

EXHIBIT Z

PENTAGON RESERVATION MOA

[SEE ATTACHED]

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MEMORANDUM OF AGREEMENT BETWEEN Virginia Department of Transportation and Department of Defense, Washington Headquarters Services regarding the Multimodal Improvements to the Pentagon Reservation

THIS MEMORANDUM OF AGREEMENT (“MOA”), is made and entered into this 18th day of May, 2017, between Washington Headquarters Services (“**WHS**”), a Department of Defense (“**DoD**”) field activity responsible for managing and operating the “Pentagon Reservation” (defined below), and the Virginia Department of Transportation (“**VDOT**”).

RECITALS

- A. VDOT intends to enter into an amended and restated comprehensive agreement (ARCA) in or about June 2017, with 95 Express Lanes, LLC (“Concessionaire”) to design, construct, operate, and maintain improvements on the I-95/I-395 corridor between 2.2 miles south of the route 610 interchange (Garrisonville Road), and Washington, D.C.
- B. As part of the ARCA, VDOT, in coordination with Concessionaire, is expanding existing High Occupancy Toll (“HOT”) Lanes on I-395 (“395 HOT Lanes”) to the Pentagon, and is improving multimodal access to the Pentagon.
- C. VDOT, by and through Concessionaire, will design and construct new bus lanes on the perimeter of the eastern portion of the South Parking Area north of I-395 and a fourth lane on South Rotary Road between Eads Street and Fern Street to improve the throughput of traffic on the Pentagon Reservation. VDOT will design and construct the Hayes Street Parking Area Improvements to temporarily accommodate tour buses. VDOT will also install corresponding traffic signals, dynamic message signs, gate arms, cameras, “Related Equipment” (defined below), and fencing.
- D. DoD/WHS owns, operates, and maintains as its property the area of real property known as the “South Parking Area” located on the Pentagon Reservation.
- E. DoD/WHS also owns, operates, and maintains as its property certain parking areas situated between I-395 and Army Navy Drive.
- F. VDOT currently owns, operates, and maintains as its property I-395, including associated entrance and exit ramps.
- G. DoD/WHS desires to permit VDOT and/or the VDOT Assignees to design and construct the Project Improvements on the Pentagon Reservation to facilitate future operation of the 395 HOT Lanes in conjunction with related traffic flow into the Pentagon

Reservation. The responsibility for maintenance of improvements after construction is completed is described in this MOA.

- H. As part of the 395 HOT Lanes project, DoD/WHS will grant VDOT and/or the VDOT Assignees the right to install the TTMS Roadside Equipment on the Pentagon Reservation, and the permanent right to access and maintain the TTMS Roadside Equipment.
- I. Except as otherwise provided in this MOA, VDOT and/or the VDOT Assignees will be responsible for all costs associated with the Work.
- J. DoD/WHS and VDOT desire to enter into this MOA to ensure effective management of the Project Improvements to the Pentagon Reservation and to their interface with the 395 HOT Lanes, to delineate future maintenance and operational responsibilities, and to set forth the terms and conditions related thereto.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, DoD/WHS and VDOT hereby agree as follows:

1. DEFINITIONS.

- 1.1 DoD – The United States Department of Defense.
- 1.2 Fourth Lane – The 395-HOT-Lanes-access-only lane to be located between Eads Street and Fern Street on South Rotary Road.
- 1.3 Fourth Lane Improvements – The improvements associated with the Fourth Lane, including TTMS Roadside Equipment and additional paving to provide improved vehicular access to the 395 HOT Lanes.
- 1.4 Hayes Street Parking Area – The parking area owned by DoD and located northwest of the intersection of South Hayes Street and Army Navy Drive upon which the Hayes Street Parking Area Improvements shall be constructed as shown in Attachment 1.22.4 attached hereto.
- 1.5 Hayes Street Parking Area Improvements – Improvements as defined in Attachment 1.22.4. Generally, the Hayes Street Parking Area Improvements include (i) modifications to the northeast section of the parking lot to accommodate tour buses, (ii) restriping of paved areas to channel tour buses to parking areas, (iii) pavement strengthening (but only if required), and (iv) removal of security booth and associated utilities.
- 1.6 Maintenance – The term “maintenance” shall include all necessary upkeep related to the physical condition of an item, as well as the upkeep and repair of any electrical or communications equipment necessary to make an item function properly.

