

EXHIBIT E
FORM OF DESIGN-BUILD CONTRACT

[SEE ATTACHED]

**TURNKEY LUMP-SUM
DESIGN-BUILD CONTRACT**

RELATING TO THE I-95 HOV/HOT LANES PROJECT

BETWEEN

**95 EXPRESS LANES LLC,
AS CONCESSIONAIRE**

AND

**FLUOR-LANE 95, LLC,
AS CONTRACTOR**

DATED AS OF JULY 31, 2012

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE 1	DEFINITIONS.....	1
1.1	Definitions.....	1
ARTICLE 2	CONTRACTOR’S DB WORK AND OTHER OBLIGATIONS OF CONTRACTOR	29
2.1	DB Work to be Performed	29
2.2	Contractor’s Assumption of Risk for Project Right of Way Conditions; No Concessionaire’s Warranties for Site Information.....	48
2.3	Commencement of the DB Work	48
2.4	Standard of Performance.....	49
2.5	Compliance with Laws	49
2.6	Independent Engineer	50
2.7	Safety Precautions.....	50
2.8	Federal and State Requirements.....	51
2.9	Ethical Standards	51
2.10	Concessionaire’s Right to Carry Out DB Work	51
2.11	Concessionaire and Department Approvals; Technical Requirements.....	52
2.12	Department Oversight.....	53
2.13	Pay-if-Paid Provisions; Department Relief.....	54
2.14	Flow-Down from Department to Contractor	54
ARTICLE 3	SUBCONTRACTS	55
3.1	Project Subcontractors	55
3.2	Payments to Subcontractors	55
3.3	Subcontractor Warranties.....	55
3.4	No Privity.....	56
3.5	Subcontracts	56
3.6	Review and Approval not Relief of Contractor’s Liability	56
ARTICLE 4	PRICE AND PAYMENT	57
4.1	Contract Sum and Allowances	57
4.2	Payment Schedule.....	59
4.3	Final Payment	61

TABLE OF CONTENTS

(continued)

	<u>Page</u>
4.4	Termination Payment..... 61
4.5	All Payments Subject to Release of Liens 62
4.6	Payment or Use Not Acceptance 63
4.7	Set-Off..... 63
4.8	Guaranty..... 63
4.9	Letter of Credit..... 63
4.10	Public Funds Amount 64
ARTICLE 5	CONCESSIONAIRE’S OBLIGATIONS..... 64
5.1	Representatives 64
5.2	Project Right of Way; Real Estate Rights..... 65
5.3	Governmental Approvals 65
5.4	Payments of Contract Sum..... 65
5.5	Start-Up Personnel 65
5.6	Hazardous Substances..... 65
5.7	Comprehensive Agreement..... 66
5.8	Scope Change Order 66
ARTICLE 6	COMMISSIONING, COMPLETION AND ACCEPTANCE OF DB PROJECT..... 66
6.1	DB Project Commissioning 66
6.2	[Reserved]..... 67
6.3	DB Project Start-Up..... 67
6.4	Performance Tests..... 67
6.5	Completed Performance Test..... 67
6.6	Substantial Completion of the DB Project..... 68
6.7	Final Acceptance of the DB Project..... 71
6.8	Concessionaire’s Punch List 74
6.9	Operation and Maintenance of the DB Project 74
6.10	Acceptance by Concessionaire Not a Release of Contractor 75
ARTICLE 7	LATE COMPLETION PAYMENTS; LANE CLOSURE PAYMENT..... 75
7.1	Guaranteed Substantial Completion and Guaranteed Final Acceptance 75

TABLE OF CONTENTS
(continued)

	<u>Page</u>
7.2 Late Completion Payments.....	75
7.3 Payment of Late Completion Payments.....	76
7.4 Late Completion Payments for Delay Only.....	76
7.5 Lane Closure Liquidated Damages.....	76
7.6 Limitation on Liquidated Damages	76
7.7 Liquidated Damages Reasonable.....	76
ARTICLE 8 PERFORMANCE GUARANTEES	77
8.1 Performance Guarantees	77
8.2 Equipment Performance.....	77
ARTICLE 9 LIABILITY AND DAMAGES	77
9.1 Limitation of Certain Contractor Liabilities	77
9.2 CONSEQUENTIAL DAMAGES	78
9.3 Further Limitation of Liability.....	78
ARTICLE 10 WARRANTIES	78
10.1 Warranties	78
10.2 [Not used].....	80
10.3 Concessionaire’s Right to Proceed	80
10.4 No Liens or Encumbrances.....	80
10.5 EXCLUSIVE REMEDIES	81
ARTICLE 11 FORCE MAJEURE	81
11.1 Excused Performance.....	81
11.2 Disputes; Burden of Proof	82
ARTICLE 12 SCOPE CHANGES	82
12.1 Scope Change Orders.....	82
12.2 Scope Change by Concessionaire	83
12.3 Scope Change by the Department.....	84
12.4 Scope Change by Contractor	86
12.5 Scope Changes Due to CA Delay Events	87
12.6 Scope Changes Due to CA Compensation Events.....	89
12.7 Scope Changes Due to Hazardous Substances	92

TABLE OF CONTENTS

(continued)

	<u>Page</u>
12.8	Scope Changes Due to Concessionaire-Caused Delay 93
12.9	Work Orders..... 93
12.10	Performance of Scope of Changes 93
12.11	Scope Changes Due to Contractor Error..... 94
12.12	Familiarity with Conditions 94
12.13	Compliance with Guaranteed Substantial Completion Date 94
12.14	Scope Change Order Dispute; Department Claim Dispute..... 95
12.15	Expedited Dispute Resolution Procedure for Claims Against the Department..... 96
12.16	Comprehensive Agreement Modifications 97
12.17	Election to Restore Following Significant Force Majeure Event 98
ARTICLE 13	INDEMNIFICATION..... 98
13.1	Indemnities of Contractor 98
13.2	Indemnities of Concessionaire..... 99
13.3	Defense and Indemnification Procedures 99
13.4	Action in Case of Injunction 100
13.5	Survival 101
ARTICLE 14	INSURANCE..... 101
14.1	Contractor-Provided Insurance 101
14.2	Certificates 101
14.3	Responsibility for Deductibles..... 101
14.4	Waiver of Subrogation 102
14.5	Failure to Procure Insurance 102
14.6	Additional Policy Requirements 102
14.7	Contractor's or Rented Equipment 102
14.8	Unemployment and Other Insurance Benefits 102
14.9	Descriptions Not Limitations 102
14.10	Additional Insureds 103
14.11	No Limitation of Liability..... 103
14.12	Insurance Primary 103

TABLE OF CONTENTS

(continued)

	<u>Page</u>
14.13 Capitalized Terms	103
14.14 Proof of Coverage	103
ARTICLE 15 SUSPENSION OF DB WORK; TERMINATION.....	104
15.1 Suspension of the DB Work	104
15.2 Termination of Contractor for Cause	105
15.3 Concessionaire Default	107
15.4 Termination Due to Significant Force Majeure Event.....	108
15.5 Termination for Failure to Achieve Financial Close	109
15.6 Requirements Following Termination	109
15.7 Surviving Obligations	110
ARTICLE 16 ASSIGNMENTS.....	111
16.1 Assignment	111
16.2 Performance in Favor of the Department and Financing Parties	111
16.3 Successors and Assigns.....	112
ARTICLE 17 DESIGN DOCUMENTATION.....	112
17.1 Concessionaire's Review	112
17.2 Final As-Built Drawings and Documentation.....	112
17.3 Ownership	113
17.4 Use of Documents by Contractor.....	113
ARTICLE 18 CONFIDENTIAL INFORMATION	113
18.1 Confidentiality	113
18.2 Survival.....	114
18.3 Press Releases; Information.....	114
ARTICLE 19 DISPUTE RESOLUTION	115
19.1 Arbitration; Other Actions	115
19.2 Common Issue in Dispute under the Comprehensive Agreement.....	115
19.3 Continuation of DB Work.....	116
ARTICLE 20 COST RECORDS.....	116
20.1 GAAP; Maintenance of Records	116
20.2 Inspection of Books, Records and Audit Rights.....	116

TABLE OF CONTENTS
(continued)

	<u>Page</u>
ARTICLE 21 INDEPENDENT CONTRACTOR.....	117
21.1 Contractor as Independent Contractor	117
ARTICLE 22 REPRESENTATIVES AND WARRANTIES OF CONTRACTOR.....	117
22.1 Representatives and Warranties	117
ARTICLE 23 REPRESENTATIVES AND WARRANTIES OF CONCESSIONAIRE	119
23.1 Representatives and Warranties	119
ARTICLE 24 MISCELLANEOUS	120
24.1 Estoppel Certificate.....	120
24.2 Waivers	121
24.3 Choice of Law.....	121
24.4 Severability	121
24.5 Notice.....	121
24.6 Headings	122
24.7 Entire Agreement	122
24.8 Amendments	123
24.9 Conflicting Provisions	123
24.10 No Third Party Rights.....	124
24.11 Escrowed Pricing Documents.....	124
24.12 Source Code Escrow	124
24.13 Recourse Limited to Concessionaire’s Assets	125
24.14 Survival of Provisions.....	125
24.15 Title to the DB Project	125
24.16 DBE and SWAM Reporting	126
24.17 Contracting Requirements	134
24.18 Coordination with the Department and Financing Parties	134
24.19 Time of the Essence	134
24.20 Exhibits	135

EXHIBITS

Exhibit A	—	Form of Notice to Proceed
Exhibit B	—	Form of Contractor’s Final Lien Waiver
Exhibit C	—	Form of Subcontractor’s Final Lien Waiver
Exhibit D	—	Form of Contractor’s Interim Lien Waiver
Exhibit E	—	Form of Subcontractor’s Interim Lien Waiver
Exhibit F	—	Form of Guaranty
Exhibit G	—	Form of Scope Change Order
Exhibit H	—	Form of Letter of Credit
Exhibit I	—	Labor, Employment and DBE/SWaM Related Matters
Exhibit J	—	Maximum Cumulative Drawdown Schedule
Exhibit K	—	Known Pre-Existing Hazardous Substances
Exhibit L	—	Payment and Values Schedule
Exhibit M	—	Project Schedule
Exhibit N	—	Project Description
Exhibit O	—	Ethical Standards
Exhibit P	—	Scope Document
Exhibit Q	—	Schedule of Submittals
Exhibit R	—	Public Funds Amount Payment Terms
Exhibit S	—	Equipment Vendors Requiring Concessionaire’s Approval
Exhibit T	—	Known Geotechnical Conditions
Exhibit U	—	Scope of Early Work
Exhibit V	—	Federal Requirements
Exhibit W	—	Form of Substantial Completion Certificate
Exhibit X	—	Form of Final Acceptance Certificate
Exhibit Y	—	Acceptable Arbitrators
Exhibit Z	—	Technical Requirements
Exhibit AA	—	Turnover Plan
Exhibit BB	—	Form of the Direct Agreement

- Exhibit CC — Project Right of Way Acquisition
- Exhibit DD — Contractor Overhead & Profit
- Exhibit EE — Public Funds Amount Allocation

THIS TURNKEY LUMP-SUM DESIGN-BUILD CONTRACT RELATING TO THE I-95 HOV/HOT LANES PROJECT, dated as of July 31, 2012, is made by and between 95 Express Lanes LLC, a Delaware limited liability company, as Concessionaire, and Fluor-Lane 95, LLC, a Delaware limited liability company, as Contractor.

WITNESSETH:

WHEREAS, Concessionaire and the Department entered into the Comprehensive Agreement (as defined below) which sets out general requirements for the Project (as defined below) and this Agreement; and

WHEREAS, in order to fulfill certain of Concessionaire's obligations under the Comprehensive Agreement, Contractor desires to provide and Concessionaire desires to obtain the design, turnkey engineering, procurement, construction, demonstration, testing and related services for the DB Project (as defined below), all of which shall be provided on a lump sum, fixed price basis and in accordance with the terms and conditions herein specified.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms shall have the meanings indicated (such meanings as necessary to be equally applicable to both the singular and plural forms of the terms defined):

“AASHTO” means American Association of State Highway and Transportation Officials.

“Affiliate” when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries has a ten percent (10%) or more voting or economic interest in such specified Person or 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. For the avoidance of doubt, Concessionaire and Contractor are not Affiliates of each other.

“Agreement” means this Turnkey Lump-Sum Design-Build Contract Relating to the I-95 HOV/HOT Lanes Project, all written amendments, modifications and supplements hereto, and all Exhibits attached hereto, all of which by this reference are incorporated herein.

“Agreement Date” means the date on which this Agreement is executed and delivered by the Parties, which date is intended to be the same date as the “Agreement Date” under the Comprehensive Agreement.

“Allowance Items” has the meaning set forth in Section 4.1.2.1 hereof.

“Applicable Standards” means those standards, special provisions and reference guides (including all supplements, errata, revisions and interims) applicable to the DB Work listed in Attachment 1.5a to the Technical Requirements in such versions in effect as of August 15, 2011 or as otherwise noted in Attachment 1.5a to the Technical Requirements; provided, however, that if any portion of such standards, special provisions and reference guides conflicts with or is less stringent than Laws or other requirements in the Contract Documents, such conflicting or less stringent portions of such standards, special provisions and reference guides shall not be deemed “applicable,” unless expressly provided by this Agreement.

“Approved for Construction (AFC) Documents” means all drawings, specifications, revisions thereto, and any other items necessary to construct the DB Work, sealed by a professional engineer licensed by the State.

“Bank Rate” means the prime rate of interest announced publicly by The Wall Street Journal (or its successors) as the so-called “prime rate.”

“Baseline Quantities” has the meaning set forth in Section 4.1.2.1 hereof.

“Business Day” means any day on which the Department is officially open for business.

“CA Compensation Event” means any of the following specified events that constitutes a “Compensation Event” under the Comprehensive Agreement and that entitles Contractor to claim a Scope Change pursuant to Section 12.6 hereof (which Scope Change may include an adjustment to the Contract Sum and other appropriate changes to the Contract Documents), but only if and to the extent (i) Contractor has used Commercially Reasonable Efforts in order to prevent or avoid such event and mitigate the effect of such event on its ability to perform its obligations under this Agreement and which by the exercise of reasonable due diligence Contractor could not reasonably have been expected to avoid and which by the exercise of reasonable due diligence it has been unable to overcome and (ii) such event is not the result of the negligence or misconduct of a Contractor Party or any act or omission of a Contractor Party in breach of the provisions of this Agreement:

- (a) Department-Caused Delays;
- (b) the development or implementation of any Department Change or Department Project Enhancement (as defined in the Comprehensive Agreement);
- (c) any Discriminatory Change in Law (as defined in the Comprehensive Agreement);
- (d) a Toll Exemption Event (as defined in the Comprehensive Agreement);

- (e) an Alternative Facility (as defined in the Comprehensive Agreement), to the extent provided for in Section 12.05 of the Comprehensive Agreement;
- (f) any Significant Force Majeure Event to the extent the Department or Concessionaire elects to continue the Comprehensive Agreement under Section 20.03 thereof;
- (g) a Tax Imposition (as defined in the Comprehensive Agreement);
- (h) an order by the Department under the Comprehensive Agreement suspending tolls on, or diverting traffic onto, the HOT Lanes, other than as provided in the Comprehensive Agreement;
- (i) an exercise by the Department under the Comprehensive Agreement of its Reserved Rights within or immediately adjacent to the HOT Lanes or the Design-Build Right of Way;
- (j) issuance by a Governmental Authority having jurisdiction over the Project of an injunction or other order enjoining or estopping either the Department or Concessionaire from the performance of its respective rights or obligations under the Comprehensive Agreement or Contractor from the performance of its rights or obligations under this 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 Contractor prior to the Agreement Date and to the extent provided under Section 12.6.4.1 hereof;
- (l) any Change in Law taking effect prior to the Guaranteed Substantial Completion Date that specifically affects the physical construction of the Project Assets in such a way as to increase the costs of the DB Work, to the extent provided under Section 12.6.4.2;
- (m) a Northern HOT Lanes Development Concessionaire Impact (as defined in the Comprehensive Agreement); or
- (n) any other event that the Comprehensive Agreement expressly deems or treats as a CA Compensation Event.

“CA Compensation Event Notice” has the meaning set forth in Section 12.6.1.1 hereof.

“CA Delay Event” means any of the following specified events that constitutes a “Delay Event” under the Comprehensive Agreement and that entitles Contractor to claim a Scope Change pursuant to Section 12.5 hereof (which Scope Change may include an adjustment to the Guaranteed Substantial Completion Date, the Project Schedule and other appropriate changes to the Contract Documents, but not to the Contract Sum) if the same wholly or partly prevents, restricts or delays the performance of any material obligation of Contractor arising under this Agreement, but only if and to the extent (i) Contractor has used Commercially Reasonable Efforts in order to prevent or avoid such event and mitigate the effect of such event on its ability

to perform its obligations under this Agreement and which by the exercise of reasonable due diligence Contractor could not reasonably have been expected to avoid and which by the exercise of reasonable due diligence it has been unable to overcome, (ii) such event is not the result of the negligence or misconduct of any Contractor Party or any act or omission of a Contractor Party in breach of the provisions of this Agreement, (iii) except to the extent the same constitutes a Force Majeure Event, such event does not include any delay that 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 and (iv) except to the extent the same constitutes a Force Majeure Event, such event does not include any delay that arises by reason of any strike, labor dispute or other labor protest involving any Person retained, employed or hired by a Contractor Party or its Representatives to supply materials or services for or in connection with the DB Work 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 Contractor Party or its Representatives:

- (a) a Force Majeure Event;
- (b) discovery of a Differing Site Condition or an Unknown Geotechnical Condition;
- (c) 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 DB Work;
- (d) issuance by a Governmental Authority of competent jurisdiction of an injunction or other order enjoining or estopping either the Department or Concessionaire from the performance of its respective rights or obligations under the Comprehensive Agreement or Contractor from the performance of its rights or obligations under this Agreement;
- (e) a Change in Law that imposes one or more changed or additional requirements that directly and materially adversely impact performance of the DB Work by Contractor and that could not have reasonably been anticipated by a reasonable contractor;
- (f) the development and implementation of any Department Change or Department Project Enhancement (as defined in the Comprehensive Agreement);
- (g) any Department-Caused Delay;
- (h) [Reserved]
- (i) an exercise by the Department under the Comprehensive Agreement of any of its Reserved Rights within or immediately adjacent to the HOT Lanes or the Design-Build Right of Way; or
- (j) any other event that the Comprehensive Agreement expressly deems or treats as a CA Delay Event.

“CA Delay Event Notice” has the meaning set forth in Section 12.5.1.1 hereof.

“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, any change in or new Law enacted but not yet effective as of the Agreement Date.

“Change Order Proposal” has the meaning set forth in Section 12.2 hereof.

“Chief Engineer” means the Department’s Chief Engineer.

“Chief of Administration” means the Department’s Chief of Administration.

“Claim” means any and all claims, disputes, disagreements, causes of action, demands, suits, proceedings, damages, injuries, liabilities, obligations, losses, costs and expenses.

“Claim Threshold” has the meaning set forth in Section 12.6.4.1(i) hereof.

“Commencement Date” has the meaning set forth in Section 2.3.1 hereof.

“Commercially Reasonable Efforts” means efforts which are reasonably within the contemplation of the Parties at the time of executing this Agreement and which do not require the performing Party to expend any funds other than expenditures which are customary and reasonable in transactions of the kind and nature contemplated by this Agreement in order for the performing Party to satisfy its obligations hereunder.

“Commissioning” means the systematic verification, as required in the Commissioning program established pursuant to Section 6.1 hereof, that each component or system of the DB Project in question is physically complete, checked, calibrated and safe for initial operation. To “commission the DB Work” or “commission the DB Project” means to provide Commissioning thereof.

“Comprehensive Agreement” means the Comprehensive Agreement Relating to the I-95 HOV/HOT Lanes Project, dated as of July 31, 2012, entered into by and between Concessionaire and the Department, and all exhibits and schedules thereto, as supplemented or amended from time to time.

“Concessionaire” means 95 Express Lanes LLC, a Delaware limited liability company, and its successors and permitted assigns as concessionaire hereunder.

“Concessionaire-Caused Delay” means a delay or failure by Concessionaire in the performance of its obligations under this Agreement, or any interference with the DB Work by a Concessionaire Contractor, or any agent or representative of any thereof (or anyone other than Contractor or any Subcontractor acting at the direction thereof), in each case that is not permitted under or excused by this Agreement or the other Contract Documents, and in each case only if the performance of the DB Work by Contractor is actually delayed as a result of such delay, failure or interference or if the cost to Contractor to perform the DB Work is increased as a result of such delay, failure or interference. Delays or failures by Concessionaire that are attributable

to the failure of Contractor (or any Subcontractor) to perform its obligations in accordance with this Agreement shall not constitute Concessionaire-Caused Delays. For the avoidance of doubt, no CA Compensation Event, CA Delay Event, or Department-Caused Delay shall be deemed to constitute a Concessionaire-Caused Delay.

“Concessionaire Contractors” means contractors of whatever tier engaged by Concessionaire or its designees at the Project Right of Way, including the OS&S Contractor.

“Concessionaire Default” means any of the events set forth in Section 15.3.1 hereof.

“Concessionaire Delay Damages Rate” means, (i) if Contractor notifies Concessionaire more than six (6) months prior to the Guaranteed Substantial Completion Date that it does not believe Substantial Completion will occur on or before the Guaranteed Substantial Completion Date, \$98,644, (ii) if Contractor notifies Concessionaire more than three (3) months but fewer than six (6) months prior to the Guaranteed Substantial Completion Date that it does not believe Substantial Completion will occur on or before the Guaranteed Substantial Completion Date, \$109,395, and (iii) if Contractor notifies Concessionaire fewer than three (3) months prior to the Guaranteed Substantial Completion Date that it does not believe Substantial Completion will occur on or before the Guaranteed Substantial Completion Date, \$131,158.

“Concessionaire Indemnitee” means Contractor, its subsidiaries and Affiliates, and the directors, officers, agents, employees, successors or assigns of each of them.

“Concessionaire’s Approval” means the right of Concessionaire to review and approve the items set forth on Exhibit Q or another matter as expressly provided in this Agreement or the Technical Requirements (which approval by Concessionaire may be contingent upon its receipt of the Department’s approval to the extent required under the Comprehensive Agreement or as otherwise designated on Exhibit Q). Subject to Section 2.11, Contractor shall submit items of DB Work subject to Concessionaire’s Approval by the date specified in this Agreement, the Technical Requirements or in Exhibit Q (or if a date is not specified, when Contractor desires), and Concessionaire shall provide its written approval or disapproval thereof or otherwise respond within twenty-five (25) days of such submission, unless another time period is specified in Exhibit Q, the Technical Requirements or in this Agreement, but in no event shall Concessionaire’s Approval or denial be provided to Contractor after the earlier of (i) four (4) days after the Department issues a corresponding approval or denial to Concessionaire under the Comprehensive Agreement or (ii) twenty-one (21) days after the Department’s receipt of the submission by Concessionaire under the Comprehensive Agreement. If Concessionaire determines to deny its approval, it shall provide a summary in reasonable detail of the reasons for its determination. If Concessionaire does not respond within the time allotted, Concessionaire’s Approval shall be deemed to have been given unless otherwise provided in Exhibit Q, the Technical Requirements or in this Agreement with respect to the approval of such item. In the event of deemed disapproval, Concessionaire will provide, within fourteen (14) days after a request by Contractor therefor, its rationale for such deemed disapproval in reasonable detail. Except as otherwise specified in this Agreement, Exhibit Q or the Technical Requirements and subject to Section 2.11, if Concessionaire denies its approval, Contractor shall as promptly as reasonably possible resubmit items subject to Concessionaire’s Approval, and Concessionaire shall provide its written approval or denial thereof within fourteen (14) days of such re-

submission, unless another time period is specified in Exhibit Q, the Technical Requirements or in this Agreement, but in no event shall Concessionaire's Approval or denial be provided to Contractor after the earlier of (i) four (4) days after the Department issues a corresponding approval or denial to Concessionaire under the Comprehensive Agreement or (ii) ten (10) days after the re-submittal by Concessionaire under the Comprehensive Agreement. Unless the Parties expressly agree otherwise in writing, Concessionaire's Approval of any aspect of the DB Work (whether deemed or actual) shall not affect Contractor's obligation to provide the complete DB Project in accordance with the requirements of this Agreement or any of Contractor's other obligations hereunder, or change the scope of DB Work set forth in the Scope Document, or reduce, increase or waive Contractor's obligations under this Agreement and its independent responsibility for performance of the DB Work hereunder or for any acts or omissions of the Contractor's design professionals or other Subcontractors engaged by Contractor to perform the DB Work, or constitute a waiver of Concessionaire's rights with respect thereto. Each Concessionaire's Approval is given by Concessionaire in reliance upon, and subject to, full and satisfactory performance by Contractor of its obligations hereunder.

“Concessionaire's Field Representative” has the meaning set forth in Section 5.1 hereof.

“Concessionaire's Project Manager” has the meaning set forth in Section 5.1 hereof.

“Concessionaire's Punch List” means an itemized list of DB Work prepared (and periodically revised) by Concessionaire, and submitted to Contractor, setting forth the items of DB Work which remain to be completed 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 DB Project.

“Concessionaire's Review” means the right of Concessionaire to review the items set forth on Exhibit Q or inspect an aspect of the DB Work or another matter specified in this Agreement (which review may include review or inspection by the Department to the extent required under the Comprehensive Agreement or otherwise designated on Exhibit Q). Contractor shall submit items of DB Work subject to Concessionaire's Review to Concessionaire by the applicable date specified in this Agreement or in Exhibit Q (or if a date is not specified, when Contractor desires), and Concessionaire shall provide its comments thereon, if any, within twenty-five (25) days of such submission, unless another time period is specified in Exhibit Q or in this Agreement, but in no event shall Concessionaire's response be provided to Contractor after the earlier of (i) four (4) days after the Department issues a corresponding response to Concessionaire under the Comprehensive Agreement or (ii) twenty-one (21) days after the Department's receipt of the submission by Concessionaire under the Comprehensive Agreement. If Concessionaire fails to respond within the time allotted, Concessionaire's Review shall be deemed to have been made, unless otherwise provided in Exhibit Q or this Agreement with respect to such item. Except as otherwise specified in this Agreement, Exhibit Q or the Technical Requirements and subject to Section 2.11, if Concessionaire's response requires re-submittal, Contractor shall as promptly as reasonably possible resubmit items subject to Concessionaire's Review, and Concessionaire shall provide its written response thereto within fourteen (14) days of such re-submission, unless another time period is specified in Exhibit Q, the Technical Requirements or in this Agreement, but in no event shall Concessionaire's response be provided to Contractor after the earlier of (i) four (4) days after the Department

issues a corresponding response to Concessionaire under the Comprehensive Agreement or (ii) ten (10) days after the re-submittal by Concessionaire under the Comprehensive Agreement. Unless the Parties expressly agree otherwise in writing, Concessionaire's Review of any aspect of the DB Work (whether deemed or actual) shall not affect Contractor's obligation to provide the complete DB Project in accordance with the requirements of this Agreement or any of Contractor's other obligations hereunder, or change the scope of DB Work set forth in the Scope Document, or reduce, increase or waive Contractor's obligations under this Agreement and its independent responsibility for performance of the DB Work hereunder or for any acts or omissions of the Contractor's design professionals or other Subcontractors engaged by Contractor to perform the DB Work, or constitute a waiver of Concessionaire's rights with respect thereto.

"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 DB Project and/or the Utility Relocations included in the DB Work in accordance with the Agreement (including the Technical Requirements).

"Construction Manager" means a person employed by Contractor to supervise and coordinate the prosecution of the DB Work at the Project Right of Way on behalf of Contractor. The Construction Manager may or may not be the same individual as the Project Director.

"Construction Quality Management Plan" means the plan developed by Contractor that provides the organization, relationship and procedures that define clear lines of responsibility and well defined approach for meeting requirements for the DB Work and innovation in construction approach, as described in more detail in the Technical Requirements.

"Contract Documents" means, collectively, this Agreement, the Comprehensive Agreement, the Construction Documentation, all Scope Change Orders, the Operating Manual, the Quality Management System Plan, the Transportation Management Plan, the Performance Testing and Commissioning Plan and Program, the Health, Safety and Security Plan, the Public Information and Communications Plan, the ROW Acquisition and Relocation Plan, DBE/SWaM Plan, Design Quality Management Plan, Document Management Plan, Environmental Management Plan, Maintenance of Traffic Plan and any other plans required to be developed and/or complied with by Contractor hereunder.

"Contract Sum" has the meaning set forth in Section 4.1.1 hereof.

"Contract Sum Adjustment" has the meaning set forth in Section 12.6.2.1 hereof.

"Contractor" means Fluor-Lane 95, LLC, a Delaware limited liability company, and its permitted successors and assigns as contractor hereunder.

"Contractor Default" means any of the events set forth in Section 15.2.1 hereof.

"Contractor Overhead & Profit" means the fixed profit and fixed overhead due Contractor, all as set forth on Exhibit DD.

“Contractor Party” means Contractor and any Affiliate and any agents, Representatives, officers, directors, employees, Subcontractors, suppliers and materialmen of the Contractor or any Affiliate.

“Contractor’s Punch List” means an itemized list of DB Work prepared (and periodically revised) by Contractor, and submitted to Concessionaire, setting forth the items of DB Work which remain to be completed with respect to the DB Project 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 DB Project.

“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.

“Critical Path” means the longest chain(s), in terms of time, of logically connected activities on a Project Schedule ending with Final Acceptance.

“DBE Performance Improvement Plan” means the plan submitted by Contractor, as reviewed by Concessionaire pursuant to Section 24.16.1(iv)(b) hereof and approved by the Department pursuant to Section 24.03(a)(v)(B) of the Comprehensive Agreement, with respect to improving Contractor’s DBE program performance.

“DBE/SWaM” means Disadvantaged Business Enterprise/Small, Women- and Minority-owned Business Enterprise.

“DBE/SWaM Plan” means the plan developed by Contractor that defines Contractor’s approach to meet the DBE/SWaM participation goal, as described in more detail in the Technical Requirements.

“DB Indemnitee” means Concessionaire, the State Indemnitees, the Financing Parties, the Independent Engineer, each of their subsidiaries and Affiliates, and the directors, officers, agents, employees and successors of each of them.

“DB Project” means that part of the Project included in the DB Work but excludes such portion of the Project that is expressly excluded from the DB Work by the terms of this Agreement.

“DB Project Documentation” means Construction Documentation and Design Public Hearing Documentation.

“DB Work” has the meaning set forth in Section 2.1 hereof.

“DB Work Period” means the date commencing on the Commencement Date (or if an LNTP is issued, the date on which Contractor is to commence performance hereunder pursuant to an LNTP) and ending on the date Final Acceptance occurs under this Agreement.

“Demobilization Costs” means the amount necessary to reimburse the reasonable out-of-pocket and documented costs and expenses incurred by Contractor as result of the occurrence of a Significant Force Majeure Event, including its reasonable costs to demobilize and terminate Subcontracts between Contractor and third parties or Affiliates for performance of DB Work, excluding Contractor’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 Comprehensive Agreement.

“Department-Caused Delay” means:

(a) a delay or failure by the Department in performing any of its material obligations pursuant to the Comprehensive Agreement; or

(b) performance of work by the Department or its contractors (other than Concessionaire, Concessionaire Contractors and Contractor) 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 DB Work or limits access to the Design-Build Right of Way and such physical damage or limited access delays the DB Work;

provided, however, that a Department-Caused Delay specifically excludes a delay attributable to:

(1) the submission of incomplete documentation by Contractor (directly or through Concessionaire) for the Department’s review under the Comprehensive Agreement;

(2) required review of Governmental Approvals from other Governmental Authorities necessary or appropriate to the Department’s review;

(3) failure by the Department to obtain appropriation and allocation of public funds;

(4) consumption of available Float;

(5) submittals or requests that are “deemed approved” under the Comprehensive Agreement if no response is provided within the applicable timeframe; or

(6) Force Majeure Events.

“Department Change” means (a) a change to the DB Work pursuant to a “Change Order” (as defined in the Comprehensive Agreement) or a Directive Letter issued pursuant to Section

14.02(d)(i) of the Comprehensive Agreement and (b) any other event that the Comprehensive Agreement expressly states will be treated as a Department Change.

“Department Change Proposal” has the meaning set forth in Section 12.3.1.2 hereof.

“Department Existing ROW” means that portion of the Project Right of Way owned by the Department on the Agreement Date.

“Department Request for Change Proposal” has the meaning set forth in Section 12.3.1.1 hereof.

“Department TIFIA Protection Amount” means a supplemental Public Funds Amount for the Project equal to \$224,250,000 to be made, or caused to be made, by the Department pursuant to the Comprehensive Agreement, subject to adjustment or cancellation pursuant to Section 7.07 of the Comprehensive Agreement.

“Design-Build Right of Way” means active construction areas on the Project Right of Way during the DB Work Period.

“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 Contractor for the purposes of the performance of the DB Work or any component thereof in accordance with this Agreement (including the Technical Requirements).

“Design Public Hearing Documentation” means documents prepared by Contractor pursuant to Section 2.1.2.2 for a required public hearing relative to the design of the DB Project and approved by the Department’s Chief Engineer following such hearing.

“Design Quality Management Plan” means the plan developed by Contractor that provides the organization, relationship and procedures that define clear lines of responsibility and well defined approach for meeting DB Project requirements and innovation in design approach, as described in more detail in the Technical Requirements.

“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 subsequent to the Agreement Date other than by a Contractor Party in the course of performing the DB Work; or

(e) Utilities in the Project Right of Way, excluding any such Utilities known to Contractor on the Agreement Date;

provided, however, that to qualify as a Differing Site Condition, such condition:

(1) was not known or discovered by Contractor prior to the Agreement Date, and could not reasonably be expected to have been known or discovered by Contractor prior to the Agreement Date; and

(2) has a material impact on Contractor's performance of the DB Work pursuant to the terms of the Agreement.

“Direct Agreement” has the meaning set forth in Section 16.1 hereof.

“Directive Letter” means an order issued by the Department in accordance with Section 14.02 of the Comprehensive Agreement directing Concessionaire to perform Work.

“Document Management Plan” means the plan developed by Contractor to define the document management approach for all Work Product, as described in more detail in the Technical Requirements.

“Early Work” means the work identified in Exhibit U.

“Environmental Assessment” means the Revised Environmental Assessment submitted by the Department to FHWA on November 7, 2011, and consisting of (i) the Environmental Assessment prepared by the Department and dated September 8, 2011, (ii) the summary of comments that the Department received to the September 8, 2011, Environmental Assessment along with the Department's responses to those comments, (iii) the summary of changes to the Project and mitigation measures that were based on the comments, and (iv) a summary of findings, agreements, and determinations that the Department made for the Project.

“Environmental Management Plan” means the plan developed by Contractor that sets forth the Contractor's approach to environmental management, as described in more detail in the Technical Requirements.

“Escrow Agent” means SunTrust Bank, and its successors and assigns, or such other entity serving as escrow agent pursuant to the Escrow Agreement.

“Escrow Agreement” means the Escrow Agreement, dated as of July 31, 2012, among Concessionaire, the Department and the Escrow Agent which will be in substantially the form attached as Exhibit D to the Comprehensive Agreement, as it may be amended or supplemented from time to time.

“ETTM” means electronic toll and traffic management.

“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

transportation 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, the ETTM Equipment and the Software which monitors, controls or executes operation of the ETTM Equipment, all of which will meet the minimum performance criteria established by the Technical Requirements.

“eVA Business to Government Vendor System” has the meaning as such term is used in the Comprehensive Agreement.

“E-ZPass” means an electronic toll collection system used in the Commonwealth of Virginia and as part of the “E-ZPass Interagency Group.”

“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 V.

“FHWA” means the Federal Highway Administration or any successor agency.

“Final Acceptance” means the satisfaction by Contractor of the requirements set forth in Section 6.7.1 hereof.

“Final Acceptance Certificate” means, a certificate of Contractor in the form of Exhibit X, delivered to Concessionaire certifying that Final Acceptance of the entire DB Project has occurred.

“Final As-Built Drawings and Documentation” means all drawings, specifications and other documentation, as further described in Section 17.2 hereof, prepared in accordance with the standard of performance described in Section 2.4 hereof, which accurately and completely represent in detail the physical placement of all DB Project components and systems as installed and/or constructed and as they exist at the time of Final Acceptance.

“Final Payment” has the meaning set forth in Section 4.3 hereof.

“Financial Close” has the meaning set forth in the Comprehensive Agreement.

“Financial Close Date” means the date on which Financial Close occurs under the Comprehensive Agreement.

“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 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

Concessionaire that the Project will not receive financing under any credit assistance program under TIFIA for the Project.

“Financing Parties” means (i) any and all lenders providing the construction, interim or long-term financing (including a leveraged lease or any other refinancing thereof) for the Project, and any trustee or agent acting on their behalf, and (ii) any and all equity investors providing leveraged lease financing or refinancing for the Project, and any trustee or agent acting on their behalf.

“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 Contractor’s ability to achieve Substantial Completion by the Guaranteed Substantial 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.

“FM Termination Payment” has the meaning set forth in Section 15.4 hereof.

“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 Contractor from performing any of its obligations pursuant to this 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 Contractor Party;
- (b) any act or omission by a Contractor Party in breach of the provisions of this Agreement;
- (c) CA 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 Contractor Party;
- (e) any strike, labor dispute or labor protest directed solely at a Contractor Party or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of a Contractor Party;
- (f) an earthquake after Substantial Completion that causes ground accelerations below the AASHTO bridge design standards for the site of the DB Project;
- (g) floods after Substantial Completion 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 Contractor's ability to meet its financial obligations for the DB Project; or

(j) weather conditions, other than hurricane force winds, tornadoes and floods to the extent not excluded by the above.

“General Warranty” has the meaning set forth in Section 10.1.1 hereof.

“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 Contractor to achieve the DBE and SWaM goals or other requirements in Section 24.16, as set forth in Exhibit I.

“Good Industry Practice” means the industry practices and standards that would be exercised by a prudent and experienced designer, engineer or contractor, engaged in the same kinds of undertakings and under similar circumstances as those applying to the DB 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 DB Work activity contemplated by this Agreement or a Scope Change Order. The term “Governmental Approvals” includes the NEPA Documents.

“Governmental Authority” means any court, federal, state or local government, department, commission, board, bureau, agency or other regulatory or governmental authority, but it does not include the Department.

“GP Lanes” means the general purpose traffic lanes (in either or both directions) along the I-95 Corridor.

“Gross Negligence” means any act or omission of a Person where (i) such Person knows, or has reason to know, that its conduct may create an unreasonable risk of harm to another Person, and (ii) its conduct evidences a reckless disregard of the probable consequences of its actions or omissions, but which falls short of being so reckless as to be equivalent to a willful and intentional wrongdoing.

“Guaranteed Final Acceptance Date” has the meaning set forth in Section 6.7.3 hereof.

“Guaranteed Substantial Completion Date” means the date on which Substantial Completion shall occur, which date shall be no later than twenty-nine (29) calendar months after the Commencement Date, as the same may be adjusted from time to time pursuant to the terms of this Agreement.

“Guarantor” means Fluor Corporation, a Delaware corporation.

“Guaranty” has the meaning set forth in Section 4.8 hereof.

“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 Contractor, Concessionaire, the Department 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 Substances” 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, hazardous material or hazardous substance 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 Contractor that defines the health, safety and security activities required during the design and construction of the DB Project, as described in more detail in the Technical Requirements.

“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 the use of which is restricted pursuant to Section 5.01 of the Comprehensive Agreement.

“HOV Assets” has the meaning set forth in Section 6.9.2 hereof.

“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.

“Indemnifying Party” has the meaning set forth in Section 13.3.1 hereof.

“Indemnitee” means any of the DB Indemnitees or the Concessionaire Indemnitees.

“Independent Engineer” means the engineering company or companies (retained by Concessionaire) appointed from time to time by the Financing Parties to act on their behalf in connection with the review of the Project, including the DB Work.

“Initial Public Funds Amount” means \$94 million, which will be adjusted at Financial Close pursuant to Section 7.03(b) of the Comprehensive Agreement.

“Intellectual Property” means the ETTM books and records, escrow documents, copyrights (including moral rights), trade marks (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 DB Project.

“Interim Agreement” means the Interim Agreement to Develop and/or Operate the I-95/395 HOT Lanes Project in Virginia, dated as of October 24, 2006, by and among the Department, Fluor Enterprises, Inc. (the successor-in-interest to Fluor Virginia, Inc.) and Transurban (USA) Inc., as amended.

“ITS” means intelligent transportation system.

“I-95 Corridor” means the portion of Interstate 95 located within the State with a northern terminus approximately one 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.

“JAMS” means JAMS, The Resolution Experts, a private alternative dispute resolution provider.

