

THIRD AMENDED AND RESTATED COMPREHENSIVE AGREEMENT

RELATING TO THE I-95/395 HOV/HOT LANES PROJECT

DATED AS OF AUGUST 10, 2022

BY AND BETWEEN

**VIRGINIA DEPARTMENT OF TRANSPORTATION,
an Agency of the Commonwealth of Virginia**

AND

**95 EXPRESS LANES LLC,
a Delaware limited liability company**

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This THIRD AMENDED AND RESTATED COMPREHENSIVE AGREEMENT RELATING TO THE I-95/395 HOV/HOT LANES PROJECT (as amended, restated, supplemented and otherwise modified from time to time, this “Agreement”) is made and entered into as of August 10, 2022 by and between the VIRGINIA DEPARTMENT OF TRANSPORTATION (the “Department”), an agency of the Commonwealth of Virginia (the “State”), the address of which Department is 1401 East Broad Street, Richmond, Virginia 23219; and 95 EXPRESS LANES LLC, a Delaware limited liability company (the “Concessionaire”), the address of which is 6440 General Green Way, Alexandria, Virginia 22312.

ARTICLE 1

RECITALS

WHEREAS, on July 31, 2012, the Department and the Concessionaire entered into the Original Comprehensive Agreement to develop and operate approximately 29 miles of high-occupancy toll lanes in the median of I-95 between one mile north of Route 648 (Edsall Road) and the ramp for the Route 610 interchange (Garrisonville Road);

WHEREAS, on May 2, 2016, under the First Amendment the Parties added the Southern Terminus Extension to the Project, which extended the Project approximately 2.2 miles south to about milepost 142.5 on I-95;

WHEREAS, on June 8, 2017, the Parties entered into the First ARCA to add the 395 Project, which among other things extended the Project for approximately 8 miles north to the Washington D.C. line;

WHEREAS, on April 18, 2019, the Parties entered into the Second ARCA to add the Fred Ex Project, which among other things extended the Project for approximately 10 miles south to Fredericksburg;

WHEREAS, Section 12.01(a) of the Second ARCA permits the Concessionaire to, at its sole cost and expense, design, develop, construct, operate and maintain Concessionaire Project Enhancements (as defined in the Second ARCA) within the Project Right of Way (as defined in the Second ARCA), including any fundamental change in the dimensions, character, quality, location, or position of all or any part of the Project, *provided* that all aspects thereof are approved in writing by the Department in its sole discretion, and the Concessionaire has entered into a Development Contract (as defined in the Second ARCA) with the Department with respect to such Concessionaire Project Enhancement;

WHEREAS, the Parties entered into that certain Opitz Boulevard Ramp Project Development Framework Agreement dated January 29, 2019, as amended and restated by the Amended and Restated Opitz Boulevard Ramp Project Development Framework Agreement, dated June 17, 2021, and as further amended to extend the expiration date thereof pursuant to that letter agreement between the Parties, dated May 19, 2022 (together, the “Opitz Boulevard Ramp DFA”), pursuant to which the Parties established a process for the Concessionaire to pursue the Opitz Boulevard Ramp Project (as hereinafter defined) as a Concessionaire Project Enhancement;

WHEREAS, the Parties entered into that certain Seminary Road Ramp Project Development Framework Agreement dated November 29, 2021, as amended to extend the expiration date thereof pursuant to that letter agreement between the Parties, dated May 19, 2022 (together, the “Seminary Road Ramp DFA”), pursuant to which the Parties established a process for the Concessionaire to pursue the Seminary Road Ramp Project (as hereinafter defined) as a Concessionaire Project Enhancement;

WHEREAS, on January 12, 2022, the Commonwealth Transportation Board designated the lanes to be constructed and/or modified by the Seminary Road Ramp Project and the Opitz Boulevard Ramp Project as HOT lanes in accordance with Va. Code § 33.2-502; and

WHEREAS, the Parties now desire to amend and restate the Second ARCA to set forth their understandings and agreements with respect to the development, design, finance, construction, operation, and maintenance of the Project pursuant to a long-term concession arrangement granted to the Concessionaire by the Department by this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 2

DEFINITIONS

All capitalized terms used in this Agreement, but not expressly defined in this Agreement, have the respective meanings set forth in Exhibit A attached to this Agreement.

ARTICLE 3

BASIC ROLES AND RESPONSIBILITIES

Section 3.01 Basic Agreement

(a) The parties hereto agree that the Project will be developed, designed, financed, constructed, operated, and maintained in accordance with this Agreement.

(b) The Concessionaire will perform the Work in accordance with (i) the Project Agreements, (ii) Law (including, without limitation, the State’s right to work Laws, and to the extent applicable, with all Federal Requirements and Laws applicable to a transportation project that has received or receives federal-aid funds); (iii) Governmental Approvals; (iv) Good Industry Practice; and (v) the requirements of insurance policies required to be maintained in accordance with this Agreement so as not to knowingly void or omit to take any action that would void any such policy or limit the coverage of any such policy in a way that materially and adversely affects the Department.

(c) The Concessionaire will provide appropriate oversight, management, and reporting of all phases of the Project and its Contractors such that the Project is delivered, operated, and maintained in accordance with this Agreement.

(d) The Concessionaire may retain Contractors to perform certain of its responsibilities pursuant to this Agreement, subject to the terms and conditions of this Agreement. Performance of any of the Work by a Contractor will satisfy the obligation of the Concessionaire to perform such Work; *provided* that any such Work performed will be binding on the Concessionaire and the foregoing shall not relieve the obligation of the Concessionaire to manage such Contractor. Except with regard to Limited Notices to Proceed, the 395 LNTP, the Fred Ex LNTP, notices relating to Substantial Completion pursuant to Section 8.08(e), notices relating to Final Acceptance pursuant to Section 8.09(b), notices relating to 395 Final Completion and 395 Early Final Completion pursuant to Section 8.18, notices relating to Fred Ex Final Completion pursuant to Section 8.21, notices relating to Opitz Boulevard Ramp Final Completion pursuant to Section 8.23, notices relating to Seminary Road Ramp Final Completion pursuant to Section 8.24, and notices relating to Service Commencement pursuant to Section 9.02(a), (f), (g), (h), and (i), the making of any submittals or the giving of any notices to the Department by the Design-Build Contractor (with respect to the Design-Build Work), the TTMS Contractor (with respect to the TTMS Work) or the O&M Contractor (with respect to the O&M Work) will satisfy the obligation of the Concessionaire to make such submittal or give such notice; *provided* that any such submittal made or notice given by the Design-Build Contractor (with respect to the Design-Build Work), the TTMS Contractor (with respect to the TTMS Work) or the O&M Contractor (with respect to the O&M Work) will be binding on the Concessionaire and the foregoing shall not relieve the obligation of the Concessionaire to manage the Design-Build Contractor (with respect to the Design-Build Work), the TTMS Contractor (with respect to the TTMS Work) or the O&M Contractor (with respect to the O&M Work). In any such event, the Concessionaire will remain fully and primarily responsible for the performance of the Work, the making of submittals, or the giving of any notices by any Contractors.

(e) The Department will be entitled to exercise such oversight of the activities of the Concessionaire and its Contractors in accordance with this Agreement, but will also be entitled to rely upon the Concessionaire to directly manage, oversee, and resolve disputes involving its Contractors, without the involvement of the Department (except as otherwise provided in this Agreement).

(f) The Department will use reasonable efforts in performing its rights and duties under this Agreement to minimize any disruption to or impairment of the performance of the Concessionaire's rights and obligations under this Agreement; *provided*, that nothing in this Section 3.01(f) will limit the Department's rights and obligations under this Agreement.

Section 3.02 Project Agreements

(a) The following Project Agreements relating to the Original Project (all as more particularly described by this Agreement), will be executed on or before the Agreement Date, and the Concessionaire will promptly deliver to the Department executed copies of the same:

(i) Escrow Agreement attached as Exhibit D;

- (ii) Design-Build Contract attached as Exhibit E;
- (iii) Design-Build Work Guarantee attached as Exhibit F;
- (iv) Operations and Maintenance Agreement attached as Exhibit I; and
- (v) Shared Facilities Agreement attached as Exhibit X.

(b) The following Project Agreements relating to the 395 Project (all as more particularly described by this Agreement), will be executed on or before the Amended and Restated Agreement Date, and the Concessionaire will promptly deliver to the Department executed copies of the same:

- (i) 395 Design-Build Contract attached as Exhibit HH; and
- (ii) 395 TTMS Contract attached as Exhibit II.

(c) The following Project Agreements relating to the Fred Ex Project (all as more particularly described by this Agreement), will be executed on or before the Second Amended and Restated Agreement Date, and the Concessionaire will promptly deliver to the Department executed copies of the same:

- (i) Fred Ex Design-Build Contract attached as Exhibit JJ;
- (ii) Fred Ex TTMS Contract attached as Exhibit KK; and
- (iii) Third Amended and Restated Escrow Agreement attached as Exhibit D.

(d) The following Project Agreements relating to the Opitz Boulevard Ramp Project and/or the Seminary Road Ramp Project will be executed on or before the Third Amended and Restated Agreement Date, and the Concessionaire will promptly deliver to the Department executed copies of the same:

- (i) the Opitz Boulevard Ramp Construction Contract attached as Exhibit LL-1;
 - (ii) the Opitz Boulevard Ramp TMS Contract attached as Exhibit LL-2;
 - (iii) the Seminary Road Ramp Construction Contract attached as Exhibit MM;
- and
- (iv) Fourth Amended and Restated Escrow Agreement attached as Exhibit D.

Section 3.03 Nature of Parties' Interests Pursuant to This Agreement

(a) This Agreement does not grant to the Concessionaire any fee title, leasehold estate, easement, or other real property interest of any kind in or to the Project Assets or the Project Right of Way. The Concessionaire's interests pursuant to this Agreement are limited to the Permit granted by this Agreement under Section 4.01.

(b) The Department and the Concessionaire acknowledge their mutual intent that, despite the Department's retention of fee title to (or other good and valid real property interest in) the Project Assets and the Project Right of Way, as a result of the Concessionaire's rights and interests therein pursuant to the Permit granted to the Concessionaire under this Agreement, to the maximum extent permitted by Law, for federal income tax purposes the Concessionaire will be treated as having acquired the following:

(i) with respect to the Project Assets and the Project Right of Way that are not part of the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, the Seminary Road Ramp Project, and the STE (other than the Department Shared Assets), (A) an ownership interest in those Project Assets that have an expected economic useful life equal to or less than the Term, (B) a leasehold interest in the Project Right of Way and those Project Assets that have an expected economic useful life greater than the Term (with the amount allocable under this clause (B) treated for purposes of section 467 as giving rise to rent that is allocated ratably to each year during the Term) and (C) a franchise and license, permit, or other right within the meaning of Section 197(d)(1)(D) and 197(d)(1)(F) of the Code and in that regard an amount equal to the Concessionaire's cost of development, design, construction, and start-up of the Project represents acquisition cost of such assets (the "Cost"), and no payment by the Department to the Concessionaire pursuant to Section 7.02 will be treated as part of the Cost;

(ii) with respect to the Project Assets and Project Right of Way related to the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, the Seminary Road Ramp Project, and the STE (other than the Department Shared Assets and the 395 Department Assets), (A) an ownership interest in the Project Assets that have an expected economic useful life equal to or less than the Term, (B) a depreciable interest in those Project Assets funded by the Concessionaire either as tenant funded leasehold improvements or owned assets, (C) a leasehold interest in the Project Right of Way and those Project Assets that have an expected economic useful life greater than the Term (with the amount allocable under this clause (C) treated for purposes of section 467 of the Code as giving rise to rent that is allocated ratably to each year during the Term) and (D) a franchise and license, permit, or other right within the meaning of Section 197(d)(1)(D) and 197(d)(1)(F) of the Code of the Project Right of Way within the 395 Corridor, STE Corridor and the Fred Ex Corridor; and

(iii) with respect to the 395 Department Assets, this Agreement provides that Concessionaire is performing Work for the Department under a long-term contract as set forth in Section 460 of the Code.

(c) The Cost and all consideration payable by the Concessionaire to or for the benefit of the Department related to the 395 Concessionaire Assets, the Fred Ex Project, the Opitz Boulevard Ramp Project, the Seminary Road Ramp Project, and the STE will be allocated for all income tax purposes in the manner determined by the Concessionaire, which allocation will be consistent with Section 1060 of the Code and the Concessionaire will execute and file all income tax returns with the Internal Revenue Service in a manner consistent with such allocation, including Form 8594. The Department and the Concessionaire do not contemplate that the Department will be required to file any return with the Internal Revenue Service with respect to

such allocation, but that if required to do so the Department will file such return in a manner consistent with such allocation.

Section 3.04 Quiet Possession and Enjoyment

The Department agrees that, except as otherwise provided in this Agreement, the Concessionaire will, at all times during the Term, be entitled to, and will have, the quiet possession and enjoyment of the Project and the Project Right of Way and be entitled to hold the Permit and exercise the rights granted to the Concessionaire under this Agreement, subject to the exercise by the Department of its rights under the Project Agreements. The Department will, at all times during the Term, defend (a) the Department's title or real property interest to the Project and Project Right of Way and (b) the Permit and related rights the Department grants to the Concessionaire hereunder, or any portion thereof, in each case against any Person claiming any interest adverse to the Department, the State or the Concessionaire in the Project or the Project Right of Way, or any portion thereof, except where such adverse interest arises as a result of act or omission by the Concessionaire or any other Concessionaire Party in breach of the provisions of this Agreement or the negligence, misconduct or violation of Law by the Concessionaire or any other Concessionaire Party.

ARTICLE 4

GRANT OF PERMIT; TERM

Section 4.01 Grant of Permit

(a) Pursuant to the PPTA and subject to the terms and conditions of this Agreement, the Department grants to the Concessionaire the exclusive right, and the Concessionaire accepts (i) the obligation to develop, design, finance, construct, operate, and maintain the Project, including the obligation to operate and maintain the STE following the applicable Service Commencement Date and following handover pursuant to Section 8A.11 and (ii) the right to establish, impose, charge, collect, use, and enforce payment of tolls and related charges (the "Permit"). For the avoidance of doubt, (1) the design, development, and construction of the Project shall not include the design, development, and construction of the STE and (2) the operations and maintenance of the Project shall not include the operations and maintenance of the 395 Department Assets.

(b) The Department's grant of the Permit and the Concessionaire's obligations, each pursuant to Section 4.01(a), is conditioned on:

(i) Financial Close having occurred in accordance with Section 7.03 (with respect to the Original HOT Lanes);

(ii) 395 Financial Close having occurred in accordance with Section 7.03A (with respect to the 395 HOT Lanes);

(iii) Fred Ex Financial Close having occurred in accordance with Section 7.03B (with respect to the Fred Ex HOT Lanes);

(iv) Opitz Boulevard Ramp Financial Close having occurred in accordance with Section 7.03D (with respect to the Opitz Boulevard Ramp HOT Lanes); and

(v) Seminary Road Ramp Financial Close having occurred in accordance with Section 7.03E (with respect to the Seminary Road Ramp HOT Lanes);

provided however that portions of the Work may be performed by the Concessionaire prior to Financial Close pursuant to Section 8.02 and Section 8.04, prior to 395 Financial Close pursuant to Section 8.17, or prior to Fred Ex Financial Close pursuant to Section 8.20.

(c) In consideration of the Permit granted to the Concessionaire by the Department pursuant to this Section 4.01, the Concessionaire will perform the Work at its own expense except as otherwise provided in this Agreement and pay (to the extent required) to the Department the Gross Toll Share Payment in accordance with the Gross Toll Share Payment calculation attached as Exhibit J-2 and the Annual Transit Investment in accordance with Section 5.11 and the terms as set forth in Exhibit P, which Annual Transit Investment also is in consideration for all the rights granted with respect to the 395 Project.

Section 4.02 Term

This Agreement will take effect on the Agreement Date and will remain in effect, until the first to occur of (i) December 28, 2087 or (ii) the effective date of the termination of this Agreement pursuant to Article 20 (the “Term”).

ARTICLE 5

TOLLING

Section 5.01 Tolling of the Project

(a) Toll Revenues.

(i) From and after the Service Commencement Date and continuing during the Term, the Concessionaire will have the exclusive right to establish, impose, charge, collect, use and enforce the collection and payment of the Toll Revenues, in accordance with the terms of this Agreement. The Concessionaire will have no right to charge or collect the Toll Revenues, except as expressly authorized by this Agreement. Except as otherwise provided in this Agreement, beginning on the Service Commencement Date and through the end of the Term, the Concessionaire will have the exclusive right, title, entitlement, and interest in and to the Toll Revenues, subject to the provisions of the Electronic Toll Collection Agreement substantially in the form attached as Exhibit K.

(ii) The Concessionaire acknowledges and agrees that it will not be entitled to receive from the Department any compensation, return on investment, or other profit for providing the services contemplated by this Agreement and the other Project Agreements, other than the Public Funds Amount and other payments to the extent and in the manner specified in this Agreement. The foregoing will not affect the Concessionaire’s entitlement to Toll Revenues as provided in this Agreement.

(b) Users of the HOT Lanes.

(i) Only Permitted Vehicles will be allowed to use the HOT Lanes.

(ii) High Occupancy Vehicles equipped with a transponder (in the absence of other available technologies as provided in Section 5.01(e)) will be entitled to use the HOT Lanes at a 100% discount from otherwise applicable tolls.

(iii) Mass Transit Vehicles and Commuter Buses, school buses, motorcycles and Exempt Vehicles equipped with a transponder (in the absence of other available technologies as provided in Section 5.01(e)) will be entitled to use the HOT Lanes at a 100% discount from otherwise applicable tolls.

(iv) Permitted Vehicles (other than vehicles referred to in clauses (ii) and (iii) above) equipped with a transponder (in the absence of other available technologies as provided in Section 5.01(e)) will be entitled to use the HOT Lanes subject to payment of the applicable tolls.

(c) Concerning Tolls. The Concessionaire's rights under Section 5.01(a) are limited by, and conditioned on, compliance with Law and all other provisions in this Agreement, including the following provisions.

(i) All tolling on the HOT Lanes will be done by electronic means and there will be no toll booths. The Concessionaire will not (A) accept cash tolls on the HOT Lanes or (B) impose or collect any fee, charge or other amount for the use of the HOT Lanes other than as authorized by this Article 5.

(ii) The Concessionaire may charge, debit, and collect tolls through Open Road Tolling facilities that comply with Section 5.04, or use remote sensing or other technologies (including global positioning system technology) which must be interoperable with E-ZPass (or any successor to E-ZPass utilized on State Highways at that time) to charge, debit, and collect tolls for actual vehicular use of the HOT Lanes.

(d) Incidental Charges. The foregoing authorization to establish, impose, charge, collect, use, and enforce the collection and payment of tolls includes the right, to the extent permitted by Law, and subject to the requirement to be interoperable with E-ZPass (and any successor to E-ZPass utilized on State Highways at that time) as set forth in Section 5.01(e), to impose, charge, collect, use, and enforce, with respect to electronic tolling accounts managed by or on behalf of the Concessionaire, the following incidental charges:

(i) except to the extent that such services are provided by the Department pursuant to the Electronic Toll Collection Agreement, reasonable administrative fees for account maintenance, account statements, and customer service;

(ii) except to the extent that such services are provided by the Department pursuant to the Electronic Toll Collection Agreement, reasonable amounts for the purchase or rental of transponders or other electronic tolling devices;

(iii) except to the extent that such services are provided by the Department pursuant to the Electronic Toll Collection Agreement, reasonable, refundable security deposits for the distribution of transponders or other electronic toll devices;

(iv) except to the extent that such services are provided by the Department pursuant to the Electronic Toll Collection Agreement, reasonable video surcharges or other reasonable fees for permitted travel on the Project Assets by vehicles that are not equipped with a transponder or other available equipment allowing the processing of the applicable tolls through E-ZPass (or any successor to E-ZPass utilized on State Highways at that time); and

(v) reasonable fees, penalties, and interest for toll violations, including costs of collection in accordance with Law; and

(vi) other incidental fees and charges reasonable and customary in connection with the services being provided at that time by the Concessionaire; *provided*, that the amount of any such other incidental fees and charges will not exceed the amount reasonably necessary for the Concessionaire to recover its Allocable Costs, directly incurred with respect to the items, services, and work for which they are levied.

Except to the extent such fees and charges are covered in the Electronic Toll Collection Agreement, the Concessionaire may apply incidental charges set forth in this Section 5.01(d) to any Permitted Vehicles other than Exempt Vehicles.

(e) Interoperability. From and after the Initial Service Commencement Date through the end of the Term, the Concessionaire will operate and maintain a toll collection system with respect to the Project which will be interoperable with E-ZPass and any successor to E-ZPass utilized on State Highways at that time. If the Department (or its successor) intends to change any State interoperability or compatibility standards, requirements or protocols for toll collection systems, it will coordinate with the Concessionaire prior to the implementation of such change so as to minimize the loss of Toll Revenues, disruption and cost to the Concessionaire, but the Department will not be liable in any event for any loss of Gross Revenues, disruption or cost attributable to such change. If the Concessionaire selects an electronic toll and traffic management system other than the system then utilized on other State Highways, it will coordinate with the Department prior to the implementation or any change of such system to ensure interoperability and compatibility with E-ZPass (or any successor to E-ZPass utilized on State Highways at that time) or with such other system then utilized on other State Highways in accordance with the Technical Requirements.

(f) Toll Collection Administration. The Concessionaire will be responsible for all toll transaction account management services; *provided*, however, (i) that the Concessionaire will engage and contract with the Department for the provision of toll transaction account management services in accordance with and for the initial term set forth in the Electronic Toll Collection Agreement, in substantially the form attached as Exhibit K, in which the Department will perform back-office, customer service, and related activities for the Project as it relates to transactions processed through E-ZPass (and any successor to E-ZPass utilized on State Highways at that time), and (ii) that the Department will make available to the public, without charge to the

Concessionaire, transponders or other electronic toll devices allowing the processing of the applicable tolls (or 100% discount from tolls) for use of the HOT Lanes. The Electronic Toll Collection Agreement is subject to renewal pursuant to the terms thereof.

(g) Transaction Costs.

(i) Without limiting the immediately succeeding sentence, the Department or its agents will use commercially reasonable efforts to work with the Concessionaire to limit transaction costs charged to the Project by the Department, including charges for toll transaction account management services. The Department will not charge the Concessionaire or the Project any fees or other transaction amounts for toll transaction account management services, other than as set forth in the Electronic Toll Collection Agreement.

(ii) If the Department, or its successors or assigns, ceases to provide all or a material part of the ETC Services and as a result the Concessionaire incurs costs related to self-performing, or engaging a Contractor to perform, the ETC Services no longer provided by the Department, or its successors or assigns, then the Department agrees to pay the Concessionaire the amount of such reasonable costs. If the Concessionaire self-performs or contracts with a Contractor to provide ETC Services, the Department, or its successors or assigns, will provide the same access to customer accounts as if the Department continued to provide the ETC Services, if such access is permitted by Law and if the Concessionaire pays to the Department, or its successors or assigns, the reasonable costs of providing such access.

(h) Violations Processing Services.

(i) The Department has implemented and maintains a processing system for the enforcement of penalties for toll violations in Virginia for electronic toll collection systems on State Highways. The Concessionaire may, but is not obligated to, enter into an agreement with the Department to obtain the benefits of such enforcement system, in accordance with the Violation Processing Services Agreement in the form attached as Exhibit L. In consideration of such services, the Concessionaire will pay the Department its customary charges for such services in effect from time to time. For purposes of identifying and apprehending toll violators of the Project, provided it is authorized under Law, and any applicable agreements or arrangements, the Department will make available to the Concessionaire the benefits of any agreements or arrangements which the Department has in place with other state authorities or agencies that provide access to records in their possession relating to vehicle and vehicle owner data, and will coordinate with the Virginia State Police in accordance with Section 9.06 with respect to the provision of policing services, emergency services, traffic patrol and traffic law enforcement services on the Project.

(ii) The Concessionaire understands and agrees that, notwithstanding anything to the contrary in this Agreement or any other Project Agreement, the risk of enforcement and collection of tolls and related charges (including user fees and civil penalties and administrative fees) remains with the Concessionaire, and that the Department does not,

and will not be deemed to, guarantee collection or collectability of such tolls and related charges to the Concessionaire or any other Person; *provided*, however, that the foregoing will not limit the Department's obligations or duties under the Electronic Toll Collection Agreement or any other Project Agreement with the Concessionaire.

(i) License Plate Look-up Fees. While the parties do not anticipate that the Virginia Department of Motor Vehicles will charge the Concessionaire a fee for license plate identification pursuant to the Concessionaire's violation processing services, in the event that the Virginia Department of Motor Vehicles does charge the Concessionaire a fee for license plate identification pursuant to the Concessionaire's violation processing services, the Concessionaire will promptly notify the Department of any such fee. Upon receipt of such notice, the Department may contact the Virginia Department of Motor Vehicles and attempt to negotiate a lower fee or to eliminate such fee. The Department agrees to pay the Concessionaire the amount of such fees charged to the Concessionaire, if any, by the Department of Motor Vehicles related to the Project. Prior to the payment by the Department of such amounts, the Concessionaire will submit to the Department on a monthly basis an invoice to the Department for such fees paid by the Concessionaire, including supporting documentation.

(j) No Continuing Department Obligations. Nothing in this Agreement will obligate or be construed as obligating the Department, or any assignee thereof, to continue or cease collecting tolls after the end of the Term.

Section 5.02 Toll Rates

(a) The Concessionaire will impose congestion pricing on the HOT Lanes, which may include dynamic tolling with potential toll rate changes at frequent intervals and there will be no restrictions on toll rates, except as set forth in this Article 5. The Concessionaire's congestion pricing methodology:

(i) will not be inconsistent with the Department's plans and programs for highway system management of the overall transportation network;

(ii) when implemented, will assure that the Project will not become a federal Degraded Facility (as defined in 23 U.S.C. §166), as set forth in the Technical Requirements; and

(iii) when implemented, will be designed to assure that the Project will meet the OSPS.

(b) The toll rates will be the same for persons using the HOT Lanes under like conditions, and for this purpose "like conditions" may take into consideration:

(i) type, weight and occupancy of the vehicle;

(ii) number of axles;

(iii) time of day and/or week;

- (iv) time and location of entry or exit to or from the HOT Lanes;
- (v) traffic volume, vehicle speed, vehicle type; and
- (vi) similar variables or combinations of such variables.

Notwithstanding the foregoing, (A) the Concessionaire may adopt and implement discount programs for different classes or groups of persons using the HOT Lanes under like conditions, subject to the provisions of Section 24.01 and (B) it is understood that dynamic tolling may result in vehicles that enter the HOT Lanes at different times being subject to different toll rates as well as in vehicles travelling on the same section of the HOT Lanes being subject to different toll rates.

Section 5.03 Reserved

Section 5.04 User Confidentiality

The Concessionaire will comply with all Laws related to confidentiality and privacy of users of the HOT Lanes.

Section 5.05 Suspension of Tolls

(a) In addition to its rights under Law and Section 22.02(b) (but without limiting the Concessionaire's rights in the event of the occurrence of a Department Change or a Compensation Event), the Department will have the right, in its sole discretion, to order immediate suspension of tolling on any or all portions of the HOT Lanes that are designated for immediate use as an emergency mass evacuation route. The Department will have no liability to the Concessionaire for the loss of Toll Revenues or the increase in costs and expenses attributable to any such order issued pursuant to Law by the Department or any other Governmental Authority, *provided* that the Department:

(i) concurrently (A) suspends tolling on all other Department-operated tolled facilities that are located within the area designated for evacuation or facilitation of evacuation and (B) orders suspension of tolling on all other tolled facilities operated by others within such area and over which the Department has the authority to order such suspension; and

(ii) lifts the order on the HOT Lanes before or concurrently with the lifting of the order for all other designated tolled facilities within the area designated for evacuation or facilitation of evacuation.

(b) The Department will have the right to order the diversion of traffic onto the HOT Lanes, and to order immediate temporary suspension of tolling on the HOT Lanes in the direction(s) of diversion, if the HOT Lanes are designated for immediate use as the alternate route for the diversion of such traffic from another State Highway or the GP Lanes temporarily closed to all lanes in one or both directions due to:

(i) an emergency declared pursuant to Law by the Department or any other Governmental Authority; or

(ii) a significant incident involving one or more casualties requiring hospitalization or treatment by a medical professional or a fatality on the affected State Highway or GP Lanes from which such traffic is diverted.

The Department and the Concessionaire will consult with each other on any such diversion of traffic and any suspension of tolling. The Department will have no liability to the Concessionaire for the loss of Gross Revenues or the increase in costs and expenses attributable to the period that such order is in effect. The Department will lift an order given in accordance with this Section 5.05(b) as soon as the need for such order ceases.

(c) If the Department receives an order, request, notice, or demand from federal authorities, the Department will have the right to close all or a portion of the HOT Lanes to the public for such period of time as may be necessary for secret service, national security and homeland security purposes. The Department will have no liability to the Concessionaire for the loss of Gross Revenues or the increase in costs and expenses attributable to any such event. The Department will lift an order given in accordance with this Section 5.05(c) as soon as the need for such order ceases.

(d) Each party will provide reasonable assistance to the other party in seeking any available reimbursement from Federal sources for lost Toll Revenues and expenses incurred as a result of a suspension pursuant to Section 5.05(a) or (b) or a closure of the HOT Lanes pursuant to Section 5.05(c) and for pursuing insurance coverage related thereto. If either the Concessionaire or the Department receives reimbursement from Federal sources for lost Toll Revenues as a result of actions taken in the preceding sentence, the proceeds of such reimbursement will be applied in the following order of priority: first to repair any uninsured physical damage to the HOT Lanes directly caused by the suspension of tolling or diversion of traffic onto the HOT Lanes pursuant to this Section 5.05; second, pro rata, to pay the Allocable Costs of the Department and the Concessionaire in obtaining reimbursement from Federal sources pursuant to this Section 5.05(d); and third, to the Concessionaire as reimbursement for lost Toll Revenues.

(e) The Department agrees that the minimum average operating speed during periods when the tolling on the HOT Lanes has been suspended or the HOT Lanes have been closed pursuant to this Section 5.05 will be excluded from any calculation of OSPS.

(f) To the extent that the Concessionaire engages in any emergency services activities while complying or attempting to comply with Chapter 3.2 of Title 44 of the Code of Virginia, the “Commonwealth of Virginia Emergency Services and Disaster Law of 2000” (§ 44-146.13 et seq.), or any rule, regulation, or executive order adopted or issued thereunder, the Concessionaire may enjoy the immunity from liability granted by § 44-146.23.

Section 5.06 Disposition of Gross Revenues

(a) Gross Revenues will be used first to pay all due and payable Operating Costs, specifically including all amounts due to the Department pursuant to this Agreement (other than the Annual Transit Investment and the Gross Toll Share Payment). Such amounts due to the Department (other than the Annual Transit Investment and the Gross Toll Share Payment) will be

paid on a *pari passu* basis with all other operations and maintenance costs, before the Gross Revenues may be used and applied for any other purpose.

(b) The Concessionaire will not use Gross Revenues to make any Distributions (or to pay any amount payable pursuant to an Affiliate Contract subject to approval but not approved by the Department pursuant to Section 24.02(1)), unless and until the Concessionaire first pays the following (listed in no particular order):

(i) any undisputed amounts due to the Department pursuant to the terms of this Agreement;

(ii) current and delinquent operations and maintenance costs (including any payments to Affiliates made solely in accordance with the applicable Affiliate Contracts entered into in accordance with Section 24.02(1));

(iii) current and delinquent debt service and other current and delinquent amounts, due under any Concessionaire Debt;

(iv) all Taxes affecting the Project that are currently due and payable or delinquent;

(v) all current and delinquent deposits to any Major Maintenance Reserve Fund and any other reserve contemplated by this Agreement;

(vi) all current and delinquent costs and expenses for Major Maintenance;

(vii) the Annual Transit Investment that is currently due and payable in accordance with Part B of Exhibit P and any 395 Delayed Annual Transit Investment Amounts pursuant to, and in accordance with, Section 5.11 and Exhibit P; and

(viii) any Gross Toll Share Payment due to the Department under Exhibit J-2.

In the event there are any disputed amounts due to the Department pursuant to the terms of this Agreement, the Concessionaire will maintain a cash reserve for such disputed amounts in accordance with GAAP or any other generally accepted accounting principles which are acceptable to the Department as a condition precedent to making any Distribution or payment to an Affiliate. If the Concessionaire makes any Distribution or payment to an Affiliate in violation of this Section 5.06(b), the same will be deemed to be held in trust by such Person for the benefit of the Department and the Collateral Agent, and will be payable to the Department or the Collateral Agent on demand. If the Department collects any such amounts held in trust, it will make them available for any of the purposes set forth above and, at the request of the Collateral Agent, deliver them to the Collateral Agent.

(c) The Concessionaire will have no right to use Gross Revenues to pay any debt, obligation, or liability unrelated to this Agreement, the Project, or the Concessionaire's services pursuant to this Agreement, *provided*, that this Section 5.06(c) does not apply to or otherwise affect the Concessionaire's right to make Distributions in accordance with the Concessionaire's

governing instruments and this Agreement and the ability of the recipients thereof to apply the same in their sole discretion, subject to compliance with Section 5.06(b) and Exhibit P.

(d) For the avoidance of doubt, any Toll Revenues generated on the Original HOT Lanes, the Fred Ex HOT Lanes, and the STE HOT Lanes will not be considered or treated as 395 Revenues (as defined under Exhibit P) for the purposes of the Annual Transit Investment.

(e) In conjunction with the (i) Concessionaire incurring any Concessionaire Debt after the Second Amended and Restated Date for which the Concessionaire intends to seek the consent of Lenders under the Financing Assignments, or (ii) Concessionaire refinancing any Concessionaire Debt after the Second Amended and Restated Date, the Concessionaire shall seek the consent of Lenders that is required to amend the Collateral Agency Agreement (A) to amend the Project Revenues Waterfall to insert the Gross Toll Share Payment immediately below the Annual Transit Investment within the Project Revenues Waterfall and (B) to remove the Permit Fee from the Collateral Agency Agreement (the "Collateral Agency Agreement Amendment"). Prior to effective date of the Collateral Agency Agreement Amendment, in connection with any Concessionaire Debt incurred after the Second Amended and Restated Date that does not require Lender consent under the Financing Assignments, the Concessionaire shall require the Lenders related to such Concessionaire Debt to agree to the Collateral Agency Agreement Amendment taking effect, whether contemporaneously or in the future, as applicable. For the avoidance of doubt, the Concessionaire satisfied in full the foregoing requirements regarding the Collateral Agency Agreement Amendment by causing the execution and delivery of the Third Amended and Restated Collateral Agency and Account Agreement, dated as of February 10, 2022, by and among the Concessionaire, the Trustee and the Collateral Agent.

Section 5.07 Revenue Risk Related to Traffic Volume

(a) Except for its specific obligations to the Concessionaire under the terms and conditions of this Agreement, the Department will not have any risk or liability related to actual traffic volume and revenue, including but not limited to the risk that actual traffic volume is less than the traffic volume projected in the Base Case Financial Model Update (Fred Ex Final).

(b) (i) From the period beginning on December 28, 2016 to December 31, 2030 (the "First Measurement Period"), the Department will pay to the Concessionaire amounts equal to 70% of the Average Toll for the number of High Occupancy Vehicles exceeding a threshold of (A) 35% of the total flow of all Permitted Vehicles (for the Original HOT Lanes), (B) 60% of the total flow of all Permitted Vehicles (for the 395 HOT Lanes), and (C) 60% of the total flow of all Permitted Vehicles (for the Fred Ex HOT Lanes), in each case in two consecutive Toll Sections that are then using such Toll Sections going in the same direction for any period of 15 consecutive minutes during a day during which the total flow of all Permitted Vehicles not including Permitted Vehicles violating the High Occupancy Requirement on such two consecutive Toll Sections going in the same direction exceeds a rate (the "First Threshold HOV Percentage and Rate") of (x) 1,450 vehicles per hour per traffic lane (for the Original HOT Lanes), (y) 1,600 vehicles per hour per traffic lane (for the 395 HOT Lanes), or (z) 1,600 vehicles per hour per traffic lane (for the Fred Ex HOT Lanes), as applicable; *provided*, however, that the Department will not be required to make any payment, in question pursuant to this Section 5.07(b)(i) unless the 15 minute period in question and any subsequent consecutive 15 minute periods immediately follows a period of at

least 30 consecutive minutes during which the total flow of all Permitted Vehicles for such two consecutive Toll Sections going in the same direction exceeds the First Threshold HOV Percentage and Rate.

(ii) From January 1, 2031 to December 31, 2040 (the “Second Measurement Period”), the Department will pay to the Concessionaire amounts equal to 70% of the Average Toll for the number of High Occupancy Vehicles exceeding a threshold of (A) 37% of the total flow of all Permitted Vehicles (for the Original HOT Lanes), (B) 62% of the total flow of all Permitted Vehicles (for the 395 HOT Lanes), and (C) 62% of the total flow of all Permitted Vehicles (for the Fred Ex HOT Lanes), in each case in two consecutive Toll Sections that are then using such Toll Sections going in the same direction for any period of 15 consecutive minutes during a day during which the total flow of all Permitted Vehicles not including Permitted Vehicles violating the High Occupancy Requirement on such two consecutive Toll Sections going in the same direction exceeds a rate (the “Second Threshold HOV Percentage and Rate”) of (x) 1,550 vehicles per hour per traffic lane (for the Original HOT Lanes), (y) 1,600 vehicles per hour per traffic lane (for the 395 HOT Lanes), or (z) 1,600 vehicles per hour per traffic lane (for the Fred Ex HOT Lanes), as applicable; *provided*, however, that the Department will not be required to make any payment, in question pursuant to this Section 5.07(b)(ii) unless the 15 minute period in question and any subsequent consecutive 15 minute periods immediately follows a period of at least 30 consecutive minutes during which the total flow of all Permitted Vehicles for such two consecutive Toll Sections going in the same direction exceeds the Second Threshold HOV Percentage and Rate.

(iii) From January 1, 2041 to July 31, 2052 (the “Third Measurement Period”), the Department will pay to the Concessionaire amounts equal to 70% of the Average Toll for the number of High Occupancy Vehicles exceeding a threshold of (A) 38% of the total flow of all Permitted Vehicles (for the Original HOT Lanes), (B) 65% of the total flow of all Permitted Vehicles (for the 395 HOT Lanes), and (C) 65% of the total flow of all Permitted Vehicles (for the Fred Ex HOT Lanes), in each case in two consecutive Toll Sections that are then using such Toll Sections going in the same direction for any period of 15 consecutive minutes during a day during which the total flow of all Permitted Vehicles not including Permitted Vehicles violating the High Occupancy Requirement on such two consecutive Toll Sections going in the same direction exceeds a rate (the “Third Threshold HOV Percentage and Rate”) of (x) 1,550 vehicles per hour per traffic lane (for the Original HOT Lanes), (y) 1,600 vehicles per hour per traffic lane (for the 395 HOT Lanes), or (z) 1,600 vehicles per hour per traffic lane (for the Fred Ex HOT Lanes), as applicable; *provided*, however, that the Department will not be required to make any payments pursuant to this Section 5.07(b)(iii) unless the 15 minute period in question and any subsequent consecutive 15 minute periods immediately follows a period of at least 30 consecutive minutes during which the total flow of all Permitted Vehicles for such two consecutive Toll Sections going in the same direction exceeded the Third Threshold HOV Percentage and Rate.

(iv) For purposes of determining the High Occupancy Vehicles as a percentage of flow, (A) HOV-2 or below vehicles and (B) Permitted Vehicles violating the High

Occupancy Requirement will not be counted as High Occupancy Vehicle usage but will be counted as part of total flow.

(v) If the Annual Budget submitted to the Department for any Agreement Year pursuant to Section 9.08 contemplates that the IRR Threshold will be achieved during such Agreement Year, any amounts otherwise payable to the Concessionaire under this Section 5.07(b) for any month occurring during or after the month which the IRR Threshold estimated to be achieved will be deposited by the Department into an escrow account. Within 90 Days following the end of the Agreement Year in which such deposits were made, the Concessionaire and the Department will direct the escrow agent to transfer the moneys in such escrow fund to the Concessionaire to the extent that, upon receipt of the moneys, the IRR Threshold has not been exceeded, and, upon confirmation that such amount has been duly paid and received by the Concessionaire, the Concessionaire and the Department shall direct the escrow agent to transfer any excess remaining after the foregoing transfer to the Department.

(vi) Failure by the Concessionaire to notify the Department in writing of its claim for a payment pursuant to this Section 5.07(b) within 30 Days after the end of each calendar month with respect to which this provision applies will constitute a permanent waiver of any such claim with respect to such month. If the Department disagrees with a claim filed by the Concessionaire, the Department may direct the Concessionaire to provide audited or otherwise independently verified information relevant to its claim for a payment. The Department will have 30 Days upon receipt of this information to review the information and calculations provided and if the Department agrees with the calculation, make the calculated payment, together with interest on such amount, which interest shall commence accruing 30 Days after the month to which the payment relates. To the extent there are amounts on deposit in the Project Enhancement Account, such payments shall be made first from the Project Enhancement Account and the interest due shall be calculated based on the average earnings rate on the Project Enhancement Account, during such period. If there are no amounts on deposit therein then interest shall be based on the average earnings rate on the State's Transportation Trust Fund or any successor thereto, during such period.

(vii) Notwithstanding the foregoing, this Section 5.07(b) will cease to apply on the first to occur of: (A) the date on which the IRR Threshold has been reached and (B) July 31, 2052.

Section 5.08 Failure to Meet OSPS

(a) At any time after the second full month following the applicable Service Commencement Date, the Concessionaire will notify the Department if the Concessionaire's scheduled monthly report identifies an instance of the Project's failure to meet the OSPS (as provided in the Technical Requirements). The notice will describe such failure in reasonable detail. The Department will notify the Concessionaire within 30 Days of its receipt of the Concessionaire's report whether or not it requires an OSPS Improvement Plan (the "OSPS Improvement Plan").

(b) Upon receiving notification from the Department pursuant to Section 5.08(a) that the Project requires an OSPS Improvement Plan, the Concessionaire (at its sole cost and expense) will prepare and submit the OSPS Improvement Plan to the Department for its approval. The OSPS Improvement Plan will not be required to propose a general strategy to improve overall OSPS compliance, but will be required to propose a strategy to address the specific reasons which the Concessionaire reasonably believes caused such failure as described in the Concessionaire's report. The OSPS Improvement Plan will be delivered to the Department within 30 Days of the Department's notice (or longer if mutually agreed to by the parties) and will cover the matters set forth in Section 5.08(a). The Department will review the OSPS Improvement Plan in accordance with the provisions of Section 10.05. The Concessionaire will diligently implement the elements of the approved OSPS Improvement Plan that are within the control of the Concessionaire promptly following the Department's approval thereof and within the schedule set forth in such OSPS Improvement Plan.

(c) Each OSPS Improvement Plan will be in writing and will set forth a schedule and describe specific actions the Concessionaire and the Department, as applicable, will undertake to improve the Concessionaire's OSPS compliance with respect to the failure described in the Concessionaire's scheduled report. At any time after initial implementation of an OSPS Improvement Plan, or upon a material revision of the OSPS during such time, either party may request a revision of such OSPS Improvement Plan by giving at least 30 Days written notice to the other party, whereupon both parties will review the existing OSPS Improvement Plan and agree in writing to any revisions required to such OSPS Improvement Plan.

(d) The current OSPS requirements will apply for a ten (10) year period from the Initial Service Commencement Date. Prior to the tenth anniversary of the Initial Service Commencement Date, the Concessionaire and the Department will review the current OSPS, as the OSPS requirements may be modified in the most recent OSPS Improvement Plan, to determine the future need for OSPS or an alternative form of performance monitoring. The Concessionaire agrees that the Department has the right to implement a form of OSPS for subsequent ten-year periods throughout the Term of this Agreement. The Department agrees that such subsequent OSPS requirements:

- (i) will not be higher than 55 mph;
- (ii) will not be lower than the FHWA / 23 U.S.C. §166 requirements; and
- (iii) will not, on the basis of the Concessionaire's updated traffic modeling and other data, result in a known failure to meet the OSPS requirements.

Section 5.09 23 U.S.C. §166 Compliance

(a) The Department agrees to provide to FHWA the certifications required of a State agency under 23 U.S.C. §166 and acknowledges that it has entered into the Toll MOU attached as Exhibit M. The delivery of a certification by the Department that the HOT Lanes do not comply with the applicable requirements of 23 U.S.C. §166, or such other federal, rule or regulation will not constitute a default by the Department under this Agreement.

(b) The Concessionaire agrees to maintain and operate the HOT Lanes, at all times, in compliance with the provisions of 23 U.S.C. §166 and 23 U.S.C. §129, successor provisions, all regulations promulgated thereunder, and the Toll MOU. Accordingly, the Concessionaire will be responsible for the satisfaction of the requirements of 23 U.S.C. §166(b)(4), in accordance with the terms of this Agreement, and will otherwise coordinate its compliance efforts with the Department so as to enable the Department to provide the certifications required by Section 5.09(a).

Section 5.10 USDOT Reporting Requirements

(a) The Concessionaire agrees to collect and provide to the Department data and other information regarding the Project and prepare reports regarding the Project (i) required to be provided by the Department to the USDOT in relation to the TIFIA Credit Assistance, TIGER Credit Assistance, or other financing program or (ii) deemed necessary by the Department to satisfy the Department's reporting obligations under the TIFIA Credit Assistance, TIGER Credit Assistance, FASTLANE grants related to the Department's Atlantic Gateway Project or other financing program.

(b) Upon receiving prior notice from the Department, the Concessionaire will provide the data, information and reports that it is required to provide and prepare pursuant to Section 5.10(a) to the Department at least 30 Days prior to the date on which the Department is required to submit the same to the USDOT.

(c) If the Concessionaire enters into one or more agreements with the USDOT in connection with the TIFIA Credit Assistance, TIGER Credit Assistance, or other financing program, the Concessionaire agrees to provide the Department with executed versions of such agreements together with any agreements or instruments evidencing or securing the Concessionaire's obligations thereunder, including any collateral pledge agreements. In Exhibit G, the Department is providing the Concessionaire with a listing of the reports, notices and other filings, copies of which are to be provided to the Department concurrently with the Concessionaire's delivery (or receipt) thereof. The Concessionaire agrees to provide the Department with copies of such reports, notices and other filings made under such agreements as are requested by the Department pursuant to the preceding sentence; *provided* however, that the Concessionaire, in its reasonable discretion, may determine not to provide the Department with reports, notices, and filings that it believes are not germane to the Project and the Department. The Concessionaire will provide within ten days after its receipt of a request by the Department, its rationale for not providing a report, notice, or other filing requested by the Department pursuant to this Section 5.10(c).

(d) If the Concessionaire enters into a Project Financing Agreement with the Collateral Agent that provides for the collection and distribution of Gross Revenues, the Concessionaire agrees to provide to the Department, as soon as reasonably practicable after the Concessionaire's actual receipt of the same, a copy of: any written notice of resignation or removal of the Collateral Agent; any written notice of the appointment of a successor Collateral Agent; any written notice of any merger of the Collateral Agent; any written notice of any transfer by the Collateral Agent of its rights under the Project Financing Agreements to an affiliate; and any written notice of any change in any Depository or deposit account bank.

Section 5.11 Annual Transit Investment

(a) The Concessionaire shall provide the Department with the Annual Transit Investment in accordance with the terms set forth in Exhibit P, this Section 5.11 and the most recent Base Case Financial Model Update.

(b) The first Annual Transit Investment will be due on the 395 Service Commencement Date and shall be paid regardless of whether or not the 395 Project reaches 395 Final Completion.

(c) The Annual Transit Investment shall be (i) paid after debt service and any payments to reserve accounts required by Lenders and (ii) subject to the level of lock-up provided for in the lock-up provisions in the 395 Project Financing Agreements or in connection with the TIFIA Loan Documentation.

(d) If funds are insufficient to make a scheduled Annual Transit Investment payment in accordance with Exhibit P at the time it is due, either due to the operating performance of the Project or the requirements in any 395 Project Financing Agreement, such Annual Transit Investment payment, or any unpaid portion thereof will be considered past due and will remain due and payable without interest (unless funds from the 395 Reserve Account are used to pay debt service in accordance with Exhibit P, Part B, Paragraph 3, in which case interest will accrue on the portion of the 395 Delayed Annual Transit Investment that has not been paid due to such debt service payment in accordance with Section 25.22 of this Agreement). Such insufficiency and failure to make such Annual Transit Investment payment will not constitute a Concessionaire Default, except as outlined in Part B of Exhibit P. Any outstanding 395 Delayed Annual Transit Investment Amount must be paid before funds may be used for the Annual Transit Investment payments due in the current Agreement Year. The Annual Transit Investment payment shall be paid in accordance with Part B of Exhibit P.

(e) If the Concessionaire fails to make the Annual Transit Investment payment in the amounts shown in Part A of Exhibit P and the time scheduled for two consecutive years, the Concessionaire must submit to the Department a plan within 45 days of the due date of the second consecutive incomplete Annual Transit Investment, describing the actions to be taken in order to improve the performance of the 395 Project and restore compliance with the payments in Part A of Exhibit P.

ARTICLE 6

BASE CASE FINANCIAL MODEL

Section 6.01 Current Base Case Financial Model Update

(a) As of the Third Amended and Restated Agreement Date, the Base Case Financial Model Update (Third ARCA) is the most recent undisputed Base Case Financial Model Update.

(b) The Concessionaire will not cause (or permit any other Person to cause) any Base Case Financial Model Update to contain any hidden data. The Concessionaire will furnish to the Department any password or other access rights for any Base Case Financial Model Update.

(c) As of the Third Amended and Restated Agreement Date, the Concessionaire has provided the Department an update of the audit report and opinion delivered pursuant to Section 23.02(m) for the Base Case Financial Model Update (Third ARCA).

Section 6.02 Base Case Financial Model Updates

(a) Other than in accordance with the terms of this Agreement, in no event will any Base Case Financial Model Update be changed except with the prior written approval of both the Department and the Concessionaire.

(b) Upon the occurrence of any one of the following events, the Concessionaire will provide to the Department a proposed Base Case Financial Model Update which will (except as otherwise agreed by the parties) include new projections and calculations, which will set forth the impact of the event:

(i) upon submission of a notice of a Refinancing under Section 7.05;

(ii) within 60 Days after the delivery of a Delay Event Notice that extends the Guaranteed Substantial Completion Date, the 395 Guaranteed Final Completion Date, the Fred Ex Guaranteed Final Completion Date, the Opitz Boulevard Ramp Guaranteed Final Completion Date, or the Seminary Road Ramp Guaranteed Final Completion Date;

(iii) within 60 Days after the delivery of a Compensation Event Notice;

(iv) within 60 Days after the delivery of a notice of a Net Cost Savings or positive Net Revenue Impact under Section 14.04;

(v) within 60 Days after the Concessionaire notifies the Department that it proposes to undertake a Concessionaire Project Enhancement;

(vi) within 60 Days after the parties agree that any amendments to this Agreement have had or will have a material effect on future costs or Gross Revenues;

(vii) within 60 Days after the Department delivers notice of the anticipated STE Final Acceptance Date under Section 8A.06(b);

(viii) within 60 Days before the date of any Fred Ex Additional Financial Close pursuant to Section 7.03C; *provided*, that (x) such proposed Base Case Financial Model Update shall be based upon the Base Case Financial Model Update (Fred Ex Final) accepted by the Department as true and complete as of Fred Ex Financial Close, and shall be updated to reflect actuals for the most recently audited fiscal year, changes in projections, changes in the proposed financing structure, and changes in all other inputs since Fred Ex Financial Close, and (y) such proposed Base Case Financial Model Update may be modified in connection with Sections 7.03C(a)(iii) and (v); and

(ix) within 30 Business Days following any termination of the Fred Ex Project, the Opitz Boulevard Ramp Project and/or the Seminary Road Ramp Project, in each case, in accordance with the terms hereof.

(c) Any proposed Base Case Financial Model Update shall become the Base Case Financial Model Update following its approval by the Department.

(d) Within 150 Days following the end of each fiscal year, the most recent undisputed Base Case Financial Model Update will be updated to reflect audited historical cash flows for the most recently audited fiscal year; *provided*, however, such Base Case Financial Model Update will not, except as otherwise agreed in writing by the Parties, include changes in: (i) Financial Model Formulas and (ii) forecast cash flows. Each Base Case Financial Model Update will be deposited with the Escrow Agent as described in Section 18.05. In addition, the Concessionaire will deposit with the Escrow Agent the Fred Ex Project Binding Proposal Base Case Financial Model within 30 days after the Second Amended and Restated Agreement Date.

(e) Commencing on the fiscal year after the occurrence of the Gross Toll Share Payment Trigger, at the end of each of the Concessionaire's second fiscal quarter, the Concessionaire will provide to the Department updates to the Base Case Financial Model Update related to the Gross Toll Revenues and the Gross Toll Share Payment related to such six-month period.

(f) In connection with the Fred Ex Financial Close, the Concessionaire shall prepare and deliver to the Department a Base Case Financial Model Update (the "Base Case Financial Model Update (Fred Ex Final)") in accordance with Section 7.03B(b)(i). The Base Case Financial Model Update (Fred Ex Final) will be inclusive of the Original HOT Lanes, the 395 HOT Lanes, the STE HOT Lanes, and the Fred Ex HOT Lanes.

(g) After the Third Amended and Restated Agreement Date, future Base Case Financial Model Updates will be governed by Sections 6.02(a), (b), (c), (d) and (e), and must be inclusive of the Original HOT Lanes, the 395 HOT Lanes, the Fred Ex HOT Lanes, any STE HOT Lanes, the Opitz Boulevard Ramp HOT Lanes, and the Seminary Road Ramp HOT Lanes (unless the Fred Ex Project, the Opitz Boulevard Ramp Project and/or the Seminary Road Ramp Project are terminated in accordance with the terms hereof).

Section 6.03 Certain Adjustments

(a) Within five days of its receipt of the Original TIFIA Loan Documentation containing Original TIFIA Commercial Terms (with any changes thereto for which adjustments are made pursuant to Section 7.07(b)) pursuant to Section 7.07(a)(i), the Concessionaire will provide the Department with:

(i) a proposed Adjusted Financial Model Update, modified in accordance with Section 7.07(b) to take into account the new Department TIFIA Protection Amount in the Original TIFIA Loan Documentation; and

(ii) a proposed Base Case Financial Model Update that incorporates the modifications made to the Adjusted Financial Model pursuant to Section 6.03(a)(i).

(b) On the Original TIFIA Closing Date, the Concessionaire will provide the Department with:

(i) the Adjusted Financial Model, modified in accordance with Section 7.07(b) to take into account the Department TIFIA Protection Amount; and

(ii) a Base Case Financial Model Update that incorporates the modifications made to the Adjusted Financial Model pursuant to Section 6.03(b)(i).

(c) The Department will have the right to dispute any proposed Adjusted Financial Model Update or Base Case Financial Model Update provided to the Department pursuant to Sections 6.03(a) and (b). Within 10 Days after receipt, the Department will accept or dispute a proposed Adjusted Financial Model Update or proposed Base Case Financial Model Update (as applicable) and, if it disputes a proposed Adjusted Financial Model Update or Base Case Financial Model Update (as applicable), specifying its reasons for such dispute in sufficient detail to enable the Concessionaire to correct the errors or deficiencies. To the extent that the Concessionaire and the Department cannot agree on the changes within 20 Days of the Concessionaire delivering the proposed Adjusted Financial Model Update or Base Case Financial Model Update (as applicable) to the Department, the Dispute will be resolved in accordance with the dispute resolution procedures described in Article 21.

(d) This Section 6.03 will not apply to the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, the Seminary Road Ramp Project, or the financing of any of the foregoing.

Section 6.04 Financial Model Disputes

(a) Except as provided in Section 6.03(c), the Department will have the right to dispute any proposed Base Case Financial Model or Base Case Financial Model Update. Within 21 Days after receipt, the Department will accept or dispute a proposed Base Case Financial Model or Base Case Financial Model Update (as applicable) and, if it disputes a proposed Base Case Financial Model or Base Case Financial Model Update (as applicable), specifying its reasons for such dispute in sufficient detail to enable the Concessionaire to correct the errors or deficiencies. To the extent that the Concessionaire and the Department cannot agree on the changes within 90 Days of the Concessionaire delivering the proposed Base Case Financial Model or Base Case Financial Model Update (as applicable) to the Department, the Dispute will be resolved in accordance with the dispute resolution procedures described in Article 21.

(b) In the event of a Dispute, the immediately preceding Base Case Financial Model Update that is not being disputed will remain in effect until such Dispute is resolved or a new Base Case Financial Model Update is issued and not disputed. If a proposed Base Case Financial Model Update has not been disputed, or if any such Dispute has been so resolved, the proposed Base Case Financial Model Update will serve as the Base Case Financial Model Update and will be submitted to the Escrow Agent in accordance with Section 18.05(d).

Section 6.05 Audit of Financial Model

(a) (i) Within 30 Days after any change to the Financial Model Formulas as a result of a proposed Base Case Financial Model Update pursuant to Section 6.02(b)(ii) through (ix), or (ii) within 10 Days after any change to the Financial Model Formulas as a result of adjustments made pursuant to Section 6.03, the Concessionaire will deliver to the Department an audit report and

opinion of the Financial Model Auditor to the effect that the Financial Model Formulas reflect the terms of this Agreement and are suitable for use in this Agreement in connection with Compensation Events, Delay Events, the impact of the execution and delivery of proposed Original TIFIA Loan Documentation, and early termination procedures, and covering such other matters as may be reasonably requested by the Department, all in form and substance acceptable to the Department. With respect to any change to Financial Model Formulas as a result of a proposed Base Case Financial Model Update due to a proposed Refinancing or upon the execution and delivery of Original TIFIA Loan Documentation, such audit report and opinion will be delivered to the Department no later than seven Days prior to the proposed date of a Refinancing.

(b) Copies of the audit reports and opinions delivered by the Financial Model Auditor will be addressed to the Department, and the Department will be expressly identified therein as an entity entitled to rely upon such audit.

(c) The Concessionaire will pay the fees and expenses of the Financial Model Auditor.

ARTICLE 7

PROJECT FINANCING; FINANCIAL CLOSE; LENDER RIGHTS AND REMEDIES; REFINANCING

Section 7.01 Concessionaire Responsibility for Project Financing; No Department Liability for Concessionaire Debt

(a) The Concessionaire is solely responsible for obtaining and repaying all financing, at its own cost and risk and without recourse to any State Party, necessary to develop, design, construct, maintain, and operate the Project and any Concessionaire Project Enhancement.

(b) Each bond or promissory note evidencing Concessionaire Debt must include a conspicuous recital on its face to the effect that payment of the principal thereof and interest thereon does not constitute a claim against the Department's fee simple title to or other good and valid real property interest in the Project Assets, the Project Right of Way, the Department's interest hereunder or its interest and estate in and to the Project Assets or any part thereof, is not an obligation of any State Party, moral or otherwise, and neither the full faith and credit nor the taxing power of any State Party is pledged to the payment of the principal thereof and interest thereon.

(c) No State Party will have any liability whatsoever for payment of the principal sum of any Concessionaire Debt, any other obligations issued or incurred by the Concessionaire in connection with this Agreement or the Project, or any interest accrued thereon or any other sum secured by or accruing under any Financing Assignment. The Department's review of any Financing Assignments or other project financing documents is not:

(i) a guarantee or endorsement of the Concessionaire Debt, any other obligations issued or incurred by the Concessionaire in connection with this Agreement, the Project, the Base Case Financial Model or any Traffic and Revenue Study; nor

(ii) a representation, warranty or other assurance as to (A) the ability of the Concessionaire to perform its obligations with respect to the Concessionaire Debt or any other obligations issued or incurred by the Concessionaire in connection with this Agreement or the Project or (B) the adequacy of the Gross Revenues to provide for payment of the Concessionaire Debt or any other obligations issued or incurred by the Concessionaire in connection with this Agreement or the Project.

(d) The Concessionaire will make or cause to be made Equity Contributions (the “Equity Contribution Amount”) equal to: (i) an amount equal to the Base Capital Contributions set forth in Section 2.2 of each Equity Funding Agreement (the “Base Equity Contributions”), as adjusted pursuant to this Agreement (the “Initial Equity Commitment Amount”); *provided*, however, that after the Agreement Date, the Concessionaire will not adjust the Initial Equity Commitment Amount without the approval of the Department in its sole discretion, (ii) an amount equal to the Contingent Capital Contributions set forth in Section 2.3 of each Equity Funding Agreement, as required pursuant to such Equity Funding Agreement (the “Contingent Capital Contribution Amount”); (iii) \$108,419,977 (the “Concessionaire TIFIA Protection Amount”), which is subject to adjustment or cancellation pursuant to Section 7.07; (iv) an amount equal to the 395 Equity Commitment Amount in accordance with the 395 Equity Funding Agreements; (v) an amount equal to the Fred Ex Equity Commitment Amount in accordance with the Fred Ex Equity Funding Agreements; and (vi) on or prior to the Opitz Boulevard Ramp Financial Close, at least 33% of the Opitz Boulevard Ramp Project Costs, to be deposited by the Concessionaire in a sub-account of the Construction Account defined in, and established and maintained under, the Collateral Agency Agreement for the deposit of Equity Contributions to be used for Opitz Boulevard Ramp Project Costs.

Section 7.02 Public Funds

(a) The Department will make or cause to be made payments of the Initial Public Funds Amount to the Concessionaire in accordance with the terms set forth in the Public Funds Amount Payment Terms attached as Exhibit N. The Initial Public Funds Amount will be (i) decreased by any amounts paid by the Department to the Concessionaire prior to the Financial Close Date for the performance of Early Work and (ii) adjusted pursuant to Section 7.03(b).

(b) The Department will make or cause to be made a supplemental Public Funds Amount for the Project equal to \$223,950,000 (the “Department TIFIA Protection Amount”), subject to adjustment or cancellation pursuant to Section 7.07.

(c) 395 Public Funds Amount.

(i) In connection with the 395 Project, the Department will make payments of the 395 Public Funds Amount to the Concessionaire in accordance with the terms set forth in the Public Funds Amount Payment Terms attached as Exhibit N.

(ii) The 395 Public Funds Amount will be used by the Concessionaire to pay the costs of the design, development, and construction of the 395 Department Assets.

(d) No Fred Ex Public Funds Amount.

(i) Except for the Fred Ex Financial Protections and the Fred Ex Department Committed Contingency, the Concessionaire will fund fully the design, development, construction, operation and maintenance of the Fred Ex Project, without any contribution of public funds from the Department.

(ii) Under the Southbound RRC Design-Build Contract, the Department procured separately the Rappahannock River Crossing project (the “Southbound RRC Project”) as a design-build project. Certain work relating to the area where the Southbound RRC Project and the Fred Ex Project meet has been included by the Department as part of the Southbound RRC Project (the “Southbound RRC Overlap Work”). The geographic location of the Southbound RRC Overlap Work and a description of the scope of work for the Southbound RRC Overlap Work are set forth in the Southbound RRC Design-Build Contract Documents. As part of the Fred Ex Project, the Concessionaire shall fund the Southbound RRC Overlap Work and shall pay to the Department \$4,000,000 on the Fred Ex Financial Close Date. Subject to Section 8.22(b), compensation for costs and expenses related to any change orders or additional work needed to complete the Southbound RRC Overlap Work will be treated as Fred Ex Pooled Contingency-Covered Costs.

(e) No Public Funds Amount for the Opitz Boulevard Ramp Project and Seminary Road Ramp Project. The Concessionaire will fund fully its design, development, construction, operation and maintenance of the Opitz Boulevard Ramp Project and the Seminary Road Ramp Project, without any contribution of public funds from the Department.

Section 7.03 Financial Close

(a) Conditions for Financial Close. Except to the extent permitted in writing by the Department, Financial Close will only be achieved once all of the following conditions precedent are satisfied:

(i) the Concessionaire has provided the Department: (A) a list of and proposed initial drafts of the Initial Project Financing Agreements and Financing Assignments set forth in Exhibit O and (B) a proposed initial draft of the Base Case Financial Model reflecting any changes in financing from the Initial Base Case Financial Model, contemporaneously with the distribution of such drafts to the Lenders and other parties to Financial Close for the Department’s review and comment, and has included the Department on all subsequent distributions of such drafts to the Lenders and other parties to Financial Close up and until the Concessionaire has furnished the proposed final drafts pursuant to Section 7.03(a)(ii);

(ii) the Concessionaire has provided the Department: (A) proposed final drafts of the Initial Project Financing Agreements and Financing Assignments and (B) a proposed final draft of the Base Case Financial Model reflecting any changes in financing from the Initial Base Case Financial Model, contemporaneously with the distribution of such final drafts to the Lenders and other parties to Financial Close at least 10 Days prior to the scheduled Financial Close Date for the Department’s review and comment, and has

included the Department on all subsequent distributions of such final drafts to the Lenders and other parties to Financial Close up and until Financial Close;

(iii) the Concessionaire has provided the Department the Base Case Financial Model and an update of the audit report and opinion delivered pursuant to Section 23.02(m) for such Base Case Financial Model;

(iv) the Concessionaire has provided the Department true and complete copies of the executed Initial Project Financing Agreements and Financing Assignments;

(v) the Concessionaire has provided the Department true and complete executed copies of the Equity Funding Agreements and the Equity Funding Guaranties in an amount at least equal to the Equity Contribution Amount and reflecting the commitment of each Equity Member to provide the equity funds reflected in the Base Case Financial Model which are required for meeting its obligations related to the Project;

(vi) the Concessionaire has provided the Department evidence, satisfactory to the Department, that all conditions precedent required for Financial Close to the availability and utilization of Concessionaire Debt have been satisfied in full;

(vii) if utilized, the Concessionaire has caused the PABs Issuer to issue the PABs as provided by and in accordance with the Initial Project Financing Agreements and has made a Financing Assignment with respect to the PABs as described in the Initial Project Financing Agreements;

(viii) the Concessionaire has delivered to the Department certificates, as may be reasonably requested by the Department, certifying as to the Concessionaire's compliance with the terms and conditions of this Agreement, the satisfaction of the conditions precedent to Financial Close, and the validity of the Concessionaire's representations and warranties set forth in Section 23.02; and

(ix) the Department has received the following documents executed by the Concessionaire and/or the Collateral Agent, as applicable:

(A) Electronic Toll Collection Agreement substantially in the form attached as Exhibit K;

(B) Violation Processing Services Agreement substantially in the form attached as Exhibit L; and

(C) Direct Agreement, substantially in the form attached as Exhibit R-1;

(x) the Department has received copies of the following executed documents:

(A) Design-Build Contract substantially in the form attached as Exhibit E;

- Exhibit F;
- (B) Design-Build Work Guarantee substantially in the form attached as
 - (C) Design-Build Letter of Credit;
 - (D) Shared Facilities Agreement substantially in the form attached as Exhibit X;
 - (E) Letter Agreement dated July 31, 2012 between CBE and the Department regarding the treatment of the Access Fee (as such term is defined in the Shared Facilities Agreement) as Toll Revenue (as such term is defined in the Capital Beltway Comprehensive Agreement);
 - (F) Indenture of Trust, dated as of July 1, 2012, between the Virginia Small Business Financing Authority and the Trustee;
 - (G) Loan Agreement, dated as of July 1, 2012, between the Virginia Small Business Financing Authority and the Concessionaire;
 - (H) Collateral Agency and Account Agreement, dated as of July 1, 2012, by and among the Concessionaire, the Trustee and the Collateral Agent;
 - (I) Security Agreement, dated as of July 1, 2012, between the Concessionaire and the Collateral Agent;
 - (J) Transurban Membership Interest Pledge Agreement, dated as of July 1, 2012 between Transurban Drive USA LLC and the Collateral Agent;
 - (K) Fluor Membership Interest Pledge Agreement, dated as of July 1, 2012, between Fluor and the Collateral Agent; and
 - (L) the Equity Funding Agreements; and
 - (M) the Equity Funding Guaranties.

If the Concessionaire has satisfied all conditions precedent (or the Department, in its sole discretion, has waived any such conditions) identified in this Section 7.03(a), the Department will issue a certificate on the Financial Close Date confirming that all conditions precedent have been satisfied.

(b) Financing Adjustments. The following adjustments will be made on the Financial Close Date. Such adjustments will be implemented in accordance with the provisions of Exhibit BB.

(i) Changes in Initial Public Funds Amount Due to Review of Initial Base Case Financial Model. In the event that a review by the Financial Model Auditor of the Initial Base Case Financial Model discloses errors or discrepancies in such financial model that results in an increase to the Initial Equity IRR in excess of 5 bps, the Initial Public Funds

Amount will be decreased in an amount so as to return the Base Case Equity IRR to the Initial Equity IRR, and the Initial Base Case Financial Model will be updated to reflect such adjustment. If a review by the Financial Model Auditor of the Initial Base Case Financial Model discloses errors or discrepancies in such financial model that results in a decrease to the Initial Equity IRR in excess of 5 bps, the Department and the Concessionaire will engage in discussions as promptly as reasonably possible and exercise good faith efforts to agree to any adjustments or other resolutions reasonably satisfactory to each party.

(ii) Other Changes to the Initial Public Funds Amount.

(A) The Initial Base Case Financial Model will be updated to reflect mutually agreed changes in the expected Original TIFIA Credit Assistance and the Initial Base Case Financial Model will be updated in accordance with the Financial Close Adjustment Protocol to account for such changes and used to calculate the Initial Public Funds Amount such that the Equity IRR is equal to the Initial Equity IRR.

(B) The Initial Base Case Financial Model will be updated to reflect mutually agreed changes to the Design-Build Contract price, TTMS price, and SPV fixed costs (all as set forth in the Financial Close Adjustment Protocol) and the Initial Base Case Financial Model will be updated in accordance with the Financial Close Adjustment Protocol to account for such changes and used to calculate the Initial Public Funds Amount such that the Equity IRR is equal to the Initial Equity IRR.

(iii) VDOT E-ZPass Fees. The Department will bear the risk of increased operating costs with an equivalent impact of \$1 million per annum (expressed in 2010 dollars), escalated from 2010 at the CPI assumption contained in the Initial Base Case Financial Model. The Initial Base Case Financial Model will be updated in accordance with the Financial Close Adjustment Protocol set forth in Exhibit BB to account for the revised operating costs and used to calculate the Initial Public Funds Amount such that the Equity IRR is equal to the Initial Equity IRR.

(iv) PABs Interest Rate Protection.

(A) (1) The Department will bear the risk and have the benefit of the first 25bps of change in PABs Interest Rate (either positive or negative) from the Benchmark PABs Interest Rate and (2) the Department and the Concessionaire will equally share the risk and the benefit in any change between 25bps and 100bps in the PABs Interest Rate (either positive or negative) from the Benchmark PABs Interest Rate to the actual PABs Interest Rate applicable to the PABs issued as of the Financial Close Date, and (3) the Concessionaire will bear the risk and have the benefit of any change in excess of 100 bps in PABs Interest Rate (either positive or negative) from the Benchmark PABs Interest Rate.

(B) If the PABs Interest Rate as of the Financial Close Date has changed from the Benchmark PABs Interest Rate, the Initial Base Case Financial Model will be updated in accordance with the Financial Close Adjustment Protocol set forth in Exhibit

BB to reflect the PABs Interest Rate and to reflect the risk and benefit allocated to the Department (ignoring for this calculation any change in the Benchmark PABs Interest Rate the risk and benefit of which has been allocated to the Concessionaire) and used to adjust the Initial Public Funds Amount in accordance with the Financial Close Adjustment Protocol such that the Equity IRR is equal to the Initial Equity IRR.

(v) Leverage Ratio. The Department and the Concessionaire acknowledge and agree that, if the Leverage Ratio as of the Financial Close Date is greater than 65%, then the Department and the Concessionaire will share equally in the benefit of such greater Leverage Ratio.

(vi) Other Changes to the Initial Base Case Financial Model. On the Financial Close Date, the Concessionaire will update the Initial Base Case Financial Model to reflect the terms and conditions included in the Initial Project Financing Agreements and Financing Assignments as of the Financial Close Date. For the avoidance of doubt, the Public Funds Amount will not be adjusted upwards or downwards except in accordance with the provisions of Section 7.03(b) and the Initial Base Case Financial Model, as updated, will be the Adjusted Financial Model and the resulting Equity IRR will be the Adjusted Equity IRR.

(vii) Original TIFIA Credit Assistance Availability. The Department and Concessionaire will bear the risk of Original TIFIA Credit Assistance not being available at Financial Close. If the Original TIFIA Credit Assistance is not available at Financial Close, the Adjusted Financial Model will be updated in accordance with the Financial Close Adjustment Protocol to reflect the risk of such change allocated to the Department (while maintaining the quantum of PABs constant) and used to adjust the Department TIFIA Protection Amount and the Concessionaire TIFIA Protection Amount such that the resulting Equity IRR is equal to the Adjusted Equity IRR and the Adjusted Financial Model, as so updated, will be the Base Case Financial Model and the resulting Equity IRR will be the Base Case Equity IRR.

(c) Financial Close Deadline. In the event Financial Close is not achieved by the Financial Close Deadline, either party may terminate this Agreement pursuant to Section 20.04.

(d) Payments at Financial Close.

(i) On the Financial Close Date for the Original Project, the Concessionaire will receive amounts agreed to by the parties, from sources identified in the Base Case Financial Model, for the costs related to project development that have not previously been reimbursed under the terms of the Interim Agreement. Such costs will be specifically itemized and identified in a schedule submitted to the Department at least 7 Days prior to the scheduled Financial Close Date. Such schedule of costs will be updated for approval as a condition precedent to Financial Close. The parties also agree that if the costs related to project development costs in the Initial Base Case Financial Model (\$52,441,000) are in excess of the amounts approved by the Department at Financial Close, such excess amounts will be used to fund all, or a portion of mutually agreed costs in relation to scope improvements to the east-west HOT movement in the Springfield Interchange, closing

costs incurred in obtaining Original TIFIA Credit Assistance, and security improvements at the Express Operations Center, relative to the designation of the Express Operations Center as critical infrastructure. If as of the Substantial Completion Date there is any remaining balance of the excess amount, the Concessionaire will cause this balance to be transferred to the Department in a reasonable period of time. The Concessionaire will identify the excess amount within 14 days of the Financial Close Date and will provide updates to the Department of the status of any excess amounts remaining throughout the Construction Period. Such updates will be provided in accordance with the monthly reporting addressed in Section 1.4.3 of the Technical Requirements.

(ii) On the Financial Close Date, the Concessionaire will reimburse the Department for any payments made prior to the Financial Close Date (not to exceed \$42,300,000 in the aggregate) for Early Work performed pursuant to the Second Amendment to the Interim Agreement dated as of March 23, 2012, or pursuant to this Agreement.

(e) Closing Transcript. The Concessionaire agrees to provide the Department a complete transcript of all documents executed and delivered in connection with the execution of this Agreement and the Financial Close promptly following the Financial Close Date.

(f) Reasonable Commercial Efforts; Cooperation. Subject to the termination rights of each party pursuant to Section 20.04, the Department and the Concessionaire each agree to: (i) use reasonable commercial efforts to satisfy the conditions within their control to reach Financial Close on or prior to the Financial Close Deadline; and (ii) use reasonable commercial efforts to cooperate and assist the other party to reach Financial Close by the Financial Close Deadline.

(g) The provisions of this Section 7.03 do not apply to the 395 Financial Close, the Fred Ex Financial Close, the Opitz Boulevard Ramp Financial Close or the Seminary Road Ramp Financial Close.

Section 7.03A 395 Financial Close

(a) Conditions for 395 Financial Close. Except to the extent permitted in writing by the Department, 395 Financial Close will only be achieved once all of the following conditions precedent are satisfied or waived by the Department in its sole discretion:

(i) the Concessionaire has provided the Department: (A) a list of and initial drafts of the 395 Project Financing Agreements and Financing Assignments as set forth in Exhibit O and (B) draft(s) of the Base Case Financial Model Update (95/395 Draft) contemporaneously with the distribution of such drafts to the Lenders and the other parties to 395 Financial Close for the Department's review and comment, and has included the Department on all subsequent distributions of such drafts to the Lenders and the other parties to 395 Financial Close up and until the Concessionaire has furnished the final drafts pursuant to Section 7.03A(a)(iii);

(ii) the Concessionaire has provided to the Department an update of the audit report and opinion delivered pursuant to Section 23.02(m) for such proposed Base Case

Financial Model Update (95/395 Draft) at least 10 Days prior to the scheduled 395 Financial Close Date for the Department's review and comment;

(iii) the Concessionaire has provided the Department: (A) final drafts of the 395 Project Financing Agreements and Financing Assignments and (B) a final draft of the Base Case Financial Model Update (95/395 Draft), contemporaneously with the distribution of such final drafts to the Lenders and other parties to 395 Financial Close at least 10 Days prior to the scheduled 395 Financial Close Date for the Department's review and comment, and has included the Department on all subsequent distributions of such final drafts to the Lenders and other parties to 395 Financial Close up and until 395 Financial Close;

(iv) the Concessionaire has provided the Department the true and complete Base Case Financial Model Update (95/395 Final);

(v) the Base Case Financial Model Update (95/395 Final) provides for the Annual Transit Investment in accordance with the terms set forth in Exhibit P;

(vi) the Concessionaire has provided the Department true and complete copies of the executed 395 Project Financing Agreements and Financing Assignments;

(vii) the Concessionaire has provided the Department true and complete executed copies of the 395 Equity Funding Agreements in an aggregate amount at least equal to the 395 Equity Commitment Amount and reflecting the commitment of each Equity Sponsor to provide the 395 Equity Commitment Amount reflected in the Base Case Financial Model Update (95/395 Final) which is required for meeting its obligations related to the 395 Project;

(viii) the Concessionaire has provided the Department a true and complete executed copy of (A) the 395 Equity Letter of Credit in an amount at least equal to the 395 Equity Commitment Amount, which meets the definition of Letter of Credit; and/or (B) the 395 Equity Funding Guaranty in an amount at least equal to the 395 Equity Commitment Amount;

(ix) the Concessionaire has provided the Department evidence, satisfactory to the Department, that all conditions precedent required for 395 Financial Close to the availability and utilization of Concessionaire Debt have been satisfied in full or waived by the finance parties in whose favor those conditions precedent run;

(x) if utilized, the Concessionaire has caused the PABs Issuer to issue the PABs as provided by and in accordance with the 395 Project Financing Agreements and has made a Financing Assignment with respect to the PABs as described in the 395 Project Financing Agreements;

(xi) if utilized, the Concessionaire has caused the TIFIA Lender to provide the TIFIA Credit Assistance for the 395 Project as provided by and in accordance with the 395 Project Financing Agreements and has made a Financing Assignment with respect to the TIFIA Credit Assistance for the 395 Project as described in the 395 Project Financing Agreements;

(xii) if utilized, the Concessionaire has caused the VTIB Lender to provide VTIB assistance for the 395 Project as provided by and in accordance with the 395 Project Financing Agreements and has made a Financing Assignment with respect to VTIB assistance for the 395 Project as described in the 395 Project Financing Agreements;

(xiii) the Concessionaire has delivered to the Department certificates, as may be reasonably requested by the Department, certifying as to the Concessionaire's compliance with the terms and conditions of this Agreement, the satisfaction of the conditions precedent to 395 Financial Close, and the validity of the Concessionaire's representations and warranties set forth in Section 23.02;

(xiv) the Department has received copies of the following executed documents:

(A) consents from the Project's existing Lenders to the execution of the First ARCA, the 395 Design-Build Contract, the 395 TTMS Contract and other related matters;

(B) the 395 Direct Agreement, substantially in the form attached as Exhibit R-2;

(C) if PABs are utilized, the Indenture of Trust between the Virginia Small Business Financing Authority and the Trustee;

(D) if PABs are utilized, the Loan Agreement between the Virginia Small Business Financing Authority and the Concessionaire;

(E) the Amended and Restated Collateral Agency and Account Agreement by and among the Concessionaire, the Trustee and the Collateral Agent;

(F) if TIFIA is utilized, the Loan Agreement relating to the TIFIA Credit Assistance for the 395 Project;

(G) if VTIB assistance is utilized, the Loan Agreement relating to VTIB assistance for the 395 Project;

(H) the 395 Equity Funding Agreements;

(I) any 395 Equity Letter of Credit or 395 Equity Funding Guaranty or both;

(J) the Amendment to O&M Agreement; and

(K) 395 Payment Bond and 395 Performance Bond in the amounts and satisfying the requirements set forth in Section 17.08(b)(ii); and

(L) 395 TTMS Payment Bond and 395 TTMS Performance Bond or 395 TTMS Letter of Credit, as applicable, in the amounts and satisfying the requirements set forth in Section 17.08(b)(ii).

(xv) the Department has received confirmation that the following executed documents remain in full effect:

- (A) the 395 Design-Build Contract; and
- (B) the 395 TTMS Contract.

If the Concessionaire has satisfied all conditions precedent (or the Department, in its sole discretion, has waived any such conditions) identified in this Section 7.03A(a), the Department will issue a certificate on the 395 Financial Close Date confirming that all conditions precedent have been satisfied.

(b) Financing Adjustments. The following adjustments will be made on the 395 Financial Close Date. Such adjustments will be implemented in accordance with the provisions of Exhibit BB.

(i) Changes in 395 Benchmark Interest Rates and 395 Credit Spreads.

(A) Subject to Section 7.03A(b)(i)(B), during the 395 Interest Rate Protection Period, the Concessionaire and the Department will bear the risk and have the benefit of the following: (x) in the case of the Concessionaire, the first 60 Basis Points of aggregate all-in interest rate change for each financing facility (taking into account any impact arising from changes in the 395 Benchmark Interest Rates prior to taking into account any impact arising from the differences in the 395 Credit Spreads) and (y) in the case of the Department, after the incurrence of the risk or benefit of such 60 Basis Points by the Concessionaire, in each case of the aggregate of:

(1) 100% of the impact (either positive or negative) arising from changes in the 395 Benchmark Interest Rates that exceed the first 60 Basis Points during the 395 Interest Rate Protection Period; *provided*, however, that this protection will be extended only to the lesser of (aa) the amount of proceeds of Concessionaire Debt assumed and indicated in the Base Case Financial Model Update (95/395 Interim), and (bb) the amount of proceeds of Concessionaire Debt issued or incurred at 395 Financial Close; and

(2) 75% of the impact (either positive or negative) arising from changes in the 395 Credit Spreads when the aggregate all-in interest rate changes exceed 60 Basis Points, calculated by taking the change in the aggregate all-in interest rate for each financing facility less the greater of (x) 60 Basis Points or (y) the change in the 395 Benchmark Interest Rate during the 395 Interest Rate Protection Period; *provided*, however, that this protection will be extended only to the lesser of (aa) the amount of proceeds of the approved capital markets financing(s) assumed and indicated in the Base Case Financial Model Update (95/395 Interim), and (bb) the amount of proceeds of the approved capital markets financing(s) issued at 395 Financial Close.

(B) The Department will bear the risk of increases in 395 Benchmark Interest Rates and 395 Credit Spreads pursuant to Section 7.03A(b)(i)(A) up to and in an

aggregate amount equal to \$12,500,000. If the aggregate adjustment due to the 395 Benchmark Interest Rates and 395 Credit Spreads (the “395 Market Interest Rate Adjustment”) pursuant to Section 7.03A(b)(i)(A) is greater than zero but does not exceed \$12,500,000, the Concessionaire may, by written notice to the Department, notify the Department at 395 Financial Close of the amount of such 395 Market Interest Rate Adjustment and the Department may elect to deduct or offset such 395 Market Interest Rate Adjustment from amounts due to the Department from the Concessionaire at Financial Close within 30 Days in accordance with Section 25.21(b). For any remaining 395 Market Interest Rate Adjustment, the Concessionaire shall include in Disbursement Requests within the first 90 Days after the 395 Financial Close Date, an amount equal to such 395 Market Interest Rate Adjustment for the 395 Concessionaire Assets in accordance with Exhibit N.

(C) If the aggregate adjustment due to the 395 Benchmark Interest Rates and 395 Credit Spreads pursuant to Section 7.03A(a)(i) results in an adjustment greater than \$12,500,000, the Concessionaire may, by written notice to the Department, elect to assume the cost and expense of the portion of the adjustment greater than \$12,500,000. If the Concessionaire does not elect to assume such cost and expense, but the Concessionaire notifies the Department of its intent to continue to pursue 395 Financial Close, then the Concessionaire shall be granted an additional 90-day period from the 395 Financial Close Deadline to achieve 395 Financial Close, *provided* that the Concessionaire delivers to the Department at least 5 Days prior to the expiration of the then-existing 395 Financial Close Security a new 395 Financial Close Security, or extends the then-existing 395 Financial Close Security, with an expiry date no earlier than 15 Days after the end of the 90-day period. If after such 90-day period, the Concessionaire does not elect to assume such cost and expense, the Department may elect to terminate the 395 Project pursuant to Section 20.04(d).

(D) If the aggregate adjustment due to the 395 Benchmark Interest Rates and 395 Credit Spreads pursuant to Section 7.03A(b)(i)(A) results in an adjustment in favor of the Department (the “395 Risk Pool Deposit”), the Concessionaire shall pay such 395 Risk Pool Deposit to the Department on the 395 Financial Close Date.

(ii) Changes to Financing Terms. The Concessionaire will bear 100% of the risk with respect to the financing terms of the PABs, the TIFIA Credit Assistance or VTIB assistance for the 395 Project. The Department will not bear any risk of TIFIA Credit Assistance not being available at 395 Financial Close.

(c) 395 Financial Close Deadline.

(i) The Concessionaire must achieve 395 Financial Close by the 395 Financial Close Deadline. In the event 395 Financial Close is not achieved by the 395 Financial Close Deadline, either Party may terminate the 395 Project pursuant to Section 20.04.

(ii) The Concessionaire acknowledges that the time period the Department has provided to the Concessionaire to achieve 395 Financial Close is reasonable, and both the Concessionaire and the Department acknowledge that the 395 Financial Close Security is

reasonable in order to compensate the Department for damages it will incur as a result of the lost opportunity to the Department represented by this Agreement.

(d) 395 Financial Close Security.

(i) Concurrent with the execution of the First ARCA, the parties acknowledge that the Concessionaire has delivered to the Department the 395 Financial Close Security with an expiry date of June 29, 2017. The Department will have the right to draw on the 395 Financial Close Security after June 19, 2017, unless on or before June 19, 2017 the Concessionaire delivers to the Department a new 395 Financial Close Security, or extends the already-delivered 395 Financial Close Security, with an expiry date no earlier than September 15, 2017. The Department will return the Final Proposal Security within two Business Days upon receipt of the 395 Financial Close Security.

(ii) In the event that 395 Financial Close is not achieved by the 395 Financial Close Deadline, the Department will have the right to draw on the 395 Financial Close Security; *provided*, however that the Department will not have the right to draw on the 395 Financial Close Security if 395 Financial Close is not achieved by the 395 Financial Close Deadline directly due to one or more of the following:

(A) the occurrence of a Department Default;

(B) the Department's failure to deliver closing certificates and opinions related to 395 Financial Close;

(C) despite the Concessionaire having complied with all of the requirements of the VTIB Lender and having satisfied all of the conditions precedent required by the VTIB Lender to receive VTIB assistance, the VTIB Lender does not fund VTIB assistance prior to the 395 Financial Close Deadline; or

(D) as specified in Section 20.04(d).

(iii) Upon 395 Financial Close being successfully achieved in accordance with the terms of this Agreement, the Department will return the 395 Financial Close Security to the Concessionaire within two Business Days of 395 Financial Close.

(e) Closing Transcript. The Concessionaire agrees to provide the Department a complete transcript of all documents executed and delivered in connection with the execution of this Agreement and the 395 Financial Close promptly following the 395 Financial Close Date.

(f) Reasonable Commercial Efforts; Cooperation. Subject to the termination rights of each party pursuant to Section 20.04, the Department and the Concessionaire each agree to: (i) use reasonable commercial efforts to satisfy the conditions within their control to reach 395 Financial Close on or prior to the 395 Financial Close Deadline; and (ii) use reasonable commercial efforts to cooperate and assist the other party to reach 395 Financial Close by the 395 Financial Close Deadline.

(g) Payments at 395 Financial Close.

(i) On the 395 Financial Close Date, the Concessionaire agrees to reimburse the Department for any amounts paid by the Department for 395 Early Work pursuant to Section 8.17 (not to exceed \$7,500,000).

(ii) On the 395 Financial Close Date, the Concessionaire will receive amounts agreed to by the Parties, from sources identified in the Base Case Financial Model (95/395 Final), for the costs related to the development of the 395 Project. Such costs will be specifically itemized and identified in a schedule submitted to the Department at least seven (7) Days prior to the scheduled 395 Financial Close Date. If the aggregate total of such costs (excluding any consent fees paid to the Project's existing Lenders) exceeds \$32,000,000, such schedule of costs will be updated and submitted to the Department for the Department's approval as a condition precedent to 395 Financial Close.

Section 7.03B Fred Ex Financial Close

(a) Concessionaire's Deliverables Leading up to Fred Ex Financial Close. During the period between the Second Amended and Restated Agreement Date and the Fred Ex Financial Close Date, the Concessionaire shall provide to the Department for the Department's review and comment:

(i) at least 60 days prior to the scheduled Fred Ex Financial Close Date a list of and initial drafts of the Fred Ex Project Financing Agreements and Financing Assignments as set forth in Exhibit O, and all other documents required for Fred Ex Financial Close other than the documents referenced in Section 7.03B(a)(ii) below;

(ii) at least 30 days prior to the scheduled Fred Ex Financial Close Date initial drafts of:

(A) closing certificates and legal opinions related to Fred Ex Financial Close;

(B) the Fred Ex Direct Agreement, if applicable;

(C) UCC filings; and,

(D) any other ancillary documents and disclosure documents related to Fred Ex Financial Close agreed by the parties at the time.

(iii) at least 10 Days prior to the scheduled Fred Ex Financial Close Date, a draft of the Base Case Financial Model Update (Fred Ex Final);

(iv) all subsequent versions of the drafts enumerated in Section 7.03B(a)(i), and (ii) above, contemporaneously with the distribution of such drafts to the Lenders and other parties related to Fred Ex Financial Close (the Concessionaire shall ensure the Department is on any external distribution list for such drafts) up and until the Concessionaire has furnished the final drafts pursuant to Section 7.03B(a)(vii);

(v) all subsequent versions of the draft of the Base Case Financial Model Update (Fred Ex Final) enumerated in Section 7.03B(a)(iii) above, contemporaneously with the external distribution of such drafts to the Lenders and other parties related to Fred Ex Financial Close up and until the Concessionaire has furnished the final draft pursuant to Section 7.03B(b)(i);

(vi) at least 10 Days prior to the scheduled Fred Ex Financial Close Date, an update of the audit report and opinion delivered pursuant to Section 23.02(m) for the proposed Base Case Financial Model Update (Fred Ex Final); and

(vii) at least 10 Days prior to the scheduled Fred Ex Financial Close Date, final drafts of the Fred Ex Project Financing Agreements and Financing Assignments, and final drafts of those documents listed in Section 7.03B(b)(viii) below.

(b) Conditions for Fred Ex Financial Close. Except to the extent permitted in writing by the Department, Fred Ex Financial Close will only be achieved once all of the following conditions precedent are satisfied or waived by the Department in its sole discretion:

(i) the Concessionaire has provided the Department the true and complete Base Case Financial Model Update (Fred Ex Final);

(ii) the Concessionaire has provided the Department true and complete copies of the executed Fred Ex Project Financing Agreements and Financing Assignments listed in Exhibit O;

(iii) the Concessionaire has provided the Department evidence, satisfactory to the Department, that all conditions precedent required for Fred Ex Financial Close to the availability and utilization of Concessionaire Debt (if utilized) have been satisfied in full or waived by the finance parties in whose favor those conditions precedent run;

(iv) if utilized, the Concessionaire has caused the PABs Issuer to issue the PABs as provided by and in accordance with the Fred Ex Project Financing Agreements and has made a Financing Assignment with respect to the PABs as described in the Fred Ex Project Financing Agreements;

(v) if utilized, the Concessionaire has caused the TIFIA Lender to provide the Fred Ex TIFIA Credit Assistance as provided by and in accordance with the Fred Ex Project Financing Agreements and has made a Financing Assignment with respect to the Fred Ex TIFIA Credit Assistance as described in the Fred Ex Project Financing Agreements;

(vi) the Concessionaire has delivered to the Department certificates, as may be reasonably requested by the Department, certifying as to the Concessionaire's compliance with the terms and conditions of this Agreement, the satisfaction of the conditions precedent to Fred Ex Financial Close, and the validity of the Concessionaire's representations and warranties set forth in Section 23.02, and confirming the Fred Ex Design-Build Contract and the Fred Ex TTMS Contract both have been executed and remain in full effect;

(vii) the Department has received the Initial Permit Fee Buyout Payment pursuant to Section 7.03B(i)(v), the ROW deposit pursuant to Section 7.03B(i)(i), and the Southbound RRC Overlap Work funds pursuant to Section 7.03B(i)(vi);

(viii) the Department has received copies of the following executed documents:

(A) any required consents from the Project's existing Lenders, including (as applicable) to the execution of the Second Amended and Restated Comprehensive Agreement, the Fred Ex Design-Build Contract, the Fred Ex TTMS Contract, final investment grade rating letters, and other related matters;

(B) the Fred Ex Direct Agreement, substantially in the form attached as Exhibit R-3;

(C) the updated Electronic Toll Collection Agreement, substantially in the form of Exhibit K;

(D) Fred Ex Payment Bond and Fred Ex Performance Bond in the amounts and satisfying the requirements set forth in Section 17.08(b)(iii)(A); and

(E) Fred Ex TTMS Payment Bond and Fred Ex TTMS Performance Bond or Fred Ex TTMS Letter of Credit, as applicable, in the amounts and satisfying the requirements set forth in Section 17.08(b)(iii)(B); and

(ix) the Concessionaire has resolved to the satisfaction of the Department any (i) model deficiencies that have a direct quantitative impact within the Base Case Financial Model Update (Fred Ex Final) or (ii) inappropriate caveats, as reasonably determined by the Department, in the case of either (i) or (ii), that appear within the draft audit report and opinion delivered under Section 7.03B(a)(vi) above.

If the Concessionaire has satisfied all conditions precedent (or the Department, in its sole discretion, has waived any such conditions) identified in this Section 7.03B(b), the Department will issue a certificate on the Fred Ex Financial Close Date confirming that all applicable conditions precedent have been satisfied.

(c) Fred Ex Financial Protections. The Department will provide the following financial protections and shared financial benefits in relation to the Fred Ex Project (the "Fred Ex Financial Protections"):

(i) Fred Ex Interest Rates and Credit Spreads Protection. During the Fred Ex Interest Rate Protection Period, the Department will provide interest rate protection (the "Fred Ex Interest Rate Protection") with respect only to debt incurred by the Concessionaire in connection with the Fred Ex Project, in each case as compared to the applicable PABs Interest Rates and/or the interest rates locked by the Concessionaire for any Fred Ex TIFIA Credit Assistance as follows:

(A) PABs.

(1) The Concessionaire will bear 100% of the risk and have the benefit of the first 80 Basis Points of change in the Fred Ex PABs All-In Rates, if applicable;

(2) the Department and the Concessionaire will share equally in the risk and the benefit of any changes in the Fred Ex PABs All-In Rates greater than the first 80 Basis Points up to and including the first 100 Basis Points, if applicable; and

(3) the Department will bear 100% of the risk and have the benefit of any changes in the Fred Ex PABs All-In Rates that exceed such 100 Basis Points, if applicable.

(B) TIFIA Credit Assistance.

(1) The Concessionaire will bear 100% of the risk and have the benefit of the first 80 Basis Points of change in the Fred Ex TIFIA Rates, if applicable;

(2) the Department and the Concessionaire will share equally in the risk and the benefit of any changes in the Fred Ex TIFIA Rates greater than the first 80 Basis Points up to and including the first 100 Basis Points, if applicable; and

(3) the Department will bear 100% of the risk and have the benefit of any changes to the Fred Ex TIFIA Rates that exceed the first 100 Basis Points, if applicable.

(C) With regard to any PABs issued to finance the Fred Ex Project, the applicable Fred Ex Interest Rate Protection will be calculated on the Fred Ex PABs Interest Rate Protection Calculation Date, which date must occur prior to the Fred Ex Interest Rate Protection Deadline but may occur after the Fred Ex Financial Close Deadline.

(D) With regard to any Fred Ex TIFIA Credit Assistance, the applicable Fred Ex Interest Rate Protection will be calculated on the Fred Ex TIFIA Interest Rate Protection Calculation Date, which date must occur prior to the Fred Ex Interest Rate Protection Deadline but may occur after the Fred Ex Financial Close Deadline.

(E) For the avoidance of doubt, Fred Ex Interest Rate Protection may be applied only once with respect to PABs (which could be applied at Fred Ex Financial Close or Fred Ex Additional Financial Close, but not both) and only once with respect to Fred Ex TIFIA Credit Assistance (which could be applied at Fred Ex Financial Close or Fred Ex Additional Financial Close, but not both).

(ii) Changes to Financing Terms. The Concessionaire will bear 100% of the risk with respect to the financing terms of the PABs for the Fred Ex Project (if any) and

the Fred Ex TIFIA Credit Assistance (if any). The Department will not bear any risk of TIFIA Credit Assistance not being available for the Fred Ex Project.

(iii) Design-Build Price Protection. If, on the Fred Ex Design-Build Price Protection Calculation Date, the sum of the Initial Fred Ex Design-Build Contract Price plus the Initial Southbound RRC Overlap Work Price plus the Fred Ex ROW Deposit is greater than the Fred Ex Benchmark Design-Build Price, the Department will be responsible for the amount of such difference (the "Fred Ex Design-Build Price Protection"). If, on the Fred Ex Design-Build Price Protection Calculation Date, the sum of the Initial Fred Ex Design-Build Contract Price plus the Initial Southbound RRC Overlap Work Price plus the Fred Ex ROW Deposit is less than the Fred Ex Benchmark Design-Build Price, the Concessionaire will pay to the Department on the Fred Ex Financial Close Date an amount equal to 75% of the amount of such difference, and the Concessionaire will retain an amount equal to 25% of the amount of such difference. The parties agree that, based on the formula set forth in this Section 7.03B(c)(iii), and based on the Initial Fred Ex Design-Build Contract Price received by the Concessionaire on October 16, 2018, the result of such computation is that the Concessionaire shall pay to the Department (the "Fred Ex Design-Build Price Protection Benefit") \$54,375,000 on the earlier of (a) the Fred Ex Additional Financial Close Date and (b) October 31, 2019.

(iv) Fred Ex Financial Protections Cap and Termination Right. The total combined amount of the Fred Ex Financial Protections provided by the Department shall not exceed \$50,000,000. Subject to Section 7.03B(c)(vi) below, if on any of the Fred Ex Financial Protections Calculation Dates, the total combined amount of the Fred Ex Financial Protections exceeds \$50,000,000, the Department may terminate the Fred Ex Project and any provisions in and terms of this Agreement and any other Project Agreement to which it is a party that solely relates to the Fred Ex Project.

(v) Payment of Fred Ex Financial Protections. If the Fred Ex Financial Protections are greater than zero but do not exceed \$50,000,000, the Concessionaire may, by written notice to the Department, notify the Department upon the applicable Fred Ex Financial Protections Calculation Date of the then-current total combined amount of the Fred Ex Financial Protections and the Department may elect to deduct or offset such Fred Ex Financial Protections from amounts due to the Department from the Concessionaire at Fred Ex Financial Close (or Fred Ex Additional Financial Close, if applicable) or from amounts due to the Department from the Concessionaire at a future Fred Ex Financial Protections Calculation Date in the Department's sole discretion, in accordance with Section 25.21(b). Thereafter, for any remaining unpaid Fred Ex Financial Protections, the Concessionaire shall include in Disbursement Requests within the first 90 Days after the Fred Ex Financial Close Date (or Fred Ex Additional Financial Close Date, if applicable), an amount equal to such remaining unpaid Fred Ex Financial Protections, of which the Department will pay all undisputed portions within 60 days of receipt.

(vi) Concessionaire's Right to Assume Excess Payment of Fred Ex Financial Protections. If on any of the Fred Ex Financial Protections Calculation Dates the total combined amount of the Fred Ex Financial Protections exceeds \$50,000,000, the Concessionaire may, by written notice to the Department, elect to assume the cost of the

portion of the Fred Ex Financial Protections greater than \$50,000,000. For the avoidance of doubt, if and so long as the Concessionaire assumes all such excess Fred Ex Financial Protections greater than \$50,000,000, the Department shall not have the right to terminate the Fred Ex Project pursuant to Section 7.03B(c)(iv).

(A) If, prior to Fred Ex Financial Close, the Concessionaire does not elect to assume such cost, but the Concessionaire notifies the Department of its intent to continue to pursue Fred Ex Financial Close, then the Concessionaire shall be granted an additional 90-day period from the Fred Ex Financial Close Deadline to achieve Fred Ex Financial Close, *provided* that the Concessionaire delivers to the Department at least 15 Days prior to the expiration of the then-existing Fred Ex Financial Close Security a new Fred Ex Financial Close Security, or extends the then-existing Fred Ex Financial Close Security, with an expiry date no earlier than 15 Days after the end of the 90-day period. If after such 90-day period, the Concessionaire does not elect to assume such cost, the Department may elect to terminate the Fred Ex Project pursuant to Section 7.03B(c)(iv) and Section 20.04(d).

(B) If, after Fred Ex Financial Close, the Concessionaire does not elect to assume such cost, but the Concessionaire notifies the Department of its intent to continue to pursue Fred Ex Additional Financial Close, then the Concessionaire shall be granted an additional 90-day period from the Fred Ex Interest Rate Protection Deadline to pursue Fred Ex Additional Financial Close. If after such 90-day period, the Concessionaire does not elect to assume such cost, the Department will have no duty to provide the Fred Ex Interest Rate Protection.

(d) Fred Ex Financial Close Signature Pages. Prior to the Fred Ex Financial Close Date (or Fred Ex Additional Financial Close Date, if applicable), each party may sign the signature pages of the various documents it is required to sign to achieve Fred Ex Financial Close (or Fred Ex Additional Financial Close, if applicable), and deliver such signature pages to counsel for the other party (or to a designated third party) to be held in escrow and not to be effective until released by an authorized representative of the signing party. The Department will release any signature pages only by written release.

(e) Fred Ex Financial Close Deadline.

(i) The Concessionaire must achieve Fred Ex Financial Close by the Fred Ex Financial Close Deadline. In the event Fred Ex Financial Close is not achieved by the Fred Ex Financial Close Deadline, either party may terminate the Fred Ex Project pursuant to Section 20.04.

(ii) The Concessionaire acknowledges that the time period the Department has provided to the Concessionaire to achieve Fred Ex Financial Close is reasonable, and both the Concessionaire and the Department acknowledge that the Fred Ex Financial Close Security is reasonable to compensate the Department for damages it will incur as a result of the lost opportunity to the Department represented by this Agreement.

(f) Fred Ex Financial Close Security.

(i) At least two Days before the execution of the Second Amended and Restated Comprehensive Agreement, the Concessionaire shall deliver to the Department the Fred Ex Financial Close Security with an expiry date no earlier than 15 Days after the Fred Ex Financial Close Deadline. The Department will have the right to draw on the Fred Ex Financial Close Security after the Fred Ex Financial Close Deadline. However, the parties may mutually agree to extend the Fred Ex Financial Close Deadline, and the Department will not have the right to draw on the Fred Ex Financial Close Security if, at least 5 days before the Fred Ex Financial Close Deadline, the Concessionaire delivers to the Department a new Fred Ex Financial Close Security, or extends the already-delivered Fred Ex Financial Close Security, with an expiry date no earlier than 15 Days after the new Fred Ex Financial Close Deadline. In such case, the Department will return the old Fred Ex Financial Close Security within two Business Days upon receipt of the new Fred Ex Financial Close Security.

(ii) In the event that Fred Ex Financial Close is not achieved by the Fred Ex Financial Close Deadline, the Department will have the right to draw on the Fred Ex Financial Close Security; *provided*, however that the Department will not have the right to draw on the Fred Ex Financial Close Security if Fred Ex Financial Close is not achieved by the Fred Ex Financial Close Deadline directly due to one or more of the following:

(A) the occurrence of a Department Default;

(B) the Department's failure to deliver closing certificates and opinions related to Fred Ex Financial Close; or

(C) as specified in Section 20.04(d).

(iii) Upon Fred Ex Financial Close being successfully achieved in accordance with the terms of this Agreement, the Department will return the Fred Ex Financial Close Security to the Concessionaire within two Business Days of Fred Ex Financial Close.

(g) Closing Transcript. The Concessionaire agrees to provide the Department a complete transcript of all documents executed and delivered in connection with (i) the execution of this Agreement, (ii) the Fred Ex Financial Close promptly following the Fred Ex Financial Close Date and, (iii) if applicable, the Fred Ex Additional Financial Close promptly following the Fred Ex Additional Financial Close Date.

(h) Reasonable Commercial Efforts; Cooperation. Subject to the termination rights of each party pursuant to Section 20.04, the Department and the Concessionaire each agree to: (i) use reasonable commercial efforts to satisfy the conditions within their control to reach Fred Ex Financial Close on or prior to the Fred Ex Financial Close Deadline; and (ii) use reasonable commercial efforts to cooperate and assist the other party to reach Fred Ex Financial Close by the Fred Ex Financial Close Deadline.

(i) Payments at Fred Ex Financial Close.

(i) Fred Ex ROW Deposit. On the Fred Ex Financial Close Date, the Concessionaire will pay \$2,500,000 to the Department to be deposited by the Department in a segregated account, to be used by the Department to pay (i) ROW Costs associated with the Fred Ex Project, plus (ii) the Department's reasonable and documented internal and external costs associated with ROW acquisition (inclusive of the Department's condemnation costs), plus (iii) the landowner's condemnation costs (collectively, the "Fred Ex ROW Costs"). If the Department reasonably believes the actual Fred Ex ROW Costs will be greater than \$2,500,000 then it will notify the Concessionaire in writing, and the Concessionaire will deposit with the Department additional funds in the amount requested by the Department within thirty (30) days of the written notice. The Concessionaire may request, and the Department shall provide, reasonable documentation to support any additional deposits. The Department may request more than one additional deposit. The Department shall make direct payments to property owners for negotiated settlements and relocation benefits and make deposits with the appropriate court for condemnation cases in accordance with Section 1.6 of Exhibit C-5. The Department will refund to the Concessionaire any remaining, unused balance of deposited funds sixty (60) days following the Fred Ex Final Completion Date; *provided*, however, if the Department anticipates it will incur additional Fred Ex ROW Costs on or after the date that is sixty (60) days following the Fred Ex Final Completion Date, the Department will refund to the Concessionaire any remaining, unused balance at that time, minus 200% of the amount the Department reasonably expects to expend with respect to the additional Fred Ex ROW Costs. After all Fred Ex ROW Costs have been paid, all remaining, unused funds on deposit with the Department with respect to Fred Ex Row Costs shall be refunded to the Concessionaire within sixty (60) days. If at any time the Department incurs Fred Ex ROW Costs in excess of amounts deposited by the Concessionaire with the Department (including after the Department has refunded any remaining, unused balances or portions thereof) the Department will notify the Concessionaire in writing, and the Concessionaire will pay to the Department within thirty (30) days an amount equal to the Fred Ex ROW Costs incurred by the Department in excess of amounts deposited by the Concessionaire.

(ii) Development Costs. On the Fred Ex Financial Close Date, the Concessionaire will receive amounts agreed to by the parties, from sources identified in the Base Case Financial Model (Fred Ex Final), for the costs related to the development of the Fred Ex Project. Such costs will be specifically itemized and identified in a schedule submitted to the Department at least seven (7) Days prior to the scheduled Fred Ex Financial Close Date. If the aggregate total of such costs (excluding any consent fees paid to the Project's existing Lenders) exceeds \$37,300,000, such schedule of costs will be updated and submitted to the Department for the Department's approval as a condition precedent to Fred Ex Financial Close. In no event shall development costs related to Fred Ex Financial Close be reimbursed by the Concessionaire unless any amounts payable to the Department with respect to the Fred Ex Project at such time are paid prior to or simultaneously with such reimbursement.

(iii) [RESERVED]

(iv) [RESERVED]

(v) Initial Permit Fee Buyout Payment. The Initial Permit Fee Buyout Payment will be paid no later than the Fred Ex Financial Close Date.

(vi) Southbound RRC Overlap Work Funds. The Concessionaire shall pay to the Department \$4,000,000 on the Fred Ex Financial Close Date to fund the Southbound RRC Overlap Work.

Section 7.03C Fred Ex Additional Financial Close

(a) Concessionaire's Deliverables Leading up to Fred Ex Additional Financial Close Date. If the Concessionaire pursues Fred Ex Additional Financial Close, the Concessionaire shall provide to the Department for the Department's review and comment:

(i) at least 45 days prior to the scheduled Fred Ex Additional Financial Close Date a list of and initial drafts of the Fred Ex Project Financing Agreements and Financing Assignments as set forth in Exhibit O, and all other documents required for Fred Ex Additional Financial Close other than the documents referenced in Section 7.03C(a)(ii) below;

(ii) at least 30 days prior to the scheduled Fred Ex Additional Financial Close Date initial drafts of:

(A) closing certificates and legal opinions related to Fred Ex Additional Financial Close;

(B) the Fred Ex Direct Agreement, if applicable;

(C) UCC filings; and,

(D) any other ancillary documents and disclosure documents related to Fred Ex Additional Financial Close agreed by the parties at the time.

(iii) at least 10 Days prior to the scheduled Fred Ex Additional Financial Close Date a draft of an updated version of the contemporaneous Base Case Financial Model Update, which draft must reflect any and all impacts of the Fred Ex Additional Financial Close (the "Base Case Financial Model Update (Fred Ex Final/Additional)");

(iv) all subsequent versions of the drafts enumerated in Section 7.03C(a)(i) and (ii) above, contemporaneously with the distribution of such drafts to the Lenders and other parties related to Fred Ex Additional Financial Close (the Concessionaire shall ensure Department is on any external distribution list for such drafts) up and until the Concessionaire has furnished the final drafts pursuant to Section 7.03C(a)(vii);

(v) all subsequent versions of the draft of the Base Case Financial Model Update (Fred Ex Final/Additional), contemporaneously with the external distribution of

such drafts to the Lenders and other parties related to Fred Ex Additional Financial Close up and until the Concessionaire has furnished the final draft pursuant to Section 7.03C(b)(i);

(vi) at least 10 Days prior to the scheduled Fred Ex Additional Financial Close Date, an update of the audit report and opinion delivered pursuant to Section 23.02(m) for the proposed Base Case Financial Model Update (Fred Ex Final/Additional); and

(vii) at least 10 Days prior to the scheduled Fred Ex Additional Financial Close final drafts of the Fred Ex Project Financing Agreements and Financing Assignments, and final drafts of those documents listed in Section 7.03C(b)(vii) below.

(b) Conditions for Fred Ex Additional Financial Close. Except to the extent permitted in writing by the Department, Fred Ex Additional Financial Close will only be achieved once all of the following conditions precedent are satisfied or waived by the Department in its sole discretion:

(i) the Concessionaire has provided the Department the true and complete Base Case Financial Model Update (Fred Ex Final/Additional);

(ii) the Concessionaire has provided the Department true and complete copies of the executed Fred Ex Project Financing Agreements and Financing Assignments listed in Exhibit O;

(iii) the Concessionaire has provided the Department evidence, satisfactory to the Department, that all conditions precedent required for Fred Ex Additional Financial Close to the availability and utilization of Concessionaire Debt have been satisfied in full or waived by the finance parties in whose favor those conditions precedent run;

(iv) if utilized, the Concessionaire has caused the PABs Issuer to issue the PABs as provided by and in accordance with the Fred Ex Project Financing Agreements and has made a Financing Assignment with respect to the PABs as described in the Fred Ex Project Financing Agreements;

(v) if utilized, the Concessionaire has caused the TIFIA Lender to provide the Fred Ex TIFIA Credit Assistance as provided by and in accordance with the Fred Ex Project Financing Agreements and has made a Financing Assignment with respect to the Fred Ex TIFIA Credit Assistance as described in the Fred Ex Project Financing Agreements;

(vi) the Concessionaire has delivered to the Department certificates, as may be reasonably requested by the Department, certifying as to the Concessionaire's compliance with the terms and conditions of this Agreement, the satisfaction of the conditions precedent to Fred Ex Additional Financial Close, and the validity of the Concessionaire's representations and warranties set forth in Section 23.02, and confirming the Fred Ex Design-Build Contract and the Fred Ex TTMS Contract both have been executed and remain in full effect;

(vii) the Department has received copies of the following executed documents, or amendments to such documents updating them for Fred Ex Additional Financial Close:

(A) any required consents from the Project's existing Lenders to the Fred Ex Additional Financial Close and other related matters, if not previously executed and delivered and rating letters;

(B) the Fred Ex Direct Agreement, substantially in the form attached as Exhibit R-3;

(C) the Collateral Agency Agreement; and

(D) the Concessionaire has resolved to the satisfaction of the Department any (i) model deficiencies that have a direct quantitative impact within the Base Case Financial Model Update (Fred Ex Final/Additional) or (ii) inappropriate caveats, as reasonably determined by the Department, in the case of either (i) or (ii), that appear within the draft audit report and opinion delivered under Section 7.03C(a)(vi) above; and

(viii) the Department has received all payments relating to Fred Ex Additional Financial Close, including those applicable payments set forth in Section 7.03C(d); *provided* that in the case of a Fred Ex TIFIA Financial Close this condition shall be satisfied upon in advance of actual receipt of the Fred Ex TIFIA which shall be paid pursuant to Section 7.03C(d)(i)(C).

If the Concessionaire has satisfied all conditions precedent (or the Department, in its sole discretion, has waived any such conditions) identified in this Section 7.03C(b), the Department will issue a certificate on the Fred Ex Additional Financial Close Date confirming that all applicable conditions precedent have been satisfied.

(c) Development Costs Related to Fred Ex Additional Financial Close. On the Fred Ex Additional Financial Close Date, the Concessionaire will receive amounts agreed to by the parties, from sources identified in the Base Case Financial Model (Fred Ex Final/Additional), for the costs related to Fred Ex Additional Financial Close. Such costs will be specifically itemized and identified in a schedule submitted to the Department at least seven (7) Days prior to the scheduled Fred Ex Additional Financial Close Date. If the aggregate total of such costs (excluding any consent fees paid to the Project's existing Lenders) exceeds \$49,800,000, such schedule of costs will be updated and submitted to the Department for the Department's approval as a condition precedent to Fred Ex Additional Financial Close. In no event shall development costs related to Fred Ex Additional Financial Close be reimbursed by the Concessionaire unless any amounts payable to the Department with respect to the Fred Ex Project at such time are paid prior to or simultaneously with such reimbursement.

(d) Payments at or Subsequent to Fred Ex Additional Financial Close.

(i) Fred Ex TIFIA Credit Assistance Benefit.

(A) The parties agree that if the Concessionaire achieves Fred Ex TIFIA Financial Close then the Concessionaire will pay the Department an amount equal to \$44,000,000 (the "Fixed Fred Ex TIFIA Credit Assistance Benefit").

(B) Notwithstanding Section 7.03C(d)(i)(A) above, under the following two scenarios the Concessionaire will not pay the Department the Fixed Fred Ex TIFIA Credit Assistance Benefit, but instead will pay to the Department the greater of: (i) 16.42% of the Fred Ex TIFIA Credit Assistance or (ii) \$33,000,000:

(1) the anticipated Fred Ex TIFIA Credit Assistance is reduced below the Fred Ex TIFIA Credit Assistance Base Amount because the Concessionaire reasonably determines, in consultation with its financial advisors, that the Fred Ex TIFIA Credit Assistance should be reduced to an amount that prevents the TIFIA Lender from becoming the Project's majority lender with respect to the calculation of voting rights; or

(2) the Concessionaire successfully secures Fred Ex TIFIA Credit Assistance in an amount greater than the Fred Ex TIFIA Credit Assistance Base Amount.

(C) The Concessionaire shall make any payment due under Section 7.03C(d)(i)(A) or Section 7.03C(d)(i)(B) within the earlier of: (1) 30 days after the Fred Ex TIFIA Financial Close Date and (2) one day after receiving the proceeds from the Fred Ex TIFIA Credit Assistance.

(ii) Fred Ex Design-Build Price Protection Benefit. The Concessionaire shall pay to the Department the Fred Ex Design-Build Price Protection Benefit on or before the earlier of (a) the Fred Ex Additional Financial Close Date and (b) October 31, 2019.

(iii) Fred Ex PABs Payment. If the Concessionaire achieves Fred Ex Additional Financial Close utilizing PABs on or before October 31, 2019, then the Concessionaire shall pay to the Department an amount equal to \$11,500,000 on the Fred Ex Additional Financial Close Date. If the Concessionaire does not achieve Fred Ex Additional Financial Close utilizing PABs by October 31, 2019, then the Concessionaire shall pay to the Department an amount equal to \$6,000,000 on such date and \$5,500,000 on the date of any subsequent Fred Ex Additional Financial Close utilizing PABs.

(iv) Fred Ex Interest Rate Protection. Subject to Section 7.03B(c), the Fred Ex Interest Rate Protection will be paid in conjunction with Fred Ex Additional Financial Close according to the following timing:

(A) with regard to any PABs issued to finance the Fred Ex Project, the corresponding Fred Ex Interest Rate Protection will be calculated on the Fred Ex PABs

Interest Rate Protection Calculation Date and payable on the Fred Ex Additional Financial Close Date, as applicable; and

(B) with regard to any Fred Ex TIFIA Credit Assistance, the corresponding Fred Ex Interest Rate Protection will be calculated on the Fred Ex TIFIA Interest Rate Protection Calculation Date and payable on the Fred Ex TIFIA Financial Close Date.

Section 7.03D Opitz Boulevard Ramp Financial Close

(a) Concessionaire's Deliverables Leading up to Opitz Boulevard Ramp Financial Close. During the period between the Third Amended and Restated Agreement Date and the Opitz Boulevard Ramp Financial Close Date, the Concessionaire shall provide to the Department for the Department's review and comment at least 30 days prior to the scheduled Opitz Boulevard Ramp Financial Close Date a list of and initial drafts of the Opitz Boulevard Ramp Project Equity Contribution Agreement and all other documents required for Opitz Boulevard Ramp Financial Close.

(b) Conditions for Opitz Boulevard Ramp Financial Close. Except to the extent permitted in writing by the Department, Opitz Boulevard Ramp Financial Close will only be achieved once all of the following conditions precedent are satisfied or waived by the Department in its sole discretion:

(i) **[RESERVED];**

(ii) the Concessionaire has provided the Department true and complete copies of the executed Opitz Boulevard Ramp Project Equity Contribution Agreement;

(iii) the Concessionaire has delivered to the Department certificates, as may be reasonably requested by the Department, certifying as to the Concessionaire's compliance with the terms and conditions of this Agreement, the satisfaction of the conditions precedent to Opitz Boulevard Ramp Financial Close, and the validity of the Concessionaire's representations and warranties set forth in Section 23.02, and confirming the Opitz Boulevard Ramp Construction Contract and the Opitz Boulevard Ramp TMS Contract each have been executed and remain in full effect; and

(iv) the Department has received copies of the following executed documents:

(A) any required consents from the Project's existing Lenders relating to the Opitz Boulevard Ramp Project, including (as applicable) to the execution of the Third Amended and Restated Comprehensive Agreement, the Opitz Boulevard Ramp Construction Contract and the Opitz Boulevard Ramp TMS Contract;

(B) Opitz Boulevard Ramp Payment Bond and Opitz Boulevard Ramp Performance Bond, in the amounts and satisfying the requirements set forth in Section 17.08(b); and

(C) Opitz Boulevard Ramp TMS Payment Bond and Opitz Boulevard Ramp TMS Performance Bond or Opitz Boulevard Ramp TMS Letter of Credit, as applicable, in the amounts and satisfying the requirements set forth in Section 17.08(b).

If the Concessionaire has satisfied all conditions precedent (or the Department, in its sole discretion, has waived any such conditions) identified in this Section 7.03D(b), the Department will issue a certificate on the Opitz Boulevard Ramp Financial Close Date confirming that all applicable conditions precedent have been satisfied. For the avoidance of doubt, nothing herein prevents the Concessionaire from achieving Seminary Road Ramp Financial Close on the same date as Opitz Boulevard Ramp Financial Close (provided the requirements of Seminary Road Ramp Financial Close and Opitz Boulevard Ramp Financial Close are each independently satisfied).

(c) Opitz Boulevard Ramp Financial Close Signature Pages. Prior to the Opitz Boulevard Ramp Financial Close Date, each party may sign the signature pages of the various documents it is required to sign to achieve Opitz Boulevard Ramp Financial Close and deliver such signature pages to counsel for the other party (or to a designated third party) to be held in escrow and not to be effective until released by an authorized representative of the signing party. The Department will release any signature pages only by written release.

(d) **[RESERVED]**

(e) Closing Transcript. The Concessionaire agrees to provide the Department a complete transcript of all documents executed and delivered in connection with (i) the execution of this Agreement, and (ii) the Opitz Boulevard Ramp Financial Close promptly following the Opitz Boulevard Ramp Financial Close Date; provided that the transcript for the Opitz Boulevard Ramp Financial Close may be combined with the transcript for the Seminary Road Ramp Financial Close into one transcript provided to the Department promptly following the second financial close date to occur; provided, however, that if Seminary Road Ramp Financial Close does not occur within 45 days of Opitz Boulevard Ramp Financial Close, then Concessionaire agrees to provide the Department with a transcript of the Opitz Boulevard Ramp Financial Close transcript.

(f) Payments to the Department. On the Opitz Boulevard Ramp Financial Close Date, the Concessionaire shall pay the Department \$91,134.00 as a reimbursement for the purchase of the required nutrient credits for the Opitz Boulevard Ramp Project pursuant to Section 8.16(g).

Section 7.03E Seminary Road Ramp Financial Close

(a) Conditions for Seminary Road Ramp Financial Close. Except to the extent permitted in writing by the Department, Seminary Road Ramp Financial Close will only be achieved once all of the following conditions precedent are satisfied or waived by the Department in its sole discretion:

(i) the Concessionaire has provided the Department evidence, satisfactory to the Department, that the Concessionaire's available cash from ongoing operations is or will be sufficient to fund the Seminary Road Ramp Project;

(ii) the Concessionaire has delivered to the Department certificates, as may be reasonably requested by the Department, certifying as to the Concessionaire's compliance with the terms and conditions of this Agreement, the satisfaction of the conditions precedent to Seminary Road Ramp Financial Close, and the validity of the Concessionaire's representations and warranties set forth in Section 23.02, and confirming the Seminary Road Ramp Construction Contract has been executed and remains in full effect; and

(iii) the Department has received copies of the following executed documents:

(A) any required consents from the Project's existing Lenders relating to the Seminary Road Ramp Project, including (as applicable) to the execution of the Third Amended and Restated Comprehensive Agreement and the Seminary Road Ramp Construction Contract; and

(B) Seminary Road Ramp Performance Bond, in the amount and satisfying the requirements set forth in Section 17.08(b).

If the Concessionaire has satisfied all conditions precedent (or the Department, in its sole discretion, has waived any such conditions) identified in this Section 7.03E(a), the Department will issue a certificate on the Seminary Road Ramp Financial Close Date confirming that all applicable conditions precedent have been satisfied. For the avoidance of doubt, nothing herein prevents the Concessionaire from achieving Opitz Boulevard Ramp Financial Close on the same date as Seminary Road Ramp Financial Close.

(b) Seminary Road Ramp Financial Close Signature Pages. Prior to the Seminary Road Ramp Financial Close Date, each party may sign the signature pages of the various documents it is required to sign to achieve Seminary Road Ramp Financial Close and deliver such signature pages to counsel for the other party (or to a designated third party) to be held in escrow and not to be effective until released by an authorized representative of the signing party. The Department will release any signature pages only by written release.

(c) **[RESERVED]**

(d) Closing Transcript. The Concessionaire agrees to provide the Department a complete transcript of all documents executed and delivered in connection with (i) the execution of this Agreement, and (ii) the Seminary Road Ramp Financial Close promptly following the Seminary Road Ramp Financial Close Date; provided that the transcript for the Seminary Road Ramp Financial Close may be combined with the transcript for the Opitz Boulevard Ramp Financial Close into one transcript provided to the Department promptly following the second financial close date to occur; provided, however, that if Opitz Boulevard Ramp Financial Close does not occur within 45 days of Seminary Road Ramp Financial Close, then Concessionaire agrees to provide the Department with a transcript of the Seminary Road Ramp Financial Close transcript.

Section 7.04 Project Financing Agreements; Department's Rights and Protections

(a) From time to time during the Term, the Concessionaire has the right, at its sole cost and expense, to pledge, hypothecate, or assign the Gross Revenues and the Concessionaire's Interest as security for any Concessionaire Debt, such debt to be issued on such terms and conditions as may be acceptable to any Lender and the Concessionaire, subject to the following terms and conditions (such pledge, hypothecation, assignment, or other security instrument, including the Initial Project Financing Agreements, the 395 Project Financing Agreements, the Fred Ex Project Financing Agreements, the 2022 Project Financing Agreements and the Opitz Boulevard Ramp Project Equity Contribution Agreement, being referred to in this Agreement as a "Financing Assignment"):

(i) no Person other than an Institutional Lender (other than with respect to indemnification and similar provisions provided for the benefit of the Collateral Agent and the agents, officers, representatives, and/or employees of an Institutional Lender or the Collateral Agent) is entitled to the benefits and protections afforded by a Financing Assignment, except that Lenders of Concessionaire Debt may be Persons other than Institutional Lenders so long as any Financing Assignment securing such Concessionaire Debt made by such Person is held by an Institutional Lender acting as Collateral Agent, and PABs may be issued, acquired and held by parties other than Institutional Lenders so long as an Institutional Lender acts as indenture trustee for the PABs and any VTIB assistance;

(ii) no Financing Assignment will encumber less than the entire Concessionaire's Interest; *provided*, that the foregoing does not preclude subordinate Financing Assignments;

(iii) the Concessionaire is strictly prohibited from pledging or encumbering the Concessionaire's Interest, or any portion thereof, to secure any indebtedness, and no Financing Assignment will secure any indebtedness, (A) that is issued by any Person other than the Concessionaire, any special purpose company that directly or indirectly owns the Concessionaire and has no assets except as are directly related to the Project, or any special purpose subsidiary wholly owned by such company, or the PABs Issuer or (B) the proceeds of which are used in whole or in part for any purpose other than the Project Purposes or any other purpose permitted in Section 7.04(a)(xiv);

(iv) no Financing Assignment or other instrument purporting to mortgage, pledge, encumber, or create a Lien on or against the Concessionaire's Interest will extend to or affect the Department's fee simple title to or other property interest and estate in and to the Project, the Project Right of Way or any interest of the Department hereunder or any part thereof;

(v) any number of permitted Financing Assignments may be outstanding at any one time, and any Financing Assignment permitted hereunder may secure two or more separate loans from two or more separate Lenders; *provided*, that each such loan and the Financing Assignment securing the same complies with the provisions of this Article 7;

(vi) the Department will not have any obligation to any Lender or Collateral Agent pursuant hereto, except as expressly set forth in this Article 7 or in any other instrument or agreement signed by the Department in favor of such Lender or Collateral Agent and unless the Concessionaire and/or the Collateral Agent have notified the Department of the existence of such Financing Assignment;

(vii) each Financing Assignment will require that if the Concessionaire is in default under the Concessionaire Debt secured by the Financing Assignment or under the Financing Assignment and the Lender or Collateral Agent gives notice of such default to the Concessionaire, then the Collateral Agent will also give concurrent notice of such default to the Department. Each Financing Assignment also will require that the Collateral Agent deliver to the Department, concurrently with delivery to the Concessionaire or any other Person, every notice of election to sell, notice of sale or other notice required by Law or by the Financing Assignment in connection with the exercise of remedies under the Financing Assignment;

(viii) no Financing Assignment will grant to a Lender any right to apply funds deposited with the Depository in accordance with Section 17.07, except for the express purposes for which the reserve or deposit is established;

(ix) each Financing Assignment will provide that the Concessionaire may, without condition or qualification, issue additional Concessionaire Debt, secured by the Concessionaire's Interest, for the limited purpose of funding Safety Compliance Orders *provided*, that (A) the Lenders may limit such additional Concessionaire Debt if other funds are then available to the Concessionaire for the purpose of funding any such Safety Compliance Orders, and (B) the Lenders may impose reasonable, customary requirements as to performance and supervision of the work related to such Safety Compliance Order;

(x) each Financing Assignment will expressly state that the Collateral Agent and the Lenders will not name or join any State Party or any officer thereof in any legal proceeding seeking collection of the related debt or other obligations secured thereby or the foreclosure or other enforcement of the Financing Assignment except to the extent (A) joining the Department as a necessary party is required to give the court jurisdiction over the dispute with the Concessionaire and to enforce any Lender's remedies against the Concessionaire and (B) the complaint against the Department states no Claim against the Department for a Lien or security interest on, or to foreclose against, the Department's fee simple title to or other property interest and estate in and to the Project, the Project Right of Way or any interest of the Department hereunder, or any part thereof, or for any liability of the Department;

(xi) each Financing Assignment will expressly state that neither the Lenders nor the Collateral Agent will seek any damages or other amounts from the Department due to the Department's breach of this Agreement, whether for Concessionaire Debt or any other amount, except damages for a violation by the Department of its express obligations to Lenders set forth in this Article 7; *provided*, that the foregoing will not affect any rights or claims of a Lender as a successor to the Concessionaire's Interest by foreclosure or transfer in lieu of foreclosure;

(xii) each Financing Assignment will expressly state that the Lenders and the Collateral Agent will respond to any request from the Department or the Concessionaire for consent to a modification or amendment of this Agreement within a reasonable period of time;

(xiii) no Financing Assignment may secure Concessionaire Debt that prohibits prepayment or defeasance; *provided*, that the foregoing does not preclude imposition of Breakage Costs in order to prepay or defease or any requirement that a prepayment or defeasance be made on the next succeeding payment date; and

(xiv) each Financing Assignment may only secure Concessionaire Debt that satisfies the requirements set forth in Section 7.01 and the proceeds of which are used exclusively for the purpose of (A) developing, designing, permitting, constructing, financing, maintaining, repairing, rehabilitating, renewing or operating the Project or any Project Enhancements or establishing or maintaining reserves in connection therewith, (B) paying reasonable fees, development costs and expenses incurred by the Concessionaire in connection with the execution of this Agreement and the Initial Project Financing Agreements, the 395 Project Financing Agreements, the Fred Ex Project Financing Agreements, or the 2022 Project Financing Agreements, as applicable, and not otherwise paid, (C) making Distributions, but only from the proceeds of any Refinancing permitted pursuant to Section 7.05, (D) any Refinancing of pre-existing Concessionaire Debt that conforms to the provisions of this Section 7.04(a), including use of proceeds to pay the reasonable costs of closing the Refinancing (including Lender's fees, but excluding any amounts paid to Affiliates) and (E) paying the Annual Transit Investment.

(b) The Department will have no obligation to join in, execute or guarantee any Financing Assignment.

(c) Notwithstanding the enforcement of any security interest created by a Financing Assignment, the Concessionaire will remain liable to the Department for the payment of all sums owing to the Department pursuant to this Agreement and the performance and observance of all of the Concessionaire's covenants and obligations pursuant to this Agreement.

(d) No Lender or Collateral Agent will, by virtue of its Financing Assignment, acquire any greater rights to or interest in the Project or Gross Revenues than the Concessionaire has at any applicable time pursuant to this Agreement, other than the provisions set forth in this Article 7 for the specific protection of the Lenders and the Collateral Agent.

(e) All rights acquired by the Lenders or the Collateral Agent under any Financing Assignment will be subject to the provisions of this Agreement and any Development Contract and to the rights of the Department hereunder and thereunder.

(f) No Financing Assignment will be binding upon the Department in the enforcement of its rights and remedies as provided in this Agreement and by Law, unless and until the Department has received a copy (certified as true and correct by the Collateral Agent or by the administrative agent identified in the Initial Project Financing Agreements, the 395 Project Financing Agreements, the Fred Ex Project Financing Agreements or the 2022 Project Financing Agreements) of the original thereof and a copy of a specimen bond, promissory note or other

evidence of indebtedness (certified as true and correct by the Collateral Agent or by the administrative agent identified in the Initial Project Financing Agreements, the 395 Project Financing Agreements, the Fred Ex Project Financing Agreements or the 2022 Project Financing Agreements) secured by such Financing Assignment, together with written notice of the address of the Collateral Agent to which notices may be sent. If applicable, after the recordation or filing thereof, the Collateral Agent will provide to the Department a copy of the Financing Assignment bearing the date and instrument number or book and page of such recordation or filing. In the event of an assignment of any such Financing Assignment by the Collateral Agent, such assignment will not be binding upon the Department unless and until the Department has received a certified copy thereof, together with written notice of the assignee thereof to which notices may be sent (and the assignee will, if such assignment is required to be recorded, after such recordation deliver to the Department a copy thereof bearing the date and instrument number or book and page of such recordation).

(g) No Financing Assignment, including relating to any Refinancing, will be valid or effective, and no Lender will be entitled to the rights, benefits, and protections of this Article 7, unless the Financing Assignment complies with this Section 7.04. If the Department has actual knowledge that any Financing Assignment or amendment thereto has been entered into and does not comply with this Section 7.04, then the Department will deliver a notice to the Collateral Agent, with a copy to the Concessionaire. Unless and until such non-compliance is remedied, the Financing Assignment will be neither valid nor effective, and the Lenders thereunder will be entitled to none of the rights, benefits, and protections of this Article 7.

(h) Each Financing Assignment will make the Department a third-party beneficiary to any provision thereof that creates or protects the rights and priorities of the Department to receive payments thereunder as provided for in this Agreement, including Section 5.06.

(i) The Concessionaire will cause all Project Financing Agreements to provide that amounts described in clauses (a), (c) and (d) of the definition of “Gross Revenues” must be deposited in one or more accounts held by the Collateral Agent or its agent under an account control or similar agreement pending disbursement; *provided*, that such funds may be invested in investments permitted by the Project Financing Agreements pending disbursement; and *provided* further that the Concessionaire is not precluded from transferring such amounts to a separate account to pay Operating Costs as permitted in the Project Financing Agreements.

(j) The Department and the Concessionaire hereby agree and confirm that: (i) the reference to “Concessionaire Debt (for the Fred Ex Project)” in the definition of “Fred Ex Concessionaire Breach Termination Amount” herein and (ii) the references to “Concessionaire Debt (for the Original HOT Lanes and the 395 HOT Lanes, but not the Fred Ex HOT Lanes)” and “Concessionaire Debt (for the Fred Ex Project only)” in the definition of “Concessionaire Default Termination Amount” herein, shall in each case include such portion of the Concessionaire Debt as refinanced pursuant to the applicable Series 2022 Bonds (as defined in the 2022 Project Financing Agreements).

Section 7.05 Refinancing Requirements

(a) Notice of Refinancing. The Concessionaire will provide the Department written notice of a Refinancing 75 Days before the date of such Refinancing (or, if such advance notice is

not reasonably possible under the circumstances, such notice as is possible and in any event with reasonable time for the Department to review and, if applicable, provide its consent for such Refinancing as contemplated below). At the Department's request, the Concessionaire will provide to the Department available details of the proposed Refinancing, including (i) details of the changes, if any, proposed to the Financial Model Formulas, (ii) the proposed Base Case Financial Model Update, (iii) any material changes in the Concessionaire's obligations (including contingent obligations) to the Project Lenders, (iv) an outline detailing the changes and/or replacements, as the case may be, to the Project Financing Agreements then in effect and the Financing Assignments contemplated by the Refinancing, (v) any other details concerning the Refinancing that the Department may reasonably require to determine whether the Refinancing would, or could reasonably be expected to, have a material adverse effect on the Department, the Project or the ability of the Concessionaire to perform its obligations pursuant to this Agreement or any other Project Agreement, *provided* that, with respect to any refinancing meeting the requirements of clauses (i), (ii), or (iii) of Section 7.05(c), the Concessionaire will provide to the Department details to the extent reasonably required to establish that such proposed Refinancing satisfies the requirements of clauses (i), (ii) or (iii) of Section 7.05(c).

(b) Project Financing Agreements Related to Refinancings.

(i) The Concessionaire will deliver to the Department for access and review, initial and subsequent drafts of all proposed Project Financing Agreements contemporaneously with the distribution of such drafts by and between the Concessionaire and the Lenders. The Department's consent, when applicable, will be given not less than 15 Business Days prior to the proposed date of the Refinancing, *provided*, however, that there are no material changes in the terms of the relevant Project Financing Agreements provided to the Department and that the Department has been given reasonable time to provide its review and/or approval in the event that written notice was not provided to Department 75 Days before the date of the Refinancing.

(ii) The Concessionaire will deliver, not later than 15 Days after close of the Refinancing, to the Department executed copies of all Project Financing Agreements in connection with the Refinancing.

(c) Department's Right to Approve Refinancing. Any Refinancing of Concessionaire Debt will be subject to the Department's prior approval, which approval will not be unreasonably withheld or delayed; *provided*, that no such approval will be required if the Concessionaire first demonstrates to the Department that:

(i) the proposed Refinancing refinances existing Concessionaire Debt and does not increase the Concessionaire Debt then outstanding other than by an amount equal to reasonable costs of closing the Refinancing, including lender fees, arranger fees and advisor fees, and the amount of any required reserves; or

(ii) the proposed Refinancing has been assigned a rating (which may include a non-public rating) by a Rating Agency (without regard to bond insurance, if any) which is no lower than BBB minus or Baa3 or equivalent rating; or

(iii) no portion of the proceeds of the Refinancing will be used to make Distributions or to pay non-capital costs and expenses (other than related costs of issuance and any required reserves).

With respect to any proposed Refinancing for which the Department's approval is required, the Department shall not unreasonably withhold or delay its consent. Without limiting other reasonable grounds for withholding consent, the Department may withhold consent if it reasonably determines that:

(1) the information disclosed to it is not a true and complete disclosure of all relevant aspects of the Refinancing;

(2) any change or series of changes in the obligations of the Concessionaire due to the Refinancing would or reasonably could be expected to result in a material increase in the Department's liabilities, obligations, or risks under this Agreement and the other Project Agreements;

(3) the Refinancing would have a material adverse effect on the ability or commitment of the Concessionaire to perform its obligations under this Agreement and the other Project Agreements; or

(4) the proposed Refinancing would or reasonably could be expected to have a material adverse effect on the Concessionaire's incentives and disincentives to fully comply with the standards and requirements applicable to the development, construction, operations, and maintenance of the Project for which the Concessionaire is responsible pursuant to this Agreement and the other Project Agreements.

Section 7.07(e) sets forth additional restrictions on Refinancings and on the incurrence of Concessionaire Debt.

(d) Payment of Department Expenses.

(i) In connection with any Refinancing, the Concessionaire will pay the Department for the Department's Allocable Costs incurred related to the Refinancing at the time of the closing of the Refinancing. The Department will provide the Concessionaire with an estimate of its expected costs related to such Refinancing; if there is a change in circumstances relating to the Refinancing following the submission of the Department's initial estimate that is expected to result in higher expenses, then the Department will provide a revised estimate. For any Refinancings that do not close, the Department will be paid for its documented expenses for such Refinancings from and at the time of (or, at the Concessionaire's option, at any time prior to) any subsequent successful Refinancings, and will be entitled to payment of interest on such expenses based on the Bank Rate calculated from the date on which such expenses were due and payable according to the first invoice issued by the Department for such expenses until paid by the Concessionaire.

(ii) The Department will provide the Concessionaire with an estimate of the expenses to be incurred by the Department related to the Refinancing, no later than 30 Days after the Department has provided its consent to such Refinancing pursuant to Section

7.05(b)(i), and a final estimate not less than five Days prior to the proposed date of the Refinancing.

(e) Other Requirements.

(i) Every Refinancing will be subject to the provisions of Section 7.01 and Sections 7.02(c), 7.03, 7.03A, 7.03B or 7.03C, as applicable, and the other provisions of this Agreement pertaining to Concessionaire Debt and Financing Assignments.

(ii) Any reimbursement agreement and related documents that the Concessionaire enters into in connection with obtaining a letter of credit will, if they encumber the Concessionaire's Interest, constitute a Financing Assignment and be treated as a Refinancing for all purposes pursuant to this Agreement. No such reimbursement agreement and related documents will encumber less than the entire Concessionaire's Interest.

(iii) In connection with the consummation of any proposed Refinancing, the Department will, promptly upon the reasonable request of the Concessionaire or the Collateral Agent or any Lender and such requesting party's agreement to cover any costs incurred by the Department in connection with the requested action, review the Concessionaire's written analysis of whether the Department is required to approve such Refinancing pursuant to Section 7.05(c) and confirm whether the Department believes its approval is required for such Refinancing.

(iv) In connection with any Refinancing, the Department will, promptly upon the request of the Concessionaire or the Collateral Agent, execute, acknowledge and deliver to the Concessionaire, or any of the parties specified by the Concessionaire, standard consents or certificates with respect to the Agreement, which may be qualified by materiality and/or to the best of the knowledge and belief of a designated representative of the Department; *provided*, however, that such consents or certificates do not limit, restrict or prejudice the Department's rights under this Agreement or any other Project Agreement.

Section 7.06 Collateral Agent's Rights

The Collateral Agent's rights are set forth in the Direct Agreement, the 395 Direct Agreement, and the Fred Ex Direct Agreement.

Section 7.07 Original TIFIA Credit Assistance Protection

(a) Concessionaire Obligation to Execute and Deliver Original TIFIA Loan Documentation.

(i) The Concessionaire agrees to (A) exercise commercially reasonable efforts to reach financial close on any Original TIFIA Loan Documentation containing Original TIFIA Commercial Terms (with any changes thereto for which adjustments are made pursuant to Section 7.07(b)), and (B) execute and deliver any Original TIFIA Loan Documentation containing Original TIFIA Commercial Terms (with any changes thereto for which adjustments are made pursuant to Section 7.07(b)) that the Concessionaire

receives on or prior to March 31, 2013 within 45 days following its receipt thereof together with confirmation from the TIFIA Lender that it is ready to execute and deliver the Original TIFIA Loan Documentation. If the Concessionaire fails to execute and deliver, prior to March 31, 2013 (or any later date ending on the last day of the 45-day period described in Section 7.07(a)(i)) (x) any Original TIFIA Loan Documentation containing Original TIFIA Commercial Terms (with any changes thereto for which adjustments are made pursuant to Section 7.07(b)) or (y) any Original TIFIA Loan Documentation containing terms consistent with the terms described in Exhibit H, but containing other terms and conditions that are inconsistent with the terms and conditions contained in TIFIA loan agreements and intercreditor agreements for Relevant Precedent, which inconsistent terms and conditions are reasonably expected to have a material adverse effect on the Concessionaire's financial profile, its ability to perform its obligations and enjoy its rights and benefits under this Agreement or its risk profile, and the Department has agreed to perform or cause to be performed such term or condition or otherwise resolve such inconsistent terms or conditions to the mutual satisfaction of the Concessionaire and the Department, each acting reasonably, in each case, within 45 days following its receipt by the Concessionaire, then such failure shall constitute a failure by the Concessionaire to comply with a material obligation of this Agreement and shall entitle the Department to exercise its rights and remedies hereunder relating thereto; *provided*, that in the event the Department exercises its right to terminate this Agreement, notwithstanding anything to the contrary set forth in Section 20.05(c) or any other provision of this Agreement, the Department will pay to the Concessionaire, subject to Section 25.19, an amount equal to the aggregate of the following: (i) 100% of Concessionaire Debt then outstanding, plus (ii) all Demobilization Costs, less (iii) Credit Balances.

(ii) If the Concessionaire fails to execute and deliver, prior to March 31, 2013 (or any later date ending on the last day of the 45-day period described in Section 7.07(a)(i)) (A) any Original TIFIA Loan Documentation containing Original TIFIA Commercial Terms (with any changes thereto for which adjustments are made pursuant to Section 7.07(b)) or (B) any Original TIFIA Loan Documentation containing terms consistent with the terms described in Exhibit H, but containing other terms and conditions that are inconsistent with the terms and conditions contained in the TIFIA loan agreements and intercreditor agreements for Relevant Precedent, which inconsistent terms and conditions are reasonably expected to have a material adverse effect on the Concessionaire's financial profile, its ability to perform its obligations and enjoy its rights and benefits under this Agreement or its risk profile, and the Department has not agreed to perform or cause to be performed such term or condition or otherwise resolve such inconsistent terms or conditions to the mutual satisfaction of the Concessionaire and the Department, each acting reasonably, then in each case, the Department TIFIA Protection Amount will be decreased by an amount equal to \$30,000,000 and the Concessionaire TIFIA Protection Amount will be increased by \$30,000,000. For the avoidance of doubt, the Concessionaire may choose to execute and deliver the Original TIFIA Loan Documentation described in clause (B), in which case no adjustment to the Department TIFIA Protection Amount or the Concessionaire TIFIA Protection Amount will be made. The failure of the Concessionaire to enter into the Original TIFIA Loan Documentation pursuant to this Section 7.07(a)(ii)(B) will not be a Concessionaire Default and the Department will have no right to terminate this Agreement or exercise any other rights or remedies that may be available to the

Department hereunder as a result thereof (other than as specifically provided in this Section 7.07(a)(ii)).

(iii) If the Concessionaire executes and delivers the Original TIFIA Loan Documentation containing Original TIFIA Commercial Terms (with any changes thereto for which adjustments are made pursuant to Section 7.07(a) and Section 7.07(b)) on or before November 30, 2012, the Department TIFIA Protection Amount will be increased by an amount equal to \$15,000,000 and the Concessionaire TIFIA Protection Amount will be decreased by \$15,000,000; *provided*, however that any adjustments pursuant to this subsection (iii) shall occur only after adjustments are made pursuant to Section 7.07(b), if any.

(iv) If the Concessionaire executes and delivers the Original TIFIA Loan Documentation containing Original TIFIA Commercial Terms (with any changes thereto for which adjustments are made pursuant to Section 7.07(a) and Section 7.07(b)) after November 30, 2012 and on or before March 31, 2013, the Department TIFIA Protection Amount will be increased by an amount equal to \$5,000,000 and the Concessionaire TIFIA Protection Amount will be decreased by \$5,000,000; *provided*, however that any adjustments pursuant to this subsection (iv) shall occur only after adjustments are made pursuant to Section 7.07(b), if any.

(v) Notwithstanding the Concessionaire's obligation to execute and deliver the Original TIFIA Loan Documentation containing Original TIFIA Commercial Terms within 45 Days following its receipt pursuant to Section 7.07(a)(i), if the Original TIFIA Loan Documentation containing Original TIFIA Commercial Terms has not been made available to the Concessionaire on or before March 31, 2013, the Concessionaire will have no further obligation to seek Original TIFIA Credit Assistance.

(b) Funding Adjustments at Original TIFIA Closing Date. If the Concessionaire enters into the Original TIFIA Loan Documentation on or before March 31, 2013, the Adjusted Financial Model will be updated to calculate a further change, positive or negative, in the Department TIFIA Protection Amount and the Concessionaire TIFIA Protection Amount using the following protocol (ignoring for these calculations any adjustments to the Department TIFIA Protection Amount and the Concessionaire TIFIA Protection Amount pursuant to Section 7.07(a)):

(i) first, if any change necessary to ensure compliance with the PABs Issuer's terms to entering into the Original TIFIA Credit Assistance set forth in Section 6.30(d)(2) of the Senior Loan Agreement, resulted in a need to reduce the principal amount of the Original TIFIA Credit Assistance, the Adjusted Financial Model will be adjusted by updating for the amount of such reduction (and ignoring for this calculation the adjustments to any further reduction in the Original TIFIA Credit Assistance) and calculating an adjustment to each of the Department TIFIA Protection Amount and the Concessionaire TIFIA Protection Amount such that the Second Funding Closing Amount is \$300,000,000 and the Equity IRR is equal to the Adjusted Equity IRR;

(ii) then, if the Original TIFIA Credit Assistance requires a change to:

(A) the amortization profile (whether mandatory or scheduled);

(B) the revenue sharing / prepayment clauses; or

(C) the funding of the Debt Service Reserve Account or the Ramp-up Reserve Account, or the use or release requirements or required balance requirements thereof,

in each case, from the terms described in Exhibit H, and the cumulative effect of such changes is less favorable to the Concessionaire, the Adjusted Financial Model will be adjusted by updating for the actual Original TIFIA Credit Assistance repayment terms and calculating a further adjustment to each of the Department TIFIA Protection Amount and the Concessionaire TIFIA Protection Amount such that the Second Funding Closing Amount is \$300,000,000 and the Equity IRR is equal to the Adjusted Equity IRR;

(iii) then, the Adjusted Financial Model will be adjusted by updating for the actual Original TIFIA Interest Rate and calculating a further adjustment to each of the Department TIFIA Protection Amount and the Concessionaire TIFIA Protection Amount such that the Second Funding Closing Amount is equal to \$300,000,000 and the resulting Base Case Equity IRR is equal to the Adjusted Equity IRR; and

(iv) then, if the amount of the Original TIFIA Credit Assistance is less than the Benchmark TIFIA Credit Assistance Amount, the Adjusted Financial Model will be further adjusted by calculating adjustments to each of the Department TIFIA Protection Amount and the Concessionaire TIFIA Protection Amount such that the Second Funding Closing Amount is \$300,000,000 and the Equity IRR is equal to the Adjusted Equity IRR and will become the Adjusted Financial Model Update in accordance with Section 6.04.

(c) Department Participation and Assistance. The Concessionaire acknowledges that the Department will actively participate in negotiating the terms of the Original TIFIA Loan Documentation that would reasonably be expected to contain terms and conditions that are inconsistent with the terms described in Exhibit H and other terms and conditions contained in the Original TIFIA Loan Documentation that are materially inconsistent with Relevant Precedent, or such inconsistent terms and conditions could be reasonably expected to have a material adverse effect on the Department's financial profile, its ability to perform its obligations and enjoy its rights and benefits under this Agreement or its risk profile. The Concessionaire will use reasonable commercial efforts to coordinate documentation development and meetings regarding the terms of the Original TIFIA Credit Assistance with the Department in a manner that allows the Department to be aware of and actively involved in the content and commercial terms of the Original TIFIA Loan Documentation. The Department acknowledges that such involvement will not cause a delay of the Second Funding Closing Date. The Department also acknowledges that on occasion, impromptu and/or "one-on-one" discussions between the Concessionaire and the TIFIA Lender may be required to advance the negotiation of the Original TIFIA Credit Assistance in a timely manner, and the Concessionaire acknowledges that the outcome of any such discussions will be promptly relayed to the Department. The Concessionaire will deliver copies of all documents and materials it receives from, and sends to, the TIFIA Lender in connection with the negotiation, execution and delivery of any Original TIFIA Loan Documentation promptly after the receipt or transmission thereof by the Concessionaire. If the TIFIA Lender proposes terms and conditions for the Original TIFIA Credit Assistance that are more burdensome than corresponding terms and

conditions described in Exhibit H that could be reasonably expected to have a material adverse effect on the Concessionaire's financial profile, its ability to perform its obligations and enjoy its rights and benefits under this Agreement or its risk profile, the Department will use reasonable commercial efforts to assist the Concessionaire's efforts to improve such terms and conditions.

(d) TIFIA Protection Amount Funding.

(i) The Department TIFIA Protection Amount and the Concessionaire TIFIA Protection Amount, as adjusted in accordance with the foregoing terms, will become non-contingent and unconditionally payable upon the earlier to occur of (A) the closing date for the Original TIFIA Credit Assistance and (B) March 31, 2013 (or any later date ending on the last day of the 45-day period described in Section 7.07(a)(i)) (the "Second Funding Closing Date"). Subject to the following sentence, the Department TIFIA Protection Amount shall be deposited in immediately available funds to the VDOT Funding Account as soon as practicable on or after the Second Funding Closing Date, but in no event later than 90 days following the Second Funding Closing Date, and the Concessionaire TIFIA Protection Amount will be paid by the Equity Sponsors pursuant to the Equity Funding Agreements effective as of the Second Funding Closing Date, and the parties will provide prompt written notice to the Trustee of such increase. If the Department TIFIA Protection Amount is not deposited to the VDOT Funding Account on the Second Funding Closing Date, the Department will deposit additional amounts necessary to reimburse the Concessionaire for all costs incurred with respect to the Project as a result of the delay in funding.

(ii) If the Department TIFIA Protection Amount is a negative amount (the "Department Credit Amount") as a result of the adjustments pursuant to this Section 7.07, the Department will not be required to make the Department TIFIA Protection Amount, the Public Funds Amount will be decreased by an amount equal to the Department Credit Amount, and the parties will provide written notice to the GARVEE Trustee or the Trustee, as relevant, to transfer an amount equal to the Department Credit Amount to or to the order of the Department within 10 days after the later of (A) the giving of such notice to the GARVEE Trustee or the Trustee, as relevant, or (B) the Second Funding Closing Date. If the Concessionaire TIFIA Protection Amount is a negative amount as a result of the adjustments pursuant to this Section 7.07, the Concessionaire TIFIA Protection Amount will be zero, the Equity Contribution Amount payable by the Equity Sponsors under the Equity Funding Agreements will be automatically reduced by such amount effective as of the Second Funding Closing Date, and the parties will provide prompt written notice to the Trustee of such reduction.

(e) Restriction on Refinancing. In the event that the Concessionaire fails to enter into the Original TIFIA Loan Documentation on or before March 31, 2013 (or any later date ending on the last day of the 45-day period described in Section 7.07(a)(i)), during the period ending on the tenth (10th) anniversary of the Financial Close Date, the Concessionaire will not incur any Concessionaire Debt or refinance, replace or refund all or any part of the outstanding PABs, that results in an increase to the principal amount of Concessionaire Debt then outstanding without the Department's prior approval, such approval to be given in the Department's sole discretion; *provided* that such restriction shall not apply to (A) purchase money obligations incurred to finance

discrete items of equipment used in connection with the Project that are not integral to the Project, (B) current accounts payable arising, and accrued expenses incurred, in the ordinary course of business which are payable in accordance with customary practices that are not overdue by more than ninety (90) days (unless subject to a good faith contest), and (C) the incurrence of Concessionaire Debt for the purposes described in clauses (i) through (iii) of Section 6.30(b)(1) of the Senior Loan Agreement, or for the purposes described in clause (iv) of Section 6.30(b)(1) of the Senior Loan Agreement so long as such incurrence does not result in the Concessionaire Debt in an amount greater than the principal amount of the then existing Concessionaire Debt (net of any deposits required to satisfy any increased reserve requirements with respect to the Concessionaire Debt being incurred, any payments to the Department required under this Agreement, and costs of issuance not to exceed 3% of the principal amount of such indebtedness).

(f) This Section 7.07 shall not apply to the financing for the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project.

ARTICLE 8

DESIGN AND CONSTRUCTION OF THE PROJECT

Section 8.01 General Obligations of the Concessionaire

(a) The Concessionaire will furnish all design, construction and other services, provide all materials, equipment and labor to perform the Work reasonably inferable from this Agreement and perform the Work in accordance with this Agreement.

(b) Except as otherwise expressly provided in this Agreement, the Department makes no warranties or representations as to any surveys, data, reports or other information provided by the Department or other Persons, including the data and other information set forth in Exhibit S (Known Geotechnical Conditions) and Exhibit T (Known Pre-Existing Hazardous Substances), concerning surface or subsurface conditions, the existing condition of the roadway and other Assets, drainage, the presence of Utilities, Hazardous Substances, contaminated ground water, archeological, paleontological and cultural resources, and endangered and threatened species, affecting the Project Right of Way or surrounding locations. The Concessionaire acknowledges that such information is for the Concessionaire's reference only and has not been verified by the Department, and that the Concessionaire will be responsible for conducting all surveys, studies and assessments as it deems appropriate for the Project; *provided*, that subject to Section 8.17, the foregoing will not limit the Concessionaire's rights with respect to Compensation Events and Delay Events.

(c) Except as otherwise expressly provided in this Agreement, the Concessionaire will bear the risk of all conditions occurring on, under or about the Project Right of Way on which the Work is performed, including:

- (i) physical conditions of an unusual nature that differ materially from those ordinarily encountered in the area;
- (ii) changes in surface topography;

- (iii) variations in subsurface moisture content;
- (iv) Utility facilities;
- (v) Hazardous Substances, including contaminated groundwater;
- (vi) any archeological, paleontological or cultural resources; and
- (vii) any species listed as threatened or endangered under Federal or State endangered species Law;

provided, that the foregoing will not limit the Concessionaire's rights with respect to Compensation Events and Delay Events.

(d) The Concessionaire will be responsible for coordinating and scheduling the Work with other separate contractors working in the Project Right of Way in accordance with the Technical Requirements. Except in the case of a Department-Caused Delay, the Department will not be liable for any delays, disruptions or damages caused by such contractors.

(e) The Concessionaire Representative and the Department Representative will be reasonably available to each other and will have the necessary authority, expertise and experience required to oversee and communicate with respect to the Work.

(f) Prior to and during the construction, the Concessionaire will provide information to the public concerning the Project, any Project Enhancements or any other construction activities in accordance with the Technical Requirements.

(g) The Concessionaire will prepare and submit to the Department for its review and approval the Project Development Plans in accordance with the requirements and times set forth in the Technical Requirements.

(h) The Concessionaire will not enter into any agreement with any Governmental Authority with jurisdiction over any Governmental Approval, Utility Owner, railroad, property owner or other third party having regulatory jurisdiction over any aspect of the Project or the Work or having any property interest affected by the Project or the Work that in any way purports to obligate the Department, or states or implies that the Department has an obligation, to the third party to carry out any activity during or after the end of the Term, unless the Department otherwise approves the same in writing in its sole discretion. Except in the case of an agreement approved by the Department pursuant to the preceding sentence, the Concessionaire has no power or authority to enter into any such agreement with a third party in the name or on behalf of the Department and the parties agree that any purported agreement to that effect will be null and void.

(i) The Concessionaire will be responsible for performing and completing all Work that the Concessionaire is obligated to perform for or on behalf of third parties relating to the Project in accordance with its agreement with such third parties and subject to any dispute resolution with such third parties and without prejudicing the Concessionaire's rights under any such agreements.

(j) The provisions of Article 8 shall not apply to the design, development and construction of the STE.

Section 8.02 Limited Notices to Proceed to Perform Certain Work

(a) The Concessionaire may request that the Department issue one or more Limited Notices to Proceed (“LNTP”) authorizing the Concessionaire to commence certain portions of the Work as set forth in this Section 8.02. Prior to issuance of a LNTP, the parties will agree upon the conditions to the issuance of such LNTP, as well as the scope, schedule, and payment terms (if applicable) for such portion of the Work.

(b) The Concessionaire will deliver notice to the Department upon the satisfaction of the agreed conditions to the issuance of any LNTP and request that the Department issue such LNTP for the applicable portion of the Work. The Department will endeavor to respond to such request, within 21 Days following receipt of such request by the Department, by delivery to the Concessionaire of the applicable LNTP or notice of the conditions that the Department believes, in its reasonable discretion, to have not been satisfied. The Concessionaire will have a reasonable opportunity to address those deficiencies and re-submit a notice to the Department or, if the Concessionaire does not agree with the Department’s assessment, to refer the matter to the dispute resolution procedures pursuant to Article 21. If the Concessionaire has not received a response within such 21-Day period, such failure by the Department to respond will be deemed approval, but will not be deemed a waiver of the Department’s other rights or the Concessionaire’s other obligations, including compliance with Good Industry Practice, the Technical Requirements, Governmental Approvals, and Law. This Section 8.02(b) shall not apply to the 395 Project.

(c) With respect to the Original Project, to the extent any elements of the Early Work or payment therefor have not been completed or paid in full by the Department prior to the Agreement Date, the Concessionaire is authorized to complete such Early Work in accordance with this Agreement and payment therefor will be made under this Agreement (including for any such Early Work performed by the Concessionaire but not paid by the Department prior to the Agreement Date). Any Early Work performed and/or approved prior to the Agreement Date shall, upon execution of this Agreement, be deemed to have been performed by the Concessionaire and/or approved pursuant to, and subject to the terms and conditions of, this Agreement.

(d) With respect to the 395 Project, to the extent any elements of the 395 Early Work or payment therefor have not been completed or paid in full by the Department prior to the Amended and Restated Agreement Date, the Concessionaire is authorized to complete such 395 Early Work in accordance with this Agreement and payment therefor will be made pursuant to Section 8.17 (including for any such 395 Early Work performed by the Concessionaire but not paid by the Department prior to the Amended and Restated Agreement Date). Any 395 Early Work performed and/or approved prior to the Amended and Restated Agreement Date shall, upon execution of the First ARCA, be deemed to have been performed by the Concessionaire and/or approved pursuant to, and subject to the terms and conditions of, this Agreement.

(e) With respect to the Fred Ex Project, the Concessionaire may perform Fred Ex Early Work at its own cost and expense.

Section 8.03 Conditions Precedent for Notices to Proceed

(a) Notice to Proceed with Design Work. For the purposes of this Section 8.03(a), the parties will manage as independent projects the Original Project, the 395 Project, and the Fred Ex Project and each requirement listed below will apply independently to each of the Original Project, the 395 Project, and the Fred Ex Project, respectively. Except with respect to (i) Early Work approved and undertaken pursuant to Section 8.02(c), (ii) 395 Early Work approved and undertaken pursuant to Section 8.17, (iii) Fred Ex Early Work approved and undertaken pursuant to Section 8.20, and (iv) except as may be authorized in a LNTP, the Concessionaire will not commence any design Work unless and until the following conditions have been satisfied (or the Department has advised that it will waive such conditions) and the Department has delivered notice to that effect to the Concessionaire (such notice being referred to as the “Design Work Notice to Proceed”):

(i) the Concessionaire will have delivered to the Department and obtained its approval of the schedule of submissions described in Section 8.04(b);

(ii) the Department has approved the following Project Development Plans: (A) Concessionaire Management Plan; (B) Document Management Plan; (C) Quality Management System Plan; (D) Design Quality Management Plan; (E) Public Information and Communications Plan; (F) DBE/SWaM Plan and (G) Hiring Development Plan; *provided*, however, that this Section 8.03(a)(ii) does not apply for the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project;

(iii) there exists no court order which restrains, enjoins, or delays performance of the Work;

(iv) the Concessionaire certifies to the Department that all representations and warranties of the Concessionaire set forth in Section 23.02 remain true in all material respects;

(v) the Concessionaire certifies to the Department that all insurance policies required under Section 17.01 specified in the Design Work Notice to Proceed for the Work, except with respect to the builder’s risk insurance and the cyber/network insurance required under Section 2 of Exhibit Y-1 or Y-2 (as applicable), have been obtained and will be in full force and effect, and in the case of Project-specific policies, the Concessionaire has delivered to the Department duplicate originals or copies thereof certified by the Concessionaire’s insurance broker to be true and correct copies of the originals; and

(vi) there exists no Concessionaire Default, 395 Concessionaire Breach, or Fred Ex Concessionaire Breach for which the Concessionaire has received notice from the Department, and the Concessionaire certifies to the Department that, to the best of its knowledge after diligent inquiry, there exists no condition, which with the lapse of time or delivery of notice to the Concessionaire, or both, would constitute a Concessionaire Default, 395 Concessionaire Breach, or Fred Ex Concessionaire Breach.

The delivery of the Design Work Notice to Proceed will not constitute authorization to commence construction activities.

(b) Notice to Proceed for Construction. For the purposes of this Section 8.03(b), the parties will manage as independent projects the Original Project, the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, and the Seminary Road Ramp Project, and each requirement listed below will apply independently to each of the Original Project, the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, and the Seminary Road Ramp Project, respectively. In addition to the conditions set forth in Section 8.03(a) (subject to the limitations for the Opitz Boulevard Ramp Project Construction Notice to Proceed and Seminary Road Ramp Project Construction Notice to Proceed set forth in clauses (vi) and (vii) below, respectively), the Concessionaire will not commence construction of the Project Assets unless and until the following conditions have been satisfied (or the Department, in its discretion, waives such conditions) and the Department has delivered notice to that effect to the Concessionaire (such notice being referred to as the “Construction Notice to Proceed”):

(i) the Concessionaire has delivered to the Department correct and complete copies of all Design Public Hearing Documentation (except for Design Public Hearing Documentation related to the 395 Project and the Fred Ex Project) and Construction Documentation required for the commencement of construction in accordance with this Agreement and the Technical Requirements, and the Concessionaire has received from the Department any prior written approvals thereof required by this Agreement and Federal Requirements;

(ii) all Governmental Approvals (including any applicable Department approvals and Federal approvals and agreements) necessary for the commencement of construction have been acquired (and copies provided to the Department), and the Concessionaire has satisfied all applicable pre-construction requirements of the Governmental Approvals;

(iii) all rights of access or other property rights necessary for the commencement of construction have been obtained;

(iv) the Department has approved the following: (A) Baseline Schedule; (B) Construction Quality Management Plan; (C) Maintenance of Traffic Plan; (D) Environmental Management Plan; (E) ROW Acquisition and Relocation Plan; (F) Health, Safety and Security Plan; and (G) Utilities Plan;

(v) the builder’s risk insurance policy required under Section 17.01(a) has been obtained and will be in full force and effect, and the Concessionaire has delivered to the Department a duplicate original or copy thereof certified by the Concessionaire’s insurance broker to be a true and correct copy of the original;

(vi) with respect to the Opitz Boulevard Ramp Project Construction Notice to Proceed, the following conditions are the sole conditions to such Construction Notice to Proceed: (A) the Concessionaire shall have furnished to the Department the Opitz Boulevard Ramp Payment Bond and Opitz Boulevard Ramp Performance Bond, (B) the Concessionaire shall have furnished to the Department (x) the Opitz Boulevard Ramp TMS Payment Bond and Opitz Boulevard Ramp TMS Performance Bond, or (y) the Opitz Boulevard Ramp TMS Letter of Credit, (C) the Department has approved an Initial Opitz Boulevard Ramp Baseline Schedule, (D) there exists no Concessionaire Default or Opitz

Boulevard Ramp Concessionaire Breach for which the Concessionaire has received notice from the Department, or any condition that, to the best of Concessionaire's knowledge after diligent inquiry, which with the lapse of time or delivery of notice to the Concessionaire, or both, would constitute a Concessionaire Default or Opitz Boulevard Ramp Concessionaire Breach; (E) the Department has approved the following Project Development Plans: (1) Concessionaire Management Plan, (2) Document Management Plan, (3) Quality Management System Plan, (4) DBE/SWaM Plan, (5) Construction Quality Management Plan, (6) Maintenance of Traffic Plan and (7) ROW Acquisition and Relocation Plan; and (F) the Concessionaire shall have satisfied the conditions set forth in Sections 8.03(a)(iii) through (vi) and Sections 8.03(b)(ii), (iii) and (v); and

(vii) with respect to the Seminary Road Ramp Project Construction Notice to Proceed, the following conditions are the sole conditions to such Construction Notice to Proceed: (A) Concessionaire shall have furnished to the Department the Seminary Road Ramp Performance Bond; (B) the Department shall have approved an Initial Seminary Road Ramp Baseline Schedule; (C) there exists no Concessionaire Default or Seminary Road Ramp Concessionaire Breach for which the Concessionaire has received notice from the Department, or any condition that, to the best of Concessionaire's knowledge after diligent inquiry, which with the lapse of time or delivery of notice to the Concessionaire, or both, would constitute a Concessionaire Default or Seminary Road Ramp Concessionaire Breach; and (D) Concessionaire shall have satisfied the conditions set forth in Sections 8.03(a)(iii) through (vi) and Sections 8.03(b)(ii), (iii) and (v).