- 1.7 Party or Parties – VDOT or DoD/WHS, individually, or both of the foregoing collectively.
- 1.8 Pentagon – The headquarters of DoD.
- 1.9 Pentagon Force Protection Agency (PFPA) - Civilian defense agency within the Department of Defense with security, law enforcement, and force protection responsibilities at the Pentagon and other delegated facilities.
- 1.10 Pentagon Reservation – That area of land and improvements thereon, titled in the name of the United States of America, located in Arlington, Virginia, on which, among other things, the Pentagon and other related facilities are located.
- 1.11 Pentagon Reservation Easements – Those easements depicted on Attachment 1.24.3.
- 1.12 Project Component – The two separate projects included in the Project Improvements, specifically, the Hayes Street Parking Area Improvements, and the South Parking Improvements.
- 1.13 Project Improvements – The South Parking Improvements (inclusive of the Fourth Lane Improvements) and the Hayes Street Parking Area Improvements.
- 1.14 Project Phase – Any subcomponents of a Project Component, specifically, within the South Parking Improvements, the Fourth Lane Improvements.
- 1.15 Related Equipment – Any mechanical, electrical, or electromechanical equipment necessary for the operation and full functionality of the primary machine or device (as determined by the context in which this term is used), including but not limited to wires, power connections, and telecommunications equipment.
- 1.16 Security Equipment – Any item or structure specified by DoD/WHS as necessary to protect, deter, detect, and defend the Pentagon Reservation and its occupants from law enforcement threats and security threats.
- 1.17 South Parking Area – The parking area within the South Parking Lot located on the Pentagon Reservation on which improvements will be constructed and owned by DoD/WHS north of I-395 and bounded by North Rotary Road, South Rotary Road and Eads Street. This definition does not include any other areas of South Parking.
- 1.18 South Parking Improvements – The improvements as defined in Attachment 1.24.1. Generally, the South Parking Improvements include (i) new concrete pavement for the bus loop; (ii) storm drainage enhancements; (iii) new sidewalks, fencing, and K-12 barrier system; (iv) new signage and pavement markings; (v) security enhancements; (vi) new lighting; (vii) a conduit duct bank, vault, and associated communications infrastructure, (viii) newly installed traffic signals on the Pentagon Reservation, and (ix) the Fourth Lane Improvements.

- 1.19 TTMS (Tolling and Traffic Management System) Roadside Equipment – Physical equipment that supports the 395 HOT Lanes tolling and traffic management system that includes, but is not limited to, fixed and dynamic message signs and their support structures, gates, AID cameras and poles, conduit duct banks including power and communications cabling, related power sources, and related cabinets and foundations, the locations of which are depicted and highlighted on Attachment 1.24.3.
- 1.20 VDOT – The Virginia Department of Transportation.
- 1.21 VDOT Assignees – The Concessionaire and its agents, employees, and contractors and supplier of any tier.
- 1.22 WHS – The Washington Headquarters Services.
- 1.23 Work – The design and construction of the Project Improvements.
- 1.24 The Attachments listed below are hereby incorporated into and made part of this MOA, and this MOA and the incorporated Attachments shall be the “Agreement Documents.” In the event of conflict among the Agreement Documents, the provisions of this 18-page MOA shall supersede the Attachments. Except as otherwise described herein, any inconsistency among the Attachments shall be resolved by giving priority to the Attachments in the order of the listing below:
- 1.24.1 The eight-page document titled “395 Project Information and Technical Requirements Attachment 1.0e Pentagon South Parking Scope of Work” (including Appendices A, B, and C thereto)
- 1.24.2 The 11-page document titled “I-395 Project Exhibit C-3 Technical Requirements Attachment 1.0a 395 Express Lanes Scope of Work” (including Appendices A and B thereto)
- 1.24.3 The three-page document titled “395 Express Lanes – Pentagon Reservation Easement Locations Narrative” dated May 3, 2017, including the sheets titled “395 Express Lanes Pentagon Reservation Easement Locations, Sheets 1, 1A, and 2 of 2,” dated May 3, 2017
- 1.24.4 The three-page document titled “I-395 Project Hayes Street Parking Lot Scope of Work” dated February 7, 2017
- 1.24.5 DD Form 2798, Application/Permit Request for Use of Space on the Pentagon Reservation
- 1.24.6 Transfer and Acceptance of DoD Real Property (DD Form 1354)
- 1.24.7 Unified Facilities Criteria (UFC), Criteria for Transfer and Acceptance of DoD Real Property, August 2011