“Known Geotechnical Conditions” means Geotechnical Conditions:

- (a) identified in Exhibit T;
- (b) which Contractor should have known were present within the Project Right of Way based on the Geotechnical Conditions identified in Exhibit T; and
- (c) which were actually known by Contractor to be present within the Project Right of Way as of the Agreement Date.

“Known Pre-Existing Hazardous Substances” means Hazardous Substances:

- (a) identified in Exhibit K;
- (b) which Contractor should have known were present within the Project Right of Way based on the contents of Exhibit K, as of the Agreement Date; and
- (c) which were actually known by Contractor to be present within the Project Right of Way as of the Agreement Date;

provided, however, that, notwithstanding anything to the contrary herein (including Exhibit K), 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 I-95 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 the purposes of this Agreement.

“Lane Closure Payment” has the meaning set forth in Section 7.5 hereof.

“Late Completion Payments” has the meaning set forth in Section 7.2 hereof.

“Late Final Acceptance Payment” has the meaning set forth in Section 7.2 hereof.

“Late Substantial Completion Payment” has the meaning set forth in Section 7.2 hereof.

“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 DB Project on the Project Right of Way, performance of the DB Work, or operation of the DB Project, or the health, safety or environmental condition of the DB Project or the Project Right of Way, as the same may be in effect from time to time. Laws include VA. Code and the Uniform Act.

“Law Enforcement Allowance” has the meaning set forth in Section 4.1.4 hereof.

“Letter of Credit” means an irrevocable, unconditional letter of credit in favor of Concessionaire (with the Department as permitted transferee), in form and content reasonably acceptable to Concessionaire, the Department and the Financing Parties that:

(a) is payable within one (1) Business Day in U.S. dollars upon presentation of a sight draft and a certificate confirming that 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 U.S. Dollars, (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 Contractor or 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 Concessionaire and the Department in their respective discretions and approved by each of them prior to the submission of the letter of credit);

(d) has an initial term as specified in this Agreement;

(e) 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 this Agreement; and

(f) 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.

“LNTP” has the meaning set forth in Section 2.3.2 hereof.

“Long Stop Date” means the date that is 365 days after the Guaranteed Substantial Completion Date, as such date may be extended hereunder; provided that a new Long Stop Date may be established pursuant to the Substantial Completion Recovery Plan proposed by Contractor and approved by (i) Concessionaire pursuant to Section 6.6.5 hereof and (ii) the Department pursuant to Section 8.15 of the Comprehensive 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 of Traffic Plan” means the plan developed by Contractor that sets forth Contractor’s approach to maintenance of traffic as it relates to the DB Project, as described in more detail in the Technical Requirements.

“Maximum Cumulative Contract Sum Payment” means a cap, designated on the Maximum Cumulative Drawdown Schedule, on the aggregate amount of payments of the Contract Sum that can be made to Contractor hereunder as of any month during the DB Work Period, as it may be modified from time to time pursuant to terms hereof.

“Maximum Cumulative Drawdown Schedule” means the schedule attached hereto as Exhibit J setting forth the Maximum Cumulative Contract Sum Payment stated as of any month during the DB Work Period.

“Monthly Progress Report” means a progress report containing the following information: (a) a narrative description of Contractor’s and all Subcontractors’ activities and design, engineering, procurement and construction progress as compared with the Project Schedule (including an updated Project Schedule), (b) the information required in Section 2.1.1.2 hereof, (c) a detailed description of the DB Work which has been completed, including digital photographs showing the progress of the DB Work and a comparison of actual and planned progress, (d) the current status of the DB Project and any deviations from scheduled performance, (e) quality management reporting, (f) safety activities and environmental compliance activities, (g) all other information required by Section 1.4.3(B) and (C) of the Technical Requirements and (h) all other information reasonably requested by Concessionaire or the Department relating to the DB Work.

“NEPA Documents” means the Environmental Assessment and the FONSI.

“Non-Permitted Closure” has the meaning set forth in Section 7.5 hereof.

“Notice of Final Acceptance” has the meaning set forth in Section 6.7.2 hereof.

“Notice of Substantial Completion” has the meaning set forth in Section 6.6.2 hereof.

“Notice to Proceed” has the meaning set forth in Section 2.3.1 hereof.

“Open Book Basis” means allowing the Department and/or Concessionaire to review all underlying assumptions and data associated with each net revenue impact, net cost saving, pricing or compensation or adjustments thereto relating to the DB Work, including assumptions as to costs of the DB 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, and other items reasonably required by the Department or Concessionaire to satisfy itself as to the reasonableness and accuracy of the amount.

“Operating Manual” has the meaning set forth in Section 2.1.28 hereof.

“OS&S Contractor” means Concessionaire or its designee(s) who will operate the Project.

“Party” or “Parties” means, respectively, a party or both parties to this Agreement.

“Payment and Values Schedule” means the schedule of values of various items of DB Work based upon which Scheduled Payments of the Contract Sum will be made by Concessionaire as set forth in Exhibit L hereto, as the same may be adjusted pursuant to this Agreement.

“Performance Guarantees” has the meaning set forth in Section 8.1 hereof.

“Performance Test” means the operation of the equipment and applicable systems included in the DB Work necessary for operation of the HOT Lanes by Contractor in accordance with the Performance Testing and Commissioning Plan and Program and the provisions of Sections 6.4 and 6.5 hereof for the purposes of determining the DB Project’s level of achievement of the Performance Guarantees and other conditions to Substantial Completion set forth in Section 6.6, and Final Acceptance set forth in Section 6.7 hereof.

“Performance Testing and Commissioning Plan and Program” means plan and program, developed by Contractor and approved by Concessionaire and the Independent Engineer, for the conduct of Performance Tests; such plan shall also specify when start-up personnel needs to be dispatched for Commissioning and inspection of the DB Work.

“Person” means any individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof.

“Pre-Existing Hazardous Substances” means Known Pre-Existing Hazardous Substances and Unknown Pre-Existing Hazardous Substances.

“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 N, and includes the DB Project.

“Project Assets” means the HOT Lanes and other assets constructed, maintained or held by Concessionaire pursuant to the Comprehensive Agreement (or any applicable portion of such assets).

“Project Director” means a person employed by Contractor to administer and act under this Agreement on behalf of Contractor.

“Project Enhancement Account” means a concession payment account created by the Department in accordance with VA. Code, Section 33.1-23.03:9(A), into which certain funds shall be deposited as required by the Comprehensive Agreement.

“Project Right of Way” means any real property within the I-95 Corridor (which term is inclusive of all estates and interests in real property, including easements), which is:

- (a) necessary for performance of the Work, including temporary and permanent easements, and ownership and operation of the Project;
- (b) shown on the approved ROW Acquisition and Relocation Plan; and
- (c) within the lines established by the NEPA Documents, as such limits may be adjusted pursuant to the Comprehensive Agreement.

“Project ROW Acquisition Work” means the DB Work associated with acquisition of the Project Right of Way as set forth in the ROW Acquisition and Relocation Plan.

“Project Schedule” means the construction and design schedule prepared by Contractor under the provisions of Section 2.1.1 hereof, which is to be consistent with the initial Project Schedule set forth as Exhibit M hereto, as adjusted pursuant to this Agreement. The Project Schedule is intended to be identical to the “Baseline Schedule” under the Comprehensive Agreement, as the same is modified from time to time pursuant to the Comprehensive Agreement.

“Proposal Request” has the meaning set forth in Section 12.2 hereof.

“Proprietary Intellectual Property” means any Intellectual Property that is patented or copyrighted by Concessionaire, Contractor or any of its Subcontractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential, proprietary information by Concessionaire, Contractor or any of its 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 DB Project.

“Public Funds Amount” means the Initial Public Funds Amount and the Department TIFIA Protection Amount.

“Public Information and Communications Plan” means the plan developed by Contractor setting forth Contractor’s approach to communicating with road users and other stakeholders affected by the development and construction of the DB Project, as described in more detail in the Technical Requirements.

“Quality Management System Plan” means the plan developed by Contractor that defines the quality management systems during the design and construction phases of the DB Project, as described in more detail in the Technical Requirements.

“Quality Manager” means a person employed by Contractor who is responsible for overseeing quality assurance and quality control of the DB Work and for ensuring that the DB Work conformance with the requirements of this Agreement and the other Contract Documents.

“Railroad Easement” has the meaning set forth in Section 2.1.6.6 hereof.

“Rating Agencies” means any nationally recognized statistical rating organization, such as Moody’s Investor Service, Inc., Fitch Ratings, or Standard & Poor’s Rating Service, a division of The McGraw-Hill Companies, Inc., or any similar entity, or any of their respective successors.

“Real Estate Rights” means all rights, title and interests in or to real estate, leases, contracts, permits, easements, licenses, private rights of way, and Utility and railroad crossing rights that are needed for performance of the DB Work other than the Project Right of Way itself, including ingress and egress, storage and laydown areas, drainage and construction staging areas.

“Remedial Action Plan” means the plan developed by Contractor with respect to Hazardous Substances encountered by Contractor within the Project Right of Way, as described in more detail in the Technical Requirements.

“Remedial Actions” has the meaning set forth in Section 2.1.17.3 hereof.

“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.”

“Reserved Rights” means the Department’s right and opportunity under the Comprehensive Agreement 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 Comprehensive Agreement and the collection, use and enjoyment of Toll Revenues as provided in the Comprehensive Agreement. The Reserved Rights reserved to the Department under the Comprehensive Agreement 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 indefeasible 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 Concessionaire under the Comprehensive Agreement required solely for operation of the Project. For avoidance of doubt, if 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 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” has the meaning set forth in Section 2.11.1 hereof.

“ROW Acquisition and Relocation Plan” means the plan developed by Contractor that defines the approach to acquisition of the Project Right of Way, and to the extent permitted by Section 2.1.6, any Real Estate Rights as set forth in Section 2.1.6, as described in more detail in the Technical Requirements.

“ROW Allowance” means the monetary allowance established in the amount of \$275,000 to pay ROW Costs.

“ROW Costs” means the actual amount paid or payable to a property owner for the acquisition of Project Right of Way and the Real Estate Rights as set forth in Section 2.1.6, 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 Right of Way and the Real Estate Rights as set forth in Section 2.1.6.

“Rules Governing Prequalification Privileges” has the meaning as such term is used in the Comprehensive Agreement.

“Scheduled Payments” has the meaning set forth in Section 4.2 hereof.

“Scope Change” has the meaning set forth in Section 12.1 hereof.

“Scope Change Order” means a written order to Contractor, in the form of Exhibit G hereto, issued and signed by Concessionaire in accordance with the provisions of Article 12 hereof after the execution and delivery of this Agreement, authorizing a Scope Change and, if appropriate pursuant to the terms hereof, an adjustment in one or more of the Scope Document, the Contract Sum, the Project Schedule, the Guaranteed Substantial Completion Date, the Guaranteed Final Acceptance Date, the Long Stop Date, the Payment and Values Schedule, the Maximum Cumulative Drawdown Schedule, or any other amendment of the terms and conditions of the Contract Documents.

“Scope Document” means the general description of the DB Work to be performed by Contractor as set forth in Exhibit P hereto.

“Segment” has the meaning as such term is used in the Comprehensive Agreement.

“Service Commencement” means the opening of the Project for normal and continuous operations and use by the travelling public, after occurrence of all the events and satisfaction of all the conditions therefor set forth in Section 9.01(a) of the Comprehensive Agreement.

“Service Commencement Date” means the date on which Service Commencement is achieved under the Comprehensive Agreement.

“Significant Force Majeure Event” has the meaning set forth in the Comprehensive Agreement.

“Software” means (a) computer instructions, including programs, routines and databases and applications supplied, procured or developed by Concessionaire, its contractors, or the Department, as applicable, 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 prior to Final Acceptance.

“Source Code Escrows” has the meaning set forth in Section 24.12.2.

“Standard of Care” means the performance of the DB Work in accordance with prudent industry practices, methods, techniques and standards, and using the degree of care, skill and diligence, that would be expected to be exercised by a prudent, skilled and experienced contractor engaged in the same types of undertakings as the DB Project under the same or similar circumstances and conditions as those applying to the design, development and construction of the DB Project, all Laws (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), all Governmental Approvals, all Applicable Standards, Good Industry Practice, the requirements of the Comprehensive Agreement (including the Technical Requirements) with which Concessionaire must comply in the performance of the DB Work under the Comprehensive Agreement, 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 Concessionaire or the Department, and the other requirements specified or referred to herein or in other Contract Documents.

“State” means the Commonwealth of Virginia.

“State Highway” means any highway designated a State Highway pursuant to Title 33.1, Chapter 1, Sections 25, 48 and 67, Code of Virginia.

“State Indemnitees” means the State, the Commonwealth Transportation Board, the Department or any other agency, instrumentality or political subdivision of the State and their respective Representatives.

“Subcontract” means a contract between Contractor and a Subcontractor for the performance or supply of a portion of the DB Work by such Subcontractor.

“Subcontractor” means a vendor, supplier, materialman, consultant or subcontractor of any tier providing equipment, materials or services directly or indirectly to Contractor in connection with the DB Work.

“Substantial Completion” means the satisfaction by Contractor of the requirements set forth in Section 6.6 so that only minor deficiencies which do not affect safety or Toll Revenue earnings remain such that Concessionaire can operate and collect tolls with respect to the HOT Lanes, all as evidenced by Concessionaire’s delivery to Contractor of the fully countersigned Substantial Completion Certificate pursuant to Section 6.6.3 hereof.

“Substantial Completion Certificate” means a certificate of Contractor in the form of Exhibit W delivered to Concessionaire certifying that Substantial Completion of the entire DB Project has occurred.

“Substantial Completion Recovery Plan” has the meaning set forth in Section 6.6.5 hereof.

“SWaM Performance Improvement Plan” means the plan submitted by Contractor to Concessionaire pursuant to Section 24.16.2(iv)(b) hereof and approved by the Department pursuant to Section 24.03(b)(v)(B) of the Comprehensive Agreement, with respect to improving Contractor’s SWaM program performance.

“Taxes” has the meaning set forth in Section 2.1.19 hereof.

“Technical Requirements” means the Technical Requirements attached as Exhibit Z hereto, as the same may be revised by any Technical Requirements Revisions pursuant to 14.02(f) of the Comprehensive Agreement and Section 12.3.2 hereof.

“Technical Requirements Deviations” has the meaning set forth in Section 12.4 hereof.

“Technical Requirements Revisions” has the meaning set forth in Section 12.3.2 hereof.

“Termination For Cause” has the meaning set forth in Section 15.2.2 hereof.

“Termination Payment” has the meaning set forth in Section 4.4 hereof.

“Third Party Claims” means any Claim asserted against an Indemnitee by any Person who is not a party to this Agreement or an Affiliate of such party.

“Third Party Hazardous Substances” means any Hazardous Substances introduced or brought onto the Project Right of Way prior to Substantial Completion by a Person other than a Contractor Party.

“TIA” or “Time Impact Analysis” means a time impact analysis, (a) establishing the influence of an event on the Project Schedule, and will include a fragmentary network, and for events that have not yet occurred (such as proposed changes), the fragmentary network will demonstrate how Contractor proposes to incorporate such event in the Project Schedule, and (b) demonstrating: (i) the time impact based on the date the event occurred or notice of a proposed

change is given to Contractor, (ii) the status of the DB Work at such point of time; and (iii) the time computation of all affected activities.

“TIFIA” means the Transportation Infrastructure Finance and Innovation Act of 1998.

“TMS” means the traffic management system.

“Toll Revenues” means:

(a) all amounts received by or on behalf of Concessionaire applicable to vehicles for the privilege of traveling on the Project imposed pursuant to the Comprehensive 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 Concessionaire receives as contractual liquidated or other contract damages with respect to any of the foregoing revenues.

“Transportation Management Plan” has the meaning set forth in Section 2.1.25 hereof.

“Turnover Plan” means the plan developed by Concessionaire pursuant to the Technical Requirements that describes the process by which Concessionaire will take over operations and maintenance responsibilities from the Department for the Project, attached as Exhibit AA.

“Uniform Act” means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

“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 Contractor assumes responsibility for such Project Right of Way or portion thereof pursuant to Section 2.1.17.2 and which are not Known Pre-Existing Hazardous Substances.

“USDOT” means the United States Department of Transportation.

“Utilities Plan” means the plan developed by Contractor that defines the Utility coordination activities during the design and construction of the DB Project, as described in more detail in the Technical Requirements.

“Utility” means any public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, data or other telecommunications, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water not connected with the highway drainage and

similar substances 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 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 DB Project.

“VA. Code” means the Code of the Commonwealth of Virginia of 1950, as amended.

“Warranty Period” has the meaning set forth in Section 10.1.3 hereof.

“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 Comprehensive Agreement to be performed by Concessionaire under the Comprehensive Agreement.

“Work Order” has the meaning set forth in Section 12.9 hereof.

“Work Product” means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of Contractor for the DB Project, 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 DB Work), 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 to the extent relating to the DB Work, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which Concessionaire and Contractor mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure and which is not conceived or first reduced to practice for the Project purposes, such as proprietary financial and pricing information of Contractor.

ARTICLE 2

CONTRACTOR'S DB WORK AND OTHER OBLIGATIONS OF CONTRACTOR

2.1 DB Work to be Performed. Except as otherwise expressly set forth in this Agreement, and subject to the specific provisions of and exclusions set forth in the Scope Document, Contractor shall perform or cause to be performed any and all work and services required or appropriate in connection with the design, engineering, procurement, procurement of Real Estate Rights, Project Right of Way acquisition in the name of the Department, Project Right of Way clearance, construction, Commissioning, start-up, demonstration, testing and completion of the DB Project, and shall provide all materials, equipment, machinery, tools, labor, supervision, transportation, administration, training and other services and items required to complete and deliver to Concessionaire the fully integrated and operational DB Project, all on a lump-sum, fixed-price, turnkey basis, and otherwise in accordance with the Standard of Care, Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents (collectively, the "DB Work"). Notwithstanding the foregoing, the fact that Contractor exercised the Standard of Care shall not excuse Contractor from a breach of any express obligation hereunder or the General Warranty. The DB Work does not include the items expressly excluded from the DB Work by the terms of this Agreement. To the extent any elements of the Early Work have not been completed or, if completed, have not been invoiced by Contractor, prior to the Agreement Date, Contractor is authorized to complete or invoice, as applicable, such Early Work in accordance with this Agreement and payment therefor will be made by Concessionaire under this Agreement (including for any such Early Work performed by Contractor but not invoiced by Concessionaire prior to the Agreement Date, it being understood that Early Work that has been performed and invoiced but not paid prior to the Agreement Date shall be payable at Financial Close). 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 Contractor and/or approved pursuant to, and subject to the terms and conditions of, this Agreement. Certain details of the DB Work are described in the Contract Documents, but Contractor shall perform or cause to be performed all DB Work necessary to complete the DB Project generally described in or reasonably inferable from the Contract Documents. Except as otherwise expressly provided in this Agreement (including those items expressly excluded by Exhibit P), all obligations of Concessionaire under the Comprehensive Agreement with respect to the design, construction and completion of the DB Project shall be deemed to be included as part of Contractor's obligations hereunder and shall be fulfilled by Contractor on behalf of Concessionaire as part of the DB Work. Without limiting the foregoing, Contractor shall perform the following as part of the DB Work:

2.1.1 Scheduling and Milestones.

2.1.1.1 Project Schedule. If not already approved by Concessionaire and the Department, Contractor shall, within fifty (50) days after the Financial Close Date, submit for Concessionaire's Approval a proposed updated detailed DB Project engineering, procurement and construction schedule, which shall include, among other things: (i) the order in which Contractor proposes to carry out the DB Work, including each stage of design, Project Right of Way acquisition, obtaining of Governmental Approvals, procurement, manufacture, delivery to the Project Right of Way, construction, inspection and testing, (ii) information

required by Section 1.4.2(B)-(F) of the Technical Requirements and (iii) the times when submissions and Concessionaire's Approvals are requested. Such proposed Project Schedule shall be submitted by Contractor to Concessionaire as follows: (i) one (1) copy in searchable PDF electronic format, (ii) one (1) electronic version in the Primavera proprietary exchange format (XER) and (iii) three (3) hard color copies (printed on 11" by 17" paper). Once approved by Concessionaire, Contractor shall submit to Concessionaire the agreed Project Schedule in the same number of copies and format as required for the initial submission, in addition to the following for the submission by Concessionaire to the Department: (i) one (1) electronic version in the Primavera proprietary exchange format (XER) and (ii) six (6) hard color copies (printed on 11" by 17" paper). Contractor shall also provide one (1) license to Concessionaire and two (2) licenses to the Department, with maintenance agreements covering the entire duration of the DB Work, for Primavera software to enable them to access and analyze all such schedules.

Under the Comprehensive Agreement, the Department is to provide its approval or disapproval of the submitted Project Schedule to Concessionaire within twenty-one (21) days of its receipt of same and Concessionaire will promptly notify Contractor after receipt of the Department's response. Contractor shall give due consideration to the Department's comments as forwarded by Concessionaire and revise the Project Schedule accordingly and re-submit same to Concessionaire for Concessionaire's Approval and once approved, Concessionaire will re-submit such revised Project Schedule to the Department. Under the Comprehensive Agreement, the Department is required to notify Concessionaire of its approval or disapproval of the revised Project Schedule within fourteen (14) days of the receipt of same and Concessionaire will promptly notify Contractor of the Department's response. If during the process outlined in this Section 2.1.1.1 Concessionaire and Contractor cannot agree on the revisions to the Project Schedule either through written correspondence or subsequent meetings, Concessionaire and Contractor shall agree to attempt to resolve the issues through the dispute resolution process set forth in Article 19 hereof. If Concessionaire and Contractor cannot agree on any revision to the Project Schedule, Contractor shall proceed under the previously approved schedule. Once the proposed Project Schedule is approved by Concessionaire and the Department, it shall replace the initial "Project Schedule" attached as Exhibit M. Contractor shall perform the DB Work in accordance with the Project Schedule and shall coordinate and incorporate the schedules of all Subcontractors into the Project Schedule as they become available.

2.1.1.2 Schedule Updates. Following the conclusion of the process outlined in Section 2.1.1.1, as part of each Monthly Progress Report and in conjunction with the monthly progress meetings required in accordance with Section 2.1.10 hereof, Contractor shall provide Concessionaire with updates to the Project Schedule meeting the requirements of Section 1.4.3(F) of the Technical Requirements. Contractor acknowledges that certain alterations to the Project Schedule and Critical Path require the Department's prior approval pursuant to Sections 8.07(d) and (e) of the Comprehensive Agreement. If Concessionaire or the Department believes that the Project Schedule needs a specific revision, either in logic, activity duration, DB Work breakdown structure, manpower or cost, Concessionaire will request Contractor in writing to make such revisions. Contractor shall respond in writing within seven (7) days or such other timeframe as mutually agreed by the Parties, and in the case of the revisions proposed by the Department, subject to the Department's approval, either agreeing with Concessionaire's proposed revision, and henceforth including it in the next Project Schedule update, or providing justification why it should not be accomplished. If revisions cannot be agreed upon either

through written correspondence or subsequent meetings, Concessionaire and Contractor shall agree to attempt to resolve the issues through the dispute resolution process set forth in Article 19 hereof. If Concessionaire and Contractor cannot agree on any revision to the Project Schedule, Contractor shall proceed under the previously approved schedule, subject to the dispute resolution process set forth in Article 19.

2.1.1.3 Schedule Update Format. Contractor shall submit to Concessionaire the Project Schedule update and narrative as follows: (i) one (1) copy in searchable PDF electronic format, (ii) one (1) electronic version (plus two (2) such electronic versions for the Department in accordance with Section 1.4.3(B)(4)(i) of the Technical Requirements) in the Primavera proprietary exchange format (XER), with each submission having a unique file name to indicate the type and order of submission and each compact disk labeled to indicate the type of submission, file name, and schedule data date and (iii) three (3) hard color copies of the current Time Scaled Logic Diagram, which shall be neatly organized and plotted time scaled from left to right on 11"x17" sheets with suitable notation relating the interface points among sheets and Time Scaled Logic Diagrams shall clearly depict the Critical Path, as well as activity identifications, activity descriptions, original durations, early start, early finish, late start, late finish, and actual dates as applicable. This process shall continue until Final Acceptance. The first day of the month ("data date") of each Project Schedule update shall coincide with Contractor's monthly request for payment made pursuant to Section 4.2.1 hereof. Contractor shall use the same software for all updates as required by Section 2.1.1.1 for the Project Schedule.

2.1.1.4 Recovery Plans. If the Monthly Progress Report shows that the Substantial Completion is projected to occur ninety (90) days later than the then-current Guaranteed Substantial Completion Date, Contractor will submit a written schedule recovery plan for Concessionaire's Review concurrent with the next monthly Project Schedule update. Such recovery schedule shall (i) include a list of all activities changed, added or deleted along with all logic changes and an accompanying narrative explaining the nature of the changes as required by Section 1.4.6(A) of the Technical Requirements and (ii) set forth a revised Project Schedule that shall be subject to Concessionaire's Approval for which projected Substantial Completion shall not, subject to Section 6.6.5, be later than 365 days after the Guaranteed Substantial Completion Date. Contractor shall respond to Concessionaire's comments in accordance with the process outlined in Section 2.1.1.2 until Concessionaire and the Department have approved the revised Project Schedule. Concessionaire's Review of a recovery plan and Concessionaire's Approval of a revised Project Schedule shall not affect any of Concessionaire's rights or Contractor's obligations under this Agreement, including Contractor's obligations to pay Late Completion Payments. Once a revised Project Schedule is reviewed and approved by Concessionaire hereunder and the Department under the Comprehensive Agreement, it shall become the Project Schedule and be used as the basis for subsequent Monthly Progress Reports.

2.1.1.5 Comprehensive Agreement Provisions. Contractor's obligations under this Section 2.1.1 shall include fulfilling Concessionaire's obligations to the Department under Sections 8.04(a) and (b) and 8.07 of the Comprehensive Agreement with respect to the DB Project, and Contractor shall coordinate with Concessionaire as appropriate such that Concessionaire may timely and fully perform such obligations.

2.1.2 Engineering and Design. Contractor shall perform all engineering and design services for completion of the DB Work in conformity with the requirements of this Agreement. All engineering work of Contractor requiring certification shall be certified, and all Design Documentation requiring sealing shall be sealed, by professional engineers licensed and properly qualified to perform such engineering services in all appropriate jurisdictions, which engineers and their qualifications shall be subject to the review and approval procedures set forth in Section 2.1.5.

2.1.2.1 Design. Contractor shall cause to be conducted all surveys, geotechnical engineering services and other tests and inspections of the Project Right of Way, and shall obtain written reports of all such tests and inspections as may be necessary or appropriate to design, procure and construct the DB Project in accordance with the Standard of Care, Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents. Contractor shall satisfy itself with the accuracy and completeness of all such tests and inspections, and shall not be excused from any of its obligations under this Agreement for any condition affecting the DB Project, the Project Right of Way or the DB Work, except as otherwise expressly provided in this Agreement. Contractor is responsible for the design of the DB Work. Design work for the DB Project shall include design for all civil works, structures, roadways, mechanical systems, electrical systems, preparation of drawings and specifications in accordance with the Scope Document, and coordination of data systems with the Department and the OS&S Contractor. Contractor expressly acknowledges and agrees that while the Scope Document sets forth a general guide as to the requirements of the DB Project, Contractor shall have full responsibility for the adequacy, safety and stability of the design for the DB Work and of all Project Right of Way operations and methods of development, construction, maintenance, testing, Commissioning and completion of the DB Project in accordance with the Standard of Care, Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents, such that the whole of the DB Project is constructed, Commissioned and operational and fulfills Concessionaire's obligations to provide the DB Project under the Comprehensive Agreement. Except as otherwise expressly provided in this Agreement, in the event Contractor's design differs from the schematic upon which the NEPA Documents were based, as between Concessionaire and Contractor, Contractor will be fully responsible for all necessary actions unless such design change was caused by Concessionaire, and will bear all risk of delay and all risk of increased cost, resulting from or arising out of any associated change in the DB Project 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, (iii) bearing all risk and cost of litigation and (iv) paying to the Department (through Concessionaire) for the "Allocable Costs" the Department incurs to conduct further or supplemental environmental studies and to fulfill any other responsibilities assigned to it pursuant to 23 CFR Part 771.

2.1.2.2 Design Documentation. Contractor shall prepare all Design Documentation in computer readable and written formats in full compliance with the Standard of Care, Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents and shall submit those set forth on Exhibit Q for Concessionaire's Review

or Concessionaire's Approval (which may include review and approval by the Department as provided in Exhibit Q). Contractor's obligations with respect to Design Documentation include fulfilling the obligations of Concessionaire with respect to the DB Project under Sections 8.03(b)(i) and 8.04 of the Comprehensive Agreement (including obligations to pay the Department its "Allocable Costs" and other amounts payable to the Department to the extent due from Concessionaire as a result of Contractor's acts or failures to act in accordance with the requirements of this Agreement), and Contractor shall coordinate with Concessionaire as appropriate such that Concessionaire may timely and fully perform such obligations. Notwithstanding anything to the contrary in this Agreement, Concessionaire's Review or Concessionaire's Approval (as the case may be) of Design Documentation shall be only a determination whether such documents (and the portions of the DB Work represented thereby) on their face meet the standards for the DB Work set forth in this Agreement, and shall not be considered an evaluation or determination that such documents and the portions of the DB Work represented thereby in fact meet the standards for the DB Work or are otherwise satisfactory for their intended purpose. Based on the Scope Document and that Design Documentation that has received Concessionaire's Approval, Contractor shall prepare comprehensive drawings and specifications setting forth in detail the requirements for the procurement and construction of the DB Project. As the drawings and specifications for the DB Project are issued and, if applicable, receive Concessionaire's Approval, they shall be clearly identified as Design Documentation. Contractor may, with Concessionaire's Approval, apply for approvals from the Department of interpretive engineering decisions concerning the meaning, scope, interpretation and application of the Technical Requirements. All applications for such approvals shall be in writing. Contractor acknowledges that the Department may issue a written approval of Contractor's proposed interpretive engineering decision, if any (upon which Concessionaire and Contractor may rely), may issue its own interpretive engineering decision, or may disapprove any interpretive engineering decision Contractor proposes.

2.1.3 Procurement. Contractor shall procure and pay for, in Contractor's name as an independent contractor and not as agent for Concessionaire, all materials, equipment, supplies, consumables, transportation, labor, supervision and other necessary services (whether on or off the Project Right of Way), which are not expressly specified to be furnished by Concessionaire in this Agreement, to complete the DB Work in accordance with the Contract Documents. Contractor shall be responsible for obtaining all customs clearances required in connection with the provision of equipment, materials and supplies necessary to complete the DB Work in accordance herewith, including any temporary clearances for construction and testing equipment and other items to be used in the DB Work.

2.1.4 Construction. If not already approved by Concessionaire and the Department, Contractor shall prepare the Construction Quality Management Plan for Concessionaire's Approval within the time required by the Technical Requirements, and shall construct and install the DB Project expeditiously and in accordance with the approved Construction Quality Management Plan and the requirements of this Agreement. Contractor shall furnish to Concessionaire Monthly Progress Reports of progress of the DB Work, together with monthly DB Work plans of activities being performed at the Project Right of Way and an updated Project Schedule (if applicable), as specified in Exhibit Q and as required by the Technical Requirements.

2.1.5 Labor Matters.

2.1.5.1 Contractor's Personnel. Contractor shall provide all labor and personnel required in connection with the DB Work, including: (a) professional engineers licensed to perform engineering services in each jurisdiction where the performance of the DB Work requires such licensing; (b) a DB Project engineer, lead structural, mechanical, electrical, instrumentation and control and civil engineers, cost and schedule engineers, and procurement, construction, start-up and training supervisors, all of whom have had extensive experience in projects of similar technology and magnitude; (c) the Project Director and the Construction Manager; and (d) the Quality Manager and other quality assurance personnel (who shall report directly to Contractor's home office managers and not to the DB Project personnel located at the Project Right of Way). Contractor shall not remove or permit the release of any personnel described in clauses (a) through (d) without replacing them with other personnel of comparable or more extensive skill and experience. As of the Agreement Date, the Project Director is John Heffley, the Construction Manager is Wallace Alphin and the Quality Manager is Sandro Plutino. If any such persons are to be replaced, Contractor shall, upon Concessionaire's request, provide for Concessionaire's Approval the résumés of the Project Director, the Construction Manager and the Quality Manager, and shall arrange for interviews by Concessionaire of such persons if requested by Concessionaire.

2.1.5.2 Facilities and Other Personnel Requirements. Contractor shall provide sufficient and appropriate first-aid facilities, sanitary facilities and potable water for the benefit of all personnel employed or expected to be present at the Project Right of Way in connection with the DB Project including Concessionaire's and the Department personnel (other than any Concessionaire Contractors' personnel), and all such facilities shall be maintained in a clean and orderly condition. Contractor may conduct periodic searches of employees and other persons present at the Project Right of Way, including personal and professional possessions, automobiles, trucks, briefcases, lunchboxes and persons for the presence of firearms, alcohol and illegal drugs. Contractor shall immediately notify Concessionaire's Project Manager if firearms, alcohol or illegal drugs are found. Concessionaire shall have the right to require the immediate removal and permanent expulsion from the Project Right of Way and from any work associated with the DB Work of any Person that at any time is found in possession of firearms, alcohol or illegal drugs. In addition, Contractor will comply, and to the extent required by the Comprehensive Agreement will cause its Subcontractors to comply, with the provisions set forth in Exhibit I to this Agreement related to labor, employment and DBE/SWaM-related matters.

2.1.5.3 Labor Relations. Contractor shall be responsible and liable for all labor relations matters of Contractor and Subcontractor personnel relating to the DB Work and shall at all times use Commercially Reasonable Efforts to maintain harmony among the unions (if any) and other personnel employed in connection with the DB Work and act in a reasonable, professional and courteous manner with Concessionaire Contractors. Contractor shall at all times use all Commercially Reasonable Efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid DB Work stoppages, slowdowns, disputes and strikes.

2.1.6 Project Right of Way and Real Estate Rights.

2.1.6.1 Project Right of Way. Contractor shall perform all Project ROW Acquisition Work necessary for the construction and operation of the Project that is set forth in the ROW Acquisition and Relocation Plan in accordance with the Standard of Care, Laws (including the Uniform Act and Titles 25.1 and 33.1 of the VA. Code), Applicable Standards, Exhibit CC (Project Right of Way Acquisition), the Technical Requirements, this Agreement and the other Contract Documents; provided, that Contractor may not make any offers to acquire the Project Right of Way or the Real Estate Rights until the Department has issued a “Notice to Commence Right of Way Acquisition” to Concessionaire under the Comprehensive Agreement. Except as otherwise provided below in this Section 2.1.6.1 and in Section 2.1.6.5, ROW Costs shall be paid by Contractor from the ROW Allowance; provided, that (i) if the aggregate ROW Costs exceed the ROW Allowance by more than \$150,000 (which shall be borne by Contractor), subject to Section 2.13.3, upon receipt of the payment therefor from the Department, Concessionaire will reimburse Contractor for such excess ROW Costs above the ROW Allowance and (ii) if the aggregate ROW Costs are less than the ROW Allowance, such difference shall be rebated by Contractor to Concessionaire. Contractor’s Project ROW Acquisition Work shall include Utility Relocation services in accordance with the Technical Requirements, assessment of the land required for the DB Work, preparation of the ROW Acquisition and Relocation Plan, all appraisals, appraisal reviews, negotiations with landowners and Utility Owners, relocation assistance and advisory services, legal services, making *bona fide* efforts to purchase properties or property rights for amounts not to exceed just compensation therefor, settlement of claims using its “best efforts” (as such term is defined for this purpose in the Technical Requirements), engagement of relevant property consultants and all other services other than exercise of power of condemnation and related services that is the Department’s responsibility. Contractor shall prepare, obtain execution of, and record documents conveying title to such properties in the Project Right of Way and Real Estate Rights to the State and shall deliver all executed and recorded general warranty deeds to Concessionaire for delivery by Concessionaire to the Department pursuant to the Comprehensive Agreement. 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 under the Comprehensive Agreement. Contractor shall exercise due diligence and use reasonable care in determining whether property to be acquired may contain waste or other materials or Hazardous Substances requiring remedial action or treatment to the extent Contractor 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. As required by Section 1.6(C)(13) of the Technical Requirements, when there is reason to believe that such materials may be present, Contractor shall notify Concessionaire within two (2) days of such discovery and will not proceed with acquiring such property until it receives written notification from Concessionaire.

The Parties acknowledge that the Department has agreed under Sections 8.05(b), 8.05(d)(ii) and 8.05(e)(ii) of the Comprehensive Agreement to (i) handle any necessary condemnation proceedings for the Project Right of Way and any other Real Estate Rights in accordance with the Technical Requirements, if despite Contractor’s “best efforts” (as such term is defined for this purpose in the Technical Requirements), Contractor is unable to reach a settlement with the owners of such real estate or Real Estate Rights within thirty (30) days; provided, that prior to filing a condemnation proceeding, Contractor shall prepare or cause to be

prepared all necessary paperwork and supporting documentation required for the proceeding and deliver it to the Department (through Concessionaire), (ii) be responsible for all ROW Costs that in the aggregate exceed the sum of the ROW Allowance and \$150,000 US Dollars, and shall be entitled to the savings if such costs are below the ROW Allowance (such savings to be deposited by Concessionaire in the Project Enhancement Account, as required by Section 8.05(d)(ii) of the Comprehensive Agreement), (iii) subject to Law, provide the benefit of any provisions in recorded utility or other easements affecting the Project which require easement holders to relocate at their expense and (iv) provide reasonable assistance in obtaining the benefit of all rights the Department has under any Utility easement, permit or other right relating to Utility Relocation, it being understood that such assistance shall not entail the initiation of or participation in legal actions or proceedings. Concessionaire shall use Commercially Reasonable Efforts to cause the Department to comply with such obligations.

2.1.6.2 Payment Procedures for Project Right of Way Acquisition Costs. Contractor shall submit with each request for payment made under Section 4.2.1 hereof evidence (including copies of each agreement and instrument pursuant to which acquisition of such portion of the Project Right of Way or Real Estate Rights was effected, and such other information as may be requested by Concessionaire or the Department relating to such acquisition) of the amounts paid to acquire any portion of the Project Right of Way and Real Estate Rights pursuant to Section 2.1.6.1. Contractor shall make direct payments of benefits to property owners for negotiated settlements, relocation benefits, and payments to be deposited with the court.

2.1.6.3 ROW Acquisition and Relocation Plan. If not already approved by Concessionaire and the Department in connection with the Early Work, Contractor shall, within the time required by the Technical Requirements, prepare and submit for Concessionaire's Approval (which shall be subject to approval by the Department pursuant to Sections 8.03(b)(iv)(E) and 8.05(a)(iii) of the Comprehensive Agreement) the ROW Acquisition and Relocation Plan that identifies a schedule of right of way activities, including the specific parcels to be acquired, will allow for the orderly relocations of displaced persons based on time frames not less than those provided by the Uniform Act. In the event Concessionaire fails to respond within the time allotted in this Agreement, such failure will not be deemed approval of the ROW Acquisition and Relocation Plan. 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 Contractor, including those necessary to accommodate laydown, staging, temporary drainage and other construction methods in connection with the construction of the DB Project. If required by the Comprehensive Agreement, the ROW Acquisition and Relocation Plan shall be updated by Contractor quarterly during the DB Work Period with each subsequent update subject to Concessionaire's Approval.

2.1.6.4 Sufficiency of Project Right of Way. Contractor agrees that it has inspected and is fully familiar with the physical sufficiency of the Project Right of Way and Real Estate Rights as represented on the drawings included in Exhibit N, and that the Project Right of Way, together with the Real Estate Rights, is physically sufficient for Contractor to undertake and complete the DB Work in accordance with the requirements of this Agreement. If Contractor subsequently determines that the as-represented Project Right of Way, together with the Real Estate Rights, is not physically sufficient for it to undertake and complete the DB Work

for reasons other than those that would entitle Contractor to claim a Scope Change Order under this Agreement, Contractor shall promptly obtain, at Contractor's expense, any additions to the area of the Project Right of Way required by Contractor.

2.1.6.5 Real Estate Rights Outside of Project Right of Way.

Contractor will be responsible, at its own cost and expense, for the acquisition of the Real Estate Rights (including 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 DB Project. To the extent the Department provides Concessionaire (at no cost to Concessionaire) with Real Estate Rights from other agencies of the State, Concessionaire shall make the same available to Contractor for performance of the DB Work.

2.1.6.6 Acquisition of Railroad Easements. Under Section 8.05(f) of the Comprehensive Agreement, the Department has agreed to obtain, at its 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 Contractor and Norfolk Southern Corporation (the "Railroad Easement"). Notwithstanding the foregoing, (i) Contractor will pay the Department on behalf of Concessionaire any amounts payable by Concessionaire to the Department under Section 8.05(f) of the Comprehensive Agreement resulting from any Contractor Party's misconduct, negligence or other culpable act, error or omission and (ii) as part of the Contract Sum, Contractor shall pay all costs of any DB 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.