(c) The Concessionaire will deliver notice to the Department upon the satisfaction of the applicable conditions set forth in this Section 8.03 and request that the Department issue a Design Work Notice to Proceed or a Construction Notice to Proceed. The parties will comply with the submittal and review procedures set forth in Section 10.05 for the issuance of a Design Work Notice to Proceed or a Construction Notice to Proceed; *provided* that the deemed approval provisions of Section 10.05(e) will not apply to the issuance of a Design Work Notice to Proceed or a Construction Notice to Proceed.

(d) The Department may waive any condition precedent set forth in Section 8.03(a) and Section 8.03(b); *provided*, that no person or entity will be entitled to assume that the Department will waive or refuse to waive any condition precedent in the absence of strict compliance therewith. Unless the Department waives in writing (as distinguished from a deemed waiver) a condition precedent that requires action by the Concessionaire to be satisfied, the Concessionaire will remain bound to use diligent efforts to satisfy the condition precedent.

Section 8.04 Design Work

(a) For the purposes of this Section 8.04, the parties will manage as independent projects the Original Project, the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, and the Seminary Road Ramp Project, and the requirements of this Section 8.04 shall be deemed to incorporate reference to independent application of such requirements to each of the Original Project, the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, and the Seminary Road Ramp Project. Except as provided in Section 8.02(c), (d), or (e) with respect to the Early Work, 395 Early Work, or Fred Ex Early Work, the Concessionaire will submit to the

Department accurate and complete copies of all Design Documentation and Construction Documentation relating to the Work (as applicable), which is required to be submitted, within three Days after such documentation is delivered to the Concessionaire by the Design-Build Contractor under the Design-Build Contract. Each submittal will comply with the applicable requirements of the Technical Requirements. The Department's review of any submittal shall comply with the submittal and review procedures set forth in Section 10.05.

(b) The Concessionaire will provide the Department with a schedule of its proposed submittals of Design Documentation and Construction Documentation (which schedule will be updated periodically as necessary) so as to facilitate the Department's coordination and review of such documents, and will complete quality control and quality assurance reviews of all Design Documentation and Construction Documentation to ensure that they are accurate and complete and comply with the requirements of this Agreement and the Technical Requirements prior to any submission to the Department.

(c) On or about the time of the scheduled submissions that require the Department's review, comment or approval, the Concessionaire will meet with the Department and will identify during such meetings, among other things, the evolution of the design and any Deviations or other changes from any of the Technical Requirements, or, if applicable, previous design submissions. Minutes of the meetings will be maintained by the Concessionaire and provided to all attendees for review.

(d) Construction Documentation will set forth in detail drawings and specifications describing the requirements for construction of the Work, in full compliance with the Technical Requirements, Law, and Governmental Approvals. The Construction Documentation will be consistent with the latest set of interim design submissions; as such submissions may have been modified in writing in a design review meeting or as otherwise agreed upon in writing, and will be submitted after Concessionaire has obtained all requisite Governmental Approvals associated with the Work contained in such documents.

(e) The Department's review, comment, and/or approval of interim design submissions and the Construction Documentation are for the purpose of evaluating the Concessionaire's compliance with the requirements of this Agreement and will be performed in accordance with the terms of this Agreement.

(f) Following the Department's initial approval pursuant to this Section 8.04, the Concessionaire will have the right to amend, supplement or otherwise modify the Design Public Hearing Documentation, Design Documentation or the Construction Documentation or any part thereof, without the further approval of the Department; *provided*, that the Department's approval will be required with respect to amendments, supplements or modifications that (i) constitute a material change in the scope of the Work or Deviations from any of the Technical Requirements, (ii) result in increases in the time to achieve (A) Substantial Completion beyond the Guaranteed Substantial Completion Date, (B) 395 Final Completion beyond the 395 Guaranteed Final Completion Date, (C) Fred Ex Final Completion beyond the Fred Ex Guaranteed Final Completion Date, (D) Opitz Boulevard Ramp Final Completion beyond the Opitz Boulevard Ramp Guaranteed Final Completion Date, or (E) Seminary Road Ramp Final Completion beyond the Seminary Road Ramp Guaranteed Final Completion Date, or (iii) except to the extent directly attributable to a

Compensation Event, impose on the Department any new or increased costs, liabilities or obligations; *provided*, further, that the Concessionaire will provide the Department notice of all such proposed amendments, supplements and modifications regardless of whether the Department's consent is required and will pay the Department, upon demand, for all the Allocable Costs it incurs to review and consider such proposed amendments, supplements or modifications that are subject to the Department's approval.

(g) In the event the Concessionaire's design differs from the schematic upon which the NEPA Documents were based, as between the Department and the Concessionaire, the Concessionaire will be fully responsible for all necessary actions, and will bear all risk of delay (except to the extent resulting from Delay Events) and all risk of increased cost (except to the extent resulting from Compensation Events), resulting from or arising out of any associated change in the Project Assets location and design, including (i) conducting all necessary environmental studies and preparing all necessary environmental documents in compliance with applicable Environmental Laws, (ii) obtaining and complying with all necessary new Governmental Approvals (including any modifications, renewals and extensions of the NEPA Documents and other existing Governmental Approvals) or third party approvals or agreements, and (iii) bearing all risk and cost of litigation. The Department and FHWA will independently evaluate all environmental studies and documents and fulfill the other responsibilities assigned to them by 23 CFR Part 771; *provided*, that the Concessionaire will fully pay the Department for the Allocable Costs it incurs to conduct further or supplemental environmental studies and to fulfill any other responsibilities assigned to it pursuant to 23 CFR Part 771.

(h) The design and construction of the Project Assets will accommodate certain improvements, projects and plans, all as set forth in the Technical Requirements.

Section 8.05 Acquisition of Project Right of Way; Utility Relocations; Railroad Easements

(a) Right of Way Acquisition Obligations. The Concessionaire will perform all Project ROW Acquisition Work necessary for the construction of the Project Assets including but not limited to all appraisals, appraisal reviews, negotiations with landowners and Utility Owners, relocation assistance and advisory services, and legal services. The Concessionaire will carry out such Work as follows:

(i) the Concessionaire will carry out the Work specified in this Agreement, in each case in accordance with the Technical Requirements and all applicable Laws;

(ii) the Concessionaire will acquire all Project Right of Way in accordance with the Technical Requirements and Law, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the "Uniform Act") and Titles 25.1 and 33.2 of the Code of Virginia;

(iii) the Concessionaire will submit a ROW Acquisition and Relocation Plan to the Department for its approval. Unless otherwise permitted in the Technical Requirements, the ROW Acquisition and Relocation Plan will not include parcels considered to be solely for the convenience of the Concessionaire, including those

necessary to accommodate laydown, staging, temporary drainage and other construction methods in connection with the construction of the Project Assets. The ROW Acquisition and Relocation Plan will identify a schedule of right of way activities including the specific parcels to be acquired and all relocations. The ROW Acquisition and Relocation Plan will allow for the orderly relocation of displaced persons based on time frames not less than those provided by the Uniform Act. The parties will comply with the submittal and review procedures set forth in Section 10.05 with regards to the Department's approval of the ROW Acquisition and Relocation Plan; *provided* that the deemed approval provisions of Section 10.05(e) will not apply to the approval of the ROW Acquisition and Relocation Plan. The ROW Acquisition and Relocation Plan will be updated as necessary during the Term;

(iv) the Concessionaire will exercise due diligence and use reasonable care in determining whether property to be acquired may contain wastes or other materials or hazards requiring remedial action or treatment to the extent the Concessionaire has access to such property and will otherwise comply with the Technical Requirements, including the undertaking of studies, assessments and tests required by the Technical Requirements;

(v) the Department will make direct payments of benefits to property owners for negotiated settlements, relocation benefits, and payments to be deposited with the court; and

(vi) the Concessionaire will prepare, obtain execution of, and record documents conveying title of the Project Right of Way to the State and deliver all executed and recorded general warranty deeds to the Department. For all property purchased in conjunction with the Project, title will be acquired in fee simple except as may be specifically agreed to by the Department.

(b) Condemnation. The Concessionaire will use its best efforts (as such term is defined for this purpose in the Technical Requirements) (i) to acquire the Project Right of Way and any other real property or real property rights outside the Project Right of Way necessary for the construction and operation of the Project that are set forth in the ROW Acquisition and Relocation Plan by making *bona fide* efforts to purchase the Project Right of Way or such other real property or real property rights from the owners of such real property or real property rights for amounts not to exceed just compensation therefore and (ii) to settle claims with landowners amicably, each in accordance with Law. If, despite the Concessionaire's best efforts, it is unable to reach a settlement with landowners within 30 Days, the Department will handle any necessary condemnation proceedings in accordance with the provisions of the Technical Requirements. Prior to the Department filing a condemnation proceeding, the Concessionaire will prepare all necessary paperwork and supporting documentation required for the proceeding and it will deliver that documentation to the Department. The Department then will file the condemnation proceeding(s) and handle such proceeding(s) in accordance with the Technical Requirements.

(c) Certain Property Outside the Project Right of Way. The Concessionaire will be responsible, at its own cost and expense, for the acquisition of, or for causing the acquisition of, any property, temporary easements or other property rights not included in the ROW Acquisition

and Relocation Plan, including those necessary to accommodate laydown, staging, temporary drainage and other construction methods in connection with the construction of the Project Assets.

(d) ROW Costs.

(i) Except as provided in this Agreement, the Concessionaire will be responsible for performing all activities and services necessary for the acquisition of all Project Right of Way at its sole cost and expense as set forth in Exhibit CC.

(ii) 395 Project ROW Costs. On the 395 Financial Close Date, the Concessionaire will pay \$350,000 to the Department to be deposited by the Department in a segregated account. Except as noted in the prior sentence, the Concessionaire will not be responsible for the payment of any ROW Costs for the 395 Project. The Department shall use such funds to pay ROW Costs (including the Department's and the landowner's condemnation costs) associated with the 395 Concessionaire Assets. The Department will be responsible for all ROW Costs (including the Department's and the landowner's condemnation costs) associated with the 395 Department Assets.

(iii) Fred Ex ROW Acquisition and Costs. The Concessionaire will perform all activities and services that are necessary for the acquisition of all right of way necessary for the Fred Ex Project consistent with applicable Law (including right of way needed for soundwalls and other noise barriers), which includes, but is not limited to, all appraisals, appraisal reviews, negotiations with landowners and Utility Owners, relocation assistance and advisory services, and legal services. Notwithstanding the prior sentence, as needed and in accordance with the Technical Requirements, the Department will exercise its rights under Law to initiate condemnation proceedings to assist the Concessionaire to acquire the right of way necessary for the Fred Ex Project. Fred Ex ROW Costs are governed by Section 7.03B(i)(i).

(iv) Opitz Boulevard Ramp Acquisition and Costs. The Concessionaire will perform all activities and services that are necessary for the acquisition of all right of way necessary for the Opitz Boulevard Ramp Project consistent with applicable Law (including right of way needed for soundwalls and other noise barriers), which includes, but is not limited to, all appraisals, appraisal reviews, negotiations with landowners and Utility Owners, relocation assistance and advisory services, legal services and any payments to pay property owners and landowner's condemnation costs. Notwithstanding the prior sentence, as needed and in accordance with the Technical Requirements, (A) the Department will exercise its rights under Law to initiate condemnation proceedings to assist the Concessionaire to acquire the right of way necessary for the Opitz Boulevard Ramp Project; (B) the Concessionaire shall fund the cost of payments to property owners for such right of way and their costs in connection with such condemnation by making payments to the Department into an account nominated by the Department (or directly to such property owners as directed by the Department) within 60 Days of receipt of an invoice from the Department detailing such documented costs incurred by the Department; and (C) the Department shall be responsible for managing the successful settlement of any such condemnation proceedings.

(e) Utility Relocations.

(i) The Concessionaire, at its sole cost and expense, will perform all activities and services necessary for all Utility Relocations necessary to accommodate construction of the Project Assets.

(ii) The Concessionaire will perform Utility Relocations in accordance with the Technical Requirements. Subject to Law, the Department will provide to the Concessionaire the benefit of any provisions in recorded Utility or other easements affecting the Project which require the easement holders to relocate at their expense and the Department will reasonably assist Concessionaire in obtaining the benefit of all rights the Department has under any Utility easement, permit, or other right relating to Utility Relocations, it being understood that such assistance will not entail the initiation of or participation in legal actions or proceedings.

(f) Acquisition of Railroad Easements. The Department will obtain, at the Department's sole cost and expense, any easements and other property rights necessary for the Work located on property owned by Norfolk Southern Corporation, and facilitate the negotiation of a construction agreement between the Concessionaire and Norfolk Southern Corporation (the "Railroad Easement"). Notwithstanding the foregoing, (i) the Concessionaire will pay the Department for Allocable Costs incurred by the Department in the Department's efforts to obtain the Railroad Easement, to the extent such Allocable Costs are incurred by the Department as a result of any Concessionaire Party's misconduct, negligence or other culpable act, error or omission and (ii) the Concessionaire will pay the costs of any Work performed on the Railroad Easement and reimburse Norfolk Southern Corporation any of its costs in connection therewith, all as provided in the Technical Requirements. This Section 8.05(a)(f) does not apply for the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project.

Section 8.06 Governmental Approvals

(a) The Concessionaire, at its sole cost and expense (except as otherwise provided in this Agreement), will obtain and maintain in full force and effect and comply with all Governmental Approvals necessary for the Work. Responsibility for and cost of obtaining Governmental Approvals necessitated by a Department Change or a Department Project Enhancement will be as agreed to and specified in the accompanying Change Order.

(b) The Department will provide reasonable assistance and cooperation to the Concessionaire, as requested by the Concessionaire, in obtaining Governmental Approvals relating to the Project and any revisions, modifications, amendments, supplements, renewals, reevaluations and extensions of Governmental Approvals.

(c) Except as otherwise provided in this Agreement, the Department will not unreasonably withhold or delay any Governmental Approval for which it is the issuing Governmental Authority with respect to the design, construction, operation or maintenance of the Project or any Project Enhancement. For the avoidance of doubt, the provisions of this Section 8.06(c) are not intended to supersede any provision of this Agreement or any other Project

Agreement providing for the conditions to or time of approval of any such Governmental Approval, or any express right of the Department to withhold consent in its sole discretion.

(d) The Concessionaire will at all times and at its sole cost and expense comply with the NEPA Documents, including, without limitation, compliance necessitated by a change in the base design of the Project. If supplements to the NEPA Documents or additional NEPA Documents are needed following the Agreement Date, the Department will prepare the necessary documentation using data and other information provided by the Concessionaire, and the Concessionaire will pay the Department for its Allocable Costs incurred in the preparation of such documentation; *provided*, that the Department will pay for supplements to the existing NEPA Documents or additional NEPA Documents necessitated by a Compensation Event or Department Project and for the Allocable Costs incurred by the Concessionaire in providing data and information relating to such supplements.

(e) 395 Project. The Department has obtained the following Governmental Approvals or will obtain the following Governmental Approvals by the date set forth next to such Governmental Approval, all of which are or will be in the Department’s name, in accordance with the Technical Requirements:

Governmental Approval	Date
395 NEPA Approval	April 30, 2017
Required Governmental Approvals from the CTB necessary for NTP for the 395 Project	Amended and Restated Agreement Date
Required Governmental Approvals from the FHWA necessary for NTP for the 395 Project, except those required for financing the 395 Project in accordance with <u>Section 7.03A(b)(ii)</u>	Amended and Restated Agreement Date
Required Governmental Approvals from the Pentagon necessary for the Pentagon Improvements and any part of the Eads Street Component located on the Pentagon Reservation	The date that is four (4) months after the Concessionaire delivers to the Department the information required and the related permit applications for approval of the necessary permit forms all in accordance with the Technical Requirements, which date shall not be prior to the 395 Financial Close Date.

The Department will also be responsible for including the 395 Project in the CLRP, the STIP and the TIP. The Concessionaire will be responsible for obtaining all other Governmental Approvals for the 395 Project.

(f) Fred Ex Project Government Approvals. With respect to the Fred Ex Project, the Department has obtained the required NEPA Approvals, CTB approvals, and approvals by the FHWA of the Interchange Justification Reports, this Agreement, and project management plan for the Fred Ex Project, as necessary. The Department will also be responsible for including the Fred

Ex Project in the LRTP, the STIP, and the TIP. The Concessionaire will be responsible for obtaining all other Government Approvals relating to the Fred Ex Project.

(g) Opitz Boulevard Ramp Project Governmental Approvals. The Department shall be responsible for including the Opitz Boulevard Ramp Project in the CLRP, the STIP, and the TIP, and obtaining the Opitz Boulevard Ramp NEPA Approval, and has obtained the Governmental Approvals necessary for the Opitz Boulevard Ramp Project from the CTB and FHWA. The Concessionaire shall (i) provide assistance in good faith to the Department in the Department's efforts to obtain the foregoing Governmental Approvals; and (ii) be responsible for fulfilling any financial obligations associated with the foregoing Governmental Approvals.

(h) Seminary Road Ramp Project Governmental Approvals. The Department shall be responsible for including the Seminary Road Ramp Project in the CLRP, the STIP, and the TIP, and has obtained the Governmental Approvals necessary for the Seminary Road Ramp Project from the CTB and FHWA. The Concessionaire shall (i) provide assistance in good faith to the Department in the Department's efforts to obtain the foregoing Governmental Approvals; and (ii) be responsible for fulfilling any financial obligations associated with the foregoing Governmental Approvals.

Section 8.07 Construction Work and Project Schedule

(a) The Initial Baseline Schedule will be the basis for monitoring the Concessionaire's performance of the Work until such time as a Baseline Schedule has been approved by the Department in accordance with the Technical Requirements. The 395 Baseline Schedule will be the basis for monitoring the Concessionaire's performance of the Work for the 395 Project. The Fred Ex Baseline Schedule will be the basis for monitoring the Concessionaire's performance of the Work for the Fred Ex Project. The Opitz Boulevard Ramp Baseline Schedule will be the basis for monitoring the Concessionaire's performance of the Work for the Opitz Boulevard Ramp Project. The Seminary Road Ramp Baseline Schedule will be the basis for monitoring the Concessionaire's performance of the Work for the Seminary Road Ramp Project.

(b) The Concessionaire and the Department will conduct monthly progress meetings in accordance with the Technical Requirements. As part of, and in conjunction with, such meetings, the Concessionaire will provide the Department with any proposed update of the Applicable Baseline Schedule in accordance with the Technical Requirements. The parties further agree to abide by the terms and procedures set forth in the Technical Requirements pertaining to project management and coordination matters.

(c) Except as provided otherwise in this Agreement, the Concessionaire will be financially responsible for all damage to the Project Assets resulting from the Work. The Department will not be responsible for any construction means and methods of the Concessionaire or liability ensuing therefrom, unless such means and methods were directed by the Department pursuant to a Department Change or a Department Project Enhancement.

(d) Whenever required by the Department, the Concessionaire will provide in writing a general description of the arrangements and methods that the Concessionaire proposes to adopt for the execution of the Work. The Concessionaire will not significantly alter the Applicable

Baseline Schedule, or such arrangements and methods, without informing the Department, and the Concessionaire will coordinate any such alterations to take into account the Department's resources and the work to be carried out by the Department's separate contractors, if any. The Concessionaire will not alter the Applicable Baseline Schedule except as permitted in the Technical Requirements.

(e) If any alteration (i) affects the Critical Path, (ii) adversely and materially affects the Department's oversight resources or the Department's separate contractors, or (iii) deviates from the Technical Requirements, the Concessionaire will not make such alteration without the prior approval of the Department.

(f) If the progress of the Work does not conform to the Applicable Baseline Schedule, as updated in this Agreement, the Concessionaire will submit a recovery schedule as required by the Technical Requirements, and will reasonably consider revisions to the Applicable Baseline Schedule proposed by the Department to achieve completion within the timeframe set forth in this Agreement.

Section 8.08 Substantial Completion

(a) The Concessionaire will achieve Substantial Completion on or before the Guaranteed Substantial Completion Date, subject to adjustment in accordance with this Agreement; *provided* that failure to achieve Substantial Completion by the Guaranteed Substantial Completion Date, in and of itself, will not result in a default under Section 19.01, except as set forth in Section 19.01(e).

(b) The Department will issue a written certificate of Substantial Completion at such time as Substantial Completion occurs. If the Department approves the issuance of a Substantial Completion Certificate, the Department will provide with its Substantial Completion Certificate a Punch List of items to be completed to achieve Final Acceptance.

(c) Substantial Completion will have been achieved when each of the following conditions have occurred for the entire Project Assets:

(i) all lanes of traffic (including ramps, interchanges, overpasses, underpasses, and other crossings) set forth in the Construction Documentation are in their final configuration and available for normal and safe use and operation;

(ii) all major safety features are installed and functional, including, as required, shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;

(iii) all required illumination for normal and safe use and operation is installed and functional in accordance with the Technical Requirements;

(iv) all required signs and signals for normal and safe use and operation are installed and functional in accordance with the Technical Requirements;

(v) the need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance, and except for temporary lane closures in accordance with and as permitted by a Department-approved traffic management plan solely in order to complete Punch List items);

(vi) the Concessionaire has completed the toll commissioning process described in the Technical Requirements, and the ETTM System is completed, has passed all demonstration and performance testing in accordance with the Construction Documentation and the Technical Requirements, including demonstration of interoperability with E-ZPass or any successor to E-ZPass then utilized on State Highways, and is ready for normal operation unless the foregoing conditions have been previously satisfied under Section 9.02(a)(viii);

(vii) the TMS (if any) and safety features for TMS components are installed and functional; and

(viii) the Concessionaire has otherwise completed the Work in accordance with this Agreement, including the Technical Requirements, and with the Construction Documentation, such that the Project Assets are in a physical condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, subject only to Punch List items.

(d) The parties will disregard the status of the landscaping and aesthetic features included in the Construction Documentation in determining whether Substantial Completion has occurred, except to the extent that its later completion will affect public safety or satisfaction of the criterion in Section 8.08(c).

(e) The Concessionaire will provide the Department with written notice of anticipated Substantial Completion at least 21 Days prior to the anticipated Substantial Completion Date. The parties will comply with the submittal and review procedures set forth in Section 10.05 in the determination of whether Substantial Completion has been achieved; *provided* that the deemed approval provisions of Section 10.05(e) will not apply to the determination of whether Substantial Completion has been achieved. During such 21-Day period, the Concessionaire and the Department will meet, confer and exchange information on a regular basis with the goal being the Department's orderly, timely inspection of the Project Assets and review of the final Construction Documentation and the Department's issuance of a Substantial Completion Certificate. In addition, the Department will conduct an inspection of the Project Assets and review of the final Construction Documentation, and such other matters as may be necessary to determine whether Substantial Completion is achieved and, not later than the expiration of such 21-Day period, will deliver a written report of findings and recommendations to the Concessionaire. The Department will provide the Concessionaire with a determination of whether or not Substantial Completion has been achieved (and if not, an explanation with reasonable specificity as to the reasons therefor) within such 21-Day period.

(f) If the Department has not notified the Concessionaire of such approval or disapproval within 21 Days after such Concessionaire notice (or 10 Days with respect to any resubmittal of the notice), and if the delay is not a result of a Concessionaire Party action or

inaction, then such delay will constitute a Delay Event and a Compensation Event, and the Concessionaire will be entitled to Concessionaire Damages, if any, pursuant to Section 14.01.

(g) This Section 8.08 shall not apply to the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project.

Section 8.09 Final Acceptance

(a) The Concessionaire will achieve Final Acceptance of the Project on or before the Final Acceptance Deadline, subject to adjustment in accordance with this Agreement.

(b) The Concessionaire will provide the Department with written notification when it has determined that the following conditions to Final Acceptance of the Project have been satisfied:

(i) Substantial Completion has occurred;

(ii) other than the Permitted Encumbrances (not including clause (c) of the definition thereof), the Project is free and clear of all Liens, claims, security interests or encumbrances arising out of or in connection with the performance of the Work during the Construction Period;

(iii) all Punch List items have been completed and delivered to the reasonable satisfaction of the Department;

(iv) all Project Documentation, including as built drawings of the Project Assets, to be submitted on or before Final Acceptance have been submitted and approved (to the extent approval is required) by the Department;

(v) the Concessionaire has paid for all Design-Build Work and other Work required to achieve Final Acceptance by third parties that the Concessionaire is obligated to pay (other than disputed amounts and amounts that are not yet due and payable);

(vi) the Concessionaire has delivered all required certifications from the engineer of record and architect of record to all necessary Governmental Authorities and to the Department;

(vii) the Concessionaire has made all deliveries of Work Product to the Department that are required to be made pursuant to this Agreement; and

(viii) the Concessionaire has delivered to the Department a list of each Asset of the type described in the Performance Requirements Baseline Table.

(c) The parties will comply with the submittal and review procedures set forth in Section 10.05 in the determination of whether Final Acceptance has been achieved *provided* that the deemed approval provisions of Section 10.05(e) will not apply to the determination of whether Final Acceptance has been achieved. During the 21-Day period following delivery of the Concessionaire's written notification, the Concessionaire and the Department will meet, confer

and exchange information with the goal being the Department's orderly, timely inspection of the Project Assets and the Department's issuance of a Final Acceptance Certificate, and the Department will conduct an inspection of the Punch List items, a review of the final drawings and such other investigation as may be necessary to evaluate whether the conditions to Final Acceptance have been satisfied. The Department will provide the Concessionaire with a determination of whether or not Final Acceptance has been achieved (and if not, an explanation with reasonable specificity as to the reasons therefor) within such 21-Day period.

(d) If the Department has not notified the Concessionaire of such approval or disapproval within 21 Days after such Concessionaire notice (or 10 Days with respect to any resubmittal of the notice), and if the delay is not a result of a Concessionaire Party action or inaction, then such delay will constitute a Delay Event and a Compensation Event, and the Concessionaire will be entitled to Concessionaire Damages, if any, pursuant to Section 14.01.

(e) This Section 8.09 shall not apply to the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project.

Section 8.10 Liquidated Damages for Delayed Completion

(a) Liquidated Damages Related to Substantial Completion – Original Project. In connection to the Original Project, if the Concessionaire does not achieve Substantial Completion by the Guaranteed Substantial Completion Date, the Department will be entitled to assess \$14,000 as liquidated damages for each Day that Substantial Completion of the Project remains to be achieved beyond the Guaranteed Substantial Completion Date. The Concessionaire will cause any related liquidated damages payable by the Design-Build Contractor under the Design-Build Contract to be paid to the Department; *provided* that the Concessionaire's overall liability for liquidated damages relating to Section 8.10(a) and (b) shall in no event exceed \$5,110,000. This Section 8.10(a) shall not apply to the 395 Project.

(b) Liquidated Damages Related to Final Acceptance – Original Project. In connection to the Original Project, if the Concessionaire does not achieve Final Acceptance by the Final Acceptance Deadline, the Department will be entitled to assess \$5,000 as liquidated damages for each Day that Final Acceptance of the Project remains to be achieved following the expiration of the Final Acceptance Deadline, and the Concessionaire will cause any related liquidated damages payable by the Design-Build Contractor under the Design-Build Contract. This Section 8.10(b) shall not apply to the 395 Project.

(c) Liquidated Damages Related to 395 Final Completion.

(i) In connection with the 395 Project, if the Concessionaire does not achieve 395 Final Completion pursuant to Section 8.18 by the 395 Guaranteed Final Completion Date, the Department will be entitled to assess \$14,000 as liquidated damages for each Day that 395 Final Completion remains to be achieved beyond the 395 Guaranteed Final Completion Date.

(ii) If the Concessionaire does not achieve 395 Final Completion by the 395 Long Stop Date, the Department will be entitled to assess \$60,000 as liquidated damages

for each Day that 395 Final Completion remains to be achieved beyond the 395 Long Stop Date.

(iii) The Concessionaire's overall liability for liquidated damages relating to Section 8.10(c) shall in no event exceed \$20,000,000; *provided* that any liquidated damages in excess of \$10,000,000 shall be due to the Department only if 395 Final Completion has not been achieved because of a failure to complete the 395 Department Assets pursuant to the terms of the 395 Design-Build Contract.

(d) Liquidated Damages Related to Fred Ex Final Completion.

(i) In connection with the Fred Ex Project, if the Concessionaire does not achieve Fred Ex Final Completion pursuant to Section 8.21 by the Fred Ex Guaranteed Final Completion Date, the Department will be entitled to assess \$14,000 as liquidated damages for each Day that Fred Ex Final Completion remains to be achieved beyond the Fred Ex Guaranteed Final Completion Date.

(ii) If the Concessionaire does not achieve Fred Ex Final Completion by the Fred Ex Long Stop Date, the Department will be entitled to assess \$60,000 as liquidated damages for each Day that Fred Ex Final Completion remains to be achieved beyond the Fred Ex Long Stop Date.

(iii) The Concessionaire's overall liability for liquidated damages relating to Section 8.10(d) shall in no event exceed \$10,000,000.

(e) Liquidated Damages Related to Fred Ex Route 17 GP Exit Ramp Completion. If the Concessionaire does not achieve Fred Ex Route 17 GP Exit Ramp Completion pursuant to Section 8.22(d) by the Fred Ex Guaranteed Route 17 GP Exit Ramp Completion Date, the Department will be entitled to assess \$2,500 as liquidated damages for each Day that Fred Ex Route 17 GP Exit Ramp Completion remains to be achieved beyond the Fred Ex Guaranteed Route 17 GP Exit Ramp Completion Date.

(f) Additional Provisions. The parties acknowledge, recognize and agree on the following:

(i) that because of the unique nature of the Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by the Department as a result of the Concessionaire's failure to timely complete the Work;

(ii) that any sums assessed under this Section 8.10 and Section 8.14 are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the additional Oversight Services that may reasonably be anticipated from such failure;

(iii) that any sums assessed under this Section 8.10 and Section 8.14 will be in lieu of all liability of the Concessionaire and its Contractors for any and all Losses, whether direct, special, or consequential, and of any nature whatsoever incurred by the Department, which are caused by the Concessionaire's failure to timely complete the construction Work,

including failure to achieve Substantial Completion, Final Acceptance, 395 Final Completion, Fred Ex Final Completion, Fred Ex Route 17 GP Exit Ramp Completion and Opitz Boulevard Ramp Final Completion by the applicable deadlines and its actions causing Non-Permitted Lane Closures as described in Section 8.14;

(iv) that any sums assessed under this Section 8.10 and Section 8.14 will be due and owing to the Department upon assessment of such damages, subject to the dispute resolution procedures of Article 21; and

(v) notwithstanding the above or Section 8.10(h), liquidated damages are not intended to excuse Concessionaire or any of its Contractors from liability for any other breach of its obligations under the Project Agreements, or limit the Department's recourse to other remedies hereunder such as termination pursuant to Article 19 and Article 20; *provided*, that (i) no Concessionaire Default will occur solely as a result of a delay in achieving Substantial Completion by the Guaranteed Substantial Completion Date, except as set forth in Section 19.01(e); (ii) no 395 Concessionaire Breach or Concessionaire Default will occur solely as a result of a delay in achieving 395 Final Completion by the 395 Guaranteed Final Completion Date, except as set forth in Section 19.06(d); (iii) no Fred Ex Concessionaire Breach or Concessionaire Default will occur solely as a result of a delay in achieving Fred Ex Final Completion by the Fred Ex Guaranteed Final Completion Date or in achieving Fred Ex Route 17 GP Exit Ramp Completion by the Fred Ex Guaranteed Route 17 GP Exit Ramp Completion Date, except as set forth in Section 19.09(d); (iv) no Opitz Boulevard Ramp Concessionaire Breach or Concessionaire Default will occur solely as a result of a delay in achieving Opitz Boulevard Ramp Final Completion by the Opitz Boulevard Ramp Guaranteed Final Completion Date, except as set forth in Section 19.12(d); or (v) no Seminary Road Ramp Concessionaire Breach or Concessionaire Default will occur solely as a result of a delay in achieving Seminary Road Ramp Final Completion by the Seminary Road Ramp Guaranteed Final Completion Date.

(g) Payment of Liquidated Damages. The Concessionaire will pay all undisputed liquidated damages under this Section 8.10 monthly in arrears not later than 30 Days after the end of each calendar month, and in accordance with the requirements set forth in Section 5.06(b).

(h) Liquidated Damages Related to the Opitz Boulevard Ramp Project Final Completion.

(i) In connection with the Opitz Boulevard Ramp Project, if the Concessionaire does not achieve Opitz Boulevard Ramp Final Completion by the Opitz Boulevard Ramp Guaranteed Final Completion Date, the Department will be entitled to assess \$2,500 as liquidated damages for each Day that Opitz Boulevard Ramp Final Completion remains to be achieved beyond the Opitz Boulevard Ramp Guaranteed Final Completion Date until the assessment by the Department of liquidated damages in accordance with Section 8.10(h)(ii) (if applicable).

(ii) If the Concessionaire does not achieve Opitz Boulevard Ramp Final Completion by the Opitz Boulevard Ramp Long Stop Date, the Department will be entitled

to assess \$10,000 as liquidated damages for each Day that Opitz Boulevard Ramp Final Completion remains to be achieved beyond the Opitz Boulevard Ramp Long Stop Date.

Section 8.11 Warranties; Defective Design and Construction

(a) Warranties.

(i) The Concessionaire will require the Design-Build Contractor and the TTMS Contractor to warrant that (A) the Design-Build Work and the TTMS Work, as applicable, is complete and conforms to Good Industry Practice; and (B) the Design-Build Work and the TTMS Work, as applicable, including all materials and equipment furnished as part of the Design-Build Work and the TTMS Work, as applicable, is new unless otherwise specified in the Technical Requirements or elsewhere in this Agreement, of good quality, free of defects in materials and workmanship.

(ii) The warranties in Section 8.11(a) are exclusive and are in lieu of all other warranties by contract. No implied or statutory warranties will apply. Subject to Section 8.11(a)(iii) below and to such limitations on coverage including aggregate caps specified in the Design-Build Contract and the TTMS Contract, the foregoing warranties for Work relating to the Project Assets will be effective for a period of, with respect to the Design-Build Work and the TTMS Work, as applicable, (A) 60 months beginning on the date on which Substantial Completion of the Design-Build Work is achieved as such date is defined in the Design-Build Contract for the Original HOT Lanes, (B) 24 months beginning on the date on which 395 Early Final Completion or 395 Final Completion is achieved, (C) 24 months beginning on the date on which Fred Ex Final Completion is achieved, (D) 24 months beginning on the date on which Opitz Boulevard Ramp Final Completion is achieved, and (E) 24 months beginning on the date on which Seminary Road Ramp Final Completion is achieved (provided that this subsection (E) shall pertain only to Work performed under the Seminary Road Ramp Project) (the “Warranty Period”). Such warranties will survive termination of this Agreement for Work that was in place prior to termination.

(iii) With respect to the warranties furnished by the Design-Build Contractor and the TTMS Contractor pursuant to Section 8.11(a)(i) and if and to the extent the Concessionaire obtains general or limited warranties from any Contractor in favor of the Concessionaire with respect to design, materials, workmanship, construction, equipment, tools, supplies, software or services, the Concessionaire will cause such warranties to be expressly extended to the Department; *provided*, that the foregoing requirement will not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to the Department using commercially reasonable efforts. The Department will only have the right to exercise remedies under any such warranty so long as the Concessionaire or a Lender is not pursuing remedies thereunder. To the extent that any Contractor warranty would be voided by reason of the Concessionaire’s negligence or failure to properly incorporate material or equipment into the Work, the Concessionaire will be responsible for correcting such defect.

(iv) Contractor warranties are in addition to all rights and remedies available pursuant to this Agreement or Law or in equity, including Claims against the Performance Security, and will not limit the Concessionaire's liability or responsibility imposed by this Agreement or Law or in equity with respect to the Work, including liability for Non-Conforming Work, design defects, patent and latent construction defects, strict liability, breach, negligence, willful misconduct or fraud.

(b) Non-Conforming Work. In the event of the occurrence of a Defect in the design or construction Work, including in any materials and equipment furnished as part of the construction, and including any Non-Conforming Work, the Department will be entitled, in addition to any other remedies:

(i) to demand that the Concessionaire rectify, or require the Contractor to rectify, such Defect at its sole expense, it being understood that, in such event, the Concessionaire will be permitted to draw on the Performance Security provided by the Contractor liable for such Work if the Contractor fails to perform such Work, to the extent of the cost of any work performed by the Concessionaire;

(ii) to suspend any affected portion of the Work of design and construction, by delivery of a written order to the Concessionaire, which order the Department will lift after the Concessionaire fully cures or corrects such Defects;

(iii) to rectify such Defects itself and to obtain payment of its Allocable Costs from the Concessionaire or, where the Contractor providing such Performance Security is liable for such Work from a draw on any Performance Security furnished pursuant to this Agreement (and the Concessionaire agrees to make such drawing upon the request of the Department); *provided*, that (A) the Department will not rectify such Defects itself or seek payment from the Concessionaire or such Performance Security unless it has requested rectification of, and the Concessionaire and the Contractor have failed to promptly rectify the Defects and (B) the Concessionaire will be permitted to draw on the Performance Security provided by any Contractor liable for such Work to the extent of any amounts paid by the Concessionaire; or

(iv) to seek performance or payment pursuant to any applicable guaranty.

(c) The issuance of a suspension order pursuant to Section 8.11(b)(ii) will not affect the Concessionaire's rights to cure or correct any Non-Conforming Work giving rise to the issuance of the suspension order.

Section 8.12 Transportation Management Plan

(a) The Department will develop, fund and implement a regional transportation management plan ("Transportation Management Plan" or "TMP"), which will be undertaken in coordination with the Concessionaire's Maintenance of Traffic Plan and Sequence of Construction Plan. The Department will provide the Concessionaire with a reasonable opportunity to comment on the TMP. The TMP will set forth the program for traffic management and related activities to ensure safety and mobility for the travelling public throughout the Original Corridor, the 395 Corridor, and the Fred Ex Corridor, as applicable, for the duration of the Construction Period. The

Concessionaire's Maintenance of Traffic Plan (as described further in the Technical Requirements) will be consistent with, and included as part of, the TMP for the Construction Period.

(b) In connection with the TMP, the Concessionaire, at its sole cost and expense, will (i) develop and implement the Concessionaire's Maintenance of Traffic Plan, (ii) be responsible for the Concessionaire's share of public outreach for the TMP pursuant to the Technical Requirements; and (iii) be responsible for traffic and operational analysis for lane closures, roadway reconfigurations and detours.

(c) The Department will be responsible for the regional TMP for the 395 Project as set forth in subsection (a). The Concessionaire will be responsible for the TMP related to the construction of the 395 Project in accordance with the Technical Requirements. The Concessionaire will also be responsible for incident management and safety service patrols on the HOV Lanes in the 395 Corridor during the construction of the 395 Project.

(d) The Department will be responsible for the regional TMP for the Fred Ex Project as set forth in subsection (a). The Concessionaire will be responsible for the TMP related to the construction of the Fred Ex Project in accordance with Exhibit C.

(e) The Concessionaire will be responsible for the TMP related to the construction of the Opitz Boulevard Ramp Project in accordance with Exhibit C.

(f) The Concessionaire will be responsible for the TMP related to the construction of the Seminary Road Ramp Project in accordance with Exhibit C.

Section 8.13 Substantial Completion of Segments of the Project

In the Department's sole discretion, it may issue a Substantial Completion Certificate and an authorization to commence Service Commencement with respect to certain Segments of the Project to be identified by the Concessionaire and approved by the Department, prior to issuing a Substantial Completion Certificate and authorization to commence Service Commencement for the balance of the Project. In such case, solely for the purpose of processing such early acceptance, the Department and the Concessionaire will develop a set of requirements that must be satisfied and other conforming changes to this Agreement, so that such Segments of the Project may be accepted early by the Department, in its sole discretion, pursuant to this Section 8.13. This Section 8.13 shall not apply to the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project.

Section 8.14 Lane Closure Damages

In its performance of the Work during the Construction Period, the Concessionaire may temporarily close existing lanes on the Project Right of Way only in accordance with the Technical Requirements. Any such closure that exceeds the time period permitted therefor in the Technical Requirements is a "Non-Permitted Closure." If a Non-Permitted Closure occurs, the Department will notify the Concessionaire thereof and of the associated Lane Closure Damages, in writing, within 48 hours. Pursuant to Section 25.21, the Concessionaire will pay to the Department the liquidated damages set forth below (the "Lane Closure Damages") at the time and in the manner set forth in the Technical Requirements. The Lane Closure Damages for any Non-Permitted

Closure for the Original Project will not exceed \$200,000 per incident. The Lane Closure Damages for any Non-Permitted Closure for the 395 Project will not exceed \$100,000 per incident. The Lane Closure Damages for any Non-Permitted Closure for the Fred Ex Project will not exceed \$100,000 per incident. The Lane Closure Damages for any Non-Permitted Closure for the Opitz Boulevard Ramp Project will not exceed \$100,000 per incident. The Lane Closure Damages for any Non-Permitted Closure for the Seminary Road Ramp Project will not exceed \$5,000 per incident.

Liquidated Damages for Lane Closures for the Original HOT Lanes			
	Liquidated damage (\$ per minute)		
<u>Elapsed Time (min)</u>	<u>I-95, I-395, I-495 and all ramps</u>	<u>Major Arterials</u>	<u>All other roads</u>
1-5, or any portion thereof	\$0	\$0	\$0
Every additional minute or portion thereof after the initial five minutes stated above.	\$1,000 plus \$2,500 per each additional minute	\$1,000 plus \$1,500 per each additional minute	\$500 plus \$500 per each additional minute

Liquidated Damages for Lane Closures for the 395 Project			
	Liquidated damage (\$ per minute)		
<u>Elapsed Time (min)</u>	<u>I-95, I-395, I-495 and all ramps</u>	<u>Major Arterials</u>	<u>All other roads</u>
1-5, or any portion thereof	\$0	\$0	\$0
Every additional minute or portion thereof after the initial five minutes stated above.	\$1,000 for the sixth minute plus \$1,000 per each additional minute	\$1,000 for the sixth minute plus \$500 per each additional minute	\$500 for the sixth minute plus \$500 per each additional minute

Liquidated Damages for Lane Closures for the Fred Ex Project			
	Liquidated damage (\$ per minute)		
<u>Elapsed Time (min)</u>	<u>I-95 and all ramps</u>	<u>Major Arterials</u>	<u>All other roads</u>
1-5, or any portion thereof	\$0	\$0	\$0
Every additional minute or portion thereof after the initial five minutes stated above.	\$1,000 for the sixth minute plus \$1,000 per each additional minute	\$1,000 for the sixth minute plus \$500 per each additional minute	\$500 for the sixth minute plus \$500 per each additional minute

Liquidated Damages for Lane Closures for the Opitz Boulevard Ramp Project			
	Liquidated damage (\$ per minute)		
<u>Elapsed Time (min)</u>	<u>I-95 and all ramps</u>	<u>Major Arterials</u>	<u>All other roads</u>
1-5, or any portion thereof	\$0	\$0	\$0
Every additional minute or portion thereof after the initial five minutes stated above.	\$1,000 for the sixth minute plus \$1,000 per each additional minute	\$1,000 for the sixth minute plus \$500 per each additional minute	\$500 for the sixth minute plus \$500 per each additional minute

Liquidated Damages for Lane Closures for the Seminary Road Ramp Project			
	Liquidated damage (\$ per minute)		
<u>Elapsed Time (min)</u>	<u>I-395 and all ramps</u>	<u>Major Arterials</u>	<u>All other roads</u>
1-5, or any portion thereof	\$0	\$0	\$0
Every additional minute or portion thereof after the initial five minutes stated above.	\$1,000 for the sixth minute plus \$1,000 per each additional minute	\$1,000 for the sixth minute plus \$500 per each additional minute	\$500 for the sixth minute plus \$500 per each additional minute

Section 8.15 Failure to Achieve Substantial Completion, 395 Final Completion, Fred Ex Final Completion by applicable Long Stop Date, Opitz Boulevard Ramp Final Completion by the Opitz Boulevard Ramp Long Stop Date, and Seminary Road Ramp Final Completion by the Seminary Road Ramp Guaranteed Final Completion Date; Substantial Completion Recovery Plan, 395 Final Completion Recovery Plan, Fred Ex Final Completion Recovery Plan and Opitz Boulevard Ramp Final Completion Recovery Plan

(a) The Concessionaire will achieve Substantial Completion of the Project by the Long Stop Date.

(b) The Long Stop Date will be extended one time if (i) the Concessionaire submits to the Department for the Department’s review and approval a written recovery plan (the “Substantial Completion Recovery Plan”) not later than 90 Days prior to the Long Stop Date; (ii) the Substantial Completion Recovery Plan outlines the actions the Concessionaire proposes to take in order to cause Substantial Completion to occur as promptly as reasonably possible, which plan may include increasing work hours to the extent permitted under applicable Law and utilizing additional labor and equipment and other appropriate acceleration techniques to improve schedule progress and will set forth a proposed new Long Stop Date; (iii) such Substantial Completion Recovery Plan and new Long Stop Date is approved by the Department within 30 Days in its reasonable discretion, and (iv) the Concessionaire diligently implements the Substantial Completion Recovery Plan. In addition, the Department may, in its sole discretion, consent to a second Substantial Completion Recovery Plan upon such terms and conditions as it may establish in its sole discretion.

(c) The Concessionaire will achieve 395 Final Completion of the 395 Project by the 395 Long Stop Date.

(d) The 395 Long Stop Date will be extended one time if (i) the Concessionaire submits to the Department for the Department’s review and approval a written recovery plan (the “395 Final Completion Recovery Plan”) not later than 90 Days prior to the 395 Long Stop Date; (ii) the 395 Final Completion Recovery Plan outlines the actions the Concessionaire proposes to take in order to cause 395 Final Completion to occur as promptly as reasonably possible, which plan may include increasing work hours to the extent permitted under applicable Law and utilizing additional labor and equipment and other appropriate acceleration techniques to improve schedule progress and will set forth a proposed new 395 Long Stop Date; (iii) such 395 Final Completion Recovery Plan and new 395 Long Stop Date is approved by the Department within 30 Days in its reasonable discretion, and (iv) the Concessionaire diligently implements the 395 Final Completion Recovery

Plan. In addition, the Department may, in its sole discretion, consent to a second 395 Final Completion Recovery Plan upon such terms and conditions as it may establish in its sole discretion.

(e) The Concessionaire will achieve Fred Ex Final Completion of the Fred Ex Project by the Fred Ex Long Stop Date.

(f) The Fred Ex Long Stop Date will be extended one time if (i) the Concessionaire submits to the Department for the Department's review and approval a written recovery plan (the "Fred Ex Final Completion Recovery Plan") not later than 90 Days prior to the Fred Ex Long Stop Date; (ii) the Fred Ex Final Completion Recovery Plan outlines the actions the Concessionaire proposes to take in order to cause Fred Ex Final Completion to occur as promptly as reasonably possible, which plan may include increasing work hours to the extent permitted under applicable Law and utilizing additional labor and equipment and other appropriate acceleration techniques to improve schedule progress and will set forth a proposed new Fred Ex Long Stop Date; (iii) such Fred Ex Final Completion Recovery Plan and new Fred Ex Long Stop Date is approved by the Department within 30 Days in its reasonable discretion, and (iv) the Concessionaire diligently implements the Fred Ex Final Completion Recovery Plan. In addition, the Department may, in its sole discretion, consent to a second Fred Ex Final Completion Recovery Plan upon such terms and conditions as it may establish in its sole discretion.

(g) The Concessionaire will achieve Opitz Boulevard Ramp Final Completion of the Opitz Boulevard Ramp Project by the Opitz Boulevard Ramp Long Stop Date.

(h) The Opitz Boulevard Ramp Long Stop Date will be extended one time if (i) the Concessionaire submits to the Department for the Department's review and approval a written recovery plan (the "Opitz Boulevard Ramp Final Completion Recovery Plan") not later than 90 Days prior to the Opitz Boulevard Ramp Long Stop Date; (ii) the Opitz Boulevard Ramp Final Completion Recovery Plan outlines the actions the Concessionaire proposes to take in order to cause Opitz Boulevard Ramp Final Completion to occur as promptly as reasonably possible, which plan may include increasing work hours to the extent permitted under applicable Law and utilizing additional labor and equipment and other appropriate acceleration techniques to improve schedule progress and will set forth a proposed new Opitz Boulevard Ramp Long Stop Date; (iii) such Opitz Boulevard Ramp Final Completion Recovery Plan and new Opitz Boulevard Ramp Long Stop Date is approved by the Department within 30 Days in its reasonable discretion, and (iv) the Concessionaire diligently implements the Opitz Boulevard Ramp Final Completion Recovery Plan. In addition, the Department may, in its sole discretion, consent to a second Opitz Boulevard Ramp Final Completion Recovery Plan upon such terms and conditions as it may establish in its sole discretion.

(i) The Concessionaire will achieve Seminary Road Ramp Final Completion of the Seminary Road Project by the Seminary Road Ramp Guaranteed Final Completion Date.

(j) The Seminary Road Ramp Guaranteed Final Completion Date will be extended one time if (i) the Concessionaire submits to the Department for the Department's review and approval a written recovery plan (the "Seminary Road Ramp Final Completion Recovery Plan") not later than 90 Days prior to the Seminary Road Ramp Guaranteed Final Completion Date; (ii) the Seminary Road Ramp Final Completion Recovery Plan outlines the actions the Concessionaire

proposes to take in order to cause Seminary Road Ramp Final Completion to occur as promptly as reasonably possible, which plan may include increasing work hours to the extent permitted under applicable Law and utilizing additional labor and equipment and other appropriate acceleration techniques to improve schedule progress and will set forth a proposed new Seminary Road Ramp Guaranteed Final Completion Date; (iii) such Seminary Road Ramp Final Completion Recovery Plan and new Seminary Road Ramp Guaranteed Final Completion Date is approved by the Department within 30 Days in its reasonable discretion, and (iv) the Concessionaire diligently implements the Seminary Road Ramp Final Completion Recovery Plan. In addition, the Department may, in its sole discretion, consent to a second Seminary Road Ramp Final Completion Recovery Plan upon such terms and conditions as it may establish in its sole discretion.

Section 8.16 Department Allowances and Commercial Commitments for Design-Build Work

(a) The Parties acknowledge that the contract price for the Design-Build Work in the Design-Build Contract includes certain agreed quantities set forth in the Technical Requirements (the “Baseline Quantities”) and associated unit prices and markups for concrete sign foundations, electric service panel feeds, and undercut excavation (the “Allowance Items”) as set forth in the Technical Requirements. If the actual quantities of the Allowance Items in the Design-Build Work exceed the Baseline Quantities, the Design-Build Contractor will be entitled to payment by the Concessionaire of an amount equal to the agreed unit price and markup multiplied by the actual quantities which exceed the Baseline Quantities; *provided* however, that such payment by the Concessionaire to the Design-Build Contractor will not exceed \$15,000,000. The Department will pay the Concessionaire for any such amount that the Concessionaire pays to the Design-Build Contractor; *provided* however, that the maximum such amount payable by the Department to the Concessionaire pursuant to this Section 8.16(a) will not exceed \$15,000,000. For the avoidance of doubt, the provisions of this Section 8.16(a) will not apply to the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project.

(b) The Concessionaire will perform landscaping work only if and to the extent directed or approved by the Department, and all such landscaping work performed by the Concessionaire will be treated as a Department Change, as more fully set forth in the Technical Requirements; *provided* however, that the maximum amount of landscaping Work to be performed by the Concessionaire will not exceed \$2,000,000, unless otherwise directed by the Department.

(c) The Department will pay the Concessionaire for any amounts paid by the Concessionaire to the Design-Build Contractor for fuel price adjustments and asphalt price adjustments for paving operations as set forth in the Technical Requirements.

(d) The Department will pay for the acquisition of stream and wetland credits in accordance with the Technical Requirements. The Concessionaire will perform stream restoration construction activities in accordance with the Technical Requirements.

(e) The allowances set forth in Sections 8.16(a) through (d) shall not apply to the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project; *provided*, however that the Department has purchased certain nutrient credits for the 395

HOT Lanes as set forth in Section 3.6W of the Technical Requirements and the Concessionaire will reimburse the Department for such credits on the 395 Financial Close Date.

(f) The Concessionaire will perform landscaping work for the 395 Project only if and to the extent directed or approved by the Department, and all such landscaping work performed by the Concessionaire will be treated as a Department Change, as more fully set forth in the Technical Requirements; *provided* however, that the maximum amount of landscaping Work for the 395 Project to be performed by the Concessionaire will not exceed \$1,000,000, unless otherwise directed by the Department. This Section 8.16(f) shall not apply to the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project.

(g) Nutrient credits shall be used to mitigate water quality impacts of the Opitz Boulevard Ramp Project. The Department will purchase the required nutrient credits for the Opitz Boulevard Ramp Project and the Concessionaire will reimburse the Department at Opitz Boulevard Ramp Financial Close.

Section 8.17 395 Early Work

(a) Authorization and Access Relating to the 395 Early Work.

(i) The Department authorizes the Concessionaire to undertake and cause the 395 Design-Build Contractor or the TTMS Contractor to undertake the 395 Early Work for the 395 Project pursuant to this Section 8.17, and the Concessionaire agrees to cause the 395 Design-Build Contractor or the TTMS Contractor to undertake the 395 Early Work in accordance with this Agreement.

(ii) The Department agrees the Concessionaire and the 395 Design-Build Contractor may access the 395 Corridor and the Pentagon Reservation as reasonably necessary for the performance of the 395 Early Work, upon request by either the Concessionaire or the 395 Design-Build Contractor in accordance with the Technical Requirements.

(b) 395 Early Work Process. The Parties agree that the 395 Early Work will be accomplished as follows:

(i) The Concessionaire has entered into the 395 Design-Build Contract with the 395 Design-Build Contractor promptly following the execution of the Second Amendment by the Parties. The Concessionaire will not materially amend the 395 Design-Build Contract without notice to and consent of the Department, which consent will not be unreasonably withheld or delayed.

(ii) After the execution of the 395 Design-Build Contract by all parties thereto, the Concessionaire will (A) deliver the 395 LNTP to the 395 Design-Build Contractor under the 395 Design-Build Contract and (B) cause the 395 Design-Build Contractor to commence the 395 Early Work promptly following the delivery of the 395 LNTP. The 395 Scope Validation Work will be completed within 120 days of the 395 Early Work Commencement Date (the "395 Scope Validation Work Completion Date") except as provided in Section 8.17(b)(iii). The 395 Early Work other than the 395 Scope Validation

Work will continue after the 395 Scope Validation Work Completion Date and will terminate upon the first to occur of (x) the 395 Financial Close Date and (y) the Department providing written notice to the Concessionaire that it does not intend to execute the First ARCA.

(iii) The Concessionaire agrees to provide the Department with written notice of each Scope Issue within three Business Days of receipt of such Scope Issue by the Concessionaire from the 395 Design-Build Contractor. All Scope Issues must be provided by the Concessionaire to the Department prior to the 395 Scope Validation Work Completion Date. The Concessionaire agrees to provide the Department with Supporting Documentation within three Business Days of receipt of such Supporting Documentation by the Concessionaire from the 395 Design-Build Contractor, and the Concessionaire shall provide reasonable advance notice and invite the Department to any meetings and conferences with the 395 Design-Build Contractor to resolve Scope Issues. The Department will have the right to review, comment, and approve or reject the relief requested in any Scope Issue; *provided* that the Department will provide any such comments, approval or rejection in writing within five Business Days of receiving written notice of such Scope Issue. The Concessionaire and the Department each acknowledge that the identification of all Scope Issues shall start on the 395 Early Work Commencement Date and end on the 395 Scope Validation Work Completion Date. The Concessionaire and the Department each acknowledge that the review, comment, and resolution of any Scope Issues shall start on the 395 Early Work Commencement Date. The Concessionaire and the Department will use their best efforts to resolve all Scope Issues with the 395 Design-Build Contractor prior to the 395 Scope Validation Work Completion Date. In the event that the Concessionaire and the Department do not resolve outstanding Scope Issues with the 395 Design-Build Contractor prior to the 395 Scope Validation Work Completion Date, the Concessionaire and the Department will agree upon and reflect the maximum adjustment related to each remaining Scope Issue on or before the 395 Scope Validation Work Completion Date in the Base Case Financial Model Update (95/395 Early Work Completion). The Concessionaire and the Department shall continue to resolve any outstanding Scope Issues identified prior to the 395 Scope Validation Work Completion Date with the 395 Design-Build Contractor following the 395 Scope Validation Work Completion Date.

(iv) The purpose of the 395 Scope Validation Work is to enable the Concessionaire and the 395 Design-Build Contractor to identify those Scope Issues that could not reasonably be identified prior to the 395 Design-Build Contract Proposal Submission Date. Following the 395 Scope Validation Work Completion Date, with the exception of (A) those Scope Issues identified prior to the 395 Scope Validation Work Completion Date, (B) any Late Scope Issues arising from Department Generated Documents (but only to the extent the 395 Design-Build Contractor, notwithstanding the fact that it is prohibited from asserting Scope Issues after the 395 Scope Validation Work Completion Date under the 395 Design-Build Contract, successfully asserts a Late Scope Issue against the Concessionaire, which Late Scope Issue arises solely from Department Generated Documents) and (C) any Scope Issues in respect of which 395 Risk Pool Costs arise, the Concessionaire assumes and accepts all risks, costs, and responsibilities of any Late Scope Issue, without an increase to the 395 Public Funds Amount set forth in the Base

Case Financial Model Update (95/395 Early Work Resolution). The Parties acknowledge that as between the Concessionaire and the Department, subject to Section 8.17(b)(vi), the Concessionaire bears the risk and financial responsibility for any Scope Issues with respect to the 395 Concessionaire Assets and the Department bears the risk and financial responsibility for any Scope Issues with respect to the 395 Department Assets in each case, as specified further in this Agreement.

(v) Within 30 days after the 395 LNTP, the Concessionaire must notify the Department in writing (an “Inaccessibility Notice”) of any area(s) of the 395 Corridor to which the 395 Design-Build Contractor cannot gain access to perform the 395 Scope Validation Work. If the Department disputes an Inaccessibility Notice, or any portion thereof, then the Department will provide the Concessionaire written notice of its position within five days of receipt of the Inaccessibility Notice. If the Department and the Concessionaire cannot agree on the areas in dispute in an Inaccessibility Notice within 20 days of such Inaccessibility Notice, the dispute will be resolved in accordance with the dispute resolution procedures described in Article 21.

(vi) For any areas covered by a timely Inaccessibility Notice, the Parties have established the a risk pool under Section 8.19(a), pursuant to which additional costs arising in relation to Differing Site Conditions, Unknown Geotechnical Conditions, Unknown Utilities and latent defects discovered after the 395 Scope Validation Work Completion Date will be funded. For any areas not covered by a timely Inaccessibility Notice, the Department will have no financial responsibility for any claims, issues, or additional costs that reasonably should have been discovered as part of the 395 Scope Validation Work, and such claims, issues, or additional costs shall not be funded from the risk pool established by the Parties to cover Differing Site Conditions, Unknown Geotechnical Conditions, Unknown Utilities, and latent defects discovered after the 395 Scope Validation Work Completion Date.

(vii) If the Department does not provide the Governmental Approvals required for the 395 Design-Build Contractor to access the Pentagon Reservation to perform the 395 Scope Validation Work at least 75 days prior to the 395 Scope Validation Work Completion Date, the Department will bear the risk and financial responsibility for any claims, issues, or additional costs arising from Differing Site Conditions, Unknown Geotechnical Conditions, Unknown Utilities, and latent defects with respect to the Pentagon Improvements discovered on the Pentagon Reservation; *provided* that the Department agrees that the total amount of Work performed by the Concessionaire through the 395 Final Completion Date on the Pentagon Reservation will not exceed \$10,000,000 and, if necessary, the Department agrees to follow the procedures set forth in Section 14.02 with a view to reduce the Work accordingly. For the avoidance of doubt, the Concessionaire shall not be responsible for amounts due for Work on the Pentagon Reservation. The Concessionaire shall provide all necessary information within three Days after the execution of the Second Amendment for the Department to obtain the permit for the Scope Validation Work from the United States Department of Defense.

(viii) Within ten days after the 395 Scope Validation Work Completion Date, the Concessionaire will submit to the Department for the Department's review and approval either:

(A) a revised Base Case Financial Model Update (95/395 Draft) which reflects (x) any agreed-upon adjustments to the 395 Design-Build Contract price arising from any Scope Issues approved by: (1) both the Concessionaire and the Department (with respect to the 395 Concessionaire Assets) or (2) only the Department (with respect to the 395 Department Assets), and (y) the maximum adjustments in the 395 Design-Build Contract price agreed to by the Parties for any unresolved Scope Issues pursuant to Section 8.17(b)(iii); or

(B) written notice that there are no adjustments resulting from the Scope Validation Work to the Base Case Financial Model Update (95/395 Interim) or Base Case Financial Model Update (95/395 Draft), as applicable.

Upon approval by the Department of either (A) or (B) above, such Base Case Financial Model Update will become the "Base Case Financial Model Update (95/395 Early Work Completion)."

(ix) As part of the Base Case Financial Model Update (95/395 Final), the Concessionaire will reflect any agreed-upon adjustments in the 395 Design-Build Contract price after the submission of the Base Case Financial Model Update (95/395 Early Work Completion) arising from any additional Scope Issues approved by: (1) both the Concessionaire and the Department (with respect to the 395 Concessionaire Assets) or (2) only the Department (with respect to the 395 Department Assets).

(x) Within ten days after the resolution of all Scope Issues, the Concessionaire will (A) revise the Base Case Financial Model Update (95/395 Final), if any, reflecting any final adjustments to the 395 Design-Build Contract price and deliver such Base Case Financial Model Update (95/395 Final) to the Department for the Department's review and approval or rejection or (B) provide written notice that there are no updates to the Base Case Financial Model Update (95/395 Final), and upon approval by the Department, such Base Case Financial Model Update will become the "Base Case Financial Model Update (95/395 Early Work Resolution)."

(c) Payments for the 395 Early Work.

(i) The Parties agree to pay for the 395 Early Work as follows:

(A) the Department will be responsible for the first \$5,000,000 of costs for 395 Eligible Work;

(B) the Department and the Concessionaire will each be responsible for 50% of the next \$5,000,000 of costs for 395 Eligible Work; and

(C) in addition to the costs provided for in subsections (A) and (B) above, the Concessionaire may pay for any 395 Sponsor Funded Early Work.

(ii) The Department agrees to pay to the Concessionaire for the performance of the 395 Early Work that is 395 Eligible Work in an aggregate amount not to exceed the Department 395 Early Work Funding Commitment so long as:

(A) the Concessionaire complies with the provisions of this Section 8.17; and

(B) on a monthly basis, the Concessionaire submits to the Department the Application for Payment (as defined in the 395 Design-Build Contract) that has been agreed to by the Concessionaire and the 395 Design-Build Contractor along with any supporting documentation associated with such Application for Payment.

(iii) Once the Department reviews the Application for Payment and agrees to the amounts and activities set forth in the Application for Payment, the Department will pay such amounts within 30 days of the Department's approval of the Application for Payment. The Department will review a complete Application for Payment and either agree or provide comments on the same within five Business Days of receipt from the Concessionaire.

(iv) The Concessionaire agrees to reimburse the Department in accordance with Section 7.03A(g) for any amounts paid by the Department pursuant to this Section 8.17.

(v) Notwithstanding Section 18.03, upon payment by the Department as set forth in this subsection (c), the Department will own all Work Product only associated with the 395 Eligible Work.

(d) Conditions Precedent for the 395 Early Work.

(i) Conditions Precedent for the 395 Early Work. The Concessionaire will not commence the 395 Early Work unless and until all of the following conditions have been satisfied:

(A) the Concessionaire certifies that there exists no court order which restrains, enjoins or delays performance of the 395 Early Work;

(B) the Concessionaire delivers to the Department certificates of insurance evidencing that it has procured the insurance coverage types and amounts specified in Section 4 of the Insurance Requirements attached as Exhibit Y-1 and, in the case of Project-specific policies, the Concessionaire has delivered to the Department duplicate originals or copies thereof certified by the Concessionaire's insurance broker to be true and correct copies of the originals;

(C) all Governmental Approvals necessary for the commencement of the 395 Early Work have been acquired other than any Governmental Approvals related to access to the Pentagon Reservation (and copies provided to the Department);

(D) the Department has provided written approval for all 395 Early Work attached as Exhibit B-5; and

(E) there exists no Event of Default under this Agreement.

(ii) The Department may waive, by written waiver only, any condition precedent set forth in this subsection (d); provided, that no person or entity will be entitled to assume that the Department will waive or refuse to waive any condition precedent in the absence of strict compliance therewith.

(e) The 395 Early Work and failure by the Department to procure any Governmental Approvals related to access to the Pentagon Reservation will not constitute a Delay Event, a Compensation Event, a Department Change, or any other action which would entitle the Concessionaire to the payment of Concessionaire Damages or any other amounts under this Agreement.

(f) The Parties agree that any failure by the Concessionaire to comply with or perform any obligation, covenant, agreement, term or condition in this Agreement insofar as it may apply to the 395 Early Work shall not constitute a Concessionaire Default or a 395 Concessionaire Breach.

Section 8.18 395 Final Completion

(a) The Concessionaire will achieve 395 Final Completion on or before the 395 Guaranteed Final Completion Date, subject to adjustment in accordance with this Agreement; *provided* that failure to achieve 395 Final Completion by the 395 Guaranteed Final Completion Date will not result in a 395 Concessionaire Breach under Section 19.06, except as set forth in Section 19.06(d) and failure to achieve 395 Final Completion by the 395 Guaranteed Final Completion Date or the 395 Long Stop Date will not result in a Concessionaire Default under Section 19.01.

(b) The Department will issue a written certificate of 395 Final Completion at such time as 395 Final Completion occurs.

(c) 395 Final Completion will have been achieved when each of the following conditions has occurred for the 395 Project:

(i) all lanes of traffic (including ramps, interchanges, overpasses, underpasses, and other crossings) set forth in the Construction Documentation for the 395 Project are in their final configuration and open for normal and safe use and operation by the travelling public;

(ii) all safety features are installed and functional, including, as required, shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators, in each case, for the 395 Project;

(iii) all required illumination for normal and safe use and operation for the 395 Project by the travelling public is installed and functional in accordance with the Technical Requirements;

(iv) all required signs and signals for normal and safe use and operation for the 395 Project by the travelling public are installed and functional in accordance with the Technical Requirements;

(v) the need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance) and all temporary traffic barriers or lane shifts have been removed, except for temporary lane closures in accordance with and as permitted by the Department-approved TMP, in each case, for the 395 Project;

(vi) the TMS (if any) and safety features for TMS components for the 395 Project are installed and functional;

(vii) other than the Permitted Encumbrances (not including clause (c) of the definition thereof), the Project is free and clear of all Liens, claims, security interests or encumbrances arising out of or in connection with the performance of the Work during the Construction Period;

(viii) all Project Documentation, including as built drawings of the 395 Project, to be submitted on or before 395 Final Completion have been submitted and approved (to the extent approval is required) by the Department;

(ix) the Concessionaire has paid for all Design-Build Work, TTMS Work and other Work required to achieve 395 Final Completion by third parties that the Concessionaire is obligated to pay (other than disputed amounts and amounts that are not yet due and payable);

(x) the Concessionaire has delivered all required certifications from the engineer of record and architect of record to all necessary Governmental Authorities and to the Department;

(xi) the Concessionaire has made all deliveries of Work Product to the Department that are required to be made pursuant to this Agreement;

(xii) the Concessionaire has delivered to the Department a list of each Asset of the type described in the Performance Requirements Baseline Table;

(xiii) the Concessionaire has completed the Work in accordance with this Agreement, including the Technical Requirements;

(xiv) the Concessionaire has completed the Work associated with the Pentagon Improvements in accordance with this Agreement in order for the Department to close the Governmental Approvals for the Pentagon Improvements; and

(xv) the Concessionaire has completed the Work associated with the 395 Project in accordance with this Agreement in order for the Concessionaire to close any permits required for the 395 Project.

(d) The Concessionaire will provide the Department with written notice of anticipated 395 Final Completion at least 21 Days prior to the anticipated 395 Final Completion Date. The parties will comply with the submittal and review procedures set forth in Section 10.05 in the determination of whether 395 Final Completion has been achieved; *provided* that the deemed approval provisions of Section 10.05(e) will not apply to the determination of whether 395 Final Completion has been achieved. During such 21-Day period, the Concessionaire and the Department will meet, confer and exchange information on a regular basis with the goal being the Department's orderly, timely inspection of the Project Assets and review of the final Construction Documentation and the Department's issuance of a 395 Final Completion Certificate. In addition, the Department will conduct an inspection of the Project Assets and review of the final Construction Documentation, and such other matters as may be necessary to determine whether 395 Final Completion is achieved and, not later than the expiration of such 21-Day period, will deliver a written report of findings and recommendations to the Concessionaire. The Department will provide the Concessionaire with a determination of whether or not 395 Final Completion has been achieved (and if not, an explanation with reasonable specificity as to the reasons therefor) within such 21-Day period.

(e) If the Department has not notified the Concessionaire of such approval or disapproval within 21 Days after such Concessionaire notice (or 10 Days with respect to any resubmittal of the notice), and if the delay is not a result of a Concessionaire Party action or inaction, then such delay will constitute a Delay Event and a Compensation Event, and the Concessionaire will be entitled to Concessionaire Damages, if any, pursuant to Section 14.01.

(f) 395 Early Final Completion.

(i) In the Department's sole discretion, the Department may issue a 395 Early Final Completion Certificate with respect to one or more 395 Department Assets identified by the Concessionaire and approved by the Department, prior to issuing a 395 Final Completion Certificate for the balance of the 395 Project.

(ii) In order to achieve 395 Early Final Completion for a 395 Department Asset, the 395 Department Asset must be fully completed with no outstanding Work for such 395 Department Asset and the Concessionaire must meet all of the applicable requirements for 395 Final Completion set forth in this Section 8.18 with respect to that specific 395 Department Asset.

(iii) In addition to the requirements above, in order for 395 Early Final Completion to be achieved for the GP Bridges Component, the Concessionaire must complete all of the Work for all bridges and the roadway surfaces on such bridges must be completed, included milling and overlay on the approach roadways.

(iv) In addition to the requirements above, in order for 395 Early Final Completion to be achieved for the DEW Component, the Concessionaire must complete all Work associated with the DEW Component set forth in the Technical Requirements.

(v) The Parties will follow the processes set forth in subsections (c), (d) and (e) with respect to the process to reach 395 Early Final Completion.

Section 8.19 Provisions Specific to the 395 Project

(a) 395 Risk Pool.

(i) If the Concessionaire has submitted an Inaccessibility Notice pursuant to Section 8.17(b)(v), and the Department has agreed in writing to the areas submitted in such Inaccessibility Notice, and additional costs arise due to Differing Site Conditions, Unknown Geotechnical Conditions, Unknown Utilities, and latent defects discovered after the 395 Scope Validation Work Completion Date in such areas (“395 Risk Pool Costs”), then (A) the Concessionaire shall be responsible for the first \$5,000,000 in additional costs of 395 Risk Pool Costs, (B) the Department and the Concessionaire shall share equally in the next \$5,000,000 in additional costs of 395 Risk Pool Costs and (C) the Department shall be solely responsible for any additional costs of 395 Risk Pool Costs above \$10,000,000. If the Department owes moneys to the Concessionaire pursuant to this Section 8.19(a)(i), the Department will make payments to the Concessionaire on a monthly basis for the 395 Risk Pool Costs in question.

(ii) If the Concessionaire contends that any 395 Risk Pools Costs arise, it must notify the Department in writing prior to incurring the 395 Risk Pool Costs, and shall provide sufficient supporting documentation for the Department to determine whether the claimed 395 Risk Pool Costs are genuine and appropriate, and the Department will have the right to approve or reject the classification of any additional costs as 395 Risk Pool Costs. Within 15 days of receipt of any written notice from Concessionaire, along with sufficient documentation to analyze claimed 395 Risk Pool Costs, the Department will respond in writing (a “395 Risk Pool Eligibility Determination”) stating whether the claimed costs are eligible to be paid as 395 Risk Pool Costs under Section 8.19(a)(i). Within an additional 15 days after the Department delivers an assenting 395 Risk Pool Eligibility Determination, the Department will respond in writing stating the approved costs that may be counted as 395 Risk Pool Costs. At any time during the Department’s analysis of a claim for 395 Risk Pool Costs, the Concessionaire shall provide to the Department any additional supporting documentation reasonably requested by the Department to analyze the claim. In the event of a dispute over whether additional costs should be classified as 395 Risk Pool Costs, or over the cost impacts arising from genuine 395 Risk Pools Costs, either party will be entitled to refer the matter to the dispute resolution procedures in Article 21.

(b) 395 Gate Control System. The Parties acknowledge that the Letter Agreement dated November 17, 2014 (the “395 Letter Agreement”) between the Parties is hereby terminated. The Concessionaire will continue to operate and maintain the I-395 gate control system during the construction of the 395 Project. The Department’s payments to the Concessionaire will continue under this Agreement in the amounts set forth in the 395 Letter Agreement until the 395 Service Commencement Date. The Department will only pay the lump sum payments set forth in the 395 Letter Agreement through December 2018. The Department will pay the Concessionaire a lump sum payment for the operation and maintenance of the I-395 gate control system on the 395 Service Commencement Date equal to the pro rata share of \$581,233 from January 2019 to the 395 Service Commencement Date. The Concessionaire will be responsible for all costs of repair for any damage to the gate control system caused during the Construction Period for the 395 Project. After

the 395 Service Commencement Date, the Concessionaire will be responsible for all costs related to the gate control system.

(c) Sound Walls. For the 395 Department Assets, the Department will bear the cost risk and receive the cost benefit of any increases or decreases in the actual square footage of all sound walls from the Base Noise Wall Quantity as included in the Technical Requirements. For the 395 Concessionaire Assets, the Department will bear the cost risk of any increase and the Concessionaire shall receive the cost benefit of any decrease in the actual square footage of all sound walls from the Base Noise Wall Quantity as included in the Technical Requirements.

(d) Pentagon Reservation MOA. Regarding the work on or near the Pentagon Reservation, the Concessionaire agrees to comply with the requirements of the Pentagon Reservation MOA, a form of which is attached as Exhibit Z hereto.

(e) Confidential Department of Defense Information. The Department, through the United States Department of Defense, will provide information regarding the location of utilities and other underground assets in and around the Pentagon Reservation for use in connection with the 395 Project. The Concessionaire will protect and keep confidential any documents marked by the United States Department of Defense “for official use only” as required by United States government policy, specifically 32 CFR Part 2001 and Department of Defense Manual Number 5200.01, Volume 4, and will not share such documents with any individuals or entities not directly involved in the 395 Project. Further, documents marked ‘for official use only’ must be destroyed or returned to the United States Department of Defense, Washington Headquarters Services after 395 Final Completion. DOCUMENTS MARKED FOR OFFICIAL USE ONLY MAY BE EXEMPT FROM PRODUCTION UNDER THE FEDERAL FREEDOM OF INFORMATION ACT (5 U.S.C. 552, as amended) AND THE VIRGINIA FREEDOM OF INFORMATION ACT (Code of Virginia (1950) § 2.2-3700 et seq., as amended) AND SHALL BE LABELED AS SUCH. The Concessionaire agrees to include in all its contracts and subcontracts for construction related to the Pentagon Improvements a substantially similar provision to this Section 8.19(e).

(f) No Compensation Event. The Parties agree that full and complete compensation for the 395 Project is included within this Agreement as of the Amended and Restated Agreement Date, and the 395 Project itself does not give rise to a Compensation Event. During the Construction Period for the 395 Project and after 395 Final Completion, the Concessionaire is prohibited from asserting a Claim that the 395 Project itself, or any portion thereof, is a Compensation Event. Notwithstanding the foregoing, if a Compensation Event (based on an event or occurrence beyond the scope of the 395 Project) occurs during the Construction Period for the 395 Project or following 395 Final Completion, the Concessionaire will be entitled to seek relief in accordance with this Agreement.

Section 8.20 Fred Ex Early Work

Any Fred Ex Early Work will be at the Concessionaire’s sole cost and expense. The scope of Fred Ex Early Work is defined in Exhibit B-6 and is subject to the LNTP procedure set forth in Section 8.02(a).

Section 8.21 Fred Ex Final Completion

(a) The Concessionaire will achieve Fred Ex Final Completion on or before the Fred Ex Guaranteed Final Completion Date, subject to adjustment in accordance with this Agreement; *provided* that failure to achieve Fred Ex Final Completion by the Fred Ex Guaranteed Final Completion Date will not result in a Fred Ex Concessionaire Breach under Section 19.09, except as set forth in Section 19.09(d) and failure to achieve Fred Ex Final Completion by the Fred Ex Guaranteed Final Completion Date or the Fred Ex Long Stop Date will not result in a Concessionaire Default under Section 19.01.

(b) The Department will issue a written certificate (the “Fred Ex Final Completion Certificate”) of Fred Ex Final Completion at such time as Fred Ex Final Completion occurs.

(c) Fred Ex Final Completion will have been achieved when each of the following conditions has occurred for the Fred Ex Project:

(i) all lanes of traffic (including ramps, interchanges, overpasses, underpasses, and other crossings) set forth in the Construction Documentation for the Fred Ex Project are in their final configuration and open for normal and safe use and operation by the travelling public;

(ii) all safety features are installed and functional, including, as required, shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators, in each case, for the Fred Ex Project;

(iii) all required illumination for normal and safe use and operation for the Fred Ex Project by the travelling public is installed and functional in accordance with the Technical Requirements;

(iv) all required signs and signals for normal and safe use and operation for the Fred Ex Project by the travelling public are installed and functional in accordance with the Technical Requirements;

(v) the need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance) and all temporary traffic barriers or lane shifts have been removed, except for temporary lane closures in accordance with and as permitted by the Department-approved TMP, in each case, for the Fred Ex Project;

(vi) the TMS (if any) and safety features for TMS components for the Fred Ex Project are installed and functional;

(vii) other than the Permitted Encumbrances (not including clause (c) of the definition thereof), the Project is free and clear of all Liens, claims, security interests or encumbrances arising out of or in connection with the performance of the Work during the Construction Period;

(viii) all Project Documentation, including as built drawings of the Fred Ex Project, to be submitted on or before Fred Ex Final Completion have been submitted and approved (to the extent approval is required) by the Department;

(ix) the Concessionaire has paid for all Fred Ex Design-Build Work, Fred Ex TTMS Work, and other Work required to achieve Fred Ex Final Completion by third parties that the Concessionaire is obligated to pay (other than disputed amounts and amounts that are not yet due and payable);

(x) the Concessionaire has delivered all required certifications from the engineer of record and architect of record to all necessary Governmental Authorities and to the Department;

(xi) the Concessionaire has made all deliveries of Work Product to the Department that are required to be made pursuant to this Agreement;

(xii) the Concessionaire has delivered to the Department a list of each Asset of the type described in the Performance Requirements Baseline Table;

(xiii) the Concessionaire has completed the Work in accordance with this Agreement, including the Technical Requirements; and

(xiv) the Concessionaire has completed the Work associated with the Fred Ex Project in accordance with this Agreement in order for the Concessionaire to close any permits required for the Fred Ex Project.

(d) The Concessionaire will provide the Department with written notice of anticipated Fred Ex Final Completion at least 21 Days prior to the anticipated Fred Ex Final Completion Date. The parties will comply with the submittal and review procedures set forth in Section 10.05 in the determination of whether Fred Ex Final Completion has been achieved; *provided* that the deemed approval provisions of Section 10.05(e) will not apply to the determination of whether Fred Ex Final Completion has been achieved. During such 21-Day period, the Concessionaire and the Department will meet, confer and exchange information on a regular basis with the goal being the Department's orderly, timely inspection of the Project Assets and review of the final Construction Documentation and the Department's issuance of a Fred Ex Final Completion Certificate. In addition, the Department will conduct an inspection of the Project Assets and review of the final Construction Documentation, and such other matters as may be necessary to determine whether Fred Ex Final Completion is achieved and, not later than the expiration of such 21-Day period, will deliver a written report of findings and recommendations to the Concessionaire. The Department will provide the Concessionaire with a determination of whether or not Fred Ex Final Completion has been achieved (and if not, an explanation with reasonable specificity as to the reasons therefor) within such 21-Day period.

(e) If the Department has not notified the Concessionaire of such approval or disapproval within 21 Days after such Concessionaire notice (or 10 Days with respect to any resubmittal of the notice), and if the delay is not a result of a Concessionaire Party action or inaction, then such delay will constitute a Delay Event and a Compensation Event, and the Concessionaire will be entitled to Concessionaire Damages, if any, pursuant to Section 14.01.

Section 8.22 Provisions Specific to the Fred Ex Project

(a) Strategic Fred Ex Corridor Review. At least once every three years following the Second Amended and Restated Agreement Date, the Department and the Concessionaire shall meet to explore collaborative solutions to challenges in the Fred Ex Corridor related to capacity, mobility, safety, optimization of existing assets (including bi-directional options), and any potential Project Enhancements.

(b) Fred Ex Pooled Contingency Fund.

(i) On or before the date the Department issues a Construction Notice to Proceed for the Fred Ex Project, the parties will make available a pooled contingency fund (the "Fred Ex Pooled Contingency Fund") in the following amounts:

(A) \$21,250,000 plus any Fred Ex Pooled Contingency Deductive Credits made available by the Concessionaire ("Fred Ex Concessionaire Committed Contingency"), and

(B) \$10,000,000 made available by the Department, or \$5,000,000 in the event the Concessionaire achieves Fred Ex Additional Financial Close utilizing PABs ("Fred Ex Department Committed Contingency").

(ii) Priority of Use of Fred Ex Pooled Contingency Fund.

(A) The parties shall use funds from the Fred Ex Pooled Contingency Fund to pay for or reimburse Fred Ex Pooled Contingency-Covered Costs. Funds shall be drawn from the Fred Ex Pooled Contingency Fund in the following order of priority:

(1) First, from the Fred Ex Concessionaire Committed Contingency; and

(2) If the Fred Ex Concessionaire Committed Contingency is totally depleted, then from the Fred Ex Department Committed Contingency.

(B) If both the Fred Ex Concessionaire Committed Contingency and the Fred Ex Department Committed Contingency are totally depleted, then the parties will split any additional Fred Ex Pooled Contingency-Covered Costs one-third (1/3) paid by the Department and two-thirds (2/3) paid by the Concessionaire.

(C) Upon final completion of the Fred Ex Design-Build Work, any unused portion of the Fred Ex Pooled Contingency Fund will be released and promptly transferred to the party that supplied it, without conditions.

(iii) Notice of Fred Ex Pooled Contingency-Covered Costs. If a Fred Ex Pooled Contingency Approval is required pursuant to Section 8.22(b)(iv) below, then a Fred Ex Pooled Contingency-Covered Cost Notice is also required. For all other Fred Ex Pooled Contingency-Covered Costs, prior approval or notice is not required and the parties will report such expenditures in accordance with Section 8.22(b)(vi) below.

(iv) Fred Ex Pooled Contingency Approval. The requesting party shall seek the approval (a “Fred Ex Pooled Contingency Approval”) of the non-requesting party (such approval not to be unreasonably delayed or withheld) to classify any cost as a Fred Ex Pooled Contingency-Covered Cost under the following circumstances:

(A) in the case of the Concessionaire as the requesting party:

(1) if any proposed use exceeds \$500,000 (individually or in the aggregate invoiced on any work order); or

(2) if more than \$14,000,000 of the Fred Ex Pooled Contingency Fund has been expended, then if any proposed use exceeds \$300,000 (individually or in the aggregate invoiced on any work order); and,

(B) in the case of the Department as the requesting party, if any proposed use exceeds \$300,000 (individually or in the aggregate invoiced on any work order).

(v) Fred Ex Pooled Contingency Fund Dispute Right.

(A) Whenever a party has the right to dispute a proposed (or classified) Fred Ex Pooled Contingency-Covered Cost, such party may dispute the proposed classification (or classification) only if the disputing party reasonably believes that the cost does or does not, as applicable, satisfy the definition of Fred Ex Pooled Contingency-Covered Costs.

(B) The Department will have the right to dispute any proposed (or classified) Fred Ex Pooled Contingency-Covered Cost only: (i) if the proposed use exceeds \$500,000 (individually or in the aggregate invoiced on any work order), or (ii) without regard to the amount of the use if more than \$14,000,000 of the Fred Ex Pooled Contingency Fund has been expended.

(C) The Concessionaire will have the right to dispute any proposed (or classified) Fred Ex Pooled Contingency-Covered Cost.

(D) When a Fred Ex Pooled Contingency Approval is required, the non-requesting party will have 14 Business Days from receipt of the corresponding Fred Ex Pooled Contingency-Covered Cost Notice to dispute the proposed classification in writing. Otherwise, the proposed classification will be deemed approved. Following any approval (or deemed approval) of a proposed Fred Ex Pooled Contingency-Covered Cost, the non-requesting party will have no further right to dispute the classification of such Fred Ex Pooled Contingency-Covered Cost, except that the non-requesting party may dispute the classification if it subsequently receives new information unknown to it at the time of the approval (or deemed approval) that, if known at the time, reasonably would have caused the relevant cost to fall outside of the definition of a Fred Ex Pooled Contingency-Covered Cost.

(E) If no Fred Ex Pooled Contingency Approval is required with respect to a use, a dispute may be initiated by the non-requesting party if permitted under Section

8.22(b)(v)(B) or (C) no later than 60 days following delivery of the quarterly or monthly report delivered in accordance with Section 8.22(b)(vi) below that first presents such classification or use. If the non-requesting party does not dispute the use in writing within such 60 day period, the use will be deemed undisputed and the non-requesting party will have no further right to dispute the use, except that the non-requesting party may dispute the use if it subsequently receives new information unknown to it at the time of the deemed undisputed use that, if known at the time, reasonably would have caused the relevant cost to fall outside of the definition of a Fred Ex Pooled Contingency-Covered Cost.

(F) Either party may refer a dispute over a Fred Ex Pooled Contingency-Covered Cost to the dispute resolution procedures pursuant to Article 21. If a Fred Ex Pooled Contingency Approval is requested but not obtained, then during the pendency of any corresponding dispute, the disputed costs shall be presumed to not be rightful Fred Ex Pooled Contingency-Covered Costs, and the requesting Party may apply its own funds towards such costs.

(G) As a result of any settlement or dispute process, the Fred Ex Pooled Contingency Fund will reimburse the amount of costs expended directly by the requesting Party and subsequently classified as or found to be rightful Fred Ex Pooled Contingency-Covered Costs, or the Fred Ex Pooled Contingency Fund will be reimbursed by the Party for whose account amounts determined not to be rightful Fred Ex Pooled Contingency-Covered Costs had been expended.

(vi) Fred Ex Pooled Contingency Fund Reporting.

(A) The Department will provide to the Concessionaire monthly reports regarding any uses of the Fred Ex Pooled Contingency Fund for the Southbound RRC Overlap Work. Subject to the Concessionaire's right to dispute the classification of any expenditure as a Fred Ex Pooled Contingency-Covered Cost pursuant to Section 8.22(b)(v), the Concessionaire will make any corresponding payments to the Department within 30 days of receipt of any such report.

(B) The Concessionaire shall provide the Department Fred Ex Pooled Contingency Fund Reports as follows:

(1) if less than \$14,000,000 of the Fred Ex Pooled Contingency Fund has been expended, the Concessionaire shall provide the Department quarterly Fred Ex Pooled Contingency Fund Reports;

(2) if more than \$14,000,000 but less than \$21,250,000 of the Fred Ex Pooled Contingency Fund has been expended, the Concessionaire shall provide the Department quarterly Fred Ex Pooled Contingency Fund Reports including a list of all charges against the Fred Ex Pooled Contingency Fund, and the Department may request, and the Concessionaire shall provide, reasonable additional information to aid the Department in understanding any reported uses of the Fred Ex Pooled Contingency Fund, and the Department may review the details

of amounts classified as Fred Ex Pooled Contingency-Covered Costs beyond \$14,000,000; and,

(3) after \$21,250,000 of the Fred Ex Pooled Contingency Fund has been expended, the Concessionaire shall provide the Department monthly Fred Ex Pooled Contingency Fund Reports including a list of all charges against the Fred Ex Pooled Contingency Fund, and the Department may request, and the Concessionaire shall provide, reasonable additional information to aid the Department in understanding any reported uses of the Fred Ex Pooled Contingency Fund, and the Department may review the details of amounts classified as Fred Ex Pooled Contingency-Covered Costs beyond \$21,250,000.

(vii) Department Funding of Fred Ex Department Committed Contingency; Netting. The Department will make available to the Concessionaire the Fred Ex Department Committed Contingency in accordance with Exhibit N. Upon the mutual agreement of the parties, the Fred Ex Department Committed Contingency and any other payments to be paid by the Department with respect to the Fred Ex Pooled Contingency Fund may be netted by the Concessionaire as a deduction from the Final Permit Fee Buyout Payment.

(viii) Concessionaire Oversight and Management Reconciliation. The Concessionaire shall fully reconcile its oversight and management costs no later than the Fred Ex Final Completion Date, unless otherwise agreed by the parties, and unplanned cost overruns and other eligible costs not previously classified may be classified as Fred Ex Pooled Contingency Covered Costs at that time. However, oversight or management costs associated with any Fred Ex Betterment shall not be charged to the Fred Ex Pooled Contingency Fund. For the avoidance of doubt, such reconciliation is subject to the Department's dispute rights set forth in Section 8.22(b)(v) above.

(c) Permit Fee Buyout Payment.

(i) In exchange for the elimination of the Permit Fee structure set forth in Exhibit J-1, the Concessionaire shall cause the Equity Sponsors to pay to the Department \$277,000,000 (the "Permit Fee Buyout Payment"). The Permit Fee Buyout Payment will be paid by the Equity Sponsors directly to the Department.

(ii) The Initial Permit Fee Buyout Payment will be paid no later than the Fred Ex Financial Close Date. The Final Permit Fee Buyout Payment will be paid no later than the Fred Ex Service Commencement Date. The Permit Fee Buyout Payment shall be included within the Fred Ex Equity Commitment Amount and shall be secured in accordance with Section 17.08(a)(iii).

(iii) If, prior to the Fred Ex Final Completion Date, the Department terminates the Fred Ex Project for any reason, the Department may, in its sole discretion, reinstate the Permit Fee structure set forth in the First ARCA and all related provisions in this Agreement related to the Permit Fee, including Exhibit J-1. In the event that the Department reinstates the Permit Fee structure, the Department will pay to the

Concessionaire any amounts of the Permit Fee Buyout Payment already paid by the Equity Sponsors to the Department.

(d) Fred Ex Route 17 GP Exit Ramp Completion.

(i) The Concessionaire will achieve Fred Ex Route 17 GP Exit Ramp Completion of the Fred Ex Route 17 GP Exit Ramp on or before the Fred Ex Guaranteed Route 17 GP Exit Ramp Completion Date, subject to adjustment in accordance with this Agreement; *provided* that failure to achieve Fred Ex Route 17 GP Exit Ramp Completion by the Fred Ex Guaranteed Route 17 GP Exit Ramp Completion Date will not result in a Fred Ex Concessionaire Breach under Section 19.09, and failure to achieve Fred Ex Route 17 GP Exit Ramp Completion by the Fred Ex Guaranteed Route 17 GP Exit Ramp Completion Date will not result in a Concessionaire Default under Section 19.01. For the avoidance of doubt, the Concessionaire will maintain and operate the Fred Ex Route 17 GP Exit Ramp until the Fred Ex Final Completion Date, after which time the Department will maintain and operate it.

(ii) The Concessionaire will provide the Department with written notice of anticipated Fred Ex Route 17 GP Exit Ramp Completion at least 21 Days prior to the anticipated Fred Ex Route 17 GP Exit Ramp Completion Date. The parties will comply with the submittal and review procedures set forth in Section 10.05 in the determination of whether Fred Ex Route 17 GP Exit Ramp Completion has been achieved; *provided* that the deemed approval provisions of Section 10.05(e) will not apply to the determination of whether Fred Ex Route 17 GP Exit Ramp Completion has been achieved. During such 21-Day period, the Concessionaire and the Department will meet, confer and exchange information on a regular basis with the goal being the Department's orderly, timely inspection of the Project Assets and review of the final Construction Documentation and the Department's issuance of a Fred Ex Route 17 GP Exit Ramp Completion Certificate. In addition, the Department will conduct an inspection of the Project Assets and review of the final Construction Documentation, and such other matters as may be necessary to determine whether Fred Ex Route 17 GP Exit Ramp Completion is achieved and, not later than the expiration of such 21-Day period, will deliver a written report of findings and recommendations to the Concessionaire. The Department will provide the Concessionaire with a determination of whether or not Fred Ex Route 17 GP Exit Ramp Completion has been achieved (and if not, an explanation with reasonable specificity as to the reasons therefor) within such 21-Day period. The process will be repeated until the Department issues in writing a Fred Ex Route 17 GP Exit Ramp Completion Certificate. Notwithstanding the Department's issuance of a Fred Ex Route 17 GP Exit Ramp Completion Certificate, the Assets that are the subject of the Fred Ex Route 17 GP Exit Ramp will remain under the care, custody, and control of the Concessionaire until the Fred Ex Final Completion Date.

(e) Fred Ex Service Commencement and Southbound RRC Project Completion. If by May 1, 2022, the Southbound RRC Project is not yet open to traffic and it appears the Fred Ex Project may achieve Service Commencement before the Southbound RRC Project is open to traffic, then the parties will meet to explore mutually-satisfactory technical solutions relating to

the potential of opening the Fred Ex Project to traffic (whether in whole or in part) prior to the Southbound RRC Project being opened to traffic.

(f) Use of Fiber for Redundant Fiber Ring.

(i) The Department will make available to the Concessionaire its rights to certain fiber optic line(s) that the Department has access to under the Fiber MOA, which the Concessionaire may use to complete the redundant fiber ring for the Fred Ex Project. The Department does not guarantee the use, condition, or function of the fiber optic line(s), and any failure of such line(s) will not give rise to a Compensation Event.

(ii) The Concessionaire shall be responsible for paying any splicing fees due under the Fiber MOA related to the use of the fiber optic line(s).

(iii) In the event that the Fiber MOA expires or is terminated during the Term, the Concessionaire shall, at its own cost and expense, remain in compliance with the Technical Requirements requiring such redundant fiber ring.

(g) The Concessionaire shall provide to the Department proof that the cyber/network insurance required under Section 2 of Exhibit Y-2 has been obtained prior to the start of any of the testing required under Section 9.02(g), and prior to connecting to the existing ETTM system.

Section 8.23 Opitz Boulevard Ramp Final Completion

(a) The Concessionaire will achieve Opitz Boulevard Ramp Final Completion on or before the Opitz Boulevard Ramp Guaranteed Final Completion Date, subject to adjustment in accordance with this Agreement; *provided* that failure to achieve Opitz Boulevard Ramp Final Completion by the Opitz Boulevard Ramp Guaranteed Final Completion Date will not result in an Opitz Boulevard Ramp Concessionaire Breach under Section 19.12, except as set forth in Section 19.12(d) and failure to achieve Opitz Boulevard Ramp Final Completion by the Opitz Boulevard Ramp Guaranteed Final Completion Date or the Opitz Boulevard Ramp Long Stop Date will not result in a Concessionaire Default under Section 19.01.

(b) The Department will issue the Opitz Boulevard Ramp Final Completion Certificate at such time as Opitz Boulevard Ramp Final Completion occurs.

(c) Opitz Boulevard Ramp Final Completion will have been achieved when each of the following conditions has occurred for the Opitz Boulevard Ramp Project:

(i) the need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance) and all temporary traffic barriers or lane shifts have been removed, except for temporary lane closures in accordance with and as permitted by the Department-approved TMP, in each case, for the Opitz Boulevard Ramp Project;

(ii) other than the Permitted Encumbrances (not including clause (c) of the definition thereof), the Project is free and clear of all Liens, claims, security interests or encumbrances arising out of or in connection with the performance of the Opitz Boulevard

Ramp Construction Work during the Construction Period;

(iii) all Project Documentation, including as built drawings of the Opitz Boulevard Ramp Project, to be submitted on or before Opitz Boulevard Ramp Final Completion have been submitted and approved (to the extent approval is required) by the Department;

(iv) the Concessionaire has paid for all Opitz Boulevard Ramp Construction Work and other Work required to achieve Opitz Boulevard Ramp Final Completion by third parties that the Concessionaire is obligated to pay (other than disputed amounts and amounts that are not yet due and payable);

(v) the Concessionaire has delivered all required certifications from the engineer of record and architect of record to all necessary Governmental Authorities and to the Department;

(vi) the Concessionaire has made all deliveries of Work Product to the Department that are required to be made pursuant to this Agreement;

(vii) the Concessionaire has delivered to the Department a list of each Asset of the type described in the Performance Requirements Baseline Table;

(viii) the Concessionaire has completed the Work in accordance with this Agreement, including the Technical Requirements; and

(ix) the Concessionaire has completed the Work associated with the Opitz Boulevard Ramp Project in accordance with this Agreement in order for the Concessionaire to close any permits required for the Opitz Boulevard Ramp Project.

(d) The Concessionaire will provide the Department with written notice of anticipated Opitz Boulevard Ramp Final Completion at least 21 Days prior to the anticipated Opitz Boulevard Ramp Final Completion Date. The parties will comply with the submittal and review procedures set forth in Section 10.05 in the determination of whether Opitz Boulevard Ramp Final Completion has been achieved; *provided* that the deemed approval provisions of Section 10.05(e) will not apply to the determination of whether Opitz Boulevard Ramp Final Completion has been achieved. During such 21-Day period, the Concessionaire and the Department will meet, confer and exchange information on a regular basis with the goal being the Department's orderly, timely inspection of the Project Assets and review of the final Construction Documentation and the Department's issuance of an Opitz Boulevard Ramp Final Completion Certificate. In addition, the Department will conduct an inspection of the Project Assets and review of the final Construction Documentation, and such other matters as may be necessary to determine whether Opitz Boulevard Ramp Final Completion is achieved and, not later than the expiration of such 21-Day period, will deliver a written report of findings and recommendations to the Concessionaire. The Department will provide the Concessionaire with a determination of whether or not Opitz Boulevard Ramp Final Completion has been achieved (and if not, an explanation with reasonable specificity as to the reasons therefor) within such 21-Day period.

(e) If the Department has not notified the Concessionaire of such approval or disapproval within 21 Days after such Concessionaire notice (or 10 Days with respect to any resubmittal of the notice), and if the delay is not a result of a Concessionaire Party action or inaction, then such delay will constitute a Delay Event and a Compensation Event, and the Concessionaire will be entitled to Concessionaire Damages, if any, pursuant to Section 14.01.

Section 8.24 Seminary Road Ramp Final Completion

(a) The Concessionaire will achieve Seminary Road Ramp Final Completion on or before the Seminary Road Ramp Guaranteed Final Completion Date, subject to adjustment in accordance with this Agreement; *provided* that failure to achieve Seminary Road Ramp Final Completion by the Seminary Road Ramp Guaranteed Final Completion Date will not result in a Seminary Road Ramp Concessionaire Breach under Section 19.15., and failure to achieve Seminary Road Ramp Final Completion by the Seminary Road Ramp Guaranteed Final Completion Date will not result in a Concessionaire Default under Section 19.01.

(b) The Department will issue the Seminary Road Ramp Final Completion Certificate at such time as Seminary Road Ramp Final Completion occurs.

(c) Seminary Road Ramp Final Completion will have been achieved when each of the following conditions has occurred for the Seminary Road Ramp Project:

(i) the need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance) and all temporary traffic barriers or lane shifts have been removed, except for temporary lane closures in accordance with and as permitted by the Department-approved TMP, in each case, for the Seminary Road Ramp Project;

(ii) the TMS (if any) and safety features for TMS components for the Seminary Road Ramp Project are installed and functional;

(iii) other than the Permitted Encumbrances (not including clause (c) of the definition thereof), the Project is free and clear of all Liens, claims, security interests or encumbrances arising out of or in connection with the performance of the Seminary Road Ramp Construction Work during the Construction Period;

(iv) if applicable, the Concessionaire has paid for all Seminary Road Ramp Construction Work and other Work required to achieve Seminary Road Ramp Final Completion by third parties that the Concessionaire is obligated to pay (other than disputed amounts and amounts that are not yet due and payable);

(v) the Concessionaire has delivered all required certifications from the engineer of record and architect of record to all necessary Governmental Authorities and to the Department;

(vi) the Concessionaire has made all deliveries of Work Product to the Department that are required to be made pursuant to this Agreement;

(vii) the Concessionaire has completed the Work in accordance with this Agreement, including the Technical Requirements; and

(viii) the Concessionaire has completed the Work associated with the Seminary Road Ramp Project in accordance with this Agreement in order for the Concessionaire to close any permits required for the Seminary Road Ramp Project.

(d) The Concessionaire will provide the Department with written notice of anticipated Seminary Road Ramp Final Completion at least 10 Days prior to the anticipated Seminary Road Ramp Final Completion Date. The parties will comply with the submittal and review procedures set forth in Section 10.05 in the determination of whether Seminary Road Ramp Final Completion has been achieved; *provided* that the deemed approval provisions of Section 10.05(e) will not apply to the determination of whether Seminary Road Ramp Final Completion has been achieved. During such 10-Day period, the Concessionaire and the Department will meet, confer and exchange information on a regular basis with the goal being the Department's orderly, timely inspection of the Project Assets and review of the final Construction Documentation and the Department's issuance of a Seminary Road Ramp Final Completion Certificate. In addition, the Department will conduct an inspection of the Project Assets and review of the final Construction Documentation, and such other matters as may be necessary to determine whether Seminary Road Ramp Final Completion is achieved and, not later than the expiration of such 10-Day period, will deliver a written report of findings and recommendations to the Concessionaire. The Department will provide the Concessionaire with a determination of whether or not Seminary Road Ramp Final Completion has been achieved (and if not, an explanation with reasonable specificity as to the reasons therefor) within such 10-Day period.

(e) If the Department has not notified the Concessionaire of such approval or disapproval within 10 Days after such Concessionaire notice (or five Days with respect to any resubmittal of the notice), and if the delay is not a result of a Concessionaire Party action or inaction, then such delay will constitute a Delay Event and a Compensation Event, and the Concessionaire will be entitled to Concessionaire Damages, if any, pursuant to Section 14.01.

ARTICLE 8A

DESIGN, DEVELOPMENT AND CONSTRUCTION OF THE SOUTHERN TERMINUS EXTENSION

Section 8A.01 General Obligations of the Department

(a) Other than as set forth in this Article, the Department shall be responsible for the design, development and construction of the STE and the installation and testing of the ETTM System for the STE (as required in the STE Technical Requirements). The Department agrees to design the STE in all material respects according to the scope and configuration provided in the 30% design for the STE developed by the Concessionaire and delivered to the Department on January 14, 2016.

(b) The design, development and construction of the STE will not constitute a Delay Event, a Compensation Event, a Department Change, or any other action which would entitle the

Concessionaire to the payment of Concessionaire Damages under this Agreement. The parties agree that the First Amendment fully resolves and settles all claims or demands for damages or compensation of any kind related to the design, development and construction of STE, including, but not limited to all labor, equipment, material, time, engineering, incidentals, quality control, overhead, profit, interest, time extensions, delays, and schedule impact.

(c) The parties agree that the provisions of this Article 8A shall apply to the design, development and construction of the STE.

(d) For the avoidance of doubt, in addition to the 95 Express Funding Commitment, the Concessionaire shall be responsible for all Concessionaire costs and expenses related to the design, development, construction, inspection and design review of the STE. The Concessionaire shall also be responsible for the operation and maintenance of the STE following the applicable Service Commencement Date and thereafter during the Term in accordance with the STE Technical Requirements and this Agreement.

(e) The Concessionaire shall make, or cause to be made by the Equity Sponsors or the Transurban Guarantor in accordance with the Equity Funding Agreement or Equity Funding Guaranty, respectively, the 95 Express Funding Commitment as described in the Cost Sharing Agreement.

(f) For the avoidance of doubt, other than obligations of the Concessionaire set forth in this Agreement, the Concessionaire shall have no obligations related to the design, development or construction of the STE.

Section 8A.02 STE Design-Build Contract

The Department shall enter into the STE Design-Build Contract with the STE Design-Build Contractor.

Section 8A.03 Design Documentation and Construction Documentation

The Department shall submit or shall cause the STE Design-Build Contractor to submit to the Concessionaire accurate and complete copies of the Design Documentation and Construction Documentation relating to the STE listed in Exhibit FF to this Agreement, within three calendar days after such documentation is delivered to the Department by the STE Design-Build Contractor under the STE Design-Build Contract. The Concessionaire may provide comments to such Design Documentation and Construction Documentation. The Department shall review and address any Concessionaire comments that relate to compliance with the STE Design-Build Contract and the STE Technical Requirements. If the Department does not address a comment from the Concessionaire, it shall provide a written response to the Concessionaire identifying the reason for not addressing any such comment. The Concessionaire's review of such Design Documentation and Construction Documentation are for the purpose of evaluating the Department's compliance with the requirements of the STE Design-Build Contract and shall be at its own cost and expense. The Concessionaire's review of any submittal pursuant to this section shall comply with the submittal and review procedures set forth in Section 8A.07.

Section 8A.04 Construction Standards, ETTM System and Progress Meetings

(a) The Department shall cause the STE Design-Build Contractor to construct the STE, including the ETTM System for the STE, in accordance with the STE Technical Requirements and the parties acknowledge that the provisions of the Technical Requirements related to design, development and construction of the Original HOT Lanes shall not apply to the design, development and construction of the STE. The Concessionaire acknowledges that it has reviewed the STE RFP, the form of STE Design-Build Contract (attached as Exhibit GG) and the STE Technical Requirements.

(b) The Concessionaire has provided to the Department specifications relating to the ETTM System, ITS equipment, gate equipment and the testing and integration procedures related thereto for inclusion in the STE Technical Requirements. The ETTM System for the STE shall be consistent and compatible with the ETTM System for the Original HOT Lanes. The Concessionaire shall coordinate and be present during all required infrastructure and communication testing performed by the STE Design-Build Contractor in accordance with the STE Design-Build Contract.

(c) The Concessionaire shall, at its own cost and expense, be permitted to conduct its own quality reviews and independently verify that the STE has been completed in accordance with the STE Technical Requirements and the STE Design-Build Contract. The Concessionaire's review pursuant to this section shall comply with the submittal and review procedures set forth in Section 8A.07.

(d) Other than as set forth Section 8A.01(a), the Concessionaire shall be responsible for the STE Integration Work, at the Department's cost and expense in accordance with a mutually-agreed upon budget. The Concessionaire shall perform the STE Integration Work during the burn period (as defined in the STE Technical Requirements), identify any failures during the burn period, and provide a certificate of acceptance to the Department at the conclusion of the burn period.

(e) The Department and the Concessionaire will coordinate with respect to maintenance of traffic, signage and work hour/lane closure restrictions and plans affecting the normal operation of the Original HOT Lanes in accordance with any existing work authorization protocols. The Concessionaire has provided to the Department updated copies of the lane closure protocols and coordination requirements for inclusion in the STE Design-Build Contract.

(f) The Concessionaire shall provide the Concept of Operations for the STE to the Department by June 30, 2017. The Department and the Concessionaire shall finalize the Joint Operating and Maintenance Protocols for the STE by March 31, 2018.

(g) The Concessionaire and the Department will conduct regular progress meetings as needed to advance the STE.

Section 8A.05 Changes During Construction

The Department shall submit to the Concessionaire accurate and complete copies of any field design changes, notices of design changes, non-conformance reports and variances relating to the

design, development and construction of the STE (collectively, “STE Changes” and each, an “STE Change”) prior to delivering any final approvals relating to an STE Change to the STE Design-Build Contract. The Concessionaire shall have the right to approve an STE Change only if such STE Change materially and adversely affects the operations and maintenance of the STE during the Term. The Concessionaire’s review of any submittal pursuant to this section shall comply with the submittal and review procedures set forth in Section 8A.07.

Section 8A.06 Southbound Opening Date and STE Final Acceptance Date

(a) The Department will provide the Concessionaire with written notice of the anticipated Southbound Opening Date at least 90 calendar days prior to the anticipated Southbound Opening Date. During such 90-day period, the Concessionaire shall integrate the ETTM System for the southbound portion of the STE into the ETTM System for the Original HOT Lanes at the Department’s cost and expense and in accordance with Section 8A.04.

(b) The Department will provide the Concessionaire with written notice of the anticipated STE Final Acceptance Date at least 90 calendar days prior to the anticipated STE Final Acceptance Date. During such 90-day period, the Concessionaire shall integrate the ETTM System for the northbound portion of the STE into the ETTM System for the Original HOT Lanes at the Department’s cost and expense and in accordance with Section 8A.04.

(c) In addition, during such 90-day periods, the Concessionaire and the Department will meet, confer and exchange information on a regular basis in order to allow for the Concessionaire’s orderly, timely inspection of the applicable portion of the STE. In addition, the Concessionaire will conduct an inspection of the applicable portion of the STE, quality assurance activities and such other matters as may be necessary to determine whether the Southbound Opening Date or the STE Final Acceptance Date, as applicable, is achieved and, not later than the expiration of such 90-day periods will deliver written comments to the Department. Any inspections by the Concessionaire pursuant to this section shall be limited to the provisions of the STE Technical Requirements and shall be at its own cost and expense.

Section 8A.07 Concessionaire Responses

(a) This section sets forth the procedures governing certain submittals or requests by the Department to the Concessionaire (including, but not limited to, schedules, Design Documentation and Construction Documentation) which require an approval, review, comment, consent, notification, determination, decision or other response from the Concessionaire (collectively, a “Concessionaire Response”) pursuant to this Agreement. In all cases where Concessionaire Responses are required to be provided hereunder, such Concessionaire Responses will not be withheld or delayed unreasonably and such Concessionaire Responses will be made reasonably except in cases where a different standard is specified.

(b) Except as otherwise set forth herein, any submittal, resubmittal or request to the Concessionaire will be deemed complete at 5:30 p.m. Eastern time on the fifth calendar day following its receipt by the Concessionaire unless, the Concessionaire notifies the Department in writing prior to 5:30 p.m. Eastern time on such fifth calendar day that such submittal, resubmittal

or request is incomplete and sets forth in reasonable detail the incomplete elements of the submittal, resubmittal or request.

(c) In any case in which a submittal or request is or has been deemed to be complete under subsection (b), the Concessionaire will review and respond to such submittal or request as promptly as reasonably possible, and no later than fourteen calendar days after the date on which the Department has delivered or has caused the STE Design-Build Contractor to deliver such submittal or request to the Concessionaire. The Concessionaire will respond within such fourteen calendar day period by (i) approving, certifying or taking other appropriate action with respect to, the submittal or request, as applicable or (ii) disapproving such submittal or request and providing written notice to the Department specifying in reasonable detail the reasons for which it has disapproved the submittal or request. If the Concessionaire objects or disapproves any submittal or request in accordance with clause (ii) of the preceding sentence, the Department will resubmit the submittal or request as promptly as reasonably possible, and the Concessionaire will resume its review and respond to such submittal or request by approving or disapproving the submittal or request within five calendar days following its receipt of a resubmittal or request. The Concessionaire's review of a resubmittal or request will be limited to the issue, condition or deficiency which gave rise to the Concessionaire's disapproval and will not extend to other aspects for which a notice of disapproval was not previously provided to the Department unless the issue, condition or deficiency which gave rise to the Concessionaire's disapproval reasonably relates to the Concessionaire's disapproval for which notice was previously provided. The Department shall review and address any Concessionaire comments that relate to compliance with the STE Design-Build Contract and the STE Technical Requirements. If the Department does not address a comment from the Concessionaire, it shall provide a written response to the Concessionaire identifying the reason for not addressing any such comment.

(d) If the Concessionaire fails to respond to a complete submittal or request which has been timely submitted or resubmitted, as the case may be within the applicable time periods, as provided in this Article 8A, the Concessionaire will be deemed to have approved, certified or taken other similar action with respect to, such submittal or request. If the Concessionaire fails to provide written comments within the applicable time periods set forth in this Article 8A, the Concessionaire will be deemed to have no comments to the applicable request.

Section 8A.08 Warranties

(a) The Department will require the STE Design-Build Contractor to warrant that the work under the STE Design-Build Contract, including all materials and equipment furnished as part of the work, shall be new unless otherwise specified in the STE Technical Requirements or the STE Design-Build Contract, of good quality and free of defects in materials and workmanship. The Department shall assign the warranties it receives from the STE Design-Build Contractor pursuant to the STE Design-Build Contract with respect to the design, development and construction of the STE to the Concessionaire. Subject to subsection (c) below and to such limitations on coverage including aggregate caps specified in the STE Design-Build Contract, the foregoing warranties relating to the STE will be effective for a warranty period of 365 days beginning on the STE Final Acceptance Date.

(b) The warranties in subsection (a) above are exclusive and are in lieu of all other warranties by contract. No implied or statutory warranties will apply.

(c) The Concessionaire will only have the right to exercise remedies under any such warranties so long as the Department is not pursuing remedies thereunder.

Section 8A.09 Governmental Approvals, Community Outreach

(a) The Department, at its own cost, agrees to obtain any modifications, renewals and/or extensions of any Governmental Approvals (including the NEPA Documents) required to undertake the STE. The Concessionaire agrees to provide reasonable support, at its own cost, to the Department in obtaining any such modifications, renewals and/or extensions of any Governmental Approvals required to undertake the STE.

(b) The Department agrees to coordinate any community outreach necessary for the development of the STE. The Concessionaire agrees to be responsible for any community outreach with respect to the Original HOT Lanes and the STE during the Operating Period.

Section 8A.10 Right of Way Acquisition

The Department will be responsible for the acquisition of any right of way that the Department determines is necessary for the design, development and construction of the STE.

Section 8A.11 Handover of STE

(a) On the Southbound Opening Date, the Department shall hand over the southbound portion of the STE to the Concessionaire in accordance with the provisions of Section 9.02. From and after the Southbound Opening Date, the Concessionaire shall operate and maintain the southbound portion of the STE as part of the Project pursuant to and in accordance with the provisions of this Agreement.

(b) On the STE Final Acceptance Date, the Department shall hand over the northbound portion of the STE to the Concessionaire in accordance with the provisions of Section 9.02. From and after the STE Final Acceptance Date, the Concessionaire shall operate and maintain the northbound portion of the STE as part of the Project pursuant to and in accordance with the provisions of this Agreement. After the Southbound Opening Date, the Concessionaire agrees to cooperate with the Department and the STE Design-Build Contractor with respect to the design, development and construction of the northbound portion of the STE in accordance with the STE Technical Requirements.

ARTICLE 9

PROJECT MANAGEMENT; OPERATIONS AND MAINTENANCE

Section 9.01 Transition of Operations and Maintenance to Concessionaire

(a) Care, Custody, and Control.

(i) Except as otherwise specifically provided for in a LNTP, after the Financial Close Date, the 395 Financial Close Date, the Fred Ex Financial Close Date, the Opitz Boulevard Ramp Financial Close Date or the Seminary Road Ramp Financial Close Date, as applicable, and prior to the Substantial Completion Date, the 395 Final Completion Date, the Fred Ex Final Completion Date, the Opitz Boulevard Ramp Final Completion Date, or the Seminary Road Ramp Final Completion Date, as applicable, the Concessionaire will (A) have care, custody, and control of the Design-Build Right of Way for the Project Assets and (B) be responsible for the security and protection of active construction areas on the Project Assets and the Project Right of Way and (1) all materials, equipment, supplies and any other property of any Concessionaire Party and (2) all materials, equipment, supplies and any other property of the Department being held in a secure location at or on the Project Assets or otherwise being used or procured in connection with the Work, whether or not on the Project Right of Way.

(ii) Through the coordination process described in Section 8.07, the Concessionaire and the Department will determine from time to time which portions of the existing HOV Lanes will be open for traffic or under construction.

(iii) On and after the Substantial Completion Date, the 395 Early Final Completion Date, the 395 Final Completion Date, the Fred Ex Final Completion Date, the Opitz Boulevard Ramp Final Completion Date, or the Seminary Road Ramp Final Completion Date, as applicable, to the end of the Term, the Concessionaire will have care, custody, and control of the Project Assets (other than the Department Shared Assets and the 395 Department Assets). For the avoidance of doubt, except as set forth in subsection (a)(i) above, the Department will have care, custody, and control of the 395 Department Assets.

(iv) Prior to the Southbound Opening Date, the Department will have care, custody and control of the Project Assets within the southbound portion of the STE Corridor. After the Southbound Opening Date, the Concessionaire will have care, custody and control of the Project Assets within the southbound portion of the STE Corridor. Prior to the STE Final Acceptance Date, the Department will have care, custody and control of the Project Assets within the northbound portion of the STE Corridor. After the STE Final Acceptance Date, the Concessionaire will have care, custody and control of the Project Assets within the northbound portion of the STE Corridor.

(b) Turnover Process. The Concessionaire will implement and comply with the Turnover Plan to ensure the timely and orderly transition of operations and maintenance of the Project from the Department to the Concessionaire. The parties will cooperate and coordinate with

each other with respect to activities undertaken pursuant to the Turnover Plan attached as Exhibit V. As of the Third Amended and Restated Agreement Date, the Turnover Plan attached as Exhibit V relates to the 395 Project (other than the Seminary Road Ramp HOT Lanes) only.

Section 9.02 Conditions Precedent to Service Commencement of the Project

(a) Regarding the Original Project, the Concessionaire will not initiate Service Commencement until the following conditions have been satisfied (or the Department, in its sole discretion, waives any such condition) and the Department has delivered notice to that effect to the Concessionaire (the “Service Commencement Notice to Proceed”):

(i) the Department has issued the Substantial Completion Certificate, or it has been determined pursuant to the dispute resolution procedures set forth in this Agreement that the Department should have issued such certificate;

(ii) the Department has approved the Operations and Maintenance Plan, the updated Performance Requirements Baseline Tables, all other Project Documentation and all other Project Development Plans required by the Technical Requirements to be submitted on or before the Service Commencement Date;

(iii) the Concessionaire has received and delivered to the Department copies of all Governmental Approvals necessary to operate the Project and has satisfied all conditions and requirements thereof which must be satisfied before the Project can be lawfully opened for regular public use, all such Governmental Approvals remain in full force and effect, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval;

(iv) all insurance policies required under Section 17.01 for the Operating Period have been obtained and will be in full force and effect, and the Concessionaire has delivered to the Department duplicate originals or copies thereof (or endorsements reasonably acceptable to the Department extending coverage to the Project), certified by the Concessionaire’s insurance broker to be true and correct copies of the originals;

(v) there exists no Concessionaire Default for which the Concessionaire has received notice from the Department, except as to any Concessionaire Default that has been cured or for which Service Commencement will effect its cure, and there exists no event or condition that, with notice or lapse of time, would constitute a Concessionaire Default;

(vi) all Operations and Maintenance Agreements and agreements relating to toll collection and violation enforcement on the HOT Lanes are in full force and effect;

(vii) the Concessionaire has implemented the Maintenance Management System in accordance with the Technical Requirements;

(viii) to the extent not previously completed pursuant to Section 8.08, the Concessionaire has completed the toll commissioning process described in the Technical Requirements, and the ETTM System is completed, has passed all demonstration and performance testing in accordance with the Construction Documentation and the Technical

Requirements, including demonstration of interoperability with E-ZPass or any successor to E-ZPass then utilized on State Highways, and is ready for normal operation unless previously completed pursuant to Section 8.08;

(ix) the Concessionaire has deposited the Source Code Documentation with the Escrow Agent in accordance with Section 18.06;

(x) all Project Agreements are in full force and effect;

(xi) the Concessionaire has paid or caused to be paid to the Department all amounts due and payable from the Concessionaire to the Department, including, but not limited to, Lane Closure Damages, in connection with this Agreement, including any applicable interest thereon (except such amounts subject to dispute in accordance with the dispute resolution procedures);

(xii) the Concessionaire has provided to the Department the training required to have been provided prior to Service Commencement by the Technical Requirements;

(xiii) the Concessionaire has submitted to the Department an Annual Budget for the remainder of the Agreement Year in which the Substantial Completion Date occurs (or, if the remainder of such year is shorter than 90 Days, an Annual Budget that conforms with the requirements specified in Section 9.08, for the remainder of such Agreement Year and for the following Agreement Year); and

(xiv) the Concessionaire has certified to the Department in writing that the conditions set forth in this subsection (a) have been satisfied as of the date of such certification.

(b) The parties will comply with the submittal and review procedures set forth in Section 10.05 in the Department's determination of whether the Concessionaire has satisfied the conditions precedent for achieving Service Commencement.

(c) The Department's issuance (or deemed issuance) of the Service Commencement Notice to Proceed will not constitute a waiver by the Department of any then-existing breach of this Agreement by the Concessionaire.

(d) Regarding the southbound portion of the STE, the Concessionaire will not initiate Service Commencement on the southbound portion of the STE until the following conditions have been achieved to the satisfaction of the Department in consultation with the Concessionaire (or the Department, in its sole discretion, waives any such condition), which shall in any event be completed by the Concessionaire within the 90 day timeframe set forth in Section 8A.06(a):

(i) the design-build work, including construction, on the southbound portion of the STE has been completed by the STE Design-Build Contractor under and in accordance with the terms of the STE Design-Build Contract;

(ii) the Concessionaire has provided to the Department and the Department has approved an updated Operations and Maintenance Plan, updated Performance

Requirements Baseline Tables, and updated versions of all other relevant Project Documentation;

(iii) other than as set forth in clause (iv) below, the Concessionaire has received and delivered to the Department copies of all Governmental Approvals necessary to operate the southbound portion of the STE and has satisfied all conditions and requirements thereof which must be satisfied before the southbound portion of the STE can be lawfully opened for regular public use, all such Governmental Approvals remain in full force and effect, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval;

(iv) the Department has received all Governmental Approvals from the CTB and FHWA necessary to operate the southbound portion of the STE;

(v) all insurance policies required under Section 17.01 for the Operating Period have been amended to include the STE and obtained and will be in full force and effect, and the Concessionaire has delivered to the Department duplicate originals or copies thereof (or endorsements reasonably acceptable to the Department extending coverage to the Project), certified by the Concessionaire's insurance broker to be true and correct copies of the originals;

(vi) all Operations and Maintenance Agreements and agreements relating to toll collection and violation enforcement, if any, have been amended to include the southbound portion of the STE and are in full force and effect;

(vii) the Concessionaire has amended the Maintenance Management System in accordance with the Technical Requirements;

(viii) the Concessionaire has completed the testing, commissioning and integration of the ETTM System for the STE into the ETTM System for the Original HOT Lanes;

(ix) the Concessionaire has amended and deposited the Source Code Documentation with the Escrow Agent in accordance with Section 18.06;

(x) all Project Agreements are in full force and effect;

(xi) the Concessionaire has paid to the Department all amounts due and payable from the Concessionaire to the Department under the Cost Sharing Agreement; and

(xii) the Concessionaire has certified to the Department in writing that the conditions set forth in this subsection have been satisfied as of the date of such certification.

(e) Regarding the northbound portion of the STE, the Concessionaire will not initiate Service Commencement on the northbound portion of the STE until the following conditions have been achieved to the satisfaction of the Department in consultation with the Concessionaire (or the Department, in its sole discretion, waives any such condition), which shall in any event be completed by the Concessionaire within the 90 day timeframe set forth in Section 8A.06(b):

(i) the design-build work, including construction, on the northbound portion of the STE has been completed by the STE Design-Build Contractor under and in accordance with the terms of the STE Design-Build Contract;

(ii) the Concessionaire has provided to the Department and the Department has approved an updated Operations and Maintenance Plan, updated Performance Requirements Baseline Tables, and updated versions of all other relevant Project Documentation;

(iii) other than as set forth in clause (iv) below, the Concessionaire has received and delivered to the Department copies of all Governmental Approvals necessary to operate the northbound portion of the STE and has satisfied all conditions and requirements thereof which must be satisfied before the northbound portion of the STE can be lawfully opened for regular public use, all such Governmental Approvals remain in full force and effect, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval;

(iv) the Department has received all Governmental Approvals from the CTB and FHWA necessary to operate the northbound portion of the STE;

(v) all insurance policies required under Section 17.01 for the Operating Period have been amended to include the STE and obtained and will be in full force and effect, and the Concessionaire has delivered to the Department duplicate originals or copies thereof (or endorsements reasonably acceptable to the Department extending coverage to the Project), certified by the Concessionaire's insurance broker to be true and correct copies of the originals;

(vi) all Operations and Maintenance Agreements and agreements relating to toll collection and violation enforcement, if any, have been amended to include the northbound portion of the STE and are in full force and effect;

(vii) the Concessionaire has amended the Maintenance Management System in accordance with the Technical Requirements;

(viii) the Concessionaire has completed the testing, commissioning and integration of the ETTM System for the STE into the ETTM System for the Original HOT Lanes;

(ix) the Concessionaire has amended and deposited the Source Code Documentation with the Escrow Agent in accordance with Section 18.06;

(x) all Project Agreements are in full force and effect;

(xi) the Concessionaire has paid to the Department all amounts due and payable from the Concessionaire to the Department under the Cost Sharing Agreement;

(xii) the Concessionaire certifies to the Department in writing that all other conditions set forth in this subsection have been satisfied; and

(xiii) the Department has assigned the warranties under the STE Design-Build Contract in accordance with Section 8A.08(a).

(f) Regarding the 395 Project, the Concessionaire will not initiate Service Commencement on the 395 HOT Lanes until the following conditions have been satisfied (or the Department, in its sole discretion, waives any such condition) and the Department has delivered notice to that effect to the Concessionaire (the “395 Service Commencement Notice to Proceed”):

(i) the Concessionaire determines that the Design-Build Work and the TTMS Work, including construction, on the 395 HOT Lanes (except for the sound walls along the 395 HOT Lanes) has been completed by the 395 Design-Build Contractor and the TTMS Contractor, respectively, under and in accordance with the terms of the 395 Design-Build Contract, the 395 TTMS Contract and this Agreement, as applicable, and the Concessionaire has otherwise completed the Work in accordance with this Agreement, including the Technical Requirements, and with the Construction Documentation, such that the Project Assets are in a physical condition that they can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit;

(ii) the Department has approved the Operations and Maintenance Plan, the updated Performance Requirements Baseline Tables, all other Project Documentation and all other Project Development Plans required by the Technical Requirements to be submitted on or before the 395 Service Commencement Date;

(iii) other than as set forth in clause (iv) below, the Concessionaire has received and delivered to the Department copies of all Governmental Approvals necessary to operate the 395 HOT Lanes and has satisfied all conditions and requirements thereof which must be satisfied before the 395 HOT Lanes can be lawfully opened for regular public use, all such Governmental Approvals remain in full force and effect, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval;

(iv) the Department has received all Governmental Approvals from the CTB and FHWA necessary to operate the 395 HOT Lanes;

(v) all insurance policies required under Section 17.01 for the Operating Period have been obtained (or existing policies for the Original HOT Lanes have been amended to include the 395 Concessionaire Assets) and will be in full force and effect, and the Concessionaire has delivered to the Department duplicate originals or copies thereof (or endorsements reasonably acceptable to the Department extending coverage to the Project), certified by the Concessionaire’s insurance broker to be true and correct copies of the originals;

(vi) there exists no Concessionaire Default or 395 Concessionaire Breach for which the Concessionaire has received notice from the Department, except as to any Concessionaire Default or 395 Concessionaire Breach that has been cured or for which Service Commencement will effect its cure, and there exists no event or condition that,

with notice or lapse of time, would constitute a Concessionaire Default or a 395 Concessionaire Breach;

(vii) all Operations and Maintenance Agreements and agreements relating to toll collection and violation enforcement, including the Electronic Toll Collection Agreement and the Violation Processing Services Agreement, have been obtained or amended to include the 395 Concessionaire Assets and are in full force and effect;

(viii) the Concessionaire has implemented the Maintenance Management System for the 395 Concessionaire Assets in accordance with the Technical Requirements;

(ix) the Concessionaire has completed the testing, commissioning and integration of the ETTM System for the 395 HOT Lanes into the ETTM System for the Original HOT Lanes and the 395 HOT Lanes and the ETTM System is completed, has passed all demonstration and performance testing in accordance with the Construction Documentation and the Technical Requirements, including demonstration of interoperability with E-ZPass or any successor to E-ZPass then utilized on State Highways, and is ready for normal operation unless the foregoing conditions have been previously satisfied under Section 9.02(a)(viii);

(x) the Concessionaire has deposited the Source Code Documentation with the Escrow Agent in accordance with Section 18.06;

(xi) all Project Agreements are in full force and effect;

(xii) the Concessionaire has paid or caused to be paid to the Department all amounts due and payable from the Concessionaire to the Department, including, but not limited to, Lane Closure Damages, in connection with this Agreement, including any applicable interest thereon (except such amounts subject to dispute in accordance with the dispute resolution procedures);

(xiii) the Concessionaire has certified to the Department in writing that the conditions set forth in this subsection (f) have been satisfied as of the date of such certification;

(xiv) all lanes of traffic (including ramps, interchanges, overpasses, underpasses, and other crossings) set forth in the Construction Documentation are in their final configuration and open for normal and safe use and operation;

(xv) all safety features are installed and functional, including, as required, shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;

(xvi) all required illumination for normal and safe use and operation is installed and functional in accordance with the Technical Requirements;

(xvii) all required signs and signals for normal and safe use and operation are installed and functional in accordance with the Technical Requirements;

(xviii) the need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance) and except for temporary lane closures in accordance with and as permitted by the Department-approved TMP; and

(xix) the TMS (if any) and safety features for TMS components are installed and functional.

(g) Regarding the Fred Ex Project, the Concessionaire will not initiate Service Commencement on the Fred Ex HOT Lanes until the following conditions have been satisfied (or the Department, in its sole discretion, waives any such condition) and the Department has delivered notice to that effect to the Concessionaire (the "Fred Ex Service Commencement Notice to Proceed"):

(i) the Concessionaire determines that the Fred Ex Design-Build Work and the Fred Ex TTMS Work, including construction, on the Fred Ex HOT Lanes has been completed by the Fred Ex Design-Build Contractor and the TTMS Contractor, respectively, under and in accordance with the terms of the Fred Ex Design-Build Contract, the Fred Ex TTMS Contract and this Agreement, as applicable, and the Concessionaire has otherwise completed the Work in accordance with this Agreement, including the Technical Requirements, and with the Construction Documentation, such that the Project Assets are in a physical condition that they can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit;

(ii) the Department has approved the Operations and Maintenance Plan, the updated Performance Requirements Baseline Tables, all other Project Documentation and all other Project Development Plans required by the Technical Requirements to be submitted on or before the Fred Ex Service Commencement Date;

(iii) other than as set forth in clause (iv) below, the Concessionaire has received and delivered to the Department copies of all Governmental Approvals necessary to operate the Fred Ex HOT Lanes and has satisfied all conditions and requirements thereof which must be satisfied before the Fred Ex HOT Lanes can be lawfully opened for regular public use, all such Governmental Approvals remain in full force and effect, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval;

(iv) the Department has received all Governmental Approvals from the CTB and FHWA necessary to operate the Fred Ex HOT Lanes;

(v) all insurance policies required under Section 17.01 for the Operating Period have been obtained (or existing policies for the Original HOT Lanes have been amended to include the Fred Ex HOT Lanes) and will be in full force and effect, and the Concessionaire has delivered to the Department duplicate originals or copies thereof (or endorsements reasonably acceptable to the Department extending coverage to the Fred Ex

Project), certified by the Concessionaire's insurance broker to be true and correct copies of the originals;

(vi) there exists no Concessionaire Default or Fred Ex Concessionaire Breach for which the Concessionaire has received notice from the Department, except as to any Concessionaire Default or Fred Ex Concessionaire Breach that has been cured or for which Service Commencement will effect its cure, and there exists no event or condition that, with notice or lapse of time, would constitute a Concessionaire Default or a Fred Ex Concessionaire Breach;

(vii) all Operations and Maintenance Agreements and agreements relating to toll collection and violation enforcement, including the Electronic Toll Collection Agreement and the Violation Processing Services Agreement, have been obtained or amended to include the Fred Ex HOT Lanes and are in full force and effect;

(viii) the Concessionaire has implemented the Maintenance Management System for the Fred Ex HOT Lanes in accordance with the Technical Requirements;

(ix) the Concessionaire has completed the testing, commissioning, and integration of the ETTM System for the Fred Ex HOT Lanes into the ETTM System for the Original HOT Lanes and the ETTM System is completed, has passed all demonstration and performance testing in accordance with the Construction Documentation and the Technical Requirements, including demonstration of interoperability with E-ZPass or any successor to E-ZPass then utilized on State Highways, and is ready for normal operation;

(x) the Concessionaire has deposited the Source Code Documentation with the Escrow Agent in accordance with Section 18.06;

(xi) all Project Agreements are in full force and effect;

(xii) the Concessionaire has paid, or has caused the Equity Sponsors to pay, to the Department all amounts due and payable from the Concessionaire to the Department in connection with this Agreement, including, but not limited to, Lane Closure Damages and the full Permit Fee Buyout Payment (and receipt of such Permit Fee Buyout payment has been confirmed in writing by the Department), and including any applicable interest thereon (except such amounts subject to dispute in accordance with the dispute resolution procedures);

(xiii) the Concessionaire has certified to the Department in writing that the conditions set forth in this subsection (g) have been satisfied as of the date of such certification;

(xiv) all lanes of traffic (including ramps, interchanges, overpasses, underpasses, and other crossings) set forth in the Construction Documentation are in their final configuration and open for normal and safe use and operation;

(xv) all safety features are installed and functional, including, as required, shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings,

cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;

(xvi) all required illumination for normal and safe use and operation is installed and functional in accordance with the Technical Requirements;

(xvii) all required signs and signals for normal and safe use and operation are installed and functional in accordance with the Technical Requirements;

(xviii) the need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance) and except for temporary lane closures in accordance with and as permitted by the Department-approved TMP; and

(xix) the TMS (if any) and safety features for TMS components are installed and functional.

(h) Regarding the Opitz Boulevard Ramp Project, the Concessionaire will not initiate Service Commencement until the following conditions have been satisfied (or the Department, in its sole discretion, waives any such condition) and the Department has delivered notice to that effect to the Concessionaire (the “Opitz Boulevard Ramp Service Commencement Notice to Proceed”):

(i) the Concessionaire determines that the Opitz Boulevard Ramp Construction Work, including construction of the Opitz Boulevard Ramp HOT Lanes, has been completed by the Opitz Boulevard Ramp Construction Contractor and the TMS Contractor under and in accordance with the terms of the Opitz Boulevard Ramp Construction Contract and Opitz Boulevard Ramp TMS Contract, as applicable, and in each case this Agreement, and the Concessionaire has otherwise completed the Work in accordance with this Agreement, including the Technical Requirements, and with the Construction Documentation, such that the Project Assets are in a physical condition that they can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit;

(ii) the Department has approved an updated Operations and Maintenance Plan, the updated Performance Requirements Baseline Tables, all other Project Documentation and all other Project Development Plans required by the Technical Requirements to be submitted on or before the Opitz Boulevard Ramp Commencement Date;

(iii) the Concessionaire has received and delivered to the Department copies of all Governmental Approvals necessary to operate the Opitz Boulevard Ramp HOT Lanes and has satisfied all conditions and requirements thereof which must be satisfied before the Opitz Boulevard Ramp HOT Lanes can be lawfully opened for regular public use, all such Governmental Approvals remain in full force and effect, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval;

(iv) all insurance policies required under Section 17.01 for the Operating Period have been obtained (or existing policies for the Original HOT Lanes have been amended to include the Opitz Boulevard Ramp HOT Lanes) and will be in full force and effect, and the Concessionaire has delivered to the Department duplicate originals or copies thereof

(or endorsements reasonably acceptable to the Department extending coverage to the Opitz Boulevard Ramp Project), certified by the Concessionaire's insurance broker to be true and correct copies of the originals;

(v) there exists no Concessionaire Default or Opitz Boulevard Ramp Concessionaire Breach for which the Concessionaire has received notice from the Department, except as to any Concessionaire Default or Opitz Boulevard Ramp Concessionaire Breach that has been cured or for which Service Commencement will effect its cure, and there exists no event or condition that, with notice or lapse of time, would constitute a Concessionaire Default or an Opitz Boulevard Ramp Concessionaire Breach;

(vi) the Concessionaire has implemented the Maintenance Management System for the Opitz Boulevard Ramp HOT Lanes in accordance with the Technical Requirements;

(vii) the Concessionaire has deposited the Source Code Documentation with the Escrow Agent in accordance with Section 18.06;

(viii) all Project Agreements are in full force and effect;

(ix) the Concessionaire has paid, or has caused the Equity Sponsors to pay, to the Department all amounts due and payable from the Concessionaire to the Department in connection with this Agreement, including, but not limited to, Lane Closure Damages, and including any applicable interest thereon (except such amounts subject to dispute in accordance with the dispute resolution procedures);

(x) the Concessionaire has certified to the Department in writing that the conditions set forth in this subsection (h) have been satisfied as of the date of such certification;

(xi) all lanes of traffic (including ramps, interchanges, overpasses, underpasses, and other crossings) set forth in the Construction Documentation are in their final configuration and open for normal and safe use and operation;

(xii) all safety features are installed and functional, including, as required, shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;

(xiii) all required illumination for normal and safe use and operation is installed and functional in accordance with the Technical Requirements;

(xiv) all required signs and signals for normal and safe use and operation are installed and functional in accordance with the Technical Requirements;

(xv) the need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance) and except for temporary lane closures in accordance with and as permitted by the Department-approved TMP; and

(xvi) the TMS (if any) and safety features for TMS components are installed and functional.

(i) Regarding the Seminary Road Ramp Project, the Concessionaire will not initiate Service Commencement until the following conditions have been satisfied (or the Department, in its sole discretion, waives any such condition) and the Department has delivered notice to that effect to the Concessionaire (the “Seminary Road Ramp Service Commencement Notice to Proceed”):

(i) the Concessionaire has completed the Seminary Road Ramp Project Construction Work in accordance with this Agreement, including the Technical Requirements, and with the Construction Documentation, such that the applicable Project Assets are in a physical condition that they can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit;

(ii) the Concessionaire has received and delivered to the Department copies of all Governmental Approvals necessary to operate the Seminary Road Ramp HOT Lanes and has satisfied all conditions and requirements thereof which must be satisfied before the Seminary Road Ramp can be lawfully opened for regular public use, all such Governmental Approvals remain in full force and effect, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval;

(iii) there exists no Concessionaire Default or Seminary Road Ramp Concessionaire Breach for which the Concessionaire has received notice from the Department, except as to any Concessionaire Default or Seminary Road Ramp Concessionaire Breach that has been cured or for which Service Commencement will effect its cure, and there exists no event or condition that, with notice or lapse of time, would constitute a Concessionaire Default or a Seminary Road Ramp Concessionaire Breach;

(iv) all Project Agreements are in full force and effect;

(v) the Concessionaire has paid, or has caused the Equity Sponsors to pay, to the Department all amounts due and payable from the Concessionaire to the Department in connection with this Agreement, including, but not limited to, Lane Closure Damages, and including any applicable interest thereon (except such amounts subject to dispute in accordance with the dispute resolution procedures);

(vi) the Concessionaire has certified to the Department in writing that the conditions set forth in this subsection (i) have been satisfied as of the date of such certification;

(vii) all required signs and signals for normal and safe use and operation are installed and functional in accordance with the Technical Requirements;

(viii) the need for temporary traffic controls or for lane closures at any time has ceased (except for any then required for routine maintenance) and except for temporary lane closures in accordance with and as permitted by the Department-approved TMP; and

(ix) the TMS (if any) and safety features for TMS components are installed and functional.

Section 9.03 Concessionaire Obligation to Manage and Operate

(a) At all times following the respective Service Commencement Date, the Concessionaire, at its sole cost and expense (except as otherwise provided in this Agreement), will cause the Project to be managed, maintained, and operated in accordance with Law, all Governmental Approvals, the terms, conditions and standards set forth in this Agreement, including the requirements set forth in the Technical Requirements, and in accordance with Good Industry Practice. Without limiting the foregoing, the Concessionaire agrees to be responsible for the following, at its sole cost and expense at all times following the respective Service Commencement Date for the Project:

(i) the management and control of traffic on the Project Assets, including, but not limited to, incident response services and temporary partial or full closures of the Project Assets, subject to the Department's rights to assume control as expressly provided in this Agreement;

(ii) the maintenance and repair of the Project Assets and all systems and components thereof, including the ETTM System, which the Concessionaire may upgrade, modify, change and replace, as applicable, in accordance with this Agreement and the requirements set forth in the Technical Requirements;

(iii) the operation of the Project Assets and the ETTM System, and otherwise carrying out the collection and enforcement of tolls and other incidental charges in accordance with Article 5 respecting the Project Assets;

(iv) the maintenance, compliance with and renewal of Governmental Approvals necessary and incidental to the foregoing activities;

(v) traffic management, and maintenance and repair responsibilities under Section 9.04(a) in accordance with the Technical Requirements; and

(vi) except as otherwise specifically provided in this Agreement (including the right of the Concessionaire to close all or a portion of the HOT Lanes in accordance with the provisions hereof), at all times during the Term, causing the Project Assets to be continuously open and operational for use by all members of the public travelling in Permitted Vehicles 24 hours a day, 365 Days a year.

(b) Snow and Ice Removal.

(i) Prior to the applicable Service Commencement Date, the Department will, at its own cost, remove snow and ice from the HOV Lanes that are open to traffic.

(ii) Subject to Section 9.03(b)(iv), the Department will provide snow and ice removal services on the HOT Lanes at a comparable level of service to that it provides on the GP Lanes. The Concessionaire will provide access to the HOT Lanes to the Department or its contractors to provide snow and ice removal services. If the Concessionaire does not

provide access to the HOT Lanes to the Department or its contractors, then the Department will not be required to provide snow and ice removal services on the applicable HOT Lanes during the pendency of such denial of access.

(iii) Other than as provided in Section 9.03(b)(iv), the Department will have no liability to the Concessionaire arising out of its snow and ice removal services. If the Department's contractors for snow and ice removal damage the Project Assets, the Department will provide to the Concessionaire any amounts that the Department has received in respect of such damage from such contractor or its insurer. Subject to Section 9.03(b)(i) and Section 9.03(b)(ii), the Department will have full discretion to establish priorities for its contractors regarding timing and location of services, materials and equipment, without liability to the Concessionaire, other than as provided in clause (iv) below.

(iv) The Concessionaire may notify the Department if the Department fails at any time to provide snow and ice removal to the HOT Lanes at a level of service comparable to that it provides on the GP Lanes. Such notice will be given verbally, to be immediately followed up in writing, to the Department's District Administrator and Assistant District Administrator for Maintenance or its designee (i.e. Duty Officer) for the Northern Virginia District and/or the Fredericksburg District, as applicable, for the applicable section of the HOT Lanes. If the Department fails to respond affirmatively within two hours of the written notice from the Concessionaire or if the Department does not begin snow and ice removal services within four hours of such written notice, except if the Concessionaire does not provide access to the HOT Lanes to the Department, then the Concessionaire may arrange for other contractors to provide such service and the Department will pay the Concessionaire for such contractors' reasonable documented cost of snow and ice removal services; *provided* that such contractors will not in any way hinder the removal of snow and ice from the GP Lanes.

(v) The Concessionaire may arrange for a contractor to provide snow and ice removal services to the HOT Lanes, at the Concessionaire's sole cost and expense, even if the Department is providing such services at a level of service comparable to that it provides on the GP Lanes, with prior written notice to the Department; *provided* that any such contractor will not in any way hinder the removal of snow and ice from the GP Lanes. Such notice will be given verbally, to be immediately followed up in writing, to the Department's District Administrator and Assistant District Administrator for Maintenance or its designee (i.e. Duty Officer) for the Northern Virginia District and/or the Fredericksburg District, as applicable, for the applicable section of the HOT Lanes.

(c) Drainage. The Concessionaire will be responsible, at its own cost and expense, for the maintenance, repair and replacement of the existing drainage system located within and outside of the Project Right of Way in accordance with the Technical Requirements, except to the extent such responsibility is allocated to the Department in accordance with the Technical Requirements. The Concessionaire will be solely responsible, at its own cost and expense, for the maintenance, repair and replacement of any drainage and stormwater management features that are constructed by the Concessionaire as part of the Fred Ex Project, without regard to whether such drainage or stormwater management features are categorized as a "Department Shared Asset" in the Technical Requirements.

(d) Operating Costs. At the request of either party from time to time (but not more than once per year), the Concessionaire and the Department will discuss in good faith possible adjustments to the Operating Costs, using the federal Contract Cost Principles and Procedures, 48 C.F.R. 31.205, as non-binding guidance to ensure that only reasonable and customary costs are included as Operating Costs.

Section 9.04 Procedures Relating to Maintenance Work

(a) General. The Concessionaire will perform all maintenance obligations with respect to the Project in accordance with this Agreement and the Technical Requirements.

(b) Life Cycle Maintenance Plan. No later than 60 Days before the beginning of each Agreement Year after the applicable Service Commencement Date, the Concessionaire will prepare and deliver to the Department a full five-year period maintenance plan on a rolling basis that describes life cycle asset maintenance for the Project (each, a “Life Cycle Maintenance Plan”) in accordance with this Agreement, including the Technical Requirements. The Life Cycle Maintenance Plan will include a description of all Major Maintenance to be undertaken during such five-year period, by Agreement Year, by component, item or discrete project (each, a “Task”), the estimated costs and timing relating to each Task, the underlying assumptions used to develop such plan, including assumptions arising from the re-evaluations of the physical condition of the Assets conducted pursuant to Section 9.04(d); the calculation of the required deposit to the Major Maintenance Reserve Fund; and such other information as may be reasonably requested by the Department.

(c) Review and Approval of Life Cycle Maintenance Plan.

(i) The Department will review and approve the Life Cycle Maintenance Plan and components thereof, including, but not limited to, the proposed scope of work, timing and estimated costs for the Major Maintenance. The Department will deliver its comments, approval or disapproval to the Concessionaire within 45 Days after the Concessionaire has delivered each proposed Life Cycle Maintenance Plan to the Department in accordance with Section 9.04(b).

(ii) The Concessionaire will reasonably consider any changes or additions proposed by the Department to the proposed Life Cycle Maintenance Plan and will modify the Life Cycle Maintenance Plan to reflect those changes and additions which are consistent with the standards and requirements of this Agreement. The Concessionaire shall deliver any required modified Life Cycle Maintenance Plan to the Department for its approval.

(iii) In the event of any Dispute relating to a Life Cycle Maintenance Plan, the Department and the Concessionaire will endeavor in good faith to resolve any such Dispute within 60 Days after it is provided to the Department. Any Disputes raised by the Department with respect to the Life Cycle Maintenance Plan must be based on whether it and the underlying assumptions are reasonable, realistic and consistent with Good Industry Practice, the Technical Requirements and Law. If no agreement is reached within such 60-Day period as to any such matter, either party may submit the Dispute to the dispute resolution procedures set forth in Article 21. Until resolution of any Dispute relating to a

Life Cycle Maintenance Plan, the treatment of the disputed Tasks in the most recently-approved Life Cycle Maintenance Plan will remain in effect and govern the requirements relating to such Tasks. If there is no approved Life Cycle Maintenance Plan then in effect, the Concessionaire will proceed as directed by the Department until resolution of such Dispute.

(iv) The Concessionaire may reasonably request changes or additions to the approved Life Cycle Maintenance Plan prior to the delivery of the next Life Cycle Maintenance Plan in accordance with Section 9.04(b). The Department shall review such request within 30 Days and will deliver its comments, approval or disapproval to the Concessionaire within 45 Days. Until such request is approved, the most recently-approved Life Cycle Maintenance will remain in effect, including the amount deposited to the Major Maintenance Reserve Account.

(d) Inspection and Implementation.

(i) After the applicable Service Commencement Date, the Concessionaire will conduct inspections of the physical condition of the Project Assets pursuant to the Technical Requirements. Every five years after the applicable Service Commencement Date, the Concessionaire will conduct an assessment of the physical condition of the Project Assets pursuant to the Technical Requirements, and will prepare a comparative analysis of such conditions to the conditions as previously reported (or, with respect to any Project Enhancements, their condition upon completion thereof), such analysis to take into account any changes in Federal Requirements and changes to safety standards. The condition of each Asset will be assessed using the Department's Maintenance Rating Program in accordance with the Technical Requirements. If any Asset is determined by the Concessionaire or the Department to fall below the applicable level or rating specified in the Technical Requirements for such Asset, the Concessionaire will, within 90 Days of such assessment, develop and submit to the Department a plan to restore such Asset to a condition that will enable the Asset to meet all applicable Performance Requirements, and such plan will also include a budget, timeline and identification of the funding sources (if known at the time) that will be utilized to restore such Asset.

(ii) The Department will be responsible at its sole cost and expense for inspection of bridges and structures on the Project Right of Way in accordance with the Technical Requirements. The Concessionaire will cooperate with the Department in its conduct of inspections and will use reasonable efforts to minimize any disruption to the Department's conduct of such inspections. The Department and the Concessionaire will use reasonable efforts to minimize any disruption to or impairment of the Work, the Project and the Department's inspection activities.

(iii) If the Concessionaire fails to complete any of the Tasks in accordance with this Agreement and the applicable Life Cycle Maintenance Plan, the Department may demand by notice in writing that such Tasks be completed by the Concessionaire. If the Concessionaire has failed to commence and diligently continue to perform such Tasks within 30 Days after the Department delivers such notice, the Department may, at its option, but is not obligated to, either (A) carry out such Task or correct such defective work

using Department personnel, materials and equipment or (B) procure the services for such Task or corrective work by one or more contractors. If the Concessionaire fails to commence and diligently continue to perform such Tasks within 30 Days after the Department delivers notice pursuant to this Section 9.04(d)(iii) and the Department elects to pursue its rights pursuant to Section 9.04(d)(iii)(A) or (B), then the Concessionaire will pay the Department's Allocable Costs it incurs to complete such Task or corrective work, and its third-party costs to procure such contract(s).

(iv) Notwithstanding anything to the contrary in Section 9.04(d)(iii), the Concessionaire may, by written notice delivered to the Department within 30 Days of receipt of the Department's notice of demand described in Section 9.04(d)(iii), object to any such demand by the Department on the basis that the Concessionaire has completed the Task(s) specified in the Department's demand in accordance with this Agreement and the applicable Life Cycle Maintenance Plan or that such Task(s) are not then required in accordance with this Agreement or the applicable Life Cycle Maintenance Plan, which notice will give details of the grounds for such objection. Upon the giving of any such notice, the parties will endeavor to reach agreement as to any matters referred to in the notice. If no agreement is reached as to any such matter within 30 Days after the giving of such notice, either party may refer the Dispute to the dispute resolution procedures set forth in Article 21. Notwithstanding the foregoing, the Concessionaire will perform the Task as directed by the Department and the Department will be entitled to exercise its remedies for the Concessionaire's failure to comply with such directive in accordance with this Agreement. If it is determined in accordance with the dispute resolution procedures in Article 21 that the Concessionaire was in compliance with its obligations under this Agreement, then such directive and any additional Work required by the Department will be treated as a Department Change pursuant to Section 14.02.

Section 9.05 Major Maintenance Reserve Fund

The Concessionaire will fund the Major Maintenance Reserve Fund in such amounts and in accordance with the terms as may be required by the Lenders.

Section 9.06 Police and Enforcement Services

(a) Other than with respect to the 395 HOT Lanes and the Fred Ex HOT Lanes, the Department will coordinate with the Virginia State Police to provide policing services, and to provide emergency services (fire and rescue), including traffic patrol and traffic law enforcement services, to be provided on the Project at a level of service equivalent to that provided on comparable State Highways from time to time. All such foregoing services will be provided without any charge to the Concessionaire or the Project (other than with respect to the 395 HOT Lanes and Fred Ex HOT Lanes). For the avoidance of doubt, such services will not include any enforcement of HOV compliance. In addition, if reasonably requested by the Concessionaire, the Department will assist the Concessionaire in obtaining enhanced levels of police services for the control of traffic for construction or maintenance activities or as otherwise needed (and in each case, at the Concessionaire's sole cost and expense). Notwithstanding such assistance, the Concessionaire will be solely responsible for obtaining such enhanced services and the Department does not guarantee that such services can be obtained.

(b) The Concessionaire may, at its sole cost and expense, engage the Virginia State Police to provide toll enforcement and HOV enforcement services (including the identification and apprehension of toll violators), and the Department will assist the Concessionaire in obtaining such services if so requested by the Concessionaire. The Concessionaire will not engage or permit the engagement of private security services to provide traffic patrol or traffic law enforcement services on the Project; *provided*, that the foregoing does not preclude the Concessionaire from engaging private security firms or employing other appropriate security devices, vehicle occupancy detection equipment or other automated technology to protect, collect and enforce the payment of Toll Revenues and to identify toll and/or HOV violators, subject to Law, and to enforce any private rights and civil remedies available to it respecting toll and/or HOV violations.

(c) Notwithstanding the foregoing, the Concessionaire will not permit any private security firm to stop vehicles, apprehend road users, or engage in any other direct enforcement activity on the Project Right of Way.

(d) The Department will not have any responsibility or liability to the Concessionaire resulting from or otherwise relating to the failure of the Virginia State Police or any other public agencies to provide policing services contemplated by this Section 9.06 or any of the acts or omissions of the Virginia State Police or such agencies with respect to such services.

(e) The parties further understand and agree that, as the Project Assets will constitute part of the State Highway system, the Virginia State Police and other public agencies will have access to the Project Assets and jurisdiction to enforce the laws and regulations of the State as they apply to the Project Assets.

(f) For the avoidance of doubt, the Concessionaire will be responsible for any coordination with the Virginia State Police and any costs owed to the Virginia State Police relating to law enforcement and any other work performed by the Virginia State Police on the 395 HOT Lanes and the Fred Ex HOT Lanes.

Section 9.07 Maintenance by the Department

(a) Except as otherwise provided in this Agreement, the Department will maintain, repair and, subject to and in accordance with the Department's normal course of operations and activities as in effect from time to time, cause to be open and operational, in a manner consistent with access to State Highways, so as to permit access to the HOT Lanes by Permitted Vehicles, the ramps, bridges and roadways directly connecting to the HOT Lanes over which the Department has sole control. The foregoing does not restrict the Department's right to operate existing or new facilities, to modify existing facilities, to construct new facilities, including Project Enhancements, and, subject to Section 12.02(d)(i) through (iii), to perform planned and emergency maintenance, renewal and replacement, safety and repair activities on existing and new facilities adjacent to or near the Project regardless of the impact of such activities on the Project.

(b) Except as set forth in the Technical Requirements, the Department will maintain and repair the Department Shared Assets, subject to and in accordance with the Technical Requirements and the Department's normal course of operations and activities as in effect from time to time. Except as set forth in the Technical Requirements, the cost for maintenance and repair of the Department Shared Assets will be paid by the Department.

(c) The Department will be responsible, at its own cost and expense, for the maintenance, repair and replacement of the existing drainage system located within and outside of the Project Right of Way in accordance with the Technical Requirements, except to the extent such responsibility is allocated to the Concessionaire in accordance with the Technical Requirements.

(d) Activities undertaken by the Department pursuant to this Section 9.07 will not constitute a Compensation Event, unless they meet the criteria as provided in this Agreement.

(e) The Department will be responsible, at its own cost and expense, for operation and maintenance of the traffic signals for the Opitz Boulevard Ramp HOT Lanes and the Seminary Road Ramp HOT Lanes as well as the other maintenance responsibilities with respect to the Seminary Road Ramp HOT Lanes set forth in Exhibit C-4.

Section 9.08 Annual Budget

(a) For each Agreement Year and partial Fiscal Year from and after the Final Acceptance Date, the Concessionaire will file with the Department an operating plan and annual budget for the Project on a cash flow basis at least 60 Days prior to the start thereof (an “Annual Budget”). Each Annual Budget will be in a form reasonably acceptable to the Department and show in reasonable detail in respect of such full or partial Agreement Year:

- (i) projected traffic;
- (ii) projected Gross Revenues and Gross Toll Revenues, including Toll Revenues;
- (iii) projected Operating Costs broken down in accordance with the definition of Operating Costs;
- (iv) projected costs of Major Maintenance pursuant to the approved Life Cycle Maintenance Plan in accordance with Section 9.04;
- (v) projected debt service and other amounts payable with respect to Concessionaire Debt, including Senior Concessionaire Debt, TIFIA debt service, VTIB debt service, Subordinate Debt, TIFIA Revenue Sharing Amount, required deposits to each reserve funds held for benefit of the Project Lenders;
- (vi) projected Major Maintenance Reserve Fund deposits and withdrawals;
- (vii) the Annual Transit Investment payments; and
- (viii) projected Distributions

(b) The Concessionaire shall provide to the Department an updated version of the contemporaneous Annual Budget to include the following Assets within 60 days of the following events: (i) the STE HOT Lanes upon the STE Final Acceptance Date; (ii) the 395 HOT Lanes upon the 395 Service Commencement Date and (iii) the Fred Ex HOT Lanes upon the Fred Ex Service Commencement Date. After each update required by (i), (ii) and (iii) above, the Concessionaire shall include the applicable Assets within each future Annual Budget.

(c) The Concessionaire will provide within 30 days of such request, any other information as the Department may reasonably require in connection with its review of the Annual Budget, including: (i) any amendments to operating budgets pursuant to the O&M Agreement; and (ii) any budgets related to the Shared Facilities Agreement.

(d) The Department's Authorized Representative shall notify the Concessionaire in writing that the Annual Budget is in a form reasonably acceptable to the Department and shows in reasonable detail the information required in this Section 9.08. For each Annual Budget submitted to the Department after the Gross Toll Revenue Payment Trigger, the Department will review and approve or reject the Annual Budget within 60 days of receipt; the Department may reasonably request additional information relating to its review of the Annual Budget, and may withhold approval if the Concessionaire does not provide information responsive to the Department's request. If an Annual Budget is rejected, the Department will state the reasons in writing and the Concessionaire shall resubmit the Annual Budget, addressing the reasons for rejection, for the Department's review and approval. The process will be repeated until the Department approves an Annual Budget for the relevant Agreement Year. Until the Annual Budget has been approved, the Concessionaire shall operate the Project consistent with the Annual Budget for the immediately preceding Agreement Year.

Section 9.09 Signage

(a) The Concessionaire will submit a Signage Plan to the Department for its review and approval pursuant to the Technical Requirements. The Concessionaire will limit its signage to the Project Right of Way and any other real property or real property rights as set forth in Section 8.05.

(b) The Concessionaire agrees that it shall, at its sole cost, install, operate and maintain on connecting State Highways such signs solely notifying motorists of the access to the HOT Lanes, the amount of tolls and fines for toll violations, the applicable High Occupancy Requirement, and other relevant information, in accordance with applicable Law and the Technical Requirements.

(c) The Department will remain responsible, at its cost, for general directional signs on State Highways informing the public of the direction and distance to the HOT Lanes and other State Highways. During the Term, the Department will also cooperate with, and use its commercially reasonable efforts to cause other public agencies or entities to cooperate with, the Concessionaire to install, at the Concessionaire's cost, additional signs along State Highways notifying motorists of the access to the HOT Lanes and any other communications relating to the HOT Lanes as are reasonably requested by the Concessionaire, subject to any obligation to obtain any necessary authorizations of any other Governmental Authority and in accordance with applicable Law. In connection with any such request, the Concessionaire will submit the proposed layout, location, type, size, color and content of all such traffic signs or other signs.

ARTICLE 10

CONCESSIONAIRE PROJECT AND QUALITY MANAGEMENT; DEPARTMENT OVERSIGHT AND OTHER SERVICES

Section 10.01 Project and Quality Management

The Concessionaire will provide oversight and management of the Project to control the scope, quality, cost, and on-time delivery of the Work. If the Concessionaire is required to rectify any Non-Conforming Work in accordance with Section 8.11(b), the parties will review the Quality Management System Plan to assess and determine whether changes, including increased management and oversight efforts by the Concessionaire, to such plan are necessary to prevent such further Non-Conforming Work. This Section 10.01 shall not apply to the design, development, and construction of the STE.

Section 10.02 Right to Oversee Work

(a) The Department will have the right at all times during the Term to carry out Oversight Services with respect to all aspects of the design, permitting, financing, acquisition, construction, installation, equipping, maintenance, repair, preservation, modification, operation, management, and administration of the Project. The Department's Oversight Services will not impact its right to rely on the Concessionaire to perform its obligations pursuant to this Agreement.

(b) The Concessionaire will fully cooperate with the Department to facilitate its conduct of Oversight Services. In the course of performing Oversight Services, the Department will use reasonable efforts to minimize the effect and duration of any disruption to or impairment of the Work or the Project.

Section 10.03 Department Access and Inspection

The Department, the FHWA, and their respective authorized agents will have unrestricted access at all times to enter upon, inspect, sample, measure, and physically test any part of the Project Assets or the Project Right of Way, as well as any materials, supplies, machinery, and equipment to be incorporated into or used in construction, operation, or maintenance of the Project. The Department will also have the right, upon reasonable advance written notice (except as provided in Section 18.07(b)) to the Concessionaire, to inspect financial or other records relating to the Project. Upon the Concessionaire's request, the Department will provide the Concessionaire with the results of any such test or inspections subject to any protections from disclosure under applicable Law.

Section 10.04 Compensation for Oversight Services

(a) Except as otherwise expressly provided in this Agreement, including, without limitation, Section 10.04(b), Section 10.04(c), Section 10.05(h), Section 11.05(a) and Section 24.03, the Department will not be compensated for its Oversight Services, whether in respect of the design, inspection, or permitting for the Project, any Project Enhancement or any Safety Compliance Orders.

(b) Notwithstanding Section 10.04(a), if at any time the Concessionaire has failed to perform any of its construction, operating, or maintenance obligations in any material respect then, in addition to other remedies available pursuant to this Agreement and the other Project Agreements, the Department, with written notice to the Concessionaire given concurrently with the increase in the Department's monitoring or as soon as practicable thereafter, is entitled to adequately and appropriately increase the level of its monitoring of the Project and the Concessionaire's compliance with its construction, operation, and maintenance obligations pursuant to this Agreement, until such time as the Concessionaire has demonstrated to the Department's reasonable satisfaction that it will perform and is capable of performing its construction, operation and maintenance obligations pursuant to this Agreement. The Concessionaire will compensate the Department for all Allocable Costs incurred by the Department as a result of such increased level of monitoring from and after the date on which such increased level of monitoring begins, *provided*, that if the increased monitoring is due to a delay in achieving Substantial Completion, Service Commencement, 395 Final Completion, Fred Ex Final Completion, Opitz Boulevard Ramp Final Completion or Final Acceptance, the Concessionaire will compensate the Department for such increased monitoring solely by payment of liquidated damages pursuant to Section 8.10. The Concessionaire's total liability to the Department during the Construction Period in connection with any increased monitoring will not exceed \$2,000,000 in the aggregate.

(c) If the Department increases its monitoring or oversight as permitted in this Agreement during the Operating Period, then the Department will give notice of such increased level of monitoring as provided in Section 10.04(b). Within 10 Days following the day on which increased monitoring activities begin, the Department will provide the Concessionaire with a budget for its increased oversight and/or monitoring activities which sets out its total proposed costs in reasonable detail. If there is a change in circumstances in the oversight activities or the events which precipitated them occurs following the submission of the Department's initial budget, then the Department will provide a revised budget, which budget will detail any increased costs.

(d) The Concessionaire may submit a cure plan describing specific actions the Concessionaire will undertake to improve its performance and avoid the need for increased monitoring, which the Department may accept or reject. Notwithstanding Section 10.04(c), if the Department accepts a cure plan, the Department shall not increase its monitoring or other Oversight Services unless the Concessionaire fails to diligently pursue such cure plan.

Section 10.05 Department Approvals

(a) This Section 10.05 sets forth procedures governing certain submittals or requests by the Concessionaire (or the Design-Build Contractor, the TTMS Contractor, or the O&M Contractor) to the Department (including, but not limited to, plans, schedules, designs, Design Documentation and Construction Documentation) which require an approval, review, comment, consent, notification, determination, decision or other response (collectively, a "Response") from the Department pursuant to this Agreement. All submittals or requests to the Department will be made in the form required by, and otherwise in conformity with, the requirements set forth in the Technical Requirements. Except as otherwise provided in this Agreement, the procedures set forth in this Section 10.05 will apply to any submittal or request by the Concessionaire relating to, or any required approval or disapproval by the Department of, the following: any proposed OSPS

Improvement Plan pursuant to Section 5.08(b); the issuance of a Design Work Notice to Proceed pursuant to Section 8.03(a) or a Construction Notice to Proceed pursuant to Section 8.03(b); any submittal of Design Documentation and Construction Documentation relating to the Work pursuant to Section 8.04(a); the approval of the ROW Acquisition and Relocation Plan pursuant to Section 8.05(a); the determination of whether Substantial Completion has been achieved pursuant to Section 8.08(e); the determination of whether Final Acceptance has been achieved pursuant to Section 8.09(c); the determination of whether 395 Final Completion has been achieved pursuant to Section 8.18(e); the determination of whether Fred Ex Final Completion has been achieved pursuant to Section 8.21; the determination of whether Opitz Boulevard Ramp Final Completion has been achieved pursuant to Section 8.23; the determination of whether Seminary Road Ramp Final Completion has been achieved pursuant to Section 8.24; the determination of whether the conditions precedent for achieving the applicable Service Commencement have been achieved pursuant to Section 9.02(b), (f), (g), (h), and (i); any Signage Plan pursuant to Section 9.09(a); data, reports and any proposed Remedial Action Plan pursuant to Section 16.01(b); insurance submittals pursuant to Section 17.02(e); and a Disbursement Request pursuant to the Public Funds Amount Payment Terms attached as Exhibit N.

(b) Except as otherwise set forth in this Agreement, any submittal, resubmittal or request to the Department will be deemed complete at 5:30 p.m. Eastern time on the seventh Day following its receipt by the Department unless, the Department notifies the Concessionaire in writing prior to 5:30 p.m. Eastern time on such seventh Day that such submittal, resubmittal or request is incomplete according to the standards set forth in the Technical Requirements and sets forth in reasonable detail the incomplete elements of the submittal, resubmittal or request.