- 1.24.8 The nine-page document titled “395 Express Lanes Communications Protocol for Interactions with DOD/WHS” updated as of March 28, 2017 (version 0.3)
- 1.24.9 FSD Construction Management, General Requirements
- 1.24.10 VDOT Job Site Safety Requirements
- 1.24.11 395 Express Lanes Pentagon South Parking Construction Concept Plan

2. PENTAGON IMPROVEMENTS, OWNERSHIP & REAL PROPERTY OUTGRANT.

- 2.1 Subject to Section 8.4, VDOT and/or the VDOT Assignees will complete the Work. However, if the Concessionaire and VDOT do not execute the ARCA for any reason, this MOA will be void and VDOT will not be obligated to perform the Work.
- 2.2 VDOT agrees to provide DoD/WHS with the documents necessary to accomplish the final transfer of real property ownership of the Project Improvements consistent with this MOA and applicable federal law, including but not limited to, appropriate transfer and acceptance documents.
- 2.3 DoD/WHS has administrative jurisdiction and real property authority over the property on which the Project Improvements described in Attachments 1.24.1 through 1.24.4 will be made and on which the TTMS Roadside Equipment will be installed. DoD will grant the permits, licenses or easements to VDOT and/or the VDOT Assignees as and where necessary to complete the Work, and to maintain and operate the TTMS Roadside Equipment and the new traffic signals that will be installed on the Pentagon Reservation. The Pentagon Reservation Easements will be granted only for purposes consistent with the operation, maintenance, and repair of Project Improvements and operation of the 395 HOT Lanes.

3. PROCEDURES DURING CONSTRUCTION.

- 3.1 Construction will be conducted by VDOT and/or the VDOT Assignees on the Pentagon Reservation. VDOT and/or the VDOT Assignees will follow Pentagon Reservation procedures for construction projects on the Pentagon Reservation, including all requirements for obtaining Pentagon-specific permits and all health and safety requirements set forth in EM 385-1-1, Department of the Army Safety and Health Requirements Manual, November 30, 2014. Attachment 1.24.9 contains the requirements for management of a construction project on the Pentagon Reservation.
- 3.2 VDOT and/or the VDOT Assignees are responsible for obtaining all necessary permits.

- 3.3 VDOT agrees to comply with, and to cause the VDOT Assignees to comply with, all applicable local rules and state and federal and laws regarding air quality, storm water, waste management, hazardous materials, and all other environmental requirements during construction.
- 3.4 VDOT agrees to adhere to the hours of work, and to cause the VDOT Assignees to adhere to the hours of work, as described in Attachment 1.24.1, unless otherwise approved in advance, per section 3.7.
- 3.5 VDOT, on behalf of itself and the VDOT Assignees, agrees to provide DoD/WHS with information and documentation necessary to complete the draft, interim, and final DD Forms 1354 for transfer and acceptance of the Work and any real property as described in Attachment 1.24.6 and 1.24.7. This information may include, but is not limited to, work order approvals, copies of contracts including the statement of work, copies of notices to proceed, architectural drawings, contract modifications, changes to statements of work, final inspections, final invoices, final as-builts, punch lists, equipment lists, and any other close-out documents related to the project.
- 3.6 VDOT, on behalf of itself and the VDOT Assignees, agrees to comply with all rules for accessing the Pentagon Reservation, including but not limited to rules regarding badging, vehicular clearances, photo permits, and wireless equipment Reservation Installation Application (RIA) permits.
- 3.7 Unless otherwise approved in advance by DoD/WHS, VDOT, on behalf of itself and the VDOT Assignees, agrees to provide continuous vehicular access to the Eads Street entrance at South Rotary Road into the Pentagon, to include access from Army Navy Drive, entrance to and exit from the South Parking Area from the Eads Street and South Rotary Road intersection side of such parking area, continuous vehicular access to the parking area inside of the designated long-term construction area, and vehicular and pedestrian access at North Rotary Road and Eads Street to the South Parking Area during all proposed construction stages, as specifically described in Attachment 1.24.11. If VDOT and/or the VDOT Assignees need to temporarily restrict vehicular access on Eads Street, South Rotary Road, or access to the South Parking Area such restrictions should be limited to night work and weekend work. VDOT and/or the VDOT Assignees shall provide DoD/WHS with a minimum of fifteen business days' notice prior to the restriction, and VDOT and/or the VDOT Assignees shall provide appropriate police presence required for traffic control during such lane closures, at no expense to DoD/WHS.
- 3.8 DoD/WHS agrees to provide VDOT and the VDOT Assignees with a construction laydown area mutually agreeable to DoD/WHS and VDOT, provided VDOT shall not impede the daily use and operation of the South Parking Area outside of the construction laydown area. VDOT's and the VDOT Assignees' access to and use of the laydown area will be governed by the permit issued by