2.1.6.7 Contractor's Obligation to Maintain. Except to the extent the Department is responsible for same pursuant to the Comprehensive Agreement, Contractor shall maintain any part of the Project Right of Way and Real Estate Rights of which it takes possession until care, custody and control is transferred to Concessionaire in accordance with the terms of this Agreement.

2.1.7 Governmental Approvals. Contractor shall procure and maintain in full force and effect throughout the term hereof all Governmental Approvals necessary for the DB Work, excluding only those Governmental Approvals (a) if any, that are the responsibility of the Department under the Comprehensive Agreement, the benefit of which Concessionaire shall make available to Contractor and (b) expressly specified in this Agreement to be the responsibility of Concessionaire. Contractor's obligations under this Section 2.1.7 shall include fulfilling the obligations of Concessionaire to the Department under Section 8.06(d) of the Comprehensive Agreement with respect to the DB Project, including the payment to the Department (through Concessionaire) for its "Allocable Costs" for the preparation of documentation if supplements to the NEPA Documents or additional NEPA Documents are necessitated by a change in the base design of the DB Project following the Agreement Date, unless such change is caused by Concessionaire. Without limitation of Contractor's other rights under this Agreement, Contractor will be entitled to the payment for supplements to the existing NEPA Documents or additional NEPA Documents necessitated by a CA Compensation Event or Department Project (as defined in the Comprehensive Agreement) and its reasonable costs incurred by it in providing data and information relating to such supplements or additional NEPA

Documents, in each case, subject to Section 2.13.3, to the extent Concessionaire receives such payments from the Department under the Comprehensive Agreement. Contractor shall provide copies of all Governmental Approvals and modifications to such Governmental Approvals to Concessionaire upon receipt and shall comply with other requirements related to the permitting applicable to the DB Work set forth in the Technical Requirements.

2.1.8 Royalties and License Fees. Contractor shall pay all applicable and required initial royalties and license fees (it being understood that Contractor is not responsible for ongoing maintenance and support fees) and shall procure for the benefit of Concessionaire and/or the Department, as applicable, at Contractor's sole expense (other than ongoing maintenance and support fees), the appropriate rights, licenses, agreements and permissions for materials, methods, processes and systems incorporated into the DB Project. In performing the DB Work hereunder, Contractor shall not incorporate into the DB Project any materials, methods, processes or systems which involve the use of any confidential information, intellectual property or proprietary rights which Concessionaire, the Department or Contractor does not have the right to use or which may result in Claims or suits against Concessionaire, the Department or Contractor arising out of Claims of infringement of any domestic or foreign patent rights, copyrights or other proprietary rights, or applications for any such rights, or use of confidential information. Any such rights held by Contractor with respect to items incorporated in the DB Work shall be assigned or licensed to the Department or Concessionaire, as applicable, at no additional cost to the Department or Concessionaire, in connection with the use or operation of the DB Project.

2.1.9 Inspection and Expediting. Contractor shall perform all inspection, expediting, quality surveillance and maintenance of traffic services that are required for performance of the DB Work on a timely basis. Contractor's responsibilities under this Section 2.1.9 shall include, without limitation, inspecting all materials and equipment, both on and off the Project Right of Way that comprise or will comprise the DB Project or that are to be used in performance of the DB Work hereunder. Contractor shall perform a detailed inspection of all DB Work in progress at intervals appropriate to the stage of construction or fabrication off the Project Right of Way as is necessary to ensure that such DB Work is proceeding in accordance with the Contract Documents and to protect Concessionaire against defects and deficiencies in such DB Work. On the basis of such inspections, Contractor shall keep Concessionaire continuously informed of the progress and quality of all DB Work and shall provide Concessionaire with written reports of deficiencies revealed through such inspections and of measures proposed by Contractor to remedy such deficiencies. Contractor shall use all reasonable efforts to secure for Concessionaire, the Department and the Independent Engineer or their representatives the option of being present at all inspections off the Project Right of Way. In the event that the progress and quality of the DB Work is not proceeding in accordance with the Contract Documents, Concessionaire shall be entitled to make recommendations to Contractor for the purpose of remedying such deficiencies. Contractor shall provide Concessionaire with a detailed list of materials and equipment inspection points. Contractor shall provide Concessionaire and the Department with at least five (5) days' prior written notice of all inspections and on a monthly basis, Contractor shall advise Concessionaire and the Department of inspections planned for the forthcoming month. Concessionaire, the Department and the Independent Engineer, and each of their designated representatives, shall have the right to be present at and participate in all inspections of the DB Work or the Project Right of Way

undertaken by Contractor. No inspection performed or failed to be performed by Concessionaire, the Department or the Independent Engineer, or any recommendation from Concessionaire, the Department or the Independent Engineer in connection therewith, shall be a waiver of any of Contractor's obligations hereunder or be construed as an approval or acceptance of any DB Work hereunder and shall not relieve Contractor of independent responsibility for performance of the DB Work hereunder or for any acts or omissions of the Contractor's design professionals or other Subcontractors engaged by Contractor to perform the DB Work.

2.1.10 Project Right of Way Access; Field Office Accommodations; Project Right of Way Monthly Progress Meetings. Contractor shall provide Concessionaire, the Department, the Independent Engineer and their designees access to the Project Right of Way at all times and arrange for access by Concessionaire, the Department, the Independent Engineer and their designees to the engineering, manufacturing and fabricating premises of all Subcontractors sufficient to permit Concessionaire, the Department, the Independent Engineer and their designees to inspect DB Work being performed and monitor compliance by Contractor and the Subcontractors with the terms hereof. Contractor shall (as part of the Contract Sum) establish (i) a field office meeting the requirements set forth in the Technical Requirements for the exclusive use of Department's engineers, the Independent Engineer and inspectors and (ii) four (4) furnished project office spaces for Concessionaire. Contractor has the choice to either provide modular trailers or rent office accommodations to satisfy the field and project office requirements. Contractor shall propose the location of such offices for Concessionaire's Approval (including the Department's approval under the Comprehensive Agreement). Such field office shall be available and operational from sixty (60) days after the later of (i) Financial Close Date or (ii) "Design Work Notice to Proceed" under the Comprehensive Agreement, to one hundred and twenty (120) days after "Final Acceptance" under the Comprehensive Agreement. Contractor shall conduct regularly scheduled, monthly progress meetings at the Project Right of Way throughout construction of the DB Project beginning the month after the Financial Close Date to thoroughly discuss the progress and status of construction with Concessionaire's Field Representative and any other representatives of Concessionaire and the Department that Concessionaire desires or the Department may request. Such meetings shall be attended by Contractor's Construction Manager and Project Director, Concessionaire's representatives and representatives of Contractor's design staff, and during such meetings, progress during the prior month, as presented in the Monthly Progress Report, shall be reviewed and Contractor shall report information from any key Subcontractors responsible for the DB Work completed during the specified duration and the DB Work scheduled during the upcoming reporting duration. Contractor shall be responsible for preparing, maintaining and distributing minutes of the monthly progress meetings to all attendees for review and shall provide such minutes incorporating the attendees' comments, if any, to Concessionaire within twenty-four (24) hours after the meeting (or such other timeframe as mutually agreed by the Parties) to enable Concessionaire to provide same to the Department in accordance with the requirements of Section 8.07(b) of the Comprehensive Agreement and Section 1.2.9 of the Technical Requirements. In addition, under the Comprehensive Agreement, Concessionaire and the Department are to conduct monthly progress meetings in accordance with the Technical Requirements and Contractor shall attend all such meetings unless otherwise directed by Concessionaire. The Parties acknowledge that all direction to Contractor will be provided by Concessionaire; provided, that the Department has the authority pursuant to Section 24.02(f)(viii) of the Comprehensive Agreement to give such direction which in the opinion of the

Department is necessary to remove an immediate and present threat to the safety of life or property. The Parties further agree to abide by the terms and procedures set forth in the Technical Requirements pertaining to project management and coordination matters.

2.1.11 Witness Points. The Quality Management System Plan shall set forth a list of agreed witness points for Concessionaire and the Department to witness certain portions of the DB Work. At least fourteen (14) days in advance of any witness point, Contractor shall provide Concessionaire and the Department with a preliminary notice thereof, and Contractor shall provide a final notice no later than five (5) days in advance of any witness point. Contractor shall not proceed past an established witness point prior to the date specified therefor in the advance notice unless Concessionaire has witnessed the activity and Contractor is in compliance with its obligations under Section 2.1.9 or Concessionaire has failed to witness or inspect the DB Work on the date scheduled, in which case Concessionaire will be deemed to have waived its right to witness such activity and Contractor shall be entitled to proceed with the DB Work. Concessionaire's failure to view a witness point shall not be cause for a Concessionaire-Caused Delay.

2.1.12 Uncovering of DB Work. If any portion of the DB Work should be covered contrary to the written request of Concessionaire or to requirements specifically expressed in the Contract Documents, such portion of the DB Work shall, if requested in writing by Concessionaire, be uncovered for observation and shall be replaced at Contractor's expense. If any other portion of the DB Work has been covered which Concessionaire has not specifically requested to observe prior to being covered, the Department or Concessionaire may request to see such DB Work and it shall be uncovered by Contractor. If such DB Work shall be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Scope Change Order, be charged to Concessionaire. If such DB Work shall be found not to be in accordance with the Contract Documents, Contractor shall pay such costs.

2.1.13 Storage and Related Matters. In accordance with the Technical Requirements, Contractor shall warehouse or otherwise provide appropriate storage (in accordance with manufacturers' recommendations) for all materials, supplies and equipment required for permanent and temporary construction of the DB Project, and shall provide for the procurement or disposal of, as appropriate, all soil, gravel and similar materials required for performance of the DB Work hereunder. All materials, supplies and equipment which are stored at a location other than on the Project Right of Way shall be (a) stored in a bonded warehouse or other appropriate location, and (b) properly secured, tagged and identified for the DB Project to establish the rights of title provided under Section 24.15 of this Agreement, and segregated from other goods. Prior to delivery at the Project Right of Way, all equipment shall be labeled with permanently affixed durable nameplates which will include the manufacturer's name, equipment model number, equipment serial number, equipment tag number and all appropriate design parameters.

2.1.14 Utilities; Fuel; Asphalt.

2.1.14.1 If not already approved by Concessionaire and the Department in connection with the Early Work, Contractor shall, within the time required by the Technical Requirements, prepare and submit the Utilities Plan for Concessionaire's Approval. The Utilities

Plan will detail the schedule and proposed activities of Contractor and the Utility Owners during the DB Work Period and will otherwise meet the requirements set forth in the Technical Requirements. Contractor shall coordinate, design and relocate all Utilities as required by the Utilities Plan and the Technical Requirements. The resolution of any conflicts between Utilities and the construction of the DB Project shall be the responsibility of Contractor. No additional compensation or time will be granted for any delays, inconveniences, or damage sustained by Contractor or its Subcontractors due to interference from Utilities or the operation of relocating Utilities, except as expressly set forth in this Agreement. Additional DB Work required due to changes in Utility Owners' requirements shall be at Contractor's risk. In addition, Contractor shall arrange, install and pay for all temporary Utilities and temporary Utility Relocations.

2.1.14.2 Contractor shall supply all fuel, chemicals and consumables, which are required to enable Contractor to perform the DB Work hereunder, including DB Project construction, start-up and testing. The Parties acknowledge that pursuant to Sections 3.5.2-3.5.4 of the Technical Requirements, the Department has agreed to allow adjustments to the monthly progress payments under the Comprehensive Agreement up or down as appropriate for cost changes in fuel and certain types of asphalt materials as set forth in Sections 3.5.2-3.5.4 of the Technical Requirements, and in turn Concessionaire will, subject to Section 2.13.3, pass through such corresponding cost adjustments to Contractor as they are received. Contractor will timely prepare all supporting documentation necessary to be presented by Concessionaire to the Department under the Comprehensive Agreement in order to claim such cost adjustments.

2.1.15 Spare Parts. Contractor shall submit for Concessionaire's Approval a proposed list of operating spare parts for all items of equipment which are part of the DB Work necessary for the first year of operation of the DB Project and, following Concessionaire's Approval thereof, shall procure spare parts included in such approved list. The costs of such spare parts shall be reimbursed by Concessionaire to Contractor with Contractor's overhead & profit of ten percent (10%). Contractor shall use all reasonable efforts to secure the lowest pricing obtainable for such spare parts and shall store them under its control until Final Acceptance; provided, however, each such item shall be clearly labeled as a part designated for the DB Project. Contractor shall have the right to purchase at its own expense any additional spare parts that Concessionaire does not require Contractor to purchase and, to the extent any such additional spare parts are not used prior to Final Acceptance, shall remain the property of Contractor. Nothing contained herein shall (i) obligate Concessionaire to procure any spare parts, or (ii) be construed to excuse Contractor from the performance of any of its obligations under this Agreement in the event that any particular spare part has not been procured for the DB Project.

2.1.16 Clean-Up and Waste Disposal. Contractor shall dispose of all water, soil, rock, gravel, sand, minerals, timber and other materials developed, obtained or excavated by Contractor or Subcontractors in the course of performance of the DB Work in compliance with all Laws. Contractor shall generally keep the Project Right of Way free from accumulation of waste materials, rubbish and other debris related to the DB Work in accordance with the Standard of Care. On or before the date of Final Acceptance, Contractor shall remove from the Project Right of Way all waste materials, rubbish and other debris related to the DB Work, as well as Contractor's and Subcontractors' other tools, construction equipment, machinery testing equipment and surplus material to which Concessionaire does not hold title, and shall leave the

Project Right of Way in a neat, clean and usable condition. All cleanup and waste disposal shall be conducted in accordance with the Standard of Care, Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents. No materials shall be disposed of on or at the Project Right of Way. Contractor's obligations under this Section 2.1.16 shall include removal and disposal of all temporary Utility facilities, all temporary buildings, structures, equipment and installations associated with the DB Work which Concessionaire does not wish to retain and all Hazardous Substances associated with performance of the DB Work, but shall not include removal or disposal of Hazardous Substances for which Contractor is not responsible pursuant to Section 2.1.17.

2.1.17 Hazardous Substances.

2.1.17.1 Contractor shall be fully responsible for any Hazardous Substances brought on the Project Right of Way by any Contractor Party and for the proper handling, removal, transportation and disposal of such Hazardous Substances. Such Hazardous Substances shall be stored and used in accordance with the Standard of Care, Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents. Contractor shall minimize the use of Hazardous Substances in the construction of the DB Project and shall not utilize, or permit or cause any Subcontractor to utilize, such Hazardous Substances as are prohibited from being imported into the United States or used in the Commonwealth of Virginia under Laws. Contractor shall maintain an updated file of all material safety data sheets for all Hazardous Substances used by Contractor or any Subcontractor at the DB Project or at any construction area related to the DB Project and shall deliver an update of such file to Concessionaire no more than ten (10) Business Days after the end of each month. Contractor shall maintain an accurate record and current inventory of all Hazardous Substances that are the subject of material safety data sheets, which inventory shall identify quantities, location of storage, use and final disposition. Contractor shall implement and administer a Hazardous Substances handling program for all of its employees and all Subcontractors which shall include development of guidelines and training with respect to the proper handling, use and disposal of Hazardous Substances for which Contractor is responsible hereunder and the development, implementation and enforcement of procedures for notification of Concessionaire and appropriate Governmental Authorities about, and clean-up of, spills and other emissions of such Hazardous Substances. Under Section 16.04(a) of the Comprehensive Agreement, the Department agreed to 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, and has agreed to be identified as the generator of such Pre-Existing Hazardous Substances and Third Party Hazardous Substances in waste manifests and any other documentation submitted to transporters, disposal facilities and any Governmental Authority. Contractor will be deemed the generator of Hazardous Substances introduced to the Project Right of Way by a Contractor Party, the presence of which constitutes a Hazardous Environmental Condition within the Project Right of Way. Contractor agrees 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.

2.1.17.2 Contractor shall 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 DB Work is performed after the earlier to occur of (i) the issuance of an LNTP (but limited to the portion of the Project Right of Way on which the DB Work is performed pursuant to such LNTP) or (ii) the issuance of the Notice to Proceed; provided, that Contractor will not be responsible for, nor be deemed the generator of, Hazardous Substances introduced to the Project Right of Way by Concessionaire.

2.1.17.3 After the earlier of (i) the issuance of an LNTP (but limited to the portion of the Project Right of Way on which the DB Work is performed pursuant to such LNTP) or (ii) issuance of the Notice to Proceed, if Contractor encounters any Hazardous Environmental Condition that must be managed, treated, handled, stored, monitored, removed, transported or disposed of (collectively, "Remedial Actions"), then Contractor will promptly (within twelve (12) hours) notify Concessionaire thereof. In the case of Hazardous Environmental Conditions that are attributable to Known Pre-Existing Hazardous Substances, Contractor will proceed with such Remedial Actions in accordance with Contractor's Environmental Management Plan. In the case of all other Hazardous Environmental Conditions and to the extent not covered by the Environmental Management Plan, Contractor will develop a Remedial Action Plan setting out the scope of the Remedial Actions that Contractor 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 Concessionaire for Concessionaire's Approval (which shall be subject to receipt of the Department's approval pursuant to Section 16.01(b) of the Comprehensive Agreement), (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's approval and (iv) carrying out the Remedial Action Plan, including, as necessary, disposal of the Hazardous Substances and (v) timely informing Concessionaire of all such actions. Contractor's obligations in this Section 2.1.17.3 include fulfilling the obligations of Concessionaire under Section 16.01(c)-(e) of the Comprehensive Agreement until Substantial Completion, and Contractor shall coordinate with Concessionaire as appropriate such that Concessionaire may timely and fully perform such obligations. The Parties acknowledge that the Department has the right to inspect areas and locations that require Remedial Actions in accordance with Section 16.01(c) of the Comprehensive Agreement.

2.1.17.4 Contractor shall be entitled to claim a Scope Change Order pursuant to Section 12.5 hereof in respect of a CA Delay Event resulting from the discovery of (a) Unknown Pre-Existing Hazardous Substances or (b) Hazardous Substances spilled or otherwise placed on the Project Right of Way after the Agreement Date other than by a Contractor Party in the course of performing of the DB Work, in each case for which Contractor does not have responsibility pursuant to Section 2.1.17.1, to the extent Contractor's performance of the DB Work is materially adversely affected thereby and Contractor cannot, in the absence of impacting the Critical Path, overcome the effect thereof.

2.1.17.5 Contractor shall also be entitled to claim a Scope Change Order pursuant to Section 12.7 hereof in respect of Contractor's costs incurred in taking Remedial Actions with respect to Unknown Pre-Existing Hazardous Substances and Third Party

Hazardous Substances, the presence of either of which constitutes a Hazardous Environmental Condition, but only to the extent that Contractor's actual costs, plus costs incurred in seeking the recovery, exceed any amounts that Contractor recovers from third parties (including, but not limited to, the Virginia Petroleum Storage Tank fund). At all times during the term hereof, prior to proceeding with any such Remedial Actions Contractor shall provide cost estimates with respect to such Remedial Actions which may be paid by Concessionaire, for Concessionaire's Approval (which shall be subject to the Department's approval in accordance with Section 16.02(c) of the Comprehensive Agreement); provided, that in the case of a sudden release of any Hazardous Substances, Contractor may take all reasonable actions necessary to stabilize and contain the release without prior submission of such cost estimates.

2.1.17.6 [Reserved]

2.1.17.7 During the period of any clean-up or mitigation activities, Contractor shall continue the DB Work to the maximum extent possible on unaffected parts of the DB Project and areas of the Project Right of Way. Except as otherwise expressly provided in this Agreement, no Scope Change Order shall be issued in the event of the discovery of Hazardous Substances at the Project Right of Way.

2.1.18 Progress Reports. Contractor shall submit a Monthly Progress Report to Concessionaire together with each request for payment made pursuant to Section 4.2.1 hereof. In addition, Contractor shall provide to Concessionaire a weekly report as required by the Technical Requirements and, whenever required by Concessionaire, a general written description of the arrangements and methods which Contractor proposes to adopt for the execution of the DB Work. No significant alteration to such arrangements or methods shall be made without informing Concessionaire and the Department.

2.1.19 Taxes. Contractor shall administer and pay all sales and use taxes, gross receipts, customs duty, import duty and other taxes and contributions imposed by any taxing authority upon the sale, purchase or use of materials, supplies, equipment, services or labor incorporated in the DB Project or used in the DB Work, as well as taxes measured by Contractor's receipts hereunder or measured by wages earned by employees of Contractor or any Subcontractor (collectively, "Taxes"), and shall furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes and promptly furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes. Taxes are included within the Contract Sum, and Contractor shall not be entitled to an adjustment to the Contract Sum in the event the amount of Taxes payable by Contractor exceeds the amount estimated by Contractor, but the foregoing shall not preclude Contractor from recovering amounts payable as Taxes as otherwise expressly provided in this Agreement. For the avoidance of doubt, Concessionaire shall be solely responsible for and shall pay all real property taxes assessed on the Project Right of Way, all ad valorem taxes or personal property taxes on the DB Project and all income taxes imposed on Concessionaire's operations.

2.1.20 Employee Identification. All employees of Contractor and its Subcontractors shall be identified by the use of a distinctive badge approved by Concessionaire, which approval shall not be unreasonably withheld.

2.1.21 Adjoining Utilities. Contractor shall do all things necessary or expedient to protect any and all parallel, converging and intersecting Utilities, highways, waterways, railroads, drainage ditches, culverts, fences, walls, gates and any and all property of others from damage as a result of its performance of the DB Work hereunder. To the extent that any such property is damaged or destroyed in the course of the performance of the DB Work hereunder, Contractor shall be responsible for such damage or destruction, and Contractor shall at its own expense rebuild, restore or replace such damaged or destroyed property to a condition at least equal to the condition of such property before such damage or destruction occurred.

2.1.22 Site Security. Contractor shall be responsible for providing appropriate security for that portion of the Project Right of Way that Contractor or its Subcontractors use or occupy for purposes of performing the DB Work until Substantial Completion of the DB Work. The Parties agree that the Department shall have access to the Project Right of Way at all times but has no responsibility for site security.

2.1.23 Protection of Property. Contractor shall provide and shall require that each Subcontractor provides proper and ample protection from damage or loss to the DB Project, the Project Right of Way, materials, construction equipment and tools during its performance of the DB Work hereunder. Where ingress and egress to and from the Project Right of Way requires the traverse of public or private lands, Contractor shall limit the movement of its crews and equipment and of all Subcontractors so as to cause as little damage as possible to crops or other property and shall use all reasonable efforts to avoid marring such lands, and shall in all respects comply with all obligations of and any restrictions imposed on Concessionaire by the Project Right of Way. All surviving fences and walls which must be opened or moved during construction of the DB Project shall be replaced by Contractor. Contractor shall not be reimbursed by Concessionaire for costs associated with loss of or damage to property, whether on or off the Project Right of Way, caused by or arising in connection with the DB Work hereunder, other than to the extent contemplated as a result of Contractor's acquisition services necessary to acquire the Project Right of Way or as a result of damage caused by Concessionaire.

2.1.24 Coordination with Concessionaire and Other Contractors. Contractor shall permit Concessionaire Contractors to introduce and store materials and perform their services. Contractor shall cooperate with Concessionaire and Concessionaire Contractors to coordinate and schedule the DB Work with the work of Concessionaire Contractors working in the Project Right of Way. Contractor's obligations include fulfilling Concessionaire's coordination and scheduling obligations under the Technical Requirements in connection with the DB Work. If invited, Contractor shall attend any negotiations or meetings that Concessionaire has with a third party, including the Department, on a matter which is or shall become Contractor's responsibility hereunder, including a meeting of Contractor's Project Director, the Concessionaire's Field Representative and the Concessionaire's Project Manager with the Department, as required by Section 1.2.9(A) of the Technical Requirements, within ten (10) days after the earlier of (i) the initial LNTP issued in accordance with the Comprehensive Agreement or (ii) the Financial Close Date, to discuss issues affecting the administration of the DB Work and to implement the necessary procedures, including those relating to submittals and approvals, to facilitate the ability of the Parties to perform their obligations under this Agreement. Contractor agrees that if any such a negotiation or meeting occurs without a presence of a Contractor's representative, such event shall not constitute a breach of this

Agreement unless such events occur repeatedly due to Concessionaire's intentional exclusion of Contractor from such negotiations or meetings.

2.1.25 Transportation Management Plan. Under Section 8.12(a) of the Comprehensive Agreement, the Department is to develop, fund and implement a transportation management plan for the Project setting forth a program for traffic management and related activities to ensure safety and mobility for the traveling public on the I-95 Corridor during the DB Work Period (the "Transportation Management Plan") and is required to provide Concessionaire with a reasonable opportunity to comment on the Transportation Management Plan. Concessionaire will in turn provide Contractor with a reasonable opportunity to comment on the Transportation Management Plan and will submit, in its reasonable discretion, any Contractor's comments to the Department. In connection with the Transportation Management Plan, Contractor shall (i) develop, and implement during the DB Work Period, the Maintenance of Traffic Plan, which shall be consistent with and included as part of the Transportation Management Plan, (ii) be responsible for Concessionaire's share of public outreach for the Transportation Management Plan pursuant to the Technical Requirements and (iii) be responsible for traffic and operational analysis for lane closures, roadway configurations and detours. Contractor shall carry out any DB Work in accordance with the Transportation Management Plan.

2.1.26 Contract Documents at Project Right of Way and Electronic Document Management System. Contractor shall maintain at the Project Right of Way, on a current basis, one record copy of all of the Contract Documents, in good order and marked currently to record all changes, and a complete set of all working drawings required to be maintained for the DB Project pursuant to Laws. These shall be available upon request of Concessionaire, the Department and the Independent Engineer. In addition, Contractor shall establish and maintain, in accordance with Section 1.2.8(A) of the Technical Requirements, an electronic document management system to store and record all material documents generated on the DB Project, including those records required under Law and shall permit Concessionaire, the Department and their agents and consultants access to such document management system as required by the Technical Requirements.

2.1.27 Commissioning. Commencing as soon as practicable prior to start-up operations, but in any event in accordance with the Project Schedule, Contractor shall commission the DB Project as more specifically provided in Section 6.1 hereof.

2.1.28 Operating Manual. Not later than six (6) months before the projected Substantial Completion Date as set forth on the Project Schedule, Contractor shall submit for Concessionaire's Approval a draft of the complete equipment and system instructions and procedures for the operation and maintenance of the systems and items of plant and equipment incorporated into the DB Project as part of the DB Work. If Concessionaire does not approve the draft, it shall provide comments thereon to Contractor within thirty (30) days after receipt, and Contractor promptly shall incorporate or otherwise respond to Concessionaire's comments and submit a revised draft for Concessionaire's Approval. Such procedure shall be repeated until receipt of Concessionaire's Approval therefor, and the revised product shall be the "Operating Manual." Not later than forty-five (45) days before the projected date of Substantial Completion as set forth on the Project Schedule, Contractor shall prepare in individually numbered bound

volumes and deliver to Concessionaire ten (10) sets of such approved Operating Manual for the DB Project as well as one (1) set to the Department, and shall also provide each of Concessionaire and the Department the same in an electronic form that may be edited and revised electronically.

2.1.29 Start-up and Initial Operation. The DB Work shall include the start-up of components, calibration of controls, initial operation of the DB Project and each portion thereof, total system function and verification tests and all other start-up and initial operation functions pertaining to the DB Project.

2.1.30 Quality Management System. In accordance with the Standard of Care, Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents, Contractor shall be responsible for all quality assurance and quality control activities necessary to manage the development, design and construction of the DB Project and shall develop and provide to Concessionaire the Quality Management System Plan in accordance with this Agreement and the Technical Requirements. Contractor shall fully observe and implement, and cause all Subcontractors to fully observe and implement, the Quality Management System Plan (including the provisions thereof relating to the non-conforming work) until Final Acceptance. Contractor shall provide oversight and management of the DB Project to control the scope, quality, cost, and on-time delivery of the DB Work and if the DB Work is not being performed in compliance with the Quality Management System Plan, Contractor shall increase and improve its management and oversight efforts such that repair or replacement of non-conforming items does not require any increase in Concessionaire's oversight of the DB Project. The Parties acknowledge that, pursuant to Section 8.03(a)(ii)(C) of the Comprehensive Agreement, the Department has the right to review Contractor's Quality Management System Plan, including the right to inspect DB Work and/or activities and to verify the accuracy and adequacy of quality management documentation. Contractor agrees to provide, and cause its Subcontractors to provide, the access and assistance as the Department may reasonably require conducting such reviews. All tests, inspections and quality assurance procedures required by this Agreement, or recommended by Subcontractors, shall be in addition to, and not in lieu of, applicable Quality Management System Plan activity. Contractor shall regularly document and report to Concessionaire its compliance with the Quality Management System Plan in accordance with the procedures contained therein.

2.1.31 Public Information. Contractor will provide information to the public concerning the DB Work in accordance with the Technical Requirements. Contractor shall prepare and implement the Public Information and Communications Plan setting forth a program for public information dissemination and related activities to be implemented by Contractor during the DB Work Period in connection with the construction of the DB Project. The Public Information and Communications Plan shall meet the requirements therefor set forth in the Comprehensive Agreement and the Technical Requirements and shall be subject to Concessionaire's Approval. The Parties acknowledge that the Public Information and Communications Plan is also subject to the Department's approval in accordance with Section 8.03(a)(ii)(E) of the Comprehensive Agreement. Prior to and during the construction of the DB Project, Contractor shall assist Concessionaire with providing information to the public concerning the DB Project in accordance with the Public Information and Communications Plan.

2.1.32 Further Assurances. Contractor shall execute and deliver all further instruments and documents, and take all further action, including but not limited to assisting Concessionaire in filing a notice of commencement and a notice of completion with the appropriate state and local lien recording offices, that Concessionaire may reasonably request in order to enable Contractor to complete performance of the DB Work or to effectuate the purposes or intent of the Contract Documents.

2.2 Contractor's Assumption of Risk for Project Right of Way Conditions; No Concessionaire's Warranties for Site Information.

2.2.1 Contractor's Assumption of Risk of Project Right of Way Conditions. Concessionaire expressly disclaims any responsibility for, and Contractor expressly waives its right to seek any increase in the Contract Sum or extension to the Guaranteed Substantial Completion Date for, any conditions at or on the Project Right of Way on which DB Work is performed except as expressly provided in this Agreement.

2.2.2 No Concessionaire's Warranties for Site Information. Concessionaire makes no warranties or representations as to any surveys, data, reports or other information provided by Concessionaire, the Department or other Persons to Contractor, including the data and other information set forth in Exhibit T (Known Geotechnical Conditions) and Exhibit K (Known Pre-Existing Hazardous Substances), concerning surface or subsurface conditions, the existing condition of the roadway and other "Assets" (as defined in the Comprehensive Agreement), drainage, the presence of Utilities, Hazardous Substances, contaminated ground water, archeological, paleontological and cultural references and endangered and threatened species, affecting the Project Right of Way or surrounding locations. Without prejudice to Contractor's right to claim a Scope Change Order under Sections 12.5, 12.6 and 12.7, Contractor acknowledges that such information is for Contractor's reference only and has not been verified by Concessionaire or the Department, and that Contractor is responsible for conducting all surveys, studies and assessments as it deems appropriate for the DB Work.

2.3 Commencement of the DB Work.

2.3.1 Notice to Proceed. Except for the Early Work or as may be authorized pursuant to Section 2.3.2, Contractor shall commence performance of the entire DB Work on the date Financial Close occurs (the "Commencement Date") as specified by Concessionaire in a written notice that shall be delivered to Contractor upon Financial Close in the form set forth as Exhibit A hereto (the "Notice to Proceed"); provided, that the Commencement Date may not occur unless and until (i) Financial Close has occurred and (ii) the Department has issued the "Design Work Notice to Proceed" and "Construction Notice to Proceed" to Concessionaire under the Comprehensive Agreement. If the "Design Work Notice to Proceed" and "Construction Notice to Proceed" have not been issued by the Department prior to or upon Financial Close, the Parties agree to cooperate to fulfill the conditions to issuance of such notices to proceed by the Department and to cause the Department to issue them as promptly as possible.

2.3.2 Limited Notice to Proceed. Contractor may request that Concessionaire issue one or more Limited Notices to Proceed ("LNTP") authorizing Contractor to commence certain portions of the DB Work as set forth in this Section 2.3.2. Prior to issuance

of a LNTP, the Parties will agree upon the conditions to the issuance of such LNTP (which conditions shall include any conditions that may be agreed, with Contractor's consent not to be unreasonably withheld, between Concessionaire and the Department to the issuance of the corresponding LNTP under the Comprehensive Agreement), as well as the scope, schedule and payment terms (if applicable) for such portion of the DB Work. Contractor will deliver notice to Concessionaire upon the satisfaction of the agreed conditions to the issuance of any LNTP and Concessionaire will respond to such request, within twenty-five (25) days following receipt of such request, by delivery to Contractor of the applicable LNTP or disapproval of such request and written notice specifying in reasonable detail the reasons for such disapproval. If Concessionaire disapproves such request, Contractor shall then re-submit a revised request to Concessionaire as promptly as reasonably possible and Concessionaire will respond to such request within fourteen (14) days following the receipt of a re-submittal; provided, that in no event shall Concessionaire be obligated to issue an LNTP until and unless the Department has issued a corresponding LNTP to Concessionaire under Section 8.02 of the Comprehensive Agreement.

2.4 Standard of Performance. With respect to Contractor's performance of the DB Work, subject to the terms and conditions of this Agreement, (i) Contractor shall comply with, and shall cause the DB Work and the DB Project and all components thereof (including the design, engineering, construction, testing and start-up of the DB Project and all equipment included within the DB Project) to comply with, the Standard of Care, Laws, Applicable Standards, the Technical Requirements and the Contract Documents, (ii) all engineering and design services shall be provided in accordance with the Contract Documents, Laws, Applicable Standards, the Technical Requirements and the Standard of Care, and (iii) the DB Project shall be constructed and erected in a good and workmanlike manner in accordance with the preceding clauses (i) and (ii). Except as otherwise expressly provided in this Agreement, the standard of performance set forth in this Section 2.4 shall apply to all aspects of the DB Work, and this Section 2.4 shall be deemed to be incorporated by reference into each provision of the Contract Documents describing the DB Work, Contractor's obligations to perform the DB Work, or referring to the "requirements of this Agreement" or words of similar effect.

2.5 Compliance with Laws. Contractor shall comply with and shall cause the DB Work and the DB Project and all components thereof (including without limitation the design, engineering and construction of the DB Project) to comply with all Laws as they may be in effect at the time of Contractor's performance hereunder. Notwithstanding the foregoing, the effect of any Change in Law (excluding therefrom any change in Governmental Approvals resulting from the acts or omissions of Contractor or any Subcontractor) shall be determined under Sections 12.3, 12.5 and 12.6. In addition, Contractor shall maintain all licenses required by Law and, if the Department makes a direct payment to Contractor, comply with the requirements of the eVA Business to Government Vendor System or its successor.

2.6 Independent Engineer. The documents which govern Concessionaire's transactions with the Financing Parties for the Project may provide to the Independent Engineer certain rights of review, inspection, certification and consultation with Concessionaire concerning the Project and the DB Work in order that the Independent Engineer may regularly and completely apprise the Financing Parties of the progress and other aspects of the Project and the DB Work. Contractor shall fully and promptly cooperate with the Independent Engineer as

reasonably requested by Concessionaire. Any acceptance or comment by the Independent Engineer, the Department or the Financing Parties shall not be construed to impose on the Independent Engineer, the Department or the Financing Parties any control of any portion of the DB Work, or relieve Contractor of any of its duties, liabilities or obligations under the Contract Documents. All communications to and from the Independent Engineer regarding the DB Work shall be made through Concessionaire, except as Contractor is otherwise directed by Concessionaire.

2.7 Safety Precautions.

2.7.1 General Requirements. Contractor recognizes the importance of performing the DB Work in a safe manner so as to prevent damage, injury or loss to: (i) all individuals at the Project Right of Way, whether working or visiting; (ii) the DB Work, including materials and equipment incorporated into the DB Work or stored on-site or off-site; and (iii) all other property at the Project Right of Way or adjacent thereto. Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the DB Work. Contractor and Subcontractors shall comply with: (i) all Laws relating to safety; (ii) Contractor's Health, Safety and Security Plan; and (iii) any Concessionaire-specific safety requirements set forth in the Contract Documents, provided that such Concessionaire-specific requirements do not violate any Laws. Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the DB Work to Concessionaire's Field Representative and, to the extent mandated by Laws, to all Governmental Authorities having jurisdiction over safety-related matters involving the DB Project or the DB Work. Contractor shall, prior to commencing construction, designate a "Safety Representative" with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the DB Work. Unless otherwise required by the Contract Documents, Contractor's "Safety Representative" shall be an individual stationed at the Project Right of Way who may have responsibilities on the DB Project in addition to safety. The "Safety Representative" shall make routine daily inspections of the Project Right of Way and shall hold weekly safety meetings with Contractor's personnel, Subcontractors and others as applicable. Contractor shall provide minutes of each weekly safety meeting held by Contractor to Concessionaire within five (5) days of such meeting.

2.7.2 No Relief. Contractor's responsibility for safety under this Section 2.7 is not intended in any way to relieve Subcontractors of their own contractual and legal obligations and responsibility for: (i) complying with all Laws, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, Losses or accidents resulting from their performance of the DB Work.

2.8 Federal and State Requirements. In performing the DB Work Contractor shall comply, and cause all Subcontractors 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 V. Contractor 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. Contractor will (i) cooperate with USDOT and provide such access to the DB Project and information as USDOT may request in the exercise of USDOT's duties, rights and responsibilities in connection with the Project and (ii) upon Concessionaire's request, provide to Concessionaire data and other information regarding the DB Project to allow Concessionaire to comply with Section 5.10 of the Comprehensive Agreement. Furthermore, in accordance with Section 2.2-4311.1 of the VA. Code, Contractor hereby certifies that it does not and agrees that it will not, during the term hereof, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986. Contractor further agrees that it will require all of its Subcontractors to certify that they do not and will not knowingly employ an unauthorized alien as defined by such Act.

2.9 Ethical Standards. Within sixty (60) days after the Commencement Date, Concessionaire and Contractor shall develop and adopt written policies establishing ethical standards of conduct for Contractor's directors, officers and supervisory or management personnel in dealing with the Department and employment relations, which policies will comply with the requirements set forth in Section 25.02 of the Comprehensive Agreement, be set forth in Exhibit O hereto, and be provided by Concessionaire to the Department. Contractor shall comply with and enforce such policies. Without limiting the foregoing, Contractor further agrees: (i) no gifts, gratuities, or favors of any nature whatsoever will be given or offered by it to personnel of the Department; and (ii) it will not employ any personnel of the Department for any services during the DB Work Period without the prior written consent of the Department. If the Department determines, after investigation, that Contractor or any of its employees, representatives, or agents of any person acting in its behalf have violated this provision, Contractor may, at the discretion of the Department, be disqualified from bidding on future contracts with the Department for a period of six (6) months from the date of the Department's determination of such a violation. Any implicated employees, agents, or representatives of Contractor may be prohibited from working on any contract awarded by the Department for the period of disqualification.

2.10 Concessionaire's Right to Carry Out DB Work. If Contractor defaults or neglects to carry out the DB Work in accordance with the requirements of this Agreement or if there are defects or deficiencies in the DB Work that Contractor refuses or neglects to repair, in each case after giving effect to and without limiting Contractor's right to cure or repair or correct performance as provided in this Agreement, and Contractor fails within thirty (30) days after receipt of written notice from Concessionaire to commence and continue correction of such default, neglect, defect or deficiency with diligence and promptness, Concessionaire may, without prejudice to any other remedy Concessionaire may have, correct same or cause it to be corrected in accordance with this Agreement. In the event Concessionaire exercises its rights hereunder, an appropriate Scope Change Order shall be issued by Concessionaire deducting from the payments then or thereafter due Contractor the reasonable, documented, out-of pocket cost of correcting such default, neglect, defect or deficiency. If the payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to Concessionaire within thirty (30) days after Concessionaire issues an invoice for such amount together with supporting documentation.

2.11 Concessionaire and Department Approvals; Technical Requirements.

2.11.1 In all cases where an approval (including Concessionaire's Approval), review (including Concessionaire's Review), comment, consent, notification, determination, decision or other response (a "Response") is required to be provided hereunder, such Response will not be withheld or delayed unreasonably (it being agreed that, without affecting Contractor's other rights hereunder, if the Department withholds such corresponding Response under the Comprehensive Agreement, it shall be reasonable for Concessionaire to withhold such Response hereunder) and such determinations will be made reasonably (and not unreasonably delayed) except in cases where a different standard (such as, by way of example only, sole discretion) is specified in this Agreement, Exhibit Q or the Technical Requirements. In cases where sole discretion is specified for an approval, consent, determination or other decision, the decision will not be subject to the dispute resolution procedures hereunder; in other cases, Contractor may refer the matter to the dispute resolution process set forth in Article 19. Concessionaire will provide within fourteen (14) days after a request by Contractor its rationale (including the Department's rationale, to the extent made known to Concessionaire), in reasonable detail, for any disapproval or deemed disapproval of any matter where Concessionaire has sole discretion to approve or disapprove.