(c) In any case in which a submittal or request is or has been deemed to be complete under Section 10.05(b), the Department will review and respond to such submittal or request as promptly as reasonably possible, and no later than 21 Days (or 14 Days for the 395 Project, the Seminary Road Ramp Project and the Opitz Boulevard Ramp Project) after the date on which the Concessionaire (or the Design-Build Contractor, the O&M Contractor, or the TTMS Contractor) has delivered such submittal or request to the Department. The Department will respond within such 21-Day or 14-Day period, as applicable, by (i) approving, certifying or taking other appropriate action with respect to, the submittal or request, as applicable or (ii) disapproving such submittal or request and providing written notice to the Concessionaire specifying in reasonable detail the reasons for which it has disapproved the submittal or request. If the Department objects or disapproves any submittal or request in accordance with clause (ii) of the preceding sentence, the Concessionaire will resubmit the submittal or request as promptly as reasonably possible, and the Department will resume its review and respond to such submittal or request by approving or disapproving the submittal or request (*provided* that such submittal or request is complete or has been deemed to be complete under Section 10.05(b)) within 10 Days following its receipt of a resubmittal or request. The Department's review of a resubmittal or request will be limited to the issue, condition, or deficiency which gave rise to the Department's disapproval and will not extend to other aspects for which a notice of disapproval was not previously provided to the Concessionaire unless the issue, condition, or deficiency which gave rise to the Department's disapproval reasonably relates to the Department's disapproval for which notice was previously provided. The Concessionaire is in no way obligated to incorporate the Department's comments unless necessary to comply with a specific requirement of this Agreement.

(d) The time periods specified in Section 10.05(c) will be extended for the duration of a Force Majeure Event that prevents the Department or the Concessionaire, as applicable, from performing under this Section 10.05.

(e) Unless otherwise provided in this Agreement, if the Department fails to respond to a complete submittal or request which has been timely submitted or resubmitted, as the case may be within the applicable time periods, as provided in this Section 10.05, the Department will be deemed to have approved, certified, or taken other similar action with respect to, such submittal or request; *provided* that such deemed approval will not be deemed a waiver of the Department's other rights or the Concessionaire's other obligations pursuant to this Agreement, including compliance with the Technical Requirements, Governmental Approvals, Good Industry Practice, and applicable Law. Notwithstanding the foregoing, the deemed approval provisions of this Section 10.05(e) will not apply to the issuance of a Design Work Notice to Proceed pursuant to Section 8.03(a) or a Construction Notice to Proceed pursuant to Section 8.03(b), the approval of the ROW Acquisition and Relocation Plan pursuant to Section 8.05(a), the determination of whether Substantial Completion has been achieved pursuant to Section 8.08(e); the determination of whether Final Acceptance has been achieved pursuant to Section 8.09(c); the determination of whether 395 Final Completion has been achieved pursuant to Section 8.18(e); the determination of whether Fred Ex Final Completion has been achieved pursuant to Section 8.21; the determination of whether Opitz Boulevard Ramp Final Completion has been achieved pursuant to Section 8.23; the determination of whether Seminary Road Ramp Final Completion has been achieved pursuant to Section 8.24; the submission of any data, reports and any proposed Remedial Action Plan pursuant to Section 16.01(b); or a Disbursement Request pursuant to the Public Funds Amount Payment Terms attached as Exhibit N.

(f) Unless otherwise agreed by the parties, the Concessionaire is entitled to resolve any disapproval by the Department of a resubmittal in accordance with the dispute resolution procedures set forth in Article 21. If the Department reasonably believes that all or a portion of a resubmittal fails to comply with this Agreement, the Department may, in accordance with this Agreement, direct the Concessionaire to perform the Work in accordance with the Department's instructions. In such event, the Concessionaire will diligently proceed with the Work in accordance with such directive, and may (i) dispute the Department's directive in accordance with this Agreement and (ii) if it chooses, proceed with the dispute resolution procedures set forth in Article 21. If it is finally determined in accordance with such dispute resolution procedures that the Concessionaire's submittal or resubmittal complied with this Agreement, the Work required under the Department's directive will be treated as a Department Change.

(g) In all cases where Responses are required to be *provided* hereunder, such Responses will not be withheld or delayed unreasonably and such determinations will be made reasonably except in cases where a different standard is specified. In cases where sole discretion is specified with respect to a Response by the Department, the Response will not be subject to the dispute resolution procedures set forth in Article 21. Any failure of the Department to respond to a matter which is determined in the Department's sole discretion (by way of example, Deviations pursuant to Section 14.03) within 21 Days (or 14 Days for the 395 Project, the Seminary Road Ramp Project and the Opitz Boulevard Ramp Project) after delivery of the Concessionaire's request to the Department will be deemed disapproval by the Department. The Department will provide within ten days after a request by the Concessionaire its rationale, in reasonable detail, for any disapproval

or deemed disapproval of any matter where the Department has sole discretion to approve or disapprove.

(h) Subject to Section 10.04, if the Concessionaire must submit a submittal or request to the Department for review and Response more than twice due to the Concessionaire's failure to comply with the requirements of this Agreement, the Concessionaire will pay the Department for the Department's Allocable Costs incurred thereafter in reviewing any portions of such submittal or request. If the Concessionaire must submit a submittal or request more than twice due to the Department's failure to comply with the requirements of this Agreement, the Department will pay the Concessionaire for the Concessionaire's Allocable Costs incurred thereafter in preparing or submitting any portions of such submittal or request.

Section 10.06 Limitations on the Concessionaire's Right to Rely

(a) The Concessionaire expressly acknowledges and agrees that the Department's rights, if any, under the Project Agreements:

(i) to review, comment on, approve, disapprove and/or accept designs, plans, specifications, work plans, construction, equipment, installation, plans for maintenance, traffic management, policing and/or Project management, books, records, reports or statements, or documents pertaining to Concessionaire Debt and Financing Assignments,

(ii) to review, comment on and approve or disapprove qualifications and performance of, and to communicate with, Contractors, and

(iii) to perform Oversight Services,

exist solely for the benefit and protection of the Department, do not create or impose upon the Department any standard or duty of care toward any Concessionaire Party, all of which are hereby disclaimed, may not be relied upon, nor may the Department's exercise or failure to exercise any such rights be relied upon, by the Concessionaire in determining whether the Concessionaire has satisfied the standards and requirements set forth in this Agreement and may not be asserted, nor may the Department's exercise or failure to exercise any such rights be asserted, against the Department by the Concessionaire as a defense, legal or equitable, to the Concessionaire's obligation to fulfill such standards and requirements; *provided*, that the foregoing will not limit the Department's liabilities or obligations pursuant to this Agreement.

(b) To the maximum extent permitted by Law, and subject to the provisions of this Agreement, the Concessionaire hereby releases and discharges the Department from any and all duty and obligation to cause permitting, Project Right of Way acquisition, Utility Relocation, construction, equipping, operations, maintenance, policing, renewal, replacement, traffic management or other management of or for the Project or the Project Right of Way, by the Department, to satisfy the standards and requirements set forth in the Project Agreements; *provided*, that the foregoing will not limit the Department's liability or obligations under this Agreement. The Department will be entitled to remedies for Non-Conforming Work pursuant to Section 8.11(b).

(c) No rights of the Department described in Section 10.06(a), no exercise or failure to exercise such rights, no failure of the Department to meet any particular standard of care in the exercise of such rights, no issuance of permits or certificates of completion or acceptance and no Final Acceptance, 395 Final Completion, Fred Ex Final Completion, Opitz Boulevard Ramp Final Completion, or Seminary Road Ramp Final Completion, relating to the Project or any Project Enhancement will:

(i) relieve the Concessionaire from performance of the Work or of its responsibility for the selection and the competent performance of its Contractors;

(ii) relieve the Concessionaire of any of its obligations or liabilities under the Project Agreements;

(iii) be deemed or construed to waive any of the Department's rights and remedies under the Project Agreements; or

(iv) be deemed or construed as any kind of representation or warranty, express or implied, by the Department.

(d) Notwithstanding Section 10.06(a), (b), and (c) above: (i) any Notices to Proceed and certificates or notices of Substantial Completion, Service Commencement, 395 Final Completion, Fred Ex Final Completion, Opitz Boulevard Ramp Final Completion, Seminary Road Ramp Final Completion, and Final Acceptance will be binding on the Department and the Concessionaire will be entitled to rely thereon; *provided* however, that the delivery of such notices and certificates will not constitute a waiver by the Department of any breach of this Agreement by the Concessionaire or relieve the Concessionaire of any of its obligations hereunder; (ii) the Concessionaire will be entitled to rely on specific approved written Deviations and interpretative engineering decisions the Department gives pursuant to this Agreement in accordance with the Technical Requirements, the Design-Build Contract or any Development Contract, and any Law; (iii) the Department is not relieved from any liability arising out of a knowing, intentional material misrepresentation under any written statement the Department delivers; and (iv) the Department is not relieved from its obligations under this Agreement or any Development Contract.

Section 10.07 Suspension of the Work

(a) The Department will have the right and authority, without liability to the Concessionaire, to suspend any affected portion of the Work by written order to the Concessionaire to comply with any court order or judgment, to protect against a risk to the public health, safety or welfare (as more particularly set forth in Section 24.05), including to workers, other personnel or the general public from unsafe or dangerous conditions, or upon the occurrence of any of the following by the Concessionaire:

(i) with respect to Non-Conforming Work, as provided in Section 8.11(b)(i);

(ii) failure to comply with any Law or Governmental Approval (including failure to handle, preserve and protect archeological, paleontological or cultural resources, or failure to handle Hazardous Substances, in accordance with applicable Laws and Governmental Approvals);

(iii) failure to provide proof of required insurance coverage or to provide or maintain the required Performance Security;

(iv) failure to carry out and comply with Directive Letters; and

(v) failure to satisfy any conditions to commencing performance of the applicable portion of the Work set forth in Article 8 or Section 9.01.

(b) The Department will lift the suspension order promptly after it is permitted by the terms of the court order or judgment, after the dangerous or unsafe condition is rectified, or after the Concessionaire fully cures and corrects the applicable breach or failure to perform.

(c) The Concessionaire will have the right to dispute the Department's suspension order by written notice to the Department, which notice will provide supporting information for the Concessionaire's position. Unless directed otherwise by the Department after receipt of such notice, the Concessionaire will carry out the Work required by the Department. If it is determined in accordance with the dispute resolution procedures in Article 21 that the Concessionaire was in compliance with its obligations under this Agreement, then the suspension order and any additional Work required by the Department will be treated as a Department Change pursuant to Section 14.02.

(d) The issuance of a suspension order will not affect the Concessionaire's rights to cure or correct any such incidents giving rise to the issuance of the suspension order in accordance with this Agreement.

ARTICLE 11

NON-COMPLIANCE POINTS SYSTEM

Section 11.01 Non-Compliance Points System

(a) Exhibit W to this Agreement sets forth a table for the identification of certain Concessionaire breaches or failures to perform its obligations under this Agreement that may result in the assessment by the Department of Non-Compliance Points ("Performance Shortfalls"). The Non-Compliance Points system is used by the Department to measure the Concessionaire's performance levels and the accumulation of Non-Compliance Points by the Concessionaire may trigger the remedies set forth or referenced in this Article 11. This Article 11 shall apply only during the Operating Period. The inclusion in Exhibit W of a breach or failure to perform shall not determine whether such breach or failure is material.

(b) The Department may exercise any of its remedies under this Article 11 without prejudice to any other rights or remedies it has under this Agreement.

(c) If the Department determines any breach or failure described in Exhibit W has occurred, the Department shall within five Days of its determination deliver to the Concessionaire written notice thereof describing the breach or failure in reasonable detail. Within five Days of receipt of the Department's notice, the Concessionaire shall investigate the Department's claim and provide a written report as to whether the breach or failure in performance has in fact occurred

and describing any mitigating factors. Within 10 Days after receiving the Concessionaire's report, the Department shall deliver to the Concessionaire a written determination setting forth the number of Non-Compliance Points, if any, the Department, in its sole discretion, has assessed to the Concessionaire.

Section 11.02 Assessment of Non-Compliance Points and Cure Periods

The Department may assess Non-Compliance Points as described in Section 11.03 and Section 11.04 subject to the following terms and conditions.

(a) The Non-Compliance Points system will apply commencing on the later of (i) December 28, 2014 and (ii) the fifth anniversary of the "Service Commencement Date" as such term is defined in the Capital Beltway Comprehensive Agreement. In addition, there will be a phased introduction of the Non-Compliance Points system, and for the initial year that the Non-Compliance Points system is applicable, the thresholds for "Total Cumulative Number of Uncured Points" specified on page 1 of Exhibit W will be increased by 50% for the first year, and over the period of the next five years such threshold will be reduced 10% per year such that the thresholds in Exhibit W apply. The Non-Compliance Points system will apply to the 395 Concessionaire Assets commencing on the 61st Day after the 395 Service Commencement Date. The Non-Compliance Points system will apply to the Fred Ex Assets commencing on the Fred Ex Service Commencement Date. For avoidance of doubt, the Non-Compliance Points system will not apply to the Opitz Boulevard Ramp HOT Lanes and the Seminary Road Ramp HOT Lanes during their respective Construction Periods, and following their respective Service Commencement Dates, the Opitz Boulevard Ramp HOT Lanes and the Seminary Road Ramp HOT Lanes, as applicable shall be considered part of the Project for purposes of assessment of Non-Compliance Points.

(b) The Department will not assess points for the first instance of each breach or failure provided that the breach or failure is cured within the cure period stated in Exhibit W. However, the Department will provide notice to the Concessionaire that a breach or failure has occurred. Any subsequent instances of each breach or failure may be subject to the assessment of Non-Compliance Points.

(c) Exhibit W sets forth the maximum number of Non-Compliance Points the Department may assess for each breach or failure. The Department may, in its sole discretion, assess fewer Non-Compliance Points for a particular breach or failure based on the merits of the individual breach or failure.

(d) Where a single act or omission gives rise to more than one breach or failure as described in Exhibit W, the Department may assess Non-Compliance Points for only one breach or failure. In such circumstances, the Department may, in its sole discretion, assess Non-Compliance Points for the breach or failure with the highest maximum number of Non-Compliance Points shall apply.

(e) For breaches or failures classified as category A in Exhibit W, Non-Compliance Points shall be assessed only at the end of the applicable cure period if the Concessionaire has failed to cure within that time. Additional Non-Compliance Points may be assessed again at the end of each subsequent cure period, until the breach or failure is cured, or the cumulative total of

cured and uncured Non-Compliance Points equals or exceeds the level described in Section 11.05(c).

(f) For breaches or failures classified as category B in Exhibit W, the Non-Compliance Points shall be assessed on the date of the written determination from the Department to the Concessionaire. Provided that the breach or failure is not then cured within the applicable cure period, Non-Compliance Points shall be assessed again at the end of the first and each subsequent cure period, until the breach or failure is cured, or the cumulative total of cured and uncured Non-Compliance Points equals or exceeds the level described in Section 11.05(c).

(g) For breaches or failures identified as category C in Exhibit W (no applicable cure period), the Non-Compliance Points shall be assessed on the date of the written determination from the Department to the Concessionaire.

(h) Any cure period specified in Exhibit W shall be extended day-for-day for any Delay Event that prevents performance of Work to cure a breach or failure.

(i) At every 10 year anniversary of the Agreement Date, or upon significant revision of the Technical Requirements, either party, by written notice to the other party at least 90 Days prior to such anniversary reserves the right to request a review of the Non-Compliance Points system. Upon receiving the notice, both parties must review the existing Non-Compliance Point system in place and agree in writing to any revisions required to the system.

Section 11.03 Notification of Cure

When the Concessionaire determines it has cured any breach or failure for which the Department has assessed Non-Compliance Points, the Concessionaire shall deliver written notice to the Department. The Concessionaire's written notice shall identify the breach or failure at issue and describe what steps were undertaken to cure it. The Department or its designee shall then promptly verify the cure through inspection or other means and provide to the Department a written certification of cure. The Department retains the right to verify independently that the breach or failure in performance has in fact been cured.

Section 11.04 Accumulation of Non-Compliance Points

(a) The total of uncured Non-Compliance Points assessed by the Department shall be monitored by the Department or its designee on an ongoing basis for the duration of the Operating Period.

(b) The cumulative total of cured and uncured Non-Compliance Points assessed by the Department shall be monitored in rolling 365 Day cycles from the time the breach has been cured for those breaches classified in categories A and B, and from the time the breach has occurred for those breaches classified in category C. At the end of each 365 Day cycle, the Non-Compliance Points assessed for that specific breach will be subtracted for the cumulative total number of Non-Compliance Points the Concessionaire has been assessed.

Section 11.05 Impact of Non-Compliance Points

(a) Increased Monitoring. If the Concessionaire is assessed 135 or more Non-Compliance Points during any 365 Day cycle or maintains 30 (or any higher applicable number during the phase-in period) or more uncured Non-Compliance Points at any time as described in Section 11.05, the Department may increase the level of monitoring of the Project in accordance with Section 10.04. The Concessionaire shall compensate the Department for its Allocable Costs incurred as a result of such increased level of monitoring. The Concessionaire may submit a cure plan describing specific actions the Concessionaire will undertake to improve its performance and avoid the need for increased monitoring, which the Department may accept or reject.

(b) The Remedial Plan.

(i) If the Concessionaire is assessed 200 or more Non-Compliance Points during any 365 Day cycle or maintains 45 (or any higher applicable number during the phase-in period) or more uncured Non-Compliance Points at any time as described in Section 11.04, the Department may require the Concessionaire to prepare and submit a remedial plan for the Department's approval. The remedial plan shall be delivered to the Department within 45 Days of its request. The remedial plan shall set forth a schedule and describe specific actions the Concessionaire will undertake to improve its performance as demonstrated by its incurring no additional Non-Compliance Points and by reducing the total number of uncured Non-Compliance Points it has accumulated to date. Such actions may include but are not limited to improvements to Concessionaire's quality management practices, plans and procedures; changes in its organizational and management structures; increased monitoring and inspections; changes in key personnel; and the replacement of subcontractors.

(ii) If, after 180 Days following the implementation of the remedial plan, the Concessionaire can demonstrate that: (1) the remedial plan has reduced the number and frequency of Non-Compliance Points assessed as compared to the period prior to the implementation of the remedial plan; (2) the Concessionaire is complying in all material respects with the course of action described in the remedial plan; and (3) the Concessionaire has no uncured Non-Compliance Points, then the total number of Non-Compliance Points assessed over the course of the 180 Day period shall be reduced by 50%. If the rolling 365 Day cycle described in Section 11.04(b) ends at any time during the 180 Day period described in this Agreement, the total number of Non-Compliance Points the Concessionaire has cured during that 365 Day cycle shall carry over to the next 365 Day cycle. However, if the total number of Non-Compliance Points assessed over the course of the 180 Day period is reduced by 50% as described above, the total number of previously cured Non-Compliance Points that were carried over also shall be subtracted from the Concessionaire's cumulative total number of assessed Non-Compliance Points.

(c) Default. If the Concessionaire: (1) fails to deliver to the Department the remedial plan within 45 Days of the Department's request; or (2) fails to comply with the course of action set forth in the remedial plan and incurs a total of 245 Non-Compliance Points during any 365 Day cycle or maintains 68 (or any higher applicable number during the phase-in period) or more uncured Non-Compliance Points at any time as described in Section 11.04(a), the Department may

notify the Concessionaire in writing that such failure is a breach of a material obligation hereunder, in which event such failure shall become a Concessionaire Default under Section 19.01(b) unless cured following such notice within the time period specified in Section 19.01(b).

Section 11.06 Disputes Regarding the Assessment of Non-Compliance Points

(a) The Concessionaire may object to the assessment of Non-Compliance Points or the amount of Non-Compliance Points assessed by delivering to the Department written notice of its objection within 10 Days of receipt of the Department's written determination assessing the Non-Compliance Points at issue. Such notice shall set forth with specificity the grounds for the Concessionaire's objection.

(b) The Department will reasonably consider the Concessionaire's objections and Representatives of the Department and the Concessionaire will meet to discuss the matter within 30 Days after the Concessionaire has provided its written objection. If, at the conclusion of this 30 Day period, the Concessionaire still objects to the Department's decision, it may pursue dispute resolution under Article 21.

(c) If for any reason the Concessionaire fails to deliver its written notice of objection within the time period specified in Section 11.06(a), the Concessionaire shall have waived its right to challenge the Department's assessment of Non-Compliance Points.

ARTICLE 12

PROJECT ENHANCEMENTS AND SAFETY COMPLIANCE ORDERS

Section 12.01 Project Enhancements by the Concessionaire

(a) The Concessionaire will have the right, at its sole cost and expense (unless the Department agrees to contribute funds for a Concessionaire Project Enhancement), at any time after the Service Commencement Date, to design, develop, construct, operate and maintain Concessionaire Project Enhancements within the Project Right of Way, including any fundamental change in the dimensions, character, quality, location, or position of all or any part of the Project; *provided*, that the Concessionaire will not undertake any such Project Enhancements (except for the Concessionaire Project Enhancement in Section 12.01(b)) unless all aspects thereof are approved in writing by the Department in its sole discretion, and the Concessionaire has entered into a Development Contract with the Department with respect to such Concessionaire Project Enhancement.

(b) **[RESERVED]**

Section 12.02 Project Enhancements by the Department

(a) The Department will have the right from time to time after the Initial Service Commencement Date, at its sole cost and expense (unless the Concessionaire agrees to contribute funds for a Department Project Enhancement), to design, develop, construct, operate, and maintain Department Project Enhancements. The Department will have the right to design, develop,

construct, operate, and maintain Department Project Enhancements through one or more of the following mechanisms, as the Department selects from time to time in its sole discretion:

- (i) use by the Department of its own personnel, materials and equipment;
- (ii) contracting with third parties through requests for proposals, competitive bids, negotiations, or any other lawful procurement process; and
- (iii) authorizing and directing the Concessionaire, at the Department's sole cost and expense (unless the Concessionaire agrees to contribute funds for a Department Project Enhancement), to undertake the Department Project Enhancements, through contracting for necessary traffic and revenue studies and all necessary planning, design, engineering, permitting, financial, right-of-way acquisition services, Utility Relocation, construction, installation, project management, operation, maintenance, repair, and other work and services;

provided, that the Department will give the Concessionaire at least 60 Days' written notice prior to initiating any procurement process referred to in clause (ii) above, during which time the Concessionaire will have the right, but not the obligation, to agree in writing to undertake the Department Project Enhancement on such terms and conditions as the Department and the Concessionaire will mutually agree upon; *provided* further, that if the Department and the Concessionaire fail to agree upon such terms and conditions within such 60 Day period, the Department will be entitled to proceed with any of the mechanisms set forth in clauses (i), (ii), and (iii) of this Section 12.02(a) and will have no further liability or obligation to the Concessionaire except as otherwise expressly provided in this Agreement.

(b) If the Department authorizes and directs the Concessionaire to undertake a Department Project Enhancement pursuant to Section 12.02(a)(iii), then, in cooperation with the Department, as applicable, and subject to (i) the review and written approval by the Department in its sole discretion and (ii) without limiting the Concessionaire's right to claim additional Concessionaire Damages, the Department making available to the Concessionaire sufficient funds, through monthly progress payments for work performed and costs incurred (plus an amount not to exceed 10% of such costs to pay the Concessionaire for reasonable and documented costs actually incurred to administer the work), including without limitation the costs of obtaining any Governmental Approvals necessitated by such Department Project Enhancement, in order to perform the work required to design, construct, operate and maintain such Department Project Enhancement, the Concessionaire will implement such Project Enhancement in accordance with the terms and provisions of this Agreement, and the Project Enhancement will be deemed a part of the Project and will become subject to all the terms and provisions of this Agreement as of the date the Concessionaire is required to assume such responsibility pursuant to this Section 12.02(b).

(c) The Department will have the right to enter upon the Project and the relevant rights of way for any purpose relating to Department Project Enhancements under this Section 12.02 to the extent reasonably necessary.

(d) The Department will have the right at any time (and without liability to the Concessionaire for any damages it may suffer, except as otherwise expressly provided in this

Agreement) to perform planned and emergency maintenance, renewal and replacement, safety and repair activities on existing and new facilities adjacent to or near the Project regardless of the impact of such activities on the Project; *provided* that

(i) the Department shall use reasonable commercial efforts to keep the Concessionaire informed of planned maintenance, renewal and replacement and repair activities which can reasonably be foreseen to impact activities on the Project;

(ii) the Department shall provide to the Concessionaire copies of and other information concerning the Department's then current maintenance, renewal and replacement and repair program, upon the Concessionaire's reasonable request; and

(iii) to the extent it relates to Department Project Enhancements, the provisions of Section 12.02 shall govern the Department's liability to the Concessionaire therefor.

Section 12.03 Safety Compliance Orders

(a) The Department may, but is not obligated to, issue Safety Compliance Orders to the Concessionaire at any time after the Substantial Completion Date; *provided*, that no Safety Compliance Order may in any event order or direct the Concessionaire to do any act in violation of any Law. Compliance with a Safety Compliance Order by the Concessionaire will not be deemed a default by the Concessionaire under the provisions of this Agreement or any other VDOT Project Agreement.

(b) The Department will use good faith efforts to inform the Concessionaire at the earliest practicable time of any circumstance or information relating to the Project which in the Department's reasonable judgment is likely to result in a Safety Compliance Order. Except in the case of an Emergency, the Department will consult with the Concessionaire, prior to issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts and the availability of Concessionaire resources to fund the Work requested in the Safety Compliance Order. The Department may, in its discretion, monitor and inspect the Project Assets at any time and from time to time for the purposes of determining whether any circumstances exist that warrant issuance of a Safety Compliance Order and giving the Department and the Concessionaire reports and recommendations related to such matters.

(c) If the Department issues a Safety Compliance Order, the Concessionaire will proceed, at its sole cost and expense, with the necessary environmental, design, and construction Work to carry out the Safety Compliance Order as follows:

(i) if the Safety Compliance Order is of the type described in clause (a) of the definition of that term, the Concessionaire will proceed expeditiously; and

(ii) if the Safety Compliance Order is of the type described in clause (b) of the definition of that term, the Concessionaire will carry it out in accordance with the procedures adopted by the Department for carrying out similar work on similar portions of the State Highways.

(d) The Concessionaire will have the right to dispute a Safety Compliance Order by providing written notice to the Department within 21 Days of the issuance of the Safety Compliance Order setting forth the Concessionaire's Claim that no condition exists to justify the disputed Safety Compliance Order and the Concessionaire's estimate of impact costs, Gross Revenues and the construction schedule, if applicable. The Concessionaire will nevertheless implement the Safety Compliance Order, but if it is finally determined in accordance with the dispute resolution procedures in Article 21 that conditions warranting the Safety Compliance Order did not exist, then the Safety Compliance Order will be treated as a Department Change pursuant to Section 14.02.

Section 12.04 Development of Other Facilities

(a) Except for the right of the Concessionaire to receive compensation set forth in Section 12.02, Section 12.04(d) (with respect to disruptions to the construction of the Project) Section 12.05 (with respect to disruptions to the construction of the Project), the State Parties will have the unlimited right, each in its sole discretion, at any time and without liability, to finance, develop, approve, construct, expand, improve, modify, upgrade, add capacity to, reconstruct, rehabilitate, restore, renew, and replace any existing and new transportation or other facilities other than the Project (including, without limitation, free roads, connecting roads, service roads, frontage roads, turnpikes, managed lanes, HOT/HOV lanes, light rail, heavy rail, high-speed rail, freight rail, and bus lanes) and exercise all of its authority to advise and recommend on transportation planning, development and funding, and to otherwise improve the GP Lanes and other roadways and structures within or adjacent to the Original Corridor, the STE Corridor, the 395 Corridor, or the Fred Ex Corridor (collectively, the "Department Projects") outside the HOT Lanes, and whether nearby or otherwise located as to affect the Project, its operation and maintenance (including the costs and expenses thereof), its vehicular traffic and/or its revenues, *provided*, that:

(i) the Department will use diligent efforts to keep the Concessionaire informed of planned maintenance, renewal and replacement and repair activities of the Department Projects, which can reasonably be foreseen to impact the Work or traffic on the HOT Lanes; and

(ii) the Department will provide to the Concessionaire copies of and other information concerning the Department's then current maintenance, renewal and replacement and repair program of the Department Projects, upon the Concessionaire's reasonable request.

(b) The Department Projects include those facilities (i) owned or operated by the State Parties, including those owned or operated by a private entity pursuant to a contract with a State Party; (ii) owned or operated by a joint powers authority or similar entity to which a State Party is a member; (iii) owned or operated by any other Governmental Authority pursuant to a contract with a State Party, including, without limitation, regional mobility authorities, joint powers authorities, counties, and municipalities and (iv) owned or operated by any other Governmental Authority (including, without limitation, regional mobility authorities, joint powers authorities, counties and municipalities) with respect to which a State Party has contributed funds, in-kind contributions or other financial or administrative support. The foregoing rights include the ability

to institute, increase, or decrease tolls or other fees and charges on such facilities or modify, change, or institute new or different operation and maintenance procedures.

(c) The State Parties will have the right, without liability, to make discretionary and non-discretionary distributions of Federal and other funds for any transportation projects, programs and planning, and to exercise all of its authority to advise and recommend on transportation planning, development, and funding on any project of its choosing.

(d) In no event will the taking of any action described in this Section 12.04 by a State Party (i) constitute a default by the Department pursuant to this Agreement or (ii) entitle the Concessionaire to Concessionaire Damages or other relief, except to the extent provided in (A) Section 12.02 with respect to any such existing and new transportation or other facilities that constitute Department Project Enhancements and (B) Section 12.05 with respect to Alternative Facilities; *provided* however, that if the construction activities associated with a Department Project directly cause a material disruption to the construction of the Project, then such construction activities may entitle the Concessionaire to Concessionaire Damages or other relief as provided in this Agreement; *provided further* however, that the Concessionaire will not be entitled to Concessionaire Damages or other relief if such material disruption is caused by a Concessionaire Party.

Section 12.05 Alternative Facilities

(a) Additional Lanes.

(i) If the Department determines that Additional Lanes are in the State's best interests, the Department will consult with the Concessionaire as to an appropriate strategy to implement such Additional Lanes. Prior to undertaking construction of Additional Lanes, the Department will give the Concessionaire the first right to submit a proposal to construct such Additional Lanes as new high-occupancy toll lanes and HOV Lanes at the Concessionaire's sole cost as a Concessionaire Project Enhancement, so long as the Concessionaire demonstrates that (A) it has or can obtain sufficient funding (whether debt, equity, other sources of funds or combination thereof) for such Concessionaire Project Enhancement, and (B) it has or can obtain (with appropriate assistance from the Department) all required Governmental Approvals for such Concessionaire Project Enhancement.

(ii) The Concessionaire's proposal to construct Additional Lanes as new high-occupancy toll lanes pursuant to a Concessionaire Project Enhancement will contain the information specified by the Department in writing and delivered to the Concessionaire. The Concessionaire's failure to submit such a proposal within 120 Days of its receipt of the Department's specifications as to the contents of the Concessionaire's proposal will constitute a waiver of the Concessionaire's right to submit a proposal pursuant to this Section 12.05. If a valid proposal is submitted by the Concessionaire, the Department will evaluate the Concessionaire's proposal in accordance with the Department's specifications within 90 Days of its submission. If the Concessionaire determines not to pursue the construction of such Additional Lanes as a Concessionaire Project Enhancement or the Department does not approve such Concessionaire Project Enhancement after review in

accordance with the Department's specifications, the Department may add Additional Lanes as a Department Project; and except as provided in clause (iv), such Additional Lanes will constitute a Compensation Event.

(iii) The Department will coordinate the activities described in Section 12.05(a) with the Concessionaire so as to minimize to the extent reasonably feasible the disruption to the Concessionaire's construction, operation and maintenance of the Project and the generation of Toll Revenues.

(iv) Without limiting the applicability of clause (ii) above, the construction of Additional Lanes by or on behalf of the Department will not constitute a Compensation Event if the IRR Threshold has been reached as of the date on which Commencement of Use of such Additional Lanes begins.

(b) Route One Improvements and Fred Ex Route One Improvements. The Route One Improvements and Fred Ex Route One Improvements will be treated as a Compensation Event unless the IRR Threshold has been reached as of the Commencement of Use of the Route One Improvements, or the Fred Ex Route One Improvements, as applicable.

(c) Occoquan Bridge Improvements. The Occoquan Bridge Improvements will be treated as a Compensation Event unless the IRR Threshold has been reached as of the Commencement of Use of the Occoquan Bridge Improvements.

(d) Southern HOT Lanes no Longer an Alternative Facility. Under provisions of the Original Comprehensive Agreement and the First ARCA, the "Southern HOT Lanes" was a defined Alternative Facility that could be developed by the Concessionaire as a Concessionaire Project Enhancement. Under this Second ARCA, as a Concessionaire Project Enhancement the Concessionaire will design, build, finance, operate, and maintain the Fred Ex HOT Lanes, which themselves constitute only a segment (and not the entirety) of the Southern HOT Lanes. In addition, the parties agree that the remainder of the Southern HOT Lanes will no longer be considered an Alternative Facility or a Compensation Event. Accordingly, the Department may add high-occupancy toll lanes in the median of Interstate 95 south of exit 133, which high-occupancy toll lanes will not be an Alternative Facility or a Compensation Event, *provided* however, that if the construction activities associated with such high-occupancy toll lanes directly causes a material disruption to the construction of the Fred Ex Project, then such construction activities may entitle the Concessionaire to Concessionaire Damages or other relief as provided in the Agreement; *provided further* however, that Concessionaire will not be entitled to Concessionaire Damages or other relief if such material disruption is caused by a Concessionaire Party.

(e) Fred Ex Additional Lanes. For the purposes of this Section 12.05, any Fred Ex Additional Lanes will be treated the same as Additional Lanes, except:

(i) during the first 10 years following the Fred Ex Service Commencement Date, the Concessionaire shall be eligible to receive Concessionaire Damages only to the extent it can demonstrate (x) an adverse Net Revenue Impact resulting directly from Fred Ex Additional Lanes, and (y) actual Gross Revenues in any calendar quarter following

Commencement of Use of such Fred Ex Additional Lanes are less than the Gross Revenues forecasted for such quarter listed in the row entitled “Gross Revenue” set forth in either the final Base Case Financial Model Update (Fred Ex Final) or the final Base Case Financial Model Update (Fred Ex Final/Additional), as applicable;

(ii) following the 10th anniversary of the Fred Ex Service Commencement Date, the Concessionaire shall be eligible to receive Concessionaire Damages with respect to Fred Ex Additional Lanes only to the extent it can demonstrate (p) the reduction in the Concessionaire’s Net Cash Flow would result in a violation of the minimum debt service coverage ratio covenants in the Project Financing Agreements, and (q) the decrease in Toll Revenues results directly from the Fred Ex Additional Lanes. The amount of such Concessionaire Damages shall not exceed the difference, if any, between (x) the Concessionaire’s Net Cash Flow following such Compensation Event (if Concessionaire’s Net Cash Flow has decreased) and (y) any and all of the Concessionaire’s debt service coverage requirements; and

(iii) after the 30th anniversary of the Fred Ex Financial Close Date, the Department may develop and construct any Fred Ex Additional Lanes, which Fred Ex Additional Lanes shall not give rise to a Compensation Event, whether during design, construction, or operation and maintenance of such Fred Ex Additional Lanes, and whether developed and constructed under a single project or multiple projects.

(f) Occoquan Auxiliary Lane. An Occoquan Auxiliary Lane shall not constitute a Compensation Event, without regard to whether the IRR Threshold has been reached.

(g) Procedures.

(i) This Section 12.05(g) sets forth the Concessionaire’s sole and exclusive rights and remedies with respect to Alternative Facilities, and supersedes any provisions of this Agreement to the contrary; *provided* however, that if the construction activities associated with an Alternative Facility directly cause a material disruption to the construction of the Project Assets (other than as stated in Section 12.05(e)(iii) above), then such construction activities may entitle the Concessionaire to Concessionaire Damages or other relief as provided in this Agreement. Such rights and remedies are subject to Section 12.05(g)(iii).

(ii) The Concessionaire Damages owing from the Department to the Concessionaire on account of an Alternative Facility will be equal to the Concessionaire Damages, if any, attributable to the Alternative Facility, but only to the extent that any such amount of any such reduction has not been previously recognized under Section 14.04. The procedure for a Concessionaire claim and determination of Concessionaire Damages shall be in the same manner, and subject to the same conditions and limitations, as for a Compensation Event under Section 14.01.

(iii) The Concessionaire acknowledges that each of CTB and the Department has a paramount public interest and duty to develop and operate whatever Department Projects it deems to be in the best interests of the State, and that the compensation to which

the Concessionaire is entitled on account of Alternative Facilities is a fair and equitable remedy. Accordingly, the Concessionaire will not have, and irrevocably waives and relinquishes, any and all rights to institute, seek or obtain any injunctive relief or pursue any action, order or decree to restrain, preclude, prohibit or interfere with CTB's or the Department's rights to plan, finance, develop, operate, maintain, toll or not toll, repair, improve, modify, upgrade, reconstruct, rehabilitate, restore, renew or replace Alternative Facilities; *provided*, that the foregoing will not preclude the Concessionaire from enforcing its right to submit proposals for Additional Lanes pursuant to Section 12.05(a), its rights to compensation under this Section 12.05, or claiming any relief in respect of Compensation Events or Delay Events, if appropriate. The filing of any such action by the Concessionaire seeking to restrain, preclude, prohibit, or interfere with CTB's or the Department's rights will automatically entitle CTB or the Department, as applicable, to recover all costs and expenses, including attorneys fees, of defending such action and any appeals.

ARTICLE 13

DELAY EVENTS

Section 13.01 Delay Event Notice and Determination

(a) If the Concessionaire is affected by a Delay Event, it will give written notice to the Department within 30 Days following the date on which the Concessionaire first became aware (or should have become aware, using all reasonable due diligence) that an event has occurred and that it is or will become a Delay Event, (*provided*, that in the case of the same Delay Event being a continuing cause of delay, only one notice will be necessary) (a "Delay Event Notice"). Such Delay Event Notice will include (i) a detailed description of the Delay Event, (ii) details of the circumstances from which the Delay Event arises and (iii) an estimate of the duration of the delay in the performance of obligations pursuant to this Agreement attributable to such Delay Event and information in support thereof, if known at that time. The Concessionaire will also provide such further information relating to the Delay Event as the Department may reasonably require. The Concessionaire will bear the burden of proving the occurrence of a Delay Event and the resulting impacts.

(b) If for any reason the Concessionaire fails to deliver a Delay Event Notice within such 30-Day period, the Concessionaire will be deemed to have irrevocably and forever waived and released any Claim or right to time extensions or any other relief with respect to such Delay Event pursuant to this Agreement or any Project Agreement.

(c) Upon the occurrence of a Delay Event, the Concessionaire will promptly undertake efforts to mitigate the effects of such Delay Event, including all steps that would generally be taken in accordance with Good Industry Practice. The Concessionaire will promptly deliver to the Department an explanation of the measures being undertaken to mitigate the delay and other consequences of the Delay Event. The Concessionaire will notify the Department within 30 Days following the date on which it first became aware (or should have become aware, using all reasonable due diligence) that such a Delay Event has ceased.

(d) Notwithstanding the occurrence of a Delay Event, the Concessionaire will continue its performance and observance pursuant to this Agreement of all of its obligations and covenants to be performed to the extent that it is reasonably able to do so and will use its reasonable efforts to minimize the effect and duration of the Delay Event. Without limiting the foregoing, the occurrence of a Delay Event will not excuse the Concessionaire from timely payment of monetary obligations pursuant to this Agreement, from compliance with Law, or from compliance with the Technical Requirements, except temporary inability to comply with the Technical Requirements as a direct result of the Delay Event.

(e) Subject to the Concessionaire giving the notice required in Section 13.01(a), a Delay Event will excuse the Concessionaire from whatever performance is prevented or delayed by the Delay Event referred to in such notice to the extent set forth in Section 13.02 and Section 13.03.

Section 13.02 Delay Events During the Construction Period

A Delay Event occurring during the Construction Period will excuse the Concessionaire from performance of its obligations to perform the Work pursuant to this Agreement but only to the extent that such obligations are directly affected by such Delay Event. In addition, during the Construction Period, extensions of milestones and/or activities identified on the Applicable Baseline Schedule for Delay Events affecting the Work will be made based on Time Impact Analysis, using the then-current Applicable Baseline Schedule and taking into account impacts of the Delay Events on Critical Path items, in accordance with the Technical Requirements, and will extend the Guaranteed Substantial Completion Date, the Final Acceptance Deadline, the 395 Guaranteed Final Completion Date, the Long Stop Date, the 395 Long Stop Date, the Fred Ex Guaranteed Final Completion Date, the Fred Ex Long Stop Date, the Opitz Boulevard Ramp Guaranteed Final Completion Date, the Opitz Boulevard Ramp Long Stop Date, and the Seminary Road Ramp Guaranteed Final Completion Date. For avoidance of doubt, the Fred Ex Long Stop Date and the Opitz Boulevard Ramp Long Stop Date may be extended in accordance with this Agreement by reason of a Delay Event that occurs during the period after the Fred Ex Guaranteed Final Completion Date or the Opitz Boulevard Ramp Guaranteed Final Completion Date, as applicable. If the Department and the Concessionaire cannot agree upon the extension, then either party will be entitled to refer the matter to the dispute resolution procedures in Article 21. This Section 13.02 shall not apply to the design, development, and construction of the STE.

Section 13.03 Delay Events After the Service Commencement Date

A Delay Event occurring after the applicable Service Commencement Date will only excuse the Concessionaire from performance of its obligations to perform O&M Work pursuant to this Agreement directly affected by such Delay Event.

ARTICLE 14

COMPENSATION EVENTS; DEPARTMENT CHANGES; DEVIATIONS; NET COST SAVINGS

Section 14.01 Compensation Events

(a) Compensation Event Notice.

(i) If the Concessionaire is affected by a Compensation Event, it will give written notice to the Department within 30 Days following the date on which the Concessionaire first became aware (or should have become aware, using all reasonable due diligence) that an event has occurred and that it is or will become a Compensation Event (a “Compensation Event Notice”); *provided*, that, in the case of a Department Project Enhancement, a Compensation Event Notice must be given within 30 days following the Commencement of Use of such Department Project Enhancement. The Compensation Event Notice will set forth (A) the Compensation Event and its date of occurrence in reasonable detail, (B) the amount claimed as Concessionaire Damages and (C) details of the calculation thereof including a written analysis and calculation of the estimated Net Cost Impact, if any, and estimated Net Revenue Impact, if known at that time; *provided* that, if the amount of Concessionaire Damages and details of the calculation thereof are not available within the 30-Day notice period required in this Agreement, the Concessionaire may submit an estimate of the amount, or if known, the actual amount claimed as Concessionaire Damages and details of the calculation thereof no later than 60 Days from submission of the Compensation Event Notice; *provided* however, the Concessionaire may update the amount of claimed Concessionaire Damages and details thereof every 30 Days.

(ii) If, for any reason, the Concessionaire fails to deliver such written Compensation Event Notice within the foregoing time period, the Concessionaire will be deemed to have irrevocably and forever waived and released any Claim or right to Concessionaire Damages or other adverse effects on Gross Revenues or on costs, expenses, and liabilities attributable to such Compensation Event.

(iii) After the Concessionaire submits a Compensation Event Notice, the Department may, but is not required to, obtain, at its sole cost, (A) a comprehensive report as to the Concessionaire’s estimate of the Net Cost Impact attributable to the Compensation Event and (B) from a traffic and revenue consultant a traffic and revenue study, prepared in accordance with Good Industry Practice, analyzing and calculating the estimated Net Revenue Impact attributable to the Compensation Event. Within 90 Days after receiving a Compensation Event Notice and the supporting documentation required by Section 14.01(a)(i), the Department will provide to the Concessionaire a copy of such reports as it has elected to obtain. If the Department disagrees with the entitlement to or amount of Concessionaire Damages claimed by the Concessionaire, the Concessionaire and Department will commence good faith negotiations to resolve the Dispute within 120 Days after the delivery of the Compensation Event Notice. If the Dispute cannot be resolved

within such 120 Days, either party may submit the Dispute for resolution pursuant to Article 21.

(b) Concessionaire Damages Determination.

(i) Concessionaire Damages with respect to any Compensation Event will be calculated based on the sum of (A) any adverse Net Cost Impact and (B) any adverse Net Revenue Impact for each year that there is an impact attributable to such Compensation Event; *provided*, that, subject to Section 14.01(c), any Net Cost Savings and positive Net Revenue Impact attributable to such Compensation Event will be used to decrease the amount of Concessionaire Damages. The calculation of Concessionaire Damages will be based on the difference in the projected cost and revenue related to the Project immediately prior to the occurrence of the Compensation Event and the projected cost and revenue related to the Project after taking into account the impact of the Compensation Event.

(ii) Following the calculations pursuant to Section 14.01(b)(i), the Concessionaire will incorporate such calculations into the proposed Base Case Financial Model Update and will provide such proposed Base Case Financial Model Update to the Department pursuant to Article 6.

(iii) The Concessionaire Damages will be net of all applicable insurance proceeds payable to the Concessionaire or its Contractors associated with the Compensation Event (or that would have been payable to the Concessionaire or its Contractors but for the failure by the Concessionaire or its Contractors to comply with the insurance requirements set forth in Section 14.01(b)(v) and Article 17), except as any payment of such insurance proceeds is affected by the bankruptcy or insolvency of the provider of such insurance, and will include all costs of asserting a Claim for such insurance proceeds and any increased insurance premium resulting from any such Claim; *provided*, that any increased insurance premium resulting from such Claim is certified in writing by the insurance provider of the Concessionaire or its Contractor, as applicable, prior to payment by the Department.

(iv) The Concessionaire will conduct all discussions and negotiations with the Department to determine any Concessionaire Damages and will share with the Department all data, documents and information pertaining thereto, on an Open Book Basis. As part of such negotiations, the parties will continue to refine and exchange, on an Open Book Basis, plans, drawings, configurations and other information related to the Compensation Event, traffic and revenue data, information, analyses and studies and financial modeling and quantifications of projected Net Cost Impacts, Net Revenue Impacts or Net Cost Savings, if any.

(v) The Concessionaire will take all steps reasonably necessary to mitigate the amount of the Concessionaire Damages attributable to, and other consequences of, any Compensation Event, including all steps that would generally be taken in accordance with Good Industry Practice, including filing a timely claim for insurance and pursuing such claims.

(vi) If the Concessionaire and the Department are unable to agree upon the amount of the Concessionaire Damages within 120 Days after the delivery of the Compensation Event Notice, then either party, by written notice to the other party, may terminate the negotiations and request the Dispute be resolved in accordance with Article 21; *provided*, that the Department will proceed to make payment to the Concessionaire of the undisputed portion of the Concessionaire Damages in accordance with Section 14.01(b) without regard to the dispute resolution procedures.

(vii) The Concessionaire will not be entitled to Concessionaire Damages which are *de minimis*.

(c) Compensation Event Payment. Following a determination of the Concessionaire Damages pursuant to Section 14.01(b), the Department will compensate the Concessionaire for such Concessionaire Damages in such manner as agreed upon by the parties in writing or as may be determined through the dispute resolution procedures set forth in Article 21; *provided*, that:

(i) in the case of any lump sum payment of the Concessionaire Damages or any other payment schedule that differs from the projected timing of the Concessionaire Damages, the net present value of the Concessionaire Damages will be determined using the then appropriate risk adjusted discount rate(s), as agreed between the Department and the Concessionaire;

(ii) in the case of any payment method chosen other than an up-front lump sum payment or a payment that is based on the projected timing and amounts of the Concessionaire Damages, the payment method will yield an amount that will be equal to the present value of a lump sum payment, using appropriate risk adjusted discount rate(s) as agreed by the parties;

(iii) the amount and timing of payment of Concessionaire Damages related to a Compensation Event will take into account the ability of the Concessionaire, *first*, to obtain funding in relation to such Concessionaire Damages in accordance with Section 14.01(d) and *second*, to have funds available in such time and in such amounts as are required to make current payments to third parties in respect of any portion of Net Cost Impact related to such Compensation Event; and

(iv) any Net Cost Savings or positive Net Revenue Impact attributable to such Compensation Event must be included in the determination of Concessionaire Damages under the provisions of this Section 14.01, as agreed between the Department and the Concessionaire.

(d) Concessionaire Funding of Concessionaire Damages. If requested by the Department, the Concessionaire will use commercially reasonable efforts to obtain funding for a portion or the full amount of Concessionaire Damages; *provided*, however, that the Concessionaire will not be obligated to obtain such funding if the Concessionaire, in its reasonable discretion, determines that obtaining such funding will diminish the Project Value, or to the extent such funding, combined with any payments from the Department, will not make funds available in such time and in such amounts as are required to make current payments to third parties as they are due

or will become due in respect of any portion of Net Cost Impact included as part of such Concessionaire Damages. If the Concessionaire is able to obtain funding for all or part of the Concessionaire Damages, the Concessionaire will submit a funding proposal for the Department's review and approval. Such funding proposal will identify the terms and conditions required to secure funding for such Concessionaire Damages, including any proposed payments by the Department. The Department will reject or accept the funding proposal within 30 Days of receipt of the funding proposal. If the funding proposal is accepted by the Department, the Department will issue a Change Order to implement the funding proposal and to the extent such funding proposal secures financing for less than 100% of the Concessionaire Damages, the Change Order will provide funding for the remainder thereof on terms and conditions mutually agreed by the parties.

(e) Sole Remedy and Release of Claims.

(i) Without limiting the Concessionaire's rights with respect to non-monetary relief for Delay Events, the Concessionaire Damages as determined according to this Section 14.01 will represent the sole right to compensation and damages for the adverse effects of a Compensation Event.

(ii) As a condition precedent to the Department's obligation to compensate any portion of the Concessionaire Damages, following a determination of the Concessionaire Damages, the Concessionaire will execute a full, unconditional, irrevocable release, in form reasonably acceptable to the Department, of any Claims, Losses or other rights to compensation or other monetary relief associated with such Compensation Event, except for (A) the Claim and right to the subject Concessionaire Damages, (B) the Concessionaire's right to non-monetary relief for a Delay Event and (C) the right to terminate this Agreement in accordance with Article 20 and to receive any applicable termination compensation.

(f) Additional Provisions for Certain Compensation Events.

(i) For the Compensation Event described in clause (k) of the definition thereof, the Concessionaire will be entitled to recover the Net Cost Impact for such Compensation Event; *provided*, however, that:

(A) in no event will the Concessionaire be entitled to submit a Claim if the Net Cost Impact of such Compensation Event does not equal or exceed \$10 million per occurrence ("Claim Threshold");

(B) if such Compensation Event meets the Claim Threshold, the Department will be solely responsible for the Net Cost Impact in excess of \$10 million for such Compensation Event; *provided*, however, that the Concessionaire will be solely responsible for the Net Cost Impact up to \$10 million per occurrence for the first two Compensation Events that meet the Claim Threshold; and

(C) the Department will be responsible for the Net Cost Impact for such Compensation Events after the first two such Compensation Events occur that meet the Claim Threshold.

For the avoidance of doubt, the Concessionaire will be solely responsible for such Compensation Events with a Net Cost Impact under \$10 million per occurrence.

(ii) For the Compensation Event described in clause (l) of the definition thereof, the Concessionaire will be entitled to recover the Net Cost Impact for such Compensation Event, *provided*, however, that:

(A) the Concessionaire will be solely responsible for the Net Cost Impact up to \$5 million (\$3 million for the 395 Project and also \$3 million for the Fred Ex Project) in the aggregate for such Compensation Event;

(B) the Department will be solely responsible for the Net Cost Impact in excess of \$5 million (\$3 million for the 395 Project and also \$3 million for the Fred Ex Project) but less than or equal to \$10 million (\$6 million for the 395 Project and also \$6 million for the Fred Ex Project) for such Compensation Event; and

(C) the parties will share evenly the Net Cost Impact in excess of \$10 million (\$6 million for the 395 Project and also \$6 million for the Fred Ex Project) for such Compensation Event.

The provisions of this Section 14.01(f)(ii) apply to each event and not in the aggregate.

Section 14.02 Department Changes

(a) Department's Right to Issue Change Orders. The Department may, at any time and from time to time during the Term, authorize and/or require changes in the Work pursuant to a Change Order or in the terms and conditions of the Technical Requirements (including changes in the standards applicable to the Work); *provided*, that the Department has no right to require any change that:

(i) is not in compliance with Law;

(ii) would contravene an existing Governmental Approval and such contravention cannot be corrected by the issuance of a further or revised Governmental Approval;

(iii) would cause an insured risk to become uninsurable; or

(iv) would give rise to a material and adverse health or safety issue.

(b) Request for Change Proposal.

(i) If the Department desires to initiate a Department Change, then the Department will issue a Request for Change Proposal. The Request for Change Proposal will set forth the nature, extent and details of the proposed Department Change.

(ii) Within 21 Days following Concessionaire's receipt of the Request for Change Proposal, the Concessionaire will provide the Department with a preliminary

written response, and within a reasonable time thereafter (not to exceed 30 Days or such other timeframe agreed upon between the Concessionaire and the Department), with a definitive written response (a “Change Proposal”), as to whether, in the Concessionaire’s opinion, the Department Change constitutes a Compensation Event, and if so, (A) a detailed assessment of the Net Revenue Impacts and Net Cost Impacts, to the extent known at that time, (B) the effect of the proposed Department Change on the Concessionaire’s performance of its obligations pursuant to this Agreement, to the extent known at the time, (C) the proposed Base Case Financial Model Update and (D) a TIA if applicable.

(iii) Within 30 Days following the delivery of the Change Proposal, the Concessionaire and the Department will exercise good faith efforts to negotiate a mutually acceptable Change Order.

(iv) The Department will pay the Concessionaire’s Allocable Costs for preparing a Change Proposal and conducting preliminary work to respond to a Request for Change Proposal at the Department’s request. Upon payment of such Allocable Costs, the Department will own all Work Product included in the Change Proposal.

(c) Concessionaire Performance of Department Change. The Concessionaire will perform the work required to implement the Department Change in a timely manner; *provided*, that:

(i) a Change Order setting forth, among other things, the adjusted scope of the Work and adjustments to the Applicable Baseline Schedule and the Technical Requirements, if applicable, will have been mutually agreed upon between the Department and the Concessionaire and issued by the Department;

(ii) the Department and the Concessionaire (if applicable) will have identified sufficient funds that may be made available to the Concessionaire to perform the work required to implement the Department Change; and

(iii) all necessary Governmental Approvals to commence the Work required to implement the Department Change have been obtained.

(d) Disputed Work.

(i) If the Department and the Concessionaire agree that the Work in question constitutes a Department Change and are unable to reach an agreement on a Change Order, the Department may deliver to the Concessionaire a Directive Letter, directing the Concessionaire to proceed with the performance of the Work in question, notwithstanding such disagreement. Such Directive Letter will include any changes to the Technical Requirements, if applicable, necessary to proceed with the Work covered by the Directive Letter.

(ii) If the parties disagree whether the Work in question constitutes a Department Change, the Department will have the right to issue a Directive Letter, directing the Concessionaire to proceed with the performance of the Work in question, and the Concessionaire will proceed with such work. Such Directive Letter will include any

changes to the Technical Requirements necessary to proceed with the Work covered by the Directive Letter.

(iii) Upon receipt of a Directive Letter under (i) or (ii) above, the Concessionaire will implement and perform the Work in question as directed by the Department and the Department will make payments to the Concessionaire for such Work performed pursuant to Section 14.02(e).

(iv) To the extent there are any Disputes related to any Directive Letter issued under Section 14.02(d), such Disputes will be subject to the dispute resolution procedures set forth in Article 21.

(e) Payments for Directive Letter Work. If the Department issues a Directive Letter to the Concessionaire pursuant to Section 14.02(d), the Department will make payments to the Concessionaire on a monthly basis for the Work in question for the reasonable Allocable Costs of the Work in question, subject to subsequent adjustment through the dispute resolution procedures set forth in Article 21.

(f) Technical Requirements Revisions. Notwithstanding anything to the contrary contained in this Agreement, during the Construction Period, a change in the terms and conditions of the Technical Requirements (including changes in the standards applicable to the Work) required or authorized by the Department will constitute a Department Change; provided, however that the Technical Requirements, as amended for the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project, will not constitute a Department Change.

(g) 395 Department Assets. Although the 395 Department Assets are being developed as Change Orders, the Parties agree that full and complete compensation for the full scope of the Work associated with the 395 Department Assets is included within this Agreement as of the Amended and Restated Agreement Date, and nothing within the scope of such Work will, in and of itself, entitle the Concessionaire to any additional relief (including a Delay Event or a Compensation Event) or require the Department or the Concessionaire to comply with any of the provisions herein related to Change Orders (but only with regard to the scope of Work associated with the 395 Department Assets as of the Amended and Restated Agreement Date). Notwithstanding the foregoing, if a Delay Event or a Compensation Event occurs during the Construction Period for the 395 Department Assets, the Concessionaire will be entitled to seek relief in accordance with this Agreement.

Section 14.03 Concessionaire Requests for Deviations

(a) The Concessionaire may request the Department to approve, in the Department's sole discretion, Deviations by submitting to the Department a written change request in a form approved by the Department. At a minimum, the following information will be submitted with each such change request:

(i) a statement that the request is submitted pursuant to this Section 14.03(a);

- (ii) a statement concerning the basis for the request, benefits to the Department or the Project and an itemization of the contract items and requirements affected by the request;
- (iii) a detailed estimate of the time and/or cost savings and impacts on Gross Revenues;
- (iv) proposed specifications and recommendations as to the manner in which the requested changes are to be accomplished; and
- (v) the time by which the request must be approved so as to obtain the maximum cost-effectiveness.

(b) The Department may consider and approve or disapprove, in its sole discretion, any such request, and the Concessionaire will bear the burden of persuading the Department that the Deviation sought constitutes sound and safe engineering consistent with Good Industry Practice and achieves the Department's applicable safety standards and criteria. No Deviation will exist or be effective unless and until approval thereof is expressly provided in writing by the Department. Approval of a submission containing a Deviation will not constitute approval of the Deviation unless and until the Department expressly and specifically approves the Deviation in writing pursuant to the terms of this Section 14.03(b). The Department's decision will not be subject to the dispute resolution procedures of Article 21. If not previously communicated, the Department will provide within 10 Days after a request by the Concessionaire its rationale, in reasonable detail, for any disapproval of a Deviation proposed by the Concessionaire.

(c) Unless otherwise agreed, the Concessionaire will be solely responsible for payment of any increased costs, for any losses of Gross Revenues, for all Allocable Costs and for any schedule delays or other impacts resulting from the implementation of a Deviation requested by the Concessionaire that has been approved by the Department.

Section 14.04 Net Cost Savings or Positive Net Revenue Impact

(a) Whenever it believes a Net Cost Saving or positive Net Revenue Impact exists or will arise from a Compensation Event, a Deviation, or a Department waiver of Non-Conforming Work, the Department at its election may, and the Concessionaire will, deliver to the other party written notice thereof. The notice will set forth (i) the Compensation Event and its date of occurrence in reasonable detail, the proposed or approved Deviation, or the Non-Conforming Work, as the case may be, (ii) a preliminary estimate, if then known, of the amount of the Net Cost Saving or positive Net Revenue Impact and (iii) a brief, preliminary written analysis and calculation thereof. Such notice will be brought within 30 Days after a claim for Concessionaire Damages or, if no claim is brought by the Concessionaire for Concessionaire Damages, within 30 Days after the occurrence of the Compensation Event or, in the case of a Project Enhancement, within 30 Days after the Commencement of Use of the Project Enhancement.

(b) If the Concessionaire gives such a notice to the Department, the parties will follow the terms and procedures set forth in Section 14.01 as if they applied to the determination of the Net Cost Saving or positive Net Revenue Impact.

(c) Following a determination of the Net Cost Saving or positive Net Revenue Impact by mutual agreement or the dispute resolution procedures set forth in Article 21, the Department will decide on the percentage share of each that it desires as compensation, in any event not to exceed 50% of the applicable Net Cost Savings and/or positive Net Revenue Impact. The Concessionaire will compensate the Department in an amount equal to the selected percentage in the manner provided for in Section 14.01(c); *provided* that when Concessionaire Damages and Net Cost Saving or positive Net Revenue Impact are payable in the same time period, such amounts shall be netted to the extent possible. The parties will select one or any combination of the following methods of compensation:

(i) through monthly payments of the selected percentage of the Net Cost Saving or positive Net Revenue Impact in accordance with a written payment schedule determined by mutual agreement or through the dispute resolution procedures set forth in Article 21;

(ii) by a lump sum payment of the selected percentage, payable as determined by mutual agreement or through the dispute resolution procedures set forth in Article 21;
or

(iii) in such other manner as agreed upon by the parties in writing.

ARTICLE 15

INDEMNIFICATION

Section 15.01 Indemnities of the Concessionaire

In addition to the Concessionaire's indemnity obligations as set forth elsewhere in this Agreement, the Concessionaire will indemnify, defend, and hold harmless a State Indemnitee from and against any Losses actually suffered or incurred by such State Indemnitee (except to the extent such Losses are solely caused by the misconduct, negligence or other culpable act, error or omission of a State Indemnitee), due to Third-Party Claims (including any Losses suffered or incurred by any such State Indemnitee that directly arise out of a Third-Party Claim brought by the Lenders) that are based upon:

(a) any actual or alleged failure by the Concessionaire to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or a Project Agreement or, any actual or alleged breach by the Concessionaire of its representations or warranties set forth in this Agreement or therein;

(b) any actual or alleged misconduct, negligence or other culpable act, error or omission of a Concessionaire Party in connection with the Project;

(c) any actual or alleged patent or copyright infringement or other actual or alleged improper appropriation or use by a Concessionaire Party of trade secrets, patents, proprietary information, know-how, trademarked or service marked materials, equipment, devices or processes, copyright rights or inventions in connection with the Project;

(d) any actual or alleged inverse condemnation, trespass, nuisance or similar taking of or harm to real property committed or caused by a Concessionaire Party in connection with the Project arising from any actual or alleged (i) failure by the Concessionaire to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement; (ii) breach by Concessionaire of its representations or warranties set forth in this Agreement or (iii) misconduct, negligence or other culpable act, error or omission of a Concessionaire Party; *provided*, however, that the Concessionaire will not be required to indemnify, defend or hold harmless a State Indemnitee from and against any Losses actually suffered or incurred by such State Indemnitee due to Third-Party Claims that are based upon any actual inverse condemnation arising from the establishment of the Project Right of Way as identified in the NEPA Documents and any other real property or real property rights outside the Project Right of Way acquired pursuant to Section 8.05(b);

(e) any actual or alleged violation of any Federal or state securities or similar law by any Concessionaire Party, or the Concessionaire's failure to comply with any requirement necessary to preserve the tax exempt status of interest paid on the PABs;

(f) any actual or alleged Tax attributable to any Transfer of the Concessionaire's Interest or any part thereof; or

(g) any actual or alleged claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the Concessionaire, its Affiliates or their respective Representatives in connection with this Agreement or a Project Agreement, any Transfer of the Concessionaire's Interest or any part thereof.

Section 15.02 Defense and Indemnification Procedures

(a) In the event that any Third-Party Claim for which the Concessionaire may be required to indemnify a State Indemnitee hereunder is asserted in writing against the Department, it will as promptly as practicable notify the Concessionaire in writing of such Claim, and such notice will include a copy of the Claim and any related correspondence or documentation from the third party asserting the Claim; *provided*, that any failure to give such prompt notice will not constitute a waiver of any rights of the Department, except to the extent that the rights of the Concessionaire are actually and materially prejudiced thereby. If any Third-Party Claim for which the Concessionaire may be required to indemnify a State Indemnitee hereunder is asserted in writing against a State Indemnitee other than the Department, a failure by such State Indemnitee to give the Concessionaire prompt notice in writing of such Claim together with a copy of the Claim and any related correspondence or documentation from the third party asserting the Claim, will constitute a waiver of any rights of such State Indemnitee to indemnification to the extent, and only to the extent, that the rights of the Concessionaire are actually and materially prejudiced thereby.

(b) The Concessionaire will be entitled and obligated to appoint counsel of its choice at the expense of the Concessionaire to represent a State Indemnitee in any action for which indemnification is sought (in which case the Concessionaire will not thereafter be responsible for the fees and expenses of any separate counsel retained by that State Indemnitee except as set forth below); *provided*, that such counsel will be satisfactory to such State Indemnitee. Notwithstanding

the Concessionaire's appointment of counsel to represent a State Indemnitee in any action, such State Indemnitee will have the right to employ separate counsel, and the Concessionaire will bear the reasonable fees, costs and expenses of such separate counsel, if:

(i) the use of counsel chosen by the Concessionaire to represent the State Indemnitee would present such counsel with a conflict of interest;

(ii) the actual or potential defendants in, or targets of, any such action include both the State Indemnitee and the Concessionaire and the State Indemnitee will have reasonably concluded that there may be legal defenses available to it and/or other State Indemnitees which are different from or additional to those available to the Concessionaire;

(iii) the Concessionaire will not have employed counsel to represent the State Indemnitee within a reasonable time after notice of the institution of such action; or

(iv) the Concessionaire authorizes the State Indemnitee to employ separate counsel at the Concessionaire's expense.

(c) The Concessionaire will not be liable for any settlement or compromise by an affected State Indemnitee of a Third-Party Claim except with the Concessionaire's prior written consent, which consent will not be unreasonably withheld or delayed, or except where the settlement or compromise is approved by the court after the Concessionaire receives reasonable notice and the opportunity to be heard and such court approval has become final and non-appealable.

ARTICLE 16

HAZARDOUS SUBSTANCES

Section 16.01 General Obligations

(a) The Concessionaire will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport, and/or disposal of any Hazardous Substances the presence of which constitutes a Hazardous Environmental Condition that are discovered on, in or under the Project Right of Way on which the Work is performed, after the earlier to occur of (i) the issuance of an LNTP, 395 LNTP or Fred Ex LNTP (but limited to the portion of the Project Right of Way on which the LNTP Work, 395 Early Work, or Fred Ex Early Work is performed pursuant to such LNTP, 395 LNTP or Fred Ex LNTP), (ii) issuance of the applicable Construction Notice to Proceed, or (iii) the applicable Service Commencement Date in accordance with this Agreement. The Concessionaire will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport, and/or disposal of any Hazardous Substances the presence of which constitutes a Hazardous Environmental Condition that are discovered on, in or under the Project Right of Way within the STE Corridor on which the Work is performed on and after the applicable Service Commencement Date.

(b) After the earlier to occur of (i) the issuance of an LNTP, 395 LNTP or Fred Ex LNTP (but limited to the portion of the Project Right of Way on which the LNTP Work, 395 Early Work or Fred Ex Early Work is performed pursuant to such LNTP, 395 LNTP or Fred Ex LNTP,

as applicable), (ii) the issuance of the applicable Construction Notice to Proceed, or (iii) the applicable Service Commencement Date, if the Concessionaire encounters any Hazardous Environmental Condition that must be managed, treated, handled, stored, monitored, removed, transported, or disposed of (collectively, “Remedial Actions”), then the Concessionaire will promptly notify the Department. In the case of Hazardous Environmental Conditions that are attributable to Known Pre-Existing Hazardous Substances, the Concessionaire will thereafter proceed with such Remedial Actions in accordance with the Concessionaire’s Environmental Management Plan. In the case of all other Hazardous Environmental Conditions and to the extent not covered by the Environmental Management Plan, the Concessionaire will develop a Remedial Action Plan setting out the scope of the Remedial Actions that the Concessionaire proposes to take in relation to the relevant Hazardous Environmental Condition, such actions to include, but not be limited to: (i) conducting such further investigations as may be necessary or appropriate to determine the nature and extent of the Hazardous Substances and submitting copies of such data and reports to the Department for its review and approval, (ii) taking reasonable steps, including in the case of excavation, construction, reconstruction or rehabilitation, modifications and/or construction techniques, to avoid or minimize excavation or dewatering in areas with Hazardous Substances (iii) preparing and obtaining Governmental Approvals for remedial action plans, including Department approval, (iv) carrying out the Remedial Action Plan, including, as necessary, disposal of the Hazardous Substances and (v) timely informing the Department of all such actions.

(c) Before any Remedial Actions are taken that would inhibit the Department’s ability to ascertain the nature and extent of the Hazardous Environmental Condition, the Concessionaire will afford the Department the opportunity to inspect areas and locations that require Remedial Actions; *provided*, that in the case of a sudden release of any Hazardous Substances, the Concessionaire may take all reasonable actions necessary to stabilize and contain the release without prior notice or inspection, but will promptly notify the Department of the sudden release and its location.

(d) The Concessionaire will obtain all Governmental Approvals relating to Remedial Actions. The Concessionaire will be solely responsible for compliance with such Governmental Approvals and applicable Environmental Laws concerning or relating to Hazardous Substances. In carrying out Remedial Actions that are compensable by the Department pursuant to this Agreement, the Concessionaire will not take any steps or actions which impair the Department’s potential Claims for indemnity and contribution, statutory or otherwise.

(e) Unless directed otherwise by the Department, the Concessionaire will seek to recover costs from any available reimbursement program or from any third party responsible for generating or otherwise creating or contributing to conditions that lead to the need for Remedial Action. Without limiting the preceding sentence, the Concessionaire will seek pre-approval and pursue reimbursement from the Virginia Petroleum Storage Tank Fund (“VPSTF”) for qualifying expenses incurred during the course of investigation, containment, management, mitigation or remediation activities on petroleum storage tank releases. The parties will cooperate with and notify each other with respect to activities undertaken pursuant to this Section 16.01(e).

(f) Except as provided in Section 16.02, the Concessionaire will bear all costs and expenses of preparing and complying with any Remedial Action Plan, of complying with Law and

obtaining and complying with Governmental Approvals pertaining to Hazardous Substances, and otherwise of carrying out Remedial Actions.

Section 16.02 Pre-Existing Hazardous Substances

(a) The Department will pay, to the extent permitted by Law, the Concessionaire for the Concessionaire's Allocable Costs for Remedial Actions with respect to any Unknown Pre-Existing Hazardous Substances and Third-Party Hazardous Substances (except to the extent that such Allocable Costs are attributable to prior Work by the Concessionaire on the Project previously paid for or reimbursed), the presence of either of which constitutes a Hazardous Environmental Condition. To the extent the Concessionaire recovers costs from any available reimbursement program or third parties with respect to Unknown Pre-Existing Hazardous Substances or Third-Party Hazardous Substances, the Concessionaire will pay such costs to the Department, less the Allocable Costs incurred by the Concessionaire in seeking recovery in accordance with Section 16.01(e). The Concessionaire will furnish to the Department documentation supporting the amount recovered from any reimbursement program or third parties and the Allocable Costs incurred by the Concessionaire in pursuing such recovery.

(b) The Department will assume, to the extent permitted by Law, responsibility for third party claims against the Concessionaire or any Concessionaire Party for personal injury, damages or harm to property or business due to any Pre-Existing Hazardous Substances and Third-Party Hazardous Substances, the presence of either of which constitutes a Hazardous Environmental Condition, and all related penalties, fines and administrative or civil sanctions arising out of or related to such Pre-Existing Hazardous Substances and Third-Party Hazardous Substances; except to the extent such claims are due to the negligence, recklessness, or willful misconduct of a Concessionaire Party.

(c) At all times during the Term, the Concessionaire will provide cost estimates with respect to such Remedial Actions which may be paid by the Department, for the Department's review and approval prior to proceeding with any such Remedial Actions, *provided*, that in the case of a sudden release of any Hazardous Substances, the Concessionaire may take all reasonable actions necessary to stabilize and contain the release without prior submission of such cost estimates. If the Department has not responded to a request for such approval pursuant to this Section 16.02(c) within 21 Days after the Department's acknowledgement of receipt (or in the case of an emergency a reasonably appropriate shorter period), the request will be deemed to be approved, except to the extent matters deviate from applicable Technical Requirements, or Law.

Section 16.03 Concessionaire Indemnifications Regarding Hazardous Substances

(a) The Concessionaire will indemnify, protect, defend and hold harmless and release each State Indemnitee from and against any and all Third-Party Claims, including attorney's fees, expert witness fees and court costs suffered or incurred by such State Indemnitee, to the extent caused by:

(i) Hazardous Substances introduced to or brought onto the Project Right of Way by a Concessionaire Party;

(ii) failure of any Concessionaire Party to comply with any requirement of this Agreement or any other Project Agreement relating to Hazardous Substances (including any failure to perform any Remedial Action required in accordance with Section 16.01) or to otherwise comply with applicable Environmental Laws and Governmental Approvals; or

(iii) the exacerbation, release, spreading, migration, or toxicity of Hazardous Substances due to the negligence, recklessness, or willful misconduct of a Concessionaire Party.

(b) The Concessionaire will defend such Third-Party Claims in accordance with Section 15.02.

(c) The Concessionaire's obligations under this Section 16.03 will not apply to Third-Party Claims to the extent caused by the negligence, recklessness, or willful misconduct of any State Indemnitee.

Section 16.04 Generator Status

(a) The Department will be deemed the generator of Pre-Existing Hazardous Substances and Third-Party Hazardous Substances, the presence of either of which constitutes a Hazardous Environmental Condition, within the Project Right of Way. The Department agrees to be identified as the generator of such Pre-Existing Hazardous Substances in waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Authority.

(b) The Concessionaire will be deemed the generator of Hazardous Substances introduced to the Project Right of Way by a Concessionaire Party, the presence of which constitutes a Hazardous Environmental Condition within the Project Right of Way. The Concessionaire agrees to be identified, or cause the applicable Concessionaire Party to be identified, as the generator of such Hazardous Substances in waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Authority.

ARTICLE 17

INSURANCE; PERFORMANCE SECURITY

Section 17.01 Insurance Coverage Required

In general, the Concessionaire shall provide and maintain at its own expense all insurance coverage types and amounts stated in Exhibit Y.

(a) Required Insurance for the Construction Period. The Concessionaire will provide and maintain at its own expense, or cause any applicable Contractor to provide and maintain, for the applicable Construction Period the insurance coverages specified in the Insurance Requirements attached as Exhibits Y-1, Y-2, and Y-3. This Section 17.01(a) shall not apply to the design, development and construction of the STE.

(b) Required Insurance for Operating Period. The Concessionaire will provide and maintain at its own expense, or cause the O&M Contractor to provide and maintain, for the Operating Period and for any time period following the Term's expiration if the Concessionaire is required to return and perform any additional work, the insurance coverages specified in the Insurance Requirements attached as Exhibit Y-4 and the Technical Requirements.

(c) Railroad Protective Liability Insurance. The Concessionaire will provide and maintain at its own expense, or cause to be provided and maintained, during the Term, railroad protective liability insurance as specified in the Insurance Requirements attached as Exhibit Y and the Technical Requirements or as may be required by any railroad in connection with Work across, under or adjacent to the railroad's tracks or railroad right-of-way.

(d) Required Insurance for the 395 Early Work. The Concessionaire will provide and maintain at its own expense, or cause the 395 Design-Build Contractor or the TTMS Contractor to provide and maintain, during the period while the 395 Design-Build Contractor or the TTMS Contractor is performing the 395 Early Work, the insurance coverages specified in Section 4 of the Insurance Requirements attached as Exhibit Y-1.

(e) Required Insurance for the Fred Ex Early Work. The Concessionaire will provide and maintain at its own expense, or cause the Design-Build Contractor or the TTMS Contractor to provide and maintain, during the period while the Fred Ex Design-Build Contractor or the TTMS Contractor is performing the Fred Ex Early Work, the insurance coverages specified in Section of the Insurance Requirements attached as Exhibit Y-2.

Section 17.02 General Requirements Applicable to Insurance

The insurances which the Concessionaire is required to maintain or cause to be maintained under Section 17.01:

(a) will delete any design-build or similar exclusions that could compromise coverages because of the Concessionaire's use of the design-build delivery method;

(b) except for professional liability insurance, worker's compensation insurance, and employer's liability insurance, the Department will be named as an additional insured on a primary, non-contributory basis;

(c) will not limit the Concessionaire's liabilities and obligations pursuant to this Agreement, including the Concessionaire's indemnification obligations;

(d) will be maintained with insurers that at the time coverage commences are authorized to do business in the State and have a current policyholder's management and financial size category rating of not less than "A-: VIII" according to A.M. Best's Financial Strength Rating and Financial Size Category, except as otherwise approved by the Department;

(e) will be on terms specified in this Agreement or otherwise approved by the Department (such approval not to be unreasonably withheld);

(f) will contain coverage terms and conditions that reflect the industry standard that the commercial market will provide and support as of the date of such insurance procurement and any subsequent renewals;

(g) without inferring a right of cancellation that would not exist in the absence of these endorsements, will contain a term which requires the insurer to give not less than 30 Days' prior notice to the Department whenever the insurer gives the Concessionaire a notice of cancellation or any other notice with respect to the policy (except in the case of any non-premium payment, not less than ten Days' prior notice, which the insurer will be obligated to give to the Department simultaneously with providing such notice to the Concessionaire);

(h) other than for workers compensation insurance, employer's liability insurance, automobile liability insurance, property and business interruption insurance, professional liability insurance and contractor pollution liability insurance, will be effected on a severability of interest basis for the purposes of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall policy limit not being increased as a result);

(i) other than for professional liability insurance, worker's compensation insurance, employer's liability insurance and property and business interruption insurance, will include cross-liability clauses allowing one insured to bring a claim against another insured party;

(j) will be endorsed so that the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the Persons comprising the insured;

(k) other than for workers compensation insurance, employer's liability insurance, automobile liability insurance, professional liability insurance and contractor pollution liability insurance, will contain a provision under which the insurer agrees that the failure of one insured to observe and fulfill the terms of the policy will not prejudice the coverage of the other insureds;

(l) other than for workers compensation insurance, employer's liability insurance, commercial general liability insurance, excess liability insurance, contractor pollution liability insurance, and automobile liability insurance, have each policy endorsed to contain a standard mortgagee clause to the effect that the Department and the other insureds will not be prejudiced by an unintended and/or inadvertent error, omission, or misdescription of the risk interest in property insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured or failure to comply with a statutory requirement;

(m) will not include defense costs within the limits of coverage or permit erosion of coverage limits by defense costs, except that defense costs may be included within the limits of coverage of professional and contractor pollution liability policies; and

(n) will provide that the coverage thereof is primary and noncontributory coverage with respect to all named or additional insureds, except for coverage that by its nature cannot be written as primary.

Section 17.03 Proof of Coverage

The Concessionaire will deliver to the Department true and correct copies of policies, material forms, endorsements, and premium indications of each insurance policy certified by the Concessionaire's insurance broker (or as appropriate the Design-Build Contractor's, the Lead Engineering Contractor's, the TTMS Contractor's or the O&M Contractor's broker) to be true and correct copies of such policies, forms, endorsements and premium indications, as a condition to receiving the applicable notices to proceed set forth in this Agreement, and annually thereafter no later than ten Days prior to policy renewal or replacement. The Concessionaire will also deliver to the Department duplicate originals or copies of each Project-specific insurance policy and endorsements for the Project coverage of each other insurance policy certified by the Concessionaire's insurance broker (or as appropriate the Design-Build Contractor's, the Lead Engineering Contractor's, the TTMS Contractor's or the O&M Contractor's broker) to be true and correct copies of the originals no later than 60 Days after receiving the applicable notices to proceed set forth in this Agreement and annually thereafter no later than 60 Days after policy renewal or replacement, and also whenever reasonably requested by the Department.

Section 17.04 Adjustments in Coverage Amounts

(a) All insurance coverage limits stipulated in Section 17.01(b), as well as deductibles and self-insured retentions, will be reviewed every three years and adjusted as appropriate, in line with such amounts that would be insured by a prudent business similar to, and undertaking similar activities to, the Concessionaire; *provided*, that no such review or adjustments will be required with respect to insurance coverage required for the Design-Build Work.

(b) In determining increases in limits and adjustments to deductibles or self-insured retentions, the parties will take into account (A) Claims and Loss experience for the Project, *provided*, that premium increases due to adverse Claims experience will not be a basis for justifying increased deductibles or self-insured retentions; (B) the condition of the Project, (C) the safety compliance and performance record for the Project; (D) then-prevailing Good Industry Practice for insuring comparable transportation projects; and (E) the provisions regarding unavailability of increased coverage set forth in Section 17.05.

(c) In connection with such review, the Concessionaire will deliver to the Department evidence that such insurance is in effect, together with the Concessionaire's certification that such insurance is in line with amounts that would be insured by such a prudent business.

(d) Any Dispute regarding increases in limits or adjustments to deductibles or self-insured retentions will be resolved according to the dispute resolution procedures under Article 21.

Section 17.05 Unavailability of Insurance

(a) If any insurance required to be maintained pursuant to this Article 17 (including the limits, deductibles or any other terms under policies for such insurance) ceases to be available on a commercially reasonable basis, the Concessionaire will provide written notice to the Department accompanied by a letter from the Concessionaire's insurance advisor stating that such insurance is unavailable anywhere in the global market on a commercially reasonable basis. Such notice will

be given not later than 30 Days prior to the scheduled date for renewal of any such policy. Except to the extent attributable to the Concessionaire, or any Concessionaire Party upon receipt of such notice by the Department, the Concessionaire and the Department will immediately enter into good faith negotiations regarding the matters set forth in Section 17.05(c) and (d) below.

(b) The Concessionaire will not be excused from satisfying the insurance requirements of this Article 17 merely because premiums for such insurance are higher than anticipated. To establish that the required coverages (or required terms of such coverages, including insurance policy limits) are not available on commercially reasonable terms, the Concessionaire will bear the burden of proving either that (i) the same is not available at all in the global insurance and reinsurance markets or (ii) the premiums for the same have so materially increased over those previously paid for the same coverage that a reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude that such increased premiums are not justified by the risk protection afforded. For the purpose of clause (ii), the only increases in premiums that may be considered are those caused by changes in general market conditions in the insurance industry.

(c) In the event that the Concessionaire and the Department cannot reach a resolution acceptable to both parties within ten Days, the Concessionaire and the Department will make arrangements for the formation of an insurance panel consisting of the Concessionaire's insurance advisor (or broker), the Department or its insurance advisor (or broker) and an independent insurance expert from a nationally recognized insurance brokerage firm, chosen by the Concessionaire and reasonably acceptable to the Department. Such independent expert will conduct a separate review of the relevant insurance requirements of this Article 17 and the Technical Requirements and the market for such insurance at the time, giving due consideration to the representations of both insurance advisors, and upon conclusion of such review will issue a written report stating whether such insurance is available or unavailable on a commercially reasonable basis.

(d) If the insurance expert concludes that such insurance is not available on a commercially reasonable basis, the insurance expert will provide a written recommendation (which will include the amount and type of insurance which is available upon a commercially reasonable basis) not less than 15 Days before the date for renewal of such insurance. The Concessionaire will, prior to the expiration of the insurance then in effect, obtain the insurance required by this Article 17 as adjusted in accordance with such recommendation.

(e) The Department makes no representation that the limits of liability specified for any insurance policy to be carried pursuant to this Agreement are adequate to protect the Concessionaire against its undertakings pursuant to this Agreement, to the Department, or any third party. No such limits of liability will preclude the Department from taking any actions as are available to it under the Project Agreements or Law.

Section 17.06 Failure to Obtain Insurance Coverage

(a) If in any instance the Concessionaire has not performed its obligations respecting insurance coverage set forth in this Agreement (as may be adjusted in accordance with Section 17.05) or is unable to enforce and collect any such insurance for failure to assert Claims in

accordance with the terms of the insurance policies, then for purposes of determining the Concessionaire's liability and the limits thereon or determining reductions in compensation due from the Department to the Concessionaire on account of available insurance, the Concessionaire will be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had the Concessionaire performed such obligations and not committed such failure.

(b) Nothing in this Section 17.06 or elsewhere in this Article 17 will be construed to treat the Concessionaire as electing to self-insure where the Concessionaire is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the insurance policy is written meets the rating qualifications approved by the Department.

Section 17.07 Restoration; Insurance Proceeds

(a) If all or any part of any of the Project Assets will be destroyed or damaged during the Term in whole or in part by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen, the Concessionaire will:

(i) give the Department notice thereof promptly after the Concessionaire receives actual notice of such casualty;

(ii) except (A) in the case of destruction or damage caused by a Compensation Event (in which case the provisions of Section 14.01 will apply) or (B) as otherwise provided in Section 20.03, at its sole cost and expense (whether or not insurance proceeds, if any, are equal to the estimated cost of repairs, alterations, restorations, replacement and rebuilding (the "Casualty Cost")), proceed diligently to restore the Project to its pre-casualty condition;

(iii) deposit all insurance proceeds received by the Concessionaire in connection with any restoration with a Depositary (such insurance proceeds, together with any interest earned thereon, the "Restoration Funds"); *provided*, that the procedures of this Section 17.07(a)(iii) will only apply to casualty events for which the cost of restoration exceeds \$5,000,000, adjusted annually by the percentage increase in CPI.

(b) Subject to Section 17.07(a)(ii), if the Concessionaire (i) fails or neglects to commence the diligent restoration of the Project or the portion thereof so damaged or destroyed, (ii) having so commenced such restoration, fails to diligently complete the same in accordance with the terms of this Agreement or (iii) prior to the completion of any such restoration, this Agreement expires or terminates in accordance with the terms of this Agreement, the Department may, but will not be required to, complete such restoration at the Concessionaire's expense and will be entitled to be paid out of the Restoration Funds for the relevant restoration costs incurred by the Department. Subject to Section 17.07(a)(ii), in any case where this Agreement will expire or be terminated prior to the completion of the restoration, the Concessionaire will (A) account to the Department for all amounts spent in connection with any restoration which was undertaken, (B) immediately pay over or cause the Depositary to pay over to the Department the remainder, if any, of the Restoration Funds received by the Concessionaire prior to such termination or

cancellation and (C) pay over or cause the Depository to pay over to the Department, within five Business Days after receipt thereof, any Restoration Funds received by the Concessionaire or the Depository subsequent to such termination or cancellation. The Concessionaire's obligations under this Section 17.07(b) will survive the expiration or termination of this Agreement.

(c) Subject to the satisfaction by the Concessionaire of all of the terms and conditions of this Section 17.07, the Concessionaire will cause the Depository, with prior written notice to the Department, to pay to the Concessionaire from time to time, any Restoration Funds, but not more than the amount actually collected by the Depository upon the loss, together with any interest earned thereon, to be utilized by the Concessionaire solely for the restoration, such payments to be made as follows:

(i) prior to commencing any restoration, the Concessionaire will furnish to the Department for its approval the estimated cost, estimated schedule and detailed plan for the completion of the restoration, each prepared by an architect or engineer;

(ii) the Restoration Funds will be paid to the Concessionaire in installments as the restoration progresses, subject to Section 17.07(c)(iii), based upon requisitions to be submitted by the Concessionaire to the Depository, with a copy to the Department, in compliance with Section 17.07(d), showing the cost of labor and materials purchased for incorporation in the restoration, or incorporated therein since the previous requisition, or the amounts payable or paid to the Contractor, as the case may be, and due and payable or paid by the Concessionaire; *provided*, that if any Lien caused by a Concessionaire Party is filed against the Project or any part thereof in connection with the restoration (other than a Permitted Encumbrances (but not including clause (c) of the definition thereof)), the Concessionaire will not be entitled to receive any further installment until such Lien is satisfied or discharged (by bonding or otherwise); *provided* further, that notwithstanding the foregoing, but subject to the provisions of Section 17.07(c)(iii), the existence of any such Lien will not preclude the Concessionaire from receiving any installment of Restoration Funds so long as such Lien will be discharged with funds from such installment and at the time the Concessionaire receives such installment the Concessionaire delivers to the Department and the Depository a release of such Lien executed by the holder of such Lien and in recordable form;

(iii) the amount of each installment to be paid to the Concessionaire will be the aggregate amount of Casualty Costs theretofore incurred by the Concessionaire minus the aggregate amount of Restoration Funds theretofore paid to the Concessionaire in connection therewith; *provided*, that all disbursements to the Concessionaire will be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for materials and Contractors to the extent that such disbursements are customary in the industry and that the unapplied portion of the funds held by the Depository, together with other funds available to the Concessionaire for such Restoration, as certified by the Concessionaire, are sufficient to complete the restoration; and

(iv) except as provided in Section 17.07(b), upon completion of and payment for the restoration by the Concessionaire, subject to the rights of any Collateral Agent, the

Depository will pay the balance of the Restoration Funds, if any, to the Concessionaire; *provided*, that if the insurance proceeds are insufficient to pay for the restoration (or if there will be no insurance proceeds), the Concessionaire will nevertheless be required to make the restoration and provide the deficiency in funds necessary to complete the restoration as provided in Section 17.07(a)(iii).

(d) The following will be conditions precedent to each payment made to the Concessionaire as provided in Section 17.07(c):

(i) the Concessionaire will have furnished the Department with estimates of costs and schedule and a detailed plan for the completion of the restoration, as provided for in Section 17.07(c)(i);

(ii) the Concessionaire will have furnished the Department a certificate stating that the materials and other items which are the subject of the requisition have been delivered to the Project (except with respect to requisitions for advance deposits permitted under Section 17.07(c)(iii)), free and clear of all Liens (other than Permitted Encumbrances), and no unsatisfied or unbonded mechanic's or other Liens have been claimed, except for any Lien that will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (*provided*, that a release of such Lien is delivered to the Depository in accordance with Section 17.07(c)(ii));

(iii) the restoration will be carried out under the supervision of the relevant architect or engineer, who is licensed in the State and has met all of the requirements of the Virginia Department of Professional and Occupational Regulation applicable to an architect or engineer and who may be a licensed employee of the Concessionaire or a Contractor, and there will be submitted to the Depository and the Department the certificate of such architect or engineer stating that:

(A) the sum then requested to be withdrawn either has been paid by the Concessionaire or is due and payable to Contractors, engineers, architects or other Persons (whose names and addresses will be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate;

(B) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Restoration Funds or has been made out of the Restoration Funds received by the Concessionaire;

(C) the sum then requested does not exceed the value of the services and materials described in the certificate;

(D) other than amounts for disbursements for advance deposits for materials and Contractors, the work relating to such requisition has been performed in accordance with this Agreement;

(E) the balance of the Restoration Funds held by the Depository or available from other sources will be sufficient upon completion of the restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion; and

(F) in the case of the final payment to the Concessionaire, the restoration has been completed in accordance with this Agreement.

(e) If the Concessionaire obtains Performance Bonds or performance Letters of Credit related to a restoration (which the Concessionaire may or may not obtain in its discretion), the Concessionaire will name the Department and the Concessionaire and the Collateral Agent, as their interests may appear, as additional obligees or transferee beneficiaries (as applicable), and will deliver copies of any such bonds or letters of credit to the Department promptly upon obtaining them. The Department will only have the right to exercise remedies under any such bonds or letters of credit so long as the Concessionaire or a Lender is not pursuing remedies thereunder.

(f) The requirements of this Section 17.07 are for the benefit only of the Department, and no Contractor or other Person will have or acquire any claim against the Department as a result of any failure of the Department actually to undertake or complete any restoration as provided in this Section 17.07 or to obtain the evidence, certifications and other documentation provided for in this Agreement.

(g) Restoration Funds deposited with a Depository will be invested and reinvested in direct obligations of and obligations fully guaranteed by, the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America, or in other “permitted investments” under the Project Financing Agreements, and all interest earned on such investments will be added to the Restoration Funds.

(h) The Department acknowledges and agrees that any Restoration Funds not applied to a restoration as provided in this Section 17.07 will be subject to the Lien or Liens of any Collateral Agent.

Section 17.08 Funding and Performance Security

(a) Performance Security – Equity Funding Guaranties or Equity Letters of Credit.

(i) With respect to the Original Project, the Concessionaire will cause each Equity Member to provide an equity funding guaranty from each of the Fluor Guarantor and the Transurban Guarantor, as applicable (each, an “Equity Funding Guaranty”), which guarantees the funding of capital contributions of the Equity Members in accordance with the terms of the Equity Funding Agreements.

(ii) With respect to the 395 Project, the Concessionaire will cause each Equity Sponsor to provide either:

(A) one or more Letters of Credit in an aggregate amount equal to the 395 Equity Commitment Amount (the “395 Equity Letter of Credit”) in accordance with the 395 Project Financing Agreements; and/or

(B) an equity funding guaranty from the Transurban Guarantor (the “395 Equity Funding Guaranty”) which guarantees the funding of capital contributions of such Equity Sponsor in accordance with the terms of the 395 Equity Funding Agreements.

(iii) With respect to the Fred Ex Project, the Concessionaire will cause each Equity Sponsor to provide either:

(A) one or more Letters of Credit in an aggregate amount equal to the Fred Ex Equity Commitment Amount (the “Fred Ex Equity Letter of Credit”) in accordance with the Fred Ex Project Financing Agreements; and/or

(B) an equity funding guaranty from the Transurban Guarantor (the “Fred Ex Equity Funding Guaranty”) which guarantees the funding of capital contributions of such Equity Sponsor in accordance with the terms of the Fred Ex Equity Funding Agreements in an aggregate amount equal to the Fred Ex Equity Commitment Amount.

(iv) Subject to the provisions of the Direct Agreement, the 395 Direct Agreement, and the Fred Ex Direct Agreement, the Project Financing Agreements will include a provision granting the Department the right to direct the Collateral Agent to draw upon the applicable Equity Funding Guaranty, the 395 Equity Letter of Credit (if any), the 395 Equity Funding Guaranty (if any), the Fred Ex Equity Letter of Credit (if any), and/or the Fred Ex Equity Funding Guaranty (if any), with respect to any amounts that the relevant Equity Member or Equity Sponsor has failed to fund when due and payable (whether at the scheduled date or upon acceleration upon an event of default under the Project Financing Agreements), and that the proceeds of such draw will be deposited in a project account as designated by the Collateral Agent in accordance with the Project Financing Agreements.

(b) Design-Build Performance Security – Design-Build and TTMS.

(i) Design-Build Security – Original Project.

(A) Design-Build Letter of Credit. With respect to the Original Project, the Concessionaire will require the Design-Build Contractor to furnish a Letter of Credit (the “Design-Build Letter of Credit”) in an amount not less than seven and one-half percent (7.5%) of the price of the Design-Build Contract. The Design-Build Letter of Credit will provide that it may be transferred by the Concessionaire to the Department, as beneficiary, with rights to draw upon or exercise other remedies thereunder if the Department succeeds to the position of the Concessionaire under the Design-Build Contract.

(B) Upon the Concessionaire’s receipt from the Department of the Substantial Completion Certificate, the Design-Build Letter of Credit may be reduced to an amount not less than three percent (3%) of the price of the Design-Build Contract. If the Punch List has not been completed within 60 Days after the Final Acceptance Deadline, the Concessionaire agrees to draw on the Design-Build Letter of Credit at the written

direction of the Department and to use the proceeds of such drawing to provide for the prompt completion of the items on the Punch List.

(C) Design-Build Work Guarantee. In connection with the Original Project and concurrently with Financial Close or, if earlier, the commencement of Work under the Design-Build Contract, the Concessionaire will cause to be delivered to the Department, an executed copy of a guaranty agreement of the Fluor Guarantor, in substantially the form set forth in Exhibit F (the “Design-Build Work Guarantee”), in which the Fluor Guarantor guarantees the performance of the Design-Build Contractor’s obligations under the Design-Build Contract. In addition to and notwithstanding the Design-Build Work Guarantee required to be delivered pursuant to the preceding sentence, the Concessionaire will ensure that the Design-Build Contract will include customary provisions limiting the Design-Build Contractor’s liability to not less than 40% of the aggregate dollar value of the Work to be performed thereunder.

(ii) Design-Build and TTMS Performance Security – 395 Project.

(A) 395 Payment Bond and 395 Performance Bond. In connection with the 395 Project, the Concessionaire will furnish or require the 395 Design-Build Contractor to furnish (1) a Payment Bond from a surety or other firm acceptable to the Department (the “395 Payment Bond”) in an amount equal to 100% of the 395 Design-Build Cost and (2) a Performance Bond from a surety or other firm acceptable to the Department (the “395 Performance Bond”) in an amount equal to 100% of the 395 Design-Build Cost, each in substantially the forms set forth in Exhibit Q-1.

(B) Performance Security for the 395 TTMS Work. In connection with the 395 TTMS Work, the Concessionaire will require the 395 TTMS Contractor to furnish either: (1)(x) a Payment Bond from a surety or other firm acceptable to the Department (the “395 TTMS Payment Bond”) in an amount equal to 100% of the cost for the 395 TTMS Work and (y) a Performance Bond from a surety or other firm acceptable to the Department (the “395 TTMS Performance Bond”) in an amount equal to 100% of the cost for the 395 TTMS Work or (2) a Letter of Credit (the “395 TTMS Letter of Credit”) in an amount equal to 100% of the cost for the 395 TTMS Work.

(C) Each of the 395 Payment Bond, the 395 Performance Bond, the 395 TTMS Payment Bond and the 395 TTMS Performance Bond may be provided in multiple forms that, in the aggregate, equal the required amount for each of such 395 Payment Bond, the 395 Performance Bond, the 395 TTMS Payment Bond and the 395 TTMS Performance Bond, as applicable. The 395 Payment Bond, the 395 Performance Bond, the 395 TTMS Payment Bond and the 395 TTMS Performance Bond each will name the Department and the Collateral Agent (as applicable) as an obligee and will provide that it may be transferred by the Concessionaire to the Department or the Collateral Agent, as beneficiary, with rights to draw upon or exercise other remedies thereunder if the Department or the Collateral Agent, as applicable, succeeds to the position of the Concessionaire under the 395 Design-Build Contract or the 395 TTMS Contract, as applicable. The 395 TTMS Letter of Credit will provide that it may be transferred by the Concessionaire to the Department (or the Collateral Agent, as applicable), as beneficiary, with rights to draw upon or exercise other

remedies thereunder if the Department succeeds to the position of the Concessionaire under the 395 TTMS Contract.

(iii) Design-Build and TTMS Performance Security – Fred Ex Project.

(A) Fred Ex Payment Bond and Fred Ex Performance Bond. In connection with the Fred Ex Project, the Concessionaire will furnish or require the Fred Ex Design-Build Contractor to furnish (1) a Payment Bond from a surety or other firm acceptable to the Department (the “Fred Ex Payment Bond”) in an amount equal to 100% of the Fred Ex Design-Build Cost and (2) a Performance Bond from a surety or other firm acceptable to the Department (the “Fred Ex Performance Bond”) in an amount equal to 100% of the Fred Ex Design-Build Cost, each in substantially the forms set forth in Exhibit Q-2.

(B) Performance Security for the Fred Ex TTMS Work. In connection with the Fred Ex TTMS Work, the Concessionaire will require the TTMS Contractor to furnish either: (1)(x) a Payment Bond from a surety or other firm acceptable to the Department (the “Fred Ex TTMS Payment Bond”) in an amount equal to 100% of the cost for the Fred Ex TTMS Work and (y) a Performance Bond from a surety or other firm acceptable to the Department (the “Fred Ex TTMS Performance Bond”) in an amount equal to 100% of the cost for the Fred Ex TTMS Work or (2) a Letter of Credit (the “Fred Ex TTMS Letter of Credit”) in an amount equal to 100% of the cost for the Fred Ex TTMS Work.

(C) Each of the Fred Ex Payment Bond, the Fred Ex Performance Bond, the Fred Ex TTMS Payment Bond, and the Fred Ex TTMS Performance Bond may be provided in multiple forms that, in the aggregate, equal the required amount for each of such Fred Ex Payment Bond, the Fred Ex Performance Bond, the Fred Ex TTMS Payment Bond, and the Fred Ex TTMS Performance Bond, as applicable. The Fred Ex Payment Bond, the Fred Ex Performance Bond, the Fred Ex TTMS Payment Bond, and the Fred Ex TTMS Performance Bond each will name the Department and the Collateral Agent (as applicable) as an obligee and will provide that it may be transferred by the Concessionaire to the Department or the Collateral Agent, as beneficiary, with rights to draw upon or exercise other remedies thereunder if the Department or the Collateral Agent, as applicable, succeeds to the position of the Concessionaire under the Fred Ex Design-Build Contract or the Fred Ex TTMS Contract, as applicable. The Fred Ex TTMS Letter of Credit will provide that it may be transferred by the Concessionaire to the Department (or the Collateral Agent, as applicable), as beneficiary, with rights to draw upon or exercise other remedies thereunder if the Department succeeds to the position of the Concessionaire under the Fred Ex TTMS Contract.

(D) Any Major Subcontract in addition to the Fred Ex Design-Build Contract and the Fred Ex TTMS Contract will be subject to customary competitive procurement, FHWA and Department review and approval, insurance, performance and payment security, and other requirements analogous to those applicable to the Fred Ex Design-Build Contract and the Fred Ex TTMS Contract.

(iv) Design-Build Performance Security – Opitz Boulevard Ramp Project.

(A) In connection with the Opitz Boulevard Ramp Project, the Concessionaire will furnish or require the Opitz Boulevard Ramp Construction Contractor to furnish: (1) a Payment Bond from a surety or other firm acceptable to the Department (the “Opitz Boulevard Ramp Payment Bond”) in an amount equal to 100% of the Opitz Boulevard Ramp Construction Cost and (2) a Performance Bond from a surety or other firm acceptable to the Department (the “Opitz Boulevard Ramp Performance Bond”) in an amount equal to 100% of the Opitz Boulevard Ramp Construction Cost, each in substantially the forms set forth in Exhibit Q-3.

(B) Performance Security for the Opitz Boulevard Ramp TMS Work. In connection with the Opitz Boulevard Ramp TMS Work, the Concessionaire will require the TMS Contractor to furnish: (x) (1) a Payment Bond from a surety or other firm acceptable to the Department (the “Opitz Boulevard Ramp TMS Payment Bond”) in an amount equal to 100% of the cost for the Opitz Boulevard Ramp TMS Work, and (2) a Performance Bond from a surety or other firm acceptable to the Department (the “Opitz Boulevard Ramp TMS Performance Bond”) in an amount equal to 100% of the cost for the Opitz Boulevard Ramp TMS Work, each in substantially the forms set forth in Exhibit Q-3 or (y) a Letter of Credit (the “Opitz Boulevard Ramp TMS Letter of Credit”) in an amount equal to 100% of the cost for the Opitz Boulevard Ramp TMS Work.

(C) Each of the Opitz Boulevard Ramp Payment Bond, the Opitz Boulevard Ramp Performance Bond, Opitz Boulevard Ramp TMS Payment Bond, and the Opitz Boulevard Ramp TMS Performance Bond may be provided in multiple forms (each in form reasonably acceptable to the Department) that, in the aggregate, equal the required amount for each of such Opitz Boulevard Ramp Payment Bond, Opitz Boulevard Ramp Performance Bond, Opitz Boulevard Ramp TMS Payment Bond, and the Opitz Boulevard Ramp TMS Performance Bond, as applicable. The Opitz Boulevard Ramp Payment Bond, the Opitz Boulevard Ramp Performance Bond, Opitz Boulevard Ramp TMS Payment Bond, and the Opitz Boulevard Ramp TMS Performance Bond each will name the Department and the Collateral Agent (as applicable) as an obligee and will provide that it may be transferred by the Concessionaire to the Department or the Collateral Agent, as beneficiary, with rights to draw upon or exercise other remedies thereunder if the Department or the Collateral Agent, as applicable, succeeds to the position of the Concessionaire under the Opitz Boulevard Ramp Construction Contract or the Opitz Boulevard Ramp TMS Contract, as applicable. The Opitz Boulevard Ramp TMS Letter of Credit will provide that it may be transferred by the Concessionaire to the Department (or the Collateral Agent, as applicable), as beneficiary, with rights to draw upon or exercise other remedies thereunder if the Department succeeds to the position of the Concessionaire under the Opitz Boulevard Ramp TMS Contract.

(v) Design-Build Performance Security – Seminary Road Ramp Project.

(A) In connection with the Seminary Road Ramp Project, the Concessionaire will furnish or require Seminary Road Ramp Construction Contractor to furnish a Performance Bond from a surety or other firm acceptable to the Department (the

“Seminary Road Ramp Performance Bond”) in an amount equal to 100% of the Seminary Road Ramp Construction Cost, in substantially the form set forth in Exhibit Q-3.

(B) The Seminary Road Ramp Performance Bond may be provided in multiple forms (each in form reasonably acceptable to the Department) that, in the aggregate, equal the required amount for the Seminary Road Ramp Performance Bond. The Seminary Road Ramp Performance Bond will name the Department and the Collateral Agent (as applicable) as an obligee and will provide that it may be transferred by the Concessionaire to the Department or the Collateral Agent, as beneficiary, with rights to draw upon or exercise other remedies thereunder if the Department or the Collateral Agent, as applicable, succeeds to the position of the Concessionaire under the Seminary Road Ramp Construction Contract.

(c) Additional Requirements for all Performance Security.

(i) Unless otherwise specified in this Agreement, a draw on any Performance Security will not be conditioned on prior resort to any other security of, or provided for the benefit of, any Concessionaire Party. If the Department receives proceeds of a draw on any Performance Security in excess of the relevant obligation, the Department will promptly refund the excess to the Concessionaire (or to its designee) after all relevant obligations are satisfied in full.

(ii) The Concessionaire will obtain and furnish all Performance Security and replacements thereof at its sole cost and expense, and will pay all charges imposed in connection with the Department’s presentment of sight drafts and drawing against any Performance Security or replacements thereof.

(iii) In the event the Department makes a permitted assignment of its rights and interests under this Agreement, the Concessionaire will cooperate so that concurrently with the effectiveness of such assignment, either replacement Performance Security for, or appropriate amendments to, the outstanding Performance Security will be delivered to the assignee naming the assignee as replacement beneficiary, at no cost to the Concessionaire.

(iv) The obligations of the Concessionaire during the Term to reimburse the issuer for draws under any Performance Security may be secured by a Financing Assignment if it encumbers the entire Concessionaire’s Interest.

(d) Performance Security – Project Enhancements and Major Maintenance. With regard to the entire Project (*i.e.*, the Original Project, the 395 Project, the Fred Ex Project, the STE, the Opitz Road Ramp Project, and the Seminary Road Ramp Project), the Concessionaire will require its contractors to furnish the Major Maintenance Performance Security with respect to Project Enhancements and Major Maintenance during the Term if and to the extent required by the Project Financing Agreements or, if there are no Project Financing Agreements, as may be reasonably required by the Department. The Major Maintenance Performance Security will name the Department a permitted assignee or transferee beneficiary (as applicable), with rights to draw upon or exercise other remedies thereunder if the Department succeeds to the position of the Concessionaire under the O&M Contract.

ARTICLE 18

OWNERSHIP AND ACCESS TO RECORDS

Section 18.01 Maintenance of Records

The Concessionaire will maintain or cause to be maintained proper books, records, and accounts in which complete and correct entries will be made of its transactions in accordance with GAAP or any other generally accepted accounting standards which are acceptable to the Department. Such books and records will be maintained at a location situated within the contiguous United States of America as designated by the Concessionaire by delivery of notice of such location to the Department. Further, the Concessionaire will maintain or cause to be maintained such books, records and accounts in accordance with applicable Law, including Laws applicable to the Project as a result of the costs of the Project being financed in part with State funds, federal-aid funds and State bond proceeds.

Section 18.02 Public Records

(a) The Concessionaire acknowledges that any Work Product the Department owns and any document of which the Department obtains a copy that relates to the Project may be considered public records under the Virginia Public Records Act, Sections 42.1-76 through 42.1-91 of the Code of Virginia or official records under the Virginia Freedom of Information Act, Sections 2.2-3700 through 2.2-3714 of the Code of Virginia, and as such may be subject to public disclosure. In the event of a request for disclosure of any such information, the Department will comply with Law. The Department recognizes that certain Work Product the Department owns, and certain documents of which the Department obtains a copy that relate to the Project, including Escrow Documents obtained under Section 18.05, may contain information exempt from disclosure under Section 2.2-3705.6(11) of the Code of Virginia, may constitute trade secrets as defined in the Uniform Trade Secrets Act, Sections 59.1-336 through 59.1-343 of the Code of Virginia, and may include confidential information which is otherwise subject to protection from misappropriation or disclosure, and the Department will keep such information confidential unless disclosure is required by Law. Should such records become the subject of a request for public disclosure, the Department will promptly notify the Concessionaire of such request and the date by which the Department anticipates responding and will consider the objections received from the Concessionaire in advance of such date.

(b) If the Concessionaire believes that any Work Product or any document subject to transmittal to or review by the Department under the terms of this Agreement or a Project Agreement contains proprietary or confidential information or trade secrets that are exempt or protected from disclosure pursuant to Law, the Concessionaire will use its reasonable efforts to identify such information prior to such transmittal or review and the Concessionaire and the Department will confer on appropriate means of ensuring compliance with such Law prior to transmittal or review. Upon the written request of either party, the Concessionaire and the Department will mutually develop a protocol for the transmittal, review, and disclosure of Work Product or other documents produced or obtained by the Concessionaire so as to avoid violations of any Law and to protect, consistent with the requirements of Law, appropriate information from disclosure.

Section 18.03 Ownership of Work Product

(a) All Work Product (including records thereof in software form), including reports, studies, data, information, logs, records, and similar terms, which is prepared or procured by or on behalf of the Department or its other contractors, whether before or after the Agreement Date, will be and remain the exclusive property of the Department; *provided*, that the Department will make available to the Concessionaire, without charge, and without representation or warranty of any kind, any documents in the possession of the Department relating to the planning, design, engineering, and permitting of the Project and any Project Enhancement that the Concessionaire elects to or is directed to carry out.

(b) Prior to the expiration or earlier termination of this Agreement, all Work Product prepared by or on behalf of the Concessionaire will remain exclusively the property of the Concessionaire, notwithstanding any delivery of copies thereof to the Department. Upon the expiration or earlier termination of this Agreement for any reason, including termination by the Concessionaire for a Department Default, (i) the Concessionaire will promptly turn over to the Department a copy of all Work Product the Concessionaire owns and (ii) subject to Section 18.04, all such Work Product will be considered the sole and exclusive property of the Department (other than Proprietary Work Product (inclusive of Proprietary Intellectual Property), with respect to which the Department will have a nonexclusive, nontransferable, irrevocable, fully paid up license in connection with the Project), without compensation due the Concessionaire or any other party. The Department will enter into a confidentiality agreement reasonably requested by the Concessionaire with respect to any Proprietary Work Product (inclusive of Proprietary Intellectual Property), subject to Section 18.02. The Concessionaire will continue to have a full and complete right to use any and all duplicates or other originals of such Proprietary Work Product (inclusive of Proprietary Intellectual Property) in any manner it chooses.

(c) Prior to the earlier termination of the 395 Project pursuant to Section 20.12, all Work Product prepared by or on behalf of the Concessionaire for the 395 Project will remain exclusively the property of the Concessionaire, notwithstanding any delivery of copies thereof to the Department. Upon the earlier termination of the 395 Project pursuant to Section 20.12, (i) the Concessionaire will promptly turn over to the Department a copy of all Work Product for the 395 Project that the Concessionaire owns and (ii) subject to Section 18.04, all such Work Product will be considered the sole and exclusive property of the Department (other than Proprietary Work Product (inclusive of Proprietary Intellectual Property), with respect to which the Department will have a nonexclusive, nontransferable, irrevocable, fully paid up license in connection with the Project), without compensation due the Concessionaire or any other party. The Department will enter into a confidentiality agreement reasonably requested by the Concessionaire with respect to any Proprietary Work Product (inclusive of Proprietary Intellectual Property), subject to Section 18.02. The Concessionaire will continue to have a full and complete right to use any and all duplicates or other originals of such Proprietary Work Product (inclusive of Proprietary Intellectual Property) in any manner it chooses.

(d) Prior to the early termination of the Fred Ex Project pursuant to Section 20.13, all Fred Ex Work Product will remain exclusively the property of the Concessionaire, notwithstanding any delivery of copies thereof to the Department. Upon the early termination of the Fred Ex Project pursuant to Section 20.13, (i) the Concessionaire will promptly turn over to the Department a copy

of all Fred Ex Work Product the Concessionaire owns and (ii) subject to Section 18.04, all such Fred Ex Work Product will be considered the sole and exclusive property of the Department (other than Proprietary Work Product (inclusive of Proprietary Intellectual Property), with respect to which the Department will have a nonexclusive, nontransferable, irrevocable, fully paid up license in connection with the Project), without compensation due the Concessionaire or any other party. The Department will enter into a confidentiality agreement reasonably requested by the Concessionaire with respect to any Fred Ex Work Product that is Proprietary Work Product (inclusive of Proprietary Intellectual Property), subject to Section 18.02. The Concessionaire will continue to have a full and complete right to use any and all duplicates or other originals of such Fred Ex Work Product that is Proprietary Work Product (inclusive of Proprietary Intellectual Property) in any manner it chooses.

(e) Prior to the early termination of the Opitz Boulevard Ramp Project pursuant to Section 20.14, all Opitz Boulevard Ramp Work Product will remain exclusively the property of the Concessionaire, notwithstanding any delivery of copies thereof to the Department. Upon the early termination of the Opitz Boulevard Ramp Project pursuant to Section 20.14, (i) the Concessionaire will promptly turn over to the Department a copy of all Opitz Boulevard Ramp Work Product the Concessionaire owns, and (ii) subject to Section 18.04, all such Opitz Boulevard Ramp Work Product will be considered the sole and exclusive property of the Department (other than Proprietary Work Product (inclusive of Proprietary Intellectual Property), with respect to which the Department will have a nonexclusive, nontransferable, irrevocable, fully paid up license in connection with the Project), without compensation due the Concessionaire or any other party. The Department will enter into a confidentiality agreement reasonably requested by the Concessionaire with respect to any Opitz Boulevard Ramp Work Product that is Proprietary Work Product (inclusive of Proprietary Intellectual Property), subject to Section 18.02. The Concessionaire will continue to have a full and complete right to use any and all duplicates or other originals of such Opitz Boulevard Ramp Work Product that is Proprietary Work Product (inclusive of Proprietary Intellectual Property) in any manner it chooses.

(f) Prior to the early termination of the Seminary Road Ramp Project pursuant to Section 20.15, all Seminary Road Ramp Work Product will remain exclusively the property of the Concessionaire, notwithstanding any delivery of copies thereof to the Department. Upon the early termination of the Seminary Road Ramp Project pursuant to Section 20.15, (i) the Concessionaire will promptly turn over to the Department a copy of all Seminary Road Ramp Work Product the Concessionaire owns, and (ii) subject to Section 18.04, all such Seminary Road Ramp Work Product will be considered the sole and exclusive property of the Department (other than Proprietary Work Product (inclusive of Proprietary Intellectual Property), with respect to which the Department will have a nonexclusive, nontransferable, irrevocable, fully paid up license in connection with the Project), without compensation due the Concessionaire or any other party. The Department will enter into a confidentiality agreement reasonably requested by the Concessionaire with respect to any Seminary Road Ramp Work Product that is Proprietary Work Product (inclusive of Proprietary Intellectual Property), subject to Section 18.02. The Concessionaire will continue to have a full and complete right to use any and all duplicates or other originals of such Seminary Road Ramp Work Product that is Proprietary Work Product (inclusive of Proprietary Intellectual Property) in any manner it chooses.

Section 18.04 Ownership of Proprietary Intellectual Property

(a) All Proprietary Intellectual Property of the Concessionaire will remain exclusively the property of the Concessionaire, notwithstanding any delivery of copies thereof to the Department. Upon the expiration or earlier termination of, or any assignment by the Concessionaire of its rights under, this Agreement for any reason whatsoever, the Department will have a nonexclusive, nontransferable, irrevocable, fully paid up license to use the Proprietary Intellectual Property of the Concessionaire solely in connection with the Project. The Department will not at any time sell any such Proprietary Intellectual Property or use or allow any party to use any such Proprietary Intellectual Property for any purpose whatsoever other than in connection with the Project (except as permitted on other State Highways in accordance with Section 18.04(b)). Subject to Section 18.02, the Department will not disclose any Proprietary Intellectual Property of the Concessionaire (other than to its concessionaires, Contractors, employees, attorneys and agents in connection with the development and operation of the Project who agree to be bound by any confidentiality obligations of the Department relating thereto), and the Department will enter into a confidentiality agreement reasonably requested by the Concessionaire with respect to any such Proprietary Intellectual Property.

(b) The Department will have the right to purchase from the Concessionaire a nonexclusive, nontransferable, irrevocable, fully paid up license to use the Proprietary Intellectual Property of the Concessionaire on any other tolled State Highway owned and operated by the Department or other State agency on commercially reasonable terms. The Concessionaire will continue to have the full and complete right to use, sell or license to other Persons any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

(c) With respect to any Proprietary Intellectual Property owned by a Person other than the Concessionaire or the Department, the Concessionaire will obtain from such owner, concurrently with execution of any Contract or purchase order with such owner, both for the Concessionaire and the Department, nonexclusive, nontransferable, irrevocable, fully paid up (other than with respect to ongoing maintenance and support fees) licenses to use such Proprietary Intellectual Property solely in connection with the Project, of at least identical scope, purpose, duration and applicability as the licenses granted by Section 18.04(a); *provided*, that the foregoing requirement will not apply to standard, pre-specified manufacturer licenses of mass-marketed products (including software products) or equipment where the license cannot be extended to the Department using commercially reasonable efforts or to other licenses of products or equipment where the products or equipment are not reasonably necessary for the operation or maintenance of the Project. The Concessionaire will use commercially reasonable efforts to obtain from such owner a right in favor of the Department to purchase from such owner a nonexclusive, nontransferable, irrevocable, fully paid up license to use such owner's Proprietary Intellectual Property on any other tolled State Highway owned and operated by the Department or other State agency on commercially reasonable terms. The limitations on sale and disclosure by the Department set forth in Section 18.04(a) will also apply to the Department's licenses in such Proprietary Intellectual Property.

(d) The Concessionaire Marks may appear on some of the Project Assets, including supplies, materials, stationery and similar consumable items at the Project on the last Day of the Term. The parties agree that the Concessionaire will remain the owner or licensee, as applicable,

of the Concessionaire Marks at the end of the Term, and the Concessionaire may remove, at its expense, the Concessionaire Marks prior to the end of the Term. If the Concessionaire fails to do so, the Department will be entitled to remove the Concessionaire Marks and, in such case, the Department will be entitled to payment of its Allocable Costs in so doing from the Concessionaire. The Department acknowledges and agrees that it will have no right, title, interest or license in the Concessionaire Marks.

(e) On or before the Agreement Date, the Department will grant to the Concessionaire a nonexclusive, nontransferable, irrevocable, fully paid up license to use any Proprietary Intellectual Property of the Department that has been developed for the Project, solely in connection with the development, construction, operation, maintenance and other incidental activities of the Project. The Concessionaire will not at any time sell such Proprietary Intellectual Property or use or allow any party to use such Proprietary Intellectual Property for any purpose whatsoever other than in connection with the Project. On or before the Agreement Date, the Department will also assign in favor of the Concessionaire the Department's rights with respect to any license by the Department's Software suppliers (to the extent permitted by, and subject to the terms of, such license) for the use of any Proprietary Intellectual Property for the Project, together with an assignment of the Department's rights under any escrow for the Source Code and Source Code Documentation relating to such Proprietary Intellectual Property, which assignments will be reasonably satisfactory to the Concessionaire. The Concessionaire will not disclose any such Proprietary Intellectual Property (other than to its Contractors, employees, attorneys, agents and Affiliates in connection with the Project who agree to be bound by any confidentiality obligations of the Concessionaire relating thereto), and the Concessionaire will enter into a confidentiality agreement reasonably requested by the Department with respect to any such Proprietary Intellectual Property. The Department will continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

(f) On or before the Amended and Restated Agreement Date, the Department will grant to the Concessionaire a nonexclusive, nontransferable, irrevocable, fully paid up license to use any Proprietary Intellectual Property of the Department that has been developed for the 395 Project, solely in connection with the development, construction, operation, maintenance and other incidental activities of the 395 Project. The Concessionaire will not at any time sell such Proprietary Intellectual Property or use or allow any party to use such Proprietary Intellectual Property for any purpose whatsoever other than in connection with the 395 Project. On or before the Amended and Restated Agreement Date, the Department will also assign in favor of the Concessionaire the Department's rights with respect to any license by the Department's Software suppliers (to the extent permitted by, and subject to the terms of, such license) for the use of any Proprietary Intellectual Property for the 395 Project, together with an assignment of the Department's rights under any escrow for the Source Code and Source Code Documentation relating to such Proprietary Intellectual Property, which assignments will be reasonably satisfactory to the Concessionaire. The Concessionaire will not disclose any such Proprietary Intellectual Property (other than to its Contractors, employees, attorneys, agents and Affiliates in connection with the 395 Project who agree to be bound by any confidentiality obligations of the Concessionaire relating thereto), and the Concessionaire will enter into a confidentiality agreement reasonably requested by the Department with respect to any such Proprietary Intellectual Property.

The Department will continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

(g) On or before the Second Amended and Restated Agreement Date, the Department will grant to the Concessionaire a nonexclusive, nontransferable, irrevocable, fully paid up license to use any Proprietary Intellectual Property of the Department that has been developed for the Fred Ex Project, solely in connection with the development, construction, operation, maintenance and other incidental activities of the Fred Ex Project. The Concessionaire will not at any time sell such Proprietary Intellectual Property or use or allow any party to use such Proprietary Intellectual Property for any purpose whatsoever other than in connection with the Fred Ex Project. On or before the Second Amended and Restated Agreement Date, the Department will also assign in favor of the Concessionaire the Department's rights with respect to any license by the Department's Software suppliers (to the extent permitted by, and subject to the terms of, such license) for the use of any Proprietary Intellectual Property for the Fred Ex Project, together with an assignment of the Department's rights under any escrow for the Source Code and Source Code Documentation relating to such Proprietary Intellectual Property, which assignments will be reasonably satisfactory to the Concessionaire. The Concessionaire will not disclose any such Proprietary Intellectual Property (other than to its Contractors, employees, attorneys, agents, and Affiliates in connection with the Fred Ex Project who agree to be bound by any confidentiality obligations of the Concessionaire relating thereto), and the Concessionaire will enter into a confidentiality agreement reasonably requested by the Department with respect to any such Proprietary Intellectual Property. The Department will continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

(h) On or before the Third Amended and Restated Agreement Date, the Department will grant to the Concessionaire a nonexclusive, nontransferable, irrevocable, fully paid up license to use any Proprietary Intellectual Property of the Department that has been developed for the Opitz Boulevard Ramp Project, solely in connection with the development, construction, operation, maintenance and other incidental activities of the Opitz Boulevard Ramp Project. The Concessionaire will not at any time sell such Proprietary Intellectual Property or use or allow any party to use such Proprietary Intellectual Property for any purpose whatsoever other than in connection with the Opitz Boulevard Ramp Project. On or before the Third Amended and Restated Agreement Date, the Department will also assign in favor of the Concessionaire the Department's rights with respect to any license by the Department's Software suppliers (to the extent permitted by, and subject to the terms of, such license) for the use of any Proprietary Intellectual Property for the Opitz Boulevard Ramp Project, together with an assignment of the Department's rights under any escrow for the Source Code and Source Code Documentation relating to such Proprietary Intellectual Property, which assignments will be reasonably satisfactory to the Concessionaire. The Concessionaire will not disclose any such Proprietary Intellectual Property (other than to its Contractors, employees, attorneys, agents, and Affiliates in connection with the Opitz Boulevard Ramp Project who agree to be bound by any confidentiality obligations of the Concessionaire relating thereto), and the Concessionaire will enter into a confidentiality agreement reasonably requested by the Department with respect to any such Proprietary Intellectual Property. The Department will continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

(i) On or before the Third Amended and Restated Agreement Date, the Department will grant to the Concessionaire a nonexclusive, nontransferable, irrevocable, fully paid up license to use any Proprietary Intellectual Property of the Department that has been developed for the Seminary Road Ramp Project, solely in connection with the development, construction, operation, maintenance and other incidental activities of the Seminary Road Ramp Project. The Concessionaire will not at any time sell such Proprietary Intellectual Property or use or allow any party to use such Proprietary Intellectual Property for any purpose whatsoever other than in connection with the Seminary Road Ramp Project. On or before the Third Amended and Restated Agreement Date, the Department will also assign in favor of the Concessionaire the Department's rights with respect to any license by the Department's Software suppliers (to the extent permitted by, and subject to the terms of, such license) for the use of any Proprietary Intellectual Property for the Seminary Road Ramp Project, together with an assignment of the Department's rights under any escrow for the Source Code and Source Code Documentation relating to such Proprietary Intellectual Property, which assignments will be reasonably satisfactory to the Concessionaire. The Concessionaire will not disclose any such Proprietary Intellectual Property (other than to its Contractors, employees, attorneys, agents, and Affiliates in connection with the Seminary Road Ramp Project who agree to be bound by any confidentiality obligations of the Concessionaire relating thereto), and the Concessionaire will enter into a confidentiality agreement reasonably requested by the Department with respect to any such Proprietary Intellectual Property. The Department will continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

Section 18.05 Escrow Documents

(a) General.

(i) Prior to the Agreement Date, the Concessionaire, the Department and the Escrow Agent will have executed and delivered the Escrow Agreement to implement the provisions of this Section 18.05. The Concessionaire will submit to the Department for its review and approval the following materials (collectively, the "95 Escrow Documents"): one copy of all documentary information generated with respect to (i) the expected costs of the Work (which uses the estimating methodology actually used by the Design-Build Contractor) available to the Concessionaire under the Design-Build Contract (the "95 Construction Escrow Documents") and (ii) the components of, and formulae for, the Initial Base Case Financial Model, the Adjusted Financial Model and the Base Case Financial Model, including, without limitation, forecast revenue and expected non-financial costs of the Project during the Term included in the Initial Base Case Financial Model, the Adjusted Financial Model and the Base Case Financial Model (the "95 Financing Escrow Documents"). The Concessionaire will deliver the Construction Escrow Documents to the Department within 14 Days following the Agreement Date and will deliver the Financing Escrow Documents not later than the Agreement Date.

(ii) Prior to the Amended and Restated Agreement Date, the Concessionaire, the Department and the Escrow Agent will have amended the existing Escrow Agreement to implement the provisions of this Section 18.05. The Concessionaire will submit to the Department for its review and approval the following materials (collectively, the "395 Escrow Documents"): one copy of all documentary information generated with respect to

(i) the expected costs of the Work (which uses the estimating methodology actually used by the 395 Design-Build Contractor and the TTMS Contractor) available to the Concessionaire under the 395 Design-Build Contract and the 395 TTMS Contract (the “395 Construction Escrow Documents”) and (ii) the components of, and formulae for, the Base Case Financial Model Update, including, without limitation, forecast revenue and expected non-financial costs of the Project during the Term included in the Base Case Financial Model Update (the “395 Financing Escrow Documents”). The Concessionaire will deliver the 395 Construction Escrow Documents to the Department within 14 Days following the Amended and Restated Agreement Date and will deliver the 395 Financing Escrow Documents not later than the Amended and Restated Agreement Date.

(iii) Prior to the Second Amended and Restated Agreement Date, the Concessionaire, the Department, and the Escrow Agent will have amended the existing Escrow Agreement to implement the provisions of this Section 18.05. The Concessionaire will submit to the Department for its review and approval the following materials (collectively, the “Fred Ex Escrow Documents”): one copy of all documentary information generated with respect to (i) the expected costs of the Work (which uses the estimating methodology actually used by the Fred Ex Design-Build Contractor and the TTMS Contractor) available to the Concessionaire under the Fred Ex Design-Build Contract and the Fred Ex TTMS Contract (the “Fred Ex Construction Escrow Documents”) and (ii) the components of, and formulae for, the Base Case Financial Model Update (Fred Ex Final), including, without limitation, forecast revenue and expected non-financial costs of the Project during the Term (the “Fred Ex Financing Escrow Documents”). The Concessionaire will deliver the Fred Ex Construction Escrow Documents to the Department within 14 Days following the Second Amended and Restated Agreement Date and will deliver the Fred Ex Financing Escrow Documents not later than the Fred Ex Financial Close Date.

(iv) Prior to the Third Amended and Restated Agreement Date, the Concessionaire, the Department, and the Escrow Agent will have amended the existing Escrow Agreement to implement the provisions of this Section 18.05. The Concessionaire will submit to the Department for its review and approval the following materials (collectively, the “Opitz Boulevard Ramp Escrow Documents”): one copy of all documentary information generated with respect to (A) the expected costs of the Work (which uses the estimating methodology actually used by the Opitz Boulevard Ramp Construction Contractor and the TMS Contractor) available to the Concessionaire under the Opitz Boulevard Ramp Construction Contract and the Opitz Boulevard Ramp TMS Contract (the “Opitz Boulevard Ramp Construction Escrow Documents”), and (B) the components of, and formulae for, the Base Case Financial Model Update (Third ARCA), including, without limitation, forecast revenue and expected non-financial costs of the Project during the Term (the “Opitz Boulevard Ramp Financing Escrow Documents”). The Concessionaire will deliver the Opitz Boulevard Ramp Construction Escrow Documents and the Opitz Boulevard Ramp Financing Escrow Documents to the Department within 14 Days following the Third Amended and Restated Agreement Date.

(v) Prior to the Third Amended and Restated Agreement Date, the Concessionaire, the Department, and the Escrow Agent will have amended the existing

Escrow Agreement to implement the provisions of this Section 18.05. The Concessionaire will submit to the Department for its review and approval the following materials (collectively, the “Seminary Road Ramp Escrow Documents”): one copy of all documentary information generated with respect to (A) the expected costs of the Work (which uses the estimating methodology actually used by the Seminary Road Ramp Construction Contractor) available to the Concessionaire under the Seminary Road Ramp Construction Contract (the “Seminary Road Ramp Construction Escrow Documents”), and (B) the components of, and formulae for, the Base Case Financial Model Update (Third ARCA), including, without limitation, forecast revenue and expected non-financial costs of the Project during the Term (the “Seminary Road Ramp Financing Escrow Documents”). The Concessionaire will deliver the Seminary Road Ramp Construction Escrow Documents and the Seminary Road Ramp Financing Escrow Documents to the Department within 14 Days following the Third Amended and Restated Agreement Date.

(b) Format and Contents.

(i) The Concessionaire may submit Escrow Documents in their usual cost estimating format; *provided*, that all information is clearly presented and ascertainable and submitted in accordance with the requirements of this Section 18.05. It is not the intention of this Section 18.05 to cause the Concessionaire extra work, but to ensure that the Escrow Documents will be adequate to enable complete understanding and proper interpretation for their intended use.

(ii) The Escrow Documents will be submitted in English and clearly itemize the estimated costs of performing each item of the Project, including financing, administrative and related costs. Cost items will be separated into sub-items as required to present a detailed cost estimate and allow a detailed cost review.

(iii) The Construction Escrow Documents will include, to the extent obtained, procured, or in the possession of the Concessionaire: estimates for costs of the design professionals and consultants itemized by discipline both for development of the design, all quantity take-offs, crew size and shifts, equipment, calculations of rates of production and progress, copies of quotes from Contractors and suppliers, and memoranda, narratives, drawings and sketches showing site or work area layouts and equipment, add/deduct sheets, geotechnical reviews and consultant reports, all other information used by the Concessionaire to arrive at the estimated prices for the Project, and all information and formulae used by the Concessionaire in developing the then-current Base Case Financial Model Update. Estimated costs will be broken down into estimate categories for items such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials and subcontract costs as appropriate. Plant and equipment, indirect costs, bond rates and calculations, insurance costs and financing should be detailed. The Concessionaire’s allocation of indirect costs, contingencies, and mark-up will be identified.

(iv) The Construction Escrow Documents will identify all costs. If detailed costs are not available to the Concessionaire, estimated unit costs are acceptable without a detailed cost estimate, *provided*, that labor, equipment, materials and subcontracts, as

applicable, are specified, and *provided further*, that indirect costs, contingencies, and mark-up, as applicable, are allocated.

(c) Submittal.

(i) The Concessionaire will submit the Escrow Documents in sealed containers, the Construction Escrow Documents in one and the Financing Escrow Documents in another, to the Department, which containers have been clearly marked on the outside with the Concessionaire's name, reference to the Project, and the words "I-95 HOV/HOT Lanes Project Construction Escrow Documents," "I-95 HOV/HOT Lanes Project Financing Escrow Documents," "I-395 Project Construction Escrow Documents," "I-395 Project Financing Escrow Documents," "Fred Ex Project Construction Escrow Documents," "Fred Ex Project Financing Escrow Documents," "Opitz Boulevard Ramp Construction Escrow Documents," "Opitz Boulevard Ramp Financing Escrow Documents," "Seminary Road Ramp Construction Escrow Documents", and "Seminary Road Ramp Financing Escrow Documents," as applicable.

(ii) On or before the Agreement Date, the Amended and Restated Agreement Date, the Second Amended and Restated Agreement Date, or the Third Amended and Restated Agreement Date, as applicable, representatives of the Department, assisted by members of the Concessionaire's staff who are knowledgeable in how the Escrow Documents were prepared, will have examined, organized, and inventoried the Escrow Documents. This examination was to ensure that the Escrow Documents are legible and complete. It did not include review of, and does not constitute approval of proposed construction methods, estimating assumptions, or interpretations of any Project Agreements, including the Design-Build Contract and the 395 TTMS Contract. Such examination will not alter any condition or term of any Project Agreement.

(iii) Timely submission of complete Escrow Documents as of the Agreement Date, the Amended and Restated Agreement Date, the Second Amended and Restated Agreement Date, or the Third Amended and Restated Agreement Date, as applicable, is an essential element of the Concessionaire's responsibility and a prerequisite to the execution and delivery of this Agreement by the Department.

(iv) To the extent the Concessionaire plans to contract out any part of the Work as of the Agreement Date, the Amended and Restated Agreement Date, the Second Amended and Restated Agreement Date, or the Third Amended and Restated Agreement Date, as applicable, the Concessionaire will cause each Contractor whose total Contract price exceeds 5% of the Project costs as set forth in the Design-Build Contract or the TTMS Contract to provide separate similar documentation to be included with those of the Concessionaire. Such documents will be opened and examined in the same manner and at the same time as the examination described above for the Concessionaire to the extent that they are relevant to the issue at hand.

(d) Updating of the Escrow Documents. Upon each update of the Initial Base Case Financial Model, Adjusted Financial Model, and Base Case Financial Model Update in accordance with this Agreement (other than any such update that does not change the Financial Formulas or

forecast assumptions), such update will be submitted by the Concessionaire to the Escrow Agent promptly and in any event within seven Days after an update has not been disputed or any such dispute has been resolved for inclusion as part of the Financing Escrow Documents. For the avoidance of doubt, previous undisputed versions of the Escrow Documents will remain in escrow with the Escrow Agent.

(e) Storage.

(i) The 95 Escrow Documents, the 395 Escrow Documents, the Fred Ex Escrow Documents, the Opitz Boulevard Ramp Escrow Documents, and Seminary Road Ramp Escrow Documents, will be stored at the following address:

Truist Bank
919 East Main Street, 2nd Floor
Richmond, Virginia 23219
Attention: Escrow Services
Telephone: (804) 782-7087
Email: Emily.Hare@truist.com

(ii) The Concessionaire will bear the cost for storing the Escrow Documents.

(f) Examination.

(i) Subject to the terms of the Escrow Agreement, the Escrow Documents may be examined by the Department and the Concessionaire at any time deemed necessary by the Department or the Concessionaire and the Department may delegate review of the Escrow Documents to members of its staff or to Consultants; *provided*, that, unless a Consultant is bound by a confidentiality agreement or other obligations to keep the Escrow Documents confidential, each such Consultant will enter into a confidentiality agreement reasonably requested by the Concessionaire with respect to any such examination. No other person will have access to the Escrow Documents. The Department will provide advance notice of any such examination to the Design-Build Contractor and the TTMS Contractor, and the Design-Build Contractor and TTMS Contractor will have the right to be present during an examination of the Construction Escrow Documents; *provided*, however, that such right will not in any way limit the Department's right to review the Construction Escrow Documents if the Design-Build Contractor and the TTMS Contractor does not attend such examination. Notwithstanding the foregoing, the Escrow Documents and information contained therein may be used:

(A) to assist in the negotiation of Concessionaire Damages, Net Cost Savings, and Change Orders;

(B) in the resolution of any claim or dispute before any entity selected to resolve disputes; and

(C) in any dispute resolution procedure commenced hereunder.

(ii) Access to the documents will take place in the presence of duly designated representatives of both the Department and the Concessionaire, except that, if the Concessionaire refuses to be present or to cooperate in any other way in the review of the documents, the Department may upon notice to the Concessionaire, review such documents without the Concessionaire being present.

(g) Ownership. The Escrow Documents are, and will always remain, the property of the Concessionaire, subject to joint review by the Department and the Concessionaire, as provided in this Agreement. The Department stipulates and expressly acknowledges that the Escrow Documents constitute trade secrets. This acknowledgement is based on the Department's express understanding that the information contained in the Escrow Documents is not known outside the Concessionaire's business, is known only to a limited extent and only by a limited number of employees of the Concessionaire, is safeguarded while in the Concessionaire's possession, is extremely valuable to the Concessionaire and could be extremely valuable to the Concessionaire's competitors by virtue of its reflecting Concessionaire's contemplated techniques of design and construction. The Department further acknowledges that the Concessionaire expended substantial sums of money in developing the information included in the Escrow Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. The Department further acknowledges that the Escrow Documents and the information contained therein are made available to the Department only because such action is an express prerequisite to the execution and delivery of this Agreement. The Department further acknowledges that the Escrow Documents include a compilation of the information used in the Concessionaire's business, intended to give the Concessionaire an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation.

(h) Final Disposition and Return of Escrow Documents. The 395 Construction Escrow Documents will be returned to the Concessionaire upon the earlier to occur of (i) completion of the 395 Design-Build Work and the 395 TTMS Work, including tender of final payment and resolution of all claims or disputes arising under the 395 Design-Build Contract and 395 TTMS Contract or (ii) termination of this Agreement and resolution of all claims or disputes arising pursuant to this Agreement. The Fred Ex Construction Escrow Documents will be returned to the Concessionaire upon the earlier to occur of (i) completion of the Fred Ex Design-Build Work and the Fred Ex TTMS Work, including tender of final payment and resolution of all claims or disputes arising under the Fred Ex Design-Build Contract and Fred Ex TTMS Contract or (ii) termination of this Agreement and resolution of all claims or disputes arising pursuant to this Agreement. The Opitz Boulevard Ramp Construction Escrow Documents will be returned to the Concessionaire upon the earlier to occur of (i) completion of the Opitz Boulevard Ramp Construction Work and the Opitz Boulevard Ramp TMS Work, including tender of final payment and resolution of all claims or disputes arising under the Opitz Boulevard Ramp Construction Contract and the Opitz Boulevard Ramp TMS Contract, or (ii) termination of this Agreement and resolution of all claims or disputes arising pursuant to this Agreement. The Seminary Road Ramp Construction Escrow Documents will be returned to the Concessionaire upon the earlier to occur of (i) completion of the Seminary Road Ramp Construction Work, including tender of final payment and resolution of all claims or disputes arising under the Seminary Road Ramp Construction Contract, or (ii) termination of this Agreement and resolution of all claims or disputes arising pursuant to this Agreement. The remaining Escrow Documents will be returned upon termination of this Agreement and resolution of all claims or disputes arising pursuant to this Agreement.

Section 18.06 Source Code Escrow

(a) The Department and the Concessionaire acknowledge that the Concessionaire and/or the Concessionaire's Software suppliers may not wish to disclose directly to the Department at the time of installation the Source Code and Source Code Documentation which is Proprietary Intellectual Property of the Concessionaire and/or the Concessionaire's Software suppliers, as public disclosure could deprive the Concessionaire and/or the Concessionaire's Software suppliers of commercial value, but that the Department must be ensured access to such Source Code and Source Code Documentation in either of the following circumstances:

(i) in the case of Source Code and Source Code Documentation that is a Contractor's Proprietary Intellectual Property, if this Agreement is terminated for Concessionaire Default or upon assignment by Concessionaire of its rights pursuant to this Agreement, the Department assumes the contract or subcontract with such Software supplier, and either (A) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the Software supplier occurs or (B) the Software supplier fails or ceases to provide services as necessary to permit continued use of the Software by the Department as contemplated by this Agreement; or

(ii) in the case of Source Code and Source Code Documentation that is the Concessionaire's Proprietary Intellectual Property, (A) this Agreement is terminated for Concessionaire Default, (B) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the Concessionaire occurs or (C) the Concessionaire fails or ceases to provide services as necessary to permit continued use of the Software by the Department as contemplated by this Agreement.

(b) By no later than the Initial Service Commencement Date, the Department and the Concessionaire will establish one or more escrows (the "Source Code Escrows") with the Escrow Agent on terms and conditions reasonably acceptable to the Department and to the Concessionaire into which such Source Code and Source Code Documentation will be escrowed, including all relevant commentary, explanations and other documentation, as well as instructions to compile such Source Code and Source Code Documentation and all modifications, additions or substitutions made to such Source Code and Source Code Documentation.

(c) The escrow provided for in this Agreement will survive any termination of this Agreement regardless of the reason.

(d) The Concessionaire will pay the reasonable costs and expenses of the Escrow Agent related to the Source Code Escrows.

Section 18.07 Inspection and Audit Rights

(a) Subject to Section 18.07(c), the Concessionaire will make available to the Department and the FHWA (including their employees, contractors, consultants, agents or designees), and allow each of them access to, such books, records and documents as they may reasonably request in connection with the Project for any purpose related to the Project, this Agreement, including but not limited to monitoring compliance with the terms and conditions of this Agreement. The Department will provide the Concessionaire 48 hours prior written notice

prior to exercising its rights to access and audit the Concessionaire's books, records and documents pursuant to this Section 18.07(a) and Section 18.07(b); *provided*, however, that the Department may exercise such rights unannounced and without prior notice during a Concessionaire Default or where there is good faith suspicion of fraud.

(b) Subject to Section 18.07(c), the Department and the State, at the Department's own expense, will have the right to carry out an audit of information relating to (i) the design, construction, operation, maintenance, and repair of the Project or (ii) other information required to be maintained or delivered by the Concessionaire pursuant to this Agreement or any other Project Agreement. Such audit may extend, without limitation, to calculations undertaken, and financial or business reports provided, by or on behalf of the Concessionaire pursuant to this Agreement. The Department or its employees, agents, auditors, attorneys and consultants, at the Department's own expense may examine, copy, take extracts from and audit all the books and records of the Concessionaire related to the Project, including all subcontracts entered into under Section 24.02. In addition, the Department or its agents, auditors, attorneys and consultants, at the Department's own expense, may conduct a re-audit and observe the business operations of the Concessionaire to confirm the accuracy of books and records. In addition, at FHWA's request, the Concessionaire will make all its records relating to the Project available to the FHWA for inspection and audit.

(c) The Concessionaire reserves the right to assert exemptions from Persons other than the Department from disclosure for information that would be exempt under Law from discovery or introduction into evidence in legal actions. Unless otherwise required by Law or this Agreement, the Concessionaire may make available copies of books, records and documents containing trade secrets or confidential proprietary information with such information redacted.

(d) In addition, the Concessionaire, at its expense, will cause a reputable independent auditor to annually audit its books and records relating to the Project, according to GAAP or any other generally accepted accounting standards, which are acceptable to the Department. The Concessionaire will cause the independent auditor to deliver the audit report to the FHWA and the Department promptly after it is completed, but in any event within 120 Days of the end of each of the Concessionaire's fiscal years.

(e) Nothing contained in this Agreement will in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State Auditor of Public Accounts, in carrying out his or her legal authority.

(f) No audit rights will extend to the make-up of any lump sum amount or unit price or rate under the Design-Build Contract once such amount, price or rate has been agreed.

(g) The Concessionaire will cooperate with the Department, the FHWA and the other persons mentioned in this Section 18.07 in the exercise of their rights hereunder. At the request of the Department, the Concessionaire will furnish or cause to be furnished to the Department such information relating to the operation, maintenance and repair of the Project as the Department may reasonably request for any purpose related to the Project or this Agreement and as will be in the possession and control of the Concessionaire, any Concessionaire Party, or any of their Representatives. Subject to Section 18.02, the Department will keep confidential any information

obtained from the Concessionaire, any Concessionaire Party or their Representatives that (i) constitutes trade secrets or commercial or financial information (A) where the trade secrets or commercial or financial information are proprietary, privileged or confidential or (B) where disclosure of the trade secrets or commercial or financial information may cause competitive harm and (ii) is designated as such by the Concessionaire, a Concessionaire Party or their Representatives in writing to the Department, and the Department has determined that such information qualifies for exemption from disclosure under Law.

ARTICLE 19

DEFAULTS, BREACHES, AND REMEDIES

Section 19.01 Concessionaire Defaults

The occurrence of any one or more of the following events (each a “Concessionaire Default Triggering Event”) during the Term will constitute a “Concessionaire Default” pursuant to this Agreement:

(a) any representation or warranty made by the Concessionaire in this Agreement or in any other Project Agreement to which the Concessionaire and the Department are parties is false or misleading in any respect on the date made and a material adverse effect upon the Project or the Department’s rights or obligations under the Project Agreements results therefrom, and such circumstance continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof, with cure regarded as complete only when the adverse effects are remedied;

(b) the Concessionaire fails to comply with, perform or observe any other material obligation, covenant, agreement, term or condition in this Agreement or any Project Agreement to which the Department and the Concessionaire are parties (provided, that a debarment pursuant to the provisions set forth in Section 24.03(b) (relating to SWaM participation) will not constitute a Concessionaire Default), which failure materially and adversely affects the Department’s rights or obligations under this Agreement or any other VDOT Project Agreement, and such failure continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof (giving particulars of the failure in reasonable detail) or for such longer period as may be reasonably necessary to cure such failure up to a maximum cure period of 180 Days; *provided*, that the maximum cure period may be extended one time for any such failure to a final date if (i) at least 30 Days prior to the end of the maximum 180-Day cure period, the Concessionaire delivers a written work plan to the Department outlining the actions by which the Concessionaire will cure such failure and setting forth a final date by which the Concessionaire will cure such failure and (ii) the Department approves such work plan within 30 Days in its reasonable discretion; *provided*, that in all cases and regardless of the duration of the cure period, (A) the Concessionaire is proceeding with all due diligence to cure or cause to be cured such failure, (B) the failure is capable of being cured within a reasonable period of time, and (C) such failure is in fact cured within such period of time; *provided* further, that this Section 19.01(b) will not apply to events covered by other provisions of this Section 19.01; and *provided*, further, that any failure to comply with, perform or observe any obligation that is covered by the

Non-Compliance Points system will constitute a Concessionaire Default only as provided in Section 11.05(c);

(c) the Concessionaire fails to pay to the Department when due any undisputed amount in excess of \$100,000, adjusted annually by the percentage increase in CPI, payable to the Department pursuant to this Agreement or any other VDOT Project Agreement or to deposit funds to any reserve account in the amount and within the time period required by this Agreement, and such failure, including any failure to pay interest at the Bank Rate from the date due, continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof;

(d) other than a Permitted Closure, the Concessionaire closes all or part of the HOT Lanes to traffic, at any time following the applicable Service Commencement Date, other than in accordance with the terms of this Agreement, and such closure continues without cure for a period of ten Days following the date the Department delivers to the Concessionaire written notice thereof;

(e) (i) the Concessionaire fails to achieve Substantial Completion of the Project by the Long Stop Date, as such date may be extended pursuant to this Agreement or (ii) in the case where a new Long Stop Date has been established pursuant to Section 8.15 hereof, the Concessionaire fails to diligently implement the Substantial Completion Recovery Plan, *provided*, however, that failure by the Concessionaire to achieve 395 Final Completion by the 395 Long Stop Date shall not be a Concessionaire Default, further *provided*, that failure by the Concessionaire to achieve Fred Ex Final Completion by the Fred Ex Long Stop Date shall not be a Concessionaire Default, further *provided*, that failure by the Concessionaire to achieve Opitz Boulevard Ramp Final Completion by the Opitz Boulevard Ramp Long Stop Date shall not be a Concessionaire Default, and further *provided*, that failure by the Concessionaire to achieve Seminary Road Ramp Final Completion by the Seminary Road Ramp Guaranteed Final Completion Date shall not be a Concessionaire Default;

(f) the Concessionaire fails to maintain, or to cause to be maintained, in effect the insurance, guarantees, letters of credit or other performance security as and when required pursuant to this Agreement for the benefit of relevant parties, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same and such failure continues without cure for a period of ten Business Days following the date the Department delivers to the Concessionaire written notice thereof;

(g) this Agreement or all or any portion of the Concessionaire's Interest is Transferred, or there occurs a Change in Control, in contravention of Section 25.01;

(h) after exhaustion of all rights of appeal, (i) there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, of the Concessionaire, any affiliate of the Concessionaire (as "affiliate" is defined in 29 CFR 98.905 or successor regulation of similar import), or Transurban or the Design-Build Contractor, in each case, whose work is not completed, from bidding, proposing or contracting with any Federal or State department or agency or (ii) the Concessionaire, Transurban or the Design-Build Contractor, in each case, who have ongoing

Work, or any of their respective officers, directors, or Administering Employees have been convicted of, or plead guilty or nolo contendere to, a violation of Law for fraud, conspiracy, collusion, bribery, perjury, or material misrepresentation, as a result in whole or in part of activities relating to any project in the State, and such failure continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof (giving particulars of the failure in reasonable detail); *provided*, that a debarment pursuant to the provisions set forth in Section 24.03(b) (relating to SWaM participation) will not constitute a Concessionaire Default. If the offending Person is an officer, director or Administering Employee, cure will be regarded as complete when the Concessionaire proves that such Person has been removed from any position or ability to manage, direct or control the decisions of the Concessionaire, Transurban or the Design-Build Contractor (as applicable) or to perform Work; and if the Person debarred or suspended or subject to an agreement for voluntary exclusion is an affiliate of the Concessionaire (as “affiliate” is defined in 29 CFR 98.905 or successor regulation of similar import), Transurban or the Design-Build Contractor, cure will be regarded as complete when the Concessionaire replaces such Person in accordance with this Agreement;

(i) the Concessionaire or any Concessionaire Financial Party (i) admits, in writing, that it is unable to pay its debts as they become due, (ii) makes an assignment for the benefit of its creditors, (iii) files a voluntary petition under Title 11 of the U.S. Code, or files any other petition or answer seeking, consenting to or acquiescing in any reorganization, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any similar Law, or (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of such Concessionaire or Concessionaire Financial Party, or of all or any substantial part of its properties or of the Project or any interest therein;

(j) within 90 Days after the commencement of any proceeding against the Concessionaire or any Concessionaire Financial Party seeking any reorganization, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any similar Law, such proceeding has not been dismissed, or, within 90 Days after the appointment, without the consent or acquiescence of such Concessionaire or Concessionaire Financial Party, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of such Concessionaire or Concessionaire Financial Party or of all or any substantial part of its properties or of the Project or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or, within 90 Days after the expiration of any such stay, such appointment has not been vacated;

(k) a levy under execution or attachment has been made against all or any part of the Project or any interest therein (including the Concessionaire’s Interest) as a result of any Lien (other than a Lien relating to permitted Concessionaire Debt) created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 Days, unless such levy resulted from actions or omissions of the Department or its Representatives; and

(l) after the sixth full month following the Initial Service Commencement Date, the Concessionaire (i) fails to deliver an OSPS Improvement Plan meeting the requirements set forth

in Section 5.08(b) at the time specified in Section 5.08(b) and such failure continues without cure for a period of 30 Days following the date on which the Department delivers to the Concessionaire notice of such failure, or (ii) fails to use commercially reasonable efforts to comply with any of the provisions set forth in an OSPS Improvement Plan submitted pursuant to Section 5.08(b), and such failure to use commercially reasonable efforts continues without cure for a period of 30 Days following the date on which the Department delivers notice of such failure to the Concessionaire.

Section 19.02 Department Remedies upon Concessionaire Default

Upon the occurrence of a Concessionaire Default, the Department may, subject to the provisions of the Direct Agreement, the 395 Direct Agreement, and the Fred Ex Direct Agreement, do any or all of the following as the Department, in its sole discretion, will determine:

(a) the Department may terminate this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties, to the extent provided in Section 20.04(f);

(b) if the Concessionaire Default is by reason of the failure to pay any undisputed monies to a third party, the Department may (but will have no obligation to) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the Department will be payable by the Concessionaire to the Department within five Days after demand, including accrued interest at the Bank Rate from the date such payment is made by the Department to the repayment date; *provided*, that (i) the Department will not incur any liability to the Concessionaire for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any Concessionaire Default and (ii) the Department's cure of any Concessionaire Default will not waive or affect the Department's rights against the Concessionaire by reason of the Concessionaire Default;

(c) the Department may cure the Concessionaire Default (but this will not obligate the Department to cure or attempt to cure a Concessionaire Default or, after having commenced to cure or attempted to cure a Concessionaire Default, to continue to do so), and all costs and expenses reasonably incurred by the Department in curing or attempting to cure the Concessionaire Default, including the Department's Allocable Costs, will be payable by the Concessionaire to the Department within five Days of demand, including accrued interest at the Bank Rate from the date such costs or expenses were incurred to the repayment date; *provided*, that (i) the Department will not incur any liability to the Concessionaire, and the Concessionaire hereby irrevocably waives and releases any liability of the Department to the Concessionaire, for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any Concessionaire Default and (ii) the Department's cure of any Concessionaire Default will not waive or affect the Department's rights against the Concessionaire by reason of the Concessionaire Default;

(d) except as provided in Section 19.02(e) below, the Department will not incur any liability to the Concessionaire for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any Concessionaire Default, and the Department's cure of any Concessionaire Default will not affect the Department's rights against the Concessionaire by reason of the Concessionaire Default;

(e) without notice and without awaiting lapse of the period to cure, in the event of a Concessionaire Default under Section 19.01(d) (closure of all or any part of the Project or any lane in violation of this Agreement), or any failure to perform a Safety Compliance Order and the Concessionaire Default or failure to perform the Safety Compliance Order results in or prolongs an Emergency or danger to persons or property, the Department may enter and take control of the Project or applicable portion thereof to the extent the Department finds it necessary to rectify the closure, Emergency or danger, and may suspend construction Work and/or close or cause to be closed the portion of the Project affected by the Emergency or danger, until such time as such breach or failure is cured, or the Department terminates this Agreement. In the event of such action by the Department, the Department may, subject to Law, distrain against any of the materials and equipment purchased exclusively for the Project that are situated on the Project and the Concessionaire waives any statutory protections and exemptions in connection therewith. Further, the Concessionaire will pay to the Department on demand the Department's Allocable Costs in connection with the exercise of the Department's rights pursuant to this Section 19.02(e). So long as the Department undertakes such action in good faith, even if under a mistaken belief in the occurrence of such a breach or failure, such action will not be deemed unlawful or a breach of this Agreement, will not expose the Department to any liability to the Concessionaire and will not entitle the Concessionaire to any other remedy, it being acknowledged that the Department has a high priority, paramount public interest in providing and maintaining continuous public access to the Project Assets and in protecting public and worker safety. The foregoing will not, however, protect the Department from the Concessionaire's lawful Claims for recovery for third party bodily injury or property damage arising out of any such Department action, if and to the extent (i) (A) the Department was mistaken in believing such a breach or failure occurred, or (B) such injury or property damage was caused by the Department's gross negligence, recklessness or willful misconduct, and (ii) the third party liability is not insured and not required to be insured pursuant to this Agreement. Immediately following rectification of such breach or failure, as determined by the Department, acting reasonably, the Department will relinquish control and possession of the Project or applicable portion thereof back to the Concessionaire; and

(f) the Department may exercise any of its other rights and remedies provided for hereunder or the other Project Agreements or at law or in equity, except where a specific remedy is expressly provided for in this Agreement.

Section 19.03 Financial Close Liquidated Damages

No liquidated damages will be assessed for failure to achieve Financial Close by the Financial Close Deadline, failure to achieve 395 Financial Close by the 395 Financial Close Deadline (other than the 395 Financial Close Security), or failure to achieve Fred Ex Financial Close by the Fred Ex Financial Close Deadline (other than the Fred Ex Financial Close Security).

Section 19.04 Department Default

The occurrence of any one or more of the following events during the Term will constitute a "Department Default" pursuant to this Agreement:

(a) any representation or warranty made by the Department in this Agreement or in any other Project Agreement to which the Department and the Concessionaire are parties is false or

misleading in any respect on the date made and a material adverse effect upon the Project or the Concessionaire's rights or obligations under such Project Agreements results therefrom, and such circumstance continues without cure for a period of 90 Days following the date the Concessionaire delivers to the Department written notice thereof, with cure regarded as complete only when the adverse effects are remedied;

(b) the Department fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement or any other Project Agreement to which it is a party, which failure materially adversely affects the Concessionaire's Interest, and such failure continues without cure for a period of 90 Days following the date the Concessionaire delivers to the Department written notice thereof (giving particulars of the failure in reasonable detail) or for such longer period as may be reasonably necessary to cure such failure up to a maximum cure period of 180 Days; *provided*, that in the latter case, (i) the Department is proceeding with all due diligence to cure or cause to be cured such failure, (ii) the failure is capable of being cured within a reasonable period of time and (iii) such failure is in fact cured within such period of time; or

(c) subject to Section 25.19, the Department fails to pay to the Concessionaire when due any undisputed amount in excess of \$100,000, adjusted annually by the percentage increase in CPI, payable to the Concessionaire pursuant to this Agreement, and such failure continues without cure for a period of 90 Days following the date on which the Concessionaire delivers to the Department written notice thereof.

Section 19.05 Concessionaire Remedies upon Department Default

(a) Upon the occurrence of a Department Default pursuant to this Agreement, the Concessionaire may by notice to the Department declare the Department to be in default and may, subject to the provisions of Section 19.05(b), do any or all of the following as the Concessionaire, in its discretion, will determine:

(i) the Concessionaire may terminate this Agreement and any Project Agreements to which the Concessionaire and the Department are both parties, to the extent provided in Section 20.06; and

(ii) the Concessionaire may exercise any of its other rights and remedies provided for under this Agreement or at Law, subject to any limitations thereon set forth in this Agreement, including Section 25.09 and Section 25.19.

(b) If the Department's failure constitutes a Delay Event or Compensation Event, the Concessionaire's sole recourse will be to seek remedies pursuant to Article 13 and Article 14.

Section 19.06 395 Concessionaire Breach

The occurrence of any one or more of the following events (each a "395 Concessionaire Breach Triggering Event") with respect to the 395 Project during the Construction Period for the 395 Project will constitute a "395 Concessionaire Breach" pursuant to this Agreement:

(a) any representation or warranty made by the Concessionaire in this Agreement or in any other Project Agreement to which the Concessionaire and the Department are parties is false or misleading in any respect on the date made and a material adverse effect upon the 395 Project or the Department's rights or obligations under the Project Agreements results therefrom, and such circumstance continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof, with cure regarded as complete only when the adverse effects are remedied;

(b) the Concessionaire fails to comply with, perform or observe any other material obligation, covenant, agreement, term or condition in this Agreement or any Project Agreement to which the Department and the Concessionaire are parties (provided, that a debarment pursuant to the provisions set forth in Section 24.03(b) (relating to SWaM participation) will not constitute a 395 Concessionaire Breach), which failure materially and adversely affects the Department's rights or obligations under this Agreement or any other VDOT Project Agreement, and such failure continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof (giving particulars of the failure in reasonable detail) or for such longer period as may be reasonably necessary to cure such failure up to a maximum cure period of 180 Days; *provided*, that the maximum cure period may be extended one time for any such failure to a final date if (i) at least 30 Days prior to the end of the maximum 180-Day cure period, the Concessionaire delivers a written work plan to the Department outlining the actions by which the Concessionaire will cure such failure and setting forth a final date by which the Concessionaire will cure such failure and (ii) the Department approves such work plan within 30 Days in its reasonable discretion; *provided*, that in all cases and regardless of the duration of the cure period, (A) the Concessionaire is proceeding with all due diligence to cure or cause to be cured such failure, (B) the failure is capable of being cured within a reasonable period of time, and (C) such failure is in fact cured within such period of time; *provided* further, that this Section 19.06(b) will not apply to events covered by other provisions of this Section 19.06;

(c) the Concessionaire fails to pay to the Department when due any undisputed amount in excess of \$100,000, adjusted annually by the percentage increase in CPI, payable to the Department with respect to the 395 Project pursuant to this Agreement or any other VDOT Project Agreement or to deposit funds to any reserve account in the amount and within the time period required by this Agreement, and such failure, including any failure to pay interest at the Bank Rate from the date due, continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof;

(d) (i) the Concessionaire fails to achieve 395 Final Completion by the 395 Long Stop Date, as such date may be extended pursuant to this Agreement or (ii) in the case where a new 395 Long Stop Date has been established pursuant to Section 8.15(d) hereof, the Concessionaire fails to diligently implement the 395 Final Completion Recovery Plan;

(e) the Concessionaire fails to maintain, or to cause to be maintained, in effect the insurance, guarantees, letters of credit or other performance security as and when required pursuant to this Agreement for the benefit of relevant parties, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same and such failure continues without cure for a period of ten Business Days following the date the Department delivers to the Concessionaire written notice thereof; and

(f) after exhaustion of all rights of appeal, (i) there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, of the Concessionaire, any affiliate of the Concessionaire (as “affiliate” is defined in 29 CFR 98.905 or successor regulation of similar import), Transurban, the 395 Design-Build Contractor or the TTMS Contractor, in each case, whose work is not completed, from bidding, proposing or contracting with any Federal or State department or agency or (ii) the Concessionaire, Transurban, the 395 Design-Build Contractor or the TTMS Contractor, in each case, who have ongoing Work, or any of their respective officers, directors, or Administering Employees have been convicted of, or plead guilty or nolo contendere to, a violation of Law for fraud, conspiracy, collusion, bribery, perjury, or material misrepresentation, as a result in whole or in part of activities relating to any project in the State, and such failure continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof (giving particulars of the failure in reasonable detail); *provided*, that a debarment pursuant to the provisions set forth in Section 24.03(b) (relating to SWaM participation) will not constitute a 395 Concessionaire Breach. If the offending Person is an officer, director or Administering Employee, cure will be regarded as complete when the Concessionaire proves that such Person has been removed from any position or ability to manage, direct or control the decisions of the Concessionaire, Transurban, the 395 Design-Build Contractor or the TTMS Contractor (as applicable) or to perform Work; and if the Person debarred or suspended or subject to an agreement for voluntary exclusion is an affiliate of the Concessionaire (as “affiliate” is defined in 29 CFR 98.905 or successor regulation of similar import), Transurban, the 395 Design-Build Contractor or the TTMS Contractor, cure will be regarded as complete when the Concessionaire replaces such Person in accordance with this Agreement.

Section 19.07 Limitations on 395 Concessionaire Breach

(a) A 395 Concessionaire Breach shall arise from a 395 Concessionaire Breach Triggering Event that affects only the 395 Project. If a single event affects more than just the 395 Project (even if the event otherwise meets the definition of a 395 Concessionaire Breach Triggering Event), the parties will treat it as a Concessionaire Default Triggering Event unless otherwise mutually agreed.

(b) Concessionaire Default Triggering Events under Sections 19.01(d) and (l) will always be treated as Concessionaire Default Triggering Events unless otherwise mutually agreed, even if such events affect only the 395 Project.

(c) Concessionaire Default Triggering Events under Sections 19.01(g), (i) and (k) will always be treated as Concessionaire Default Triggering Events unless otherwise mutually agreed.

(d) After 395 Final Completion, Sections 19.06, 19.07, 19.08, and 20.12 will no longer apply and all events giving rise to Concessionaire Default will be governed by Section 19.01.

Section 19.08 Department Remedies upon 395 Concessionaire Breach

Upon the occurrence of a 395 Concessionaire Breach, the Department may, subject to the provisions of the 395 Direct Agreement, do any or all of the following as the Department, in its sole discretion, will determine:

(a) except for a 395 Concessionaire Breach occurring under Section 19.06(d), the Department may terminate the 395 Project and any provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties that solely relates to the 395 Project, to the extent provided in Section 20.12;

(b) if the 395 Concessionaire Breach is by reason of the failure to pay any undisputed monies to a third party, the Department may (but will have no obligation to) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the Department will be payable by the Concessionaire to the Department within five Days after demand, including accrued interest at the Bank Rate from the date such payment is made by the Department to the repayment date; *provided*, that (i) the Department will not incur any liability to the Concessionaire for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any 395 Concessionaire Breach and (ii) the Department's cure of any 395 Concessionaire Breach will not waive or affect the Department's rights against the Concessionaire by reason of the 395 Concessionaire Breach;

(c) the Department may cure the 395 Concessionaire Breach (but this will not obligate the Department to cure or attempt to cure a 395 Concessionaire Breach or, after having commenced to cure or attempted to cure a 395 Concessionaire Breach, to continue to do so), and all costs and expenses reasonably incurred by the Department in curing or attempting to cure the 395 Concessionaire Breach, including the Department's Allocable Costs, will be payable by the Concessionaire to the Department within five Days of demand, including accrued interest at the Bank Rate from the date such costs or expenses were incurred to the repayment date; *provided*, that (i) the Department will not incur any liability to the Concessionaire, and the Concessionaire hereby irrevocably waives and releases any liability of the Department to the Concessionaire, for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any 395 Concessionaire Breach and (ii) the Department's cure of any 395 Concessionaire Breach will not waive or affect the Department's rights against the Concessionaire by reason of the 395 Concessionaire Breach; and

(d) at any time after a 395 Concessionaire Breach occurring under Section 19.06(d), if the Concessionaire has already achieved Service Commencement for the 395 HOT Lanes, the Department may elect to assume, and upon the Department's election the Concessionaire shall assign to the Department or its designee, the 395 Design-Build Contract under which the 395 Design-Build Contractor will complete the 395 Department Assets, and within 30 days of the 395 Design-Build Contractor achieving 395 Final Completion, the Concessionaire shall pay to the Department any amounts incurred by the Department to reach 395 Final Completion beyond the 395 Public Funds Amount; for the avoidance of doubt, if the Department elects to assume the 395 Design-Build Contract under this Section 19.08(d), the Concessionaire will retain its right to operate and maintain the Original HOT Lanes, the STE, and the 395 HOT Lanes.