DoD/WHS to VDOT permitting the Project Improvements on the Pentagon Reservation, and will be consistent with Attachment 1.24.11.

- 3.9 DoD/WHS retains the right to conduct inspections of Work, to include safety inspections, and conduct periodic erosion and sediment control inspections during construction, subject to the requirement that DoD/WHS observes the VDOT Job Site Safety Requirements listed in Attachment 1.24.10 and the Communications Protocols set forth in Attachment 1.24.8.
 - 3.9.1 If at any time during construction or after construction is complete but before DoD/WHS has accepted the Work, DoD/WHS identifies deficiencies in Work or non-conformity with the specifications, to include subsequent construction submittals, and procedures described in Attachment 1.24.1, DoD/WHS shall immediately notify VDOT as described in 9.13. If VDOT and/or the VDOT Assignees fail to correct the deficiency, DoD/WHS reserves the right to not accept the disputed work items until the deficiency has been addressed to its reasonable satisfaction.
- 3.10 Changes in the manner and/or scope of Work may be accomplished after execution of this agreement, subject to general provisions outlined in Attachment 1.24.1. Changes must be agreed upon in writing by all Parties prior to conducting Work in accordance with the change. In the event a Party wishes to initiate a change, the Party requesting the change should provide the other Party with a written description of the change in the Work, including any delays in schedule. Notice will be provided in accordance with 9.13. The Parties will work in good faith to agree about any proposed changes in the manner and/or scope of Work.
- 3.11 Before all of the Work is complete, and in accordance with the following principles, DoD/WHS may accept the following Project Components and/or Project Phase in phases: (i) the Fourth Lane Improvements, (ii) the Hayes Street Parking Area Improvements, or (iii) the South Parking Improvements:
 - 3.11.1 If DoD/WHS contends a Project Component and/or Project Phase is complete and desires to accept it early, DoD/WHS may accept such Project Component and/or Project Phase by written acceptance to VDOT pursuant to Section 9.13, even if the full scope of Work is not yet complete;
 - 3.11.2 Upon such written acceptance, DoD/WHS may occupy and use the accepted Project Component and/or Project Phase;
 - 3.11.3 Upon such written acceptance, DoD/WHS's duty to maintain the accepted Project Component and/or Project Phase in accordance with Sections 4.1 through 4.12 will begin; and,
 - 3.11.4 This Section 3.11 provides for early acceptance and use of certain Project Components and/or Project Phase, and nothing herein expands

DoD/WHS's duties, or negates VDOT's duties, under Sections 4.1 through 4.12 below.

4. **REAL PROPERTY OPERATION AND MAINTENANCE.** Upon DoD/WHS's written acceptance of the Work by use of Attachment 1.24.6 (DD Form 1354), or upon early acceptance of a Project Component and or Project Phase in accordance with Section 3.11, the duty to operate, maintain, and repair of the Project Improvements will be as follows:

4.1 Pavements and Hardstands.

DoD/WHS will own, maintain, operate, and repair all travel lanes, pavements, and hardstands within the Project Improvements, including the Fourth Lane. DoD/WHS will maintain the standard (typical) pavement markings on South Rotary Road, North Rotary Road, Eads Street between South Rotary Road and North Rotary Road, and all other Project Improvements with the exception of the E-Z Pass logo pavement markings in the Fourth Lane, which shall be maintained by VDOT or the VDOT Assignees. This agreement to maintain pavements and hardstands is subject to any warranty coverage and shall not be construed as a limitation of any warranty. DoD/WHS will be the sole owner of travel lanes, pavements, and hardstands within the Pentagon Reservation.