2.11.2 Subject to Section 2.12 below, if Concessionaire must submit a submittal or request made by Contractor under this Agreement to the Department for review and response more than twice due to Contractor's failure to comply with the requirements of this Agreement, Contractor shall, through Concessionaire, pay the Department its "Allocable Costs" incurred thereafter in re-reviewing any portions of such submittal or request, as required by Section 10.05(h) of the Comprehensive Agreement. If Concessionaire must submit a submittal or request made by Contractor under this Agreement more than twice due to the Department's failure to comply with the requirements of the Comprehensive Agreement, under Section 10.05(h) of the Comprehensive Agreement the Department is to pay Concessionaire its "Allocable Costs" incurred thereafter in preparing or submitting any portions of such submittal or request, and, subject to Section 2.13.3, Concessionaire shall pay over to Contractor its portion of such "Allocable Costs" solely if and to the extent received by Concessionaire from the Department.

2.11.3 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 Contractor unless the issue, condition or deficiency which gave rise to Concessionaire's disapproval reasonably relates to Concessionaire's disapproval for which notice was previously provided. Contractor is in no way obligated to incorporate Concessionaire's comments unless necessary to comply with a specific requirement of this Agreement.

2.11.4 Where the Technical Requirements impose an obligation on Concessionaire to act by or within a specified time and Contractor is obligated as part of the DB Work to fulfill such obligation on behalf of Concessionaire, Contractor shall fulfill such obligation within the time specified by the Technical Requirements, and, unless this Agreement or Exhibit Q provides otherwise with respect to a given item (including when an item is subject to Concessionaire's Review or Concessionaire's Approval), Contractor shall provide such item to the Concessionaire for its review at least four (4) days prior to the date such item must be submitted to the Department, and Concessionaire shall provide any comments at least four (4)

days prior to the date such item must be submitted to the Department. Any such review by Concessionaire, or Concessionaire's election or failure not to perform a review, will not diminish the Contractor's obligations or liabilities under this Agreement or Concessionaire's rights under this Agreement. No reference to the Technical Requirements in this Agreement is intended to obligate Contractor to perform the work that is expressly excluded from the DB Work in the Scope Document or elsewhere in this Agreement.

2.12 Department Oversight. Contractor acknowledges that pursuant to Section 10.02 of the Comprehensive Agreement, the Department has the right to oversee the Work, including the DB Work, and Contractor shall cooperate with Concessionaire and Department to facilitate the Department's conduct of such oversight of the DB Work. If at any time Concessionaire fails to perform any of its obligations in any material respect under the Comprehensive Agreement, the Department, with written notice to Concessionaire given concurrently with the increase in the Department's monitoring or as soon as practicable thereafter, is entitled, pursuant to Section 10.04(b) of the Comprehensive Agreement, to adequately and appropriately increase the level of its monitoring of the Project and Concessionaire's compliance with its obligations pursuant to the Comprehensive Agreement, until such time as Concessionaire has demonstrated to the Department's reasonable satisfaction that it will perform and is capable of performing such obligations. If such failure by Concessionaire to perform its obligations under the Comprehensive Agreement is a result of Contractor's failure to perform its obligations hereunder, then Contractor (i) will, on behalf of Concessionaire, as required by Section 10.04(b) of the Comprehensive Agreement, 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, not to exceed \$2,000,000 in the aggregate; provided, that if the increased monitoring is due to a delay in achieving Substantial Completion or Final Acceptance, Contractor will compensate the Department (through Concessionaire) for such increased monitoring solely by payment of liquidated damages pursuant to Section 7.2, and (ii) as permitted by Section 10.04 (d) of the Comprehensive Agreement, may submit a cure plan to the Department (through Concessionaire) describing specific actions Contractor will undertake to improve its performance and avoid the need for increased monitoring, which the Department may accept or reject under the Comprehensive Agreement, and if the Department accepts a cure plan, the Department has agreed under the Comprehensive Agreement not to increase its monitoring or other oversight services unless Concessionaire (or Contractor for the purposes of this Agreement) fails to diligently pursue such cure plan. In addition, Contractor shall, on behalf of Concessionaire, accommodate the Department's and FHWA's rights under Section 10.03 of the Comprehensive Agreement with respect to the DB Work, including, but not limited to, the right of access to the Project Right of Way and the right to inspect the DB Work-related records subject to and in accordance with the requirements of the Comprehensive Agreement. Notwithstanding anything to the contrary in this Agreement, this Agreement shall not impose any obligations, duties or liabilities upon the Department beyond those obligations, duties, or liabilities expressly assumed by the Department under the Comprehensive Agreement. Further, nothing in this Agreement shall create any direct cause of action by Contractor against the Department, except to the extent this Agreement is assigned to the Department pursuant to Article 16.

2.13 Pay-if-Paid Provisions; Department Relief.

2.13.1 Whenever a provision in this Agreement provides that Contractor shall only be entitled to compensation in the event and only to the extent (or words of similar effect) that Concessionaire actually receives the corresponding compensation under the Comprehensive Agreement, or that Contractor's entitlement to compensation shall be conditional upon and only to the extent (or words of similar effect) that Concessionaire receives the corresponding compensation under the Comprehensive Agreement, or other similar language providing that a payment to Contractor is conditional upon receipt of the relevant amount by Concessionaire from any other Person, then payment of the amount in question by the Department to Concessionaire pursuant to the Comprehensive Agreement will be a strict condition precedent to the obligation of Concessionaire to make a payment to Contractor under the relevant provision of this Agreement.

2.13.2 In addition, whenever a provision in this Agreement provides that Contractor shall only be entitled (or words of similar effect) to relief if the Department provides Concessionaire with the corresponding relief under the Comprehensive Agreement, or that Contractor's entitlement (or words of similar effect) to relief shall be conditional upon Concessionaire's receipt of the corresponding relief under the Comprehensive Agreement, then Concessionaire's receipt of the corresponding relief in question from the Department pursuant to the Comprehensive Agreement will be a strict condition precedent to the obligation of Concessionaire to grant relief to Contractor under the relevant provision of this Agreement.

2.13.3 Notwithstanding the provisions of Sections 2.13.1 and 2.13.2, if Concessionaire's failure to receive payment or other relief (including approvals and consents) to which it is otherwise entitled under the Comprehensive Agreement (and to which Contractor is entitled hereunder) is solely a result of Concessionaire's failure to comply with its obligations under this Agreement and the Comprehensive Agreement that is not attributable to Contractor, Contractor will be entitled to such payment or other relief from Concessionaire hereunder that Contractor would be otherwise entitled hereunder but for such Concessionaire's failure to so comply.

2.14 Flow-Down from Department to Contractor. Subject in each case to Sections 12.14 and 12.15, Concessionaire shall diligently and in good faith (a) seek any approvals, consents, determinations and other responses from the Department under the Comprehensive Agreement which correspond with any such approvals, consents, determinations and other responses being requested by Contractor under this Agreement, (b) seek any compensation, time extensions and other relief from the Department under the Comprehensive Agreement which correspond with any such compensation, time extension and other relief being requested by Contractor under this Agreement and (c) pass through to Contractor under this Agreement the benefit of any approvals, consents, determinations and other responses, and any compensation, time extensions and other relief which it actually obtains from the Department under the Comprehensive Agreement.

ARTICLE 3

SUBCONTRACTS

3.1 Project Subcontractors. Contractor may enter into Subcontracts for discrete portions of the DB Work, but may not subcontract the entire DB Work. The identity of vendors supplying the equipment specified in Exhibit S shall require Concessionaire's Approval, not to be unreasonably withheld. Contractor will not enter into any Subcontract 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).

3.2 Payments to Subcontractors. From and after the Commencement Date, Contractor shall be solely responsible for paying each Subcontractor and any other Person to whom any amount is due from Contractor for services, equipment, materials or supplies in connection with the DB Project. Pursuant to VA. Code § 2.2-4354, Contractor agrees that, within seven (7) days following receipt of monies from Concessionaire for DB Work performed by any Subcontractor, Contractor shall either: (a) pay the Subcontractor for the proportionate share of the total payment received from Concessionaire attributable to the DB Work performed by the Subcontractor (excluding contractual retainage); or (b) notify Concessionaire and Subcontractor, in writing, of Contractor's intention to withhold all or a part of the Subcontractor's payment, specifying the reason for the non-payment. Contractor also agrees that it shall include in all of its Subcontracts a provision that: (a) obligates Contractor to pay interest to Subcontractors on all amounts owed by Contractor that remain unpaid after seven (7) days following receipt of monies from Concessionaire for DB Work performed by any Subcontractor, except for amounts withheld as allowed in this Section 3.2; (b) states, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."; and (c) obligates each Subcontractor to include or otherwise be subject to the same payment and interest requirements as specified in this Section 3.2 with respect to each lower-tier Subcontractor. Contractor's obligations to pay an interest charge to a Subcontractor shall not be construed to be an obligation of Concessionaire, nor shall any modification to this Agreement be allowed for the purpose of providing reimbursement for the interest charge. Cost reimbursement Claims shall not include any amount for reimbursement for the interest charge.

3.3 Subcontractor Warranties. Subject to Section 10.1.5, Contractor shall, for the protection of Concessionaire and the Department, obtain from all Subcontractors guarantees and warranties on all machinery, equipment, services, materials, supplies and other items used and installed hereunder, and such guarantees and warranties shall not be amended, modified or otherwise discharged without the prior written consent of Concessionaire. Contractor shall use Commercially Reasonable Efforts to cause such guarantees and warranties from Subcontractors having Subcontracts for amounts in excess of \$500,000 to cover periods of not less than two (2) years from the date of Substantial Completion and to include parts, shipping, service and labor for all warranty repairs with respect thereto. Contractor shall enforce guarantees and warranties to the fullest extent thereof on behalf of Concessionaire and the Department until expiration of the Warranty Period. Subject to Section 10.1.5, at Concessionaire's request or, if later, upon the

expiration of the Warranty Period, Contractor shall assign to Concessionaire or, as directed by Concessionaire or the Department, all guarantees and warranties of all Subcontractors then remaining in effect; provided, however, that (i) such assignment shall not relieve Contractor of its warranty obligations under the Contract Documents and (ii) Contractor shall have the prior right to enforce the guarantees and warranties of Subcontractors to the extent necessary to enforce any claims of Contractor against such Subcontractor and to assure satisfaction of Contractor's warranty obligations to Concessionaire under the Contract Documents. Neither Contractor, nor any Subcontractor or any Person under Contractor's control, shall take any action which could release, void, impair or waive any warranties or guarantees on equipment, materials or services that it procures from others.

3.4 No Privity. Concessionaire shall not be deemed by virtue of this Agreement to have any contractual obligation to or relationship with any Subcontractor.

3.5 Subcontracts. In addition to the requirements set forth in Section 3.2, each Subcontract that Contractor executes for the performance of the DB Work will:

(i) include a provision requiring the Subcontractor to maintain all licenses required by Law and, if the Department is to make a direct payment to such Subcontractor, comply with the requirements of the eVA Business to Government Vendor System or its successor;

(ii) contain or incorporate by reference the essential terms of this Agreement;

(iii) provide that such Subcontract may be freely assigned to Concessionaire upon the request of Concessionaire following termination of this Agreement or to the Department upon the request of the Department if the Department assumes Concessionaire's rights and obligations under this Agreement as described in Section 16.2 hereof; and

(iv) name the Department as third-party beneficiaries of all Subcontractor's representations and warranties contained in such Subcontract; provided, that the Department has agreed under the Comprehensive Agreement that it will only exercise its rights under such representations and warranties only so long as Contractor, Concessionaire or any Financing Party is not pursuing remedies under such Subcontract.

3.6 Review and Approval not Relief of Contractor's Liability. Concessionaire's Review and Concessionaire's Approval of the identity of vendors supplying equipment on Exhibit S shall not relieve Contractor of any of its duties, liabilities or obligations under the Contract Documents. Any inspection, review or approval by Concessionaire or any other Person permitted under the Contract Documents of any portion of the DB Work or of any DB Work in progress by Contractor or Subcontractors shall not relieve Contractor of any duties, liabilities or obligations under the Contract Documents.

ARTICLE 4

PRICE AND PAYMENT

4.1 Contract Sum and Allowances.

4.1.1 Contract Sum. As consideration to Contractor for the full and complete performance of the DB Work in accordance with the terms hereof and all costs incurred in connection therewith, Concessionaire shall pay, and Contractor shall accept, a firm, fixed-price, lump sum equal to Six hundred ninety one million, one hundred forty eight thousand US Dollars (\$691,148,000), to be paid in installments as set forth in Section 4.2 hereof (such amount, as it may be adjusted from time to time in accordance with this Agreement, herein referred to as the “Contract Sum”). The Contract Sum (i) includes the ROW Allowance and payments from such allowance shall be made by Concessionaire as provided in Section 2.1.6 hereof, (ii) includes the Law Enforcement Allowance, and payments from such allowance shall be made by Concessionaire as provided in Section 4.1.4, and (iii) excludes amounts described in Section 4.1.2 hereof and other amounts expressly stated to be payable by Concessionaire under this Agreement. The Public Funds Amount described in Section 4.10 hereof will be utilized to pay a portion of the Contract Sum for specific elements of the DB Work as set forth on Exhibit EE. Contractor agrees that, subject to Section 2.13.3, any failure of Concessionaire to pay that portion of any Scheduled Payment due to Contractor under this Agreement for the elements of the DB Work to which such Public Funds Amount funds have been allocated (as set forth on Exhibit EE) that was to be paid with the proceeds of the Public Funds Amount shall not constitute a breach or default by Concessionaire to the extent resulting from the failure by the Department to make the Public Funds Amount available to Concessionaire at the time and in the amounts set forth in the Comprehensive Agreement and Exhibit R; provided, however, that Contractor may nevertheless suspend the applicable portion of the DB Work until payment is made, which suspension shall be treated as a suspension by Concessionaire entitling Contractor to claim a Scope Change Order under Section 15.1.1 hereof. Concessionaire agrees to pursue all rights it may have under the Comprehensive Agreement as a result of such Department’s failure and to provide Contractor with the benefit of any relief obtained by Concessionaire thereunder. Other than as expressly specified in this Agreement, the Contract Sum is not subject to adjustment for any reason other than pursuant to a Scope Change authorized by Concessionaire or to which Contractor is entitled to claim as specified herein.

4.1.2 Allowances for DB Work.

4.1.2.1 The Parties acknowledge that the Contract Sum includes certain agreed quantities set forth in the Technical Requirements (the “Baseline Quantities”) and associated unit prices and markups for (i) concrete sign foundations, (ii) electric service panel feeds, and (iii) undercut excavation (collectively, the “Allowance Items”) as set forth in the Technical Requirements. If the actual quantities of the Allowance Items in the DB Work exceed the Baseline Quantities, Contractor will be entitled to payment by 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 Concessionaire to Contractor will not exceed \$15,000,000 US Dollars.

4.1.2.2 Contractor will perform landscaping work only if and to the extent directed or approved by Concessionaire and the Department, and all such landscaping work performed by Contractor 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 Contractor will not exceed \$2,000,000 US Dollars, unless otherwise directed by Concessionaire.

4.1.2.3 Concessionaire will pay Contractor for fuel price adjustments and certain asphalt price adjustments for paving operations as described in Section 2.1.14.2 hereof and as set forth in the Technical Requirements.

4.1.2.4 Under the Comprehensive Agreement, the Department has paid or will pay for the acquisition of stream and wetland credits in accordance with the Technical Requirements. Contractor will perform stream restoration construction activities in accordance with the Technical Requirements.

4.1.3 The Parties acknowledge that the Department has agreed pursuant to Section 8.16 of the Comprehensive Agreement to pay to Concessionaire the amounts described in Sections 4.1.2.1 through 4.1.2.3 above for further payment to Contractor. Subject to Section 2.13.3, payment by Concessionaire to Contractor of the amounts described in Sections 4.1.2.1 through 4.1.2.3 above shall be subject to prior receipt thereof by Concessionaire from the Department under the Comprehensive Agreement and Concessionaire shall have no liability to Contractor for any failure of the Department to pay such amounts as and when due under the Comprehensive Agreement. Contractor will timely prepare all supporting documentation necessary to be presented by Concessionaire to the Department under the Comprehensive Agreement in order to claim any of the amounts described in Sections 4.1.2.1 through 4.1.2.3 above.

4.1.4 Allowance for Law Enforcement Utilization. The Parties acknowledge that the Contract Sum includes an estimated budget of \$1,392,300 (the "Law Enforcement Allowance") to be used by Contractor for the cost of law enforcement through Substantial Completion, plus an 18% markup on the Law Enforcement Allowance. If the aggregate cost (excluding the 18% markup) of law enforcement used by Contractor until Substantial Completion is less than the Law Enforcement Allowance, Contractor will rebate such difference to Concessionaire plus an 18% markup, and Concessionaire will pay over such amount to the Department pursuant to Section 1.8.8 of the Technical Requirements. If the aggregate cost of law enforcement as of Substantial Completion exceeds the Law Enforcement Allowance, Concessionaire will, subject to Section 2.13.3, upon receipt of payment therefor from the Department, reimburse Contractor for such excess cost above the Law Enforcement Allowance, without a markup. The law enforcement utilization in lieu of using flag persons will be excluded from the total cost. It is understood by all parties that Contractor will work with and comply with the direction of Concessionaire and the Department to determine the use of law enforcement.

4.2 Payment Schedule. Other than the first installment of the Contract Sum, which is payable on the Commencement Date and shall not be subject to the conditions for payment set forth in this Section 4.2, the Contract Sum shall be paid by Concessionaire to Contractor in

monthly installments (“Scheduled Payments”) based on percentage completion of the DB Work (other than Scheduled Payments designated as “Mobilization Payments” on the Payment and Values Schedule, which shall be payable at the times specified in the Payment and Values Schedule), subject to the Maximum Cumulative Drawdown Schedule and in accordance with the Payment and Values Schedule, as may be adjusted from time to time pursuant to the terms of this Agreement. The Parties agree that any Early Work that has been performed and invoiced but not paid prior to the Agreement Date shall be payable at Financial Close. In addition, the Parties agree that Contractor’s first request for payment hereunder may include an invoice for the full amount that would have been due under the Interim Agreement for any Early Work performed but not invoiced prior to the Agreement Date.

4.2.1 Request for Payment. By no later than the twenty-third (23rd) day of each month, Contractor shall submit to Concessionaire its request for payment consisting of (a) an invoice in the amount of the applicable Scheduled Payment; (b) a certificate signed by the Contractor that Contractor has achieved the appropriate percentage of completion required for such Scheduled Payment in accordance with the Payment and Values Schedule and attaching reasonable documentary evidence of the performance of the relevant portion of the DB Work sufficient for Concessionaire and the Independent Engineer to reasonably determine that such portion of the DB Work has been properly performed to include at a minimum a current statused cost-loaded baseline schedule with activities sorted and subtotaled at the Payment and Values Schedule level; (c) copies of the lien waivers specified in Section 4.5 or a bond meeting the requirements set forth in Section 4.5 with respect to any lien not waived; and (d) all certifications, affidavits and information as required by Section 4.10. Notwithstanding anything to the contrary contained herein, Concessionaire shall not be obligated to make any payment to the extent that such payment, when added to all other previous payments, exceeds the total amount designated as the “Maximum Cumulative Contract Sum Payment” for the corresponding month on the Maximum Cumulative Drawdown Schedule or exceeds the total cumulative physical percent complete of the DB Work as derived by the progress schedule. Also, with each payment request, Contractor shall furnish to Concessionaire all cost details relating to such payment request as necessary for Concessionaire to satisfy the requirements of the Financing Parties and the legal requirements of all Governmental Authorities. Such information shall be subject to audit in accordance with Section 20.2 hereof. Concessionaire and Contractor shall use all reasonable efforts to cooperate with each other to cause each request for payment to be reviewed and certified by the end of each calendar month. Contractor agrees that no information shall be submitted to the Independent Engineer or the Department under this Section 4.2.1 without its first being submitted to Concessionaire for Concessionaire’s Review and Concessionaire’s Approval.

4.2.2 Conditions to Scheduled Payments. Subject to the terms of this Agreement, and provided that Concessionaire has received Contractor’s request for payment in accordance with Section 4.2.1 above, Concessionaire shall make, or cause to be made, the undisputed portion of the corresponding Scheduled Payment to Contractor within thirty (30) days after Concessionaire received such request for payment, such payment to comply with VA. Code § 2.2, *et seq.*, which addresses prompt payment; provided, however, that Concessionaire may withhold all or part of any Scheduled Payment upon the occurrence of any of the following events, and provided, further, that, other than upon the occurrence of an event described in (i), (ii)(B), (vii) and (viii) below, Concessionaire will only withhold such portion of the Scheduled

Payment necessary to protect itself, and upon the occurrence of the event described in (vi) below, Concessionaire will only withhold such portion of the Scheduled Payment not approved by the Independent Engineer:

- (i) Contractor's request for payment does not meet the requirements of Section 4.2.1(a), (b) and (d) hereof;
- (ii) Contractor has not supplied Concessionaire with (A) the certification and the interim lien waivers as described in Section 4.5 hereof or (B) the Monthly Progress Report for the month for which the request for payment has been made as described in Section 2.1.18 hereof;
- (iii) one or more third parties have filed a mechanics' lien or similar Claim against Concessionaire or the Project or Project Right of Way resulting from the actions or inactions of Contractor, any Subcontractor, or any person for whom Contractor is legally responsible and Contractor has not furnished in respect thereof a bond meeting the requirements of the penultimate sentence of Section 4.5 hereof;
- (iv) Contractor has failed to make timely payments to Subcontractors as required under applicable Subcontracts and Law; provided, however, that the foregoing shall not apply if Concessionaire has wrongfully withheld payments due to Contractor;
- (v) Contractor fails to pay any amounts owing to Concessionaire under the Contract Documents;
- (vi) the Independent Engineer does not approve the request for payment;
- (vii) any event which would permit a Termination For Cause of this Agreement by Concessionaire has occurred and is continuing beyond any applicable cure period; or
- (viii) this Agreement is terminated before the Final Payment is made, in which event Concessionaire shall not be obligated to make further Scheduled Payments or other payments except in accordance with Section 4.4 or Section 15.2 hereof, as applicable.

4.2.3 Deferral of Scheduled Payments. Contractor shall re-invoice at the next regular monthly invoicing date any Scheduled Payment or portion thereof withheld under Section 4.2.2 once the cause for such withholding has been removed or resolved, and Concessionaire shall make such Scheduled Payment, other than any portion thereof in dispute, without interest, if all the conditions to the Scheduled Payment have been satisfied. Contractor shall continue to perform the DB Work, notwithstanding a withholding by Concessionaire under Section 4.2.2.

4.2.4 Interest on Late Payments. Any undisputed amount not paid when due shall bear interest at the Bank Rate from the date such payment is due until the date it is actually paid. Any disputed amount which is ultimately determined to be payable shall bear interest at the Bank Rate from the date of such determination until the date it is actually paid.

4.3 Final Payment. Concessionaire shall pay the unpaid balance of the Contract Sum (the "Final Payment"), within thirty (30) days after the latest to occur of (i) Final Acceptance, (ii) receipt by Concessionaire of a final list and summary of the DB Work performed by all Subcontractors, the amount due to each Subcontractor, and certification by Contractor that all undisputed amounts due to Subcontractors have been paid in full, (iii) receipt by Concessionaire of a final lien waiver, in the form of Exhibit B, of all liens that Contractor may have against Concessionaire, the Project and the Project Right of Way, (iv) receipt by Concessionaire from Contractor of final lien waivers in the form of Exhibit C (or, solely in the case of vendors providing materials or equipment valued at less than \$50,000 in the aggregate, other evidence reasonably satisfactory to Concessionaire demonstrating that such vendor has waived or is not entitled to place any lien on any part of the Project or the Project Right of Way) from each Subcontractor with a Subcontract of more than \$50,000 in value (and from such other Subcontractors as may be necessary such that the aggregate value of all Subcontracts for which a final release and waiver has not been obtained does not exceed \$1,000,000) or, if Contractor is unable to obtain all such waivers, a letter of credit or bond that has received Concessionaire's Approval to protect Concessionaire, the Department, the Project and the Project Right of Way from any and all Claims made on account of such liens, and (v) the satisfaction of all other conditions to a Scheduled Payment contained in this Agreement or to which Contractor has otherwise agreed. Concessionaire may withhold from the Final Payment the sum of (x) one hundred fifty percent (150%) of the amount reasonably estimated by Concessionaire to cover the costs of causing the DB Project to reach Final Acceptance if not achieved by the Guaranteed Final Acceptance Date, plus (y) the unpaid amount of all Subcontracts for which a final release and waiver has not been obtained or for which Contractor has not provided a satisfactory payment bond to protect the Project and Concessionaire. Concessionaire shall pay over to Contractor the relevant portions of such withheld amount when the DB Work required to achieve Final Acceptance has been completed (less Concessionaire's cost of completing such DB Work) and when the statutory period by which any liens may be created has expired without such liens having been created.

4.4 Termination Payment. Upon a termination of this Agreement pursuant to Section 15.3 hereof, Contractor shall be entitled to receive a termination payment (the "Termination Payment") equal to the sum of (i) that portion of the Contract Sum, which is due and payable to Contractor by Concessionaire and applicable to the DB Work completed up to the date of termination and which has not previously been paid to Contractor, (ii) the direct, out-of-pocket costs reasonably incurred by Contractor in withdrawing its equipment and personnel from the Project Right of Way and in otherwise demobilizing, and (iii) the direct, out-of-pocket costs reasonably incurred by Contractor in terminating contracts with Subcontractors. Representatives of Concessionaire and Contractor shall determine the Contract Sum amount referred to in clause (i) above in accordance with the Payment and Values Schedule, and Contractor shall document in detail the costs claimed under clause (ii) above to Concessionaire's reasonable satisfaction and shall supply Concessionaire with copies of the Subcontractor invoices covering amounts claimed under clause (iii) above. Contractor shall submit an invoice to Concessionaire for the

Termination Payment with the supporting information and documents referred to above, and Concessionaire shall pay such invoice within thirty (30) days after its receipt of same subject to the provisions of this Section 4.4 and unless it disputes certain elements thereof, in which event only the undisputed portion of the Termination Payment need be made within such 30-day period and the dispute over the remainder of the claimed Termination Payment may be submitted to the appropriate dispute resolution process set forth in Article 19. The Termination Payment shall be subject to offset for amounts payable by Contractor to Concessionaire. As a condition precedent to receiving the Termination Payment, Contractor shall comply with all the provisions of Section 15.6 hereof. Payment of the Termination Payment shall be the sole and exclusive liability of Concessionaire, and the sole and exclusive remedy of Contractor, with respect to termination of this Agreement pursuant to Section 15.3 hereof, but it will not affect Contractor's right to receive amounts otherwise due and unpaid hereunder prior to termination. In no event shall Concessionaire have any further liability to Contractor in any such event for actual, incidental, consequential or other damages, notwithstanding the actual amount of damages that Contractor may have sustained in connection with a termination pursuant to Section 15.3 hereof. Calculation of the Termination Payment has been agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of such damages Contractor will actually sustain in the event of a termination of the DB Work pursuant to Section 15.3 hereof, and Concessionaire and Contractor agree that the calculation of the Termination Payment is reasonable.

4.5 All Payments Subject to Release of Liens. At the time of each Scheduled Payment hereunder, Contractor shall (a) certify to Concessionaire that the DB 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, are, to the extent of the most recent payment received by Contractor, free from any and all Claims, liens, security interests or encumbrances in the nature of mechanics', labor or materialmen's liens or otherwise, arising out of or in connection with performance by Contractor, or any Subcontractor, of the DB Work, and (b) provide an interim lien waiver, in the form of Exhibit D hereto (or, solely in the case of vendors providing materials or equipment valued at less than \$50,000 in the aggregate, other evidence reasonably satisfactory to Concessionaire demonstrating that such vendor has waived or is not entitled to place any lien on any part of the Project or the Project Right of Way), of Contractor's lien Claims, to the extent of the most recent payment received by Contractor, and interim lien waivers, in the form of Exhibit E hereto, from each Subcontractor with a Subcontract in excess of \$50,000, to the extent of the most recent payment received by Contractor, as are necessary to support Contractor's certificate. If any Claim, lien, security interest or encumbrance is filed or notification of withholding money for labor or material furnished under this Agreement is served on Concessionaire, the Department or any Financing Party, Concessionaire may withhold from any Scheduled Payment or other amount payable to Contractor under this Agreement or otherwise, an amount sufficient to discharge any or all such liens or Claims, unless Contractor shall furnish a bond in form, substance and amount reasonably satisfactory to Concessionaire, the Department and the Financing Parties to protect Concessionaire, the Project and the Project Right of Way against such liens or Claims, and, after thirty (30) days from the time such lien or Claim is made, unless Contractor shall have furnished a bond as described above, Concessionaire may discharge such lien or Claim with the moneys withheld, whereupon for purposes of this Agreement such moneys shall be deemed to have been paid to Contractor hereunder. In addition, Contractor shall deliver to Concessionaire a final release and waiver of liens, in the

form of Exhibit C hereto, from each Subcontractor with a Subcontract in excess of \$50,000 on the payment date next following the date on which final payment to such Subcontractor is made.

4.6 Payment or Use Not Acceptance. No Scheduled Payment or other payment to Contractor or any use of the DB Project by Concessionaire shall alone constitute an acceptance of any of the DB Work or relieve Contractor of any of its obligations or liabilities with respect thereto.

4.7 Set-Off. Concessionaire may deduct and set-off against any part of the balance due or to become due to Contractor under this Agreement, any amounts due from Contractor to Concessionaire under or in connection with this Agreement, including any Late Completion Payment and Lane Closure Payment due or to become due from Contractor to Concessionaire pursuant to Article 7.

4.8 Guaranty. Contractor shall cause the Guarantor to execute and deliver a guaranty in favor of Concessionaire in the form of Exhibit F hereto (the "Guaranty") as a security for all obligations of Contractor hereunder. Such Guaranty must be provided by no later than the Agreement Date and must be assignable by Concessionaire to the Department, with rights to draw upon or exercise other remedies thereunder if the Department succeeds to the position of Concessionaire under this Agreement.

4.9 Letter of Credit. On or before the Financial Close Date, Contractor shall provide Concessionaire with a Letter of Credit in the form of Exhibit H hereto in an amount equal to seven-and-one-half percent (7.5%) of the Contract Sum as additional security for Contractor's performance of its obligations hereunder. Upon Substantial Completion, the amount of the Letter of Credit shall be adjusted to an amount equal to three percent (3%) of the Contract Sum, and be subject to draw by Concessionaire for the first two (2) years of the Warranty Period. If any General Warranty Claims remain unresolved as of the date the Letter of Credit (or applicable portion thereof) is otherwise permitted to expire pursuant to the preceding sentence, Contractor shall cause the Letter of Credit (or applicable portion thereof) to remain in effect through the date of resolution of such General Warranty Claims; provided that the amount of the Letter of Credit (or applicable portion thereof) shall be reduced following the end of the first two (2) years of the applicable Warranty Period to an amount equal to one hundred fifty percent (150%) of the total amount of such outstanding Claims. The Letter of Credit will be assignable by Concessionaire to the Department, with rights to draw upon or exercise other remedies thereunder if the Department succeeds to the position of Concessionaire under this Agreement. The items on Concessionaire's Punch List shall be completed by Contractor within sixty (60) days after the Guaranteed Final Acceptance Date, and Concessionaire may draw on the Letter of Credit and use the proceeds of such drawing to provide for the prompt completion of the items remaining on Concessionaire's Punch List after such sixty (60)-day period. In addition, if the items on Concessionaire's Punch List have not been completed by Contractor within the time set forth in Section 17.08(b)(ii) of the Comprehensive Agreement, Concessionaire will draw on the Letter of Credit and use the proceeds of such drawing to provide for the prompt completion of the remaining items on Concessionaire's Punch List if the Department so directs.

For so long as Contractor is obligated to maintain the Letter of Credit not later than thirty (30) days prior to the stated expiration date of the Letter of Credit, Contractor shall renew, or

cause the renewal of, outstanding Letter of Credit, or replace, or cause the replacement of, such Letter of Credit with one or more replacement Letters of Credit having a stated amount equal to that of the Letter of Credit being renewed or replaced (or in such lesser amount as may then be required under this Agreement). For so long as Contractor is obligated to maintain the Letter of Credit, in the event (i) the issuer of a Letter of Credit shall fail to meet the requirements of clause (b) of the definition of the "Letter of Credit" hereunder or (ii) an issuer of a Letter of Credit shall fail to honor the beneficiary's properly documented request to draw on an outstanding Letter of Credit, then within five (5) Business Days thereafter Contractor shall provide a substitute Letter of Credit from an issuer other than the bank that has failed to honor the outstanding Letter of Credit; provided, that if the issuer of a Letter of Credit fails to maintain the ratings specified in clause (c) of the definition of the "Letter of Credit" hereunder, within fifteen (15) days thereafter Contractor shall provide a substitute Letter of Credit from an issuer other than the bank that has been downgraded. If Concessionaire does not receive a replacement Letter of Credit from an issuer within the applicable time specified in either of the two preceding sentences, it may draw on the full available amount of the Letter of Credit. Amounts drawn in such circumstances shall be held directly by Concessionaire (or the Department, as applicable) and shall be available to be applied by Concessionaire or the Department under the conditions set forth in the Letter of Credit. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing or otherwise administering a Letter of Credit shall be borne by Contractor.

4.10 Public Funds Amount. The Department has agreed, pursuant to Section 7.02(a) of the Comprehensive Agreement, to provide to Concessionaire payments of the Public Funds Amount in accordance with the terms set forth in Exhibit R. The Public Funds Amount may be adjusted pursuant to Section 7.03(b) of the Comprehensive Agreement and will be utilized by Concessionaire to pay a portion of the Contract Sum in accordance with this Agreement. For any month in which the Public Funds Amount will be utilized to pay a portion of the Contract Sum, Contractor shall provide with its request for payment under Section 4.2.1 all necessary certifications, affidavits and information required by Exhibit R for the disbursement of the Public Funds Amount from the Department (or the trustee) to the Concessionaire under the Comprehensive Agreement.

ARTICLE 5

CONCESSIONAIRE'S OBLIGATIONS

5.1 Representatives. Concessionaire shall designate a representative (the "Concessionaire's Project Manager") to administer the Contract Documents on behalf of Concessionaire. Concessionaire's Project Manager shall have the authority to (a) issue Concessionaire's instructions and other communications to Contractor, (b) determine achievement of milestones under the Payment and Values Schedule, (c) issue Concessionaire's determination regarding Substantial Completion, Final Acceptance, the Contractor's Punch List and the Concessionaire's Punch List, and (d) execute Proposal Requests and Scope Change Orders. Concessionaire's Project Manager shall be the recipient of notices and other written communications from Contractor under the Contract Documents. In furtherance of his/her responsibilities described hereunder, Concessionaire's Project Manager may conduct observations and inspections of the DB Project throughout design, procurement and construction,

provided that no such observations or inspections shall relieve Contractor of any of its obligations under the Contract Documents. Concessionaire shall also designate a representative to observe the DB Work on the Project Right of Way ("Concessionaire's Field Representative"). Concessionaire's Field Representative shall have the right to be present at the Project Right of Way at all times, to occupy the field office of Concessionaire at the Project Right of Way and to participate in weekly DB Project status meetings conducted by Contractor. Concessionaire's Field Representative shall have the right to observe and inspect the progress of procurement and construction of the DB Project, and may offer advice to Contractor about the conformance of the DB Work with the Contract Documents. Contractor shall notify Concessionaire's Field Representative before commencing any significant items of construction for the DB Project. However, Concessionaire's Field Representative shall not have the authority to make decisions or give instructions binding upon Concessionaire, except to the extent expressly authorized by Concessionaire in writing. In the event Concessionaire employs or designates a different Concessionaire's Project Manager or Concessionaire's Field Representative, Concessionaire shall give Contractor written notice of the identity of the new Concessionaire's Project Manager or Concessionaire's Field Representative. Concessionaire's Project Manager or Concessionaire's Field Representative may delegate any or all of his/her authority to one or more delegates, but no such delegation shall be effective unless made in a written instrument from him/her delivered to Contractor naming the delegate, his/her tenure and the extent of his/her authority. In addition, Concessionaire shall have the right to retain one or more independent consultants to monitor and inspect the DB Work at the Project Right of Way or specific portions of the DB Work.

5.2 Project Right of Way; Real Estate Rights. Concessionaire shall furnish all Department Existing ROW and Real Estate Rights that are provided to Concessionaire from the Department under the Comprehensive Agreement, such Department Existing ROW and Real Estate Rights to be made available to Contractor by the later of the Agreement Date or the Commencement Date.

5.3 Governmental Approvals. Concessionaire shall cooperate with Contractor in connection with Contractor's efforts to obtain the Governmental Approvals that are designated as Contractor's responsibility hereunder.

5.4 Payments of Contract Sum. Concessionaire shall make all undisputed payments of the Contract Sum due to Contractor in accordance with Article 4.

5.5 Start-Up Personnel. Concessionaire shall engage the OS&S Contractor to provide all necessary start-up personnel for Commissioning and testing of the DB Work, all in accordance with the Performance Testing and Commissioning Plan and Program.

5.6 Hazardous Substances. The Parties acknowledge that pursuant to Section 16.02 of the Comprehensive Agreement, the Department (a) has assumed, to the extent permitted by Law, responsibility for third party claims against "Concessionaire Parties" (as defined under the Comprehensive Agreement), including Contractor, 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 or relating 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” (as defined under the Comprehensive Agreement) and (b) has agreed to pay Concessionaire, to the extent permitted by Law, its “Allocable Costs” for Remedial Actions with respect to Unknown Pre-Existing Hazardous Substances and Third Party Hazardous Substances, the presence of either of which constitutes a Hazardous Environmental Condition, and Concessionaire shall, pursuant to Sections 2.1.17.5 and 12.7 hereof, make available to Contractor any relief provided by the Department to Concessionaire under Section 16.02 of the Comprehensive Agreement. Concessionaire shall not be considered in breach of this Agreement in the event of the discovery of Unknown Pre-Existing Hazardous Substances and Third Party Hazardous Substances, the presence of either of which constitutes a Hazardous Environmental Condition, so long as it is using Commercially Reasonable Efforts to pursue its rights under the Comprehensive Agreement with respect thereto. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the amount of any Claim to be made against the Department pursuant to the Comprehensive Agreement as a consequence of the discovery of Unknown Pre-Existing Hazardous Substances or Third Party Hazardous Substances, the presence of either of which constitutes a Hazardous Environmental Condition.

5.7 Comprehensive Agreement. Concessionaire shall perform, or cause Concessionaire Contractors to perform, its specified obligations under the Comprehensive Agreement to the extent such obligations are not required to be performed by Contractor hereunder and will use Commercially Reasonable Efforts to include Contractor where appropriate in dealings with the Department to the extent permitted by the Department.

5.8 Scope Change Order. In the event Concessionaire initiates and authorizes a Scope Change Order and the forecasted cost to carry out such Scope Change Order exceeds the amount of Concessionaire’s remaining overrun contingency built in to the financial model approved by the Financing Parties as of Financial Close Date, Concessionaire shall reasonably demonstrate to Contractor that it has sufficient funds to pay for such Scope Change Order.

ARTICLE 6

COMMISSIONING, COMPLETION AND ACCEPTANCE OF DB PROJECT

6.1 DB Project Commissioning. At least ninety (90) days before Commissioning of the DB Project is scheduled to begin, Contractor shall propose, for Concessionaire’s Approval and the Independent Engineer’s review and acceptance, a Performance Testing and Commissioning Plan and Program, including a Commissioning schedule, an organization chart of Contractor’s personnel conducting the Commissioning, and a comprehensive procedure for the review of the Operating Manual and the application of its contents to the DB Project systems. Concessionaire shall supply its start-up personnel as provided in Section 5.5 hereof to perform the labor necessary to start-up the DB Project and to observe and verify Commissioning tasks performed by Contractor. Upon Concessionaire’s and the Independent Engineer’s acceptance of the Performance Testing and Commissioning Plan and Program for the DB Project, Contractor shall proceed to commission the DB Project. As Commissioning progresses, Contractor shall provide Concessionaire and the OS&S Contractor’s personnel with comprehensive classroom

and on-the-job training in the operation and maintenance of the DB Project or the applicable portion thereof. Contractor shall coordinate all training sessions in a manner sufficient to provide Concessionaire and the OS&S Contractor's personnel with an adequate understanding of the basic and principal design, and the operation and maintenance aspects, of each dimension of the DB Project as an integrated whole.