Section 19.09 Fred Ex Concessionaire Breach

The occurrence of any one or more of the following events (each a "Fred Ex Concessionaire Breach Triggering Event") with respect to the Fred Ex Project during the Construction Period for the Fred Ex Project will constitute a "Fred Ex Concessionaire Breach" pursuant to this Agreement:

(a) any representation or warranty made by the Concessionaire in this Agreement or in any other Project Agreement to which the Concessionaire and the Department are parties is false or misleading in any respect on the date made and a material adverse effect upon the Fred Ex Project or the Department's rights or obligations under the Project Agreements results therefrom, and such circumstance continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof, with cure regarded as complete only when the adverse effects are remedied;

(b) the Concessionaire fails to comply with, perform or observe any other material obligation, covenant, agreement, term or condition in this Agreement or any Project Agreement to which the Department and the Concessionaire are parties (provided, that a debarment pursuant to the provisions set forth in Section 24.03(b) (relating to SWaM participation) will not constitute a Fred Ex Concessionaire Breach), which failure materially and adversely affects the Department's rights or obligations under this Agreement or any other VDOT Project Agreement, and such failure continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof (giving particulars of the failure in reasonable detail) or for such longer period as may be reasonably necessary to cure such failure up to a maximum cure period of 180 Days; *provided*, that the maximum cure period may be extended one time for any such failure to a final date if (i) at least 30 Days prior to the end of the maximum 180-Day cure period, the Concessionaire delivers a written work plan to the Department outlining the actions by which the Concessionaire will cure such failure and setting forth a final date by which the Concessionaire will cure such failure and (ii) the Department approves such work plan within 30 Days in its reasonable discretion; *provided*, that in all cases and regardless of the duration of the cure period, (A) the Concessionaire is proceeding with all due diligence to cure or cause to be cured such failure, (B) the failure is capable of being cured within a reasonable period of time, and (C) such failure is in fact cured within such period of time; *provided* further, that this Section 19.09(b) will not apply to events covered by other provisions of this Section 19.09;

(c) the Concessionaire fails to pay to the Department when due any undisputed amount in excess of \$100,000, adjusted annually by the percentage increase in CPI, payable to the Department with respect to the Fred Ex Project pursuant to this Agreement or any other VDOT Project Agreement or to deposit funds to any reserve account in the amount and within the time period required by this Agreement, and such failure, including any failure to pay interest at the Bank Rate from the date due, continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof;

(d) (i) the Concessionaire fails to achieve Fred Ex Final Completion by the Fred Ex Long Stop Date, as such date may be extended pursuant to this Agreement or (ii) in the case where a new Fred Ex Long Stop Date has been established pursuant to Section 8.15(f) hereof, the Concessionaire fails to diligently implement the Fred Ex Final Completion Recovery Plan;

(e) the Concessionaire fails to maintain, or to cause to be maintained, in effect the insurance, guarantees, letters of credit or other performance security as and when required pursuant to this Agreement for the benefit of relevant parties, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same and such failure continues without cure for a period of ten Business Days following the date the Department delivers to the Concessionaire written notice thereof; and

(f) after exhaustion of all rights of appeal, (i) there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, of the Concessionaire, any affiliate of the Concessionaire (as “affiliate” is defined in 29 CFR 98.905 or successor regulation of similar import), Transurban, the Fred Ex Design-Build Contractor or the TTMS Contractor, in each case, whose work is not completed, from bidding, proposing or contracting with any Federal or State department or agency or (ii) the Concessionaire, Transurban, the Fred Ex Design-Build Contractor or the TTMS Contractor, in each case, who have ongoing Work, or any of their respective officers, directors, or Administering Employees have been convicted of, or plead guilty or nolo contendere to, a violation of Law for fraud, conspiracy, collusion, bribery, perjury, or material misrepresentation, as a result in whole or in part of activities relating to any project in the State, and such failure continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof (giving particulars of the failure in reasonable detail); *provided*, that a debarment pursuant to the provisions set forth in Section 24.03(b) (relating to SWaM participation) will not constitute a Fred Ex Concessionaire Breach. If the offending Person is an officer, director or Administering Employee, cure will be regarded as complete when the Concessionaire proves that such Person has been removed from any position or ability to manage, direct or control the decisions of the Concessionaire, Transurban, the Fred Ex Design-Build Contractor or the TTMS Contractor (as applicable) or to perform Work; and if the Person debarred or suspended or subject to an agreement for voluntary exclusion is an affiliate of the Concessionaire (as “affiliate” is defined in 29 CFR 98.905 or successor regulation of similar import), Transurban, the Fred Ex Design-Build Contractor or the TTMS Contractor, cure will be regarded as complete when the Concessionaire replaces such Person in accordance with this Agreement.

Section 19.10 Limitations on Fred Ex Concessionaire Breach

(a) A Fred Ex Concessionaire Breach shall arise from a Fred Ex Concessionaire Breach Triggering Event that affects only the Fred Ex Project. If a single event affects more than just the Fred Ex Project (even if the event otherwise meets the definition of a Fred Ex Concessionaire Breach Triggering Event), the parties will treat it as a Concessionaire Default Triggering Event unless otherwise mutually agreed.

(b) Concessionaire Default Triggering Events under Sections 19.01(d) and (l) will always be treated as Concessionaire Default Triggering Events unless otherwise mutually agreed, even if such events affect only the Fred Ex Project.

(c) Concessionaire Default Triggering Events under Sections 19.01(g), (i) and (k) will always be treated as Concessionaire Default Triggering Events unless otherwise mutually agreed.

(d) After Fred Ex Final Completion, Sections 19.09, 19.10, 19.11, and 20.13 will no longer apply and all events concerning the Fred Ex Project giving rise to Concessionaire Default will be governed by Section 19.01.

Section 19.11 Department Remedies upon Fred Ex Concessionaire Breach

Upon the occurrence of a Fred Ex Concessionaire Breach, the Department may, subject to the provisions of the Fred Ex Direct Agreement, do any or all of the following as the Department, in its sole discretion, will determine:

(a) except for a Fred Ex Concessionaire Breach occurring under Section 19.09(d), the Department may terminate the Fred Ex Project and any provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties that solely relates to the Fred Ex Project, to the extent provided in Section 20.13;

(b) if the Fred Ex Concessionaire Breach is by reason of the failure to pay any undisputed monies to a third party, the Department may (but will have no obligation to) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the Department will be payable by the Concessionaire to the Department within five Days after demand, including accrued interest at the Bank Rate from the date such payment is made by the Department to the repayment date; *provided*, that (i) the Department will not incur any liability to the Concessionaire for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any Fred Ex Concessionaire Breach and (ii) the Department's cure of any Fred Ex Concessionaire Breach will not waive or affect the Department's rights against the Concessionaire by reason of the Fred Ex Concessionaire Breach; and

(c) the Department may cure the Fred Ex Concessionaire Breach (but this will not obligate the Department to cure or attempt to cure a Fred Ex Concessionaire Breach or, after having commenced to cure or attempted to cure a Fred Ex Concessionaire Breach, to continue to do so), and all costs and expenses reasonably incurred by the Department in curing or attempting to cure the Fred Ex Concessionaire Breach, including the Department's Allocable Costs, will be payable by the Concessionaire to the Department within five Days of demand, including accrued interest at the Bank Rate from the date such costs or expenses were incurred to the repayment date; *provided*, that (i) the Department will not incur any liability to the Concessionaire, and the Concessionaire hereby irrevocably waives and releases any liability of the Department to the Concessionaire, for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any Fred Ex Concessionaire Breach and (ii) the Department's cure of any Fred Ex Concessionaire Breach will not waive or affect the Department's rights against the Concessionaire by reason of the Fred Ex Concessionaire Breach.

Section 19.12 Opitz Boulevard Ramp Concessionaire Breach

The occurrence of any one or more of the following events (each an "Opitz Boulevard Ramp Concessionaire Breach Triggering Event") with respect to the Opitz Boulevard Ramp Project during the Construction Period for the Opitz Boulevard Ramp Project will constitute an "Opitz Boulevard Ramp Concessionaire Breach" pursuant to this Agreement:

(a) any representation or warranty made by the Concessionaire in this Agreement or in any other Project Agreement to which the Concessionaire and the Department are parties is false or misleading in any respect on the date made and a material adverse effect upon the Opitz Boulevard Ramp Project or the Department's rights or obligations under the Project Agreements

results therefrom, and such circumstance continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof, with cure regarded as complete only when the adverse effects are remedied;

(b) the Concessionaire fails to comply with, perform or observe any other material obligation, covenant, agreement, term or condition in this Agreement or any Project Agreement to which the Department and the Concessionaire are parties (provided, that a debarment pursuant to the provisions set forth in Section 24.03(b) (relating to SWaM participation) will not constitute an Opitz Boulevard Ramp Concessionaire Breach), which failure materially and adversely affects the Department's rights or obligations under this Agreement or any other VDOT Project Agreement, and such failure continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof (giving particulars of the failure in reasonable detail) or for such longer period as may be reasonably necessary to cure such failure up to a maximum cure period of 180 Days; *provided*, that the maximum cure period may be extended one time for any such failure to a final date if (i) at least 30 Days prior to the end of the maximum 180-Day cure period, the Concessionaire delivers a written work plan to the Department outlining the actions by which the Concessionaire will cure such failure and setting forth a final date by which the Concessionaire will cure such failure and (ii) the Department approves such work plan within 30 Days in its reasonable discretion; *provided*, that in all cases and regardless of the duration of the cure period, (A) the Concessionaire is proceeding with all due diligence to cure or cause to be cured such failure, (B) the failure is capable of being cured within a reasonable period of time, and (C) such failure is in fact cured within such period of time; *provided* further, that this Section 19.12(b) will not apply to events covered by other provisions of this Section 19.12;

(c) the Concessionaire fails to pay to the Department when due any undisputed amount in excess of \$100,000, adjusted annually by the percentage increase in CPI, payable to the Department with respect to the Opitz Boulevard Ramp Project pursuant to this Agreement or any other VDOT Project Agreement or to deposit funds to any reserve account in the amount and within the time period required by this Agreement, and such failure, including any failure to pay interest at the Bank Rate from the date due, continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof;

(d) (i) the Concessionaire fails to achieve Opitz Boulevard Ramp Final Completion by the Opitz Boulevard Ramp Long Stop Date, as such date may be extended pursuant to this Agreement, or (ii) in the case where a new Opitz Boulevard Ramp Long Stop Date has been established pursuant to Section 8.15(h) hereof, the Concessionaire fails to diligently implement the Opitz Boulevard Ramp Final Completion Recovery Plan. For avoidance of doubt, a failure of Concessionaire to achieve Opitz Boulevard Ramp Final Completion by the Opitz Boulevard Ramp Long Stop Date shall not be a Concessionaire Default;

(e) the Concessionaire fails to maintain, or to cause to be maintained, in effect the insurance, guarantees, letters of credit or other performance security as and when required pursuant to this Agreement for the benefit of relevant parties, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same and such failure continues without cure for a period of ten Business Days following the date the Department delivers to the Concessionaire written notice thereof; and

(f) after exhaustion of all rights of appeal, (i) there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, of the Concessionaire, any affiliate of the Concessionaire (as “affiliate” is defined in 29 CFR 98.905 or successor regulation of similar import), Transurban, or the Opitz Boulevard Ramp Construction Contractor, in each case, whose work is not completed, from bidding, proposing or contracting with any Federal or State department or agency or (ii) the Concessionaire, Transurban, or the Opitz Boulevard Ramp Construction Contractor, in each case, who have ongoing Work, or any of their respective officers, directors, or Administering Employees have been convicted of, or plead guilty or nolo contendere to, a violation of Law for fraud, conspiracy, collusion, bribery, perjury, or material misrepresentation, as a result in whole or in part of activities relating to any project in the State, and such failure continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof (giving particulars of the failure in reasonable detail); *provided*, that a debarment pursuant to the provisions set forth in Section 24.03(b) (relating to SWaM participation) will not constitute an Opitz Boulevard Ramp Concessionaire Breach. If the offending Person is an officer, director or Administering Employee, cure will be regarded as complete when the Concessionaire proves that such Person has been removed from any position or ability to manage, direct or control the decisions of the Concessionaire, Transurban, or the Opitz Boulevard Ramp Construction Contractor (as applicable) or to perform Work; and if the Person debarred or suspended or subject to an agreement for voluntary exclusion is an affiliate of the Concessionaire (as “affiliate” is defined in 29 CFR 98.905 or successor regulation of similar import), Transurban, or the Opitz Boulevard Ramp Construction Contractor, cure will be regarded as complete when the Concessionaire replaces such Person in accordance with this Agreement.

Section 19.13 Limitations on Opitz Boulevard Ramp Concessionaire Breach

(a) An Opitz Boulevard Ramp Concessionaire Breach shall arise from an Opitz Boulevard Ramp Concessionaire Breach Triggering Event that affects only the Opitz Boulevard Ramp Project. If a single event affects more than just the Opitz Boulevard Ramp Project (even if the event otherwise meets the definition of an Opitz Boulevard Ramp Concessionaire Breach Triggering Event), the parties will treat it as a Concessionaire Default Triggering Event unless otherwise mutually agreed.

(b) Concessionaire Default Triggering Events under Sections 19.01(d) and (l) will always be treated as Concessionaire Default Triggering Events unless otherwise mutually agreed, even if such events affect only the Opitz Boulevard Ramp Project.

(c) Concessionaire Default Triggering Events under Sections 19.01(g), (i) and (k) will always be treated as Concessionaire Default Triggering Events unless otherwise mutually agreed.

(d) After Opitz Boulevard Ramp Final Completion, Sections 19.12, 19.13, 19.14, and 20.14 will no longer apply and all events concerning the Opitz Boulevard Ramp Project giving rise to Concessionaire Default will be governed by Section 19.01.

Section 19.14 Department Remedies upon Opitz Boulevard Ramp Concessionaire Breach

Upon the occurrence of an Opitz Boulevard Ramp Concessionaire Breach, the Department may do any or all of the following as the Department, in its sole discretion, will determine:

(a) except for an Opitz Boulevard Ramp Concessionaire Breach occurring under Section 19.12(d), the Department may terminate the Opitz Boulevard Ramp Project and any provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties that solely relates to the Opitz Boulevard Ramp Project, to the extent provided in Section 20.14;

(b) if the Opitz Boulevard Ramp Concessionaire Breach is by reason of the failure to pay any undisputed monies to a third party, the Department may (but will have no obligation to) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the Department will be payable by the Concessionaire to the Department within five Days after demand, including accrued interest at the Bank Rate from the date such payment is made by the Department to the repayment date; *provided*, that (i) the Department will not incur any liability to the Concessionaire for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any Opitz Boulevard Ramp Concessionaire Breach, and (ii) the Department's cure of any Opitz Boulevard Ramp Concessionaire Breach will not waive or affect the Department's rights against the Concessionaire by reason of the Opitz Boulevard Ramp Concessionaire Breach; and

(c) the Department may cure the Opitz Boulevard Ramp Concessionaire Breach (but this will not obligate the Department to cure or attempt to cure an Opitz Boulevard Ramp Concessionaire Breach or, after having commenced to cure or attempted to cure an Opitz Boulevard Ramp Concessionaire Breach, to continue to do so), and all costs and expenses reasonably incurred by the Department in curing or attempting to cure the Opitz Boulevard Ramp Concessionaire Breach, including the Department's Allocable Costs, will be payable by the Concessionaire to the Department within five Days of demand, including accrued interest at the Bank Rate from the date such costs or expenses were incurred to the repayment date; *provided*, that (i) the Department will not incur any liability to the Concessionaire, and the Concessionaire hereby irrevocably waives and releases any liability of the Department to the Concessionaire, for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any Opitz Boulevard Ramp Concessionaire Breach, and (ii) the Department's cure of any Opitz Boulevard Ramp Concessionaire Breach will not waive or affect the Department's rights against the Concessionaire by reason of the Opitz Boulevard Ramp Concessionaire Breach.

Section 19.15 Seminary Road Ramp Concessionaire Breach

The occurrence of any one or more of the following events (each a "Seminary Road Ramp Concessionaire Breach Triggering Event") with respect to the Seminary Road Ramp Project during the Construction Period for the Seminary Road Ramp Project will constitute a "Seminary Road Ramp Concessionaire Breach" pursuant to this Agreement:

(a) any representation or warranty made by the Concessionaire in this Agreement or in any other Project Agreement to which the Concessionaire and the Department are parties is false or misleading in any respect on the date made and a material adverse effect upon the Seminary Road Ramp Project or the Department's rights or obligations under the Project Agreements results therefrom, and such circumstance continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof, with cure regarded as complete only when the adverse effects are remedied;

(b) the Concessionaire fails to comply with, perform or observe any other material obligation, covenant, agreement, term or condition in this Agreement or any Project Agreement to which the Department and the Concessionaire are parties (provided, that a debarment pursuant to the provisions set forth in Section 24.03(b) (relating to SWaM participation) will not constitute a Seminary Road Ramp Concessionaire Breach), which failure materially and adversely affects the Department's rights or obligations under this Agreement or any other VDOT Project Agreement, and such failure continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof (giving particulars of the failure in reasonable detail) or for such longer period as may be reasonably necessary to cure such failure up to a maximum cure period of 180 Days; *provided*, that the maximum cure period may be extended one time for any such failure to a final date if (i) at least 30 Days prior to the end of the maximum 180-Day cure period, the Concessionaire delivers a written work plan to the Department outlining the actions by which the Concessionaire will cure such failure and setting forth a final date by which the Concessionaire will cure such failure and (ii) the Department approves such work plan within 30 Days in its reasonable discretion; *provided*, that in all cases and regardless of the duration of the cure period, (A) the Concessionaire is proceeding with all due diligence to cure or cause to be cured such failure, (B) the failure is capable of being cured within a reasonable period of time, and (C) such failure is in fact cured within such period of time; *provided* further, that this Section 19.15(b) will not apply to events covered by other provisions of this Section 19.15;

(c) the Concessionaire fails to maintain, or to cause to be maintained, in effect the insurance, guarantees, letters of credit or other performance security as and when required pursuant to this Agreement for the benefit of relevant parties, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same and such failure continues without cure for a period of ten Business Days following the date the Department delivers to the Concessionaire written notice thereof; and

(d) after exhaustion of all rights of appeal, (i) there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, of the Concessionaire, any affiliate of the Concessionaire (as "affiliate" is defined in 29 CFR 98.905 or successor regulation of similar import), Transurban, or the Seminary Road Ramp Construction Contractor, in each case, whose work is not completed, from bidding, proposing or contracting with any Federal or State department or agency or (ii) the Concessionaire, Transurban, or the Seminary Road Ramp Construction Contractor, in each case, who have ongoing Work, or any of their respective officers, directors, or Administering Employees have been convicted of, or plead guilty or nolo contendere to, a violation of Law for fraud, conspiracy, collusion, bribery, perjury, or material misrepresentation, as a result in whole or in part of activities relating to any project in the State, and such failure continues without cure for a period of 90 Days following the date the Department delivers to the Concessionaire written notice thereof

(giving particulars of the failure in reasonable detail); *provided*, that a debarment pursuant to the provisions set forth in Section 24.03(b) (relating to SWaM participation) will not constitute a Seminary Road Ramp Concessionaire Breach. If the offending Person is an officer, director or Administering Employee, cure will be regarded as complete when the Concessionaire proves that such Person has been removed from any position or ability to manage, direct or control the decisions of the Concessionaire, Transurban, or the Seminary Road Ramp Construction Contractor (as applicable) or to perform Work; and if the Person debarred or suspended or subject to an agreement for voluntary exclusion is an affiliate of the Concessionaire (as “affiliate” is defined in 29 CFR 98.905 or successor regulation of similar import), Transurban, or the Seminary Road Ramp Construction Contractor, cure will be regarded as complete when the Concessionaire replaces such Person in accordance with this Agreement.

Section 19.16 Limitations on Seminary Road Ramp Concessionaire Breach

(a) A Seminary Road Ramp Concessionaire Breach shall arise from a Seminary Road Ramp Concessionaire Breach Triggering Event that affects only the Seminary Road Ramp Project. If a single event affects more than just the Seminary Road Ramp Project (even if the event otherwise meets the definition of a Seminary Road Ramp Concessionaire Breach Triggering Event), the parties will treat it as a Concessionaire Default Triggering Event unless otherwise mutually agreed.

(b) Concessionaire Default Triggering Events under Sections 19.01(d) and (l) will always be treated as Concessionaire Default Triggering Events unless otherwise mutually agreed, even if such events affect only the Seminary Road Ramp Project.

(c) Concessionaire Default Triggering Events under Sections 19.01(g), (i) and (k) will always be treated as Concessionaire Default Triggering Events unless otherwise mutually agreed.

(d) After Seminary Road Ramp Final Completion, Sections 19.15, 19.16, 19.17 and 20.15 will no longer be applicable and all events concerning the Seminary Road Ramp Project giving rise to Concessionaire Default will be governed by Section 19.01.

Section 19.17 Department Remedies upon Seminary Road Ramp Concessionaire Breach

Upon the occurrence of a Seminary Road Ramp Concessionaire Breach, the Department may do any or all of the following as the Department, in its sole discretion, will determine:

(a) the Department may terminate the Seminary Road Ramp Project and any provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties that solely relates to the Seminary Road Ramp Project, to the extent provided in Section 20.15;

(b) if the Seminary Road Ramp Concessionaire Breach is by reason of the failure to pay any undisputed monies to a third party, the Department may (but will have no obligation to) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the Department will be payable by the Concessionaire to the Department within five Days after demand, including accrued interest at the Bank Rate from the date such payment is made by the

Department to the repayment date; *provided*, that (i) the Department will not incur any liability to the Concessionaire for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any Seminary Road Ramp Concessionaire Breach, and (ii) the Department's cure of any Seminary Road Ramp Concessionaire Breach will not waive or affect the Department's rights against the Concessionaire by reason of the Seminary Road Ramp Concessionaire Breach; and

(c) the Department may cure the Seminary Road Ramp Concessionaire Breach (but this will not obligate the Department to cure or attempt to cure a Seminary Road Ramp Concessionaire Breach or, after having commenced to cure or attempted to cure a Seminary Road Ramp Concessionaire Breach, to continue to do so), and all costs and expenses reasonably incurred by the Department in curing or attempting to cure the Seminary Road Ramp Concessionaire Breach, including the Department's Allocable Costs, will be payable by the Concessionaire to the Department within five Days of demand, including accrued interest at the Bank Rate from the date such costs or expenses were incurred to the repayment date; *provided*, that (i) the Department will not incur any liability to the Concessionaire, and the Concessionaire hereby irrevocably waives and releases any liability of the Department to the Concessionaire, for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any Seminary Road Ramp Concessionaire Breach, and (ii) the Department's cure of any Seminary Road Ramp Concessionaire Breach will not waive or affect the Department's rights against the Concessionaire by reason of the Seminary Road Ramp Concessionaire Breach.

ARTICLE 20

TERMINATION; HANDBACK

Section 20.01 Termination Upon Expiration of Term

Unless earlier terminated in accordance with the terms of this Article 20, all the rights and obligations of the parties hereunder will cease and terminate, without notice or demand, on the last Day of the Term. Not later than 180 Days preceding the end of the Term, the Concessionaire and the Department will develop a plan (the "Transition Plan") to assure the orderly transition of the Project to the Department or its designee (which Transition Plan is in addition to the adjustments and changes to the Life Cycle Maintenance Plan under Section 20.02). The parties will then diligently implement the Transition Plan in accordance with the Technical Requirements.

Section 20.02 Handback Obligations and Reserve

(a) Upon the end of the Term, the Concessionaire shall hand-back the Project Assets to the Department, at no charge to the Department, with asset condition having a remaining life of the greater of: (i) five years; or (ii) life within its normal lifecycle (collectively referred to as the "Handback Requirements"). In addition, if requested by the Department, the Concessionaire will dismantle the HOT Lanes toll system as required to convert the HOT Lanes back to HOV Lanes; *provided* that the Department shall notify the Concessionaire at least one year prior to the end of the Term if the HOT Lanes are to be converted back to HOV Lanes. Any such dismantling of the HOT Lanes toll system shall be at Concessionaire's sole cost and expense.

(b) Beginning 20 years prior to the expiration of the Term and every five years thereafter, the Concessionaire and the Department will jointly conduct inspections of the Project Assets, for the purposes of jointly (i) determining and verifying the condition of all Project Assets and their residual lives, and (ii) determining, revising and updating the Life Cycle Maintenance Plan to reflect the Handback Requirements.

(c) Beginning five years prior to the expiration of the Term, the Concessionaire and the Department will jointly conduct annual inspections of the Project Assets to ensure that the Handback Requirements will be met.

(d) The Concessionaire shall diligently perform and complete all work contained in the Life Cycle Maintenance Plan prior to reversion of the Project Assets back to the Department, based on the required adjustments and changes to the Life Cycle Maintenance Plan resulting from the inspections and analysis under Section 20.02(b) and (c). The Concessionaire shall complete all such work prior to the end of the Term.

(e) Starting five years prior to the expiration of the Term, the Concessionaire shall post to the Department a ten-year irrevocable Letter of Credit or a Performance Bond for a period of five years after expiration of the Term in an amount equal to 50% of the nominal lifecycle cost expended in the previous five years of the Term pursuant to the most recent Life Cycle Maintenance Plan approved by the Department. This Letter of Credit or Performance Bond may be drawn upon by the Department only in the event that subsequent to termination or expiration of the Term, the Project Assets are found to fail to address the Handback Requirements and in the amount required to address such failures up to the full amount of the Letter of Credit or Performance Bond.

(f) The Department will determine whether the Project Assets meet the Handback Requirements based on routine inspections up to five years after termination or expiration of the Term (“Handback Period”). If the Concessionaire disagrees with the Department’s determination of the condition of the Project Assets during the Handback Period, the Concessionaire may, at its own expense, retain an engineer to inspect the facility and review the findings of the Department. Resolution of any disagreement will be subject to the dispute resolution procedures set forth in Article 21.

Section 20.03 Termination for a Significant Force Majeure Event

(a) If a Significant Force Majeure Event occurs, then

(i) the Concessionaire may elect to terminate this Agreement unless the Department elects, within 14 Days following receipt of the Concessionaire’s written notice of election to terminate, to treat the Significant Force Majeure Event as a Compensation Event; and

(ii) the Department may elect to terminate this Agreement unless the Concessionaire elects, within 60 Days following the Significant Force Majeure Event, to restore any resulting damage or destruction at the Concessionaire’s sole cost and expense and furnishes a restoration plan acceptable to the Department with respect to such damage or destruction;

provided, that a party will exercise its right to terminate this Agreement pursuant to this Section 20.03(a) by delivering to the other party written notice of its election to terminate this Agreement (“Significant Force Majeure Termination Notice”).

(b) If the Concessionaire has elected to restore the Project in accordance with Section 20.03(a)(ii), it will promptly carry out the restoration of the Project in accordance with the terms of this Agreement and the restoration plan approved by the Department.

(c) If this Agreement is terminated pursuant to Section 20.03(a), the Department will pay to the Concessionaire the Significant Force Majeure Termination Amount.

Section 20.04 Termination for Failure to Achieve Financial Close; Termination of the Fred Ex Project Based on Excess Fred Ex Financial Protections

(a) Failure to Achieve Financial Close by Financial Close Deadline. If the Concessionaire fails to achieve Financial Close by the Financial Close Deadline, either party may, at its sole discretion, elect to terminate this Agreement and any other Project Agreement to which it is a party. If a party elects to terminate pursuant to this Section 20.04(a), such party will provide written notice of termination to the other party, and such termination will be effective immediately upon delivery of such notice. In the event of such termination, the Department will pay the Concessionaire the Non-Financial Close Termination Amount, which shall apply neither to the 395 Project nor the Fred Ex Project.

(b) Liability Upon Termination. In the event of any termination under Section 20.04(a), the Department will have no liability to the Concessionaire under this Agreement or any other Project Agreement other than the Non-Financial Close Termination Amount, and the Concessionaire will not be entitled to any Concessionaire Damages.

(c) Failure to Achieve Fred Ex Financial Close by the Fred Ex Financial Close Deadline.

(i) If the Concessionaire fails to achieve Fred Ex Financial Close by the Fred Ex Financial Close Deadline, either party may, at its sole discretion, elect to terminate the Fred Ex Project and any provisions in and terms of this Agreement and any other Project Agreement to which it is a party that solely relates to the Fred Ex Project.

(ii) If a party elects to terminate the Fred Ex Project pursuant to this Section 20.04(c), such party will provide written notice of termination to the other party, and such termination will be effective immediately upon delivery of such notice. In addition to any such termination rights, the Department will have the right to draw on the Fred Ex Financial Close Security, subject to the limitations set out in to Section 7.03B(f)(ii).

(d) Termination of the Fred Ex Project Based on Excess Fred Ex Financial Protections.

(i) Subject to Section 7.03B(c), if on any of the Fred Ex Financial Protections Calculation Dates, the total combined amount of the Fred Ex Financial Protections would exceed \$50,000,000, the Department may terminate the Fred Ex Project and any provisions in and terms of this Agreement and any other Project Agreement to which it is a party that

solely relates to the Fred Ex Project. The \$50,000,000 overall Fred Ex Financial Protections cap applies to the specific amount of the Fred Ex Financial Protections offered by the Department, without regard to whether such amount is realized by the Concessionaire (a) as a payment from the Department, (b) offset against amounts owed from the Concessionaire to the Department, or (c) by any other means.

(ii) In the event of termination of the Fred Ex Project pursuant to this Section 20.04(d), the Department will not have the right to draw on the Fred Ex Financial Close Security and the Department shall return the Fred Ex Financial Close Security to the Concessionaire within five (5) Business Days of such termination. In addition, if the Department terminates the Fred Ex Project pursuant to this Section 20.04(d), then the Department will reimburse the Concessionaire for one half of the Concessionaire's properly documented and invoiced third-party Fred Ex External Engineering Costs not to exceed \$5,700,000. After such termination, the Department will own all rights in all Fred Ex Work Product.

(e) In the event of termination of the Fred Ex Project pursuant to Sections 20.04(c) or (d), the Concessionaire will retain its right to operate and maintain the Original HOT Lanes, the 395 HOT Lanes, and the STE, but will lose its right to develop and operate the Fred Ex HOT Lanes, and the Department may complete the Fred Ex Project or any portion thereof, in which case the Department's completion of the Fred Ex Project or any portion thereof will not be treated as a Compensation Event. In the event of termination of the Fred Ex Project pursuant to this Section 20.04, the Concessionaire and the Department will follow the procedures in Section 20.08 applied to the Fred Ex Project alone, and not applied to the Original Project, the 395 Project or the STE.

(f) In the event of termination of the Fred Ex Project pursuant to Sections 20.04(c) or (d), the Concessionaire will assign the Fred Ex Design-Build Contract to the Department or its designee upon receipt of written notice by the Department to be provided at the Department's sole discretion, and the parties agree that the provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties related to the Fred Ex Project and the Fred Ex Corridor are null and void and no longer applicable to the Project, and the First ARCA, including all exhibits thereto will be reinstated and will govern the Project, inclusive of the Permit Fee.

Section 20.05 Termination for Concessionaire Default

(a) Subject to the provisions of the Direct Agreement, the 395 Direct Agreement, and the Fred Ex Direct Agreement, at any time after the occurrence and during the continuance of a Concessionaire Default, the Department is entitled to terminate this Agreement and any other Project Agreement to which the Department and the Concessionaire are both parties.

(b) If the Department elects to terminate pursuant to this Section 20.05, the Department will deliver to the Concessionaire and the Collateral Agent written notice of its election to terminate, which termination will take effect not less than 60 Days after the delivery of such notice.

(c) In the event of termination pursuant to this Section 20.05, the Department will pay to the Concessionaire in accordance with Section 25.19, the Concessionaire Default Termination Amount.

(d) A termination by the Department for Concessionaire Default or any other termination of this Agreement by the Department which is later determined by the court of proper jurisdiction to be wrongful or in violation of this Agreement will be deemed to have been a termination for Department Default pursuant to Section 20.06 for the sole purpose of calculating the compensation owed to the Concessionaire by the Department.

Section 20.06 Termination for Department Default

(a) Subject to the provisions of this Section 20.06, the Concessionaire is entitled to terminate this Agreement and any other Project Agreement to which the Concessionaire and the Department are both parties in the event of a Department Default.

(b) If the Concessionaire elects to terminate pursuant to this Section 20.06, the Concessionaire will deliver to the Department a written notice of intent to terminate this Agreement. Upon receipt of such notice of intent to terminate, the Department will be entitled to cure such Department Default by providing the Concessionaire with a written work plan within the 90-Day period after the Department receives the written notice of intent to terminate. The work plan will outline the actions by which the Department will ensure future compliance with the obligation, covenant, agreement, term, or condition in this Agreement that the Department failed to perform or observe. The work plan will be subject to the Concessionaire's written approval (which approval will not be unreasonably withheld, delayed, or conditioned).

(c) If (i) the Department fails to provide the Concessionaire with the work plan required pursuant to Section 20.06(b) or (ii) the Department fails to comply in any material respect with the work plan approved by the Concessionaire pursuant to Section 20.06(b) and in the case of this clause (ii), such failure continues without cure for 60 Days following the date the Concessionaire delivers to the Department written notice thereof, the Concessionaire may terminate this Agreement by delivering to the Department written notice of its election to terminate, which termination will take effect not less than 30 Days after the delivery of such notice.

(d) In the event of a termination pursuant to this Section 20.06, the Department will pay to the Concessionaire the Department Default Termination Amount.

Section 20.07 Other Termination

(a) If this Agreement is terminated by the Department or the State prior to the end of the Term, other than pursuant to Sections 19.02, 20.03, 20.04, 20.05, or 20.06, or is canceled, rescinded, or voided during the Term, subject to Section 25.19, the Department will pay to the Concessionaire the Other Termination Amount. A termination as contemplated by this Section 20.07 shall not be effective unless and until Project Value has been determined pursuant to Section 20.11.

(b) Each of the Department and Concessionaire hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof.

Section 20.08 Concessionaire Actions Upon Termination

(a) On delivery of notice of termination of this Agreement or the Concessionaire's rights hereunder for any reason prior to the expiration of the Term, the provisions of this Section 20.08 will apply. The Concessionaire will timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due to the Concessionaire or the Department on account of termination. In connection with the expiration of the Term, certain provisions of this Section 20.08, as specified, will apply.

(b) The Concessionaire will conduct all discussions and negotiations to determine the amount of any termination compensation, and will share with the Department all data, documents and information pertaining thereto, on an Open Book Basis.

(c) Except as otherwise specified in this Agreement, within 30 Days after receipt of a notice of termination, or, if applicable, not later than 120 Days before expiration of the Term, the Concessionaire will meet and confer with the Department for the purpose of developing an interim transition plan for the orderly transition of Work, demobilization and transfer to the Department of control of the Project and Project Right of Way. The parties will use diligent efforts to complete preparation of the interim transition plan within 15 Days after the date the Concessionaire receives the notice of termination or, if applicable, not later than 15 Days before expiration of the Term. The parties will use diligent efforts to complete a final transition plan within 30 Days after such date. The transition plan will be in form and substance acceptable to the Department in its good faith discretion and will include and be consistent with the other provisions and procedures set forth in this Section 20.08, all of which procedures the Concessionaire will promptly follow, regardless of any delay in preparation or acceptance of the transition plan.

(d) Upon receipt of a notice of termination, or, if applicable, before expiration of the Term, the Concessionaire will take all action that may be necessary, or that the Department may reasonably direct, for the protection and preservation of the Project, the Work and such materials, goods, machinery, equipment, parts, supplies, and other property. For the avoidance of doubt, during the period from its receipt of a notice of termination until the expiration of the Term, the Concessionaire will continue to perform its obligations and be entitled to receive Toll Revenues pursuant to this Agreement.

(e) The Concessionaire will deliver to the Department on the date of expiration of the Term or on the effective date of any earlier termination:

(i) all tangible personal property, reports, books, and records necessary or useful for the Project, and, to the extent provided in Article 18, Work Product and Intellectual Property used or owned by the Concessionaire or any Contractor relating to the Project or the Work; excluding, however, all personal property, machinery, equipment and tools owned or leased by any Contractor and not incorporated or intended to be incorporated into the Project;

(ii) possession and control of the Project and Project Assets (other than the Department Shared Assets and the 395 Department Assets), free and clear of any and all Liens created, incurred or suffered by the Concessionaire, any Concessionaire Party or any

Affiliate or anyone claiming under any of them; *provided*, that release of the Liens of the Lenders will be subject to payment of termination compensation owing by the Department;

(iii) all other intangible personal property used or owned by the Concessionaire and relating to or derived from the Project and the Work; and

(iv) a notice of termination of this Agreement and the Concessionaire's Interest, in the form reasonably required by the Department, executed and acknowledged by the Concessionaire.

(f) If, as of the date on which the notice of termination is delivered, the Concessionaire has not completed construction of all or part of the Project, the Department may, subject to the provisions of the Direct Agreement, the 395 Direct Agreement, or the Fred Ex Direct Agreement, elect, by written notice to the Concessionaire, the Design-Build Contractor, and the TTMS Contractor, if applicable, delivered within 90 Days after the date on which the notice of termination is delivered, to continue in effect the Design-Build Contract or the TTMS Contract or to require the termination of any such agreement. If the Department does not deliver written notice of election within such time period, the Department will be deemed to elect to require termination of the Design-Build Contract or the TTMS Contract, as applicable. If the Department elects to continue the Design-Build Contract or the TTMS Contract, in effect, then the Concessionaire will execute and deliver to the Department a written assignment, in form and substance acceptable to the Department, acting reasonably, of all the Concessionaire's right, title, and interest in and to the Design-Build Contract or the TTMS Contract and the Department will assume in writing the Concessionaire's obligations thereunder that arise from and after the end of the Term. If the Department elects (or is deemed to elect) to require termination of the Design-Build Contract or the TTMS Contract, then the Concessionaire will:

(i) unless the Department has granted Replacement Agreements to a Lender or its Substituted Concessionaire, take such steps as are necessary to terminate the Design-Build Contract or the TTMS Contract, including notifying the Design-Build Contractor or TTMS Contractor that the Design-Build Contract or the TTMS Contract is being terminated and that the Design-Build Contractor or TTMS Contractor is to immediately stop work and stop and cancel orders for materials, services, or facilities unless otherwise authorized in writing by the Department;

(ii) immediately and safely demobilize and secure construction, staging, lay down, and storage areas for the Project Assets and Utility Relocations included in the construction Work in a manner satisfactory to the Department, and remove all debris and waste materials except as otherwise approved by the Department in writing;

(iii) take such other actions as are necessary or appropriate to mitigate further cost;

(iv) subject to the prior written approval of the Department, settle all outstanding liabilities and all Claims arising out of the Design-Build Contract or the TTMS Contract;

(v) cause the Design-Build Contractor or TTMS Contractor to execute and deliver to the Department a written assignment, in form and substance acceptable to the

Department, acting reasonably, of all the Design-Build Contractor's or TTMS Contractor's right, title and interest in and to (A) all third party agreements and permits, except Contracts for performance of the Design-Build Work or the TTMS Work, as applicable; *provided*, that the Department assumes in writing all of the Design-Build Contractor's or TTMS Contractor's obligations thereunder that arise after the effective date of termination and (B) all assignable warranties and Claims held by the Design-Build Contractor or TTMS Contractor against other Contractors and other third parties in connection with the Project or the Work; *provided* that the Design-Build Contractor or TTMS Contractor will be entitled to retain its rights and remedies with respect to Work performed prior to the effective date of termination; and

(vi) carry out such other directions as the Department may give for suspension or termination of Work performed under the Design-Build Contract or the TTMS Contract.

(g) If, as of the date notice of termination is delivered, the Concessionaire has entered into any other Contract for the design, construction, permitting, installation, and equipping of the Project, subject to the provisions of the Direct Agreement, the 395 Direct Agreement, and the Fred Ex Direct Agreement, the Department will elect, by written notice to the Concessionaire, to continue in effect such Contract or to require its termination. If the Department elects to continue the Contract in effect, then the Concessionaire will execute and deliver to the Department a written assignment, in form and substance acceptable to the Department, acting reasonably, of all the Concessionaire's right, title, and interest in and to the Contract, and the Department will assume in writing the Concessionaire's obligations thereunder that arise from and after the effective date of termination. If the Department elects to require termination of the Contract, then the Concessionaire will take actions comparable to those set forth in Section 20.08(f) with respect to the Contract.

(h) If, as of the date notice of termination is delivered, the Concessionaire has entered into any operations or maintenance Contract, the Department will elect, by written notice to the Concessionaire, to continue it in effect or require its termination; *provided*, that if a Lender is entitled to Replacement Agreements following termination, the Department will not elect to terminate any such Contract until the Lender's right to Replacement Agreements expires without exercise. If the Department elects to continue any such Contract in effect, then on or about the effective date of termination (or promptly after any later election to terminate) the Concessionaire will execute and deliver to the Department a written assignment, in form and substance acceptable to the Department, acting reasonably, of all the Concessionaire's right, title and interest in and to the Contract, and the Department will assume in writing the Concessionaire's obligations thereunder that arise from and after the effective date of termination.

Section 20.09 Liability After Termination; Consequences of Termination

(a) If this Agreement is terminated by reason of a Concessionaire Default or a Department Default or any other Project Agreement is terminated for default thereunder, such termination will not excuse the defaulting party from any liability arising out of such default as provided in the Project Agreements. If any outstanding Claim of the Concessionaire against the Department that is independent of the event of termination and determination of the termination compensation is resolved prior to payment of the termination compensation (if any), the parties

will adjust the termination compensation by the amount of the unpaid award, if any, on the Claim. Notwithstanding the foregoing, any termination of this Agreement will automatically extinguish any Claim of the Concessionaire to payment of Concessionaire Damages for adverse Net Cost Impacts and Net Revenue Impacts accruing after the effective date of termination from Compensation Events that occurred prior to termination; *provided*, however, that (i) Claims for any such Net Cost Impacts that cannot reasonably be avoided by the Concessionaire will not be extinguished, and (ii) the foregoing will not limit any Claim of the Concessionaire for interest on unpaid amounts owing or to become owing by the Department as provided in this Agreement.

(b) If this Agreement is terminated by any reason other than a Concessionaire Default or a Department Default or any other Project Agreement is terminated other than a termination for default, no party will have any further obligation or liability except for performance of their respective obligations which are either expressly stated in this Agreement or any other Project Agreement to survive termination or by their sense and context are intended to survive termination.

(c) The Department will, as of the effective date of termination of this Agreement or the Concessionaire's rights hereunder, whether due to expiration or earlier termination of the Term, assume full responsibility for the Project or, if Substantial Completion, 395 Final Completion, Fred Ex Final Completion, Opitz Boulevard Ramp Final Completion, or Seminary Road Ramp Final Completion has not been achieved or other Work has otherwise not been completed as of such date, be permitted to assume full responsibility for such outstanding Work, and as of such date, the Concessionaire will have no liability or responsibility for such Work, as the case may be, occurring after such date; *provided*, that the Department and the Concessionaire will remain fully responsible for all of their respective obligations or liabilities pursuant to this Agreement or any other Project Agreement arising before the effective date of termination and those obligations pursuant to this Agreement or other Project Agreements which survive termination.

(d) Each of the Concessionaire and the Department will be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to the effective date of termination of this Agreement or the Concessionaire's rights hereunder, whether due to expiration or earlier termination of the Term, and the Concessionaire will not be liable for any costs, expenses and amounts incurred in connection with the Project or the Work on and after such date, except to the extent such costs, expenses and amounts are properly included in the measure of any damages due to the Department arising from a default by the Concessionaire pursuant to this Agreement. The amount of any termination compensation is subject to reduction and offset for such damages.

(e) Regardless of the Department's prior actual or constructive knowledge thereof, no contract or agreement to which the Concessionaire is a party (unless the Department is also a party thereto) as of the effective date of termination will bind the Department, unless the Department elects to assume such contract or agreement in writing. Except in the case of the Department's express written assumption, no such contract or agreement will entitle the contracting party to continue performance of work or services respecting the Project following the effective date of termination, or to any Claim, legal or equitable, against the Department.

(f) As of the effective date of termination of this Agreement, whether due to expiration or earlier termination of the Term, the Permit and all of the Concessionaire's Interest will

automatically terminate and expire, and all Liens created, permitted or suffered by the Concessionaire will be automatically extinguished, *provided* however, that the foregoing will not prohibit the Concessionaire from assigning its right to receive termination payments to the Lenders.

Section 20.10 Exclusive Termination Remedies

(a) Each of the Department and the Concessionaire hereby acknowledges and agrees that it may only terminate this Agreement, the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project in accordance with the express terms hereof.

(b) Article 19 and this Article 20 set forth the entire and exclusive provisions and rights of the Department and the Concessionaire regarding termination of this Agreement, the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project, and any and all other rights at law or in equity to terminate or to payment of compensation upon termination are hereby waived to the maximum extent permitted by Law. The parties hereto agree that, upon any termination of this Agreement, the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project, the payments provided in this Agreement will constitute the Concessionaire's sole compensation (and the Concessionaire shall have no further liability to the Department except as otherwise provided in this Agreement) pursuant to this Agreement and in the event the Department or any designee or licensee of the Department imposes tolls for travel on the Project after termination of this Agreement, the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project, neither the Concessionaire nor any beneficiary or Lender as a result of a Financing Assignment will be entitled to any further compensation in respect thereof. In furtherance of the foregoing, the parties hereto agree that the provisions of Section 33.2-1813B of the Code of Virginia will not apply to the Project after the termination of this Agreement.

Section 20.11 Determination of Project Value

(a) In the event the Department owes the Concessionaire an amount calculated by reference to the Project Value, Project Value will be determined according to the following procedures:

(i) within 30 Days after a party requests the appointment of an appraiser, the Department and the Concessionaire will confer in good faith to mutually appoint an independent third-party appraiser to determine the Project Value by written appraisal. This appraiser must be nationally recognized and experienced in appraising similar assets;

(ii) if the parties are unable to agree upon such a single appraiser within such 30-Day period, then within ten Days thereafter the Department and the Concessionaire will each appoint an independent third-party appraiser and both such appraisers will be instructed jointly to select, within 15 Days after they are appointed, a third independent third-party appraiser who is nationally recognized and experienced in appraising similar assets to make the appraisal referred to above;

(iii) if the appraisers appointed by the parties are unable to appoint an independent third-party appraiser under Section 20.11(a)(ii) within 60 Days after a party has requested the appointment of an appraiser under Section 20.11(a)(i), then either party may petition the Circuit Court for the City of Richmond to appoint an independent third-party appraiser having such reputation and experience;

(iv) each party will pay the costs of its own appraiser. The Department and the Concessionaire will pay in equal shares the reasonable costs and expenses of the third independent appraiser;

(v) each party will diligently cooperate with the appraiser, including promptly providing the appraiser with data and information regarding the Project, Project Right of Way, asset condition, historical cost and revenue data, and other information the appraiser may request that is in the possession of or reasonably available to the party. Each party will provide the appraiser with access to the party's books and records regarding the Project on an Open Book Basis; and

(vi) once appointed, the independent third-party appraiser will conduct an appraisal of the Project Value and deliver to both parties a draft appraisal report and draft valuation. The appraisal will determine Project Value as of the effective date of termination of the Agreement, based on the then condition of the Project (but without regard to any damage or loss resulting from a Department Default). The appraiser will appraise Project Value by taking into account the terms and conditions of this Agreement, projected cash flows and projected costs of the Project for the remainder of the projected Term had this Agreement not been terminated, as determined by the appraiser. For the avoidance of doubt, the calculation of Project Value is the sum of the fair market value of the projected Distributions for the remainder of the Term without taking into consideration any terminations pursuant to Article 20 and the fair market value of any Concessionaire Debt outstanding as of the date of the calculation, and will include Concessionaire Damages for adverse Net Cost Impacts and Net Revenue Impacts accruing after the effective date of termination from Compensation Events that occurred prior to termination. In conducting the appraisal, and before issuing a draft appraisal report, the independent appraiser will afford reasonable and comparable opportunity to each party to provide the appraiser with information, data, analysis and reasons supporting each party's view on the Project Value. The parties will have 15 Days after receipt of the draft appraisal report to comment thereon. After the opportunity to comment has expired, the independent third-party appraiser will consider and evaluate all comments, prepare a final appraisal report stating the Project Value, and deliver the final appraisal report to both parties.

(b) If either party disagrees with the Project Value, either party may invoke the dispute resolution procedures set forth in Article 21, by delivery of notice to the other party within 60 Days following receipt of the appraiser's report. Failure to invoke the dispute resolution procedures within such time period will conclusively constitute acceptance of the Project Value.

Section 20.12 Termination of 395 Project for 395 Concessionaire Breach

(a) Subject to the provisions of the 395 Direct Agreement, and except for a 395 Concessionaire Breach occurring under Section 19.06(d), at any time after the occurrence and during the continuance of a 395 Concessionaire Breach, the Department is entitled to terminate the 395 Project and any provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties that solely relates to the 395 Project.

(b) If the Department elects to terminate the 395 Project pursuant to this Section 20.12, the Department will deliver to the Concessionaire and the Collateral Agent written notice of its election to terminate the 395 Project, which termination will take effect not less than 60 Days after the delivery of such notice.

(c) In the event of termination of the 395 Project pursuant to this Section 20.12, the Department will pay to the Concessionaire in accordance with Section 25.19, the 395 Concessionaire Breach Termination Amount.

(d) In the event of termination of the 395 Project pursuant to this Section 20.12, the Concessionaire will retain its right to operate and maintain the Original HOT Lanes and STE, but will lose its right to develop and operate the 395 HOT Lanes, and the Department may complete the 395 Project or any portion thereof, in which case the Department's completion of the 395 Project or any portion thereof will not be treated as a Compensation Event. In the event of termination of the 395 Project pursuant to this Section 20.12, the Concessionaire and the Department will follow the procedures in Section 20.08 applied to the 395 Project alone, and not applied to the Original HOT Lanes or the STE.

(e) In the event of termination of the 395 Project pursuant to this Section 20.12, the Parties agree that the provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties related to the 395 Project and the 395 Corridor are null and void and no longer applicable to the Project.

Section 20.13 Termination of Fred Ex Project for Fred Ex Concessionaire Breach

(a) Subject to the provisions of the Fred Ex Direct Agreement, and except for a Fred Ex Concessionaire Breach occurring under Section 19.09(d), at any time after the occurrence and during the continuance of a Fred Ex Concessionaire Breach, the Department is entitled to terminate the Fred Ex Project and any provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties that solely relates to the Fred Ex Project.

(b) If the Department elects to terminate the Fred Ex Project pursuant to this Section 20.13, the Department will deliver to the Concessionaire and the Collateral Agent written notice of its election to terminate the Fred Ex Project, which termination will take effect not less than 60 Days after the delivery of such notice.

(c) In the event of termination of the Fred Ex Project pursuant to this Section 20.13, the Department will pay to the Concessionaire in accordance with Section 25.19, the Fred Ex

Concessionaire Breach Termination Amount. In addition, the Concessionaire will deliver to the Department all Fred Ex Work Product in accordance with Section 18.03(d).

(d) In the event of termination of the Fred Ex Project pursuant to this Section 20.13, the Concessionaire will retain its right to operate and maintain the Original HOT Lanes, the 395 HOT Lanes, the Opitz Boulevard Ramp HOT Lanes, the Seminary Road Ramp HOT Lanes and STE, but will lose its right to develop and operate the Fred Ex HOT Lanes, and the Department may complete the Fred Ex Project or any portion thereof, in which case the Department's completion of the Fred Ex Project or any portion thereof will not be treated as a Compensation Event. In the event of termination of the Fred Ex Project pursuant to this Section 20.13, the Concessionaire and the Department will follow the procedures in Section 20.08 applied to the Fred Ex Project alone, and not applied to the Original HOT Lanes, the 395 HOT Lanes, the Opitz Boulevard Ramp HOT Lanes, the Seminary Road Ramp HOT Lanes, or STE.

(e) In the event of termination of the Fred Ex Project pursuant to this Section 20.13, the parties agree that the provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties related to the Fred Ex Project and the Fred Ex Corridor are null and void and no longer applicable to the Project, and the First ARCA, including all exhibits thereto will be reinstated and will govern the Project, inclusive of the Permit Fee, as amended to include all terms and conditions necessary to retain the provisions of the Third ARCA with respect to the Opitz Boulevard Ramp Project and the Seminary Road Ramp Project.

Section 20.14 Termination of Opitz Boulevard Ramp Project for Opitz Boulevard Ramp Concessionaire Breach

(a) Except for an Opitz Boulevard Ramp Concessionaire Breach occurring under Section 19.12(d), at any time after the occurrence and during the continuance of an Opitz Boulevard Ramp Concessionaire Breach, the Department is entitled to terminate the Opitz Boulevard Ramp Project and any provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties that solely relates to the Opitz Boulevard Ramp Project.

(b) If the Department elects to terminate the Opitz Boulevard Ramp Project pursuant to this Section 20.14, the Department will deliver to the Concessionaire and the Collateral Agent written notice of its election to terminate the Opitz Boulevard Ramp Project, which termination will take effect not less than 60 Days after the delivery of such notice.

(c) In the event of termination of the Opitz Boulevard Ramp Project pursuant to this Section 20.14, the Department will pay to the Concessionaire in accordance with Section 25.19, the Opitz Boulevard Ramp Concessionaire Breach Termination Amount. In addition, the Concessionaire will deliver to the Department all Opitz Boulevard Ramp Work Product in accordance with Section 18.03(e).

(d) In the event of termination of the Opitz Boulevard Ramp Project pursuant to this Section 20.14, the Concessionaire will retain its right to operate and maintain the Original HOT Lanes, the 395 HOT Lanes, the Fred Ex HOT Lanes, STE and the Seminary Road Ramp HOT

Lanes, but will lose its right to develop and operate the Opitz Boulevard Ramp HOT Lanes, and the Department may complete the Opitz Boulevard Ramp Project or any portion thereof, in which case the Department's completion of the Opitz Boulevard Ramp Project or any portion thereof will not be treated as a Compensation Event. In the event of termination of the Opitz Boulevard Ramp Project pursuant to this Section 20.14, the Concessionaire and the Department will follow the procedures in Section 20.08 applied to the Opitz Boulevard Ramp Project alone, and not applied to the Original HOT Lanes, the 395 HOT Lanes, the Fred Ex Project, the Seminary Road Ramp Project, or the STE.

(e) In the event of termination of the Opitz Boulevard Ramp Project pursuant to this Section 20.14, the parties agree that the provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties related to the Opitz Boulevard Ramp Project are null and void and no longer applicable to the Project.

Section 20.15 Termination of Seminary Road Ramp Project for Seminary Road Ramp Concessionaire Breach

(a) Except for a Seminary Road Ramp Concessionaire Breach occurring under Section 19.15(d), at any time after the occurrence and during the continuance of a Seminary Road Ramp Concessionaire Breach, the Department is entitled to terminate the Seminary Road Ramp Project and any provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties that solely relates to the Seminary Road Ramp Project.

(b) If the Department elects to terminate the Seminary Road Ramp Project pursuant to this Section 20.15, the Department will deliver to the Concessionaire and the Collateral Agent written notice of its election to terminate the Seminary Road Ramp Project, which termination will take effect not less than 60 Days after the delivery of such notice.

(c) In the event of termination of the Seminary Road Ramp Project pursuant to this Section 20.15, the Department will pay to the Concessionaire in accordance with Section 25.19, the Seminary Road Ramp Concessionaire Breach Termination Amount. In addition, the Concessionaire will deliver to the Department all Seminary Road Ramp Work Product in accordance with Section 18.03(f).

(d) In the event of termination of the Seminary Road Ramp Project pursuant to this Section 20.15, the Concessionaire will retain its right to operate and maintain the Original HOT Lanes, the 395 HOT Lanes, the Fred Ex HOT Lanes, STE and the Opitz Boulevard Ramp HOT Lanes, but will lose its right to develop and operate the Seminary Road Ramp, and the Department may complete the Seminary Road Ramp Project or any portion thereof, in which case the Department's completion of the Seminary Road Ramp Project or any portion thereof will not be treated as a Compensation Event. In the event of termination of the Seminary Road Ramp Project pursuant to this Section 20.15, the Concessionaire and the Department will follow the procedures in Section 20.08 applied to the Seminary Road Ramp Project alone, and not applied to the Original HOT Lanes, the 395 HOT Lanes, the Fred Ex Project, the Opitz Boulevard Ramp Project, or STE.

(e) In the event of termination of the Seminary Road Ramp Project pursuant to this Section 20.15, the parties agree that the provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties related to the Seminary Road Ramp Project are null and void and no longer applicable to the Project.

ARTICLE 21

DISPUTE RESOLUTION

Section 21.01 General

(a) The parties will attempt to resolve any Disputes arising out of this Agreement at the Project level through good faith negotiations between designated representatives. The Department, the Concessionaire, the Design-Build Contractor, the TTMS Contractor, all subcontractors, and the FHWA are firmly committed to the following principles:

(i) trust and open communications are encouraged and expected by all participants;

(ii) all of the participants move quickly to address and resolve issues at the lowest possible level by approaching problems from the perspectives and needs of all of the participants involved;

(iii) all of the participants have identified common goals and respect each other's individual goals and values; and

(iv) all of the participants create an atmosphere conducive to cooperation and teamwork in finding better solutions to potential problems and issues at hand.

(b) If the Dispute cannot be resolved at the Project level in accordance with Section 21.01(a) above, then either party will have the right to submit the Dispute to the Steering Committee for resolution. The Steering Committee will convene a meeting within ten Days of notification by either party of any unresolved Dispute. After the meeting has convened, the Steering Committee will have seven Days to resolve the Dispute.

(c) If the Steering Committee has not resolved the Dispute pursuant to Section 21.01(a)(i), then either party may request non-binding mediation of the Dispute or any other form of alternative dispute resolution process that is mutually acceptable to both parties. If the Dispute has not been resolved within 60 Days after the initiation of mediation proceedings or, if both parties do not agree to mediation, the other form of alternative dispute resolution process, either party will have the right to proceed in accordance with Section 21.02. The first face-to-face meeting between the mediator and both parties will be deemed to be the initiation of mediation.

(d) Any of the time periods specified in this Section 21.01 may be extended by mutual agreement of the parties.

Section 21.02 Litigation; Venue

(a) All litigation between the parties arising out of or pertaining to this Agreement or its breach will be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, which will have exclusive jurisdiction and venue.

(b) As permitted by Section 33.2-1814 of the Code of Virginia, the parties agree that any requirement that the State Corporation Commission issue a declaratory judgment regarding a material default (as defined in Section 33.2-1800 of the Code of Virginia) pursuant to such Section 33.2-1814, as a prerequisite to exercising any remedy set forth in this Agreement or such Section 33.2-1814, will not apply to this Agreement.

(c) Satisfaction of the procedures set forth in Section 21.01 will be a condition precedent to instituting a legal action in court; *provided*, that if the Department determines, in its sole discretion, that a Dispute involves an issue that poses an immediate and serious threat to the public health, safety, and welfare, the Department will be entitled to take whatever steps it deems appropriate and to initiate litigation of the matter in court without first submitting the Dispute to the dispute resolution procedures of this Agreement.

Section 21.03 Conduct During Pendency of Dispute

(a) Notwithstanding anything to the contrary in this Agreement, neither party will be required to await the resolution of dispute proceedings regarding the reasons for terminating this Agreement before exercising such party's termination rights.

(b) Pending final resolution of any Dispute (except a Dispute regarding the cause for terminating this Agreement), the parties will continue to fulfill their respective obligations under this Agreement.

Section 21.04 Costs of Dispute Resolution

(a) Each party will bear its own attorneys' fees and costs in any Dispute or litigation arising out of or pertaining to this Agreement, and no party will seek or accept an award of attorneys' fees or costs, except as otherwise expressly provided in this Agreement.

(b) The fees and costs of any mediator will be borne equally by each party.

ARTICLE 22

RESERVED RIGHTS

Section 22.01 Exclusions from the Concessionaire's Interest

The Concessionaire's rights and interests in the Project have been granted to the Concessionaire under the Permit in order to enable it to accomplish the Project Purposes. Subject to Section 22.04, the Concessionaire's rights and interests consist only of those expressly granted by this Agreement and other Project Agreements and specifically exclude all Reserved Rights.

Section 22.02 Department Reservation of Rights

(a) The Department may, at any time at its sole cost and expense, devote, use or take advantage of the Reserved Rights for any public purpose without any financial participation whatsoever by the Concessionaire. The Department hereby reserves to itself all ownership, development, maintenance, repair, replacement, operation, use and enjoyment of, and access to, the Reserved Rights. The Department will owe no compensation or damages on account of its exercise of Reserved Rights, unless such exercise qualifies as a Compensation Event.

(b) In addition to any rights it has, the Department reserves (for itself and its representatives, as well as others claiming by, through or under the Department) the right and will have the right to enter the Project Assets and each and every part thereof at all reasonable times in the following circumstances:

(i) in the event of an actual or reported emergency, danger, threat, circumstance or event that is reasonably believed by the Department or its designee (including relevant police, fire, emergency services, armed forces, and any other security or emergency personnel in accordance with Section 9.06) to have caused (or to present the imminent potential to cause) injury to individuals, damage to property, or threat to the Environment or to public safety, to take, at such times, as the Department determines necessary in its discretion and with notice to the Concessionaire if practicable under the circumstances, such actions as the Department or such designee determines necessary to respond to or to rectify such emergency, danger, threat, circumstance or event; and

(ii) in the event of any circumstance or event that is reasonably believed by the Department to have caused an impairment to the continuous operation of the HOT Lanes as a public highway, and if the Department in its discretion determines that the Concessionaire is not then taking all necessary steps to respond to or to rectify such circumstance or event, to take, at such times as the Department determines necessary in its discretion and with notice to the Concessionaire if practicable under the circumstances, such actions as the Department determines may be necessary to respond to or to rectify such circumstance or event or to restore the operation of the Project, and all costs and expenses incurred by the Department in connection with or related to such actions will be paid by the Concessionaire.

(c) The Concessionaire acknowledges and agrees that all rights to own, lease, sell, assign, transfer, utilize, develop or take advantage of the Reserved Rights are hereby reserved to the Department, and the Concessionaire will not engage in any activity infringing upon the Reserved Rights.

Section 22.03 Disgorgement

If a Concessionaire Default concerns a breach of the provisions of Section 22.01 or Section 22.02, in addition to any other remedies pursuant to this Agreement, the Department will be entitled to disgorgement of all profits from the prohibited activity and to sole title to and ownership of the prohibited assets and improvements.

Section 22.04 Alternate Treatment of Reserved Rights

Notwithstanding Section 22.01 and Section 22.02, the Department may elect in its sole discretion to treat any development of improvements respecting Reserved Rights that it undertakes as Project Enhancements, in which case all of the provisions of Section 12.02 will apply.

Section 22.05 Naming Rights

(a) The Department hereby grants the Concessionaire the naming rights for the Project, subject to (i) approval of any such name by the Department, which approval will not be unreasonably withheld, conditioned or delayed, and (ii) compliance with Law and Governmental Approvals. The Concessionaire will request the Department's approval of a name for the Project in writing and no such approval will be effective unless and until provided in writing by the Department; *provided*, that the failure of the Department to respond in writing to such request within 21 Days following receipt of the Concessionaire's request will be deemed the Department's approval thereof. The Concessionaire may sub-license any such rights to the O&M Contractor.

(b) If the Concessionaire changes the name of the HOT Lanes, the Concessionaire will pay the Department for the cost of changing names on signs maintained by the Department pursuant to the Technical Requirements.

(c) Any revenues received by the Concessionaire with respect to the naming rights granted to the Concessionaire under this Section 22.05 will be treated as Gross Revenues.

ARTICLE 23

REPRESENTATIONS, WARRANTIES AND FINDINGS

Section 23.01 Department Representations and Warranties

The Department hereby represents and warrants to the Concessionaire as follows:

(a) the Department is an agency of the State and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with, and subject to the terms and conditions of this Agreement and other Project Agreements to which the Department is a party;

(b) each person executing this Agreement or any other Project Agreement on behalf of the Department to which the Department is a party has been or at such time will be duly authorized to execute each such document on behalf of the Department;

(c) neither the execution and delivery by the Department of this Agreement and the other Project Agreements executed concurrently herewith to which the Department is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of (i) any other agreements or instruments to which it is a party or by which it is bound or (ii) to its knowledge, any Law, where such violation will have a material adverse effect on the ability of the Department to perform its obligations under this Agreement;

(d) there is no action, suit, proceeding, investigation or litigation pending and served on the Department which challenges the Department's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Project Agreements to which the Department is a party, or which challenges the authority of the Department official executing this Agreement or the other Project Agreements, and the Department has disclosed to the Concessionaire any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Department is aware;

(e) as of the Agreement Date, no agreement, contract, option, commitment or other right exists which binds, or which in the future may become binding on, the Department to sell, transfer, convey, dispose of or encumber the Project. The Department has not granted or assigned any interest in Gross Revenues to any other party other than the Concessionaire pursuant to this Agreement;

(f) this Agreement has been duly authorized, executed and delivered by the Department and constitutes a valid and legally binding obligation of the Department, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;

(g) the Department has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other Project Agreements to which the Department is a party;

(h) the Department is in material compliance with all Laws and Governmental Approvals applicable to its obligations in connection with this Agreement; and

(i) other than with respect to portions of the Project Right of Way not yet acquired as of the Agreement Date, the Department has good and sufficient title and interest to the Project Right of Way, free and clear of all Liens or other exceptions to title, except Permitted Encumbrances.

Section 23.02 Concessionaire Representations and Warranties

The Concessionaire hereby represents and warrants to the Department as follows:

(a) the Concessionaire is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to conduct business in the State, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and perform each and all of its obligations under the Project Agreements;

(b) (i) as of the Agreement Date, the membership interests in the Concessionaire are owned in 90% holdings by DRIVE USA Investments LLC and 10% holdings by Fluor and no other Person has a membership interest in the Concessionaire, (ii) as of the Amended and Restated Agreement Date, the membership interests in the Concessionaire are owned in 90% holdings by DRIVE USA Investments LLC and 10% holdings by Transurban Express Lanes LLC, (iii) as of the Second Amended and Restated Agreement Date, the membership interests in the Concessionaire is owned in 100% holdings by Transurban Express Lanes LLC, and no other

Person has a membership interest in the Concessionaire and (iv) as of the Third Amended and Restated Agreement Date, the membership interests in the Concessionaire is owned in 100% holdings by Transurban Express Lanes LLC, and no other Person has a membership interest in the Concessionaire;

(c) the Concessionaire has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other Project Agreements to which the Concessionaire is a party;

(d) each person executing this Agreement or any other Project Agreement on behalf of the Concessionaire has been or will at such time be duly authorized to execute each such document on behalf of the Concessionaire;

(e) this Agreement and each Project Agreement to which the Concessionaire or a Concessionaire Financial Party is a party have been duly authorized, executed and delivered by the Concessionaire or the Concessionaire Financial Party and constitutes a valid and legally binding obligation of the Concessionaire or the Concessionaire Financial Party (as the case may be), enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;

(f) neither the execution and delivery by the Concessionaire of this Agreement and the other Project Agreements to which the Concessionaire is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of (i) the governing instruments of the Concessionaire or any other agreements or instruments to which it is a party or by which it is bound or (ii) to its knowledge, any Law, where such violation will have a material adverse effect on the ability of the Concessionaire to perform its obligations under this Agreement;

(g) there is no action, suit, proceeding, investigation or litigation pending and served on the Concessionaire which challenges the Concessionaire's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Project Agreements to which the Concessionaire is a party, or which challenges the authority of the Concessionaire official executing this Agreement or the other Project Agreements; and the Concessionaire has disclosed to the Department any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Concessionaire is aware;

(h) the Concessionaire is in material compliance with all Laws applicable to the Concessionaire or its activities in connection with this Agreement and the other Project Agreements;

(i) none of the Concessionaire, any affiliate of the Concessionaire (as "affiliate" is defined in 29 CFR 98.905), the Design-Build Contractor or their affiliates (as so defined) or the TTMS Contractor or its affiliates (as so defined) is suspended or debarred, subject to a proceeding to suspend or debar it, or subject to an agreement for voluntary exclusion, from bidding, proposing or contracting with any Federal or State department or agency;

(j) to the best of the Concessionaire's knowledge after diligent inquiry, no event which, with the passage of time or the giving of notice, would constitute a Concessionaire Default, a 395 Concessionaire Breach, a Fred Ex Concessionaire Breach, an Opitz Boulevard Ramp Concessionaire Breach, or a Seminary Road Ramp Concessionaire Breach has occurred;

(k) to the best of the Concessionaire's knowledge after diligent inquiry, no event which, with the passage of time or the giving of notice, would constitute a Delay Event or a Compensation Event under this Agreement has occurred;

(l) the Initial Base Case Financial Model (i) was prepared by or on the Concessionaire's behalf in good faith, (ii) fully discloses all Financial Model Formulas, and all cost, revenue and other financial assumptions and projections that the Concessionaire used or is using in making its decision to enter into this Agreement, (iii) fully discloses all Financial Model Formulas disclosed to the Lenders under the Project Financing Agreements and (iv) as of the Agreement Date, represents the projections that the Concessionaire believes in good faith are realistic and reasonable for the Project; *provided*, that such projections are based upon a number of estimates and assumptions and are subject to significant business, economic and competitive uncertainties and contingencies and that, accordingly, no representation or warranty is made that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results;

(m) on or before the Agreement Date, the Concessionaire has delivered to the Department an audit report and an opinion of the Financial Model Auditor addressed to the Department to the effect that the Base Case Financial Model and the Financial Model Formulas reflect the terms of this Agreement and that the Financial Model Formulas and the Base Case Financial Model are suitable for use in this Agreement in connection with Compensation Events, Delay Events and early termination procedures, and covering such other matters as may have been reasonably requested by the Department, all in form and substance acceptable to the Department; and

(n) All Early Work performed by Fluor and Transurban prior to the Agreement Date was performed in accordance with (i) Law; (ii) Governmental Approvals; and (iii) prudent industry practices, methods, techniques and standards and using the degree of care that would be expected to be exercised by a prudent, skilled and experienced developer engaged in the same kinds of undertakings and under the same or similar circumstances, conditions, scope and limitations (including limitations on access to the Project Right of Way and limitations agreed with the Department as to the scope of the work to be undertaken prior to the Agreement Date) as those applying to such work.

Section 23.03 Department's Findings Under the PPTA

The Department, as the Responsible Public Entity with respect to the Project, makes the following findings:

(a) the actions taken by the Department pursuant to the PPTA facilitate the development, design, construction, management, operation and maintenance of the Project and the timely development of any Project Enhancements, and such public need may not be wholly

satisfied by existing methods of procurement in which qualifying transportation facilities are developed and/or operated;

(b) there is a public need to construct and operate a qualifying transportation facility (as defined in Section 33.2-1800 of the Code of Virginia) of the type of the Project;

(c) the Permit granted hereunder authorizing the Concessionaire to develop, design, construct, manage and operate and maintain the Project, including the development of any Project Enhancements, may result in their availability to the public in a more timely, more efficient and less costly fashion, thereby serving the public safety and welfare;

(d) the Project, its interconnections with existing transportation facilities, and the Concessionaire's plans for the development, design, construction, operation and maintenance of the Project are reasonable and compatible with the State transportation plan and with local comprehensive plans;

(e) the estimated cost of developing, designing, constructing, operating and maintaining the Project is reasonable in relation to similar transportation facilities;

(f) the Concessionaire's plans will result in the timely construction and operation and maintenance of the Project and in the development of any Project Enhancements;

(g) the Department will continue to have fee title or good and valid interest to the Project and the Project will remain open for use by members of the public as a public road upon payment of the applicable tolls;

(h) through this Agreement, the Department intends to encourage investment in the State by the Concessionaire to facilitate the development, construction, operation and maintenance of the Project and the development of any Project Enhancements; and

(i) the terms and conditions of this Agreement serve the public purpose of the PPTA.

ARTICLE 24

CONTRACTING PRACTICES AND PUBLIC WELFARE CONSIDERATIONS

Section 24.01 Obligation to Refrain from Discrimination

The Concessionaire covenants and agrees that it will not discriminate and it will require all Contractors not to discriminate against any person, or group of persons, on account of age, sex, marital status, race, creed, color, national origin, religion or the presence of any sensory, mental or physical handicap in the permitting, design, acquisition, construction, maintenance, operation or management of the Project, nor will the Concessionaire establish or permit any such practice or practices of discrimination or segregation with reference to the selection, use, hiring, firing, promotion or termination of employees, Contractors, and vendors or with reference to the use, occupancy or enjoyment of or access to or toll rates charged for use of the Project; *provided*, that the prohibition against discrimination on the basis of sensory, mental or physical handicap will not apply if the particular disability prevents the proper performance of the particular person involved.

Section 24.02 Contracting

(a) General. The Concessionaire may perform the Work through use of its own personnel, materials and equipment, or by contracting to Persons with the expertise, qualifications, experience, competence, skills and know-how to perform the responsibilities being contracted in accordance with all Law, all Governmental Approvals, and the terms, conditions and standards set forth in this Agreement.

(b) Design-Build Contractors and TTMS Contractor.

(i) The Concessionaire has entered into the 395 Design-Build Contract. Notwithstanding its use of the 395 Design-Build Contractor, the Concessionaire remains responsible for the 395 Design-Build Work during the Term in accordance with this Agreement. The Concessionaire will immediately notify the Department upon the termination, replacement or removal of the 395 Design-Build Contractor. Likewise, the Concessionaire has entered into the Fred Ex Design-Build Contract. Notwithstanding its use of the Fred Ex Design-Build Contractor, the Concessionaire remains responsible for the Fred Ex Design-Build Work during the Term in accordance with this Agreement. The Concessionaire will immediately notify the Department upon the termination, replacement or removal of the Fred Ex Design-Build Contractor. Likewise, the Concessionaire has entered into the Opitz Boulevard Ramp Construction Contract. Notwithstanding its use of the Opitz Boulevard Ramp Construction Contractor, the Concessionaire remains responsible for the Opitz Boulevard Ramp Construction Work during the Term in accordance with this Agreement. The Concessionaire will immediately notify the Department upon the termination, replacement or removal of the Opitz Boulevard Ramp Construction Contractor. Likewise, the Concessionaire has entered into the Seminary Road Ramp Construction Contract. Notwithstanding its use of the Seminary Road Ramp Construction Contractor, the Concessionaire remains responsible for the Seminary Road Ramp Construction Work during the Term in accordance with this Agreement. The Concessionaire will immediately notify the Department upon the termination, replacement or removal of the Seminary Road Ramp Construction Contractor.

(ii) The Concessionaire has entered into the 395 TTMS Contract. Notwithstanding its use of the TTMS Contractor, the Concessionaire remains responsible for the 395 TTMS Work during the Term in accordance with this Agreement. The Concessionaire will immediately notify the Department upon the termination, replacement or removal of the TTMS Contractor. Likewise, the Concessionaire has entered into the Fred Ex TTMS Contract. Notwithstanding its use of the Fred Ex Contractor, the Concessionaire remains responsible for the Fred Ex TTMS Work during the Term in accordance with this Agreement. The Concessionaire will immediately notify the Department upon the termination, replacement or removal of the TTMS Contractor with respect to performance of the Fred Ex Work. Likewise, the Concessionaire has entered into the Opitz Boulevard Ramp TMS Contract. Notwithstanding its use of the TMS Contractor, the Concessionaire remains responsible for the Opitz Boulevard Ramp TMS Work during the Term in accordance with this Agreement. The Concessionaire will immediately notify the Department upon the termination, replacement or removal of the TMS Contractor with respect to performance of the Opitz Boulevard Ramp Work.

(c) Shared Facilities Agreement. The Concessionaire has entered into the Shared Facilities Agreement with CBE for the use of the Express Operations Center. In connection therewith, the Concessionaire agrees to provide to the Department copies of all notices received or given by the Concessionaire pursuant to the Shared Facilities Agreement, unless otherwise mutually agreed to by the parties. For the avoidance of doubt, the Parties agree that there will be no Access Fee payments between the Department and the Concessionaire on one hand and the Concessionaire and its affiliates, including CBE, on the other hand, for the use of the Express Operations Center for the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project.

(d) O&M Contractor.

(i) Subject to the Department's approval, which will not be unreasonably withheld, the Concessionaire may contract with one or more separate O&M Contractors with the expertise, qualifications, experience, competence, skills and know-how to perform the operations and maintenance obligations of the Concessionaire in accordance with this Agreement; *provided*, that the Department's approval will not be required with respect to any Contractor with respect to the O&M Work (other than the O&M Contractor) (A) whose Contract price is less than \$4 million adjusted annually by the percentage increase in CPI and (B) is prequalified with the Department in accordance with the Department's Rules Governing Prequalification Privileges. Notwithstanding its use of an O&M Contractor, the Concessionaire remains ultimately responsible for the operation and maintenance of the Project during the Term in accordance with this Agreement. The O&M Contractor will be subject at all times to the direction and control of the Concessionaire, and any delegation to an O&M Contractor does not relieve the Concessionaire of any of its obligations, duties or liability pursuant to this Agreement. The Concessionaire will immediately notify the Department upon the termination, replacement, removal or resignation of an O&M Contractor. Subject to the Direct Agreement, the 395 Direct Agreement, and the Fred Ex Direct Agreement, any agreement between the Concessionaire and any O&M Contractor will by its terms terminate, without penalty, at the election of the Department upon five Days' notice to such O&M Contractor upon the termination of this Agreement. The O&M Contractor will have no interest in or rights pursuant to this Agreement or the Project.

(ii) Each O&M Contractor and its Contract will comply with this Section 24.02. In addition, the material terms of the proposed Contract of the O&M Contractor must be consistent with the corresponding duties and obligations of the Concessionaire pursuant to this Agreement and the other Project Agreements.

(iii) The O&M Contractor and its Affiliates may contract to receive or recover overhead costs ("O&M Overhead Costs") that are consistent with Part 31 of the Federal Acquisition Regulation principles and will provide the Department with a report on these costs. Any such O&M Overhead Costs will not include excluded costs of the nature described in subsection (b) of the definition of Operating Costs and will include only those costs that provide a direct and measurable benefit to the Project when compared with projects of similar scope and complexity. Any O&M Overhead Costs charged by an Affiliate of the O&M Contractor will be arms-length and commercially reasonable.

(e) Replacement of Design-Build Contractor, O&M Contractor or TTMS Contractor. Before entering into any Contract replacing a Design-Build Contractor, O&M Contractor, or TTMS Contractor, as applicable, the Concessionaire will submit a true and complete copy of the proposed Contract for the Department's review and approval, subject to the following:

(i) the Department may disapprove such proposed Contract if such Contract or the Work to be performed thereunder does not comply, or is inconsistent, in any material respect with the applicable requirements of this Agreement; and

(ii) the Department may disapprove, in its sole discretion, of the replacement Contractor after taking into account the following factors:

(A) the financial strength and integrity of the proposed Contractor, each of its direct Contractors, and their respective direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates;

(B) the capitalization of the proposed Contractor or any parent guarantor, as applicable;

(C) the experience of the proposed Contractor and each of its direct Contractors in constructing or operating toll roads or highways and performing other projects;

(D) the presence of any actions, suits or proceedings, at law or in equity, or before any Governmental Authority, pending or, to the best of such Contractor's knowledge, threatened against such Contractor, that would or could reasonably be expected to have a material adverse effect on its ability to perform its obligations under the Contract;

(E) the background of the proposed Contractor, each of its direct Contractors, and their respective direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory Claims or actions against any such Person and the quality of any such Person's past or present performance on other projects); and

(F) the Contractor's compliance with any of the other provisions of this Section 24.02.

(f) Each Contract for the performance of the Work that the Concessionaire executes at a minimum:

(i) will set forth a standard of professional responsibility or a standard for commercial practice equal to prudent industry standards for work of similar scope and scale and will set forth effective procedures for Claims and change orders;

(ii) will establish provisions for prompt payment by the Concessionaire in accordance with the provisions of Sections 2.2-4347 through 4356 of the Code of Virginia, which would apply if the Department was contracting with such Contractor;

(iii) will require the Contractor to carry out its scope of work in accordance with Law, the Technical Requirements, all Governmental Approvals, Good Industry Practice and the terms, conditions and standards set forth in this Agreement;

(iv) will set forth warranties, guaranties and liability provisions of the contracting party in accordance with Good Industry Practice for work of similar, scope and scale;

(v) will be fully assignable to the Department upon termination of this Agreement, such assignability to include the benefit of all Contractor warranties, indemnities, guarantees and professional responsibility;

(vi) will include express requirements that, if the Department succeeds to the Concessionaire's rights under the subject Contract (by assignment or otherwise), then the relevant Contractor agrees that it will (A) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment supplier, designer, service provider), (B) permit audit thereof by the Concessionaire, and provide progress reports to the Concessionaire appropriate for the type of Contract it is performing sufficient to enable the Concessionaire to provide the reports it is required to furnish the Department pursuant to this Agreement and (C) allow the Department, to assume the benefit of the Concessionaire's Contract rights and the work performed thereunder, with liability only for those remaining obligations accruing after the date of assumption, but excluding any monetary claims or obligations that the Concessionaire may have against such Contractor that existed prior to the Department's assumption of such Contract;

(vii) will not be assignable by the Contractor without the Concessionaire's prior written consent; *provided*, that the foregoing will not limit permitted subcontracting of the Work;

(viii) will expressly require the Contractor to participate in meetings between the Concessionaire and the Department, upon the Department's reasonable request, concerning matters pertaining to such Contractor or its work; *provided*, that all direction to such Contractor will be provided by the Concessionaire; and *provided further*, that nothing in this Section 24.02(f)(viii) will limit the authority of the Department to give such direction or take such action which in the opinion of the Department is necessary to remove an immediate and present threat to the safety of life or property;

(ix) will expressly provide that all Liens and claims of any Contractors at any time will not attach to any interest of the Department in the Project or the Project Right of Way; and

(x) will be consistent in all other respects with the terms and conditions of this Agreement to the extent such terms and conditions are applicable to the scope of work of such Contractor.

(g) The Concessionaire will not enter into any Contract at any level with any Person if that Person or any of its affiliates (as "affiliate" is defined in 29 CFR §98.905), or any of their

respective officers, directors and employees, (i) is then suspended or debarred, subject to a proceeding to suspend or debar it, or subject to an agreement for voluntary exclusion, from bidding, proposing or contracting with any Federal or State department or agency, (ii) has been convicted, pled guilty or *nolo contendere* to a violation of Law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows a similar lack of moral or ethical integrity or (iii) is then barred or restricted from owning, operating or providing services for the Project under Law, including the Foreign Investment and National Security Act of 2007, 50 USC App. 2170 (HR556).

(h) The Concessionaire will include provisions in each Contract for the performance of the Work that the Concessionaire executes requiring the Contractor: (i) to maintain all licenses required by Law; (ii) if the Department makes a direct payment under such Contract, to comply with the requirements of the eVA Business to Government Vendor System or its successor; and (iii) to include in Contracts for the performance of the Work that such Contractor executes the provisions set forth in this Section 24.02(h).

(i) The Concessionaire will include provisions in each Contract for the performance of the Work that the Concessionaire executes (i) naming the Department as a third-party beneficiary of all Contractor representations and warranties contained in such Contract and (ii) requiring the Contractor to include in Contracts for the performance of the Work that such Contractor executes to name the Department as a third-party beneficiary of all Contractor representations and warranties contained in such Contract; *provided*, that the Department will have the right to exercise its rights under such representations and warranties only so long as the Concessionaire, the Contractor or a Lender is not pursuing remedies thereunder.

(j) The Concessionaire will not contract any part of the Design-Build Work, the O&M Work or the TTMS Work to a Contractor who is not prequalified with the Department in accordance with the Department's Rules Governing Prequalification Privileges, unless otherwise indicated in this Agreement. This restriction does not apply to contract specialty items, consultants, manufacturers, suppliers, haulers or snow removal service providers.

(k) The appointment of Contractors will not relieve the Concessionaire of its responsibility hereunder or for the quality of work, materials and services provided by it. The Concessionaire will at all times be held fully responsible to the Department for the acts and omissions of its Contractors and persons employed by them and no Contract entered into by the Concessionaire will impose any obligation or liability upon the Department to any such Contractor or any of its employees. Further, absent the Department's express written consent, no Contract or delegation of Work thereunder will affect the obligation of the Concessionaire to directly communicate with the Department and to oversee the Work of the Contractor. Nothing in this Agreement will create any contractual relationship between the Department and a Contractor.

(l) The Concessionaire will not enter into or materially amend an Affiliate Contract without notice to and consent of the Department, which consent will not be unreasonably withheld or delayed if the Contract is entered into in the ordinary course of business and the Concessionaire demonstrates to the Department's satisfaction that the Affiliate Contract is on overall terms no less favorable or unfavorable to the Concessionaire than terms the Concessionaire could obtain in an arm's-length transaction for comparable services with a Person that is not an Affiliate of the

Concessionaire; *provided*, that no consent will be required for (i) reasonable overhead sharing fees and reimbursement of third-party costs payable to an Affiliate for legal, accounting, tax, computer and other centralized management services provided to the Concessionaire in lieu of the Concessionaire having its own employees for such functions; or (ii) the joint ownership of assets or property used for the operation or maintenance of the Project and other projects owned or operated by Affiliates of the Concessionaire so long as the cost of such assets and properties are reasonably shared and documented.

(m) From and after the Agreement Date, the Concessionaire will be solely responsible for paying each Contractor and any other Person to whom any amount is due from the Concessionaire for services, equipment, materials and supplies in connection with the Work. Pursuant to Section 2.2-4354 of the Code of Virginia, the Concessionaire will require the Design-Build Contractor, O&M Contractor and TTMS Contractor, within seven Days following receipt of monies from the Concessionaire for work performed by any Contractor of the Design-Build Contractor, O&M Contractor and TTMS Contractor, to either (i) pay such Contractor for the proportionate share of the total payment received from the Concessionaire attributable to the Work performed by such Contractor or (ii) notify the Concessionaire and such Contractor, in writing, of the Design-Build Contractor's, O&M Contractor's or TTMS Contractor's intention to withhold all or a part of the Contractor's payment, specifying the reason for the non-payment. The Concessionaire also agrees that it will require the Design-Build Contractor, O&M Contractor and TTMS Contractor to include in all of its Contracts a provision that (A) obligates the Design-Build Contractor, O&M Contractor or TTMS Contractor, as applicable, to pay interest to its Contractors on all amounts owed by the Design-Build Contractor, O&M Contractor or TTMS Contractor, as applicable, that remain unpaid after seven Days following receipt of monies from the Concessionaire for work performed by its Contractor, except for amounts withheld as allowed in clause (ii) of this Section 24.02(m); (B) states, "Unless otherwise *provided* under the terms of this contract, interest will accrue at the rate of one percent per month." and (C) obligates each Contractor to include or otherwise be subject to the same payment and interest requirements as specified in this Section 24.02(m) with respect to each lower-tier Contractor.

(n) Upon entering into a Contract for the Design-Build Work, O&M Work or TTMS Work in excess of \$100,000, the Concessionaire will provide the Department with a copy of such Contract and, if such Contract is with an Affiliate of the Concessionaire, a list of all Contracts in effect to which such Affiliate is a party and under which all or a substantial portion of the Affiliate's responsibilities or obligations under its Contract are delegated to its Contractor. The Concessionaire will allow the Department ready access to all Contracts and records regarding Contracts, including amendments and supplements to Contracts and guarantees thereof.

(o) As soon as the Concessionaire identifies a potential Contractor for a potential Contract described in the first sentence of Section 24.02(n), but in no event later than five Days after Contract execution, the Concessionaire will notify the Department in writing of the name, address, phone number and authorized representative of such Contractor.

Section 24.03 Small, Women-Owned and Minority Business (SWaM) and Disadvantaged Business Enterprise (DBE) Reporting

(a) Disadvantaged Business Enterprise (DBE).

(i) General.

(A) The parties recognize the importance of pursuing, inviting and developing the participation of minority, women-owned and small businesses through the DBE program, where applicable.

(B) The Concessionaire and each Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Concessionaire and each Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Concessionaire and each Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as set forth in Section 24.03(a)(v).

(ii) Design-Build Work.

(A) During performance of the Design-Build Work, in an effort to comply with 49 CFR Part 26, the Department has established a goal of 10% for DBE participation.

(B) The Department and the Concessionaire agree to manage the foregoing goals as follows:

(1) the Concessionaire will submit an updated DBE/SWaM Plan on January 1 of each year of the Term that defines the Concessionaire's approach to meeting the DBE participation goals set forth in this Section 24.03(a);

(2) the Concessionaire will have dedicated resources to the DBE inclusion program to ensure compliance with 49 CFR Part 26, the DBE/SWaM Plan, nondiscrimination provisions, technical assistance activities, communication of subcontracting and generate reports specific to DBE utilization;

(3) the Concessionaire will be responsible for either achieving or making Good Faith Efforts to achieve the goal of 10% for DBE participation by providing maximum contracting opportunities for DBE businesses;

(4) the Concessionaire will provide to the Department each calendar quarter documentation of all executed Contracts and payments to DBE businesses;

(5) the Concessionaire will have the opportunity to establish DBE sub-contracting work packages; and

(6) the Concessionaire will provide Good Faith Efforts documentation using form C-49 and other supplemental information as appropriate for Contracts that do not include DBE participation. The Concessionaire agrees that if the Department accepts the Good Faith Efforts documentation on a particular bid item group, the Concessionaire will make reasonable efforts to accomplish the overall goal using other bid item groups.

(C) During the performance of the Design-Build Work, the parties will work cooperatively to accomplish the applicable DBE objectives. The Department will assist the Concessionaire in meeting the Design-Build Work goals by offering assistance to include the following items:

(1) the parties will jointly conduct outreach meetings for DBE firms;

(2) the Department will identify to the Concessionaire DBE firms that are eligible to bid on the specific bid item groups; and

(3) the Department will provide access to technical and managerial assistance to eligible DBE firms, including in part, through the VDOT/GEC Civil Rights Team and the Business Opportunity Workforce Development Center based upon available funds.

(D) The Concessionaire acknowledges that the Department's assistance and cooperation will not eliminate or reduce the Concessionaire's responsibility to achieve the Design-Build Work goals for DBE participation or demonstrate Good Faith Efforts. The Concessionaire is expected to utilize a variety of means and methods and creative strategies to do so. These strategies should be employed for all phases of the Project. The Concessionaire is expected to meet the goal or demonstrate that Good Faith Efforts have been made. The Concessionaire will submit quarterly reports of Good Faith Efforts documentation, and DBE payments on form C-63 to the Department Representative.

(E) When there is a contract goal for the Design-Build Work, the Concessionaire and the Concessionaire Parties must make Good Faith Efforts to meet the goal either through obtaining enough DBE participation or documenting the Good Faith Efforts it made to do so. 49 CFR Part 26 explicitly provides that the Department must not disregard showings of Good Faith Efforts, and it gives the Concessionaire and the Concessionaire Parties the right to have the Department reconsider a decision that their Good Faith Efforts were insufficient. The Department must seriously consider the Concessionaire's documentation of Good Faith Efforts. The Department will issue a guidance memorandum on Good Faith Efforts, providing examples, procedures and reporting requirements for the Concessionaire.

(iii) O&M Work. During performance of the O&M Work, when contracting for such work the Concessionaire will encourage the participation of DBE firms in the Project. The Concessionaire will set annual goals and make Good Faith Efforts to achieve or exceed

such goals in contracts for the O&M Work. The annual and long-term participation DBE goals for the Concessionaire in contracting for the O&M Work is 2%.

(iv) DBE Reporting and Assessment.

(A) The Concessionaire will report quarterly, within 15 Days after each calendar quarter ends, to the Division Administrator for Civil Rights on the Concessionaire's efforts to (1) satisfy the DBE goals set forth in this Section 24.03(a) or (2) demonstrate Good Faith Efforts to accomplish the DBE goals set forth in this Section 24.03(a).

(B) The Division Administrator for Civil Rights will assess, confirm and communicate to the Concessionaire within 30 Days after receiving each quarterly report whether the Concessionaire has (1) satisfied the DBE goals, (2) demonstrated Good Faith Efforts, or (3) failed to satisfy the requirements of clause (1) and (2) of this Section 24.03(a)(iv)(B).

(v) Failure to Demonstrate DBE Good Faith Efforts Related to Design-Build Work.

(A) If the Division Administrator for Civil Rights notifies the Concessionaire pursuant to Section 24.03(a)(iv) that the Concessionaire has failed to satisfy the requirements of clause (1) of Section 24.03(a)(iv)(B) and has failed to satisfy the requirements of clause (2) of Section 24.03(a)(iv)(B) with respect to the DBE goals for the Design-Build Work for a quarterly period, the Concessionaire will have until the end of the next consecutive quarter to demonstrate that it has satisfied the requirements of either clause (1) or (2) of Section 24.03(a)(iv)(B) with respect to such DBE goals.

(B) If the Concessionaire has failed to satisfy the requirements of clause (1) of Section 24.03(a)(iv)(B) and has failed to satisfy the requirements of clause (2) of Section 24.03(a)(iv)(B) with respect to the DBE goals for the Design-Build Work for two consecutive quarters based on the determinations by the Division Administrator for Civil Rights pursuant to Section 24.03(a)(iv), the Concessionaire will prepare and submit, at the Concessionaire's sole cost and expense, a DBE Performance Improvement Plan for the Department's review and approval. The DBE Performance Improvement Plan will describe the specific actions and measures that the Concessionaire will undertake to improve its performance with respect to satisfying the requirements of clause (1) and (2) of Section 24.03(a)(iv)(B) with respect to the DBE goals for the Design-Build Work. The Concessionaire will submit the DBE Performance Improvement Plan within 15 Days after receiving notice from the Division Administrator for Civil Rights pursuant to Section 24.03(a)(iv) that the Concessionaire has failed to satisfy the requirements of clause (1) of Section 24.03(a)(iv)(B) and has failed to satisfy the requirements of clause (2) of Section 24.03(a)(iv)(B). The Concessionaire will pay the Department for its Allocable Costs in reviewing, approving and monitoring the Concessionaire's compliance with the DBE Performance Improvement Plan until the Concessionaire satisfies the requirements of either clause (1) or (2) of Section 24.03(a)(iv)(B) with respect to the DBE goals for the Design-Build Work.

(C) If the Concessionaire has failed to satisfy the requirements of clause (1) of Section 24.03(a)(iv)(B) and has failed to satisfy the requirements of clause (2) of Section 24.03(a)(iv)(B) with respect to the DBE goals for the Design-Build Work for three consecutive quarters based on the determinations by the Division Administrator for Civil Rights pursuant to Section 24.03(a)(iv), the Department may debar or disqualify the Key Members from participating in State procurements through the Department until the earlier to occur of (i) the Concessionaire satisfies the requirements of either clause (1) or (2) of Section 24.03(a)(iv)(B) with respect to the DBE goals for the Design-Build Work or (ii) twenty-four months after the effective date of the debarment. Only the Commissioner of Highways for the Department may waive the provisions of this Section 24.03(a)(v).

(D) If the Division Administrator for Civil Rights determines at any time that the Concessionaire has satisfied the requirements of either clause (1) or (2) of Section 24.03(a)(iv)(B) with respect to the DBE goals for the Design-Build Work performed to date with respect to the applicable calendar quarter, then any prior determinations by the Division Administrator for Civil Rights of the Concessionaire's failure to satisfy the requirements of clause (1) of Section 24.03(a)(iv)(B) and the Concessionaire's failure to satisfy the requirements of clause (2) of Section 24.03(a)(iv)(B) with respect to such DBE goals will be disregarded, the Concessionaire will be deemed to be in compliance with this Section 24.03, and any future determinations of a failure to satisfy the requirements of clause (1) of Section 24.03(a)(iv)(B) and a failure to satisfy the requirements of clause (2) of Section 24.03(a)(iv)(B) with respect to such DBE goals will be pursuant to the provisions set forth in Section 24.03(a)(v)(A).

(E) Any decision or action taken by the Division Administrator for Civil Rights or the Department pursuant to Section 24.03(a) is subject to the dispute resolution procedures set forth in Article 21.

(b) Small, Women-Owned and Minority Business (SWaM).

(i) General.

(A) The parties recognize the importance of pursuing, inviting and developing the participation of minority, women-owned and small businesses through the SWaM program, where applicable.

(B) The Concessionaire shall not and will not permit its Contractors to discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Concessionaire shall carry out applicable requirements of Executive Order 33 (2006), in the award and administration of this Agreement and the award and administration of subcontracts pursuant to this Agreement.

(C) Failure by the Concessionaire to carry out the requirements in this Section 24.03(b) relating to SWaM participation will subject the Concessionaire to only the remedies set forth in Section 24.03(b)(v) and shall not result in a Concessionaire Default, a 395 Concessionaire Breach, a Fred Ex Concessionaire Breach, an Opitz

Boulevard Ramp Concessionaire Breach, or a Seminary Road Ramp Concessionaire Breach.

(D) If debarment occurs as a result of the Department's exercise of such remedies, such debarment shall not result in a Concessionaire Default, a 395 Concessionaire Breach, a Fred Ex Concessionaire Breach, an Opitz Boulevard Ramp Concessionaire Breach, or a Seminary Road Ramp Concessionaire Breach.

(ii) Design-Build Work.

(A) During performance of the Design-Build Work, in an effort to support Executive Order 33 (2006), the Department has established a goal of 19% for SWaM participation.

(B) The Department and the Concessionaire agree to manage the foregoing goals as follows:

(1) the Concessionaire will submit an updated DBE/SWaM Plan on January 1 of each year of the Term that defines the Concessionaire's approach to meeting the SWaM participation goals set forth in this Section 24.03(b);

(2) the Concessionaire will have dedicated resources to the SWaM inclusion program to ensure compliance with Executive Order 33 (2006), the DBE/SWaM Plan, nondiscrimination provisions, technical assistance activities, communication of subcontracting and generate reports specific to SWaM utilization;

(3) the Concessionaire will be responsible for either achieving or making Good Faith Efforts to achieve the goal of 19% for SWaM participation by providing maximum contracting opportunities for SWaM businesses;

(4) the Concessionaire will provide to the Department each calendar quarter documentation of all executed Contracts and payments to SWaM businesses;

(5) the Concessionaire will have the opportunity to establish SWaM-only statement of work packages; and

(6) the Concessionaire will provide Good Faith Efforts documentation using form C-49 and other supplemental information as appropriate for Contracts that do not include SWaM participation. The Concessionaire agrees that if the Department accepts the Good Faith Efforts documentation on a particular bid item group, the Concessionaire will make reasonable efforts to accomplish the overall goal using other bid item groups.

(C) During the performance of the Design-Build Work, the parties will work cooperatively to accomplish the applicable SWaM objectives. The Department will

assist the Concessionaire in meeting the Design-Build Work goals by offering assistance to include the following items:

(1) the parties will jointly conduct outreach meetings for SWaM firms;

(2) the Department will identify to the Concessionaire SWaM firms that are eligible to bid on the specific bid item groups; and

(3) the Department will provide access to technical and managerial assistance to eligible SWaM firms, including in part, through the VDOT/GEC Civil Rights Team and the Business Opportunity Workforce Development Center based upon available funds.

(D) The Concessionaire acknowledges that the Department's assistance and cooperation will not eliminate or reduce the Concessionaire's responsibility to achieve the Design-Build Work goals for SWaM participation or demonstrate Good Faith Efforts. The Concessionaire is expected to utilize a variety of means and methods and creative strategies to do so. These strategies should be employed for all phases of the Project. The Concessionaire is expected to meet the goal or demonstrate that Good Faith Efforts have been made. The Concessionaire will submit quarterly reports of Good Faith Efforts documentation, and SWaM payments on form C-63 to the Department Representative.

(E) When there is a contract goal for the Design-Build Work, the Concessionaire and the Concessionaire Parties must make Good Faith Efforts to meet the goal either through obtaining enough SWaM participation or documenting the Good Faith Efforts it made to do so. The Department must seriously consider the Concessionaire's documentation of Good Faith Efforts. The Department will issue a guidance memorandum on Good Faith Efforts, providing examples, procedures and reporting requirements for the Concessionaire.

(iii) O&M Work. During performance of the O&M Work, when contracting for such work the Concessionaire will encourage the participation of SWaM firms in the Project. The Concessionaire will set annual goals and make Good Faith Efforts to achieve or exceed such goals in contracts for the O&M Work. The Concessionaire will provide its participation on such matters to the Department Representative, and the Department may include those participation rates, as appropriately adjusted, with its own towards the State's long-term goal established pursuant to the Office of the Governor's Executive Order 33 (2006). The annual and long-term participation SWaM goal for the Concessionaire in contracting for the O&M Work is 4%.

(iv) SWaM Reporting and Assessment.

(A) The Concessionaire will report quarterly, within 15 Days after each calendar quarter ends, to the Division Administrator for Civil Rights on the Concessionaire's efforts to (A) satisfy the SWaM goals set forth in this Section 24.03(b) or (B) demonstrate Good Faith Efforts to accomplish the SWaM goals set forth in this Section 24.03(b).

(B) The Division Administrator for Civil Rights will assess, confirm and communicate to the Concessionaire within 30 Days after receiving each quarterly report whether the Concessionaire has (1) satisfied the SWaM goals, (2) demonstrated Good Faith Efforts, or (3) failed to satisfy the requirements of clause (1) and (2) of this Section 24.03(b)(iv)(B).

(v) Failure to Demonstrate SWaM Good Faith Efforts Related to Design-Build Work.

(A) If the Division Administrator for Civil Rights notifies the Concessionaire pursuant to Section 24.03(b)(iv) that the Concessionaire has failed to satisfy the requirements of clause (1) of Section 24.03(b)(iv)(B) and has failed to satisfy the requirements of clause (2) of Section 24.03(b)(iv)(B) with respect to the SWaM goals for the Design-Build Work for a quarterly period, the Concessionaire will have until the end of the next consecutive quarter to demonstrate that it has satisfied the requirements of either clause (1) or (2) of Section 24.03(b)(iv)(B) with respect to such SWaM goals.

(B) If the Concessionaire has failed to satisfy the requirements of clause (1) of Section 24.03(b)(iv)(B) and has failed to satisfy the requirements of clause (2) of Section 24.03(b)(iv)(B) with respect to the SWaM goals for the Design-Build Work for two consecutive quarters based on the determinations by the Division Administrator for Civil Rights pursuant to Section 24.03(b)(iv), the Concessionaire will prepare and submit, at the Concessionaire's sole cost and expense, a SWaM Performance Improvement Plan for the Department's review and approval. The SWaM Performance Improvement Plan will describe the specific actions and measures that the Concessionaire will undertake to improve its performance with respect to satisfying the requirements of clause (1) and (2) of Section 24.03(b)(iv)(B) with respect to the SWaM goals for the Design-Build Work. The Concessionaire will submit the SWaM Performance Improvement Plan within 15 Days after receiving notice from the Division Administrator for Civil Rights pursuant to Section 24.03(b)(iv) that the Concessionaire has failed to satisfy the requirements of clause (1) of Section 24.03(b)(iv)(B) and has failed to satisfy the requirements of clause (2) of Section 24.03(b)(iv)(B). The Concessionaire will pay the Department for its Allocable Costs in reviewing, approving and monitoring the Concessionaire's compliance with the SWaM Performance Improvement Plan until the Concessionaire satisfies the requirements of either clause (1) or (2) of Section 24.03(b)(iv)(B) with respect to the SWaM goals for the Design-Build Work.

(C) If the Concessionaire has failed to satisfy the requirements of clause (1) of Section 24.03(b)(iv)(B) and has failed to satisfy the requirements of clause (2) of Section 24.03(b)(iv)(B) with respect to the SWaM goals for the Design-Build Work for three consecutive quarters based on the determinations by the Division Administrator for Civil Rights pursuant to Section 24.03(b)(iv), the Department may debar or disqualify the Key Members from participating in State procurements through the Department until the earlier to occur of (i) the Concessionaire satisfies the requirements of either clause (1) or (2) of Section 24.03(b)(iv)(B) with respect to the SWaM goals for the Design-Build Work or (ii) twenty-four months after the effective date of the debarment. Only the

Commissioner of Highways for the Department may waive the provisions of this Section 24.03(b)(v).

(D) If the Division Administrator for Civil Rights determines that the Concessionaire has satisfied the requirements of either clause (1) or (2) of Section 24.03(b)(iv)(B) with respect to the SWaM goals for the Design-Build Work performed to date, then any prior determinations by the Division Administrator for Civil Rights of the Concessionaire's failure to satisfy the requirements of clause (1) of Section 24.03(b)(iv)(B) and the Concessionaire's failure to satisfy the requirements of clause (2) of Section 24.03(b)(iv)(B) with respect to such SWaM goals will be disregarded, the Concessionaire will be deemed to be in compliance with this Section 24.03, and any future determinations of a failure to satisfy the requirements of clause (1) of Section 24.03(b)(iv)(B) and a failure to satisfy the requirements of clause (2) of Section 24.03(b)(iv)(B) with respect to such SWaM goals will trigger the provisions set forth in Section 24.03(b)(v)(A).

(E) Any decision or action taken by the Division Administrator for Civil Rights or the Department pursuant to Section 24.03(b) is subject to the dispute resolution procedures set forth in Article 21.

(c) Veteran and Local Hires.

(i) General.

(A) The Commonwealth is committed to reducing barriers to employment to ensure a diverse workforce in the construction industry. Therefore, the purpose of the Veteran and Local Hiring Program, set forth in the Department's Special Experimental Project – 14 document issued September 2, 2015 (“SEP-14”), is to support and grow the Commonwealth's commitment by means of a robust hiring and retention program for local workers and veterans and a robust on-the-job training program.

(B) The Concessionaire, the 395 Design-Build Contractor, the 395 TTMS Contractor, and any subcontractors will comply with SEP-14. **SEP-14 DOES NOT APPLY TO THE FRED EX PROJECT, THE OPITZ BOULEVARD RAMP PROJECT, OR THE SEMINARY ROAD RAMP PROJECT.**

(C) The parties recognize the importance of recruiting, hiring, and technical and workplace training of local workers and veterans in the development and execution of the 395 Project. As such, the Concessionaire will utilize workforce on-the-job training, apprenticeship and recruitment programs to actively recruit local workers and veterans.

(D) The Concessionaire will comply with all applicable State and federal law, regulations, guidelines, and policies in the administration of SEP-14 and the award and administration of subcontracts. Failure by the Concessionaire to carry out the requirements of SEP-14 will subject the Concessionaire to only the remedies set forth in Section 24.03(c)(iv) and will not result in a Concessionaire Default or a 395 Concessionaire Breach.

(E) If debarment occurs as a result of the Department's exercise of such remedies, such debarment will not result in a Concessionaire Default or a 395 Concessionaire Breach.

(ii) Design-Build Work – 395 Project.

(A) During performance of the Design-Build Work for the 395 Project, the Department has established an on-the-job training goal of seventeen (17) participants for the 395 Concessionaire Assets and an on-the-job training goal of seven (7) participants for the 395 Department Assets. New hire participation represents employees paid specifically for work performed on the 395 Project and may be randomly verified through the checking of payrolls. Hiring by subcontractors will count toward meeting the goals.

(B) The Department and the Concessionaire agree to manage the foregoing goals as follows:

(1) the Concessionaire will submit for the Department's review and approval an initial Hiring Development Plan, and an updated Hiring Development Plan as further described in this Agreement. The initial and updated Hiring Development Plan will be submitted within 30 Days after the 395 Project has achieved 395 Financial Close and on January 30 of each year prior to achieving 395 Final Completion. The Hiring Development Plan will define the Concessionaire's approach to meeting the workforce minimum requirements set forth in Section 24.03(c)(ii)(A);

(2) the Concessionaire will designate resources, including a liaison officer designated and made known to the Department who is assigned the responsibility of administering and promoting an active and inclusive Hiring Development Plan to ensure all programs related to the Hiring Development Plan are compliant with this Section 24.03(c). The designation and identity of this officer will be submitted as part of the initial and updated Hiring Development Plan;

(3) the Concessionaire will ensure that local workers and veterans have been given full and fair opportunity to participate in the hiring process for vacant positions;

(4) the Concessionaire will make Good Faith Efforts to obtain local workers and veterans' participation in the execution and performance of this Agreement at or above the established local worker and veteran hiring goals set forth in this Agreement;

(5) the Concessionaire will provide to the Department each calendar quarter, after approval of the Initial Hiring Development Plan, documentation of all local worker and veteran workforces; and

(6) each calendar quarter, the Concessionaire will provide Good Faith Efforts documentation using Form C-66, VDOT Local Worker and Veteran Employment Report or equivalent tracking measures and other supplemental

information as appropriate. Current workforce and local and veteran new hires will be tracked by the number of employees and not how many hours such employee is paid. Form C-66 or the Concessionaire's equivalent report in a format otherwise acceptable to the Department, will be used to capture the Concessionaire's workforce at contract execution and local workers and veterans hired and terminated during the course of the 395 Project.

(C) During the performance of the Design-Build Work for the 395 Project, the Parties will work cooperatively to accomplish the local worker and veteran recruitment, hiring and on-the-job objectives, as established in the approved Hiring Development Plan and its subsequent updates. The Department will assist the Concessionaire in meeting the Design-Build Work for the 395 Project workforce minimum requirements set forth in Section 24.03(c)(ii)(A) by offering assistance in the following activities:

- (1) the Parties will jointly conduct outreach meetings for local workers and veterans; and
- (2) the Parties will jointly identify agencies or firms that actively employ or recruit local workers and veterans.

(D) The Concessionaire acknowledges that the Department's assistance and cooperation will not eliminate or reduce the Concessionaire's responsibility to achieve the workforce minimum requirements set forth in Section 24.03(c)(ii)(A) or demonstrate Good Faith Efforts. The Concessionaire is expected to utilize a variety of means and methods and creative strategies to do so. These strategies should be employed for all phases of the 395 Project. The Concessionaire will meet the workforce minimum requirements set forth in this Agreement or demonstrate that Good Faith Efforts have been made.

(E) When there is a workforce minimum requirement for the Design-Build Work for the 395 Project, the Concessionaire will make Good Faith Efforts to meet the workforce minimum requirement through obtaining enough local and veteran worker workforce participation or documenting the Good Faith Efforts it made to do so. The Department will not disregard showings of Good Faith Efforts. The Department must seriously consider the Concessionaire's documentation of Good Faith Efforts. The Department will issue Good Faith Efforts guidelines providing examples, procedures and reporting requirements for the Concessionaire's consideration.

(F) During the performance of both the Design-Build Work for the 395 Project, the following procedures will apply to the Hiring Development Plan for compliance purposes:

- (1) Hiring: The Concessionaire will use standard hiring practices, including interviews, to consider all qualified applicants in the defined local geographic area to meet the established local and veteran hiring goal. The Concessionaire will make Good Faith Efforts to fill all available positions with

local and veteran applicants. Local workforce development centers and the Virginia Employment Commission may be used for applicant referrals. The Concessionaire is encouraged to partner with local workforce development centers for local applicants;

(2) New Hire: Employees who work on the 395 Project to whom the employer anticipates paying earnings include full-time, part-time, and temporary statuses that are employed for a specific project. New hires will include employees reporting to work for the first time or re-hires (employees who return to work after being laid off, furloughed, separated, granted a leave without pay, or terminated from employment); and

(3) Good Faith Efforts Described: The Department will determine if the Concessionaire has demonstrated adequate Good Faith Efforts, and if given all relevant circumstances, those efforts were made actively and aggressively to meet the local and veteran hiring goal. Efforts to obtain local and veteran hiring goals are not Good Faith Efforts if they could not reasonably be expected to produce a level of local worker's participation sufficient to meet the local and veteran hiring goal set forth in this Special Provision. Good Faith Efforts may be determined by soliciting for vacant positions through reasonable and available means in the goal area, such as but not limited to, advertising, written notices to local workforce development centers and the Virginia Employment Commission.

(iii) Veteran and Local Hires Reporting and Assessment – 395 Project.

(A) The Concessionaire, the 395 Design-Build Contractor and each subcontractor will report to the Department quarterly, within 15 Days after each calendar quarter ends, on the Concessionaire's efforts to (A) satisfy the local and veteran worker workforce minimum requirements set forth in Section 24.03(c)(ii)(A) or (B) demonstrate Good Faith Efforts to accomplish the local and veteran worker workforce minimum requirements.

(B) The Department will assess, confirm and communicate to the Concessionaire within 30 Days after receiving each quarterly report whether the Concessionaire has (A) satisfied the local worker and veteran workforce minimum requirements, (B) demonstrated Good Faith Efforts, or (C) failed to satisfy the requirements of clause (A) and (B), and the reasons why the Department has determined Good Faith Efforts has not been satisfied.

(C) The Concessionaire will report compliance on Form C-66, VDOT Local Worker and Veteran Employment Report, in accordance with the instructions attached to the form or an equivalent report in a format otherwise acceptable to the Department.

(iv) Failure to Demonstrate Veteran and Local Hires Good Faith Efforts Related to Design-Build Work – 395 Project.

(A) If the Department notifies the Concessionaire that the Concessionaire has failed to satisfy the requirements of Section 24.03(c)(iii) with respect to the local worker and veteran participation workforce minimum requirements for the Design-Build Work for a quarterly period, the Concessionaire will have until the end of the next consecutive quarter to demonstrate that it has satisfied the requirements of Section 24.03(c)(iii) with respect to such local worker and veteran participation workforce minimum requirements.

(B) If the Concessionaire has failed to satisfy the requirements of Section 24.03(c)(iii) with respect to the local worker and veteran participation workforce minimum requirements for the Design-Build Work for two consecutive quarters based on the determinations by the Department, the Concessionaire will prepare and submit, at the Concessionaire's sole cost and expense, a participation performance improvement plan ("Participation Performance Improvement Plan") for the Department's review and approval. The Participation Performance Improvement Plan will describe the specific actions and measures that the Concessionaire will undertake to improve its performance with respect to satisfying the requirements of Section 24.03(c)(iii) with respect to the participation workforce minimum requirements for the Design-Build Work. The Concessionaire will submit the Participation Performance Improvement Plan within 15 days after receiving notice from the Department that the Concessionaire has failed to satisfy the requirements of Section 24.03(c)(iii). The Concessionaire will reimburse the Department for its Allocable Costs in reviewing, approving and monitoring the Concessionaire's compliance with the Participation Performance Improvement Plan until the Concessionaire satisfies the requirements of Section 24.03(c)(iii).

(C) If the Concessionaire has failed to satisfy the requirements of Section 24.03(c)(iii) with respect to the Veteran and Local Hires goals for the Design-Build Work for three consecutive quarters, the Department may debar or disqualify the Key Members from participating in Commonwealth procurements through the Department until the earlier to occur of (i) the Concessionaire satisfies the requirements of Section 24.03(c)(iii) or (ii) twenty-four months after the effective date of the debarment. Only the Commissioner of Highways for the Department may waive the provisions of this Section 24.04(c)(iv)(C).

(v) Design-Build Work – Fred Ex Project.

(A) During performance of the Design-Build Work for the Fred Ex Project, the Department has established an on-the-job training goal of four (4) participants. New hire participation represents employees paid specifically for work performed on the Fred Ex Project and may be randomly verified through the checking of payrolls. Hiring by subcontractors will count toward meeting the goals.

(B) The Department and the Concessionaire agree to manage the foregoing goals as follows:

(1) the Concessionaire will submit for the Department's review and approval an initial Hiring Development Plan, and an updated Hiring Development Plan as further described in this Agreement. The initial and updated Hiring Development Plan will be submitted within 30 Days after the Fred Ex Project has achieved Fred Ex Financial Close and on January 30 of each year prior to achieving Fred Ex Final Completion. The Hiring Development Plan will define the Concessionaire's approach to meeting the workforce minimum requirements set forth in Section 24.03(c)(v)(A); and,

(2) the Concessionaire will designate resources, including a liaison officer designated and made known to the Department who is assigned the responsibility of administering and promoting an active and inclusive Hiring Development Plan to ensure all programs related to the Hiring Development Plan are compliant with the parts of Section 24.03(c) that apply to the Fred Ex Project. The designation and identity of this officer will be submitted as part of the initial and updated Hiring Development Plan.

(C) The Concessionaire acknowledges that the Department's assistance and cooperation will not eliminate or reduce the Concessionaire's responsibility to achieve the workforce minimum requirements set forth in Section 24.03(c)(v)(A) or demonstrate Good Faith Efforts. The Concessionaire is expected to utilize a variety of means and methods and creative strategies to do so. These strategies should be employed for all phases of the Fred Ex Project. The Concessionaire will meet the workforce minimum requirements set forth in this Agreement or demonstrate that Good Faith Efforts have been made.

(D) When there is a workforce minimum requirement for the Design-Build Work for the Fred Ex Project, the Concessionaire will make Good Faith Efforts to meet the workforce minimum requirement. The Department will not disregard showings of Good Faith Efforts. The Department must seriously consider the Concessionaire's documentation of Good Faith Efforts. The Department will issue Good Faith Efforts guidelines providing examples, procedures and reporting requirements for the Concessionaire's consideration.

Section 24.04 Small, Women-Owned and Minority Business (SWaM) and Disadvantaged Business Enterprise (DBE) Reporting – Opitz Boulevard Ramp Project

(a) Except as otherwise specifically addressed in this Section 24.04 (Small, Women-Owned and Minority Business (SWaM) and Disadvantaged Business Enterprise (DBE) Reporting – Opitz Boulevard Ramp Project), the provisions of Section 24.03 (Small, Women-Owned and Minority Business (SWaM) and Disadvantaged Business Enterprise (DBE) Reporting) shall apply to the design, development and construction of the Opitz Boulevard Ramp Project.

(b) During the performance of design Work for the Opitz Boulevard Ramp Project, the Concessionaire will be responsible for either achieving or making Good Faith Efforts to achieve the goal of 12% for DBE participation by providing maximum contracting opportunities for DBE businesses.

(c) During performance of the Opitz Boulevard Ramp Construction Work, the Concessionaire will be responsible for either achieving or making Good Faith Efforts to achieve the goal of 13% for DBE participation by providing maximum contracting opportunities for DBE businesses.

(d) During performance of the Opitz Boulevard Ramp Construction Work, the Concessionaire will be responsible for either achieving or making Good Faith Efforts to achieve the goal of 19% for SWaM participation by providing maximum contracting opportunities for SWaM businesses. For avoidance of doubt, there shall be no SWaM goal with respect to design work for the Opitz Boulevard Ramp Project.

Section 24.05 Public Safety and Welfare

The parties recognize and agree that protection of the health, safety and welfare of the public and all persons engaged in connection with the performance of the Concessionaire's obligations pursuant to this Agreement is a priority. Accordingly, the Concessionaire will comply with the following provisions, along with all other Laws and the Technical Requirements:

(a) the Concessionaire will comply, and will require all Contractors to comply, with all construction safety and health standards established by Law, including the State and Federal Occupational Health and Safety Acts. Neither the Concessionaire nor any Contractor will require any worker to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to their health or safety, as determined under construction safety and health standards promulgated by the U.S. Secretary of Labor in accordance with Section 107 of the Contract Work Hours and Safety Standards Act; and

(b) the Department will be entitled to require the Concessionaire to suspend any Work or other activities related to the Project, which, in the sole discretion of the Department, presents a risk to the public health, safety or welfare, and to take such other actions as the Department may require to prevent such risk; *provided*, that if it is determined in accordance with the dispute resolution procedures in Article 21 that the Concessionaire was in compliance with its obligations under this Agreement, then the suspension order and other actions will be treated as a Department Change pursuant to Section 14.02.

Section 24.06 Labor, Employment and DBE/SWaM Related Matters

The Concessionaire will comply, and will cause its Contractors to comply, with the provisions set forth in the Labor, Employment and DBE/SWaM Related Matters attached as Exhibit AA.

Section 24.07 Federal Immigration Reform and Control Act

(a) In accordance with Section 2.2-4311.1 of the Code of Virginia, the Concessionaire certifies that it does not and agrees that it will not, during the Term, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986. The Concessionaire further agrees that it will require all of its Contractors to certify that they do not and will not knowingly employ an unauthorized alien as defined by such Act.

ARTICLE 25

MISCELLANEOUS

Section 25.01 Transfers by the Concessionaire

(a) Lock-Up Period. During the Lock-up Period, the Concessionaire will not, without the Department's approval, Transfer, or otherwise permit the Transfer of, any or all of the Concessionaire's Interest to or in favor of any Person (a "Transferee") or permit any Person to:

(i) Transfer, or otherwise dispose of 50% or more of any direct or indirect ownership interest in the Concessionaire;

(ii) grant any security interest, Lien or other encumbrance over its direct or indirect ownership interest in the Concessionaire;

(iii) enter into any agreement in respect of any direct or indirect ownership interest in the Concessionaire or in respect of any votes attached to any such shares held by such Person in the Concessionaire, in each case (A) other than customary shareholder, partnership or organizational agreements among the Equity Members as of the Agreement Date solely with respect to the governance and management of the Concessionaire or (B) other than agreements for Transfers of less than 50% of any direct or indirect ownership interest in the Concessionaire; or

(iv) agree, whether or not subject to any condition precedent or subsequent, to do any of the foregoing.

Notwithstanding the foregoing, this Section 25.01 will not prohibit or restrict the following:

(A) a Transfer to the Collateral Agent or trustee or such Person's nominee or transferee, as permitted in connection with the exercise of rights and remedies under the Project Financing Agreements, or a Transferee permitted or approved under the Direct Agreement, the 395 Direct Agreement, and the Fred Ex Direct Agreement;

(B) any other Transfer identified in clauses 1 through 8 of the definition of Change in Control; or

(C) any agreement to make any of the Transfers described in the preceding clauses (A) and (B) of this Section 25.01(a).

(b) Post Lock-Up Period. Following the Lock-up Period, the Concessionaire will not Transfer, any or all of the Concessionaire's Interest to or in favor of a Transferee, unless:

(i) the Department has approved such proposed Transferee based upon a determination in accordance with Section 25.01(c) (unless it is the Collateral Agent permitted under Article 7 or a Transferee that is permitted or has been approved under the Direct Agreement, the 395 Direct Agreement, and the Fred Ex Direct Agreement); and

(ii) the proposed Transferee (unless it is the Collateral Agent permitted under Article 7 or a Transferee that is permitted or has been approved under the Direct Agreement, the 395 Direct Agreement, and the Fred Ex Direct Agreement) enters into an agreement with the Department in form and substance reasonably satisfactory to the Department wherein the Transferee acquires the rights and assumes the obligations of the Concessionaire and agrees to perform and observe all of the obligations and covenants of the Concessionaire pursuant to this Agreement.

(c) The Department's approval of a proposed Transferee may be withheld only if the Department determines that the proposed Transfer is prohibited by Law or such proposed Transferee is not capable of performing the obligations and covenants of the Concessionaire pursuant to this Agreement, which determination may be based upon, or take into account, one or more of the following factors:

(i) the financial strength and integrity of the proposed Transferee, and its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates;

(ii) the capitalization of the proposed Transferee;

(iii) the experience of the proposed Transferee and each of its direct Contractors in operating toll roads or highways and performing other projects; and

(iv) the background of the proposed Transferee, each of its direct Contractors, and their direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory Claims or actions against any such Person and the quality of any such Person's past or present performance on other projects).

If the Department is not satisfied that these conditions are met, it may condition its consent on provision of reasonable additional security or other reasonable arrangements.

(d) Except for a Transfer of all the Concessionaire's Interest to the Collateral Agent upon its exercise of remedies under the Financing Assignments or to a Transferee that is permitted or has been approved under the Direct Agreement, the 395 Direct Agreement, and the Fred Ex Direct Agreement, no Transfer of all or any of the Concessionaire's Interest will be made or have any force or effect if at the time of such Transfer there has occurred a Concessionaire Default that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute a Concessionaire Default, unless the Transferee is prepared to cure such Concessionaire Default in accordance with the Direct Agreement, the 395 Direct Agreement, and the Fred Ex Direct Agreement.

(e) A Change in Control of the Concessionaire will be deemed to be a Transfer of the Concessionaire's Interest for purposes of this Section 25.01.

(f) Any Transfer or other sale, transfer, disposition or other transaction made in violation of this Section 25.01 will be null and void *ab initio* and of no force and effect.

Section 25.02 Ethical Standards

(a) The Concessionaire has adopted and provided copies to the Department of its written policies establishing ethical standards of conduct for all its directors, officers and supervisory or management personnel in dealing with the Department and employment relations. Such policies including any amendments or modifications will include standards of ethical conduct concerning the following:

(i) restrictions on gifts and contributions to, and lobbying of, any State Party and any of their respective commissioners, directors, officers and employees;

(ii) protection of employees from unethical practices in the selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;

(iii) protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting of illegal (including the making of a false Claim), unethical or unsafe actions or failures to act by the Concessionaire or its personnel or any Contractors;

(iv) restrictions on directors, members, officers or supervisory or management personnel of the Concessionaire engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Project or employees;

(v) restrictions on use of an office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director, member, officer or supervisory or management person, rather than primarily for the benefit of the Concessionaire or the Project, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

(vi) adherence to the Department's organizational conflict of interest rules and policies pertaining to the hiring of any consultant which has assisted the Department in connection with the negotiation of this Agreement or the conduct of Oversight Services for the Project.

(b) The Concessionaire will cause its directors, members, officers and supervisory and management personnel, and require those of its Contractors, to adhere to and enforce the adopted policy on ethical standards of conduct. The Concessionaire will establish reasonable systems and procedures to promote and monitor compliance with the policy.

(c) Without limiting the foregoing provisions of this Section 25.02, the Concessionaire further agrees: (i) no gifts, gratuities, or favors of any nature whatsoever will be given or offered by any Concessionaire Party to personnel of the Department; and (ii) no Concessionaire Party will

employ any personnel of the Department for any services during the Term, without the prior written consent of the Department. If the Department determines, after investigation, that a Concessionaire Party or any of its employees, representatives, or agents of any person acting in its behalf have violated this provision, the Concessionaire Party may, at the discretion of the Department, be disqualified from bidding on future contracts with the Department for a period of six months from the date of the Department's determination of such a violation. Any implicated employees, agents, or representatives of the Contractor may be prohibited from working on any contract awarded by the Department for the period of disqualification.

Section 25.03 Assignment by the Department

The Department may, subject to giving the Concessionaire not less than 90 Days prior written notice or as required by Law, transfer and assign its interests, in whole or in part, in the Project, this Agreement and any other Project Agreements to any other public agency or public entity of the State as permitted by Law; *provided*, that the assignee (a) has assumed all of the Department's obligations, duties and liabilities pursuant to this Agreement and the Project Agreements then in effect and has provided the Concessionaire with reasonable assurance of its legal authority and sufficient financial resources to honor and perform same and (b) will not be required to have financial resources in excess of those then available to the Department.

Section 25.04 Authorized Representatives

(a) Each of the Concessionaire and the Department hereby designates the following individuals as its initial Concessionaire Representative(s) and Department Representative(s), respectively, to administer this Agreement on its respective behalf:

(i) For the Concessionaire:

President
95 Express Lanes LLC
6440 General Green Way
Alexandria, Virginia 22312

(ii) For the Department:

Chief Engineer
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219

(b) The Concessionaire Representatives and the Department Representatives will be reasonably available to each other during the Term and will have the authority to issue instructions and other communications on behalf of the Concessionaire and Department, respectively, and will be the recipient of notices and other written communications from the other party pursuant to this Agreement (except any notice initiating or relating to the dispute resolution procedures of Article 21 will be given in accordance with Section 25.05). However, such Representatives will not have the authority to make decisions or give instructions binding upon the Concessionaire or the Department, except to the extent expressly authorized by the Concessionaire or the Department,

as the case may be, in writing. In the event the Concessionaire or the Department designates different Representatives, it will give the other party written notice of the identity of and contact information for the new Concessionaire Representative(s) or Department Representative(s), as the case may be.

Section 25.05 Notices

(a) Whenever under the provisions of this Agreement it will be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same will be in writing and will not be effective for any purpose unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by facsimile transmission, where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission is immediately followed by service of the original of the subject item in another manner permitted herein or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Department:

Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Commissioner of Highways
Facsimile: (804) 786-2940

With copies to:

Office of the Attorney General
202 N. 9th Street
Richmond, VA 23219
Attention: Chief Transportation Section
Facsimile: (804) 786-9136

If to the Concessionaire:

95 Express Lanes LLC
6440 General Green Way
Alexandria, Virginia 22312
Attention: President
Facsimile: (571) 419-6101

With copies to:

Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, NY 10019-6142
Attention: Young Lee

(b) Any party may, from time to time, by notice in writing served upon the other party as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally will be deemed delivered upon receipt, if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by facsimile transmission will be deemed delivered on the date of receipt as shown on the received facsimile (*provided*, that the original is thereafter delivered as aforesaid).

Section 25.06 Binding Effect

Subject to the limitations of Section 25.01 and Section 25.03, this Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns, and wherever a reference in this Agreement is made to any of the parties hereto, such reference also will be deemed to include, wherever applicable, a reference to the legal representatives, successors and permitted assigns of such party, as if in every case so expressed.

Section 25.07 Relationship of Parties

(a) The relationship of the Concessionaire to the Department will be one of an independent contractor, not an agent, partner, lessee, joint or co-venturer or employee, and neither the Department nor the Concessionaire will have any rights to direct or control the activities of the other or their respective Affiliates, contractors or consultants, except as otherwise expressly provided in this Agreement.

(b) Officials, employees and agents of the Concessionaire or the Department will in no event be considered employees, agents, partners or representatives of the other.

Section 25.08 No Third-Party Beneficiaries

Nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement, except rights expressly contained in this Agreement for the benefit of the Lenders, the Collateral Agent and/or State Indemnitees.

Section 25.09 Limitation on Consequential Damages

Except as expressly provided in this Agreement to the contrary, neither party will be liable to the other for punitive damages or special, indirect, incidental or consequential damages of any nature, whether arising in contract, tort (including negligence) or other legal theory. The foregoing limitation will not, however, in any manner:

- (a) prejudice the Department's right to recover liquidated damages from the Concessionaire as provided in this Agreement;
- (b) limit the Concessionaire's liability for any type of damage arising out of the Concessionaire's obligation to indemnify, protect, defend and hold each State Indemnitee harmless from Third-Party Claims under Article 15 and Section 16.03 of this Agreement;
- (c) limit the Concessionaire's liability for any type of damage to the extent covered by the proceeds of insurance required hereunder; or
- (d) limit the amounts expressly provided to be payable by the Department or the Concessionaire pursuant to this Agreement.

Section 25.10 Waiver

- (a) No waiver by any party of any right or remedy pursuant to this Agreement or the other Project Agreements will be deemed to be a waiver of any other or subsequent right or remedy pursuant to this Agreement or the other Project Agreements. The consent by one party to any act by the other party requiring such consent will not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- (b) No act, delay or omission done, suffered or permitted by one party or its agents will be deemed to waive, exhaust or impair any right, remedy or power of such party pursuant to this Agreement or any other Project Agreement, or to relieve the other party from the full performance of its obligations pursuant to this Agreement and the other Project Agreements.
- (c) No waiver of any term, covenant or condition of this Agreement will be valid unless in writing and executed by the obligee party.
- (d) The acceptance of any payment or payment by a party will not (i) waive any preceding or then-existing breach or default by the other party of any term, covenant or condition of this Agreement, other than the other party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or payment or (ii) continue, extend or affect (A) the service of any notice, any suit, arbitration or other legal proceeding or final judgment, (B) any time within which the other party is required to perform any obligation or (C) any other notice or demand.

(e) No custom or practice between the parties in the administration of the terms of this Agreement will be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.

Section 25.11 No Brokers

Except for any financial adviser or investment banker whose fee will be paid by the party retaining such adviser or banker (or in the case of a Concessionaire Financial Party, by such party or the Concessionaire), each party represents and warrants that it has not dealt with any real estate or business opportunity broker or agent or any finder in connection with this Agreement. Each party agrees, to the extent permitted by Law, to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any Claim for commission, finder's fee or like compensation asserted by any real estate or business opportunity broker, agent, finder or other Person claiming to have dealt with the indemnifying party in connection with this Agreement.

Section 25.12 Governing Law; Compliance with Law and Federal Requirements

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State without giving effect to any choice or conflict of law provision or rule (whether of the State or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State.

(b) The Concessionaire will keep fully informed of and comply and require its Contractors to comply with Law. The Concessionaire will execute and file the documents, statements, and affidavits required under any Law required by or affecting this Agreement or the execution of the Work. The Concessionaire will permit examination of any records made subject to such examination by such Law.

(c) The Concessionaire will comply and require its Contractors to comply with all Laws applicable to the Project as a result of the costs of the Project being financed in part with State funds, federal-aid funds and State bond proceeds, including the applicable Federal Requirements attached as Exhibit U.

(d) The Concessionaire acknowledges and agrees that the USDOT will have certain approval rights with respect to the Project, including the right to provide certain oversight and technical services with respect to the Work. The Concessionaire will cooperate with USDOT and provide such access to the Project and information as USDOT may request in the exercise of USDOT's duties, rights and responsibilities in connection with the Project.

Section 25.13 Use of Police Power

Nothing in this Agreement limits the authority of the Department to exercise its regulatory and police powers granted by Law.

Section 25.14 Survival

The dispute resolution procedures, the indemnifications, limitations, releases, obligations to pay termination compensation and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Work will survive the expiration or earlier termination of this Agreement and/or the completion of the Work.

Section 25.15 Subpoena

Except as provided for in Section 33.2-206 of the Code of Virginia, the Concessionaire may subpoena any Department personnel; *provided*, that the Concessionaire will pay for such personnel's time at its fully burdened rate (including overhead and fringe benefits), together with all out-of-pocket expenses incurred, no later than 30 Days after the Concessionaire's receipt of an invoice reasonably documenting the amount of such time provided.

Section 25.16 Construction and Interpretation of Agreement

(a) The language in all parts of this Agreement will in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of this Agreement, this Agreement will not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction will be utilized.

(b) If any court of competent jurisdiction issues a final, non-appealable judicial order finding that a term or provision of this Agreement is invalid or unenforceable, the remainder of this Agreement will not be affected thereby and each other term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by Law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the parties in good faith will supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

(c) The captions of the articles and sections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(d) References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation and/or undertaking "herein," "hereunder" or "pursuant hereto" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by

reference in this instrument. All terms defined in this instrument will be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. All references to a subsection or clause “above” or “below” refer to the denoted subsection or clause within the section in which the reference appears. Unless expressly provided otherwise, all references to Articles and Sections refer to the Articles and Sections set forth in this Agreement. Unless otherwise stated in this Agreement or the Project Agreements, words which have well-known technical or construction industry meanings are used in this Agreement or the Project Agreements in accordance with such recognized meaning. Wherever the word “including,” “includes” or “include” is used in this Agreement or the Project Agreements, except where immediately preceded by the word “not”, it will be deemed to be followed by the words “without limitation”. Wherever reference is made in the Project Agreements to a particular Governmental Authority, it includes any public agency succeeding to the powers and authority of such Governmental Authority.

(e) As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

(f) The Project Agreements are intended to be complementary and consistent and to be read together as a complete agreement. In the event of any conflict or inconsistency between the Articles of this Agreement and the exhibits to this Agreement, the conflict or inconsistency will be resolved by applying the following order of document precedence, from highest to lowest:

- (i) Change Orders and amendments to the articles of this Agreement and Definitions;
- (ii) the Articles of this Agreement and Definitions;
- (iii) Project Description and Scope Documentation;
- (iv) the Technical Requirements, as amended; and
- (v) the other exhibits to this Agreement, as amended.

(g) A Project Agreement to which the Department is not a party will have no effect upon the terms and conditions of this Agreement or the construction or interpretation thereof.

(h) Any standard or specification with which the Concessionaire is required to comply by a provision of this Agreement during the Construction Period, shall be the specific edition or version identified in the Technical Requirements, and the Concessionaire shall not be required during the Construction Period to comply with any newer, updated or revised edition or version unless the parties so agree or the Concessionaire is so directed by the Department as a Department Change.

Section 25.17 Counterparts

This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which shall constitute one and the same instrument. The Parties may

sign this Amendment electronically and electronic transmission of an executed counterpart of this Amendment shall be deemed to constitute due and sufficient delivery of such counterpart.

Section 25.18 Entire Agreement; Amendment

(a) THIS AGREEMENT AND THE PROJECT AGREEMENTS TO WHICH THE DEPARTMENT AND THE CONCESSIONAIRE ARE BOTH PARTIES CONSTITUTE THE ENTIRE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SPECIFIC MATTERS COVERED HEREIN AND THEREIN. ALL PRIOR WRITTEN AND PRIOR OR CONTEMPORANEOUS VERBAL AGREEMENTS, UNDERSTANDINGS, REPRESENTATIONS AND/OR PRACTICES RELATIVE TO THE FOREGOING, INCLUDING THE INTERIM AGREEMENT, ARE HEREBY SUPERSEDED, REVOKED AND RENDERED INEFFECTIVE FOR ANY PURPOSE. THIS AGREEMENT MAY BE ALTERED, AMENDED OR REVOKED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY EACH PARTY HERETO, OR ITS PERMITTED SUCCESSOR OR ASSIGNEE, EXCEPT TO THE EXTENT THE DEPARTMENT HAS THE RIGHT TO AMEND BY DEPARTMENT CHANGE OR DIRECTIVE LETTER PURSUANT TO ARTICLE 14. NO VERBAL AGREEMENT OR IMPLIED COVENANT WILL BE HELD TO VARY THE TERMS HEREOF, ANY STATUTE, LAW OR CUSTOM TO THE CONTRARY NOTWITHSTANDING.

(b) This Agreement and the other Project Agreements attempt to set forth in full all requirements applicable under the PPTA as to the development, operation, maintenance, repair, management and financing of the Project and attempt to define in full the rights and responsibilities of each party in connection therewith. To the extent requirements and rights and responsibilities have not been addressed in this Agreement and the other Project Agreements, the parties agree to carry out their respective responsibilities in the spirit of cooperation contemplated by the PPTA, recognizing that they may not have defined in a sufficient detail or anticipated fully all activities necessary for the full implementation of the Project.

(c) For the avoidance of doubt, the *Amended and Restated Advanced Development Framework Agreement Fredericksburg Extension of I-95 HOV/HOT Lanes*, Conformed Execution Version, executed by the Parties and dated August 22, 2017, as amended, is superseded and is null and void as of the Second Amended and Restated Agreement Date. In addition, the Parties acknowledge and agree the (i) *Concessionaire Proposal Specifications For Binding Proposal to Develop the Fred Ex Project* dated January 9, 2018, and (ii) the *Major Business Terms for the Fred Ex Project in the Commonwealth of Virginia* dated January 9, 2018, are both superseded and without legal effect as of the Second Amended and Restated Agreement Date.

(d) For the avoidance of doubt, the Opitz Boulevard Ramp DFA is superseded and is null and void as of the Third Amended and Restated Agreement Date.

(e) For the avoidance of doubt, the Seminary Road Ramp DFA is superseded and is null and void as of the Third Amended and Restated Agreement Date.

Section 25.19 Payment of Concessionaire Damages and Other Amounts by the Department

(a) THE DEPARTMENT'S PAYMENT OF ANY CONCESSIONAIRE DAMAGES, LOSSES OR ANY OTHER AMOUNTS DUE AND OWING BY THE DEPARTMENT PURSUANT TO THIS AGREEMENT WILL BE SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY AND ALLOCATION BY THE CTB. Upon determination of Concessionaire Damages or such other amounts due and owing by the Department, the Department will with all practical dispatch consistent in all respects with Law and its obligations pursuant to this Agreement:

(i) deliver to the Governor and the Director of the Department of Planning and Budget of the State, before December 1 with respect to any such payment requested to be appropriated by the next regular session of the General Assembly, a statement of the amount of any such payment due or expected to be due and a request that the Governor include in his budget to be delivered to the next session of the General Assembly a provision that there be appropriated such amounts for such purpose to the extent required, from any legally available funds;

(ii) use its diligent efforts to have (A) the Governor include, in each biennial or any supplemental budget the Governor presents to the General Assembly, the amounts set forth in any statement delivered pursuant to (i) above, (B) the General Assembly appropriate and reappropriate, as applicable, such amounts to or on behalf of the Department for the purpose of paying any Concessionaire Damages or other amounts due and owing by the Department to the Concessionaire pursuant to this Agreement, and (C) the CTB allocates such appropriated amounts as applicable for payment to the Concessionaire; and

(iii) notify the Concessionaire promptly upon becoming aware of any failure by (A) the Governor to include such amounts in his budget delivered to the next session of the General Assembly, (B) the General Assembly to appropriate such amounts during such next session of the General Assembly or (C) the CTB to so allocate such amounts for payment to the Concessionaire.

(b) The parties hereto agree and acknowledge that, subject to appropriation, such obligation of the Department to pay the Concessionaire Damages and other amounts was and is a material inducement and consideration for the execution and delivery of this Agreement by the Concessionaire.

(c) The Department will pay any sum due pursuant to Section 20.03, Section 20.04(f), Section 20.06, Section 20.07, Section 20.12, Section 20.13, Section 20.14, or Section 20.15, within 60 Days after the date of determination of the applicable termination compensation amount; provided, in each case, that the Department may defer payment of such sum for an additional 270 Days if it reasonably determines that such additional period is necessary in order to obtain funds to pay such sum; *provided* further, that any payment of such sum will be made together with interest thereon (A) at the average earnings rate on the State's Transportation Trust Fund or any successor thereto during the period that runs from the date such sum would have otherwise become

due to the date that is 60 Days thereafter and (B) after such period, at the Bank Rate until the date of payment thereof; except that to the extent such payment is based on the Concessionaire Debt, such amounts will be re-calculated as of the date of payment.

(d) The Department will proceed to make payment to the Concessionaire of the undisputed amount of any sum due pursuant to Section 20.03, Section 20.04(f), Section 20.06, Section 20.07, Section 20.12, Section 20.13, Section 20.14, or Section 20.15, without regard to the dispute resolution procedures.

Section 25.20 Taxes

The Concessionaire is solely responsible for the payment of Taxes accrued or arising out of the performance of its obligations pursuant to this Agreement.

Section 25.21 Payments to Department or Concessionaire

(a) Except as otherwise expressly provided in this Agreement or in any Project Agreement, payments due to the Department or the Concessionaire hereunder, as applicable, will be due and payable within 30 Days of receipt by the Concessionaire or the Department, as applicable, of an invoice therefor, together with any supporting documentation.

(b) Each party will be entitled to deduct, offset or withhold from any amounts due from one party to the other party any amounts then due and owing from such other party.

(c) Except as otherwise provided, neither party is required to pay amounts due that are being contested in accordance with the dispute resolution procedures described in Article 21.

Section 25.22 Interest on Overdue Amounts

Any amount not paid when due pursuant to this Agreement will bear interest from the date such payment is due until payment is made (after as well as before judgment) at a variable rate per annum at all times equal to the Bank Rate (except as provided otherwise in Section 25.19(c)), which interest will be payable on demand. Interest will be compounded annually and payable on the date on which the related overdue amount is paid.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Third Amended and Restated Comprehensive Agreement Relating to the I-95/395 HOV/HOT Lanes Project as of the date first written above.

**VIRGINIA DEPARTMENT OF
TRANSPORTATION,**
an agency of the Commonwealth of Virginia

By: 

Name: Stephen C. Brich, P.E.

Title: Commissioner of Highways

95 EXPRESS LANES LLC,
a Delaware limited liability company

By:  _____
Name: Pierce R. Coffee
Title: President

EXHIBIT A

DEFINITIONS

Acronym	
AASHTO	American Association of State Highway and Transportation Officials
AID	Automatic Incident Detection
AMRL	AASHTO Materials Reference Laboratory
ASTM	American Society for Testing Materials
ATMS	Advanced Traffic Management System
BCOM	Virginia Department of General Services' Bureau of Capital Outlay Management
CCCS	Central Control Computer System
CCTV	Closed-Circuit Television
CI	Critical Infrastructure
CII	Critical Infrastructure Information
CII/SSI	Critical Infrastructure Information/Sensitive Security Information
CLRP	Constrained Long-Range Transportation Plan
CPI	Consumer Price Index
CPM	Critical Path Method
CPT	Cone Penetration Test
CPTED	Crime Prevention Through Environmental Design
CTB	Commonwealth Transportation Board
DBE/SWaM	Disadvantaged Business Enterprise/Small, Women- and Minority-owned Business Enterprise
DEM	Digital Elevation Model
DGS	Department of General Services
DMS	Dynamic Message Signs
DMT	Dilatometer Test
DMV	Department of Motor Vehicles
DTM	Digital Terrain Model
EDMS	Electronic Document Management System
EIR	Environmental Impact Review
ESC	Erosion and Sediment Control
ESCCC	Erosion and Sediment Control Contractor Certification
ETC	Electronic Toll Collection
ETTM	Electronic Toll and Traffic Management
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FI/RW	Field Inspection and Right of Way
FOIA	Freedom of Information Act
GAAP	Generally Accepted Accounting Principles
GFCI	Ground Fault Circuit Interrupter
GFE	Good Faith Effort
GUI	Graphical User-Interface

Acronym	
HOT/HOV	High Occupancy Toll/High Occupancy Vehicle
HOV	High Occupancy Vehicle
IAG	InterAgency Group
IDSP	Integrated Directional Sign Program
IIM or I&IM	Instructional and Informational Memorandum
IJR	Interchange Justification Report
IMR	Interchange Modification Report
IP	Intellectual Property
ISA	In Service Availability
ISO	International Organization for Standardization
IT	Information Technology
ITS	Intelligent Transportation System
IVHS	Intelligent Vehicle Highway System
LED	Light Emitting Diode
L RTP	Long Range Transportation Plan
MMS	Maintenance Management System
MOI	Department Manual of Instructions for Material Division
MOT	Maintenance of Traffic
MPO	Metropolitan Planning Organization
MTBF	Mean Time Between Failure
MTR	Mean Time To Repair
MUTCD	Manual on Uniform Traffic Control Devices
NEPA	National Environmental Policy Act
NFPA	National Fire Protection Association
NS	Norfolk Southern
ORT	Open Road Tolling
OSHA	Occupational Health and Safety
PA	Programmatic Agreement
PABs	Private Activity Bonds
PCI	Payment Card Industry
PDP	Project Development Plan
PPTA	Public-Private Transportation Act
PTZ	Pan Tilt Zoom
QMSP	Quality Management System Plan
RLD	Responsible Land Disturber Certification
ROD	Record of Decision
ROW	Right of Way
RUMS	Right of Way and Utilities Management System
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (Public Law 109-59)
SAT	Site Acceptance Testing
SPT	Standard Penetration Test
SRA	Safety Rest Area
STIP	State Transportation Improvement Plan

Acronym	
STRAHNET	Strategic Highway Network
SWaM	Small Woman-Owned and Minority Business
SYIP	Six-Year Improvement Plan
SWM	Storm Water Management
SWPPP	Storm Water Pollution Prevention Plan
TIA	Time Impact Analysis
TIFIA	Transportation Infrastructure Finance and Innovation Act
TMP	Transportation Management Plan
TMS	Traffic Management System
UCC	Uniform Commercial Code
UPS	Uninterruptible Power Source
USDOT	United States Department of Transportation
VA SHPO	Virginia State Historic Preservation Officer
VCRI	Verification Cross Reference Index
VDOT	Virginia Department of Transportation
VPDES	Virginia Department of Environmental Quality’s Virginia Pollutant Discharge Elimination System
VPS	Violation Processing System
VPSTF	Virginia Petroleum Underground Storage Tank Fund
VSMP	Virginia Stormwater Management Program
VSP	Virginia State Police
VTIB	Virginia Transportation Infrastructure Bank

2022 Project Financing Agreements means the Project Financing Agreements entered into by the Concessionaire on or about the Series 2022 Financial Close Date, if applicable, in the form agreed between the parties.

395 Additional Early Work means any design work, permitting, preparation of right of way, project management activities and other work performed by the 395 Design-Build Contractor necessary to complete the 395 Early Work.

395 Baseline Schedule means (a) the Initial 395 Baseline Schedule identifying the major Work activities in sufficient detail to enable the Department to monitor and evaluate design and construction progress until such time as the 395 Baseline Schedule is approved by the Department pursuant to the Technical Requirements and (b) the 395 Baseline Schedule thereafter as updated according to the Technical Requirements.

395 Benchmark Interest Rates means the 395 PABs Benchmark Interest Rate, the 395 TIFIA Benchmark Interest Rate and the 395 VTIB Benchmark Interest Rate.

395 Commercial Close Conditions means delivery to the Department by the Concessionaire of the following:

- (a) Final term sheet(s) for the Concessionaire Debt to be incurred in connection with the 395 Project, as applicable;

(b) Drafts of amendments to the Initial Project Financing Agreements to be executed in connection with the 395 Project;

(c) Copies of any technical, legal, tax and insurance due diligence reports in connection with the implementation of the financing for the 395 Project and evidence of the review and acceptance, in principle, by the Lenders of the same that are specifically requested by the Department and available for distribution to the Parties;

(d) Evidence of consent from the Project's existing Lenders to the Concessionaire executing the Amended and Restated Comprehensive Agreement, the 395 Design-Build Contract, the 395 TTMS Contract and other related matters;

(e) Indicative letters of support from proposed providers of Concessionaire Debt to be incurred in connection with the 395 Project, as described in Appendix B, II(b) of the Proposal Specifications; and

(f) A Base Case Financial Model scenario reflecting the requirements in the Second Amendment.

395 Concessionaire Assets means (a) the 395 Express Lanes Northern Extension and (b) the Eads Street Component.

395 Concessionaire Breach is defined in Section 19.06.

395 Concessionaire Breach Termination Amount means the lesser of (a) the Completed Work Value and (b) the lesser of 80% of Concessionaire Debt (for the 395 Project) then outstanding or 80% of Concessionaire Debt (for the 395 Project) projected in the Base Case Financial Model Update (Fred Ex Final) or, if applicable, the Base Case Financial Model Update (Fred Ex Final/Additional) to be then outstanding; less:

(i) 395 Credit Balances;

(ii) unpaid and/or accrued default interest;

(iii) Breakage Costs;

(iv) any other amounts referred to in the definition of Concessionaire Debt that arise as a consequence of the termination of the 395 Project or the acceleration of or requirement to mandatorily prepay the Concessionaire Debt; and

(v) Allocable Costs incurred by the Department in terminating the 395 Project for 395 Concessionaire Breach.

395 Concessionaire Breach Triggering Event is defined in Section 19.06.

395 Construction Escrow Documents is defined in Section 18.05(a)(ii).

395 Contract Documents has the meaning set forth in Article 2 of Part 3 of the 395 Design-Build Contract.

395 Converted Eligible Work means 395 Early Work for which the Concessionaire has paid the 395 Design Build Contractor, but which does not meet the definition of 395 Eligible Work until after the Concessionaire's assignment of the 395 Design-Build Contract to the Department under Section 20.04(f).

395 Corridor means the portion of Interstate 395 located within the State with a northern terminus of the Washington D.C. line and a southern terminus approximately 1 mile north of Route 648 (Edsall Road). For the avoidance of doubt, the Seminary Road Ramp HOT Lanes ROW is located within the 395 Corridor.

395 Credit Balances means the aggregate of any amounts standing to the credit of any bank account held by or on behalf of the Concessionaire for the 395 Project.

395 Credit Spreads means the 395 PABs Credit Spreads, the 395 TIFIA Credit Spreads and the 395 VTIB Credit Spreads.

395 Delayed Annual Transit Investment Amount is defined in Section 7 of Part B of Exhibit P.

395 Department Assets means (a) the DEW Component, (b) the Seminary Road Soundwall Component, (c) the Pentagon Improvements and (d) the GP Bridges Component.

395 Design-Build Cost means \$336,303,841.02.

395 Design-Build Contract means the design-build contract to be entered into between the Concessionaire and the 395 Design-Build Contractor pursuant to the 395 Design-Build RFP.

395 Design-Build Contractor means The Lane Construction Corporation, a Connecticut corporation.

395 Design-Build Work means the "395 Work" as defined within the 395 Design-Build Contract.

395 Design-Build Proposal means the proposal submitted by the 395 Design-Build Contractor to the Concessionaire pursuant to the 395 Design-Build RFP.

395 Design-Build Proposal Submission Date means December 19, 2016.

395 Design-Build RFP means the Request for Proposals (RFP) dated August 10, 2016, including all addenda thereto.

395 Direct Agreement means the Direct Agreement executed among the Department, the Concessionaire and the Collateral Agent, in the form attached as Exhibit R-2.

395 Direct Agreement (Second ARCA) means the 395 Direct Agreement (Second ARCA) executed among the Department, the Concessionaire and the Collateral Agent, in the form attached as Exhibit R-5.

395 Early Final Completion means the satisfaction of the criteria for completion of construction of a 395 Department Asset, as set forth in Section 8.18(f), as and when confirmed by the Department's issuance of the 395 Early Final Completion Certificate.

395 Early Final Completion Certificate means a letter or certificate issued by the Department in accordance with Section 8.18(f) evidencing the Department's determination that 395 Early Final Completion has occurred for a 395 Department Asset.

395 Early Final Completion Date means the date on which 395 Early Final Completion is achieved, as indicated in the 395 Early Final Completion Certificate.

395 Early Work means (a) the 395 Scope Validation Work; (b) any design work, permitting, preparation of right of way, project management activities and other work performed by the 395 Design-Build Contractor necessary to complete the 395 Scope Validation Work; (c) the commencement and completion of the final noise studies and reports; and (d) the 395 Additional Early Work.

395 Early Work Commencement Date means the date the Second Amendment is signed by the last Party to sign.

395 Eligible Work means:

(a) any Work that (i) is eligible for reimbursement with federal-aid funds, (ii) is reusable by the Department, in the Department's sole discretion and (iii) is approved by the Department; and

(b) any Work that would meet the definition under (a) immediately above except that it was performed prior to FHWA's Project Authorization within the Fiscal Management Information System;

provided that the 395 Eligible Work will not include any third-party costs, except for costs of the 395 Design-Build Contractor.

395 Eligible Work Costs is defined in Section 20.04(g).

395 Environmental Assessment means the approved Environmental Assessment document (and supporting technical reports) for the 395 Express Lanes Northern Extension and associated facilities, including the Eads Street Component, dated September 2016.

395 Equity Commitment Amount means \$164,819,350.

395 Equity Funding Agreements means the equity funding agreements by and among each Equity Sponsor, the Concessionaire and the agent for the Lenders, with respect to the capital commitments for the 395 Project.

395 Equity Funding Guaranty is defined in Section 17.08(a)(ii)(B).

395 Equity Letter of Credit is defined in Section 17.08(a)(ii)(A).

395 Escrow Documents is defined in Section 18.05(a)(ii).

395 Express Lanes Northern Extension means the development, design, construction, financing, operation and maintenance of the 395 HOT Lanes and associated facilities.

395 Final Completion means the satisfaction of the criteria for completion of construction of the 395 Project set forth in Section 8.18, as and when confirmed by the Department's issuance of the 395 Final Completion Certificate.

395 Final Completion Certificate means a letter or certificate issued by the Department in accordance with Section 8.18 evidencing the Department's determination that 395 Final Completion has occurred.

395 Final Completion Date means the date on which 395 Final Completion is achieved, as indicated in the 395 Final Completion Certificate.

395 Final Completion Recovery Plan has the meaning given to it in Section 8.15(d).

395 Financial Close means satisfaction of all of the conditions set forth in Section 7.03A(a).

395 Financial Close Adjustment Protocol attached as Exhibit BB.

395 Financial Close Date means the date on which 395 Financial Close occurs.

395 Financial Close Deadline means the date by which 395 Financial Close must occur, which is September 1, 2017.

395 Financial Close Security means a bond (from a surety or firm acceptable to the Department) or a Letter of Credit in the minimum amount of \$10,000,000 delivered pursuant to Section 7.03A(d).

395 Financing Escrow Documents is defined in Section 18.05(a)(ii).

395 Guaranteed Final Completion Date means the date that is one thousand fifty-seven (1,057) days after the 395 Financial Close Date, as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

395 HOT Lanes means the high occupancy toll lanes that are separated from the adjacent GP Lanes and the associated entry and exit ramps within the Project Right of Way on the 395 Corridor, including, solely during its Operating Period, the Seminary Road Ramp HOT Lanes.

395 Interest Rate Protection Period means the period beginning on the 395 Interest Rate Setting Date and ending on the earlier of (a) the 395 Financial Close Date and (b) the 395 Financial Close Deadline.

395 Interest Rate Setting Date means January 24, 2017

395 Letter Agreement is defined in Section 8.19(b).

395 LNTP means the LNTP as defined in the 395 Design-Build Contract.

395 Long Stop Date means the date that is 365 Days after the 395 Guaranteed Final Completion Date; *provided* that a new 395 Long Stop Date may be established pursuant to a 395 Final Completion Recovery Plan proposed and approved pursuant to Section 8.15(d) as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

395 Market Interest Rate Adjustment is defined in Section 7.03A(b)(i)(B).

395 NEPA Approval means the Finding of No Significant Impact with respect to certain elements of the 395 Project issued by the FHWA on February 27, 2017, the 395 Environmental Assessment, the DEW Categorical Exclusion and the Seminary Road Soundwall Categorical Exclusion.

395 PABs Benchmark Interest Rate is the rate included in Table 1 of Exhibit BB for the relevant credit rating at 395 Financial Close at the 395 Interest Rate Setting Date and the AAA MMD for a comparable maturity as of the 395 Pricing Date.

395 PABs Credit Spreads is the rate included in Table 1 of Exhibit BB for the relevant credit rating at 395 Financial Close at the 395 Interest Rate Setting Date and the yield to call for premium bonds and yield to maturity for discount bonds and par bonds less the 395 PABs Benchmark Interest Rate as of the 395 Pricing Date.

395 Payment Bond is defined in Section 17.08(b)(ii)(A).

395 Performance Bond is defined in Section 17.08(b)(ii)(A).

395 Pricing Date means the date the PABs issued to finance the 395 Project are priced.

395 Project means (a) the 395 Express Lanes Northern Extension, (b) the DEW Component, (c) the Seminary Road Soundwall Component, (d) the Pentagon Improvements, (e) the GP Bridges Component, (f) the Eads Street Component, and (g) solely during its Operating Period, the Seminary Road Ramp HOT Lanes.

395 Project Financing Agreements means the Project Financing Agreements entered into by the Concessionaire on or about the 395 Financial Close Date in the form agreed between the parties.

395 Public Funds Amount means the amount set forth as such in the most recent Base Case Financial Model Update.

395 Reserve Account means a reserve account established by the Concessionaire as set forth in Exhibit P and established under the 395 Project Financing Agreements.

395 Revenues is defined in Section 4 of Part B of Exhibit P.

395 Risk Pool Costs is defined in Section 8.19(a).

395 Risk Pool Deposit is defined in Section 7.03A(b)(i)(D).

395 Risk Pool Eligibility Determination is defined in Section 8.19(a)(ii).

395 Service Commencement Date means, with respect to the 395 HOT Lanes, the date on which Service Commencement for such 395 HOT Lanes was achieved, as indicated in the 395 Service Commencement Notice to Proceed.

395 Service Commencement Notice to Proceed is defined in Section 9.02(f).

395 Scope Validation Documents means the 395 Contract Documents and the Department Generated Documents.

395 Scope Validation Work means work performed by the Concessionaire or the 395 Design-Build Contractor between the 395 Early Work Commencement Date and the 395 Scope Validation Work Completion Date to identify any Scope Issues by: (a) thoroughly reviewing the 395 Scope Validation Documents, (b) comparing the 395 Scope Validation Documents to actual field conditions to verify and validate the 395 Design-Build Contractor's proposed design concept and (c) conducting site investigations.

395 Scope Validation Work Completion Date is defined in Section 8.17(b)(ii).

395 Sponsor Funded Early Work means any 395 Additional Early Work that is not 395 Eligible Work and which one or more of the Concessionaire's direct or indirect owners elect to fund.

395 TIFIA Benchmark Interest Rate is the rate included in Table 1 of Exhibit BB at the 395 Interest Rate Setting Date and the State and Local Government Series (SLGS) rate included in the 395 Project Financing Agreement for the TIFIA loan.

395 TIFIA Credit Spreads means one Basis Point.

395 TTMS Contract means the Turnkey Lump-Sum Design-Build Contract Relating to the I-395 HOV/HOT Lanes Tolling and Traffic Management System dated February 24, 2017 between the Concessionaire and the TTMS Contractor.

395 TTMS Contractor means the TTMS Contractor in relation to the 395 TTMS Contract.

395 TTMS Letter of Credit is defined in Section 17.08(b)(ii)(B).

395 TTMS Payment Bond is defined in Section 17.08(b)(ii)(B).

395 TTMS Performance Bond is defined in Section 17.08(b)(ii)(B).

395 TTMS Work means the services provided by the TTMS Contractor under the 395 TTMS Contract in respect of the construction of the Project Assets.

395 VTIB Benchmark Interest Rate is the rate included in Table 1 of Exhibit BB at the 395 Interest Rate Setting Date and the Taxable AAA MMD rate included in the 395 Project Financing Agreement for the VTIB assistance.

395 VTIB Credit Spreads is the rate included in Table 1 of Exhibit BB at the 395 Interest Rate Setting Date and the aggregate all-in VTIB interest rate less the 395 VTIB Benchmark Interest Rate included in the 395 Project Financing Agreement for the VTIB assistance

95 Express Funding Commitment shall have the meaning assigned to such term in the Cost Sharing Agreement.

95 Construction Escrow Documents is defined in Section 18.05(a)(i).

95 Escrow Documents is defined in Section 18.05(a)(i).

95 Financing Escrow Documents is defined in Section 18.05(a)(i).

Actual Equity IRR means, as of the end of each partial or full year under the Agreement, the post-tax Internal Rate of Return on Committed Investment, based on Distributions, as provided in the most recent undisputed Base Case Financial Model Update, from the Agreement Date to the end of such partial or full year.

Additional Lanes means any additional GP Lanes along the Original Corridor within the Project Right of Way to the extent the plans for such improvements have not been included in (a) the CLRP and the SYIP as of November 30, 2011 or (b) the Technical Requirements; *provided* however, that neither (i) the addition of a fourth general purpose traffic lane travelling southbound on I-395 between Seminary Road and Edsall Road nor (ii) the Occoquan Auxiliary Lane, will be considered an Additional Lane.

Adjusted Equity IRR means the nominal post-tax Internal Rate of Return on Committed Investment over the full Term projected in the Adjusted Financial Model or the Adjusted Financial Model Update, as applicable.

Adjusted Equity IRR (95/395 Interim) is defined in Section 2 of Exhibit BB.

Adjusted Financial Model means the Initial Base Case Financial Model, as adjusted at Financial Close in accordance with Section 7.03(b)(i) through (vi) of the Agreement.

Adjusted Financial Model Update means the Adjusted Financial Model, as adjusted at Financial Close for the Original Project of the Original TIFIA Credit Assistance in accordance with Section 7.07(b) of the Agreement.

Administering Employees means employees of Concessionaire and the Key Members whose work related to the Project has not been completed that are involved in the administration of Federal or State funds.

Affiliate means, when used to indicate a relationship with a specified Person, a Person that: (a) directly or indirectly, through one or more intermediaries has a 10% or more voting or economic interest in such specified Person or (b) controls, is controlled by or is under common control with such specified Person, and a Person is deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

Affiliate Contract means a Contract with an Affiliate.

Affiliate Debt means any indebtedness incurred by the Concessionaire to an Affiliate of the Concessionaire unless the terms of such indebtedness are comparable to terms, or are no less favorable to the Concessionaire than terms that could have been obtained on an arms-length basis from a Person that is not an Affiliate of the Concessionaire.

Agreement means the Third ARCA, as subsequently amended, restated, supplemented and otherwise modified from time to time, and all exhibits and schedules thereto, in each case, as amended, restated, supplemented, and otherwise modified from time to time.

Agreement Date means July 31, 2012.

Agreement Year means (a) the period beginning on the Financial Close Date and ending on the first June 30 following the Financial Close Date, (b) each succeeding full fiscal year during which the Agreement remains in effect, and (c) the period beginning on July 1 of the fiscal year in which the Agreement terminates and ending on the date of termination. For purposes of assessing the Net Cost Impact of a Compensation Event, the partial year commencing with the date of the Compensation Event and ending on the earlier of (i) the following June 30, or (ii) the termination of the Agreement, will be treated as an Agreement Year.

Airspace means any and all real property, including the surface of the ground, within the vertical column extending above and below the surface boundaries of the Project Right of Way and not necessary or required for the Project (including Project Enhancements) or developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, tolling, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the Project (including Project Enhancements) or the Concessionaire's timely fulfillment of its obligations under the Project Agreements.

Allocable Costs means:

(a) for services performed using Department or Concessionaire personnel, materials and equipment, the sum of:

(i) an amount equal to the reasonable fully burdened hourly rate (including overhead and fringe benefits) of each employee providing such services multiplied by the actual number of hours such employee performs such services; plus

(ii) the reasonable cost of all materials used, including sales taxes, freight and delivery charges and any allowable discounts; plus

(iii) reasonable and documented out-of-pocket costs and expenses of each employee (including travel, meals and lodging costs), subject to any limitations and requirements on such costs and expenses set forth in the Department's travel guidelines; plus

(iv) the costs for the use, operating, maintenance, fuel, storage and other costs of all deployed tools (excluding small tools) and equipment, calculated at hourly rates determined from the most current volume of the Rental Rate Blue Book published by Nielsen/DATAQUEST, Inc. of Palo Alto, California, or its successors, or at any lesser hourly rate the Department may approve from time to time in its sole discretion, without area adjustment, but with equipment life adjustment made in accordance with the rate adjustment tables, *provided*, that if rates are not published for a specific type of tool or equipment, the Department will establish a rate for it that is consistent with its cost and use in the industry; and

(b) if the services are performed by a contractor under contract with the Department or the Concessionaire, the sum of:

(i) all reasonable amounts owing under such contract; *provided*, that if the contract is an Affiliate Contract, the lesser of the contract amount or the amount that would be reasonably obtained in an arm's length transaction for comparable services with a person that is not an Affiliate; plus

(ii) the amount to reimburse the Department or the Concessionaire for the actual and documented reasonable costs of administering the contract, but not to exceed 10% of the value of the contract; plus

(iii) all reasonable costs the Department or the Concessionaire reasonably incurs to enforce or pursue remedies for the contractor's failure to perform in accordance with the contract, except in the case of a contract that is an Affiliate Contract.

Allowance Items is defined in Section 8.16(a).

Alternative Facility means (a) the Route One Improvements, (b) Additional Lanes, (c) the Occoquan Bridge Improvements, (d) the Fred Ex Route One Improvements, or (e) Fred Ex Additional Lanes, in any case, for which Commencement of Use occurs during the Term and that is built and opened to traffic, except for any Alternative Facility developed by or at the direction of the federal government, where the CTB or the Department does not have discretionary authority to effectively prevent the construction or opening to traffic or to control the location of such Alternative Facility. For the avoidance of doubt, the Southern HOT Lanes are not an Alternative Facility.

Amended and Restated Agreement Date means June 8, 2017.

Amendment to O&M Agreement means the Amendment No. 2 to the Operating and Support Services Agreement for I-95 HOV/HOT Lanes Project dated May 15, 2017 between the Concessionaire and the Initial O&M Contractor.

Annual Budget is defined in Section 9.08(a).

Annual Transit Investment means those payments required to be made by the Concessionaire to the Department in accordance with Section 5.11 and as shown in Exhibit P.

Applicable Baseline Schedule means the Baseline Schedule for the Original HOT Lanes, the 395 Baseline Schedule for the 395 Project, the Fred Ex Baseline Schedule for the Fred Ex Project, the Opitz Boulevard Ramp Baseline Schedule for the Opitz Boulevard Ramp Project, and the Seminary Road Ramp Baseline Schedule for the Seminary Road Ramp Project.

Approved for Construction (AFC) Documents means all drawings, specifications, revisions thereto, and any other items necessary to construct the Work, sealed by a professional engineer licensed by the State. **As-Built Schedule** means the last Project Schedule Update submitted to and approved by the Department.