4.2 Security Equipment.

DoD/WHS will own maintain, operate, and repair all installed Security Equipment installed for its use.

4.3 Stormwater Management Features.

DoD/WHS will own, operate, and be responsible for maintenance and repair of the storm water management system.

4.4 Landscaping.

DoD/WHS will own, maintain, and repair the landscaping for the areas surrounding the Bus Loop and South Parking Area.

4.5 Snow & Ice Control.

DoD/WHS will provide snow and ice control services for the Bus Loop, the South Parking Improvements, and the Fourth Lane. VDOT will provide snow and ice control services for the entrance ramps to the 395 HOT Lanes and on Eads Street between South Rotary Road and Army Navy Drive.

4.6 Traffic Signals and Equipment Movement/Relocation.

VDOT and/or the VDOT Assignees will be responsible for the operation and maintenance of all traffic signals included as part of the Project Improvements.

DoD/WHS will assume costs related to any relocation or movement of the traffic signals on the Pentagon Reservation or of other TTMS Roadside Equipment located on the Pentagon Reservation as a result of any future reconfiguration or construction on the Pentagon Reservation not planned by VDOT and/or the VDOT Assignees.

4.7 Gate Arms.

VDOT and/or the VDOT Assignees will be responsible for the maintenance and operation of the gate arms controlling access to the 395 HOT Lanes. VDOT will retain ownership of the gate arms and Related Equipment.

4.8 Dynamic Message Signs.

VDOT and/or the VDOT Assignees will be responsible for the maintenance and operation of the dynamic message signs. VDOT will retain ownership of the dynamic message signs and Related Equipment.

4.9 Automated Incident Detection (AID) Cameras.

VDOT and/or the VDOT Assignees will be responsible for the maintenance and operation of the AID cameras installed by VDOT to assist with traffic operations only. VDOT will retain ownership of the AID cameras and Related Equipment. The Pentagon Force Protection Agency (PFPA) shall be permitted access to the cameras in the performance of its security and law enforcement missions.

4.10 Provision of Utilities.

Provision of and payment for sewer, water, and electric utilities associated with the TTMS Roadside Equipment will be the responsibility of VDOT.

4.11 Communication.

The Parties hereto agree to communicate regarding any significant changes in operation that would impact the flow of traffic entering or exiting the Pentagon Reservation in accordance with Attachment 1.24.8.

4.12 Warranties.

VDOT shall require that the Concessionaire or its contractor provide a warranty against defects in material and workmanship on all construction of the Work for a period of two years after from the date of “395 Final Completion” or “395 Early Final Completion” of the Pentagon Improvements, as applicable, in each case as defined within the ARCA. VDOT shall provide to DoD/WHS documentation of the final warranty letter and a point of contact for all warranty issues. DoD/WHS shall notify VDOT of any claims under or issues relating to the warranty. Any warranty work will commence no later than ten (10) days from the date on which DoD/WHS provides notice of any non-conforming work. If VDOT or

Concessionaire believes the issue is not covered under or related to the warranty, DoD/WHS may request a fact finding meeting on site attended by a DoD/WHS or other United States government representative as well as representatives of VDOT and Concessionaire. If the fact finding meeting determines the issue is covered under the warranty, VDOT and/or the VDOT Assignees must repair the item within forty-eight (48) hours, or such longer period as may be reasonably necessary to effect the repair. VDOT agrees to cooperate with all efforts made by DoD/WHS to enforce such warranty regarding the Work.

5. LAW ENFORCEMENT AND EMERGENCY MANAGEMENT.

5.1 DoD/WHS.

VDOT and/or the VDOT Assignees' use of any property or equipment located on the Pentagon Reservation shall be subject to 32 CFR Part 234 (Conduct on the Pentagon Reservation). VDOT and/or the VDOT Assignees' equipment may be subject to search by PFPA in emergency situations.

5.2 Law Enforcement.

Law enforcement and authority to enforce rules and regulations will follow procedures under current agreements between Arlington County and the PFPA.

6. VDOT REGULATION OF ACCESS TO AND FROM THE PENTAGON RESERVATION FROM 395 HOT LANES.

6.1 VDOT and/or the VDOT Assignees will manage access, including ingress and egress to and from the 395 HOT Lanes. Such access will be controlled via traffic signals and gate arm operation.