6.2 [Reserved]

6.3 DB Project Start-Up. Contractor shall present to Concessionaire for Concessionaire's Approval a completed checklist of all documentation, equipment and systems reviewed during the Commissioning of the DB Project. Following confirmation by Concessionaire that such checklist is complete and accurate and that Substantial Completion has been achieved, Contractor shall start up the DB Project in accordance with the Standard of Care, the Contract Documents and a schedule of start-up procedures delivered by Contractor to, and approved by, Concessionaire at least ninety (90) days prior to start-up.

6.4 Performance Tests. Provided the DB Project and all DB Project systems included therein are capable of safe and continuous operation in accordance with the Standard of Care, the Operating Manual, the Performance Guarantees, the Technical Requirements and the Contract Documents, subject to Concessionaire's Approval, Contractor shall conduct the Performance Tests. At least sixty (60) days prior to the date Contractor wishes to commence a Performance Test, Contractor shall provide to Concessionaire, for Concessionaire's Approval and approval of the Independent Engineer, complete test procedures developed in accordance with the Performance Testing and Commissioning Plan and Program. Thereafter, Contractor shall give Concessionaire, the Department and the Independent Engineer at least five (5) Business Days' prior written notice of the date on which Contractor intends to commence each Performance Test. A Performance Test shall consist of the operation of the equipment and applicable systems included in the DB Work necessary for operation of the HOT Lanes in accordance with the Contract Documents and the Performance Testing and Commissioning Plan and Program. Concessionaire shall designate and make available qualified and authorized representatives to observe the Performance Tests and to monitor the taking of measurements to determine the level of achievement of the Performance Guarantees, all in accordance with the Contract Documents and the Performance Testing and Commissioning Plan and Program. The Department will be included in such Performance Tests for purposes of demonstrating effective information transfer across system interfaces, where applicable. Contractor shall not attempt to perform a Performance Test if any Commissioning, start-up or initial test procedures have not been completed as required prior to the Performance Test or any aspect of the DB Project has not been completed sufficiently to assure the safe and continuous operation of all or any part of the DB Project during the Performance Test in accordance with the Standard of Care, the Operating Manual, the Contract Documents and the Performance Testing and Commissioning Plan and Program.

6.5 Completed Performance Test. When Contractor believes it has successfully completed a Performance Test, Contractor shall provide Concessionaire and the Independent Engineer a written report of the test results as part of the Substantial Completion delivered under Section 6.6 hereof. The performance results will be calculated in accordance with the Performance Testing and Commissioning Plan and Program and the Performance Guarantees,

including any adjustments to reflect deviations from the Performance Guarantees to be calculated as set forth in the Performance Testing and Commissioning Plan and Program.

6.6 Substantial Completion of the DB Project.

6.6.1 Conditions to Substantial Completion. Substantial Completion of the DB Project shall be achieved hereunder if the following conditions have been met:

(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 which are part of the DB Project 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 which is part of the DB Project is installed and functional in accordance with the Technical Requirements;

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

(v) the need for temporary traffic controls or for lane closures at any time which are part of the DB Project has ceased (except for any then required for routine maintenance, and except for temporary lane closures during hours of low traffic volume in accordance with and as permitted by a Department-approved traffic management plan solely in order to complete Concessionaire's Punch List items);

(vi) Contractor 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) of the Comprehensive Agreement;

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

(viii) Contractor has concluded a Performance Test in which the DB Project demonstrates a level of achievement deemed satisfactory in accordance with the Performance Testing and Commissioning Plan and Program;

(ix) Contractor has delivered either (i) (A) an interim lien waiver, in the form of Exhibit D hereto, of Contractor's lien Claims to the extent of most recent payment received by Contractor and (B) interim lien waivers, in form of Exhibit E hereto, from each Subcontractor with a Subcontract in excess of \$50,000, to the extent of the most recent payment received by such Contractor, as are necessary to support Contractor's certificate (or solely in the case of vendors providing materials or equipment valued at less than \$50,000 in the aggregate, other evidence reasonably satisfactory to Concessionaire demonstrating that such vendor has waived or is not entitled to place any lien on any part of the Project or the Project Right of Way); or (ii) written evidence of posting of a bond by Contractor in the amount equal to the aggregate of amounts of all liens on any part of the Project or the Project Right of Way that remain outstanding as of the date of Substantial Completion (or, if earlier, the date of the most recent payment to Contractor);

(x) Contractor has otherwise completed the DB Work in accordance with this Agreement, including the Technical Requirements, other Contract Documents and the Construction Documentation, such that the DB Project is 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, except for any remaining items listed in Concessionaire's Punch List;

(xi) "Substantial Completion" has occurred under the Comprehensive Agreement as evidenced by the Department's issuance of a "Substantial Completion Certificate" thereunder; and

(xii) as provided in Section 6.6.3, Concessionaire has delivered to Contractor the Substantial Completion Certificate signed by Contractor and countersigned by each of Concessionaire and the Independent Engineer.

The Parties agree to cooperate to fulfill the above conditions to Substantial Completion. 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 6.6.1.

6.6.2 Notice and Report of Substantial Completion of the DB Project. At least forty (40) days prior to the date when Contractor anticipates to achieve Substantial Completion, it shall deliver to Concessionaire a notice thereof (the "Notice of Substantial Completion") when Contractor believes that conditions (i) through (x) of Section 6.6.1 have been satisfied (or will be satisfied within fourteen (14) days after the Notice of Substantial Completion has been delivered by Contractor to Concessionaire). The Notice of Substantial Completion shall contain a report of results of the Performance Test and a description of all DB Work

completed in a form reasonably acceptable to Concessionaire and the Independent Engineer and with sufficient detail to enable them to establish whether Substantial Completion has been achieved, as well as a Substantial Completion Certificate signed by Contractor. Within nineteen (19) days after receipt of the Notice of Substantial Completion, Concessionaire shall inspect the DB Project and all DB Work completed by Contractor, review the results of the Performance Test and the report submitted by Contractor, and either (a) deliver to the Independent Engineer (for countersignature) and the Department the signed Substantial Completion Certificate, or (b) if reasonable cause exists for doing so, notify Contractor that Substantial Completion has not been achieved stating in reasonable detail the reasons therefor. If Concessionaire notifies Contractor that Substantial Completion has not been achieved, Contractor shall promptly, at its own cost, take such action or perform such additional DB Work as will permit achievement of Substantial Completion, conduct another Performance Test, if necessary, and issue to Concessionaire a revised Substantial Completion Certificate signed by Contractor. The foregoing process shall be repeated until Concessionaire is satisfied with the Notice of Substantial Completion and concurs that Substantial Completion has occurred, whereupon it shall countersign the Substantial Completion Certificate and forward the same to the Independent Engineer and the Department.

6.6.3 Achievement of Substantial Completion of the DB Project. Within twenty (20) days after Concessionaire has provided the Notice of Substantial Completion to the Independent Engineer and the Department, then Concessionaire, Contractor, the Independent Engineer and the Department will meet, confer and exchange information on a regular basis with a goal being Concessionaire's issuance of the Substantial Completion Certificate countersigned by the Independent Engineer; provided that Concessionaire's issuance of such Substantial Completion Certificate hereunder shall be contingent upon issuance of a "Substantial Completion Certificate" by the Department under Section 8.08 of the Comprehensive Agreement. Contractor acknowledges that, pursuant to Section 8.08(e) of the Comprehensive Agreement, the Department is to conduct an inspection of the DB Project and review the final Construction Documentation and such other matters as may be necessary to determine whether Substantial Completion is achieved and will deliver a report of findings and recommendations to Concessionaire. If the Department notifies Concessionaire in accordance with Section 8.08 of the Comprehensive Agreement that it will not issue the "Substantial Completion Certificate" under the Comprehensive Agreement and identifies any defects and deficiencies in the DB Work, Concessionaire shall promptly provide such notice to Contractor, and Contractor shall promptly correct such defects and deficiencies in the DB Work identified by the Department. The foregoing process shall be repeated until Substantial Completion has been achieved as evidenced by Concessionaire's and the Independent Engineer's countersigning of the Substantial Completion Certificate. For all purposes of this Agreement, the date of achievement of Substantial Completion shall be the date on which Concessionaire issues to Contractor such Substantial Completion Certificate that is countersigned by each of Concessionaire and the Independent Engineer. Concessionaire will provide to Contractor with such Substantial Completion Certificate the Concessionaire's Punch List of items to be completed by Contractor to achieve Final Acceptance. The Parties acknowledge that under Section 8.08(f) of the Comprehensive Agreement if the Department has not notified Concessionaire of its approval or disapproval of whether Substantial Completion has been achieved within twenty-one (21) days after such Concessionaire notice under the Comprehensive Agreement (or ten (10) days with respect to any resubmittal of the notice), and if the delay is not a result of an action or inaction of a "Concessionaire Party" (as defined in the Comprehensive Agreement), then such Department's

delay will constitute a CA Delay Event and a CA Compensation Event hereunder and provisions of Sections 12.5 and 12.6 shall apply.

6.6.4 Substantial Completion of Segments. Concessionaire may, with Contractor's consent, request the Department to accept a Segment prior to the issuance of "Substantial Completion Certificate" for the balance of the Project under the Comprehensive Agreement. If the Department agrees pursuant to Section 8.13 of the Comprehensive Agreement to such acceptance of a Segment, Contractor shall, on behalf of Concessionaire, fulfill all the conditions to acceptance of such Segment relating to the DB Work as developed by the Department and Concessionaire under the Comprehensive Agreement and agreed to by Contractor.

6.6.5 Failure to Achieve Substantial Completion by Long Stop Date; Substantial Completion Recovery Plan. Contractor will achieve Substantial Completion of the DB Project by the Long Stop Date. The Long Stop Date will be extended one time if (i) Contractor submits to Concessionaire for Concessionaire's Approval (which approval will be subject to the Department's approval under Section 8.15(b) of the Comprehensive Agreement) a written recovery plan (the "Substantial Completion Recovery Plan") not later than ninety (90) days prior to the Long Stop Date, (ii) the Substantial Completion Recovery Plan outlines the actions Contractor 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 subject to Concessionaire's Approval (which approval shall be contingent upon the Department's approval under the Comprehensive Agreement) within thirty (30) days in its reasonable discretion, (iv) Contractor diligently implements the Substantial Completion Recovery Plan and (v) Contractor agrees to continue to pay Late Substantial Completion Payments pursuant to Section 7.2 (at the same daily rate for up to the number of additional days by which the Long Stop Date is so extended at Contractor's request) notwithstanding the limit on Contractor's liability for such Late Substantial Completion Payments set forth in Section 7.6. If all the conditions to the approval of the Substantial Completion Recovery Plan set out in the preceding sentence have been satisfied, the Long Stop Date hereunder shall be extended for the same number of days the corresponding "Long Stop Date" has been extended under the Comprehensive Agreement. In addition, Concessionaire may, in its sole discretion, consent (which consent will be subject to the Department's consent under Section 8.15(b) of the Comprehensive Agreement) to a second Substantial Completion Recovery Plan upon such terms and conditions as it may establish in its sole discretion.

6.7 Final Acceptance of the DB Project. Final Acceptance of the DB Project may be achieved hereunder pursuant to Section 6.7.1 below.

6.7.1 Conditions to Final Acceptance. Final Acceptance of the DB Project shall be achieved hereunder if the following conditions have been met:

- (i) the DB Project is free and clear of all liens, Claims, security interests or encumbrances arising out of or in connection with the

performance of the DB Work by Contractor or any Subcontractor during the DB Work Period;

(ii) all items on Concessionaire's Punch List have been completed by Contractor in accordance with the Contract Documents;

(iii) all DB Project Documentation, including Final As-Built Drawings and Documentation as required by Section 17.2, to be submitted on or before the Final Acceptance have been submitted and approved by Concessionaire, the Department and the Independent Engineer, as applicable (to the extent such approvals are required from the Independent Engineer under the Project financing documents, the Department under the terms of the Comprehensive Agreement or Concessionaire under the terms of this Agreement, as applicable);

(iv) Contractor has paid for all DB Work required to achieve Final Acceptance which was performed by third parties that Contractor is obligated to pay (other than disputed amounts and amounts that are not yet due and payable);

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

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

(vii) Contractor has otherwise performed all of the DB Work required by the Contract Documents;

(viii) Substantial Completion has occurred in accordance with Section 6.6.3 and "Substantial Completion" has occurred under the Comprehensive Agreement;

(ix) "Final Acceptance" has occurred under the Comprehensive Agreement as evidenced by the Department's issuance of a "Final Acceptance Certificate" thereunder; and

(x) as provided in Section 6.7.3, Concessionaire has delivered to Contractor the Final Acceptance Certificate signed by Contractor and countersigned by each of Concessionaire and the Independent Engineer.

The Parties agree to cooperate to fulfill the above conditions to Final Acceptance.

6.7.2 Notice and Report of Final Acceptance of the DB Project. At least forty (40) days prior to the date when Contractor anticipates to achieve Final Acceptance, it shall deliver to Concessionaire a notice thereof (the "Notice of Final Acceptance") when Contractor believes that conditions (i) through (viii) of Section 6.7.1 have been satisfied (or will be satisfied

within fourteen (14) days after the Notice of Final Acceptance has been delivered by Contractor to Concessionaire). The Notice of Final Acceptance shall contain a report in a form reasonably acceptable to Concessionaire and the Independent Engineer and with sufficient detail to enable them to establish that Contractor has completely performed all of the DB Work under the Contract Documents, including the items listed in Concessionaire's Punch List, as well as a Final Acceptance Certificate signed by Contractor. Concessionaire shall, within nineteen (19) days following receipt of the Notice of Final Acceptance, inspect the DB Project and all DB Work hereunder and review the report submitted by Contractor and either (a) deliver to the Independent Engineer (for countersignature) and the Department the signed Final Acceptance Certificate, or (b) if reasonable cause exists for doing so, notify Contractor that Final Acceptance has not been achieved, stating in reasonable detail the reasons therefor. If Concessionaire notifies Contractor that Final Acceptance has not been achieved, Contractor shall, at its own cost, promptly take such action or perform such additional DB Work as will permit achievement of Final Acceptance, conduct another Performance Test, if necessary, and issue to Concessionaire and a revised Final Acceptance Certificate signed by Contractor. The foregoing process shall be repeated until Concessionaire is satisfied with the Notice of Final Acceptance and concurs that Final Acceptance has occurred, whereupon it shall countersign the Final Acceptance Certificate and forward the same to the Independent Engineer and the Department.

6.7.3 Achievement of Final Acceptance of the DB Project. Within twenty (20) days after Concessionaire has provided the Notice of Final Acceptance to the Independent Engineer and the Department, then Concessionaire, Contractor, the Independent Engineer and the Department will meet, confer and exchange information with the goal being Concessionaire's issuance of the Final Acceptance Certificate countersigned by the Independent Engineer; provided that Concessionaire's issuance of such Final Acceptance Certificate hereunder shall be contingent upon issuance of a "Final Acceptance Certificate" by the Department under Section 8.09 of the Comprehensive Agreement. Contractor acknowledges that, pursuant to Section 8.09(c) of the Comprehensive Agreement, the Department is to conduct an inspection of the completed Concessionaire's Punch List items, a review of the Final As-Built Drawings and Documentation and such other investigation as may be necessary to evaluate whether the conditions for Final Acceptance of the DB Project have been satisfied. If the Department notifies Concessionaire that it will not issue the "Final Acceptance Certificate" under Section 8.09 of the Comprehensive Agreement and identifies any defects and deficiencies in the DB Work, Concessionaire shall promptly provide such notice to Contractor (together with the explanation provided by the Department for its determination under Section 8.09(d) of the Comprehensive Agreement), and Contractor shall promptly correct such deficiencies in the DB Work identified by the Department. The foregoing process shall be repeated until Final Acceptance has been achieved as evidenced by Concessionaire's and the Independent Engineer's countersigning the Final Acceptance Certificate; provided, however, Contractor is obligated to achieve Final Acceptance within ninety (90) days after the date of Substantial Completion, as such date may be extended hereunder (the "Guaranteed Final Acceptance Date"). If Concessionaire reasonably and in good faith determines that Contractor is not proceeding with all due diligence to complete the DB Work in order to achieve Final Acceptance by the Guaranteed Final Acceptance Date, Concessionaire may complete such DB Work at Contractor's expense. If Concessionaire completes such DB Work, Concessionaire shall have the right to set-off in accordance with Section 4.7 any amounts Contractor owes it pursuant to the preceding sentence and Contractor shall pay to Concessionaire the remaining balance, if any, within thirty

(30) days of the receipt of Concessionaire's invoice therefor. For all purposes of this Agreement, the date of achievement of Final Acceptance shall be the date on which Concessionaire issues to Contractor such Final Acceptance Certificate that is countersigned by each of Concessionaire and the Independent Engineer. The Parties acknowledge that under Section 8.09(d) of the Comprehensive Agreement if the Department has not notified Concessionaire of its approval or disapproval of whether Final Acceptance has been achieved within twenty-one (21) days after such Concessionaire notice under the Comprehensive Agreement (or ten (10) days with respect to any resubmittal of the notice), and if the delay is not a result of an action or inaction of a "Concessionaire Party" (as defined in the Comprehensive Agreement), then such Department's delay will constitute a CA Delay Event and a CA Compensation Event hereunder and provisions of Sections 12.5 and 12.6 shall apply.

6.8 Concessionaire's Punch List. At any time after the commencement of DB Project start-up, Concessionaire may submit Concessionaire's Punch List to Contractor, and may thereafter revise the same from time to time; provided that Concessionaire does not have the right to submit or revise Concessionaire's Punch List after Concessionaire issues fully countersigned Final Acceptance Certificate; notwithstanding the foregoing, Concessionaire shall retain the right to confirm that punch list items performed by Contractor are properly completed. Concessionaire shall not be precluded from listing any item of DB Work on the Concessionaire's Punch List that was not included on Contractor's Punch List.

6.9 Operation and Maintenance of the DB Project.

6.9.1 Upon Substantial Completion, Concessionaire shall have care, custody and control of the DB Project. Contractor will assist Concessionaire in the implementation of the Turnover Plan to the extent applicable to the DB Work.

6.9.2 Except as otherwise specifically provided for in a LNTP, after the Commencement Date and prior to Substantial Completion, Contractor will (A) have care, custody and control of the Design-Build Right of Way for the DB Project and (B) be responsible for the security and protection of active construction areas on the DB Project and the Project Right of Way and (1) all materials, equipment, supplies and any other property of any Contractor Party and (2) all materials, equipment, supplies and any other property of Concessionaire or the Department being held in a secure location at or on the DB Project or otherwise being used or procured in connection with the DB Work, whether or not on the Project Right of Way. Notwithstanding the foregoing, Contractor and Concessionaire acknowledge that during the DB Work Period, the Department has agreed, pursuant to Section 9.01(a) of the Comprehensive Agreement, to (i) except as otherwise provided in the Comprehensive Agreement, operate and maintain the existing HOV Lanes and access ramps at its own cost and expense to the extent they are not actively under construction as provided in Section 9.07 of the Comprehensive Agreement (the "HOV Assets"), (ii) have care, custody and control of the HOV Assets and (iii) be responsible for the security and protection of the HOV Assets and all materials, equipment, supplies and any other property of the Department at or on the HOV Assets, in all cases except as otherwise provided in Section 9.02 of the Comprehensive Agreement, and through the coordination process set forth in the Technical Requirements, Concessionaire (with guidance from Contractor) and the Department will determine from time to time which portions of the existing HOV Lanes will be open for traffic or under construction.

6.9.3 The Parties acknowledge that the Department has agreed, pursuant to Section 9.03(b)(i) of the Comprehensive Agreement, at its own cost, to remove snow and ice from the HOV Lanes that are open to traffic prior to the Service Commencement Date.

6.9.4 The Parties acknowledge that responsibility for the maintenance, repair and replacement of the existing drainage system located within and outside of the Project Way has been allocated between Concessionaire and the Department in the Technical Requirements. As part of the DB Work, Contractor shall fulfill the obligations of Concessionaire under the Technical Requirements during the DB Work Period with respect to such drainage system.

6.10 Acceptance by Concessionaire Not a Release of Contractor. The acceptance by Concessionaire or Concessionaire's Approval of the Design Documentation, or any other part of the DB Work or the DB Project, shall not constitute a waiver or relinquishment by Concessionaire of any of its rights under this Agreement, nor exonerate or relieve Contractor from any obligation, warranty or liability hereunder, except to the extent expressly provided herein. Each such acceptance by Concessionaire or Concessionaire's Approval shall be given in reliance upon, and subject to, the performance by Contractor of its obligations hereunder.

ARTICLE 7

LATE COMPLETION PAYMENTS; LANE CLOSURE PAYMENT

7.1 Guaranteed Substantial Completion and Guaranteed Final Acceptance. Subject only to the adjustments permitted in accordance with this Agreement, Contractor guarantees that Substantial Completion will be achieved on or before the Guaranteed Substantial Completion Date and that Final Acceptance will be achieved on or before the Guaranteed Final Acceptance Date.

7.2 Late Completion Payments. If Substantial Completion has not occurred on or before the Guaranteed Substantial Completion Date, then for each calendar day (or portion thereof) by which Substantial Completion occurs after the Guaranteed Substantial Completion Date, subject to the limitation set forth in Section 7.6 hereof, Contractor hereby agrees to pay to Concessionaire, as part of the consideration for awarding the contract, an amount equal to the sum of (x) the applicable Concessionaire Delay Damages Rate, plus (y), to the extent Concessionaire is then obligated to pay the same to the Department pursuant to Section 8.10(a) of the Comprehensive Agreement, \$14,000 per calendar day, not to exceed \$5,110,000 in the aggregate, to be paid over to the Department, all as liquidated damages and not as a penalty (the "Late Substantial Completion Payment"). In addition, if Final Acceptance has not occurred on or before the Guaranteed Final Acceptance Date and if Concessionaire is then obligated to pay the same to the Department pursuant to Section 8.10(b) of the Comprehensive Agreement, then for each calendar day (or portion thereof) by which Final Acceptance occurs after the Guaranteed Final Acceptance Date, Contractor hereby agrees to pay to Concessionaire, as part of the consideration for awarding the contract, \$5,000 per calendar day to be paid over to the Department, all as liquidated damages and not as a penalty (the "Late Final Acceptance Payment," and collectively with the Late Substantial Completion Payment, "Late Completion Payments").

7.3 Payment of Late Completion Payments. Late Completion Payments shall be paid by Contractor or withheld by Concessionaire, as applicable, in arrears at the payment intervals applicable to Scheduled Payments beginning after the Guaranteed Substantial Completion Date or the Guaranteed Final Acceptance Date, as applicable, with the last such payment to occur on the date on which Substantial Completion or Final Acceptance, as applicable, actually occurs. Concessionaire's rights of set-off under Section 4.7 hereof expressly apply to any amounts of the Late Completion Payment not timely paid to Concessionaire hereunder.

7.4 Late Completion Payments for Delay Only. The Late Completion Payments shall be the full measure of Contractor's liability only for delay in achieving the Substantial Completion and/or Final Acceptance, and shall not limit Contractor's liability for defects or deficiencies in the DB Work or for Contractor's failure to perform its other obligations under the Contract Documents. The Late Completion Payments are in lieu of Concessionaire's right to terminate this Agreement solely as a result of any schedule delay, except to the extent such delay otherwise constitutes a Contractor Default under Section 15.2.1(v)(A).

7.5 Lane Closure Liquidated Damages. In its performance of the DB Work during the DB Work Period, Contractor may temporarily close existing lanes on the Project Right of Way only in accordance with the Technical Requirements, and any such closure that does not conform with or exceeds the time period permitted therefor in the Technical Requirements is a "Non-Permitted Closure." Contractor agrees that it will fully reopen the closed lanes to traffic by the required time, and that if it fails to do so, it shall pay Concessionaire the amount that Concessionaire must pay to the Department pursuant to Section 8.14 of the Comprehensive Agreement (the "Lane Closure Payment") as liquidated damages and not as penalty, not to exceed \$200,000 per incident for any Non-Permitted Closure. The Lane Closure Payment shall be the measure of Contractor's liability only for delay in re-opening the lanes pursuant to this Section 7.5, and shall not limit Contractor's liability for defects or deficiencies in the DB Work or for Contractor's failure to perform its other obligations under the Contract Documents. The Lane Closure Payment shall be paid by Contractor or withheld by Concessionaire, as applicable, in arrears at the payment intervals applicable to Scheduled Payments beginning after the designated time for re-opening of the affected lanes. Concessionaire's rights of set-off under Section 4.7 hereof expressly apply to any amounts of the Lane Closure Payment not timely paid to Concessionaire hereunder.

7.6 Limitation on Liquidated Damages. Contractor's liability to Concessionaire under this Agreement for Late Substantial Completion Payments shall not exceed an amount equal to the product of (x) the sum of the applicable Concessionaire Delay Damages Rate plus \$14,000, multiplied by (y) 365. This Section 7.6 shall not be construed to limit Contractor's other obligations or liabilities arising under or in connection with this Agreement.

7.7 Liquidated Damages Reasonable. Concessionaire and Contractor hereby acknowledge and agree that the terms, conditions and amounts fixed pursuant to Section 7.2 for Late Completion Payments and pursuant to Section 7.5 for Lane Closure Payment are fair and reasonable, considering the reduction in value of the DB Project to Concessionaire and the actual costs that Concessionaire will incur in the event of Contractor's failure to achieve Substantial Completion by the Guaranteed Substantial Completion Date and/or Final Acceptance by the Guaranteed Final Acceptance Date or to re-open the lanes to traffic after the temporary closure

thereof. The amount of liquidated damages is agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of Losses that will be actually incurred by Concessionaire for late occurrence of Substantial Completion, Final Acceptance or lane re-opening, and Concessionaire and Contractor agree that the liquidated damages amounts specified in Sections 7.2 and 7.5 represent a reasonable estimate of fair compensation of Losses that may be reasonably anticipated for such late occurrences and shall be applicable regardless of the amount of such costs actually incurred by Concessionaire.

ARTICLE 8

PERFORMANCE GUARANTEES

8.1 Performance Guarantees. Contractor guarantees that the DB Project will achieve all of the performance specifications referred to in the Contract Documents (the “Performance Guarantees”). Contractor agrees to exhaust all reasonable repair and replacement alternatives in order that the DB Project might attain the Performance Guarantees.

8.2 Equipment Performance. Contractor shall use all reasonable efforts to cause Subcontractors supplying any equipment to the DB Project to achieve the performance standards guaranteed by the suppliers of such equipment. Any damages payable by a supplier to Contractor shall be remitted to Concessionaire, except for that portion of such damages required to compensate Contractor for amounts paid to Concessionaire hereunder as a result of the failure of such supplier’s equipment to achieve the required standards under this Agreement and for other reasonable costs incurred by Contractor as a result of such failure. No such damages paid to Concessionaire shall relieve Contractor from any of its obligations under this Agreement and any such damages remitted to Concessionaire shall not be applied to reduce Contractor’s liability hereunder.

ARTICLE 9

LIABILITY AND DAMAGES

9.1 Limitation of Certain Contractor Liabilities. Notwithstanding anything herein to the contrary, the total liability of Contractor in contract, tort, equity or otherwise (including negligence, warranty, strict liability or otherwise) relative to or arising out of this Agreement shall not exceed an amount equal to forty percent (40%) of the Contract Sum; provided, that the foregoing limitation shall not apply to or include:

- (i) the proceeds of insurance, not to exceed amounts required to be maintained by Contractor in accordance with the terms of this Agreement;
- (ii) costs, liabilities or obligations that arise from Gross Negligence, willful misconduct or actual fraud of Contractor;

(iii) costs, liabilities or obligations that arise from Contractor's abandonment of the DB Work or from a Contractor Default described in Section 15.2.1(vii);

(iv) Contractor's breach of its obligations in Section 10.4; or

(v) Contractor's indemnity obligations under Article 13.

9.2 CONSEQUENTIAL DAMAGES. NEITHER CONCESSIONAIRE NOR CONTRACTOR SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOSS OF USE OR LOSS OF PROFIT, AND CONCESSIONAIRE AND CONTRACTOR EACH HEREBY RELEASES THE OTHER AND ITS CONTRACTORS AND AGENTS FROM ANY SUCH LIABILITY. THE FOREGOING EXCLUSION (I) SHALL NOT PRECLUDE RECOVERY, WHERE APPLICABLE, OF LIQUIDATED DAMAGES PURSUANT TO SECTIONS 7.2 AND 7.5 AND (II) SHALL NOT BE CONSTRUED TO LIMIT RECOVERY UNDER ANY INDEMNITY IN ARTICLE 13 FOR THIRD PARTY CLAIMS FOR DAMAGE TO OR DESTRUCTION OF PROPERTY OF, OR DEATH OF OR BODILY INJURY TO, ANY PERSON.

9.3 Further Limitation of Liability. The limitations of liability and the exclusions of consequential damages set forth in this Agreement shall apply irrespective of whether a Party or any Affiliate thereof, or any partner, shareholder, officer, director or employee of a Party or an Affiliate thereof, asserts a theory of liability in contract, tort, negligence, misrepresentation (including negligent misrepresentation), strict liability or any other theory of liability.

ARTICLE 10

WARRANTIES

10.1 Warranties.

10.1.1 Contractor warrants and guarantees (the "General Warranty") to Concessionaire and the Department as follows:

(i) The design of the DB Project shall satisfy the requirements of this Agreement, the Comprehensive Agreement and the Technical Requirements;

(ii) All DB Work (except as described in Section 10.1.1(i) hereof), including materials and equipment furnished as part of the construction, shall be (A) complete and conform to Good Industry Practice, (B) new unless otherwise specified herein or in the Technical Requirements, of good quality, in conformance with the Standard of Care, Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents, and (C) once completed, free of all defects and deficiencies in design, materials and workmanship and fit for its intended purpose; and

(iii) The Final As-Built Drawings and Documentation shall be accurate and complete, comply with the requirements of the Contract Documents, and accurately reflect the condition of the DB Project as of Final Acceptance.

10.1.2 If Concessionaire (or the Department) notifies Contractor in writing during the Warranty Period, or no later than fifteen (15) days after the expiration of the Warranty Period, that a breach of the General Warranty has occurred during the Warranty Period, Contractor shall promptly investigate and determine the source of the deficiency or defect (including any inaccuracy or other deficiency in the Final As-Built Drawings and Documentation), and promptly rectify any defects or deficiencies in the DB Work at its expense without recourse to Concessionaire or the Department. Contractor's liability for such defects shall include labor, parts, transportation, factory repair and testing, dismantling, re-designing, re-construction, re-erecting, re-testing and re-Commissioning associated with the correction of such defects which are needed or appropriate to assure the continued performance of the DB Project for its intended functions as a complete operating system. If Contractor fails to repair and/or replace a defect or deficiency within reasonable time following Concessionaire's (or the Department's) notice of a breach of the General Warranty, Concessionaire (or the Department pursuant to the Comprehensive Agreement) shall have the right to employ another contractor to correct the deficiency or defect and complete the DB Work at Contractor's expense; provided, that the Department has agreed under Section 8.11(a)(iii) of the Comprehensive Agreement that it will only have the right to exercise remedies under the General Warranty so long as Concessionaire or any Financing Party is not pursuing such remedies.

10.1.3 The "Warranty Period" for all DB Work shall be sixty (60) months commencing on the date of Substantial Completion; provided, however, that:

(i) the Warranty Period shall be extended for an additional twelve (12) months from the date of repair or replacement with respect to any portion of the DB Work that is repaired or replaced during the final year of the initial Warranty Period;

(ii) the Warranty Period as to the individual pieces of equipment shall be twenty-four (24) months from the date of incorporation of the specific piece of equipment into the DB Project unless Contractor is able to obtain from the vendor thereof longer durations on commercially reasonable terms; and

(iii) any warranties from third party suppliers longer than the Warranty Period shall be passed through to Concessionaire and the Department.

10.1.4 Following the expiration of the first two (2) years of the Warranty Period, the General Warranty shall extend only to repairs which exceed \$15,000 per single occurrence (but such threshold shall not apply if the same type of defect causes same type of repair more than twice), subject to an aggregate annual exclusion of \$60,000 in each of the third, fourth and fifth year of the Warranty Period.

10.1.5 If and to the extent Contractor obtains general or limited warranties from any Subcontractor with respect to design, materials, workmanship, construction,

equipment, tools, supplies, software or services in accordance with Section 3.3, Contractor will cause such warranties to be expressly extended to Concessionaire and the Department. Concessionaire agrees that it will only have the right to exercise remedies under any such warranty so long as Contractor is not pursuing such remedies; 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 Concessionaire and the Department using Commercially Reasonable Efforts.

10.1.6 The duties, liabilities and obligations of Contractor under this Section 10.1 do not extend to any repairs, adjustments, alterations, replacements or maintenance of materials which are required as a result of normal corrosion, erosion, or wear and tear in the operation of the DB Project other than as caused by the negligence of or breach of the Contract Documents by Contractor.

10.2 [Not used]

10.3 Concessionaire's Right to Proceed. If, within fourteen (14) days after notification by Concessionaire of a breach of any warranty hereunder, Contractor has not, to the reasonable satisfaction of Concessionaire, commenced re-performance, repair, replacement or other performance as required herein or notified Concessionaire of its disagreement with such alleged breach and, within seven (7) days after such notice, provide reasonable evidence in support of its position, Concessionaire may retain a third party to undertake such re-performance, repair, replacement or other performance and the costs of retaining such third party shall be for the account of Contractor. Concessionaire's retention of such third-party contractor shall not in any way diminish Contractor's obligations or liabilities under the Contract Documents or reduce its warranty obligations under this Article 10 with respect to the work undertaken by such third party. Nothing herein shall be deemed to preclude Concessionaire from retaining a third-party contractor at its own cost to undertake any re-performance, repair, replacement or other performance of warranty claims hereunder. In addition, Contractor acknowledges and agrees that the Department shall have such rights and remedies as provided by Section 8.11(b) of the Comprehensive Agreement, and that to the extent the exercise of such rights and remedies in respect of "Non-Conforming Work" (as defined in the Comprehensive Agreement) for which Contractor is responsible under this Agreement interferes with Contractor's performance of the DB Work, then, subject to Contractor's right to assert a CA Delay Event and a CA Compensation Event, Contractor shall not be entitled to relief under this Agreement.

10.4 No Liens or Encumbrances. Contractor warrants and guarantees that title to the DB Project, any portion or component of the DB Project, and all DB Work provided hereunder shall pass to the Department as provided under Section 24.15 hereof, free and clear of all liens, Claims, security interests and other encumbrances (other than inchoate liens provided by Laws to secure payments not yet delinquent), and that none of such DB Work, materials, supplies or equipment shall be acquired by Contractor subject to any agreement under which a security interest or other lien or encumbrance is retained by any Person. Such warranty shall become effective as title to DB Work passes to the Department under Section 24.15 hereof, subject to Concessionaire's obligation to pay for such DB Work in accordance with the Contract Documents.

10.5 EXCLUSIVE REMEDIES. ARTICLE 8, THIS ARTICLE 10 AND SECTION 15.2 HEREOF SET FORTH CONCESSIONAIRE'S EXCLUSIVE REMEDIES AGAINST CONTRACTOR, AND CONCESSIONAIRE HEREBY WAIVES ALL OTHER REMEDIES, REGARDING DEFECTS OR DEFICIENCIES IN THE DB WORK, WHETHER PATENT OR LATENT OR ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR PURSUANT TO OTHER LEGAL THEORY, EXCEPT FOR DEFECTS AND DEFICIENCIES IN THE DB WORK RESULTING FROM THE FRAUD OR DECEIT OF CONTRACTOR. CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE QUALITY OF THE DB WORK, PROVIDED, HOWEVER, THAT CONTRACTOR SHALL CONTINUE TO BE RESPONSIBLE FOR ALL OF ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING THE DESIGN AND CONSTRUCTION OF THE DB PROJECT, NOTWITHSTANDING THE PARTIES' AGREEMENT TO EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY UNDER THIS SECTION 10.5.

ARTICLE 11

FORCE MAJEURE

11.1 Excused Performance. If a Party is rendered wholly or partially unable to perform its obligations under the Contract Documents because of a Force Majeure Event, then that Party will be excused (but in the case of Contractor, solely to the extent provided in a Scope Change Order entered into pursuant to Section 12.5) from whatever performance is affected by the Force Majeure Event to the extent so affected; provided, that:

- (i) the affected Party gives the other Party notice describing the particulars of the occurrence promptly after the occurrence of the Force Majeure Event, and, in no event more than seven (7) days after the affected Party becomes aware of such occurrence;
- (ii) within seven (7) days after giving the notice described in clause (a) above, the affected Party gives the other Party its best estimate of the occurrence's expected duration and probable impact on the performance of such Party's obligations hereunder, and continues to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event;
- (iii) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (iv) no monetary obligations or default of either Party which arose before the occurrence of the Force Majeure Event causing the suspension of performance shall be excused as a result of the occurrence, but so long as the affected Party shall have commenced and is diligently continuing to attempt to cure such default prior to the occurrence of the Force Majeure Event, the cure period (if any) provided in Article 15 with respect to such default shall be extended on a day-for-day basis to the extent a cure actually is prevented as a result of the Force Majeure Event;

(v) the affected Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party; and

(vi) the affected Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance.

A Scope Change Order shall be executed by Concessionaire and Contractor as provided in Section 12.5 to account for the actual effect, if any, on Contractor's performance of its obligations as a result of a Force Majeure Event.

11.2 Disputes; Burden of Proof. If Concessionaire and Contractor are unable in good faith to agree that a Force Majeure Event has occurred, either Party may submit the dispute to dispute resolution under Article 19; provided, however, that the burden of proof as to whether a Force Majeure Event has occurred and whether the Force Majeure Event excuses the Party from performance under Section 11.1 shall be upon the Party claiming such Force Majeure Event.

ARTICLE 12

SCOPE CHANGES

12.1 Scope Change Orders. A "Scope Change" means a material addition to, deletion from, suspension of or other modification to, the quality, function or intent of the DB Project as delineated in the Scope Document, or a material change to the requirements of this Agreement, but shall not include refinement, correction or detailing of the DB Work by Concessionaire and Contractor from time to time. Concessionaire may order Scope Changes to the DB Work, in which event, as more specifically set forth in this Article 12, one or more of the Contract Sum, the Payment and Values Schedule, the Maximum Cumulative Drawdown Schedule, the Project Schedule, the Guaranteed Substantial Completion Date, the Guaranteed Final Acceptance Date, the Long Stop Date, the Scope Document and any other applicable terms and conditions of the Contract Documents shall be adjusted accordingly, if necessary, as agreed by Concessionaire and Contractor or determined pursuant to dispute resolution under Article 19; provided, that Contractor shall use reasonable efforts to mitigate the impacts of any Scope Change. If either Concessionaire or Contractor believes a Scope Change is necessary, it shall proceed as set forth in this Article 12. If Concessionaire believes that a particular item of DB Work is within the then-existing scope of DB Work but Contractor believes that such DB Work constitutes a Scope Change, the Contractor shall diligently proceed with such DB Work as directed in writing by Concessionaire; provided, that if the disputed item of DB Work is subsequently determined to constitute a Scope Change (whether by mutual agreement of the Parties or by operation of the dispute resolution provisions in Section 12.14), then such DB Work shall be deemed to have been the subject of a Work Order under Section 12.9 and Concessionaire shall issue a Scope Change Order with respect thereto as provided in Section 12.10 hereof; otherwise, Contractor shall not be entitled to a Scope Change Order with respect to such item of DB Work. All Scope Changes may be subject to the Department's consent, as described in Section 24.8 hereof. In the event the Department requires modifications to the Contract Documents as a condition of its approval of any Scope Change, the Parties shall cooperate to effect such modifications.

As a condition to Concessionaire's obligation under this Article 12 to make payments to Contractor in respect to a Scope Change Order or Work Order, Contractor shall increase the amount of the Letter of Credit by an amount equal to seven-and-one-half percent (7.5%) of the increase in the Contract Sum resulting from the Scope Change Order or Work Order to the extent the aggregate increase in the Contract Sum resulting from all Scope Changes exceeds Seventeen million, five hundred thousand U.S. Dollars (\$17,500,000); in lieu of increasing the Letter of Credit by the full amount required, Contractor may notify Concessionaire to withhold as retainage from payments of the Contract Sum the amount not provided pursuant to a Letter of Credit, such retainage not to exceed seven-and-one-half percent (7.5%) of each installment payment of the Contract Sum. Amounts withheld as retainage may be applied by Concessionaire to the same purposes for which draws on the Letter of Credit may be applied, and shall be released to Contractor in whole or in part if the Letter of Credit is increased as required, or otherwise at the time the amount of the Letter of Credit may be reduced pursuant to Section 4.9 hereof, it being understood that the Parties intend that the Letter of Credit is to be the primary form of additional security during the Warranty Period, and that amounts withheld as retainage will continue to be withheld during the Warranty Period only to the extent the amount of the Letter of Credit does not satisfy the requirements of Section 4.9.