Asset means an individual component, system or subsystem of the Project, as identified in the first column of the Performance Requirements Baseline Table.

Average Toll means, for any period of not less than 45 consecutive minutes during which Permitted Vehicles not including Permitted Vehicles violating the High Occupancy Requirement going in the same direction for two consecutive Toll Sections exceeds the applicable rate of vehicles per hour per traffic lane specified in Section 5.07 and the percentage of High Occupancy Vehicles exceeds the applicable threshold specified in Section 5.07, (a) the total revenue for all toll paying vehicles going in such direction using such Toll Section in such period, divided by (b) the number of toll paying vehicles going in such direction using such Toll Section in such period.

Bank Rate means the prime rate of interest announced publicly by *The Wall Street Journal* (or its successors) as the so-called “prime rate.”

Base Case Equity IRR means the nominal post-tax Internal Rate of Return on Committed Investment over the full Term projected in the most recent undisputed Base Case Financial Model Update.

Base Case Financial Model means the Adjusted Financial Model adjusted at Financial Close pursuant to Section 7.03(b)(vii).

Base Case Financial Model Update means the Base Case Financial Model, as most recently updated pursuant to Section 6.02.

Base Case Financial Model Update (95/395 Draft) is the draft(s) of the Base Case Financial Model Update (95/395 Final) delivered to the Department by the Concessionaire as required by Section 7.03A.

Base Case Financial Model Update (95/395 Early Work Completion) is defined in Section 8.17(b)(viii).

Base Case Financial Model Update (95/395 Early Work Resolution) is defined in Section 8.17(b)(x).

Base Case Financial Model Update (95/395 Final) is the Base Case Financial Model Update (95/395 Final) dated July 18, 2017 (18:06 EST) and delivered to the Department by the Concessionaire in conjunction with 395 Financial Close.

Base Case Financial Model Update (Fred Ex Draft) is an iterative financial model submitted by the Concessionaire initially with its written proposal to develop and construct the Fred Ex Project, and updated at various times by the Concessionaire before Fred Ex Financial Close, as set forth in Sections 6.02 and 7.03B.

Base Case Financial Model Update (Fred Ex Final) is defined in Section 6.02(f).

Base Case Financial Model Update (Fred Ex Final/Additional) is defined in Section 7.03C(a)(iii).

Base Case Financial Model Update (Third ARCA) is the Base Case Financial Model Update dated July 11, 2022 (17:08 EDT) delivered to the Department by the Concessionaire in conjunction with the execution of this Third ARCA.

Base Case Traffic Model means the traffic and revenue model and the assumptions and information used by or incorporated in the model to provide the I-95 HOV/HOT Lanes Project Investment Grade Traffic and Revenue Study dated March 2012, the results of operation of which are incorporated into the Base Case Financial Model.

Base Equity Contributions is defined in Section 7.01(d).

Baseline Quantities is defined in Section 8.16(a).

Baseline Schedule means (a) the Initial Baseline Schedule identifying the major Work activities in sufficient detail to enable the Department to monitor and evaluate design and construction progress until such time as the Baseline Schedule is approved by the Department pursuant to the Technical Requirements, (b) the Baseline Schedule thereafter as updated according to the Technical Requirements, (c) the 395 Baseline Schedule as updated according to the Technical Requirements, (d) the Fred Ex Baseline Schedule as updated according to the Technical Requirements, (e) the Opitz Boulevard Ramp Baseline Schedule as updated according to the Technical Requirements, and (f) the Seminary Road Ramp Baseline Schedule as updated monthly.

Basis Points or **bp** means one hundredth of one percent (0.0001).

Benchmark PABs Interest Rate means 7.00% per annum.

Benchmark TIFIA Interest Rate means 3.50% per annum.

Benchmark TIFIA Credit Assistance Amount is \$300 million.

Benchmark TIFIA Eligible Costs Amount is \$913.6 million.

Breakage Costs means any prepayment premiums or penalties, make-whole payments or other prepayment amounts (including premiums) that the Concessionaire must pay under any

Project Financing Agreement as a result of the early repayment of Concessionaire Debt prior to its scheduled maturity date.

Business Day means any day on which the Department is officially open for business.

Capital Beltway Comprehensive Agreement means the Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project, dated as of December 19, 2007, between the Department and CBE.

CBE means Capital Beltway Express LLC, a Delaware limited liability company.

Casualty Cost is defined in Section 17.07(a).

Change in Control means (a) the Transfer of 50% or more of the equity interests in the Concessionaire by the Equity Members as of the Agreement Date, or (b) any Transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of the Concessionaire or a material aspect of its business. A change in the power to direct or control or cause the direction or control of the management of a shareholder, member, partner or joint venture member of the Concessionaire may constitute a Change in Control of the Concessionaire if such shareholder, member, partner or joint venture member possesses the power to direct or control or cause the direction or control of the management of the Concessionaire; *provided*, that the following will not constitute a Change in Control:

- (i) a change in possession of the power to direct or control the management of the Concessionaire or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, excluding such transactions involving an initial public offering;
- (ii) a change in possession of the power to direct or control the management of the Concessionaire or a material aspect of its business due solely to a bona fide transaction involving securities or beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of the Concessionaire, unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any Federal department or agency or State Party;
- (iii) an upstream reorganization or transfer of direct or indirect interests in the Concessionaire so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of such person, whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise;
- (iv) the exercise of preferred or minority equity holder veto or voting rights (whether provided by Law or by the Concessionaire's organizational documents) over major business decisions of the Concessionaire;

(v) the grant of Financing Assignments in accordance with the Agreement, or the exercise of Lender remedies thereunder, including foreclosure;

(vi) transfers of direct or indirect ownership interests in the Concessionaire (as applicable) between or among (1) Persons that are under common “control” (within the meaning of control contemplated by the definition clause (b) of Affiliate) or (2) any fund or entity managed directly or indirectly by a shareholder, member or partner of the Concessionaire or any Affiliate.

(vii) Transfers from either Equity Member as of the Agreement Date to the other Equity Member as of the Agreement Date or its Affiliate; or

(viii) a pledge or grant of a security interest, lien or other encumbrance of an Equity Member’s Distributions or its parent entities indirect right to receive such Distributions from the Concessionaire for the purpose of securing or serving as collateral for a debt instrument.

Change in Law means (a) the enactment of any Law after the Agreement Date or (b) any change, amendment to, repeal or revocation of any Law or in the interpretation or application thereof by any Governmental Authority after the Agreement Date; excluding, however, subject to the following sentence, any change in or new Law enacted but not yet effective as of the Agreement Date. Change in Law shall apply (i) for the southbound portion of the STE as if the phrase “after the Agreement Date” in the preceding sentence was “after the Southbound Opening Date,” (ii) for the northbound portion of the STE as if the phrase “after the Agreement Date” in the preceding sentence was “after the STE Final Acceptance Date,” (iii) for the 395 Project as if the phrase “after the Agreement Date” in the preceding sentence was “after January 17, 2017,” (iv) for the Fred Ex Project, as if the phrase “after the Agreement Date” in the preceding sentence was “after October 16, 2018,” and (v) for the Opitz Boulevard Ramp Project and the Seminary Road Ramp Project, as if the phrase “after the Agreement Date” in the preceding sentence was “after July 29, 2022.”

Change Order means a written order issued by the Department to the Concessionaire delineating changes in the Work or in the terms or conditions of the Technical Requirements, as applicable, in accordance with Section 14.02.

Change Proposal is defined in Section 14.02(b).

Chief Engineer means the Department’s Chief Engineer or any successor in function.

Claim means any and all claims, disputes, disagreements, causes of action, demands, suits, proceedings, damages, injuries, liabilities, obligations, losses, costs and expenses.

Claim Threshold is defined in Section 14.01(f)(i).

Code means the Internal Revenue Code of 1986, as amended.

Code of Virginia means the Code of Virginia of 1950, as amended from time to time.

Collateral Agent means the Institutional Lender acting on behalf of or at the direction of the other Lenders or the Person or Persons so designated in an intercreditor agreement or other document executed by all Lenders to whom Financing Assignments are outstanding at the time of execution of such document, a copy of which will be delivered by the Concessionaire to the Department.

Collateral Agency Agreement means the Collateral Agency and Account Agreement, dated as of July 1, 2012, by and among the Concessionaire, the Trustee and the Collateral Agent; as amended and restated by the Amended and Restated Collateral Agency and Account Agreement, dated as of November 20, 2012, by and among the Concessionaire, the Trustee and the Collateral Agent; as further amended and restated by the Second Amended and Restated Collateral Agency and Account Agreement, dated as of July 25, 2017, by and among the Concessionaire, the Trustee and the Collateral Agent; as further amended and restated by the Third Amended and Restated Collateral Agency and Account Agreement, dated as of February 10, 2022, by and among the Concessionaire, the Trustee and the Collateral Agent, and any future amendments to the Collateral Agency Agreement or any successor agreement.

Commencement of Use occurs when an Alternative Facility is opened for normal and continuous use by the travelling public or when a Project Enhancement is substantially completed.

Commissioner of Highways means the appointed chief executive officer of the Department or any successor in function.

Committed Investment means (a) any form of direct investment by Equity Members, including the purchase of equity shares in the Concessionaire; (b) any bona fide indebtedness of the Concessionaire for funds borrowed that: (i) is held by any Equity Member and (ii) is subordinated in priority of payment and security to all Concessionaire Debt held by Persons who are not Equity Members; or (c) an irrevocable on-demand letter of credit issued by or for the account of an Equity Member naming the Concessionaire as beneficiary and guaranteeing the provision of the direct investment or loan referenced in clause (a) or (b) of this definition.

Commonwealth Transportation Board (CTB) means a board of the State affiliated with the Department.

Compensation Event means any of the following events:

- (a) Department-Caused Delays;
- (b) the development or implementation of any Department Change or Department Project Enhancement pursuant to the Agreement;
- (c) any Discriminatory Change in Law;
- (d) a Toll Exemption Event;
- (e) an Alternative Facility, to the extent provided for in Section 12.05;

(f) any Significant Force Majeure Event to the extent the Department or the Concessionaire elects to continue the Agreement pursuant to Section 20.03;

(g) Tax Imposition;

(h) an order by the Department suspending tolls on, or diverting traffic onto, the HOT Lanes, other than as provided in the Agreement;

(i) an exercise by the Department of its Reserved Rights within or immediately adjacent to the HOT Lanes or the Design-Build Right of Way;

(j) an issuance by a Governmental Authority having jurisdiction over the Project of an injunction or other order enjoining or estopping the Concessionaire or the Department from the performance of its rights or obligations pursuant to the Agreement, in any case for more than 45 days in the aggregate;

(k) the discovery of any subsurface, man-made structure within the Project Right of Way, excluding any such structure known to the Concessionaire prior to the Agreement Date and to the extent provided under Section 14.01(f)(i); *provided*, however, that this subsection (k) shall not apply to the development and construction of the 395 Concessionaire Assets, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project;

(l) any Change in Law taking effect prior to the Guaranteed Substantial Completion Date, the 395 Guaranteed Final Completion Date, the Fred Ex Guaranteed Final Completion Date, the Opitz Boulevard Ramp Guaranteed Final Completion Date, or the Seminary Road Ramp Guaranteed Final Completion Date, respectively, that specifically affects the physical construction of the Project Assets in such a way as to increase the costs of the Work, to the extent *provided* under Section 14.01(f)(ii); or

(m) a delay in the completion of the Southbound RRC Project that results in (i) a loss of Toll Revenue to the Concessionaire or (ii) additional compensation under the Fred Ex Design-Build Contract to the Fred Ex Design-Build Contractor, which compensation must be based on an actual delay to the Southbound RRC Project baseline schedule that delays the Fred Ex Project Critical Path, substantiated by a schedule impact analysis provided by the Concessionaire in accordance with the Fred Ex Technical Requirements, *provided*, that any loss or delay under clauses (i) or (ii) above must arise directly and solely from the delay in the completion of the Southbound RRC Project, *provided further*, that Concessionaire Damages under clauses (i) and (ii) above shall not exceed (x) \$5,000 per day and (y) \$250,000 in the aggregate; *provided further*, however that no Compensation Event under this paragraph (m) may arise by reason of any delay in the completion of the Southbound RRC Project due to a Force Majeure Event or due to an action of the Concessionaire or the Fred Ex Design-Build Contractor;

provided, that no Compensation Event may arise by reason of:

(1) the negligence or misconduct of a Concessionaire Party; or

(2) any act or omission by a Concessionaire Party in breach of the provisions of the Agreement or any other Project Agreement.

Compensation Event Notice is defined in Section 14.01(a)(i).

Completed Work Value means the greater of zero and an amount equal to $(A - [B + C + D])$, where:

A = the total Contract Price (as defined in the Design-Build Contract), the total Contract Sum (as defined in the 395 TTMS Contract), the 395 Design-Build Cost, the total Contract Sum (as defined in the Fred Ex TTMS Contract), the Fred Ex Design-Build Cost, the Opitz Boulevard Ramp Construction Cost, the total Contract Sum (as defined in the Opitz Boulevard Ramp TMS Contract), and the Seminary Road Ramp Construction Cost, as applicable, plus the value of all Department-approved change orders to each of the Design-Build Contract, the 395 TTMS Contract, the 395 Design-Build Contract, the Fred Ex TTMS Contract, the Fred Ex Design-Build Contract, the Opitz Boulevard Ramp Construction Contract, the Opitz Boulevard Ramp TMS Contract, and the Seminary Road Ramp Construction Contract, each as applicable;

B = the estimated cost to complete all of the Work required to be undertaken in order to achieve Initial Service Commencement, 395 Service Commencement, Fred Ex Service Commencement, Opitz Boulevard Ramp Service Commencement, or Seminary Road Ramp Service Commencement, as applicable;

C = the Department's estimate of all those costs (internal and external) that it is reasonably likely to incur in retendering: (i) the Agreement, (ii) a replacement agreement to complete the 395 Project, (iii) a replacement agreement to complete the Fred Ex Project, (iv) a replacement agreement to complete the Opitz Boulevard Ramp Project, and/or (v) a replacement agreement to complete the Seminary Road Ramp Project, each as applicable; and

D = the aggregate of all amounts paid to the Concessionaire by the Department in respect of (i) Public Funds Amount, (ii) the 395 Public Funds Amount, (iii) any Fred Ex Pooled Contingency Covered-Costs paid by the Department, and (iv) any other amounts paid by the Department to the Concessionaire as compensation for the Work, as applicable, in accordance with Exhibit N on or prior to the date of termination of the Agreement, the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project, as applicable.

Concessionaire has the meaning assigned to such term in Section 56-557 of the Code of Virginia and, for purposes of the Agreement, means 95 Express Lanes LLC, a Delaware limited liability company, and its permitted successors and assigns.

Concessionaire Damages means the amount calculated pursuant to Section 14.01(b).

Concessionaire Debt means (without duplication) any bona fide indebtedness (including, but not limited to, PABs, VTIB assistance, State or TIFIA loans, guaranties and credit support, subordinated indebtedness and all such obligations arising under such indebtedness) related to the Project for or in respect of funds borrowed (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received. Concessionaire Debt includes principal, capitalized interest, accrued interest, customary

and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with respect thereto, payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto, lease financing obligations and Breakage Costs. Concessionaire Debt excludes any increase in indebtedness to the extent resulting from an agreement or other arrangement the Concessionaire enters into or first becomes obligated to repay after the occurrence of an event of termination giving rise to an obligation of the Department to pay termination compensation, including the Concessionaire's receipt of a notice of termination by the Department or the Concessionaire's declaration of a Department Default of the type entitling the Concessionaire to terminate the Agreement, as applicable, *provided*, that Concessionaire Debt will include any increase in indebtedness resulting from a Refinancing. In addition, (a) no indebtedness will constitute Concessionaire Debt unless and until the Department is *provided* with notice thereof and any related funding agreements and security documents in accordance with the Agreement and (b) for the purpose of calculating compensation upon a termination of the Agreement, Concessionaire Debt will not include Shareholder Loans. For the avoidance of doubt, the 95 Express Funding Commitment, the 395 Equity Commitment Amount, the Fred Ex Equity Commitment and Subordinate Debt incurred in connection with the Fred Ex Project shall not be considered Concessionaire Debt.

Concessionaire Default is defined in Section 19.01.

Concessionaire Default Termination Amount means:

(a) with respect to termination prior to the Substantial Completion Date for the Original HOT Lanes, the lesser of **A** or **B**;

(b) with respect to termination following the Substantial Completion Date for the Original HOT Lanes but prior to both the 395 Final Completion Date and Fred Ex Final Completion Date, (i) the lesser of **C** or **D**, *plus* (ii) the lesser of **E** or **F**;

(c) with respect to termination following the 395 Final Completion Date but prior to the Fred Ex Final Completion Date, (i) the lesser of **G** or **H**, *plus* (ii) the lesser of **I** or **J**;

(d) with respect to termination following the Fred Ex Final Completion Date but prior to the 395 Final Completion Date, (i) the lesser of **K** or **L**, *plus* (ii) the lesser of **M** or **N**; and

(e) with respect to termination following all of (i) the Substantial Completion Date for the Original HOT Lanes, (ii) the 395 Final Completion Date, and (iii) the Fred Ex Final Completion Date, the lesser of **O** or **P**;

where:

A = the Completed Work Value (for the Original HOT Lanes only);

B = the lesser of 80% of Concessionaire Debt (for the Original HOT Lanes only) then outstanding or 80% of Concessionaire Debt (for the Original HOT Lanes only) projected in the most recent Base Case Financial Model Update to be then outstanding;

C = the Project Value (for the Original HOT Lanes only);

D = the lesser of 100% of Concessionaire Debt (for the Original HOT Lanes only) then outstanding or 100% of Concessionaire Debt (for the Original HOT Lanes only) projected in the most recent Base Case Financial Model Update to be then outstanding;

E = the Completed Work Value (for the 395 HOT Lanes and Fred Ex HOT Lanes, but not the Original HOT Lanes);

F = the lesser of 80% of Concessionaire Debt (for the 395 Project and the Fred Ex Project, but not the Original HOT Lanes) then outstanding or 80% of Concessionaire Debt (for the 395 Project and the Fred Ex Project, but not the Original HOT Lanes) projected in the Base Case Financial Model Update (Fred Ex Final) (or, if applicable, Base Case Financial Model Update (Fred Ex Final/Additional)) to be then outstanding;

G = the Project Value (for the Original HOT Lanes and the 395 HOT Lanes (including the Opitz Boulevard Ramp HOT Lanes and/or the Seminary Road Ramp HOT Lanes, if on or after the Opitz Boulevard Ramp Final Completion Date or the Seminary Road Ramp Final Completion Date, respectively), but not the Fred Ex HOT Lanes);

H = the lesser of 100% of Concessionaire Debt (for the Original HOT Lanes and the 395 HOT Lanes, but not the Fred Ex HOT Lanes) then outstanding or 100% of Concessionaire Debt (for the Original HOT Lanes and the 395 HOT Lanes, but not the Fred Ex HOT Lanes) projected in the most recent Base Case Financial Model Update to be then outstanding;

I = the Completed Work Value (for the Fred Ex HOT Lanes only, but including the Opitz Boulevard Ramp HOT Lanes and/or the Seminary Road Ramp HOT Lanes, if prior to the Opitz Boulevard Ramp Final Completion Date or the Seminary Road Ramp Final Completion Date, respectively);

J = the lesser of 80% of Concessionaire Debt (for the Fred Ex Project only) then outstanding or 80% of Concessionaire Debt (for the Fred Ex Project only) projected in the most recent Base Case Financial Model Update to be then outstanding;

K = the Project Value (for the Original HOT Lanes and the Fred Ex HOT Lanes, but not the 395 HOT Lanes);

L = the lesser of 100% of Concessionaire Debt (for the Original HOT Lanes and the Fred Ex HOT Lanes, but not the 395 HOT Lanes) then outstanding or 100% of Concessionaire Debt (for the Original HOT Lanes and the Fred Ex HOT Lanes, but not the 395 HOT Lanes) projected in the Base Case Financial Model Update (Fred Ex Final) (or, if applicable, Base Case Financial Model Update (Fred Ex Final/Additional)) to be then outstanding;

M = the Completed Work Value (for the 395 HOT Lanes only);

N = the lesser of 80% of Concessionaire Debt (for the 395 Project only) then outstanding or 80% of Concessionaire Debt (for the 395 Project only) projected in the Base Case Financial

Model Update (Fred Ex Final) (or, if applicable, Base Case Financial Model Update (Fred Ex Final/Additional)) to be then outstanding;

O = the Project Value (for the Original HOT Lanes, the 395 HOT Lanes (including the Opitz Boulevard Ramp HOT Lanes and/or the Seminary Road Ramp HOT Lanes, if on or after the Opitz Boulevard Ramp Final Completion Date or the Seminary Road Ramp Final Completion Date, respectively), and the Fred Ex HOT Lanes) plus the Completed Work Value (for the Opitz Boulevard Ramp HOT Lanes and/or the Seminary Road Ramp HOT Lanes, if prior to the Opitz Boulevard Ramp Final Completion Date or the Seminary Road Ramp Final Completion Date, respectively); and,

P = the lesser of 100% of Concessionaire Debt then outstanding or 100% of Concessionaire Debt projected in the most recent Base Case Financial Model Update to be then outstanding;

in each case, less:

(1) Credit Balances; *provided*, however, that Credit Balances will not be deducted from the Project Value unless the Project Value is increased on account of such Credit Balances;

(2) unpaid and/or accrued default interest;

(3) Breakage Costs;

(4) any other amounts referred to in the definition of Concessionaire Debt that arise as a consequence of the termination of the Agreement or the acceleration of or requirement to mandatorily prepay the Concessionaire Debt;

(5) Non-Reimbursable Concessionaire Damages; *provided*, however, that Non-Reimbursable Concessionaire Damages will only be deducted from Concessionaire Debt and only to the extent the Non-Reimbursable Concessionaire Damages were used to make Distributions; and

(6) Allocable Costs incurred by the Department in terminating the Agreement for Concessionaire Default.

Concessionaire Default Triggering Event is defined in Section 19.01.

Concessionaire Financial Party means any guarantor of the Concessionaire's material and executory obligations under the Agreement or any Equity Member of the Concessionaire with material financial obligations to the Concessionaire, unless such obligations have been satisfied or are fully secured under the terms of the Equity Funding Guaranties, the 395 Equity Funding Guaranty or 395 Equity Letter of Credit, or the Fred Ex Equity Funding Guaranty or Fred Ex Equity Funding Letter of Credit.

Concessionaire Management Plan means the plan developed by the Concessionaire that describes the Concessionaire's managerial approach, strategy, and quality procedures to design,

build, operate and maintain the Project and achieve all requirements of the Agreement, as described in more detail in the Technical Requirements.

Concessionaire Marks means the Concessionaire's name and/or other trademarks, service marks and trade names owned or licensed by the Concessionaire.

Concessionaire Party means the Concessionaire and any Affiliate and any agents, Representatives, officers, directors, employees, Contractors, suppliers and materialmen of the Concessionaire or any Affiliate, and will include the Design-Build Contractor, the TTMS Contractor and the O&M Contractor.

Concessionaire Project Agreements means the Agreement, the Design-Build Contract, the O&M Agreement, the TTMS Contract and any new construction contract entered into by the Concessionaire for a substantial rebuild of the Work.

Concessionaire Project Enhancement means any extensions of, additions to, or major modifications to the Project undertaken by the Concessionaire pursuant to Section 12.01 or Section 12.05.

Concessionaire Representative means an individual designated in accordance with Section 25.04.

Concessionaire Response is defined in Section 8A.07.

Concessionaire TIFIA Protection Amount is defined in Section 7.01(d).

Concessionaire's Equity Value means the net present value of the anticipated future nominal Distributions (post-tax on the part of the Concessionaire but pre-tax on the part of the Equity Members) in respect of drawn equity contributions or Shareholder Loans as of the termination date determined by an independent nationally recognized third party expert appraiser, pursuant to the process set forth in Section 20.11.

Concessionaire's Interest means the interest of the Concessionaire in the Project created by the Agreement and the rights and obligations of the Concessionaire pursuant to the Agreement, which will constitute contract rights.

Constrained Long-Range Transportation Plan (CLRP) means the constrained long-range transportation plan that is adopted by the applicable metropolitan planning organizations and approved by the FHWA and the Federal Transit Administration as a prerequisite to receiving Federal transportation funds and/or approvals.

Construction Documentation means all Design Documentation, AFC Documents, and all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary for construction of the Project and/or the Utility Relocations included in the Work, in accordance with the Agreement and the other Project Agreements.

Construction Escrow Documents means the 95 Construction Escrow Documents, the 395 Construction Escrow Documents, the Fred Ex Construction Escrow Documents, the Opitz Boulevard, and/or the Seminary Road Ramp Construction Escrow Documents.

Construction Notice to Proceed is defined in Section 8.03(b).

Construction Period means the period (a) in relation to the Original Project, commencing on the Agreement Date through the Initial Service Commencement Date, (b) in relation to the 395 Project, commencing on the Amended and Restated Agreement Date through the 395 Final Completion Date, (c) in relation to the Fred Ex Project, commencing on the Second Amended and Restated Agreement Date through the Fred Ex Final Completion Date, (d) in relation to the Opitz Boulevard Ramp Project, commencing on the Third Amended and Restated Agreement Date through the Opitz Boulevard Ramp Final Completion Date, or (e) in relation to the Seminary Road Ramp Project, commencing on the Third Amended and Restated Agreement Date through the Seminary Road Ramp Final Completion Date, as applicable; *provided* however, that the Construction Period shall not apply to the design, development, and construction of the STE.

Construction Quality Management Plan means the plan developed by the Concessionaire that provides the organization, relationship and procedures that define clear lines of responsibility and well defined approach for meeting Project requirements and innovation in construction approach, as described in more detail in the Technical Requirements.

Consultant means any Person at the time retained by or on behalf of the Department or the Concessionaire, which Person is experienced and has a national and favorable reputation in the matters for which such Person is so employed.

Consumer Price Index (CPI) means the “Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items” (not seasonally adjusted), or its successor, as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor; *provided*, that if the CPI is changed so that the base year of the CPI changes, the CPI will be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor. If the CPI is discontinued or substantially altered, the applicable substitute index will be that chosen by the Secretary of the Treasury for the Department of Treasury’s Inflation-Linked Treasuries as described at 62 Fed. Reg. 846-847 (Jan. 6, 1997), or if no such securities are outstanding, will be determined by the parties in accordance with general market practice at that time.

Contingent Capital Contribution Amount is defined in Section 7.01(d).

Contract means any contract, subcontract, or other form of agreement to perform any part of the Work or provide any materials, equipment or supplies for the Project and/or the Utility Relocations included in the Work, on behalf of the Concessionaire or any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers.

Contractor means any Person with whom the Concessionaire has entered into any contract to perform any part of the Work or provide any materials, equipment or supplies for the Project and/or the Utility Relocations included in the Work, on behalf of the Concessionaire, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers. The

term “Contractor” will include the Design-Build Contractor, the TTMS Contractor and the O&M Contractor.

Cost is defined in Section 3.03(b)(i).

Cost Sharing Agreement means the Cost Sharing Agreement dated May 2, 2016 between the Department and the Concessionaire.

Credit Balances means the aggregate of any amounts standing to the credit of any bank account held by or on behalf of the Concessionaire.

Critical Path means the longest chain(s), in terms of time, of logically connected activities on a Project Schedule ending with Final Acceptance, 395 Final Completion, Fred Ex Final Completion, Opitz Boulevard Ramp Final Completion, or Seminary Road Ramp Final Completion, as applicable.

Day or day means a calendar day.

DBE Performance Improvement Plan is the plan submitted and approved by the Department pursuant to Section 24.03(a)(v)(B) with respect to improving the Concessionaire’s performance.

DBE/SWaM Plan means the plan developed by the Concessionaire that defines the Concessionaire’s approach to meet the DBE/SWaM participation goal, as described in more detail in the Technical Requirements.

Debt Service Reserve Account means any cash fund, letter of credit or similar security required to be maintained as a reserve for the payment of debt service on the initial Senior Concessionaire Debt under the Initial Project Financing Agreements, the 395 Project Financing Agreements, the Fred Ex Project Financing Agreements, the 2022 Project Financing Agreements, or the Original TIFIA Credit Assistance.

Defect means a deterioration in the condition or performance of an Asset, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any Project Asset, which would cause or have the potential to cause one or more of the following:

- (a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of road users;
- (b) structural deterioration of the affected Project Asset;
- (c) damage to a third party’s property or equipment;
- (d) damage to the Environment; or
- (e) failure of the affected Project Asset to meet a Performance Requirement.

Definitions means this Exhibit A.

Delay Event means:

(a) with respect to the Construction Period, the occurrence of one or more of the following during the Construction Period:

(i) a Force Majeure Event;

(ii) discovery of a Differing Site Condition or Unknown Geotechnical Condition;

(iii) an unreasonable and unjustifiable failure by a Governmental Authority to issue, or an unreasonable and unjustified delay by a Governmental Authority in issuing, any Governmental Approval or other authorization required for the Project or the Work;

(iv) issuance by a Governmental Authority of competent jurisdiction of an injunction or other order enjoining or estopping either the Department or the Concessionaire from the performance of its rights or obligations under the Agreement;

(v) a Change in Law that imposes one or more changed or additional requirements that directly and materially adversely impact the performance of the Work and that could not have been reasonably anticipated by a reasonable concessionaire;

(vi) the development or implementation of any Department Change or Department Project Enhancement pursuant to the Agreement;

(vii) Department-Caused Delay;

(viii) an exercise by the Department of any of its Reserved Rights within or immediately adjacent to the HOT Lanes or the Design-Build Right of Way; or

(ix) a delay in the completion of the Southbound RRC Project;

(b) with respect to the Operating Period, the occurrence of one or more of the following during the Operating Period:

(i) a Force Majeure Event;

(ii) issuance by a Governmental Authority of competent jurisdiction of an injunction or other order enjoining or estopping either the Department or the Concessionaire from the performance of its rights or obligations under the Agreement;

(iii) a Change in Law occurring after the applicable Service Commencement Date that imposes one or more changed or additional requirements that directly and materially adversely impact the performance of the Work and that could not have been reasonably anticipated by a reasonable concessionaire;

(iv) the development or implementation of any Department Change or Department Project Enhancement pursuant to the Agreement;

(v) Department-Caused Delay; or

(vi) a delay in the completion of the Southbound RRC Project; and

(c) which in either case under clause (a) or (b) above results in a delay or interruption in the performance by the Concessionaire of any obligation under the Agreement, *provided*, that the Delay Events do not include any delay that:

(i) could have been reasonably avoided by a Concessionaire Party;

(ii) is caused by the negligence or misconduct of a Concessionaire Party;

(iii) is caused by any act or omission by a Concessionaire Party in breach of the provisions of the Agreement or any other Project Agreement;

(iv) arises by reason of lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of any Concessionaire Party;

(v) except to the extent the same constitutes a Force Majeure Event, arises by reason of any strike, labor dispute or other labor protest involving any Person retained, employed or hired by a Concessionaire Party or its Representatives to supply materials or services for or in connection with the Project or any strike, labor dispute or labor protest caused by or attributable to any act (including any pricing or other price or method of operation) or omission of a Concessionaire Party or its Representatives;

(vi) except to the extent the same constitutes a Force Majeure Event, arises by reason of any weather condition (including any flooding) whether or not such weather conditions or the severity of such weather conditions are not or have not ordinarily or customarily been encountered or experienced; or

(vii) arises by reason of the development, redevelopment, construction, modification, maintenance or change in the operation of any existing or new mode of transportation (including mass transit facilities or operations, a road, street or highway) that results in the reduction of Toll Revenues or in the number of vehicles using the HOT Lanes, other than an Alternative Facility to the extent provided in Section 12.05.

Delay Event Notice is defined in Section 13.01(a).

Demobilization Costs means the amount necessary to reimburse the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire, including its reasonable Allocable Costs, to demobilize and terminate Contracts between the Concessionaire and third parties or Affiliates for performance of Work, excluding the Concessionaire's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates.

Department means the Virginia Department of Transportation, an agency of the State, and any other state agency succeeding to the powers, authorities and responsibilities of the Department invoked by or pursuant to the Agreement.

Department 395 Early Work Funding Commitment means not more than \$7,500,000.

Department-Caused Delay means:

(a) a delay or failure by the Department in performing any of its material obligations pursuant to the Agreement; or

(b) performance of work by the Department or its contractors (other than the Concessionaire and its Contractors performing the Work) within or immediately adjacent to the HOT Lanes or the Design-Build Right of Way that causes physical damage to the HOT Lanes or the Design-Build Work or limits access to the Design-Build Right of Way and such physical damage or limited access delays the Concessionaire's Work;

provided, however, that a Department-Caused Delay specifically excludes a delay attributable to:

(i) the submission of incomplete documentation for the Department's review;

(ii) required review of Governmental Approvals from other Governmental Authorities necessary or appropriate to the Department's review;

(iii) failure to obtain appropriation and allocation of public funds;

(iv) consumption of available Float;

(v) submittals or requests that are "deemed approved" if no response is *provided* within the applicable timeframe;

(vi) Force Majeure Events; or

(vii) the resolution of disputed payment amounts in connection with Service Commencement pursuant to Section 9.02.

Department Change means (a) a change to the Work pursuant to a Change Order or a Directive Letter issued pursuant to Section 14.02(d)(i) except to the extent that such change constitutes a Department Project Enhancement and (b) any other event that the Agreement expressly states will be treated as a Department Change.

Department Credit Amount has the meaning specified in Section 7.07(d)(ii).

Department Default is defined in Section 19.04.

Department Default Termination Amount means:

(a) if a notice of termination is delivered prior to the end of the Ramp-Up Period, the aggregate of (i) the lesser of 100% of Concessionaire Debt then outstanding or 100% of Concessionaire Debt projected in the most recent Base Case Financial Model Update to be then outstanding, (ii) all reasonable Demobilization Costs, and (iii) the greater of (1) the Concessionaire's Equity Value as of the date of payment of the applicable termination compensation amount, and (2) an amount that, when added to the Distributions actually received by the Equity Members up until the date of payment of the applicable termination compensation amount, are sufficient to yield the Initial Equity IRR on aggregate amounts paid by the Equity Members to the Concessionaire in the form of capital contributions or Shareholder Loans up until the date of payment of the applicable termination compensation amount; and

(b) if a notice of termination is delivered following the Ramp-Up Period, the greater of (i) the lesser of 100% of Concessionaire Debt then outstanding or 100% of Concessionaire Debt projected in the most recent Base Case Financial Model Update to be then outstanding, and (ii) the Project Value;

in each case, less any Credit Balances; *provided*, however, that Credit Balances will not be deducted from the Project Value unless the Project Value is increased on account of such Credit Balances.

Department Generated Documents means the Proposal Specifications and the Technical Requirements, in each case, only as such documents relate to the 395 Project.

Department Project Enhancements means any extensions of, additions to, or major modifications of the Project within the Project Right of Way undertaken by the Department pursuant to Section 12.02, except as part of maintenance, repair, reconstruction, rehabilitation, restoration or replacement of any improvements and assets.

Department Projects is defined in Section 12.04(a).

Department Protection 395 Benchmark Interest Rates is defined in Section 2 of Exhibit BB.

Department Protection 395 Credit Spreads is defined in Section 2 of Exhibit BB.

Department Representative means the individual designated in accordance with Section 25.04.

Department Shared Assets means those components of the Department's transportation network existing as of the Agreement Date or constructed, renovated or improved by the Concessionaire as part of the Project that are set forth in the Technical Requirements as "Department Shared Assets."

Department TIFIA Protection Amount is defined in Section 7.02(b).

Depository means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by the Concessionaire

and approved by the Department, to serve as depository pursuant to the Agreement; *provided*, that so long as Concessionaire Debt is outstanding, the Depository will be the Collateral Agent.

Design-Build Contract means (a) for the Original HOT Lanes, the contract, dated as of July 31, 2012, between the Concessionaire and the Design-Build Contractor for the Project, attached as Exhibit E, as it may be amended or supplemented, (b) for the 395 Project, the 395 Design-Build Contract, (c) for the Fred Ex Project, the Fred Ex Design-Build Contract, (d) for the Opitz Boulevard Ramp Project, the Opitz Boulevard Ramp Construction Contract, and (e) for the Seminary Road Ramp Project, the Seminary Road Ramp Construction Contract.

Design-Build Contractor means (a) for the Original HOT Lanes, Fluor-Lane 95, LLC, a Delaware limited liability company, (b) for the 395 Project, the 395 Design-Build Contractor, (c) for the Fred Ex Project, the Fred Ex Design-Build Contractor, (d) for the Opitz Boulevard Ramp Project, the Opitz Boulevard Ramp Construction Contractor, and (e) for the Seminary Road Ramp Project, the Seminary Road Ramp Construction Contractor.

Design-Build Letter of Credit is defined in Section 17.08(b).

Design-Build Right of Way means active construction areas on the Project Right of Way during the applicable Construction Period.

Design-Build Work means the services provided by the Design-Build Contractor under the Design-Build Contract for the design and construction of the Project Assets. For the avoidance of doubt, the design, development and construction of the STE shall not be included in the Design-Build Work.

Design-Build Work Guarantee is defined in Section 17.08(b).

Design Documentation means such plans, drawings, specifications and other design documentation (including design standards, design or durability reports, models, samples and calculations) in computer readable and written formats prepared by or on behalf of the Concessionaire for the purposes of the performance of the Work or any component thereof in accordance with the Agreement.

Design Public Hearing Documentation means documents approved by the Department's Chief Engineer following a required public hearing relative to design of the Project.

Design Quality Management Plan means the plan developed by the Concessionaire that provides the organization, relationship and procedures that define clear lines of responsibility and well defined approach for meeting Project requirements and innovation in design approach, as described in more detail in the Technical Requirements.

Design Work Notice to Proceed is defined in Section 8.03(a).

Development Contract means any agreement that is entered into by the Department and the Concessionaire from time to time that sets forth the parties' rights and obligations with respect to the design and construction of a Project Enhancement, which will include such terms as may be mutually agreed by the Concessionaire and the Department.

Deviation means any material proposed or actual change, deviation, modification, alteration or exception from any of the Technical Requirements.

DEW Categorical Exclusion means the Categorical Exclusion for the DEW Component approved by FHWA on March 1, 2017.

DEW Component means the widening of the southbound section of I-395 between the Duke Street and Edsall Road interchanges from three general purpose lanes to four general purpose lanes, modifications to the Duke Street and Edsall Road interchanges, a modified entry ramp from Duke Street to the southbound section of I-395 and other necessary improvements to accommodate such widening.

Differing Site Conditions means any:

(a) threatened or endangered species whose habitat is protected by Law on the Project Right of Way;

(b) archaeological, paleontological or cultural resources on the Project Right of Way;

(c) Unknown Pre-Existing Hazardous Substances;

(d) Hazardous Substances spilled or otherwise placed on the Project Right of Way: (i) in the case of the Original Corridor (but not the Opitz Boulevard Ramp HOT Lanes ROW), subsequent to the Agreement, (ii) in the case of the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW), subsequent to January 17, 2017, (iii) in the case of the Fred Ex Corridor, subsequent to October 16, 2018, or (iv) in the case of the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project, subsequent to July 29, 2022, as applicable, other than by a Concessionaire Party in the course of performing the Work; or

(e) Utilities in the Project Right of Way, excluding (i) in the case of the initial Project Right of Way (but not the Opitz Boulevard Ramp HOT Lanes ROW), Utilities known to the Concessionaire as of the Agreement Date, (ii) in the case of the Project Right of Way within the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW), Utilities known to the Concessionaire as of January 17, 2017, (iii) in the case of the Project Right of Way within the Fred Ex Corridor, Utilities known to the Concessionaire as of October 16, 2018, or (iv) in the case of the Project Right of Way for the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project, Utilities known to the Concessionaire as of July 29, 2022, as applicable;

provided, however, that to qualify as a Differing Site Condition, such condition:

(i) was not known or discovered by the Concessionaire prior to the Agreement Date or, in the case of the Project Right of Way within the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW), January 17, 2017, or, in the case of on the Project Right of Way within the Fred Ex Corridor, October 16, 2018, or, in the case of the Project Right of Way for the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project, July 29, 2022, as applicable, and could not reasonably be expected to have been known or discovered by the Concessionaire prior to the Agreement Date or, in the case of the Project Right of Way within the 395 Corridor (but not the Seminary Road Ramp HOT Lanes

ROW), January 17, 2017, or, in the case of on the Project Right of Way within the Fred Ex Corridor, October 16, 2018, or, in the case of the Project Right of Way for the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project, July 29, 2022 as applicable; and

(ii) has a material impact on the Concessionaire's performance of the Work pursuant to the terms of the Agreement.

Direct Agreement means the agreement executed among the Department, the Concessionaire and the Collateral Agent, in the form attached as Exhibit R-1.

Direct Agreement (Comprehensive Agreement) means the Direct Agreement (Comprehensive Agreement) executed among the Department, the Concessionaire and the Collateral Agent, in the form attached as Exhibit R-6.

Direct Agreement (Second ARCA) means the Direct Agreement (Second ARCA) executed among the Department, the Concessionaire and the Collateral Agent, in the form attached as Exhibit R-4.

Directive Letter means an order issued by the Department in accordance with Section 14.02 directing the Concessionaire to perform Work.

Disadvantaged Business Enterprise Program (DBE) means the Federal program designed to support socially and economically disadvantaged firms working with transportation agencies.

Discriminatory Change in Law means the adoption of any State Law or any change in any State Law or in the interpretation or application thereof during the Term that, except as otherwise provided within this definition:

(a) has the effect of discriminating solely against the Project, the Concessionaire or operators of toll roads in the State, except where such State Law or change in State Law or in interpretation or application (i) is in response, in whole or in part, to any failure to perform or breach of the Agreement or other Project Agreement, violation of Law or Governmental Approval, culpable act, omission or negligence on the part of any Concessionaire Party or (ii) is otherwise permitted under the Agreement;

(b) permits vehicles other than Permitted Vehicles to travel on the Project;

(c) permits vehicles then paying tolls to travel on the Project at reduced tolls or without tolls, including decreases in then existing High Occupancy Requirements; or

(d) limits the Concessionaire's right to impose, charge, collect and enforce tolls and incidental charges in accordance with Section 5.01.

None of the following will be a Discriminatory Change in Law:

- (i) the development and operation of any existing or new mode of transportation (including a road, street, highway or mass transit facility) that results in the reduction of Toll Revenues or in the number of vehicles using the Project;
- (ii) any changes in Taxes of general application;
- (iii) the exercise by the State of its regulatory and police powers;
- (iv) a Toll Exemption Event; or
- (v) any order issued by a State or federal court or the interpretation by a State or federal court of any Law.

A Safety Compliance Order will not be deemed to be a Discriminatory Change in Law. For purposes of the definition of “Discriminatory Change in Law,” the term “Governmental Authority” means the government of the State or of any department, commission, board, bureau, agency or other regulatory or governmental authority established under the laws of the State.

Dispute means any Claim, dispute, disagreement or controversy between the Department and the Concessionaire concerning their respective rights and obligations under the Project Agreements, including concerning any alleged breach or failure to perform and remedies.

Distribution means

- (a) any distribution, dividend or other payment, monetary or in-kind, made by the Concessionaire to any Equity Members, including from the proceeds of any Refinancing, on account of equity investment in the Concessionaire;
- (b) any payment by the Concessionaire to an Affiliate other than pursuant to an Affiliate Contract to which the Department has consented in accordance with Section 24.02(k) or which does not require the Department’s consent in accordance with Section 24.02(k); or
- (c) the early release of any contingent funding liabilities to any Equity Member.

Division Administrator for Civil Rights means the Department’s Division Administrator for Civil Rights or any successor in function.

Document Management Plan means the plan developed by the Concessionaire to define the document management approach for all Work Product, as described in more detail in the Technical Requirements.

Eads Street Component means the development, design, construction, financing, operation and maintenance of certain improvements to the connections at Eads Street (including the fourth lane, gates, traffic signals and betterments associated with improving transit circulation for carpools, vanpools and buses within the Pentagon) as set forth in Exhibit EE hereto.

Early Work means the work identified in Exhibit B-4.

Electronic Toll Collection Agreement means the agreement between the Concessionaire and the Department executed in accordance with Section 5.01(f), attached as Exhibit K.

Emergency means any unplanned event within the Project Right of Way that:

(a) presents an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, to property adjacent to the Project or to the safety of road users or the traveling public;

(b) has jeopardized the safety of road users or the traveling public; or

(c) is a declared state of emergency pursuant to State or Federal Law.

Environment means soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air.

Environmental Assessment means the Revised Environmental Assessment submitted by the Department to FHWA on November 7, 2011, and consisting of (a) the Environmental Assessment prepared by the Department and dated September 8, 2011, (b) the summary of comments that the Department received to the September 8, 2011, Environmental Assessment along with the Department's responses to those comments, (c) the summary of changes to the Project and mitigation measures that were based on the comments and (d) a summary of findings, agreements, and determinations that the Department made for the Project.

Environmental Laws means any Laws applicable to the Project regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health, the Environment or Hazardous Substances, including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 USC Section 6901 *et seq.*, the Federal Clean Water Act, 33 USC Section 1351 *et seq.*, the Occupational Safety and Health Act, 29 USC Section 651 *et seq.*, as currently in force or as hereafter amended.

Environmental Management Plan means the plan developed by the Concessionaire that sets forth the Concessionaire's approach to environmental management, as described in more detail in the Technical Requirements.

Equity Contribution Amount is defined in Section 7.01(d).

Equity Contributions means (without duplication) (i) cash, (ii) funds available for distribution in the Distribution Account (as defined in the Collateral Agency Agreement) that have not yet been distributed and are made available for Project-related expenditures, and (iii) funds made available from each of the Equity Funding Agreements, the 395 Equity Funding Agreements, the Fred Ex Equity Funding Agreements, funds contributed by or on behalf of the Equity Sponsors to fund the Opitz Boulevard Ramp Project, and funds contributed by or on behalf of the Equity Sponsors to fund the Seminary Road Ramp Project, each in form and substance acceptable to the Department in its reasonable sole discretion.

Equity Funding Agreements means the equity funding agreements, by and among the Equity Sponsors, the Concessionaire and the agent for the Lenders, with respect to the capital commitments for the Project.

Equity Funding Guaranty is defined in Section 17.08(a)(i).

Equity IRR means the nominal post-tax Internal Rate of Return calculated on the Committed Investment over the full Term projected in the most recent Base Case Financial Model Update.

Equity Member means any Person with a direct equity interest in the Concessionaire.

Equity Sponsor(s) means (a) initially, Fluor and DRIVE USA Investments LLC, (b) as of and after the Amended and Restated Agreement Date, DRIVE USA Investments LLC and Transurban Express Lanes LLC, (c) as of and after the Second Amended and Restated Agreement Date, Transurban Express Lanes LLC and (d) as of and after the Third Amended and Restated Agreement Date, Transurban Express Lanes LLC.

Escrow Agent means Truist Bank, and its successors and assigns, or such other entity serving as escrow agent pursuant to the Escrow Agreement.

Escrow Agreement means the Fourth Amended and Restated Escrow Agreement dated as of the Third Amended and Restated Agreement Date among the Concessionaire, the Department, and the Escrow Agent, which will be in substantially the form attached as Exhibit D, as it may be amended or supplemented from time to time.

Escrow Documents means the 95 Escrow Documents, the 395 Escrow Documents, the Fred Ex Escrow Documents, the Opitz Boulevard Ramp Escrow Documents, and/or the Seminary Road Ramp Escrow Documents, and includes any documents submitted after the Agreement Date, the Amended and Restated Agreement Date, the Second Amended and Restated Agreement Date or the Third Amended and Restated Agreement Date, as applicable, pursuant to Section 18.05(d).

ETC Services means electronic toll collection services.

ETTM means electronic toll and traffic management.

ETTM Data means all data generated by or accumulated in connection with the operation of the ETTM System, including but not limited to customer lists, customer identification numbers, customer account information and billing records and other customer specific information.

ETTM Equipment means the automatic vehicle identification equipment, video monitoring equipment, vehicle occupancy detection equipment, toll violator systems, and electronic toll collection equipment, including its components, systems and subsystems; the traffic management system equipment; communications equipment, and all associated hardware and physical infrastructure and other computer hardware and software necessary to meet the performance specifications for ETTM.

ETTM Facilities means the administration/operations building, toll gantries and technical cabinets, utility connections, lighting facilities and other facilities associated with electronic toll and traffic management.

ETTM System means the ETTM Facilities, ETTM Equipment and the Software which monitors, controls or executes the ETTM Equipment, all of which will meet the minimum performance criteria established by the Technical Requirements.

Exempt Vehicles means (a) maintenance vehicles of the Department and its contractors and snow removal vehicles of the Department and its contractors, each in the performance of its duties related to the HOT Lanes; and (b) emergency vehicles and law-enforcement vehicles using the Project for the performance of their duties.

Express Operations Center means the HOT OC Services facilities located at 6440 General Green Way, Alexandria, Virginia.

E-ZPass means an electronic toll collection system used in the Commonwealth of Virginia and as part of the “E-ZPass Interagency Group”.

Federal means of or relating to the central government of the United States of America.

Federal Requirements means the provisions required to be part of federal-aid contracts relating to highway projects and applicable to the Project, including the provisions set forth in Exhibit U.

Fiber MOA means the Memorandum of Agreement Fiber Optic Resource Sharing Agreement dated January 25, 2013 between the Department and Summit Infrastructure Group, LLC.

Final Acceptance means the occurrence of all the events and satisfaction of all the conditions with respect to the Work as set forth in Section 8.09(b).

Final Acceptance Certificate means the certificate issued by the Department pursuant to Section 8.09(c).

Final Acceptance Date means the date on which Final Acceptance is achieved, as indicated on the Final Acceptance Certificate.

Final Acceptance Deadline means the date which is 90 Days from the Substantial Completion Date, as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

Final Permit Fee Buyout Payment means \$232,000,000 presented in time of payment (nominal) dollars.

Final Proposal means the Concessionaire’s Final Proposal in accordance with the Proposal Specifications.

Final Proposal Security has the meaning given to such term in the Proposal Specifications.

Financial Close means satisfaction of all of the conditions set forth in Section 7.03(a).

Financial Close Adjustment Protocol attached as Exhibit BB.

Financial Close Date means the date on which Financial Close occurs.

Financial Close Deadline means the date by which Financial Close must occur, which is the first to occur of (a) 270 Days following the date on which the Concessionaire has submitted an application to USDOT to obtain financing under any credit assistance program under TIFIA for the Project, or (b) 270 Days following the date on which USDOT provides written notice to the Concessionaire that the Project will not receive financing under any credit assistance program under TIFIA for the Project.

Financial Model Auditor means any independent, recognized auditor engaged by the Concessionaire, acceptable to the Department, who will audit the Base Case Financial Model and modifications to the Financial Model Formulas, and perform such other services as are required in the Agreement.

Financial Model Formulas means the financial formulas that the Concessionaire and the Department have agreed upon as of the Agreement Date as a basis for the Initial Base Case Financial Model and any updates pursuant to the Agreement but without the data and the information used by or incorporated in the Initial Base Case Financial Model, Base Case Financial Model or Base Case Financial Model Update.

Financing Assignment is defined in Section 7.04(a).

Financing Escrow Documents means the 95 Financing Escrow Documents, the 395 Financing Escrow Documents, the Fred Ex Financing Escrow Documents, the Opitz Boulevard Ramp Financing Escrow Documents, and/or the Seminary Road Ramp Financing Escrow Documents.

First Amendment means the First Amendment to the Comprehensive Agreement Related to the I-95/395 HOV/HOT Lanes Project dated May 2, 2016 between the Department and the Concessionaire.

First ARCA means the Amended and Restated Comprehensive Agreement Related to the I-95/395 HOV/HOT Lanes Project dated June 8, 2017 between the Department and the Concessionaire.

First Measurement Period is defined in Section 5.07(b)(i).

First Threshold HOV Percentage and Rate is defined in Section 5.07(b)(i).

Fitch Ratings mean Fitch Ratings, and any successor thereto which is a nationally recognized rating agency.

Fixed Fred Ex TIFIA Credit Assistance Benefit is defined in Section 7.03C(d)(i)(A).

Float means the amount of time that any given activity or logically connected sequence of activities shown on a Project Schedule may be delayed before it will affect the Concessionaire's ability to achieve Substantial Completion by the Guaranteed Substantial Completion Date, 395 Final Completion by the 395 Guaranteed Final Completion Date, Fred Ex Final Completion by the Fred Ex Guaranteed Final Completion Date, Opitz Boulevard Ramp Final Completion by the Opitz Boulevard Ramp Guaranteed Final Completion Date, or Seminary Road Ramp Final Completion by the Seminary Road Ramp Guaranteed Final Completion Date. Such Float is generally identified as the difference between the early completion date and late completion date for all activities as shown on a Project Schedule.

Fluor means Fluor Enterprises, Inc.

Fluor Guarantor means Fluor Corporation.

FONSI means the Finding of No Significant Impact related to the Project issued by the FHWA on December 5, 2011.

Force Majeure Event means the occurrence of an event, act, omission, condition, or circumstance beyond either parties' reasonable control and due to no fault of either party, or those for whom either party is responsible, that materially prevents or delays the Concessionaire from performing any of its obligations pursuant to the Agreement. An event is not a Force Majeure Event if such event is otherwise specifically dealt with in the Agreement or arises by reason of:

- (a) the negligence or misconduct of a Concessionaire Party;
- (b) any act or omission by a Concessionaire Party in breach of the provisions of the Agreement;
- (c) Delay Events, other than Force Majeure Events;
- (d) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of a Concessionaire Party;
- (e) any strike, labor dispute or labor protest directed solely at a Concessionaire Party or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of a Concessionaire Party;
- (f) an earthquake after Substantial Completion, 395 Final Completion, Fred Ex Final Completion, Opitz Boulevard Ramp Final Completion, or Seminary Road Ramp Final Completion, as the case may be, that causes ground accelerations below the AASHTO bridge design standards for the site of the operating Project Assets;
- (g) floods after Substantial Completion, 395 Final Completion, Fred Ex Final Completion, Opitz Boulevard Ramp Final Completion, or Seminary Road Ramp Final Completion, as the case may be, below the base flood levels specified in the Technical Requirements;

(h) market conditions and economic conditions affecting the availability, supply, or cost of labor, equipment and materials, construction equipment and supplies, or commodities;

(i) market conditions and economic conditions affecting traffic volumes, traffic revenue or the Concessionaire's ability to meet its financial obligations for the Project; or

(j) weather conditions, other than hurricane force winds, tornadoes and floods to the extent not excluded by the above.

For the avoidance of doubt, Force Majeure Events shall not apply to the design, development and construction of the STE.

Fragnet or Fragmentary Network means the sequence of new activities and/or activity revisions, logic relationships, and resource changes that are proposed to be added to the existing schedule to demonstrate the influence of impacts to the schedule.

Fred Ex Additional Equity Commitment Amount means the equity commitment committed at Fred Ex Financial Close for purposes of calculating the Total Financing Amount.

Fred Ex Additional Financial Close means a second financial close in relation to the Fred Ex Project that involves PABs financing and/or Fred Ex TIFIA Credit Assistance. Fred Ex Additional Financial Close: (i) shall be optional to the Concessionaire, (ii) shall be in addition to the Fred Ex Financial Close, (iii) may occur after the Fred Ex Financial Close Deadline, (iv) may occur only once with respect to PABs, (v) may occur only once with respect to Fred Ex TIFIA Credit Assistance, and (vi) will not be treated as a refinancing under Section 7.05 of the Agreement. Nothing in the Agreement prohibits the Concessionaire from incorporating PABs financing and/or Fred Ex TIFIA Credit Assistance as part of Fred Ex Financial Close.

Fred Ex Additional Financial Close Date means the date all of the conditions precedent set forth in Section 7.03C(b) are satisfied such that the Department issues a certificate confirming that all such conditions precedent have been satisfied.

Fred Ex Additional Lanes means any additional GP Lanes along the Fred Ex Corridor within the Project Right of Way to the extent the plans for such improvements have not been included in (a) CLRP or LRTP and the SYIP as of January 9, 2018 or (b) the Technical Requirements. For the avoidance of doubt, the I-95 Northbound Rappahannock River Crossing Project has been included in the applicable CLRP or LRTP and the SYIP as of January 9, 2018.

Fred Ex Assets means the Fred Ex HOT Lanes and other assets constructed, maintained, or held by the Concessionaire as part of the Fred Ex Project (or any applicable portion of such assets).

Fred Ex Baseline Schedule means (a) the Initial Fred Ex Baseline Schedule identifying the major Work activities in sufficient detail to enable the Department to monitor and evaluate design and construction progress until such time as the Fred Ex Baseline Schedule is approved by the Department pursuant to the Technical Requirements and (b) the Fred Ex Baseline Schedule thereafter as updated according to the Technical Requirements.

Fred Ex Benchmark Design-Build Price means \$370,000,000.

Fred Ex Betterment means any nonessential modification to the Fred Ex Design-Build Contract, the Fred Ex TTMS Contract, or any other Contract, in each case related to the design and construction of the Fred Ex Project as amended or supplemented from time to time, that:

- (i) exceeds the applicable Contract base requirements;
- (ii) increases compensation paid by the Concessionaire to the Fred Ex Design-Build Contractor, the Fred Ex TTMS Contractor, or to such other Contractor related to the Fred Ex Project;
- (iii) provides no more than a *de minimis* benefit to the Department; and
- (iv) can reasonably be characterized as an enhancement or upgrade.

Fred Ex Concessionaire Breach is defined in Section 19.09.

Fred Ex Concessionaire Breach Termination Amount means (x) any amounts due to the Concessionaire under Section 8.22(c)(iii) of the Agreement (but only to the extent such amounts are not counted under (y)), *plus* (y) the lesser of (a) the Completed Work Value and (b) the lesser of 80% of Concessionaire Debt (for the Fred Ex Project) then outstanding or 80% of Concessionaire Debt (for the Fred Ex Project) projected in the most recent Base Case Financial Model Update to be then outstanding; less:

- (i) Fred Ex Credit Balances;
- (ii) unpaid and/or accrued default interest;
- (iii) Breakage Costs;
- (iv) any other amounts referred to in the definition of Concessionaire Debt that arise as a consequence of the termination of the Fred Ex Project or the acceleration of or requirement to mandatorily prepay the Concessionaire Debt; and
- (v) Allocable Costs incurred by the Department in terminating the Fred Ex Project for the Fred Ex Concessionaire Breach.

Fred Ex Concessionaire Breach Triggering Event is defined in Section 19.09.

Fred Ex Concessionaire Committed Contingency is defined in Section 8.22(b)(i)(A).

Fred Ex Construction Escrow Documents is defined in Section 18.05(a).

Fred Ex Corridor means the portion of Interstate 95 located within the State with a northern terminus of approximately mile marker 145 and a southern terminus of approximately mile marker 133. For the purposes of Sections 8.12 and 8.22(a), the Fred Ex Corridor will include the STE Corridor.

Fred Ex Credit Balances means the aggregate of any amounts standing to the credit of any bank account held by or on behalf of the Concessionaire for the Fred Ex Project.

Fred Ex Department Committed Contingency is defined in Section 8.22(b)(i)(B).

Fred Ex Design-Build Contract means the design-build contract dated April 18, 2019 between the Concessionaire and the Fred Ex Design-Build Contractor.

Fred Ex Design-Build Contractor means Branch-Flatiron, Joint Venture.

Fred Ex Design-Build Cost means \$291,000,000.

Fred Ex Design-Build Price Protection is defined in Section 7.03B(c)(iii).

Fred Ex Design-Build Price Protection Benefit is defined in Section 7.03B(c)(iii).

Fred Ex Design-Build Price Protection Calculation Date means the date the Concessionaire receives and opens competitive pricing proposals from firms competing for the Fred Ex Design-Build Contract, or (if applicable) the date the Concessionaire receives and opens competitive best-and-final pricing offers from firms competing for the Fred Ex Design-Build Contract.

Fred Ex Design-Build Work means the Fred Ex Work (or “Work”) as defined within the Fred Ex Design-Build Contract.

Fred Ex Direct Agreement means the Direct Agreement executed among the Department, the Concessionaire, and the Collateral Agent, in the form attached as Exhibit R-3.

Fred Ex Direct Agreement (Comprehensive Agreement) means the Fred Ex Direct Agreement (Comprehensive Agreement) executed among the Department, the Concessionaire and the Collateral Agent, in the form attached as Exhibit R-7.

Fred Ex Early Work means the work identified in Exhibit B-6.

Fred Ex Equity Funding Agreements means the equity funding agreements by and among each Equity Sponsor, the Concessionaire, and the agent for the Lenders relating to each Equity Sponsor’s duty to fund the Fred Ex Project.

Fred Ex Equity Funding Guarantee is defined in Section 17.08(a)(iii)(B).

Fred Ex Equity Letter of Credit is defined in Section 17.08(a)(iii)(A).

Fred Ex Escrow Documents is defined in Section 18.05(a).

Fred Ex External Engineering Costs means any engineering costs incurred by the Concessionaire in direct support of the scope of work of the Fred Ex Project, and performed by an individual or entity other than the Concessionaire or its employees, or any Concessionaire Affiliate or its employees.

Fred Ex Final Completion means the satisfaction of the conditions set forth in Section 8.21, as and when confirmed by the Department's Issuance of the Fred Ex Final Completion Certificate.

Fred Ex Final Completion Certificate means a letter or certificate issued by the Department in accordance with Section 8.21(b) evidencing the Department's determination that Fred Ex Final Completion has occurred.

Fred Ex Final Completion Date means the date the Department issues the Fred Ex Final Completion Certificate.

Fred Ex Final Completion Recovery Plan is defined in Section 8.15(f).

Fred Ex Financial Close means the satisfaction (or waiver by the Department in its sole discretion) of all conditions precedent set forth in Section 7.03B(b).

Fred Ex Financial Close Date means the date all of the conditions precedent set forth in Section 7.03B(b) are satisfied (or waived by the Department in its sole discretion) such that the Department issues a certificate confirming that all such conditions precedent have been satisfied.

Fred Ex Financial Close Deadline means the date by which Fred Ex Financial Close must occur, which is May 29, 2019, which is 210 days from the date the Concessionaire delivers to the Department a written notice of intent to award the Fred Ex Design-Build Contract or another date as may be mutually agreed by the Concessionaire and the Department.

Fred Ex Financial Close Security means a Letter of Credit in the minimum amount of \$10,000,000 delivered pursuant to Section 7.03B(f).

Fred Ex Financial Protections are defined in Section 7.03B(c).

Fred Ex Financial Protections Calculation Dates means collectively, the Fred Ex Design-Build Price Protection Calculation Date, the Fred Ex PABs Interest Rate Protection Calculation Date, and the Fred Ex TIFIA Interest Rate Protection Calculation Date.

Fred Ex Financing Escrow Documents is defined in Section 18.05(a).

Fred Ex Guaranteed Final Completion Date means 1,430 days following the date of issuance of the Design Work NTP and Construction NTP under the Fred Ex Design-Build Contract.

Fred Ex Guaranteed Route 17 GP Exit Ramp Completion Date means July 15, 2021.

Fred Ex HOT Lanes means the HOT lanes separated from the adjacent GP Lanes and the associated entry and exit ramps within the Project Right of Way on the Fred Ex Corridor. For the purposes of Section 5.07, the Fred Ex HOT Lanes include the STE HOT Lanes.

Fred Ex Interest Rate Protection Deadline means March 31, 2020.

Fred Ex Interest Rate Protection is defined in Section 7.03B(c)(i).

Fred Ex Interest Rate Protection Period means the time period between (a) the Fred Ex Interest Rate Setting Date and (b) the date prior to the Fred Ex Interest Rate Protection Deadline that the Concessionaire locks in the last of the rates for Fred Ex TIFIA Credit Assistance and/or PABs used to finance the Fred Ex Project.

Fred Ex Interest Rate Setting Date means October 6, 2017.

Fred Ex LNTP means any LNTP relating to the Fred Ex Project issued pursuant to Section 8.02(a).

Fred Ex Long Stop Date means the date that is 365 Days after the Fred Ex Guaranteed Final Completion Date; *provided* that a new Fred Ex Long Stop Date may be established pursuant to a Fred Ex Final Completion Recovery Plan proposed and approved pursuant to Section 8.15(f) as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

Fred Ex NEPA Approval means the Finding of No Significant Impact with respect to certain elements of the Fred Ex Project issued on March 19, 2018.

Fred Ex PABs All-In Rates means the combined benchmark interest rates and credit spreads, each applicable to PABs and sourced as of October 6, 2017, and stated in Exhibit BB-2.

Fred Ex PABs Interest Rate Protection Calculation Date means the date the interest rates applicable to any PABs issued to finance the Fred Ex Project are locked.

Fred Ex Payment Bond is defined in Section 17.08(b)(iii).

Fred Ex Performance Bond is defined in Section 17.08(b)(iii).

Fred Ex Pooled Contingency Approval is defined in Section 8.22(b)(iv).

Fred Ex Pooled Contingency-Covered Cost(s) means (i) additional, unanticipated costs and expenses incurred by the Department and required to design and construct the Southbound RRC Overlap Work that are not reasonably anticipated at the time the Department executes the Southbound RRC Design-Build Contract, and (ii) additional, unanticipated costs and expenses incurred by the Concessionaire and required to design and construct the Fred Ex Project that were not included in the Fred Ex Design-Build Contract, the Fred Ex TTMS Contract, the Base Case Financial Model Update (Fred Ex Final) or Base Case Financial Model Update (Fred Ex Final/Additional). Costs expressly contemplated in the Fred Ex Design-Build Contract and the Fred Ex TTMS Contract, Fred Ex Betterments (including oversight and/or management costs associated with any Fred Ex Betterment), Department Changes in respect of the Fred Ex Project, and Department Project Enhancements will not count as Fred Ex Pooled Contingency-Covered Costs unless otherwise agreed by the parties.

Fred Ex Pooled Contingency-Covered Cost(s) Notice means prior written notice from a party requesting approval to classify any cost as a Fred Ex Pooled Contingency-Covered Cost(s),

which is provided to the non-requesting party. The notice shall state the amount of the expenditure, the amount of Fred Ex Department Committed Contingency or Fred Ex Concessionaire Committed Contingency required to be funded, if any, and include any applicable invoices and/or supporting documentation or information.

Fred Ex Pooled Contingency Deductive Credits means the aggregated amounts of any deductive modifications to the Fred Ex Design-Build Contract, the Fred Ex TTMS Contract, or any other Contract related to the design and construction of the Fred Ex Project, which amounts reduce the compensation paid by the Concessionaire under the applicable Contract. Such savings shall be made available as part of the Fred Ex Concessionaire Committed Contingency pursuant to Section 8.22(b)(i)(A).

Fred Ex Pooled Contingency Fund is defined in Section 8.22(b)(i).

Fred Ex Pooled Contingency Fund Report means a report provided by the Concessionaire to the Department on the status of the Fred Ex Pooled Contingency Fund, including (i) an up-to-date total of the amount of the Fred Ex Pooled Contingency Fund expended, (ii) any pending, approved, or disputed contingency use classifications or amounts, (iii) a break-out between internal costs and external costs (and specifically identifying all costs paid to Affiliates) for which payment or reimbursement is sought from the Fred Ex Pooled Contingency Fund, and (iv) a list of issues that the Concessionaire considers unanticipated, and which could increase Concessionaire oversight and management costs on the Fred Ex Project, and the potential result from each identified issue.

Fred Ex Project means the development, design, construction, financing, operation, and maintenance of the Fred Ex HOT Lanes.

Fred Ex Project Binding Proposal Base Case Financial Model means the financial model delivered by the Concessionaire to the Department on January 9, 2018, in conjunction with the Concessionaire's binding proposal relating to the Fred Ex Project.

Fred Ex Project Financing Agreements means the Project Financing Agreements entered into by the Concessionaire on or about the Fred Ex Financial Close Date or the Fred Ex Additional Financial Close Date, if applicable, in the form agreed between the parties.

Fred Ex Project Scope is defined in Exhibit B-1 of the Agreement.

Fred Ex Route 17 GP Exit Ramp means the portion of the Fred Ex Project, which provides access from the southbound GP Lanes to the Route 17 interchange.

Fred Ex Route 17 GP Exit Ramp Completion means the satisfaction of the conditions set forth in Section 8.22(d), as and when confirmed by the Department's Issuance of the Fred Ex Route 17 GP Exit Ramp Completion Certificate.

Fred Ex Route 17 GP Exit Ramp Completion Certificate means a letter or certificate issued by the Department in accordance with Section 8.22(d) evidencing the Department's determination that Fred Ex Route 17 GP Exit Ramp Completion has occurred.

Fred Ex Route 17 GP Exit Ramp Completion Date means the date the Department issues the Fred Ex Route 17 GP Exit Ramp Completion Certificate.

Fred Ex Route One Improvements means any new construction, material expansion or other additional alteration to U.S. Route One in Virginia between Route 610 (Garrisonville Road) and Route 17 in Stafford County, the plans for which have not been included in Table 7.4 in Chapter 7 (Financially Constrained Long-Range Highway Plan) of the FAMPO 2040 Long Range Transportation Plan for the George Washington Region as of April 15, 2013, that results, in the aggregate, more than two additional miles of limited access highway (as defined in Virginia Code § 33.2-400) with a speed limit of at least 55 miles per hour.

Fred Ex ROW Costs is defined in Section 7.03B(i)(i).

Fred Ex Service Commencement Date means the date on which Service Commencement for the Fred Ex Project was achieved, as indicated in the Fred Ex Service Commencement Notice to Proceed.

Fred Ex Service Commencement Notice to Proceed is defined in Section 9.02(g).

Fred Ex Technical Requirements means the Technical Requirements included as Exhibit C (including all Attachments thereto), as amended to include the Fred Ex Project.

Fred Ex TIFIA Credit Assistance means funding made available to the Concessionaire under the Fred Ex TIFIA Loan Documentation to fund the Fred Ex Project.

Fred Ex TIFIA Credit Assistance Base Amount means \$268,000,000.

Fred Ex TIFIA Financial Close means the execution of the Fred Ex TIFIA Loan Documentation by the Concessionaire and the TIFIA Lender.

Fred Ex TIFIA Financial Close Date means the date when the Fred Ex TIFIA Loan Documentation is executed by the last party to release signature pages.

Fred Ex TIFIA Interest Rate Protection Calculation Date means the date the interest rates applicable to any Fred Ex TIFIA Credit Assistance are locked.

Fred Ex TIFIA Loan Documentation means loan agreements between the Concessionaire and the TIFIA Lender pursuant to which the Fred Ex TIFIA Credit Assistance (if any) is provided, and a subordination and intercreditor agreement, in each case, that is in a form agreed and readily executable by the parties (other than the completion of terms of an administrative, non-substantive or ministerial nature, or the final interest rate and related terms that by their nature cannot be finalized prior to the date of Fred Ex TIFIA Financial Close), together with any related agreements and documents delivered therewith.

Fred Ex TIFIA Rates means the SLGS Daily Rate Table based on the applicable tenor of the proposed loan, published as of 10 a.m. on October 6, 2017.

Fred Ex TTMS Contract means the Turnkey Lump-Sum Design-Build Contract Relating to the Fredericksburg Extension of the I-95/395 HOV/HOT Lanes Tolling and Traffic Management System dated April 18, 2019 between the Concessionaire and TTMS Contractor.

Fred Ex TTMS Contractor means the TTMS Contractor in relation to the Fred Ex TTMS Contract.

Fred Ex TTMS Letter of Credit is defined in Section 17.08(b)(iii).

Fred Ex TTMS Payment Bond is defined in Section 17.08(b)(iii).

Fred Ex TTMS Performance Bond is defined in Section 17.08(b)(iii).

Fred Ex TTMS Work means the services provided by the TTMS Contractor under the Fred Ex TTMS Contract in respect of the construction of the Project Assets.

Fred Ex Work Product means all work product, complete or incomplete, generated by or on behalf of the Concessionaire relating to the Fred Ex Project, including, without limitation: (a) preliminary field inspection (PFI) level plans (PDF and DGN files associated with the plans), (b) preliminary drainage and stormwater management calculations, (c) preliminary bridge plans (PDF and DGN files), (d) conceptual signing plans, (e) topographic survey files and TIN files, (f) geotechnical boring data and the geotechnical data report, (g) any project cost estimates and (h) any independent reviews or reports related to the Fred Ex Project, all in computer readable and written format.

GARVEE Trustee means U.S. Bank National Association, as trustee under the Master Trust Indenture between the CTB and the U.S. Bank National Association, as the same may be supplemented from time to time.

General Assembly means the General Assembly of the State.

Generally Accepted Accounting Principles (GAAP) means such accepted accounting practice as conforms at the time to generally accepted accounting principles in the United States of America, consistently applied.

Geotechnical Conditions means any geotechnical, subsurface or latent physical conditions within the Project Right of Way (including natural foundations, infrastructures or manmade obstructions within the Project Right of Way).

Good Faith Efforts means the adequate demonstrated effort required by the Concessionaire and its Contractors to achieve the DBE, SWaM and on-the-job training goals or other requirements in Section 24.03.

Good Industry Practice means the industry practices and standards that would be exercised by a prudent and experienced concessionaire, designer, engineer, contractor, operator or maintenance provider engaged in the same kinds of undertakings and under similar circumstances as those applying to the Work.

Governmental Approvals means all local, regional, state and Federal agreements, studies, findings, permits, approvals, authorizations, certifications, consents, decisions, exemptions, filings, leases, licenses, registrations, rulings and other governmental authorizations required to be obtained or completed under Law prior to undertaking any particular activity contemplated by the Agreement, a Development Contract or a Change Order. The term “Governmental Approvals” includes NEPA Documents.

Governmental Authority means any court, Federal, state, or local government, department, commission, board, bureau, agency or other regulatory or governmental authority, but will not include the Department.

GP Bridges Component means the rehabilitation of the following bridges on or over the GP Lanes along the 395 Corridor: (a) 395 over Sanger Ave. (Northbound & Southbound) – Structure No. 2805, (b) 395 over West Braddock Rd. (Northbound & Southbound) – Structure No. 2806 and (c) 395 (NB GP Lanes and HOV) over Route 27 NB and Joyce Street – Structure No. 2040.

GP Lanes means the general purpose traffic lanes (in either or both directions) along the Original Corridor, the 395 Corridor, the Fred Ex Corridor, and, from and after the respective Service Commencement Date, along the STE Corridor.

Gross Revenues means the amount calculated as follows:

- (a) Toll Revenues; plus
- (b) proceeds of business interruption or similar insurance against loss of revenues from operation of the Project; plus
- (c) all other amounts derived from or in respect of the operation of the Project which constitute revenues in accordance with GAAP, including any interest income the Concessionaire earns on any funds on deposit in any bank account or securities account; plus
- (d) the amounts paid or to be paid by the Department to the Concessionaire as a result of a Compensation Event within the current calendar year that compensates for Net Revenue Impact and Net Cost Impact pursuant to the Agreement; plus
- (e) all amounts received or retained by the Concessionaire pursuant to Sections 5.07 and 22.05; minus
- (f) total credits and refunds of Toll Revenues made by the Concessionaire to customers and users on account of Toll Revenue previously collected.

Gross Toll Revenues means (a) toll revenues from the Project (excluding any fees recovered as part of any enforcement process but including amounts collected as tolls as part of any enforcement process); plus (b) any amounts received by the Concessionaire in lieu of any such toll revenues, including without limitation, (i) insurance proceeds, (ii) amounts paid by the Department as Compensation Events, and (iii) payments from the Electronic Toll Collection

Servicer paid by the Department under Section 2.6 (or any such succeeding provision) of Exhibit K; plus (c) all amounts received by the Concessionaire pursuant to Section 5.07.

Gross Toll Share Payment is defined in Exhibit J-2.

Gross Toll Share Payment Trigger is defined in Exhibit J-2.

Guaranteed Substantial Completion Date means December 31, 2014, as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

Guidelines means the PPTA Implementation Guidelines, as may be revised from time to time.

Handback Period is defined in Section 20.02(f).

Handback Requirements is defined in Section 20.02(a).

Hazardous Environmental Condition means the presence of any Hazardous Substances on, in, under or emanating from the Project Right of Way that is present at concentrations or in quantities that: (a) may present an imminent or substantial safety or health hazard for the Department, the Concessionaire or their respective employees, agents, representatives or independent contractors, the general public or the surrounding environment or (b) are required to be removed or remediated as a matter of Law or in accordance with the requirements of any Governmental Authority.

Hazardous Substance means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is or could be considered a contaminant, pollutant, dangerous substance, toxic substance, Hazardous Waste, solid waste, or hazardous material which is or becomes regulated by Laws or which is classified as hazardous or toxic under Laws.

Hazardous Waste means a waste that is (a) listed as a hazardous waste in 40 CFR Section 261.31 to 261.33, and (b) exhibits one of the following characteristics: ignitability, corrosivity, reactivity or toxicity, or is otherwise defined as a hazardous waste by Law.

Health, Safety and Security Plan means the plan developed by the Concessionaire that defines the health, safety and security activities required during the design and construction of the Project, as described in more detail in the Technical Requirements.

High Occupancy Requirement means the number of Persons in accordance with Law applicable to the Project required to be traveling in a vehicle for the vehicle to use the HOT Lanes without payment of a toll.

High Occupancy Vehicle or **HOV** means a Permitted Vehicle traveling with at least the number of Persons required by the High Occupancy Requirement.

Hiring Development Plan means the plan developed by the Concessionaire that describes its approach to complying with the Department's geographic labor and veterans hiring preference work plan.

HOT Lanes means the high occupancy toll lanes and the associated entry and exit ramps within the Project Right of Way that are separated from the adjacent GP Lanes, and including, for the avoidance of doubt, the Opitz Boulevard Ramp HOT Lanes and the Seminary Road Ramp HOT Lanes, and the use of which is restricted pursuant to Section 5.01.

HOT OC Buy-In Cost or Access Fee means the amount paid to CBE pursuant to the Shared Facilities Agreement.

HOT OC Services means the toll and other services to be provided to the Project pursuant to the Shared Facilities Agreement, the O&M Agreement and the Operations and Support Services Agreement for the Capital Beltway HOT Lanes Project dated December 19, 2007 between CBE and Transurban (USA) Operations, Inc.

HOV Lanes means the two reversible high occupancy vehicle lanes and the associated entry and exit ramps within the Project Right of Way that are separated from the adjacent GP Lanes, and in operations as of the Agreement Date.

I-95 Northbound Rappahannock River Crossing Project means the Department's construction project between approximately just south of Interstate 95 exit 130 to just north of exit 133, inclusive of a section of new roadway adjacent to the Fred Ex HOT Lanes (between Truslow Road and Centerport Parkway) to be constructed and maintained by the Department.

I-95 Uplift Ratio means the calculation as set forth in Exhibit P.

I-95 Uplift Toll Revenue means the incremental revenue from the Original HOT Lanes and any HOT Lanes on the STE recorded at 395 Financial Close in accordance with Exhibit P.

Inaccessibility Notice is defined in Section 8.17(b)(v).

Incident means any unplanned event within the Project Right of Way that causes potential or actual disruption to the free flow of traffic.

Initial 395 Baseline Schedule means the initial construction schedule for the 395 Project, as proposed by the Concessionaire and approved by the Department, which is attached as Exhibit B-3.

Initial Base Case Financial Model means the Financial Model Formulas and the assumptions and information, including, but not limited to, projections and calculations with respect to revenues, expenses, the repayment of Concessionaire Debt, applied to the Financial Model Formulas and which is prepared on the basis of the Base Case Traffic Model as of the Agreement Date.

Initial Baseline Schedule means the initial construction schedule, proposed by the Concessionaire and approved by the Department, which is attached as Exhibit B-2.

Initial Equity Commitment Amount is defined in Section 7.01(d).

Initial Equity IRR means the nominal post-tax Internal Rate of Return on Committed Investment over the full Term as defined in the Initial Base Case Financial Model.

Initial Fred Ex Baseline Schedule means the initial construction schedule for the Fred Ex Project, as proposed by the Concessionaire and approved by the Department, which is attached as Exhibit B-3A.

Initial Fred Ex Design-Build Contract Price means \$291,000,000.

Initial HOT OC Buy-In Cost means \$21,400,000.

Initial Opitz Boulevard Ramp Baseline Schedule means the initial construction schedule for the Opitz Boulevard Ramp Project, as proposed by the Concessionaire and approved by the Department, which is attached as Exhibit B-3B.

Initial Permit Fee Buyout Payment means \$45,000,000 presented in time of payment (nominal) dollars.

Initial Project Financing Agreements means the Project Financing Agreements entered into by the Concessionaire on or about the Financial Close Date in the form agreed between the parties on or before the Agreement Date.

Initial Public Funds Amount means \$94 million, which will be adjusted at Financial Close pursuant to Section 7.03(b).

Initial Seminary Road Ramp Baseline Schedule means the initial construction schedule for the Seminary Road Ramp Project, as proposed by the Concessionaire and approved by the Department, which is attached as Exhibit B-3C.

Initial Service Commencement Date means December 28, 2014.

Initial Southbound RRC Overlap Work Price means \$4,000,000.

Institutional Lender means:

(a) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;

(b) any (i) savings bank, commercial bank, investment bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States of America or any state thereof, (iii) pension fund, hedge fund, foundation or university or college endowment fund, (iv) entity which is formed for the purpose

of securitizing mortgages, whose securities are sold by public offering or to qualified investors under the U.S. Securities Act of 1933, as amended, (v) Person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the U.S. Securities Act of 1933, as amended, within one year of its making (*provided*, that an entity described in this clause (b) only qualifies as an Institutional Lender if it is subject to the jurisdiction of state and Federal courts in the State in any actions);

(c) any “qualified institutional buyer” under Rule 144(a) of the Securities Act of 1933 or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms;

(d) the holders of debt issued by a PABs Issuer or the trustee for such holders, so long as the indenture trustee for such holders of debt itself is an Institutional Lender; or

(e) any other financial institution or entity designated by the Concessionaire and approved by the Department (*provided*, that such institution or entity, in its activity under the Agreement, is acceptable under then current guidelines and practices of the State);

provided, that each such entity (other than entities described in clause (b)(iv) and clause (c) of this definition) or combination of such entities if the Institutional Lender is a combination of such entities will have individual or combined assets, as the case may be, of not less than \$1 billion; and *provided* further, that an entity described in clause (b)(iv) of this definition must have assets of not less than \$100 million.

Insurance Requirements means Exhibit Y.

Intellectual Property means the ETTM books and records, Escrow Documents, copyrights (including moral rights), trademarks (registered and unregistered), designs (registered, including applications, and unregistered), patents (including applications), circuit layouts, Source Code and Source Code Documentation, plant varieties, business and domain names, inventions, trade secrets, proposals, copyrightable works, customer and supplier lists and information, and other results of intellectual activity, copies and tangible embodiments of all of the foregoing (in whatever form or medium) and licenses granting any rights with respect to any of the foregoing (to the extent assignable), in each case, relating to the Project.

Interim Agreement means the agreement dated October 24, 2006 between the Department, Fluor Virginia, Inc., and Transurban (USA) Development Inc., as amended from time to time.

Internal Rate of Return means the discount rate that makes the net present value of all cash flows from an investment equal to zero.

IRR Threshold means the IRR Threshold as set forth in the most recent Base Case Financial Model Update. All Base Case Financial Model Updates shall explicitly state the IRR Threshold.

Key Member means (a) Fluor, Lane Construction Corporation (but not Virginia Paving Corporation) (solely with respect to the Original Project during its Construction Period) and the Design-Build Contractor with respect to the Design-Build Work, (b) Transurban and the O&M Contractor with respect to the O&M Work, or (c) the TTMS Contractor with respect to the TTMS Work.

Known Geotechnical Conditions means Geotechnical Conditions:

(a) identified in Exhibit S;

(b) which the Concessionaire should have known were present (i) within the Project Right of Way within the Original Corridor (but not the Opitz Boulevard Ramp HOT Lanes ROW) based on the Geotechnical Conditions identified in Exhibit S, as of the Agreement Date, (ii) within the Project Right of Way within the STE Corridor based on the contents of Exhibit S, as of the applicable Service Commencement Date, (iii) within the Project Right of Way within the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW) based on the contents of Exhibit S, as of January 17, 2017, (iv) within the Project Right of Way within the Fred Ex Corridor based on the contents of Exhibit S, as of October 16, 2018; and (v) within the Project Right of Way for the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project based on the contents of Exhibit S, as of July 29, 2022.

(c) which were actually known by the Concessionaire to be present (i) within the Project Right of Way within the Original Corridor (but not the Opitz Boulevard Ramp HOT Lanes ROW) as of the Agreement Date, (ii) within the Project Right of Way within the STE Corridor as of the applicable Service Commencement Date, (iii) within the Project Right of Way within the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW) as of January 17, 2017, (iv) within the Project Right of Way within the Fred Ex Corridor based on the contents of Exhibit S, as of October 16, 2018, and (v) within the Project Right of Way for the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project based on the contents of Exhibit S, as of July 29, 2022.

Known Pre-Existing Hazardous Substances means Hazardous Substances:

(a) identified in Exhibit T;

(b) which the Concessionaire should have known were present (i) within the Project Right of Way within the Original Corridor (but not the Opitz Boulevard Ramp HOT Lanes ROW) based on the contents of Exhibit T, as of the Agreement Date, (ii) within the Project Right of Way within the STE Corridor based on the contents of Exhibit T, as of the applicable Service Commencement Date, (iii) within the Project Right of Way within the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW) based on the contents of Exhibit T, as of January 17, 2017, (iv) within the Project Right of Way within the Fred Ex Corridor based on the contents of Exhibit T, as of October 16, 2018; and (v) within the Project Right of Way for the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project based on the contents of Exhibit T, as of July 29, 2022.

(c) which were actually known by the Concessionaire to be present (i) within the Project Right of Way within the Original Corridor (but not the Opitz Boulevard Ramp HOT Lanes ROW) as of the Agreement Date, (ii) within the Project Right of Way within the STE Corridor as

of the applicable Service Commencement Date, (iii) within the Project Right of Way within the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW) as of January 17, 2017, (iv) within the Project Right of Way within the Fred Ex Corridor based on the contents of Exhibit T, as of October 16, 2018; and (v) within the Project Right of Way for the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project based on the contents of Exhibit T, as of July 29, 2022.

provided, however, that notwithstanding anything to the contrary herein (including Exhibit T), any Hazardous Substances resulting from the gasoline spill on February 26, 1995 at the northbound on-ramp to I-95 at Backlick Road in Newington, Exit 166 and any Hazardous Substances consisting of asbestos on the existing bridges within the Corridor (other than asbestos contained in insulation in steel pipes on such existing bridges) shall not be considered to be Known Pre-Existing Hazardous Substances for purposes of the Agreement.

Labor, Employment and DBE/SWaM Related Matters means Exhibit AA.

Lane Closure Damages is defined in Section 8.14.

Late Scope Issue means any issue that meets the definition of Scope Issue except that the Concessionaire did not identify it to the Department before the 395 Scope Validation Work Completion Date.

Law means all laws, treaties, ordinances, judgments, Federal Requirements, decrees, injunctions, writs and orders of any Governmental Authority, and all rules, regulations, orders, formal interpretations and permits of any Governmental Authority having jurisdiction over construction of the Project on the Project Right of Way, performance of the Work, or operation of the Project, or the health, safety or environmental condition of the Project or the Project Right of Way, as the same may be in effect from time to time. Laws include the Code of Virginia and the Uniform Act.

Lenders means each of the Institutional Lenders that are parties to the Project Financing Agreements, including the Collateral Agent, and their respective successors and assigns who also qualify as Institutional Lenders subject to Section 7.04(a)(i).

Letter of Credit means an irrevocable, unconditional letter of credit in favor of the Department (or where indicated, the Concessionaire or the Collateral Agent with the Department as permitted transferee), in form and content reasonably acceptable to the Department that:

(a) is payable within one Business Day in U.S. dollars upon presentation of a sight draft and a certificate confirming that the Department (or, where indicated, the Collateral Agent or the Concessionaire) has the right to draw under such letter of credit from time to time in the amount of such sight draft and confirming such other matters that may be required under the Letter of Credit, without presentation of any other document, statement or authorization;

(b) is issued by a commercial bank or trust company that (i) has a combined capital and surplus of at least \$1,000,000,000, (ii) is a national banking association, a state bank chartered in one of the states of the United States, or the U.S. branch of a foreign bank, and (iii) is not an Affiliate of the Concessionaire;

(c) is issued by a commercial bank or trust company that has a current credit rating of at least A- or its equivalent from at least two nationally recognized Rating Agencies (or such other credit rating as is acceptable to the Department in its discretion and approved by the Department prior to the submission of the letter of credit);

(d) provides that, if the issuer of the Letter of Credit fails to maintain the ratings specified above in clause (c), then the Letter of Credit may be drawn upon in full within 30 Days unless the Concessionaire or other applicable account party provides a replacement Letter of Credit that meets the requirements of the Agreement or provides additional security acceptable to the Department in its sole discretion;

(e) has an initial term as specified in the Agreement, to the extent applicable;

(f) provides for the continuance or extension of its term for a period of at least one year or, if earlier, until the end of the term for which the Letter of Credit is required or as otherwise provided for in the Agreement;

(g) provides that the office for presentment of sight drafts specified in the Letter of Credit will be located at a specified street address in the City of New York, New York; and

(h) provides that it may be drawn upon in accordance with its terms within ten Business Days of its scheduled expiration date unless, prior to such tenth Business Day, the Department (or, where indicated, the Collateral Agent or the Concessionaire) has received evidence that the scheduled expiration date of such letter of credit has been extended or continued in accordance with the provisions hereof or that the replacement letter of credit meeting the requirements of the Agreement has been provided to the intended beneficiary of the expiring letter of credit.

Leverage Ratio means the ratio that results from the following calculation: Total Financing Amount minus Equity Contributions divided by the Total Financing Amount. For example and the avoidance of doubt, (a) a Leverage Ratio of 65% means 65% of the Total Financing Amount consists of funds other than Equity Contributions and 35% of the Total Financing Amount consists of Equity Contributions and (b) a positive change in the Leverage Ratio means a decrease in the percentage of Equity Contributions.

Lien means any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Virginia Uniform Commercial Code).

Life Cycle Maintenance Plan means the plan produced annually by the Concessionaire and approved by Department identifying Major Maintenance and Handback Requirements needs, the estimated costs and timing of those needs and such other information as may be reasonably requested by the Department, as described in Section 9.04(b) and the Technical Requirements.

Limited Notice to Proceed (LNTP) means the applicable limited notice to proceed issued pursuant to Section 8.02(a).

List of Initial Project Financing Agreements, 395 Project Financing Agreements, Fred Ex Project Financing Agreements, 2022 Project Financing Agreements, Opitz Boulevard Ramp Project Equity Contribution Agreement and Financing Assignments means Exhibit O.

Lock-up Period means the period commencing on the Agreement Date and ending on the later of (a) December 20, 2017 and (b) the Initial Service Commencement Date.

Long Range Transportation Plan (LRTP) means the long-range transportation plan that is adopted by the Fredericksburg Area Metropolitan Planning Organization and approved by the FHWA and the Federal Transit Administration as a prerequisite to receiving Federal transportation funds and/or approvals.

Long Stop Date means the date that is 547 Days after the Guaranteed Substantial Completion Date; *provided* that a new Long Stop Date may be established pursuant to a Substantial Completion Recovery Plan proposed and approved pursuant to Section 8.15 as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

Losses means, with respect to any Person, any losses, liabilities, judgments, damages, fees, penalties, fines, sanctions, charges or out-of-pocket and documented costs or expenses actually suffered or incurred by such Person, including as a result of any injury to or death of persons or damage to or loss of property.

Maintenance Management System (MMS) means the system required under the Technical Requirements to record inventory, failures, repairs, maintenance activities, inspections performed, communications, and notifications of Incidents and Defects.

Maintenance of Traffic (MOT) Plan means the plan developed by the Concessionaire that sets forth the Concessionaire's approach to maintenance of traffic, as described in more detail in the Technical Requirements.

Maintenance Rating Program (MRP) means the Department's Maintenance Rating Program.

Major Arterials means primary routes and all other State Highways in the State that connect directly to I-95, I-395, or I-495.

Major Maintenance means maintenance, repair, renewal, reconstruction or replacement of any portion or component of the Project Assets, as applicable, of a type which is not normally included as Ordinary Maintenance.

Major Maintenance Performance Security means any Performance Bond, surety, Letter of Credit, guaranty or similar instrument procured in accordance with the terms of the Agreement as set forth in Section 17.08(d).

Major Maintenance Reserve Fund or Account means a deposit account established by the Concessionaire at a financial institution which qualifies as an Institutional Lender under clause (b) of the definition thereof for the exclusive purpose of holding funds to pay for Tasks of Major

Maintenance as described in Section 9.04, together with all amounts from time to time contained therein.

Major Subcontract means a Contract entered into by the Concessionaire for the construction, installation, or development of the Fred Ex Project with a value of \$10,000,000 or more.

Mass Transit Vehicles and Commuter Buses means vehicles providing scheduled transportation services to the general public over designated routes with specified stops and for the purposes of Section 5.01(b) transporting at a minimum the High Occupancy Requirement.

Measurement Period means each of the First Measurement Period, the Second Measurement Period and the Third Measurement Period.

Minimum Revenue Profile is defined in Section 6 of Part B of Exhibit P.

Monthly Progress Reports means those reports prepared by the Concessionaire or its contractors that are required pursuant to the Agreement for monthly delivery to the Department Representative that reflect the status of and information related to the development and operation of the Project.

Moody's means Moody's Investor Service, Inc. and any successor thereto which is a nationally recognized rating agency.

NEPA means the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*, as amended and as it may be amended from time to time.

NEPA Documents means (a) in the case of the Original Project, the Environmental Assessment and the FONSI, (b) in the case of the STE, the STE NEPA Reevaluation, (c) in the case of the 395 Project, the 395 NEPA Approval, (d) in the case of the Fred Ex Project, the Fred Ex NEPA Approval, and (e) in the case of the Opitz Boulevard Ramp Project, the Opitz Boulevard Ramp NEPA Approval.

Net Cost Impact means the aggregate value of any net increase in the Concessionaire's costs (including the Concessionaire's Allocable Costs to the extent applicable), reflected on an annual basis, directly attributable to a Compensation Event, as compared with what the Concessionaire's costs (including the Concessionaire's Allocable Costs, to the extent applicable) would have been absent the occurrence of the Compensation Event, less the increased costs that can reasonably be mitigated by the Concessionaire. Net Cost Impact will:

(a) exclude:

(i) third-party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships, in each case to the extent that such costs would not be reimbursed to an employee of the Department in the regular course of business;

(ii) unallowable costs under the following provisions of the Federal Contract Cost Principles, 48 CFR Section 31.205: Section 31.205-8 (contributions or donations), Section 31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), Section 31.205-14 (entertainment costs), Section 31.205-15 (fines, penalties, and mischarging costs), Section 31.205-27 (organization costs), Section 31.205-34 (recruitment costs), Section 31.205-35 (relocation costs), Section 31.205-43 (trade, business, technical and professional activity costs), Section 31.205-44 (training and education costs), and Section 31.205-47 (costs related to legal and other proceedings); and

(b) exclude amounts paid or to be paid to Affiliates that have not been approved by the Department pursuant to Section 24.02(k) that are in excess of the pricing the Concessionaire could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor; and

(c) take into account any savings in costs, including finance costs, attributable to the Compensation Event.

Net Cost Saving means the aggregate value of any decrease in the Concessionaire's costs reflected on an annual basis directly attributable to a Compensation Event, a Deviation, whether proposed, approved or unauthorized, a change in the Technical Requirements, whether or not such change constitutes a Department Change, or Non-Conforming Work waived by the Department, as compared with what the costs would have been absent occurrence of a Compensation Event, Deviation or Non-Conforming Work but excluding any savings in costs taken into account to reduce the Net Cost Impact attributable to such Compensation Event.

Net Revenue Impact means:

(a) any net increase or decrease in Gross Revenues directly attributable to a Compensation Event;

(b) in the case of a net decrease in Gross Revenues, less any savings in Project operating and maintenance costs resulting from the Compensation Event (excluding any savings in costs subtracted from Net Cost Impact for the same Compensation Event) as compared with what the Gross Revenues would have been absent occurrence of the Compensation Event;

(c) in the case of a net increase in Gross Revenues, less any incremental increase in Project operating and maintenance costs resulting from the Compensation Event (excluding any increase in costs included in Net Cost Impact for the same Compensation Event); less

(d) any lost Gross Revenues that can reasonably be mitigated by the Concessionaire (excluding any mitigation of costs subtracted from Net Cost Impact for the same Compensation Event).

Non-Compliance Points means the points that may be assessed for Performance Shortfalls, as set forth in Exhibit W.

Non-Compliance Points Table means the table attached as Exhibit W showing the Performance Shortfalls.

Non-Conforming Work means Work that does not conform to the requirements of the Agreement, relevant Governmental Approvals, Law or the Design Documentation, including but not limited to Deviations not approved in writing by the Department.

Non-Financial Close Termination Amount means the amounts due and owing for unpaid Early Work performed up to the effective date of termination of the Agreement, in an amount not to exceed \$42,706,962.

Non-Permitted Closure is defined in Section 8.14.

Non-Reimbursable Concessionaire Damages means that portion of any Concessionaire Damages previously paid to the Concessionaire that compensated the Concessionaire for Net Cost Impacts and/or Net Revenue Impacts attributable to the period after the effective date of termination of the Agreement.

Notice to Commence Acquisition means a notice issued by the Department, providing the Concessionaire with the right and obligation to initiate an offer and/or to acquire a property.

O&M Agreement or Operations and Maintenance Agreement means the Contract between the Concessionaire and the O&M Contractor, pursuant to which the O&M Contractor will operate and maintain the Project, as it may be amended or supplemented.

O&M Contractor or Operations and Maintenance Contractor means Transurban (USA) Operations Inc. (the “Initial O&M Contractor”) or any Person entering into a Contract with the Concessionaire to perform the O&M Work.

O&M Overhead Costs is defined in Section 24.02(d)(iii).

O&M Reserve Fund means any cash fund or Letter of Credit required to be maintained as a reserve to pay Operating Costs.

O&M Work means any and all operation, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Project during the Operating Period, including Major Maintenance and potential Project Enhancements, except to the extent that such Work is furnished pursuant to the Design-Build Contract. For the avoidance of doubt, O&M Work shall not include the operations and maintenance of the 395 Department Assets.

Occoquan Auxiliary Lane means a single southbound auxiliary lane connecting the southbound Route 123 on-ramp onto Interstate 95 with the off-ramp at westbound Prince William Parkway as submitted by Prince William County in the SMART SCALE application (Round Three; Project ID No. 3499, but without regard to whether such application itself is ultimately approved or whether such scope is accomplished by means other than such SMART SCALE application) to the Department, *provided* that this definition shall not apply to any scope different than the one so submitted to the extent such different scope could reasonably be expected to result in improved traffic flow and/or additional throughput capacity compared to the scope so submitted. For the avoidance of doubt, the Occoquan Auxiliary Lane shall not constitute a Compensation Event.

Occoquan Bridge Improvements means the addition of any additional lanes on the bridge over the Occoquan River on U.S. Route One in Virginia, the plans for which have not been included in the CLRP or the SYIP as of November 30, 2011.

Open Book Basis means allowing the Department to review all underlying assumptions and data associated with each Base Case Financial Model, Base Case Financial Model Update, Net Revenue Impact, Net Cost Saving, pricing or compensation (whether of the Concessionaire or the Department) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, traffic volumes and related data including vehicle categories, Gross Revenues, changes in toll rates, and other items reasonably required by the Department to satisfy itself as to the reasonableness and accuracy of the amount.

Open Road Tolling (ORT) means an electronic toll collection system without toll plazas, where drivers will be charged the toll without having to stop, slow down, or stay in a given lane.

Operating Costs means all reasonable costs incurred and paid for by the Concessionaire in connection with the performance of the Work during the Operating Period, including:

(i) (i) costs for operation and maintenance and consumables, (ii) payments under any lease (other than a financing lease constituting Concessionaire Debt), (iii) payments pursuant to the agreements for the management, operation and maintenance of the Project, (iv) Taxes, (v) insurance, (vi) payments for Oversight Services, (vii) police services and costs for any security, (viii) payment of Department Share of Net Cost Saving, (ix) Concessionaire's reasonable Allocable Costs, (x) capital expenditures including the cost of implementing any Change (as and to the extent set forth in the related Change Order or Directive Letter) or Safety Compliance Order, (xi) any other reasonable expense paid for the enhancement, expansion, major maintenance, repair, reconstruction, rehabilitation, renewal and replacement of the Project and (xii) Permit Fee payments to the Department (if any).

(ii) Operating Costs do not include: (i) debt service payments or financing costs or fees, (ii) any Distributions, (iii) entertainment costs, lobbying and political activity costs not related to the business and operations of the Concessionaire, (iv) costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships, in each case, to the extent that such costs would not be reimbursed to an employee of the Department in the regular course of business, (v) non-cash charges, such as depreciation, amortization or other bookkeeping entries of a similar nature, (vi) liquidated damages payable pursuant to the Agreement, (vii) the Annual Transit Investment or (viii) Gross Toll Share Payments.

For purposes of Exhibit P, Operating Costs attributable to the 395 HOT Lanes do not include (i) certain reserve and sinking fund accounts in the Department approved Base Case Financial Model (95/395 Final), (ii) capital expenditures related to any change that enhances or expands the Project, (iii) any cost of implementing a Project Enhancement, (iv) the Annual Transit Investment or (v) the Permit Fee (if any).

Operating Period means the period commencing on the applicable Service Commencement Date through the end of the Term.

Operating Synergies means reductions in Operating Costs of the Project actually occurring as a result of the HOT OC Services.

Operations and Maintenance Plan means the plan developed by the Concessionaire that identifies the methods, systems and procedures for performing the O&M Work, as described in more detail in the Technical Requirements.

Opitz Boulevard Ramp Baseline Schedule means (a) the Initial Opitz Boulevard Ramp Baseline Schedule identifying the major Work activities in sufficient detail to enable the Department to monitor and evaluate design and construction progress until such time as the Opitz Boulevard Ramp Baseline Schedule is approved by the Department pursuant to the Technical Requirements, and (b) the Opitz Boulevard Ramp Baseline Schedule thereafter as provided within 15 Days following the Opitz Boulevard Ramp Construction Notice to Proceed, and updated according to the Technical Requirements.

Opitz Boulevard Ramp Concessionaire Breach is defined in Section 19.12.

Opitz Boulevard Ramp Concessionaire Breach Termination Amount means the Completed Work Value; less:

- (i) Opitz Boulevard Ramp Credit Balances; and
- (ii) Allocable Costs incurred by the Department in terminating the Opitz Boulevard Ramp Project for the Opitz Boulevard Ramp Concessionaire Breach.

Opitz Boulevard Ramp Concessionaire Breach Triggering Event is defined in Section 19.12.

Opitz Boulevard Ramp Construction Escrow Documents is defined in Section 18.05(a)(iv).

Opitz Boulevard Ramp Credit Balances means the aggregate of any amounts standing to the credit of any bank account held by or on behalf of the Concessionaire for the Opitz Boulevard Ramp Project.

Opitz Boulevard Ramp Construction Contract means the construction contract dated August 10, 2022 between the Concessionaire and the Opitz Boulevard Ramp Construction Contractor.

Opitz Boulevard Ramp Construction Contractor means Shirley Contracting Company, LLC, a Virginia limited liability company.

Opitz Boulevard Ramp Construction Cost means \$59,127,675.84.

Opitz Boulevard Ramp Construction Work means the services provided by the Opitz Boulevard Ramp Construction Contractor under the Opitz Boulevard Ramp Construction Contract for the construction of the Opitz Boulevard Ramp Project.

Opitz Boulevard Ramp DFA has the meaning set forth in the recitals to this Third ARCA.

Opitz Boulevard Ramp Escrow Documents is defined in Section 18.05(a)(iv).

Opitz Boulevard Ramp Final Completion means the satisfaction of the conditions set forth in Section 8.23, as and when confirmed by the Department's issuance of the Opitz Boulevard Ramp Final Completion Certificate.

Opitz Boulevard Ramp Final Completion Certificate means a letter or certificate issued by the Department in accordance with Section 8.23(b) evidencing the Department's determination that Opitz Boulevard Ramp Final Completion has occurred.

Opitz Boulevard Ramp Final Completion Date means the date the Department issues the Opitz Boulevard Ramp Final Completion Certificate.

Opitz Boulevard Ramp Final Completion Recovery Plan is defined in Section 8.15(h).

Opitz Boulevard Ramp Financial Close means the satisfaction (or waiver by the Department in its sole discretion) of all conditions precedent set forth in Section 7.03D(b).

Opitz Boulevard Ramp Financial Close Date means the date all of the conditions precedent set forth in Section 7.03D(b) are satisfied (or waived by the Department in its sole discretion) such that the Department issues a certificate confirming that all such conditions precedent have been satisfied.

Opitz Boulevard Ramp Financing Escrow Documents is defined in Section 18.05(a)(iv).

Opitz Boulevard Ramp Guaranteed Final Completion Date means 790 days following the date of issuance of the Construction NTP under the Opitz Boulevard Ramp Construction Contract.

Opitz Boulevard Ramp HOT Lanes means the new access ramp between the HOT Lanes and Opitz Boulevard to be constructed under the Opitz Boulevard Ramp Project.

Opitz Boulevard Ramp HOT Lanes ROW means the "Project Right of Way" as defined in the Opitz Boulevard Ramp Construction Contract.

Opitz Boulevard Ramp Long Stop Date means the date that is 365 Days after the Opitz Boulevard Ramp Guaranteed Final Completion Date; *provided* that a new Opitz Boulevard Ramp Long Stop Date may be established pursuant to an Opitz Boulevard Ramp Final Completion Recovery Plan proposed and approved pursuant to Section 8.15(h) as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

Opitz Boulevard Ramp NEPA Approval means the Categorical Exclusion approved by FHWA on January 24, 2022.

Opitz Boulevard Ramp Payment Bond is defined in Section 17.08(b)(iv)(A).

Opitz Boulevard Ramp Performance Bond is defined in Section 17.08(b)(iv)(A).

Opitz Boulevard Ramp Project means the design, construction, financing, operation, and maintenance of the Opitz Boulevard Ramp HOT Lanes.

Opitz Boulevard Ramp Project Costs has the meaning given to such term in the Opitz Boulevard Ramp Project Equity Contribution Agreement.

Opitz Boulevard Ramp Project Equity Contribution Agreement means the equity contribution agreement entered into on or prior to the Opitz Boulevard Ramp Financial Close Date for the purposes of funding the Opitz Boulevard Ramp Project in the aggregate amount of no less than the Opitz Boulevard Ramp Project Costs and in the form agreed between the Parties.

Opitz Boulevard Ramp Service Commencement Date means the date on which Service Commencement for the Opitz Boulevard Ramp Project was achieved, as indicated in the Opitz Boulevard Ramp Service Commencement Notice to Proceed.

Opitz Boulevard Ramp Service Commencement Notice to Proceed is defined in Section 9.02(h).

Opitz Boulevard Ramp TMS Contract means the Turnkey Lump-Sum Design-Build Contract Relating to the Opitz Boulevard Ramp Project of the I-95/395 HOV/HOT Lanes Tolling and Traffic Management System dated August 10, 2022 between the Concessionaire and TMS Contractor.

Opitz Boulevard Ramp TMS Letter of Credit is defined in Section 17.08(b)(iv)(B).

Opitz Boulevard Ramp TMS Payment Bond is defined in Section 17.08(b)(iv)(B).

Opitz Boulevard Ramp TMS Performance Bond is defined in Section 17.08(b)(iv)(B).

Opitz Boulevard Ramp TMS Work means the services provided by the TMS Contractor under the Opitz Boulevard Ramp TMS Contract in respect of the construction of the Project Assets.

Opitz Boulevard Ramp Work Product means all Work Product, complete or incomplete, generated by or on behalf of the Concessionaire relating to the Opitz Boulevard Ramp Project, including, without limitation: (a) preliminary field inspection (PFI) level plans (PDF and DGN files associated with the plans), (b) preliminary drainage and stormwater management calculations, (c) preliminary plans (PDF and DGN files), (d) conceptual signing plans, (e) topographic survey files and TIN files, (f) geotechnical boring data and the geotechnical data report, (g) any project cost estimates, and (h) any independent reviews or reports related to the Opitz Boulevard Ramp Project, all in computer readable and written format.

Ordinary Maintenance means maintenance actions taken place to preserve the current condition of assets that are routine in nature and may be performed and funded annually. The actions may include pot hole repair, mowing, shoulder repair, guardrail repair, removal of roadside hazards, etc.

Original Comprehensive Agreement means the Comprehensive Agreement Relating to the I-95 HOV/HOT Lanes Project entered into between the Department and the Concessionaire on July 31, 2012.

Original Corridor means the portion of Interstate 95 located within the State with a northern terminus approximately 1 mile north of Route 648 (Edsall Road) and a southern terminus at the ramp for the Route 610 interchange (Garrisonville Road) on Interstate 95 in Stafford County. For the avoidance of doubt, the Opitz Boulevard Ramp HOT Lanes ROW is located within the Original Corridor.

Original HOT Lanes means the HOT Lanes on the Original Corridor designed, developed, constructed, operated, and maintained under the Agreement, and excluding the STE and the Opitz Boulevard Ramp HOT Lanes.

Original Project means (a) the development, design, financing, construction, operation, maintenance, and tolling of the Original HOT Lanes and (b) solely during its Operating Period, the Opitz Boulevard Ramp HOT Lanes.

Original TIFIA Closing Date means the date of the execution and delivery of the Original TIFIA Loan Documentation.

Original TIFIA Commercial Terms means Original TIFIA Credit Assistance that: (a) contains the terms attached hereto as Exhibit H, (b) does not contain any other terms or conditions that are inconsistent with the terms and conditions contained in the TIFIA loan agreement and intercreditor agreement for the Pocahontas Parkway Project, the Capital Beltway Project, the North Tarrant Express Managed Lanes Project, the LBJ Express Project or the Midtown Tunnel Project (collectively, the “Relevant Precedent”), and the Concessionaire demonstrates to the Department that such inconsistent terms are reasonably expected to have a material adverse effect on the Concessionaire’s financial profile, its ability to perform its obligations and enjoy its rights and benefits under the Agreement or its risk profile, and (c) does not contain any material conditions precedent to execution and delivery. For purposes of (b) above, a term or condition that is inconsistent with the terms and conditions contained in the TIFIA loan agreements and intercreditor agreements for Relevant Precedent will not be reasonably expected to have a material effect on the Concessionaire’s ability to perform its obligations and enjoy its rights and benefits under the Agreement to the extent the Department agrees to perform or cause to be performed such term or condition or resolve the inconsistency in any other way, in each case, to the mutual satisfaction of the Concessionaire and the Department, each acting reasonably.

Original TIFIA Credit Assistance means funding made available to the Concessionaire under the Original TIFIA Loan Documentation.

Original TIFIA Credit Assistance Amount means \$300,000,000.

Original TIFIA Financial Close means the execution of the Original TIFIA Loan Documentation by the Concessionaire and the TIFIA Lender.

Original TIFIA Interest Rate means the rate of interest borne by the Original TIFIA Credit Assistance.

Original TIFIA Loan Documentation means loan agreements between the Concessionaire and the TIFIA Lender pursuant to which the Original TIFIA Credit Assistance is *provided*, and a subordination and intercreditor agreement, in each case, that is in a form agreed and readily executable by the parties (other than the completion of terms of an administrative, non-substantive or ministerial nature, or the final interest rate and related terms that by their nature cannot be finalized prior to the Second Funding Closing Date), together with any related agreements and documents delivered therewith.

OSPS means the Operating Speed Performance Standard described in the Technical Requirements.

OSPS Improvement Plan is defined in Section 5.08(a).

Other Termination Amount means the greater of (a) Project Value (determined, without regard to the effect of such termination, pursuant to Section 20.11) plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire, including its reasonable Allocable Costs, as a direct result of such termination and (b) the lesser of 100% of Concessionaire Debt then outstanding or 100% of Concessionaire Debt projected in the most recent Base Case Financial Model Update to be then outstanding, and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department.

Oversight Services means those services and functions the Department has the right or obligation to perform or to cause to be performed under Law or any Project Agreement in order to monitor, review, approve, administer or audit the Work.

PABs means private activity bonds allocated and issued pursuant to Section 11143 of Title XI of SAFETEA-LU, which amended Section 142 of the Code to add highway and freight transfer facilities to the types of privately developed and operated projects for which private activity bonds may be issued.

PABs Interest Rate means the all-in cost of borrowing of PABs based on the coupon and the net issuer premium or discount for the PABs proceeds received by the Concessionaire at Financial Close, 395 Financial Close, Fred Ex Financial Close, or Fred Ex Additional Financial Close, as applicable. If the PABs are issued in more than one tranche, the PABs Interest Rate will be the weighted average all-in cost of borrowing of all tranches of PABs.

PABs Issuer means any public entity or corporation eligible under State Law to issue the PABs.

Payment Bond means a payment bond made on official forms furnished by the Department, executed by a surety company rated in one of the two top categories by two nationally

recognized rating agencies or at least A- (A minus) or better or Class VIII or better by AM Best & Company and authorized to do business in the State in accordance with the Laws of the State and the rules and regulations of the State Corporation Commission.

Pentagon Improvements means certain improvements at the Pentagon as set forth in Exhibit EE hereto including roadway and parking improvements, enhanced bus access and circulation, and associated security measures.

Pentagon Reservation means the area of land and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, parking lots and other related facilities are located.

Pentagon Reservation MOA means the Memorandum of Agreement between the Department and the U.S. Department of Defense, Washington Headquarters Services with respect to the Pentagon Improvements and other Work being performed on or near the Pentagon Reservation, a form of which is attached hereto as Exhibit Z.

Performance Bond means a performance bond made on official forms furnished by the Department, executed by a surety company rated in one of the two top categories by two nationally recognized rating agencies or at least A- (A minus) or better or Class VIII or better by AM Best & Company and authorized to do business in the State in accordance with the Laws of the State and the rules and regulations of the State Corporation Commission.

Performance Requirement means a performance requirement with respect to the O&M Work, as set forth in the Performance Requirements Baseline Table for each Asset.

Performance Requirements Baseline Table means the table included in the Technical Requirements, as may be updated pursuant to the Agreement, which sets forth the Performance Requirements for each Asset.

Performance Security means (a) each of the funding and performance securities required under Section 17.08, or (b) any surety bond, letter of credit, guaranty, or similar instrument acceptable to the Department in its reasonable discretion procured in accordance with the terms of the Agreement.

Performance Shortfalls is defined in Section 11.01(a).

Permit is defined in Section 4.01.

Permit Fee means the payments received (if any) by the Department as compensation for the Department's grant to the Concessionaire of the Permit, as set forth in Exhibit J-1.

Permit Fee Buyout Payment is defined in Section 8.22(c)(i).

Permitted Closure means a Department approved closure for the below circumstances:

(A) Closures for performance of properly scheduled maintenance as provided in the Technical Requirements;

(B) A closure due to an Emergency that is not the result of the gross negligence, willful misconduct, or breach of applicable Law or contract by the Concessionaire or any Concessionaire Party;

(C) A closure due to accident or incident investigation;

(D) A closure specified, caused or ordered by, and continuing only for so long as required by, the Department or any Governmental Entity, except to the extent such closure is the result of the gross negligence, willful misconduct, or breach of applicable Law or contract by the Concessionaire or any Concessionaire Party;

(E) A closure as a result of a Force Majeure Event;

(F) A necessary closure pursuant to the facilitation of the Concessionaire's snow and ice removal services in accordance with the Agreement;

(G) Closures necessary for Concessionaire or Department Enhancement Projects; and

(H) Any closure authorized by the Agreement.

Permitted Encumbrance means, with respect to the Project:

(a) the rights and interests of the Concessionaire under the Agreement;

(b) any Lien that is being contested by the Department (but only for so long as such contestation effectively postpones enforcement of any such Lien);

(c) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's or other similar Liens arising in the ordinary course of business of the Project or the Department's performance of its obligations hereunder, and either (A) not delinquent or (B) which are being contested by the Department (but only for so long as such contestation effectively postpones enforcement of any such Lien);

(d) any recorded or unrecorded easement, right, claim, license, privilege, covenant, condition, right-of-way or servitude, or other similar reservation, right, limitation or restriction, relating to, affecting or encumbering the Project or the development, use or operation of the Project (including, but not limited to, easements and rights-of-way for utilities and utility facilities), or any defect or irregularity in the title to the Project, including, but not limited to those discoverable by a physical inspection or survey of the Project, that does not materially interfere with the operations of the Projects or the right and benefits of the Concessionaire and the Department under the Agreement;

(e) any zoning, building, environmental, health or safety Law now or hereafter in effect relating to, affecting or governing the Project or the development, use or operation of the Project, together with all amendments, modifications, supplements or substitutions thereto or therefore;

- (f) any right reserved to or vested in any Governmental Authority (other than the Department) by any statutory provision;
- (g) any other encumbrance permitted hereunder;
- (h) any Lien created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it; and
- (i) any amendment, extension, renewal or replacement of any of the foregoing.

Permitted Vehicles means (a) any vehicle with two axles including motorcycles, (b) Mass Transit Vehicles and Commuter Buses and school buses and (c) Exempt Vehicles. Permitted Vehicles will not include any vehicle pulling a trailer except Exempt Vehicles.

Person means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

Planned Refinancing means a Refinancing which is planned by the Concessionaire and included in the most recent Base Case Financial Model Update.

Pre-Existing Hazardous Substances means Known Pre-Existing Hazardous Substances and Unknown Pre-Existing Hazardous Substances.

Pricing Date means November 29, 2011.

Project means the development, design, financing, construction, operation, maintenance and tolling of the Project Assets, all as more particularly described in the Technical Requirements and in Exhibit B-1; *provided*, however, that the Project shall not include the operation and maintenance of the 395 Department Assets.

Project Agreements means the VDOT Project Agreements, the Concessionaire Project Agreements, the Direct Agreement, the 395 Direct Agreement, the Fred Ex Direct Agreement, and all other agreements identified in Section 3.02, as those agreements may be amended, superseded or replaced during the Term.

Project Assets means the HOT Lanes and other assets (including the 395 Department Assets) constructed, maintained or held by the Concessionaire pursuant to the Agreement (or any applicable portion of such assets); *provided*, however that Project Assets shall not include the 395 Department Assets when the operations, maintenance and/or tolling of the Project Assets are referenced in the Agreement.

Project Development Plans means the project development plans developed by the Concessionaire pursuant to the Technical Requirements.

Project Documentation means Construction Documentation and Design Public Hearing Documentation.

Project Enhancement Account means a concession payments account created in accordance with Virginia Code Section 33.2-1528.

Project Enhancements means, collectively, Concessionaire Project Enhancements and Department Project Enhancements.

Project Financing Agreements means the Financing Assignments and any other documents evidencing Concessionaire Debt (including Refinancings) obtained in compliance with the terms of the Agreement, together with any and all amendments and supplements thereto.

Project Purposes means the development, permitting, design, financing, acquisition, construction, installation, equipping, management, operation, maintenance, tolling and administration of the Project, in each case in accordance with the Agreement.

Project Revenues Waterfall means the priority of uses for funds in the Revenue Account stated in Section 5.02 of the Collateral Agency Agreement, or any successor provision that governs the priority of uses of revenues related to the Project.

Project Right of Way or Right of Way (ROW) means any real property within (a) the Original Corridor, the 395 Corridor, and the Fred Ex Corridor, and (b) from and after the applicable Service Commencement Date, the STE Corridor (which term is inclusive of all estates and interests in real property, including easements), which is:

- (i) necessary for performance of the Work, including temporary and permanent easements, and ownership and operation of the Project;
- (ii) shown on the approved ROW Acquisition and Relocation Plan; and
- (iii) within the limits established by the NEPA Documents, as such limits may be adjusted pursuant to the Agreement.

Project ROW Acquisition Work means the Work associated with acquisition of the Project ROW as set forth in the ROW Acquisition and Relocation Plan.

Project Schedule means the Initial Baseline Schedule, Baseline Schedule, Project Schedule Updates or the As-Built Schedule, as applicable, as described in more detail in the Technical Requirements.

Project Schedule Update means the schedule attached to the Monthly Progress Report submitted to the Department, as described in more detail in the Technical Requirements.

Project Value means fair market value of the Concessionaire's Interest, determined according to the appraisal procedures set forth in Section 20.11.

Proposal Specifications means the Concessionaire Proposal Specifications for Final Proposal to Develop the 395 Project dated October 3, 2016.

Proposed Project means the development, design, financing, construction, operation and maintenance of the HOT Lanes on I-95 submitted by Clark/Shirley in an unsolicited conceptual proposal to the Department.

Proprietary Intellectual Property means any Intellectual Property that is patented or copyrighted by the Concessionaire, the Department or any other Person, as applicable, or any of its respective contractors or subcontractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential, proprietary information by the Concessionaire, the Department or any other Person, as applicable, or any of its respective contractors or subcontractors, but excludes any item of Intellectual Property that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Project.

Proprietary Work Product means any Work Product that is created, held and managed as a trade secret or confidential proprietary information by the Concessionaire or any of its Contractors.

Public Funds Amount means the Initial Public Funds Amount, the 395 Public Funds Amount, the 395 Market Interest Rate Adjustment, the Department TIFIA Protection Amount, the Fred Ex Financial Protections (if any) and the Fred Ex Department Committed Contingency.

Public Funds Amount Payment Terms means Exhibit N.

Public Information and Communications Plan means the plan developed by the Concessionaire setting forth the Concessionaire's approach to communicating with road users and other stakeholders affected by the development and operation of the Project, as described in more detail in the Technical Requirements.

Punch List means an itemized list of Work which remains to be completed with respect to the Project Assets after Substantial Completion has been achieved and before Final Acceptance, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the Project Assets.

Quality Management System Plan (QMSP) means the plan developed by the Concessionaire that defines the quality management systems during the design, construction and operations and maintenance phases of the Project, as described in more detail in the Technical Requirements.

Railroad Easement is defined at Section 8.05(f).

Ramp-Up Period means the period commencing on the Substantial Completion Date and ending on the first anniversary of the Substantial Completion Date.

Rating Agency means any nationally recognized statistical rating organization, such as Moody's, Fitch Ratings, or S&P or any similar entity, or any of their respective successors.

Refinancing means, at any time after the initial Financial Close Date:

(a) any amendment, variation, novation or supplement of any Concessionaire Debt, Project Financing Agreement or Financing Assignment;

(b) the issuance by the Concessionaire of any Concessionaire Debt other than the Concessionaire Debt incurred pursuant to the Initial Project Financing Agreements, secured or unsecured, including issuance of any reimbursement agreement respecting a letter of credit;

(c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Concessionaire Debt, Project Financing Agreement or Financing Assignment or the creation or granting of any other form of benefit or interest in any Concessionaire Debt, Project Financing Agreement or Financing Assignment, or the revenues, assets or other contracts of the Concessionaire whether by way of security or otherwise; or

(d) any other arrangement put in place by Concessionaire or another person which has an effect similar to clause (a), (b) or (c) of this definition;

excluding, however, any capitalization of interest or accretion of principal or other committed increases on any Concessionaire Debt incurred or committed on or prior to the Agreement Date, that is not part of any Planned Refinancing.

Remedial Actions is defined in Section 16.01(b).

Remedial Action Plan means the plan developed by the Concessionaire with respect to Hazardous Substances encountered by the Concessionaire within the Project Right of Way, as described in more detail in the Technical Requirements.

Replacement Agreements has the meaning ascribed thereto in the Direct Agreement or the 395 Direct Agreement, as applicable.

Representative means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, other Person for whom such Person is, under Law, responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

Request for Change Proposal means a written notice issued by the Department to the Concessionaire pursuant to Section 14.02(b).

Reserved Rights means the Department’s right and opportunity to develop and pursue, anywhere in the world, entrepreneurial, commercial and business activities that are ancillary or collateral to the use, enjoyment and operation of the Project and Project Right of Way as provided in the Agreement and the collection, use and enjoyment of Toll Revenues as provided in the Agreement. The Reserved Rights reserved to the Department include but are not limited to all the following:

(a) all rights to finance, design, construct, use, possess, operate and maintain any passenger or freight rail facility, roads and highways (State and local) or other mode of

transportation in the Airspace, including tunnels, flyovers, frontage roads, crossings, interchanges and fixed guide-ways, and to grant to others such rights;

(b) all rights to install, use, lease, grant infeasible rights of use, sell and derive revenues from electrical and fiber optic conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity, existing over, on, under or adjacent to any portion of the Project Right of Way installed by anyone, whether before or after the Agreement Date, and all software which executes such equipment and hardware and related documentation, except for the capacity of any such improvement installed by the Concessionaire that is necessary for and devoted exclusively to the operation of the Project;

(c) all rights to use, sell and derive revenues from ETTM Data and other data generated from operation of the Project or any ETTM System, except use of such data as required solely for operation of the Project and enforcement and collection of tolls and incidental charges;

(d) all ownership, possession and control of, and all rights to develop, use, operate, lease, sell and derive revenues from, the Airspace, including development and operation of service areas, rest areas and any other office, retail, commercial, industrial, residential, retail or mixed use real estate project within the Airspace;

(e) all rights to install, use and derive information, services, capabilities and revenues from ITS, except installation and use of any such systems and applications by the Concessionaire as required solely for operation of the Project. For avoidance of doubt, if the Concessionaire installs any such systems or applications, all use and capacity thereof not necessary for operation of the Project is reserved to, and will be the sole property of, the Department;

(f) all rights to use, install, maintain, repair, or authorize the use, installation, maintenance or repair, of Utilities;

(g) all rights to market, distribute, sell and derive revenues from any goods, products or merchandise depicting, utilizing or exploiting any name, image, logo, caricature or other representation, in any form or medium, of the Department or the Project, or that may be confused with those of the Department or the Project;

(h) all rights and opportunities to grant to others sponsorship and advertising rights with respect to the Project or any portion thereof, except for a non-exclusive license for the Concessionaire to use the name in connection with Project operations;

(i) all rights to revenues and profits derived from the right or ability of electronic toll account customers to use their accounts or transponders to purchase services or goods other than payment of tolls;

(j) any other commercial or noncommercial development or use of the Airspace or electronic toll collection technology for other than operation of the Project; and

(k) all ownership, possession and control of, and all rights to develop, use, lease, sell and derive revenues from, carbon credits or other environmental benefits generated by or resulting from the development, use, operation or maintenance of the Project.

Response is defined in Section 10.05(a).

Responsible Public Entity has the meaning assigned to such term in Section 33.2-1800 of the Code of Virginia and, for purposes hereof, means the Department.

Restoration Funds is defined in Section 17.07(a).

Route One Improvements means any new construction, material expansion or other alteration to U.S. Route One in Virginia between Route 642 (Lorton Road) in Fairfax County and Route 610 (Garrisonville Road) in Stafford County, the plans for which have not been included in the CLRP or the SYIP as of November 30, 2011, that results in more than two miles in the aggregate of limited access highway with a speed limit of at least 55 miles per hour. For the avoidance of doubt, Route One Improvements excludes any new construction, material expansion or other alteration to U.S. Route One in Virginia south of Route 610 (Garrisonville Road) in Stafford County.

ROW Acquisition and Relocation Plan means the plan developed by the Concessionaire that defines the approach to acquisition of the Project ROW and, to the extent permitted by Section 8.05, any other real property or real property rights as set forth in Section 8.05, as described in more detail in the Technical Requirements.

ROW Costs means the actual amount paid or payable to a property owner for the acquisition of Project ROW and any other real property and real property rights as set forth in Section 8.05, which includes any relocation, settlement, or damage costs. For the avoidance of doubt, ROW Costs do not include any acquisition activities and/or property management services required for the acquisition of Project ROW and any other real property and real property rights as set forth in Section 8.05.

S&P means Standard & Poor's Rating Service, a division of The McGraw-Hill Companies, Inc. or any successor thereto.

Safety Compliance Order means any written order or directive of the Department issued after the Substantial Completion Date or the 395 Final Completion Date, as applicable, which directs the Concessionaire to undertake certain improvements to the Project (a) to correct a specific safety condition affecting the Project, which the Department has determined to exist by investigation or analysis, or (b) to conform to changes in safety standards or methodologies agreed to or adopted by the Department for similar portions of comparable State Highways.

Scope Issue means any defect, error, omission, or inconsistency in the 395 Scope Validation Documents that may affect the 395 Design-Build Contractor's ability to complete the 395 Project, and which is identified by the Concessionaire to the Department before the 395 Scope Validation Work Completion Date. Scope Issues shall be limited to newly-discovered items during the 395 Scope Validation Work only, and Scope Issues shall not include any item that the 395 Design-Build Contractor or the Concessionaire should have reasonably discovered prior to the 395 Design-Build Proposal Submission Date.

Scope of Work and Schedules and Early Work means Exhibit B.

Second Amended and Restated Agreement Date means April 18, 2019.

Second Amended and Restated Comprehensive Agreement or **Second ARCA** means the Second Amended and Restated Comprehensive Agreement Related to the I-95/395 HOV/HOT Lanes Project dated the Second Amended and Restated Agreement Date between the Department and the Concessionaire.

Second Amendment means the Second Amendment to the Comprehensive Agreement Relating to the I-95 HOV/HOT Lanes Project dated February 23, 2017 between the Department and the Concessionaire.

Second Funding Closing Amount means, as of the Second Funding Closing Date, collectively, (a) the amount of the Original TIFIA Credit Assistance (if any), (b) the Department TIFIA Protection Amount, and (c) the Concessionaire TIFIA Protection Amount.

Second Funding Closing Date has the meaning specified in Section 7.07(d)(i).

Second Measurement Period is defined in Section 5.07(b)(ii).

Second Threshold HOV Percentage and Rate is defined in Section 5.07(b)(ii).

Seminary Road Ramp Baseline Schedule means the Initial Seminary Road Ramp Baseline Schedule identifying the major Work activities in sufficient detail to enable the Department to monitor and evaluate design and construction progress and updated monthly.

Seminary Road Ramp Concessionaire Breach is defined in Section 19.15.

Seminary Road Ramp Concessionaire Breach Termination Amount means the Completed Work Value; less:

- (i) Seminary Road Ramp Credit Balances; and
- (ii) Allocable Costs incurred by the Department in terminating the Seminary Road Ramp Project for the Seminary Road Ramp Concessionaire Breach.

Seminary Road Ramp Concessionaire Breach Triggering Event is defined in Section 19.15.

Seminary Road Ramp Construction Escrow Documents is defined in Section 18.05(a)(v).

Seminary Road Ramp Credit Balances means the aggregate of any amounts standing to the credit of any bank account held by or on behalf of the Concessionaire for the Seminary Road Ramp Project.

Seminary Road Ramp Construction Contract means the construction contract dated August 10, 2022 between the Concessionaire and the Seminary Road Ramp Construction Contractor.

Seminary Road Ramp Construction Contractor means CES Consulting, LLC.

Seminary Road Ramp Construction Cost means \$89,458.50.

Seminary Road Ramp Construction Work means the services provided by the Seminary Road Construction Contractor under the Seminary Road Ramp Construction Contract with respect to the Seminary Road Ramp Project.

Seminary Road Ramp DFA has the meaning set forth in the recitals to this Third ARCA.

Seminary Road Ramp Escrow Documents is defined in Section 18.05(a)(v).

Seminary Road Ramp Final Completion means the satisfaction of the conditions set forth in Section 8.24, as and when confirmed by the Department's issuance of the Seminary Road Ramp Final Completion Certificate.

Seminary Road Ramp Final Completion Certificate means a letter or certificate issued by the Department in accordance with Section 8.24(b) evidencing the Department's determination that Seminary Road Ramp Final Completion has occurred.

Seminary Road Ramp Final Completion Date means the date the Department issues the Seminary Road Ramp Final Completion Certificate.

Seminary Road Ramp Final Completion Recovery Plan is defined in Section 8.15(j).

Seminary Road Ramp Financial Close means the satisfaction (or waiver by the Department in its sole discretion) of all conditions precedent set forth in Section 7.03E(a).

Seminary Road Ramp Financial Close Date means the date all of the conditions precedent set forth in Section 7.03E(a) are satisfied (or waived by the Department in its sole discretion) such that the Department issues a certificate confirming that all such conditions precedent have been satisfied.

Seminary Road Ramp Financing Escrow Documents is defined in Section 18.05(a)(v).

Seminary Road Ramp Guaranteed Final Completion Date means 90 days following the Third Amended and Restated Agreement Date.

Seminary Road Ramp HOT Lanes means the existing ramp between the HOT Lanes and Seminary Road to be converted from a HOV ramp to a HOT ramp under the Seminary Road Ramp Project.

Seminary Road Ramp HOT Lanes ROW means the "Project Right of Way" as defined in the Seminary Road Ramp Construction Contract.

Seminary Road Ramp Performance Bond is defined in Section 17.08(b)(v)(A).

Seminary Road Ramp Project means the design, construction, and financing of the Seminary Road Ramp HOT Lanes.

Seminary Road Ramp Service Commencement Date means the date on which Service Commencement for the Seminary Road Ramp Project was achieved, as indicated in the Seminary Road Ramp Service Commencement Notice to Proceed.

Seminary Road Ramp Service Commencement Notice to Proceed is defined in Section 9.02(i).

Seminary Road Soundwall Categorical Exclusion means the Categorical Exclusion for the Seminary Road Soundwall Component approved by FHWA on November 30, 2012.

Seminary Road Soundwall Component means the design and construction of soundwalls near Seminary Road along I-395 SB on and between the Sanger Ave Bridge and Duke Street.

Seminary Road Ramp Work Product means all Work Product, complete or incomplete, generated by or on behalf of the Concessionaire relating to the Seminary Road Ramp Project, including, without limitation: (a) preliminary plans (PDF and DGN files), (b) conceptual signing plans, (c) any project cost estimates, and (d) any independent reviews or reports related to the Seminary Road Ramp Project, all in computer readable and written format.

Senior Concessionaire Debt means Concessionaire Debt secured by a Lien on the Concessionaire's Interest that is senior to or on parity with any other Lien on the Concessionaire's Interest.

Senior Loan Agreement means a loan agreement to be entered between the PABs Issuer and the Concessionaire, with respect to the financing of the Project.

Series 2022 Financial Close Date means February 10, 2022.

Service Commencement means the opening of the Project for normal and continuous operations and use by the traveling public, after occurrence of all the events and satisfaction of all the conditions therefore set forth in Section 9.01(a).

Service Commencement Date means (a) with respect to the Original Project, December 28, 2014, (b) with respect to the southbound portion of the STE, the Southbound Opening Date, (c) with respect to the northbound portion of the STE, the STE Final Acceptance Date, (d) with respect to the 395 HOT Lanes, the 395 Service Commencement Date, (e) with respect to the Fred Ex HOT Lanes, the Fred Ex Service Commencement Date, (f) with respect to the Opitz Boulevard Ramp HOT Lanes, the Opitz Boulevard Ramp Service Commencement Date, and (g) with respect to the Seminary Road Ramp HOT Lanes, the Seminary Road Ramp Service Commencement Date.

Service Commencement Notice to Proceed has the meaning ascribed thereto in Section 9.02(a).

Shared Facilities Agreement means the Shared Facilities Agreement dated as of July 31, 2012 between the Concessionaire and CBE as it may be updated from time to time.

Shareholder Loan means any Subordinate Debt made by any Equity Members to the Concessionaire.

Signage Plan is defined as the Construction Documentation associated with the signage elements of the Project.

Significant Force Majeure Event means one or more Force Majeure Events occurring after the Financial Close Date (a) that (i) has the effect of causing physical damage or destruction to the Project Assets or surrounding infrastructure within the Project Right of Way, and (ii) results in the Project Assets being substantially unavailable for public use or the suspension or substantial reduction of toll collections for a period in excess of (1) 180 consecutive Days; or (2) a period otherwise agreed to by the parties; or (b) which halts the performance of the Work by the Design-Build Contractor during the Construction Period for a period in excess of 180 consecutive Days; *provided* that such Force Majeure Event will not become a Significant Force Majeure Event by reason of the Concessionaire or the Design-Build Contractor's failure to mitigate or cure the result of such Force Majeure Event through the exercise of reasonably diligent efforts.

Significant Force Majeure Termination Amount means the aggregate of (a) the Concessionaire Debt, (b) all amounts at par paid by the Equity Members in the form of capital contributions or Shareholder Loans up until the termination date, less any amounts actually received by the Equity Members from the Concessionaire as Distributions or payment of principal and interest for such Shareholder Loans (the difference being not less than zero), and (c) all Demobilization Costs, (d) less Credit Balances and (e) less proceeds of insurance that is required to be carried pursuant to Section 17.01.

Significant Force Majeure Termination Notice is defined in Section 20.03.

Six-Year Improvement Program (SYIP) means the CTB's approved allocation of funding in accordance with Title 33.2, Chapter 3, Article 5 of the Code of Virginia.

Small, Women-Owned, and Minority Business (SWaM) means the State program to support small, women-owned and minority groups in doing business with the State.

Software means (a) computer instructions, including programs, routines and databases and applications supplied, procured or developed by the Concessionaire or the Department in connection with the operation of the Project or in connection with Reserved Rights, including but not limited to that which monitors, controls or executes on ETTM Equipment or ITS equipment or hardware, and (b) all modifications, updates and revisions made to the matter described in clause (a) above, including those made to correct errors or to support new models of computer equipment and/or new releases of operating systems.

Source Code and Source Code Documentation mean Software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the Software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the Software without undue experimentation. Source Code and Source Code

Documentation also include all modifications, additions, substitutions, updates, upgrades and corrections made to the foregoing items.

Source Code Escrows is defined in Section 18.06(b).

Southbound Opening Date means the date on which the new traffic lanes in the southbound direction of the STE is opened for traffic.

Southbound RRC Design-Build Contract means the design-build contract entered into between the Department and a design-builder relating to Request for Proposals No. C00101595DB94 issued by the Department.

Southbound RRC Design-Build Contract Documents means the documents that are part of, are incorporated into, or otherwise govern the Southbound RRC Design-Build Contract.

Southbound RRC Overlap Work is defined in Section 7.02(d)(ii).

Southbound RRC Project is the Rappahannock River Crossing project defined in Section 7.02(d)(ii).

Southern HOT Lanes means the addition of any toll lanes in the median of the Interstate 95 general purpose lanes (in either or both directions) and not specifically part of the general purpose lanes and the associated entry and exit ramps built on Interstate 95 with a northern terminus of the Route 610 Interchange (Garrisonville Road) and a southern terminus of U.S. Route 17 By-Pass at Massaponax.

Southern Terminus Extension or **STE** means the development, design, financing, construction, operation and maintenance of toll lanes within the Southern Terminus Extension Corridor.

Southern Terminus Extension Corridor or **STE Corridor** means the portion of Interstate 95 located within the State with a northern terminus approximately 1.3 miles north of the Route 610 interchange (Garrisonville Road) and a southern terminus at approximately milepost 142.5 on Interstate 95 in Stafford County.

State means the Commonwealth of Virginia.

State Highway means any highway designated a State Highway pursuant to Title 33.2, Chapter 3 of the Code of Virginia.

State Indemnitee means any of the State Parties and their respective Representatives.

State Law means any Law or any change in any Law by any State Party.

State Party means the State, the CTB, the Department or any other agency, instrumentality or political subdivision of the State.

Statewide Transportation Improvement Program (STIP) means the state improvement program that schedules the detailed funding for all Federally supported surface transportation projects/programs within the boundaries of the State, for the next three fiscal years, that is approved by the FHWA and the Federal Transit Administration as a prerequisite to receiving Federal transportation funds and/or agreements. Projects/programs in the STIP have to be consistent with the long-range plans of the State and/or the metropolitan planning organizations within the boundaries of the State.

STE Change or Changes is defined in Section 8A.05.

STE Design-Build Contract means the Design-Build Contract between the Department and the STE Design-Build Contractor with respect to the Southern Terminus Extension in the form attached hereto as Exhibit GG.

STE Design-Build Contractor means the design-build contractor selected by the Department that is party to the STE Design-Build Contract.

STE Final Acceptance means Final Acceptance under the STE Design-Build Contract.

STE Final Acceptance Date means the date on which Final Acceptance is achieved under the STE Design-Build Contract.

STE HOT Lanes means the HOT lanes separated from the adjacent GP Lanes and the associated entry and exit ramps within the Project Right of Way on the STE Corridor.

STE Integration Work means the testing, commissioning and integration of the ETTM System for the STE into the ETTM System for the Original HOT Lanes, including (a) the delivery and integration of the ETTM System, (b) any ETTM System training and manuals and (c) ETTM System engineering, including network architecture, configuration management, interface control and systems integration, all as more fully set forth in the STE Design-Build Contract and the STE Technical Requirements.

STE NEPA Reevaluation means the Reevaluation of 2011 Environmental Assessment for I-95 Express Lanes Southern Terminus Extension Stafford County, Virginia dated March 2, 2016.

STE RFP means the Requests for Proposals relating to the STE issued by the Department.

STE Technical Requirements means (a) the Department's design-build standards as of the date hereof and (b) certain project specific standards relating to the STE to be agreed to by the Department and the Concessionaire and as set forth in STE Design-Build Contract.

Steering Committee means the executive-level committee established by the Concessionaire and the Department to provide executive-level business guidance on issues relating to the Project, which will include the Design-Build Contractor during the Construction Period and, solely with respect to issues involving Design-Build Work, after the Construction Period.

Step 1 Adjusted Equity IRR is defined in Section 2 of Exhibit BB-2.

Subordinate Debt means (a) Affiliate Debt or Shareholder Loans or (b) any other Concessionaire Debt that would be paid at the same level of priority as the payment of any Distributions or that would be payable at a level of priority after all payments other than Distributions are made. The term “Subordinate Debt” does not include any Concessionaire Debt constituting loans, guaranties and other credit support under TIFIA.

Substantial Completion means the satisfaction of the criteria for completion of construction of the Project set forth in Section 8.08(c), as and when confirmed by the Department’s issuance of the Substantial Completion Certificate.

Substantial Completion Certificate means a letter or certificate issued by the Department in accordance with Section 8.08(e) evidencing the Department’s determination that Substantial Completion has occurred.

Substantial Completion Date means the date on which Substantial Completion is achieved, as indicated in the Substantial Completion Certificate.

Substantial Completion Recovery Plan has the meaning given to it in Section 8.15.

Substituted Concessionaire means any person or entity selected by the Lenders (acting through the Collateral Agent) and approved by the Department in accordance with the Direct Agreement, the 395 Direct Agreement, or the Fred Ex Direct Agreement to perform the Concessionaire’s obligations and succeed to the Concessionaire’s Interests after any such Lender, or any such Person, acquires the Concessionaire’s Interests by foreclosure or transfer in lieu of foreclosure, or after the Collateral Agent takes possession and control of the Project in accordance with the Direct Agreement, the 395 Direct Agreement, or the Fred Ex Direct Agreement.

Supporting Documentation means any documentation that specifically supports an alleged Scope Issue, including, without limitation: (a) the assumptions that the 395 Design-Build Contractor made during the preparation of the 395 Design-Build Proposal that form the basis for its allegation, along with documentation verifying that it made such assumptions in developing the 395 Design-Build Proposal, (b) an explanation of the defect, error, omission, or inconsistency in the 395 Scope Validation Documents that the Concessionaire or the 395 Design-Build Contractor could not have reasonably identified prior to the 395 Design-Build Proposal Submission Date and (c) the specific impact that the alleged Scope Issue is expected to have on the 395 Design-Build Contractor’s price and time to perform the 395 Design-Build Work.

SWaM Performance Improvement Plan is the plan submitted and approved by the Department pursuant to Sections 24.03(b)(v)(B) with respect to improving the Concessionaire’s performance.

Task is defined in Section 9.04(b).

Tax means any Federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Code), customs duties, permit fees, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on

minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind whatsoever payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not including in each case utility rates or rents.

Tax Imposition means:

(a) any State or local property tax or similar ad valorem tax or charge (including property taxes under Section 58.1-3203 of the Code of Virginia, as amended from time to time) or recordation tax on a deed, release or other document recorded in connection with the Agreement, unless recorded by or at the behest of the Concessionaire; and

(b) any license fee or sales, use, receipts or similar tax on or measured by receipts or revenues levied, rated, charged, imposed or assessed by the State or any county, city or town of the State with respect to Toll Revenues paid to or collected by the Concessionaire for travel on the Project;

but excluding (i) any taxes of general application on overall net income or (ii) any taxes levied, rated, charged, imposed or assessed in connection with any Transfer during the Term of all or any portion of the Concessionaire's Interest or of any interest in the Concessionaire.

Technical Requirements means the Technical Requirements included as Exhibit C (including all Attachments thereto), which include the Original Project, the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, the Seminary Road Ramp Project, and (with regard to O&M duties only) the STE, and as the same may be revised and updated from time to time in accordance with the Agreement.

Term is defined in Section 4.02.

Third Amended and Restated Agreement Date means the date on the cover of the Third ARCA.

Third Amended and Restated Comprehensive Agreement or **Third ARCA** means the Third Amended and Restated Comprehensive Agreement Related to the I-95/395 HOV/HOT Lanes Project dated the Third Amended and Restated Agreement Date between the Department and the Concessionaire.

Third Measurement Period is defined in Section 5.07(b)(iii).

Third-Party Claim means any Claim asserted against a State Indemnitee by any Person who is not a party to the Agreement or an Affiliate of such party.

Third-Party Hazardous Substances means any Hazardous Substances introduced or brought onto the Project ROW prior to Substantial Completion for the Original Corridor (but not the Opitz Boulevard Ramp HOT Lanes ROW), 395 Final Completion for the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW), Fred Ex Final Completion for the Fred Ex Corridor, Opitz Boulevard Ramp Final Completion for the Opitz Boulevard Ramp Project, or the

Seminary Road Ramp Final Completion for the Seminary Road Ramp Project, as applicable, by a Person other than a Concessionaire Party.

Third Threshold HOV Percentage and Rate is defined in Section 5.07(b)(iii).

TIFIA means The Transportation Infrastructure Finance and Innovation Act of 1998.

TIFIA Credit Assistance means the Original TIFIA Credit Assistance, the Fred Ex TIFIA Credit Assistance, if any, and any other funding made available by the TIFIA Lender to the Concessionaire.

TIFIA Lender means the United States Department of Transportation.

TIGER Credit Assistance means any financial assistance provided by USDOT to the Concessionaire or a State Party in respect of the Project under the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010 (Division A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117, Dec. 16, 2009)), regarding National Infrastructure Investments, the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-055, Nov. 18, 2011) or similar program.

Time Impact Analysis (TIA) means a time impact analysis, (a) establishing the influence of an event on the Baseline Schedule, and will include a Fragnet, and for events that have not yet occurred (such as proposed changes or Project Enhancements), the Fragnet will demonstrate how the Concessionaire proposes to incorporate such event in the Baseline Schedule, and (b) demonstrating: (i) the time impact based on the date the event occurred or notice of a proposed change is given to the Concessionaire, (ii) the status of the Work at such point of time and (iii) the time computation of all affected activities, as described in the Technical Requirements.

Toll Exemption Event means the enactment, adoption, promulgation, modification or repeal by any Governmental Authority of any Law during the Term that (a) changes the types of vehicles or categories of users of vehicles then permitted by Section 5.02 to travel on the HOT Lanes without paying the full tolls established by the Concessionaire, including by any change in the High Occupancy Requirement lower than HOV-3 or (b) either permits vehicles other than Permitted Vehicles to travel on the HOT Lanes or restricts vehicles then classified as Permitted Vehicles from traveling on the HOT Lanes without paying a toll.

Toll MOU means the Memorandum of Understanding between FHWA and the Department, a copy of which is attached as Exhibit M.

Toll Revenues means:

(a) all amounts received by or on behalf of the Concessionaire applicable to vehicles for the privilege of traveling on the Project imposed pursuant to the Agreement and from any other permitted use or operation of the Project, including without limitation fees, tolls, rates, incidental charges and other charges (including administrative charges such as late fees, insufficient funds fees, etc.);

(b) amounts received pursuant to any collection or enforcement action, judgment or settlement with respect to any of the foregoing revenues; and

(c) amounts the Concessionaire receives as contractual liquidated or other contract damages with respect to any of the foregoing revenues.

Toll Section means the toll sections described in Exhibit DD, which may be revised by mutual agreement of the Department and the Concessionaire. For the purposes of Section 5.07(b)(i) through (b)(iii), the Toll Section between I-495 and approximately 1 mile North of Route 648 (Edsall Road) shall be classified as HOT Lanes in the Original Corridor.

Total Financing Amount means the sum of the Initial Equity Commitment Amount, the 395 Equity Commitment Amount, the Contingent Capital Contribution Amount, the initial principal amount of the PABs, the Benchmark TIFIA Credit Assistance Amount and other Concessionaire Debt (including Shareholder Loans) at Financial Close, 395 Financial Close, Fred Ex Financial Close or Fred Ex Additional Financial Close, as applicable; *provided*, if Fred Ex Additional Financial Close occurs, the Fred Ex Additional Equity Commitment Amount shall be reduced by the principal amount of Concessionaire Debt which will replace all or any portion of such Fred Ex Additional Equity Commitment Amount at Fred Ex Additional Financial Close. The Total Financing Amount shall not include the Public Funds Amount.

Traffic and Revenue Study means any study of the projected traffic and Toll Revenue for the Project prepared by or on behalf of Concessionaire, as well as all data, charts, tables, analyses and other documentation assembled or prepared in connection therewith and all existing and future updates, reissuances, supplements and amendments thereto.

Traffic Management System (TMS) means any application of computer, electronics and/or telecommunications equipment and software and supporting fixtures and equipment whose function is to provide information, data and/or services to the traveling public or the Department or to manage and control traffic, and any future systems or services conceived or developed for the same or similar purposes.

Transfer means to sell, convey, assign, sublease, mortgage, encumber, transfer or otherwise dispose of.

Transferee is defined in Section 25.01(a).

Transition Plan is defined in Section 20.01.

Transportation Improvement Program (TIP) means the transportation improvement program that schedules the detailed funding for projects, project phases and programs that will be implemented in the next six fiscal years. The TIP is adopted by the metropolitan planning organization and approved by the FHWA and the Federal Transit Administration as a prerequisite to receiving Federal transportation funds and/or approvals.

Transportation Management Plan (TMP) is defined in Section 8.12(a).

Transportation Trust Fund means the State’s Transportation Trust Fund, which is codified in Virginia Code Section 33.2-1524.

Transurban means Transurban (USA) Inc.

Transurban Guarantor means Transurban Holdings Limited, Transurban International Limited, and Transurban Infrastructure Management Limited, in its capacity as responsible entity of the Transurban Holding Trust.

Trustee means U.S. Bank National Association, as trustee under the trust indenture relating to the PABs.

TTMS Contract means the 395 TTMS Contract with respect to the 395 Project, the Fred Ex TTMS Contract with respect to the Fred Ex Project, and the Opitz Boulevard Ramp TMS Contract with respect to the Opitz Boulevard Ramp Project.

TTMS Contractor or **TMS Contractor** means Transurban (USA) Inc., a Delaware corporation.

TTMS Work means the 395 TTMS Work with respect to the 395 TTMS Contract, the Fred Ex TTMS Work with respect to the Fred Ex TTMS Contract, and the Opitz Boulevard Ramp TMS Work with respect to the Opitz Boulevard Ramp TMS Project.

Turnover Plan means the plan developed by the Concessionaire pursuant to the Technical Requirements that describes the process by which the Concessionaire will take over operations and maintenance responsibilities from the Department for the Project, attached as Exhibit V.

Uniform Act is defined in Section 8.05(a)(ii).

Unknown Geotechnical Conditions means any Geotechnical Conditions which are not Known Geotechnical Conditions.

Unknown Pre-Existing Hazardous Substances means any Hazardous Substances present on the Project Right of Way or portion thereof as of the date that the Concessionaire assumes responsibility of such Project Right of Way or portion pursuant to Section 16.01(a) and which are not Known Pre-Existing Hazardous Substances.

Utilities Plan means the plan developed by the Concessionaire that defines the Utility coordination activities during the design and construction of the Project, as described in more detail in the Technical Requirements.

Utility means a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, data or other telecommunications, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water not connected with the highway drainage and similar systems that directly or indirectly serve the public. The term “Utility” specifically excludes (a) storm water lines connected with the highway drainage, and (b) traffic signals, street lights, and electrical systems for Project roadways.

Utility Owner means the owner or franchisee of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

Utility Relocation means the removal, relocation and/or protection in place (including provision of temporary services as necessary) of any and all Utility facilities that have to be removed, relocated and/or protected in place in order to permit construction of the Project.

VDOT Funding Account means a project trust account established by the Department or its designee to fund the Public Funds Amount pursuant to Article 7.

VDOT Project Agreements means the Agreement, the Escrow Agreement, the Toll MOU, the Pentagon Reservation MOA, the Electronic Toll Collection Agreement, and the Violation Processing Services Agreement (if applicable).

Verification Process is defined in Section 7 of Part B of Exhibit P.

Violation Processing Services Agreement means an agreement the Concessionaire and the Department may enter into to govern utilization of the Department's violation processing system in accordance with Section 5.01(h)(i), which will be in the form then in use by the Department.

Virginia Petroleum Underground Storage Tank Fund (VPSTF) is defined in Section 16.01(e).

VPDES Construction Permit is defined in Section 3.3.12 of the Technical Requirements.

VTIB Lender means the Virginia Transportation Infrastructure Bank.

Warranty Period is defined in Section 8.11(a)(ii).

Work means collectively, the finance, development, planning, design, acquisition, installation, construction, completion, management, equipment, operation, repair and maintenance and any other services identified in the Agreement to be performed by the Concessionaire. For the avoidance of doubt, Work shall not include the design, development and construction of the STE or the operations and maintenance of the 395 Department Assets.

Work Product means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Concessionaire or the Department, as applicable, for the Project or the Project Right of Way, including but not limited to designs, drawings, plans and specifications, record and as-built plans and specifications, engineering documents, geotechnical soils and soil boring data, analyses, reports and records, property acquisition files, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all construction documents relating to the Work or Project Enhancements), engineers' and inspectors' diaries and reports, Utility Relocation plans and agreements, right of way record maps and surveys, traffic and revenue studies, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, air quality monitoring data, environmental reviews,

studies and reports, mitigation studies and reports, data, assessments, studies and reports regarding Hazardous Substance investigations, testings, borings, monitoring and analyses, manifests regarding handling, storage or transportation of Hazardous Substances, correspondence and agreements relating to Governmental Approvals, change orders, final quantities, pile driving records, records of accidents and traffic management, field test records and reports, concrete pour records, surfacing depth check records, grade and alignment books, cross-section notes, drainage notes, photographs, false work and form plans, records of construction materials, ETTM Equipment and ETTM Facilities records and reports, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which the Concessionaire and the Department mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure under Section 18.02 and which is not conceived or first reduced to practice for the Project Purposes, such as proprietary financial and pricing information of the Concessionaire.

EXHIBIT B

SCOPE OF WORK AND SCHEDULES AND EARLY WORK

EXHIBIT B-1

PROJECT DESCRIPTION AND SCOPE DOCUMENTATION

The I-95/395 HOV/HOT Lanes Project means the development, design, financing, construction, operation, maintenance and tolling of the Project Assets, all as more particularly described in the Technical Requirements, which consists of:

1. Expanding the current HOV Lanes facility from two lanes to three lanes between Prince William Parkway and approximately 2 miles north of Capital Beltway (near Turkeycock Run) and maintaining the existing two lanes from Prince William Parkway to south of the Town of Dumfries.

2. Extending the HOV Lane facility approximately 9 miles south by constructing two new lanes from Dumfries Road to Garrisonville Road (VA 610) in Stafford County.

3. Converting the HOV Lanes and ramps between 2 miles north of Capital Beltway (near Turkeycock Run) and Garrisonville Road into HOV/High Occupancy Toll Lanes (“HOT Lanes”).

4. Conversion of the Springfield Interchange Phase VIII HOV connector ramps from I-95 and I-395 to and from the Capital Beltway into HOT ramps; and the Phase VIII HOV-only through lanes on the Capital Beltway through the Springfield Interchange will be converted into HOT Lanes.

5. Adding new entry/exit points into and out of the HOT Lanes, as listed below in the access point table. All existing entry/exit points between 2 miles north of Capital Beltway (including Turkeycock Run SB HOV ramp) and south of Dumfries Road will be converted to HOT Lanes unless modified as identified below.

6. Operation and maintenance of the Project Assets, including the STE, following the Southbound Opening Date, with respect to the southbound portion of the STE, and following the STE Final Acceptance Date, with respect to the northbound portion of the STE. For the avoidance of doubt, the Department shall be responsible for the design, development and construction of the STE pursuant to the provisions of the First Amendment. The STE will extend the existing HOT lanes approximately 2.2 miles to milepost 142.5. The STE includes the creation of new northbound and southbound access points between the HOT Lanes and the GP Lanes.

7. Design, development and construction of the 395 Project. The 395 Project means (i) the 395 Express Lanes Northern Extension, (ii) the DEW Component, (iii) the Seminary Road Soundwall Component, (iv) the Pentagon Improvements, (v) the GP Bridges Component and (vi) the Eads Street Component.

8. The I-395 Express Lanes Northern Extension will convert the two existing I-395 HOV lanes to HOT Lanes from Turkeycock Run to the Washington, D.C. line for a distance of approximately eight miles, and add one additional HOT lane within the current footprint of the reversible HOV lanes from Turkeycock Run to 0.5 miles south of Eads Street. The I-395 Express Lanes Northern Extension will also include improvements to the existing HOV Lanes from 0.5

miles south of Eads Street to the Washington, D.C. line. No new HOT ramps will be built and the existing HOV access ramps will be converted to HOT ramps, except for the south facing ramp at Seminary Road.

9. Design, development and construction of the Fred Ex Project. The Fred Ex Project will build new HOT Lanes in the median of the existing I-95 Corridor from the current southern terminus of the STE to Route 17 in Stafford County, milepost 133, for a distance of approximately ten miles.

10. Design, development and construction of the Opitz Boulevard Ramp Project. The Opitz Boulevard Ramp Project means the design, construction, financing, operation, and maintenance of the Opitz Boulevard Ramp HOT Lanes.

11. Design, development and construction of the Seminary Road Ramp Project. The Seminary Road Ramp Project means the design, construction, financing, operation, and maintenance of the Seminary Road Ramp HOT Lanes.

12. After completion of the 395 Project, STE and Fred Ex Project, the project limits of the HOT Lanes will be from Washington D.C. line to Route 17 in Stafford County, milepost 133, including the Phase VIII HOV-only lanes and HOV connector ramps through the Springfield Interchange (hereinafter referred to as the “Toll Facility”).

No.	Route	Connection Location:	Northbound Connections	Southbound Connections	Type of Modification
1	I - 395	Between VA 648 (Edsall Road) and Turkeycock Run	NB HOV/HOT Lanes to NB GP Lanes	N/A	New
2	I - 95	VA 7100 (Fairfax County Parkway)	NB HOV/HOT Lanes to Fairfax County Parkway (Alban Rd.)	Fairfax County Parkway (Alban Rd.) to SB HOV/HOT Lanes	New
3	I - 95	Between VA 7100 (Fairfax County Pkwy) and VA 638 (Pohick Road)	N/A	SB HOV/HOT Lanes to SB GP Lanes	Deleted (to accommodate No. 2 above)
4	I - 95	Between VA 642 (Lorton Road) and Rt. 1	N/A	SB GP to SB HOV/HOT Lanes	New
5	I - 95	Between VA 123, VA 3000 (Prince William Parkway) and Opitz Blvd	NB HOV/HOT Lanes to NB general purpose lanes	N/A	New

No.	Route	Connection Location:	Northbound Connections	Southbound Connections	Type of Modification
6	I - 95	Between Opitz and Dale Blvd	N/A	SB GP to SB HOV/HOT Lanes	Deleted (to accommodate No. 17 below)
7	I - 95	Between US 234 (Dumfries Road) and VA 619 (Joplin Road)	N/A	SB HOV/HOT Lanes to SB general purpose lanes	Expanded – replace slip ramp with flyover
8	I - 95	Between VA 619 (Joplin Road) and VA 610 (Garrisonville Road)	NB general purpose lanes to NB HOV/HOT lanes	SB HOV/HOT Lanes to SB general purpose lanes	New
9	I - 95	Between VA 630 (Courthouse Road) and VA 610 (Garrisonville Road)	NB general purpose lanes to NB HOV/HOT lanes	SB HOV/HOT Lanes to SB general purpose lanes	New
10	I - 395	Seminary Road	South facing Ramp to Seminary Road	South facing Ramp to Seminary Road	Conversion from HOV3+ to HOT
11	I - 395	Eads Street	Eads Street to NB HOV/HOT Lanes	SB HOV/HOT Lanes to Eads Street	Modified ramps to be Reversible
12	I - 395	Between Eads Street and Washington Blvd	N/A	SB HOV/HOT Lanes to SB GP lanes	Deleted (to accommodate No. 11 above)
13	I-95	Between Route 637 (Telegraph Road) and Russell Road	Flyover from NB general purpose lanes to NB HOV/HOT lanes	Flyover from SB HOV/HOT Lanes to SB general purpose lanes	New
14	I-95	Route 630 (Courthouse Road)	Direct connect south facing ramp to Courthouse Road	Direct connect south facing ramp from Courthouse Road	New

No.	Route	Connection Location:	Northbound Connections	Southbound Connections	Type of Modification
15	I-95	Between VA Route 652 (Truslow Road) and VA Route 17 (Warrenton Road)	Flyover from NB general purpose lanes and future NB collector-distributor lanes to NB HOV/HOT lanes	Flyover from SB HOV/HOT Lanes to SB collector-distributor lanes	New
16	I-95	Route 17 (Warrenton Road)	At-grade slip ramp from NB general purpose lanes to NB HOV/HOT lanes	At-grade slip ramp from SB HOV/HOT Lanes to SB general purpose lanes	New
17	I-95	Route 2000 (Opitz Boulevard)	South facing ramp to Opitz Boulevard	South facing ramp to Opitz Boulevard	New
18	I-95	Between Dale Blvd and Cardinal Drive	N/A	SB GP to SB HOV/HOT Lanes	New (replaces No. 6 above)

The Project will also include (i) the tolling, operation and maintenance, and repair of the Project Assets in accordance with the Agreement, (ii) all other improvements constructed pursuant to the Agreement, as amended from time to time, and (iii) enhancements to the HOT Lanes to facilitate the operation of the Project Assets as intended in the Agreement.

The Project also includes use of the Express Operations Center constructed by Capital Beltway Express, LLC (“CBE”) as concessionaire for the Capital Beltway HOT Lanes in Virginia Project, as well as use of the TTMS and certain other equipment installed by CBE at the Express Operations Center. Such Project Assets as well as new TTMS and other equipment to be installed as part of the Project will be shared with CBE as provided in the Shared Facilities Agreement.

Following the 395 Early Final Completion Date or the 395 Final Completion Date, as applicable, the 395 Department Assets will be turned over to the Department and shall be maintained by the Department.

EXHIBIT B-2

INITIAL BASELINE SCHEDULE

[SEE ATTACHED]

EXHIBIT B-3

INITIAL 395 BASELINE SCHEDULE

[SEE ATTACHED]

EXHIBIT B-3A

INITIAL FRED EX BASELINE SCHEDULE

[SEE ATTACHED]

EXHIBIT B-3B

INITIAL OPITZ BOULEVARD RAMP BASELINE SCHEDULE

[SEE ATTACHED]

EXHIBIT B-3C

INITIAL SEMINARY ROAD RAMP BASELINE SCHEDULE

[SEE ATTACHED]

EXHIBIT B-4

SCOPE OF EARLY WORK

[SEE ATTACHED]

EXHIBIT B-5

SCOPE OF 395 EARLY WORK

[SEE ATTACHED]

EXHIBIT B-6

SCOPE OF FRED EX EARLY WORK

[SEE ATTACHED]

EXHIBIT C

TECHNICAL REQUIREMENTS

[SEE ATTACHED]

EXHIBIT D

FORM OF FOURTH AMENDED AND RESTATED ESCROW AGREEMENT

This **FOURTH AMENDED AND RESTATED ESCROW AGREEMENT** (“Escrow Agreement”) is made and entered into as of August 10, 2022 (the “Effective Date”) by and among the **VIRGINIA DEPARTMENT OF TRANSPORTATION** (the “Department”), an agency of the Commonwealth of Virginia, **95 EXPRESS LANES LLC** (the “Concessionaire”), a Delaware limited liability company, and **TRUIST BANK**, a North Carolina banking corporation (successor in interest to SunTrust Bank), as escrow agent hereunder (the “Escrow Agent”) (the Department, the Concessionaire and the Escrow Agent are herein referred to collectively as the “Parties”).

RECITALS

WHEREAS, the Department and the Concessionaire entered into a Comprehensive Agreement Relating to the I-95 HOV/HOT Lanes Project (the “95 Project”), dated July 31, 2012 (the “Original Comprehensive Agreement”), pursuant to which the Department granted a permit to the Concessionaire which includes (i) the right and obligation to develop, design, finance, construct, operate and maintain the 95 Project and (ii) the right to establish, impose, charge, collect, use and enforce payment of tolls and related charges;

WHEREAS, on May 2, 2016, the Department and the Concessionaire executed the first amendment to the Original Comprehensive Agreement, which added the Southern Terminus Extension or “STE” to the 95 Project;

WHEREAS, the Department and the Concessionaire entered into an Amended and Restated Comprehensive Agreement Relating to the I-95/I-395 HOV/HOT Lanes Project on June 8, 2017, which added the 395 Project to the 95 Project and STE;

WHEREAS, on April 18, 2019, the Department and the Concessionaire entered into a Second Amended and Restated Comprehensive Agreement Relating to the I-95/I-395 HOV/HOT Lanes Project, which added the Fred Ex Project to the 95 Project, the STE, and the 395 Project;

WHEREAS, on or about August 10, 2022 the Department and the Concessionaire entered into a Third Amended and Restated Comprehensive Agreement Relating to the I-95/I-395 HOV/HOT Lanes Project (the “Third ARCA”), which added the Opitz Boulevard Ramp Project and the Seminary Road Ramp Project to the 95 Project, the STE, the Fred Ex Project, and the 395 Project (the 95 Project, the STE, the Fred Ex Project, the 395 Project, the Opitz Boulevard Ramp Project, and the Seminary Road Ramp Project, collectively, referred to hereafter as the “Project”);

WHEREAS, under the Third ARCA, the Department has granted a permit to the Concessionaire, which includes (i) the right and obligation to develop, design, finance, construct, operate, and maintain the Project and (ii) the right to establish, impose, charge, collect, use, and enforce payment of tolls and related charges connected to the Project;

WHEREAS, pursuant to Section 18.05 of the Third ARCA, the Concessionaire is required to submit to the Department the Construction Escrow Documents and the Financing Escrow Documents (collectively, the “Escrow Documents”);

WHEREAS, pursuant to Section 18.05(d) of the Third ARCA, the Concessionaire is required to submit to the Department any Base Case Financial Model Updates (collectively, the “Revised Financial Models”);

WHEREAS, pursuant to Section 18.06 of the Third ARCA, the Concessionaire is required to establish an escrow for Concessionaire and its contractors and subcontractors to deposit their respective Source Code and all related documentation, including all relevant commentary and explanations and other documentation, as well as instructions to compile such Source Code and all modifications, additions, or substitutions made to such Source Code related documentation (the “Source Code Materials” and, together with the Escrow Documents and the Revised Financial Models, the “Escrow Materials”);

WHEREAS, the parties have previously amended and restated this Escrow Agreement and now desire to amend and restate it again to account for the execution of the Third ARCA.