6.2 In the event of an emergency, and if deemed to be in the best interests of the national security of the United States, DoD/WHS shall have the right to intervene in traffic operations.

6.3 DoD/WHS shall notify VDOT and its designee of any such determination in accordance with Attachment 1.24.8.

6.4 DoD/WHS' use of the Pentagon Reservation shall not unreasonably interfere with VDOT's traffic operation. VDOT's traffic operation shall not unreasonably interfere with DoD/WHS' use of the Pentagon Reservation.

6.5 DoD/WHS hereby grants VDOT and the VDOT Assignees the right to install the TTMS Equipment on the Pentagon Reservation, and the perpetual right thereafter to use the Pentagon Reservation Easements, as detailed further on Attachment 1.24.3, to access the TTMS Roadside Equipment and the traffic signals located on the Pentagon Reservation, to operate, maintain and repair the same, as described in Article 4, and as otherwise necessary to own and operate the 395 HOT Lanes,

subject to the security requirements for the Pentagon Reservation, as described in Attachment 1.24.9.

7. DoD RETENTION OF RIGHTS.

Subject to this MOA, DoD/WHS will retain the right to use fully and enjoy the areas upon which the Project Improvements will be constructed.

8. DESIGN AND CONSTRUCTION OF PROJECT IMPROVEMENTS.

8.1 Description of Project Work.

VDOT and/or the VDOT Assignees shall design the Project Improvements, subject to DoD/WHS' approval of design and construction plans and specifications, as described below.

8.2 Design.

8.2.1 VDOT and/or the VDOT Assignees shall prepare, at its sole cost and expense, all design and construction plans and specifications necessary for construction of the Project Improvements. Such plans shall be submitted to DoD/WHS for approval, which shall not be unreasonably withheld, conditioned or delayed. If DoD/WHS does not respond with specific comments to any such plan submittal within fifteen (15) business days thereof, then such plans shall be deemed approved.

8.2.2 VDOT shall, at its sole cost and expense, cause the VDOT Assignees to prepare the necessary plats of survey and metes and bounds descriptions of the areas to be occupied by the Project Improvements and TTMS Roadside Equipment. Additionally, VDOT, at its sole cost and expense, shall cause the VDOT Assignees to complete and submit a certified plat of survey and metes and bounds description of the property rights, including all temporary and permanent easements, required for the completion of the Project Improvements and TTMS Roadside Equipment. The plat of survey and metes and bounds description shall be prepared by a surveyor registered in the Commonwealth of Virginia.

8.2.3 DoD/WHS will release information regarding the location of utilities and other underground assets to VDOT and/or the VDOT Assignees for the sole purpose of construction of the Project Improvements and TTMS Roadside Equipment. Such information shall be considered "for official use only" and shall not be distributed to any entity not directly involved in the Work. VDOT agrees, on behalf of itself and the VDOT Assignees, to safeguard information marked "for official use only" as required by United States government policy, specifically 32 CFR Part 2001 and Department of Defense Manual Number 5200.01, Volume 4. VDOT and the VDOT Assignees shall include in

all contracts related to the Work the following provision: “Documents marked ‘for official use only’ must be protected and not shared with any individuals or entities not directly involved in the construction. DOCUMENTS MARKED FOR OFFICIAL USE ONLY MAY BE EXEMPT FROM PRODUCTION UNDER THE FEDERAL FREEDOM OF INFORMATION ACT (5 U.S.C. 552, as amended) AND THE VIRGINIA FREEDOM OF INFORMATION ACT (Code of Virginia (1950) § 2.2-3700 et seq., as amended) AND SHALL BE LABELED AS SUCH.” Notwithstanding the foregoing, VDOT and the VDOT Assignees may show on VDOT’s as-built plans for the Project Improvements and TTMS Roadside Equipment any utilities located in the immediate vicinity of the Project Improvements and TTMS Roadside Equipment, for the purpose of avoiding utility conflicts during future operation and maintenance of the Project Improvements and TTMS Roadside Equipment. VDOT may also release a copy of its as-built plans for the Project Improvements and TTMS Roadside Equipment to Arlington County for the same purpose.