12.2 Scope Change by Concessionaire. If a Scope Change is initiated by Concessionaire (including a Scope Change resulting from a change in Applicable Standards after the Agreement Date that Concessionaire determines should apply to the DB Work, if such changes do not otherwise constitute a Change in Law covered by Section 12.5 hereof or a Technical Requirements Revision covered by Section 12.3.2 hereof), Concessionaire shall give Contractor a written "Proposal Request" (herein so called) setting forth in detail the nature of the requested change, and if the forecasted cost to carry out such Scope Change exceeds the amount of remaining overrun contingency built in the financial model, Concessionaire shall reasonably demonstrate to Contractor that it has sufficient funds to pay for the costs of such Scope Change. Within twenty-one (21) days after receipt of a Proposal Request, Contractor shall provide Concessionaire with a preliminary written response, and within a reasonable time thereafter (not to exceed thirty (30) days) provide to Concessionaire two (2) completed copies of its definitive "Change Order Proposal" (herein so called) setting forth in detail, to the extent known at such time, with a separate pay item (addition or deletion) for purchase and installation of equipment and materials and an otherwise suitable breakdown of costs by trades and DB Work classifications, a stipulated sum proposed as an adjustment to the Contract Sum for the performance of the Scope Change set forth in the Proposal Request, together with any proposed adjustment to the Guaranteed Substantial Completion Date, the Scope Document and the Payment and Values Schedule or other changes in the Contract Documents necessary because of such proposed Scope Change. The adjustment, if any, to the Guaranteed Substantial Completion Date and the Payment and Values Schedule specified in any Change Order Proposal shall be limited to the delays to the Critical Path directly attributable to and necessarily incurred as a result of the proposed Scope Change. Each Change Order Proposal shall be accompanied by appropriate data reasonably acceptable to Concessionaire supporting the proposed adjustments therein, including but not limited to bids, cost estimates, quotations from suppliers and wage schedules. If Concessionaire approves Contractor's Change Order Proposal, Concessionaire will issue and Contractor will execute and accept a written Scope Change Order in the form attached to this Agreement as Exhibit G, and the Contract Sum, the Payment and Values Schedule, the Guaranteed Substantial Completion Date and any other appropriate changes in the Contract

Documents shall be adjusted as set forth in such Scope Change Order. If Concessionaire does not approve Contractor's Change Order Proposal, Concessionaire may, at its option, execute and deliver to Contractor a Work Order in accordance with Section 12.9 hereof in lieu of the Scope Change Order.

12.3 Scope Change by the Department. The Department has the right, at any time and from time to time during the term of the Comprehensive Agreement, to authorize and/or require Scope Changes in the Work or in the terms and conditions of the Technical Requirements (including changes in the standards applicable to the Work) by initiating a Department Change pursuant to Section 14.02 of the Comprehensive Agreement, provided, however, that the Department has no right to require any Scope 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 be uninsurable, or (iv) would give rise to a material and adverse health or safety issue. If the Department initiates a Department Change prior to Final Acceptance, the obligations of Concessionaire under the Comprehensive Agreement with respect to the Department Change, as described below in Sections 12.3.1 and 12.3.2, shall be fulfilled by Contractor. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the amount of any Claim to be made against the Department pursuant to the Comprehensive Agreement in respect of a Department Change.

12.3.1 Department Change Proposal.

12.3.1.1 If the Department desires to initiate a Department Change, then the Department will issue to Concessionaire a "Request for Change Proposal" under the Comprehensive Agreement setting forth the nature, extent and details of the proposed Department Change ("Department Request for Change Proposal"), which Concessionaire will promptly forward to Contractor.

12.3.1.2 Within thirteen (13) days following Contractor's receipt of the Department Request for Change Proposal, Contractor shall provide Concessionaire with a preliminary written response, and within a reasonable time thereafter (not to exceed twenty-six (26) days, or if another timeframe is agreed upon between Concessionaire and the Department under the Comprehensive Agreement, such other timeframe less four (4) days), with a definitive written response (a "Department Change Proposal"), as to whether, in Contractor's opinion, the Department Change constitutes a CA Compensation Event, and, if so, (a) to the extent known at the time, detailed assessment of the cost of the proposed Department Change and an estimate of any compensation to be requested if the proposed Department Change constitutes a CA Compensation Event, (b) the effect of the proposed Department Change on Contractor's performance of its obligations hereunder, to the extent known at the time and (c) a TIA if applicable.

12.3.1.3 Within thirty-four (34) days following the delivery by Concessionaire of the Department Change Proposal to the Department pursuant to Section 12.3.1.2 above, Concessionaire and Contractor shall exercise Commercially Reasonable Efforts to negotiate a mutually acceptable Scope Change Order, including adjustments to the Project

Schedule, and if the Department Change constitutes a CA Compensation Event, an adjustment to the Contract Sum.

12.3.1.4 Pursuant to Section 14.02(b)(iv) of the Comprehensive Agreement, the Department has agreed pay Concessionaire's "Allocable Costs" for preparing a Department Change Proposal and conducting preliminary work to respond to a Department Request for Change Proposal at the Department's request, and Concessionaire will pay Contractor's portion thereof over to Contractor to the extent, subject to Section 2.13.3, actually received by Concessionaire from the Department under the Comprehensive Agreement. The Parties acknowledge that upon payment of such "Allocable Costs" by the Department under the Comprehensive Agreement, the Department will own all Work Product included in the Department Change Proposal.

12.3.1.5 Contractor shall perform the DB Work required to implement the Department Change in a timely manner; provided, that:

(a) a "Change Order" (as defined in the Comprehensive Agreement) setting forth the adjusted scope of DB Work and adjustment to the Project Schedule will have been mutually agreed upon between the Department and Concessionaire and issued by the Department under the Comprehensive Agreement, and a Scope Change Order reflecting such "Change Order" shall have been mutually agreed upon between Concessionaire and Contractor and issued by Concessionaire under this Agreement;

(b) the Department and Concessionaire (if applicable) will have identified sufficient funds that may be made available to Contractor to perform the DB Work required to implement the Department Change; and

(c) all Governmental Approvals necessary to commence the DB Work to implement the Department Change have been obtained.

12.3.1.6 If the Department and Concessionaire agree under the Comprehensive Agreement that the DB Work in question constitutes a Department Change and are unable to reach an agreement on a "Change Order," the Department may deliver to Concessionaire a Directive Letter pursuant to Section 14.02(d)(i) of the Comprehensive Agreement, directing Concessionaire to proceed with the performance of the Work in question, notwithstanding such disagreement. If the Department and Concessionaire disagree under the Comprehensive Agreement whether the Work in question constitutes a Department Change, the Department has the right pursuant to Section 14.02(d)(ii) of the Comprehensive Agreement to issue a Directive Letter, directing Concessionaire to proceed with the performance of the Work in question and such Directive Letter will include any changes to the Technical Requirements, if applicable, necessary to proceed with the Work covered by the Directive Letter. Upon Concessionaire's receipt of a Directive Letter, Concessionaire shall issue a Work Order pursuant to Section 12.9 hereof and Contractor shall implement and perform the DB Work in question in accordance with the Work Order, which will entitle Contractor to a Scope Change Order under Section 12.10. Under the Comprehensive Agreement the Department is to make payments to Concessionaire on a monthly basis for the reasonable "Allocable Costs" of such DB Work performed pursuant to Section 14.02(e) of the Comprehensive Agreement, and, subject to

Section 2.13.3, to the extent such payments are received from the Department, Concessionaire shall make payments of Contractor's portion thereof to Contractor as provided in Section 12.9. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the amount or other terms of any claim to be made against the Department pursuant to the Comprehensive Agreement in respect of a Department's Directive Letter.

12.3.2 Technical Requirements Revisions Treated as Department Change.

The Department has the right in accordance with Section 14.02(f) of the Comprehensive Agreement to require or authorize, during the DB Work Period, a change in the terms and conditions of the Technical Requirements, including changes in the standards applicable to the DB Work (the "Technical Requirements Revisions"). Such Technical Requirements Revisions shall be considered Department Changes and handled pursuant to the Scope Change Order procedures for a Department Change set forth above in Section 12.3.1. In the absence of a Scope Change Order or Work Order relating to such Technical Requirements Revisions, Contractor shall not incorporate the same into its design and construction of the DB Project prior to Substantial Completion.

12.3.3 Any standard or specification with which Contractor is required to comply by a provision of this Agreement during the DB Work Period, shall be the specific edition or version identified in the Technical Requirements, and Contractor shall not be required during the DB Work Period to comply with any newer, updated or revised edition or version unless the Parties so agree or Concessionaire is so directed by the Department as a Department Change.

12.4 Scope Change by Contractor. If Contractor desires to initiate a Scope Change because of a Force Majeure Event or otherwise, Contractor shall, within ten (10) Business Days after first becoming aware (or should have been aware, using all reasonable due diligence) that a Scope Change may be necessary, provide notice thereof to Concessionaire. Except as otherwise specified in Sections 12.5 and 12.6, within seven (7) Business Days thereafter, Contractor shall deliver to Concessionaire (i) a Change Order Proposal meeting the requirements specified in Sections 12.2 and 12.3, together with a detailed description of the proposed Scope Change, a reasonably detailed explanation of why Contractor believes the proposed Scope Change is necessary, all relevant back up documentation, including drawings (original vs. latest), relevant technical/commercial agreement references, and a description of the critical activity which is directly affected, and by how long, or (ii) such of the foregoing information as is known to Contractor at the time, together with its estimate of the date by which a full Change Order Proposal will be submitted to Concessionaire. Subject to the final sentence of this Section 12.4, Concessionaire shall approve a Change Order Proposal evidencing Contractor's entitlement to claim a Scope Change Order under Sections 12.5, 12.6, 12.7, 12.8 and 12.10 due to any of the causes specified therein, but if Concessionaire has a reasonable basis for objecting to any such Change Order Proposal, Concessionaire shall state such objections in writing to Contractor within ten (10) days of receipt of Contractor's Change Order Proposal and the Parties promptly shall meet to resolve their differences; Concessionaire is under no obligation to approve any other Change Order Proposal initiated by Contractor. If the Parties cannot agree on the Scope Change Order, either Party may submit the dispute for resolution pursuant to Section 12.14. Contractor shall not be entitled to submit a package of one or more Change Order Proposals more than once in any month (other than a Change Order Proposal which Contractor provides

pursuant to Section 12.3 or which Concessionaire must approve as set forth in the second preceding sentence, as to which there shall be no limits).

Contractor acknowledges and agrees that timely notice as set forth in the first sentence of this Section 12.4 is essential to allow Concessionaire to review the Change Order Proposal while the facts and conditions underlying the request therefor are contemporaneous, that Concessionaire need not approve any Change Order Proposal to which Contractor is otherwise entitled under this Agreement if Contractor has failed to provide such timely notice, and that the Department is not obligated under the Comprehensive Agreement to provide any relief in the event a CA Compensation Event or CA Delay Event is not claimed within thirty (30) days after Concessionaire first becomes aware (or should have been aware, using all reasonable due diligence) of such CA Compensation Event or CA Delay Event. Contractor may also request Concessionaire to approve any material proposed or actual change, deviation, modification, alteration or exception from any of the Technical Requirements (the “Technical Requirements Deviations”) by submitting a Change Order Proposal containing details required by clause (i) of this Section 12.4 and other relevant items required by Section 14.03(a) of the Comprehensive Agreement, in addition to setting forth Contractor’s detailed estimate of impacts on costs and schedule attributable to the proposed Technical Requirements Deviation, and Concessionaire may in its sole discretion pass such Change Order Proposal for the Department’s consideration pursuant to Section 14.03 of the Comprehensive Agreement. No Technical Requirements Deviations shall exist or be effective for the purposes of the DB Project and the Contract Documents unless and until a written notice of the Department’s approval thereof is provided to Contractor by Concessionaire.

12.5 Scope Changes Due to CA Delay Events.

12.5.1 Delay Event Notice and Determination.

12.5.1.1 If Contractor is affected by a CA Delay Event, it will give written notice to Concessionaire within twenty (20) days following the date on which Contractor 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 CA Delay Event (provided, that in the case of the same CA Delay Event being a continuing cause of delay, only one notice will be necessary) (a “CA Delay Event Notice”). Such CA Delay Event Notice will include, in such form and substance as is required to satisfy Concessionaire’s obligations under the Comprehensive Agreement: (i) a detailed description of the CA Delay Event, (ii) details of the circumstances from which the CA 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 CA Delay Event and information in support thereof, if known at that time. Subject to Sections 12.14 and 12.15, Concessionaire shall submit a “Delay Event Notice” under Section 13.01 of the Comprehensive Agreement based on the CA Delay Event Notice submitted by Contractor hereunder and thereafter assert its rights under the Comprehensive Agreement with respect to the CA Delay Event claimed by Contractor. Contractor will also provide such further information relating to the CA Delay Event as Concessionaire or the Department may reasonably require. Contractor will bear the burden of proving the occurrence of a CA Delay Event and the resulting impacts in accordance with the Comprehensive Agreement.

12.5.1.2 Subject to Sections 12.14 and 12.15, if for any reason Contractor fails to deliver a CA Delay Event Notice within such twenty (20)-day period, Contractor 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 CA Delay Event pursuant to this Agreement.

12.5.1.3 Upon the occurrence of a CA Delay Event, Contractor will promptly undertake efforts to mitigate the effects of such CA Delay Event, including all steps that would generally be taken in accordance with Good Industry Practice. Contractor will promptly deliver to Concessionaire an explanation of the measures being undertaken to mitigate the delay and other consequences of the CA Delay Event. Contractor will notify the Concessionaire within twenty (20) days following the date on which it first became aware (or should have become aware using all reasonable due diligence) that such a CA Delay Event has ceased.

12.5.1.4 Notwithstanding the occurrence of a CA Delay Event, Contractor 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 CA Delay Event. Without limiting the foregoing, the occurrence of a CA Delay Event will not excuse Contractor from timely payment of monetary obligations that are due and payable by Contractor pursuant to this Agreement (including liquidated damages and amounts payable as indemnities), 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 CA Delay Event.

12.5.1.5 Subject to Contractor's giving the notice required in Section 12.5.1.1 and to the provisions of Section 12.5.2, but solely to the extent performance by Concessionaire is, subject to Section 2.13.3, excused by the Department under the Comprehensive Agreement, a CA Delay Event will result in an extension of the Guaranteed Substantial Completion Date, the Guaranteed Final Acceptance Date and/or the Long Stop Date by an equal number of days that the corresponding deadline, if applicable, is extended under the Comprehensive Agreement and the Project Schedule shall be adjusted accordingly. All changes to the Guaranteed Substantial Completion Date, the Guaranteed Final Acceptance Date or the Long Stop Date and conforming changes to the Project Schedule shall be reflected in a Scope Change Order entered into pursuant to Section 12.1.

12.5.2 Delays Affecting Performance of the DB Work. Contractor acknowledges and agrees that pursuant to Section 13.02 of the Comprehensive Agreement, a CA Delay Event occurring during the DB Work Period will excuse Contractor from performance of its obligations to perform the DB Work pursuant to this Agreement but only to the extent that such obligations are directly affected by such CA Delay Event. In addition, during the DB Work Period, extensions of milestones and/or activities identified on the Project Schedule for CA Delay Events affecting the DB Work will be made based on Time Impact Analysis, using the then current Project Schedule and taking into account impacts of the CA Delay Events on Critical Path items, in accordance with the Technical Requirements, and will extend the Guaranteed Substantial Completion Date, the Guaranteed Final Acceptance Date and the Long Stop Date. For avoidance of doubt, the Long Stop Date may be extended in accordance with this

Agreement by reason of a CA Delay Event that occurs during the period after the Guaranteed Substantial Completion Date. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the length of the extension to be sought from the Department pursuant to the Comprehensive Agreement in respect of such a Scope Change Order resulting from a CA Delay Event. For the avoidance of doubt, a change to the Technical Requirements, including as a result of a Change in Law, shall be treated as a Department Change pursuant to Section 12.3.2 hereof.

12.6 Scope Changes Due to CA Compensation Events.

12.6.1 CA Compensation Event Notice.

12.6.1.1 If Contractor is affected by a CA Compensation Event, it will give written notice to Concessionaire within twenty (20) days following the date on which Contractor 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 CA Compensation Event (a “CA Compensation Event Notice”). The CA Compensation Event Notice will set forth, in such form and substance as is required to satisfy the Concessionaire’s obligations under the Comprehensive Agreement for such notice: (A) the CA Compensation Event and its date of occurrence in reasonable detail, (B) the amount by which Contractor claims the Contract Sum should be adjusted as a result of the CA Compensation Event and (C) details of the calculation thereof; provided, that if the amount of such Contract Sum adjustment and details of such calculation are not available within the twenty (20)-day notice period, Contractor may submit an estimate of the amount claimed, or if known, the actual amount claimed, and details thereof no later than forty-five (45) days from the submission of a CA Compensation Event Notice, and Contractor may update the amount of claimed Contract Sum adjustment and details thereof every thirty (30) days. Concessionaire shall submit a “Compensation Event Notice” to the Department under Section 14.01(a)(i) of the Comprehensive Agreement based on the CA Compensation Event Notice submitted by Contractor and such other information provided by Contractor pursuant to this Section 12.6.1.1 and thereafter assert its rights under the Comprehensive Agreement with respect to the CA Compensation Event claimed by Contractor.

12.6.1.2 Subject to Sections 12.14 and 12.15, if, for any reason, Contractor fails to deliver such CA Compensation Event Notice within the such twenty (20)-day period, Contractor will be deemed to have irrevocably and forever waived and released any Claim or right to an adjustment to the Contract Sum or other adverse effects on costs, expenses and liabilities attributable to such CA Compensation Event.

12.6.1.3 After Concessionaire submits a “Compensation Event Notice” under the Comprehensive Agreement based on a CA Compensation Event claimed by Contractor, under Section 14.01(a)(iii) of the Comprehensive Agreement the Department may but it is not required to obtain, at its sole cost, (A) a comprehensive report as to Concessionaire’s estimate of the net cost impact attributable to the CA Compensation Event (which will incorporate the adjustment to the Contract Sum sought by Contractor) 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 CA Compensation Event. Under the Comprehensive Agreement, within 90 days after receiving a

“Compensation Event Notice” and the supporting documentation, the Department is to provide to Concessionaire a copy of such reports as it has elected to obtain and Concessionaire will provide a copy of such report to Contractor. Under Section 14.01(a)(iii) of the Comprehensive Agreement, if the Department disagrees with the entitlement to or the amount of “Concessionaire Damages” claimed by Concessionaire (which will incorporate the adjustment to the Contract Sum sought by Contractor), Concessionaire and the Department are to commence good faith negotiations to resolve the dispute within 120 days after the delivery of the “Compensation Event Notice.” The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the amount to be sought from the Department pursuant to the Comprehensive Agreement in respect of such a Scope Change Order resulting from a CA Compensation Event. All changes to the Contract Sum and corresponding changes to the Payment and Values Schedule and other appropriate changes to the Contract Documents shall be reflected in a Scope Change Order entered into pursuant to Section 12.1.

12.6.2 Contract Sum Adjustment Determination.

12.6.2.1 The Contract Sum shall be adjusted only in an amount necessary to compensate Contractor for all reasonable, unavoidable costs and expenses (including additional Taxes) attributable to the CA Compensation Event and mitigate or avoid the effects of the CA Compensation Event (net of any savings incurred by Contractor as a result of the CA Compensation Event) plus Contractor Overhead & Profit (collectively, the “Contract Sum Adjustment”).

12.6.2.2 The Contract Sum Adjustment associated with a CA Compensation Event will be net of all applicable insurance proceeds payable to Contractor associated with such CA Compensation Event (or that would be payable to Contractor but for the failure by Contractor to comply with the insurance requirements set forth herein), 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 premiums resulting from such Claim; provided, that any portion of an increased insurance premium resulting from any such Claim is certified in writing by Contractor’s insurance provider prior to payment by Concessionaire.

12.6.2.3 Contractor will share with Concessionaire and the Department all data, documents and information pertaining to the proposed Contract Sum Adjustment on an Open Book Basis. Contractor will take all steps reasonably necessary to mitigate the amount of the Contract Sum Adjustment attributable to, and other consequences of, any CA 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.

12.6.2.4 Under the Comprehensive Agreement, if 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 of the Comprehensive Agreement. Under the Comprehensive Agreement the Department is to make payment to Concessionaire of the undisputed portion of the “Concessionaire Damages” in accordance with Section 14.01(b)(vi) of the Comprehensive

Agreement without regard to the dispute resolution procedures, and, subject to Section 2.13.3, solely to the extent received from the Department, Concessionaire shall pay the portion thereof attributable to the Contract Sum Adjustment over to Contractor.

12.6.2.5 The Parties acknowledge that under Section 14.01(b)(vii) of the Comprehensive Agreement Concessionaire is not entitled to “Concessionaire Damages” which are *de minimis*, and, as a result, Contractor will not be entitled to a Contract Sum Adjustment under this Agreement if Concessionaire is denied corresponding “Concessionaire Damages” that are *de minimis* under the Comprehensive Agreement.

12.6.2.6 Subject to Section 2.13.3, all payments to Contractor of amounts claimed in respect of a CA Compensation Event are strictly subject to Concessionaire’s receipt thereof from the Department; provided, however, that if the amount of “Concessionaire Damages” payable by the Department under Section 14.01 of the Comprehensive Agreement is less than the amount to which the DB Contractor is entitled hereunder in respect of such CA Compensation Event (as agreed by the Parties or determined pursuant to the dispute resolution process set forth in Article 19 hereof) as a result of the application of the proviso to Section 14.01(b)(i) of the Comprehensive Agreement, then Concessionaire shall be responsible for such shortfall.

12.6.3 Sole Remedy and Release of Claims. Without limiting Contractor’s rights with respect to non-monetary relief for CA Delay Events in accordance with Section 12.5, the Contract Sum Adjustment as expressly provided in this Agreement will represent the sole right to compensation and damages for the adverse effects of a CA Compensation Event.

12.6.4 Additional Provisions for Certain CA Compensation Events.

12.6.4.1 If Contractor is affected by a CA Compensation Event described in clause (k) of the definition thereof, Contractor will be entitled to claim a Contract Sum Adjustment under this Agreement for such CA Compensation Event; provided, however, that:

(i) in no event will Contractor be entitled to submit a Claim if the Contract Sum Adjustment for such CA Compensation Event does not equal or exceed \$10 million US Dollars per occurrence (“Claim Threshold”);

(ii) if such Contract Sum Adjustment meets the Claim Threshold, the Department has agreed pursuant to Section 14.01(f)(i) of the Comprehensive Agreement to be solely responsible for such costs in excess of \$10 million US Dollars for such CA Compensation Event and; provided, however, that Contractor will be solely responsible for such costs up to \$10 million US Dollars per occurrence for the first two CA Compensation Events that meet the Claim Threshold; and

(iii) the Department has agreed pursuant to Section 14.01(f)(i) of the Comprehensive Agreement to be responsible for such costs of such CA Compensation Events after the first two such CA Compensation Events occur that meet the Claim Threshold.

For the avoidance of doubt, Contractor will be solely responsible for such CA Compensation Events with a Contract Sum Adjustment under \$10 million per occurrence. The costs to Contractor attributable to the CA Compensation Event described in this Section 12.6.4.1 for which the Department bears responsibility pursuant to Section 14.01(f)(i) of the Comprehensive Agreement are to be paid by the Department to Concessionaire, which shall promptly pay over the amount received to Contractor. Concessionaire shall not be liable to Contractor for the payment of any such costs for which the Department is responsible under the Comprehensive Agreement except, subject to Section 2.13.3, to the extent the same are actually received by Concessionaire from the Department.

12.6.4.2 If Contractor is affected by a CA Compensation Event described in clause (l) of the definition thereof, Contractor will be entitled to claim a Contract Sum Adjustment under this Agreement for such CA Compensation Event; provided, however, that:

- (i) Contractor may not claim a Contract Sum Adjustment for the first \$5 million US Dollars in aggregate increased costs for such CA Compensation Event;
- (ii) the Department has agreed pursuant to Section 14.01(f)(ii) of the Comprehensive Agreement to be responsible for such costs in excess of \$5 million US Dollars but less than or equal to \$10 million US Dollars for such CA Compensation Event; and
- (iii) the Department and Contractor will share evenly the costs in excess of \$10 million US Dollars for such CA Compensation Event.

The provisions of this Section 12.6.4.2 apply to each event and not in the aggregate. The costs to Contractor attributable to the CA Compensation Event described in this Section 12.6.4.2 for which the Department bears responsibility pursuant to Section 14.01(f)(ii) of the Comprehensive Agreement are to be paid by the Department to Concessionaire, which shall promptly pay over the amount received to Contractor. Concessionaire shall not be liable to Contractor for the payment of any such costs for which the Department is responsible under the Comprehensive Agreement except, subject to Section 2.13.3, to the extent the same are actually received by Concessionaire from the Department.

12.7 Scope Changes Due to Hazardous Substances. Subject to Section 2.1.17.5, if Contractor incurs costs in taking Remedial Actions with respect to (i) Unknown Pre-Existing Hazardous Substances or Third Party Hazardous Substances, the presence of either of which constitutes a Hazardous Environmental Condition, that exceed the amount recovered from any available reimbursement program or third parties, as described in Section 2.1.17.5, or (ii) any Hazardous Substances, the presence of which constitutes a Hazardous Environmental Condition, introduced to the Project Right of Way after the Agreement Date by Concessionaire, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust the Contract Sum, the Payment and Values Schedule and the Maximum Cumulative Drawdown Schedule. Subject to Section 2.13.3, Concessionaire's obligation to pay Contractor any increase on the Contract Sum as a result of a Scope Change

Order issued pursuant to clause (i) of this Section 12.7 shall be subject to Concessionaire's receipt of necessary funds in respect thereof from the Department under Section 16.02(a) of the Comprehensive Agreement. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the amount or other terms of any Claim to be made against the Department pursuant to the Comprehensive Agreement in respect of such a Scope Change Order.

12.8 Scope Changes Due to Concessionaire-Caused Delay. Except to the extent another consequence is expressly provided in this Agreement, Contractor shall be entitled to claim a Scope Change Order adjusting one or more of the Contract Sum, the Payment and Values Schedule, the Guaranteed Substantial Completion Date, the Guaranteed Final Acceptance Date, the Long Stop Date and other appropriate changes to the Contract Documents to the extent Contractor's performance of the DB Work is adversely affected by a Concessionaire-Caused Delay and in respect of which Contractor cannot, in the absence of incurring material cost or impacting the Critical Path, overcome the effect thereof. If the Parties cannot agree upon the appropriate adjustment(s), such adjustment(s) shall be determined pursuant to the dispute resolution process set forth in Article 19.

12.9 Work Orders. If (i) Contractor's Change Order Proposal delivered pursuant to Section 12.2 hereof is not agreed to by Concessionaire, Concessionaire may, at its option, issue or (ii) as contemplated by Section 12.3.1.6 hereof, if the Department issues a Directive Letter pursuant to Section 14.02(d) of the Comprehensive Agreement, Concessionaire shall issue, to Contractor a Work Order in lieu of the Scope Change Order ordinarily issued under certain other sections of this Article 12. A "Work Order" is a written instruction from Concessionaire to Contractor to proceed with the Scope Change that is the subject of a Change Order Proposal. Pursuant to Section 14.02(e) of the Comprehensive Agreement, the Department is to make payments to Concessionaire on a monthly basis for the reasonable "Allocable Costs" of such DB Work performed, and, subject to Section 2.13.3, to the extent so received from the Department, Concessionaire shall make corresponding payments to Contractor on a monthly basis for the reasonable costs of the DB Work in question plus Contractor Overhead & Profit (subject to subsequent adjustment through the dispute resolution procedures, as between Concessionaire and the Department, set forth in the Comprehensive Agreement). Contractor shall be entitled to claim a Scope Change Order pursuant to Section 12.10 with respect to Work Orders issued by Concessionaire.

12.10 Performance of Scope of Changes. If Concessionaire executes and delivers to Contractor a Work Order, or if Concessionaire and Contractor agree to a Scope Change Order, Contractor promptly shall perform the DB Work described in the Work Order or Scope Change Order. Concessionaire shall not be responsible for premium time work unless (i) Concessionaire has expressly directed the performance of premium time work, (ii) the need for such premium time work was not caused by Contractor, and (iii) such premium time work was not contemplated by Contractor's original DB Work plan. With respect to DB Work performed pursuant to a Work Order, Contractor shall deliver to Concessionaire, within twenty (20) days after completion, invoices, statements, payroll data and other evidence of the actual cost of the DB Work attributable to the Work Order that Concessionaire may reasonably require. Promptly following (a) completion of the Scope Change required under a Work Order, (b) agreement by Concessionaire and Contractor (or as determined pursuant to the dispute resolution process set

forth in Article 19) as to the adjustments to the Contract Sum, the Payment and Values Schedule, the Guaranteed Substantial Completion Date and other applicable terms and conditions of the Contract Documents which should be permitted as a result of such Work Order, and (c) receipt by Concessionaire of all required invoices, statements, payroll data and other evidence of the actual cost of the DB Work performed pursuant to such Work Order, Concessionaire shall issue a Scope Change Order adjusting one or more of the Contract Sum, the Payment and Values Schedule and the Guaranteed Substantial Completion Date, and making appropriate changes to the Contract Documents. If the Scope Change under a Work Order is performed over a period of more than one (1) month, Contractor may request, and shall be entitled to, payments for the Scope Change performed during each month in the same manner as payments requested for other DB Work. Agreement on any Scope Change Order shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefor pursuant to this Agreement.

12.11 Scope Changes Due to Contractor Error. Notwithstanding anything in this Article 12 to the contrary, no Scope Change Order shall be issued and no adjustment of the Contract Sum, the Guaranteed Substantial Completion Date or the Payment and Values Schedule shall be made in connection with any correction of errors, omissions, deficiencies, or improper or defective DB Work on the part of Contractor or any Subcontractor in the performance of the DB Work hereunder, or correction of any improper, defective or deficient equipment supplied by Contractor or any Subcontractor.

12.12 Familiarity with Conditions. Except as otherwise expressly provided in Sections 2.1.17, 5.6, 12.5, 12.6 and 12.7, Contractor accepts the risk of mistake or error relating to all matters within the scope of the DB Work and acknowledges and agrees that no increase or adjustment in the Contract Sum, the Guaranteed Substantial Completion Date or the Payment and Values Schedule will be authorized by Concessionaire as a result of any such mistake or error. Contractor has received from Concessionaire and the Department, for its reference purpose only, certain information pertinent to the Project Right of Way and the DB Work. Neither Concessionaire nor the Department has made and will not make any express or implied warranty to Contractor as to the accuracy and completeness of such information, and neither Concessionaire nor the Department shall be liable to Contractor with respect to such information.

12.13 Compliance with Guaranteed Substantial Completion Date. With respect to any Scope Change proposed by Concessionaire or Contractor or required hereunder, Contractor shall whenever possible provide Concessionaire with the option to cause Contractor to perform the Scope Change without an adjustment in the Guaranteed Substantial Completion Date or the Project Schedule; provided that the Contract Sum is adjusted to compensate Contractor for any reasonable additional costs incurred in performing the Scope Change in accordance with such time limitation. If Concessionaire disputes Contractor's estimate of such reasonable additional costs, such costs shall nonetheless be paid pending the resolution of the dispute. Amounts that are subsequently determined not to have been properly payable to Contractor shall be refunded to Concessionaire together with interest at the Bank Rate. Subject to the foregoing, Concessionaire shall have the right to elect to cause such Scope Change to be performed without an adjustment in the Guaranteed Substantial Completion Date or any schedule for the DB Project whenever possible, or to cause such Scope Change to be performed upon any other terms and conditions set forth in the Change Order Proposal.

12.14 Scope Change Order Dispute; Department Claim Dispute. In the event Contractor makes a claim for a Scope Change Order to which it believes it is entitled under the terms hereof and (a) the Parties are unable to reach agreement regarding the terms of such Scope Change Order within ten (10) Business Days after Contractor's submission of the Change Order Proposal and supporting documentation, or (b) solely in respect of a proposed Scope Change Order resulting from the claimed occurrence of a CA Compensation Event, a CA Delay Event or pursuant to Section 12.7, Concessionaire determines that seeking relief under the Comprehensive Agreement is not appropriate and as a consequence thereof is unwilling to provide a Scope Change Order to Contractor, the Parties agree to a fast-track adjudication process in accordance with this Section 12.14:

(i) A Party may submit the Claim to a qualified independent third-party arbitrator with substantial experience in highway construction contracts; the Parties agree that any of the Persons named on Exhibit Y hereto (with such additions and deletions from time to time as the Parties mutually agree) will be acceptable arbitrators unless a Party sends a notice objecting to such Person's inclusion on Exhibit Y prior to the commencement of the adjudication process. The other Party shall submit its response to the arbitrator within ten (10) days of submission of the Claim to the arbitrator by the initiating Party.

(ii) Such independent arbitrator will have fifteen (15) calendar days to make a preliminary determination whether (I) in the case of a dispute described in clause (a) of the first paragraph of this Section 12.14, Contractor's Claim and proposed cost adjustment amount appears in good faith to be valid, and if the independent arbitrator so determines, he/she shall then advise the Parties of an appropriate interim measure while the Parties proceed with the dispute resolution process as set out in paragraphs (iii), (iv) and (v) below; or (II) in the case of a dispute described in clause (b) of the first paragraph of this Section 12.14, Contractor's Claim appears in good faith to be valid, and if the independent arbitrator so determines, the Parties shall follow the procedure set forth in Section 12.15 hereof.

(iii) Subject to Concessionaire's compliance with its obligations under Section 5.8 and to Contractor's suspension rights set forth in clause (iv) below, the Parties agree that such interim measure shall require Contractor to proceed with the DB Work set out in the disputed Scope Change Order and that Claims and certification for such DB Work shall occur in accordance with the conditions of this Agreement. If a payment has been made according to the terms of this Section 12.14, and the Claim underlying such payment is subsequently determined not to be valid, Contractor shall repay all monies to Concessionaire (including accumulated interest at the Bank Rate);

(iv) Upon certification by the independent arbitrator, Concessionaire shall pay for the disputed Scope Change Order in accordance with this Agreement, and if Concessionaire fails to make such payment, Contractor shall be entitled to suspend only that portion of the DB Work that is required by

the specific disputed Scope Change Order until Concessionaire makes the required payment. Any suspension of the DB Work by Contractor under this Section 12.14 shall entitle Contractor to make a claim for a Scope Change Order under the terms of this Agreement; and

(v) The disputes process employed by the Parties pursuant to this Section 12.14 shall be structured with the goal of fully resolving disputed Scope Change Orders and Contractor's Claims thereto within ninety (90) days of submission by Contractor of such Scope Change Order; provided, however, that where such process as described herein does not result in a determination in time for Concessionaire to file the corresponding Claim under the Comprehensive Agreement or otherwise preserve its rights thereunder, then the Parties shall seek in good faith to agree on the action to be requested from the Department or, if agreement is not reached, Concessionaire shall present Contractor's Claim to the Department subject to its right to modify or withdraw the Claim to reflect the outcome of the dispute resolution process hereunder. The Parties shall request the independent arbitrator to allocate the costs of pursuing, modifying or withdrawing the Claim under the Comprehensive Agreement equitably in accordance with the outcome of the dispute resolution process.

Nothing in this Section 12.14 shall be deemed to waive or otherwise affect any requirement in this Article 12 that the Department approve a Scope Change Order before Contractor may issue or implement the same, and Contractor shall have no obligation to do so pending receipt of any required the Department approval.

12.15 Expedited Dispute Resolution Procedure for Claims Against the Department. In the event Contractor and Concessionaire cannot agree on (1) the amount or other terms of any Claim to be presented by Concessionaire to the Department under the Comprehensive Agreement as a result of the occurrence of a CA Compensation Event entitling Contractor to claim a Scope Change Order hereunder or pursuant to Section 12.7, or (2) the period of time by which Concessionaire should request the Department to extend the Guaranteed Substantial Completion Date or the Long Stop Date under the Comprehensive Agreement upon the occurrence of a CA Delay Event entitling Contractor to claim a Scope Change Order hereunder, the Parties shall follow the following procedure:

(a) A Party may submit the dispute to a qualified independent third-party arbitrator with substantial experience in highway construction contracts; the Parties agree that any of the Persons named on Exhibit Y hereto will be acceptable arbitrators unless a Party sends a notice objecting to such Person's inclusion on Exhibit Y prior to the commencement of the adjudication process. The other Party shall submit its response within ten (10) days of submission of the Claim to the arbitrator by the initiating Party. In their respective submittals, each of the Parties shall specify its "best and final" offer regarding the amount and other terms of the Claim to be presented to the Department or the period of time by which Concessionaire should request the Department to extend the Guaranteed Substantial Completion Date, as applicable.

(b) The independent arbitrator shall, within fifteen (15) calendar days after receipt of the Parties' submissions, select only one of the "best and final" offers submitted, and shall not craft any alternative or compromise.

(c) The determination of the independent arbitrator shall be final and binding upon the Parties, and Concessionaire shall thereafter exercise its rights under the Comprehensive Agreement to obtain from the Department, in the case of a CA Compensation Event, the Claim amount and other relief terms selected by the arbitrator, or in the case of a CA Delay Event, the length of the extension request selected by the arbitrator, unless in either instance Concessionaire determines to provide a Scope Change Order to Contractor providing the outcome sought in Contractor's submission without regard for obtaining a corresponding "Change Order" under the Comprehensive Agreement. Concessionaire shall allow Contractor to participate in the presentation of the Claim to and negotiations of the Claim with the Department. Any compromise with the Department that is less favorable to Contractor than the relief selected by the arbitrator shall be subject to Contractor's approval.

(d) Contractor shall not be entitled to any further relief under this Agreement in respect of such CA Compensation Event or CA Delay Event if (i) Concessionaire successfully obtains the relief in the offer selected by the arbitrator, (ii) Contractor accepts a compromise with the Department pursuant to subsection (c) above, or (iii) the matter is finally resolved in accordance with the dispute resolution process set forth in the Comprehensive Agreement or Article 19 hereof.

(e) Where the process as described herein does not result in a determination in time for Concessionaire to file the corresponding Claim under the Comprehensive Agreement or otherwise preserve its rights thereunder, then the Parties shall seek in good faith to agree on the action to be requested from the Department or, if agreement is not reached, Concessionaire shall present Contractor's Claim to the Department subject to its right to modify or withdraw the Claim to reflect the outcome of the dispute resolution process hereunder. The Parties shall request the independent arbitrator to allocate the costs of pursuing, modifying or withdrawing the Claim under the Comprehensive Agreement equitably in accordance with the outcome of the dispute resolution process.

12.16 Comprehensive Agreement Modifications. If an amendment to the Comprehensive Agreement that materially increases Contractor's obligations or diminishes its rights is made without Contractor's consent, then Concessionaire shall issue a Scope Change Order reasonably acceptable to Contractor addressing the impacts to Contractor of such amendment to the Comprehensive Agreement.

12.17 Election to Restore Following Significant Force Majeure Event. If the Department elects to terminate the Comprehensive Agreement pursuant to Section 20.03(a)(ii) of the Comprehensive Agreement as a result of the occurrence of a Significant Force Majeure Event prior to achievement of Substantial Completion, then Concessionaire shall not, without the Contractor's prior written consent, elect to restore any resulting damage or destruction and thereby avoid such termination.

ARTICLE 13

INDEMNIFICATION

13.1 Indemnities of Contractor. In addition to the Contractor's indemnity obligations as set forth elsewhere in this Agreement, Contractor will indemnify, defend, and hold harmless each DB Indemnitee from and against any Losses actually suffered or incurred by such DB Indemnitee (except to the extent such Losses are solely caused by the misconduct, negligence or other culpable act, error or omission of a DB Indemnitee), due to Third Party Claims that are based upon:

(i) any actual or alleged failure by Contractor to comply with, observe or perform any of its covenants, obligations, agreements, terms or conditions in this Agreement, the other Contract Documents or the Technical Requirements, or, any actual or alleged breach by Contractor of its representations or warranties set forth herein or therein;

(ii) any actual or alleged misconduct, negligence or other culpable act, error or omission of a Contractor Party in connection with the Project;

(iii) any actual or alleged patent or copyright infringement or other actual or alleged improper appropriation or use by a Contractor Party of trade secrets, patents, proprietary information, know-how, trade marked or service marked materials, equipment, devices or processes, copyright rights or inventions in connection with the DB Project;

(iv) any actual or alleged inverse condemnation, trespass, nuisance or similar taking of or harm to real property committed or caused by a Contractor Party in connection with the DB Project arising from any actual or alleged (A) failure by Contractor to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement; (B) breach by Contractor of its representations or warranties set forth in this Agreement or (C) misconduct, negligence or other culpable act, error or omission of a Contractor Party; provided, however, that the Contractor will not be required to indemnify, defend or hold harmless a DB Indemnitee from and against any Losses actually suffered or incurred by such DB 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 Real Estate Right outside the Project Right of Way acquired pursuant to this Agreement;

(v) any actual or alleged claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of Contractor, its Affiliates or their respective Representatives in connection with this Agreement;

(vi) payments of, or failure to pay, Taxes relating to Contractor's income or other Taxes required to be paid by Contractor without reimbursement under this Agreement; or

(vii) nonpayment of amounts due as a result of furnishing materials to Contractor or any Subcontractor in connection with the DB Work to the extent Concessionaire has paid Contractor all undisputed amounts then due and payable from the Concessionaire to Contractor under this Agreement.