NOW, THEREFORE, in consideration of these premises and in consideration of the mutual covenants herein contained, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, the Parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1

DEFINITIONS AND ORDER OF PRECEDENCE

1.1. Definitions

All capitalized terms used in this Escrow Agreement, but not otherwise defined herein, shall have the respective meanings given to such terms in the Third ARCA; provided, however, that the Parties acknowledge that the Escrow Agent is not a party to the Third ARCA and has no obligations beyond this Escrow Agreement.

1.2 Order of Precedence

In the event of any conflict, ambiguity or inconsistency between the provisions of the Third ARCA and the provisions of this Escrow Agreement, the provisions of this Escrow Agreement shall prevail. This Escrow Agreement constitutes the entire agreement between the Parties in connection with the subject matter of this Escrow Agreement, and no other agreement entered into between the Parties, including, without limitation, the Third ARCA, shall be considered adopted or binding, in whole or in part, upon the Escrow Agent notwithstanding that any such other agreement may be deposited with the Escrow Agent or the Escrow Agent may have knowledge thereof.

1.3 No Effect on Third ARCA

Nothing in this Escrow Agreement amends or modifies any of the Concessionaire’s or the Department’s obligations and rights under the Third ARCA.

ARTICLE 2

ESCROW ARRANGEMENTS

2.1. Appointment of Escrow Agent

The Concessionaire and the Department hereby appoint the Escrow Agent to serve as escrow agent hereunder, and the Escrow Agent hereby accepts such appointment, subject to the terms and conditions set forth in this Escrow Agreement. The Escrow Agent shall hold, manage, provide access to and dispose of the Escrow Materials in accordance with the terms hereof.

2.2. Deposit of Escrow Documents

2.2.1. In accordance with Section 18.05 of the Third ARCA, the Department (or, at the request of the Department, the Concessionaire) shall deliver and deposit with the Escrow Agent the Escrow Materials in the same sealed containers in which the Concessionaire delivered the Escrow Materials to the Department, which containers shall not have been opened or the contents thereof altered or modified in any way by the Department or any other person. The Escrow Agent shall provide to each Party written acknowledgment of the receipt of the Escrow Materials, and any additional Escrow Materials deposited with the Escrow Agent from time-to-time, promptly upon receipt thereof. The Escrow Agent is not required to take notice of the Escrow Materials or the contents thereof, which the Escrow Agent shall hold only for escrow purposes.

2.2.2. Within seven (7) days after an update has not been challenged or any such challenge has been resolved, the Concessionaire shall deliver and deposit with the Escrow Agent the Revised Financial Models for inclusion as part of the Financing Escrow Documents. The Escrow Agent shall provide each Party written acknowledgement of the receipt of the Revised Financial Models, and any subsequent additions or modifications to the Revised Financial Models, promptly upon receipt thereof. The Escrow Agent is not required to take notice of the Revised Financial Models or the contents thereof, which the Escrow Agent shall hold only for escrow purposes.

2.2.3. At any time before or after the applicable Service Commencement Date, the Concessionaire and all of its relevant contractors or subcontractors (each, a "Source Code Owner") shall deliver and deposit with the Escrow Agent any Source Code Materials and any modifications, additions, or substitutions made to such Source Code Materials no less than one time per calendar year. The Concessionaire shall provide the Escrow Agent and the Department with written notice of the identity of each Source Code Owner required to deposit Source Code Materials with the Escrow Agent pursuant to this Escrow Agreement. The Escrow Agent shall provide written acknowledgement of the receipt of the Source Code Materials to the Source Code Owner (with a copy of such acknowledgement to Concessionaire and the Department), and any subsequent additions or modifications to the Source Code Materials, promptly upon receipt thereof. The Escrow Agent is not required to take notice of the Source Code Materials or the contents thereof, which the Escrow Agent shall hold only for escrow purposes.

2.2.4. Upon delivering any Escrow Materials to the Escrow Agent, the delivering Party shall designate whether the Escrow Materials are Construction Escrow Documents,

Financing Escrow Documents, Revised Financial Models, or Source Code Materials. The Escrow Agent shall not be required to review any of the Escrow Materials delivered to it and shall be entitled to conclusively rely upon without inquiry the designation assigned to such Escrow Materials by the delivering Party.

2.3. Ownership; Use and Review of Escrow Documents

2.3.1. The Parties hereby acknowledge and agree that the Escrow Documents and the Revised Financial Models are, and shall always be, the property of the Concessionaire. The Escrow Agent shall provide prompt access to the Escrow Documents and the Revised Financial Models upon receipt by it of a written notice requesting such access signed by the Department or the Concessionaire together with the certificate of the Department or the Concessionaire referred to below in this Section 2.03(a); *provided*, that the Department, prior to making such request, has given a minimum of 24 hours written notice to the Concessionaire, and the Concessionaire, prior to making such request, has given a minimum of 24 hours written notice to the Department. The Escrow Agent shall not permit access to the Escrow Documents and the Revised Financial Models to any person other than duly authorized representatives of the Department and the Concessionaire. Such authorized representatives of the Concessionaire and the Department shall be entitled to conduct examinations and reviews of the Escrow Documents and the Revised Financial Models for the purposes and in accordance with the provisions set forth in Section 18.05(f) of the Third ARCA. As a condition to allowing access to the Escrow Documents and the Revised Financial Models to any person, the Escrow Agent shall be entitled to receive and to conclusively rely upon without inquiry, as applicable, (i) a certificate of the Concessionaire that such person is an authorized representative of the Concessionaire and is entitled to access to the Escrow Documents and the Revised Financial Models pursuant to this Escrow Agreement and the Third ARCA and that the Concessionaire has given the Department at least twenty-four (24) hours prior written notice of its request for access to the Escrow Documents and the Revised Financial Models or (ii) a certificate from the Department that such person is a duly authorized representative of the Department and is entitled to access to the Escrow Documents and the Revised Financial Models pursuant to this Escrow Agreement and that the Department has given the Concessionaire at least twenty-four (24) hours prior written notice of its request for access to the Escrow Documents and the Revised Financial Models.

2.3.2. The Parties hereby acknowledge and agree that the Source Code Materials are, and shall always be, the exclusive property of the applicable Source Code Owner. The Escrow Agent shall not use the Source Code or permit access to the Source Code Materials to any person other than duly authorized representatives of the appropriate Source Code Owner. As a condition to allowing access to any Source Code Materials to any person, the Escrow Agent shall be entitled to receive and to conclusively rely upon without inquiry a certificate of the applicable Source Code Owner that such person is a duly authorized representative of such Source Code Owner and is entitled to access to such Source Code Materials pursuant to this Escrow Agreement.

2.4 Release and Return of Escrow Materials.

2.4.1. The Escrow Agent shall hold the Escrow Materials in its possession at its offices in Richmond, Virginia until directed to deliver such Escrow Materials upon receipt of a written certification delivered pursuant to Section 2.4.2 below whereupon the Escrow Agent shall

deliver the appropriate Escrow Documents and Revised Financial Models to the Concessionaire or the Source Code Materials to the applicable Source Code Owner, as appropriate.

2.4.2. The Escrow Agent shall:

2.4.2.1. release the Fred Ex Construction Escrow Documents to the Concessionaire upon receipt by the Escrow Agent of a certification from the Concessionaire and the Department stating that the Fred Ex Project has achieved Fred Ex Final Completion, final payment has been made to the Fred Ex Design-Build Contractor and the Fred Ex TTMS Contractor, and all claims or disputes arising under or related to the Fred Ex Design-Build Contract and the Fred Ex TTMS Contract have been fully and finally resolved and/or adjudicated;

2.4.2.2 release the Opitz Boulevard Ramp Construction Escrow Documents to the Concessionaire upon receipt by the Escrow Agent of a certification from the Concessionaire and the Department stating that the Opitz Boulevard Ramp Project has achieved Opitz Boulevard Ramp Final Completion, final payment has been made to the Opitz Boulevard Ramp Construction Contractor and the TTMS Contractor (with respect to Opitz Boulevard Ramp TMS Contract), and all claims or disputes arising under or related to the Opitz Boulevard Ramp Construction Contract and the Opitz Boulevard Ramp TMS Contract have been fully and finally resolved and/or adjudicated; and

2.4.2.3. release the Seminary Road Ramp Construction Escrow Documents to the Concessionaire upon receipt by the Escrow Agent of a certification from the Concessionaire and the Department stating that the Seminary Road Ramp Project has achieved Seminary Road Ramp Final Completion, final payment has been made to the Seminary Road Ramp Construction Contractor, and all claims or disputes arising under or related to the Seminary Road Ramp Construction Contract have been fully and finally resolved and/or adjudicated.

2.4.3. The Escrow Agent shall release the Financing Escrow Documents and Revised Financials Models to the Concessionaire upon receipt by the Escrow Agent of a certification from the Concessionaire and the Department stating that the Third ARCA has been terminated in accordance with the provisions thereof and all claims or disputes arising under or related to the Third ARCA have been fully and finally resolved and/or adjudicated.

2.4.4. The Escrow Agent shall release the Source Code Documentation to the applicable Source Code Owner upon receipt by the Escrow Agent of a certification from the Concessionaire and the Department stating that the Third ARCA has terminated in accordance with the provisions thereof and all claims or disputes arising under or related to the Third ARCA have been fully and finally resolved and/or adjudicated.

2.5. Termination

This Escrow Agreement shall continue in effect and shall automatically terminate at such time as the last of the Escrow Materials is released to the Concessionaire or Source Code Owner as provided in Section 2.04 hereof. It is agreed and understood that in the event of disagreement between the Parties hereto or any of the Source Code Owners, the Escrow Agent will, and does, reserve the right to hold the Escrow Materials in its possession, and all papers in connection with or concerning this escrow, until mutual agreement has been reached between the Parties and the

Source Code Owners, as applicable, or until delivery thereof is ordered pursuant to a final disposition reached pursuant to the dispute resolution provisions of Article 21 of the Third ARCA and the Escrow Agent shall not be or become liable in any way or to any Party, any Source Code Owner or any other person or entity for its continuing to hold the Escrow Materials and all other such papers in its possession until receipt of such mutual agreement of the Parties and the Source Code Owners, as applicable, or such final disposition.

ARTICLE 3

ESCROW AGENT

3.1. Liability of Escrow Agent

The Escrow Agent undertakes to perform only those duties that are expressly set forth in this Escrow Agreement, and the Parties hereto acknowledge that these duties are purely ministerial in nature. The Escrow Agent shall have no responsibility to any person in connection with this Escrow Agreement except as specifically provided herein and shall not be responsible for anything done or omitted to be done by it except for its own gross negligence or willful default in the performance of any obligation imposed on it hereunder. Unless specifically provided herein, the Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of the other Parties with respect to arrangements or contracts with others, the Escrow Agent's sole duty hereunder being to safeguard the Escrow Materials and to dispose of and deliver the same in accordance with this Escrow Agreement. No provision of this Escrow Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement. In no event shall the Escrow Agent be liable for incidental, indirect, special, consequential, or punitive damages of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. If the Escrow Agent is called upon by the terms of this Escrow Agreement to determine the occurrence of any event or contingency, the Escrow Agent may request from the other Parties or any other person such reasonable additional evidence as the Escrow Agent in its discretion may deem necessary to determine any fact relating to the occurrence of such event or contingency, and in this connection may inquire and consult with the other Parties, among others, at any time. The permissive rights of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties. In carrying out its duties and obligations under the terms of this Escrow Agreement, the Escrow Agent shall be protected in acting upon any written instruction, notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which the Escrow Agent in good faith believes to be genuine and what it purports to be, including, but not limited to, items requesting or authorizing release, disbursement or retainage of the subject matter of this Escrow Agreement and items amending the terms of the Escrow Agreement. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents. The Escrow Agent shall not be obligated to take any legal action or to commence any proceedings in connection with this Escrow Agreement or any property held hereunder or to appear in, prosecute or defend in any such legal action or proceedings. The Escrow Agent may request an opinion of counsel for a determination of any legal issue which might arise in the performance of its duties hereunder and such opinion of counsel

shall be full and complete authorization for any action taken, suffered or omitted by the Escrow Agent in reliance thereon and the Concessionaire shall pay the reasonable fees and expenses of such counsel. This Escrow Agreement sets forth exclusively the duties of the Escrow Agent with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into this Escrow Agreement against the Escrow Agent. The Escrow Agent shall in no event be deemed to be a fiduciary to any Party or any other person or entity under this Escrow Agreement.

3.2. Payment of Escrow Agent; Indemnity

3.2.1. The Escrow Agent acknowledges receipt of good and valuable consideration for the services rendered or to be rendered by it pursuant to this Escrow Agreement. The Concessionaire shall pay the Escrow Agent’s reasonable fees and expenses in connection with the performance of its duties under this Escrow Agreement. The semi annual administrative fee will be computed as described below and shall be payable in March and September by the Concessionaire or within thirty (30) days of receipt of an invoice from the Escrow Agent. The Escrow Agent and the Concessionaire acknowledge and agree that the Department shall have no liability in respect of any fees or expenses of the Escrow Agent. The provisions of this section shall survive the termination of this Escrow Agreement and any resignation or removal of the Escrow Agent.

Number of Items held in vault	Semi Annual Administration Fee
1 - 10	\$ 1,250.00
11 - 20	\$ 1,750.00
21 - 30	\$ 2,250.00
31 - 40	\$ 2,750.00
41 - 50	\$ 3,250.00

3.2.2. The Concessionaire agrees to indemnify, defend, and hold harmless the Escrow Agent and each of the Escrow Agent’s officers, directors, agents and employees (the “Indemnified Parties”) from and against any and all losses, liabilities, claims, damages, expenses and costs (including, without limitation, attorneys’ fees and expenses and the fees and expenses of enforcing the terms of this Escrow Agreement including the indemnifications provided herein) of every nature whatsoever (collectively, “Losses”) whether brought by any Party hereto or third party which any such Indemnified Party may incur and which arise directly or indirectly from this Escrow Agreement or which arise directly or indirectly by virtue of the Escrow Agent’s undertaking to serve as Escrow Agent hereunder; *provided*, however, that no Indemnified Party shall be entitled to indemnity with respect to Losses that have been finally adjudicated by a court of competent jurisdiction to have been directly caused by such Indemnified Party’s gross negligence or willful misconduct. The provisions of this section shall survive the termination of this Escrow Agreement and any resignation or removal of the Escrow Agent.

3.3. Resignation and Replacement of Escrow Agent

The Escrow Agent may resign, and thereby become discharged from the duties and obligations hereby created, by written notice given to the Department and the Concessionaire, not less than fifteen (15) days before such resignation shall take effect. Such resignation shall take effect immediately, however, upon the earlier appointment of a new Escrow Agent hereunder and acceptance of the duties hereunder. The Escrow Agent shall continue to serve as Escrow Agent until a successor is appointed and the Escrow Materials have been properly transferred to the successor Escrow Agent. In the event of the resignation of the Escrow Agent prior to the expiration of this Escrow Agreement, the Escrow Agent shall rebate to the Concessionaire a ratable portion of any prepaid fee theretofore paid by the Concessionaire to the Escrow Agent for its services hereunder. After any notice of resignation of the Escrow Agent, the Concessionaire shall undertake to appoint a replacement Escrow Agent on terms reasonably acceptable to the Concessionaire and the Department.

ARTICLE 4

GENERAL PROVISIONS

4.1. Address for Notices

4.1.1. Whenever under the provisions of this Escrow Agreement it will be necessary or desirable for one Party to serve any approval, notice, request, demand, report or other communication on another Party, the same will be in writing and will not be effective for any purpose unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by E-mail transmission or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Department: Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Engineer
Email: ba.thrasher@vdot.virginia.gov

With copies to: Office of the Attorney General
202 N. 9th Street
Richmond, VA 23219
Attention: Transportation Section
Email: LBidwell@oag.state.va.us

Virginia Department of Transportation
4975 Alliance Drive
Fairfax, Virginia 22030
Attention: NOVA Mega Projects Director
Email: susan.shaw@vdot.virginia.gov

Virginia Department of Transportation
87 Deacon Road
Fredericksburg, VA 22405
Attention: Fredericksburg Assistant District Engineer
Email: michelle.shropshire@vdot.virginia.gov

If to the Concessionaire: 95 Express Lanes LLC
6440 General Green Way
Alexandria, Virginia 22312
Attention: President
Email: PCoffee@transurban.com

With copies to: 95 Express Lanes LLC
6440 General Green Way
Alexandria, Virginia 22312
Attention: Legal Counsel
Telephone: (571) 419-6100
Email: LWilliams@transurban.com

If to the Escrow Agent: Truist Bank
919 East Main Street, 2nd Floor
Richmond, Virginia 23219
Attention: Escrow Services
Telephone: (804) 782-7087
Email: Emily.Hare@truist.com

4.1.2. Any Party may, from time to time, by notice in writing served upon the other Parties as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally will be deemed delivered upon receipt, if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by facsimile transmission will be deemed delivered on the date of receipt as shown on the received facsimile (*provided*, that the original is thereafter delivered as aforesaid); provided, however, that notwithstanding anything to the contrary herein provided, the Escrow Agent shall not be deemed to have received any demand, notice, approval or other communication hereunder prior to the Escrow Agent's actual receipt thereof.

4.2. **Successors and Assigns**

This Escrow Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and permitted assigns. Except as hereinafter provided, neither this Escrow Agreement nor any rights or obligations hereunder may be assigned by any Party without the express written consent of each of the other Parties. The Department and the Escrow Agent hereby consent to the collateral assignment (the "Assignment") of this Escrow

Agreement in whole by the Concessionaire to the Collateral Agent as security for the performance of the Concessionaire's obligations under the Project Financing Agreements. Pursuant to the Assignment, the Collateral Agent and its designee or assignee shall have the right to assume the benefits and obligations of the Concessionaire under this Escrow Agreement. In the event that the Collateral Agent or such designee or assignee exercise such right by notice to the Escrow Agent, as of the date of such assumption of benefits and obligations of the Concessionaire hereunder, the Collateral Agent may, in connection with any default under any Project Financing Agreement, assign any rights assigned to it hereunder to any other entity. However, the Escrow Agent shall have no obligation in performing this Escrow Agreement to recognize any successor or assign of the Concessionaire unless the Escrow Agent receives clear, authoritative and conclusive written evidence of the change of Party together with a written assumption of the obligations of the Concessionaire by the successor or assign in form and substance reasonably acceptable to the Escrow Agent and any information requested by the Escrow Agent with respect to the successor or assign to enable the Escrow Agent to satisfy the requirements of the customer identification program under the USA PATRIOT Act.

4.3. Counterparts

This Escrow Agreement may be executed in several counterparts (including in electronic .pdf format) each of which shall be an original and all of which together shall constitute one and the same instrument.

4.4. Waiver

Any term of this Escrow Agreement may be waived by the Party entitled to the benefits thereof, provided that any such waiver must be in writing and signed by the Party against whom the enforcement of the waiver is sought. No waiver of any condition, or breach of any provision of this Escrow Agreement, in any one or more instances, shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed the waiver of that right or remedy.

4.5. Benefit of Agreement; Amendments

4.5.1. This Escrow Agreement is made for the benefit of the Concessionaire and the Department and, with respect to the Source Code Materials, for the benefit of each Source Code Owner, except as otherwise expressly provided herein.

4.5.2. This Escrow Agreement shall not be amended without the prior written consent of the Concessionaire, the Department, and the Escrow Agent.

4.6. Severability

In the event any one or more of the provisions contained in this Escrow Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Escrow Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

4.7. Prior Contracts Superseded

This Escrow Agreement constitutes the sole agreement of the Parties hereto with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the Parties respecting such subject matter and no other agreement entered into between the other Parties or either of them with any other person or entity, including, without limitation, the Third ARCA, shall be considered as adopted or binding, in whole or in part, upon the Escrow Agent notwithstanding that any such other agreement may be deposited with the Escrow Agent or the Escrow Agent may have knowledge thereof.

4.8. Effect of Breach

Without prejudice to any rights a Party may otherwise have, a breach of this Escrow Agreement shall not of itself give rise to a right to terminate the Third ARCA.

4.9 No Third-Party Beneficiaries

Nothing contained in this Escrow Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward, any person or entity that is not a Party.

4.10. No Partnership

Nothing contained in this Escrow Agreement shall be deemed to constitute a partnership between the Parties hereto. None of the Parties shall hold itself out contrary to the terms of this Section 4.10.

4.11. Governing Law

This Escrow Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia applicable to contracts executed and to be performed within the State, without regard for conflict of laws principles. Venue for any legal action arising out of this Escrow Agreement shall lie in the Circuit Court in the City of Richmond, Virginia, Division I.

4.12. Certificate of Incumbency

Contemporaneously with the execution and delivery of this Escrow Agreement and, if necessary, from time to time thereafter, each of the parties hereto (other than the Escrow Agent) shall execute and deliver to the Escrow Agent a Certificate of Incumbency substantially in the form of Exhibit A hereto (a "Certificate of Incumbency"), for the purpose of establishing the identity and authority of persons entitled to issue notices, instructions or directions to the Escrow Agent on behalf of each such party. Until such time as the Escrow Agent shall receive an amended Certificate of Incumbency replacing any Certificate of Incumbency theretofore delivered to the Escrow Agent, the Escrow Agent shall be fully protected in relying, without further inquiry, on the most recent Certificate of Incumbency furnished to the Escrow Agent. Whenever this Escrow Agreement provides for joint written notices, joint written instructions or other joint actions to be delivered to the Escrow Agent, the Escrow Agent shall be fully protected in relying, without further

inquiry, on any joint written notice, instructions or action executed by persons named in such Certificate of Incumbency.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Escrow Agreement to be executed by their duly authorized representatives as of the Effective Date.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an agency of the Commonwealth of Virginia

By: _____
Name: Stephen C. Brich, P.E.
Title: Commissioner of Highways

95 EXPRESS LANES LLC,
a Delaware limited liability company

By: _____
Name: Pierce R. Coffee
Title: President

TRUIST BANK,
a North Carolina banking corporation

By: _____
Name:
Title:

[Signature Page to Escrow Agreement]

EXHIBIT A-1

Certificate of Incumbency

(List of Authorized Representatives)

Client Name: VIRGINIA DEPARTMENT OF TRANSPORTATION

As an Authorized Officer of the above referenced entity, I hereby certify that each person listed below is an authorized signor for such entity, and that the title and signature appearing beside each name is true and correct.

Name	Title	Signature	Phone Number(s)	Email Address

IN WITNESS WHEREOF, this certificate has been executed by a duly authorized officer on:

_____.
Date

By: _____
Name: _____
Title: _____

EXHIBIT A-2

Certificate of Incumbency

(List of Authorized Representatives)

Client Name: 95 EXPRESS LANES LLC

As an Authorized Officer of the above referenced entity, I hereby certify that each person listed below is an authorized signor for such entity, and that the title and signature appearing beside each name is true and correct.

Name	Title	Signature	Phone Number(s)	Email Address
Pierce R. Coffee	President			PCoffee@transurban.com

IN WITNESS WHEREOF, this certificate has been executed by a duly authorized officer on:

_____.
Date

By: _____
Name: Lakshmi Williams
Title: Secretary

EXHIBIT E
FORM OF DESIGN-BUILD CONTRACT

[SEE ATTACHED]

EXHIBIT F

FORM OF DESIGN-BUILD WORK GUARANTEE

[SEE ATTACHED]

EXHIBIT G

USDOT REPORTING REQUIREMENTS FOR TIFIA

Requirements Relating to TIFIA Credit Assistance	
TIFIA Loan Agmt. §	Reporting Provisions
Definition – “TIFIA Loan Documents”	“any and all other agreements, instruments, government approvals or other documents evidencing, securing, governing or otherwise executed in connection with and effecting in any material respects the TIFIA Loan”
Section 7(b)	Revisions to the Loan amortization schedule at the 5th anniversary of Project completion
Section 9(a)	Outstanding TIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period
Section 10(b)	Borrower’s notice of optional prepayment of TIFIA Loan.
Section 12	Notice of Event of Default from the TIFIA Lender
Section 13	Concessionaire must deliver certain documents as a condition precedent to the TIFIA Loan, including Traffic and Revenue Study, Project Revenue Schedule, insurance certificates and draw schedule.
Section 16(h)(ii)-(iii)	Notices required to be given to the TIFIA Lender for Litigation and other adverse events.
Section 16(m)	Annual Ratings from credit rating agencies, unless the ratings are confidential.
Section 19(c)	Any notices relating to the TIFIA Lender’s instituting any actions or proceedings for the collection of sums due and unpaid
Section 19(d)	Any notices of suspension or debarment by the TIFIA Lenders.
Section 21(a)	Financial Plan
Section 22(b)(d)	30 days after the end of each calendar month, a traffic and operating report

EXHIBIT H
TIFIA REQUIREMENTS

[SEE ATTACHED]

EXHIBIT I
FORM OF O&M AGREEMENT

[SEE ATTACHED]

EXHIBIT J-1

PERMIT FEE²

1. Concessionaire Responsibilities and Department Rights

- 1.1 On or before 120 days following the end of each Agreement Year following the Service Commencement Date and continuing until 120 days following the end of the year in which the end of the Term, or the termination of the Agreement, occurs the Concessionaire shall provide to the Department:
- (i) a calculation of the Actual Equity IRR as at the end of such Agreement Year;
 - (ii) a reconciliation of Permit Fees paid, if any, during the Agreement Year and the required Permit Fees payable, if any, based upon the Actual Equity IRR throughout the Agreement Year; and
 - (iii) the Concessionaire's audited calculation of the Permit Fee, together with all other data relevant to the calculation of the Permit Fee.
- 1.2 Prior to achieving the First Level Rate of Return as defined in Section 2.1 of this Exhibit, the Concessionaire's responsibilities in this section still apply. In periods where no Permit Fee is payable, the Concessionaire shall explicitly note this as part of 1.1(ii).
- 1.3 The Permit Fee will be payable by the Concessionaire to the Department, *pari passu* with other Operating Costs pursuant to Section 5.06(a).
- 1.4 The Department shall have the right to dispute the Concessionaire's calculation of the Permit Fee or to request additional information, clarification or amendment of such calculation, at any time for a period of one year following the submission of the audit and other data referenced above. The Concessionaire shall deliver to the Department such information, clarification or amendment within 30 Days following the delivery of the Department's request. If the Department does not agree with the calculation of the Permit Fee, the dispute shall be resolved according to the Dispute Resolution Procedures of Article 21 of the Agreement.
- 1.5 "Semi-Annual Period" means the six month period ending December 31 and June 30 of each Agreement Year.

2. Rate of Return Levels

- 2.1 "First Level Rate of Return" means the Initial Equity IRR. "Second Level Rate of Return" means the Initial Equity IRR plus 2%. "Third Level Rate of Return" means

² The Parties agree that once the Permit Fee Buyout Payment is made, the Permit Fee will no longer be applicable to the Project and the provisions of this Exhibit J-1 shall not apply.

the Initial Equity IRR plus 4%. “Fourth Level Rate of Return” means the Initial Equity IRR plus 6%.

- 2.2 First Level Rate of Return shall be treated as having been achieved if during an Agreement Year the nominal Actual Equity IRR equals or exceeds the First Level Rate of Return;
- 2.3 Second Level Rate of Return shall be treated as having been achieved if during an Agreement Year the nominal Actual Equity IRR equals or exceeds the Second Level Rate of Return;
- 2.4 Third Level Rate of Return shall be treated as having been achieved if during an Agreement Year the nominal Actual Equity IRR equals or exceeds the Third Level Rate of Return; and
- 2.5 Fourth Level Rate of Return shall be treated as having been achieved if during an Agreement Year the nominal Actual Equity IRR equals or exceeds the Fourth Level Rate of Return.

3. Calculation of Permit Fees

- 3.1 If, as of the end of any Agreement Year, the Project shall have achieved the First Level Rate of Return as of such date, the Concessionaire shall pay to the Department, as a Permit Fee, an amount equal to 5% of the aggregate Gross Revenues received by or on behalf of the Concessionaire during such Agreement Year in excess of such portion of such Gross Revenues that resulted in the Concessionaire achieving the First Level Rate of Return (but excluding any such Gross Revenues that may have resulted in the Concessionaire achieving a return in excess of the Second Level Rate of Return).
- 3.2 If, as of the end of any Agreement Year, the Project shall have achieved the Second Level Rate of Return as of such date, the Concessionaire shall pay to the Department, as a Permit Fee, an amount equal to 15% of the aggregate Gross Revenues received by or on behalf of the Concessionaire during such Agreement Year in excess of such portion of such Gross Revenues that resulted in the Concessionaire achieving the Second Level Rate of Return (but excluding any such Gross Revenues that may have resulted in the Concessionaire achieving a return in excess of the Third Level Rate of Return).
- 3.3 If, as of the end of any Agreement Year, the Project shall have achieved the Third Level Rate of Return as of such date, the Concessionaire shall pay to the Department, as a Permit Fee, an amount equal to 30% of the aggregate Gross Revenues received by or on behalf of the Concessionaire during such Agreement Year in excess of such portion of such Gross Revenues that resulted in the Concessionaire achieving the Third Level Rate of Return (but excluding any such Gross Revenues that may have resulted in the Concessionaire achieving a return in excess of the Fourth Level Rate of Return).

- 3.4 If, as of the end of any Agreement Year, the Project shall have achieved the Fourth Level Rate of Return as of such date, the Concessionaire shall pay to the Department, as a Permit Fee, an amount equal to 40% of the aggregate Gross Revenues received by or on behalf of the Concessionaire during such Agreement Year in excess of such portion of such Gross Revenues that resulted in the Concessionaire achieving the Fourth Level Rate of Return.
- 3.5 If, as of June 30 of the 50th Agreement Year of the Term and each Agreement Year thereafter, the Project shall have achieved the First Level Rate of Return as of such date, the Concessionaire shall pay to the Department, as a Permit Fee, an amount equal to 40% of the aggregate Gross Revenues received by or on behalf of the Concessionaire during such Agreement Year in excess of such portion of such Gross Revenues that resulted in the Concessionaire achieving the First Level Rate of Return.
- 3.6 At the request of either party from time to time (but not more than once per year), the Concessionaire and the Department will discuss in good faith possible adjustments to the Operating Costs, using the federal Contract Cost Principles and Procedures, 48 C.F.R. 31.205, as non-binding guidance to ensure that only reasonable and customary costs are included as Operating Costs.

4. Example of the Permit Fee calculations

4.1 Calculation of the first Permit Fee payable

The amounts payable on or before October 31 following the end of the first Agreement Year in which the First Level Rate of Return is achieved are shown as follows:

$$\text{First Year Permit Fee payable} = \{[A - B] \times 5\%\} \times \{[1 + C\%]D/365\}$$

Where:

A = total Gross Revenue for the full Agreement Year

B = total Gross Revenue accumulated during each Semi-Annual Period in such Agreement Year during which the First Level Rate of Return was achieved

C = calculated average annual earnings rate on the State's Transportation Trust Fund or any successor.

D = the number of days after June 30 of the Agreement Year prior to the Agreement Year in which payment is made, understanding that payment is required by October 31 of the immediately following Agreement Year.

4.2 Subsequent Permit Fee Payments

(a) Concessionaire requirements

Within 30 days following each Quarterly Period (i.e., the quarterly periods ending September 30, December 31, March 31 and June 30) within any Agreement Year following the Agreement Year in which the First Level Rate of Return was achieved, the Concessionaire shall remit to the Department an amount equal to the Permit Fee for such Quarterly Period based on the sharing percentage as calculated in the most recent audited Permit Fee calculation submitted by Concessionaire and agreed by the Department.

(b) Quarterly Permit Fees

The amounts payable shall be calculated based on the following formula:

$$\text{Quarterly Permit Fee payable} = A \times B$$

Where:

A = total Gross Revenues for the preceding Quarterly Period.

B = the Permit Fee sharing percentage as determined in the most recent audited Permit Fee calculation provided by the Concessionaire and agreed by the Department.

(c) Second Level Rate of Return Permit Fee Calculation

If the Actual Equity IRR calculation as submitted to the Department by the Concessionaire shows that during the preceding Agreement Year, the Actual Equity IRR achieved the Second Level Rate of Return, then the Concessionaire shall identify the amounts payable to the Department within a reconciliation of the amounts payable and amounts paid as required in Section 1 of this Exhibit J.

The calculation of such amount is shown as below:

$$\text{TRPF} = \{[A - B] \times 15\%\} + \{B \times 5\%\}$$

$$\text{TPPF} = A \times 5\%$$

$$\text{Amounts due} = \{\text{TRPF} - \text{TPPF}\} \times \{[1 + C\%]D/365\}$$

Where:

TRPF = Total Required Permit Fee

TPPF = Total Paid Permit Fee

A = total Gross Revenue for the full Agreement Year

B = total Gross Revenue accumulated from the beginning of the Agreement Year to the end of the Semi-Annual Period during which the Second Level Rate of Return was achieved

C = calculated average annual earnings rate on the State's Transportation Trust Fund or any successor.

D = the number of days after June 30 of the Agreement Year prior to the Agreement Year in which payment is made, understanding that payment is required by October 31 of the immediately following Agreement Year.

(d) Third Level Rate of Return Permit Fee calculation

If the Actual Equity IRR calculation as submitted to the Department by the Concessionaire shows that during the preceding Agreement Year, the Actual Equity IRR achieved the Third Level Rate of Return, then the Concessionaire shall identify the amounts payable to the Department within a reconciliation of the amounts payable and amounts paid as required in Section 1 of this Exhibit J.

The calculation of such amount is shown as below:

$$\text{TRPF} = \{[A - B] \times 30\%\} + \{B \times 15\%\}$$

$$\text{TPPF} = A \times 15\%$$

$$\text{Amounts due} = \{\text{TRPF} - \text{TPPF}\} \times \{[1 + C\%]D/365\}$$

Where:

TRPF = Total Required Permit Fee

TPPF = Total Paid Permit Fee

A = total Gross Revenue for the full Agreement Year

B = total Gross Revenue accumulated from the beginning of the Agreement Year to the end of the Semi-Annual Period during which the Third Level Rate of Return was reached

C = calculated average annual earnings rate on the State's Transportation Trust Fund or any successor.

D = the number of days after June 30 of the Agreement Year prior to the Agreement Year in which payment is made, understanding that payment is required by October 31 of the immediately following Agreement Year.

(e) Fourth Level Rate of Return Permit Fee calculation

If the Actual Equity IRR calculation as submitted to the Department by the Concessionaire shows that during the preceding Agreement Year, the Actual Equity IRR achieved the Fourth Level Rate of Return, then the Concessionaire shall identify the amounts payable to the Department within a reconciliation of the amounts payable and amounts paid as required in Section 1 of this Exhibit J.

The calculation of such amount is shown as below:

$$\text{TRPF} = \{[A - B] \times 40\%\} + \{B \times 30\%\}$$

$$\text{TPPF} = A \times 30\%$$

$$\text{Amounts due} = \{\text{TRPF} - \text{TPPF}\} \times \{[1 + C\%]D/365\}$$

Where:

TRPF = Total Required Permit Fee

TPPF = Total Paid Permit Fee

A = total Gross Revenue for the full Agreement Year

B = total Gross Revenue accumulated from the beginning of the Agreement Year to the end of the Semi-Annual Period during which the Fourth Level Rate of Return was reached

C = calculated average annual earnings rate on the State's Transportation Trust Fund or any successor.

D = the number of days after June 30 of the Agreement Year prior to the Agreement Year in which payment is made, understanding that payment is required by October 31 of the immediately following Agreement Year.

(f) Permit Fee calculation after the 50th Agreement Year of the Term

On or after the 50th Agreement Year after the Service Commencement occurs, so long as the First Level Rate of Return was achieved, then the Concessionaire shall identify the amounts payable to the Department within a reconciliation of the amounts payable and amounts paid as required in Section 1 of this Exhibit J.

The calculation of such amount is shown as below:

$$\text{TRPF} = \{A \times 40\%\}$$

$$\text{Amounts due} = \{\text{TRPF} - \text{TPPF}\} \times \{[1 + C\%]D/365\}$$

Where:

TRPF = Total Required Permit Fee

TPPF = Total Paid Permit Fee

A = total Gross Revenue for the full Agreement Year

B = total Gross Revenue accumulated during each Semi-Annual Period.

C = calculated average annual earnings rate on the State's Transportation Trust Fund or any successor.

D = the number of days after June 30 of the Agreement Year prior to the Agreement Year in which payment is made, understanding that payment is required by October 31 of the immediately following Agreement Year.

(g) Additional Committed Investment

If the Concessionaire invests additional Committed Investment over and above that included in the Base Case Financial Model, subject to adjustment pursuant to Section 7.07, the additional Committed Investment shall not be included in the calculation of the Actual Equity IRR, except to the extent that the additional Committed Investment was made in connection with a Department Change, a Department Project Enhancement or a Directive Letter.

5. Payment of Permit Fees

Payment of the First Permit Fee

5.1 In the first Agreement Year in which a Permit Fee becomes payable, as a result of the First Level Rate of Return being achieved, the Concessionaire shall submit to the Department within 150 days following the end of such Agreement Year, the Permit Fee payable by Concessionaire to the Department together with interest, from the first day of the month following the month in which the First Level Rate of Return is achieved to the payment date, with interest during such period to be calculated at the average daily earnings rate on the State's Transportation Trust Fund or any successor rate. Any amount not paid within such 150 day period, will bear interest as specified in Section 25.22 of the Agreement.

Payment of Subsequent Permit Fees

5.2 In each Agreement Year following the Agreement Year in which the Concessionaire first achieves the First Level Rate of Return, the Concessionaire shall remit to the Department within 30 days after the end of each Quarterly Period ending September 30, December 31, March 31 and June 30 an amount equal to the estimated Permit Fee for such immediately preceding quarter.

- 5.3 The Permit Fee for each Quarterly Period shall be based upon the total Gross Revenues for such Quarterly Period and a sharing percentage as calculated and audited at the end of the most recent Agreement Year.
- 5.4 Within 150 days of the end of each Agreement Year, the Concessionaire shall pay to the Department any unpaid portion of the Permit Fee together with interest from the end date of any Quarterly Period in relation to which it was determined that an insufficient amount was paid to the date of payment, with interest during such period to be calculated at the average daily earnings rate on the State's Transportation Trust Fund or any successor rate. Any amount not paid within such 150 day period, will bear interest as specified in Section 25.22 of the Agreement.

EXHIBIT J-2

GROSS TOLL SHARE PAYMENTS

[See attached]

EXHIBIT K

FORM OF ELECTRONIC TOLL COLLECTION AGREEMENT

This ELECTRONIC TOLL COLLECTION AGREEMENT (this “Agreement”) is made and entered into this 1st day of July 2019, by and between the VIRGINIA DEPARTMENT OF TRANSPORTATION (“VDOT”) and 95 Express Lanes, LLC (the “Participant”).

RECITALS

WHEREAS, VDOT is the owner and operator of the Virginia E-ZPass Toll Collection System;

WHEREAS, the Participant will operate the 95 Express Lanes (the “Facility”);

WHEREAS, the Facility will operate and be compatible with the E-ZPass ETC System;

WHEREAS, pursuant to the E-ZPass Reciprocity Agreement attached hereto as Exhibit A, VDOT has joined the E-ZPass Interagency Group on behalf of itself and the Other Participants; and

WHEREAS, VDOT and the Participant desire to enter into this Agreement which will permit Participant to purchase the necessary equipment to operate the Facility to be compatible with the E-ZPass ETC System and to provide for, among other things, the provision by VDOT of ETC Services for the Participant for the Facility.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VDOT and the Participant, intending to be legally bound, hereby agree as follows:

ARTICLE 1 – DEFINITIONS

Section 1.1 The terms set forth below will have the meanings set forth adjacent to them.

Agreement means this Electronic Toll Collection Agreement.

Agreement Date means the date hereof.

Authorized VDOT Representative means the person duly authorized to act on behalf of VDOT.

Authorized Participant Representative means the person duly authorized to act on behalf of the Participant.

Comprehensive Agreement means a comprehensive agreement, if any, relating to the Facility between VDOT and Participant pursuant to the Virginia Public-Private Transportation Act.

CSC means a customer service center that will issue and provide services relating to the ETC System administration, prepaid account maintenance, and distribution of transponders.

ETC means electronic toll collection.

ETC Prepaid Account means an account for purposes of collecting prepaid tolls and account fees.

ETC Servicer means a third party with whom VDOT has contracted to provide the ETC Services to the Participant.

ETC Servicer Agreement means the agreement between VDOT and the ETC Servicer for the provision of the ETC Services to the Participant.

ETC Services means all of those services necessary for the administration and operation of an electronic toll collection system, including customer services, distribution of transponders and the collection of tolls from customer accounts and the operation of E-ZPass CSCs.

ETC System means a system of electronic toll collection.

E-ZPass means the trademark for the regional ETC system operated by an Interagency Group (IAG) of participants.

E-ZPass ETC System means the overall system of hardware, software and networks that are used for processing E-ZPass transactions and managing E-ZPass accounts.

E-ZPass Reciprocity Agreement means the agreement requiring reciprocity among Other Participants in the E-ZPass ETC System attached to the Agreement as Exhibit A.

Facility means 95 Express Lanes[, which for the purposes of this Agreement are the continuous stretch of high-occupancy toll lanes between: (i) approximately Exit 133 on Interstate 95 in Virginia, (ii) Interstate 395 in Virginia just south of the Washington D.C. line].

Facility Transactions means the aggregate of the tolled transactions for the Facility.

Fiscal Year means any 12 month period beginning July 1st one year and ending June 30th the following year.

Other Participant or **Other Participants** means those persons operating other ETC Systems in Virginia and who wish to participate in the E-ZPass network.

Participant means 95 Express Lanes, LLC.

Read-Only Access means permission only to view limited information in a database without ability to input or update data.

Statewide Transactions means the aggregate of electronic tolled transactions in the Commonwealth of Virginia.

VDOT means the Virginia Department of Transportation.

VDOT E-ZPass Fees means the fees paid by the Participant to VDOT in an amount as calculated in accordance with Article 4.

VDOT Standard Operating Procedures means the VDOT Standard Operating Procedures for ETC Services set forth in Exhibit E.

Virginia E-ZPass Customer Database is defined in Section 2.3(d).

Virginia Toll Facilities Group means a group comprised of the Participant and the Other Participants.

ARTICLE 2 – ETC SERVICES

Section 2.1 – Provision of ETC Services. VDOT agrees to provide the ETC Services to the Participant for the Facility. All Participant policies and procedures that affect VDOT's E-ZPass CSC operations are subject to review and approval by VDOT (such approval not to be unreasonably withheld or delayed); *provided*, however that such approval shall not be subject to any deemed approval provisions of a Comprehensive Agreement. To the extent that any of Participant's policies and procedures materially and adversely affect VDOT's E-ZPass CSC operations, VDOT and Participant will engage in good faith discussions regarding the implementation of such policies and procedures, including the cure by Participant of any adverse financial effect on VDOT or the E-ZPass CSC operations.

Section 2.2 – E-ZPass Customer Service Center(s). VDOT will establish, administer, and operate one or more CSCs either directly or through a contract with an ETC Servicer to establish, administer, and operate one or more CSCs. Unless otherwise provided herein, VDOT will provide the necessary data and communication lines, office supplies and equipment to support a CSC. VDOT will provide a minimum of seven (7) days advance notice to the Participant of any planned changes to any CSC, toll operations and service requirements that materially affect Participant and will, with good faith cooperation, seek the Participant's comments on any such changes and incorporate any mutually agreeable proposals.

Section 2.3 – ETC Prepaid Account.

(a) Notwithstanding anything contained in this Agreement, VDOT and the Participant acknowledge and agree that:

- (i) VDOT has established an ETC Prepaid Account;
- (ii) VDOT is the sole owner of the ETC Prepaid Account and has the exclusive right, power and authority, at the exclusion of the Participant and all other persons, to exercise sole dominion and control of the ETC Prepaid Account; and
- (iii) the Participant will have no right, title or interest in and to the ETC Prepaid Account.

(b) VDOT agrees to initiate payment by wire transfer to the Participant on or before the close of business of the next VDOT business day, an amount equal to the aggregate tolls and any applicable membership fees posted to patron accounts the previous day, less payment of the VDOT E-ZPass Fees; *provided*, however that VDOT shall not be obligated to initiate payment pursuant to this Section 2.3(b) in cases of system failure that prevents Participant from sending E-ZPass transactions or VDOT from processing E-ZPass transactions for Participant. Payments which were not made in accordance with this Section 2.3(b) due to system failure will be made by VDOT to the Participant the next day following the correction of the system failure.

(c) In the event outstanding bond or financial covenants located in the Project Financing Agreements (as defined in the Comprehensive Agreement) prohibit netting of the VDOT E-ZPass Fees from the electronic toll receipts, the VDOT E-ZPass Fees must be paid upon receipt of an invoice for services pursuant to Section 2.4.

(d) VDOT agrees to provide the Participant with Read-Only Access to the Virginia E-ZPass Customer Database via the customer service client application, subject to the Participant's agreement to comply with the then-current terms and conditions of the Virginia E-ZPass Database User Policy. VDOT reserves the right to limit the number of individual users from the Participant that are granted Read-Only Access. The Participant's use of the Virginia E-ZPass customer database shall be limited to the provision of direct customer service to address a customer service issue relating solely to the Participant. The Participant shall not use the Virginia E-ZPass customer database to contact customers for marketing purposes. Unless otherwise required by law, the Participant shall not disclose customer data from the Virginia E-ZPass Customer Database to any third party without the express written consent of VDOT.

Section 2.4 – Invoices for Services. Any fees for any services including, but not limited to, ETC Services provided by VDOT to the Participant upon request or with the agreement of the other party that are not otherwise paid as provided herein, will be invoiced to the other party and paid in compliance with the laws of the Commonwealth of Virginia.

Section 2.5 – Disputed Invoices. If either VDOT or the Participant disputes any invoice or payment transaction reported by the ETC Servicer, they will give prompt notice to the ETC Servicer and each other and resolve the dispute pursuant to Article 10. Participant will only reimburse questioned amounts to VDOT upon final resolution for any amounts in dispute.

Section 2.6 – Payments by the ETC Servicer. In the event that pursuant to an ETC Servicer Agreement, the ETC Servicer is obligated to pay VDOT lost revenues or any other sum resulting from the default of the ETC Servicer or the non-performance of the ETC Servicer's duties and obligations under the ETC Servicer Agreement, VDOT will promptly remit to the Participant its *pro rata* portion of such sums. Such payment will be based on the product of (i) the historical ratio of the Facility Transactions to Statewide Transactions over the applicable time period in question for the immediately preceding year (taking into account holiday and weekend travel days), multiplied by (ii) the average percentage traffic increase at the Facility during the immediately preceding twelve month period; *provided* that if by reason of an event during the time periods in either or both of the preceding items (i) and (ii), the foregoing calculation is not a fair approximation of the traffic flow for the Facility for the period in question, then VDOT will remit such other amount as Participant can establish to VDOT's reasonable satisfaction. Payment to the

Participant by VDOT will be limited to revenues lost by Participant or other sums that Participant can show as a direct loss from any such non-performance.

ARTICLE 3 – ETC SYSTEMS

Section 3.1 – Independent Systems.

(a) The Participant operates or will operate an ETC System which is independent of but compatible with the VDOT E-ZPass ETC System and reads the same or E-ZPass-approved compatible type of transponder, and the Participant agrees that its ETC System will provides ETC transaction data in the format required by VDOT. The Participant agrees to purchase readers, antennas and other tolling hardware necessary comply with the E-ZPass Reciprocity Agreement from vendors approved by VDOT.

(b) VDOT will provide data formats, documentation, interface requirements and any other necessary design information to the Participant in a timely manner and at no additional cost to the Participant. This information is subject to change with reasonable advance written notice from VDOT. Participant will be required to conform to the new interface requirements at no cost to VDOT. Transaction processing problems which arise from the Participant not meeting these requirements will be resolved at the direction of VDOT on a time plus materials basis payment by the Participant to VDOT.

(c) VDOT and the Participant will each continue to be responsible for the maintenance, repair, and operation of all necessary lane and computer equipment for their respective ETC Systems. Specifically, the Participant will be responsible for the maintenance, repair and operation of all necessary lane and computer equipment for its ETC System through and including its host computer. VDOT will be responsible for the maintenance, repair and operation of its ETC System commencing from the Participant's host router and extending through and including telephone lines, routers, black boxes and the CSC.

(d) In no event will VDOT have any liability to the Participant for any losses, including but not limited to lost toll revenue, suffered due to equipment failure or error in the Participant's ETC System; *provided*, however, that should VDOT's failure to properly maintain, repair and operate its ETC System and the CSC cause a loss of revenue to the Participant, VDOT will pay the Participant the lost revenue and the Participant's direct costs associated therewith within 14 days after the Participant provides VDOT written notice. Such written notice will include adequate and detailed documentation of such lost revenues and costs. Neither party will have any liability to the other party for consequential damages.

Section 3.2 – Testing Procedures and Results. Participant will provide VDOT the opportunity to participate in the installation of upgrades or other modifications to the Participant's ETC System, as requested by VDOT. The Participant may participate in the installation of upgrades or other modifications to VDOT's CSC system. In any such event, each party will provide proposed test schedules and scripts for such upgrades or other modifications to the other party and the CSC at least 7 days in advance of testing, and reasonable commercial efforts to deliver 60 days in advance of testing. In the case of upgrades or modifications to Participant's ETC System, upon mutual agreement, VDOT may require additional tests to be undertaken at the

Participant's expense in order to confirm the accuracy and reliability in all aspects of processing relating to ETC transactions. Copies of test results will be made available to the other party and the relevant CSC promptly. VDOT will participate in acceptance testing and must approve testing prior to processing of live traffic through the CSC.

Section 3.3 – Modifications to Systems.

(a) As equipment changes, modifications or upgrades occur to the ETC Systems, the Participant will use reasonable efforts to cause its ETC equipment used on the Facility to be compatible with that used by VDOT on its other ETC facilities and VDOT's ETC operations. The Participant will be responsible for any and all system maintenance, changes, modifications or upgrades to its ETC equipment or operations. If any changes, modifications or upgrades to any of the Participant's ETC equipment or other system modifications will adversely impact VDOT's ETC operations in any material respect, the parties agree to make good faith efforts to resolve such impact to each party's satisfaction; *provided*, however, that any such changes, modifications or upgrades will be ultimately compatible with the VDOT ETC operations. Either party will notify the other in writing at least 90 days in advance of any changes or modification to such party's ETC System equipment that may affect the other's ETC System equipment or operations in any material respect.

(b) VDOT will exercise due care and diligence in planning and implementing modifications, upgrades and associated testing of its ETC System at levels which are reasonable given the schedule, scope and budget for the ETC System and will not exceed what is considered customary and reasonable for hardware and software processing systems. However, there is no guarantee against adverse impacts to the performance of the hardware or software in Participant's or others' systems. While precautions will be taken by VDOT to help mitigate the risk of occurrence of such adverse impacts, VDOT will not, unless it is in breach of its duty of due care and diligence, be financially responsible for the occurrence of adverse impact to the Participant or other third parties affected during such modifications, upgrades and associated testing.

Section 3.4 – System Performance.

(a) Both the Participant and VDOT will report as promptly as possible and no later than 72 hours from when the parties received notice therefore, of any system failure or degradation that may affect ETC operations. In the event that the Participant is unable to send E-ZPass transactions for the Facility for periods in excess of 24 hours, the Participant must notify the Authorized VDOT Representative prior to sending any backlogged E-ZPass transactions for the Facility. If VDOT is unable to process E-ZPass transactions for the Facility for the Participant for any period in excess of 24 hours, VDOT will notify the Participant within as promptly as possible and no later than 72 hours of such fact.

(b) Any E-ZPass transactions for the Facility not sent within 60 business days of occurrence are subject to deletion from the patron's account and related revenue may not be recorded or transferred unless the delay is due to failure by VDOT, in which case the related revenue will promptly be transferred to the Participant.

Section 3.5 – Disputed Transactions.

(a) Each business day, the Participant will forward by telecopy or e-mail to VDOT through a CSC, a report listing E-ZPass transactions by lane number from the previous day or weekend, as applicable. Each business day VDOT will cause a CSC to send the Participant via telecopy or e-mail a disbursement report reflecting E-ZPass transaction revenue credited to Participant by transaction number.

(b) If at any time the Participant's E-ZPass revenue reflected in the disbursement report is out of balance with Participant's reported E-ZPass transactions by \$50 or more for any 3 consecutive days, the Participant will notify VDOT. VDOT will provide a detailed disbursement file within 5 business days of Participant's notification. The Participant will compare the detailed disbursement report to its detailed audit and provide details regarding the disputed transactions sufficient to update the patron accounts. If the Participant cannot provide detail sufficient to update the patron accounts within 20 business days of the occurrence of the transactions, those transactions will not be charged to patron accounts and will not result in revenue to the Facility. The Participant will send the detailed data to VDOT with comparisons of transactions to include the transaction sequence number(s) and the acknowledgement verification by the ETC System.

(c) E-ZPass transaction/revenue disputes will be resolved on a monthly basis. The CSC will resolve disputes that are recognized and/or identified as valid by adjusting or offsetting the funds that are owed to the Participant in a subsequent transfer. Any Participant's E-ZPass transactions rejected by their respective home agency will be identified in a report, which will be communicated to the Participant. Rejected transactions will be handled according to documented or generally accepted E-ZPass reconciliation procedures.

ARTICLE 4 - PAYMENT TERMS

Section 4.1 – VDOT E-ZPass Fees.

(a) Participant agrees to pay the VDOT E-ZPass Fees. The VDOT E-ZPass Fees will be due and payable as provided in Section 2.3. VDOT or the ETC Servicer will manage all responsibilities associated with collection and transmission of revenue back to the Participant.

(b) Subject to bond covenants and the affirmative agreement of Participant to right of offset, VDOT reserves the right to offset against amounts to be transferred from the ETC Prepaid Account to the Participant, any amount due to VDOT from the Participant. VDOT and the Participant agree that the agreement to transfer Participant's tolls from the ETC Prepaid Account and the remittance by VDOT to the Participant of amounts from the ETC Prepaid Account in accordance with this Agreement is irrevocable unless amended, modified or waived by written agreement of both parties.

(c) The cost for any additional services provided by VDOT or the ETC Servicer for the Participant that have been agreed to by VDOT and the Participant in advance will be in addition to the VDOT E-ZPass Fees. Examples of additional services may include mailhouse services to customers and emails to customers. Pricing for the performance of such additional services shall be as agreed between the Participant and VDOT, with pricing for such services to be limited to a pass through of reasonably incurred costs to perform such services.

Section 4.2 – Basis for VDOT E-ZPass Fees.

(a) The VDOT E-ZPass Fees are intended to cover the Participant's share of VDOT's total annual ETC expenses and such fees shall be full compensation to VDOT to pay VDOT's normal and customary expenses incurred to process electronic toll collections through E-ZPass based on transactions transmitted electronically to the ETC Servicer. The VDOT E-ZPass Fees for each fiscal year will be determined by VDOT and will be deemed correct absent manifest error. The VDOT E-ZPass Fees consist of the following two amounts: the operating costs component and the processing fee component.

(b) The operating costs component of the VDOT E-ZPass Fees will be assessed by transaction and calculated as follows (as shown in the examples in Exhibit B):

(i) VDOT will determine the estimated operating costs component of the VDOT E-ZPass Fees for each fiscal year based on a two-year look ahead based upon:

(A) VDOT's estimated costs for operating the statewide ETC system, including, but not limited to, the amortized capital costs allocated to the statewide ETC system, the annual E-ZPass membership dues paid by VDOT to the E-ZPass Group, and additional transponder acquisition and distribution costs of VDOT's ETC operations;

(B) VDOT's estimated revenue collected from customer maintenance fees assessed per transponder and other miscellaneous customer charges (e.g., statement fees, lost/stolen transponder fees);

(C) VDOT's estimated transactions for all participants in the statewide ETC System; and

(D) The estimated baseline operating costs component of the VDOT E-ZPass Fees is an amount equal to the difference in the estimated amounts set forth in clause (A) above and clause (B) above, plus the amount set forth below in Section 4.2(b)(ii)(Z) for the most recently available fiscal year divided by the number of estimated transactions set forth in clause above. $[(A - B + Z) \div C]$.

(ii) Following the end of each fiscal year, an adjustment to the estimated baseline operating costs component of the VDOT E-ZPass Fees calculated in Section 4.2(b)(i) will be made as follows:

(W) VDOT will calculate the difference between the estimated costs for operating the statewide ETC system set forth in Section 4.2(b)(i)(A) and the actual costs for operating the statewide ETC system for such fiscal year;

(X) VDOT will calculate the difference between the estimated revenue collected set forth in Section 4.2(b)(i)(B) and the actual revenues collected during such fiscal year;

(Y) VDOT will calculate the difference between (1) the estimated number of transactions for all participants in the statewide ETC system, multiplied by the result in

Section 4.2(b)(1)(D) above and (2) the actual number of transactions for such fiscal year, multiplied by the fee set forth in Section 4.2(b)(1)(D); and

(Z) The baseline operating costs adjustment for a fiscal year is an amount equal to the sum of the amounts set forth in clause (W) above, clause (X) above and clause (Y) above. [W + X + Y].

(c) The processing fee component of the VDOT E-ZPass Fees will consist of the sum of an amount equal to the average credit card processing fee (expressed in a percentage and calculated as set forth in the next sentence) multiplied by total revenue processed for the Participant each day. For the purposes of this calculation, the “average credit card processing fee” will equal the sum of the actual credit card processing fees and other related bank fees divided by credit card revenue multiplied by the percentage of total E-ZPass revenue processed by credit card. In the event that the processing fee component of the VDOT E-ZPass Fees collected for the twelve month period immediately preceding the date of calculation are either less than or in excess of the actual costs for such period, the deficiency or excess will then be applied to the calculation of the processing fee component of the VDOT E-ZPass Fees for the next twelve month period.

(d) Annually, on or about April 1st, VDOT will endeavor to provide to Participant written notice of the VDOT E-ZPass Fees to be charged the next Fiscal Year.

(e) A calculation of the estimated baseline operating costs component of the VDOT E-ZPass Fees and the adjustment thereto is set forth in Exhibit B. A calculation of the processing fee component of the VDOT Processing Fee for the current Fiscal Year is also set forth in Exhibit B.

Section 4.3 –Bank Account Information. Unless otherwise directed by the Participant upon 10 business days prior written notice, the Department shall deposit or cause to be deposited all revenues derived from E-ZPass transactions into the account set forth in Exhibit C, in accordance with the terms of this Agreement.

ARTICLE 5 – TERM

Section 5.1 – Term. The term of this Agreement will commence upon the Agreement Date and will terminate on that date which is the earlier to occur of the following:

- (a) June 30, 2025, subject to extension by VDOT pursuant to the Annual Extension of the Electronic Toll Collection Agreement, the form of which is attached hereto as Exhibit D, for successive one-year extensions of the term;
- (b) the date on which this Agreement is terminated by either party, having given 90 days prior written notice; or
- (c) the date this Agreement is terminated in accordance with Article 12.

Section 5.2 – Continuity of ETC Services. In order to insure continuity of ETC Services to the Participant, VDOT agrees that if the ETC Services Agreement will for any reason be terminated, or is materially changed or renegotiated, VDOT will (i) make a good faith attempt to

give the Participant the opportunity to obtain ETC Services from the current ETC Servicer or a substitute Servicer engaged by VDOT, as appropriate, under terms substantially the same as those set forth in the ETC Services Agreement and this Agreement pursuant to an amendment to this Agreement or a separate agreement, and (ii) in the case where VDOT is performing the ETC Services, make ETC Services available to the Participant under terms substantially the same as those set forth in the ETC Services Agreement and this Agreement.

ARTICLE 6 – OPERATIONS

Section 6.1 – Standard Operational Procedures. VDOT Standard Operating Procedures for ETC Services are attached hereto as Exhibit E (the “Standard Operating Procedures”). The Participant may establish and operate a customer service center to provide non-ETC related services independently of VDOT and in such a case the Participant agrees to operate such an independent service center in a manner consistent with the VDOT Standard Operating Procedures.

Section 6.2 – Changes in Operational Procedures. Any anticipated changes that materially affect operating procedures will be presented and discussed at liaison meetings. VDOT will, in good faith cooperation, try to accommodate changes proposed by the Participant. However, VDOT has sole approval authority to amend operational procedures.

ARTICLE 7 – RESPONSIBILITIES OF VDOT

Section 7.1 – Generally. VDOT will use commercially reasonable efforts to cause the ETC Servicer to perform its duties and obligations in accordance with the ETC Servicer Agreement and the VDOT Standard Operating Procedures. If the Participant gives VDOT a written notice stating that the ETC Servicer is not performing its duties and obligations in accordance with the ETC Servicer Agreement or the VDOT Standard Operating Procedures, and specifying the reasons therefore, VDOT will promptly remedy the deficiency (including taking any remedial action available pursuant to the ETC Servicer Agreement) or give the ETC Servicer notice to such effect and request appropriate action. VDOT will include the Participant in all decisions relating to any such situation. The parties acknowledge that it is not necessary for Participant to be a party to the ETC Servicer Agreement, *provided* that VDOT will be obligated to provide all ETC Services pursuant to this Agreement.

Section 7.2 – Notices. VDOT will promptly notify the Participant of all changes in ETC Services that are anticipated to materially affect Participant’s operations, including with respect to E-ZPass and the E-ZPass Reciprocity Agreement.

ARTICLE 8 – RESPONSIBILITIES OF PARTICIPANT

Section 8.1 – Generally. The Participant will use commercially reasonable efforts to maintain its ETC System to perform in accordance with the VDOT Standard Operating Procedures. If VDOT gives the Participant a written notice stating that its ETC System is not operating in accordance with approved operating procedures, and specifying the reasons, the Participant will promptly initiate appropriate corrective action. The Participant will include VDOT in all decisions relating to any such situation. The Participant will take no actions that violate or affect any of the terms of the E-ZPass Reciprocity Agreement that is attached and incorporated as part of this Agreement.

Section 8.2 – Toll Rate Changes. The Participant is exclusively authorized to make and be responsible for any toll rate changes at the Facility in accordance with applicable law and a Comprehensive Agreement, if any. The Participant will communicate any toll rate changes to VDOT and the ETC Servicer if required by and in accordance with a Comprehensive Agreement, if any, or if the Participant has not entered into a Comprehensive Agreement, at least fifteen (15) business days prior to implementation to allow for modifications to the ETC systems and related charges and modifications.

Section 8.3 – Notices. The Participant will notify VDOT of all changes in its ETC Systems that are anticipated to materially affect VDOT and/or ETC operations.

ARTICLE 9 – MARKETING

Section 9.1 – Marketing. VDOT and the Participant will coordinate marketing for the ETC System of toll collections. VDOT and the Participant will mutually determine a marketing plan. VDOT will, in good faith cooperation, include the Participant in its marketing efforts. However, either party may implement, at its own cost, supplemental marketing efforts for the Facility which are in addition to those provided by the mutually agreed upon marketing plan. The Participant will be provided usage of, and is hereby granted, subject to the provisions of a Comprehensive Agreement, a license to use, the term “E-ZPass” and the “E-ZPass” logos at no charge for operational and marketing purposes and VDOT represents and covenants that it has lawful authority to grant such license; provided that VDOT will retain the right of prior approval of any such use, such approval not to be unreasonably withheld, conditioned or delayed.

ARTICLE 10 – DISPUTE RESOLUTION

Section 10.1 – Dispute Resolution Generally. VDOT and the Participant will each exercise their best efforts to mutually resolve any dispute that may arise between them through good faith negotiations between the Authorized VDOT Representative and Authorized Participant Representative.

Section 10.2 – Dispute Resolution Pursuant to a Comprehensive Agreement. If VDOT and the Participant have entered into a Comprehensive Agreement pursuant to the Virginia Public-Private Transportation Act which requires their respective entry into this Agreement, then the provisions of Section 11.1 shall not apply and the parties agree to resolve any disputes which arise between them under this Agreement pursuant to the dispute resolution provisions of such Comprehensive Agreement.

ARTICLE 11 – DEFAULT

Section 11.1 – Events of Default; Cure; Termination.

(a) A failure by either VDOT or Participant to fulfill their respective material responsibilities and obligations set forth herein will give rise to an event of default, respectively. Following the provision of notice of default by the non-defaulting party to the defaulting party, and the failure to cure the event of default within the period agreed upon pursuant to Section 12.1(b), the Agreement may be terminated in accordance with Section 12.1(c).

(b) If an event of default occurs pursuant to Section 12.1(a), the defaulting party shall have 60 days to cure such default; *provided*, however, that the 60-day cure period may be extended by mutual agreement.

(c) Following expiration of the cure period, unless such cure period is extended by mutual agreement, the non-defaulting party will have the right to terminate this Agreement by notice thereof to the defaulting party.

ARTICLE 12 – MISCELLANEOUS

Section 12.1 – Waivers, Modifications and Amendments. No waiver, modification, or amendment of any term, condition or provision of this Agreement will be valid or of any force or effect unless made in writing and signed by both VDOT and the Participant. The effect of any such change will be limited to the extent specified and agreed to by VDOT and the Participant, as evidenced by signatures of duly appointed officers of each of the parties.

Section 12.2 – Captions. Captions, headings, cover pages and tables of contents contained in this Agreement are inserted for convenience of reference only and in no way define, limit or prescribe the scope, intent or meaning of any provisions of this Agreement. All appendices, exhibits, or schedules attached hereto are hereby incorporated herein and made a part of this Agreement.

Section 12.3 – Notices. All notices will be in writing and will be delivered personally, by telecopy, or by registered or certified mail, return receipt requested, addressed as follows:

Participant Mailing Address

95 Express Lanes LLC
6440 General Green Way
Alexandria, Virginia 22312
Attention: Vice President, Operations
Telecopier: 571-419-6101

VDOT Mailing Address

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attention: Commissioner of Highways
Telecopier: 804-780-6250

Section 12.4 – Entire Agreement. This Agreement constitutes the entire agreement between VDOT and the Participant concerning the subject matter hereof and supersedes all prior negotiations, representations, and agreements about them, either oral or written; *provided*, however that the provisions of a Comprehensive Agreement, if any, shall prevail in the event such provisions conflict with the terms of this Agreement.

Section 12.5 – Force Majeure/Emergency. In case by reason of force majeure, either party will be rendered unable wholly or in part to carry out its obligations under this Agreement, then, provided such party will give notice and full particulars of such force majeure in writing to the other within a reasonable time after occurrence of the event or cause relied on, the obligations of such party so far as they are affected by such force majeure, will be suspended during the continuance of the inability then claimed, which will include a reasonable time for the removal of the effect thereof, and such party will endeavor to remove or overcome such inability with all

reasonable dispatch. Any time period specified herein for the performance by such party of an obligation will be appropriately adjusted and extended without the necessity for any amendment to this Agreement if a force majeure event occurs.

Section 12.6 – Assignment. Participant may not assign its rights and obligations under this Agreement except with the prior written consent of VDOT.

Section 12.7 – Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia, without regard for conflict of laws principles. All litigation between the parties arising out of or pertaining to this Agreement or its breach will be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, which will have exclusive jurisdiction and venue.

Section 12.8 – Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 12.9 – Authorized Representatives. The Authorized VDOT Representative is David T. Caudill, Division Administrator of Tolling Operations Division, and the Authorized Participant Representative is [●]. Either party may change its authorized representative at any time by written notice to the other party.

[Signature Page Follows]

IN WITNESS THEREOF, this Agreement has been entered into and is effective as of July 1, 2019.

PARTICIPANT

VIRGINIA DEPARTMENT OF
TRANSPORTATION

By: _____
Name: _____
Title:

By: _____
Name: David T. Caudill, P.E.
Title: Division Administrator
Tolling Operations Division

Exhibit A

E-ZPass Reciprocity Agreement

(Provided Separately)

Exhibit B

VDOT E-ZPass Fees

For Fiscal Year 201[●], the processing fee component of the VDOT E-ZPass Fees will be [●]% of the revenue processed for each individual facility.

For Fiscal Year 201[●], the operating costs component of the VDOT E-ZPass Fees will be \$[●] per transaction.

The method of calculation for the future estimated baseline operating costs component of the VDOT E-ZPass Fees and the adjustment thereto is illustrated in the following example attached hereto as follows:

Example of baseline operating cost component calculation

Exhibit B - VDOT E-ZPass Fees and Adjustments				
Notes				
April 2018 Calculation for FY 2019 Toll Facility Transaction Fee				
Estimated Year: 2019				

2018 Transaction Fee Calculation Summary				
Operating cost component	Current Year Projection	Future Year Projection		
	Fiscal Year 2018	Fiscal Year 2019		
				Total
Toll Facility Transaction Fee	0.0639			
Total Costs for Operating the statewide ETC System (A)	\$ (16,317,480)	\$ (16,421,048)		\$ (32,738,528)
Total Estimated Revenue collected from customer maintenance fees and other miscellaneous fees	\$ 2,766,873	\$ 1,735,199		\$ 4,502,073
Toll facility transaction fee income	\$ 13,653,823			\$ 13,653,823
Total revenue/income (E)	\$ 16,420,696	\$ 1,735,199		\$ 18,155,895
Costs remaining (A+E)	\$ 103,216	\$ (14,685,849)		\$ (14,582,633)
ETC Transactions for all participants (C)	224,127,291	228,055,107		452,182,398
Projected transactions available for cost recovery (F)		228,055,107		228,055,107
Amount to be recovered via future transaction fee				(14,582,633)
Future transaction fee required to cover cost remaining (E/D)				\$ (0.0639)
Future projected transaction fee revenue	\$ -	\$ 14,582,633		\$ 14,582,633
Operating Profit / (Loss)	\$ 103,216	\$ (103,216)		(0.00)
				\$ (0.0639)
Revenue Summary				
Revenue anticipated from other revenues/fees	\$ 2,766,873	\$ 1,735,199		\$ 4,502,073
Transaction Fee	13,653,823	14,582,633		28,236,456
TOTAL	\$ 16,420,696	\$ 16,317,832		\$ 32,738,528
Anticipated Revenue less Total Estimated Costs for Operating ETC System (Profit/(Loss))	\$ 103,216	\$ (103,216)		\$ -

Exhibit C

Bank Account Information

Bank:

Account Name:

Account No.

Re:

* If the Facility is not in operation, the Participant agrees to provide to the Department the account information in this Exhibit C within 30 days prior to the planned commencement of tolling on the Facility.

Exhibit D

Form of Annual Extension of the Electronic Toll Collection Agreement

This ANNUAL EXTENSION OF THE ELECTRONIC TOLL COLLECTION AGREEMENT (this “FY 20[●] Extension Agreement”) is made and entered into this [●] day of [●] 20[●], by and between the VIRGINIA DEPARTMENT OF TRANSPORTATION (“VDOT”) and _____ (the “Participant”). Terms used in this FY 20[●] Extension Agreement and not defined herein shall have the meaning given them in the ETC Agreement.

Recitals

WHEREAS, VDOT and Participant entered into an Electronic Toll Collection Agreement (the “ETC Agreement”) on [●];

WHEREAS, the [●] Extension of the ETC Agreement was entered into on [●] and ends on [●]; and

WHEREAS, Article 5 of the ETC Agreement provides that it may be renewed for successive one year extensions.

Agreement

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VDOT and the Participant hereby agree as follows:

Section 1.01 Extension Period. The term of the ETC Agreement shall be extended for an additional one-year period commencing July 1, 20[●] (the “Effective Date”) and ending June 30, 20[●] (the “Extension Period”), subject to extension or earlier termination as provided in the ETC Agreement.

Section 2.01 VDOT E-ZPass Fees.

(a) The VDOT E-ZPass Fees for the Extension Period are calculated and set forth in Exhibit A hereto and shall replace the VDOT E-ZPass Fees prior to the Effective Date.

Section 3.01 Ratification of ETC Agreement. Except as expressly modified by a prior extension and this FY 20[●] Extension Agreement, all of the terms and provisions of the ETC Agreement and subsequent extension agreements are hereby ratified and confirmed and shall remain in full force and effect.

Section 4.01 Counterparts. This FY 20[●] Extension Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Section 5.01 Authorized Representatives. During this FY 20[●] Extension Agreement, the Authorized VDOT Representative is [●], and the Authorized Participant Representative is [●]. Either party may change its authorized representative at any time by written notice to the other party.

[Signature Page Follows]

IN WITNESS THEREOF, this FY 20[●] Extension Agreement has been entered into as of the first date set forth above, by the duly authorized officers of the parties hereto.

PARTICIPANT

**VIRGINIA DEPARTMENT OF
TRANSPORTATION**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibit A to FY20[•] Extension Agreement

VDOT E-ZPass Fees

For Fiscal Year 20(●), the processing fee component of the VDOT E-ZPass Fees will be _____% of the revenue processed for each individual facility.

For Fiscal Year 20(●), the operating costs component of the VDOT E-ZPass Fees will be \$_____ per transaction.

Exhibit E

VDOT Standard Operating Procedures for ETC Services

(Provided Separately)

EXHIBIT L

FORM OF VIOLATION PROCESSING SERVICES AGREEMENT

[SEE ATTACHED]

EXHIBIT M

TOLL MOU

AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE FHWA VIRGINIA DIVISION OFFICE (DIVISION) AND THE VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT)

WHEREAS, on April 10, 2017, the FHWA and VDOT entered into a memorandum of understanding (the “Existing Toll MOU”) permitting VDOT to toll the high occupancy vehicle (“HOV”) lanes facility on Interstates 95 and 395 from approximately I-395 just south of the Washington D.C. line, at the northern terminus, to approximately mile marker 142.5 on I-95 in Stafford County, at the southern terminus, including the Phase VIII HOV-only lanes and HOV connector ramps through the Springfield Interchange (the “Existing Facility”); and

WHEREAS, VDOT desires to extend and expand the Existing Facility 10 miles farther south to approximately I-95 mile marker 133 (the entire span from mile marker 133 to just south of the Washington D.C. line hereinafter referred to as the “Toll Facility”); and

WHEREAS, based on the Existing Toll MOU, VDOT has previously implemented or plans to implement tolls using a congestion pricing toll strategy on the Existing Facility and now also desires to implement tolls using a congestion pricing toll strategy on the portion of the Existing Facility to be extended and expanded farther south to approximately I-95 mile marker 133, such that tolling using a congestion pricing toll strategy will eventually be implemented on the entirety of the Toll Facility; and

WHEREAS, the FHWA and VDOT desire to enter into this Amended and Restated MOU to reflect the mutual understanding that 23 U.S.C. 129(a) and 23 U.S.C. 166, HOV to HOT conversion applies to the entirety of the Toll Facility; and

WHEREAS, 23 U.S.C. 166(b)(4), as amended by the FAST Act, provides that a public authority may allow vehicles not otherwise exempt pursuant to 23 U.S.C. 166(b) to use a HOV facility by paying a toll.

NOW THEREFORE, the FHWA and VDOT hereby agree as follows:

1. The Toll Facility meets the toll eligibility requirements of 23 U.S.C. 166.
2. VDOT shall comply with all requirements of 23 U.S.C. 129(a) and 23 U.S.C. 166, as amended by the FAST Act, with respect to the Toll Facility. VDOT shall also ensure compliance with these requirements through appropriate contractual arrangements with a private operator of the Toll Facility.
3. The Existing Toll MOU is hereby amended and restated to apply to the entirety of the Toll Facility and replaced with this Amended and Restated MOU.

IN WITNESS THEREOF, the parties hereto have caused this Amended and Restated MOU to be duly executed, on the date of the last signature below.

COMMONWEALTH OF VIRGINIA
VIRGINIA DEPARTMENT OF TRANSPORTATION

BY: _____
Stephen C. Brich, P.E.
Commissioner of Highways

DATE: _____

FEDERAL HIGHWAY ADMINISTRATION
VIRGINIA DIVISION

BY: _____

DATE: _____

EXHIBIT N

PUBLIC FUNDS AMOUNT PAYMENT TERMS

Section 1 Deposit of Initial Public Funds Amount

(a) The Department will deposit or will cause to be deposited \$94 million into the VDOT Funding Account held by the GARVEE Trustee on or before the Financial Close Date, constituting the parties' pre-Financial Close estimate of the Initial Public Funds Amount.

(b) If the provisions of Section 7.03(b) of the Agreement results in an increase to the Initial Public Funds Amount, the Department will deposit such additional amounts into the VDOT Funding Account within 90 Days of the Financial Close Date. If the provisions of Section 7.03(b) of the Agreement results in a decrease to the Initial Public Funds Amount, the parties will provide written notice to the GARVEE Trustee to make available to or to the order of the Department such amount from the VDOT Funding Account within 10 Days after the Financial Close Date.

(c) Funds on deposit in the VDOT Funding Account, including earned interest, will be the property of the Department until such funds and any earned interest are disbursed to the PABs Trustee. In the event the Agreement is terminated for any reason before disbursement of all of the funds in the VDOT Funding Account, the GARVEE Trustee will make available to or to the order of the Department the funds remaining in the VDOT Funding Account within 10 Days of the effective date of termination of the Agreement.

(d) Any interest earned on the balance of the VDOT Funding Account will be eligible for disbursement to the Concessionaire in accordance with this Exhibit N.

(e) This Section 1 applies neither to the 395 Project nor the Fred Ex Project.

Section 2 Deposit of Department TIFIA Protection Amount

The Department will pay the Department TIFIA Protection Amount at the times and in the amounts set forth in Section 7.07 of the Agreement. This Section 2 applies to neither the 395 Project nor the Fred Ex Project.

Section 3 Disbursement Request

When required, the Concessionaire will submit a request ("Disbursement Request") to the Department for any payments of the Public Funds Amount at a frequency not to exceed once every month of an Agreement Year. The Concessionaire will submit separate Disbursement Requests for each of the Original Project, the 395 Project, and the Fred Ex Project (treating each as an independent project for the purposes of this Section 3). The Concessionaire will submit each Disbursement Request within three Days following the 15th Day of each calendar month. The Disbursement Request will be comprised of a certificate ("Disbursement Request Certificate") signed by the Authorized Representative of the Concessionaire, in the form attached as Attachment 1 and the following information attached thereto; provided that with respect to any Disbursement Request submitted pursuant to Section 4B for the Fred Ex Project, the information described in (c), (d), (h), (i) and (j) shall not apply:

- (a) Department assigned contract number and title;
- (b) Invoice or Disbursement Request number (numbered consecutively starting with “1”);
- (c) Period covered by the Disbursement Request;
- (d) Progress report on the activities performed during the period covered by the Disbursement Request;
- (e) Amount requested in the Disbursement Request;
- (f) Detailed list of costs incurred that will be funded with the amount requested in the Disbursement Request, including invoices and other documentation supporting such costs;
- (g) Cumulative disbursements made to date;
- (h) Certificate of lien and claim waiver signed by the Design-Build Contractor with respect to Work performed by the Design-Build Contractor for which payment was received under the previous Disbursement Request, or, in the case of another Prime Contractor, substantially in the form attached as Attachment 2, Attachment 2A for the 395 Project, or Attachment 2B for the Fred Ex Project, as applicable, signed by each Prime Contractor performing Work for which payment was received under the previous Disbursement Request;
- (i) Affidavit submitted by each Prime Contractor certifying that Davis-Bacon wages for which payment was received under the previous Disbursement Request have been paid in accordance with Labor, Employment, and DBE/SwaM Related Matters, Exhibit AA of the Agreement; and
- (j) Letter signed by the Concessionaire certifying that the amounts requested under the Disbursement Request are eligible for reimbursement from federal-aid funds, including funds constituting proceeds of GARVEE bonds (if applicable) or other bonds secured by federal-aid funds, pursuant to applicable Law.

Section 4 Review and Approval of Disbursement Request; Payment By the GARVEE Trustee

(a) The Department and the Concessionaire acknowledge and agree that: (i) the Disbursement Request is a submission requiring an Approval for purposes of Section 10.05 of the Agreement; and (ii) the “deemed approval” provisions of Section 10.05(e) of the Agreement do not apply to a Disbursement Request submitted pursuant to Section 3.

(b) Within seven Days after approval by the Department of a Disbursement Request in compliance with Section 3, the Department will provide written authorization to the GARVEE Trustee to disburse funds from the VDOT Funding Account to the Department for the amount approved by the Department. Following disbursement to the Department by the GARVEE Trustee of the amount approved by the Department, the Department will pay such amount to or to the order of the Concessionaire within such seven-Day period.

(c) If the Department determines that any portion of the Disbursement Request is not eligible for funding pursuant hereto, the Department may disapprove the requested funds corresponding to such portion of the Disbursement Request. The Department will notify the Concessionaire for the reasons of such disapproval, and provide written authorization to the GARVEE Trustee to disburse funds from the VDOT Funding Account to the Department to pay undisputed amounts to the Concessionaire within seven Days after the Department approves the undisputed amounts. Any such disapproved amounts will be available in a subsequent Disbursement Request if the reasons for disapproval are satisfied.

(d) In the event that the mobilization payment is to be paid out of the Public Funds Amount, it will be paid in accordance with the provisions below in lieu of the provisions set forth in Section 3.

(i) Upon issuance of the earlier of an LNTP pursuant to Section 8.02 of the Agreement or notice to proceed pursuant to Section 8.03 of the Agreement, the Concessionaire may submit to the Department an invoice for 50% of the mobilization payment. Within 27 Days of receipt of such invoice, the Department will provide written authorization to the GARVEE Trustee to disburse 50% of the mobilization payment from the VDOT Funding Account to the Department. Following disbursement to the Department by the GARVEE Trustee of such amount, the Department will pay such amount to the Concessionaire within such 27-Day period.

(ii) Beginning on the month following receipt of payment of the first 50% of the mobilization payment, the Concessionaire may submit to the Department an invoice for the remaining 50% of the mobilization payment. Within 27 Days after receipt of such invoice, the Department will provide written authorization to the GARVEE Trustee to disburse the remaining 50% of the mobilization payment from the VDOT Funding Account to the Department. Following disbursement to the Department by the GARVEE Trustee of such amount, the Department will pay such amount to the Concessionaire within such 27-Day period.

Within 90 days of receiving the mobilization payment, the Concessionaire will provide documentation supporting the investment and expenditure of those funds to include:

(A) Records on how the mobilization payment has been invested to include the dollar amounts and balances, investments owned (including the purchase and sale prices of such investments), and earnings on those funds;

(B) Detailed list of expenses paid including invoices and other documentation supporting such costs; and

(C) Letter signed by the Concessionaire certifying that the expenditures are eligible for reimbursement from federal-aid funds, including funds constituting proceeds of GARVEE bonds or other bonds secured by federal-aid funds, pursuant to applicable Law.

In the event that the mobilization payment has not been spent within 120 days, the Department will have the right to have the funds returned and disbursed according to the normal request process described in Section 4.

- (e) This Section 4 applies neither to the 395 Project nor the Fred Ex Project.

Section 4A Review and Approval of Disbursement Requests for the 395 Project; Payment by the Department

(a) The Department and the Concessionaire acknowledge and agree that for the 395 Project: (i) the Disbursement Request is a submission requiring an Approval for purposes of Section 10.05 of the Agreement; and (ii) the “deemed approval” provisions of Section 10.05(e) of the Agreement do not apply to a Disbursement Request submitted pursuant to Section 3.

(b) Unless otherwise *provided* under the Agreement (including Section 7.03A(b)(i)(B)), payments by the Department to the Concessionaire shall not exceed the 395 Public Funds Amount.

(c) Within seven Days after approval by the Department of a Disbursement Request in compliance with Section 3, the Department will disburse funds for such amount approved by the Department to or to the order of the Concessionaire. Disbursement payments for the 395 Early Work shall be made in accordance with Section 8.17(c) of the Agreement.

(d) If the Department determines that any portion of the Disbursement Request for the 395 Project is not eligible for funding pursuant hereto, the Department may disapprove the requested funds corresponding to such portion of the Disbursement Request. The Department will notify the Concessionaire for the reasons of such disapproval, and disburse funds to pay undisputed amounts to or to the order of the Concessionaire within seven Days after the Department approves the undisputed amounts. Any such disapproved amounts will be available in a subsequent Disbursement Request if the reasons for disapproval are satisfied.

(e) To the extent that the Concessionaire has received a Virginia Transportation Investment Bank (“VTIB”) loan for the 395 Project, the Concessionaire shall follow all requirements for requesting disbursement of such loan proceeds in accordance with the policies and procedures of the Virginia Resources Authority (“VRA”). Funds from the VTIB loan shall be disbursed upon written request of the Concessionaire and approval by the Department, according to VRA’s procedures.

Section 4B Review and Approval of Disbursement Requests Covering Fred Ex Financial Protections and Fred Ex Pooled Contingency-Covered Costs; Payment by the Department

(a) For any Fred Ex Financial Protections for which the Department will make an actual payment to the Concessionaire under Section 7.03B(c)(v), the Concessionaire shall submit to the Department a Disbursement Request within the first 90 Days after the Fred Ex Financial Close Date (or Fred Ex Additional Financial Close Date, if applicable), for an amount equal to the remaining unpaid Fred Ex Financial Protections, in accordance with Section 7.03B(c)(v).

(b) If the Concessionaire requires any funds from the Fred Ex Department Committed Contingency pursuant to Section 8.22(b) of the Agreement, then the Concessionaire shall submit to the Department a Disbursement Request, together with the corresponding Fred Ex Pooled Contingency Fund Report required under Section 8.22(b) of the Agreement, and in the case of amounts in excess of \$300,000 (individually or in the aggregate invoiced on any work order), following receipt of the Fred Ex Pooled Contingency Approval or deemed approval, and the Department will pay undisputed amounts to the Concessionaire within 30 days. Any such Disbursement Request shall include the total amount of the Fred Ex Department Committed Contingency (or any additional funds for the Department's share of Fred Ex Pooled Contingency-Covered Costs) requested by the Concessionaire at the time, without regard to whether some or all of the corresponding Fred Ex Pooled Contingency-Covered Costs were the subject of a prior Fred Ex Pooled Contingency Approval.

(c) The Department and the Concessionaire acknowledge and agree that Section 10.05 of the Agreement do not apply with respect to any Disbursement Requests submitted with respect to any Fred Ex Pooled Contingency-Covered Costs.

Section 5 No Waiver

No approvals by the Department, or payments or disbursements by the GARVEE Trustee (if applicable), will be construed as an acceptance of any Work that is not in accordance with the requirements of the Agreement.

Section 6 Accounting of Payments Received

(a) No later than 180 Days from the Final Acceptance Date (or the Substantial Completion Date, but only if none of the Public Funds Amount is used to pay costs incurred after the Substantial Completion Date), the Concessionaire will provide a final accounting to the Department, documenting the use of the Public Funds Amount.

(b) No later than 180 Days from the 395 Final Completion Date, the Concessionaire will provide a final accounting to the Department, documenting the use of the 395 Public Funds Amount.

(c) No later than 180 Days from the Fred Ex Final Completion Date, the Concessionaire will provide a final accounting to the Department, documenting the use of any funds paid by the Department to cover or reimburse Fred Ex Pooled Contingency-Covered Costs.

Section 7 Definitions

Capitalized terms used but not otherwise defined in this Exhibit N have the respective meanings set forth in Exhibit A to the Agreement. In addition, the following terms have the meanings specified below:

Indenture means the Master Trust Indenture between the Commonwealth Transportation Board and the GARVEE Trustee, as the same may be supplemented from time to time in connection with the issuance of GARVEE Bonds, the proceeds of which are used to fund a portion of the Public Funds Amount.

Prime Contractors means the Design-Build Contractor, the TTMS Contractor and any other Contractors performing the Work that has a direct Contract with the Concessionaire.

Attachment 1

DISBURSEMENT REQUEST CERTIFICATE

In order to induce the Department to provide written authorization to disburse: (i) funds from the VDOT Funding Account as requested by this Disbursement Request, (ii) funds for the 395 Project, or (iii) the Fred Ex Department Committed Contingency (or any additional funds for the Department's share of Fred Ex Pooled Contingency-Covered Costs), the Concessionaire hereby certifies and represents to the Department as follows:

(a) The information contained in the documents attached hereto is true, complete, and correct in all material respects.

(b) The Work associated with this Disbursement Request has been performed and furnished in compliance with the requirements of the Agreement.

(c) The amount specified in the Disbursement Request has been computed in accordance with, and is due and payable under, the terms and conditions of the Agreement, has not been the subject of any previous Disbursement Request (unless disputed or rejected for payment) and is not the subject of any pending Disbursement Request from the Concessionaire.

(d) [As of the date of this Disbursement Request, neither the Design-Build Contractor nor any other Contractor performing the Work that has a direct Contract with the Concessionaire (collectively, "Prime Contractors") for which payment is sought under the Disbursement Request is barred or suspended from providing goods or services to any Governmental Authority. Except for any specific Contractor listed as barred or suspended in an attachment to this Disbursement Request Certificate, each Contractor who has a direct Contract with the Prime Contractors has certified in its respective invoice to the applicable Prime Contractor that such Contractor is not barred or suspended from providing goods or services to any Governmental Authority, and to the Concessionaire's knowledge, no such Contractor has been so barred or suspended.]

(e) [As of the date of this Disbursement Request, the Concessionaire has paid the Prime Contractors the amount previously disbursed to the Concessionaire on account of the Work performed by the Prime Contractors, in accordance with the terms and conditions of its Contracts with such Prime Contractors.]

Unless otherwise indicated, capitalized terms used herein shall have the meanings set forth in the Comprehensive Agreement.

95 Express Lanes LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

the Project Right of Way, for all services done and materials furnished to the date hereof have been obtained in such a form as to constitute an effective defense against the assertion of all such liens and encumbrances under the laws of the Commonwealth of Virginia, if and to the extent required under the Agreement.

The Commonwealth of Virginia may rely on the statements made in this Waiver and is a third party beneficiary thereof.

Signed this ____ day of _____.

PRIME CONTRACTOR

By: _____
Name:
Title: [Authorized Representative]

Subscribed and sworn to before me this ____ day of 20____.

Notary Public in and for
said County and State

The Commonwealth of Virginia may rely on this Waiver and is a third party beneficiary thereof.

Signed this ____ day of _____.

PRIME CONTRACTOR

By: _____
Name:
Title: [Authorized Representative]

Subscribed and sworn to before me this ____ day of 20____.

Notary Public in and for
said County and State

the Project Right-of-Way, for all services done and materials furnished to the date hereof have been obtained in such a form as to constitute an effective defense against the assertion of all such liens and encumbrances under the laws of the Commonwealth of Virginia, if and to the extent required under the Agreement.

The Commonwealth of Virginia may rely on this Waiver and is a third party beneficiary thereof.

Signed this ____ day of _____.

PRIME CONTRACTOR

By: _____
Name:
Title: [Authorized Representative]

Subscribed and sworn to before me this ____ day of 20____.

Notary Public in and for
said County and State

FINAL LIEN AND CLAIM WAIVER

COMMONWEALTH OF VIRGINIA)
 :
COUNTY OF)

TO WHOM IT MAY CONCERN:

The undersigned is the [__ Title __] of [____], a [____] (“Prime Contractor”), which has contracted to furnish [____] services in connection with the 395 Project, located in the Commonwealth of Virginia, pursuant to that certain Amended and Restated Comprehensive Agreement, dated as of June 8, 2017 (the “Agreement”), with 95 Express Lanes LLC, as concessionaire (“Concessionaire”). Capitalized terms used herein that are not otherwise defined herein have the respective meanings set forth in the Agreement.

The undersigned, on behalf of Prime Contractor, DOES HEREBY WAIVE AND RELEASE:

Any and all claims, liens, security interests, or encumbrances in the nature of mechanics’, labor or materialmen’s liens or otherwise, with respect to and on the Project, the Project Right-of-Way and any and all interests and estates therein, and all improvements and materials placed on the Project Right-of-Way, in each case on account of the Work performed by or on behalf of Prime Contractor for the Project;

and DOES HEREBY CERTIFY THAT:

There are no claims, liens, security interests or encumbrances in the nature of mechanics’, labor or materialmen’s liens or claims or otherwise, arising out of or in connection with, the performance by Prime Contractor or any of the Subcontractors of the Work performed under the Agreement, the Project, the Project Right-of-Way and any and all interests and estates herein and all improvements and materials placed on the Project Right-of-Way, outstanding or known to exist at the date of this certification; all bills with respect to the Work to be performed under the Agreement have been paid (except for \$ _____ withheld by the Concessionaire pursuant to Section [____] of the Agreement and disputed amounts for additional work equal to \$ _____), and there is no known basis for filing of any claims, liens, security interests or encumbrances in the nature of mechanics’, labor or materialmen’s liens or claims or otherwise arising out of or in connection with the performance by Prime Contractor or any of the Subcontractors of the Work under the Agreement; and releases, assignments and waivers from all Subcontractors that would otherwise have had the right to place a lien or encumbrance with respect to and on the Project, the Project Right-of-Way and any and all interests and estates therein, and all improvements and materials placed on the Project Right-of-Way, for all services done and materials furnished have been obtained in such a form as to constitute an effective defense against the assertion of all such liens and claims under the laws of the Commonwealth of Virginia.

The Commonwealth of Virginia may rely on this Waiver and is a third party beneficiary thereof.

Signed this ____ day of _____.

PRIME CONTRACTOR

By: _____

Name:

Title: [Authorized Representative]

Subscribed and sworn to before me this ____ day of 20_____.

Notary Public in and for

said County and State

the Project Right-of-Way, for all services done and materials furnished to the date hereof have been obtained in such a form as to constitute an effective defense against the assertion of all such liens and encumbrances under the laws of the Commonwealth of Virginia, if and to the extent required under the Agreement.

The Commonwealth of Virginia may rely on this Waiver and is a third party beneficiary thereof.

Signed this ____ day of _____.

PRIME CONTRACTOR

By: _____
Name:
Title: [Authorized Representative]

Subscribed and sworn to before me this ____ day of 20_____.

Notary Public in and for
said County and State

FINAL LIEN AND CLAIM WAIVER

COMMONWEALTH OF VIRGINIA)
 :
COUNTY OF)

TO WHOM IT MAY CONCERN:

The undersigned is the [__ Title __] of [_____], a [_____] (“Prime Contractor”), which has contracted to furnish [_____] services in connection with the Fred Ex Project, located in the Commonwealth of Virginia, pursuant to that certain Third Amended and Restated Comprehensive Agreement, dated as of [●] (the “Agreement”), with 95 Express Lanes LLC, as concessionaire (“Concessionaire”). Capitalized terms used herein that are not otherwise defined herein have the respective meanings set forth in the Agreement.

The undersigned, on behalf of Prime Contractor, DOES HEREBY WAIVE AND RELEASE:

Any and all claims, liens, security interests, or encumbrances in the nature of mechanics’, labor or materialmen’s liens or otherwise, with respect to and on the Project, the Project Right-of-Way and any and all interests and estates therein, and all improvements and materials placed on the Project Right-of-Way, in each case on account of the Work performed by or on behalf of Prime Contractor for the Project;

and DOES HEREBY CERTIFY THAT:

There are no claims, liens, security interests or encumbrances in the nature of mechanics’, labor or materialmen’s liens or claims or otherwise, arising out of or in connection with, the performance by Prime Contractor or any of the Subcontractors of the Work performed under the Agreement, the Project, the Project Right-of-Way and any and all interests and estates herein and all improvements and materials placed on the Project Right-of-Way, outstanding or known to exist at the date of this certification; all bills with respect to the Work to be performed under the Agreement have been paid (except for \$_____ withheld by the Concessionaire pursuant to Section [___] of the Agreement and disputed amounts for additional work equal to \$_____), and there is no known basis for filing of any claims, liens, security interests or encumbrances in the nature of mechanics’, labor or materialmen’s liens or claims or otherwise arising out of or in connection with the performance by Prime Contractor or any of the Subcontractors of the Work under the Agreement; and releases, assignments and waivers from all Subcontractors that would otherwise have had the right to place a lien or encumbrance with respect to and on the Project, the Project Right-of-Way and any and all interests and estates therein, and all improvements and materials placed on the Project Right-of-Way, for all services done and materials furnished have been obtained in such a form as to constitute an effective defense against the assertion of all such liens and claims under the laws of the Commonwealth of Virginia.

The Commonwealth of Virginia may rely on this Waiver and is a third party beneficiary thereof.

Signed this ____ day of _____.

PRIME CONTRACTOR

By: _____
Name:
Title: [Authorized Representative]

Subscribed and sworn to before me this ____ day of 20_____.

Notary Public in and for

said County and State

EXHIBIT O

LIST OF INITIAL PROJECT FINANCING AGREEMENTS, 395 PROJECT FINANCING AGREEMENTS, FRED EX PROJECT FINANCING AGREEMENTS, 2022 PROJECT FINANCING AGREEMENTS, OPITZ BOULEVARD RAMP PROJECT EQUITY CONTRIBUTION AGREEMENT AND FINANCING ASSIGNMENTS

Initial Project Financing Agreements and Financing Assignments

1. Indenture of Trust, dated as of July 1, 2012, between Virginia Small Business Financing Authority (the “Issuer”) and U.S. Bank National Association, as the trustee.
2. Loan Agreement, dated as of July 1, 2012, between the Issuer and 95 Express Lanes LLC (the “Borrower”).
3. Collateral Agency and Account Agreement dated as of July 1, 2012, by and among the Borrower, U.S. Bank National Association, as the trustee, and U.S. Bank National Association, as the collateral agent and securities intermediary.
4. Subordination and Intercreditor Agreement, dated as of November 20, 2012, by and among the United States Department of Transportation acting by and through the Federal Highway Administrator, U.S. Bank National Association, as the trustee and the collateral agent.
5. Security Agreement, dated as of July 1, 2012, between the Borrower and U.S. Bank National Association, as the collateral agent.
6. Transurban Membership Interest Pledge Agreement, dated as of July 1, 2012 between DRIVe Investments USA LLC and U.S. Bank National Association, as the collateral agent.
7. Fluor Membership Interest Pledge Agreement, dated as of July 1, 2012, between Fluor Enterprises, Inc. and U.S. Bank National Association, as the collateral agent.
8. Equity Funding Agreement, dated as of July 1, 2012, by and among DRIVe USA Investments LLC, the Borrower and U.S. Bank National Association, as the collateral agent.
9. Equity Funding Agreement, dated as of July 1, 2012, by and among between Fluor Enterprises, Inc. (the “Fluor Member”), the Borrower and U.S. Bank National Association, as the collateral agent.
10. Equity Funding Guaranty, dated as of July 1, 2012, by and among Transurban Holdings Limited, Transurban International Limited, and Transurban Infrastructure Management Limited in its capacity as responsible entity of the Transurban Holding Trust, the Borrower, and U.S. Bank National Association, as the collateral agent.
11. Fluor Equity Funding Guaranty, dated as of July 1, 2012, by and among Fluor Corporation, the Borrower and U.S. Bank National Association, as the collateral agent.

395 Project Financing Agreements and Financing Assignments

1. First Supplemental Indenture of Trust between the Issuer and U.S. Bank National Association, as the trustee.
2. First Amendment to Loan Agreement between the Issuer and the Borrower.
3. Second Amended and Restated Collateral Agency and Account Agreement by and among the Borrower, U.S. Bank National Association, as the trustee, and U.S. Bank National Association, as the collateral agent and as the securities intermediary.
4. Amended and Restated Subordination and Intercreditor Agreement by and among U.S. Bank National Association, as the trustee, United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, replacing the Federal Highway Administrator as successor in delegation of authority to act, Virginia Resources Authority, as manager of Virginia Transportation Infrastructure Bank, and U.S. Bank National Association, as the collateral agent.
5. Amendment No. 1 to TIFIA Loan Agreement by and between the Borrower and United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, replacing the Federal Highway Administrator as successor in delegation of authority to act.
6. VTIB Loan Agreement by and between the Borrower and Virginia Resources Authority, as manager of Virginia Transportation Infrastructure Bank.
7. Transurban Membership Interest Pledge Agreement between Transurban Express Lanes LLC and U.S. Bank National Association, as the collateral agent.
8. Amended and Restated Transurban Drive Membership Interest Pledge Agreement between DRIVe Investments USA LLC and U.S. Bank National Association, as the collateral agent.
9. Equity Funding Agreement by and among DRIVe USA Investments LLC, the Borrower and U.S. Bank National Association, as the collateral agent.
10. Equity Funding Agreement by and among Transurban Express Lanes LLC, the Borrower and U.S. Bank National Association, as the collateral agent.
11. Equity Funding Guaranty by and among Transurban Holdings Limited, Transurban International Limited and Transurban Infrastructure Management Limited in its capacity as responsible entity of the Transurban Holding Trust, the Borrower, and U.S. Bank National Association, as the collateral agent.

Fred Ex Project Financing Agreements and Financing Assignments

1. Amended and Restated Equity Funding Agreement by and among Transurban Express Lanes LLC, the Borrower and U.S. Bank National Association.

2. Equity Funding Guaranty by and among Transurban Holdings Limited, Transurban International Limited and Transurban Infrastructure Management Limited in its capacity as responsible entity of the Transurban Holding Trust, the Borrower, and U.S. Bank National Association.
3. Second Supplemental Indenture of Trust between the Issuer and U.S. Bank National Association, as the trustee.
4. Second Amendment to Loan Agreement between the Issuer and the Borrower.

2022 Project Financing Agreements and Financing Assignments

1. Third Amended and Restated Collateral Agency and Account Agreement by and among the Borrower, U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), in its capacity as the trustee and the collateral agent, and U.S. Bank National Association, as the securities intermediary.
2. Amendment No. 2 to TIFIA Loan Agreement by and between the Borrower and United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, replacing the Federal Highway Administrator as successor in delegation of authority to act.
3. Amendment No. 1 to VTIB Loan Agreement by and between the Borrower and Virginia Resources Authority, as manager of Virginia Transportation Infrastructure Bank.
4. Escrow Deposit Agreement by and among the Issuer, the Borrower and U.S. Bank Trust Company, National Association, as escrow agent and trustee.
5. Second Amended and Restated Subordination and Intercreditor Agreement by and among U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), as the trustee, United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, replacing the Federal Highway Administrator as successor in delegation of authority to act, Virginia Resources Authority, as manager of Virginia Transportation Infrastructure Bank, and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), as the collateral agent.
6. Third Amendment to Loan Agreement between the Issuer and the Borrower.
7. Third Supplemental Indenture of Trust between the Issuer and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), as the trustee.

Opitz Boulevard Ramp Project Equity Contribution Agreement

1. Equity Contribution Agreement by and among the Borrower, Transurban Express Lanes LLC, Transurban (USA) Operations Inc., DRIVe USA Investments LLC, AustralianSuper Investments Pty Ltd (CAN 119 626 792) as trustee of AustralianSuper,

Investments Fund No. 2, CPPIB Roads America Inc. and UniSuper Infrastructure USA Inc.

EXHIBIT P

ANNUAL TRANSIT INVESTMENT

The Annual Transit Investment amount shown in Part A of this Exhibit P will be payable in accordance with Section 5.11 of the Amended and Restated Comprehensive Agreement and this Exhibit P. The Annual Transit Investment shall commence on the 395 Service Commencement Date and be paid annually following each anniversary of the 395 Service Commencement Date in accordance with Parts B through D of this Exhibit P.

Part A: Annual Transit Investment

PART A – ANNUAL TRANSIT INVESTMENT FORM			
Payment Due Date	Minimum Annual Transit Investment (\$ Nominal)	Payment Due Date	Minimum Annual Transit Investment (\$ Nominal)
395 Service Commencement Date	\$15,000,000	+ 35 year	\$35,598,078
+ 1 year	15,375,000	+ 36 year	36,488,030
+ 2 year	15,759,375	+ 37 year	37,400,230
+ 3 year	16,153,359	+ 38 year	38,335,236
+ 4 year	16,557,193	+ 39 year	39,293,617
+ 5 year	16,971,123	+ 40 year	40,275,958
+ 6 year	17,395,401	+ 41 year	41,282,857
+ 7 year	17,830,286	+ 42 year	42,314,928
+ 8 year	18,276,043	+ 43 year	43,372,801
+ 9 year	18,732,945	+ 44 year	44,457,121
+ 10 year	19,201,268	+ 45 year	45,568,549
+ 11 year	19,681,300	+ 46 year	46,707,763
+ 12 year	20,173,332	+ 47 year	47,875,457
+ 13 year	20,677,666	+ 48 year	49,072,343
+ 14 year	21,194,607	+ 49 year	50,299,152
+ 15 year	21,724,472	+ 50 year	51,556,631
+ 16 year	22,267,584	+ 51 year	52,845,547
+ 17 year	22,824,274	+ 52 year	54,166,685
+ 18 year	23,394,881	+ 53 year	55,520,852
+ 19 year	23,979,753	+ 54 year	56,908,874
+ 20 year	24,579,247	+ 55 year	58,331,596
+ 21 year	25,193,728	+ 56 year	59,789,885
+ 22 year	25,823,571	+ 57 year	61,284,633
+ 23 year	26,469,160	+ 58 year	62,816,748
+ 24 year	27,130,889	+ 59 year	64,387,167
+ 25 year	27,809,161	+ 60 year	65,996,846
+ 26 year	28,504,391	+ 61 year	67,646,767
+ 27 year	29,217,000	+ 62 year	69,337,937
+ 28 year	29,947,425	+ 63 year	71,071,385
+ 29 year	30,696,111	+ 64 year	72,848,170
+ 30 year	31,463,514	+ 65 year	74,669,374
+ 31 year	32,250,102	+ 66 year	76,536,108
+ 32 year	33,056,354	+ 67 year	78,449,511
+ 33 year	33,882,763	+ 68 year	80,410,749
+ 34 year	34,729,832		
		Term of the Comprehensive Agreement	\$2,696,840,696

Part B: Annual Transit Investment Payment Amount Verification Process

On each anniversary of the 395 Service Commencement Date during the Term, the parties will verify the Annual Transit Investment payment amount for each year according to the principles as set forth in this Exhibit P, Part B. An Annual Transit Investment payment may be delayed only in accordance with this Exhibit P, Part B.

1. The first Annual Transit Investment shall be payable on the 395 Service Commencement Date from funds shown in the Final Proposal's Base Case Financial Model Update (95/395 Interim) as accepted by the Department and will be payable each year thereafter in accordance with this Exhibit P. Each subsequent Annual Transit Investment payment shall be payable as follows: Within fifteen days following the end of the month in which the anniversary of the 395 Service Commencement Date occurs the Verification Process will be run by the Concessionaire per the terms of this Part B. If the Verification Process is Passed (per the definition in paragraph 7) or if the Concessionaire proposes to make the full Annual Transit Investment payment per Part A of this Exhibit, the Concessionaire will make payment of the Annual Transit Investment, as invoiced, in accordance with Section 25.21 of the Third Amended and Restated Comprehensive Agreement. If the Verification Process is Failed (per the definition in paragraph 7) then the Reduced Annual Transit Investment Amount (per the definition in paragraph 7) will be paid no later than forty-five (45) days from the end of the fiscal quarter during which the anniversary of the 395 Service Commencement Date occurred.
2. The Annual Transit Investment payment shall be payable in the order set forth in Section 5.11(c) of the Third Amended and Restated Comprehensive Agreement.
3. From 395 Financial Close throughout the remainder of the Term, the Concessionaire may deposit funds from available sources in the 395 Reserve Account for the purpose of supporting the full payment of the Annual Transit Investment as set forth in this Exhibit P and 395 Delayed Annual Transit Investment Amount (defined below) payments due in accordance with Section 5.11(d) of the Third Amended and Restated Comprehensive Agreement. The maximum amount of funds that can be withdrawn from the 395 Reserve Account in any year is the sum of: (i) the Transit Investment Amount required by Part A of this Exhibit P for that given year, (ii) **plus** any outstanding 395 Delayed Annual Transit Investment Amount, (iii) **plus** any outstanding principal and interest on the Senior Bonds and Additional Parity Indebtedness (as defined and in accordance with the Collateral Agency Agreement), (iv) **plus** any outstanding TIFIA Mandatory Debt Service and VTIB Mandatory Debt Service (as defined and in accordance with the Collateral Agency Agreement). On and prior to the third anniversary of the 395 Service Commencement Date, 395 Reserve Account funds may be used for debt service described in (iii) and (iv) of this paragraph 3 above, but only to the extent funds designated or reserved for such debt service payments under the Collateral Agency Agreement are insufficient. If funds from the 395 Reserve Account are withdrawn to pay debt service and there is a 395 Delayed Annual Transit Investment Amount,

such outstanding 395 Delayed Annual Transit Investment Amount shall accrue interest in accordance with Sections 5.11(d) and 25.22 of the Third Amended and Restated Comprehensive Agreement. After the third anniversary of the 395 Service Commencement Date, 395 Reserve Account funds may no longer be used to pay for debt service described in (iii) and (iv) of this paragraph 3 above. Subject to the foregoing restrictions and the Verification Process outlined below, funds may be withdrawn from the 395 Reserve Account for distribution to equity.

4. Each Annual Transit Investment payment shall be payable from the annual revenues generated by the 395 HOT Lanes, including the annual incremental revenue from the Existing HOT Lanes and any HOT Lanes on the STE generated specifically as a result of the 395 HOT Lanes achieving Service Commencement (“395 Revenues”) and from any 395 Reserve Account. The 395 Revenues will be calculated using the ratio of (A) projected quarterly revenue on the 395 HOT Lanes plus (B) projected quarterly incremental revenue on the Existing HOT Lanes and any HOT Lanes on the STE to (A) projected quarterly revenue on the 395 HOT Lanes [= (A+B) / A] as set out in the Base Case Financial Model Update (95/395 Final), and multiplying that ratio by the actual revenue generated on the 395 HOT Lanes. For purposes of establishing the quarterly revenue, the first quarter shall begin on the first day of the month following the end of the month in which the 395 Service Commencement Date occurs and the sum of the quarterly revenues for that quarter and the next three quarters shall be the annual 395 Revenues.
5. Reserved.
6. The forecasted minimum annual amount of 395 Revenues required to make each Annual Transit Investment payment in full including any cost or funding obligations, which rank senior to the Annual Transit Investment payment (in accordance with Section 5.06 of the Third Amended and Restated Comprehensive Agreement and the 395 Project Financing Agreements) is referred to herein as the “Minimum Revenue Profile” as set out on an annual basis in Part D of this Exhibit P. In all periods in the Base Case Financial Model Update (95/395 Final) and the most recent undisputed Base Case Financial Model Update, the Minimum Revenue Profile is no higher than the annual 395 Revenues.
7. Except as stated in paragraph 8 below, each year during the Term, no more than fifteen (15) days following the end of the month in which the anniversary of the 395 Service Commencement Date occurs, the annual 395 Revenues will be measured against the annual Minimum Revenue Profile (the “Verification Process”). If such Verification Process occurs in any given year, the Concessionaire shall provide the Department in writing the calculations and evidence of the Verification Process no less than fifteen (15) days following the end of the month in which the anniversary of the 395 Service Commencement Date occurs for that year. If the Verification Process determines that the 395 Revenues are equal to or greater than the Minimum Revenue Profile for that year (the Verification Process is “Passed”), then the Concessionaire will pay no less than an amount equivalent to the Annual Transit Investment amount in that period as

specifically outlined in Exhibit P, Part A. If the Verification Process determines that the 395 Revenues have not met or exceeded the Minimum Revenue Profile for that year (the Verification Process is “Failed”), the Concessionaire will pay an amount equal to the Annual Transit Investment amount scheduled in that period in Exhibit P, Part A less the amount of such shortfall (the “Reduced Annual Transit Investment Amount”), it being understood that such shortfall shall be reduced by any payment made by the Concessionaire from a 395 Reserve Account pursuant to Section 3 of this Part B. Any amount of the applicable Annual Transit Investment amount unpaid in that year shall be considered the “395 Delayed Annual Transit Investment Amount” and shall remain due until paid in accordance with Section 5.11(d) of the Third Amended and Restated Comprehensive Agreement. If the Verification Process determines that the 395 Revenues are greater than the Minimum Revenue Profile then those additional funds shall be payable to the Department for any 395 Delayed Annual Transit Investment Amount and the Annual Transit Investment amount in Exhibit P, Part A until those additional amounts are paid. If the Concessionaire does not pay the amount determined by the Verification Process to be payable for the relevant year as described above in this Section 7, then the Concessionaire shall be in default in accordance with Section 19.01(c) of the Third Amended and Restated Comprehensive Agreement. While there is a 395 Delayed Annual Transit Investment Amount outstanding, no distributions will be made from 395 Revenues until the delayed amount is paid in full. If 395 Revenues, combined with any amounts in the 395 Reserve Account as set forth in Section 3 of this Exhibit, are insufficient to meet the Annual Transit Investment payment and the 395 Delayed Annual Transit Investment Amount in any given year, the limitation in Section 5.06(b)(vii) of the Third Amended and Restated Comprehensive Agreement will apply to, and only to, 395 Revenues. For the avoidance of doubt, Annual Transit Investment payment amounts are fixed and governed by Exhibit P, Part A. The Verification Process cannot waive any fixed Annual Transit Investment payment amount, but may allow the Concessionaire only to postpone payment of an Annual Transit Investment payment amount in accordance with the principles stated above.

8. If the Annual Transit Investment is to be paid in full in any given year, including with respect to any 395 Delayed Annual Transit Investment Amount (if 395 Revenues are greater than the Minimum Revenue Profile), the Verification Process need not occur.
9. No more than once every 10 years during the Operating Period except by mutual agreement, the Parties may review the Verification Process, its inputs, and the Base Case Financial Model Update (95/395 Final) and the most recent undisputed Base Case Financial Model Update to determine if any adjustments are required to such Verification Process. If the results of such review cannot be agreed upon, no changes shall be made to the Verification Process, its input, and the Base Case Financial Model Update (95/395 Final) and the most recent undisputed Base Case Financial Model Update for such purpose except in accordance with Article 6 of the Third Amended and Restated Comprehensive Agreement.

Part C: Steps in the Annual Transit Investment Payment Amount Verification Process

This Part C of Exhibit P outlines the steps to be followed as required in Part B of Exhibit P. The Base Case Financial Model Update (95/395 Final), [tab c, Section 29.04] shall be used to establish the amount resulting from each calculation. Tab [c] of the Base Case Financial Model Update (95/395 Final) shall include the output for each step and the information in Part D of this Exhibit P. For purposes of this Part C, all amounts shall be quarterly in the Base Case Financial Model Update (95/395 Final) and annual for purposes of the Verification Process. The determination of the first quarter amount shall begin on the first day of the month following the end of the month in which the Service Commencement Date occurs and the sum of the quarterly revenues for that quarter and the next three quarters shall be the annual amount for purposes of the Verification Process.

Step	Calculation	Output Definition	Ref
Section A: Steps to be completed at Financial Close			
Establish the quarterly I-95 Uplift Ratio			
Establish projected quarterly 395 Toll Revenue (395 HOT Lanes only)	Record projected 395 Toll Revenue	PROJECTED 395 HOT LANES TOLL REVENUE	A
Establish the quarterly incremental revenue from the Existing HOT Lanes and any HOT Lanes on the STE (“I-95 Uplift Toll Revenue”)	Record I-95 Uplift Toll Revenue	I-95 UPLIFT TOLL REVENUE	B.1
Calculate and record projected quarterly 395 Revenues	Projected 395 HOT Lanes Toll Revenue PLUS projected I-95 Uplift Revenue	PROJECTED 395 REVENUES	B = A + B.1
Calculate and record the quarterly (“I-95 Uplift Ratio”)	Projected 395 Revenues (B) DIVIDED BY Projected 395 HOT Lanes Toll Revenue (A) (calculated on a quarterly basis for the period being assessed)	I-95 UPLIFT RATIO	G = B / A
Set the annual Minimum Revenue Profile			
Record the Annual Transit Investment schedule from Part A of Exhibit P	Record the Annual Transit Investment amount for each year as set forth in Part A, Exhibit P	ANNUAL TRANSIT INVESTMENT AMOUNT	C
Calculate the projected cash outflow of 395 Revenues during the 395 base case operating period (excluding Annual Transit Investment) on a quarterly basis (sum to annual for Step 8)	Operating Costs attributable to 395 HOT Lanes MINUS 395 capital expenditures	PROJECTED CASH OUTFLOW OF 395 REVENUES (excluding Annual Transit Investment amount)	D

Step	Calculation	Output Definition	Ref
	PLUS 395 Concessionaire Debt service payments and financing costs		
Reserved			
Calculate annual Minimum Revenue Profile	The lesser of - Annual Transit Investment PLUS annual Projected Cash Outflow of 395 Revenues (C + D) OR - annual Projected 395 Revenues (B)	MINIMUM REVENUE PROFILE	E = Minimum (C + D; B)
Record annual Minimum Revenue Profile at the 395 Financial Close Date	Record Minimum Revenue Profile for each year at the 395 Financial Close Date in Part D, Exhibit P	MINIMUM REVENUE PROFILE	E
Section B: Steps to be performed during operations			
Measure Actual Revenue against Minimum Revenue Profile			
Measure actual 395 HOT Lanes Toll Revenue for the Service Commencement Date anniversary year just ended on a quarterly basis and sum to annual	Record actual 395 HOT Lanes Toll Revenues	ACTUAL 395 HOT LANES TOLL REVENUE	F
Calculate the I-95 Uplift Revenue for the Service Commencement Date anniversary year just ended on a quarterly basis and sum to annual	Actual 395 HOT Lanes Toll Revenue (F) MULTIPLIED BY I-95 Uplift Ratio (G-1)	ACTUAL I-95 UPLIFT TOLL REVENUE	H = F * (G - 1)
Calculate the actual annual 395 Revenues	Actual 395 HOT Lanes Toll Revenue (F) PLUS Actual I-95 Uplift Toll Revenue (H)	ACTUAL 395 REVENUES	I = F + H
Reserved			

Step	Calculation	Output Definition	Ref
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Reserved

Reserved

Conduct Verification Process

Compare actual annual revenue with annual Minimum Revenue Profile	395 Revenue with 395 Permit Fee adjustment (K) MINUS Minimum Revenue Profile (E)	OVER / UNDER PERFORMANCE	L = I - E
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Adjust Annual Transit Investment amount payable (in that period), if necessary	If resulting number (L) is zero or negative amount, then there is an Annual Transit Investment amount shortfall which may remain unpaid in accordance with Exhibit P, Part B, paragraph 7 (“395 Delayed Annual Transit Investment Amount”).	TRANSIT PAYMENT AMOUNT PAYABLE (for the annual period)	M
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If resulting number (L) is a positive amount, then any prior year unpaid 395 Delayed Annual Transit Investment Amount plus the Annual Transit Investment amount for the current year is due and payable until the entire resulting number (L) is used. The specific financial model steps are as follows:

Step 1: MINIMUM OF

- a) Annual Transit Investment
PLUS Over/Under Performance
(C + L) or,
- b) Annual Transit Investment
PLUS 395 Delayed Annual Transit Investment

Step	Calculation	Output Definition	Ref
	Amount balance (if any) $(C + N_{t-1})$		
	<u>Step 2:</u> The greater of either Step 1 or Zero		
Annual 395 Delayed Transit Payment Amount Carry Forward(If necessary)			
Accrue any unpaid/delayed Annual Transit Investment	The greater of either the Annual Transit Investment PLUS Accrued Transit Payments MINUS Transit Payment Amount Payable $(C + N_{t-1} - M)$, or Zero	395 DELAYED ANNUAL TRANSIT INVESTMENT AMOUNT BALANCE (at time of calculation)	N_t

Part D: Minimum Revenue Profile

The Minimum Revenue Profile will be measured against 395 Revenues as part of the Verification Process on each anniversary of the 395 Service Commencement Date commencing one year following the 395 Service Commencement Date.

PART D – Minimum Revenue Profile as of 395 Financial Close			
Verification Process Date	Minimum Revenue (\$ Nominal)	Verification Process Date	Minimum Revenue (\$ Nominal)
395 Service Commencement Date		+ 35 year	43,437,438
+ 1 year	24,983,662	+ 36 year	5,765,443
+ 2 year	23,978,951	+ 37 year	93,674,985
+3 year	23,649,807	+ 38 year	99,924,530
+ 4 year	7,672,669	+ 39 year	105,454,385
+ 5 year	24,615,548	+ 40 year	113,067,579
+ 6 year	25,055,854	+ 41 year	146,814,651
+ 7 year	25,920,915	+ 42 year	80,296,891
+ 8 year	26,636,462	+43 year	124,241,100
+ 9 year	27,459,564	+ 44 year	162,921,339
+ 10 year	17,960,736	+ 45 year	163,450,204
+ 11 year	8,323,355	+ 46 year	174,780,558
+ 12 year	32,938,722	+ 47 year	170,813,818
+13 year	33,285,191	+ 48 year	186,947,857
+14 year	34,641,419	+ 49 year	145,724,018
+ 15 year	51,486,592	+ 50 year	200,531,717
+ 16 year	48,996,179	+ 51 year	150,964,200
+ 17 year	50,102,111	+ 52 year	206,325,153
+ 18 year	50,899,338	+ 53 year	211,567,028
+ 19 year	52,901,452	+ 54 year	219,856,871
+ 20 year	27,312,184	+ 55 year	226,633,650
+ 21 year	33,689,383	+ 56 year	234,515,128
+ 22 year	34,972,317	+ 57 year	242,017,821
+ 23 year	34,963,700	+ 58 year	249,456,596
+ 24 year	34,829,690	+ 59 year	253,762,783
+ 25 year	34,875,499	+ 60 year	259,283,955
+ 26 year	39,882,325	+ 61 year	266,764,723
+ 27 year	44,205,214	+ 62 year	275,345,488
+ 28 year	44,970,866	+ 63 year	294,318,216
+ 29 year	36,835,831	+ 64 year	298,896,810
+ 30 year	40,481,617	+ 65 year	303,706,025
+ 31 year	41,100,243	+ 66 year	308,193,326
+ 32 year	41,602,366	+ 67 year	295,548,619
+ 33 year	42,051,863	+ 68 year	353,407,787
+ 34 year	42,314,323		

EXHIBIT Q-1

FORMS OF PAYMENT AND PERFORMANCE BONDS

[SEE ATTACHED]

EXHIBIT Q-2

FORMS OF FRED EX PAYMENT AND PERFORMANCE BONDS

[SEE ATTACHED]

FORM OF FRED EX PAYMENT BOND

Bond No.

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, the Commonwealth of Virginia, Department of Transportation, a state agency of the Commonwealth of Virginia (the “VDOT”), has awarded to 95 EXPRESS LANES LLC (the “Obligee” which term hereinafter includes its successors and assigns) a Comprehensive Agreement dated July 31, 2012 (the “Original Agreement”) to develop, design, build, finance, operate, and maintain the Interstate 95 HOV/HOT Lanes Project (the “Project”); and

WHEREAS, VDOT and the Obligee entered into a First Amendment to the Original Agreement dated May 2, 2016 (the “First Amendment”), under which the parties agreed to add the “Southern Terminus Extension” to the Project; and

WHEREAS, the Owner and Obligee have entered into an Amended and Restated version of the Original Agreement (the “ARCA”) dated June 8, 2017 under which Obligee will add approximately eight miles of high-occupancy toll lanes on Interstate 395 to the Project, will widen portions of Interstate 395, and will perform other significant related improvements on and around Interstate 395 (collectively, the “395 Project”); and

WHEREAS, VDOT and the Obligee intend to enter into a further amended ARCA (“Second ARCA”) under which the Obligee will add approximately ten miles of high-occupancy toll lanes to the existing 95/395 HOV/HOT Lanes on Interstate 95 to the Project south of their current terminus (the “Fred Ex Project”); and

WHEREAS, Obligee intend to has entered into the Fred Ex Design-Build Contract between Concessionaire and Design-Builder (the “DB Contract”) with [●], as Design-Builder (hereinafter, the “Principal”), bearing the date of [●], for the performance of certain work defined within the DB Contract as the “Fred Ex Work,” which DB Contract, together with any and all changes, extensions of time, alterations, modifications, or additions thereto or to the work to be performed thereunder, shall hereafter be referred to as the “Contract;” and

WHEREAS, it is one of the conditions of the Second ARCA and the Contract that these presents shall be executed.

NOW THEREFORE, we, the undersigned Principal, and [●] (the “Surety”, [and collectively, the “Co-Sureties”]) jointly and severally, bind ourselves, our heirs, executors, administrators, successors, and assigns to the Obligee to pay for labor, materials, and equipment furnished for use in the performance of the Contract, which Contract is deemed a part hereof as if said Contract were fully set forth herein. [Any reference to the “Surety” in this Bond shall be read as a reference to the Co-Sureties and each of them on the basis of such joint and several liability.] **This Bond is in the amount of [●].**

The following terms and conditions shall apply with respect to this Bond:

1. If the Principal promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Obligee and VDOT from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Contract, then the Surety and the Principal shall have no obligation under this Bond.
2. The Surety's obligation to the Obligee under this Bond shall arise after the Obligee or VDOT has promptly notified the Principal and the Surety (at the address described in Section 13) of claims, demands, liens, or suits against the Obligee, the Obligee's property, or VDOT or its property, by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Contract, and tendered defense of such claims, demands, liens, or suits to the Principal and the Surety.
3. When the conditions of Section 2 have been satisfied, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Obligee and VDOT against a duly tendered claim, demand, lien, or suit.
4. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - (a) Claimants, who do not have a direct contract with the Principal,
 - i. have furnished a written notice of non-payment to the Principal, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - ii. have sent a Claim to the Surety (at the address described in Section 13).
 - (b) Claimants, who are employed by or have a direct contract with the Principal, have sent a Claim to the Surety (at the address described in Section 13).
5. If a notice of non-payment required by Section 4 is forwarded or otherwise provided by the Obligee or VDOT to the Principal, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 4.
6. When a Claimant has satisfied the conditions of Sections 4(a) or (b), whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - (a) Send an answer to the Claimant, with a copy to the Obligee and VDOT, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - (b) Pay or arrange for payment of any undisputed amounts.

7. The Surety's failure to discharge its obligations under Section 6(a) or Section 6(b) shall not be deemed to constitute a waiver of defenses the Surety or Principal may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 6(a) or Section 6(b), the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. **This Bond is in the amount of [_____].** The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Obligee to the Principal under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By the Principal furnishing and the Obligee accepting this Bond, they agree that all funds earned by the Principal in the performance of the Contract are dedicated to satisfy obligations of the Principal and Surety under this Bond, subject to the Obligee's or VDOT's priority to use the funds for the completion of the Contract work.
10. The Surety shall not be liable to the Obligee, Claimants, or others for obligations of the Principal that are unrelated to the Contract. Neither the Obligee nor VDOT shall be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction within the Commonwealth of Virginia after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 4, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Obligee, or the Principal shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Principal and Obligee shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. **Definitions**

15.1 “**Claim**” means a written statement by the Claimant including at a minimum:

- (1) the name of the Claimant;
- (2) the name of the person for whom the labor was done, or materials, or equipment furnished;
- (3) a copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Contract;
- (4) a brief description of the labor, materials, or equipment furnished;
- (5) the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Contract;
- (6) the total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
- (7) the total amount of previous payments received by the Claimant; and
- (8) the total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

15.2 “**Claimant**” means any subcontractor or supplier of any tier who furnishes labor, materials, or equipment for use in the performance of the Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Fred Ex Project is located. The intent of this Bond shall be to include without limitation in the terms “labor, materials, or equipment” that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural, and engineering services required for performance of the Contract, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at [_____] on this [_____] day of [_____] , 20[____].

PRINCIPAL (full legal name):
Address:

By: _____
Title:
Contact Name:
Phone: ()

SURETY (full legal name):
Address:

By: _____
Title:
Contact Name:
Phone: ()

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: A copy of a certificate that the Surety (or Co-Sureties) is (are) authorized to transact business in Virginia must be attached.]

[Note: The Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but are not a members of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority including the appropriate power of attorney documentation must be attached.]

FORM OF PERFORMANCE BOND

Bond No.

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, the Commonwealth of Virginia, Department of Transportation, a state agency of the Commonwealth of Virginia (the "Owner"), has awarded to 95 EXPRESS LANES LLC ("Concessionaire" which term hereinafter includes its successors and assigns) a Comprehensive Agreement dated July 31, 2012 (the "Original Agreement") to develop, design, build, finance, operate, and maintain the Interstate 95 HOV/HOT Lanes Project (the "Project"); and

WHEREAS, the Owner and Concessionaire entered into a First Amendment to the Original Agreement dated May 2, 2016 (the "First Amendment"), under which the parties agreed to add the "Southern Terminus Extension" to the Project; and

WHEREAS, the Owner and Concessionaire have entered into an Amended and Restated version of the Original Agreement (the "ARCA") dated June 8, 2017 under which Concessionaire will add approximately eight miles of high-occupancy toll lanes on Interstate 395 to the Project, will widen portions of Interstate 395, and will perform other significant related improvements on and around Interstate 395 (collectively, the "395 Project"); and

WHEREAS, Owner and Concessionaire intend to enter into a further amended ARCA ("Second ARCA") under which the Concessionaire will add approximately ten miles of high-occupancy toll lanes to the existing 95/395 HOV/HOT Lanes on Interstate 95 to the Project south of their current terminus (the "Fred Ex Project"); and

WHEREAS, Concessionaire has entered into the Fred Ex Design-Build Contract (the "Contract") with [●], as Design-Builder (hereinafter, the "Principal"), bearing the date of [●], for the performance of certain work defined within the Contract as the "Fred Ex Work," which Contract, together with any and all changes, extensions of time, alterations, modifications, or additions thereto or to the work to be performed thereunder, shall hereafter be referred to as the "Contract;" and

WHEREAS, it is one of the conditions of the Second ARCA and the Contract that these presents shall be executed.

NOW THEREFORE, we, the undersigned Principal, and [●] (the "Surety", [and collectively, the "Co-Sureties"]) are firmly bound and held unto (i) the Owner, (ii) Concessionaire and (iii) the Fred Ex Financing Parties, ((i), (ii) and (iii) collectively referred to hereinafter as the "Obligees" and each, an "Obligee") in the penal sum of [_____] Dollars (\$[_____]) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to one or more of the Obligees, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents. An Obligee enforcing, or attempting to enforce, its rights under this Bond is referred to herein as the "Enforcing Obligee". [Any reference to the "Surety" in this Bond shall be read as a reference to the Co-Sureties and each of them on the basis of such joint and several liability.]

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

If the Principal shall in all things stand to and abide by and well and truly keep, perform and complete all covenants, conditions, agreements, and obligations under the Contract, including any and all amendments, supplements, and alterations made to the Contract as therein *provided*, on the Principal's part to be kept and performed at the time and in the manner therein specified, if the Principal shall indemnify and save harmless each Obligee, their directors, officers, employees and agents, as therein stipulated, and if the Principal shall reimburse upon demand of each Obligee any sums paid the Principal which exceed the final payment determined to be due upon completion of the Fred Ex Work, then these presents shall become null and void; otherwise they shall remain in full force and effect unconditionally, irrevocably and shall be non-cancellable.

The following terms and conditions shall apply with respect to this Bond:

1. The provisions of the Contract are deemed a part hereof as if said Contract were fully set forth herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Contract.

2. This Bond specifically guarantees the performance of each and every obligation of Principal related to the Fred Ex Work under the Contract, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages as specified in the Contract, but not to exceed the penal sum of this Bond.

3. The guarantees contained herein shall survive Final Completion of the Fred Ex Work called for in the Contract with respect to those obligations of Principal which survive Final Completion.

4. Whenever Principal shall be, and is declared by the Enforcing Obligee to be, in default under the Contract, Surety shall promptly:

- (a) with the consent of the Enforcing Obligee, arrange for the Principal to perform and complete the Contract; or
- (b) complete the Fred Ex Work in accordance with the terms and conditions of the Contract, through its agents or through independent contractors; or
- (c) obtain bids or negotiated proposals from qualified contractors acceptable to the Enforcing Obligee for a contract for performance and completion of the Fred Ex Work, through a procurement process approved by the Enforcing Obligee, arrange for a contract to be prepared for execution by the Enforcing Obligee and the contractor selected with the Enforcing Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to the Enforcing Obligee the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Fred Ex Contract Price resulting from the Principal's default; or

- (d) waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances and pay the penal sum of the Bond to the Owner within 30 days of such waiver.

5. If Surety does not proceed as provided in Paragraph 4 of this Bond within 30 days of Surety's receipt of notice that the Principal has been declared to be in default by the Enforcing Oblige, Surety shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional written notice from the Enforcing Oblige to Surety demanding that Surety perform its obligations under this Bond, and the Enforcing Oblige shall be entitled to enforce any remedy available to it.

6. After the Enforcing Oblige has terminated the Principal's right to complete the Fred Ex Work, and if Surety elects to act under Subparagraph 4.a., 4.b, or 4.c above, then the responsibilities of Surety to the Obliges shall not be greater than those of the Principal under the Contract, and the responsibilities of the Enforcing Oblige to Surety shall not be greater than those of Concessionaire under the Contract. To the limit of the penal sum of this Bond, but subject to commitment of the unpaid balance of the Fred Ex Contract Price to mitigate costs and damages on the Contract, Surety is obligated without duplication for:

- (a) the responsibilities of the Principal for correction of defective work and completion of the Fred Ex Work;
- (b) actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and
- (c) Liquidated Damages and any other sums due and owing under the Contract.

7. In no event shall the aggregate liability of the Surety to the Obliges, either jointly or severally, exceed the penal sum of the attached bond.

8. No alteration, modification, or supplement to the Contract or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond. Surety hereby waives notice of any such alteration, modification, or supplement, including changes in time, to the Contract.

9. Correspondence or claims relating to this Bond shall be sent to Surety at the following address: [●]

10. No right of action shall accrue on this Bond to or for the use of any entity other than the Obliges or their successors and assigns.

11. Concessionaire, the Fred Ex Financing Parties, and Owner may act as the Enforcing Obligees according to the following principles:

- (a) Concessionaire may enforce the provisions of this Bond at any time in accordance with Paragraph 4;
- (b) the Fred Ex Financing Parties may enforce the provisions of this Bond in accordance with Paragraph 4 if the Collateral Agent has elected to exercise its step-in or substitution rights under the Fred Ex Direct Agreement;
- (c) Owner may enforce the provisions of this Bond in accordance with Paragraph 4 if the Principal is in default under the Contract and Concessionaire refuses, ignores, or is otherwise unable to enforce the provisions of this Bond (but only to the extent the Fred Ex Financing Parties are not already acting as the Enforcing Obligees); and
- (d) there will be only one Enforcing Obligees at a time and Surety shall follow, and may rely upon, the instructions of the Enforcing Obligees.

12. [If multiple or co-sureties] The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Obligees will have no obligation to deal with multiple sureties hereunder. All correspondence from an Obligees to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligees designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be [●], whose contact information is [●].

13. If any provision of this Bond is found to be unenforceable as a matter of law, all other provisions shall remain in full force and effect.

14. This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard for conflicts of laws principles, and any action seeking enforcement of the Bond will be litigated exclusively in the courts of the Commonwealth of Virginia.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at [_____] on this [_____] day of [_____] , 20[____].

PRINCIPAL (full legal name):
Address:

By: _____
Title:
Contact Name:
Phone: ()
SURETY (full legal name):
Address:

By: _____
Title:
Contact Name:
Phone: ()

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: A copy of a certificate that the Surety (or Co-Sureties) is (are) authorized to transact business in Virginia must be attached.]

[Note: The Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but are not a members of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority including the appropriate power of attorney documentation must be attached.]

EXHIBIT Q-3

**OPITZ BOULEVARD RAMP AND SEMINARY ROAD RAMP PAYMENT AND
PERFORMANCE BONDS**

[SEE ATTACHED]

EXHIBIT R-1

AMENDED AND RESTATED DIRECT AGREEMENT

[SEE ATTACHED]

EXHIBIT R-2

395 DIRECT AGREEMENT

[SEE ATTACHED]

EXHIBIT R-3

FRED EX DIRECT AGREEMENT

[SEE ATTACHED]

EXHIBIT R-4

DIRECT AGREEMENT (SECOND ARCA)

[SEE ATTACHED]

EXHIBIT R-5

395 DIRECT AGREEMENT (SECOND ARCA)

[SEE ATTACHED]

EXHIBIT R-6

FORM OF DIRECT AGREEMENT (COMPREHENSIVE AGREEMENT)

This **DIRECT AGREEMENT (COMPREHENSIVE AGREEMENT)** (this “Agreement”) relates to the **THIRD AMENDED AND RESTATED COMPREHENSIVE AGREEMENT RELATING TO THE I-95/395 HOV/HOT LANES PROJECT**, is dated as of [____], 20[____], and is among the VIRGINIA DEPARTMENT OF TRANSPORTATION (the “Department”), an agency of the Commonwealth of Virginia (the “State”), the address of which Department is 1401 East Broad Street, Richmond, Virginia 23219; 95 EXPRESS LANES LLC, a Delaware limited liability company (the “Concessionaire”) whose address is 6440 General Green Way, Alexandria, Virginia 22312; and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as agent for the Lenders in accordance with the terms of the Project Financing Agreements (the “Collateral Agent”), whose address is Three James Center, 1051 East Cary Street, Suite 600, Richmond, Virginia 23219.

RECITALS

WHEREAS, the Department and the Concessionaire entered into a Third Amended and Restated Comprehensive Agreement Relating to the I-95/395 HOV/HOT Lanes Project (the “Project”), dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Comprehensive Agreement”), pursuant to which the Department has granted a permit to the Concessionaire, which includes (i) the right and obligation to develop, design, finance, construct, operate, and maintain the Project and (ii) the right to establish, impose, charge, collect, use, and enforce payment of tolls and related charges; and

WHEREAS, the provision of Concessionaire Debt to the Concessionaire is conditioned upon the Department providing the Lenders with certain assurances (as more particularly set forth in this Agreement) regarding the Lenders’ rights in the event of a default by the Concessionaire under the Comprehensive Agreement or the Project Financing Agreements.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows.

ARTICLE 1.

DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

Section 1.01 Definitions

Capitalized terms used but not otherwise defined in this Agreement have the respective meanings set forth in Exhibit A to the Comprehensive Agreement. In addition, the following terms have the meanings specified below:

2022 Project Financing Agreements means the Project Financing Agreements entered into on or about the Series 2022 Financial Close Date, together with any and all amendments and supplements thereto.

395 Project Financing Agreements has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

395 Public Funds Amount has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

Bankruptcy Related Default means a Concessionaire Default that arises pursuant to Section 19.01(i) or (j) of the Comprehensive Agreement.

Collateral Agent Notice has the meaning given to it in Section 2.02(d)(i).

Combined Project Financing Agreements means the Initial Project Financing Agreements, the 395 Project Financing Agreements, the Fred Ex Project Financing Agreements, the Series 2022 Project Financing Agreements and the Opitz Boulevard Ramp Project Equity Contribution Agreement.

Cure Period means the period commencing on the date that the Collateral Agent receives a Department Notice pursuant to Section 2.02(a) and ending on the earliest of:

- (a) the relevant Cure Period Completion Date;
- (b) any Step-out Date or Substitution Effective Date; or
- (c) the last day of the Term.

Cure Period Completion Date means, subject to Section 8.02:

(a) with respect to any Payment Default, the date falling 30 Days after the date that the Collateral Agent receives the relevant Department Notice;

(b) with respect to any Bankruptcy Related Default, the date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice;

(c) with respect to any Non-Completion Default, the date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice; provided, however, that such period will be extended by such reasonable period of time as may be required to achieve Substantial Completion (subject to a maximum extension of 275 days), but only to the extent that:

(i) in the reasonable opinion of the Department, there is a reasonable prospect of achieving Substantial Completion within 365 days of the relevant Department Notice; and

(ii) within the 90 Day period, the Collateral Agent and the Department (each acting reasonably) agree to a plan in relation to achieve Substantial Completion; and

(d) with respect to any Concessionaire Default not referred to in clauses (a) through (c) above, the date falling 90 Days after the date that the relevant Department Notice is received by the Collateral Agent; *provided*, however, that such period will, at the request of the Collateral Agent, be extended up to a maximum of 60 additional Days, but only to the extent that:

(i) within the 90 Day period, the Collateral Agent and the Department (each acting reasonably) agree to a plan specifying the remedial action to be taken in respect of the relevant Concessionaire Default; and

(ii) the extension requested by the Collateral Agent represents (in the reasonable opinion of the Department) a reasonable period of time to remedy the relevant Concessionaire Default.

Department Funding Sub-Account has the meaning given to such term in the Third Restated Collateral Agency and Account Agreement.

Department Notice has the meaning given to it in Section 2.02(a).

Designated Account means the Concessionaire Damages Account as defined in the Third Amended and Restated Collateral Agency and Account Agreement, dated as of July 25, 2017 (the “Third Restated Collateral Agency Agreement”) between the Concessionaire and U.S. Bank Trust Company, National Association, as Collateral Agent, or such other account in accordance with the terms of the Third Restated Collateral Agency Agreement.

Discharge Date means the date on which all of the obligations of the Concessionaire under the Combined Project Financing Agreements have been irrevocably discharged in full to the satisfaction of the Collateral Agent.

Event of Default has the meaning given to such term in the Combined Project Financing Agreements.

Fred Ex Project Financing Agreements has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

Future Borrower Damages has the meaning given to such term in the Third Restated Collateral Agency and Account Agreement.

Initial Equity Member means the Equity Member as of the date of this Agreement, which is Transurban Express Lanes LLC.

Initial Period means:

(a) with respect to any Payment Default, the date falling 30 Days after the date that the Collateral Agent received the relevant Department Notice;

(b) with respect to any Bankruptcy Related Default, the date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice; and

(c) with respect to any Concessionaire Default not referred to in (a) or (b) above, the date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice;

in each case, as may be extended pursuant to Section 8.02.

Initial Project Financing Agreements has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

Non-Completion Default means a Concessionaire Default that arises pursuant to Section 19.01(e) of the Comprehensive Agreement.

Opitz Boulevard Ramp Project Equity Contribution Agreement has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

Payment Default means a Concessionaire Default that arises pursuant to Section 19.01(c) of the Comprehensive Agreement.

Property means any right or interest in or to property of any kind whatsoever, whether real, personal, or mixed and whether tangible or intangible.

Qualified Substitute Concessionaire means a Person who:

- (a) has the legal capacity, power and authority to become a party to, and perform the obligations of the Concessionaire under, the Comprehensive Agreement;
- (b) has the resources available to it (including committed financial resources) to perform the obligations of the Concessionaire under the Comprehensive Agreement;
- (c) employs or subcontracts with Persons having the appropriate qualifications, experience and technical competence available to it that are sufficient to enable it to perform the obligations of the Concessionaire under the Comprehensive Agreement; and
- (d) has not been:
 - (i) debarred or prohibited from participating in state or federally-funded projects;
 - (ii) indicted, convicted, pled guilty or nolo contendere to a violation of law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that show a similar lack of moral or ethical integrity; or
 - (iii) barred or prohibited from owning or operating the Project under law, including the Foreign Investment and National Security Act of 2007, 50 USC App. 2170 (HR 556).

Revenue Account has the meaning given to such term in the Third Restated Collateral Agency and Account Agreement.

Series 2022 Financial Close Date means February 10, 2022.

Step-in Date has the meaning given to it in Section 4.01(c).

Step-in Entity has the meaning given to it in Section 4.01(b).

Step-in Entity Accession Agreement means the agreement to be entered into by a Step-in Entity pursuant to Section 4.01(c).

Step-in Notice has the meaning given to it in Section 4.01(a).

Step-in Period in relation to a Step-in Entity means the period from and including the Step-in Date until the earliest of:

- (a) the last day of the Cure Period;
- (b) the Substitution Effective Date;
- (c) the Step-out Date;
- (d) the date of termination of the Comprehensive Agreement by the Department in accordance with this Agreement and the Comprehensive Agreement; and
- (e) the last day of the Term.

Step-out Date in relation to a Step-in Entity means the date upon which any Step-out Notice is served by such Step-in Entity pursuant to Section 4.03.

Step-out Notice has the meaning given to it in Section 4.03(a).

Substitute has the meaning given to it in Section 5.01.

Substitute Accession Agreement means the agreement to be entered into by a Substitute pursuant to Section 6.01.

Substitution Effective Date has the meaning given to it in Section 6.01.

Substitution Notice has the meaning given to it in Section 5.01.

Section 1.02 Order of Precedence

In the event of any conflict, ambiguity or inconsistency between the provisions of the Comprehensive Agreement and the provisions of this Agreement, the provisions of this Agreement will prevail.

Section 1.03 No Effect on Comprehensive Agreement

Nothing in this Agreement amends or modifies any of the Concessionaire's obligations to the Department under the Comprehensive Agreement.

ARTICLE 2 **CONSENT TO SECURITY AND NOTICES**

Section 2.01 Consent to Security

Notwithstanding anything to the contrary in the Comprehensive Agreement:

- (a) the Department acknowledges notice and receipt of and consents to:
 - (i) the assignment by the Concessionaire to the Collateral Agent of all of the Concessionaire's Interest pursuant to the Combined Project Financing Agreements; and
 - (ii) the grant by the Initial Equity Member to the Collateral Agent of a security interest in its equity interests in the Concessionaire pursuant to the Combined Project Financing Agreements;
- (b) none of the security interests referred to in Section 2.01(a):
 - (i) constitute (or with the giving of notice or lapse of time, or both, could constitute) either a breach by the Concessionaire of its obligations under the Comprehensive Agreement or a Concessionaire Default; or
 - (ii) require any consent of the Department that is either additional or supplemental to those granted pursuant to this Section 2.01;
- (c) for the avoidance of doubt, the Collateral Agent will not, by virtue of the security interests referred to in Section 2.01(a), acquire any greater rights to the Concessionaire's Interest than the Concessionaire itself has at any particular time pursuant to the Comprehensive Agreement; and
- (d) for so long as any amount under the Combined Project Financing Agreements is outstanding, the Department will not, without the prior written consent of the Collateral Agent, consent to any assignment, transfer, pledge or hypothecation by the Concessionaire of the Comprehensive Agreement or any interest therein by the Concessionaire, other than as specified in this Agreement.

Section 2.02 Notice Requirements

(a) The Department will give the Collateral Agent written notice (a "Department Notice") promptly upon becoming aware of the occurrence of any Concessionaire Default giving rise to the Department's right to terminate or give notice terminating the Comprehensive Agreement, and will specify in the Department Notice:

(i) the unperformed obligations of the Concessionaire under the Comprehensive Agreement of which the Department is aware (having made reasonable inquiry) and grounds for termination of the Comprehensive Agreement in sufficient detail to enable the Collateral Agent to assess the scope and amount of any liability of the Concessionaire resulting therefrom;

(ii) all amounts due and payable by the Concessionaire to the Department under the Comprehensive Agreement, if any, on or before the date of the Department Notice and which remain unpaid at such date and, by cross-reference to the applicable provision(s) of the Comprehensive Agreement, the nature of the Concessionaire's obligation to pay such amounts; and

(iii) the amount of any payments that the Department reasonably foresees will become due from the Concessionaire during the applicable Cure Period.

(b) The Department will update any Department Notice issued pursuant to Section 2.02(a) as and when it becomes aware of any unperformed obligations of the Concessionaire (including non-payment of amounts that have become due) under the Comprehensive Agreement that were not specified in the relevant Department Notice.

(c) For the avoidance of doubt, nothing in this Agreement will prevent multiple Department Notices running concurrently.

(d) The Collateral Agent will:

(i) promptly upon becoming aware of any Event of Default (whether or not a Department Notice has been served in connection with the same event) give the Department written notice (a "Collateral Agent Notice");

(ii) specify in any Collateral Agent Notice the circumstances and nature of the Event of Default to which the Collateral Agent Notice relates; and

(iii) notify the Department of any decision to accelerate amounts outstanding under the Combined Project Financing Agreements or to exercise any enforcement remedies under the Combined Project Financing Agreements.

Section 2.03 Department Payments under the Comprehensive Agreement

(a) With the exception of Future Borrower Damages, the Department will, unless directed otherwise by the Collateral Agent, deposit all amounts payable by it under the Comprehensive Agreement (other than the 395 Public Funds Amount, which the Department shall deposit into the Department Funding Sub-Account, and other than Fred Ex Department Committed Contingency, which, at the option of the Department, in its sole discretion, may be netted by the Concessionaire as a deduction from the Final Permit Fee Buyout Payment) into the Revenue Account and the Concessionaire agrees that any payment made in accordance with this Section 2.03 will constitute a complete discharge of the Department's relevant payment obligations under the Comprehensive Agreement.

(b) The Department will, unless directed otherwise by the Collateral Agent, deposit all lump sum payments with respect to Future Borrower Damages payable by it under the Comprehensive Agreement, into the Designated Account.

(c) The Collateral Agent acknowledges that all of the Department's payment obligations to the Concessionaire pursuant to the Comprehensive Agreement are subject to Section 25.19 of the Comprehensive Agreement.

ARTICLE 3

RIGHTS AND OBLIGATIONS DURING THE CURE PERIOD

Section 3.01 No Termination during the Cure Period

At any time during a Cure Period, the Department will not, subject to the terms of this Agreement:

(a) terminate or give notice terminating the Comprehensive Agreement for Concessionaire Default or exercise any rights under Section 19.02 (other than Sections 19.02(c) and 19.02(e)) of the Comprehensive Agreement; or

(b) take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of the Concessionaire or for the composition or readjustment of the Concessionaire's debts, or any similar insolvency procedure in relation to the Concessionaire, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for the Concessionaire or for any part of the Concessionaire's Property.

Section 3.02 Collateral Agent Rights

(a) At any time during an Event of Default (but, in the case of a Concessionaire Default, only for so long as the Initial Period has not expired), without giving a Step-in Notice, the Collateral Agent may (but shall have no obligation), at its sole option and discretion, perform or arrange for the performance of any act, duty, or obligation required of the Concessionaire under the Comprehensive Agreement, or remedy any breach of the Concessionaire thereunder at any time, which performance or remedy by or on behalf of the Collateral Agent will be accepted by the Department in lieu of performance by the Concessionaire and in satisfaction of the Concessionaire's obligations under the Comprehensive Agreement. To the extent that any breach of the Concessionaire under the Comprehensive Agreement is remedied and/or any payment liabilities or obligations of the Concessionaire are performed by the Collateral Agent under this Section 3.02(a), such action will discharge the relevant liabilities or obligations of the Concessionaire to the Department. No such performance by or on behalf of the Collateral Agent under this Section 3.02(a) will be construed as an assumption by the Collateral Agent, or any person acting on the Collateral Agent's behalf, of any of the covenants, agreements or other obligations of the Concessionaire under the Comprehensive Agreement.

(b) At any time during a Cure Period or an Event of Default, the Collateral Agent may:

- or
- (i) issue a Step-in Notice in accordance with the requirements of Section 4.01;
 - (ii) issue a Substitution Notice in accordance with the requirements of Section 5.01.

ARTICLE 4

STEP-IN ARRANGEMENTS

Section 4.01 Step-in Notice

(a) Provided that all unperformed payment obligations of the Concessionaire identified in a Department Notice will have been remedied in full or waived by the Department on or before the Step-in Date, the Collateral Agent may provide the Department with a written notice (“Step-in Notice”) under this Section 4.01 at any time during any Cure Period or Event of Default.

(b) The Collateral Agent will nominate, in any Step-in Notice, any one of:

- (i) the Collateral Agent, a Lender or any of their respective Affiliates; or
- (ii) any Person approved by the Department in its discretion, such approval not to be unreasonably withheld or delayed if such Person meets all the criteria to be a Qualified Substitute Concessionaire and the Department has been provided with the relevant information required under Section 5.03 with respect to such Person (it being understood that if the Department has failed to respond to the Collateral Agent within 60 days of the date on which the Department has received the information specified in Section 5.03 in respect of any such nominated Person, the approval of the Department shall be deemed to have been given), (each a “Step-in Entity”), stating that the Step-in Entity is to become a joint and several obligor with the Concessionaire under the Comprehensive Agreement and this Agreement in accordance with the terms hereof.

(c) The Step-in Entity named in the Step-in Notice will be deemed to become a party to the Comprehensive Agreement and this Agreement on and from the date it executes a duly completed Step-in Entity Accession Agreement, substantially in the form attached hereto as Annex 1 (Form of Step-in Entity Accession Agreement), and submits it to the Department (the “Step-in Date”).

Section 4.02 Rights and Obligations on Step-in

(a) On and from the Step-in Date and during the Step-in Period, the Step-in Entity will be:

- (i) jointly and severally entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to the Concessionaire under the Comprehensive Agreement and this Agreement;
- (ii) entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Entity under this Agreement; and

(iii) jointly and severally liable with the Concessionaire for the payment of all sums due from the Concessionaire under or arising out of the Comprehensive Agreement at the Step-in Date and for the performance of all of the Concessionaire's obligations under or arising out of the Comprehensive Agreement on or after the Step-in Date.

(b) Without prejudice to Article 7 (Reinstatement of Remedies), during the Step-in Period:

(i) the Department undertakes:

A. not to terminate or give notice terminating the Comprehensive Agreement for Concessionaire Default or exercise any of its rights under Section 19.02 (other than Sections 19.02(c) and 19.02(e)) of the Comprehensive Agreement, unless:

(1) the grounds for termination or giving notice of termination or exercise of any of its rights under Section 19.02 (other than Sections 19.02(c) and 19.02(e)) of the Comprehensive Agreement arose during the Step-in Period; or

(2) the Step-in Entity fails to comply with the requirements of any plan agreed between the Department and the Collateral Agent in connection with the extension of the relevant Cure Period Completion Date; and

B. not to take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of the Concessionaire or for the composition or readjustment of the Concessionaire's debts, or any similar insolvency procedure in relation to the Concessionaire, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for the Concessionaire or for any part of the Concessionaire's Property;

C. not to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Concessionaire) under the Comprehensive Agreement, unless the grounds for suspension of performance arose during the Step-in Period; and

D. to continue to make payments required to be made to Concessionaire under the Comprehensive Agreement to the Designated Account and the Revenue Account.

(ii) the Department will owe its obligations under the Comprehensive Agreement and this Agreement to the Concessionaire and such Step-in Entity jointly; *provided*, however, that:

A. subject to Section 4.02(b)(ii)(B), the performance of such obligations by the Department in favor of either such Step-in Entity or the

Concessionaire will be a good and effective discharge of such obligations under this Agreement and the Comprehensive Agreement; and

B. the Collateral Agent will be entitled at any time by notice in writing to the Department to direct (such direction being binding on the Collateral Agent, the Department and the Concessionaire) that, at all times thereafter while such Step-in Entity is deemed to be a party to the Comprehensive Agreement and this Agreement and subject to any further notice from the Collateral Agent, such Step-in Entity will be solely entitled to make any decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with the Department under the Comprehensive Agreement and this Agreement.

(c) The Concessionaire will not be relieved from any of its obligations under the Comprehensive Agreement, whether arising before or after the Step-in Date, by reason of the Step-in Entity becoming a party to the Comprehensive Agreement pursuant to a Step-in Entity Accession Agreement, except to the extent provided in Section 3.02(a) and Section 6.02(a).

Section 4.03 Step Out

(a) A Step-in Entity may, at any time, by giving not less than 30 Days' prior written notice ("Step-out Notice") to the Department, terminate its obligations to the Department under the Comprehensive Agreement and this Agreement, whereupon the Step-in Entity will, upon the expiry of such notice, no longer be deemed to be a party to the Comprehensive Agreement and this Agreement and, except as provided in Section 4.03(b), will be released from all obligations under the Comprehensive Agreement and this Agreement. The obligations of the Department to the Step-in Entity in such capacity under the Comprehensive Agreement and this Agreement will also terminate upon the expiry of such notice.

(b) Nothing in this Section 4.03 will have the effect of releasing the Step-in Entity from any liability that relates to the performance or non-performance of the Comprehensive Agreement or this Agreement by the Concessionaire or the Step-in Entity during the Step-in Period.

ARTICLE 5 **SUBSTITUTION PROPOSALS**

Section 5.01 Notice of Proposed Substitute

To the extent that the Collateral Agent or the Lenders at any time propose to require the Concessionaire to assign its rights and obligations under the Comprehensive Agreement and/or this Agreement to a Person (a "Substitute") designated by the Collateral Agent or the Lenders (whether by mutual agreement or enforcement of rights under the Combined Project Financing Agreements), the effectiveness of such assignment will be conditional upon:

(a) the Collateral Agent issuing a notice (a "Substitution Notice") to the Department requesting the prior approval of the proposed Substitute;

(b) the Department approving the identity of the proposed Substitute pursuant to Sections 5.02 or 5.04; and

(c) the proposed Substitute executing a Substitute Accession Agreement in accordance with Section 6.01.

Section 5.02 Grounds for Refusing Approval

The Department will only be entitled to withhold its approval to any proposed Substitute that is the subject of a Substitution Notice if:

- (a) the proposed Substitute is not a Qualified Substitute Concessionaire; or
- (b) subject to Section 6.04, there are outstanding breaches of the Comprehensive Agreement that have been previously notified by the Department to the Collateral Agent and have not, to the reasonable satisfaction of the Department, been remedied or waived prior to the date of the Substitution Notice; unless the Department has approved (such approval not to be unreasonably withheld or delayed) a plan specifying the remedial action that the Substitute will be required to take after the Substitution Effective Date in order to remedy each such breach.

Section 5.03 Provision of Information

The Collateral Agent will, as soon as practicable, provide to the Department such information in relation to the proposed Substitute and any Person who, it is proposed, will enter into a material subcontract with the proposed Substitute in relation to the Project, as the Department will reasonably require to enable it to reasonably determine whether the proposed Substitute is a Qualified Substitute Concessionaire, including:

- (a) the name and address of the proposed Substitute;
- (b) unless such proposed Substitute is a publicly-traded entity, the names of the proposed Substitute's shareholders or members and the share capital or partnership or membership interests, as the case may be, held by each of them;
- (c) the manner in which it is proposed to finance the proposed Substitute and the extent to which such financing is committed (to the extent relevant);
- (d) copies of the proposed Substitute's most recent financial statements (and if available, such financial statements will be for the last three financial years and audited), or in the case of a special purpose company, its opening balance sheet;
- (e) a copy of the proposed Substitute's organizational documents;
- (f) details of the resources available to the proposed Substitute and the proposed Substitute's appropriate qualifications, experience and technical competence available to the proposed Substitute to enable it to perform the obligations of the Concessionaire under the Comprehensive Agreement; and
- (g) the names of the proposed Substitute's directors and any key personnel who will have responsibility for the day-to-day management of its participation in the Project.

Section 5.04 Deemed Approval

If the Department has failed to respond to the Collateral Agent within 60 days of the date on which the Department has confirmed it has received the information specified in Section 5.03 in respect of any proposed Substitute, the approval of the Department will be deemed to have been given.

ARTICLE 6 **SUBSTITUTION**

Section 6.01 Substitution Effective Date

If the Department approves (or is deemed to have approved) the identity of a proposed Substitute pursuant to Article 5, the Substitute will execute a duly completed Substitute Accession Agreement substantially in the form set out in Annex 2 to this Agreement and submit it to the Department (with a copy of it to the other parties to this Agreement). Such assignment will become effective on and from the date on which the Department countersigns the Substitute Accession Agreement or the date that is 10 days after the date the Department receives the completed Substitute Accession Agreement if the Department fails to countersign the Substitute Accession Agreement (the "Substitution Effective Date").

Section 6.02 Effectiveness of Substitution

On and from the Substitution Effective Date:

(a) such Substitute will become a party to the Comprehensive Agreement and this Agreement in place of the Concessionaire who will be immediately released from its obligations arising under, and cease to be a party to, the Comprehensive Agreement and this Agreement from that Substitution Effective Date; and

(b) such Substitute will exercise and enjoy the rights and perform the obligations of the Concessionaire under the Comprehensive Agreement and this Agreement, and

(c) the Department shall owe its obligations (including, without limitation, any undischarged liability in respect of any loss or damage suffered or incurred by the Concessionaire prior to the Substitution Effective Date) under the Comprehensive Agreement and this Agreement to such Substitute in place of the Concessionaire and any Step-in Entity.

Section 6.03 Facilitation of Transfer

The Department will use its reasonable efforts to facilitate the transfer to the Substitute of the Concessionaire's obligations under the Comprehensive Agreement and this Agreement.

Section 6.04 Settlement of Outstanding Financial Liabilities

(a) The Substitute will pay to the Department within 30 Days after the Substitution Effective Date any amount due from the Concessionaire to the Department under the

Comprehensive Agreement and this Agreement as of the Substitution Effective Date (as notified by the Department to the Substitute reasonably in advance of such Substitution Effective Date).

(b) If the Substitute fails to satisfy its obligations pursuant to Section 6.04(a), the Department will be entitled to exercise its rights under the Comprehensive Agreement in respect of the amount so due and unpaid.

Section 6.05 Consequences of Substitution

On and from the Substitution Effective Date:

(a) subject to Section 6.04, any right of termination or any other right suspended by virtue of Section 3.01 will be of no further effect and the Department will not be entitled to terminate the Comprehensive Agreement and this Agreement by virtue of any act, omission or circumstance that occurred prior to such Substitution Effective Date;

(b) if any Step-in Entity is a party to or has any obligations under the Comprehensive Agreement and this Agreement on the Substitution Effective Date, such Step-in Entity will cease to be a party thereto and hereto and will be discharged from all obligations thereunder and hereunder; and

(c) the Department will enter into an equivalent direct agreement on substantially the same terms as this Agreement, save that the Concessionaire will be replaced as a party by the Substitute.

ARTICLE 7

REINSTATEMENT OF REMEDIES

If a Department Notice has been given, the grounds for that notice are continuing and have not been remedied or waived by the Department and:

(a) no Step-in Entity or Substitute becomes a party to the Comprehensive Agreement and this Agreement before the Cure Period Completion Date relating thereto; or

(b) a Step-in Entity becomes a party to the Comprehensive Agreement and this Agreement, but the Step-in Period relating to such Step-in Entity ends without a Substitute becoming a party thereto and hereto,

then, on and from the Cure Period Completion Date or the date such Step-in Period expires, the Department will be entitled to:

(i) act upon any and all grounds for termination available to it in relation to the Comprehensive Agreement in respect of Concessionaire Defaults under the Comprehensive Agreement that have not been remedied or waived by the Department;

(ii) pursue any and all claims and exercise any and all remedies against the Concessionaire; and

(iii) if and to the extent that it is then entitled to do so under the Comprehensive Agreement, take or support any action of the type referred to in Section 3.01(b).

ARTICLE 8
IMPACT OF BANKRUPTCY OR INSOLVENCY PROCEEDINGS

Section 8.01 Rejection of the Comprehensive Agreement

(a) If the Comprehensive Agreement is rejected by a trustee or debtor-in-possession in, or terminated as a result of, any bankruptcy or insolvency proceeding involving the Concessionaire and, within 150 days after such rejection or termination, the Collateral Agent will so request and will certify in writing to the Department that the Collateral Agent or the Collateral Agent's permitted designee or assignee, including a Qualified Substitute Concessionaire, intends to perform the obligations of the Concessionaire as and to the extent required under the Comprehensive Agreement, the Department will execute and deliver to the Collateral Agent (or any Substitute satisfying the requirements of this Agreement if directed to do so by the Collateral Agent) a new comprehensive agreement. The new comprehensive agreement will contain conditions, agreements, terms, provisions and limitations which are the same as those of the Comprehensive Agreement, except for any obligations that have been fulfilled by the Concessionaire, any party acting on behalf of or stepping-in for the Concessionaire or the Collateral Agent prior to such rejection or termination. References in this Agreement to the "Comprehensive Agreement" will be deemed also to refer to any such new comprehensive agreement.

(b) The effectiveness of any new comprehensive agreement referred to in Section 8.01(a) above will be conditional upon the Collateral Agent first reimbursing the Department in respect of its Allocable Costs incurred in connection with the execution and delivery of such new comprehensive agreement.

Section 8.02 Extension of Cure Period Completion Date and Initial Period

If the Collateral Agent is prohibited by any court order, bankruptcy or insolvency proceedings from:

- (a) remedying the Concessionaire Default that is the subject of a Department Notice;
- or
- (b) from commencing or prosecuting foreclosure proceedings,

each of the relevant Cure Period Completion Date and Initial Period will be extended by a period of time equal to the shorter of the period of such prohibition or 150 Days.

ARTICLE 9
TERMINATION OF THIS AGREEMENT

This Agreement will remain in effect until the earliest to occur of:

- (a) the Discharge Date;

(b) the time at which all of the parties' respective obligations and liabilities under the Comprehensive Agreement and this Agreement have expired or have been satisfied in accordance with the terms of the Comprehensive Agreement and this Agreement; and

(c) any assignment to a Substitute has occurred under Article 6 and the Department shall have entered into an equivalent direct agreement on substantially the same terms as this Agreement, save that the Concessionaire has been replaced as a party by the Substitute.

ARTICLE 10 **PRESERVATION OF FUNDS**

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Combined Project Financing Agreements, the Collateral Agent agrees for itself and on behalf of the Lenders that it will not exercise any rights under the Combined Project Financing Agreements or take any other steps that would prejudice the operation of Sections 5.11 (Annual Transit Investment), 9.05 (Major Maintenance Reserve Fund), 17.07 (Restoration; Insurance Proceeds), and 20.02 (Handback Obligations and Reserve) of the Comprehensive Agreement.

ARTICLE 11 **GENERAL PROVISIONS**

Section 11.01 Representations and Warranties

(a) The undersigned signatory for the Collateral Agent hereby represents and warrants that he or she is an officer of the Collateral Agent and that he or she has full and complete authority to enter into this Agreement on behalf of the Collateral Agent.

(b) The Collateral Agent hereby represents and warrants that the Collateral Agent has full power, right and authority to execute and perform each and all of its obligations under this Agreement. These representations and warranties are made for the purpose of inducing the Department and the Concessionaire to enter into this Agreement.

(c) The Collateral Agent represents and warrants that this Agreement has been duly authorized, executed and delivered by the Collateral Agent and constitutes a valid and legally binding obligation of the Collateral Agent, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) The undersigned signatory for the Concessionaire hereby represents and warrants that he or she is an officer of the Concessionaire and that he or she has full and complete authority to enter into this Agreement on behalf of the Concessionaire.

(e) The Concessionaire hereby represents and warrants that the Concessionaire has full power, right and authority to execute and perform each and all of its obligations under this Agreement and the Comprehensive Agreement. These representations and warranties are made for the purpose of inducing the Department and the Collateral Agent to enter into this Agreement.

(f) The Concessionaire represents and warrants that each of this Agreement and the Comprehensive Agreement has been duly authorized, executed and delivered by the Concessionaire and constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(g) The Concessionaire represents and warrants that there is no Concessionaire Default or, to the best of its knowledge, no Department Default, there exists no event or condition that would, with the giving of notice or passage of time or both, constitute such a Concessionaire Default or, to the best of its knowledge, a Department Default, and no such Concessionaire Default or, to the best of its knowledge, Department Default has occurred prior to the date hereof.

(h) The undersigned signatory for the Department hereby represents and warrants that he or she is an authorized official of the Department and has full and complete authority to enter into this Agreement on behalf of the Department

(i) The Department has full power, right and authority to execute and perform each and all of its obligations under this Agreement and the Comprehensive Agreement. These representations and warranties are made for the purpose of inducing the Collateral Agent to enter into this Agreement.

(j) The Department represents and warrants that each of this Agreement and the Comprehensive Agreement has been duly authorized, executed and delivered by the Department and constitutes a valid and legally binding obligation of the Department, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(k) The Department represents and warrants that there is no Department Default or, to the best of its knowledge, no Concessionaire Default, there exists no event or condition that would, with the giving of notice or passage of time or both, constitute such a Department Default or, to the best of its knowledge, a Concessionaire Default, and no such Department Default or, to the best of its knowledge, Concessionaire Default has occurred prior to the date hereof.

Section 11.02 Public Information and Confidentiality

The Department and the Collateral Agent will, for each other's benefit, comply with the requirements of Section 18.02 of the Comprehensive Agreement as if any reference to the Concessionaire therein was a reference to the Collateral Agent.

Section 11.03 Amendments and Waivers

(a) No amendment of this Agreement, and no waiver of any term, covenant or condition of this Agreement, will be effective unless in writing and signed by the parties to this Agreement.

(b) The exercise by a party of any right or remedy provided under this Agreement or law will not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any party of any right or remedy under this Agreement or law will be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or law. The consent by one party to any act by the other party requiring such consent will not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

Section 11.04 Non-collusion

(a) The Collateral Agent warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Collateral Agent, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from making of this Agreement.

(b) For breach or violation of this warranty, the Department will have the right to terminate this Agreement without liability.

Section 11.05 Disputes

(a) In the event of any dispute between the Department and the Collateral Agent under this Agreement, the parties will resolve the dispute according to the dispute resolution procedures set forth in the Comprehensive Agreement, with the Collateral Agent having the same rights and obligations of the Concessionaire under the disputes resolution procedures set forth in Article 21 of the Comprehensive Agreement.

(b) Nothing in Section 11.05(a) affects the Collateral Agent's rights and remedies against the Concessionaire and the Concessionaire's Interest under the Combined Project Financing Agreements and Financing Assignments or the procedures available to the Collateral Agent under law to exercise its security interests thereunder.

Section 11.06 Successors and Assigns

(a) No party to this Agreement may assign or transfer any part of its rights or obligations hereunder without the prior written consent of the other parties; *provided*, however, that the Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Combined Project Financing Agreements and the Department may transfer its rights or obligations hereunder in accordance with and subject to the terms and conditions set forth in Section 25.03 of the Comprehensive Agreement. In connection with any such assignment or transfer, the Department agrees to enter into a new direct agreement with the successor Collateral Agent on terms that are substantially the same as those of this Agreement.

(b) This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 11.07 Severability

In the event any one or more of the provisions contained in this Agreement will, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision thereof and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 11.08 [Reserved]

Section 11.09 Notices and Communications

(a) Whenever under the provisions of this Agreement it will be necessary or desirable for one party to serve any approval, notice, request, demand, report or other communication on another party, the same will be in writing and will not be effective for any purpose unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by facsimile transmission, where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission is immediately followed by service of the original of the subject item in another manner permitted herein or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Department:

Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Financial Officer
Facsimile: (804) 786-2940

With copies to:

Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
Attention: Chief, Transportation Section
Facsimile: (804) 786-9136

If to the Concessionaire:

95 Express Lanes LLC
6440 General Green Way
Alexandria, Virginia 22312
Attention: President
Facsimile: (571) 419-6101

If to the Collateral Agent:

U.S. Bank Trust Company, National Association

Three James Center
1051 East Cary Street, Suite 600
Richmond, Virginia 23219
Attention: Stephanie E. Haysley
Facsimile: (804) 343-1572

(b) Any party may, from time to time, by notice in writing served upon the other parties as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally will be deemed delivered upon receipt, if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by facsimile transmission will be deemed delivered on the date of receipt as shown on the received facsimile (*provided*, that the original is thereafter delivered as aforesaid).

Section 11.10 Effect of Breach

Without prejudice to any rights a party may otherwise have, a breach of this Agreement will not of itself give rise to a right to terminate the Comprehensive Agreement.

Section 11.11 Counterparts

This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 11.12 No Third-Party Beneficiaries

Nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

Section 11.13 No Partnership

Nothing contained in this Agreement will be deemed to constitute a partnership between the parties hereto. None of the parties will hold itself out contrary to the terms of this Section 11.13.

Section 11.14 No Interference

The Concessionaire joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not to knowingly do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

Section 11.15 Collateral Agent

(a) Notwithstanding anything to the contrary in this Agreement, but subject to Article 4 (solely to the extent the Collateral Agent or any of its Affiliates is the Step-In Entity), Section 11.01 and Section 11.15(b), the Collateral Agent shall not have any liability to the Department under this Agreement, unless the Collateral Agent expressly assumes such liability in writing.

(b) The Department acknowledges and agrees that the Collateral Agent shall not be obligated or required to perform any of Concessionaire's obligations under the Comprehensive Agreement, except during any Step-in Period (solely to the extent the Collateral Agent or any of its Affiliates is the Step-In Entity).

Section 11.16 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia applicable to contracts executed and to be performed within the State, without regard for conflict of laws principles that would result in the application of laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an agency of the Commonwealth of Virginia

By: _____
Name: Stephen Brich, P.E.
Title: Commissioner of Highways

95 EXPRESS LANES LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

ANNEX 1

FORM OF STEP-IN ENTITY ACCESSION AGREEMENT

[Date]

To: [Name of the Department's Representative]
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Facsimile: (804) 786-2940

Copied to: Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
Attention: Chief Transportation Section
Facsimile: (804) 786-9136

[Lenders and other parties to Finance Documents to be listed]

[insert address]

For the attention of: [●]

From: [Step-in Entity]

I-95/395 HOV/HOT LANES PROJECT

STEP-IN ENTITY ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Third Amended and Restated Comprehensive Agreement Relating to the I-95/395 HOV/HOT Lanes Project (the "Project"), dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Comprehensive Agreement"), between the Virginia Department of Transportation (the "Department") and 95 Express Lanes LLC (the "Concessionaire") and the Direct Agreement (Comprehensive Agreement), dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Direct Agreement"), among the Department, the Concessionaire, and U.S. Bank Trust Company, National Association, as Collateral Agent.

Terms not otherwise defined herein will have the same meaning given to them in the Direct Agreement.

(a) We hereby confirm that we are a Step-in Entity pursuant to Article 4 of the Direct Agreement.

(b) We acknowledge and agree that, upon and by reason of our execution of this Step-in Entity Accession Agreement, we will become a party to the Comprehensive Agreement and the Direct Agreement jointly and severally with the Concessionaire as a Step-in Entity and, accordingly, will have the rights and powers and assume the obligations of the Concessionaire under the Comprehensive Agreement and the Direct Agreement in accordance with the terms of the Direct Agreement.

(c) Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Step-in Entity]

(d) This Step-in Entity Accession Agreement will be governed by, and construed in accordance with, the law of the Commonwealth of Virginia, without regard for conflict of laws principles that would result in the application of laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

The terms set forth herein are hereby agreed to:

[*Step-in Entity*]

By _____
Name:
Title:

FORM OF SUBSTITUTE ACCESSION AGREEMENT

[Date]

To: [Name of the Department's Representative]
Virginia Department of Transportation
1401 E. Broad Street Richmond
VA 23219
Facsimile: (804) 786-2940

Copied to: Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
Attention: Chief Transportation Section
Facsimile: (804) 786-9136

From: [Substitute]

I-95/395 HOV/HOT LANES PROJECT

SUBSTITUTE ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Third Amended and Restated Comprehensive Agreement Relating to the I-95/395 HOV/HOT Lanes Project (the "Project"), dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Comprehensive Agreement"), between the Virginia Department of Transportation (the "Department") and 95 Express Lanes LLC (the "Concessionaire") and the Direct Agreement (Comprehensive Agreement), dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Direct Agreement"), among the Department, the Concessionaire, and U.S. Bank Trust Company, National Association, as Collateral Agent.

Terms defined not otherwise defined herein will have the same meaning given to them in the Direct Agreement.

1. We hereby confirm that we are a Substitute pursuant to Article 6 of the Direct Agreement.

2. We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement, we will become a party to the Comprehensive Agreement and the Direct Agreement as a Substitute and, accordingly, will have the rights and powers and assume the obligations of the Concessionaire under the Comprehensive Agreement and the Direct Agreement in accordance with the terms of the Direct Agreement.

3. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Substitute]

4. This Substitute Accession Agreement will be governed by, and construed in accordance with, the law of the Commonwealth of Virginia, without regard for conflict of laws principles that would result in the application of laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

The terms set forth herein are hereby agreed to:

[*Substitute*]

By _____
Name:
Title:

Agreed for and on behalf of:
Virginia Department of Transportation

By _____
Name:
Title:

[*Provided under separate cover*]

EXHIBIT R-7

FORM OF FRED EX DIRECT AGREEMENT (COMPREHENSIVE AGREEMENT)

This **FRED EX DIRECT AGREEMENT (COMPREHENSIVE AGREEMENT)** (this “Agreement”) relates to the **THIRD AMENDED AND RESTATED COMPREHENSIVE AGREEMENT RELATING TO THE I-95/395 HOV/HOT LANES PROJECT**, is dated as of [____], 20[____], and is among the VIRGINIA DEPARTMENT OF TRANSPORTATION (the “Department”), an agency of the Commonwealth of Virginia (the “State”), the address of which Department is 1401 East Broad Street, Richmond, Virginia 23219; 95 EXPRESS LANES LLC, a Delaware limited liability company (the “Concessionaire”) whose address is 6440 General Green Way, Alexandria, Virginia 22312; and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as agent for the Lenders in accordance with the terms of the Project Financing Agreements (the “Collateral Agent”), whose address is Three James Center, 1051 East Cary Street, Suite 600, Richmond, Virginia 23219.

RECITALS

WHEREAS, the Department and the Concessionaire have entered into a Third Amended and Restated Comprehensive Agreement Relating to the I-95/395 HOV/HOT Lanes Project (the “Project”), dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Comprehensive Agreement”), pursuant to which the Department has granted a permit to the Concessionaire, which includes (i) the right and obligation to develop, design, finance, construct, operate, and maintain the Project and (ii) the right to establish, impose, charge, collect, use, and enforce payment of tolls and related charges; and

WHEREAS, the provision of Concessionaire Debt to the Concessionaire is conditioned upon the Department providing the Lenders with certain assurances (as more particularly set forth in this Agreement) regarding the Lenders’ rights in the event of a Fred Ex Concessionaire Breach by the Concessionaire under the Comprehensive Agreement or a default under the Combined Project Financing Agreements; and

WHEREAS, the purpose of this Agreement is to govern the rights of the Collateral Agent and the Lenders regarding a Fred Ex Concessionaire Breach occurring prior to the Fred Ex Final Completion Date.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows.

ARTICLE 1.
DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

Section 1.01 Definitions

Capitalized terms used but not otherwise defined in this Agreement have the respective meanings set forth in Exhibit A to the Comprehensive Agreement. In addition, the following terms have the meanings specified below:

2022 Project Financing Agreements means the Project Financing Agreements entered into on or about the Series 2022 Financial Close Date, together with any and all amendments and supplements thereto.

395 Project Financing Agreements has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

395 Public Funds Amount has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

Collateral Agent Notice has the meaning given to it in Section 2.02(d)(i).

Combined Project Financing Agreements means the Initial Project Financing Agreements, the 395 Project Financing Agreements, the Fred Ex Project Financing Agreements, the Series 2022 Project Financing Agreements and the Opitz Boulevard Ramp Project Equity Contribution Agreement.

Cure Period means the period commencing on the date that the Collateral Agent receives a Department Notice pursuant to Section 2.02(a) and ending on the relevant Cure Period Completion Date.

Cure Period Completion Date means:

(a) with respect to any Payment Breach, the date falling 30 Days after the later of (i) the date that the Collateral Agent receives the relevant Department Notice, and (ii) expiration of any applicable cure period granted to the Concessionaire pursuant to Section 19.09(c) of the Comprehensive Agreement;

(b) with respect to any Non-Completion Breach, the date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice; provided, however, that such period will be extended by such reasonable period of time as may be required to achieve Fred Ex Final Completion (subject to a maximum extension of 275 days), but only to the extent that:

(i) in the reasonable opinion of the Department, there is a reasonable prospect of achieving Fred Ex Final Completion within 365 days of the relevant Department Notice; and

(ii) within the 90-Day period, the Collateral Agent and the Department (each acting reasonably) agree to a plan in relation to achieving Fred Ex Final Completion; and

(c) with respect to any Fred Ex Concessionaire Breach not referred to in clauses (a) and (b) above, the date falling 90 Days after the later of (i) date that the relevant Department Notice is received by the Collateral Agent and (ii) expiration of any applicable cure period granted to the Concessionaire pursuant to Section 19.09 of the Comprehensive Agreement; provided, however, that such period will, at the request of the Collateral Agent, be extended up to a maximum of 60 additional Days, but only to the extent that:

(i) within the 90 Day period, the Collateral Agent and the Department (each acting reasonably) agree to a plan specifying the remedial action to be taken in respect of the relevant Fred Ex Concessionaire Breach; and

(ii) the extension requested by the Collateral Agent represents (in the reasonable opinion of the Department) a reasonable period of time to remedy the relevant Fred Ex Concessionaire Breach.

Department Funding Sub-Account has the meaning given to such term in the Third Restated Collateral Agency and Account Agreement.

Department Notice has the meaning given to it in Section 2.02(a).

Designated Account means the Concessionaire Damages Account as defined in the Third Amended and Restated Collateral Agency and Account Agreement, dated as of July 25, 2017 (the “Third Restated Collateral Agency Agreement”) between the Concessionaire and U.S. Bank Trust Company, National Association, as Collateral Agent, or such other account in accordance with the terms of the Third Restated Collateral Agency Agreement.

Fred Ex Project Financing Agreements has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

Future Borrower Damages has the meaning given to such term in the Third Restated Collateral Agency and Account Agreement.

Initial Equity Member means the Equity Member as of the date of this Agreement, which is Transurban Express Lanes LLC.

Initial Period means:

(a) with respect to any Payment Breach, the later of (i) the date falling 30 Days after the date that the Collateral Agent received the relevant Department Notice and (ii) expiration of any applicable cure period granted to the Concessionaire pursuant to the Comprehensive Agreement;

(b) with respect to any Fred Ex Concessionaire Breach not referred to in (a) above, the later of (i) the date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice and (ii) expiration of any applicable cure period granted to the Concessionaire pursuant to the Comprehensive Agreement.

Initial Project Financing Agreements has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

Non-Completion Breach means a Fred Ex Concessionaire Breach that arises pursuant to Section 19.09(d) of the Comprehensive Agreement.

Opitz Boulevard Ramp Project Equity Contribution Agreement has the meaning set forth in the Comprehensive Agreement, as the same may be amended or modified from time to time.

Payment Breach means a Fred Ex Concessionaire Breach that arises pursuant to Section 19.09(c) of the Comprehensive Agreement that has not been cured within a period of thirty (30) days of the Concessionaire receiving written notice from the Department of such Fred Ex Concessionaire Breach.

Property means any right or interest in or to property of any kind whatsoever, whether real, personal, or mixed and whether tangible or intangible.

Qualified Substitute Concessionaire means a Person who has the legal capacity, power and authority to become a party to, and perform the obligations of the Concessionaire under, the Comprehensive Agreement:

(a) who has the resources available to it (including committed financial resources) to perform the obligations of the Concessionaire under the Comprehensive Agreement;

(b) who employs or subcontracts with Persons having the appropriate qualifications, experience and technical competence available to it that are sufficient to enable it to perform the obligations of the Concessionaire under the Comprehensive Agreement; and

(c) who has not been:

(i) debarred or prohibited from participating in State or federally-funded projects;

(ii) indicted, convicted, pled guilty or nolo contendere to a violation of law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that show a similar lack of moral or ethical integrity; or

(iii) barred or prohibited from owning or operating the Project under law, including the Foreign Investment and National Security Act of 2007, 50 USC App. 2170 (HR 556).

Revenue Account has the meaning given to such term in the Third Restated Collateral Agency and Account Agreement.

Series 2022 Financial Close Date means February 10, 2022.

Step-in Date has the meaning given to it in Section 4.01(c).

Step-in Entity has the meaning given to it in Section 4.01(b).

Step-in Entity Accession Agreement means the agreement to be entered into by a Step-in Entity pursuant to Section 4.01(c).

Step-in Notice has the meaning given to it in Section 4.01(a).

Step-in Period in relation to a Step-in Entity means the period from and including the Step-in Date until the earliest of:

- (a) the last day of the Cure Period;
- (b) the Substitution Effective Date;
- (c) the Step-out Date;
- (d) the date of termination of the Comprehensive Agreement by the Department in accordance with this Agreement and the Comprehensive Agreement; or
- (e) the last day of the Term.

Step-out Date in relation to a Step-in Entity means the date upon which any Step-out Notice is served by such Step-in Entity pursuant to Section 4.03.

Step-out Notice has the meaning given to it in Section 4.03(a).

Substitute has the meaning given to it in Section 5.01.

Substitute Accession Agreement means the agreement to be entered into by a Substitute pursuant to Section 6.01.

Substitution Effective Date has the meaning given to it in Section 6.01.

Substitution Notice has the meaning given to it in Section 5.01.

Section 1.02 Order of Precedence

In the event of any conflict, ambiguity or inconsistency between the provisions of the Comprehensive Agreement and the provisions of this Agreement, the provisions of this Agreement will prevail.

Section 1.03 No Effect on Comprehensive Agreement

Nothing in this Agreement amends or modifies any of the Concessionaire's obligations to the Department under the Comprehensive Agreement.

ARTICLE 2.
CONSENT TO SECURITY AND NOTICES

Section 2.01 Consent to Security

Notwithstanding anything to the contrary in the Comprehensive Agreement:

- (a) the Department acknowledges notice and receipt of and consents to:
- (i) the assignment by the Concessionaire to the Collateral Agent of all of the Concessionaire's Interest pursuant to the Combined Project Financing Agreements; and
 - (ii) the grant by the Equity Member to the Collateral Agent of a security interest in its equity interests in the Concessionaire pursuant to the Combined Project Financing Agreements; and
 - (iii) the grant by the Concessionaire to the Collateral Agent of the security interests in all of the property and assets of the Concessionaire pursuant to the Combined Project Financing Agreements;
- (b) none of the security interests referred to in Section 2.01(a):
- (i) constitute (or with the giving of notice or lapse of time, or both, could constitute) a Fred Ex Concessionaire Breach; or
 - (ii) require any consent of the Department that is either additional or supplemental to those granted pursuant to this Section 2.01;
- (c) without prejudice to the rights granted to the Collateral Agent pursuant to this Agreement, the Collateral Agent will not, by virtue of the security interests referred to in Section 2.01(a), acquire any greater rights to the Concessionaire's Interest than the Concessionaire itself has at any particular time pursuant to the Comprehensive Agreement; and
- (d) for so long as any amount under the Combined Project Financing Agreements is outstanding, the Department will not, without the prior written consent of the Collateral Agent, consent to any assignment, transfer, pledge or hypothecation by the Concessionaire of the Comprehensive Agreement or any interest therein by the Concessionaire, other than as specified in this Agreement.

Section 2.02 Notice Requirements

(a) The Department will give the Collateral Agent written notice (a "Department Notice") promptly upon becoming aware of the occurrence of any Fred Ex Concessionaire Breach or other event that permits the Department to suspend its performance under the Comprehensive Agreement with respect to the Fred Ex Project or terminate the Fred Ex Project (whether immediately, with the giving of notice, or upon the passage of time (or any combination of the foregoing)) and will specify in the Department Notice:

(i) the unperformed obligations of the Concessionaire with respect to the Fred Ex Project under the Comprehensive Agreement of which the Department is aware (having made reasonable inquiry) and grounds for termination of the Fred Ex Project in sufficient detail to enable the Collateral Agent to assess the scope and amount of any liability of the Concessionaire resulting therefrom;

(ii) all amounts due and payable by the Concessionaire to the Department under the Comprehensive Agreement with respect to the Fred Ex Project, if any, on or before the date of the Department Notice and which remain unpaid at such date and, by cross-reference to the applicable provision(s) of the Comprehensive Agreement, the nature of the Concessionaire's obligation to pay such amounts; and

(iii) the amount of any payments that the Department reasonably foresees will become due from the Concessionaire during the applicable Cure Period.

(b) The Department will update any Department Notice issued pursuant to Section 2.02(a) as and when it becomes aware of any unperformed obligations of the Concessionaire with respect to the Fred Ex Project (including non-payment of amounts that have become due) under the Comprehensive Agreement that were not specified in the relevant Department Notice.

(c) For the avoidance of doubt, nothing in this Agreement will prevent multiple Department Notices running concurrently.

(d) The Collateral Agent will:

(i) promptly upon becoming aware of any Fred Ex Concessionaire Breach (whether or not a Department Notice has been served in connection with the same event) give the Department written notice (a "Collateral Agent Notice");

(ii) specify in any Collateral Agent Notice the circumstances and nature of the Fred Ex Concessionaire Breach to which the Collateral Agent Notice relates; and

(iii) notify the Department of any decision to accelerate amounts outstanding under the Combined Project Financing Agreements or to exercise any enforcement remedies under the Combined Project Financing Agreements.

Section 2.03 Department Payments under the Comprehensive Agreement

(a) With the exception of Future Borrower Damages, the Department will, unless directed otherwise by the Collateral Agent, deposit all amounts payable by it under the Comprehensive Agreement (other than the 395 Public Funds Amount, which the Department shall deposit into the Department Funding Sub-Account, and other than Fred Ex Department Committed Contingency, which, at the option of the Department, in its sole discretion, may be netted by the Concessionaire as a deduction from the Final Permit Fee Buyout Payment) into the Revenue Account and the Concessionaire agrees that any payment made in accordance with this Section 2.03 will constitute a complete discharge of the Department's relevant payment obligations under the Comprehensive Agreement.

(b) The Department will, unless directed otherwise by the Collateral Agent, deposit all lump sum payments with respect to Future Borrower Damages payable by it under the Comprehensive Agreement, into the Designated Account.

(c) The Collateral Agent acknowledges that all of the Department's payment obligations to the Concessionaire pursuant to the Comprehensive Agreement are subject to Section 25.19 of the Comprehensive Agreement.

ARTICLE 3. **RIGHTS AND OBLIGATIONS DURING THE CURE PERIOD**

Section 3.01 No Termination of the Fred Ex Project during the Cure Period

At any time during a Cure Period, the Department will not, subject to the terms of this Agreement:

(a) terminate or give notice terminating the Fred Ex Project for Fred Ex Concessionaire Breach or exercise any rights under Section 19.11 of the Comprehensive Agreement; or

(b) suspend its performance under the Comprehensive Agreement with respect to the Fred Ex Project.

Section 3.02 Collateral Agent Rights

(a) At any time during a Fred Ex Concessionaire Breach, only for so long as the Initial Period has not expired, the Collateral Agent may (but shall have no obligation), at its sole option and discretion, perform or arrange for the performance of any act, duty, or obligation required of the Concessionaire under the Comprehensive Agreement with respect to the Fred Ex Project, or remedy any Fred Ex Concessionaire Breach at any time, which performance or remedy by or on behalf of the Collateral Agent will be accepted by the Department in lieu of performance by the Concessionaire and in satisfaction of the Concessionaire's obligations under the Comprehensive Agreement with respect to the Fred Ex Project. To the extent that any Fred Ex Concessionaire Breach is remedied and/or any payment liabilities or obligations of the Concessionaire are performed by the Collateral Agent under this Section 3.02(a), such action will discharge the relevant liabilities or obligations of the Concessionaire to the Department. No such performance by or on behalf of the Collateral Agent under this Section 3.02(a) will be construed as an assumption by the Collateral Agent, or any person acting on the Collateral Agent's behalf, of any of the covenants, agreements or other obligations of the Concessionaire under the Comprehensive Agreement.

Section 3.03 Extension of Cure Period Completion Date and Initial Period

If the Collateral Agent:

(a) is prohibited by any court order, bankruptcy or insolvency proceedings from remedying the Fred Ex Concessionaire Breach that is the subject of a Department Notice; or

(b) pursues with good faith, diligence and continuity lawful processes and steps to obtain the appointment of a court receiver for the Fred Ex Project and possession, custody and control of the Fred Ex Project, but despite such efforts the Collateral Agent is unable to obtain such possession, custody and control of the Fred Ex Project;

then each of the relevant Cure Period Completion Date and Initial Period will be extended by a period of time equal to the shorter of the period of such prohibition or 180 Days.

ARTICLE 4. **STEP-IN ARRANGEMENTS**

Section 4.01 Step-in Notice

(a) Provided that all unperformed payment obligations of the Concessionaire identified in a Department Notice will have been remedied in full or waived by the Department on or before the Step-in Date, the Collateral Agent may provide the Department with a written notice (“Step-in Notice”) under this Section 4.01 at any time during any Cure Period or Fred Ex Concessionaire Breach.

(b) The Collateral Agent will nominate, in any Step-in Notice, any one of:

(i) subject to the Department’s approval, which will not to be unreasonably withheld or delayed, the Collateral Agent, a Lender or any of their respective Affiliates; or

(ii) any Person approved by the Department, such approval not to be unreasonably withheld or delayed if such Person meets all the criteria to be a Qualified Substitute Concessionaire and the Department has been provided with the relevant information required under Section 5.03 with respect to such Person (each a “Step-in Entity”), stating that the Step-in Entity is to become a joint and several obligor with the Concessionaire under the Comprehensive Agreement and this Agreement in accordance with the terms hereof.

(c) The Step-in Entity named in the Step-in Notice will be deemed to become a party to the Comprehensive Agreement and this Agreement on and from the date it executes a duly completed Step-in Entity Accession Agreement, substantially in the form attached hereto as Annex 1 (Form of Step-in Entity Accession Agreement), and submits it to the Department (the “Step-in Date”).

Section 4.02 Rights and Obligations on Step-in

(a) On and from the Step-in Date and during the Step-in Period, the Step-in Entity will be:

(i) jointly and severally entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to the Concessionaire under the Comprehensive Agreement and this Agreement;

(ii) entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Entity under this Agreement; and

(iii) jointly and severally liable with the Concessionaire for the payment of all sums due from the Concessionaire under or arising out of the Comprehensive Agreement at the Step-in Date and for the performance of all of the Concessionaire's obligations under or arising out of the Comprehensive Agreement on or after the Step-in Date.

(b) Without prejudice to Article 7 (Reinstatement of Remedies), during the Step-in Period:

(i) the Department undertakes:

A. not to terminate or give notice terminating the Fred Ex Project for Fred Ex Concessionaire Breach under Section 19.11(a) of the Comprehensive Agreement, unless:

(1) the grounds for termination or giving notice of termination or exercise of any of its rights under Section 19.11 of the Comprehensive Agreement arose during the Step-in Period; or

(2) the Step-in Entity fails to comply with the requirements of any plan agreed between the Department and the Collateral Agent in connection with the extension of the relevant Cure Period Completion Date; and

B. not to take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of the Concessionaire or for the composition or readjustment of the Concessionaire's debts, or any similar insolvency procedure in relation to the Concessionaire, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for the Concessionaire or for any part of the Concessionaire's Property;

C. not to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Concessionaire) under the Comprehensive Agreement, unless the grounds for suspension of performance arose during the Step-in Period; and

D. to continue to make payments required to be made to Concessionaire under the Comprehensive Agreement to the Designated Account and the Revenue Account.

(ii) the Department will owe its obligations under the Comprehensive Agreement and this Agreement to the Concessionaire and such Step-in Entity jointly; provided, however, that:

A. subject to Section 4.02(b)(ii)(B), the performance of such obligations by the Department in favor of either such Step-in Entity or the Concessionaire will be a good and effective discharge of such obligations under this Agreement and the Comprehensive Agreement; and

B. the Collateral Agent will be entitled at any time by notice in writing to the Department to direct (such direction being binding on the Collateral Agent, the Department and the Concessionaire) that, at all times thereafter while such Step-in Entity is deemed to be a party to the Comprehensive Agreement and this Agreement and subject to any further notice from the Collateral Agent, such Step-in Entity will be solely entitled to make any decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with the Department under the Comprehensive Agreement and this Agreement.

(c) The Concessionaire will not be relieved from any of its obligations under the Comprehensive Agreement, whether arising before or after the Step-in Date, by reason of the Step-in Entity becoming a party to the Comprehensive Agreement pursuant to a Step-in Entity Accession Agreement, except to the extent provided in Section 3.02.

Section 4.03 Step Out

(a) A Step-in Entity may, at any time, by giving not less than 30 Days' prior written notice ("Step-out Notice") to the Department, terminate its obligations to the Department under the Comprehensive Agreement and this Agreement, whereupon the Step-in Entity will, upon the expiry of such notice, no longer be deemed to be a party to the Comprehensive Agreement and this Agreement and, except as provided in Section 4.03(b), will be released from all obligations under the Comprehensive Agreement and this Agreement. The obligations of the Department to the Step-in Entity in such capacity under the Comprehensive Agreement and this Agreement will also terminate upon the expiry of such notice.

(b) Nothing in this Section 4.03 will have the effect of releasing the Step-in Entity from any liability that relates to the performance or non-performance of the Comprehensive Agreement or this Agreement by the Concessionaire or the Step-in Entity during the Step-in Period.

ARTICLE 5. SUBSTITUTION PROPOSALS

Section 5.01 Notice of Proposed Substitute

To the extent that the Collateral Agent or the Lenders at any time propose to require the Concessionaire to assign its rights and obligations under the Comprehensive Agreement and/or this Agreement to a Person (a "Substitute") designated by the Collateral Agent or the Lenders (whether by mutual agreement or enforcement of rights under the Combined Project Financing Agreements), the effectiveness of such assignment will be conditional upon:

(a) the Collateral Agent issuing a notice (a "Substitution Notice") to the Department requesting the Department's prior approval of the proposed Substitute;

(b) the Department approving the identity of the proposed Substitute pursuant to Section 5.02; and

(c) the proposed Substitute executing a Substitute Accession Agreement in accordance with Section 6.01.

Section 5.02 Grounds for Refusing Approval

The Department will only be entitled to withhold its approval to any proposed Substitute that is the subject of a Substitution Notice if:

(a) In the Department's reasonable opinion, the proposed Substitute is not a Qualified Substitute Concessionaire; or

(b) subject to Section 6.04, there are outstanding breaches of the Comprehensive Agreement that have been previously notified by the Department to the Collateral Agent and have not, to the reasonable satisfaction of the Department, been remedied or waived prior to the date of the Substitution Notice; unless the Department has approved (such approval not to be unreasonably withheld or delayed) a plan specifying the remedial action that the Substitute will be required to take after the Substitution Effective Date in order to remedy each such breach.

Section 5.03 Provision of Information

The Collateral Agent will, as soon as practicable, provide to the Department such information in relation to the proposed Substitute and any Person who, it is proposed, will enter into a material subcontract with the proposed Substitute in relation to the Project, as the Department will reasonably require to enable it to reasonably determine whether the proposed Substitute is a Qualified Substitute Concessionaire, including:

(a) the name and address of the proposed Substitute;

(b) unless such proposed Substitute is a publicly-traded entity, the names of the proposed Substitute's shareholders or members and the share capital or partnership or membership interests, as the case may be, held by each of them;

(c) the manner in which it is proposed to finance the proposed Substitute and the extent to which such financing is committed (to the extent relevant);

(d) copies of the proposed Substitute's most recent financial statements (and if available, such financial statements will be for the last three financial years and audited), or in the case of a special purpose company, its opening balance sheet;

(e) a copy of the proposed Substitute's organizational documents;

(f) details of the resources available to the proposed Substitute and the proposed Substitute's appropriate qualifications, experience and technical competence available to the proposed Substitute to enable it to perform the obligations of the Concessionaire under the Comprehensive Agreement; and

(g) the names of the proposed Substitute's directors and any key personnel who will have responsibility for the day-to-day management of its participation in the Project.

ARTICLE 6.
SUBSTITUTION

Section 6.01 Substitution Effective Date

If the Department approves the identity of a proposed Substitute pursuant to Article 5, the Substitute will execute a duly completed Substitute Accession Agreement substantially in the form set out in Annex 2 to this Agreement and submit it to the Department (with a copy of it to the other parties to this Agreement). Such assignment will become effective on and from the date on which the Department countersigns the Substitute Accession Agreement (the “Substitution Effective Date”).

Section 6.02 Effectiveness of Substitution

On and from the Substitution Effective Date:

(a) such Substitute will become a party to the Comprehensive Agreement and this Agreement in place of the Concessionaire who will be immediately released from its obligations arising under, and cease to be a party to, the Comprehensive Agreement and this Agreement from that Substitution Effective Date; and

(b) such Substitute will exercise and enjoy the rights and perform the obligations of the Concessionaire under the Comprehensive Agreement and this Agreement, and

(c) the Department shall owe its obligations (including, without limitation, any undischarged liability in respect of any loss or damage suffered or incurred by the Concessionaire prior to the Substitution Effective Date) under the Comprehensive Agreement and this Agreement to such Substitute in place of the Concessionaire and any Step-in Entity.

Section 6.03 Facilitation of Transfer

The Department will use its reasonable efforts to facilitate the transfer to the Substitute of the Concessionaire’s obligations under the Comprehensive Agreement and this Agreement.

Section 6.04 Settlement of Outstanding Financial Liabilities

(a) The Substitute will pay to the Department within 30 Days after the Substitution Effective Date any amount due from the Concessionaire to the Department under the Comprehensive Agreement and this Agreement as of the Substitution Effective Date (as notified by the Department to the Substitute reasonably in advance of such Substitution Effective Date).

(b) If the Substitute fails to satisfy its obligations pursuant to Section 6.04(a), the Department will be entitled to exercise its rights under the Comprehensive Agreement in respect of the amount so due and unpaid.

Section 6.05 Consequences of Substitution

On and from the Substitution Effective Date:

(a) subject to Section 6.04, any right of termination or any other right suspended by virtue of Section 3.01 will be of no further effect, however, the Department will not be entitled to terminate the Comprehensive Agreement and this Agreement based on any act, omission, or circumstance that occurred prior to such Substitution Effective Date; and

(b) if any Step-in Entity is a party to or has any obligations under the Comprehensive Agreement and this Agreement on the Substitution Effective Date, such Step-in Entity will cease to be a party thereto and hereto and will be discharged from all obligations thereunder and hereunder; and the Department will enter into an equivalent direct agreement on substantially the same terms as this Agreement, save that the Concessionaire will be replaced as a party by the Substitute.

ARTICLE 7. **REINSTATEMENT OF REMEDIES**

If a Department Notice has been given, the grounds for that notice are continuing and have not been remedied or waived by the Department and:

(a) no Step-in Entity or Substitute becomes a party to the Comprehensive Agreement and this Agreement before the Cure Period Completion Date relating thereto; or

(b) a Step-in Entity becomes a party to the Comprehensive Agreement and this Agreement, but the Step-in Period relating to such Step-in Entity ends without a Substitute becoming a party thereto and hereto,

then, on and from the Cure Period Completion Date or the date such Step-in Period expires, the Department will be entitled to:

(i) act upon any and all grounds for termination of the Fred Ex Project available to it in respect of Fred Ex Concessionaire Breaches under the Comprehensive Agreement that have not been remedied or waived by the Department;

(ii) pursue any and all claims and exercise any and all remedies against the Concessionaire in respect of Fred Ex Concessionaire Breaches under the Comprehensive Agreement; and

(iii) if and to the extent that it is then entitled to do so under the Comprehensive Agreement, take or support any action of the type referred to in Section 3.01(b).

ARTICLE 8. **TERMINATION OF THIS AGREEMENT**

This Agreement will remain in effect until Fred Ex Final Completion.

ARTICLE 9.
PRESERVATION OF FUNDS

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Combined Project Financing Agreements, the Collateral Agent agrees for itself and on behalf of the Lenders that it will not exercise any rights under the Combined Project Financing Agreements or take any other steps that would prejudice the operation of Sections 5.11 (Annual Transit Investment), 9.05 (Major Maintenance Reserve Fund), 17.07 (Restoration; Insurance Proceeds), and 20.02 (Handback Obligations and Reserve) of the Comprehensive Agreement.

ARTICLE 10.
GENERAL PROVISIONS

Section 10.01 Representations and Warranties

(a) The undersigned signatory for the Collateral Agent hereby represents and warrants that he or she is an officer of the Collateral Agent and that he or she has full and complete authority to enter into this Agreement on behalf of the Collateral Agent.

(b) The Collateral Agent hereby represents and warrants that the Collateral Agent has full power, right and authority to execute and perform each and all of its obligations under this Agreement. These representations and warranties are made for the purpose of inducing the Department and the Concessionaire to enter into this Agreement.

(c) The Collateral Agent represents and warrants that this Agreement has been duly authorized, executed and delivered by the Collateral Agent and constitutes a valid and legally binding obligation of the Collateral Agent, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) The undersigned signatory for the Concessionaire hereby represents and warrants that he or she is an officer of the Concessionaire and that he or she has full and complete authority to enter into this Agreement on behalf of the Concessionaire.

(e) The Concessionaire hereby represents and warrants that the Concessionaire has full power, right and authority to execute and perform each and all of its obligations under this Agreement and the Comprehensive Agreement. These representations and warranties are made for the purpose of inducing the Department and the Collateral Agent to enter into this Agreement.

(f) The Concessionaire represents and warrants that each of this Agreement and the Comprehensive Agreement has been duly authorized, executed and delivered by the Concessionaire and constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(g) The Concessionaire represents and warrants that there is no Concessionaire Default or Fred Ex Concessionaire Breach or, to the best of its knowledge, no Department Default, there

exists no event or condition that would, with the giving of notice or passage of time or both, constitute such a Concessionaire Default or Fred Ex Concessionaire Breach or, to the best of its knowledge, a Department Default, and no such Concessionaire Default or Fred Ex Concessionaire Breach or, to the best of its knowledge, Department Default has occurred prior to the date hereof.

(h) The undersigned signatory for the Department hereby represents and warrants that he or she is an authorized official of the Department and has full and complete authority to enter into this Agreement on behalf of the Department.

(i) The Department has full power, right and authority to execute and perform each and all of its obligations under this Agreement and the Comprehensive Agreement. These representations and warranties are made for the purpose of inducing the Collateral Agent to enter into this Agreement.

(j) The Department represents and warrants that each of this Agreement and the Comprehensive Agreement has been duly authorized, executed and delivered by the Department and constitutes a valid and legally binding obligation of the Department, enforceable against the Department in accordance with the terms hereof and thereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(k) The Department represents and warrants that there is no Department Default or, to the best of its knowledge, no Concessionaire Default or Fred Ex Concessionaire Breach, there exists no event or condition that would, with the giving of notice or passage of time or both, constitute such a Department Default or, to the best of its knowledge, a Concessionaire Default or Fred Ex Concessionaire Breach, and no such Department Default or, to the best of its knowledge, Concessionaire Default or Fred Ex Concessionaire Breach has occurred prior to the date hereof.

Section 10.02 Public Information and Confidentiality

The Department and the Collateral Agent will, for each other's benefit, comply with the requirements of Section 18.02 of the Comprehensive Agreement as if any reference to the Concessionaire therein was a reference to the Collateral Agent.

Section 10.03 Amendments and Waivers

(a) No amendment of this Agreement, and no waiver of any term, covenant or condition of this Agreement, will be effective unless in writing and signed by the parties to this Agreement.

(b) The exercise by a party of any right or remedy provided under this Agreement or law will not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. The remedies provided herein are cumulative and not exclusive of any remedies provided by law and may be exercised by the Collateral Agent or the Lenders and any permitted designee, transferee or assignee thereof from time to time. No waiver by any party of any right or remedy under this Agreement or law will be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or law. The consent by one party to any act by the other party requiring such consent will not be deemed to render unnecessary the obtaining of consent to

any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

Section 10.04 Non-Collusion

(a) The Collateral Agent warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Collateral Agent, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from making of this Agreement.

(b) For breach or violation of this warranty, the Department will have the right to terminate this Agreement without liability.

Section 10.05 Disputes

(a) In the event of any dispute between the Department and the Collateral Agent under this Agreement, the parties will resolve the dispute according to the dispute resolution procedures set forth in the Comprehensive Agreement, with the Collateral Agent having the same rights and obligations of the Concessionaire under the disputes resolution procedures set forth in Article 21 of the Comprehensive Agreement.

(b) Nothing in Section 10.05(a) affects the Collateral Agent's rights and remedies against the Concessionaire and the Concessionaire's Interest under the Combined Project Financing Agreements or the procedures available to the Collateral Agent under law to exercise its security interests thereunder.

Section 10.06 Successors and Assigns

(a) No party to this Agreement may assign or transfer any part of its rights or obligations hereunder without the prior written consent of the other parties; *provided*, however, that the Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Combined Project Financing Agreements and the Department may transfer its rights or obligations hereunder in accordance with and subject to the terms and conditions set forth in Section 25.03 of the Comprehensive Agreement. In connection with any such assignment or transfer, the Department agrees to enter into a new direct agreement with the successor Collateral Agent on terms that are substantially the same as those of this Agreement.

(b) This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 10.07 Severability

In the event any one or more of the provisions contained in this Agreement will, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision thereof and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 10.08 Prior Contracts Superseded

This Agreement constitutes the sole agreement of the parties hereto with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the parties respecting such subject matter.

Section 10.09 Notices and Communications

(a) Whenever under the provisions of this Agreement it will be necessary or desirable for one party to serve any approval, notice, request, demand, report or other communication on another party, the same will be in writing and will not be effective for any purpose unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by facsimile transmission, where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission is immediately followed by service of the original of the subject item in another manner permitted herein or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Department:

Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Financial Officer
Facsimile: (804) 786-2940

With copies to:

Office of the Attorney General
202 N. 9th Street
Richmond, VA 23219
Attention: Chief, Transportation Section
Facsimile: (804) 786-9136

If to the Concessionaire:

95 Express Lanes LLC
6440 General Green Way
Alexandria, Virginia 22312
Attention: President
Facsimile: (571) 419-6101

If to the Collateral Agent:

U.S. Bank Trust Company, National Association
Three James Center
1051 East Cary Street, Suite 600

Richmond, Virginia 23219
Attention: Stephanie E. Haysley
Facsimile: (804) 343-1572

(b) Any party may, from time to time, by notice in writing served upon the other parties as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally will be deemed delivered upon receipt, if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by facsimile transmission will be deemed delivered on the date of receipt as shown on the received facsimile (*provided*, that the original is thereafter delivered as aforesaid).

Section 10.10 Effect of Breach

Without prejudice to any rights a party may otherwise have, a breach of this Agreement will not of itself give rise to a right to terminate the Fred Ex Project.

Section 10.11 Counterparts

This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 10.12 No Third-Party Beneficiaries

Nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

Section 10.13 No Partnership

Nothing contained in this Agreement will be deemed to constitute a partnership between the parties hereto. None of the parties will hold itself out contrary to the terms of this Section 10.13.

Section 10.14 No Interference

The Concessionaire joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not to knowingly do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

Section 10.15 Collateral Agent

(a) Notwithstanding anything to the contrary in this Agreement, but subject to Section 10.01 and Section 10.15(b), neither the Collateral Agent nor any Lender shall have any liability to

the Department under this Agreement, unless the Collateral Agent or such Lender expressly assumes such liability in writing.

(b) The Department acknowledges and agrees that the Collateral Agent shall not be obligated or required to perform any of the Concessionaire's obligations under the Comprehensive Agreement except during any Step-in Period (solely to the extent the Collateral Agent or any of its Affiliates is the Step-In Entity).

(c) The Department acknowledges and agrees that no Lender shall be obligated or required to perform any of the Concessionaire's obligations under the Comprehensive Agreement.

Section 10.16 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia applicable to contracts executed and to be performed within the State, without regard to conflicts of law principles that would result in the application of the laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an agency of the Commonwealth of Virginia

By: _____
Name: _____
Title: _____

95 EXPRESS LANES LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

ANNEX 1

FORM OF STEP-IN ENTITY ACCESSION AGREEMENT

[Date]

To: Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Financial Officer
Facsimile: (804) 786-2940

Copied to: Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
Attention: Chief Transportation Section
Facsimile: (804) 786-9136

[Lenders and other parties to Finance Documents to be listed]

[insert address]

For the attention of: [•]

From: [Step-in Entity]

FRED EX HOT LANES PROJECT

STEP-IN ENTITY ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Third Amended and Restated Comprehensive Agreement Relating to the I-95/395 HOV/HOT Lanes Project, dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Comprehensive Agreement"), between the Virginia Department of Transportation (the "Department") and 95 Express Lanes, LLC (the "Concessionaire") and the Fred Ex Direct Agreement (Comprehensive Agreement), dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Fred Ex Direct Agreement"), among the Department, the Concessionaire, and U.S. Bank Trust Company, National Association, as Collateral Agent.

Terms not otherwise defined herein will have the same meaning given to them in the Fred Ex Direct Agreement.

We hereby confirm that we are a Step-in Entity pursuant to Article 4 of the Fred Ex Direct Agreement.

We acknowledge and agree that, upon and by reason of our execution of this Step-in Entity Accession Agreement, we will become a party to the Comprehensive Agreement and the Fred Ex Direct Agreement jointly and severally with the Concessionaire as a Step-in Entity and, accordingly, will have the rights and powers and assume the obligations of the Concessionaire under the Comprehensive Agreement and the Fred Ex Direct Agreement in accordance with the terms of the Fred Ex Direct Agreement.

Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Step-in Entity]

This Step-in Entity Accession Agreement will be governed by, and construed in accordance with, the law of the Commonwealth of Virginia, without regard for conflict of laws principles that would result in the application of the laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

The terms set forth herein are hereby agreed to:

[Step-in Entity]

By _____
Name:
Title:

ANNEX 2

FORM OF SUBSTITUTE ACCESSION AGREEMENT

[Date]

To: Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Financial Officer
Facsimile: (804) 786-2940

Copied to: Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
Attention: Chief Transportation Section
Facsimile: (804) 786-9136

From: [Substitute]

FRED EX HOT LANES PROJECT

SUBSTITUTE ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Third Amended and Restated Comprehensive Agreement Relating to the I-95/395 HOV/HOT Lanes Project, dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Comprehensive Agreement"), between the Virginia Department of Transportation (the "Department") and 95 Express Lanes, LLC (the "Concessionaire") and the Fred Ex Direct Agreement (Comprehensive Agreement), dated as of [____], 20[____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Fred Ex Direct Agreement"), among the Department, the Concessionaire and U.S. Bank Trust Company, National Association, as Collateral Agent.

Terms defined not otherwise defined herein will have the same meaning given to them in the Fred Ex Direct Agreement.

We, [entity name and entity type and state of formation], hereby confirm that we are a Substitute pursuant to Article 6 of the Fred Ex Direct Agreement.

We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement, we will become a party to the Comprehensive Agreement and the Fred Ex Direct Agreement, and we will assume all rights, duties, and obligations of the "Concessionaire" under the Comprehensive Agreement and the Fred Ex Direct Agreement and will complete the Work for the benefit of the Department.

Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Substitute]

This Substitute Accession Agreement will be governed by, and construed in accordance with, the law of the Commonwealth of Virginia, without regard for conflict of laws principles that would result in the application of the laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

The terms set forth herein are hereby agreed to:

[Substitute]

By: _____

Name:

Title:

Agreed for and on behalf of:

Virginia Department of Transportation

By: _____

Name:

Title:

[Provided under separate cover]

EXHIBIT S

KNOWN GEOTECHNICAL CONDITIONS

The table below identifies documents that contain geotechnical information for the I-95/I-395 corridor. These documents have been provided to the Concessionaire by the Department or have been provided to the Department by the Concessionaire during the development phase of the Project.

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Existing Plans	Proposed Bridge Rte. 95 over Relocated Rte. 619	Bridges	NA	12/04/59	NA	Bridge 68 Ex Plan #149-01	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Rte 95 over Relocated Quantico Creek and Rte 629	Bridges	NA	12/15/59	NA	Bridge 67B Ex Plan #149-03	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Rte. 95 over Neabsco Creek	Bridges	NA	01/07/60	NA	Bridge 63B Ex Plan #149-07	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Rte. 95 over Relocated Powell Creek	Bridges	NA	01/07/60	NA	Bridge 65 Ex Plan #149-05	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Rte. 95 over Rte. 123 B621, B626 (Occoquan Road)	Bridges	NA	02/02/60	NA	Bridge 59 Ex Plan #149-10	VDOT	NA	Contains boring logs
Existing Plans	Rte. 95 over Relocated Rte. 611	Bridges	NA	02/25/60	NA	Bridge 56 Ex Plan #149-13	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Rte. 95 over Occoquan Creek	Bridges	NA	04/12/60	NA	Bridge 57 Ex Plan #149-12	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Interstate Route 95 SB Route 95 over Chopawamsic Creek	Bridges	NA	07/26/60	NA	Bridge 70 Ex Plan #156-18	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Interstate Route 95 NB Route 95 over Chopawamsic Creek	Bridges	NA	07/26/60	NA	Bridge 70 Ex Plan #156-19	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Interstate Route 95 Route 611 over Route 95	Bridges	NA	07/26/60	NA	Bridge 71 Ex Plan #156-17	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Interstate Route 95 SB Route 95 over Quantico Trunk Highway	Bridges	NA	07/27/60	NA	Bridge 69 Ex Plan #156-20	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Interstate Route 95 NB Route 95 over Quantico Trunk Highway	Bridges	NA	07/27/60	NA	Bridge 69 Ex Plan #156-21	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridges Interstate Route 95 SB & NB Route 95 over Aquia Creek	Bridges	NA	05/25/61	NA	Bridge 72 Ex Plan #156-13	VDOT	NA	Contains boring logs
Existing Plans	Ramp "C" over Ramp "E" and Route I-95	Bridges	NA	01/08/65	NA	Bridge 30 Ex Plan #178-03	VDOT	NA	Contains boring logs
Existing Plans	Route 648 (Edsall road) over Route I-95	Bridges	NA	01/08/65	NA	Bridge 31 Ex Plan #177-13	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Opitz Blvd over Rte. 95, Ramp G, & NBCD Rd.	Bridges	NA	07/16/79	NA	Bridge 61 Ex Plan #257-38	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Widening SBL Rte. 95 over Powells Creek	Bridges	NA	07/27/79	NA	Bridge 65 Ex Plan #149-05C	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Widening NBL Rte. 95 over Powells Creek	Bridges	NA	08/31/79	NA	Bridge 65 Ex Plan #149-05D	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Reloc. Dale Blvd over Rte. 95 & C.D. Rds.	Bridges	NA	09/11/80	NA	Bridge 62 Ex Plan #258-01	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Widening on Rte. I-95 over Neabsco Creek	Bridges	NA	03/20/81	NA	Bridge 63B Ex Plan #149-07C	VDOT	NA	Contains boring logs
Existing Plans	Proposed Widening of Bridges on Rte. 95 over Rte. 619	Bridges	NA	04/15/81	NA	Bridge 68 Ex Plan #149-01A	VDOT	NA	Contains boring logs
Existing Plans	Proposed Widening of Bridge on SBL Route 95 over Quantico Trunk Highway	Bridges	NA	04/15/81	NA	Bridge 69 Ex Plan #156-20A	VDOT	NA	Contains boring logs

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Existing Plans	Proposed Widening of Bridge on NBL Route 95 over Quantico Trunk Highway	Bridges	NA	04/15/81	NA	Bridge 69 Ex Plan #156-21A	VDOT	NA	Contains boring logs
Existing Plans	Proposed Widening of Bridge on SBL Route 95 over Chopawamsic Creek	Bridges	NA	04/15/81	NA	Bridge 70 Ex Plan #156-18A	VDOT	NA	Contains boring logs
Existing Plans	Proposed Widening of Bridge on NBL Route 95 over Chopawamsic Creek	Bridges	NA	04/15/81	NA	Bridge 70 Ex Plan #156-19A	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridges Widening on Rte. 95 over Aquia Creek	Bridges	NA	05/20/83	NA	Bridge 72 Ex Plan #156-13A	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Springfield Bypass Spur over Rte. 95	Bridges	NA	10/04/88	NA	Bridge 47 Ex Plan #264-68	VDOT	NA	Contains boring logs
Existing Plans	Proposed Pedestrian Bridge over Rte. 95	Bridges	NA	10/04/88	NA	Bridge 48 Ex Plan #266-32	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Ramp H_N over Rte. 95 N.B.L.	Bridges	NA	05/01/90	NA	Bridge 48B Ex Plan #264-53	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Widening Rte. 95 over Powells Creek	Bridges	NA	01/07/91	NA	Bridge 65 Ex Plan #149-05E	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Rte. 95 over Accotink Creek	Bridges	NA	07/08/91	NA	Bridge 50 Ex Plan #264-51	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Rte. 638 (Pohick Road) over Rte. 95 and R.F. & P.R.R	Bridges	NA	07/08/91	NA	Bridge 51 Ex Plan #264-60	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Rte. 95 over Pohick Creek	Bridges	NA	07/08/91	NA	Bridge 52 Ex Plan #269-37	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Rte. 95 over Rte. 642	Bridges	NA	07/08/91	NA	Bridge 53 Ex Plan #269-36	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Prince William Parkway over Route 95	Bridges	NA	12/16/91	NA	Bridge 60 Ex Plan #268-89	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Widening on Existing SBL Route 95 over Occoquan River	Bridges	NA	01/17/92	NA	Bridge 57 Ex Plan #149-12C	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Widening on Route 95 HOV Lanes over Occoquan River	Bridges	NA	01/17/92	NA	Bridge 57 Ex Plan #149-12D	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Rte. 95 N.B.L. and H.O.V. over Ramp C	Bridges	NA	04/06/92	NA	Bridge 54 Ex Plan #264-64	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Ramp B over Rte. 95 N.B.L. & H.O.V.	Bridges	NA	04/06/92	NA	Bridge 55 Ex Plan #264-62	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Rte. I-95 H.O.V. & N.B.L. over Rte. 611	Bridges	NA	04/06/92	NA	Bridge 56 Ex Plan #149-13C	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on HOV Ramp Flyover over Route 95 SBL	Bridges	NA	06/15/92	NA	Bridge 57A Ex Plan #266-39	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Rte. 123 over Rte. 95	Bridges	NA	06/15/92	NA	Bridge 58 Ex Plan #269-16	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Widening on Rte. 95 over Rte. 253 (Occoquan Road)	Bridges	NA	05/21/93	NA	Bridge 59 Ex Plan #149-10A	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Ramp "A" Flyover over Route 95 SBL	Bridges	NA	05/21/93	NA	Bridge 60A Ex Plan #266-38	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Ramp "B" Flyover over Route 95 NBL	Bridges	NA	05/21/93	NA	Bridge 60B Ex Plan #266-37	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Horner Road Flyover over Route 95 SBL	Bridges	NA	07/01/93	NA	Bridge 59B Ex Plan #270-29	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Rte. 610 (Cardinal Drive) over Rte. 95	Bridges	NA	06/20/94	NA	Bridge 64 Ex Plan #265-75	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Rte. 95 HOV Lane over Neabsco Creek	Bridges	NA	07/01/94	NA	Bridge 63 Ex Plan #265-76	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Rte. 95 HOV Lane over Powells Creek	Bridges	NA	07/01/94	NA	Bridge 65 ex Plan #265-74	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Rte. 234 over Rte. 95	Bridges	NA	07/01/94	NA	Bridge 66 Ex Plan #266-67	VDOT	NA	Contains boring logs
Report	Environmental Conditions Status Report	Historic	NA	02/26/95	NA	vfn419-2	Quality Environmental Solutions, Inc.	VDOT	Report concerning 1995 Gasoline Spill I-95 On-Ramp

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Existing Plans	Proposed Bridge on Rte. 789 (Commerce Street) over I-95 /I-395	Bridges	NA	06/15/98	NA	Bridge 40 Ex Plan #278-71	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Ramp F-S over I-95 NB and SB, I-395 NB, HOV, Rte. 644 and Ramps SP-NE, OK-H, W-P and N-F	Bridges	NA	06/15/98	NA	Bridge 41 Ex Plan #278-72	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Ramp OK-H over I-95 SB	Bridges	NA	06/15/98	NA	Bridge 43 Ex Plan #278-62	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Ramp OK-H and I-95 NB over Route 644	Bridges	NA	06/15/98	NA	Bridge 43A Ex Plan #278-64	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Ramp OK-E over Ramps OK-S, F-S, H-S, I-95 and HOV	Bridges	NA	06/15/98	NA	Bridge 44 Ex Plan #278-61	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on Ramp OK-W over Ramps OK-S, F-S, H-S, I-95, HOV and I-395 NB	Bridges	NA	06/15/98	NA	Bridge 45 Ex Plan #278-60	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Ramp H-S over H.O.V. & I-95 S.B.L.	Bridges	NA	06/15/98	NA	Bridge 46 Ex Plan #264-55	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Ramp H-S over H.O.V. & I-95 S.B.L.	Bridges	NA	06/15/98	NA	Bridge 46 Ex Plan #264-55A	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Rte. 617 over Rte. 95	Bridges	NA	06/15/98	NA	Bridge 49 Ex Plan #264-52	VDOT	NA	Contains boring logs
Report	Preliminary Site Assessment Report Interstates I-95/I-395/I-495 (attachment)	Historic	NA	10/20/98	NA	VFN321-1	Marshall Miller & Associates	VDOT	attachment to report VFN321, contains summary of government records review, does not contain geotech specific data
Report	Preliminary Site Assessment Report Interstates I-95/I-395/I-495	Historic	NA	11/23/98	NA	VFN321	Marshall Miller & Associates	VDOT	Unsigned report, 154 pages
Report	Preliminary Site Assessment Report Interstates I-95/I-395/I-495	Historic	NA	11/23/98	NA	VFN321 Preliminary Site Assessment Report	Marshall Miller & Associates	VDOT	Signed report, 110 pages
Existing Plans	Proposed Middle Bridge on Rte. I-95 over Quantico Creek and Rte. 629	Bridges	NA	04/22/99	NA	Bridge 67 Ex Plan #280-08	VDOT	NA	Contains boring logs
Report	Commerce/Franconia PCE Investigation Springfield Interchange Project	Historic	NA	06/01/99	NA	VFN426 report	Marshall Miller & Associates	VDOT	Signed report, not complete
Report	Commerce/Franconia PCE Investigation Springfield Interchange Project	Historic	NA	06/04/99	NA	vfn426	Marshall Miller & Associates	VDOT	Unsigned report, appears complete
Existing Plans	Proposed Bridge Widening on Rte. 234 over Rte. 95	Bridges	NA	09/01/99	NA	Bridge 66 Ex Plan #266-67A	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Widening & Superstructure Replacement on Rte. 95 over Rte. 619	Bridges	NA	09/30/99	NA	Bridge 68 Ex Plan #149-01B	VDOT	NA	Contains boring logs
Report	Subsurface investigation Norfolk Southern and CSC Railways	Historic	NA	06/01/00	NA	VFN409 Subsurface Investigation	Marshall Miller & Associates	VDOT	
Report	Petroleum Contaminated Soil Disposal Springfield Interchange	Historic	NA	08/14/00	NA	VFN576 Report	Marshall Miller & Associates	VDOT	
Report	Preliminary Site Assessment Report Proposed Interstate 85/Route 7900 Interchange Improvement (Map 1)	Historic	NA	09/24/01	NA	VFN633 Map 1	Marshall Miller & Associates	VDOT	
Report	Preliminary Site Assessment Report Proposed Interstate 85/Route 7900 Interchange Improvement (Map 2)	Historic	NA	09/24/01	NA	VFN633 Map 2	Marshall Miller & Associates	VDOT	
Report	Preliminary Site Assessment Report Proposed Interstate 85/Route 7900 Interchange Improvement	Historic	NA	09/24/01	NA	VFN633 Preliminary Site Assessment Report	Marshall Miller & Associates	VDOT	

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Report	Preliminary Site Assessment Report Proposed Interstate 85/Route 7900 Interchange Improvement (Vicinity Map)	Historic	NA	09/24/01	NA	VFN633 VM	Marshall Miller & Associates	VDOT	
Report	Delineation and Management of Sulfidic Materials in Virginia Highway Corridors	Special	Corrosively	09/01/02	NA	Delineation and Mapping of Sulfidic Materials in Virginia Highway Corridors	Virginia Transportation Research Council	NA	Research document prepared by Zenah Omdorff and W. Lee Daniels
Existing Plans	Proposed Bridge on I-395 over Norfolk & Southern Railroad	Bridges	NA	03/27/03	NA	Bridge 32 Ex Plan #284-24	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge on I-395 SBL & HOV over I-495 WBL, HW-S, HS-W & E-SP Ramps	Bridges	NA	03/27/03	NA	Bridge 33 Ex Plan #284-22	VDOT	NA	Contains boring logs
Report	Preliminary Site Assessment Report Proposed Interstate 95/Route 7900 Interchange Improvement	Special	NA	06/27/03	NA	F0064	Marshall Miller & Associates	VDOT	Contains geologic, hydrologic, and floodplain, and environmental site data
Report	Preliminary Site Assessment Report Proposed Interstate 95 and Backlick Road Improvement	Special	NA	01/30/04	NA	F0095 Preliminary Site Assessment Report	Marshall Miller & Associates	VDOT	
Report	Subsurface Investigation Report Proposed Rt. 7900 and Route 617 Improvements	Special	NA	06/17/04	NA	F0083	Marshall Miller & Associates	VDOT	
Presentation	Landslide Issues in Virginia	Embankments	Construction	10/18/04	NA	Excerpt from Landslide Issues In Virginia	VDOT	NA	Presentation by John D. Lynch and David P. Shiells regarding landslides in Virginia including I-95 Ramp at Rt. 1 in Woodbridge and I-95 HOV Lanes at Neabsco Creek
VDOT Report	I-95/I-395 HOV Widening/Extension Washington D.C. to Stafford County Line Existing Data Report for Pavement Ratings and Subsurface Soils	Pavement	NA	05/25/05	NA	95_395 DC to Stafford Existing Data Report_Volume I of VI	VDOT	NA	
VDOT Report	I-95/I-395 HOV Widening/Extension Washington D.C. to Stafford County Line Existing Data Report for Pavement Ratings and Subsurface Soils	Pavement	NA	05/25/05	NA	95_395 DC to Stafford Existing Data Report_Volume II of VI	VDOT	NA	
VDOT Report	I-95/I-395 HOV Widening/Extension Washington D.C. to Stafford County Line Existing Data Report for Pavement Ratings and Subsurface Soils	Pavement	NA	05/25/05	NA	95_395 DC to Stafford Existing Data Report_Volume III of VI	VDOT	NA	
VDOT Report	I-95/I-395 HOV Widening/Extension Washington D.C. to Stafford County Line Existing Data Report for Pavement Ratings and Subsurface Soils	Pavement	NA	05/25/05	NA	95_395 DC to Stafford Existing Data Report_Volume IV of VI	VDOT	NA	
VDOT Report	I-95/I-395 HOV Widening/Extension Washington D.C. to Stafford County Line Existing Data Report for Pavement Ratings and Subsurface Soils	Pavement	NA	05/25/05	NA	95_395 DC to Stafford Existing Data Report_Volume V of VI	VDOT	NA	
VDOT Report	I-95/I-395 HOV Widening/Extension Washington D.C. to Stafford County Line Existing Data Report for Pavement Ratings and Subsurface Soils	Pavement	NA	05/25/05	NA	95_395 DC to Stafford Existing Data Report_Volume VI of VI	VDOT	NA	
Existing Plans	Proposed Bridge Widening on Rte. 95 NBL & SBL over Pohick Creek	Bridges	NA	02/05/07	NA	Bridge 52 Ex Plan #269-37A	VDOT	NA	Contains boring logs

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Existing Plans	Proposed Bridge Widening on Rte. 95 NBL & SBL over Rte. 642	Bridges	NA	02/05/07	NA	Bridge 53 Ex Plan #269-36A	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Widening on I-95 NBL over I-95 SBL to Rte 1 (Ramp C)	Bridges	NA	04/23/07	NA	Bridge 54 Ex Plan #264-54A	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge widening on I-95 NBL over Rte. 611 (Furnace Road)	Bridges	NA	04/23/07	NA	Bridge 56 Ex Plan #149-13D	VDOT	NA	Contains boring logs
Existing Plans	Proposed Bridge Widening I-95 SBL over Accotink Creek	Bridges	NA	07/23/07	NA	Bridge 50 Ex Plan #264-51A	VDOT	NA	Contains boring logs
Technical Requirement	Requirements for Preliminary Geotechnical Investigation, Preliminary Geotechnical Design and Minimum Pavement Sections for I-95/I-395 HOV/Bus/HOT Lanes	Requirements	Pavements	06/16/08	NA	Reqs for Prelim Geotech Investig and Min Pavement Sections for I-395 HOT Lanes	VDOT	NA	Superseded
DM-01	Foundation Recommendations for Bridge Nos. 52, 63, 65, 68, and 71	Bridges	NA	07/07/08	NA	2008_0707_HAI_DM1-CategoryIIBridges_Final	Haley & Aldrich	HNTB	Ref. foundation alternatives matrix <i>provided</i> on 6/19/08, not included in DM
DM-02	Foundation Recommendations for Bridge Nos. 29A, 52A, 69, 70, and 72	Bridges	NA	07/14/08	NA	2008_0714_HAI_DM2_Cat egoryIIBridges_Final	Haley & Aldrich	HNTB	Ref. foundation alternatives matrix <i>provided</i> on 6/19/08, not included in DM Also, ref. historic subsurface info for borings 69, 70, and 72
DM-03	Foundation Recommendations for Bridge Nos. 49A, 52B, 59A, and 67A	Bridges	NA	07/25/08	NA	4RG.03 Ref Matl-Geotech-Bridge Fdn Rec BR 49A,52B,59A,67A 2008-07-25	Haley & Aldrich	HNTB	
DM-04	Driven Pile/Drilled Shaft Load Test Recommendations	Construction	Testing	08/01/08	NA	H&A DM4 Testing Memo	Haley & Aldrich	HNTB	
DM-06	Recommendations for Embankment Construction	Embankments	NA	08/12/08	NA	2008_0812_HAI_DM6 Embankments-F	Haley & Aldrich	HNTB	
Summary Table	Pavement Boring Summary Table	Pavement	NA	08/13/08	NA	2008-0813-Pavement Core Summary	Haley & Aldrich	HNTB	
Summary Table	Summary of Analytical Testing for Sulfidic Soil	Special	Corrosively	08/18/08	NA	4RG.12 Ref Matl-Geotech-Sulfidic Soils 2008-08-14	Haley & Aldrich	HNTB	
Boring Location Plan	Preliminary Geotechnical Boring Location Plan	Boring Logs	NA	08/19/08	NA	2008-0819-HAI-BLP_PlanSet	Haley & Aldrich	HNTB	
Summary Table	Summary of Foundation Recommendations	Bridges	NA	08/19/08	NA	4RG.04 Ref Matl-Geotech-Bridge Fdn Rec BR16,26,64A,72A_Rev1 2008-08-19	Haley & Aldrich	HNTB	Provides foundation recommendations for Bridges No. 16, 26, 64A, and 72A
Summary Table	Summary of Laboratory Testing Results	Special	Laboratory Testing	08/19/08	NA	4RG.08 Ref Matl-Geotech Lab Results 2008-08-18	Haley & Aldrich	HNTB	
DM-07	Evaluation of Cut/Fill Test Borings and Unsuitable Materials	Embankments	Cut/Fill	08/20/08	NA	2008_0820_HAI_DM7 Material Reuse-F	Haley & Aldrich	HNTB	
Pavement Section Dwgs	Typically, Sections - Adjacent to Existing PCC with Asphalt Overlay Widening Using Flexible Pavement	Pavement	NA	08/20/08	NA	2008-0820-Typical Sections	Haley & Aldrich	HNTB	No geotech information <i>provided</i> , but contains typically pavement sections
Summary Table	Summary of Proposed Test Borings	Boring Locations	NA	08/20/08	NA	2008-0824-Boring Summary	Haley & Aldrich	HNTB	
Summary Table	Shoulder Analysis Summary Table	Pavement	NA	08/21/08	NA	2008-0821-HAI-ShoulderAnalysis	Haley & Aldrich	HNTB	

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Summary Table	Summary of Foundation Design Recommendations for New and Extended Culverts	Drainage	Culverts	08/21/08		4RG.10 Ref Matl-Geotech-Box Culverts Summary 2008-08-21	Haley & Aldrich	HNTB	
Boring Location Plan	Preliminary Geotechnical Boring Location Plan	Boring Logs	NA	08/25/08	File dated 8/19/08	2008-0825-HAI-BLP_PlanSet	Haley & Aldrich	HNTB	
Summary Table	Summary of Bridges with Associated H&A Borings and Plan Sheets	Bridges	NA	08/27/08	NA	1395 HOT Bridge and Dwg Summary	GEC	NA	
DM-08	Evaluation of Abutment Stability	Bridges	Abutments	08/28/08	DM-1, DM-2	2008_0828_HAI_DM8_Abu tment Stability	Haley & Aldrich	HNTB	Contains recommendations specific to Bridges 29A, 63, and 64A
DM-10	Foundation Recommendations for New and Extended Culverts	Drainage	Culverts	08/29/08	Summary Table Date 8/21/8	2008_0829_HAI_DM10_Cu lverts_Final	Haley & Aldrich	HNTB	
DM-11	Recommendations for Ground Improvement	Embankments	Ground Improvement	09/03/08	NA	2008_0903_HAI_DM11_Gr ound Improvement F	Haley & Aldrich	HNTB	
DM-09	Foundation Recommendations for Bridges Nos. 16,18, 24, 26, 47, 64A, and 72A	Bridges	NA	09/04/08	NA	2008_0904_HAI_DM9_Brid ge Recommendations-F	Haley & Aldrich	HNTB	Ref. foundation alternatives matrix provided on 6/19/08 and 7/8/8, not included in DM
DM-12	Evaluation of Presence of Acid Sulfate Soils	Special	Corrosively	09/23/08	Summary Table Dated 8/18/08	2008_0923_HAI_DM12_Ac idSulfateSoils	Haley & Aldrich	HNTB	
Review Comments	Geotechnical, Design Memorandums 4, 5, & 6 and Boring Logs	Structures & Bridges	NA	09/23/08	NA	1-95-395 RFE(3) Design Memo 4,5,6 & Boring Logs	GEC	FTU	Contains geotech comments
DM-13	Placement of Fill Above Existing Culverts	Drainage	Culverts	11/10/08	NA	2008_1110_HAI_DM13_Ex istingCulverts	Haley & Aldrich	HNTB	
DM-03	Foundation Recommendations for Bridge Nos. 49A, 52B, 59A, and 67A	Bridges	NA	03/03/09	NA	2009_0303_HAI_DM3_Cat egorylIIIBridges F Rev1	Haley & Aldrich	HNTB	
DM-14	Comparison of LRFD and LFD Driven Pile Recommendations	Special	Code Compliance	03/05/09	NA	2009_0305_HAI_DM14_LR FDvLFD Comparison FINAL	Haley & Aldrich	HNTB	Provides recommendations for bridges 68 and 72
DM-15	Pile Driving Noise Emission Reduction Recommendations	Construction	Noise	03/06/09	NA	2009_0306_HAI_DM15_Pil e Driving Noise Reduction-F	Haley & Aldrich	HNTB	
DM-16	Foundation Recommendations for Bridge Nos. 29A, 49A, 52A, 59A, 67A, and 72A	Bridges	NA	03/11/09	DM-2, DM-3, DM-9	2009_0311_HAI_DM16_Fl yovers-LRFD F	Haley & Aldrich	HNTB	
RFI-III DM-04	Culvert Inventory & Condition Matrix	Drainage	NA	03/13/09	NA	2DM.04 HNTB Design Memo 04-Culvert Repairs 09-03-13	HNTB	Fluor	Discussed the presence of soft soil below bottom of culvert
DM-18	Preliminary Foundation Recommendations for Overhead Signs and Toll Gantry Structures	Overhead Signs	NA	03/16/09	NA	2009_0316_HAI_DM18_Ov erhead Sign Recommendations F	Haley & Aldrich	HNTB	Ref. foundation alt. matrices transmitted on 2/25/9
DM-17	Additions to Recommendations for Retaining Walls	Retaining Walls	NA	03/17/09	DM-5	2009_0317_HAI_DM17_Re tainingWalls Rev1	Haley & Aldrich	HNTB	
DM-05	Recommendations for Retaining Walls	RW	NA	03/18/09	NA	2009_0318_HAI_DM5_Ret ainingWalls Rev2	Haley & Aldrich	HNTB	
Summary Table	Retaining Wall Index	Retaining Walls	NA	03/18/09	NA	RFE(3)_20090320 Retaining Wall Index	HNTB	NA	
Boring Logs	Boring Logs: Retaining Walls, Pavements, Cut-Fill-Embankments, Ground Improvement, Culverts, Bridges	Boring Logs	NA	03/19/09	NA	2009_0319_HAI_Boring Logs	Haley & Aldrich	NA	
DM-04	Driven Pile/Drilled Shaft Load Test Recommendations	Construction	Testing	03/19/09	DM-4	2009_0319_HAI_DM4_Lo ad Test Rev2	Haley & Aldrich	HNTB	

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Summary Table	Summary of Laboratory Testing Results	Special	Laboratory Testing	03/19/09	NA	2009-0319-LabResults	Haley & Aldrich	HNTB	
DM-19	Construction-Phase Instrumentation Requirements	Construction	Instrumentation	03/20/09	NA	2009_0320_HAI_DM19-Instrumentation-F	Haley & Aldrich	HNTB	
Scour Report	Preliminary Scour Analyses for Proposed Bridge No. 52 Over Pohick Creek	Scour	NA	03/20/09	NA	Br Scour BR-52 Pohick	HNTB	Fluor	Discusses soil conditions at bridge
Scour Report	Preliminary Scour Analyses for Proposed Bridge No. 60 over Neabsco Creek	Scour	NA	03/20/09	NA	Br Scour BR-52 Pohick	HNTB	Fluor	Discusses soil conditions at bridge
Meeting Documentation	Overview of RFI Plans: Structures & Geotech Meeting Minutes (working file with edits)	Special	NA	03/24/09	File Dated 3/26/09	09-03-24 Fluor S&B Geotech Risk Assessment	HNTB	FTU	Many geotechnical related issues and documents discussed during meeting
E-mail	I-95/395 General Estimating Information	Estimating	NA	03/25/09	NA	Re_I-95_395 General Estimating Information (tracked email)	Flour	GEC	Contains information regarding acidic soils, piling, and more.
Meeting Documentation	Overview of RFI Plans: Structures & Geotech Meeting Minutes	Special	NA	03/26/09	NA	09-03-26 SB Geotech RFE Plan overview	HNTB	FTU	Many geotechnical related issues and documents discussed during meeting
Review Comments	Bridge No. 29a, Flyover THN	Structures & Bridges	NA	03/26/09	NA	I-95-395 RFE(3) Bridge 29A CDF	GEC	FTU	Contains geotech comments
Review Comments	Bridge No. 47, Franconia Springfield Parkway	Structures & Bridges	NA	03/26/09	NA	I-95-395 RFE(3) Bridge 47 CDF	GEC	FTU	Contains geotech comments
Review Comments	Bridge No. 49a, Flyover FxEH over I-95 SB	Structures & Bridges	NA	03/26/09	NA	I-95-395 RFE(3) Bridge 49a CDF	GEC	FTU	Contains geotech comments
Review Comments	Bridge No. 63, HOT over Neabsco Creek	Structures & Bridges	NA	03/26/09	NA	I-95-395 RFE(3) Bridge 63 CDF	GEC	FTU	Contains geotech comments
Review Comments	Bridge No. 65, HOT over Powells Creek	Structures & Bridges	NA	03/26/09	NA	I-95-395 RFE(3) Bridge 65 CDF	GEC	FTU	Contains geotech comments
Review Comments	Bridge No. 67a, Flyover JHS over I-95 SB	Structures & Bridges	NA	03/26/09	NA	I-95-395 RFE(3) Bridge 67a CDF	GEC	FTU	Contains geotech comments
Review Comments	Bridge No. 68, HOT over Joplin Road	Structures & Bridges	NA	03/26/09	NA	I-95-395 RFE(3) Bridge 68 CDF	GEC	FTU	Contains geotech comments
Review Comments	Bridge No. 69, HOT over Russell Road	Structures & Bridges	NA	03/26/09	NA	I-95-395 RFE(3) Bridge 69 CDF	GEC	FTU	Contains geotech comments
Review Comments	Bridge No. 70, HOT over Chopawamsic Creek	Structures & Bridges	NA	03/26/09	NA	I-95-395 RFE(3) Bridge 70 CDF	GEC	FTU	Contains geotech comments
Review Comments	Bridge No. 71, Telegraph Road over I-95	Structures & Bridges	NA	03/26/09	NA	I-95-395 RFE(3) Bridge 71 CDF	GEC	FTU	Contains geotech comments
Review Comments	Bridge No. 72, HOT over Aquia Creek	Structures & Bridges	NA	03/26/09	NA	I-95-395 RFE(3) Bridge 72 CDF	GEC	FTU	Contains geotech comments
Review Comments	Bridge No. 72a, Flyover GHS over I-95 SB	Structures & Bridges	NA	03/26/09	NA	I-95-395 RFE(3) Bridge 72a CDF	GEC	FTU	Contains geotech comments
E-mail	I-95/395 Estimating Firm Questions	Special	NA	03/27/09	NA	FW_I-95_395 Estimating Firm Questions	FTU	GEC	Discusses soil stabilization
E-mail	Meeting Minutes: 03/24 Geotech/Structures	Special		03/27/09	NA	FW_Meeting Minutes_03_24 Geotech_Structures	FTU	GEC	Communication referring to a document for geotechnical risk areas

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Summary Table	I-95-395 HOT Lanes Questions & Clarifications	Special	NA	04/15/09	NA	I-95-395 HOT Lanes Questions&Clarifications1	VDOT	NA	Questions answered by VDOT regarding technical requirements, contains soil information, contains 38 question and not all answered, F. Abreu/GEC changed name to distinguish from next file
Calculations	Design OF GP Lane Widening, New HOV Lanes, and new Ramps	Pavement		04/16/09	NA	2009-0416-HAI-Pavement Design B	Haley & Aldrich	HNTB	Provides subgrade CBR values
Summary Table	I-95-395 HOT Lanes Questions & Clarifications	Special	NA	04/28/09	File Dated 4/15/09	I-95-395 HOT Lanes Questions&Clarifications	VDOT	NA	Questions answered by VDOT regarding technical requirements, contains soil information
VE Report	Value Engineering Study Report	Construction	NA	05/15/09	NA	Final VE Study Report for I-95 & I-395 - 5 15 2009	HDR	Fluor	Refers to areas with soft soils
Report	Commerce/Franconia PCE Investigation Springfield Interchange Project (attachments)	Historic	NA	06/04/09	NA	vfn426-Attachments	Marshall Miller & Associates	VDOT	Originally 13 individual files on the server, F. Abreu/CH combined the files into this one file
E-mail	95/395: Culvert Strengthening	Drainage	Culverts	08/18/10	RFI-III DM-04	2010-08-18 Culvert Strengthening	Flour	NA	Discusses possible differential settlement in areas of poor soils
E-mail	Foundation Recommendations for Overhead Signs and Gantry Structures	Signs	NA	09/17/10	NA	Email-Foundation Recommendation for OH Signs	Flour	GEC	Contains foundation recommendations for overhead signs
Pavement Core Work Plan	Pavement Core Work Plan [Segments 2-4, Option 2F]	Pavement	NA	04/07/11	NA	195 Pavement Core Work Plan Seg 2-4	Flour	VDOT	
Core Logs	Core Logs by TRC	Pavement	Logs	04/16/11	NA	roadway core logs_final	TRC Engineers, Inc.	NA	Correlates borings with structures
Boring Logs	Soil Boring Logs by TRC	Pavement	Logs	04/17/11	NA	spt boring logs	TRC Engineers, Inc.	NA	
Meeting Documentation	Meeting Notes from Structural Coordination Meeting	Retaining Walls	NA	04/19/11	NA	Final MOM Structures Mtg. 110419 (w attach)	HNTB	GEC	Discusses the proposed methods to connect new MSE walls to existing walls for ramp widening
Technical Requirement	VDOT Requirements for Geotechnical Investigations, Geotechnical Design and Minimum Pavement Sections for I-95/I-395 HOV/HOT Lanes	Requirements	Pavements	04/26/11	File dated 06/16/08	Requirements for geotechnical Investigations, and Minimum Pavement Sections for I-95 HOV HOT Lanes 4-26-11	VDOT	NA	Superseded
Retaining Wall Drawings	Retaining Wall Profiles	Retaining Walls	NA	05/31/11	DM-21	2011-08-15 20THN Walls 1535-1,-2,-3, 1556	Haley & Aldrich	HNTB	
Test Report	FWD Testing and Data Analysis for I-95 HOV Lanes near Alexandria, VA	Pavement	Testing	06/01/11	NA	ARA_Report_Draft_I-95_HOV_06012011	Applied Research Associates, Inc.	TRC Engineers, Inc.	
Test Report	FWD Testing and Data Analysis for I-95 HOV Lanes near Alexandria, VA	Pavement	Testing	06/01/11	NA	Copy of Appendix A - FWD Data	Applied Research Associates, Inc.	TRC Engineers, Inc.	
Design Information	Supplemental Preliminary Design Information	Special	Requirements	06/02/11	NA	11.1 Seg 1 Supplemental Prelim Design Information 11-06-05	HDR	NA	General assumptions and preliminary design information for Seg 1 used for cost estimate. Contains geotechnical information.

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Review Comments	I-95 HOT Lanes Project - Geotechnical Bores Work Plan (Segment 1, May 23, 2011)	Boring Locations	NA	06/17/11	NA	GeotechnicalBoresWorkPlan_Seg1_20110617	GEC	FTU	Review comment responses not available, awaiting the revised boring location plan, does not contain specific subsurface data
Summary Table	Summary of Preliminary Retaining Wall Recommendations	Retaining Walls	NA	06/28/11	NA	2011-0628-HAI-RW Table I-D1	Haley & Aldrich	HNTB	Superseded by DM-21, Table is watermarked "Preliminary"
Summary Table	Summary of Supplemental Driven Pile Foundation Recommendations	Bridges	NA	06/30/11	NA	2011_0630_HAI_Bridge Recommendation Summary_FINAL	Haley & Aldrich	HNTB	Superseded by DM-20, Table is watermarked "Preliminary"
Summary Table	Summary of Pavement Cores	Pavement	NA	06/30/11	NA	2011-0624-PavementCoreSummary-D	Haley & Aldrich	HNTB	Superseded by DM-22, Table is watermarked "Preliminary"
Summary Table	TABLE I - SUMMARY OF SUPPLEMENTAL DRIVEN PILE FOUNDATION RECOMMENDATIONS TABLE II - SUMMARY OF SUPPLEMENTAL DRILLED SHAFT FOUNDATION RECOMMENDATIONS TABLE III - SUMMARY OF BRIDGE FOUNDATION LOADS	Bridges	NA	06/30/11	NA	4RG.20 Geotech-Bridge Recommendation Summary_FINAL 2011-07-08	Haley & Aldrich	HNTB	Superseded by DM-20, Tables are watermarked "Preliminary"
Drawing	Preliminary Ground Improvement Plan	Retaining Walls	Ground Improvement	07/08/11	NA	2011-0708-HAI-RW1535-1 Ground Improvement-F	Haley & Aldrich	HNTB	
Drawing	Preliminary Ground Improvement Plan	Retaining Walls	Ground Improvement	07/08/11	NA	2011-0708-HAI-RW1535-2 Ground Improvement-F	Haley & Aldrich	HNTB	
Summary Table	Pavement Core Summary	Pavement	NA	07/11/11	NA	PavementCoresSummary_H & A	Haley & Aldrich	NA	Does not contain geotech subsurface conditions, but does contain summary of cores on the project
Technical Requirement	VDOT Requirements for Geotechnical Investigations, Geotechnical Design and Minimum Pavement Sections for I-95/I-395 HOV/HOT Lanes	Requirements	Pavements	07/18/11	File dated 04/26/11	Requirements for Geotechnical Investigations and Minimum Pavement Sections for I-95 HOV HOT Lanes 7-18-11	VDOT	NA	
DM-20	Preliminary Bridge Foundation Recommendations	Bridges	NA	07/20/11	DM-1, DM-2, DM-3, DM-9, DM-14, DM-16	2011-0720-HAI-DM20 Bridges-Rev1	Haley & Aldrich	HNTB	
DM-21	Preliminary Foundation Recommendations for Retaining Walls	Retaining Walls	NA	07/20/11	DM-5	2011-0720-HAI-DM21 RetainingWalls-D2	Haley & Aldrich	HNTB	Watermarked "Draft"
Summary Table	Summary of Preliminary Retaining Wall Recommendations Case 1 - Combo Wall Adjacent to Ramp THN	Retaining Walls	NA	07/28/11	NA	2011-0728-HAI-Turkeycock Wall Summary_D2	Haley & Aldrich	HNTB	
DM-22	Preliminary Recommendations for Pavement Design	Pavement	NA	08/03/11	DM-5, DM-8, DM-17	2011-0803-HAI-DM22 Pavement-F	Haley & Aldrich	HNTB	
DM-04	Preliminary Deep Foundation Load Test Recommendations	Construction	Testing	08/09/11	DM-4	2011-08-09-HAI-DM4-Load Test-Rev3 F	Haley & Aldrich	HNTB	
Review Comments	Roadway, Bridge, and Retaining Wall Plans - Section 2, 3, & 4	Structures & Bridges, Roadway, Drainage	NA	08/09/11	NA	I95_HOT_HOV_Comments_Log_Section_2-3-4_8-9-2011	GEC	FTU	No geotechnical specific comments

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Review Comments	Roadway, Bridge, and Retaining Wall Plans - Section 1	Structures & Bridges, Roadway, Drainage	NA	08/09/11	NA	I95_HOT_HOV_Comments_Log_Section-1_8-9-2011	GEC	FTU	No geotechnical specific comments
DM-21	Preliminary Foundation Recommendations for Retaining Walls	Retaining Walls	NA	08/12/11	DM-21	2011-08-12-HAI-DM21 RetainingWalls-F	Haley & Aldrich	HNTB	
Review Comments	Roadway, Bridge, and Retaining Wall Plans - Section 1 - Responses to Review Comments	Structures & Bridges	NA	08/12/11	Review Comments	HDR_Updated_Response_to_S&B_I95_HOT_HOV_Comments_Log_Sectio	GEC	FTU	No comments specific to subsurface conditions
Boring Logs	Pavement & Subgrade Boring Logs	Boring Logs	NA	08/16/11	NA	Boring Logs Binder	VDOT	FTU	Boring logs taken July - Aug 2011
EA	Environmental Assessment	Environmental	NA	09/08/11	NA	110908_I-95HOTLanesEA_Approved byFHWA	VDOT/FHWA	Public	Contains information regarding sulfate acidic soil and rock
Technical Report	Asset Evaluation I-95 HOV to HOT Conversation - DRAFT	Pavement	Structures and Bridges	09/30/11	NA	I-95 Draft Asset Evaluation Report (9_30_11) vtx	TRC Engineers, Inc.	Transurban	**Review comments provided to TRC from GEC and comments have not been addressed**
Review Comments	I-95 HOT HOV Lanes Project: Asset Evaluation Technical Report	Pavement	Roadway	10/25/11	NA	I95_HOT_Asset_Report_2011	GEC	FTU	No geotechnical specific comments
Geotechnical Data Report	DRAFT Geotechnical Data Report Segment 1 - Zone 1.1	Geotechnical Data Report	NA	02/14/12	NA	Draft GDR - Segment 1 - 1 Zone 1.1	HDR	Fluor Enterprises & VDOT	Draft Report summarizes subsurface exploration and laboratory testing programs.
Technical Memorandum	Memorandum No. TR-003; I-95 Express Lanes Project - Determination of Minimum Number of Subsurface Explorations	Boring Locations	Requirements	03/02/12	NA	2012-03-02-TR003_Boring Spacing	HDR and HNTB	NA	Meeting held on 3/16/12 with VDOT to discuss proposed changes for MOI minimum boring requirements
Boring Location Plan	Late Stage Explorations for Sound Barrier Walls and SWM Ponds	Boring Locations	NA	03/05/12	NA	120302-Late_Stage_Geotech_Test_Boring_Work_Plan[1]	HDR	Fluor	Proposes subsurface exploration for late stage geotechnical investigation
Boring Location Plan (existing)	Existing Boring Location Roll Plots Seg. 1-4	Boring Locations	NA	03/05/12	NA	Existing boring Location Roll Plots-Segments 1-4 03_05_2012	Haley & Aldrich	NA	
Boring Logs	Boring Logs from 2008 and 2011	Boring Logs	NA	03/07/12	NA	Boring Logs (2008 and 2011)_2012-0307 Rev0	Haley & Aldrich	NA	Boring logs for borings performed between 2008 and 2011
Laboratory Test Results	Summary of Geotechnical Laboratory Testing (for Test Borings Performed in 2008 and 2011)	Geotechnical Laboratory Test Results	NA	03/12/12	NA	Laboratory Test Results (2008 and 2011)_Rev0	Haley & Aldrich	HNTB	
Summary Table	Summary of Test Borings	Boring Locations	NA	03/14/12	NA	2012-0314-Proposed Test Boring Summary	Haley & Aldrich	HNTB	Meeting held on 3/16/12 with VDOT to discuss proposed changes for MOI minimum boring requirements
Boring Location Plan	Post RFI III - Option 2F - Construction Section 2, 3, & 4	Boring Locations	NA	03/14/12	NA	Roadway Proposed BLP Segment 2_2012-0314	HNTB	Fluor	Meeting held on 3/16/12 with VDOT to discuss proposed changes for MOI minimum boring requirements

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Boring Location Plan	Post RFI III - Option 2F - Construction Section 2, 3, & 4	Boring Locations	NA	03/14/12	NA	Roadway Proposed BLP Segment 4_2012-0314	HNTB	Fluor	Meeting held on 3/16/12 with VDOT to discuss proposed changes for MOI minimum boring requirements
Boring Location Plan	Post RFI III - Option 2F - Construction Section 2, 3, & 4	Boring Locations	NA	03/14/12	NA	Roadway Proposed BLP Segment3_2012-0314	HNTB	Fluor	Meeting held on 3/16/12 with VDOT to discuss proposed changes for MOI minimum boring requirements
Geotechnical Data Report	DRAFT Geotechnical Data Report Segment 1 - Zone 1.2	Geotechnical Data Report	NA	03/26/12	NA	Draft GDR - Segment 1 - 1 Zone 1.2	HDR	Fluor Enterprises & VDOT	Summarizes subsurface exploration and laboratory testing programs.
Pavement Core Logs	Pavement core logs	Core Logs	NA	03/26/12	NA	Pavement Core Logs (2008 and 2011) 2012-0326 Rev0	Haley & Aldrich	HNTB	
Summary Table	Summary of 2008 and 2011 Test Borings	Boring Logs	NA	04/06/12	NA	2012-0406-HAI-Summary of 2008 and 2011 Borings-F	Haley & Aldrich	NA	Provides ground surface elevation, soil depth, rock core length, total boring depth, and groundwater elevations for borings completed between 2008 and 2011
Boring Location Plan (proposed)	Proposed Boring Location Plan - Seg 2	Boring Locations	NA	04/11/12	NA	Proposed Boring Location Plan - Segment 2 (4-11-12)	Haley & Aldrich	HNTB	
Boring Location Plan (proposed)	Proposed Boring Location Plan - Seg 3N	Boring Locations	NA	04/11/12	NA	Proposed Boring Location Plan - Segment 3N (4-11-12)	Haley & Aldrich	HNTB	
Boring Location Plan (proposed)	Proposed Boring Location Plan - Seg 3S	Boring Locations	NA	04/11/12	NA	Proposed Boring Location Plan - Segment 3S (4-11-12)	Haley & Aldrich	HNTB	
Boring Location Plan (proposed)	Proposed Boring Location Plan - Seg 4	Boring Locations	NA	04/11/12	NA	Proposed Boring Location Plan - Segment 4 (4-11-12)	Haley & Aldrich	HNTB	
Geotechnical Data Report	DRAFT Geotechnical Data Report Segment 1 - Zone 1.3	Geotechnical Data Report	NA	04/16/12	NA	Draft GDR - Segment 1 - 1 Zone 1.3	HDR	Fluor Enterprises & VDOT	Summarizes subsurface exploration and laboratory testing programs.
Technical Memorandum	Memorandum No. TR-004; I-95 Express Lanes Project - New and Widened Pavement	Pavement	Requirements	04/19/12	NA	2012-04-19_TR-004_New and Widened Pavement.Rev1	HDR and HNTB	NA	Memorandum provides a summary of approach for designing new and widened pavement. VDOT's concurrence is required.
DM 01-22	Combined file with 22 Design Memorandums	Design Memorandum	NA	04/23/12	DM-21	Design Memoranda 1 - 22_Combined	Haley & Aldrich	HNTB	Only DM 21 has been updated from earlier version
Summary Table	Summary of Existing (2008 and 2011) and Proposed Test Borings	Boring Logs	NA	04/23/12	NA	Test Boring Summary (Existing and Proposed) 2012_0423	NA	NA	Some of the borings identified in table are listed as "Not Complete"
Boring Location Plan	Pavement & Subgrade Boring Location Plan	Boring Locations	NA	NA	NA	Boring Location Plans	VDOT	FTU	Boring location plans for borings performed July - Aug 2011
Report	Geotechnical Data Report for 0095-969-991, C501	Pavement	Soundwall	1/26/16	NA	I-95 Express Lanes Southern Extension GDR 01-26-16	VDOT	NA	First Amendment STE
Environmental Report	Interstate 395 Express Lanes Northern Extension Environmental Assessment September 2016	Environmental	N/A	09/2016	N/A	01.02.18 I-395 Environmental Assessment + Errata (September 2016)	VDOT	FHWA	Environmental Assessment Report 395 Express Lanes

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Geotechnical Engineering Report	Geotechnical Report Preliminary Draft Emergency Services for Retaining Wall Failure at I-395 Southbound King Street Exit Ramp, Arlington	Retaining Wall	N/A	05/14	N/A	01.02.28 DRAFT GER_I-395 Wall Failure_Issued 052914	Parsons Brinckerhoff	VDOT	I-395 Southbound King Street Exit Ramp Geotechnical Report For Information Only
Plans	I-395 King Street 1965 As-Built Retaining Walls Plans	Retaining Wall	N/A	1965	N/A	01.02.28 1965 As-Built Retaining Walls - Combined	HNTB	VDOT	Original I-395 King Street Retaining Wall Plans For Information Only
Plans	I-395 King Street 1965 Proposed Retaining Wall Repairs	Retaining Wall	N/A	08/14	N/A	01.02.28 2015 Sealed Plans - Combined	Parsons Brinckerhoff	VDOT	Proposed retaining wall repair plans and drawings for King Street at 395 For Information Only
Plans	Design-Build Project RFP Conceptual Plan Sheets 395 Express Lanes	Roadway	N/A	7/18/16	N/A	02.02.01.01 395TR_Attach_1-00a_App-A_Plans_2016-07-18	HDR	Transurban	RFP 395 Conceptual Plans
Plans	395 Conceptual Plans Appendix A to Attachment 1.0a - Plan Revision 1	Bridge	N/A	9/28/16	N/A	02.02.01.01.01 395TR-Attach_1-00a_App-A_395_Plans_PlanRevision 1_2016-09-28	HDR	VDOT	Plan Revisions 1 to the 395 RFP Conceptual Plans Change to Bridge Design
Plans	395 Conceptual Plans Appendix A to Attachment 1.0a – Plan Revision 2	Median Barrier	N/A	10/20/16	N/A	02.02.01.01.02 395TR-Attach_1-00a_App-A_395_Plans_PlanRevision 2_2016-10-20	HDR	Transurban	Change to median barrier and conduit design for the TTMS
Plans	395 RFP Conceptual Cross Sections	Cross Sections	N/A	7/18/16	N/A	02.02.01.02 395TR_Attach_1-00a_App-A_Cross_Sections_2016-07-18	HDR	Transurban	395 Express Lanes conceptual cross sections
Geotechnical Engineering Report	Geotechnical Engineering Data Report for 395 Express Lanes Preliminary Design RFP Conceptual Plans Arlington County, Fairfax County & City of Alexandria, VA	Geotechnical Data Report	N/A	9/22/16	N/A	02.11.01 395TR-Attach_3-04a-Rev1_2016-09-22	HDR	Transurban	395 Express Lanes geotechnical report based on conceptual plans
Report	Condition Assessment Volume 1 Pavement Condition Assessment Summary Report	Pavement	N/A	6/3/16	N/A	02.15.01 395TR-Attach_3-08_Rev0_2016-08-10	HDR	Transurban	Report <i>provided</i> existing pavement condition, pavement thickness, and inventory or existing joint condition
Report	Report on Retaining Walls RW-1A, RW-18 and RW-8 Southbound I-395 Additional Through Lane Fairfax to Arlington County, Virginia Preliminary Design (30%)	Retaining Walls	N/A	2/4/15	N/A	01.03.02 DEW Retaining_Walls_Report-F_2015_Feb	Haley & Aldrich	HNTB	This Draft report originally submitted in February 2015, has NOT been updated to reflect project design changes that have occurred since the original submittal date. For Information Only

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Report	Report on Evaluation of Existing Culverts Southbound I-395 Additional Through Lane Fairfax to Arlington County, Virginia Preliminary Design (30%)	Culverts	N/A	5/11/15	N/A	01.03.03 DEW_Culvert_Reort-D_2015_05_11	Haley & Aldrich	HNTB	This Draft report originally submitted in May 2015, has NOT been updated to reflect project design changes that have occurred since the original submittal date. For Information Only
Report	Report On Retaining Walls RW-2, RW-3A, RW-3B, RW-4, RW-5, RW-6, RW-7, RW-9 and RW-10 Southbound I-395 Additional Through Lane Fairfax to Arlington County, Virginia Preliminary Design (30%)	Retaining Walls	N/A	6/22/15	N/A	01.03.04 DEW_MSE_and_P&P_Wall_ReportD_2015_06-22	Haley & Aldrich	HNTB	This Draft report originally submitted in June 2015, has NOT been updated to reflect project design changes that have occurred since the original submittal date. For Information Only
Report	Drainage Design Report I-395 SB Additional Through Lane Duke Street to Edsall Road Project # 0395-029-015, P-101, C-105 UPC # 103316	Drainage	N/A	02/2015	N/A	01.03.05 DEW_Drainage_Design_Report_2015_Feb	HNTB	VDOT	This report, originally submitted in February 2015, has NOT been updated to reflect project design changes that have occurred since the original submittal date. For Information Only
Report	Adequacy of Outfalls Report I-395 SB Additional Through Lane Duke Street to Edsall Road	Outfalls	N/A	02/2015	N/A	01.03.06 DEW_Outfall_Analysis_Report_2015_Feb	ALA HNTB	VDOT	This report, originally submitted in February 2015, has NOT been updated to reflect project design changes that have occurred since the original submittal date. For Information Only
Report	Stormwater Management Design Report I-395 SB Additional Through Lane Duke Street to Edsall Road Project # 0395-029-015, P-101, C-501 UPC # 103316	Stormwater Management	N/A	02/2015	N/A	01.03.07 DEW_SWM_Report_2015_Feb	HNTB	VDOT	This report, originally submitted in February 2015, has NOT been updated to reflect project design changes that have occurred since the original submittal date. For Information Only
Report	VDOT Bridge Inspection Report State Bridge 1817 – Duke Street over I-395	Bridge	N/A	05/16	N/A	01.03.19 Duke St over I-395 Info	Volkert	VDOT	Bridge inspection report for Duke St over I-395; includes foundation information For Information Only
Report	VDOT Bridge Inspection Report State Bridge 2160 – Edsall Flyover Ramp over I-395	Bridge	N/A	05/15	N/A	01.03.19 Edsall Rd flyover to NB I-395 Info	Wallace Montgomery	VDOT	Bridge inspection report for Edsall flyover ramp over I-395; includes foundation information For Information Only

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Report	VDOT Bridge Inspection Report State Bridge 6240 – Edsall over I-395	Bridge	N/A	12/14	N/A	01.03.19 Edsall Rd over I-395 Info	Volkert	VDOT	Bridge inspection report for Edsall over I-395; includes foundation information. For Information Only
Plans	RFP Conceptual Plans Fairfax County & City of Alexandria I-395 SB Additional Through Lane	Roadway	N/A	7/18/16	N/A	02.03.01.01 395TR_Attach_1-00b_App-A_DEW_Plans_2016-07-18	HNTB	VDOT	Plans contain typical roadway sections.
Geotechnical Data Report	I-395 SB Additional Through Lane Fairfax County & City of Alexandria, Virginia Geotechnical Engineering Data Report Project No. 0395-029-015, C501 UPC No. 103316	Geotechnical Data Report	N/A	7/6/16	N/A	02.03.01.02 395TR_Attach_1-00b_App-B_DEW_GDR_2016_07_06	VDOT	HNTB	Report presents results of preliminary subsurface exploration performed by VDOT to prospective design build teams
Report	Geotechnical Data Report for 0395-100-722,C501,B684 to B687	Geotechnical Data Report	NA	5/25/2012	NA	I-395 HOV Ramp at Seminary Road	VDOT	NA	Report developed by VDOT for preliminary design contained in RFP document For Information Only
Report	Final Geotechnical Engineering Report for 0395-100-722/736	Roadways	Bridges	10/22/2014	NA	I-395 HOV Ramp and I-395 Northbound Auxiliary Lane Extension at Seminary Road	Schnabel	Archer Western & VDOT	Report developed for final design For Information Only
Plans	I-395 HOV Ramp and I-395 Northbound Auxiliary Lane Extension	Roadway	Soundwall	07/14/2014	N/A	I-395 HOV Ramp and I-395 Northbound Auxiliary Lane Extension	Parsons Transport Group	Archer Western & VDOT	I-395 HOV and NB Ramp Project Roadway Plans and Drainage Drawings For Information Only
Plans	Bridge 684 (Seminary Road over I-395)	Bridge	NA	07/14/2014	N/A	Bridge 684	Parsons Transport Group	Archer Western & VDOT	Contains boring logs For Information Only
Plans	Bridge 685 (Rte. 395 over Sanger Ave)	Bridge	NA	07/14/2014	N/A	Bridge 685	Parsons Transport Group	Archer Western & VDOT	Contains boring logs For Information Only
Plans	Bridge 686 (Pedestrian Bridge over I-395)	Bridge	NA	07/11/2014	N/A	Bridge 686	Parsons Transport Group	Archer Western & VDOT	Contains boring logs For Information Only
Plans	Bridge 687 (I-395 HOV Ramp to Seminary Road)	Bridge	NA	07/14/2014	N/A	Bridge 687	Parsons Transport Group	Archer Western & VDOT	Contains boring logs For Information Only
Plans	Retaining Wall on I-395 HOV Ramp to Seminary Road	Retaining Wall	NA	07/14/2014	N/A	I-395 HOV Ramp to Seminary Road Retaining Wall	Parsons Transport Group	Archer Western & VDOT	Contains boring logs For Information Only
Report	Southbound Noise Barrier 1 and 2, I-395 HOV Ramp and I-395 Northbound Auxiliary Lane Extension	Geotechnical	N/A	05/25/2012	N/A	Geotechnical Engineering Report	Schnabel	VDOT	For Information Only
Report	Seminary Road Drainage Report	Drainage	N/A	11/2013	03/2014	2014-04-14-Drainage Report-I-395-Signed	Endesco	VDOT	Drainage Report For Information Only
Report	I-395 HOV Ramp at Seminary Road with I-395 NB Auxiliary Lane Extension	Drainage	N/A	11/2013	03/2014	2014-04-14_I395 MS-19 Report-Signed	Endesco	VDOT	MS-19 Outfall Adequacy Assessment and SWM Analysis For Information Only
Report	Bridge Report Interim Fracture Critical I-395 NBL and HOV over Route 27 NBL and South Joyce Street	Bridge	N/A	02/2016	N/A	01.02.22 Bridge Insp I-395 NB GP and HOV over Joyce St Info	Volkert	VDOT	Bridge Inspection Report for I-395 over Route 27 For Information Only

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Report	Bridge Report Regular Inspection I-395 Over West Braddock Road	Bridge	N/A	04/2015	N/A	01.02.22 Bridge Insp I-395 over Braddock Rd Info	Wallace Montgomery	VDOT	Bridge Inspection Report for I-395 over Braddock For Information Only
Report	Bridge Inspection; Structure Inspection Sanger Ave and Shirley Memorial Highway	Bridge	N/A	5/12/16	N/A	01.02.22 Bridge Insp I-395 over Sanger Info	VDOT	VDOT	Bridge Inspection Report Sanger and I-395 For Information Only
Geotechnical Data Report	Preliminary Report of Subsurface Exploration and Geotechnical Engineering Analysis ECS Project No. 01:20149-12 TO5-Reconfigure South Parking Infrastructure Pentagon, Arlington, Virginia	Geotechnical Data Report	N/A	4/6/16	N/A	01.04.03 ECS Geotech Report South Parking dated April 6, 2016	ECS, LLC	Black & Veitch	Pentagon For Information Only
Technical Memorandum	Pavement Design Recommendation Reconfigure South Parking Infrastructure at Pentagon Project No.: 0395-029-015, C501	Pavement	Requirements	10/5/16	N/A	02.055.01.06 395TR- Attach_1-00e_App- C_PAV_MEMO_2016_10_ 15	VDOT Materials Division	VDOT Mega Project	Recommendations are based on geotechnical investigation contained in Preliminary Report of Subsurface Exploration and Geotechnical Engineering Analysis prepared by ECS, LLC dated 4/16/16
Report	Washington Headquarters Services Guidance Document for Proper Handling of Excavated and Imported Soil at the Pentagon Reservation	Excavation	U.S. Department of Defense Washington Headquarter Service	9/20/16		02.055.01.05 395TR- Attach_1-00e_App- B_WHS_SOIL.pdf	WHS	DOD	Guidance for handling of soils on Pentagon Reservation For Information Only
I-95 Existing Plans	Design-Build/PPTA Project 95 Express Lanes – Segment 4 As-built Plans	Roadway	N/A	3/6/15	N/A	01.02.14.01 95XL Segment 4 As-Built Plans - 03-06- 2015	HNTB	VDOT	As-built plans for the I- 95 Express Lanes project inside the Beltway – Segment 4 Will be relevant to the connection of the new 395 Express Lanes corridor. For Information Only
Historical Plans	Commonwealth of Virginia Plan and Provide of Proposed State Highway Historical 395 Drawings Arlington Co Line to Glebe Road	Roadway	N/A	5/5/69	N/A	01.02.14.02 Historical 395 - Arlington Co Line to Glebe Road - 05-05-1969	HNTB	VDOT	Historical Drawings of 395 Corridor For Information Only
Historical Plans	Commonwealth of Virginia Plan and Provide of Proposed State Highway Historical 395 Drawings Arlington Co Line to Holmes Run	Roadway	N/A	8/3/65	N/A	01.02.14.03 Historical 395 - Arlington Co Line to Holmes Run- 08-03-1965	HNTB	VDOT	Historical Drawings of 395 Corridor For Information Only
Historical Plans	Commonwealth of Virginia Plan and Provide of Proposed State Highway Historical 395 Drawings Franconia Rd to S. Glebe Rd	Roadway	N/A	2/23/81	N/A	01.02.14.04 Historical 395 - Franconia Rd to S. Glebe Road - 02-23-1981	HNTB	VDOT	Historical Drawings of 395 Corridor For Information Only

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Historical Plans	Commonwealth of Virginia Plan and Provide of Proposed State Highway Historical 395 Drawings Glebe Rd to DC-VA Line	Roadway	N/A	9/24/69	N/A	01.02.14.05 Historical 395 - Glebe Rd to DC-VA Line - 09-24-1969	HNTB	VDOT	Historical Drawings of 395 Corridor For Information Only
Historical Plans	Commonwealth of Virginia Plan and Provide of Proposed State Highway Historical 395 Drawings Pohick Rd to Edsall Rd	Roadway	N/A	10/22/88	N/A	01.02.14.06 Historical 395 - Pohick Rd to Edsall Rd - 10-20-1988	HNTB	VDOT	Historical Drawings of 395 Corridor For Information Only
Historical Plans	Commonwealth of Virginia Plan and Provide of Proposed State Highway Historical 395 Drawings City of Alexandria N on 395	Roadway	N/A	8/3/65	N/A	01.02.26 Historical 395 - Alexandria Co Line to Holmes Run- 08-03-1965	HNTB	VDOT	Historical Drawings of 395 Corridor For Information Only
Historical Plans	Commonwealth of Virginia Plan and Provide of Proposed State Highway Historical 395 Drawings King Street Interchange with 395	Roadway	N/A	11/15/65	N/A	01.02.26 Historical 395 - King Street Interchange - 11-15-1965	HNTB	VDOT	Historical Drawings of 395 Corridor For Information Only
Historical Plans	177-16 (Ramp B over 95SB-Turkeycock)	Bridges	NA	01/08/65	NA	01.02.08 177-16 (Ramp B over 95SB-Turkeycock)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	177-18 Duke St over I-395	Bridges	NA	03/15/65	NA	01.02.08 177-18 Duke St over I-395	VDOT	NA	Contains boring logs For Information Only
Historical Plans	177-19 (Ramp C over Duke St Rt 236 Ramp E & 95)	Bridges	NA	03/15/65	NA	01.02.08 177-19 (Ramp C over Duke St Rt 236 Ramp E & 95)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	177-21 (Ramp B over I-95)	Bridges	NA	12/07/65	NA	01.02.08 177-21 (Ramp B over I-95)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	177-22 (Ramp B-King St over 95)	Bridges	NA	09/22/65	NA	01.02.08 177-22 (Ramp B-King St over 95)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	177-23 (King St Rt 7 over 95 & Ramps C & G)	Bridges	NA	09/22/65	NA	01.02.08 177-23 (King St Rt 7 over 95 & Ramps C & G)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	177-24 (Ramp E-King St over 95)	Bridges	NA	09/22/65	NA	01.02.08 177-24 (Ramp E-King St over 95)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	177-25 (S Abingdon 34th St over 95 & Ramps D & F)	Bridges	NA	09/22/65	NA	01.02.08 177-25 (S Abingdon 34th St over 95 & Ramps D & F)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	192-01 (Ramp A over I-95; Bus Ramp)	Bridges	NA	12/07/65	NA	01.02.08 192-01 (Ramp A over I-95; Bus Ramp)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	192-04 (Shirlington S Rotary over 95)	Bridges	NA	05/02/69	NA	01.02.08 192-04 (Shirlington S Rotary over 95)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	192-05 (Shirlington N Rotary over 95 & Ramp G)	Bridges	NA	07/23/70	NA	01.02.08 192-05 (Shirlington N Rotary over 95 & Ramp G)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	192-07 (95 over Four Mile Run)	Bridges	NA	1/26/71	NA	01.02.08 192-07 (95 over Four Mile Run)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	192-08 (95 over Route 120)	Bridges	NA	07/23/70	NA	01.02.08 192-08 (95 over Route 120)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	192-10 (95 over Ramp G)	Bridges	NA	03/04/71	NA	01.02.08 192-10 (95 over Ramp G)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	199-09 (Shirlington Ped Br over 95)	Bridges	NA	07/23/70	NA	01.02.08 199-09 (Shirlington Ped Br over 95)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	200-05 (95 over Sanger Ave)_ORIGINAL	Bridges	NA	05/18/67	NA	01.02.08 200-05 (95 over Sanger Ave) ORIGINAL	VDOT	NA	Contains boring logs For Information Only

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Historical Plans	200-06 (95 over Braddock Rd) ORIGINAL	Bridges	NA	05/17/67	NA	01.02.08 200-06 (95 over Braddock Rd) ORIGINAL	VDOT	NA	Contains boring logs For Information Only
Historical Plans	213-20 (95 over Country Club Rd)	Bridges	NA	11/08/73	NA	01.02.08 213-20 (95 over Country Club Rd)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	213-21 (Arlington Ridge Road over I-95)	Bridges	NA	11/08/73	NA	01.02.08 213-21 (Arlington Ridge Road over I-95)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	213-24 (95 HOV over Rdwy F & Wash Blvd)_Greyscale	Bridges	NA	04/02/68	NA	01.02.08 213-24 (95 HOV over Rdwy F & Wash Blvd)_Greyscale	VDOT	NA	Drawing Index contains Engineering Geology (but drawings are missing) For Information Only
Historical Plans	214-12 (95 HOV & NB over Wash Blvd & Joyce St)	Bridges	NA	11/08/73	NA	01.02.08 214-12 (95 HOV & NB over Wash Blvd & Joyce St)	VDOT	NA	Drawing Index contains Engineering Geology (but drawings are missing) For Information Only
Historical Plans	214-17 (95 HOV over Ramps CC-CE)	Bridges	NA	03/16/76	NA	01.02.08 214-17 (95 HOV over Ramps CC-CE)	VDOT	NA	Drawing Index contains Engineering Geology (but drawings are missing) For Information Only
Historical Plans	214-21 (95 HOV over Fern St)	Bridges	NA	03/16/76	NA	01.02.08 214-21 (95 HOV over Fern St)	VDOT	NA	Drawing Index contains Engineering Geology (but drawings are missing) For Information Only
Historical Plans	214-23 I-395 SBL over Eads St	Bridges	NA	03/16/76	NA	01.02.08 214-23 I-395 SBL over Eads St	VDOT	NA	Drawing Index contains Engineering Geology (but drawings are missing) For Information Only
Historical Plans	214-24 (95 HOV over Eads St)	Bridges	NA	03/16/76	NA	01.02.08 214-24 (95 HOV over Eads St)	VDOT	NA	Drawing Index contains Engineering Geology (but drawings are missing) For Information Only
Historical Plans	215-01 (95 HOV over Rte 110 Jefferson Davis Hwy)	Bridges	NA	03/16/76	NA	01.02.08 215-01 (95 HOV over Rte 110 Jefferson Davis Hwy)	VDOT	NA	Drawing Index contains Engineering Geology (but drawings are missing) For Information Only
Historical Plans	215-02	Bridges	NA	03/16/76	NA	01.02.08 215-02	VDOT	NA	Contains boring logs For Information Only
Historical Plans	215-04 (Rt 1 SB over NB JDH, 95NB & HOV)	Bridges	NA	03/16/76	NA	01.02.08 215-04 (Rt 1 SB over NB JDH, 95NB & HOV)	VDOT	NA	Contains boring logs For Information Only
Historical Plans	215-06 (95 HOV & NB over Access Rd A & RR Spur)_Grayscale	Bridges	NA	03/16/76	NA	01.02.08 215-06 (95 HOV & NB over Access Rd A & RR Spur) Grayscale	VDOT	NA	Contains boring logs For Information Only
Historical Plans	222-16 (Route 27 Wash Blvd Rev Lanes over Joyce St)	Bridges	NA	11/08/73	NA	222-16 (Route 27 Wash Blvd Rev Lanes over Joyce St)	VDOT	NA	Drawing Index contains Engineering Geology (but drawings are missing) For Information Only
Historical Plans	231-24 (95NB over Eads St)	Bridges	NA	03/16/76	NA	231-24 (95NB over Eads St)	VDOT	NA	Contains boring logs For Information Only

Doc. Number	Title/Description	Descriptor 1	Descriptor 2	Dated	Amends	Electronic File Name	Author	Addressee	Comments
Historical Plans	Wash Blvd transverse section	Bridges	NA	11/08/73	NA	Wash Blvd transverse section	VDOT	NA	Contains boring logs For Information Only
Geotechnical Data Report	Geotechnical Data Report, 95 Express Lanes Fredericksburg Extension Preliminary Design	Geotechnical Data Report	N/A	08/09/2017	N/A	95 Express Lanes Fredex - Geotechnical Data Report - 8 9 2017.pdf	HDR Engineering Inc	TU	
Geotechnical Data Report	Geotechnical Data Report Addendum No. 1 – General Purpose Lane Realignment, I-95 Southbound Collector Distributor Lanes Stafford County & City of Fredericksburg, Virginia; VDOT Project No. 0095-111-259 UPC No. 101595	Geotechnical Data Report	N/A	09/25/2017	N/A	Final GDR - I-95 CD Lanes Addendum No.3 – 092517.pdf	ECS LLC	VDOT	
Geotechnical Engineering Report	Geotechnical Engineering Report Route 630 Interchange Stafford County, Virginia State Project No. UPC 4632	Geotechnical Engineering Report	N/A	08/31/2017	N/A	UPC_13558_-_95_630_Interchange_Geotechnical_Engineering_Report - 2017-08-31.pdf	GeoConcepts Engineering Inc/	Shirley/ Dewberry and VDOT	
Geotechnical Report	Geotechnical Report – I-95 Express Lanes Opitz Boulevard Connection Prince William County, Virginia State Project 0095-076-299 UPC 116663	Geotechnical Report	N/A	3/25/2022	Rev. 3	Opitz Blvd Geotech Report Rev.3 2022.03.25	Whitman, Requardt and Associates (WRA)	VDOT, Transurban	
Geotechnical Data Report	Geotechnical Data Report for Signs and ITS Structures	Geotechnical Data Report	N/A	3/8/2022	N/A	Opitz Blvd Geotech Data Report ITS-Signs_08-Mar-2022	Whitman, Requardt and Associates (WRA)	VDOT, Transurban	

EXHIBIT T

KNOWN PRE-EXISTING HAZARDOUS SUBSTANCES

The table below identifies the Known Pre-Existing Hazardous Substances located within or directly adjacent to the I-95/395 HOV/HOT Lanes Project:

Summary	Description	Location	Reference
Report of petroleum impacted soils	Petroleum impacted soils discovered during installation of the tower on the west side of Garrisonville Road interchange between 1994 and 2000. Site is located approx. 200 ft. west of the HOT lanes. Per the Marshall Miller & Associates Phase I ESA report, no other information was available for this REC.	Cellular Tower, Northwest corner of I-95 and Route 610, Outside of HOT Lanes alignment	Phase I ESA, I- 95/395 HOV/Bus/HOT Lanes Southern Section, Marshall Miller & Associates
Potential environmental concern due to auto repair activities	No PC numbers or USTs were confirmed with the property. However, these facilities typically house drums containing antifreeze, waste oil, and other fluids used with automobile maintenance services. New R/W is proposed up to the building along the property frontage. Limited subsurface investigations in the proposed road construction area were completed and all test results for groundwater and soil samples collected were below detection limits.	SAAB International Motors, 7520 Backlick Road, Springfield	Preliminary Site Assessment Report, Proposed I- 95 and Backlick Road Improvement, Marshall Miller & Assoc.; Subsurface Investigation Report, Proposed Route 7900 and Route 617 Improvements, Marshall Miller & Associates
Potential environmental concern due potential auto repair activities	No PC numbers or USTs were confirmed with this property. However, facilities such as these typically house drums containing antifreeze, waste oil, and other fluids used with automobile maintenance services. New R/W is proposed along the property frontage. A limited subsurface investigation in the proposed road construction area was completed and all test results for groundwater and soil samples collected were below detection limits.	Henry's Wrecker Service, 7526 Backlick Road, Springfield	Preliminary Site Assessment Report, Proposed I-95 and Backlick Road Improvement, Marshall Miller & Assoc.; Subsurface Investigation Report, Proposed Route 7900 and Route 617 Improvements, Marshall Miller & Associates
Potential environmental concern due to former UST located on property	Two USTs are currently registered on the site. However, USTs were formerly present on the property when Volkswagen operated at the site. These tanks were removed prior to Car Craft Collision Center acquiring the property. In addition, this type of facility typically house drums containing antifreeze, waste oil, and other fluids with automobile maintenance services. There are no PCs registered to the facility. New R/W is proposed at the northeast corner of the property. No subsurface investigation was conducted at this site since there was limited to no R/W proposed in this area.	Car Craft Collision Center, 7616 Backlick Road, Springfield	Preliminary Site Assessment Report, Proposed I-95 and Backlick Road Improvement, Marshall Miller & Assoc.
Potential environmental concerns of impacted soils due to leaking UST	Total petroleum hydrocarbons and volatile organic compounds (VOCs) were detected in the soil and groundwater at the site. The pollution case was closed on July 14, 2000. The site was enrolled into the VRP program in March 2001 due to the VOCs detected on the property, including trichloroethene. The impacted area is estimated approximately 300 feet from VDOT's road construction. The depth to water ranges between 30 to 55 feet at the site, and the groundwater flow direction is to the southwest (away from the road project). The property remains an active VRP site but closure has been requested. No R/W is proposed, however, cut sections are proposed along the property frontage. Limited subsurface investigations may be considered in the proposed road construction area. A limited subsurface investigation in the proposed road construction area was completed and all test results for groundwater and soil samples collected were below detection limits.	Fairfax Lumber and Millwork, 7622 Backlick Road, Springfield	Preliminary Site Assessment Report, Proposed I-95 and Backlick Road Improvement, Marshall Miller & Assoc.; Subsurface Investigation Repo Proposed Route 7900 and Route 617 Improvements, Marshall Miller & Associates

Summary	Description	Location	Reference
Groundwater impact from PCE	The suspected source of PCE at the intersection of Franconia and Commerce Street, in Springfield, is from a former dry cleaning facility previously located adjacent to the 7-11 store on Parcel 63. A subsurface investigation was conducted in 1999 by Marshall Miller & Associates and found that contamination from tetrachloroethene (PCE) is present in the groundwater underlying the subject parcels and the plume is relatively well delineated in the north and eastern direction. The concentrations found in the groundwater in six of the sample locations exceeded the EPA's published drinking standard of 5 µg/l. The concentration in GP-10 also exceeded the maximum concentration for the toxicity characteristic for consideration as a hazardous waste of 700 µg/l.	Intersection of Franconia/Commerce Street, Springfield	Commerce/Franconia PCE Investigation, Marshall Miller & Associates, 1999
Potential environmental concern from auto repair/junk yard	Due to the amount of junk cars and automobile debris on this property, this is a property of concern. VDOT planned to acquire 9 feet of R/W from this property.	Schaeffer Industrial Park, 7818 Loisdale Rd, Springfield	Preliminary Site Assessment, I-95/395/495 Fairfax County, VA, Marshall Miller & Associates, 1998
Suspected former landfill	This property extends northward along Loisdale Road to just south of Loisdale Estates. This property was at one time a gravel pit and is now a suspected former landfill. Review of aerial photographs between 1970 and 1990 shows intermittent activity such as clearing, excavating, and filling, and periods of no activity. This property is reported as being used as a landfill that ceased operations in 1979. However, there are no records to indicate the age, owner, the size, or type of waste disposed of in the landfill, or if any environmental precautions were in place during the operation or at closure of the landfill.	Located north of Springfield Self Storage on Loisdale Road, Springfield	Preliminary Site Assessment, I-95/395/495 Fairfax County, VA, Marshall Miller & Associates, 1998
Gasoline spill on on-ramp to I-95 NB at Backlick Rd in Newington	On February 26, 1995, a tanker truck overturned and spilled approx. 5,700 gallons of gasoline adjacent to a storm drain which directed the fuel through a series of drainage ditches and culverts to a stormwater retention basin. Water and product in the retention basin drained via a standpipe to a drainage system on the western side of I-95. The drainage system ultimately discharges into Accotink Creek. Excavation of the top six inches to one foot of impacted soil in the immediate vicinity of the spill was conducted and the soil was replaced with clean fill and stone followed by hydro-mulching and seeding. The underflow dam was stabilized to maximize its effectiveness and ability to handle future rainfall events. No product was observed behind the dam; and inspection of the spill impact areas was conducted on a weekly basis for 3 months.	Northbound On-Ramp to I-95 at Backlick Road in Newington, Exit 166	Environmental Conditions Status Report, Quality Environmental Solutions (QES), 1995
All Bridges and Structures Within Roadway Alignments	A determination on the classification (Type A or Type B) of protective coating of all metal on existing structures within the project limits is required. In absence of any characterization, all structures are presumed to be Type B until paint tests conclude otherwise. In addition, bridge inspection for asbestos containing material should be conducted on all bridge structures within the project corridor prior to construction activities or demolition of bridges.	Entire Corridor	2007 Road and Bridge Specs; VDOT Memo – Asbestos Containing Materials on Bridges – 2009
Potential environmental concern of metals in soils and groundwater	Site has been developed into a public storage site. Contamination is thought to have occurred prior to construction of the storage units. Lead and arsenic reportedly found in soils; groundwater marginally impacted. No groundwater use restriction (but file indicates restrictions may be in place if the site was entered into the program today).	SEI-Arlington Acquisition Corp. Site, 399 Old Jefferson Davis Highway (Long Bridge Drive), Arlington, VA 22202; site located east of I-395 and west of Long Bridge Drive	EDR Report (dated 5/5/2016): EDR ID: 11 VCP/VRP database, VRP Facility ID #: VRP00152
Potential environmental concern of impacted soils due to leaking USTs and auto/roadway maintenance activities	Two USTs currently in use at the site. Three USTs were reportedly removed from the ground, and two were reportedly installed as early as 1968. Two Pollution Complaint cases were opened in 1996 and 1997 and were subsequently closed. A salt dome and lagoon visible on aerial imagery of the property. Storage of roadway maintenance vehicles, equipment, materials and fluids also apparent.	VDOT – Columbia Pike Area, Headquarters, 1510 Columbia Pike, Arlington, VA 22204; site is located northwest of I- 395 and south of Columbia Pike	EDR Report (dated 5/5/2016): EDR ID: 12 VA LTANKS database, Pollution Complaint # 19983637 and Pollution Complaint # 19973053; UST database; TIER 2 database

Summary	Description	Location	Reference
Potential environmental concern of impacted soils due to proximity of adjacent property associated with leaking USTs and auto/roadway maintenance activities	Property is adjacent to 1510 Columbia Pike (see above). Property with 1426 Columbia Pike address is associated with a RCRA-CESQG database and lists VDOT as the owner/operator.	1426 Columbia Pike, Arlington, VA 22204; site is located northwest of I-395 and south of Columbia Pike	EDR Report (dated 5/5/2016): EDR ID: 12, 13 RCRA-CESQG database
Potential environmental concern from storage of hazardous materials	Property associated with facilities which store or manufacture hazardous materials and submit a chemical inventory report.	WMATA-Shirley Highway, 601 Army Navy Drive, Arlington, VA 22202; site is located south of I-395 and north of Army Navy Drive	EDR Report (dated 5/5/2016): EDR ID: 19 TIER 2 database
Potential environmental concern of impacted soils due to leaking USTs and leaking gasoline dispensers	Five USTs currently in use at the site. A Pollution Complaint case was opened in 1993 and subsequently closed. A spill from leaking gasoline dispenser nozzle was reported in 2001. The property was reported in the EDR Historical Auto Stations database as early as 1961.	Texaco / Star Enterprise / Shell #2817, 2817 South Quincy Street, Arlington, VA 22206; site is located northwest of I-395 at the intersection of Campbell Avenue and South Quincy Street	EDR Report (dated 5/5/2016): EDR ID: 103 VA LUST & VA LTANKS databases, Pollution Complaint #: 19940582; UST database; VA SPILLS database, Incident Response #: 2001-N-0204; RCRA-NonGen/NLR database; EDR Historical Auto Stations database; FINDS and ECHO databases
Potential environmental concern from diesel fuel spill	A spill of 30 gallons of diesel fuel reportedly occurred near a retaining wall near the intersection of Seminary Road and I-395. Contaminated soils were reportedly removed.	Mark Center-BRAC 133- Diesel Fuel Spill, Seminary Road & I-395, Alexandria, VA	EDR Report (dated 5/5/2016): EDR ID: 15 3 VA SPILLS database, Incident Response #: 2009-N-0678
Potential environmental concern from reportedly small oil spill	A spill of oil reportedly occurred near 1600 North Van Dorn Street. Absorbents were reportedly employed to clean up the oil. There were reportedly no releases to nearby storm drains.	1600 North Van Dorn Spill, 1600 North Van Dorn Street, Alexandria, VA, site is located south of I-395	EDR Report (dated 5/5/2016): EDR ID: 160 VA SPILLS database, ID #: 1469

EXHIBIT U

FEDERAL REQUIREMENTS

Attachment 1	Federal Requirements for Federal-Aid Construction Projects
Attachment 2	FHWA Form 1273
Attachment 3	Federal Prevailing Wage Rate
Attachment 4	Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)
Attachment 5	Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)
Attachment 6	Certification Regarding Use of Contract Funds for Lobbying
Attachment 7	Compliance with Buy America Requirements
Attachment 8	Special Provision for Use of Domestic Material
Attachment 9	Certification of Nondiscrimination in Employment
Attachment 10	On-the-Job Training Program for Federal-Aid Highway Construction Projects

ATTACHMENT 1 TO EXHIBIT U

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL. — The Work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The “Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273,” are included in this Exhibit U. Whenever in said required contract provisions references are made to:

- (a) “contracting officer” or “authorized representative”, such references shall be construed to mean the Department or its Authorized Representative;
- (b) “contractor”, “prime contractor”, “bidder” “Federal-aid construction contractor”, “prospective first tier participant” or First Tier Participant such references shall be construed to mean the Concessionaire or its authorized representative and/or the Design-Build Contractor or its authorized representative, as may be appropriate under the circumstances;
- (c) “contract”, “prime contract”, “Federal-aid construction contract” or “design-build contract” such references shall be construed to mean the Design-Build Contract;
- (d) “subcontractor”, “supplier”, “vendor”, “prospective lower tier participant” “lower tier prospective participant”, “Lower Tier participant” or “lower tier subcontractor”, such references shall be construed to mean, as appropriate, any Contractors other than the Design-Build Contractor; and
- (e) “department”, “agency”, “department or agency with which this transaction originated” or “contracting agency” such references shall be construed to mean the Department except where a different department or agency or officer is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, “Nondiscrimination,” and Section VI, “Subletting or Assigning the Contract,” of the Form 1273 required contract provisions, the Concessionaire shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free

competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING. — Part 26, Title 49, Code of Federal Regulations applies to the Project. Pertinent sections of said Code are incorporated within other sections of the Agreement and the Department Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

CONVICT PRODUCED MATERIALS

- (a) FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.
- (b) Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

ACCESS TO RECORDS

- (a) As required by 49 CFR 18.36(i)(10), the Concessionaire and its Contractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of the Concessionaire and subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), the Concessionaire and its Contractors shall retain all such books, documents, papers, and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.
- (b) The Concessionaire agrees to include this section in each Contract at each tier, without modification except as appropriate to identify the Contractor who will be subject to its provisions.

SUBCONTRACTING

- (a) Any distribution of work shall be evidenced by a written binding agreement on file at the project site. Where no field office exists, such agreement shall be readily available upon request to Department inspector(s) assigned to the project.
- (b) The provisions contained in Form FHWA-1273 specifically, and other federal provisions included with the prime Contract are generally applicable to all Federal-aid construction projects and must be made a part of, and physically incorporated in, all contracts as well as, appropriate subcontracts for work so as to be binding in those agreements.

**ATTACHMENT 2 TO EXHIBIT U
FHWA FORM 1273**

ATTACHED

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

a. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

- a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.
- b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

- a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.
- b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
 - (1) Withholding monthly progress payments;
 - (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying the contractor from future bidding as non-responsible.
- c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

- a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway, 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.
- (4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees (29 CFR 5.5)

- a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility (29 CFR 5.5)

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on longstanding interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(0) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(1) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR
APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL
ACCESS ROAD CONTRACTS** (23 CFR 633, Subpart B, Appendix B) This provision is
applicable to all Federal-aid projects funded under the Appalachian Regional Development Act
of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
 - a. To the extent that qualified persons regularly residing in the area are not available.
 - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
 - c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.
2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.
3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this

certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**ATTACHMENT 3 TO EXHIBIT U
FEDERAL PREVAILING WAGE RATE**

ATTACHED

ATTACHMENT 3

FEDERAL PREVAILING WAGE RATES

General Decision Number: VA 20220103 02/25/2022
Superseded General Decision Number: VA 20210103
State: Virginia
Construction Type: Highway
Counties: Alexandria* and Arlington Counties in Virginia.
* including the independent city of Alexandria

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none">• Executive Order 14026 generally applies to the contract.• The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none">• Executive Order 13658 generally applies to the contract.• The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	02/25/2022

ELEC0080-011 06/01/2019

	Rates	Fringes
ELECTRICIAN, Includes Traffic Signalization	\$ 28.35	15.95%+7.00

LABO0011-011 09/01/2021

	Rates	Fringes
LABORER: Common or General.....	\$ 20.90	7.90

PLAS0891-011 06/01/2020

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER	\$ 20.70	8.03

* SUVA2016-039 07/02/2018

	Rates	Fringes
CARPENTER, Includes Form Work.....	\$ 20.97	0.00
FENCE ERECTOR.	\$ 15.28	0.00
IRONWORKER, REINFORCING.	\$ 34.18	0.00
IRONWORKER, STRUCTURAL.	\$ 34.18	0.00
LABORER: Asphalt, Includes Raker, Shoveler, Spreader and Distributor.....	\$ 19.06	1.75
LABORER: Grade Checker.	\$ 14.88**	0.00
LABORER: Pipelayer.	\$ 20.48	0.00
LABORER: Power Tool Operator.....	\$ 15.69	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 23.93	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.	\$ 19.00	3.49

OPERATOR: Broom/Sweeper.....	\$ 17.40	2.01
OPERATOR: Crane.....	\$ 29.46	0.00
OPERATOR: Drill.....	\$ 24.89	0.00
OPERATOR: Gradall.....	\$ 19.26	0.00
OPERATOR: Grader/Blade.....	\$ 23.21	0.00
OPERATOR: Hydroseeder.....	\$ 16.64	0.00
OPERATOR: Loader.....	\$ 18.92	0.00
OPERATOR: Mechanic.....	\$ 22.84	0.00
OPERATOR: Milling Machine.....	\$ 23.19	2.94
OPERATOR: PAVEMENT PLANER GROUNDSMEN.....	\$ 19.75	0.00
OPERATOR: PAVEMENT PLANER.....	\$ 21.14	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 20.33	2.81
OPERATOR: Piledriver.....	\$ 21.83	4.08
OPERATOR: Roller (Finishing).....	\$ 18.73	3.23
OPERATOR: Roller.....	\$ 18.92	0.00
OPERATOR: Screed.....	\$ 22.13	4.89
OPERATOR: Asphalt Spreader and Distributor.....	\$ 20.58	2.31
OPERATOR: Bulldozer, Including Utility.....	\$ 20.64	0.00
PAVEMENT MARKING OPERATOR.....	\$ 22.15	0.00
PAVEMENT MARKING TRUCK DRIVER.....	\$ 18.78	0.00
TRAFFIC CONTROL: Flagger.....	\$ 13.64**	0.00
TRUCK DRIVER: HEAVY 7CY & UNDER.....	\$ 15.53	0.00
TRUCK DRIVER: 1/Single Axle Truck.....	\$ 19.35	0.00

TRUCK DRIVER: Fuel and Lubricant Service.....	\$ 18.25	0.00
TRUCK DRIVER:HEAVY OVER 7 CY.	\$ 18.05	0.00
TRUCK DRIVER: MULTI AXLE.	\$ 20.34	2.89

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of “identifiers” that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than “SU” or “UAVG” denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the

example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the “SU” identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

- 1.) Has there been an initial decision in the matter? This can be:
 - an existing published wage determination
 - a survey underlying a wage determination
 - a Wage and Hour Division letter setting forth a position on
 - a wage determination matter
 - a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

General Decision Number: VA190192 01/04/2019 VA192

Superseded General Decision Number: VA20180203

State: Virginia

Construction Type: Highway

County: Stafford County in Virginia.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/04/2019

ELEC0080-011 06/01/2018

	Rates	Fringes
ELECTRICIAN, Includes Traffic Signalization.....	\$ 27.94	12.56%+6.95

PLAS0891-011 06/01/2017

	Rates	Fringes
CEMENT FINISHER MASON/CONCRETE	\$20.10	7.38

SUVA2016-077 07/02/2018

	Rates	Fringes
CARPENTER, Includes Form Work.....	\$ 20.97	0.00
FENCE ERECTOR	\$ 15.28	0.00
IRONWORKER, REINFORCING	\$ 34.18	0.00
IRONWORKER, STRUCTURAL.....	\$ 34.18	0.00
LABORER: Asphalt, Includes Raker, Shoveler, Spreader and Distributor	\$ 19.05	1.75
LABORER: Common or General.....	\$ 15.77	0.00
LABORER: Grade Checker	\$ 14.88	0.00
LABORER: Pipelayer	\$ 20.48	0.00
LABORER: Power Tool Operator	\$ 15.69	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 23.93	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	\$ 19.00	3.49
OPERATOR: Broom/Sweeper.....	\$ 17.40	2.01
OPERATOR: Crane	\$ 29.46	0.00
OPERATOR: Drill	\$ 24.89	0.00
OPERATOR: Gradall.....	\$ 19.26	0.00
OPERATOR: Grader/Blade	\$ 23.21	0.00
OPERATOR: Hydroseeder	\$ 16.64	0.00
OPERATOR: Loader.....	\$ 18.92	0.00
OPERATOR: Mechanic	\$ 22.84	0.00
OPERATOR: Milling Machine.....	\$ 23.19	2.94
OPERATOR: PAVEMENT PLANER GROUNDSMEN	\$ 19.75	0.00
OPERATOR: PAVEMENT PLANER...	\$ 21.14	0.00
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 20.33	2.81

	Rates	Fringes
OPERATOR: Piledriver	\$ 21.83	4.08
OPERATOR: Roller (Finishing)	\$ 18.73	3.23
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OPERATOR: Bulldozer, Including Utility	\$ 20.64	0.00
PAVEMENT MARKING OPERATOR	\$ 22.15	0.00
PAVEMENT MARKING TRUCK DRIVER	\$ 18.78	0.00
TRAFFIC CONTROL: Flagger	\$ 13.64	0.00
TRUCK DRIVER: HEAVY 7CY & UNDER	\$ 15.53	0.00
TRUCK DRIVER: Fuel and Lubricant Service	\$ 18.25	0.00
TRUCK DRIVER: HEAVY OVER 7 CY	\$ 18.05	0.00
TRUCK DRIVER: Single & Multi Axle	\$ 18.84	0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of “identifiers” that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

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Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

- 1.) Has there been an initial decision in the matter? This can be:
- an existing published wage determination
 - a survey underlying a wage determination
 - a Wage and Hour Division letter setting forth a position on a wage determination matter
 - a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

- 2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

- 3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

- 4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

General Decision Number: VA20220185 02/25/2022

Superseded General Decision Number: VA20210185

State: Virginia

Construction Type: Highway

Counties: Manassas Park*, Manassas* and Prince William Counties in Virginia.

*including the independent cities of Manassas and Manassas Park

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
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1	02/25/2022

ELEC0080-011 06/01/2019

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PLAS0891-011 06/01/2020

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER	\$20.70	8.03

SUVA2016-070 07/02/2018

	Rates	Fringes
CARPENTER, Includes Form Work.....	\$20.97	0.00
FENCE ERECTOR.....	\$15.28	0.00
IRONWORKER, REINFORCING.....	\$34.18	0.00
IRONWORKER, STRUCTURAL	\$34.18	0.00
LABORER: Asphalt, Includes Raker, Shoveler, Spreader and Distributor.....	\$19.05	1.75
LABORER: Common or General.....	\$15.77	0.00
LABORER: Grade Checker.....	\$14.88**	0.00
LABORER: Pipelayer.....	\$20.48	0.00
LABORER: Power Tool Operator.....	\$15.69	0.00
OPERATOR: Backhoe/Excavator/Trackhoe	\$23.93	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	\$19.00	3.49
OPERATOR: Broom/Sweeper	\$17.40	2.01
OPERATOR: Crane.....	\$29.46	0.00
OPERATOR: Drill.....	\$24.89	0.00
OPERATOR: Gradall	\$19.26	0.00

	Rates	Fringes
OPERATOR: Grader/Blade.....	\$23.21	0.00
OPERATOR: Hydroseeder.....	\$16.64	0.00
OPERATOR: Loader.....	\$18.35	2.90
OPERATOR: Mechanic.....	\$22.84	0.00
OPERATOR: Milling Machine.....	\$23.19	2.94
G OPERATOR: PAVEMENT PLANERROUNDSMEN.....	\$19.75	0.00
OPERATOR: PAVEMENT PLANER .	\$20.10	1.24
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$20.90	1.56
OPERATOR: Piledriver.....	\$21.83	4.08
OPERATOR: Roller (Finishing).....	\$18.40	3.87
OPERATOR: Roller.....	\$18.92	0.00
OPERATOR: Screed.....	\$22.13	4.89
OPERATOR: Asphalt Spreader and Distributor.....	\$19.27	2.51
OPERATOR: Bulldozer, Including Utility.....	\$20.64	0.00
PAVEMENT MARKING OPERATOR	\$22.15	0.00
PAVEMENT MARKING TRUCK DRIVER.....	\$18.78	0.00
TRAFFIC CONTROL: Flagger.....	\$14.86	0.21
TRUCK DRIVER: HEAVY 7CY & UNDER.....	\$15.53	0.00
TRUCK DRIVER: Fuel and Lubricant Service.....	\$18.25	0.00
TRUCK DRIVER: HEAVY OVER 7 CY.....	\$18.05	0.00
TRUCK DRIVER: Single & Multi Axle.....	\$19.22	3.15

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of “identifiers” that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than “SU” or “UAVG” denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the “SU” identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate

includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- an existing published wage determination
- a survey underlying a wage determination
- a Wage and Hour Division letter setting forth a position on a wage determination matter
- a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

ATTACHMENT 4 TO EXHIBIT U
SPECIAL PROVISION
Standard Federal Equal Employment Opportunity
Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:
 - (a) “Covered area” means the geographical area described in the solicitation from which this contract resulted;
 - (b) “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - (c) “Employer identification number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - (d) “Minority” includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its

obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - (b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to

community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

- (c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.
- (d) Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral Process has impeded the contractor's efforts to meet its obligations.
- (e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.
- (f) Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- (g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (h) Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

- (i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - (j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
 - (k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - (l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - (m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.
 - (n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - (p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the

contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.
11. The contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an

easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
16. In addition to the reporting requirements set forth elsewhere in this contract, the contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

**ATTACHMENT 5 TO EXHIBIT U
SPECIAL PROVISION
Notice of Requirement for Affirmative Action
to Ensure Equal Employment Opportunity
(Executive Order 11246)**

1. **General.** In addition to the affirmative action requirements of the Special Provision titled “Standard Federal Equal Employment Opportunity Construction Contract Specifications” as set forth elsewhere in this proposal, the Offeror or Bidder’s attention is called to the “Equal Opportunity Clause” set forth herein.

2. **Goals.**

(a) The goals for minority and female participation expressed in percentage terms for the Contractor’s aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation in each trade (percent)	Goals for female participation in each trade (percent)
See Attachment A	6.9

(b) These goals are applicable to all the Contractor’s construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor’s compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor’s goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. **Subcontracting.** The Contractor shall provide written notification to the Department within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. **Reports.** The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the contractor as to the specific reporting requirements that he will be expected to fulfill.

Attachment A

Economic Area	Goal (Percent)
Virginia:	
021 Roanoke-Lynchburg, VA	
SMSA Counties:	
4640 Lynchburg, VA	19.3
VA Amherst; VA Appomattox; VA Campbell; VA Lynchburg.	
6800 Roanoke, VA	10.2
VA Botetourt; VA Craig; VA Roanoke; VA Roanoke City; VA Salem	
Non-SMSA Counties	12.0
VA Alleghany; VA Augusta; VA Bath; VA Bedford; VA Bland; VA Carroll; VA Floyd; VA Franklin; VA Giles; VA Grayson; VA Henry; VA Highland; VA Montgomery; VA Nelson; VA Patrick; VA Pittsylvania; VA Pulaski; VA Rockbridge; VA Rockingham; VA Wythe; VA Bedford City; VA Buena Vista; VA Clifton Forge; VA Covington; VA Danville; VA Galax; VA Harrisonburg; VA Lexington; VA Martinsville; VA Radford; VA Staunton; VA Waynesboro; WV Pendleton.	
022 Richmond, VA:	
SMSA Counties:	
6140 Petersburg - Colonial Heights - Hopewell, VA	30.6
VA Dinwiddie; VA Prince George; VA Colonial Heights; VA Hopewell; VA Petersburg.	
6760 Richmond, VA	24.9
VA Charles City; VA Chesterfield; VA Goochland, VA Hanover; VA Henrico; VA New Kent; VA Powhatan; VA Richmond.	
Non-SMSA Counties 27.9	
VA Albemarle; VA Amelia; VA Brunswick; VA Buckingham, VA Caroline; VA Charlotte; VA Cumberland; VA Essex; VA Fluvanna; VA Greene; VA Greenville; VA Halifax; VA King and Queen; VA King William; VA Lancaster; VA Louisa; VA Lunenburg; VA Madison; VA Mecklenburg; VA Northumberland; VA Nottoway; VA Orange; VA Prince Edward; VA Richmond VA Sussex; VA Charlottesville; VA Emporia; VA South Boston	
023 Norfolk - Virginia Beach - Newport News VA:	
SMSA Counties:	
5680 Newport News- Hampton, VA	27.1
VA Gloucester; VA James City; VA York; VA Hampton; VA Newport News; VA Williamsburg.	
5720 Norfolk - Virginia Beach - Portsmouth, VA – NC	26.6
NC Currituck; VA Chesapeake; VA Norfolk; VA Portsmouth; VA Suffolk; VA Virginia Beach.	
Non-SMSA Counties 29.7	
NC Bertie; NC Camden; NC Chowan; NC Gates; NC Hertford; NC Pasquotank; NC Perquimans; VA Isle of Wight; VA Matthews; VA Middlesex; VA Southampton; VA Surry; VA	
Franklin. Washington, DC:	
020 Washington, DC.	
SMSA Counties:	

8840 Washington, DC - MD – VA	28.0
DC District of Columbia; MD Charles; MD Montgomery MD Prince Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince William VA Alexandria; VA Fairfax City; VA Falls Church.	
Non- SMSA Counties	25.2
MD Calvert; MD Frederick; MD St. Mary’s: MD Washington; VA Clarke; VA Culpeper; VA Fauquier; VA Frederick; VA King George; VA Page; VA Rappahannock; VA Shenandoah; VA Spotsylvania; VA Stafford; VA Warren: VA Westmoreland; VA Fredericksburg; VA Winchester WV Berkeley; WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan.	
Tennessee:	
052 Johnson City - Kingsport - Bristol,	
TN - VA SMSA Counties:	
3630 Johnson City - Kingsport -Bristol, TN-VA.....	2.6
TN Carter; TN Hawkins; TN Sullivan; TN Washington; VA Scott: VA Washington; VA Bristol.	
Non-SMSA Counties	3.2
TN Greene; TN Johnson; VA Buchanan; VA Dickenson; VA Lee; VA Russell; VA Smyth; VA Tazewell; VA Wise; VA Norton; WV McDowell; WV Mercer.	

ATTACHMENT 6 TO EXHIBIT U
CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

By signing and submitting its proposal or bid, and by executing the Agreement or Subcontract, each prospective the Concessionaire and subcontractor (at all tiers) shall be deemed to have signed and delivered the following:

1. The prospective Concessionaire /subcontractor certifies, to the best of its knowledge and belief, that:
 - (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. Concessionaire/subcontractor shall require that the language of this certification be included in all lower tier Subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

**ATTACHMENT 7 TO EXHIBIT U
COMPLIANCE WITH BUY AMERICA REQUIREMENTS**

The Concessionaire shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in the Agreement only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the contract price under the Agreement.

Concurrently with execution of the Agreement, the Concessionaire has completed and submitted, or shall complete and submit, to the Department a Buy America Certificate, in format below. After submittal, the Concessionaire is bound by its original certification.

A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Agreement be investigated, the Concessionaire has the burden of proof to establish that it is in compliance.

At the Concessionaire's request, the Department may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, the Concessionaire certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Department. A request for a waiver shall be treated as a Deviation under Section 14.03 of the Agreement.

BUY AMERICA CERTIFICATE

The undersigned certifies on behalf of itself and all proposed subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

A. The Concessionaire shall comply with the Federal Highway Administration (“FHWA”) Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the Contract only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Contract Price.

B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Contract be investigated, the Concessionaire has the burden of proof to establish that it is in compliance.

C. At the Concessionaire’s request, the Department may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, the Concessionaire certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Department.

CONCESSIONAIRE

SIGNATURE

**NAME (printed or
typed)**

TITLE

DATE

**ATTACHMENT 8 TO EXHIBIT U
SPECIAL PROVISION FOR USE OF DOMESTIC MATERIAL**

SP102-000510-02

**VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
USE OF DOMESTIC MATERIAL**

December 19, 2018

SECTION 102.05 PREPARATION OF BID of the Specifications is amended to include the following:

In accordance with the provisions of Section 635.410(b) of Title 23 CFR, hereinafter referred to as “Buy America”, except as otherwise specified, all iron and steel (including miscellaneous items such as fasteners, nuts, bolts and washers) to be permanently incorporated for use on federal aid projects shall be produced in the United States of America. This applies to any iron or steel item brought onto the project, regardless of the percentage of iron or steel that exists in the pay item or in the final form they take; however, electrical components (i.e., combination products such as signal controllers and similar products which are only sold as a unit) are not subject to Buy America provisions if the product as purchased by the Contractor is less than 50% steel and iron. “Produced in the United States of America” means all manufacturing processes occur in one of the 50 United States, the District of Columbia, Puerto Rico or in the territories and possessions of the United States. “Manufacturing processes” are defined as any process which alters or modifies the chemical content, physical size or shape, or final finish of iron or steel material (such as rolling, extruding, bending, machining, fabrication, grinding, drilling, finishing, or coating). For the purposes of satisfying this requirement “coating” is defined as the application of epoxy, galvanizing, painting or any other such process that protects or enhances the value of the material to which the coating is applied. Non-iron and non-steel materials used in the coating process do not need to be produced in the United States as long as the application of the coating occurred in the United States. The manufacturing process is considered complete when the resultant product is ready for use as an item in the project (e.g. fencing, posts, girders, pipe, manhole covers, etc.) or is incorporated as a component of a more complex product by means of further manufacturing. Final assembly of a product may occur outside of the United States of America provided no further manufacturing processes take place.

For the purposes of this provision, all steel or iron material meeting the criteria as produced in the United States of America will be considered as “Domestic Material.” All iron and steel items not meeting the criteria as produced in the United States of America will be considered “Non-Domestic Material.”

A minimal amount of “Non-Domestic” steel or iron material may be incorporated in the permanent work on a federal-aid contract provided that the cost of such materials or products does not exceed one-tenth of one percent of the Contract amount or \$2500, whichever is greater. The cost of the “Non-Domestic Material” is defined as its monetary value delivered to the job site and supported by invoices or bill of sale to the Contractor. This delivered-to-site cost must include transportation, assembly, installation and testing.

Buy America provisions do not apply to iron or steel products used temporarily in the construction of a project such as temporary sheet piling, temporary bridges, steel scaffolding, falsework or such temporary material or product or material that remains in place for the Contractor's convenience.

Raw materials such as iron ore, pig iron, processed, pelletized and reduced iron ore, waste products (including scrap, that is, steel or iron no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, or the like and steel trimmings from mills or product manufacturing) and other raw materials used in the production of steel and/or iron products may, however, be imported. Extracting, handling, or crushing the raw materials which are inherent to the transporting the materials for later use in the manufacturing process are exempt from Buy America.

Any items containing foreign source steel or iron billet shall be considered "Non-Domestic Materials." Additionally, iron or steel ingots or billets produced in the United States, but shipped outside the United States of America for any manufacturing process and returned for permanent use in a project shall be considered "Non-Domestic Materials."

Waivers:

The process for receiving a waiver for Buy America provisions is identified in 23 CFR 635.410(c). The Contractor shall not anticipate that any Buy America provisions will be waived.

Certification of Compliance:

The Contractor is required to submit a Certificate of Compliance prior to incorporating any items containing iron or steel items into the project. This shall be accomplished by the Contractor submitting the Form C-76 Certificate of Compliance to the Department when the items are delivered to the project site. The Certification of Compliance will certify whether the items are considered "Domestic Material" or "Non-Domestic Material" as referenced in this Special Provision. The certificate must be signed and dated by the Prime Contractor's Superintendent and include a Buy America Submittal Number. The Buy America Submittal Number is simply the Contractor's project specific sequential numbering system that will allow the Contractor and Department to track the total number of certificates provided and the individual items containing iron or steel associated with each certificate.

Supporting Documentation:

Supporting documentation to demonstrate compliance with Buy America provisions (such as mill test reports manufacturer/supplier certifications, etc.) shall be organized by Buy America Submittal Number and maintained by the Contractor from the date of delivery until three years after project acceptance. The Contractor may maintain this documentation electronically or in paper format.

The Department or FHWA may review the Contractor's supporting documentation to verify compliance with the Buy America provisions at any time. Supporting documentation shall be provided within five business days of the request. The burden of proof to meet the Buy America provisions rests with the Contractor. If the supporting documentation does not undeniably demonstrate to FHWA or the Department that the "Domestic Materials" identified in the Certificates of Compliance were produced in the United States of America, then the Department may deduct payment from moneys due the Contractor for the value of the iron and steel that did not meet the Buy America provisions.

**ATTACHMENT 9 TO EXHIBIT U
SPECIAL PROVISION**

Certification of Nondiscrimination in Employment

By signing this proposal, the bidder certifies that he has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if he has not participated in a previous contract of this type, or if he has had previous contract or subcontracts and has not filed, he will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**ATTACHMENT 10 TO EXHIBIT U
SPECIAL PROVISION**

On-the-Job Training Program for Federal-Aid Highway Construction Projects

This training special provision is the Department's implementation of 23 U.S.C. § 140 (a). The primary objective of this provision is to train and upgrade minorities and women toward journey worker status. This training commitment is not intended and shall not be used to discriminate against any applicant for training, whether a member of a minority group or not.

As part of the Concessionaire's equal employment opportunity affirmative action program, training shall be provided as follows:

1. The Concessionaire shall ensure that on-the-job training (OJT) aimed at developing full journey worker status in the type of trade or job classification involved is provided.
2. The Department has assigned a project-specific trainee goal in accordance with the following guidelines as set forth in 23 C.F.R. §230.111.
 - 1) Dollar value of the contract;
 - 2) Duration of the contract;
 - 3) Geographic location;
 - 4) Availability of minorities, women, and disadvantaged for training;
 - 5) The potential for effective training;
 - 6) Type of work;
 - 7) Total normal work force that the average proposer could be expected to use;
 - 8) The need for additional journeymen in the area;
 - 9) Recognition of the suggested minimum goal for the State; and
 - 10) A satisfactory ratio of trainees to journeymen expected to be on the Concessionaire's work force during normal operations.
3. The OJT program trainee goal for this project is 28 trainees (24 for the 395 Project and 4 for the Fred Ex Project).
4. The Concessionaire will have fulfilled its responsibilities under this provision when acceptable training has been provided to the number of trainees assigned to this project.
5. In the event that the Concessionaire subcontracts a portion of the contract work, it shall determine if any of the trainees are to be trained by the subcontractor. The Concessionaire should insure that this training special provision is made applicable to such subcontract. However, Concessionaire shall retain the primary responsibility for meeting the training requirements imposed by this special provision.
6. The Concessionaire shall make every effort to ensure minorities and women are enrolled and trained in the program. The Concessionaire shall conduct systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that such persons are available within a reasonable area of recruitment.
7. It is the intention of this provision that training is to be provided in the construction crafts. Training is permissible in lower level management positions such as office engineers,

- estimators, timekeepers, etc., where the training is oriented toward construction applications. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.
8. The Department and the Federal Highway Administration (FHWA) shall approve a training program if it meets the equal employment opportunity obligations of the Concessionaire and aims to train and upgrade employees to journey worker status.
 9. The Department's OJT Program has been designed to ensure that the trainee consistently receives the level and quality of training necessary to perform as a journey worker in his/her respective skilled trade classification. Standard training programs for each skilled construction trade classification are located in the OJT program manual.
 10. Apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided the program is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts.
 11. The number of trainees shall be distributed among the work classifications on the basis of the Concessionaire's needs and the availability of journey worker in the various classifications.
 12. No employee shall be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey worker status or in which he or she has been employed as a journey worker. The Concessionaire may satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Concessionaire's records should document the findings in each case.
 13. At or before contract execution, the Concessionaire must submit the Contractor OJT Plan form to the Department's Office of Civil Rights (OCR). The plan shall specify how the Concessionaire intends to satisfy its goal by including the following information: the type of apprentice or training program, number of trainees, type of training, and length of training.
 14. The trainee(s) shall begin training on the project after start of work and remain on the project as long as training opportunities exist or until the training is completed.
 15. The trainees will be paid at minimum, 60% of the appropriate journey worker's rate specified in the contract for the first half of the training period, 75% for the third quarter of the training period, and 90 percent for the last quarter of the training period. However, if the apprentices or trainees are enrolled in another program approved by the Department of Labor or other agency, such appropriate rates shall apply.
 16. The OCR must approve all proposed apprentices and trainees before training begins. The Concessionaire must submit the Trainee Enrollment Form in order for training to be

counted toward the project goal and be eligible for reimbursement. The Concessionaire shall provide each trainee with a copy of the training program he or she will follow.

17. On a weekly basis, the Concessionaire shall submit Form C-67 (Weekly Trainee Report) to the Department and the OCR. The weekly reporting form will include the required training information and certification that the information is accurate and complete. If a trainee is terminated, the Concessionaire is required to notify the Department immediately.
18. The Concessionaire shall provide each trainee with a certification showing the type and length of training satisfactorily completed.
19. If requested, the Concessionaire may be reimbursed 80 cents per hour of training for each trainee working on this project and whose participation towards the OJT project goal has been approved.

This reimbursement will be made regardless whether the Concessionaire receives additional training program funds from other sources, provided such other program requirements do not specifically prohibit the Concessionaire from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the Concessionaire if the trainees are concurrently employed on a federal-aid project and when the Concessionaire contributes to the cost of the training, or provides the instruction to the trainee, or pays the trainee's wages during the offsite training period.

No payment shall be made to the Concessionaire if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by the Concessionaire and evidences a lack of good faith on the part of the Concessionaire in meeting the requirements of this Special Training Provision.

20. Detailed program reporting requirements and procedures, reporting forms, and the list of approved training classifications are found in the OJT program manual, which can be obtained upon request by contacting the OCR.

EXHIBIT V

TURNOVER PLAN

1. INTRODUCTION

This Turnover Plan outlines the operational relationship between the Concessionaire and the Department concerning the impacts and turnover of ITS and TMS assets to the Concessionaire during construction and prior to commencement of tolling within the Project limits.

2. BOUNDARIES

This Turnover Plan pertains to the existing 395 Corridor from just south of Edsall Road to the Potomac River, a distance of roughly 8.8 miles.

3. ASSETS AFFECTED

The Department will provide the Concessionaire with those existing assets within the project boundaries that pertain to high occupancy toll (HOT) operation of the reversible roadway. The assets include assets built or modified by the Concessionaire. Examples of the assets to be transferred are:

- Access gates;
- Dynamic message signs used for informing motorists of gate status, toll amounts, or conditions on the reversible roadway;
- Lighting, including sign lighting, that is primarily for the reversible roadway;
- Signing relating to the reversible roadway;
- Electrical service panels used solely for devices operated and maintained by the Concessionaire; and
- Existing sign structures used exclusively for 395 Express Lanes Northern Extension fixed signs or dynamic message signs.

The Concessionaire may also impact the Department's assets during construction. Examples of the assets that may be impacted are:

- Ramp meters;
- Dynamic message signs;
- Lighting;
- Signing;

- Electrical service panels;
- Traffic cameras and detectors;
- Closed-circuit television (CCTV) cameras;
- Mile markers;
- Weather stations;
- Sign structures;
- Equipment cabinets;
- Attenuators;
- Guardrail;
- Drop inlets;
- Barrier walls;
- Traffic signals;
- Conduit;
- Fiber; and
- Electric lines.

4. PROTECTION OF ASSETS

Throughout this Turnover Plan, “impact” is defined as any work that will interrupt the normal operation of the Department’s assets.

The work shall be governed by the general requirement that the impacted Department assets shall be maintained or returned to a condition equal or better than the condition at the start of construction unless otherwise indicated in the plans or approved by the Department. This shall include both the functionality and maintainability of the assets.

Unless specifically described on the plans or special provisions or directed by the Department in writing, means and methods for completing the work related to impacted assets shall be at the discretion of the Concessionaire. Means and methods shall be consistent with the requirements of the Amended and Restated Comprehensive Agreement.

The Concessionaire’s work entails relocating or salvaging some Department assets from the Project area. The Concessionaire shall inspect all assets being removed or relocated by

the Project and shall record their condition prior to disconnection. Any items identified as defective shall be brought to the attention of the Department prior to deactivation.

5. MAINTENANCE

The existing lighting, communication, gate, and ITS systems will be maintained by the Department until the Concessionaire begins impacting those assets, at which time the Concessionaire shall take over the maintenance.

As described in Section 7 of this Turnover Plan, the Concessionaire must submit a notification form giving the date on which it proposes to impact the Department's assets. Once the notification form is approved, the maintenance responsibility will transfer on that date. While the Concessionaire is responsible for maintenance, the Department will address certain events outside the control of the Concessionaire, including warranty claims and recovery from at-fault third parties.

After construction, the Concessionaire shall continue to maintain and operate those assets used for HOT operation of the reversible roadway. Responsibility for maintenance of other assets will transfer back to the Department upon final acceptance of the work.

The Department will maintain items that are not impacted by construction.

6. OUTAGES DURING CONSTRUCTION

The Concessionaire's work entails temporarily taking some equipment out of service. Equipment that would otherwise be operational may be out of service because construction has interrupted power or communication to the equipment. This section presents limitations on the Concessionaire's activities, limitations intended to minimize the danger and inconvenience to the public as a result of equipment outages. Additional restrictions are described in the Amended and Restated Comprehensive Agreement.

The Concessionaire shall minimize time out of service. Where equipment, power lines, and communication lines are being replaced, the Concessionaire shall endeavor to have the replacement equipment, power systems, and communication systems ready for use before impacting the original equipment or provide temporary replacement such as portable CCTV, DMS, generator, sensor, traffic signal, lighting and aerial cable to alleviate impacts of an extended outage.

Notwithstanding the permission given in this section to take equipment out of service, the Concessionaire shall promptly restore equipment to normal operation when requested by the Department. In particular, the Department may require gate system operability prior to and during a snow event.

Temporary outages for construction purposes shall be allowed as follows:

6.1 Communication System

The Concessionaire may impact the Department's fiber optic communication system for not more than eight (8) hours outside peak periods (i.e. during overnight hours and weekend). The Department may require the outage to occur at times of lightest traffic demand and prohibit outages during holidays, emergencies and special events.

6.2 Gates

The Concessionaire may impact normal remote operations of a gate for a period no longer than seven (7) days. This includes degraded functions time during which the gate has power and communication but does not operate normally because the associated dynamic message signs do not have communication or power. The Concessionaire shall not cause more than two gate group outages at a time. In the event that outages caused by the Concessionaire require personnel to manually operate gates, the Concessionaire shall provide qualified personnel to manually operate the gates in a manner consistent with the Department's normal operations.

6.3 Gate-Related Dynamic Message Signs

The Concessionaire may impact normal remote/automated gate-related dynamic message signs for a period no longer than seven (7) days. This includes degraded functions time during which the signs have power and communication but do not operate normally because the associated gates do not have power or communication. During sign outages, the Concessionaire shall provide and operate portable dynamic message signs remotely controllable to display the usual gate-related messages.

6.4 Traveler Advisory Dynamic Message Signs

The Concessionaire may impact dynamic message signs that are not gate-related for a period no longer than thirty (30) days. Concessionaire shall endeavor to provide remotely controllable portable dynamic message signs in the vicinity of impacted dynamic message signs.

6.5 Roadway Lighting

The Department shall endeavor to maintain all existing HOV lighting within the HOV Lanes so long as unfettered access is preserved. If the highways lights within existing HOV facility (only) have to be taken out of service by the Concessionaire or the Department, these lights must be returned to service within thirty (30) days. At no time shall the lights in GP Lanes and other roadways be put out of service, unless mutually agreed between the Parties for the purposes of cutover, testing or integration into the ETTM System or NRO MPSTOC ATMS.

6.6 Traffic Cameras and Detectors

The Concessionaire may impact CCTV cameras and traffic detection equipment for a period of no longer than ten (10) days. This limitation applies to cameras operated by 95 Express Lanes LLC as well as those operated by VDOT. For CCTV outages lasting longer than twenty-four (24) hours, the Concessionaire shall provide a temporary traffic detector and portable camera remotely accessible/controllable for use by the operator of the out-of-service camera. For detectors used by ramp meters, see Section 6.08 below.

6.7 Sign Lighting

The Concessionaire may de-energize overhead sign lighting for a period of no longer than thirty (30) days.

6.8 Ramp Meters

The Concessionaire may impact ramp meters only during hours when the meters are not normally in operation during reoccurring peak periods. The ramp meter includes the detectors connected directly or logically to the ramp meter controller; some of those detectors may be several hundred feet from the ramp meter cabinet.

6.9 Other

Any item not listed above shall be handled in accordance with the requirements listed in the Amended and Restated Comprehensive Agreement.

7. NOTIFICATION AND APPROVAL

No work that impacts the Department's traffic management assets shall commence without prior notification to, and approval by, the Department in accordance with Section 3.16 of the Technical Requirements.

For assets dedicated to the operation and illumination of the reversible roadway that 95 Express Lanes LLC currently operates and maintains under the Gate Control System Agreement dated November 17, 2014 or the I-95 HOV/HOT Lanes Project, 95 Express Lanes LLC will be the Department's agent, receiving the notification and issuing the approval. That equipment includes:

- Access gates;
- Dynamic message signs used to tell motorists whether the gates are open or closed;
- Cameras that the 95 Express Lanes LLC staff uses to view the reversible roadway;
- Roadway and sign lights that primarily serve users of the reversible roadway and the associated ramps; and

- Service panels, generators, equipment cabinets, conduit and cables runs used exclusively for assets listed above.

For these assets, the Concessionaire shall notify the Department per the procedures below at least twenty-one (21) days prior to the date of impact. If the Department has not notified the Concessionaire of an objection to the impact within seven (7) calendar days of receiving the notification, the work may proceed as scheduled.

Notification of impacts to all assets shall be via the form provided in Appendix A.

If the request is to impact the operation of gates or the associated signs, the Concessionaire shall accept degradation and include a proposed mitigation plan for maintaining access and safe operation of ramps during period gates are inoperable or degraded.

Appendix B describes the approval process for requests to impact of all traffic management assets. When deviations are required due to changing field conditions, no reasonable request by the Concessionaire or the Department for changes may be denied without good cause.

The Department and Concessionaire shall regularly work together to coordinate work that may impact Department assets. This coordination shall include, but not be limited to, regularly scheduled construction coordination meetings scheduled and documented by the Concessionaire.

The Department shall be notified immediately of any damage to existing assets. The Concessionaire shall immediately initiate actions to restore functionality to damaged asset and endeavor to complete repairs prior to next peak period.

8. TESTING

Testing during construction will be in accordance with the Technical Requirements. The test procedures and acceptance criteria or Departmental testing of new or relocated assets shall be developed in accordance with industry standards best practice by the Concessionaire and submitted to the Department for review. Along with each test procedure submission, the Concessionaire shall provide written evidence that 95 Express Lanes LLC, in its current capacity as operator and maintainer of the reversible roadway, is satisfied with the adequacy of the testing and agrees that the proposed test procedures will not unduly impact safety or traffic operations and adequately demonstrate workmanship and functionality prior to acceptance. Testing shall not proceed until the Department accepts the test procedures and acceptance criteria.

Testing shall include testing of traffic signals tied to access gates.

Test procedures for access gates shall include plans for safely maintaining traffic during the test. This will include stipulating what messages can be displayed on dynamic message signs as part of the testing.

Upon successful completion of the testing newly accepted assets shall be subject to 30-day in service burn period prior to releasing the Concessionaire and commencement of warranty service.

**APPENDIX A
(TO EXHIBIT V)**

NOTIFICATION OF IMPACT TO VDOT ASSETS

This Appendix contains both the form and instructions for filling it out.

VDOT Traffic Management System Assets Notification of Impact—1

Notification ID# _____ (*to be completed by notified party*)

Date Submitted: _____

Status:

For approver's use only

Asset Information:

Type: _____

Milepost: _____

Station and Offset: _____

Asset ID (if known): _____

Plan Package ID: _____

Description:

Type/Description of Work:

Schedule:

Start Day / Time: _____ *End Day/Time:* _____

Interim Milestones:

VDOT Traffic Management System Assets Notification of Impact—2

Request for Waiver:

Impact Mitigation:

Concessionaire Contact Information:

Name: _____ *E-mail:* _____

Mobile Phone: _____

Approver Contact Information:

Name: _____

E-mail: _____

Mobile Phone: _____

Required VDOT Actions:

To be completed by Concessionaire

Information to Concessionaire:

To be completed by VDOT/I-95 Express Lanes LLC

**Instructions for
VDOT Traffic Management System Assets Notification of Impact**

Field	Responsibility for data entry and instructions
Date Submitted	Concessionaire. Enter the date the form is submitted. The form will be submitted electronically by e-mail. The date should reflect the date the form is sent via e-mail. Forms sent after 3:00 p.m. shall include the next business day as the date submitted.
Notification ID #	VDOT Engineer or 95 Express Lanes LLC. Enter the appropriate notification number upon receipt. The approver shall acknowledge receipt and provide the Notification ID to the Concessionaire for tracking purposes and use in other correspondence.
Approval Status	<p>VDOT Engineer or 95 Express Lanes LLC. Following initial review, indicate status and provide notes and comments as appropriate. Comments shall include specific items of the Form that are non-conforming, with references to the contract documents that control the work. Upon Approval, the Form will be signed and scanned with copies to the Concessionaire.</p> <p>Revised and Resubmitted Forms will include the original comments. Upon final approval, Revised and Resubmit shall be changed to Approved and signed as noted above.</p> <p>Rejected Forms will be closed and upon resubmittal, a new submittal date and ID number will be entered.</p>
Asset Information: Type	Concessionaire. Enter the type of asset being impacted (e.g. camera, gate, gate dynamic message sign, advisory dynamic message sign, fiber, etc.).
Asset Information: Description	Concessionaire. Enter a description of the location, such as “outside northbound GP lanes, just north of Turkeycock Interchange”.
Asset Information: Location	Concessionaire. Enter the milepost, to the nearest 0.1 mile. Enter the station and offset of the asset (or station range) from the plans.
Asset Information: Asset ID	Concessionaire/Approver. Enter the cabinet ID and/or device ID of the asset, if known (e.g. Cabinet B 151, VMS 0990, etc.). The Concessionaire shall enter this information if shown on the plans. Otherwise, the approver shall enter if available.
Type of Work	Concessionaire. Indicate the type of work to be completed (e.g. relocation/reconnection of power, relocation/reconnection of communications, relocation of device, etc.).
Description of Work	Concessionaire. Provide brief description on the work to be performed including any pertinent means and methods. If the work is sufficiently detailed on the plans, standards, and special provisions, indicate “Per Plan”.

Field	Responsibility for data entry and instructions
Schedule of Work	Concessionaire. Enter proposed date and time for start and end of work/impact. If there are intermediate milestones, provide dates.
Request for Waiver	Concessionaire. Enter any deviations from the requirements of the Turnover Plan and provide justification for the request (e.g. request for longer duration outage, request for waiver to temporary camera requirement, etc.).

VDOT Traffic Management System Assets ID#

Notification of Impact

(to be completed by VDOT)

Field	Responsibility for data entry and instructions
Impact Mitigation	Concessionaire. Enter a description of the work to be done to mitigate impacts to operational performance as required by the Turnover Plan (e.g. temporary CCTV camera, manual operation of gates, etc.). Provide as much detail as possible in order to coordinate and integrate temporary operations with the Department's normal operations (device configuration parameters, etc.). Indicate pending information for ongoing coordination as appropriate.
Concessionaire Contact Information	Concessionaire. Enter phone and e-mail contact information. Enter primary contact information for person responsible for planning and directing the work. Enter secondary contact information as needed. Enter Field Contact information for the person that will be on-site at the time of the work with the authority to direct the work in the field as it is being done. Mobile number must be provided for Field Contact.
Approver Contact Information	VDOT Engineer or 95 Express Lanes LLC Representative. Enter phone and e-mail contact information. Enter primary contact information for person responsible for coordinating the work and authority to approve work. Enter Secondary Contact information as needed. Enter Field Contact information for the person that will be on-site at the time of the work or at a remote location with the authority to provide final approval to commence work if required.
Required VDOT Actions	Concessionaire. Enter any actions required by VDOT or additional information needed from VDOT in order to plan or complete the work.
Information to Concessionaire	Approver. Provide the Concessionaire any additional information or instructions to plan and coordinate the work.
Documents Attached	Concessionaire. Enter Plan Package, sheet number, and special provision controlling the work. Provide other references or attach mark-ups that detail the work as needed.

**APPENDIX B
(TO EXHIBIT V)**

APPROVAL PROCESS FOR IMPACT TO VDOT ASSETS

Schedule	
Milestone	
	Description
21 Days Prior to Work Start	<p>1st Notification</p> <p>The Concessionaire shall submit a complete <u>Notification of Impact to VDOT TMS Asset</u> form to the approver. The form shall be <i>provided</i> a minimum of 21 calendar days prior to the proposed start of the work impacting the asset.</p>
18 Days Prior to Work Start	<p>Notification Review</p> <p>The approver shall review the form for conformance with the plans and contract documents. Within 3 days of receipt, the approver shall respond to the submitted form. The approver shall provide one of three responses:</p> <p><i>Approved</i> – The form is found to be in conformance with all documented requirements and is approved as submitted. The process moves to the Inspection phase.</p> <p><i>Revise and Resubmit</i> – The form is conditionally approved with minor corrections or clarifications required as noted in the approver’s comments. The process moves to the Inspection phase and the Concessionaire revises the Form as needed for resubmittal prior to the 2nd Notification.</p> <p><i>Rejected</i> – The form has significant elements that are not in conformance with the plans or other contract documents. The approver notes the specific elements of the form not in conformance and cites the controlling contract requirements not met. The Concessionaire shall submit the form again beginning at the 1st Notification.</p>

Schedule

Milestone	
Inspection	Description
	<p>Following approval or conditional approval of the Notification form, the approver and the Concessionaire shall conduct a joint field meeting at the asset to be impacted. The entity operating the equipment – VDOT or 95 Express Lanes LLC – shall provide the Concessionaire access to the equipment and assets to be impacted for general inspection and demonstrate the operational status of the equipment. If the proposed impact is not limited to a single site (e.g., impact to power or communications connecting multiple devices), the operator shall also demonstrate operation at a remote location to establish the existing condition of all elements to be impacted by the work. The Concessionaire shall document the condition of the site through field notes and photos as needed. The Concessionaire shall provide written notification to the operator of any site deficiencies within 24 hours of the inspection. The operator shall assess deficiencies and provide a response to the Concessionaire within 48 hours of receipt of the Concessionaire’s report. The response shall be one of the following:</p> <p><i>Operator Repair/Replace</i> – VDOT or 95 Express Lanes LLC, as agreed between them, shall repair or replace deficient equipment prior to the start of the work. A second inspection shall be scheduled to document the existing condition of the assets prior to the start of the work.</p> <p><i>Proceed per Plan</i> – The approver shall instruct the Concessionaire to carry out the work as shown in the plans and proposed on the Notification Form, accepting the condition of the assets as is. The Concessionaire shall complete the work as required by the Contract documents and return the system to its existing condition at the time of the inspection accounting for the deficiencies of the system noted in its report. For example, VDOT may instruct the Concessionaire to relocate a camera as called for in the plans even if the camera is inoperative at the time of inspection. The Concessionaire will relocate the camera noting that it was inoperative prior to start and maintaining its current condition.</p> <p><i>Request for Change</i> – The approver shall request a change to the plans to address the deficient conditions. This may include requesting the Concessionaire to carry out repair or replacement or removal and disposal/salvage of the impacted assets. This process shall follow the typical process for changes to the contract accounting for any impacts to schedule and scope.</p>

Schedule	
	Milestone
10 Days Prior to Start of Work	<p style="text-align: center;">Description</p> <p>The Concessionaire shall provide a 2nd Notification to the approver for the start of the work. If the notification form was required to be revised and resubmitted as part of a conditional approval, the Concessionaire shall provide the revised form with this notification. The Concessionaire may propose changes to the original request as part of this notification, such as minor changes to the schedule of the work or revisions to the construction work plan. If no updates to the 1st Notification are required, the Concessionaire shall provide only a written reaffirmation of the original notification.</p> <p>The approver shall approve or reject the updated form within 48 hours of its receipt and provide a written response per the requirements of the 1st Notification.</p>
24 Hours Prior to Work Start	<p style="text-align: center;">Confirming Notification</p> <p>The Concessionaire shall provide written confirmation of the planned work a minimum of 24 hours prior to the scheduled start of the work. Minor deviations of the written notification form shall be allowed (e.g., minor changes in the specific start time; updated contact information, etc.).</p>
15 Minutes Prior to Work Start	<p style="text-align: center;">Final Notification</p> <p>The Concessionaire shall provide final notification 15 minutes prior to the start of the work if required by the approver as noted on the approved Notification Form. This notification shall be made for assets identified by the approver as being of significant operational value. An asset of “significant operational value” is one which must remain in operation until an unscheduled incident or condition is resolved. The approver shall identify these assets on the Notification form. The Concessionaire shall provide this final notification to the PSTOC or Express Lanes Operations Center staff as identified by the approver in the Notification Process.</p>

Schedule		
Milestone		
		Description
Start of Work	Work	The Concessionaire shall carry out the work in accordance with the Contract documents and approved Notification form. The Concessionaire should provide daily updates to the approver on the progress of the work or as required on the Notification form. The Concessionaire shall notify the approver of any events or issues that arise during the course of the work that may impact the scheduled completion of the work. The Concessionaire shall provide a plan for recovery of schedule as needed.
Completion of Work	Notification of Completion	The Concessionaire shall notify the approver immediately upon completing the work. The approver shall verify the operation of the asset as needed to ensure the basic scope of the work is completed. The approver shall notify the Concessionaire immediately of any impact to normal operation of the asset following completion of the work.
48 Hours After Completion of Work	Return of Maintenance	For assets that are not used to operate the reversible roadway, the Concessionaire and the Department shall conduct a return of maintenance inspection within 48 hours of completion of the work. The Department shall inspect the work on site and provide a written punch list or acceptance as appropriate. Maintenance of the asset shall transfer back to the Department upon completion of any punch list items and issuance of the written acceptance. Written acceptance shall be <i>provided</i> no less than 48 hours following the final inspection.

EXHIBIT W
NON-COMPLIANCE POINTS TABLE

[SEE ATTACHED]

EXHIBIT X
SHARED FACILITIES AGREEMENT

[SEE ATTACHED]

EXHIBIT Y
INSURANCE REQUIREMENTS

EXHIBIT Y-1

INSURANCE REQUIREMENTS FOR THE ORIGINAL PROJECT AND 395 PROJECT

Section 1 Insurance Coverages Prior to Final Acceptance or 395 Final Completion

Except as set forth below, the Concessionaire will obtain and maintain, or cause the Design-Build Contractor to obtain and maintain, the following insurance coverages during the performance of the Design-Build Work. Unless required otherwise, all insurance coverages listed below will be purchased specifically and exclusively for the Project, with coverage limits devoted solely to the Project. Policy coverage limits may be achieved through a combination of insurance policies (e.g. primary and/or excess).

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$2 million bodily injury by accident, each accident, and \$2 million bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$2 million per occurrence and \$4 million annual aggregate applicable on a per project basis. The Department is to be named as an additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$2 million combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Department is to be named as an additional insured on a primary, non-contributory basis.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$100 million per occurrence and in the aggregate.

(e) **Builder's Risk Insurance** for physical loss, destruction, or physical damage to the Work. The Builder's Risk insurance will cover the Concessionaire, the Design-Build Contractor, the Department, and other Contractors of all tiers prior to Final Acceptance or 395 Final Completion, as applicable; *provided*, that the limits of such coverage may be based on a maximum probable loss analysis, subject to the Department's approval of such maximum probable loss analysis by an independent third party acceptable to the Department. In no event will the limits of such coverage be less than \$100 million. Further, the policy will include sub-limits for certain specified perils including, but not limited to: Offsite Storage, Property in Transit, Expediting Expenses, Demolition and Increased Cost of Construction, Debris Removal, Professional Fees/Loss adjustment expenses and adjacent property of others within the Project limits. At the Design-Build Contractor's option, Mobile Equipment may be covered under the Builder's Risk Insurance or a separate Equipment Floater Policy may be purchased. The policy also will include

replacement cost coverage for materials, supplies, equipment, machinery, and fixtures that are or will be part of the Project. Coverage will include, but not be limited to, the following: right to partial occupancy; earthquake; earth movement; flood; transit; temporary and permanent works; expediting expenses; debris removal; offsite storage; and delayed opening.

(f) **Contractor's Pollution Liability Insurance** to indemnify for bodily injury, property damage, or amounts which the Concessionaire, its employees, its agents, or its Contractors are legally obligated to pay for clean-up/remediation work arising out of the Design-Build Work, including coverage, if needed, for marine operations and coverage for liabilities under the Oil Pollution Act of 1990 (33 U.S.C. §§ 2701-2762) and the Comprehensive Environmental Response, Liability, and Compensation Act (42 U.S.C. §§ 9601-9675) for marine operations. Such insurance will have minimum limits of \$10 million any one claim and in the aggregate and will remain in full force and effect for the period of the Design-Build Work for the Existing HOT Lanes and five years completed operations extension after Substantial Completion of the Project. Such insurance will have minimum limits of \$5 million any one claim and in the aggregate and will remain in full force and effect for the period of the Design-Build Work for the 395 Project and five years completed operations extension after 395 Final Completion.

(g) **Marine Protection and Indemnity Insurance** – if any of the Design-Build Work requires marine operations - the Concessionaire and its Contractors shall provide protection and indemnity coverage with respect to bodily injury or property damage arising from marine operations including damage to piers, wharves, other fixed or movable structures, and loss or damage to any other vessel, craft, or property on such other vessel or craft. Such insurance will have minimum limits of \$5 million in the aggregate. The Concessionaire is not obligated to purchase a Project-specific Marine Protection and Indemnity Insurance, but will cause such insurance coverage to name the Department as an additional insured on a primary, non-contributory basis.

(h) **Railroad Protective Liability Insurance**, as may be required by any railroad in connection with Work across, under or adjacent to the railroad's tracks or railroad right-of-way, including for the Norfolk Southern Railroad with a coverage limit of \$5 million per occurrence and \$10 million in the aggregate.

(i) **Architects/Engineers Professional Liability Insurance** covering the Design-Build Contractor's lead design engineer for acts, errors, or omissions arising in connection with the Design-Build Work, including design and engineering work performed pursuant to the Interim Agreement, for not less than (i) \$15 million for any one claim and in the aggregate for the Existing HOT Lanes and (ii) \$10 million for any one claim and in the aggregate for the 395 Project. Such insurance, which may be purchased and maintained by the Design-Build Contractor's lead design engineer, will remain in full force and effect during the performance of the Design-Build Work and with an extended reporting period for five years after Substantial Completion or 395 Final Completion, as applicable.

Section 2 Insurance Coverage Requirements for the TTMS Contractor

The Concessionaire will cause the TTMS Contractor (or, with respect to the Errors & Omissions Insurance, its Contractors) to obtain and maintain the following insurance coverages or

be responsible for maintaining such coverages on their behalf; *provided*, however, if the TTMS Contractor's Contractors maintain the Errors & Omissions Insurance, the TTMS Contractor must be named as an indemnified party on the Errors & Omissions Insurance policy:

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1 million bodily injury by accident, each accident, and \$1 million bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$1 million per occurrence and \$2 million annual aggregate applicable on a per project basis. The Department is to be named as an additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$1,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Concessionaire and the Department are to be named as additional insured.

(d) **Errors & Omissions Insurance** with limits of at least \$2,000,000 per claim and in the aggregate. Such insurance will remain in full force and effect during the performance of such professional services and with an extended reporting period for two years after completion of such professional services.

Section 3 Insurance Coverage Requirements for Other Contractors

The Concessionaire will cause all Contractors (other than the Design-Build Contractor, the TTMS Contractor and the O&M Contractor) performing any portion of the Work to obtain and maintain the following insurance coverages or be responsible for maintaining such coverages on their behalf:

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1 million bodily injury by accident, each accident, and \$1 million bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** will include coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and contractual liability with limits for contract expenditures of less than \$100,000, the limits must be no less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate annually, and for contract expenditure greater than \$100,000, limits of no less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate annually. To the extent commercially

obtainable, deductible per occurrence should not exceed \$100,000. The Concessionaire and the Department are to be named as additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$500,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Concessionaire and the Department are to be named as additional insured.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability and automobile liability in the amount of \$2,000,000 per occurrence and in the aggregate for contracts of less than \$100,000 or \$5,000,000 per occurrence and in the aggregate for contracts greater than \$100,000.

(e) **Professional Liability Insurance** (applicable only to Contractors rendering professional services, including, but not limited to, architects, engineers, traffic consultants, accountants, attorneys, etc.) with limits of at least \$1,000,000 per claim and in the aggregate. Such insurance will remain in full force and effect during the performance of such professional services and with an extended reporting period for two years after completion of such professional services.

Section 4 Insurance Coverages for the 395 Early Work

The Concessionaire will obtain and maintain, or cause the 395 Design-Build Contractor to obtain and maintain, the following insurance coverages during the performance of the 395 Early Work. Unless required otherwise, all insurance coverages listed below will be purchased specifically and exclusively for the 395 Project, with coverage limits devoted solely to the 395 Project. Policy coverage limits may be achieved through a combination of insurance policies (e.g. primary and/or excess).

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1 million bodily injury by accident, each accident, and \$1 million bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$1 million per occurrence and \$1 million annual aggregate applicable on a per project basis. The Department is to be named as an additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$1 million combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Department is to be named as an additional insured on a primary, non-contributory basis.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$4 million per occurrence and in the aggregate.

(e) **Architects/Engineers Professional Liability Insurance** covering the 395 Design-Build Contractor's lead design engineer for acts, errors, or omissions arising in connection with the 395 Early Work for not less than \$5 million for any one claim and in the aggregate. Such insurance, which may be purchased and maintained by the 395 Design-Build Contractor's lead design engineer, will remain in full force and effect during the performance of the 395 Early Work.

EXHIBIT Y-2

INSURANCE REQUIREMENTS FOR THE FRED EX PROJECT

Section 1. Insurance Coverages Prior to Fred Ex Final Completion

Except as set forth below, the Concessionaire will obtain and maintain, or cause the Fred Ex Design-Build Contractor to obtain and maintain, the following insurance coverage types and amounts during the performance of the work under the Fred Ex Design-Build Contract (the “Fred Ex Design-Build Work”). Unless required otherwise, all insurance coverages listed below may be provided under corporate insurance programs maintained by the Concessionaire (or Fred Ex Design-Build Contractor) and need not be project specific. Policy coverage limits may be achieved through a combination of insurance policies (e.g. primary and/or excess).

(a) **Workers’ Compensation and Employer’s Liability Insurance** with statutory workers’ compensation (Coverage A) limits and employer’s liability (Coverage B) limits of \$2,000,000 bodily injury by accident, each accident, and \$2,000,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers’ Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$2,000,000 per occurrence and \$4,000,000 annual aggregate applicable on a per project basis. The Department is to be named as an additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$2,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Department is to be named as an additional insured on a primary, non-contributory basis.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer’s liability, commercial general liability, and automobile liability in the amount of \$100,000,000 per occurrence and in the aggregate for the Fred Ex Project. The Department is to be named as an additional insured on a primary, non-contributory basis.

(e) **Builder’s Risk Insurance** for physical loss, destruction, or physical damage to the Fred Ex Design-Build Work. The Builder’s Risk insurance will cover the Concessionaire, the Fred Ex Design-Build Contractor, the Department, and other Contractors of all tiers prior to final completion of the Fred Ex Project; *provided*, that the limits of such coverage may be based on a maximum probable loss analysis, subject to the Department’s approval of such maximum probable loss analysis by an independent third party acceptable to the Department. In no event will the limits of such coverage be less than \$100,000,000. Further, the policy will include sub-limits for certain specified perils including, but not limited to: Offsite Storage, Property in Transit, Expediting Expenses, Demolition and Increased Cost of Construction, Debris Removal, Professional Fees/ Loss adjustment expenses and adjacent property of others within the Project limits. At the option

of the Fred Ex Design-Build Contractor, Mobile Equipment may be covered under the Builder's Risk Insurance or a separate Equipment Floater Policy may be purchased. The policy also will include replacement cost coverage for materials, supplies, equipment, machinery, and fixtures that are or will be part of the Fred Ex Project, as applicable. Coverage will include, but not be limited to, the following: right to partial occupancy, earthquake, earth movement, flood, windstorm, transit, temporary and permanent works, expediting expenses, debris removal, offsite storage, soft costs, and delayed opening loss of revenue.

(f) **Contractor's Pollution Liability Insurance** to indemnify for bodily injury, property damage, or amounts which the Concessionaire, its employees, its agents, or its Contractors are legally obligated to pay for clean-up/remediation work arising out of the Fred Ex Design-Build Work, including coverage, if needed, for marine operations and coverage for liabilities under the Oil Pollution Act of 1990 (33 U.S.C. §§ 2701-2762) and the Comprehensive Environmental Response, Liability, and Compensation Act (42 U.S.C. §§ 9601-9675) for marine operations. Such insurance will have minimum limits of \$5,000,000 any one claim and in the aggregate and will remain in full force and effect for the period of the Fred Ex Design-Build Work and five years of completed operations extension after Fred Ex Final Completion.

(g) **Marine Protection and Indemnity Insurance** – if any of the Fred Ex Design-Build Work requires marine operations, the Concessionaire and its Contractors shall provide protection and indemnity coverage with respect to bodily injury or property damage arising from marine operations including damage to piers, wharves, other fixed or movable structures, and loss or damage to any other vessel, craft, or property on such other vessel or craft. Such insurance will have minimum limits of \$5,000,000 in the aggregate. The Concessionaire is not obligated to purchase a project-specific Marine Protection and Indemnity Insurance, but will cause such insurance coverage to name the Department as an additional insured on a primary, non-contributory basis.

(h) **Railroad Protective Liability Insurance**, as may be required by any railroad in connection with Fred Ex Design-Build Work across, under or adjacent to the railroad's tracks or railroad right-of-way.

(i) **Architects/Engineers Professional Liability Insurance** covering the Fred Ex Design-Build Contractor's lead design engineer for acts, errors, or omissions arising in connection with the Fred Ex Design-Build Work, including any design and engineering work, for not less than \$10,000,000 for any one claim and in the aggregate. Such insurance, which may be purchased and maintained by the Fred Ex Design-Build Contractor's lead design engineer, as applicable, will remain in full force and effect during the performance of the Fred Ex Design-Build Work, and with an extended reporting period for five years after Fred Ex Final Completion.

Section 2. Insurance Coverage Requirements for the TTMS Contractor

The Concessionaire will cause the TTMS Contractor (or, with respect to the Errors & Omissions Insurance, its subcontractors) to obtain and maintain the following insurance coverage types and amounts, or be responsible for maintaining such coverages on their behalf; *provided*, however, if the TTMS Contractor's subcontractors maintain the Errors & Omissions Insurance,

the TTMS Contractor must be named as an indemnified party on the Errors & Omissions Insurance policy:

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1,000,000 bodily injury by accident, each accident, and \$1,000,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate applicable on a per project basis. The Department is to be named as an additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$1,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Concessionaire and the Department are to be named as additional insured on a primary, non-contributory basis.

(d) **Errors & Omissions Insurance** with limits of at least \$2,000,000 per claim and in the aggregate. Such insurance shall include coverage for claims arising from errors and omissions of TTMS Contractor and/or subcontractors, including network security cyber liability, and will remain in full force and effect during the performance of such professional services and with an extended reporting period for two years after completion of such professional services. The TTMS Contractor may comply with this requirement through the use of separate insurance policies (one for technology errors and omissions and one for cyber/network security) if such approach is more cost-effective. Under such a 'two policy' approach, the technology errors & omissions insurance must be in effect prior to the initiation of TTMS design services and the cyber/network security policy must be in effect at least prior to any 'hot testing' or other work tying in to the existing network.

Section 3. Insurance Coverage Requirements for Other Contractors

The Concessionaire will cause all Contractors (other than the Fred Ex Design-Build Contractor, the Fred Ex TTMS Contractor, the TTMS Contractor, and the O&M Contractor) performing any portion of the Work to obtain and maintain the following insurance coverages or be responsible for maintaining such coverages on their behalf, which requirements shall apply both during the design and construction of the Fred Ex Project and during the Operating Period:

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1,000,000 bodily injury by accident, each accident, and \$1,000,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** will include coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and contractual liability with limits no less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate annually. The Concessionaire and the Department are to be named as additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$500,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Concessionaire and the Department are to be named as additional insured on a primary, non-contributory basis.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability and automobile liability in the amount \$5,000,000 per occurrence and in the aggregate for contracts greater than \$500,000.

(e) **Professional Liability Insurance** (applicable only to Contractors rendering professional services, including, but not limited to, architects, engineers, traffic consultants, accountants, attorneys, etc.) with limits of at least \$1,000,000 per claim and in the aggregate. Such insurance will remain in full force and effect during the performance of such professional services and with an extended reporting period for two years after completion of such professional services.

Section 4. Insurance Coverages for Fred Ex Early Work

The Concessionaire will obtain and maintain, or cause the Fred Ex Design-Build Contractor to obtain and maintain, the following insurance coverage types and amounts during the performance of Fred Ex Early Work. Unless required otherwise, all insurance listed below may be *provided* under corporate (so-called "practice") insurance policies and need not be purchased on a project-specific basis. Policy coverage limits may be achieved through a combination of insurance policies (e.g. primary and/or excess).

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1,000,000 bodily injury by accident, each accident, and \$1,000,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate applicable on a per project basis. The Department is to be named as an additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$1,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Department is to be named as an additional insured on a primary, non-contributory basis.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$4,000,000 per occurrence and in the aggregate. The Department is to be named an additional insured on a primary, non-contributory basis.

(e) **Architects/Engineers Professional Liability Insurance** covering the Fred Ex Design-Build Contractor's lead design engineer for acts, errors, or omissions arising in connection with the Fred Ex Early Work for not less than \$10,000,000 for any one claim and in the aggregate. Such insurance, which may be purchased and maintained by the Fred Ex Design-Build Contractor's lead design engineer, will remain in full force and effect during the performance of the Fred Ex Early Work.

EXHIBIT Y-3

INSURANCE REQUIREMENTS FOR THE OPITZ BOULEVARD RAMP PROJECT AND THE SEMINARY ROAD RAMP PROJECT

Section 1. Insurance Coverages for the Opitz Boulevard Ramp Project

From the Effective Date until Opitz Boulevard Ramp Final Completion, the Concessionaire will obtain and maintain, or cause the Opitz Boulevard Ramp Construction Contractor to obtain and maintain (with such Opitz Boulevard Ramp Construction Contractor as a named insured), the following insurance coverages during the Construction Period for the Opitz Boulevard Ramp Project. Unless required otherwise, all insurance coverages listed below may be provided under corporate insurance programs maintained by the Concessionaire (or the Opitz Boulevard Ramp Construction Contractor) and need not be project specific. Policy coverage limits may be achieved through a combination of insurance policies (e.g. primary and/or excess) and utilization of an owner-controlled insurance program (OCIP) or contractor-controlled insurance program (CCIP) will be allowable.

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1 million bodily injury by accident, each accident, and \$1 million bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$1 million per occurrence and \$2 million annual aggregate applicable on a per project basis. The Department is to be named as an additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$1 million combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Department is to be named as an additional insured on a primary, noncontributory basis.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$50 million per occurrence and in the aggregate.

(e) **Builder's Risk Insurance** for physical loss, destruction, or physical damage to the Work unless already covered by the Property Insurance carried in accordance with Exhibit Y-4. The Builder's Risk insurance will cover the Concessionaire, the Opitz Boulevard Ramp Construction Contractor, the Department, and other Contractors of all tiers prior to Opitz Boulevard Ramp Final Completion; *provided*, that the limits of such coverage may be based on a maximum probable loss analysis, subject to the Department's approval of such maximum probable loss analysis by an independent third party acceptable to the Department. In no event will the limits

of such coverage be less than \$25 million. Further, the policy will include sub-limits for certain specified perils including, but not limited to: Offsite Storage, Property in Transit, Expediting Expenses, Demolition and Increased Cost of Construction, Debris Removal, Professional Fees/Loss adjustment expenses and adjacent property of others within the Project limits. At the Design-Build Contractor's option, Mobile Equipment may be covered under the Builder's Risk Insurance or a separate Equipment Floater Policy may be purchased. The policy also will include replacement cost coverage for materials, supplies, equipment, machinery, and fixtures that are or will be part of the Opitz Boulevard Ramp Project. Coverage will include, but not be limited to, the following: right to partial occupancy; earthquake; earth movement; flood; transit; temporary and permanent works; expediting expenses; debris removal; offsite storage; and delayed opening.

(f) **Contractor's Pollution Liability Insurance** to indemnify for bodily injury, property damage, or amounts which the Concessionaire, its employees, its agents, or its Contractors are legally obligated to pay for clean-up/remediation work arising out of the Work, including coverage, if needed, for marine operations and coverage for liabilities under the Oil Pollution Act of 1990 (33 U.S.C. §§ 2701-2762) and the Comprehensive Environmental Response, Liability, and Compensation Act (42 U.S.C. §§ 9601-9675) for marine operations. Such insurance will have minimum limits of \$5 million any one claim and in the aggregate and will remain in full force and effect for the Construction Period for the Opitz Boulevard Ramp Project and five years completed operations extension after Opitz Boulevard Ramp Final Completion.

(g) **Marine Protection and Indemnity Insurance** – If any of the Opitz Boulevard Ramp Construction Work requires marine operations - the Concessionaire and its Contractors shall provide protection and indemnity coverage with respect to bodily injury or property damage arising from marine operations including damage to piers, wharves, other fixed or movable structures, and loss or damage to any other vessel, craft, or property on such other vessel or craft. Such insurance will have minimum limits of \$5 million in the aggregate. The Concessionaire is not obligated to purchase a Project-specific Marine Protection and Indemnity Insurance, but will cause such insurance coverage to name the Department as an additional insured on a primary, non-contributory basis.

(h) **Railroad Protective Liability Insurance**, as may be required by any railroad in connection with Work across, under or adjacent to the railroad's tracks or railroad right-of-way.

In addition, the Concessionaire shall require that the lead design engineer provide **Architects/Engineers Professional Liability Insurance** covering acts, errors, or omissions arising in connection with the Work with a minimum limit of \$5 million for any one claim and in the aggregate. Such insurance must remain in full force and effect during the performance of the design work for the Opitz Boulevard Ramp Project and the Opitz Boulevard Ramp Construction Work, and with an extended reporting period for five years after Opitz Boulevard Ramp Final Completion.

The Concessionaire will cause all other Contractors (other than the Opitz Boulevard Ramp Construction Contractor and the O&M Contractor) working at the site or providing professional services in conjunction with the project to obtain and maintain the following insurance coverages:

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$500,000 bodily injury by accident, each accident, and \$500,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** will include coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and contractual liability with limits for contract expenditures of less than \$100,000, the limits must be no less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate annually. The Concessionaire and the Department are to be named as additional insured on a primary, noncontributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$500,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Concessionaire and the Department are to be named as additional insured.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability and automobile liability in the amount of \$2,000,000 per occurrence and in the aggregate for contracts of \$500,000 or more.

In addition any Contractors (including the Opitz Boulevard Ramp Construction Contractor and the O&M Contractor) who provide professional services (including, but not limited to, architects, engineers, traffic consultants, accountants, attorneys, etc.) shall be required to procure and maintain **Professional Liability Insurance** with limits of at least \$1,000,000 per claim and in the aggregate. Such insurance will remain in full force and effect during the performance of such professional services and with an extended reporting period for two years after completion of such professional services.

In addition, the TMS Contractor (if any) shall carry **Errors & Omissions Insurance** with limits of at least \$2,000,000 per claim and in the aggregate. Such insurance shall include coverage for claims arising from errors and omissions of TMS Contractor and/or subcontractors, including network security/cyber liability. Coverage will remain in full force and effect during the performance of such professional services and with an extended reporting period for two years after completion of such professional services.

Section 2. Insurance Coverages for the Seminary Road Ramp Project

The Concessionaire will cause all contractors performing any portion of the Seminary Road Ramp Construction Work to obtain and maintain the following insurance coverages or be responsible for maintaining such coverages on their behalf, which requirements shall apply from the Effective Date until Seminary Road Ramp Final Completion:

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and

\$1,000,000 bodily injury by disease each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Automobile Liability Insurance** with a limit of at least \$1,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Department is to be named as an additional insured on a primary, non-contributory basis.

(c) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate applicable on a per project basis. The Department is to be named as an additional insured on a primary, non-contributory basis.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability and automobile liability in the amount of \$5,000,000 per occurrence and in the aggregate annually.

(e) **Professional Liability Insurance** (applicable only to Contractors rendering professional services, including, but not limited to, architects, engineers, traffic consultants, accountants, attorneys, etc.) with limits of at least \$5,000,000 per claim and in the aggregate. Such insurance will remain in full force and effect during the performance of such professional services and with an extended reporting period for two years after completion of such professional services.

(f) **Technology Errors & Omissions Insurance** (applicable only to TMS Work) with limits of at least \$2,000,000 per claim and in the aggregate. Such insurance shall include coverage for claims arising from errors and omissions of any applicable Contractor and shall include in addition to technology errors & omissions coverage the following: network security cyber liability, privacy liability, cyber business income interruption, and related coverages. Such policy shall remain in full force and effect during the performance of such technology-related services and with an extended reporting period for two years after completion of such professional services.

Section 3. Applicability of Exhibit Y-4 Requirements

For avoidance of doubt, the insurance requirements set forth in Exhibit Y-4 as applicable to the Project shall from the Third Amended and Restated Agreement Date be applicable to the Opitz Boulevard Ramp Project and the Seminary Road Ramp Project and in addition to the requirements of this Exhibit Y-3.

EXHIBIT Y-4

INSURANCE REQUIREMENTS DURING THE OPERATING PERIOD

Section 1. Insurance Coverages Required for the Project During the Operating Period

The Concessionaire will obtain and maintain, or cause the O&M Contractor to obtain and maintain, the following insurance coverages applicable to the O&M Work. Policy coverage limits may be achieved through a combination of insurance policies (e.g. primary and/or excess). For purposes of the requirements set forth in this Exhibit Y-4, the Opitz Boulevard Ramp Project shall from the Third Amended and Restated Agreement Date be considered part of the Original Project, and the Seminary Road Ramp Project shall from the Third Amended and Restated Agreement Date be considered part of the 395 Project.

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1,000,000 bodily injury by accident, each accident, and \$1,000,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$2,000,000 per occurrence and \$4,000,000 annual aggregate, applicable on a per location basis. The Department is to be named as an additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$2,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Department is to be named as an additional insured on a primary, non-contributory basis.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$100,000,000 per occurrence and in the aggregate. The Department is to be named as an additional insured on a primary and non-contributory basis.

(e) **Property and Business Interruption Insurance** at replacement cost covering loss, damage, or destruction to the Project, including improvements and betterments; *provided*, that the limits of such coverage may be based on a maximum probable loss analysis, subject to the Department's approval of such maximum probable loss analysis by an independent third party acceptable to the Department. In no event will the limits of such coverage be less than (i) \$100,000,000 for the Original Project, (ii) \$50,000,000 for the 395 Project and (iii) \$50,000,000 for the Fred Ex Project. Coverage will include, but not be limited to, the following: flood, earthquake, earth movement, windstorm, collapse, water (including overflow), leakage, utility interruption, debris removal, business ordinance or law for increased costs of construction, extra expenses, valuable papers, and terrorism. Subject to the applicable deductible, such coverage also

will insure against interruption or loss of projected Toll Revenues for at least six months from the occurrence of the risk, resulting from physical damage to the Project and any relevant feeder roads. The Department is to be named as an additional insured on a primary, non-contributory basis. The Concessionaire is responsible for all loss or damage to personal property (including but not limited to materials, fixtures/contents, equipment, tools, and supplies) of the Concessionaire.

(f) **Pollution Liability Insurance** to indemnify for bodily injury, property damage, or amounts which the Concessionaire, its employees, its agents, or its Contractors are legally obligated to pay for clean-up/remediation work arising out of the O&M Work, including coverage, if needed, for marine operations and coverage for liabilities under the Oil Pollution Act of 1990 (33 U.S.C. §§ 2701-2762) and the Comprehensive Environmental Response, Liability, and Compensation Act (42 U.S.C. §§ 9601-9675) for marine operations. Such insurance will have minimum limits of (i) \$10,000,000 for any one claim and in the aggregate for the Original Project, (ii) \$5,000,000 for any one claim and in the aggregate for the 395 Project and (iii) \$5,000,000 for any one claim and in the aggregate for the Fred Ex Project.

(g) **Marine Protection and Indemnity Insurance** – if any of the O&M Work requires marine operations, the Concessionaire and its Contractors shall provide protection and indemnity coverage with respect to bodily injury or property damage arising from marine operations including damage to piers, wharves, other fixed or movable structures and loss or damage to any other vessel, craft, or property on such other vessel or craft. Such insurance will have minimum limits of \$5,000,000 in the aggregate.

EXHIBIT Z

PENTAGON RESERVATION MOA

[SEE ATTACHED]

EXHIBIT AA

LABOR, EMPLOYMENT AND DBE/SWAM RELATED MATTERS

In the event of any discrepancy between the provisions of this Exhibit AA that are intended to incorporate or summarize statutes, rules or regulations promulgated by a Governmental Authority and the actual statutes, rules or regulations in effect from time to time, the actual statutes, rules or regulations shall apply and supersede the inconsistent provisions set forth herein. Further, such statutes, rules and regulations shall apply to the Project at any time only to the extent such statutes, rules and regulations are required to apply to the Project by applicable Law or regulation. In addition, in the event the Agreement and this Exhibit AA apply different standards, procedures or requirements for the same matters, the standards, procedures and requirements specified in the Agreement shall control.

1. Labor and Wages

The Concessionaire shall comply with the provisions and requirements of the workers' compensation law and public statutes that regulate hours of employment on public work.

- (a) **Predetermined Minimum Wages:** The provisions of laws requiring the payment of a minimum wage of a predetermined minimum wage scale for the various classes of laborers and mechanics, when such a scale is incorporated in the Agreement, expressly shall be made a part of any Project Agreement. The Concessionaire and its agents shall comply promptly with all such applicable provisions.

Any classification not listed and subsequently required shall be classified or reclassified in accordance with the wage determination. If other classifications are used, omission of classifications shall not be cause for additional compensation. The Concessionaire shall be responsible for determining local practices with regard to the application of the various labor classifications.

- (b) **Labor Rate Forms:** The Concessionaire shall complete Form C-28, indicating by classification the total number of employees, excluding executive and administrative employees, employed on the Project. The Concessionaire also shall indicate on the form the compensation rate per hour for each classification. The Concessionaire shall submit an original and two copies of the form prior to the due date of the second estimate for payment and for each 90-day period thereafter until the work specified in the Agreement has been completed. If at the time of Final Acceptance the period since the last labor report is 30 days or more, the Concessionaire shall furnish an additional labor report as outlined herein prior to payment of the final estimate.

2. Equal Employment Opportunity

- (a) The Concessionaire shall comply with the applicable provisions of presidential executive orders and the rules, regulations, and orders of the President's Committee on Equal Employment Opportunity ("EEO"). The Concessionaire shall maintain the following records and reports as required by the EEO provisions:

record of all applicants for employment
new hires by race, work classification, hourly rate, and date employed
minority and non-minority employees employed in each work classification
changes in work classifications
employees enrolled in approved training programs and the status of each
minority subcontractor or subcontractors with meaningful minority group
representation
copies of Form C-57 (Contractor's Monthly EEO Report) submitted by
subcontractors

The Concessionaire shall cooperate with the Department in carrying out EEO obligations and in the Department's review of activities under the Agreement. The Concessionaire shall comply with the specific EEO requirements specified in this Exhibit and shall include these requirements in every subcontract of \$10,000 or more with such modification of language as may be necessary to make them binding on the subcontractors.

- (b) EEO Policy: The Concessionaire shall accept as operating policy the following statement:

It is the policy of this Company to assure that applicants are employed and that employees are treated during employment without regard to their race, religion, sex, sexual orientation, gender identity, color, or national origin. Such action shall include employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship or on-the-job training.

- (c) EEO Officer: The Concessionaire shall designate and make known to the Department an EEO Officer who can effectively administer and promote an active Concessionaire EEO program and who shall be assigned adequate authority and responsibility to do so.

- (d) Dissemination of Policy:

1. Members of the Concessionaire's staff who are authorized to hire, supervise, promote, and discharge employees or recommend such action or are substantially involved in such action shall be made fully aware of and shall implement the Concessionaire's EEO policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. The following actions shall be taken as a minimum:

- a. Periodic meetings of supervisory and personnel office employees shall be conducted before the start of work and at least once every 6 months thereafter, at which time the Concessionaire's EEO policy and its implementation shall be reviewed and explained. The

meetings shall be conducted by the EEO Officer or another knowledgeable company official.

- b. New supervisory or personnel office employees shall be given a thorough indoctrination by the EEO Officer or another knowledgeable company official covering all major aspects of the Concessionaire's EEO obligations within 30 days following their reporting for duty with the Concessionaire.
- c. The EEO Officer or appropriate company official shall instruct employees engaged in the direct recruitment of employees for the Project relative to the methods followed by the Concessionaire in locating and hiring minority group employees.

2. In order to make the Concessionaire's EEO policy known to all employees, prospective employees, and potential sources of employees such as, but not limited to, schools, employment agencies, labor unions where appropriate, and college placement officers, the Concessionaire shall take the following actions:

- a. Notices and posters setting forth the Concessionaire's EEO policy shall be placed in areas readily accessible to employees, applicants for employment, and potential employees.

The Concessionaire shall furnish, erect, and maintain at least two bulletin boards having dimensions of at least 48 inches in width and 36 inches in height at locations readily accessible to all personnel concerned with the project. The boards shall be erected immediately upon initiation of the Agreement work and shall be maintained until the completion of such work, at which time they shall be removed from the project. Each bulletin board shall be equipped with a removable glass or plastic cover that when in place shall protect posters from weather or damage. The Concessionaire shall promptly post official notices on the bulletin boards.

- b. The Concessionaire's EEO policy and the procedures to implement such policy shall be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

(e) Recruitment:

- 1. When advertising for employees, the Concessionaire shall include in all advertisements for employees the notation "An Equal Opportunity Employer" and shall insert all such advertisements in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

2. Unless precluded by a valid bargaining agreement, the Concessionaire shall conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, state employment agencies, schools, colleges, and minority group organizations. The Concessionaire shall identify sources of potential minority group employees and shall establish procedures with such sources whereby minority group applicants may be referred to it for employment consideration.
 3. The Concessionaire shall encourage its employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all employees. In addition, information and procedures with regard to referring minority group applicants shall be discussed with employees.
- (f) Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel action of any type shall be taken without regard to race, color, religion, sex, or national origin.
1. The Concessionaire shall conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of personnel.
 2. The Concessionaire periodically shall evaluate the spread of wages paid within each classification to determine whether there is evidence of discriminatory wage practices.
 3. The Concessionaire periodically shall review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Concessionaire promptly shall take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, corrective action shall include all affected persons.
 4. The Concessionaire shall investigate all complaints of alleged discrimination made to it in connection with obligations under the Agreement, attempt to resolve such complaints, and take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, corrective action shall include those persons. Upon completion of each investigation, the Concessionaire shall inform every complainant of all avenues of appeal.
- (g) Training:
1. The Concessionaire shall assist in locating, qualifying, and increasing the skills of minority group and women employees and applicants for employment.

2. Consistent with work force requirements and as permissible under Federal and state regulations, the Concessionaire shall make full use of training programs, i.e., apprenticeship and on-the-job training programs for the geographical area of Agreement performance. Where feasible, 25 percent of apprentices or trainees in each occupation should be in their first year of apprenticeship or training.
 3. The Concessionaire shall advise employees and applicants for employment of available training programs and the entrance requirements for each.
 4. The Concessionaire periodically shall review the training and promotion potential of minority group employees and shall encourage eligible employees to apply for such training and promotion.
 5. If the Agreement provides a pay item for trainees, training shall be in accordance with the requirements of Section 518 of the *2016 Road and Bridge Specification*.
- (h) Unions: If the Concessionaire relies in whole or in part on unions as a source of employees, best efforts shall be made to obtain the cooperation of such unions to increase opportunities for minority groups and women in the unions and to effect referrals by such unions of minority and women employees. Actions by the Concessionaire, either directly or through its agents or subcontractors, shall include the following procedures:
1. In cooperation with the unions, best efforts shall be used to develop joint training programs aimed toward qualifying more minority group members and women for membership in the unions and to increase the skills of minority group employees and women so that they may qualify for higher-paying employment.
 2. Best efforts shall be used to incorporate an EEO clause into union agreements to the end that unions shall be contractually bound to refer applicants without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.
 3. Information shall be obtained concerning referral practices and policies of the labor union except that to the extent the information is within the exclusive possession of the union. If the labor union refuses to furnish the information to the Concessionaire, the Concessionaire shall so certify to the Department and shall set forth what efforts he made to obtain the information.
 4. If a union is unable to provide the Concessionaire with a reasonable flow of minority and women referrals within the time limit set forth in the union agreement, the Concessionaire shall, through its recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity or national origin, making full efforts to

obtain qualified or qualifiable minority group persons and women. If union referral practice prevents the Concessionaire from complying with the EEO requirements, the Concessionaire shall immediately notify the Department.

- (i) **Subcontracting:** The Concessionaire shall use best efforts to use minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. The Concessionaire shall use best efforts to ensure subcontractor compliance with its EEO obligations.
 1. **Records and Reports:** The Concessionaire shall keep such records as are necessary to determine compliance with its EEO obligations. The records shall be designed to indicate the following:
 - i. the number of minority and nonminority group members and females employed in each work classification on the Project;
 - ii. the progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and females if unions are used as a source of the work force;
 - iii. the progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 - iv. the progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees
 2. Records shall be retained for a period of three years following completion of the Work and shall be available at reasonable times and places for inspection by authorized Representatives of the Department.
 3. Form C-57 shall be submitted each month for the first three months after each Contractor commences the Work pursuant to a notice to proceed issued by the Department pursuant to Section 8.03(b) or Section 9.02 (as applicable) of the Agreement and every month of July thereafter for the duration of the Project. Form C-57 shall be completed to indicate the number of minority, nonminority, and female employees currently engaged in each work classification shown on the form. The completed Form C-57 shall be submitted within three weeks after the reporting period. Failure to do so may result in delay of approval of the Concessionaire's monthly progress estimate for payment.

3. Use of Small, Women and Minority-Owned Businesses (SWaMs)

The Concessionaire shall comply with all the requirements of the Department's "Special Provision 1 for Section 107.15 – Use of Small, Women-Owned and Minority-Owned-Businesses (SWaM)" dated January 4, 2017 (attached hereto as Attachment 2). Attachment 2 and "Special Provision 2 for Section 107.15 – Use of Disadvantaged Business Enterprises (DBEs)", (attached

hereto as Attachment 2 and described in more detail below) amend and supersede Section 107.15 of the *2016 Road and Bridge Specification* in its entirety and shall be read in conjunction with Section 24.03 of the Agreement.

4. Civil Rights

- (a) DBE-SWaM Forms: The Concessionaire shall complete the following forms or equivalent forms as part of its compliance with the DBE-SWaM goals set forth in the Agreement.

Form C-111 (Minimum DBE Requirements)

Form C-112 (Certification Of Binding Agreement)

Form C-48 (Subcontractor/Supplier Solicitation And Utilization Form)

Form C-49 (DBE Good Faith Efforts Documentation)

- (b) On-the-Job Training Forms: The Concessionaire shall comply with the Special Provision Copied Note for Section 518 of the 2007 Road and Bridge Specifications.

- (c) Design Requirements and Submittals: Payments made to DBE and SWaM consultants must be submitted on form C-63 (DBE Report) or an equivalent form on a quarterly basis. Form C-63 and submittal information for the form is set forth in the Department's Construction Directive Memorandum CD-2007-6.

- (d) Construction Requirements and Submittals:

1. EEO Contract Compliance:

- i. The following forms and associated submittal information are required from the Design-Build Contractor and its subcontractors (including haulers and suppliers as applicable).

Form C-64 (Company Employment)

Letter Designating EEO Officer

Semi-annual Minutes of an EEO Meeting

Form C-57 (Contractor's Monthly EEO Report)

- ii. The Design-Build Contractor and its subcontractors are subject to formal Department EEO Contractor Compliance Reviews at least annually.

2. Labor Compliance: The Concessionaire shall submit, or cause the submission, of the following. In addition, the Concessionaire's employees

(and the employees of its subcontractors) may be subject to interviews by the Department.

- i. weekly payrolls from the Design-Build Contractor and its subcontractors and haulers;
 - ii. Form C-28 (Basic Hourly Rates paid by Contractor); and
 - iii. Form C-56 (Statement of Compliance).
3. DBE Compliance:
 - i. DBE subcontractors, suppliers, manufacturers and haulers must be listed and submitted on Form C-111 or an equivalent form, indicating the task(s) assigned and the approximate dollar value of the planned work pursuant to “Special Provision 2 for Section 107.15 – Use of Disadvantaged Business Enterprises (DBEs)” dated January 4, 2017 (attached hereto as Attachment 3). Attachments 2 and 3 amend and supersede Section 107.15 of the *2016 Road and Bridge Specification* in its entirety and shall be read in conjunction with Section 24.03 of the Agreement.
 - ii. Payments made to DBE firms must be submitted on form C-63 on a quarterly basis. Form C-63 and submittal information for the form is provided in the Department’s Construction Directive Memorandum CD-2007-6 included in Attachment 5.
 - iii. All DBE firms are subject to formal DBE contract compliance reviews at least once during active participation on the project.
 - iv. Attachment 3 provides guidance on removal of a DBE firm from the contract or for substituting another firm for all or portions of items of work designated to be performed by a DBE firm. Advance approval must be obtained from the district Civil Rights Office.
 4. SWaM Compliance:
 - i. SWaM subcontractors, suppliers, manufacturers and haulers shall be listed and submitted on Form C-111 or an equivalent form, indicating the task(s) assigned and the approximate dollar value of the planned work pursuant to Attachment 2.
 - ii. Payments made to SWaM firms must be submitted on form C-63 on a quarterly basis in order to receive credit. See Construction Memorandum CD-2007-6.
 5. On-the-Job Training Compliance (applicable only during the performance of the Design-Build Work):
 - i. The Project has been assigned a goal of 28 on-the-job trainees (24 on the 395 Project and 4 on the Fred Ex Project), as indicated in the

Special Provision for Section 518 of the 2016 Road and Bridge Specifications and as set forth in Section 24.03 of the Agreement.

- ii. Upon notification of intent to assign employees into an approved program, the Department's Civil Rights office shall provide Form C-65, which initiates the training process. The Concessionaire is responsible for submitting the completed form for approval by the District Civil Rights Manager ("DCRM"). Trainees may not have received prior training in the classification planned for the training opportunity. A journeyman in that classification must be on site and be available to assist with the training. The DCRM must be in agreement with the selected candidate.
- iii. Form C-67, weekly training hours report, is required and must have concurrence from the DCRM as to the number of hours of training received for that week.
- iv. The Concessionaire shall comply with all the requirements of the Department's Special Provision for Local and Veterans Hiring Program for Design-Build Projects dated September 2, 2015 (attached hereto as Appendix 1). This provision applies only to the 395 Project.

EXHIBIT AA

ATTACHMENT 1

**VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
LOCAL AND VETERANS HIRING PROGRAM FOR DESIGN-BUILD PROJECTS**

September 2, 2015

Local and Veteran Hiring Program Requirements (applies only to the 395 Project)

(a) General

- (i) The Commonwealth of Virginia is committed to reducing barriers to employment to ensure a diverse workforce in the construction industry. Therefore, the purpose of the Local and Veterans Hiring Program is to support and grow the Commonwealth's commitment by means of a robust hiring and retention program for local workers and veterans and a robust On-the-Job Training (OJT) Program.
- (ii) The Design-Builder and any subcontractors shall comply with this Special Provision.
- (iii) The parties recognize the importance of recruiting, hiring, and technical and workplace training of local workers and veterans in the development of the Project and execution of the Contract. As such, the Design-Builder shall utilize workforce on-the-job training, apprenticeship and recruitment programs to actively recruit local workers and veterans.
- (iv) The Design-Builder shall comply with all applicable state and federal law, regulations, guidelines, and policies in the administration of this Special Provision and the award and administration of subcontracts pursuant to the Contract. Failure by the Design-Builder to carry out the requirement in this Special Provision will subject the Design-Builder to the enforcement mechanisms as set forth herein, but shall not result in a right of the Department to terminate the Contract.
- (v) All time frames referenced in this Special Provision are expressed in business days (Days) unless otherwise indicated. Should the expiration of any deadline fall on a weekend or holiday, such deadline will automatically be extended to the next normal business day.
- (vi) In accordance with the Local and Veterans Hiring Program requirements, the Design-Builder, and subcontractors shall commit to complying fully with this Special Provision. The Design-Builder agrees to assume these contractual at the Design-Builder's expense.
- (vii) For the purposes of this Special Provision, Offeror is defined as any individual, partnership, corporation, or Joint Venture that formally submits a Statement of

Qualification or Proposal for the work contemplated there under; Design-Builder is defined as any individual, partnership, or Joint Venture that contracts with the Department to perform the Design-Build Work; and subcontractor is defined as any supplier, manufacturer, or subcontractor performing work or furnishing material, supplies or services to the Contract. New hires shall be as defined in Section (b) (v) herein below.

(b) Design-Build Work.

- (i) During performance of the Design-Build Work, the Department has established a minimum requirement of 75% for local worker and/or veteran new hire participation. New hire participation represents employees paid specifically for work performed on the project and may be randomly verified through the checking of payrolls. Hiring by subcontractors will count toward meeting the percentage goal. Veteran shall mean any person that meets the definition of “veteran” in either 38 USC §101 or 5 USC §2108. Local worker shall mean that the person resides in the following jurisdictions: Counties of Arlington, Fauquier, Fairfax, Loudoun, Prince William, Stafford and Spotsylvania, as well as the Cities of Alexandria, Fairfax, Manassas, Falls Church and Manassas Park.

The Department and the Design-Builder agree to manage this goal as follows:

- (A) the Design-Builder shall submit for the Department’s review and approval and initial Hiring Development Plan, and an updated Hiring Development Plan as further described herein. The initial and updated Hiring Development Plan shall be submitted within 30 Days after Contract award and on January 30 of each year prior to achieving Substantial Completion of the Project. The Hiring Development Plan shall define the Design-Builder’s approach to meeting the workforce minimum requirements set forth in this Section (b) (i);
- (B) the Design-Builder shall designate resources, including a liaison officer designated and made known to the Department who is assigned the responsibility of administering and promoting an active and inclusive Hiring Development Plan to ensure all programs related to the Hiring Development Plan are compliant with this Special Provision. The designation and identity of this officer needs to be submitted as part of the Initial and Updated Hiring Development Plan;
- (C) the Design-Builder shall ensure that local workers and veterans have been given full and fair opportunity to participate in the hiring process for vacant positions;
- (D) the Design-Builder shall make Good Faith Efforts to obtain local workers and veterans’ participation in the execution and performance of the Contract at or above the established local worker & veteran hiring goal set forth in this Section (b) (i);

- (E) the Design-Builder shall provide to the Department each calendar quarter, after approval of the Initial Hiring Development Plan, documentation of all local worker and veteran workforces; and
 - (F) each calendar quarter, the Design-Builder will provide Good Faith Efforts documentation using Form C-66, VDOT Local Worker and Veteran Employment Report or equivalent tracking measures and other supplemental information as appropriate. Current workforce and local and veteran new hires shall be tracked by the number of employees and not how many hours such employee is paid. Form C-66 or Design-Builder's equivalent report in a format otherwise acceptable to the Department, shall be used to capture the Design-Builder's workforce at contract execution and local workers and veterans hired and terminated during the course of the project.
- (ii) During the performance of the Design-Build Work, the parties will work cooperatively to accomplish the local worker and veteran recruitment, hiring and OJT objectives, as established in the approved Hiring Development Plan and its subsequent updates. The Department will assist the Design-Builder in meeting the Design-Build Work workforce minimum requirements set forth in Section (b) (i) by offering assistance in the following activities:
- (A) the parties will jointly conduct outreach meetings for local workers and veterans; and
 - (B) the parties will jointly identify agencies or firms that actively employ or recruit local workers and veterans.
- (iii) The Design-Builder acknowledges that the Department's assistance and cooperation will not eliminate or reduce the Design-Builder's responsibility to achieve the Design-Build Work workforce minimum requirements set forth in Section (b) (i) or demonstrate Good Faith Efforts. The Design-Builder is expected to utilize a variety of means and methods and creative strategies to do so. These strategies should be employed during the performance of the Design-Build Work. The Design-Builder shall meet the workforce minimum requirements set forth in Section (b) (i) or demonstrate that Good Faith Efforts have been made.
- (iv) When there is a workforce minimum requirement for the Design-Build Work, the Design-Builder shall make Good Faith Efforts to meet the workforce minimum requirement through obtaining enough local and veteran worker workforce participation or documenting the Good Faith Efforts it made to do so. The Department shall not disregard showings of Good Faith Efforts, and it gives the Design-Builder the right to have the Department reconsider a decision that their Good Faith Efforts were insufficient. The Department must seriously consider the Design-Builder's documentation of Good Faith Efforts. The Department will issue Good Faith Efforts Guidelines providing examples, procedures and reporting requirements for the Design-Builder's consideration.

(v) During the performance of the Design-Build Work the following procedures shall apply to the Hiring Development Plan for compliance purposes:

- (A) **Hiring:** The Design-Builder shall use standard hiring practices, including interviews, to consider all qualified applicants in the defined local geographic area to meet the established local and veteran hiring goal. The Design-Builder shall make Good Faith Efforts to fill all available positions with local and veteran applicants. Local Workforce Development Centers and the Virginia Employment Commission may be used for applicant referrals. The Design-Builder is encouraged to partner with local Workforce Development Centers for local applicants;
- (B) **New Hire:** Employees who work on the Project to whom the employer anticipates paying earnings include full-time, part-time, and temporary statuses that are employed for a specific project. New hires shall include employees reporting to work for the first time or re-hires (employees who return to work after being laid off, furloughed, separated, granted a leave without pay, or terminated from employment); and
- (C) **Good Faith Efforts Described:** The Department will determine if the Design-Builder has demonstrated adequate Good Faith Efforts, and if given all relevant circumstances, those efforts were made actively and aggressively to meet the local and veteran hiring goal. Efforts to obtain local and veteran hiring goals are not Good Faith Efforts if they could not reasonably be expected to produce a level of local worker's participation sufficient to meet the local and veteran hiring goal set forth in this Special Provision.

Good Faith Efforts may be determined by soliciting for vacant positions through reasonable and available means in the local area, such as but not limited to, advertising, written notices to local Workforce Development Centers and the Virginia Employment Commission.

A list of actions the Contractor may take to meet the local worker and veteran's hiring goal can be found in the Good Faith Efforts Guidelines.

(c) Local Worker and Veteran Workforce Participation Reporting and Assessment

- (i) The Design-Builder and each subcontractor shall report to the Department quarterly, within 15 Days after each calendar quarter ends, on the Design-Builder's efforts to (A) satisfy the local and veteran worker workforce minimum requirements set forth in Section (b)(i) or (B) demonstrate Good Faith Efforts to accomplish the local and veteran worker workforce minimum requirements set forth in Section (b)(i).
- (ii) The Department will assess, confirm and communicate to the Design-Builder within 30 Days after receiving each quarterly report whether the Design-Builder has (A) satisfied the local worker and veteran workforce minimum requirements,

(B) demonstrated Good Faith Efforts, or (C) failed to satisfy the requirements of clause (A) and (B) of this Section (c)(ii), and the reasons why the Department has determined Good Faith Efforts has not been satisfied.

(iii) The Design-Builder shall report compliance on Form C-66, VDOT Local Worker and Veteran Employment Report, in accordance with the instructions attached to the form or an equivalent report in a format otherwise acceptable to the Department.

(d) Failure to Demonstrate Local Worker and Veteran Recruitment and Hiring Good Faith Efforts Related to Design-Build Work

(i) If the Department notifies the Design-Builder pursuant to Section (d) that the Design-Builder has failed to satisfy the requirements of clause (A) and (B) of Section (c)(i) with respect to the local worker and veteran participation workforce minimum requirements for the Design-Build Work for a quarterly period, the Design-Builder will have until the end of the next consecutive quarter to demonstrate that it has satisfied the requirements of either clause (A) and (B) of Section (c)(ii) with respect to such local worker and veteran participation workforce minimum requirements.

(ii) If the Design-Builder has failed to satisfy the requirements of clause (A) and (B) of Section (c)(ii) with respect to the local worker and veteran participation workforce minimum requirements for the Design-Build Work for two consecutive quarters based on the determinations by the Department pursuant to Section (c), the Design-Builder will prepare and submit, at the Design-Builder's sole cost and expense, a Participation Performance Improvement Plan for the Department's review and approval. The Participation Performance Improvement Plan will describe the specific actions and measures that the Design-Builder will undertake to improve its performance with respect to satisfying the requirements of clause (A) and (B) of Section (c)(ii) with respect to the participation workforce minimum requirements for the Design-Build Work. The Design-Builder will submit the Participation Performance Improvement Plan within 15 days after receiving notice from the Department pursuant to Section (d) that the Design-Builder has failed to satisfy the requirements of clause (A) and (B) of Section (c)(ii). The Design-Builder will reimburse the Department for its Allocable Costs in reviewing, approving and monitoring the Design-Builder's compliance with the Participation Performance Improvement Plan until the Design-Builder satisfies the requirements of either clause (A) or (B) of Section (c)(ii) with respect to the local worker and veteran participation workforce minimum requirements set forth in Section (b) (i) for the Design-Build Work.

(e) Project Completion Related to the Design Build Work

The Design-Builder may submit documentation to the Department to substantiate that failure was beyond the Design-Builder's control and that all feasible means had been used to achieve the local and veteran hiring goal. The Department, upon verification of such

documentation shall determine whether the Design-Builder has met the requirements of this Special Provision.

(f) Existing Local and Veteran Workforce

Existing local and veteran workforce participation in the execution and performance of the Contract will count toward the Design-Builder's total local workers and veteran's workforce. This information will be captured on the VDOT Local Worker and Veteran Employment Report (Form C-66). Local workers residing in the jurisdictions as set out in Section (b) (i) will be included in the Design-Builder's workforce. Only veterans, as defined in Section (b) (i), who reside in the Commonwealth of Virginia will be included in this computation.

EXHIBIT AA

ATTACHMENT 2

**VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
SECTION 107.15 USE OF SMALL, WOMEN-OWNED, AND MINORITY-OWNED
BUSINESSES (SWaM) FOR DESIGN-BUILD PROJECTS**

January 4, 2017

It is the policy of the Department that Small, Women-Owned, and Minority-Owned Businesses (SWaMs) shall have the maximum opportunity to participate in the performance of the Contract. The Contractor is encouraged to take necessary and reasonable steps to ensure that SWaMs have the maximum opportunity to compete for and perform work on the Contract, including participation in any subsequent subcontracts.

A SWaM firm shall mean a small business concern (as defined pursuant to the Code of Virginia, Title 2.2-1401) for the purpose of reporting small, women-owned, and minority-owned business participation in state contracts and purchases pursuant to §§ 2.2-1404 and 2.2-1405. To that end the following terms shall apply:

Small business means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less.

Women-owned business means a business concern that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with the United States immigration law, and both the management and daily business operations are controlled by one or more women who are U.S. citizens or legal resident aliens.

Minority-owned business means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

Minority individual means an individual who is a citizen of the United States or a non-citizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

1. African American means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2. Asian American means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
3. Hispanic American means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
4. Native American means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.
5. A member of another group, or other individual, found to be economically and socially disadvantaged by the Small Business Administration under 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)).

State agency means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

A list of Virginia Department of Small Business and Supplier Diversity (SBSD) certified SWaM firms is maintained on the SBSBD web site (<http://www.sbsd.virginia.gov>) under the **SWaM Vendor Directory** link.

SWaM certification entitles firms to participate in VDOT's SWaM program; however, this certification does not guarantee that the firm will obtain work nor does it attest to the firm's abilities to perform any particular work.

The Contractor shall designate and make known to the Department a liaison officer who is assigned the responsibility of actively and effectively administering, encouraging and promoting a responsive program for the use of SWaMs.

The performance of the Contract for the purpose of this specification shall be interpreted to include, but not necessarily be limited to, subcontracting; furnishing materials, supplies, and services; and, leasing equipment or where applicable, any combination thereof.

If the Contractor intends to sublet a portion of the work on the project in accordance with the provisions of Section 105.06 of the Specifications, the Contractor is encouraged to seek out and consider SWaMs as potential subcontractors. The Contractor is encouraged to contact SWaMs to solicit their interest, capability, and prices and shall retain on file the proper documentation to substantiate such contacts.

If the Department has determined that specific opportunities for participation by SWaMs are available on a particular Contract and the bidder chooses to claim credit for SWaM participation,

the extent of such participation will be shown as a percentage of the Contract amount and will be indicated on Form C-111, *SWaM Participation*.

Design Phase: Thirty (30) days after the Notice to Proceed for Design, the Design-Builder shall submit to the Department for review and approval Forms C-111 and C-112 for each SWaM firm to be utilized during the design phase to meet the SWaM contract goal requirement. Failure to submit the required documentation within the specified timeframe shall be cause to deny credit for any work performed by a SWaM firm and delay approval of the Design-Builder's monthly payment.

Construction Phase: No later than thirty (30) days prior to the SWaM firm undertaking any work, the Design-Builder shall submit to the Department for review and approval Forms C-111, and C-112. Failure to submit the required documentation within the specified timeframe shall result in disallowed cred of any work performed prior to approval of Forms C-111 and C-112 and delay approval of monthly payment.

The following are examples of efforts the Department encourages bidders and Contractors to make in soliciting SWaM participation. Other factors or types of efforts may be relevant in appropriate cases. The Contractor is encouraged to:

- (a) attend any pre-solicitation or pre-bid meetings at which SWaMs could be present and/or informed of contracting and subcontracting opportunities;
- (b) advertise in general circulation, trade association and minority-focus media concerning the subcontracting opportunities;
- (c) provide written notice to a reasonable number of specific SWaMs that their interest in the Contract is being solicited in sufficient time to allow the SWaMs to participate effectively;
- (d) follow-up initial solicitations of interest by contacting SWaMs to determine with certainty whether the SWaMs are interested;
- (e) select portions of the work to be performed by SWaMs in order to increase the likelihood of obtaining SWaM participation (including, where appropriate, breaking down proposed contract work into economically feasible units to facilitate SWaM participation);
- (f) provide interested SWaMs with adequate information about the plans, Specifications, and requirements of the Contract
- (g) negotiate in good faith with interested SWaMs, not rejecting SWaMs as unqualified without sound reasons based on a thorough investigation of their capabilities;
- (h) make efforts to assist interested SWaMs in obtaining bonding, lines of credit, or insurance required by the Department or Contractor;

- (i) make efforts to assist interested SWaMs in obtaining necessary equipment, supplies, materials, or other necessary or related assistance or services; and,
- (j) effectively use the services of available minority, woman and small business community organizations; minority, woman and small business contractors' groups; local, state and federal minority, woman and small business assistance offices; and other organizations that provide assistance in the recruitment and placement of SWaMs.

Any agreement between the Design-Builder and a SWaM firm whereby the SWaM firm agrees not to provide quotations for performance of work to other contractors/consultants is prohibited.

The Design-Builder shall furnish, and require each subcontractor to furnish, on a quarterly basis, information relative to all SWaM involvement on the project. The information shall be indicated on Form C-63, DBE and SWaM Payment Compliance Report or by copies of canceled checks with appropriate identifying notations. If participation achievement is to be fulfilled with a SWaM whose name has not been previously furnished to the Department for the Contract in question, an initial or revised Form C-111, whichever is appropriate, shall be submitted prior to such SWaM beginning the work. Failure to provide the Department the forms by the fifth of the month following each quarterly reporting period may result in delay of the Design-Builder's estimate for payment.

If a SWaM, through no fault of the Contractor, is unable or unwilling to fulfill his agreement with the Contractor, the Contractor shall immediately notify the Department and provide all relevant facts. If any subcontractor is relieved of the responsibility to perform work under their subcontract, the Contractor is encouraged to take the appropriate steps to obtain a SWaM to perform an equal or greater dollar value of the remaining subcontracted work. The substitute SWaM's name, description of the work, and dollar value of the work shall be submitted to the Department on Form C-111 prior to such SWaM beginning the work, if such work is to be counted for participation achievement.

EXHIBIT AA

ATTACHMENT 3

**VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
SECTION 107.15 FOR DESIGN-BUILD PROJECTS**

January 4, 2017

Section 107.15 of the Specifications is replaced by the following:

Section 107.15—Use of Disadvantaged Business Enterprises (DBEs) for Design-Build Projects

A. Disadvantaged Business Enterprise (DBE) Program Requirements

Any Design-Builder, subcontractor, supplier, DBE firm, and contract surety involved in the performance of work on a federal-aid contract shall comply with the terms and conditions of the United States Department of Transportation (USDOT) DBE Program as the terms appear in Part 26 of the Code of Federal Regulations (49 CFR as amended), the USDOT DBE Program regulations; and the Virginia Department of Transportation's (VDOT or the Department) Road and Bridge Specifications and DBE Program rules and regulations.

For the purposes of this provision, Offeror is defined as any individual, partnership, corporation, or Joint Venture that formally submits a Statement of Qualification or Proposal for the work contemplated there under; Design-Builder is defined as any individual, partnership, or Joint Venture that contracts with the Department to perform the Work; and subcontractor is defined as any supplier, manufacturer, or subcontractor performing work or furnishing material, supplies or services to the contract. The Design-Builder shall physically include this same contract provision in every supply or work/service subcontract that it makes or executes with a subcontractor having work for which it intends to claim credit.

In accordance with 49 CFR Part 26 and VDOT's DBE Program requirements, the Design-Builder, for itself and for its subcontractors and suppliers, whether certified DBE firms or not, shall commit to complying fully with the auditing, record keeping, confidentiality, cooperation, and anti-intimidation or retaliation provisions contained in those federal and State DBE Program legal requirements. By submitting a Proposal on this contract, and by accepting and executing this contract, the Design-Builder agrees to assume these contractual obligations and to bind the Design-Builder's subcontractors contractually to the same at the Design-Builder's expense.

The Design-Builder and each subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Design-Builder shall carry out applicable requirements of 49 CFR Part 26 in the award, administration, and performance of this contract. Failure by the Design-Builder to carry out these requirements

is a material breach of this contract, which will result in the termination of this contract or other such remedy, as VDOT deems appropriate.

All administrative remedies noted in this provision are automatic unless the Design-Builder exercises the right of appeal within the required timeframe(s) specified herein. Appeal requirements, processes, and procedures shall be in accordance with guidelines stated herein and current at the time of the proceedings. Where applicable, the Department will notify the Design-Builder of any changes to the appeal requirements, processes, and procedures after receiving notification of the Design-Builder's desire to appeal.

All time frames referenced in this provision are expressed in business days unless otherwise indicated. Should the expiration of any deadline fall on a weekend or holiday, such deadline will automatically be extended to the next normal business day.

B. DBE Certification

The only DBE firms eligible to perform work on a federal-aid contract for DBE contract goal credit are firms certified as Disadvantaged Business Enterprises by the Virginia Department of Small Business and Supplier Diversity (SBSD) or the Metropolitan Washington Airports Authority (MWAA) in accordance with federal and VDOT guidelines. DBE firms must be certified in the specific work listed for DBE contract goal credit. A directory listing of certified DBE firms can be obtained from the Virginia Department of Small Business and Supplier Diversity's website: <http://www.sbsd.virginia.gov>.

C. DBE Program-Related Certifications Made by Offerors/Design-Builders

By submitting a Proposal and by entering into any contract on the basis of that Proposal, the Offeror/Design-Builder certifies to each of the following DBE Program-related conditions and assurances:

1. That the Offeror/Design-Builder agrees to comply with the project construction and administration obligations of the USDOT DBE Program, 49 CFR Part 26 as amended, and the Standard Specifications setting forth the Department's DBE Program requirements.
2. Design-Builder shall comply fully with the DBE Program requirements in the execution and performance of the contract. Design-Builder acknowledges that failure to comply may result in enjoinder from participation in future Department or State procurements and/or other legal sanctions.
3. To ensure that DBE firms have been given full and fair opportunity to participate in the performance of the contract. The Design-Builder certifies that all reasonable steps were, and will be, taken to ensure that DBE firms had, and will have, an opportunity to compete for and perform work on the contract. The Design-Builder further certifies that the Design-Builder shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the contract or in the award of any subcontract. Any agreement between a Design-Builder and a DBE whereby

the DBE promises not to provide quotations for performance of work to other Design-Builders are prohibited.

4. Design-Builder shall make good faith efforts to obtain DBE participation in the proposed contract at or above the goal. The Offeror shall submit a written statement as a part of its Statement of Qualifications and/or Proposal indicating the Offeror's commitment to achieve the minimum requirement related to DBE goal indicated in Request for Qualification (RFQ) and/or Request for Proposal (RFP) for the entire value of the contract. The Offeror, by signing and submitting its Proposal, certifies the DBE participation information that will be submitted within the required time thereafter is true, correct, and complete, and that the information to be provided includes the names of all DBE firms that will participate in the contract, the specific item(s) that each listed DBE firm will perform, and the creditable dollar amounts of the participation of each listed DBE.
5. Offeror further certifies, by signing its Proposal, it has committed to meet the contract goal for DBE participation. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents. By signing the Proposal, the Offeror certifies that good faith efforts will be made on work that it proposes to sublet; and that it will seek out and consider DBE firms as potential subcontractors and subconsultants. The Design-Builder shall, as a continuing obligation, contact DBE firms to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and shall retain on file proper documentation to substantiate its good faith efforts.
6. Design-Builder shall not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract in whole or in part with another DBE, any non-DBE firm, or with the Design-Builder's own forces or those of an affiliate of the Design-Builder without the prior written consent of Department as set out within the requirements of this Special Provision.
7. Design-Builder shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part 26 for DBE firms. The designation and identity of this officer needs to be submitted only once by the Design-Builder.
8. Design-Builder shall comply fully with all contractual requirements and Legal Requirements of the USDOT DBE Program, and shall cause each DBE firm participating in the contract to fully perform the designated work items with the DBE firm's own forces and equipment under the DBE firm's direct supervision, control, and management. Where a contract exists and where the Design-Builder, DBE firm, or any other firm retained by the Design-Builder has failed to comply with federal or Department DBE Program requirements, Department has the authority and discretion to determine the extent to which the DBE contract regulations have not been met, and will assess against the Design-Builder any remedies available at law or provided in the contract.

9. If a bond surety assumes the completion of work, if for any reason VDOT has terminated the Design-Builder, the surety shall be obligated to meet the same DBE contract terms and requirements as were required of the original Design-Builder in accordance with the requirements of this specification.

D. DBE Program Compliance Procedures

The following procedures shall apply to the contract for DBE Program compliance purposes:

1. **Prequalification of Subcontractors:** All prospective DBE subcontractors shall prequalify with the Department in accordance with the *Rules Governing Prequalification*.
2. **DBE Goal, Good Faith Efforts Specified:** Design-Builder shall evidence attainment of the DBE commitment equal to or greater than the required DBE Goal through submission, to Department, of completed Form C-111, Minimum DBE Requirements; Form C-112, Certification of Binding Agreement; and Form C-48, Subcontractor/Supplier Solicitation and Utilization, as a part of the good faith efforts documentation set forth below:

Design Phase: Thirty (30) days after the Notice to Proceed for Design, the Design-Builder shall submit to Department for review and approval Forms C-111 and C-112 for each DBE firm to be utilized during the design phase to meet the DBE minimum requirement and Form C-48. Failure to submit the required documentation within the specified timeframe shall be cause to deny credit for any work performed by a DBE firm and delay approval of the Design-Builder's monthly payment.

Construction Phase: No later than thirty (30) days prior to the DBE firm undertaking any work, Design-Builder shall submit to Department for review and approval Forms C-111, C-112, and C-48. Failure to submit the required documentation within the specified timeframe shall result in disallowed credit of any work performed prior to approval of Forms C-111 and C-112 and delay approval of monthly payment.

The District Civil Rights Office (DCRO) will monitor good faith effort documentation quarterly to determine progress being made toward meeting the DBE minimum requirement established for the contract.

Forms C-48, C-49, C-111, and C-112 can be obtained from the VDOT website at:

<http://vdotforms.vdot.virginia.gov/>

3. **Good Faith Efforts Described:** Department will determine if Design-Builder demonstrated adequate good faith efforts, and if given all relevant circumstances, those efforts were made actively and aggressively to meet the DBE requirements. Efforts to obtain DBE participation are not good faith efforts if they could not

reasonably be expected to produce a level of DBE firm participation sufficient to meet the DBE Program requirements and DBE Goal.

Good faith efforts may be determined through use of the following list of the types of actions the Design-Builder may make to obtain DBE participation. This is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts of similar intent may be relevant in appropriate cases:

- (a) Soliciting through reasonable and available means, such as but not limited to, attendance at pre-bid meetings, advertising, and written notices to DBE firms who have the capability to perform the work of the contract. Examples include: advertising in at least one daily/weekly/monthly newspaper of general circulation, as applicable; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and internet contacts with supporting documentation, including dates advertised. DBE firms shall have no less than five (5) business days to reasonably respond to the solicitation. Design-Builder shall determine with certainty if the DBE firms are interested by taking reasonable steps to follow up initial solicitations as evidenced by documenting such efforts as requested on Form C-49, DBE Good Faith Efforts Documentation.
- (b) Selecting portions of the work to be performed by DBE firms in order to increase the likelihood that the DBE Goal will be achieved. This includes, where appropriate, breaking out work items into economically feasible units to facilitate DBE firm participation, even when the Design-Builder might otherwise prefer to completely perform all portions of this work in its entirety or use its own forces;
- (c) Providing interested DBE firms with adequate information about the plans, specifications, and requirements of the contract in a timely manner, which will assist the DBE firms in responding to a solicitation;
- (d) Negotiating for participation in good faith with interested DBE firms;
 1. Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBE firms that were considered; dates DBE firms were contacted; a description of the information *provided* regarding the plans, specifications, and requirements of the contract for the work selected for subcontracting; and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBE firms to perform the work;
 2. Design-Builder should, using good business judgment, consider a number of factors in negotiating with subcontractors/subconsultants, and should take a DBE firm's price,

qualifications, and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using DBE firms is not sufficient reason for a Design-Builder's failure to meet the DBE goal as long as such costs are reasonable and comparable to costs customarily appropriate to the type of work under consideration. Also, the ability or desire of a Design-Builder to perform the work with its own organization does not relieve the Design-Builder of the responsibility to make diligent good faith efforts. Design-Builders are not, however, required to accept higher quotes from DBE firms if the price difference can be shown by the Design-Builder to be excessive, unreasonable, or greater than would normally be expected by industry standards;

- (e) A Design-Builder cannot reject a DBE firm as being unqualified without sound reasons based on a thorough investigation of the DBE firm's capabilities. The DBE firm's standing within its industry, membership in specific groups, organizations, associations, and political or social affiliations, and union vs. non-union employee status are not legitimate causes for the rejection or non-solicitation of bids in the Design-Builder's efforts to meet the contract goal for DBE participation;
- (f) Making efforts to assist interested DBE firms in obtaining bonding, lines of credit, or insurance as required by Department or by Design-Builder;
- (g) Making efforts to assist interested DBE firms in obtaining necessary equipment, supplies, materials, or related assistance or services subject to the restrictions contained in this Special Provision;
- (h) Effectively using the services of appropriate personnel from VDOT and from SBSB; available minority/women community or minority organizations; contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and utilization of qualified DBEs.

E. Documentation and Administrative Reconsideration of Good Faith Efforts

Design-Builder must provide Form C-49, DBE Good Faith Efforts Documentation, of its efforts made to meet the DBE goal within the time frames specified in this provision. The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the Design-Builder. Design-Builder shall attach additional pages to the certification, if necessary, in order to fully detail specific good faith efforts made to obtain the DBE firm's participation in the proposed work.

However, Design-Builder shall timely submit its completed and executed forms C-111, C-112, C-48, and C-49, as aforementioned. Failure to submit the required documentation

within the specified time frames shall be cause to disallow DBE goal credit and delay approval of the Design-Builder's monthly payment.

During the Contract: If a DBE, through no fault of the Design-Builder, is unable or unwilling to fulfill his agreement with the Design-Builder, the Design-Builder shall immediately notify the Department and provide all relevant facts. If a Design-Builder relieves a DBE subcontractor of the responsibility to perform work under their subcontract, the Design-Builder is encouraged to take the appropriate steps to obtain another DBE firm to perform the remaining subcontracted work for the amount that would have been paid to the original DBE firm. In such instances, Design-Builder is expected to seek DBE participation towards meeting the goal during the performance of the contract.

If at any point during the execution and performance of the contract it becomes evident that the remaining dollar value of allowable DBE goal credit for performing the subcontracted work is insufficient to obtain the DBE contract goal, and the Design-Builder has not taken the preceding actions, the Design-Builder and any aforementioned affiliates may be subject to disallowance of DBE credit until such time as sufficient progress toward achievement of the DBE goal is achieved or evidenced.

Project Completion: If, at final completion, the Design-Builder fails to meet the DBE goal, and fails to adequately document that it made good faith efforts to achieve sufficient DBE goal, then Design-Builder and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding, responding, or participating on Department projects for a period of ninety (90) days and be removed from Department's prequalification list.

Prior to such enjoinder or removal, Design-Builder may submit documentation to the State Construction Engineer or other designee of Department to substantiate that failure was due solely to quantitative underrun(s), elimination of items subcontracted to DBEs, or to circumstances beyond Design-Builder's control and that all feasible means had been used to achieve the DBE goal. The State Construction Engineer, or such other designee, upon verification of such documentation shall determine whether Design-Builder has met the requirements of the contract.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Design-Builder may request an appearance before the Department's Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The Administrative Reconsideration Panel will be made up of Department Division Administrators or their designees, none of who took part in the initial determination that the Design-Builder failed to make the DBE goal or make adequate good faith efforts to do so. After reconsideration, Department shall notify the Design-Builder in writing of its decision and explain the basis for finding that the Design-Builder did or did not meet the DBE goal or make adequate good faith efforts to do so. The decision of the Administrative Reconsideration Panel shall be administratively final. If the decision is made to enjoin the Design-Builder from bidding or participating on other Department work as described herein, the enjoinder period will

begin upon Design-Builder's failure to request a hearing within the designated time frame or upon the Administrative Reconsideration Panel's decision to enjoin, as applicable.

F. DBE Participation for Contract Goal Credit

DBE participation on the contract will count toward meeting the DBE contract goal in accordance with the following criteria:

1. The applicable percentage of the total dollar value of the contract or subcontract awarded to the DBE firm will be counted toward meeting the DBE goal in accordance with the **DBE Program-Related Certifications Made by Offerors/Design-Builder's** section of this Special Provision for the value of the work, goods, or services that are actually performed or provided by the DBE firm itself or subcontracted by the DBE to other DBE firms.
2. When a DBE performs work as a participant in a joint venture with a non-DBE firm, the Design-Builder may count toward the DBE goal only that portion of the total dollar value of the subcontract equal to the distinctly defined portion of the work that the DBE firm has performed with the DBE firm's own forces or in accordance with the provisions of this Section. The Department shall be contacted in advance regarding any joint venture involving both a DBE firm and a non-DBE firm to coordinate Department review and approval of the joint venture's organizational structure and proposed operation where the Design-Builder seeks to claim the goal credit.
3. When a DBE firm subcontracts part of the work to another firm, the value of that subcontracted work may be counted toward the DBE contract goal only if the DBE firm's subcontractor is a DBE firm. Work that a DBE firm subcontracts to a non-DBE firm, or to a firm that may be eligible to be a DBE firm, but has not yet been certified as a DBE firm, will not count toward the DBE. The cost of supplies and equipment a DBE subcontractor purchases or leases from the Design-Builder or prime contractual affiliates, as in the case of a joint venture, will not count toward the DBE goal.
4. The Design-Builder may count expenditures to a DBE subcontractor toward the DBE goal only if the DBE performs a Commercially Useful Function (CUF) on that subcontract, as such term is defined in subparagraph H below.
5. A Design-Builder may not count the participation of a DBE subcontractor toward the DBE goal until the amount being counted has actually been paid to the DBE firm. Design-Builder may count sixty (60) percent of its expenditures actually paid for materials and supplies obtained from a DBE certified as a regular dealer, and one hundred (100) percent of such expenditures actually paid for materials and supplies obtained from a regular dealer of the goods or a manufacturer DBE firm.
 - (a) For the purposes of this Special Provision, a "regular dealer" is defined as a firm or person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment

required and used under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the DBE firm or person shall be an established business that regularly engages, as its principal business and under its own name, in the purchase and sale or lease of the products or equipment in question. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions will not be considered regular dealers.

- (b) A DBE firm or person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business where it keeps such items in stock if the DBE firm both owns and operates distribution equipment for the products it sells and provides for the work, *provided* further that the DBE firm or person has been certified with an appropriate North American Industry Classification System (NAICS) code for supply of such bulk items. Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis to be eligible for credit to meet the DBE goal credit.
- (c) If a DBE regular dealer is used for DBE goal credit, no additional credit will be given for hauling or delivery to the project site goods or materials sold by that DBE regular dealer. Those delivery costs shall be deemed included in the price charged for the goods or materials by the DBE regular dealer, which shall be responsible for distribution of the goods or materials.
- (d) For the purposes of this Special Provision, a manufacturer will be defined as a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the project specifications. A manufacturer shall include firms that produce finished goods or products from raw or unfinished material, or purchase and substantially alter goods and materials to make them suitable for construction use before reselling them.
- (e) A Design-Builder may count toward the DBE goal the following expenditures to DBE firms that are not regular dealers or manufacturers for DBE program purposes:
 - 1. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of the federal-aid contract, if the fee is reasonable and not excessive or greater than would normally be expected by industry standards for the same or similar services.

2. The entire amount of that portion of the contract that is performed by the DBE firm's own forces and equipment under the DBE firm's supervision. This includes the cost of supplies and materials ordered and paid for by the DBE firm for work, including supplies purchased or equipment leased by the DBE firm, except Design-Builder supplies and equipment a DBE subcontractor purchases or leases from the Design-Builder or its affiliates.
- (f) Design-Builder may count toward the DBE goal one hundred (100) percent of the fees paid to a DBE trucker or hauler for the delivery of material and supplies required on the project job site, but not for the cost of those materials or supplies themselves, provided that the trucking or hauling fee is determined by Department to be reasonable, as compared with fees customarily charged by non-DBE firms for similar services. Design-Builder shall not count costs for the removal or relocation of excess material from or on the job site when the DBE trucking company is the manufacturer of or a regular dealer in those materials and supplies. The DBE trucking firm shall also perform a CUF on the project and not operate merely as a pass through for the purposes of gaining DBE goal credit. Prior to entering into a trucking subcontract, Design-Builder shall determine, or contact the Department Civil Rights Division or its district offices for assistance in determining, whether a DBE trucking firm will meet the criteria for performing a CUF on the project. See section on **Miscellaneous DBE Program Requirements; Factors used to Determine if a DBE Trucking Firm is Performing a CUF**.
- (g) Design-Builder will receive DBE goal credit for the fees or commissions charged by and paid to a DBE broker who arranges or expedites sales, leases, or other work arrangements provided that those fees are determined by Department to be reasonable and not excessive as compared with fees customarily charged by non-DBE firms for similar services. For the purposes of this Special Provision, a broker is defined as a person or firm that regularly engages in arranging for delivery of material, supplies, and equipment, or regularly arranges for the providing of project services as a course of routine business, but does not own or operate the delivery equipment necessary to transport materials, supplies or equipment to or from a job site.

G. Performing a Commercially Useful Function (CUF)

No credit toward the DBE goal will be allowed for payments or reimbursement of expenditures to a DBE firm if that DBE firm does not perform a CUF on that contract. A DBE firm performs a CUF when the DBE is solely responsible for execution of a distinct element of the work and the DBE firm actually performs, manages, and supervises such work with the DBE firm's own forces or in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. To perform a CUF the DBE firm alone shall be responsible and bear the risk for the material and supplies

used on the contract, selecting a supplier or dealer from those available, negotiating price, determining quality and quantity, ordering the material and supplies, installing those materials with the DBE firm's own forces and equipment, and paying for those materials and supplies. The amount the DBE firm is to be paid under the subcontract shall be commensurate with the work the DBE actually performs and the DBE goal credit claimed for the DBE firm's performance.

Monitoring CUF Performance: It shall be the Design-Builder's responsibility to confirm that all DBE firms selected for subcontract work on the contract, for which he seeks to claim credit toward the DBE goal, perform a CUF. Further, the Design-Builder is responsible for and shall confirm that each DBE firm fully performs the DBE firm's designated tasks in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. For the purposes of this Special Provision the DBE firm's equipment will mean either equipment directly owned by the DBE as evidenced by title, bill of sale or other such documentation, or leased by the DBE firm, and over which the DBE has control as evidenced by the leasing agreement from a firm not owned in whole or part by the Design-Builder or an affiliate of the Design-Builder.

Department will monitor Design-Builder's DBE involvement during the performance of the contract. However, Department is under no obligation to warn the Design-Builder that a DBE firm's participation will not count toward the goal.

DBE Firms Must Perform a Useful and Necessary Role in Contract Completion: A DBE firm does not perform a CUF if the DBE firm's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE firm participation.

DBE Firms Must Perform The Contract Work With Their Own Workforces: If a DBE firm does not perform and exercise responsibility for at least thirty (30) percent of the total cost of the DBE firm's contract with the DBE firm's own work force, or the DBE firm subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involve, Department will presume that the DBE firm is not performing a CUF and such participation will not be counted toward the DBE goal.

Department Makes Final Determination On Whether a CUF Is Performed: Department has the final authority to determine, in its sole discretion, whether a DBE firm has performed a CUF on the contract. To determine whether a DBE is performing or has performed a CUF, Department will evaluate the amount of work subcontracted by that DBE firm or performed by other firms and the extent of the involvement of other firms' forces and equipment. Any DBE work performed by the Design-Builder or by employees or equipment of the Design-Builder shall be subject to disallowance under the DBE Program, unless the independent validity and need for such an arrangement and work is demonstrated. When a DBE firm is presumed not to be performing a commercially useful function the DBE may present evidence to rebut the Department's finding. Department has the final authority to determine, in its sole discretion, whether a DBE firm has performed a CUF on the contract.

H. Verification of DBE Participation and Imposed Damages

Within fourteen (14) days after subcontract execution between Design-Builder and DBE subcontractors (or subcontract execution between DBE subcontractors and DBE subcontractors), Design-Builder shall submit to the DCRO, a copy of the fully executed subcontract agreement for each DBE firm used to claim credit in accordance with the requirements stated on Form C-111. The subcontract shall be executed by both parties stating the work to be performed, the details or specifics concerning such work, and the price which will be paid to the DBE subcontractor. Because of the commercial damage that the Design-Builder and its DBE subcontractor could suffer if their subcontract pricing, terms, and conditions were known to competitors, the Department staff will treat subcontract agreements as proprietary Design-Builder trade secrets with regard to Freedom of Information Act requests. In lieu of subcontracts, purchase orders may be submitted for haulers, suppliers, and manufacturers. These too, will be treated confidentially and protected. Such purchase orders must contain, as a minimum, the following information: authorized signatures of both parties; description of the scope of work to include contract item numbers, quantities, and prices; and required federal contract provisions.

The Design-Builder shall also furnish, and shall require each subcontractor to furnish, information relative to all DBE involvement on the project for each quarter during the life of the contract in which participation occurs and verification is available. The information shall be indicated on Form C-63, DBE and SWAM Payment Compliance Report. The Department reserves the right to request proof of payment via copies of cancelled checks with appropriate identifying notations. Failure to provide Form C-63 to the DCRO within five (5) business days after the reporting period may result in delay of approval of the Design-Builder's monthly payment. The names and certification numbers of DBE firms provided by the Design-Builder on the various forms indicated in this Special Provision shall be exactly as shown on SBSB's latest list of certified DBEs. Signatures on all forms indicated herein shall be those of authorized representatives of the Design-Builder as shown on the Prequalification Application, Form C-32 or the Prequalification/Certification Renewal Application, Form C-32A, or authorized by letter from the Design-Builder. If DBE firms are used which have not been previously documented with the Design-Builder's minimum DBE requirements documentation and for which the Design-Builder now desires to claim credit toward the contract goal, the Design-Builder shall be responsible for submitting necessary documentation in accordance with the procedures stipulated in this Special Provision to cover such work prior to the DBE firm beginning work. Form C-63 can be obtained from the VDOT website at: <http://vdotforms.vdot.virginia.gov/>.

Design-Builder shall submit to the Department's Project Manager with a copy to the DCRO, a narrative with each project schedule submission, as required in the Special Provision for Design-Build Project Schedule (Part 3, Exhibit 11.1). The project schedule narrative shall include a log of applicable DBE participation activities in the Design-Builder's project schedule for which the Design-Builder intends to claim credit for attaining the DBE goal required in the contract. The log shall include the proposed start/finish dates, durations, and dollar values of the DBE participation activities.

Narratives or other agreeable format of schedule information requirements and subsequent progress determination shall be based on the commitment information shown on the latest Form C-111 as compared with the appropriate Form C-63.

Prior to beginning any major component of the work to be performed by a DBE firm not previously submitted, Design-Builder shall furnish a revised Form C-111 showing the name(s) and certification number(s) of any such DBEs for which Design-Builder seeks DBE goal credit. Design-Builder shall obtain the prior approval of the Department for any assistance it may provide to the DBE firm beyond its existing resources in executing its commitment to perform the work in accordance with the requirements listed in the **Good Faith Efforts Described** section of this Special Provision. If Design-Builder is aware of any assistance beyond a DBE firm's existing resources that Design-Builder, or another subcontractor, may be contemplating or may deem necessary and that have not been previously approved, Design-Builder shall submit a new or revised narrative statement for Department's approval prior to assistance being rendered.

If the Design-Builder fails to correctly complete and any of the required documentation requested by this Special Provision within the specified time frames, the Department will withhold payment until such time as the required submissions are received by Department. Where such failures to provide required submittals or documentation are repeated, Department will move to enjoin the Design-Builder and any prime contractual affiliates, as in the case of a joint venture, from bidding, responding or participating Department projects until such submissions are received.

I. Documentation Required for Semi-final Payment

Design-Builder must submit Form C-63 to the DCRO sixty (60) days prior to date of final completion, set forth on the Baseline Schedule (as updated from time to time in accordance with the contract). The form must include each DBE firm used on the contract and the work performed by each DBE firm. The form shall include the actual dollar amount paid to each DBE firm for the accepted creditable work. The form shall be certified under penalty of perjury, or other applicable legal requirements, to be accurate and complete. Department will use this certification and other information available to determine applicable DBE credit allowed to date by Department and the extent to which the DBE firms were fully paid for that work. The Design-Builder acknowledges by the act of filing the form that the information is supplied to obtain payment regarding the contract as a federal participation contract. A letter of certification, signed by both the Design-Builder and appropriate DBE firms, will accompany the form, indicating the amount, including any retainage, if present, that remains to be paid to the DBE firm(s).

J. Documentation Required for Final Payment

In anticipation of final payment, Design-Builder shall submit a final Form C-63 marked "Final" to the DCRO, within thirty (30) days of the anticipated date of final completion, as set forth on the Baseline Schedule (as updated from time to time in accordance with the contract). The form must include each DBE firm used on the contract and the work performed by each DBE firm. The form shall include the actual dollar amount paid to each

DBE firm for the creditable work. Department will use this form and other information available to determine if Design-Builder and DBE firms have satisfied the DBE goal and the extent to which credit was allowed. Design-Builder acknowledges by the act of signing and filing the form that the information is supplied to obtain payment regarding the contract as a federal participation contract.

K. Prompt Payment Requirements

Design-Builder shall make prompt and full payment to the subcontractor(s) (including DBE subcontractors) of any retainage held by Design-Builder after the subcontractor's work is satisfactorily completed.

For purposes of this Special Provision, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted as required by the contract documents by Department. If Department has made partial acceptance of a portion of the contract, then Department will consider the work of any subcontractor covered by that partial acceptance to be satisfactorily completed. Payment will be made in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Division I Amendments to the Standard Specifications (Part 5).

Upon Department's payment of the subcontractor's portion of the work as shown on the application for payment and the receipt of payment by Design-Builder for such work, the Design-Builder shall make compensation in full to the subcontractor for that portion of the work satisfactorily completed and accepted by the Department. For the purposes of this Special Provision, payment of the subcontractor's portion of the work shall mean the Design-Builder has issued payment in full, less agreed upon retainage, if any, to the subcontractor for that portion of the subcontractor's work that Department paid to Design-Builder pursuant to the applicable application for payment.

Design-Builder shall make payment of the subcontractor's portion of the work within seven (7) days of the receipt of payment from Department in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Division I Amendments to the Standard Specifications (Part 5).

If Design-Builder fails to make payment for the subcontractor's portion of the work within the time frame specified herein, the subcontractor shall notify the Department and the Design-Builder's bonding company in writing. Upon written notice from the subcontractor, the Design-Builder's bonding company and Department will investigate the cause for non-payment. Barring mitigating circumstances that would make the subcontractor ineligible for payment, the Design-Builder's bonding company shall be responsible for insuring payment to the subcontractor in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Division I Amendments to the Standard Specifications (Part 5).

By accepting and executing this contract, the Design-Builder agrees to assume these obligations, and to bind the Design-Builder's subcontractors contractually to these obligations.

Nothing contained herein shall preclude Design-Builder from withholding payment to the subcontractor in accordance with the terms of the subcontract in order to protect the Design-Builder from loss or cost of damage due to a breach of the subcontract by the subcontractor.

L. Miscellaneous DBE Program Requirements

Loss of DBE Eligibility: When a DBE firm has been removed from eligibility as a certified DBE firm, the following actions will be taken:

1. When a Design-Builder has made a commitment to use a DBE firm that is not currently certified, thereby making the Design-Builder ineligible to receive DBE goal credit for work performed, the ineligible DBE firm's work does not count toward the DBE goal. Design-Builder shall meet the DBE goal with a DBE firm that is eligible to receive DBE credit for work performed, or must demonstrate to the DCRO that it has made good faith efforts to do so.
2. When a Design-Builder has executed a subcontract with a DBE firm prior to official notification of the DBE firm's loss of eligibility, Design-Builder may continue to use the firm on the contract and shall continue to receive DBE credit toward DBE goal for the subcontractor's work.
3. When Department has executed a prime contract with a DBE firm that is certified at the time of contract execution but that is later ruled ineligible, the portion of the ineligible firm's performance on the contract before VDOT has issued the notice of its ineligibility shall count toward the contract goal.

Termination of DBE: If a DBE subcontractor is terminated, or fails, refuses, or is unable to complete the work on the contract for any reason, Design-Builder must promptly request approval to substitute or replace that DBE firm in accordance with this section of this Special Provision.

Design-Builder, shall notify DCRO in writing before terminating and/or replacing the DBE firm that is being used or represented to fulfill DBE-related contract obligations during the term of the contract. Written consent from the DCRO for terminating the performance of any DBE firm shall be granted only when the Design-Builder can demonstrate that the DBE firm is unable, unwilling, or ineligible to perform its obligations for which the Design-Builder sought credit toward the DBE goal. Such written consent by the Department to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE with another DBE. Consent to terminate a DBE firm shall not be based on the Design-Builder's ability to negotiate a more advantageous contract with another subcontractor whether that subcontractor is, or is not, a DBE firm.

4. All Design-Builder requests to terminate, substitute, or replace a DBE firm shall be in writing, and shall include the following information:
 - (a) The date the Design-Builder determined the DBE to be unwilling, unable, or ineligible to perform.
 - (b) The projected date that the Design-Builder shall require a substitution or replacement DBE to commence work if consent is granted to the request.
 - (c) A brief statement of facts describing and citing specific actions or inaction by the DBE firm giving rise to Design-Builder's assertion that the DBE firm is unwilling, unable, or ineligible to perform;
 - (d) A brief statement of the DBE firm's capacity and ability to perform the work as determined by the Design-Builder;
 - (e) A brief statement of facts regarding actions taken by the Design-Builder, that Design-Builder believes constitute good faith efforts toward enabling the DBE firm to perform;
 - (f) The current percentage of work completed by the DBE firm;
 - (g) The total dollar amount currently paid for work performed by the DBE firm;
 - (h) The total dollar amount remaining to be paid to the DBE firm for work completed, but for which the DBE firm has not received payment, and with which the Design-Builder has no dispute;
 - (i) The total dollar amount remaining to be paid to the DBE firm for work completed, but for which the DBE firm has not received payment, and over which the Design-Builder and/or the DBE firm have a dispute.
5. Design-Builder's Written Notice to DBE of Pending Request to Terminate and Substitute with another DBE.

Design-Builder shall send a copy of the "request to terminate and substitute" letter to the affected DBE firm and make best efforts to ensure its receipt by the DBE firm, in conjunction with submitting the request to the DCRO. The DBE firm may submit a response letter to the DCRO and Department within two (2) business days of receiving the notice to terminate from the Design-Builder. If the DBE firm submits a response letter, then Design-Builder shall, as part of its subcontract, obligate the DBE firm to explain its position concerning performance on the committed work. The Department will consider both the Design-Builder's request and the DBE firm's response and explanation before approving the Design-Builder's termination and substitution request.

If, after making its best efforts to deliver a copy of the "request to terminate and substitute" letter, the Design-Builder is unsuccessful in notifying the affected DBE

firm, the Department will verify that the DBE firm is unable or unwilling to continue performing its subcontract let with respect to the contract. Department will timely approve the Design-Builder's request for a substitution.

6. Proposed Substitution of Another Certified DBE

Upon termination of a DBE firm, Design-Builder shall use reasonable good faith efforts to replace the terminated DBE firm. The termination of such DBE firm shall not relieve Design-Builder of its obligations under this Special Provision, and the unpaid portion of the terminated DBE firm's subcontract will not be counted toward the DBE goal.

When a DBE substitution is necessary, the Design-Builder shall submit an amended Form C-111 to the DCRO for approval with the name of another DBE firm, the proposed work to be performed by that DBE firm, and the dollar amount of the work to replace the unfulfilled portion of the work of the original DBE firm.

Should Design-Builder be unable to commit the remaining required dollar value to the substitute DBE firm, the Design-Builder shall provide written evidence of good faith efforts made to obtain the substitute value requirement. Department will review the quality, thoroughness, and intensity of those efforts. Efforts that are viewed by Department as merely superficial or pro-forma will not be considered good faith efforts to meet the DBE goal. Design-Builder must document the steps taken that demonstrated its good faith efforts to obtain participation as set forth in **the Good Faith Efforts Described** section of this Special Provision.

Factors Used to determine if a DBE Trucking Firm is performing a CUF:

The following factors will be used to determine whether a DBE trucking company is performing a CUF:

1. To perform a CUF, the DBE trucking firm shall be completely responsible for the management and supervision of the entire trucking operation for which the DBE trucking firm is responsible by subcontract under the contract. There shall not be a contrived arrangement, including, but not limited to, any arrangement that would not customarily and legally exist under customary construction project subcontracting practices for the purpose of meeting the DBE goal;
2. The DBE firm must own and operate at least one fully licensed, insured, and operational truck used in the performance of the contract work. This does not include a supervisor's pickup truck or a similar vehicle that is not suitable for and customarily used in hauling the subject materials or supplies;
3. Design-Builder is eligible to receive full credit toward the DBE goal for the total reasonable amount the DBE firm is paid for the transportation services provided on the subcontract under the contract using acceptable

trucks the DBE firm owns, insures, and operates using drivers that the DBE employs and manages;

4. The DBE trucking firm may lease trucks from another DBE firm, including from an owner-operator who is a DBE firm. Design-Builder is eligible to receive credit for the total fair market value actually paid for transportation services the lessee DBE firm provides to the DBE firm that leases trucks from such lessee DBE firm on the contract;
5. The DBE firm may also lease trucks from a non-DBE firm, including an owner-operator. Design-Builder may be eligible to receive DBE goal credit for the services of a DBE firm who leases trucks from a non-DBE firm up to the total value of the transportation services provided by non-DBE lessees, not to exceed the value of transportation services provided by DBE-owned trucks on the contract. For additional participation by non-DBE lessees, the DBE will only receive credit for the fee or commission it receives as a result of the lease arrangement.

Truck Counting

Design-Builders may count for credit against the DBE goal the dollar volume attributable to no more than twice the number of trucks owned by a DBE firm or leased from another DBE firm.

As an example, DBE credit would be awarded for the total transportation services provided by DBE Firm X and DBE Firm Y, and may also be awarded for the total value of transportation services by four (4) of the six (6) trucks provided by non-DBE Firm Z (not to exceed the value of transportation services provided by DBE-owned trucks).

		Value of Transportation Services (For Illustrative Purposes Only)
<u>Firm X</u>		
Truck 1	Owned by DBE	\$100 per day
Truck 2	Owned by DBE	\$100 per day
<u>Firm Y</u>		
Truck 3	Leased from DBE	\$110 per day
Truck 4	Leased from DBE	\$110 per day
<u>Firm Z</u>		
Truck 1	Leased from Non-DBE	\$125 per day
Truck 2	Leased from Non-DBE	\$125 per day
Truck 3	Leased from Non-DBE	\$125 per day
Truck 4	Leased from Non-DBE	\$125 per day
Truck 5	Leased from Non-DBE*	\$125 per day
Truck 6	Leased from Non-DBE*	\$125 per day

DBE credit would be awarded for the total transportation services provided by DBE firm X and DBE Firm Y, and may also be awarded for the total value of transportation services by four (4) of the six (6) trucks provided by non-DBE Firm Z (not to exceed the value of transportation services provided by DBE-owned trucks).

Credit = 8 Trucks

Total Value of Transportation Services = \$820.00

In all, full DBE credit would be allowed for the participation of eight (8) trucks (twice the number of DBE trucks owned and leased) and the dollar value attributable to the Value of Transportation Services provided by the eight (8) trucks.

* With respect to the other two trucks provided by non-DBE Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks that DBE Firm X receives as a result of the lease with non-DBE Firm Z.

1. For purposes of this section, the lease must indicate that the DBE firm leasing the truck has exclusive use of and control over the truck. This will not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, provided the lease gives the DBE absolute priority for and control over the use of the leased truck. Leased trucks must display the name and identification number of the DBE firm that has leased the truck at all times during the life of the lease.

M. Suspect Evidence of Criminal Behavior

Failure of Design-Builder or any subcontractor to comply with the Standard Specifications, this Special Provision, or any other contract document wherein there appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted prosecution.

Suspected DBE Fraud

In appropriate cases, Department will bring to the attention of the United States Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take the steps, e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or "Program Fraud and Civil Penalties" rules provided in 49 CFR Part 31.

EXHIBIT BB-1

395 FINANCIAL CLOSE ADJUSTMENT PROTOCOL

[SEE ATTACHED]

EXHIBIT BB-2

FRED EX ADDITIONAL FINANCIAL CLOSE MODEL ADJUSTMENT PROTOCOL

[SEE ATTACHED]

EXHIBIT BB-2

FRED EX ADDITIONAL FINANCIAL CLOSE MODEL ADJUSTMENT PROTOCOL

Section 1 Determination of the Base Case Financial Model Update (Fred Ex Final/Additional)

(A) As of the Second Amended and Restated Agreement Date, the Base Case Financial Model Update (Fred Ex Draft) is the most recent undisputed Base Case Financial Model Update. Unless otherwise mutually agreed by the Parties, the Base Case Financial Model Update (Fred Ex Final),¹ to be delivered to the Department by the Concessionaire prior to Fred Ex Financial Close in accordance with Section 7.03B(b)(i) of the Second ARCA, will be identical (or with modifications mutually agreed by the parties) to the Base Case Financial Model Update (Fred Ex Draft) and will become the governing Base Case Financial Model Update upon Fred Ex Financial Close. Such model will reflect any Planned Refinancings and any Department agreed upon costs, savings, and benefits (including but not limited to all updated costs and benefits resulting from Exhibit C-4 of the Second ARCA (which are part of the Technical Requirements)).

(B) The Concessionaire will use the Base Case Financial Model Update (Fred Ex Final) as the basis to develop the Base Case Financial Model Update (Fred Ex Final/Additional) in conjunction with Fred Ex Additional Financial Close.

(C) Between the Fred Ex Financial Close Date and the Fred Ex Additional Financial Close Date, the Base Case Financial Model Update (Fred Ex Final) will be updated by the Concessionaire to accurately reflect (among other appropriate changes that are approved by the Department under the processes established by Sections 6.02, 7.03B, and 7.03C of the Second ARCA):

1. the most recent financing terms (including the Fred Ex TIFIA Credit Assistance Benefit Amount, if applicable);
2. changes made to address any rating agency or lenders' requirements (including changes required under Section 7.03C(d)(i) of the Second ARCA); and
3. all calculations and information regarding the Fred Ex Financial Protections in accordance with Section 7.03B(c) of the Second ARCA and per Section 4 below.
4. Such updated Base Case Financial Model Update (Fred Ex Final) will be provided to the Department under the processes established by Sections 6.02, 7.03B, and 7.03C of the Second ARCA.

(D) In accordance with Section 7.03C(a)(iii) of the Second ARCA (and using the Base Case Financial Model Update (Fred Ex Final) as the basis) at least 10 days prior to the Fred Ex Additional Financial Close Date, the Concessionaire will deliver to the Department a proposed

¹ Both the (i) Base Case Financial Model Update (Fred Ex Draft) and (ii) Base Case Financial Model Update (Fred Ex Final) will be equity-only with respect to the Fred Ex Project. The Base Case Financial Model Update (Fred Ex Draft) is included in the Escrow Documents in accordance with Section 18.05 of the Second ARCA.

draft of the Base Case Financial Model Update (Fred Ex Final/Additional). All subsequent versions of the draft of the Base Case Financial Model Update (Fred Ex Final/Additional) will be delivered to the Department contemporaneously with the external distribution of such drafts to the Lenders and other (non-advisor) parties related to Fred Ex Additional Financial Close up and until the Concessionaire has furnished the final draft pursuant to Section 7.03C(b)(i) of the Second ARCA.

(E) The draft Base Case Financial Model Update (Fred Ex Final/Additional) will be updated upon Fred Ex Additional Financial Close (as set forth in Sections 6.02 and 7.03C of the Second ARCA) as follows to become the true and complete Base Case Financial Model Update (Fred Ex Final/Additional). Such updates are described in the Sections 2 and 4 of this Exhibit.

(F) Fred Ex Additional Financial Close will only be achieved once the Concessionaire has provided the Department the true and complete Base Case Financial Model Update (Fred Ex Final/Additional) in accordance with Section 7.03C(b)(i) of the Second ARCA.

Section 2 Interest Rate Protection Calculations

The draft Base Case Financial Model Update (Fred Ex Final/Additional) will be adjusted as follows to calculate the Fred Ex Interest Rate Protection resulting from changes relative to the (i) Fred Ex PABs All-In Rates and/or (ii) the Fred Ex TIFIA Rates.

Step 1: Update the Concessionaire Debt for the Fred Ex Project in accordance with Section 7.03B(c)(i) of the Second ARCA

(A) If the total Concessionaire Debt for the Fred Ex Project at the applicable Fred Ex Financial Protections Calculation Date, is different than the Concessionaire Debt for the Fred Ex Project in the draft Base Case Financial Model Update (Fred Ex Final/Additional) for reasons beyond the changes in Fred Ex PABs All-In Rates, and/or Fred Ex TIFIA Rates, the draft Base Case Financial Model Update (Fred Ex Final/Additional) will be adjusted as follows:

- Update the PABs and TIFIA facility size to reflect the proceeds at the Fred Ex Additional Financial Close Date; and
- Update the PABs and TIFIA repayment profile to reflect the profile at the Fred Ex Additional Financial Close Date.

(B) The draft Base Case Financial Model Update (Fred Ex Final/Additional) will be optimized based on the updates in Step 1(A) above to arrive at an (entire Concession) Equity IRR ("Step 1 Adjusted Equity IRR") without Fred Ex Interest Rate Protection.

Step 2: Determine the Department Protection Fred Ex Benchmark Interest Rates

(A) The (i) applicable PABs Interest Rates and/or (ii) the interest rates locked by the Concessionaire for any Fred Ex TIFIA Credit Assistance, in each case as of the applicable Fred Ex Financial Protections Calculation Date, will be compared to the (i) Fred

Ex PABs All-In Rates, and/or (ii) Fred Ex TIFIA Rates, respectively, in accordance with Section 7.03B(c)(i) of the Second ARCA to calculate the total change in interest rates.

(B) If the increase or decrease in interest rate per facility is less than or equal to 80 Basis Points, the Fred Ex Interest Rate Protection applied for that facility will be zero (0.00%).

(C) If the increase in interest rate per facility is greater than 80 Basis Points, the Fred Ex Interest Rate Protection applied for that facility will be determined as follows:

- If the increase in interest rate per facility exceeds 80 Basis Points, but is less than or equal to 100 Basis Points, the Fred Ex Interest Rate Protection shall be the change in the all-in interest rate for that facility less 80 Basis Points, multiplied by 50%.
- If the increase in interest rate per facility exceeds 100 Basis Points, the Fred Ex Interest Rate Protection shall be the change in the all-in interest rate for that facility less 100 Basis Points, plus an additional 10 Basis Points (for the 50% share applied to interest rate increase between 80 and 100 Basis Points).

(D) If the decrease in interest rates per facility is greater than 80 Basis Points, the Fred Ex Interest Rate Protection applied for that facility will be determined as follows:

- If the decrease in interest rate per facility exceeds 80 Basis Points, but is less than or equal to 100 Basis Points, the Fred Ex Interest Rate Protection shall be the change in the all-in interest rate for that facility *plus* 80 Basis Points, multiplied by 50%.
- If the decrease in interest rate per facility exceeds 100 Basis Points, the Fred Ex Interest Rate Protection shall be the change in the all-in interest rate for that debt facility plus 100 Basis Points, less an additional 10 Basis Points (for the 50% share applied to interest rate decrease between 80 and 100 Basis Points).

Step 3: Update the Fred Ex Interest Rates Protection

(A) The draft Base Case Financial Model Update (Fred Ex Final/Additional) shall be run to solve for the Fred Ex Interest Rate Protection amount needed to return the Equity IRR to the Step 1 Adjusted Equity IRR as applicable, by adding only the:

- Fred Ex Interest Rate Protection with respect to the Fred Ex PABs All-In Rates as calculated in Step 2, and
- Fred Ex Interest Rate Protection with respect to the Fred Ex TIFIA Rates as calculated in Step 2.

No other changes will be made to the draft Base Case Financial Model Update (Fred Ex Final/Additional). The resulting amount from Step 3 will be the Fred Ex Interest Rate Protection amount. The Fred Ex Interest Rate Protection amount will be a positive amount in the event that there has been an increase in interest rates, per facility, of greater than 80 Basis Points. The Fred Ex Interest Rate Protection amount will be a negative amount (i.e. payment to the Department, as applicable under Section 3) in the event that there has been a decrease in interest rates, per facility, of greater than 80 Basis Points.

Section 3 Determine the Fred Ex Financial Protections amount

(A) At each Fred Ex Financial Protections Calculation Date, the total Fred Ex Financial Protections amount will be calculated.

(B) The Fred Ex Financial Protections will be the sum of:

(i) Section 2 (Step 3) Fred Ex Interest Rate Protection amount for Fred Ex PAB All-In Rates,

(ii) Section 2 (Step 3) Fred Ex Interest Rate Protection amount for Fred Ex TIFIA Rates, and

(iii) \$0 (for the Fred Ex Design Build Price Protection per Section 7.03B(c)(iii) of the Second ARCA), as applicable.

(C) If on any of the Fred Ex Financial Protections Calculation Dates the total combined amount of the Fred Ex Financial Protections exceeds \$50,000,000, refer to Section 7.03B(c)(iv) of the Second ARCA.

(D) The true and complete Base Case Financial Model Update (Fred Ex Final/Additional) shall include the Fred Ex Financial Protections, if applicable.

Section 4 Adjustments to Financing Terms

(A) The draft Base Case Financial Model Update (Fred Ex Final/Additional) provided by the Concessionaire in accordance with Section 7.03C(a)(iii) of the Second ARCA will be adjusted to reflect the final financing terms. Concessionaire will bear 100% of the risk with respect to the financing terms of the PABs for the Fred Ex Project (if any) and the Fred Ex TIFIA Credit Assistance (if any), in accordance with Section 7.03B(c)(ii) of the Second ARCA.

(B) The resulting true and complete financial model on the Fred Ex Additional Financial Close Date will include the final financing terms and will be defined as the true and complete Base Case Financial Model Update (Fred Ex Final/Additional).

TABLE BB-1(A) – BBB/BBB PABs – 10 year par call

Private Activity Bonds (PAB)					
Credit rating: BBB-/Baa3					
Facility	Benchmark Description	Benchmark Rate** [A]	Credit Spread*** [B]	PABs All-in Interest Rate [= A + B]	Coupon Rate
PAB maturing Year 0.5	AAA MMD 2020 Maturity	0.94%	0.35%	1.29%	2.00%
PAB maturing Year 1.0	AAA MMD 2020 Maturity	0.94%	0.40%	1.34%	3.00%
PAB maturing Year 1.5	AAA MMD 2021 Maturity	0.94%	0.45%	1.39%	4.00%
PAB maturing Year 2.0	AAA MMD 2021 Maturity	1.00%	0.50%	1.50%	4.00%
PAB maturing Year 2.5	AAA MMD 2022 Maturity	1.00%	0.55%	1.55%	5.00%
PAB maturing Year 3.0	AAA MMD 2022 Maturity	1.09%	0.60%	1.69%	5.00%
PAB maturing Year 3.5	AAA MMD 2023 Maturity	1.09%	0.63%	1.72%	5.00%
PAB maturing Year 4.0	AAA MMD 2023 Maturity	1.20%	0.66%	1.86%	5.00%
PAB maturing Year 4.5	AAA MMD 2024 Maturity	1.20%	0.69%	1.89%	5.00%
PAB maturing Year 5.0	AAA MMD 2024 Maturity	1.37%	0.73%	2.10%	5.00%
PAB maturing Year 5.5	AAA MMD 2025 Maturity	1.37%	0.75%	2.12%	5.00%
PAB maturing Year 6.0	AAA MMD 2025 Maturity	1.50%	0.78%	2.28%	5.00%
PAB maturing Year 6.5	AAA MMD 2026 Maturity	1.50%	0.81%	2.31%	5.00%
PAB maturing Year 7.0	AAA MMD 2026 Maturity	1.64%	0.83%	2.47%	5.00%
PAB maturing Year 7.5	AAA MMD 2027 Maturity	1.64%	0.85%	2.49%	5.00%
PAB maturing Year 8.0	AAA MMD 2027 Maturity	1.79%	0.87%	2.66%	5.00%
PAB maturing Year 8.5	AAA MMD 2028 Maturity	1.79%	0.89%	2.68%	5.00%
PAB maturing Year 9.0	AAA MMD 2028 Maturity	1.92%	0.90%	2.82%	5.00%
PAB maturing Year 9.5	AAA MMD 2029 Maturity	1.92%	0.92%	2.84%	5.00%
PAB maturing Year 10.0	AAA MMD 2029 Maturity	2.02%	0.94%	2.96%	5.00%
PAB maturing Year 10.5	AAA MMD 2030 Maturity	2.02%	0.95%	2.97%	5.00%
PAB maturing Year 11.0	AAA MMD 2030 Maturity	2.11%	0.95%	3.06%	5.00%
PAB maturing Year 11.5	AAA MMD 2031 Maturity	2.11%	0.95%	3.06%	5.00%
PAB maturing Year 12.0	AAA MMD 2031 Maturity	2.19%	0.95%	3.14%	5.00%
PAB maturing Year 12.5	AAA MMD 2032 Maturity	2.19%	0.95%	3.14%	5.00%
PAB maturing Year 13.0	AAA MMD 2032 Maturity	2.25%	0.95%	3.20%	5.00%
PAB maturing Year 13.5	AAA MMD 2033 Maturity	2.25%	0.95%	3.20%	5.00%
PAB maturing Year 14.0	AAA MMD 2033 Maturity	2.32%	0.95%	3.27%	5.00%
PAB maturing Year 14.5	AAA MMD 2034 Maturity	2.32%	0.95%	3.27%	5.00%
PAB maturing Year 15.0	AAA MMD 2034 Maturity	2.39%	0.95%	3.34%	5.00%
PAB maturing Year 15.5	AAA MMD 2035 Maturity	2.39%	0.95%	3.34%	5.00%
PAB maturing Year 16.0	AAA MMD 2035 Maturity	2.45%	0.95%	3.40%	5.00%
PAB maturing Year 16.5	AAA MMD 2036 Maturity	2.45%	0.95%	3.40%	5.00%
PAB maturing Year 17.0	AAA MMD 2036 Maturity	2.51%	0.95%	3.46%	5.00%
PAB maturing Year 17.5	AAA MMD 2037 Maturity	2.51%	0.95%	3.46%	5.00%
PAB maturing Year 18.0	AAA MMD 2037 Maturity	2.56%	0.95%	3.51%	5.00%
PAB maturing Year 18.5	AAA MMD 2038 Maturity	2.56%	0.95%	3.51%	5.00%
PAB maturing Year 19.0	AAA MMD 2038 Maturity	2.60%	0.95%	3.55%	5.00%
PAB maturing Year 19.5	AAA MMD 2039 Maturity	2.60%	0.95%	3.55%	5.00%
PAB maturing Year 20.0	AAA MMD 2039 Maturity	2.64%	0.95%	3.59%	5.00%
PAB maturing Year 20.5	AAA MMD 2040 Maturity	2.64%	0.95%	3.59%	5.00%

PAB maturing Year 21.0	AAA MMD 2040 Maturity	2.68%	0.95%	3.63%	5.00%
PAB maturing Year 21.5	AAA MMD 2041 Maturity	2.68%	0.95%	3.63%	5.00%
PAB maturing Year 22.0	AAA MMD 2041 Maturity	2.71%	0.95%	3.66%	5.00%
PAB maturing Year 22.5	AAA MMD 2042 Maturity	2.71%	0.95%	3.66%	5.00%
PAB maturing Year 23.0	AAA MMD 2042 Maturity	2.73%	0.95%	3.68%	5.00%
PAB maturing Year 23.5	AAA MMD 2043 Maturity	2.73%	0.95%	3.68%	5.00%
PAB maturing Year 24.0	AAA MMD 2043 Maturity	2.75%	0.95%	3.70%	5.00%
PAB maturing Year 24.5	AAA MMD 2044 Maturity	2.75%	0.95%	3.70%	5.00%
PAB maturing Year 25.0	AAA MMD 2044 Maturity	2.77%	0.95%	3.72%	5.00%
PAB maturing Year 25.5	AAA MMD 2045 Maturity	2.77%	0.95%	3.72%	5.00%
PAB maturing Year 26.0	AAA MMD 2045 Maturity	2.79%	0.95%	3.74%	5.00%
PAB maturing Year 26.5	AAA MMD 2046 Maturity	2.79%	0.95%	3.74%	5.00%
PAB maturing Year 27.0	AAA MMD 2046 Maturity	2.80%	0.95%	3.75%	5.00%
PAB maturing Year 27.5	AAA MMD 2047 Maturity	2.80%	0.95%	3.75%	5.00%
PAB maturing Year 28.0	AAA MMD 2047 Maturity	2.81%	0.95%	3.76%	5.00%
PAB maturing Year 28.5	AAA MMD 2048 Maturity	2.81%	0.95%	3.76%	5.00%
PAB maturing Year 29.0	AAA MMD 2048 Maturity	2.82%	0.95%	3.77%	5.00%
PAB maturing Year 29.5	AAA MMD 2049 Maturity	2.82%	0.95%	3.77%	5.00%
PAB maturing Year 30.0	AAA MMD 2049 Maturity	2.83%	0.95%	3.78%	5.00%
PAB maturing Year 30.5	AAA MMD 2050 Maturity	2.83%	0.96%	3.79%	5.00%
PAB maturing Year 31.0	AAA MMD 2050 Maturity	2.83%	0.97%	3.80%	5.00%
PAB maturing Year 31.5	AAA MMD 2051 Maturity	2.83%	0.98%	3.81%	5.00%
PAB maturing Year 32.0	AAA MMD 2051 Maturity	2.83%	0.99%	3.82%	5.00%
PAB maturing Year 32.5	AAA MMD 2052 Maturity	2.83%	1.00%	3.83%	5.00%
PAB maturing Year 33.0	AAA MMD 2052 Maturity	2.83%	1.01%	3.84%	5.00%
PAB maturing Year 33.5	AAA MMD 2053 Maturity	2.83%	1.02%	3.85%	5.00%
PAB maturing Year 34.0	AAA MMD 2053 Maturity	2.83%	1.03%	3.86%	5.00%
PAB maturing Year 34.5	AAA MMD 2054 Maturity	2.83%	1.04%	3.87%	5.00%
PAB maturing Year 35.0	AAA MMD 2054 Maturity	2.83%	1.05%	3.88%	5.00%
PAB maturing Year 35.5	AAA MMD 2055 Maturity	2.83%	1.06%	3.89%	5.00%
PAB maturing Year 36.0	AAA MMD 2055 Maturity	2.83%	1.07%	3.90%	5.00%
PAB maturing Year 36.5	AAA MMD 2056 Maturity	2.83%	1.08%	3.91%	5.00%
PAB maturing Year 37.0	AAA MMD 2056 Maturity	2.83%	1.09%	3.92%	5.00%
PAB maturing Year 37.5	AAA MMD 2057 Maturity	2.83%	1.10%	3.93%	5.00%
PAB maturing Year 38.0	AAA MMD 2057 Maturity	2.83%	1.11%	3.94%	5.00%
PAB maturing Year 38.5	AAA MMD 2058 Maturity	2.83%	1.12%	3.95%	5.00%
PAB maturing Year 39.0	AAA MMD 2058 Maturity	2.83%	1.13%	3.96%	5.00%
PAB maturing Year 39.5	AAA MMD 2059 Maturity	2.83%	1.14%	3.97%	5.00%
PAB maturing Year 40.0	AAA MMD 2059 Maturity	2.83%	1.15%	3.98%	5.00%

Assumptions for Private Activity Bonds (PAB)

- 1) Benchmark Rate source: Thompson Reuters' Municipal Market Monitor (TM3)'s Municipal Market Data for AAA General Obligations (MMD AAA GO Yield Curve)
 - 2) Optional Redemption (standard 10 year call provision) and Extraordinary Mandatory Redemption call included
 - 3) Interest rates should include no buffer
 - 4) Scenario assumes NR/BBB/BBB ratings
- * Credit spread quoted as Yield To Worst according to market standards; Assumes optional redemption in ten years at par
- 1) Benchmark Rate source: Thompson Reuters' Municipal Market Monitor (TM3)'s Municipal Market Data for AAA General Obligations (MMD AAA GO Yield Curve)

TABLE BB-1(B) – BBB/BBB PABs – 3 year par call

Private Activity Bonds (PAB)					
Credit rating: BBB-/Baa2					
Facility	Benchmark Description	Benchmark Rate** [A]	Credit Spread*** [B]	PABs All-in Interest Rate [= A + B]	Coupon Rate
Private Activity Bonds (PAB)					
PAB maturing Year 0.5	AAA MMD 2020 Maturity	0.94%	0.35%	1.29%	2.00%
PAB maturing Year 1.0	AAA MMD 2020 Maturity	0.94%	0.40%	1.34%	3.00%
PAB maturing Year 1.5	AAA MMD 2021 Maturity	0.94%	0.45%	1.39%	4.00%
PAB maturing Year 2.0	AAA MMD 2021 Maturity	1.00%	0.50%	1.50%	4.00%
PAB maturing Year 2.5	AAA MMD 2022 Maturity	1.00%	0.55%	1.55%	5.00%
PAB maturing Year 3.0	AAA MMD 2022 Maturity	1.09%	0.60%	1.69%	5.00%
PAB maturing Year 3.5	AAA MMD 2023 Maturity	1.09%	0.13%	1.22%	5.00%
PAB maturing Year 4.0	AAA MMD 2023 Maturity	1.20%	0.16%	1.36%	5.00%
PAB maturing Year 4.5	AAA MMD 2024 Maturity	1.20%	0.19%	1.39%	5.00%
PAB maturing Year 5.0	AAA MMD 2024 Maturity	1.37%	0.23%	1.60%	5.00%
PAB maturing Year 5.5	AAA MMD 2025 Maturity	1.37%	0.25%	1.62%	5.00%
PAB maturing Year 6.0	AAA MMD 2025 Maturity	1.50%	0.28%	1.78%	5.00%
PAB maturing Year 6.5	AAA MMD 2026 Maturity	1.50%	0.31%	1.81%	5.00%
PAB maturing Year 7.0	AAA MMD 2026 Maturity	1.64%	0.33%	1.97%	5.00%
PAB maturing Year 7.5	AAA MMD 2027 Maturity	1.64%	0.35%	1.99%	5.00%
PAB maturing Year 8.0	AAA MMD 2027 Maturity	1.79%	0.37%	2.16%	5.00%
PAB maturing Year 8.5	AAA MMD 2028 Maturity	1.79%	0.39%	2.18%	5.00%
PAB maturing Year 9.0	AAA MMD 2028 Maturity	1.92%	0.40%	2.32%	5.00%
PAB maturing Year 9.5	AAA MMD 2029 Maturity	1.92%	0.42%	2.34%	5.00%
PAB maturing Year 10.0	AAA MMD 2029 Maturity	2.02%	0.44%	2.46%	5.00%
PAB maturing Year 10.5	AAA MMD 2030 Maturity	2.02%	0.45%	2.47%	5.00%
PAB maturing Year 11.0	AAA MMD 2030 Maturity	2.11%	0.45%	2.56%	5.00%
PAB maturing Year 11.5	AAA MMD 2031 Maturity	2.11%	0.45%	2.56%	5.00%
PAB maturing Year 12.0	AAA MMD 2031 Maturity	2.19%	0.45%	2.64%	5.00%
PAB maturing Year 12.5	AAA MMD 2032 Maturity	2.19%	0.45%	2.64%	5.00%
PAB maturing Year 13.0	AAA MMD 2032 Maturity	2.25%	0.45%	2.70%	5.00%
PAB maturing Year 13.5	AAA MMD 2033 Maturity	2.25%	0.45%	2.70%	5.00%
PAB maturing Year 14.0	AAA MMD 2033 Maturity	2.32%	0.45%	2.77%	5.00%
PAB maturing Year 14.5	AAA MMD 2034 Maturity	2.32%	0.45%	2.77%	5.00%
PAB maturing Year 15.0	AAA MMD 2034 Maturity	2.39%	0.45%	2.84%	5.00%
PAB maturing Year 15.5	AAA MMD 2035 Maturity	2.39%	0.45%	2.84%	5.00%
PAB maturing Year 16.0	AAA MMD 2035 Maturity	2.45%	0.45%	2.90%	5.00%
PAB maturing Year 16.5	AAA MMD 2036 Maturity	2.45%	0.45%	2.90%	5.00%
PAB maturing Year 17.0	AAA MMD 2036 Maturity	2.51%	0.45%	2.96%	5.00%
PAB maturing Year 17.5	AAA MMD 2037 Maturity	2.51%	0.45%	2.96%	5.00%
PAB maturing Year 18.0	AAA MMD 2037 Maturity	2.56%	0.45%	3.01%	5.00%
PAB maturing Year 18.5	AAA MMD 2038 Maturity	2.56%	0.45%	3.01%	5.00%
PAB maturing Year 19.0	AAA MMD 2038 Maturity	2.60%	0.45%	3.05%	5.00%
PAB maturing Year 19.5	AAA MMD 2039 Maturity	2.60%	0.45%	3.05%	5.00%
PAB maturing Year 20.0	AAA MMD 2039 Maturity	2.64%	0.45%	3.09%	5.00%
PAB maturing Year 20.5	AAA MMD 2040 Maturity	2.64%	0.45%	3.09%	5.00%
PAB maturing Year 21.0	AAA MMD 2040 Maturity	2.68%	0.45%	3.13%	5.00%

PAB maturing Year 21.5	AAA MMD 2041 Maturity	2.68%	0.50%	3.18%	5.00%
PAB maturing Year 22.0	AAA MMD 2041 Maturity	2.71%	0.50%	3.21%	5.00%
PAB maturing Year 22.5	AAA MMD 2042 Maturity	2.71%	0.50%	3.21%	5.00%
PAB maturing Year 23.0	AAA MMD 2042 Maturity	2.73%	0.50%	3.23%	5.00%
PAB maturing Year 23.5	AAA MMD 2043 Maturity	2.73%	0.50%	3.23%	5.00%
PAB maturing Year 24.0	AAA MMD 2043 Maturity	2.75%	0.50%	3.25%	5.00%
PAB maturing Year 24.5	AAA MMD 2044 Maturity	2.75%	0.50%	3.25%	5.00%
PAB maturing Year 25.0	AAA MMD 2044 Maturity	2.77%	0.50%	3.27%	5.00%
PAB maturing Year 25.5	AAA MMD 2045 Maturity	2.77%	0.50%	3.27%	5.00%
PAB maturing Year 26.0	AAA MMD 2045 Maturity	2.79%	0.50%	3.29%	5.00%
PAB maturing Year 26.5	AAA MMD 2046 Maturity	2.79%	0.50%	3.29%	5.00%
PAB maturing Year 27.0	AAA MMD 2046 Maturity	2.80%	0.50%	3.30%	5.00%
PAB maturing Year 27.5	AAA MMD 2047 Maturity	2.80%	0.50%	3.30%	5.00%
PAB maturing Year 28.0	AAA MMD 2047 Maturity	2.81%	0.50%	3.31%	5.00%
PAB maturing Year 28.5	AAA MMD 2048 Maturity	2.81%	0.50%	3.31%	5.00%
PAB maturing Year 29.0	AAA MMD 2048 Maturity	2.82%	0.50%	3.32%	5.00%
PAB maturing Year 29.5	AAA MMD 2049 Maturity	2.82%	0.50%	3.32%	5.00%
PAB maturing Year 30.0	AAA MMD 2049 Maturity	2.83%	0.50%	3.33%	5.00%
PAB maturing Year 30.5	AAA MMD 2050 Maturity	2.83%	0.51%	3.34%	5.00%
PAB maturing Year 31.0	AAA MMD 2050 Maturity	2.83%	0.52%	3.35%	5.00%
PAB maturing Year 31.5	AAA MMD 2051 Maturity	2.83%	0.53%	3.36%	5.00%
PAB maturing Year 32.0	AAA MMD 2051 Maturity	2.83%	0.54%	3.37%	5.00%
PAB maturing Year 32.5	AAA MMD 2052 Maturity	2.83%	0.55%	3.38%	5.00%
PAB maturing Year 33.0	AAA MMD 2052 Maturity	2.83%	0.56%	3.39%	5.00%
PAB maturing Year 33.5	AAA MMD 2053 Maturity	2.83%	0.57%	3.40%	5.00%
PAB maturing Year 34.0	AAA MMD 2053 Maturity	2.83%	0.58%	3.41%	5.00%
PAB maturing Year 34.5	AAA MMD 2054 Maturity	2.83%	0.59%	3.42%	5.00%
PAB maturing Year 35.0	AAA MMD 2054 Maturity	2.83%	0.60%	3.43%	5.00%
PAB maturing Year 35.5	AAA MMD 2055 Maturity	2.83%	0.61%	3.44%	5.00%
PAB maturing Year 36.0	AAA MMD 2055 Maturity	2.83%	0.62%	3.45%	5.00%
PAB maturing Year 36.5	AAA MMD 2056 Maturity	2.83%	0.63%	3.46%	5.00%
PAB maturing Year 37.0	AAA MMD 2056 Maturity	2.83%	0.64%	3.47%	5.00%
PAB maturing Year 37.5	AAA MMD 2057 Maturity	2.83%	0.65%	3.48%	5.00%
PAB maturing Year 38.0	AAA MMD 2057 Maturity	2.83%	0.66%	3.49%	5.00%
PAB maturing Year 38.5	AAA MMD 2058 Maturity	2.83%	0.67%	3.50%	5.00%
PAB maturing Year 39.0	AAA MMD 2058 Maturity	2.83%	0.68%	3.51%	5.00%
PAB maturing Year 39.5	AAA MMD 2059 Maturity	2.83%	0.69%	3.52%	5.00%
PAB maturing Year 40.0	AAA MMD 2059 Maturity	2.83%	0.70%	3.53%	5.00%

Assumptions for Private Activity Bonds (PAB)

- 1) Benchmark Rate source: Thompson Reuters' Municipal Market Monitor (TM3)'s Municipal Market Data for AAA General Obligations (MMD AAA GO Yield Curve)
 - 2) Optional Redemption (3 year call provision) and Extraordinary Mandatory Redemption call included
 - 3) Interest rates should include no buffer
 - 4) Scenario assumes NR/BBB/BBB ratings
- * Credit spread quoted as Yield To Worst according to market standards; Assumes optional redemption in three years at par

TABLE BB-3 - TIFIA

TIFIA		
Facility	Benchmark Description	Benchmark Rate** [A]
TIFIA Maturing Year 0.5	AAA SLGS 2020 Maturity	1.23%
TIFIA Maturing Year 1.0	AAA SLGS 2020 Maturity	1.35%
TIFIA Maturing Year 1.5	AAA SLGS 2021 Maturity	1.43%
TIFIA Maturing Year 2.0	AAA SLGS 2021 Maturity	1.51%
TIFIA Maturing Year 2.5	AAA SLGS 2022 Maturity	1.59%
TIFIA Maturing Year 3.0	AAA SLGS 2022 Maturity	1.66%
TIFIA Maturing Year 3.5	AAA SLGS 2023 Maturity	1.74%
TIFIA Maturing Year 4.0	AAA SLGS 2023 Maturity	1.82%
TIFIA Maturing Year 4.5	AAA SLGS 2024 Maturity	1.90%
TIFIA Maturing Year 5.0	AAA SLGS 2024 Maturity	1.97%
TIFIA Maturing Year 5.5	AAA SLGS 2025 Maturity	2.04%
TIFIA Maturing Year 6.0	AAA SLGS 2025 Maturity	2.11%
TIFIA Maturing Year 6.5	AAA SLGS 2026 Maturity	2.16%
TIFIA Maturing Year 7.0	AAA SLGS 2026 Maturity	2.21%
TIFIA Maturing Year 7.5	AAA SLGS 2027 Maturity	2.25%
TIFIA Maturing Year 8.0	AAA SLGS 2027 Maturity	2.28%
TIFIA Maturing Year 8.5	AAA SLGS 2028 Maturity	2.31%
TIFIA Maturing Year 9.0	AAA SLGS 2028 Maturity	2.34%
TIFIA Maturing Year 9.5	AAA SLGS 2029 Maturity	2.36%
TIFIA Maturing Year 10.0	AAA SLGS 2029 Maturity	2.37%
TIFIA Maturing Year 10.5	AAA SLGS 2030 Maturity	2.38%
TIFIA Maturing Year 11.0	AAA SLGS 2030 Maturity	2.39%
TIFIA Maturing Year 11.5	AAA SLGS 2031 Maturity	2.40%
TIFIA Maturing Year 12.0	AAA SLGS 2031 Maturity	2.41%
TIFIA Maturing Year 12.5	AAA SLGS 2032 Maturity	2.42%
TIFIA Maturing Year 13.0	AAA SLGS 2032 Maturity	2.43%
TIFIA Maturing Year 13.5	AAA SLGS 2033 Maturity	2.45%
TIFIA Maturing Year 14.0	AAA SLGS 2033 Maturity	2.46%
TIFIA Maturing Year 14.5	AAA SLGS 2034 Maturity	2.48%
TIFIA Maturing Year 15.0	AAA SLGS 2034 Maturity	2.50%
TIFIA Maturing Year 15.5	AAA SLGS 2035 Maturity	2.52%
TIFIA Maturing Year 16.0	AAA SLGS 2035 Maturity	2.53%
TIFIA Maturing Year 16.5	AAA SLGS 2036 Maturity	2.55%
TIFIA Maturing Year 17.0	AAA SLGS 2036 Maturity	2.57%
TIFIA Maturing Year 17.5	AAA SLGS 2037 Maturity	2.58%
TIFIA Maturing Year 18.0	AAA SLGS 2037 Maturity	2.60%
TIFIA Maturing Year 18.5	AAA SLGS 2038 Maturity	2.62%
TIFIA Maturing Year 19.0	AAA SLGS 2038 Maturity	2.64%
TIFIA Maturing Year 19.5	AAA SLGS 2039 Maturity	2.65%
TIFIA Maturing Year 20.0	AAA SLGS 2039 Maturity	2.67%
TIFIA Maturing Year 20.5	AAA SLGS 2040 Maturity	2.68%
TIFIA Maturing Year 21.0	AAA SLGS 2040 Maturity	2.70%
TIFIA Maturing Year 21.5	AAA SLGS 2041 Maturity	2.72%
TIFIA Maturing Year 22.0	AAA SLGS 2041 Maturity	2.73%
TIFIA Maturing Year 22.5	AAA SLGS 2042 Maturity	2.75%
TIFIA Maturing Year 23.0	AAA SLGS 2042 Maturity	2.77%
TIFIA Maturing Year 23.5	AAA SLGS 2043 Maturity	2.78%
TIFIA Maturing Year 24.0	AAA SLGS 2043 Maturity	2.80%

TIFIA Maturing Year 24.5	AAA SLGS 2044 Maturity	2.81%
TIFIA Maturing Year 25.0	AAA SLGS 2044 Maturity	2.83%
TIFIA Maturing Year 25.5	AAA SLGS 2045 Maturity	2.84%
TIFIA Maturing Year 26.0	AAA SLGS 2045 Maturity	2.85%
TIFIA Maturing Year 26.5	AAA SLGS 2046 Maturity	2.86%
TIFIA Maturing Year 27.0	AAA SLGS 2046 Maturity	2.87%
TIFIA Maturing Year 27.5	AAA SLGS 2047 Maturity	2.88%
TIFIA Maturing Year 28.0	AAA SLGS 2047 Maturity	2.88%
TIFIA Maturing Year 28.5	AAA SLGS 2048 Maturity	2.89%
TIFIA Maturing Year 29.0	AAA SLGS 2048 Maturity	2.89%
TIFIA Maturing Year 29.5	AAA SLGS 2049 Maturity	2.90%
TIFIA Maturing Year 30.0	AAA SLGS 2049 Maturity	2.90%

EXHIBIT CC

PROJECT RIGHT OF WAY ACQUISITION

PROJECT PARCEL #	AFFECTED PARCEL(S)	PROPERTY OWNER	PURPOSE OF ROW/EASEMENT	ESTIMATED IMPACT AREA	SHEET NO.
001	TM 072-3-((33A1))-A	OVERLOOK FOUNDATION INC.	Drainage and Fence Easement	5,050 sq-ft	
002	TM 099-1-((17))-1	MCDONALDS CORP, NO 045- 1047	Temporary Construction Easement	20,500 sq-ft	
003	TM 099-1-((03))-1A	Corner LLC.	Temporary Construction / Permanent Sidewalk	200 sq-ft	
004	TM 099-1-((1))-13	D & J Real Estate	Temporary Construction / Permanent Signal	780 sq-ft	
005	TM 21Z 1 A	Brookfield Woodstream LLC	Elec Service - Panel H131- Stat. 51+10 +/-	1,376 sq-ft	
006	21-80A	Sileom Ventures LLC	Elec Service - Panel H130- Stat. 112+00 +/-	2,250 sq-ft	
008	21-92	Hidden Valley Corporation of VA	Elec Service - Panel H129- Stat. 149+00 +/-	1,620 sq-ft	
009	0902-01-0021A	Greater Springfield Fire Department	Temporary Construction Easement	5,750 sq-ft	
010	TM 0811-6- ((3))	Edsall Gardens LP	Elec Service - Panel PI - Stat. 1514+00 +/-	842 sq-ft	
N/A	N/A - ROW	VDOT	Adjust LA line	N/A	
020	8291-79-7354	Mall at Potomac Mills, LLC	Elec Service - Panel H117	1,637 sq-ft	
021	090-1-01-0052	School Board of Fairfax County (Garfield)	ITS Easement - Permanent and Temporary Construction	3,546 sq-ft Perm. 625 sq-ft Temp	
106	21-80A	Sileom Ventures LLC	Elec service, Temporary Construction, Permanent Sound Wall & Sound Wall Maintenance	8,950 sq-ft Perm. 8,090 sq-ft Temp	
022	21E-4-A	Potomac Hills Homeowners Association, Inc.	Temporary Construction, Permanent Sound Wall Maintenance	380 sq-ft Perm. 2,630 sq-ft Temp	
023	21-81D	Pointe Apartment Associates, L.P.	Temporary Construction, Permanent Sound Wall Maintenance	2,410 sq-ft Perm. 9,810 sq-ft Temp	

PROJECT PARCEL #	AFFECTED PARCEL(S)	PROPERTY OWNER	PURPOSE OF ROW/EASEMENT	ESTIMATED IMPACT AREA	SHEET NO.
024	046-04-02-03	Hoffman, John R.	Permanent sidewalk easement	111 sq-ft	
	N-SEM-1	Jablonski	DMS	145 sq-ft	Beyond limits of drawing
	N-SEM-2	BPMS Encore LLC	Ground Mounted Sign	70 sq-ft	Beyond limits of drawing
	N-SEM-3	City of Alexandria	Ground Mounted Sign	70 sq-ft	Beyond limits of drawing
	N-QUAK-1	Park Fairfax	Ground Mounted Sign	70 sq-ft	Beyond limits of drawing
	N-QUAK-2	Park Fairfax	Ground Mounted Sign	70 sq-ft	Beyond limits of drawing
	EADS-1	Fourteen Hundred Eads St & Vornado	DMS	145 sq-ft	395XPL - 29
	EADS-3	1101 Fern St Inc. & Vornado	Ground Mounted Sign	70 sq-ft	395XPL - 29
	EADS-4	1101 Fern St Inc. & Vornado	Ground Mounted Sign	70 sq-ft	395XPL - 29
	EADS-20	1101 Fern St Inc. & Vornado	Ground Mounted Sign	65 sq-ft	Beyond limits of drawing
	Sig Esmt 4.4 TM ID:33-003-438	1101 Fern St Inc. & Vornado	Temporary Construction Easement (SW corner of Army Navy Drive and S. Eads Street intersection)	1000 sq-ft	395XPL - 29
	DVP Esmt TM 029.03-01-06	Meadowcreek Lynbrook Residential LLC	3 Phase Primary	10,000 sq-ft	Beyond limits of drawing
	CB	Poter/Hunter	Soundwall	0.011 Acres	DEW - 8
	CF	Wesly Lincolnia LLC	Combination Retaining Wall and Sound Wall	0.216 Acres	DEW - 9
	FY	BRE ESA P Portfolio	Permanent Access Easement	0.026 Acres	DEW - 11

PROJECT PARCEL #	AFFECTED PARCEL(S)	PROPERTY OWNER	PURPOSE OF ROW/EASEMENT	ESTIMATED IMPACT AREA	SHEET NO.
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Notes:

1. 395 XPL refers to the 395 Express Lanes Project
2. DEW refers to the Duke to Edsall Widening Project.
3. Does NOT reflect right of way impacts resulting from proposed 395XPL soundwalls.
4. Limited access line change is inside of existing VDOT ROW - no parcel number is required.
5. The source of the right of way data for Parcel Nos. 001 to 006, 008 to 010, 020 to 024, and 106 is the Right of Way Acquisition Plan, Revision 2,

FRED EX PROJECT

PROJECT PARCEL #	AFFECTED PARCEL(S)	PROPERTY OWNER	PURPOSE OF ROW/EASEMENT	ESTIMATED IMPACT AREA	SHEET NO.
001	45-15	JMC-IV REAL ESTATE COMPANY	Permanent Roadway and Drainage Features	12.01 AC	3, 4, 5, 6
004	45-101B	MICHAEL J. WILLIAMSON & CHUNGA WILLIAMSON	Permanent Roadway and Drainage Features	0.12 AC	4
005	45-101L	THERESA L. DENSON	Permanent Roadway and Drainage Features	0.50 AC	4, 5
006A	45-142	BRENDA S. BLAKE	Permanent Roadway and Drainage Features	0.01 AC	6
008	45-220L	GLENCAIRNE FARM LP	Permanent Roadway and Drainage Features	1.69 AC	7, 8
010	45-133	CFT & ASSOCIATES LLC	Permanent Roadway and Drainage Features	0.23 AC	6, 7
010A	45-141	KENNETH W. & MARLENE WEBB	Permanent Roadway and Drainage Features	0.01 AC	6
011	45-133C	CHARLES D. ROLLINS	Permanent Roadway and Drainage Features	0.99 AC	7, 8
012	45-133E	RICHARD G. CANTRELL & ROBIN B. CANTRELL	Permanent Roadway and Drainage Features	1.24 AC	8
013	45-220M	DANIEL M. CHICHESTER & JOHN H. CHICHESTER	Permanent Roadway and Drainage Features	2.55 AC	8, 9, 10
014	38-32A	RBR LLC	Permanent Roadway and Drainage Features	0.09 AC	20
015	38-14G	CHESAPEAKE HOLDINGS CSG, LLC	Permanent Roadway and Drainage Features	1.88 AC	19, 20
016	38-34C	LANE CONSTRUCTION CORP	Permanent Roadway and Drainage Features	0.47 AC	20, 21
019	35-50	MARILYN GALLAWAY, THERESA HOLT & DELORES TAYLOR	Permanent Roadway and Drainage Features	1.26 AC	21, 22, 23
021	12-14	MCMILLION, ROY	Permanent Roadway and Drainage Features	0.75 AC	52, 53
022	13C-A	QUANTICO BUSINESS CENTER, LLC	Permanent Roadway and Drainage Features	0.91 AC	54, 55
023	13C-E	WASHINGTON REAL EST. INV. TR.	Permanent Roadway and Drainage Features	0.46 AC	55, 56

PROJECT PARCEL #	AFFECTED PARCEL(S)	PROPERTY OWNER	PURPOSE OF ROW/EASEMENT	ESTIMATED IMPACT AREA	SHEET NO.
026	38-35	STAFFORD AMERICAN LEGION POST INC	Permanent Roadway and Drainage Features	0.02 AC	21

OPITZ BOULEVARD RAMP PROJECT

PROJECT PARCEL #	AFFECTED PARCEL(S)	PROPERTY OWNER	PURPOSE OF ROW/EASEMENT	ESTIMATED IMPACT AREA	SHEET NO.
001	GPIN 8291-76-1385	Potomac Festival Limited Partnership	Permanent Roadway and Drainage Features	1872 Square Feet	10, 10RW
002	DB 1250 PG 506	Commonwealth of Virginia	Permanent Roadway and Drainage Features	6503 Square Feet	10, 10RW
003	GPIN 8291-76-9471	Commonwealth of Virginia Department of Highways	Permanent Roadway and Drainage Features	100 Square Feet	10, 10RW
004	GPIN 8391-06-1497	Potomac Hospital Corporation	Permanent Roadway and Drainage Features	50 Square Feet	11, 11RW
005	GPIN 8291-96-6718	The Board of County Supervisors of Prince William County, Virginia	Permanent Roadway and Drainage Features	None	11

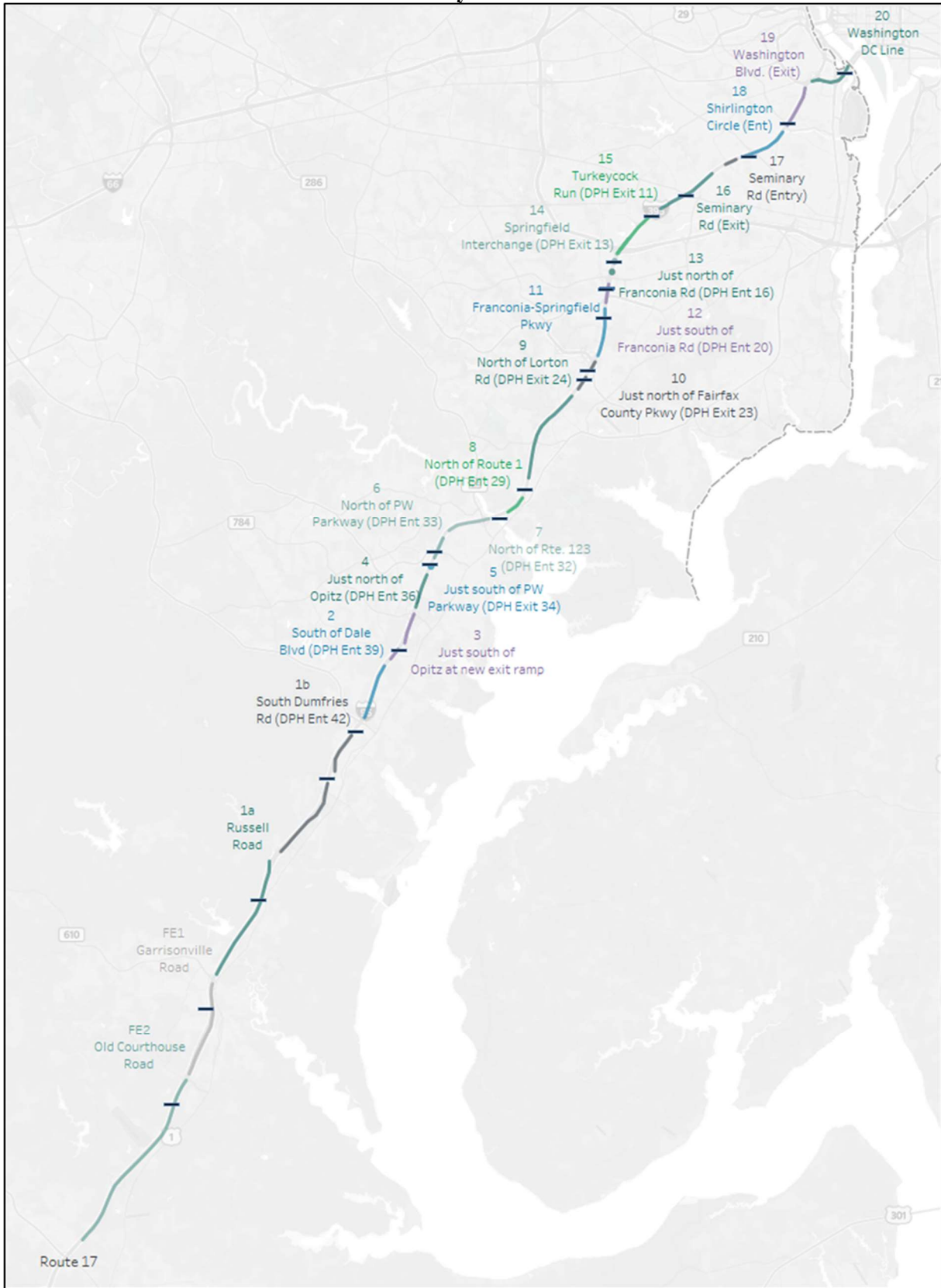
EXHIBIT DD

TOLL SECTIONS

NB Tolling Section	Northbound Section Begins	Northbound Section Ends
20	Washington Blvd. (Exit)	Washington DC Line
19	Shirlington Circle (Ent)	Washington Blvd. (Exit)
18	Seminary Rd (Entry)	Shirlington Circle (Ent)
17	Seminary Rd (Exit)	Seminary Rd (Entry)
16	Turkeycock Run (DPH Exit 11)	Seminary Rd (Exit)
15	Springfield Interchange (DPH Exit 13)	Turkeycock Run (DPH Exit 11)
14	Just north of Franconia Rd (DPH Ent 16)	Springfield Interchange (DPH Exit 13)
13	Just south of Franconia Rd (DPH Ent 20)	Just north of Franconia Rd (DPH Ent 16)
12	Franconia-Springfield Pkwy	Just south of Franconia Rd (DPH Ent 20)
11	Just north of Fairfax County Pkwy (DPH Exit 23)	Franconia-Springfield Pkwy
10	North of Lorton Rd (DPH Exit 24)	Just north of Fairfax County Pkwy (DPH Exit 23)
9	North of Route 1 (DPH Ent 29)	North of Lorton Rd (DPH Exit 24)
8	North of Rte. 123 (DPH Ent 32)	North of Route 1 (DPH Ent 29)
7	North of PW Parkway (DPH Ent 33)	North of Rte. 123 (DPH Ent 32)
6	Just south of PW Parkway (DPH Exit 34)	North of PW Parkway (DPH Ent 33)
5	Just north of Opitz (DPH Ent 36)	Just south of PW Parkway (DPH Exit 34)
4	Just south of Opitz at new exit ramp	Just north of Opitz (DPH Ent 36)
3	South of Dale Blvd (DPH Ent 39)	Just south of Opitz at new exit ramp
2	South Dumfries Rd (DPH Ent 42)	South of Dale Blvd (DPH Ent 39)
1b	Russell Road	South Dumfries Rd (DPH Ent 42)
1a	Garrisonville Road	Russell Road
FE1	Old Courthouse Road	Garrisonville Road
FE2	Just North of Route 17	Old Courthouse Road

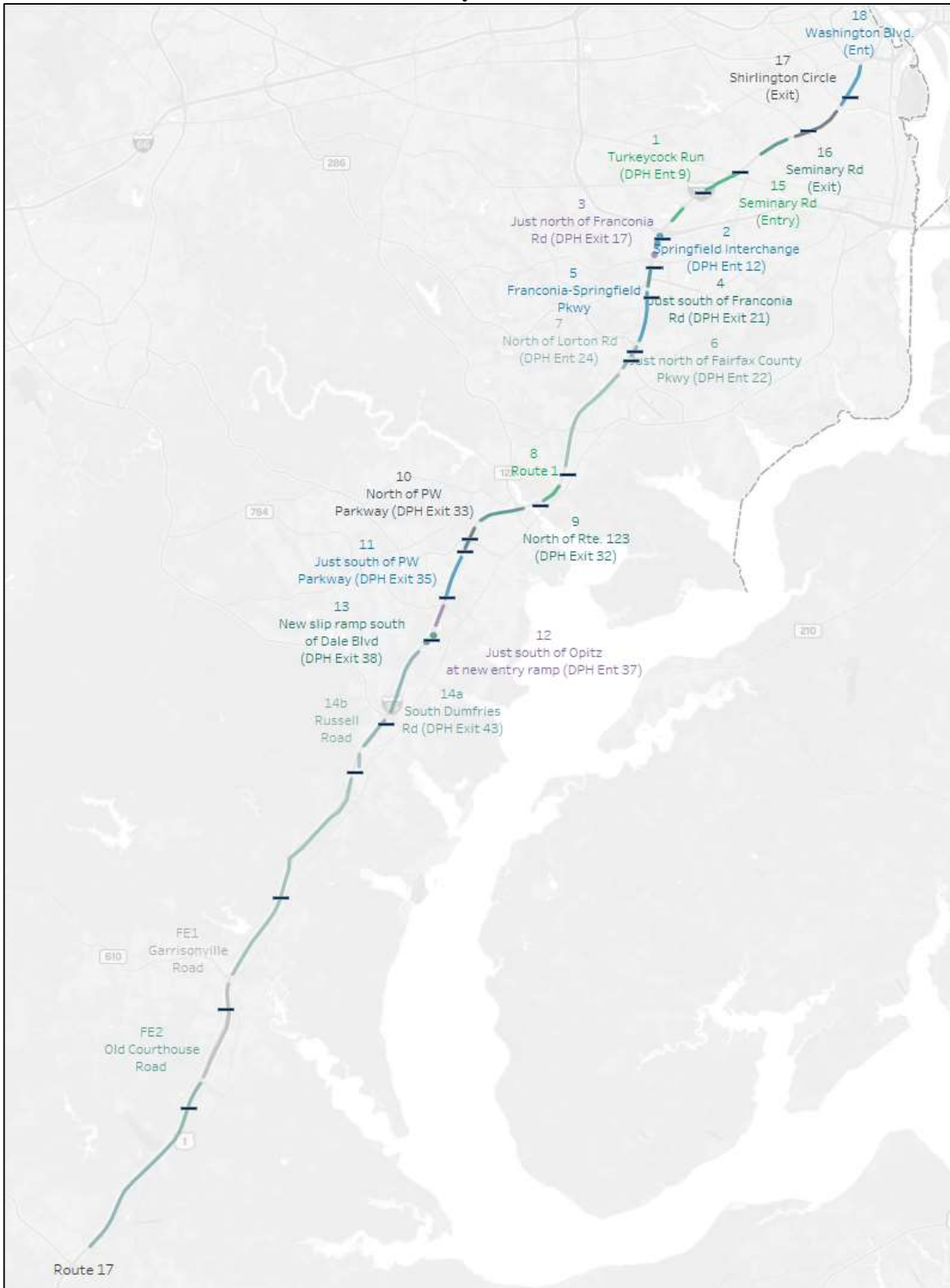
SB Tolling Section	Southbound Section Begins	Southbound Section End
18	Washington Blvd. (Ent)	Shirlington Circle (Exit)
17	Shirlington Circle (Exit)	Seminary Rd (Exit)
16	Seminary Rd (Exit)	Seminary Rd (Entry)
15	Seminary Rd (Entry)	Turkeycock Run (DPH Ent 9)
1	Turkeycock Run (DPH Ent 9)	Springfield Interchange (DPH Ent 12)
2	Springfield Interchange (DPH Ent 12)	Just north of Franconia Rd (DPH Exit 17)
3	Just north of Franconia Rd (DPH Exit 17)	Just south of Franconia Rd (DPH Exit 21)
4	Just south of Franconia Rd (DPH Exit 21)	Franconia-Springfield Pkwy
5	Franconia-Springfield Pkwy	Just north of Fairfax County Pkwy (DPH Ent 22)
6	Just north of Fairfax County Pkwy (DPH Ent 22)	North of Lorton Rd (DPH Ent 24)
7	North of Lorton Rd (DPH Ent 24)	Route 1
8	Route 1	North of Rte. 123 (DPH Exit 32)
9	North of Rte. 123 (DPH Exit 32)	North of PW Parkway (DPH Exit 33)
10	North of PW Parkway (DPH Exit 33)	Just south of PW Parkway (DPH Exit 35)
11	Just south of PW Parkway (DPH Exit 35)	Just south of Opitz at new entry ramp (DPH Ent 37)
12	Just south of Opitz at new entry ramp (DPH Ent 37)	New slip ramp south of Dale Blvd (DPH Exit 38)
13	New slip ramp south of Dale Blvd (DPH Exit 38)	South Dumfries Rd (DPH Exit 43)
14a	South Dumfries Rd (DPH Exit 43)	Russell Road
14b	Russell Road	Garrisonville Road
FE1	Garrisonville Road	Old Courthouse Road
FE2	Old Courthouse Road	Just North of Route 17

Toll Sections Layout - Northbound



— Toll Gantries

Toll Sections Layout - Southbound



■ Toll Gantries

EXHIBIT EE

**MAP OF EADS STREET COMPONENT AND
PENTAGON IMPROVEMENTS**

[SEE ATTACHED]

EXHIBIT FF

DESIGN DOCUMENTATION AND CONSTRUCTION DOCUMENTATION FOR THE STE REQUIRING CONCESSIONAIRE REVIEW

1. Request for Proposal (RFP) for the solicitation of the Design-Build Contractor
2. QA/QC Plan
3. Health, Safety, and Welfare Plan
4. Baseline Schedule
5. Monthly Schedule Updates/Monthly Progress Reports
6. Individual Design Work Packages and Construction Drawings
7. Notice of Design Changes (NDC)
8. Field Design Changes (FDC)
9. Non-Conforming Reports (NCR)
10. Variances
11. Special Provisions by the STE Design-Build Contractor
12. Testing Plans and Program

EXHIBIT GG

FORM OF STE DESIGN-BUILD CONTRACT

[SEE ATTACHED]

EXHIBIT HH

FORM OF 395 DESIGN-BUILD CONTRACT

[SEE ATTACHED]

EXHIBIT II
FORM OF 395 TTMS CONTRACT

[SEE ATTACHED]

EXHIBIT JJ

FORM OF FRED EX DESIGN-BUILD CONTRACT

[SEE ATTACHED]

EXHIBIT KK

FORM OF FRED EX TTMS CONTRACT

[SEE ATTACHED]

EXHIBIT LL-1

FORM OF OPITZ BOULEVARD RAMP CONSTRUCTION CONTRACT

[SEE ATTACHED]

EXHIBIT LL-2

FORM OF OPITZ BOULEVARD RAMP TMS CONTRACT

[SEE ATTACHED]

EXHIBIT MM

FORM OF SEMINARY ROAD RAMP CONSTRUCTION CONTRACT

[SEE ATTACHED]