- 8.2.4 DoD/WHS has the right to review and approve Concessionaire’s or its contractor’s overall project health and safety plan, which review and approval will be limited to whether the submitted health and safety plan complies with EM 385-1-1, Department of the Army Safety and Health Requirements Manual, November 30, 2014.
- 8.2.5 DoD/WHS shall expedite issuance of any permits necessary, including Right of Entry and Use of Space to begin geological testing and construction, upon VDOT’s application for permission to construct the Project Improvements, provided VDOT provides all information necessary for WHS to act expeditiously.

8.3 Construction Activities.

VDOT shall, at its sole cost and expense, cause the Concessionaire to:

- 8.3.1 Advertise, award, and administer the construction contract and perform all construction engineering (construction inspection services and materials testing/certification);
- 8.3.2 Install and maintain necessary safety and other barriers to protect VDOT facilities, patrons, VDOT employees, agents, contractors, and licensees;
- 8.3.3 Hire appropriate surveyors to mark all utilities as located in the field by DoD/WHS personnel prior to beginning construction;
- 8.3.4 Obtain all permits necessary for the construction of the Project Improvements and installation of the TTMS Roadside Equipment;

- 8.3.5 Provide watchmen, flagmen, and any other protective services or devices that in the Parties' reasonable judgment are necessary to protect or safeguard VDOT's operations during construction of the Project Improvements;
- 8.3.6 Submit an Electronic Documentation Systems ("EDS") Compliant as-built set to DoD/WHS after construction completion.

8.4 Costs.

VDOT will bear the costs of the Work, not to exceed \$10 million. In the event the Work is expected to cost more than \$10 million, VDOT, in its sole discretion, may issue deductive change orders to the Concessionaire to reduce the scope of the Work, and notwithstanding any other provision hereof, will not be in breach of this MOA. However, prior to issuing any deductive change order, VDOT must consult with DoD/WHS and, to the extent feasible, execute mutually-agreed deductive change orders. Any deductive change orders shall not result in a less than complete and useable improvement, as determined by VDOT.

If after February 27, 2017, there is a change in the governing regulations or laws that increases VDOT's costs to execute the Work, VDOT will, after consulting with DoD/WHS execute a corresponding reduction in scope so that the cost of the Work does not increase as a result of the change in the governing laws or regulations.

9. OTHER PROVISIONS.

9.1 Effective Date and Termination.

This MOA shall become effective upon the signature of DoD/WHS and VDOT. This MOA may be terminated without cost or liability at any time by either DoD/WHS or VDOT upon ninety (90) days prior written notice to the other Party. However, both: (i) the rights granted by DoD/WHS to VDOT and the VDOT Assignees under Sections 2.3 and 6.5 and (ii) DoD/WHS's duty to deliver to VDOT the Pentagon Reservation Easements in a form that is valid and enforceable, shall survive termination of this MOA.

9.2 Liability.

Each Party shall be responsible for its own actions and shall in no way assume any responsibility for or provide indemnification for the actions of other Party, their officers, agents, employees or contractors for or against any damages, actions or costs of any name or destruction arising from or caused by any acts or activities performed in connection with this MOA. Each Party shall be responsible for its own negligence, to the extent permitted by applicable law.

9.3 Litigation.

The Parties agree that each shall promptly notify the other if a lawsuit is brought against one of them for any matter related to the subject matter of this MOA.

9.4 Notice of Material Breach.

9.4.1 In the event that any Party to this MOA asserts that there has been a material breach by another Party of its responsibilities under this MOA, the Party asserting material breach shall have a duty to provide the other Party with written notice stating the nature of the alleged breach.

9.4.2 The notice shall specifically state the nature of the material breach and shall provide the allegedly breaching Party a reasonable period of time within which to correct the alleged breach, but in no event less than thirty (30) calendar days.

9.4.3 Should any alleged material breach not be corrected within the time specified in 9.4.2, any Party to this MOA may invoke non-binding dispute resolution procedures.

9.5 Damages.

In no event shall either Party be liable to the other Party for any indirect, special, or consequential damages, lost profits or lost data arising out of or related to this MOA, including the performance or breach thereof, the services provided or failed to be provided, or any delay, non-delivery, wrong delivery or service interruption, whether or not caused by the negligence of a Party or its officers, agents, employees, or contractors.