13.2 Indemnities of Concessionaire. Concessionaire will indemnify, defend, and hold harmless Contractor Parties from and against any Losses actually suffered or incurred by Contractor Parties (except to the extent such Losses are solely caused by the misconduct, negligence or other culpable act, error or omission of a Contractor Party), due to Third Party Claims that are based upon (i) any actual or alleged failure by Concessionaire to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or the other Contract Documents, or, any actual or alleged breach by Concessionaire of its representations or warranties set forth herein or therein, or (ii) any actual or alleged misconduct, negligence, violation of Law, or other culpable act, error or omission of Concessionaire or a Concessionaire Contractor in connection with the Project.

13.3 Defense and Indemnification Procedures.

13.3.1 In the event that either Party becomes aware of any Claim for which a Party (the "Indemnifying Party") may be required to indemnify an Indemnitee hereunder, it will as promptly as practicable notify the other Party in writing of such Claim, and such notice will include a copy of the Claim (if available) and any related correspondence or documentation; provided, that if the Party required to give notice is the Indemnitee, any failure to give such prompt notice will not constitute a waiver of any rights of the Indemnitee, except to the extent that the rights of the Indemnifying Party are actually and materially prejudiced thereby. If any Third Party Claim for which Contractor 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 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 Contractor are actually and materially prejudiced thereby.

13.3.2 The Indemnifying Party will be entitled and obligated to appoint counsel of its choice at the expense of the Indemnifying Party to represent an Indemnitee in any action for which indemnification is sought (in which case the Indemnifying Party will not thereafter be responsible for the fees and expenses of any separate counsel retained by that Indemnitee except as set forth below); provided, that such counsel will be satisfactory to such Indemnitee. Notwithstanding the Indemnifying Party's appointment of counsel to represent an Indemnitee in any action, such Indemnitee will have the right to employ separate counsel, and the Indemnifying Party will bear the reasonable fees, costs and expenses of such separate counsel, if:

(i) the use of counsel chosen by the Indemnifying Party to represent the 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 Indemnitee and the Indemnifying Party and the Indemnitee will have reasonably concluded that there may be legal defenses available to it and/or other Indemnitees which are different from or additional to those available to the Indemnifying Party, and the Indemnifying Party has not provided the Indemnitee with its own separate counsel satisfactory to such Indemnitee;

(iii) the Indemnifying Party will not have employed counsel to represent the Indemnitee within a reasonable time after notice of the institution of such action; or

(iv) the Indemnifying Party authorizes the Indemnitee to employ separate counsel at the Indemnifying Party's expense.

13.3.3 The Indemnifying Party will not be liable for any settlement or compromise by an affected Indemnitee of a Third Party Claim except with the Indemnifying Party'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 Indemnifying Party receives reasonable notice and the opportunity to be heard and such court approval has become final and non-appealable.

13.4 Action in Case of Injunction. If, in any claim, suit or proceeding identified in Section 13.1(iii), a temporary restraining order or preliminary injunction is granted, Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If, in any such claim, suit or proceeding, the DB Project or any part, combination or process thereof is held to constitute an infringement and its use is permanently enjoined, Contractor shall at its own expense and without impairing performance requirements, either replace the infringing DB Work or part, combination or process thereof with non-infringing components or parts or modify the same so that they become non-infringing. If Contractor is unable to do so within a reasonable time, Contractor shall promptly make every reasonable effort to secure for Concessionaire a license, at no cost to Concessionaire, authorizing continued use of the infringing DB Work. No Guaranteed Substantial Completion Date or any of Contractor's scheduling requirements under this Agreement shall be extended due to any temporary restraining order or injunction described in this Section 13.4.

13.5 Survival. The provisions of this Article 13 shall survive Final Acceptance and the termination of this Agreement.

ARTICLE 14

INSURANCE

14.1 Contractor-Provided Insurance.

14.1.1 From the Commencement Date Contractor shall provide the insurance coverages required by Section 1 of Exhibit Y to the Comprehensive Agreement in form reasonably satisfactory to Concessionaire and the Department and shall maintain such insurance in full force and effect until Final Acceptance; provided, however, that Contractor shall provide all types of Liability insurance coverage and Workers' Compensation Coverage required by Section 1 of Exhibit Y to the Comprehensive Agreement for all periods during which Contractor or any of its agents, Subcontractors or employees enters onto the DB Project site and provided, further, that such Liability insurance coverage and Worker's Compensation Coverage shall continue in full force and effect during the Warranty Period and Contractor shall provide Completed Operations Coverage and Commercial General Liability ("CGL") and certify to Concessionaire and the Financing Parties that such Completed Operations Coverage and CGL will be in effect for a period of three (3) years after the end of the Warranty Period.

14.1.2 The insurances which Contractor is required to maintain under Section 14.1.1 shall 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 Concessionaire.

14.1.3 Contractor shall cause its Subcontractors performing any portion of the DB Work to provide and maintain the insurance coverages required by Section 3 of Exhibit Y to the Comprehensive Agreement.

14.2 Certificates. Contractor shall furnish to Concessionaire, the Department, the Financing Parties, the Independent Engineer and their respective permitted assigns and successors, upon request, certificates of insurance required hereunder in a form reasonably acceptable to Concessionaire, the Department, the Financing Parties, the Independent Engineer and their respective permitted assigns and successors, as the case may be. All such certificates shall state that thirty (30) days' prior written notice shall be given to each such party in the event of cancellation or non-renewal of or material change in the relevant policy. Renewal certificates shall be provided upon request.

14.3 Responsibility for Deductibles. Deductibles under the foregoing policies of insurance shall be borne by Contractor; provided, however, that in no event shall Contractor be required to compensate Concessionaire for loss incurred during the waiting period (which shall be no more than fifteen (15) days) under the delay in start-up endorsement or the business interruption endorsement of the property coverage described in Section 1(e) of Exhibit Y to the Comprehensive Agreement, whether during the construction period or otherwise. The Parties agree that the policies shall contain a single deductible, where available.

14.4 Waiver of Subrogation. All insurance policies supplied by Contractor or Concessionaire under this Article 14 shall include a waiver of any right of subrogation of the insurers thereunder against all State Indemnitees, and to the extent reasonably available, against Concessionaire, Contractor, its Subcontractors and the Financing Parties, the Independent Engineer and their respective permitted assigns, successors, subsidiaries, parent companies,

Affiliates, employees insurers and underwriters, and a waiver of any right of the insurers to any set-off or counterclaim or any other deduction, save for outstanding premium under the relevant insurance only, whether by attachment or otherwise, in respect of any liability of any Person insured under any such policy.

14.5 Failure to Procure Insurance. If Contractor fails to procure and maintain the required insurance, or any portion thereof, Concessionaire shall have the right, but not the obligation, to procure and maintain the required insurance for and in the name of Concessionaire and Contractor shall promptly pay the cost thereof and shall furnish all information necessary to acquire and maintain such insurance.

14.6 Additional Policy Requirements. The insurance coverages required to be provided by Contractor hereunder shall include a severability of interest clause, and Contractor agrees that none of the insurance policies required under this Article 14 shall contain a clause that would void coverage due to the individual actions of any other insured parties.

14.7 Contractor's or Rented Equipment. All equipment, supplies and materials belonging to Contractor or any Subcontractor which are used by or on behalf of Contractor or any Subcontractor for its performance hereunder or is leased or loaned to any of them, shall be brought to and kept at the DB Project site at the sole cost, risk and expense of Contractor or such Subcontractor and Concessionaire shall not be liable for loss or damage thereto, and any insurance policies carried by Contractor, any Subcontractor, or any third party on said equipment, supplies and materials shall provide for a waiver of the underwriters' right to subrogation against all State Indemnitees, Concessionaire, the Financing Parties, the Independent Engineer and their respective permitted assigns, successors, parent companies, subsidiaries, Affiliates, employees, insurers and underwriters.

14.8 Unemployment and Other Insurance Benefits. Contractor agrees to and does hereby accept full and exclusive responsibility and liability for the withholding and payment of any and all Taxes and contributions levied or assessed against Contractor for Unemployment Insurance and for Old Age Retirement Benefits, and for pensions and annuities now imposed, or hereafter imposed, by the Governmental Authorities with respect to, assessed against or measured by wages, salaries or other remuneration paid to persons employed by Contractor in connection with the DB Work hereunder. Contractor further agrees to indemnify and hold harmless the DB Indemnitees from any and all liability therefor.

14.9 Descriptions Not Limitations. The coverages referred to in this Article 14 and Section 1 of Exhibit Y to the Comprehensive Agreement are set forth in full in the respective policy forms, and the descriptions of such policies in this Agreement and Section 1 of Exhibit Y to the Comprehensive Agreement and are not intended to be complete, nor to alter or amend any provision of the actual policies and in matters, if any, in which the said descriptions may be conflicting with such instruments, the provisions of the policies of insurance shall govern; provided, however, that neither the content of any insurance policy or certificate nor Concessionaire's Approval thereof shall relieve Contractor or any of its obligations under the Contract Documents.

14.10 Additional Insureds. All insurance policies furnished by Contractor or its design engineer pursuant to this Article 14 (except Worker's Compensation Insurance, Automobile, Employer's Liability Insurance and Professional Indemnity Insurance) shall name all State Indemnitees, Concessionaire, the Financing Parties, the Independent Engineer and their respective permitted assigns, successors, subsidiaries and Affiliates as additional insureds as their respective interests may appear; provided, however, that the Department shall also be named an additional insured on a primary, non-contributory basis under Contractor's Automobile Liability Insurance.

14.11 No Limitation of Liability. The required coverages referred to and set forth in this Article 14 shall in no way affect, nor are they intended as a limitation of, Contractor's liability with respect to its performance of the DB Work hereunder.

14.12 Insurance Primary. All policies of insurance provided by Contractor pursuant to this Article 14 shall be written as primary policies, not contributing with, and not in excess of, the coverage that Concessionaire, the Independent Engineer, the Department, the Financing Parties and their respective permitted assigns, successors, parent companies, subsidiaries and Affiliates may carry against the same hazards.

14.13 Capitalized Terms. Capitalized terms used in this Article 14 and not otherwise defined in this Agreement shall have the respective meanings generally ascribed to them in the commercial insurance industry in the United States.

14.14 Proof of Coverage. Contractor will deliver to Concessionaire true and correct copies of policies, material forms, endorsements and premium indications of each insurance policy certified by Contractor's insurance broker to be true and correct copies of such policies, forms, endorsements and premium indications, as a condition to receiving the Notice to Proceed set forth in this Agreement, and annually thereafter no later than twenty (20) days prior to policy renewal or replacement. Contractor will also deliver to Concessionaire duplicate originals or copies of each Project-specific insurance policy and endorsements for the Project coverage of each other insurance policy certified by Contractor's insurance broker to be true and correct copies of the originals no later than fifty (50) days after receiving the Notice to Proceed set forth in this Agreement and annually thereafter no later than fifty (50) days after policy renewal or replacement, and also whenever reasonably requested by Concessionaire.

ARTICLE 15

SUSPENSION OF DB WORK; TERMINATION

15.1 Suspension of the DB Work.

15.1.1 Concessionaire's Right to Suspend the DB Work. Concessionaire may elect to suspend completion of all or any part of the DB Work upon ten (10) days' prior written notice to Contractor (or, in emergency situations, upon such prior notice as circumstances may permit) indicating (a) the portion of the DB Work the completion of which Concessionaire has elected to defer, (b) Concessionaire's estimate of the duration of such suspension and (c) the effective date of such suspension of the DB Work. Upon receipt of and consistent with the effective date of such notice, Contractor shall stop performance of the portion of the DB Work which Concessionaire has elected to defer and shall continue to complete performance of the balance of the DB Work hereunder. In the event of a suspension of the DB Work pursuant to this Section 15.1.1, Concessionaire will authorize a Scope Change Order or, at its option, a Work Order if appropriate, making required adjustments to one or more of the Guaranteed Substantial Completion Date, the Contract Sum or the Payment and Values Schedule, and such other adjustments as are appropriate, with any disputes being resolved pursuant to the dispute resolution process set forth in Article 19. Contractor shall mitigate to the fullest extent reasonable possible any additional expenses to be borne by Concessionaire as a result of suspension of the DB Work pursuant to this Section 15.1.1. In the event the entire DB Work is suspended pursuant to this Section 15.1.1 for a period of four hundred and eighty-six (486) consecutive days, Contractor may terminate this Agreement upon written notice to Concessionaire. In the event Contractor terminates this Agreement pursuant to this Section 15.1.1, Concessionaire shall pay the Termination Payment to Contractor in accordance with Section 4.4 as Contractor's sole and exclusive remedy, but it will not affect Contractor's right to receive amounts otherwise due but unpaid hereunder prior to termination.

15.1.2 Department's Right to Suspend the DB Work.

15.1.2.1 Contractor acknowledges and agrees that under Section 10.07 of the Comprehensive Agreement the Department has the right and authority, without liability to Concessionaire or Contractor, to suspend any affected portion of the DB Work by written order to 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 24.04(b) of the Comprehensive Agreement and Section 15.1.2.2 hereof), including to workers, other personnel or the general public from unsafe or dangerous conditions, or upon the occurrence of the events described in Section 10.07(a) of the Comprehensive Agreement. In accordance with Section 10.07(b) of the Comprehensive Agreement, the Department is to 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 Contractor (acting on behalf of the Concessionaire) fully cures and corrects the applicable breach or failure to perform. Contractor may direct Concessionaire to dispute the Department's suspension order by written notice to Concessionaire, which notice will provide supporting information for Contractor's position. Unless directed otherwise by Concessionaire after receipt of such notice, Contractor will carry out the DB Work required by the Department. If it is determined in accordance with the dispute resolution procedures in the Comprehensive Agreement that Contractor was in compliance with its obligations under this Agreement, then the suspension order and any additional DB Work required by the Department under the Comprehensive Agreement will be treated as a Department Change hereunder.

15.1.2.2 The Parties acknowledge that the Department under Section 24.04(b) of the Comprehensive Agreement may require Concessionaire to suspend any DB Work or other activities related to the DB 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 the Comprehensive Agreement that Contractor was in compliance with its obligations under this Agreement, then the suspension order will be treated as a Department Change hereunder. If the DB Work is so suspended for reasons attributable to Contractor, then Contractor shall not be relieved of any of its obligations under this Agreement and shall be fully liable to Concessionaire for any failure to timely and fully fulfill such obligations in accordance with the terms of this Agreement.

15.1.3 Contractor Right to Suspend the DB Work. Contractor may suspend performance of the DB Work pursuant to Sections 12.14(iv) and 15.3.2 hereof and as otherwise expressly permitted in this Agreement.

15.2 Termination of Contractor for Cause.

15.2.1 Concessionaire may elect, by ten (10) Business Days written notice to Contractor, at Concessionaire's sole option, to terminate this Agreement if any of the following events ("Contractor Defaults") shall occur:

(i) Contractor or the Guarantor makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding under any Law, now in existence or hereafter becoming effective, and, in the case of any such involuntary proceeding, it is not dismissed or stayed within sixty (60) days after it is commenced;

(ii) Contractor fails to pay to Concessionaire when due any undisputed amount in excess of \$100,000, adjusted annually by the percentage increase in CPI, payable to Concessionaire pursuant to this Agreement 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 thirty (30) days following the date Concessionaire delivers to Contractor written notice thereof (which notice requirement shall be waived if Law prohibits the giving of such notice);

(iii) Contractor fails, for any reason other than failure of Concessionaire to make payments to Contractor when obligated and in accordance with this Agreement, to make undisputed payments due to Subcontractors, which failure continues for thirty (30) days after written notice of such non-payment (which notice requirement shall be waived if Law prohibits the giving of such notice);

(iv) Contractor intentionally or negligently disregards Laws in the performance of the DB Work and such failure continues for fifteen (15) days after written notice from Concessionaire (which notice requirement shall be waived if Law prohibits the giving of such notice), or, if such failure is not capable of being cured within such fifteen (15) day period, if Contractor has not commenced the cure within such period and thereafter diligently pursued the same until a cure is effected, not to exceed an additional thirty (30) days unless the failure is not susceptible of cure;

(v) (A) Contractor fails to achieve Substantial Completion of the DB Project by the Long Stop Date, as such date may be extended pursuant to this Agreement, or (B) if a new Long Stop Date has been established pursuant to Section 6.6.5, Contractor fails to diligently implement the Substantial Completion Recovery Plan;

(vi) Contractor fails to diligently implement a corrective action plan adopted pursuant to Section 2.1.1.4;

(vii) Contractor abandons the DB Work;

(viii) Contractor fails to maintain (A) the Letter of Credit in effect in the amount required hereunder or (B) insurance in the amount, terms and coverage required hereunder, and such failure continues without cure for six (6) Business Days following the date Concessionaire delivers to Contractor written notice thereof;

(ix) the Guarantor fails to maintain the Guaranty in effect as required hereunder, and such failure continues without cure for six (6) Business Days following the date Concessionaire delivers to Contractor and Guarantor written notice thereof;

(x) a “Concessionaire Default” (as defined in the Comprehensive Agreement) occurs under Section 19.01(h) of the Comprehensive Agreement with respect to Contractor, Fluor Enterprises, Inc. or Lane Construction Corporation and is not cured within the time allowed thereunder;

(xi) Contractor otherwise is in default of any provision of or has failed to perform its obligations under the Contract Documents and such failure continues for thirty (30) days after written notice from Concessionaire (which notice requirement shall be waived if Law prohibits the giving of such notice), or, if such failure is not capable of being cured within such thirty (30)-day period, if Contractor has not commenced the cure within such period and thereafter diligently pursued the same until a cure is effected, not to exceed an additional ninety (90) days unless the failure is not susceptible of cure; provided, that a debarment pursuant to the provisions set forth in Section 24.16.2 (relating to SWaM participation) will not constitute a Contractor Default, and provided,

further, that this Section 15.2.1(xi) will not apply to events covered by other provisions of this Section 15.2.1; or

(xii) the Department terminates the Comprehensive Agreement as a result of a breach by Contractor of its obligations hereunder (including its obligations to fulfill Concessionaire's obligations under the Comprehensive Agreement to the extent required under this Agreement).

15.2.2 With respect to any termination by Concessionaire pursuant to Section 15.2.1 (a "Termination For Cause"):

(a) If Concessionaire terminates this Agreement in accordance with Section 15.2.1, Concessionaire may cause the DB Work to be completed by other contractors, and Contractor shall pay for the cost of such completion and Losses suffered by Concessionaire to the extent the same exceeds the Contract Sum. Concessionaire shall, within a reasonable period of time after the DB Project is fully and finally completed by the work of one or more other contractors, determine the total cost (including contractor fees) to Concessionaire for completing the DB Work, including all sums previously paid or then owned to Contractor pursuant to this Agreement. If the Contract Sum is less than the sum of (i) the cost incurred by Concessionaire to fully and finally complete the DB Work, (ii) all other Losses suffered by Concessionaire as a result of a default or breach by Contractor of its obligations under the Contract Documents, and (iii) all amounts previously paid to Contractor pursuant to this Agreement, Contractor shall pay to Concessionaire on demand the amount of such difference. Any amount owed by Concessionaire to Contractor, including for the month and level of completion of the DB Work shall be retained by Concessionaire until after completion of the DB Work and applied by Concessionaire to pay any amounts and Losses owed by Contractor pursuant to this Section 15.2.2 or otherwise. Any excess shall be remitted to Contractor within sixty (60) days after the DB Project is fully and finally completed.

(b) If a Contractor Default has occurred for which a cure period is envisioned above in Section 15.2.1, Contractor shall prepare a remedial program and submit the same for Concessionaire's Approval, and Contractor shall remedy such Contractor Default in accordance with the agreed remedial program. To the extent Contractor fails to cure such Contractor Default and Concessionaire elects not to exercise its termination rights hereunder, Concessionaire may remedy such Contractor Default with the cost thereof to be borne by Contractor.

(c) No compensation shall be payable to Contractor in the event of a Termination For Cause except to the extent provided in Section 15.2.2(a).

15.3 Concessionaire Default.

15.3.1 The following events shall constitute "Concessionaire Defaults":

(i) Concessionaire makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement,

reorganization or other debtor relief proceeding under any Law, now in existence or hereafter becoming effective, and, in the case of any such involuntary proceeding, it is not dismissed or stayed within sixty (60) days after it is commenced;

(ii) Concessionaire fails to pay to Contractor any portion of a Scheduled Payment which is not in dispute and such failure continues for thirty (30) days after written notice of such non-payment (which notice requirement shall be waived if Law prohibits the giving of such notice); or

(iii) only if relief cannot be provided by issuance of a Scope Change Order under Section 12.8, Concessionaire otherwise is in default or has failed to perform any of its other material obligations under the Contract Documents and such failure continues for thirty (30) days after written notice from Contractor (which notice requirement shall be waived if Law prohibits the giving of such notice), or, if such failure is not capable of being cured within such thirty (30) day period, if Concessionaire has not commenced the cure within such period and thereafter diligently pursued the same until a cure is effected, not to exceed an additional ninety (90) days unless the failure is not susceptible of cure.

15.3.2 Upon the occurrence of a Concessionaire Default under Section 15.3.1(ii), Contractor may suspend performance of the DB Work hereunder and, if Concessionaire fails to pay the undisputed portion of the Scheduled Payment within ninety (90) days after written notice of such non-payment (which notice requirement shall be waived if Law prohibits the giving of such notice), terminate this Agreement upon ten (10) Business Days written notice to Concessionaire. In the case of any other Concessionaire Default, Contractor may terminate this Agreement upon ten (10) Business Days written notice to Concessionaire. Any right of Contractor to terminate this Agreement shall be subject to all cure rights of the Department under the Comprehensive Agreement and of the Financing Parties. In the event Contractor terminates this Agreement by Contractor pursuant to this Section 15.3.2, Concessionaire shall pay the Termination Payment to Contractor in accordance with Section 4.4 hereof as Contractor's sole and exclusive remedy, but it will not affect Contractor's right to receive amounts otherwise due but unpaid hereunder prior to termination. If Contractor suspends the DB Work under the first sentence of this Section 15.3.2 but subsequently resumes performance of the DB Work following Concessionaire's payment of the undisputed portion of the Scheduled Payment, then such suspension shall be treated as a Concessionaire-Caused Delay entitling Contractor to claim a Scope Change Order pursuant to Section 12.8.

15.4 Termination Due to Significant Force Majeure Event. If a Significant Force Majeure Event occurs under the Comprehensive Agreement and the Department or Concessionaire terminates the Comprehensive Agreement as a result thereof pursuant to Section 20.03(a) of the Comprehensive Agreement, then this Agreement shall automatically terminate effective as of the termination date of the Comprehensive Agreement. If this Agreement is terminated pursuant to the preceding sentence prior to Final Acceptance of the entire DB Project (and Concessionaire's payment therefor), Contractor shall be entitled to receive a termination payment (the "FM Termination Payment") equal to that portion of the Contract Sum and any other amounts that are then due and payable to Contractor by Concessionaire and applicable to

the DB Work completed up to the date of termination and which have not previously been paid to Contractor, plus all Demobilization Costs but less proceeds of insurance that is required to be carried by Contractor hereunder. Representatives of Concessionaire and Contractor shall determine the Contract Sum amount in accordance with the Payment and Values Schedule. Contractor shall submit an invoice to Concessionaire for the FM Termination Payment, and Concessionaire shall pay such invoice within 30 days after its receipt of same subject to the provisions of this Section 15.4 unless it disputes certain elements thereof, in which event only the undisputed portion of the FM Termination Payment need be made within such 30-day period and the dispute over the remainder of the claimed FM Termination Payment may be submitted to the appropriate dispute resolution process set forth in Article 19; provided, that, subject to Section 2.13.3, Concessionaire's obligation to pay the FM Termination Payment shall be subject to its receipt of funds therefore as part of the "Significant Force Majeure Termination Amount" paid by the Department under the Comprehensive Agreement. The FM Termination Payment shall be subject to offset for amounts payable by Contractor to Concessionaire. As a condition precedent to receiving the FM Termination Payment, Contractor shall comply, on behalf of Concessionaire, with all the provisions of Section 20.08 of the Comprehensive Agreement with respect to the DB Work. Payment of the FM Termination Payment shall be the sole and exclusive liability of Concessionaire, and the sole and exclusive remedy of the Contractor, with respect to termination of this Agreement pursuant to this Section 15.4 and the events (including the applicable Concessionaire Default) giving rise to such termination, but it will not affect Contractor's right to receive amounts otherwise due but unpaid hereunder prior to termination. In no event shall Concessionaire have any further liability to Contractor in any such event for actual, incidental, consequential or other damages, notwithstanding the actual amount of damages that Contractor may have sustained in connection with a termination pursuant to this Section 15.4. Calculation of the FM Termination Payment has been agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of such damages Contractor will actually sustain in the event of a termination pursuant to this Section 15.4 and Concessionaire and Contractor agree that the calculation of the FM Termination Payment is reasonable.

15.5 Termination for Failure to Achieve Financial Close. If Concessionaire fails to achieve Financial Close by the Financial Close Deadline and the Department or Concessionaire terminates the Comprehensive Agreement, this Agreement will automatically terminate. In the event of such termination, neither Party shall have any liability or obligation to the other, other than amounts payable in respect of the Early Work performed by Contractor or DB Work performed pursuant to an LNTP, in each case, subject to Section 2.13.3, to the extent of the receipt of the corresponding payment by Concessionaire from the Department under the Comprehensive Agreement.

15.6 Requirements Following Termination. Upon termination of this Agreement, Concessionaire shall be immediately released from any and all obligations to Contractor (except for Concessionaire's obligation to pay the Termination Payment and/or any amount payable under this Agreement by Concessionaire to Contractor that is due but unpaid as of the termination date), Contractor shall immediately discontinue the DB Work and remove its personnel and construction equipment from the Project Right of Way, and Concessionaire shall be entitled to take exclusive possession of the DB Project and all or any part of the equipment and materials delivered or enroute to the DB Project, to the extent that Concessionaire has paid

Contractor all undisputed amounts hereunder then due and payable from Concessionaire to Contractor. If requested by Concessionaire, Contractor will make every reasonable effort to cancel any existing Subcontracts upon terms satisfactory to Concessionaire. Except as otherwise expressly provided in this Agreement or where pursuant to the dispute resolution process under Article 19 it is determined that termination by Concessionaire was wrongful, any payments to be made to a Subcontractor as a result of any such termination shall be at the expense of Contractor. Contractor shall also, upon request by Concessionaire, (i) deliver and assign to Concessionaire (but in no event shall Concessionaire be liable for any action or default of Contractor occurring prior to such delivery and assignment except to the extent such action or default was caused by Concessionaire, and each Subcontract shall so provide) any and all Subcontracts, purchase order, bonds and options made by Contractor in performance of the DB Work, and (ii) deliver to Concessionaire originals of all Construction Documentation and, if the termination occurs at a time when the design of the DB Project is incomplete, originals of all Design Documentation in process (except that Contractor may keep for its records copies, and, if sufficient originals exist, an original set, of the Agreement and other Contract Documents executed by Concessionaire), all other materials relating to the DB Work which belong to Concessionaire, and all papers and documents relating to the Governmental Approvals, orders placed, bills and invoices, lien releases and financial management under this Agreement. All deliveries hereunder shall be made free and clear of any liens, security interests or encumbrances, except such as may be created by Concessionaire. Contractor shall also fulfill Concessionaire's obligations under Section 20.08(b)-(e) of the Comprehensive Agreement to the extent they relate to the DB Work. Notwithstanding any termination of Contractor's retention or this Agreement pursuant to this Article 15, Contractor shall for a period not to exceed five (5) days take such steps as are reasonably necessary to preserve and protect DB Work completed and in progress and to protect materials, equipment and supplies at the Project Right of Way, stored off-site, or in transit. Except as provided herein, no action taken by Concessionaire or Contractor after the termination of Contractor's retention of this Agreement shall prejudice any other rights or remedies of Concessionaire or Contractor provided by law, by the Contract Documents or otherwise upon such termination.

15.7 Surviving Obligations. Termination of this Agreement or the retention of Contractor to perform the DB Work (a) shall not relieve Contractor of its obligations with respect to the confidentiality of Concessionaire information as set forth in Article 18 hereof, (b) shall not relieve Contractor of any obligation hereunder which expressly or by implication survives termination hereof, and (c) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Concessionaire or Contractor of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination, and shall not relieve Contractor of its obligations as to portions of the DB Work or other services hereunder already performed or of obligations assumed by Contractor prior to the date of termination.

ARTICLE 16

ASSIGNMENTS

16.1 Assignment. Neither Party shall have the right, power or authority to assign or delegate this Agreement or any portion thereof, either voluntarily or involuntarily, or by operation of law, without the prior written consent of the other Party, which consent may be granted or withheld in the sole discretion of such other Party; provided, that Concessionaire may assign all of its rights and interests in and under this Agreement to the Financing Parties as collateral security for its obligations. Upon request by Concessionaire, on or before the Financial Close Date Contractor shall enter with Concessionaire and the Financing Parties or their agent into a direct agreement substantially in the form of Exhibit BB hereto (the "Direct Agreement"), and the Direct Agreement will provide for Contractor's consent to Concessionaire's assignment of all of its right, title and interest in, to and under this Agreement to the Financing Parties as collateral security for Concessionaire's obligations under the Project financing documents; the Financing Parties may further assign such rights without Contractor's consent thereto in connection with the exercise of remedies against Concessionaire. Concessionaire also may assign to the Department any or all of its rights under this Agreement and the other Contract Documents without Contractor's consent. Nothing in this Section 16.1 shall be deemed to preclude Contractor from subcontracting portions of the DB Work in accordance with Article 3 hereof.

16.2 Performance in Favor of the Department and Financing Parties. Contractor agrees that in the event of a default by Concessionaire under the terms and conditions of the Comprehensive Agreement or any agreement between Concessionaire and any Financing Party, then the Department and/or the Financing Parties shall be entitled to use and enforce this Agreement, as the same may be amended or supplemented before or after such default, all without additional cost to the Department or the Financing Parties. In the event any Financing Party notifies Contractor in writing that Concessionaire has defaulted under any agreement between Concessionaire and the Financing Parties and requests Contractor to continue performance under this Agreement, Contractor shall thereafter perform hereunder in accordance with the terms and provisions hereof, so long as Contractor shall be paid in accordance with this Agreement for the DB Work performed hereunder, including payment of any sums due to Contractor for DB Work performed to and including the date of Concessionaire Default. Subject to the provisions of the Direct Agreement, in the event the Department notifies Contractor in writing, pursuant to Section 20.08(f) of the Comprehensive Agreement, within 90 days after the date on which the notice of termination is delivered by the Department to Concessionaire under the Comprehensive Agreement that Concessionaire has defaulted under the Comprehensive Agreement and requests Contractor to continue performance under this Agreement, Contractor shall thereafter perform hereunder in accordance with the terms and provisions hereof, so long as Contractor shall be paid in accordance with this Agreement for the DB Work performed hereunder; provided, that the Department will only be liable to Contractor for such obligations hereunder accruing after the date of assumption by the Department of Concessionaire's rights under this Agreement. Contractor will consent to such other agreements with respect to the Department's and/or the Financing Parties' enforcement of their liens and security interests as the Department and/or the Financing Parties may reasonably request. In addition, if the Department succeeds to Concessionaire's rights under this Agreement (by assignment or

otherwise), Contractor agrees, in accordance with Section 24.02(f)(vi) of the Comprehensive Agreement, 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 and service provider), (B) permit audit thereof by Concessionaire, and provide progress reports to Concessionaire appropriate for the Agreement sufficient to enable Concessionaire to provide the reports it is required to furnish the Department pursuant to the Comprehensive Agreement and (C) allow the Department to assume the benefit of Concessionaire's contract rights and the DB Work performed hereunder with liability only for those remaining obligations accruing after the date of assumption, but excluding any monetary Claims or obligations that Concessionaire may have against Contractor that existed prior to the Department's assumption of this Agreement.

16.3 Successors and Assigns. All of the rights, benefits, duties, liabilities and obligations of the Parties hereto shall inure to the benefit of and be binding upon their respective successors and permitted assigns.

ARTICLE 17

DESIGN DOCUMENTATION

17.1 Concessionaire's Review. All design information and calculations shall be subject to Concessionaire's Review, but neither (a) the review of such information or calculations by Concessionaire, or (b) Concessionaire's acceptance of Substantial Completion or Final Acceptance shall constitute a waiver of, or release Contractor from, any liability for errors or omissions contained in any designs or calculations by Contractor or by any Subcontractor, including any errors or omissions contained in the Final As-Built Drawings and Documentation. Notwithstanding anything to the contrary herein contained, Concessionaire shall not be liable for and makes no representation with respect to any designs and specifications prepared by Contractor and reviewed or accepted by Concessionaire, and including any designs and specifications set forth in the Contract Documents. With respect to all aspects of DB Project design, Contractor must create designs and solutions that comply with the Standard of Care, Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents. The acceptance of the DB Project by Concessionaire or the Department shall not relieve Contractor of its obligation for such compliance.

17.2 Final As-Built Drawings and Documentation. As a condition to achievement of Final Acceptance, Contractor shall furnish for Concessionaire's Approval hard copies and electronic files of the Final As-Built Drawings and Documentation meeting the requirements of Section 3.18 of the Technical Requirements (plus one extra hard and electronic copy of each file), including without limitation "as built" surveys illustrating the boundaries of the Project Right of Way, the established building setback lines, if any, and the location of the DB Project on the Project Right of Way and within any established boundaries and setback lines. Together with the Final As-Built Drawings, Contractor shall furnish to Concessionaire a DB Project library in an electronic format that can be searched easily to include, without limitation: all Design Documentation, geological data and observations, surveys and inspection reports, electronic management system and other documents prepared by Contractor and used in the

performance of the DB Work hereunder. Contractor shall incorporate into the Final As-Built Drawings and Documentation all changes or corrections to the DB Work made at the Project Right of Way prior to Final Acceptance so as to accurately represent the completed DB Project and will certify, as required by Section 3.18(B) of the Technical Requirements, that the Final As-Built Drawings and Documentation reflect the actual condition of the DB Project as of Final Acceptance. Contractor shall establish such systems and retain such personnel as are necessary to maintain full quality control and quality assurance with respect to the Final As-Built Drawings and Documentation. If Contractor fails to provide Final As-Built Drawings and Documentation which in all material respects comply with the provisions of this Section 17.2, Concessionaire, without limiting any other right or remedy it may have under the Contract Documents or under Laws, may engage a third party engineer to produce Final As-Built Drawings and Documentation complying herewith, and Contractor shall pay all fees and costs of such engineer.

17.3 Ownership. Contractor agrees that all Design Documentation, the Final As-Built Drawings and Documentation, and other documents prepared or required to be prepared by Contractor as deliverables under this Agreement shall be the sole and exclusive property of the Department and Concessionaire and shall not be used by Contractor in connection with any other project without Concessionaire's prior written consent. The foregoing does not apply to Contractor's pre-existing technical experience, expertise, standard formats or the like. Contractor agrees that all such documents, as well as any drawings, tracings, specifications, calculations, memoranda, data, notes and other materials which are supplied by Concessionaire and come into the possession of Contractor, shall be delivered to Concessionaire at the earlier of Final Acceptance or termination of the DB Work hereunder if not previously delivered hereunder, except to the extent Concessionaire shall instruct Contractor not to deliver such materials. Concessionaire may not copy or disseminate such materials in connection with any project other than the Project unless Contractor's name is deleted from such materials. Concessionaire shall defend, indemnify and hold Contractor harmless from any Claim, demand or liability arising from reuse of Contractor's documents if such reuse is not in connection with the Project.

17.4 Use of Documents by Contractor. Contractor shall be entitled to retain and use solely and specifically in connection with the DB Work hereunder and for enhancement of its engineering files a reproducible set of all Design Documentation, the Final As-Built Drawings and Documentation, and other documents delivered to Concessionaire by Contractor in accordance with this Article 17.

ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 Confidentiality. Except as set forth in this Section 18.1, each Party shall hold in confidence for a period ending five (5) years after the earlier of (i) Final Acceptance of the entire DB Project or (ii) the earlier termination hereof, any confidential information (marked as such) supplied to it by the other Party or otherwise related to the Contract Documents or the Project. Contractor shall inform its Subcontractors, suppliers, vendors and employees of its obligations under this Section 18.1 and shall require each of its Subcontractors, suppliers, vendors and employees to execute confidentiality arrangements substantially in the form of this Article 18.

Notwithstanding the foregoing, each Party may disclose the following categories of information or any combination thereof:

(i) information which was in the public domain prior to receipt thereof by such Party or which subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of such Party or, in the case of Contractor, any Subcontractor;

(ii) information that such Party can show was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation;

(iii) information received by such Party from a third party having no obligation of confidentiality with respect thereto;

(iv) information at any time developed independently by such Party provided it is not developed from otherwise confidential information;

(v) information disclosed pursuant to and in conformity with the Law or a judicial order or in connection with any legal proceedings or arbitration procedures; and

(vi) information required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries or reporting required by a Governmental Authority if such Party informs the other Party of the need for such disclosure and, if reasonably requested by the other Party, seeks, through a protective order or other appropriate mechanism, to maintain the confidentiality of such information.

18.2 Survival. Provisions of this Article 18 shall continue in full force and effect in accordance with their terms, and shall survive any termination of this Agreement.

18.3 Press Releases; Information. Contractor shall not issue any press or similar media release or any advertisement, or publish, release or disclose any photograph or other information concerning this Agreement or the Project, including in accordance with the Public Information and Communications Plan, without the express prior written consent of Concessionaire, which consent shall not be unreasonably withheld. Contractor shall include and enforce this restriction in all Subcontracts and purchase orders. Contractor shall give prior notice to Concessionaire of any information contained in documents filed with public authorities or any other public disclosure which would result in the dissemination of confidential information. Concessionaire when marketing the Project may use Contractor's name and logo without Contractor's consent. Concessionaire shall provide Contractor a copy for review and comment where any press release or any paid advertisement containing the name or logo of Contractor, or any of Contractor's parent entities, may require Contractor to make a responding press release.

ARTICLE 19

DISPUTE RESOLUTION

19.1 Arbitration; Other Actions. Any Claim or controversy between Concessionaire and Contractor not exceeding One Million Dollars (\$1,000,000) in value shall be submitted to binding arbitration in accordance with this Section 19.1 upon written notice of either Party delivered to the other of such Party's intention to arbitrate, the nature of the dispute, the amount claimed and the decision sought, provided that a dispute relating to a Scope Change Order shall be resolved in accordance with Section 12.14. Arbitration under this Section 19.1 shall be conducted by JAMS or its successor in accordance with its Streamlined Arbitration Rules and the Federal Arbitration Act, 9 USC Section 1 *et seq.* The notice of intent to arbitrate also shall specify the name and address of an arbitrator selected by the Party requesting arbitration. The other Party shall within ten (10) Business Days of receipt of the arbitration notice select its arbitrator; provided, that if it fails to do so, the arbitrator appointed by the Party requesting arbitration shall serve as the sole arbitrator of the dispute. However, if both Parties name an arbitrator, the two arbitrators thus selected shall within ten (10) Business Days of the selection of the second arbitrator select the third arbitrator. All arbitrators shall be qualified, independent and neutral. The decision of any two of the three arbitrators on any issue shall be final. Unless the Parties otherwise agree, all arbitration proceedings shall be held in Washington, D.C. Concessionaire and Contractor shall proceed with any arbitration expeditiously. All conclusions and decisions of the arbitration shall be made consistent with applicable legal principles and the arbitrators' good faith interpretation of the terms and provisions of this Agreement. The award of the arbitrators will be final and binding on both Parties and may be enforced in any court having jurisdiction over the Party against which enforcement is sought. Each Party shall bear its own expenses, including but not limited to counsel fees and witness fees. If the arbitrators determine that the Claim or defense of either Party was frivolous (*i.e.*, without justifiable merit), they may require that the Party at fault pay or reimburse the other Party for costs of the arbitration in whole or in part, except that all expenses of the arbitration shall be apportioned in the award of the arbitrators based upon the respective merit of the positions of the Parties. NOTWITHSTANDING THE FOREGOING, EQUITABLE REMEDIES, INCLUDING INJUNCTION AND SPECIFIC PERFORMANCE, SHALL BE AVAILABLE TO THE PARTIES BY JUDICIAL PROCEEDINGS AT ANY TIME AND, FOR THIS PURPOSE AND FOR THE PURPOSE OF ENFORCING ANY ARBITRAL AWARD OR DECISIONS, THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE FEDERAL AND STATE COURTS IN RICHMOND, VIRGINIA. THE PARTIES ALSO SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE FEDERAL AND STATE COURTS IN RICHMOND, VIRGINIA, REGARDING ANY DISPUTE BETWEEN THE PARTIES WHERE THE AMOUNT IN CONTROVERSY EXCEEDS ONE MILLION DOLLARS (\$1,000,000). EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING UNDER THIS AGREEMENT AND FOR ANY COUNTERCLAIM IN SUCH AN ACTION OR PROCEEDING. THE PROVISIONS OF THIS SECTION 19.1 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

19.2 Common Issue in Dispute under the Comprehensive Agreement. Notwithstanding any other provision in this Agreement to the contrary, if any issue in dispute

between the Parties to this Agreement is also the subject of a concurrent dispute under the Comprehensive Agreement, the Parties shall seek to cause the dispute hereunder to be consolidated with the dispute resolution process occurring under the Comprehensive Agreement. If such consolidation does not occur, then any ongoing proceeding regarding the dispute hereunder shall be stayed pending final resolution of the dispute under the Comprehensive Agreement, which resolution shall be binding on the Parties for all purposes of this Agreement. Until the expiration of the Warranty Period, Contractor shall be permitted to attend meetings of the "Steering Committee" established under Section 21.01 of the Comprehensive Agreement with respect to any dispute under the Comprehensive Agreement. In addition, for so long as Contractor has any remaining obligations under this Agreement, Contractor shall be permitted to participate on such Steering Committee with respect to any dispute regarding the DB Work or relief available to Contractor hereunder that is subject to Concessionaire's receipt of corresponding relief under the Comprehensive Agreement.

19.3 Continuation of DB Work. Contractor shall continue its performance of the DB Work on a timely basis in accordance with the Project Schedule during any dispute which may arise between Concessionaire and Contractor concerning the DB Project, subject to Contractor's suspension rights in Section 12.14.

ARTICLE 20

COST RECORDS

20.1 GAAP; Maintenance of Records. Contractor shall maintain fiscal records, books and accounts pertaining to the DB Project in accordance with generally accepted American accounting principles consistently applied. Contractor will maintain or cause to be maintained such books, records and accounts in accordance with applicable Law, including such 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.

20.2 Inspection of Books, Records and Audit Rights. Contractor covenants and agrees to keep and maintain full, complete and detailed records of all its costs and allowances pertaining to Scope Changes. Contractor agrees to make available to Concessionaire, the Department, the Independent Engineer and FHWA (to the extent required under Section 18.07 of the Comprehensive Agreement) and independent third parties designated by Concessionaire and allow to each of them access to, such books, records and documents as they may reasonably request in connection with the DB Project for any purpose related to the Project, this Agreement, the Comprehensive Agreement, including but not limited to monitoring compliance with the terms and conditions of this Agreement. Contractor will fulfill all of Concessionaire's obligations under Section 18.07 of the Comprehensive Agreement with respect to any books, records and documents in connection with the DB Project and will cooperate with the Department, FHWA and other parties mentioned in this Section 20.2 in the exercise of their rights hereunder. Any records, books and documents in connection with the DB Project shall be preserved by Contractor for a period of three (3) years after Final Acceptance, at no additional cost to Concessionaire, and subject to Concessionaire inspection and audit during such period. All expenses of an audit by Concessionaire shall be paid by Concessionaire. No audit rights (or, in the case of Concessionaire and its designees, inspection rights) shall extend to the make-up of

the lump-sum Contract Sum or to any unit price or rate used under this Agreement after such amount, price or rate has been agreed by the Parties.

ARTICLE 21

INDEPENDENT CONTRACTOR

21.1 Contractor as Independent Contractor. Contractor shall be an independent contractor with respect to the DB Project, each part thereof, and the DB Work hereunder, and neither Contractor, its Subcontractors, nor the employees of any of them shall be deemed to be agents, representatives, employees or servants of Concessionaire in the performance of the DB Work or any other services dealt with herein. Concessionaire shall not have the right to control the methods or means by which Contractor or any agent, representative, Subcontractor, or employee or Contractor conducts its independent business operations. Concessionaire and Contractor covenant and agree that in the performance of the DB Work by Contractor, Contractor shall not perform any act or make any representation to any Person to the effect that Contractor or any of its agents, representatives, Subcontractors is the agent of Concessionaire.

ARTICLE 22

REPRESENTATIVES AND WARRANTIES OF CONTRACTOR

22.1 Representatives and Warranties. Contractor represents and warrants to Concessionaire that:

22.1.1 Organization and Qualification. Contractor is duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the lawful power to engage in the business it presently conducts and contemplates conducting. Contractor is duly licensed or qualified to do business in the Commonwealth of Virginia and in each other jurisdiction wherein the nature of the business transacted by them makes such licensing or qualification necessary. The sole limited liability company members of Contractor are Fluor Enterprises, Inc., a California corporation, and Lane Construction Corporation, a Connecticut corporation, each of which is duly organized, validly existing and in good standing under the laws of the state of its incorporation, and each of which has the lawful power to engage in the business it presently conducts and contemplates conducting, including ownership of Contractor.

22.1.2 Power and Authority. Contractor has the corporate power to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part.

22.1.3 No Conflict. The execution, delivery and performance of this Agreement by Contractor (assuming issuance of Governmental Approvals in due course upon application therefor) will not conflict with Contractor's governing documents, any Laws or any covenant, agreement, understanding, decree or order to which Contractor is a party or by which Contractor is bound or affected.

22.1.4 Validity and Binding Effect. This Agreement has been duly and validly executed and delivered by Contractor. This Agreement constitutes a legal, valid and

binding obligation of Contractor, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity. No authorization, approval, exemption or consent by any Governmental Authority (other than the Governmental Approvals) is required in connection with the authorization, execution, delivery and carrying out of the terms of this Agreement.

22.1.5 Litigation. There are no actions, suits, proceedings or investigations pending or, to the knowledge of Contractor, threatened against Contractor at law or in equity before any court or before any Governmental Authority, whether or not covered by insurance, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Contractor or to result in any impairment of Contractor's ability to perform its obligations under this Agreement. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any Governmental Authority which is reasonably likely to have such a materially adverse effect or to result in such impairment.

22.1.6 Patents; Licenses; Franchises. Contractor owns or possesses all the patents, trademarks, service marks, trade names, copyrights, licenses, franchises, Governmental Approvals and rights with respect to the foregoing necessary to perform the DB Work and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights of others.

22.1.7 Compliance with Laws. Contractor has complied with all Laws such that Contractor is not subject to any fines, penalties, injunctive relief or criminal liabilities which in the aggregate have materially affected or are reasonably likely to have a materially adverse effect upon the business operations or financial condition of Contractor or Contractor's ability to perform the DB Work or other services hereunder.

22.1.8 Prequalification. As required by Section 24.02(j) of the Comprehensive Agreement, Contractor is prequalified with the Department in accordance with the Department's Rules Governing Prequalification Privileges, and covenants that it will not subcontract any part of the DB Work to a Subcontractor who is not prequalified with the Department in accordance with the Department's Rules Governing Prequalification Privileges, unless otherwise indicated in the Comprehensive Agreement; provided, that this restriction does not apply to contract specialty items, consultants, manufacturers, suppliers, haulers or snow removal service providers.

22.1.9 Disbarment/Suspension. None of Contractor or any of its affiliates (as "affiliate" is defined in 29 CFR 98.905) 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.

22.1.10 No Default. To the best of Contractor's knowledge after diligent inquiry, no event which, with the passage of time or the giving of notice, would constitute a Contractor Default has occurred.

22.1.11 No CA Delay Event or CA Compensation Event. To the best of Contractor's knowledge after diligent inquiry, no event which, with the passage of time or the giving of notice, would constitute a CA Delay Event or a CA Compensation Event under this Agreement has occurred.

22.1.12 Disclosure. No representation or warranty by Contractor contained herein or in any other document furnished by Contractor to Concessionaire contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances under which it was made. All financial and other information furnished by Contractor to Concessionaire is true and correct in all material respects.

22.1.13 Early Work. All Early Work performed by Contractor or by Fluor Enterprises, Inc. 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 contractor 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.

Contractor acknowledges that the Department is a third-party beneficiary of all Contractor's representations and warranties made in this Article 22; *provided*, that, in accordance with Section 24.02(i) of the Comprehensive Agreement, the Department agreed to exercise its rights under such representations and warranties only so long as Concessionaire or the Financing Parties are not pursuing remedies related thereto.

ARTICLE 23

REPRESENTATIVES AND WARRANTIES OF CONCESSIONAIRE

23.1 Representatives and Warranties. Concessionaire represents and warrants to Contractor that:

23.1.1 Organization and Qualification. Concessionaire is duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the lawful power to engage in the business it presently conducts and contemplates conducting. Concessionaire is duly licensed or qualified to do business in the Commonwealth of Virginia and in each other jurisdiction wherein the nature of the business transacted by them makes such licensing or qualification necessary.

23.1.2 Power and Authority. Concessionaire has the corporate power to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part.

23.1.3 No Conflict. The execution, delivery and performance of this Agreement by Concessionaire (assuming issuance of Governmental Approvals in due course upon application therefor) will not conflict with Concessionaire's governing documents, any

Laws or any covenant, agreement, understanding, decree or order to which Concessionaire is a party or by which Concessionaire is bound or affected.

23.1.4 Validity and Binding Effect. This Agreement has been duly and validly executed and delivered by Concessionaire. This Agreement constitutes a legal, valid and binding obligation of Concessionaire, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity. No authorization, approval, exemption or consent by any Governmental Authority (other than the Governmental Approvals) is required in connection with the authorization, execution, delivery and carrying out of the terms of this Agreement.

23.1.5 Litigation. There are no actions, suits, proceedings or investigations pending or, to the knowledge of Concessionaire, threatened against Concessionaire at law or in equity before any court or before any Governmental Authority, whether or not covered by insurance, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Concessionaire or to result in any impairment of Concessionaire's ability to perform its obligations under this Agreement. Concessionaire has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any Governmental Authority which is reasonably likely to have such a materially adverse effect or to result in such impairment.

23.1.6 Compliance with Laws. Concessionaire has complied with all Laws such that Concessionaire is not subject to any fines, penalties, injunctive relief or criminal liabilities which in the aggregate have materially affected or are reasonably likely to have a materially adverse effect upon the business operations or financial condition of Concessionaire or Contractor's ability to perform the DB Work or other services hereunder.

23.1.7 Disclosure. No representation or warranty by Concessionaire contained herein or in any other document furnished by Concessionaire to Contractor contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances under which it was made. All financial and other information furnished by Concessionaire to Contractor is true and correct in all material respects.

ARTICLE 24

MISCELLANEOUS

24.1 Estoppel Certificate. Contractor shall at any time and from time to time furnish promptly upon request by Concessionaire or any Financing Party a written statement in such form as may be required by the requesting party stating that this Agreement is a valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by

general principles of equity; that this Agreement has not been released, subordinated or modified; and that there are no offsets or defenses against the enforcement of this Agreement against Contractor; or if any of the foregoing statements are untrue, specifying the reasons therefor.

24.2 Waivers. No failure to exercise, and no delay in exercising, any right, power or remedy under the Contract Documents shall impair any right, power or remedy which any Party hereto may have, nor shall such failure or delay be construed to be a waiver of any such rights, powers or remedies, or an acquiescence in any breach or default under the Contract Documents, nor shall any waiver of any breach or default be deemed a waiver of any default or breach subsequently occurring under the Contract Documents.

24.3 Choice of Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER AND/OR ARISING FROM OR RELATING IN ANY WAY TO THE TRANSACTIONS EVIDENCED BY THE CONTRACT DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULES THEREOF WHICH MAY DIRECT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

24.4 Severability. In the event that any of the provisions, or portions or applications thereof, of any of the Contract Documents are held to be unenforceable or invalid by any court of competent jurisdiction, Concessionaire and Contractor shall negotiate an equitable adjustment in the provisions of the affected Contract Documents with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

24.5 Notice. Unless otherwise expressly required or permitted by the Contract Documents, any notice required or permitted to be given by Contractor to Concessionaire hereunder shall be in writing and shall be addressed to Concessionaire at:

95 Express Lanes LLC
6440 General Green Way
Room 95
Alexandria, VA 22312
Attention: President
Telephone: 571-419-6100
Fax: 571-419-6101

With a copy to:

Transurban (USA) Inc.
6440 General Green Way
Alexandria, VA 22312
Attention: Vice President-Development
Telephone: 646-278-0870

Fax: 646-278-0839

and any notice required or permitted to be given by Concessionaire to Contractor hereunder shall be in writing and shall be addressed to:

Fluor-Lane 95, LLC
6621 Electronic Drive, 2nd Floor
Springfield, VA 22151
Attention: Project Director

With a copy to:

Fluor-Lane 95, LLC
c/o Fluor Enterprises, Inc.
100 Fluor Daniel Drive
Greenville, SC 29607
Attention: President of Infrastructure
Telephone: 803-330-5215
Fax: 803-560-9381

And a copy to:

Fluor-Lane 95, LLC
c/o Fluor Enterprises, Inc.
100 Fluor Daniel Drive
Greenville, SC 29607
Attention: Spencer C. Weiss
Telephone: 864-281-8088
Fax: 864-281-6868

24.5.1 Delivery. Unless otherwise expressly required or permitted by the Contract Documents, all notices shall be delivered (a) in person to the Party above mentioned, (b) via certified mail with a return receipt requested in a securely sealed envelope, (c) by expedited delivery service with proof of delivery, or (d) by prepaid telegram, telex or telecopy. A notice shall be deemed delivered either at the time of personal delivery or, in the case of delivery service or mail, as the date of first attempted delivery at the address provided herein, or in the case of telegram, telex or telecopy, upon receipt. Concessionaire and Contractor, by like notice in writing, may designate, from time to time, another address or office to which notices may be given pursuant to this Agreement.

24.6 Headings. The Article and Section headings herein have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning or effect of the provisions herein contained nor govern the rights and liabilities of the Parties hereto.

24.7 Entire Agreement. The Contract Documents contain the entire agreement between Concessionaire and Contractor with respect to the DB Project, and supersede any and

all prior and contemporaneous written and oral agreements, proposals, negotiations, understandings and representations pertaining to the DB Project.

24.8 Amendments. No amendments or modifications of the Contract Documents shall be valid unless evidenced by a Scope Change Order or by a written instrument signed by a duly authorized representative of the Party against whom enforcement is sought. The Parties acknowledge that they may not amend or modify this Agreement without the prior written consent of the Department; provided, however, that the Department's consent shall not be required with respect to Scope Change Orders that neither (i) constitute a change in the scope of the DB Work for purposes of the Comprehensive Agreement or a Technical Requirements Deviation nor (ii) result in an increase in the time to complete the DB Work pursuant to the Comprehensive Agreement (even though such Scope Change Orders may result in an increase in the time permitted to complete the DB Work under this Agreement to the extent so provided in this Agreement) or the imposition or enlargement of any of the Department's costs, liabilities or obligations under the Comprehensive Agreement.

24.9 Conflicting Provisions. In the event of any inconsistencies between this Agreement and the other Contract Documents, the following order of precedence in the interpretation hereof or resolution of such conflict hereunder shall prevail:

- (i) the Comprehensive Agreement and Exhibit A thereto, excluding this Agreement and other exhibits to the Comprehensive Agreement;
- (ii) Technical Requirements;
- (iii) Exhibits to the Comprehensive Agreement, excluding this Agreement, Exhibit A thereto and the Technical Requirements;
- (iv) Duly authorized and executed Scope Change Orders and written amendments to this Agreement executed by both Parties;
- (v) This Agreement, excluding Exhibits hereto;
- (vi) Scope Document;
- (vii) Exhibits hereto (other than the Technical Requirements and the Scope Document); and
- (viii) Drawings produced and delivered pursuant hereto (in respect of which, precedence shall be given to drawings of a larger scale over those of smaller, figured dimensions on the drawings shall control over scaled dimensions, and noted materials shall control over undimensioned graphic indications).

Where an irreconcilable conflict exists among Laws, this Agreement, the drawings included in the Design Documentation, and the specifications in the Design Documentation, the earliest item mentioned in this sentence involving a conflict shall control over any later mentioned item or items subject to such conflict, and if a conflict exists within or between parts of the Contract

Documents, or between the Contract Documents and Laws, or among Laws themselves, the more stringent or higher quality requirements shall control. All obligations imposed on Contractor and each Subcontractor under the Contract Documents (other than this Agreement) or under Laws or Applicable Standards and not expressly imposed or addressed in this Agreement shall be in addition to and supplement the obligations imposed on Contractor under this Agreement, and shall not be construed to create an “irreconcilable conflict.” Where a conflict exists among codes and standards applicable to the DB Project or Contractor’s performance of the DB Work, the most stringent provision of such codes and standards shall govern.

24.10 No Third Party Rights. The Contract Documents and all rights thereunder are intended for the benefit of Concessionaire and Contractor, the Financing Parties (to the extent provided in Articles 13 and 16 hereof), the Department (to the extent set out in the Comprehensive Agreement or this Agreement), and the Indemnitees (to the extent provided in Article 13 hereof), and shall not imply or create any rights on the part of, or obligations to, any other Person or any other rights on the part of, or other obligations to, the Financing Parties, the Department and the Indemnitees beyond the rights and obligations expressly set forth herein. The Parties agree to look solely to each other with respect to the obligations and liability arising in connection with this Agreement and the services performed hereunder. No Claims shall be asserted directly between Contractor and the OS&S Contractor (whether arising in contract or tort); rather, such matters, if any, shall be asserted through Concessionaire. Such matters will not be treated as “Third Party Claims” in connection with indemnity obligations; either between Concessionaire and the OS&S Contractor or between Concessionaire and Contractor. This Section 24.10 shall not limit contribution or other Claims for bodily injury, death or third-party property damage.

24.11 Escrowed Pricing Documents. Contractor shall provide to Concessionaire all documents and information required pursuant to Section 18.05(a)-(d) of the Comprehensive Agreement with respect to the DB Work; provided that such documents and information will remain the property of Contractor subject to the Department’s and Concessionaire’s review and will be returned to Contractor upon the earlier to occur of (i) completion of the DB Work and resolution of all Claims or disputes arising hereunder or (ii) termination of this Agreement and resolution of all Claims or disputes arising pursuant to this Agreement. Pursuant to Section 18.05(f)(i) of the Comprehensive Agreement, the Department is to provide advance notice of any examination of the escrowed documents to Contractor, and Contractor will have the right to be present during such examination; provided, however, that such right will not in any way limit the Department’s right to review such documents if Contractor does not attend such examination.

24.12 Source Code Escrow.

24.12.1 The Department, Concessionaire and Contractor acknowledge that Contractor and/or its Software suppliers may not wish to disclose directly to the Department and Concessionaire at the time of installation the Source Code and Source Code Documentation which is Proprietary Intellectual Property of Contractor and/or its Software suppliers, as public disclosure could deprive Contractor and/or its Software suppliers of commercial value, but that the Department and Concessionaire must be ensured access to such Source Code and Source Code Documentation in either of the following circumstances:

(i) if the Comprehensive Agreement is terminated for “Concessionaire Default” thereunder or upon assignment by Concessionaire of its rights pursuant to the Comprehensive Agreement, the Department assumes this Agreement 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 the Comprehensive Agreement; or

(ii) (A) if this Agreement is terminated for Contractor Default, (B) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of Contractor occurs or (C) Contractor fails or ceases to provide services as necessary to permit continued use of the Software by Concessionaire as contemplated by this Agreement.

24.12.2 Under the Comprehensive Agreement, by no later than the Service Commencement Date, the Department and 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 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. Prior to such date, Concessionaire may in its sole discretion establish escrows (for purposes of this Section 24.12.2, “interim escrows”) with the Escrow Agent that will be replaced by the Source Code Escrows once established. Contractor will cooperate with Concessionaire in escrowing the Source Code and Source Code Documentation and will submit to Concessionaire all Source Code and Source Code Documentation in its possession or control that is part of the DB Work.

24.12.3 The escrows provided for herein will survive any termination of this Agreement regardless of the reason. Concessionaire will pay the reasonable costs and expenses of the Escrow Agent related to the Source Code Escrows and interim escrows.

24.13 Recourse Limited to Concessionaire’s Assets. Concessionaire and Contractor acknowledge that Concessionaire has entered into this Agreement entirely on its own behalf, and that, except with regard to Claims of fraud, Contractor shall have no recourse against any parent, subsidiary or Affiliate company of Concessionaire, or against any partners, shareholders, members, owners, joint venturers, officers, directors, employees, agents, successors or assigns of any thereof for any reason.

24.14 Survival of Provisions. All provisions of the Contract Documents which are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination.

24.15 Title to the DB Project. Title to all materials, supplies, equipment and machinery used in connection with the DB Work which become a permanent part of the DB Project shall

vest in the Department upon the earliest of (i) the occurrence of any event by which title passes from the Subcontractor providing such materials, supplies, equipment or machinery, (ii) full payment therefor by Contractor, (iii) full payment therefor by Concessionaire, (iv) incorporation into the DB Project at the Project Right of Way, or (v) delivery of equipment or materials for the DB Project to an approved off-site location. Title to water, soil, rock, gravel, sand, minerals, timber and any other resources developed or obtained in the excavation or the performance by Contractor of the DB Work and the right to use said items or dispose of the same, other than any materials incorporated into the DB Project, is hereby expressly vested in and reserved by Concessionaire. Contractor shall not have any right, title or interest in said resources.

24.16 DBE and SWAM Reporting.

24.16.1 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) Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement and will not permit its Subcontractors to discriminate on the basis of race, color, national origin, or sex in the performance of their respective Subcontracts. Contractor shall carry out applicable requirements of 49 CFR part 26 in the administration of this Agreement and perform in a manner that will not result in a violation of Section 24.03(a)(i)(B) of the Comprehensive Agreement and shall cause its Subcontractors to do the same with respect to their respective Subcontracts. The Parties acknowledge that under the Comprehensive Agreement, failure by Concessionaire and each of its contractors, including Contractor, to carry out the requirements of Section 24.03(a)(i) of the Comprehensive Agreement is a material breach of the Comprehensive Agreement, which may result in the termination of the Comprehensive Agreement or such other remedy as set forth in Section 24.03(a)(v) of the Comprehensive Agreement. As a result, failure by Contractor to carry out the requirements of this Section 24.16.1(i) is a material breach of this Agreement that may result in Concessionaire's seeking the same remedy sought by the Department against Concessionaire under the Comprehensive Agreement as a result of such breach, including termination.

(ii) DB Work.

(a) During performance of the DB Work, in an effort to comply with 49 CFR Part 26, under the Comprehensive Agreement the Department has established a goal of 10% for DBE participation.

(b) Contractor and the Concessionaire agree to manage this goal as follows:

(1) On December 20th of each year, beginning with the first December following the Agreement Date until the Final Acceptance, Contractor will submit an updated DBE/SWaM Plan that defines Contractor's approach to meeting the DBE participation goals set forth in this Section 24.16.1;

(2) Contractor 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) Contractor will be responsible for either achieving or making Good Faith Efforts to achieve the overall goal of 10% for DBE participation by providing maximum contracting opportunities for DBE businesses;

(4) Contractor will provide to Concessionaire each calendar quarter documentation of all executed Subcontracts and payments to DBE businesses;

(5) Contractor will have the opportunity to establish DBE subcontracting work packages; and

(6) Contractor will provide Good Faith Efforts documentation using form C-49 and other supplemental information as appropriate for Subcontracts that do not include DBE participation. Contractor agrees that if the Department accepts the Good Faith Efforts documentation on a particular bid item group, Contractor will make reasonable efforts to accomplish the overall goal using other bid item groups.

(c) During the performance of the DB Work, the Parties will work cooperatively to accomplish the applicable DBE objectives. Under the Comprehensive Agreement the Department is to assist Concessionaire in meeting the DB Work goals by offering assistance to include the following items:

(1) the Department and Concessionaire will jointly conduct outreach meetings for DBE firms; Contractor shall participate in such meetings;

(2) the Department will identify to Concessionaire DBE firms that are eligible to bid on the specific bid item groups, which information Concessionaire will provide to Contractor; 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, which access shall be made available by the Concessionaire to Contractor.

(d) Contractor acknowledges that the Department's assistance and cooperation will not eliminate or reduce Contractor's responsibility to achieve the DB Work goals for DBE participation or demonstrate Good Faith Efforts. Contractor 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 DB Work. Contractor is expected to meet the goal or demonstrate that Good Faith Efforts have been made. Contractor will submit quarterly reports of Good Faith Efforts documentation, and, DBE payments on form C-63 to Concessionaire for forwarding to the Department Representative.

(e) When there is a contract goal for the DB Work, Contractor 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 Concessionaire and Contractor the right to have the Department reconsider a decision that their Good Faith Efforts were insufficient. The Department must seriously consider Contractor's documentation of Good Faith Efforts. The Department will issue a guidance memorandum on Good Faith Efforts, providing examples, procedures and reporting requirements for Concessionaire, which Concessionaire shall provide to Contractor.

(iii) DBE Reporting and Assessment.

(a) Within eleven (11) days after each calendar quarter ends Contractor will submit to Concessionaire (who will submit same to the Chief of Administration in accordance with the Comprehensive Agreement) a quarterly report on Contractor's efforts to (A) satisfy the DBE goals set forth in this Section 24.16.1 or (B) demonstrate Good Faith Efforts to accomplish the DBE goals set forth in this Section 24.16.1.

(b) An assessment and confirmation as to whether Contractor has (A) satisfied the DBE goals, (B) demonstrated Good Faith Efforts to satisfy such goals or (C) failed to satisfy the requirements of clauses (A) and (B) of this Section 24.16.1(iii)(b) will be made by the Chief of Administration under the Comprehensive Agreement) and communicated to Concessionaire within 30 days after receipt of each quarterly report being submitted by Concessionaire and Concessionaire will notify Contractor thereof.

(iv) Failure to Demonstrate DBE Good Faith Efforts Related to DB Work.

(a) If the Chief of Administration notifies Concessionaire and Concessionaire notifies Contractor pursuant to Section 24.16.1(iii)(b) that Contractor has failed to satisfy the requirements of clause (A) of Section 24.16.1(iii)(b) and has failed to satisfy the requirements of clause (B) of Section 24.16.1(iii)(b) with respect to the DBE

goals for the DB Work for a quarterly period, Contractor will have until the end of the next consecutive quarter to demonstrate that it has satisfied the requirements of either clause (A) or (B) of Section 24.16.1(iii)(b) with respect to such DBE goals.

(b) If Contractor has failed to satisfy the requirements of clause (A) of Section 24.16.1(iii)(b) and has failed to satisfy the requirements of clause (B) of Section 24.16.1(iii)(b) with respect to the DBE goals for the DB Work for two consecutive quarters based on the determinations by the Chief of Administration pursuant to the Comprehensive Agreement, Contractor will prepare and submit to Concessionaire, at Contractor's sole cost and expense, a DBE Performance Improvement Plan for Concessionaire's review, and Concessionaire will provide comments thereto to Contractor, who will consider them in good faith and make the modifications as appropriate. The DBE Performance Improvement Plan will describe the specific actions and measures that Contractor will undertake to improve its performance with respect to satisfying the requirements of clause (A) and (B) of Section 24.16.1(iii)(b) with respect to the DBE goals for the DB Work. Contractor will submit the DBE Performance Improvement Plan to Concessionaire for review within eleven (11) days after receiving notice from the Chief of Administration forwarded by Concessionaire pursuant to Section 24.16.1(iii) that Contractor has failed to satisfy the requirements of clause (A) of Section 24.16.1(iii)(b) and has failed to satisfy the requirements of clause (B) of Section 24.16.1(iii)(b) and Concessionaire will after its review submit such plan for the Department's review and approval under Section 24.03(a)(v)(B) of the Comprehensive Agreement. Under Section 24.03(a)(v)(B) of the Comprehensive Agreement, Concessionaire is to pay the Department for its "Allocable Costs" in reviewing, approving and monitoring Concessionaire's compliance with the DBE Performance Improvement Plan until Concessionaire satisfies the requirements of either clause (1) or (2) of Section 24.03(a)(iv)(B) of the Comprehensive Agreement with respect to the DBE goals for the DB Work. Contractor agrees to pay to Concessionaire any such amounts required for the payment of the Department in reviewing, approving and monitoring Contractor's compliance with the DBE Performance Improvement Plan until Contractor satisfies the requirements of either clause (A) or (B) of Section 24.16.1(iii)(b) with respect to the DBE goals for the DB Work and Concessionaire will pay the same over to the Department.

(c) If Contractor is debarred or disqualified pursuant to Section 24.03(a) of the Comprehensive Agreement for reasons not attributable to Concessionaire, then Contractor shall not be relieved of any of its obligations under this Agreement and shall be fully liable to Concessionaire for any failure to timely and fully fulfill such obligations in accordance with the terms of this Agreement.

(d) If the Chief of Administration under the Comprehensive Agreement determines at any time that Concessionaire has satisfied the requirements of either clause (1) or (2) of Section 24.03(a)(iv)(B) of the Comprehensive Agreement based on the satisfaction by Contractor of the requirements of either clause (A) or (B) of Section 24.16.1(iii)(b) hereof with respect to the DBE goals for the DB Work performed to date with respect to the applicable calendar quarter, then any prior determinations by the Chief of Administration of Concessionaire's failure to satisfy the requirements of

clause (1) of Section 24.03(a)(iv)(B) of the Comprehensive Agreement and Concessionaire's failure to satisfy the requirements of clause (2) of Section 24.03(a)(iv)(B) of the Comprehensive Agreement based on Contractor's failure hereunder to satisfy the requirements of clause (A) of Section 24.16.1(iii)(b) hereof and Contractor's failure to satisfy the requirements of clause (B) of Section 24.16.1(iii)(b) hereof with respect to such DBE goals will be disregarded, Contractor will be deemed to be in compliance with this Section 24.16, and any future determinations of a failure to satisfy the requirements of clause (A) of Section 24.16.1(iii)(b) and a failure to satisfy the requirements of clause (B) of Section 24.16.1(iii)(b) hereof with respect to such DBE goals will be pursuant to the provisions set forth in Section 24.16.1(iv)(a) hereof.

(e) Any decision or action taken by the Chief of Administration or the Department pursuant to Section 24.03(a) of the Comprehensive Agreement is subject to the dispute resolution procedures set forth in Article 21 of the Comprehensive Agreement, and Concessionaire will, to the extent permitted by the Department, allow Contractor to participate in any such dispute resolution proceedings which involve the DBE goals for the DB Work. In addition, Contractor may pursue its rights against Concessionaire in accordance with the dispute resolution process set forth in Article 19.

24.16.2 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) Contractor shall carry out applicable requirements of Executive Order 33 (2006) in the administration of this Agreement and shall cause its Subcontractors to do the same in the award and administration of the respective Subcontracts.

(c) Failure by Contractor to carry out the requirements in this Section 26.16.2 relating to SWaM participation will subject Contractor to only the remedies set forth in Section 26.16.2(iv) and will not result in Contractor Default.

(d) If debarment occurs as a result of the exercise of such remedies, such debarment shall not constitute a Contractor Default hereunder.

(ii) DB Work.

(a) During performance of the DB Work, in an effort to support Executive Order 33 (2006), under the Comprehensive Agreement the Department has established a goal of 19% for SWaM participation.

(b) Contractor and the Concessionaire agree to manage this goal as follows:

(1) On December 20th of each year, beginning with the first December following the Agreement Date until the Final Acceptance, Contractor will submit an updated DBE/SWaM Plan that defines Contractor's approach to meeting the SWaM participation goals set forth in this Section 24.16.2;

(2) Contractor 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) Contractor will be responsible for either achieving or making Good Faith Efforts to achieve the overall goal of 19% for SWaM participation by providing maximum contracting opportunities for SWaM businesses;

(4) Contractor will provide to Concessionaire each calendar quarter documentation of all executed Subcontracts and payments to SWaM businesses;

(5) Contractor will have the opportunity to establish SWaM-only statement of work packages; and

(6) Contractor will provide Good Faith Efforts documentation using form C-49 and other supplemental information as appropriate for Subcontracts that do not include SWaM participation. Contractor agrees that if the Department accepts the Good Faith Efforts documentation on a particular bid item group, Contractor will make reasonable efforts to accomplish the overall goal using other bid item groups.

(c) During the performance of the DB Work, the Parties will work cooperatively to accomplish the applicable SWaM objectives. Under the Comprehensive Agreement the Department is to assist Concessionaire in meeting the DB Work goals by offering assistance to include the following items:

(1) the Department and Concessionaire will jointly conduct outreach meetings for SWaM firms; Contractor shall participate in such meetings;

(2) the Department will identify to Concessionaire SWaM firms that are eligible to bid on the specific bid item groups, which information Concessionaire will provide to Contractor; 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, which access shall be made available by the Concessionaire to Contractor.

(d) Contractor acknowledges that the Department's assistance and cooperation will not eliminate or reduce Contractor's responsibility to achieve the DB Work goals for SWaM participation or demonstrate Good Faith Efforts. Contractor 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 DB Work. Contractor is expected to meet the goal or demonstrate that Good Faith Efforts have been made. Contractor will submit quarterly reports of Good Faith Efforts documentation, and, SWaM payments on form C-63 to Concessionaire for forwarding to the Department Representative.

(e) When there is a contract goal for the DB Work, Contractor 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 Contractor's documentation of Good Faith Efforts. The Department will issue a guidance memorandum on Good Faith Efforts, providing examples, procedures and reporting requirements for Concessionaire, which Concessionaire shall provide to Contractor.

(iii) SWaM Reporting and Assessment.

(a) Within eleven (11) days after each calendar quarter ends Contractor will submit to Concessionaire (who will submit same to the Chief of Administration in accordance with the Comprehensive Agreement) a quarterly report on Contractor's efforts to (A) satisfy the SWaM goals set forth in this Section 24.16.2 or (B) demonstrate Good Faith Efforts to accomplish the SWaM goals set forth in this Section 24.16.2.

(b) An assessment and confirmation as to whether Contractor has (A) satisfied the SWaM goals, (B) demonstrated Good Faith Efforts to satisfy such goals or (C) failed to satisfy the requirements of clauses (A) and (B) of this Section 24.16.2(iii)(b) will be made by the Chief of Administration under the Comprehensive Agreement) and communicated to Concessionaire within 30 days after receipt of each quarterly report being submitted by Concessionaire and Concessionaire will notify Contractor thereof.

(iv) Failure to Demonstrate SWaM Good Faith Efforts Related to DB Work.

(a) If the Chief of Administration notifies Concessionaire and Concessionaire notifies Contractor pursuant to Section 24.16.2(iii)(b) that Contractor has failed to satisfy the requirements of clause (A) of Section 24.16.2(iii)(b) and has failed to satisfy the requirements of clause (B) of Section 24.16.2(iii)(b) with respect to the SWaM goals for the DB Work for a quarterly period, Contractor will have until the end of the

next consecutive quarter to demonstrate that it has satisfied the requirements of either clause (A) or (B) of Section 24.16.2(iii)(b) with respect to such SWaM goals.

(b) If Contractor has failed to satisfy the requirements of clause (A) of Section 24.16.2(iii)(b) and has failed to satisfy the requirements of clause (B) of Section 24.16.2(iii)(b) with respect to the SWaM goals for the DB Work for two consecutive quarters based on the determinations by the Chief of Administration pursuant to the Comprehensive Agreement, Contractor will prepare and submit (through Concessionaire), at Contractor'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 Contractor will undertake to improve its performance with respect to satisfying the requirements of clause (A) and (B) of Section 24.16.2(iii)(b) with respect to the SWaM goals for the DB Work. The Contractor will submit the SWaM Performance Improvement Plan to Concessionaire within eleven (11) days after receiving notice from the Chief of Administration forwarded by the Concessionaire pursuant to Section 24.16.2(iii) that Contractor has failed to satisfy the requirements of clause (A) of Section 24.16.2(iii)(b) and has failed to satisfy the requirements of clause (B) of Section 24.16.2(iii)(b). Under Section 24.03(b)(v)(B) of the Comprehensive Agreement, Concessionaire is to pay the Department for its "Allocable Costs" in reviewing, approving and monitoring Concessionaire's compliance with the DBE Performance Improvement Plan until Concessionaire satisfies the requirements of either clause (1) or (2) of Section 24.03(b)(iv)(B) of the Comprehensive Agreement with respect to the SWaM goals for the DB Work. Contractor agrees to pay to Concessionaire any such amounts required for the payment of the Department in reviewing, approving and monitoring Contractor's compliance with the SWaM Performance Improvement Plan until Contractor satisfies the requirements of either clause (A) or (B) of Section 24.16.2(iii)(b) with respect to the SWaM goals for the DB Work and Concessionaire will pay the same over to the Department.

(c) If Contractor is debarred or disqualified pursuant to Section 24.03(b) of the Comprehensive Agreement for reasons not attributable to Concessionaire, then Contractor shall not be relieved of any of its obligations under this Agreement and shall be fully liable to Concessionaire for any failure to timely and fully fulfill such obligations in accordance with the terms of this Agreement.

(d) If the Chief of Administration under the Comprehensive Agreement determines at any time that Concessionaire has satisfied the requirements of either clause (1) or (2) of Section 24.03(b)(iv)(B) of the Comprehensive Agreement based on the satisfaction by Contractor of the requirements of either clause (A) or (B) of Section 24.16.2(iii)(b) hereof with respect to the SWaM goals for the DB Work performed to date with respect to the applicable calendar quarter, then any prior determinations by the Chief of Administration of Concessionaire's failure to satisfy the requirements of clause (1) of Section 24.03(b)(iv)(B) of the Comprehensive Agreement and Concessionaire's failure to satisfy the requirements of clause (2) of Section 24.03(b)(iv)(B) of the Comprehensive Agreement based on Contractor's failure hereunder to satisfy the requirements of clause (A) of Section 24.16.2(iii)(b) hereof and

Contractor's failure hereunder to satisfy the requirements of clause (B) of Section 24.16.2(iii)(b) hereof with respect to such SWaM goals will be disregarded, Contractor will be deemed to be in compliance with this Section 24.16, and any future determinations of a failure to satisfy the requirements of clause (A) of Section 24.16.2(iii)(b) hereof and a failure to satisfy the requirements of clause (B) of Section 24.16.2(iii)(b) hereof with respect to such SWaM goals will be pursuant to the provisions set forth in Section 24.16.2(iv)(a) hereof.

(e) Any decision or action taken by the Chief of Administration or the Department pursuant to Section 24.03(b) of the Comprehensive Agreement is subject to the dispute resolution procedures set forth in Article 21 of the Comprehensive Agreement, and Concessionaire will, to the extent permitted by the Department, allow Contractor to participate in any such dispute resolution proceedings which involve the SWaM goals for the DB Work. In addition, Contractor may pursue its rights against Concessionaire in accordance with the dispute resolution process set forth in Article 19.

24.17 Contracting Requirements.

24.17.1 Contractor covenants and agrees that it will not discriminate and it will require all Subcontractors 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 Contractor 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, Subcontractors, and vendors; 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.

24.17.2 Contractor will comply, and will require all Subcontractors to comply, with all construction safety and health standards established by Law. Neither Contractor nor any Subcontractor will require any worker to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to his or her 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.

24.17.3 Contractor acknowledges that in accordance with Section 24.02(f)(ix) of Comprehensive Agreement no liens or Claims will attach at any time to any interest of the Department in the Project or the Project Right of Way.

24.18 Coordination with the Department and Financing Parties. Contractor acknowledges that each of the Department and the Financing Parties shall have the right to review and approve this Agreement and that they may require as a condition to such approval certain rights for their benefit, including the rights (a) to receive notices of default by Contractor and notices of inspections and tests, (b) to approve payments, (c) to approve Substantial Completion and Final Acceptance, and (d) to have the Independent Engineer inspect the progress

of the DB Project. Contractor agrees to make changes to this Agreement and to otherwise cooperate with each of the Department and the Financing Parties to the extent reasonably required in order for Concessionaire to obtain the Department approval and to obtain financing for the Project on terms satisfactory to Concessionaire.

24.19 Time of the Essence. Without prejudice to any provision of this Agreement relating to liquidated damages, delay or termination for default relating to delay, time is of the essence in the performance of this Agreement.

24.20 Exhibits. All exhibits attached to this Agreement are made a part hereof for all purposes.

[Remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, Concessionaire and Contractor, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the date indicated below and to be effective as of the day and year first above written.

CONCESSIONAIRE

95 Express Lanes LLC

By: _____
Name: _____
Title: _____
Date: _____

CONTRACTOR

Fluor-Lane 95, LLC

By: _____
Name: _____
Title: _____
Date: _____