9.6 Resolution of Disputes; Alternative Dispute Resolution (“ADR”); Court Jurisdiction; Governing Law.

9.6.1 **Resolution of Disputes:** This MOA shall be governed by the laws of the Commonwealth of Virginia except where preempted by federal law. Any dispute between the parties arising out of this MOA may be disposed of by the parties by written agreement and/or amendment of this MOA. If the parties cannot resolve the dispute, then the Party seeking a resolution shall provide written notice of the nature of the dispute and the issue(s) to the other Party. The other Party may respond within thirty (30) days after receipt of such notice. If the dispute is not resolved within thirty (30) days after receipt of such notice, the dispute may be resolved by the parties’ executives or their respective designees, or as discussed below in Section 9.6.2.

9.6.2 **ADR:** Absent resolution, the Parties agree to pursue any type of non-binding alternative dispute resolution procedure which appears to have

a likelihood of successfully resolving any dispute.

9.6.3 **Court Jurisdiction:** If any Party asserts a legal challenge against the other under this MOA, such challenge shall be filed in the United States District for the Eastern District of Virginia.

9.7 Assignment.

This MOA shall not be assignable by any Party without the prior written consent of the other Party.

9.8 Modifications.

Changes to this MOA may only be made by written, mutual agreement of the Parties.

9.9 Entire Agreement.

This MOA contains the entire agreement between the Parties with respect to the matters addressed herein and shall not be amended or modified in any manner except by an instrument in writing executed by the Parties as an amendment to this MOA.

9.10 Invalid or Unenforceable Term.

If any provision of this MOA or the application to any person or situation shall be held invalid or unenforceable, the remainder of this MOA and the application of such provision to persons or situations other than those held invalid or unenforceable shall not be affected and shall continue valid and be enforced to the fullest extent permitted by law provided that to do so does not cause this MOA to fail of its essential purposes.

9.11 Authority.

The undersigned individuals represent that they have the requisite authority to enter into this MOA on behalf of DoD/WHS and VDOT, respectively, and to bind DoD/WHS and VDOT hereby.

9.12 Counterparts.

This MOA may be signed in counterparts, each constituting an original. Photocopies or facsimile transmissions of signatures shall be deemed original signatures and shall be fully binding upon the Parties to the same extent as original signatures.

9.13 Notices and Invoices.

Notices under sections 3.9.1, 3.10, 4.12, 9.4, and 9.6 of this MOA shall be in writing and shall be made or sent to the following (otherwise, all communications among VDOT or the VDOT Assignees and DoD/WHS will be governed by Attachment 1.24.8):

If to VDOT:

Susan Shaw, P. E., Director of Megaprojects
Virginia Department of Transportation
4975 Alliance Drive
Fairfax, Virginia 22030

If to WHS:

Director, Facilities Services Directorate
Department of Defense
Washington Headquarters Services
1155 Defense Pentagon
Room 2E1008
Washington, D.C. 20301-1155

9.14 Anti-Deficiency.

It is expressly understood that the ability of DoD/WHS and VDOT to carry out their obligations under this MOA is subject to the availability of funds. Nothing in this MOA shall be interpreted in a manner that would cause a violation of the Antideficiency Act.

9.14 Successors and Assigns.

This MOA shall inure to the benefit of and be binding upon the Parties hereto, their agents, successors, and assigns. There are no intended third party beneficiaries to this agreement.

9.16 Recitals.

The Recitals are incorporated herein as substantive provisions of this MOA.

9.17 Force Majeure.

If any Party is delayed, hindered or prevented from performing any act or thing required to be performed pursuant to the terms of this MOA because of strikes, lockouts, casualties, acts of God, labor troubles, material shortages, riots, insurrections, war or other causes beyond its reasonable control, then the performance of such act or thing shall be excused for the period of delay and time

for performance of any act or thing shall be extended for a period equivalent to the period of such delay.

[Signatures appear on following pages.]

IN WITNESS WHEREOF, the parties hereto have caused this MOA to be executed by their proper and duly authorized officers, on the day and year first written above.

DEPARTMENT OF DEFENSE

WITNESS

By: _____
Date: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

RECOMMENDED FOR APPROVAL

**COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF TRANSPORTATION**

By: _____
CHARLES A. KILPATRICK, P.E
Commissioner

Date: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY
