

**SECOND AMENDED AND RESTATED COMPREHENSIVE AGREEMENT
RELATING TO THE ROUTE 495 HOT LANES IN VIRGINIA PROJECT**

DATED AS OF SEPTEMBER 30, 2021

BY AND BETWEEN

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

AND

**CAPITAL BELTWAY EXPRESS LLC,
a Delaware limited liability company**

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This SECOND AMENDED AND RESTATED COMPREHENSIVE AGREEMENT RELATING TO THE ROUTE 495 HOT LANES IN VIRGINIA PROJECT (as amended, restated, supplemented or otherwise modified from time to time, this “Agreement”) is made and entered into as of September 30, 2021 by and between the VIRGINIA DEPARTMENT OF TRANSPORTATION (the “Department”), an agency of the Commonwealth of Virginia (the “State”), the address of which Department is 1401 East Broad Street, Richmond, Virginia 23219; and CAPITAL BELTWAY EXPRESS LLC, a Delaware limited liability company (the “Concessionaire”), the address of which is 6440 General Green Way, Alexandria, Virginia 22312.

ARTICLE 1

RECITALS

WHEREAS, on April 28, 2005, the Department, Fluor Enterprises, Inc., a California corporation (“Fluor Enterprises”), and Transurban (USA), Inc., a Delaware corporation (“Transurban”) entered into a Comprehensive Agreement to Develop, Design, Finance, Construct, Maintain and Operate the Route 495 HOT Lanes in Virginia (the “Original Comprehensive Agreement”);

WHEREAS, on December 19, 2007, the Department and the Concessionaire entered into an Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project; on April 30, 2014, the Department and the Concessionaire entered into Amendment No. 1 to the Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project; on December 15, 2014, the Department and the Concessionaire entered into Amendment No. 2 to the Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project; on or about January 2018, the Department and the Concessionaire entered into Amendment No. 3 to the Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project; and on January 29, 2019, the Department and the Concessionaire entered into Amendment No. 4 to the Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project, which has been supplemented and amended from time to time (as further supplemented and amended from time to time prior to the date hereof, the “First ARCA”);

WHEREAS, on June 11, 2021, the Concessionaire submitted to the Department a written proposal to develop the NEXT Project, as further described below, as a Concessionaire Project Enhancement, and the Department accepted such proposal on July 8, 2021 for the purposes of proceeding to amend and restate the First ARCA; and

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

AGREEMENT

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

ARTICLE 2

DEFINITIONS

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

ARTICLE 3

ESTABLISHMENT OF PUBLIC-PRIVATE TRANSACTION; BASIC ROLES AND RESPONSIBILITIES

Section 3.01 Basic Agreement.

(a) The parties hereto agree that the Project as described on Exhibit B-1 attached hereto shall be developed, designed, permitted, financed, acquired, constructed, operated, maintained, equipped and insured in a transaction involving a series of agreements setting forth distinct roles and responsibilities of the Department and the Concessionaire, as well as other parties referred to in Section 3.02, in accordance with this Agreement and the other Project Agreements.

(b) The Concessionaire shall provide appropriate oversight, management and reporting of all phases of the Project and its subcontractors such that:

(i) the Project is delivered in accordance with and “fit for purpose” intended by the contract documents;

(ii) the Concessionaire resolves all disputes with or among its contractors;

(iii) the Concessionaire shall review and approve all submittals prior to submitting documents to the Department; and

(iv) the Department’s role is one of limited oversight, and not project management.

(c) The Concessionaire shall perform, or cause the Design-Build Contractor to perform, the Work in accordance with applicable Law and shall provide, or cause the Design-Build Contractor to provide, all notices applicable to the Work in accordance with this Agreement, the Design-Build Contract and applicable Law. Performance of any obligation or the giving of any notice to the Department by the Design-Build Contractor shall satisfy the obligation of the Concessionaire to perform such Work or give such notice, *provided* the foregoing shall not relieve the obligation of the Concessionaire to manage the Design-Build Contractor, and *provided further* performance by the Design-Build Contractor shall not relieve the Concessionaire of liability for the Design-Build Contractor’s failure to perform or malfeasance in performance.

(d) The Concessionaire shall perform, or cause to be performed, operations and maintenance with respect to the HOT Lanes, in accordance with this Agreement and applicable Law, during the Operating Period and shall provide all notices provided for herein and in accordance with applicable Law. Performance of any obligation or the giving of any notice to the Department by the O&M Contractor shall satisfy the obligation of the Concessionaire to perform such obligation or give such notice, *provided* the foregoing shall not relieve the obligation of the Concessionaire to manage the O&M Contractor, or liability for the O&M Contractor’s failure to perform or malfeasance.

Section 3.02 Parties to the Transaction.

(a) The parties to this Agreement are the Department and the Concessionaire. The Concessionaire shall be accountable for delivering on the undertakings described in, and for delivery of executed copies of the Project Agreements described in, (b) through (d) of this Section and in Section 3.03 to the Department as well as for other responsibilities of the Concessionaire described in this Agreement.

(b) The parties to other Project Agreements will include, among others: Fluor Lane, LLC, as the Original Design-Build Contractor under the Original Design-Build Contract; Fluor Corporation, a Delaware corporation (“Fluor Corporation”), as the Original Contractor Guarantor of the Original Design-Build Contractor’s obligations under the Original Design-Build Contract (the “Original Contractor Guarantor”) for the Original Project; The Lane Construction Corporation, as the NEXT Design-Build Contractor under the NEXT Design-Build Contract; Webuild SpA, as the NEXT Contractor Guarantor of the NEXT Design-Build Contractor’s obligations under the Original Design-Build Contract (the “NEXT Contractor Guarantor”); the O&M Contractor, to whom the Concessionaire will delegate certain responsibilities related to the operations and maintenance services for the Project, as well as such other private sector entities agreed to by the Concessionaire as are acceptable to the Department as parties to other Project Agreements and Project Financing Agreements.

(c) The Original Contractor Guarantor shall guarantee to the Concessionaire and the Department the performance and completion of all of the Original Design-Build Contractor’s obligations under the Original Design-Build Contract (including, but not limited to, its warranty and indemnification obligations), in accordance with the provisions of the Original Completion Guaranty. The NEXT Contractor Guarantor shall guarantee to the Concessionaire and the Department the performance and completion of all of the NEXT Design-Build Contractor’s obligations under the NEXT Design-Build Contract (including, but not limited to, its warranty and indemnification obligations), in accordance with the provisions of the NEXT Completion Guaranty.

(d) The Concessionaire has delegated to the O&M Contractor the performance of its operations and maintenance services obligations as provided in this Agreement and the other Project Agreements, pursuant to a business operations agreement (in substantially the form attached to this Agreement as Exhibit C as of the Second Amended and Restated Agreement Date, as amended, amended and restated, supplemented or otherwise modified from time to time, the “Operations and Support Services Agreement”). Despite such delegation, the Concessionaire remains responsible for the performance of its obligations under this Agreement and the other Project Agreements.

Section 3.03 Project Agreements.

Certain of the Project Agreements and their content are briefly described below.

(a) Operations and Support Services Agreement. The Operations and Support Services Agreement, in substantially the form attached to this Agreement as Exhibit C as of the Second Amended and Restated Agreement Date, has been executed and delivered by the O&M Contractor and the Concessionaire, pursuant to which the Concessionaire delegates to the O&M Contractor the performance of its operations and maintenance services obligations as provided in this Agreement and the other Project Agreements.

(b) Electronic Toll Collection Services Agreement. The Electronic Toll Collection Services Agreement, in substantially the form attached to this Agreement as Exhibit D as of the Second Amended and Restated Agreement Date, has been executed and delivered by the Concessionaire and the Department, for the provision by the Department of certain “back office” operations related to the collection

of electronic tolls on the HOT Lanes, including the distribution of transponders utilized on the E-ZPass network and any successor to E-ZPass utilized on State Highways (*provided*, however, if transponders unique to HOT Lanes are distributed, or if the Department provides any other specialized services that are specific to the HOT Lanes, the Concessionaire shall pay the increased incremental cost thereof), account maintenance, customer queries and complaints services, reporting and reconciliation and customer services.

(c) Design-Build Contracts. The Original Design-Build Contract has been executed and delivered by the Concessionaire and the Original Design-Build Contractor, pursuant to which the Original Design-Build Contractor shall have, among other things, the right and obligation to complete the design and construction of the Original Project as set forth more fully therein. The NEXT Design-Build Contract, a copy of which is attached to this Agreement as Exhibit I as of the Second Amended and Restated Agreement Date, executed by the Concessionaire and the NEXT Design-Build Contractor, pursuant to which the NEXT Design-Build Contractor shall have, among other things, the right and obligation to complete the design and construction of the NEXT Project as set forth more fully therein.

(d) Independent Engineer Agreement. The Independent Engineer Agreement has been executed and delivered by the Concessionaire, the Department, the Collateral Agent and the Independent Engineer. The Concessionaire shall assign the Independent Engineer to work directly for the Department and the Collateral Agent. The Independent Engineer shall agree that the Concessionaire, the Department, the Collateral Agent, the Lender and the FHWA may rely on the reports prepared by the Independent Engineer. The Concessionaire or the Department may request additional scope of work from the Independent Engineer, subject to the reasonable approval of the Department or the Concessionaire, respectively. As of the Second Amended and Restated Agreement Date, the Independent Engineer Agreement is no longer applicable.

(e) Project Financing Agreements. The Initial Project Financing Agreements are listed on Exhibit H-1 and have been executed among and delivered by the Concessionaire or an Affiliate thereof, together with certain lenders and such other parties as more fully described on such exhibit. The NEXT Project Financing Agreements are listed on Exhibit H-2 and will be entered into among the Concessionaire or an Affiliate thereof, together with certain lenders and such other parties as more fully described on such exhibit on or prior to NEXT Financial Close. The Concessionaire may from time to time enter into other Project Financing Agreements, subject to the terms and conditions set forth in Article 6.

(f) Completion Guaranties. The Original Contractor Guarantor has executed and delivered the Original Completion Guaranty, a copy of which is attached as Exhibit J-1, under which it shall guarantee to the Concessionaire and the Department the performance and completion of all of the Original Design-Build Contractor's obligations under the Original Design-Build Contract (including, but not limited to, its warranty and indemnification obligations). The NEXT Contractor Guarantor is executing and delivering the NEXT Completion Guaranty, a copy of which is attached as Exhibit J-2 as of the Second Amended and Restated Agreement Date, under which it shall guarantee to the Concessionaire and the Department the performance and completion of all of the NEXT Design-Build Contractor's obligations under the NEXT Design-Build Contract (including, but not limited to, its warranty and indemnification obligations).

(g) Toll MOU. The Toll MOU, in the form attached to this Agreement as Exhibit K (the "Toll MOU"), has been executed and delivered by the Department and FHWA, providing for tolling of the HOT Lanes.

Section 3.04 Nature of Parties' Interests Under Certain Project Agreements.

(a) Neither this Agreement nor any of the other Project Agreements grant to the Concessionaire any fee title, leasehold estate, easement or other real property interest of any kind in or to the Project or the Rights of Way. The Concessionaire's interests under this Agreement are limited to contract rights constituting intangible personal property (and not real estate interests), including, without limitation, the Concessionaire's right, in accordance with the provisions of this Agreement, to impose, charge, collect, use and enforce payment of Toll Revenues.

(b) The Department and the Concessionaire acknowledge their mutual intent that, despite the Department's retention of fee title to (or other good and valid real property interest in) the HOT Lanes Project and the HOT Lanes Right of Way, as a result of the Concessionaire's rights and interests therein pursuant to the permit granted to the Concessionaire under this Agreement, the Concessionaire shall be treated, to the maximum extent permitted by Law, as the owner of the HOT Lanes Project for federal income tax purposes and in that regard (i) the Concessionaire's cost of development, design, construction and start-up of the Project represents acquisition cost of the Concessionaire's interest in the HOT Lanes Project, including the Permit (the "Permit Cost"), and (ii) no payment by the Department to the Design-Build Contractor pursuant to Section 7.02 shall be treated as part of the Permit Cost. The Department shall not file any documentation with any agency of any state government, the U.S. federal government or any department thereof that is inconsistent with this intention; *provided* that it is the intention of the parties that this provision have no bearing on ownership status under Environmental Laws regarding Hazardous Substances. The Permit Cost shall be allocated for all income tax purposes in the manner determined by the Concessionaire, which allocation shall be consistent with Section 1060 of the Code. The Concessionaire shall execute and file all income tax returns with the Internal Revenue Service in a manner consistent with such allocation, including Form 8594, and although it is not contemplated that the Department will be required to file any return with the Internal Revenue Service with respect to such allocation, if required to do so the Department shall file such return in a manner consistent with such allocation.

Section 3.05 Quiet Enjoyment.

The Department agrees that, if the Concessionaire performs its obligations and makes payments as provided hereunder, the Concessionaire shall, at all times during the Term, be entitled to, and shall have, the quiet possession and enjoyment of the HOT Lanes Project and the HOT Lanes Right of Way, for the purposes expressly provided by, and subject to Oversight Services by the Department and the provisions contained in this Agreement. The Department shall, at all times during the Term, defend (a) the Department's title or real property interest to the HOT Lanes Project and HOT Lanes Right of Way, (b) the Permit and related rights the Department grants to the Concessionaire hereunder, or any portion thereof, against any Person claiming any interest adverse to the Department, the State or the Concessionaire in the HOT Lanes Project or the HOT Lanes Right of Way, or any portion thereof, except where such adverse interest arises as a result of the act, omission, negligence, misconduct or violation of Law of the Concessionaire or any other Concessionaire Party.

ARTICLE 4

GRANT OF PERMIT; USE AND TOLLING OF PROJECT

Section 4.01 Grant of Permit.

Pursuant to the PPTA and subject to the terms and conditions of this Agreement as may be further described in the other Project Agreements, the Department hereby grants to the Concessionaire a permit (the "Permit") pursuant to which the Concessionaire shall have the exclusive right, and the Concessionaire

accepts the obligation (i) to finance, develop, design and construct the Project, and (ii) from and after the applicable Service Commencement Date and until the end of the Term, to manage, operate, maintain, improve and equip the HOT Lanes Project and establish, impose, charge, collect, use and enforce payment of tolls.

Section 4.02 Development and Operation of Project.

(a) The Concessionaire shall, in accordance with the terms and provisions of this Agreement, finance, develop, design and construct, whether directly or through Contractors, the Project.

(b) Notwithstanding anything in this Agreement or any other Project Agreement to the contrary except Section 7.14(c) of this Agreement, upon Substantial Completion of the New Lanes, the Department shall assume responsibility from the Concessionaire for the operation and maintenance of the New Lanes, which shall be repaired, operated and maintained thereafter by the Department. From and after the Initial Service Commencement Date, the Department shall be responsible for the maintenance, operation and repair of Springfield Interchange Phase VIII in accordance with Section 8.07.

(c) Upon Substantial Completion of the Original Project and the satisfaction of the other conditions to Service Commencement set forth in Section 8.01, the Concessionaire shall assume responsibility from the Department for the operation and maintenance of the HOT Lanes, which shall be repaired, operated, maintained and equipped thereafter by the Concessionaire for the Term in accordance with this Agreement. Upon Service Commencement for the NEXT HOT Lanes set forth in Section 8.02, the Concessionaire shall assume responsibility from the Department for the operation and maintenance of the NEXT HOT Lanes, which shall be repaired, operated, maintained and equipped thereafter by the Concessionaire for the Term in accordance with this Agreement.

Section 4.03 Use of HOT Lanes.

Except as permitted in accordance with Section 4.06, the HOT Lanes shall be used solely for travel by Permitted Vehicles.

Section 4.04 Tolling of HOT Lanes.

(a) Pursuant to the permit granted under Section 4.01, the Concessionaire shall implement a system for the collection of tolls and related incidental charges and/or construct or relocate and maintain different or additional tolling operations on the HOT Lanes Right of Way in accordance with the terms of this Agreement. The Concessionaire shall impose congestion pricing, which may include dynamic tolling with potential toll rate changes at frequent intervals, with a view to maintaining free flow conditions of traffic, and there shall be no restrictions upon toll rates except as set forth in Section 4.04(b). The Concessionaire has no authority or right to impose or collect any fee, charge or other amount for the use of the HOT Lanes other than as authorized by this Section 4.04.

(b) The Concessionaire's rights granted in Section 4.04(a) above are limited by, and conditioned on compliance with applicable Law and all other provisions in this Agreement, including the following:

(i) High Occupancy Vehicles equipped with a transponder (in the absence of other available technologies, as provided in clause (v) of this Section 4.04(b)) shall be entitled to use the HOT Lanes at a 100% discount from otherwise applicable tolls;

(ii) Mass Transit Vehicles and Commuter Buses, school buses, motorcycles and Exempt Vehicles equipped with a transponder (in the absence of other available technologies, as provided in clause (v) of this Section 4.04(b)) shall be entitled to use the HOT Lanes at a 100% discount from otherwise applicable tolls;

(iii) Permitted Vehicles (other than vehicles referred to in the preceding clauses (i) and (ii)) equipped with a transponder (in the absence of other available technologies, as provided in clause (v) of this Section 4.04(b)) shall be entitled to use the HOT Lanes subject to payment of the applicable tolls;

(iv) The toll rates shall be the same for persons using the HOT Lanes under like conditions, and for this purpose “like conditions” may take into consideration type, weight and occupancy of the vehicle, number of axles, time-of-day and/or day-of-week travel, time and location of entry to the HOT Lanes, traffic congestion and other traffic conditions (*provided*, that the Concessionaire may adopt and implement discount programs for different classes or groups of persons using the HOT Lanes under like conditions, subject to the provisions of Section 11.01; and, *provided further*, that it is understood that, with dynamic tolling vehicles traveling on the same Toll Section of the HOT Lanes at the same time may be subject to different toll rates); and

(v) The Concessionaire may charge, debit and collect tolls through open road tolling facilities physically located on the HOT Lanes Right of Way or use global positioning system technology, remote sensing or other technologies which shall be interoperable with the E-ZPass network and, with reasonable notice from the Department, any successor to E-ZPass utilized on State Highways at that time to charge, debit and collect tolls for actual vehicular use of the HOT Lanes; *provided*, that it is the intent of the parties that all tolling on the HOT Lanes will be by electronic means, there will be no toll booths and the Concessionaire shall not be required to accept cash tolls. Further, the Concessionaire shall have any and all rights pursuant to applicable Law and the Project Agreements to enforce and collect toll violations, including, but not limited to, the use of automated vehicle detection systems and other technologies.

(c) The foregoing authorization to impose, charge, collect and enforce the payment of tolls includes the right, to the extent permitted by applicable Law, and subject to the terms, rules and regulations that may be established for uniform account maintenance and reconciliation among operators of electronically tolled facilities in the State, to impose, charge, collect and enforce, with respect to electronic tolling accounts managed by or on behalf of the Concessionaire, the following incidental charges:

(i) Reasonable amounts for the purchase or rental of transponders or other electronic toll devices;

(ii) Reasonable, refundable security deposits for the distribution of transponders or other electronic toll devices;

(iii) If a Concessionaire Party is administering toll collection, reasonable administrative fees for account maintenance, account statements and customer service;

(iv) If a Concessionaire Party is administering toll collection, reasonable fees, penalties and interest for toll violations, including costs of collection; and

(v) Other incidental fees and charges reasonable and customary in connection with the services being provided at that time by Concessionaire Party.

The amount of any such incidental charges shall not exceed the amount reasonably necessary for the Concessionaire to recover its reasonable out-of-pocket and documented costs and expenses, including its Allocable Costs, directly or indirectly incurred with respect to the items, services and work for which they are levied. The Concessionaire may apply such incidental charges to vehicle operators entitled to use of the HOT Lanes at a 100% discount from otherwise applicable tolls if the Concessionaire provides such Persons transponders or other electronic tolling devices.

(d) Except as otherwise provided in this Agreement, at all times during the Term, the Concessionaire shall have the exclusive right, title, entitlement and interest in and to Toll Revenues, subject to the Electronic Toll Collection Services Agreement. Toll Revenues shall be used first to pay all current and delinquent costs and expenses of operating and maintaining the HOT Lanes Project (including premiums for insurance, bonds and other performance security), before they are used for any other purpose.

(e) The Concessionaire shall not use Toll Revenues to make any Distributions, unless and until the Concessionaire first pays the following (listed in no particular order): (i) operations and maintenance costs (including any payments to Affiliates made solely in accordance with the applicable Affiliate Contracts entered into in accordance with Section 11.02(f)), and any amounts due to the Department pursuant to the terms of this Agreement, including without limitation any compensation due under Article 5 before payment of amounts described in (ii) through (iv); (ii) current and delinquent debt service (other than debt service permitted to be deferred in accordance with the terms thereof), and other current and delinquent amounts, due under any Concessionaire Loan; (iii) all taxes currently due and payable or delinquent; (iv) all current and delinquent deposits to any Major Maintenance Reserve Fund; (v) the semi-annual Transit and Corridor Investment Payment in the amount required under Section 4.08; (vi) deposits into any debt service reserve accounts required under the terms of Concessionaire Debt; and (vii) the Excess Sharing Amount in the amount required under Section 4.09, except with respect to any of clauses (i) through (vii), amounts, if any, that are being contested in good faith and by appropriate proceedings and with respect to which adequate reserves as required by generally accepted accounting principles consistently applied have been established by the Concessionaire. If the Concessionaire makes any Distribution or payment to any holder of an equity interest in the Concessionaire in violation of this provision, the same shall be deemed to be held in trust by such Person for the benefit of the Department and the Collateral Agent, and shall be payable to the Department or the Collateral Agent on demand. If the Department collects any such amounts held in trust, it shall make them available for any of the purposes set forth above and, at the request of the Collateral Agent, deliver them to the Collateral Agent.

(f) The Concessionaire shall have no right to use Toll Revenues to pay any debt, obligation or liability unrelated to this Agreement, the Project, or the Concessionaire's services under this Agreement. The foregoing restriction in this Section 4.04(f) does not apply to or affect:

(i) the Concessionaire's right to make distributions to the holders of equity interests in the Concessionaire in accordance with the Concessionaire's governing instruments and this Agreement and the ability of the recipients thereof to apply the same in their sole discretion; or

(ii) the Concessionaire's ability to pledge, sell or otherwise transfer solely the Toll Revenues available for distribution to the holders of equity interests in the Concessionaire pursuant to any asset securitization and in accordance with the Concessionaire's governing instruments, senior Financing Assignments and this

Agreement (with no other portion of the Revenues or Concessionaire's Interest encumbered thereby or subject to the exercise of remedies), in each instance so long as:

(A) the issuance by the Concessionaire of any Concessionaire Debt related to the asset securitization is a Refinancing that is permitted hereunder,

(B) pursuant to the agreements that govern the asset securitization, the Concessionaire's Interest is not subject to the exercise of remedies as a result of a default or other similar event relating to any other asset in the securitization pool or any payment default by the issuer or other obligor of the securitized debt or other instruments, and

(C) the asset securitization documents conform to the limitations and restrictions set forth in this Agreement, including Sections 4.04(d) and 4.04(e) above, respecting use and application of Revenues.

(Any asset securitization that satisfies the requirements of Section 4.04(f)(ii) is referred to herein as a "Permitted Securitization.")

Section 4.05 Additional Provisions Respecting Tolls.

(a) The Concessionaire acknowledges and agrees that it shall not be entitled to receive from the Department any compensation, return on investment or other profit for providing the services contemplated by this Agreement and the other Project Agreements, other than Concessionaire Damages and other payments, including any payments provided by Section 13.05 and Article 16, to the extent specified herein. The foregoing shall not affect the Concessionaire's entitlement to Toll Revenues and other tolls contemplated by this Agreement.

(b) Nothing in this Agreement shall obligate or be construed as obligating the Department, or any assignee thereof, to continue or cease tolls after the end of the Term.

(c) From and after the Initial Service Commencement Date through the end of the Term, the Concessionaire shall maintain a toll collection system with respect to the HOT Lanes which shall be interoperable with the E-ZPass network and any successor to E-ZPass utilized on State Highways at that time. If the Department intends to change any State interoperability or compatibility standards, requirements or protocols for toll collection systems, it will coordinate with the Concessionaire prior to the implementation of such changes so as to minimize the disruption and cost to the Concessionaire. To the extent required by Section 3.1(b) of the Electronic Toll Collection Services Agreement, the Concessionaire agrees to conform the ETTM System to any new interface requirements and resolve transaction processing problems which arise from the Concessionaire not meeting these requirements. If the Concessionaire selects an ETTM System other than the system then utilized on other State Highways, it will coordinate with the Department prior to the implementation or any change of such system to ensure interoperability and compatibility with the system then utilized on other State Highways.

(d) In the event that the Department implements and maintains a processing system for the enforcement of penalties for toll violations in Virginia for electronic toll collection systems on roads (i) the Department shall provide such enforcement system, in accordance with a violation enforcement services agreement, for the benefit of the HOT Lanes Project at the same levels of service as are provided by the Department for any other toll roads operated within the State and (ii) the Department or its agent shall remit to the Concessionaire amounts received as a result of such enforcement efforts. For purposes of identifying and apprehending toll violators of the HOT Lanes, and subject to all applicable Law, the

Department shall make available to the Concessionaire the benefits of any agreements or arrangements which the Department has in place with other state authorities or agencies that provide access to records in their possession relating to vehicle and vehicle owner data; provided that the distribution of information considered to be personal information that may be part of any such vehicle and vehicle owner data to persons other than the Concessionaire will be controlled exclusively by the Department. In consideration of such services, the Concessionaire shall pay the Department its customary charges for such services in effect from time to time for providing such services.

(e) The Department will (i) use best efforts to work with the Concessionaire to limit transaction costs charged to the HOT Lanes Project by the Department, including charges for toll transaction account management services and (ii) provide annual statements containing a break-down of any and all third-party costs incurred by the Department in connection with services provided to the Concessionaire under this Agreement.

(f) The Department agrees that the Concessionaire may at its sole discretion and cost, engage and contract with a toll transaction account management services provider other than the Department (which may be an Affiliate of the Concessionaire, to the extent permitted by Section 11.02(f)). If the Concessionaire elects to contract with another party for these services, the Department will provide the same access to accounts as if the Concessionaire had continued its transaction account management services with the Department, if such access is permitted by Law and if the Concessionaire pays to the Department the reasonable costs of providing such access.

Section 4.06 Emergency Suspension of Tolls.

(a) In addition to its rights granted pursuant to applicable Law (but without limiting the Concessionaire's rights in the event of the occurrence of a Delay Event or Compensation Event), and the provisions of Section 12.02, the Department shall have the right, in its sole discretion, to order immediate suspension of tolling in the event the HOT Lanes are designated for immediate use as an emergency mass evacuation route. The Department shall have no liability to the Concessionaire for the loss of Toll Revenues or the increase in costs and expenses attributable to such an order issued pursuant to applicable Law by the Department or any other Governmental Authority; *provided*, that the Department: (i) concurrently suspends tolling on all other Department-operated tolled facilities that are located within the area designated for evacuation or facilitation of evacuation; (ii) concurrently orders suspension of tolling on all other tolled facilities operated by others within such area and over which the Department has the authority to order such suspension; and (iii) lifts such order over the HOT Lanes concurrently with the lifting of such order for all other designated tolled facilities. The Department will assist the Concessionaire in seeking any available reimbursement from the federal government for any lost Toll Revenues and expenses incurred during the emergency and for pursuing any applicable insurance coverage related thereto.

(b) In the event the HOT Lanes are designated for immediate use as the alternate route for the diversion of traffic from another State Highway, or from the GP Lanes, temporarily closed to all lanes in one or both directions due to a declared emergency issued pursuant to applicable Law by the Department or any other Governmental Authority or a significant incident involving one or more casualties requiring hospitalization or treatment by a medical professional or one or more fatalities on the affected State Highway or GP Lanes from which such traffic is diverted, the Department shall have the right to divert such traffic onto the HOT Lanes and to order immediate suspension of tolling on the HOT Lanes in the direction(s) of diversion. The Department and the Concessionaire shall consult with each other on such diversion of traffic and any suspension of tolling. The Department shall have no liability to the Concessionaire for the loss of Toll Revenues or the increase in costs and expenses attributable to the period that such order is in effect.

(c) The Department shall lift such order given in accordance with subsection (a) or (b) above as soon as the need for such order ceases.

Section 4.07 23 U.S.C. §166 Compliance.

(a) The Department agrees to provide to FHWA the certifications required of a State agency under Section 1121 of the Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), 23 U.S.C. §166(d)(1), and acknowledges that it has entered into the Toll MOU. The delivery of a certification by the Department that the HOT Lanes Operations do not comply with the applicable requirements of 23 U.S.C. §166, or such other federal, rule or regulation shall not constitute a default by the Department under this Agreement.

(b) The Concessionaire agrees to maintain and operate the HOT Lanes Project, at all times, in compliance with the provisions of 23 U.S.C. §166 and 23 U.S.C. §129, successor provisions, all regulations promulgated thereunder, and the Toll MOU. Accordingly, the Concessionaire shall be responsible for the satisfaction of the requirements of 23 U.S.C. §166(b)(4), in accordance with the terms of this Agreement, and shall otherwise coordinate its compliance efforts with the Department so as to enable the Department to provide the certifications required by Section 4.07(a) of this Agreement.

Section 4.08 Transit and Corridor Investment.

(a) The Concessionaire shall pay, or cause to be paid, a payment to the Department in an amount equal to \$2,200,000 on June 30, 2025 (the “Initial Transit and Corridor Investment Payment”) and semi-annual payments to the Department thereafter (continuing until the end of the Term or, if earlier, the termination of this Agreement has occurred) of \$1,100,000, escalated by 2.5% on an annual basis (the “Transit and Corridor Investment Payments”) to be paid to the Department in accordance with this Section 4.08 on each TCI Payment Date.

(b) Except for the Initial Transit and Corridor Investment Payment, amounts of the Transit and Corridor Investment Payment that are not paid on any TCI Payment Date to the Department, including due to insufficient available Revenues generated on the Original HOT Lanes and the NEXT HOT Lanes (the “Available Revenues”) as of any TCI Payment Date, will not rollover to the next TCI Payment Date; *provided*, however, that the Concessionaire shall not be allowed to make any Distributions for the semi-annual period ending on the June 30 or December 31 on or immediately prior to each TCI Payment Date unless and until the Concessionaire pays the semi-annual Transit and Corridor Investment Payment payable on such TCI Payment Date in full. If, on a TCI Payment Date, Available Revenues are sufficient to pay all or a portion of the semi-annual Transit and Corridor Investment Payment, the Concessionaire shall pay such amount due on such TCI Payment Date. The Initial Transit and Corridor Investment Payment is not subject to Available Revenues and is payable in full on June 30, 2025. Available Revenues will be calculated and paid as set forth in Exhibit Z-1.

(c) After NEXT Financial Close, the semi-annual Transit and Corridor Investment Payments, excluding the Initial Transit and Corridor Investment Payment, are payable in accordance with clause (b) above from Available Revenues applied through the cashflow waterfall and to the extent available at a level of priority (i) after (in no particular order) all mandatory and scheduled debt service and any payments to reserve accounts required in the NEXT Project Financing Agreements and (ii) subject to the level of lock-up provided for in the lock-up provisions in the NEXT Project Financing Agreements or in connection with a TIFIA Loan.

(d) The Initial Transit and Corridor Investment Payment shall be payable regardless of whether or not (i) the Concessionaire achieves Service Commencement on the NEXT HOT Lanes or (ii) the Concessionaire receives liquidated damages payments from the NEXT Design-Build Contractor.

(e) The Transit and Corridor Investment Payments (other than the Initial Transit and Corridor Investment Payment) shall not be payable unless and until the Concessionaire achieves Service Commencement on the NEXT HOT Lanes; *provided* that, if the Concessionaire receives liquidated damages payments from the NEXT Design-Build Contractor in connection with any delay in achieving Service Commencement on the NEXT HOT Lanes, then any Transit and Corridor Investment Payments otherwise scheduled for such period of delay in Service Commencement on the NEXT HOT Lanes shall be paid to the Department, subject to Available Revenues at the time of payment, and without any further rollover pursuant to and in accordance with clause (b) above, at such time as any such liquidated damages payments are transferred for application through the cashflow waterfall and are available at the priority of payment in the cashflow waterfall for Transit and Corridor Investment Payments, all in accordance with the NEXT Project Financing Agreements.

Section 4.09 Excess Sharing Amount.

(a) Beginning in fiscal year 2026 (July 1, 2025 - June 30, 2026) and for each fiscal year thereafter, continuing until the end of the Term or, if earlier, the termination of this Agreement has occurred, if there is an Eligible Sharing Amount (as defined below), then a portion of the Eligible Sharing Amount shall be payable to the Department as follows: (i) first, 100% of the Eligible Sharing Amount up to a maximum amount of \$1,000,000 (and annually thereafter, the maximum \$1,000,000 shall be escalated by 2.5% on an annual basis), and (ii) second, 70% of the remaining Eligible Sharing Amount (with the remaining 30% payable to the Concessionaire), with the Department's aggregate share under both clauses (i) and (ii) in year 1 capped at a total maximum amount of \$5,000,000 (and annually thereafter, the maximum \$5,000,000 cap shall be escalated by 2.5% on an annual basis). In each year, such aggregate amount to be shared with the Department pursuant to the foregoing sentence shall be referred to herein as the "Excess Sharing Amount". The Excess Sharing Amount (if any) generated during the immediately preceding fiscal year shall be paid to the Department no later than the dates required by Exhibit Z-2 (each such date of payment, an "ESA Payment Date"). For the avoidance of doubt, the portion of the Eligible Sharing Amount that is payable to the Concessionaire is included as revenue for the purposes of calculating Net Cash Flow and the Permit Fee.

(b) Amounts of the Excess Sharing Amounts that are not paid on any ESA Payment Date to the Department, including due to insufficient Actual Gross Revenues as of any ESA Payment Date, will not rollover to the next ESA Payment Date; *provided*, however, that the Concessionaire shall not be allowed to make any Distributions (i) for the semi-annual period ending on the December 31 immediately prior to any projected ESA Payment Date unless and until the Concessionaire reserves from Actual Gross Revenue one-half of the Excess Sharing Amount calculated based on the historical performance for the semi-annual period ending on such December 31, capped at one-half of the otherwise applicable maximum Excess Sharing Amount for such fiscal year, in a reserve account funded at the same level of the cashflow waterfall as the Excess Sharing Amount is payable (the "ESA Reserve Account") and (ii) for the semi-annual period ending on the June 30 immediately prior to any projected ESA Payment Date unless and until the Concessionaire pays from amounts on reserve in the ESA Reserve Account and from any then available Actual Gross Revenue any Excess Sharing Amount due to the Department, recalculated based on the historical performance for the prior fiscal year and payable on such ESA Payment Date. Eligible Sharing Amounts, Excess Sharing Amounts and Actual Gross Revenues will be calculated and paid as set forth in Exhibit Z.

(c) Excess Sharing Amounts are payable in accordance with clause (b) above solely to the extent there is an Eligible Sharing Amount for the applicable fiscal year and from Actual Gross Revenues applied through the cashflow waterfall and available at a level of priority directly after Transit and Corridor Investment Payments.

(d) Excess amounts in the ESA Reserve Account (if any) after the Excess Sharing Amount is recalculated per subsection (ii) of clause (b) above will be released into the cashflow waterfall. For clarity, if there is no Excess Sharing Amount payable in such fiscal year after such recalculation, all amounts in the ESA Reserve Account shall be released. Amounts on deposit in the ESA Reserve Account may be used for insufficiencies in the cashflow waterfall above the level at which the ESA Reserve Account is filled up to its required balance, as required by under the Project Financing Agreements.

(e) For the purposes of this section:

(i) “Actual Gross Revenue” means (A) Toll Revenues from the NEXT Project (excluding any fees recovered as part of any enforcement process but including amounts collected as tolls as part of any enforcement process); plus (B) any amounts received as of any date of determination by the Concessionaire in lieu of the Toll Revenues from the NEXT Project described in clause (A) above, including without limitation, from such sources as (1) proceeds of business interruption or similar insurance against loss of revenues from operation of the NEXT Project, (2) amounts paid by the Department as Compensation Events with respect to the NEXT Project, and (3) payments from the Electronic Toll Collection Servicer paid by the Department under Section 2.6 (or any such succeeding provision) of the Electronic Toll Collection Services Agreement with respect to the NEXT Project; plus (C) all amounts received by the Concessionaire pursuant to Section 13.05 with respect to the NEXT Project. Actual Gross Revenue collected from the NEXT Project (in both directions of travel) will be determined based on dynamic tolls charged for the northern-most pricing segment of the Original 495 HOT Lanes, the toll paying traffic registered under the existing toll gantry located north of the Dulles Toll Road and for the extension of the NEXT Project; and

(ii) “Eligible Sharing Amount” means a positive number that is equal to Actual Gross Revenues minus the forecast gross revenue for the NEXT Project in the gross revenue projection provided by the Concessionaire as part of the NEXT Binding Proposal Base Case Financial Model.

Section 4.10 Reserved.

ARTICLE 5

**PERMIT FEE, FINANCIAL MODEL UPDATES; DEPOSIT AND USES OF PERMIT FEE;
SHARING IN COST AND INTEREST RATE SAVINGS**

Section 5.01 Permit Fee.

The Department shall be entitled to receive Permit Fee payments as set forth in Exhibit L. The Concessionaire agrees to pay the Permit Fee to the Department as compensation for the Department’s grant to Concessionaire of the Permit. For the avoidance of doubt, the Permit Fee is omitted from any calculation of gross revenues under Section 4.09 and accordingly, any calculation of the Excess Sharing Amount.

Section 5.02 Sharing of Cost and Interest Rate Savings for the Original Project.

With respect to the Original Project, the Department and the Concessionaire shall share equally in:

- (i) cost savings arising from negotiation of the capital costs of construction of the Original Project, and
- (ii) interest rate savings arising as a result of reductions of market interest rates of more than 25 basis points after July 10, 2007;

in either case only such savings occurring on or prior to the Closing Date; *provided*, that as of the Agreement Date the parties agree that the Department's share of such savings shall be \$15,000,000. The Department's share of any such savings shall be funded in accordance with the Initial Project Financing Agreements and such share shall be deposited to the Concession Payments Account on the Closing Date.

Section 5.03 Deposit and Use of Permit Fee and Other Payments.

The Department shall deposit all amounts received pursuant to this Article 5 and Sections 7.12(a) and 7.12(c), in a concession payments account in accordance with Virginia Code Section 33.2-1528 (the "Concession Payments Account"), and shall use such amounts in accordance with Virginia Code Section 33.2-1528 to pay or finance costs of programs or projects reasonably related to or benefiting users of the Project and as otherwise permitted by applicable Law. Any proffers received in connection with the Project shall be deposited to the Concession Payments Account. During the Work Period, the Concessionaire may submit requests, with the written concurrence of the Department Representative, to the Chairman of the CTB for allocation of any amounts in the Concession Payments Account to fund any portion of additional costs of the Project, including without limitation, costs associated with bicycle and pedestrian accommodations.

Section 5.04 Base Case Financial Model Updates.

(a) As of the Second Amended and Restated Agreement Date, the Base Case Financial Model Update (NEXT Draft) dated August 13, 2021 (10:48 AM EST) is the most recent undisputed Base Case Financial Model Update. The Base Case Financial Model Update (NEXT Draft) will be the basis for the Base Case Financial Model Update (NEXT Final), to be delivered to the Department by the Concessionaire prior to NEXT Financial Close, in accordance with Section 5.04(h) and which will become the governing Base Case Financial Model Update upon NEXT Financial Close. If the NEXT Project alone is terminated for any reason, including because the Concessionaire fails to reach NEXT Financial Close, then the Base Case Financial Model Update dated August 13, 2021 (10:48 AM EST) (or any subsequent undisputed Base Case Financial Model Update that has been most recently agreed to by the parties in accordance with this Section 5.04 prior to the termination of the NEXT Project) will be reinstated as the most recent undisputed Base Case Financial Model Update, as it may be updated in accordance with this Section 5.04 from time to time.

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

- (i) on or before September 30 of each calendar year until fiscal year 2022 and thereafter on or before March 31 of each fiscal year, including the updated TRI to the end of the preceding calendar or fiscal year, as applicable, updates to reflect audited historical cash flows for the most recent fiscal year, provided, however, such Base Case Financial

Model Update will not, except as otherwise agreed in writing by the parties, include changes in financial model formulas or cash flow forecasts;

(ii) within 60 days after the occurrence of a Compensation Event;

(iii) within 60 days after the occurrence of a Delay Event that extends the NEXT Guaranteed Final Completion Date;

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

(v) within 60 days after the parties agree that amendments to this Agreement or the other Project Agreements (including Department Changes during the Work Period pursuant to Section 7.12) have a material effect on future costs or Toll Revenues;

(vi) concurrently with written notice of any proposed Refinancing in accordance with Section 6.06(a)(ii); and

(vii) within 60 days after a termination of the NEXT Project (such Base Case Financial Model Update to remove the impact of the NEXT Project).

(c) The Department will have the right to dispute any proposed Base Case Financial Model Update. Within 21 Days after receipt, the Department will accept or dispute a proposed Base Case Financial Model Update (as applicable) and, if it disputes a proposed Base Case Financial Model Update (as applicable), specifying its reasons for such dispute in sufficient detail to enable the Concessionaire to correct the errors or deficiencies. To the extent that the Concessionaire and the Department cannot agree on the changes within 90 Days of the Concessionaire delivering the proposed Base Case Financial Model Update (as applicable) to the Department, the Dispute will be resolved in accordance with the dispute resolution procedures described in Section 17.06.

(d) In the event of a challenge, the immediately preceding Base Case Financial Model Update that has not been challenged shall remain in effect pending resolution of the challenge or until a new Base Case Financial Model Update is issued and unchallenged. If a Base Case Financial Model Update has not been challenged, or if any such challenge has been so resolved, the Base Case Financial Model Update shall be submitted to the Escrow Agent in accordance with Section 18.05(e). In addition, the Concessionaire will deposit with the Escrow Agent the NEXT Binding Proposal Base Case Financial Model within 30 days after the Second Amended and Restated Agreement Date.

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

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

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

(h) In connection with the NEXT Financial Close, the Concessionaire shall prepare and deliver to the Department a Base Case Financial Model Update (the "Base Case Financial Model");

Update (NEXT Final)”) in accordance with Section 5.04(a). The Base Case Financial Model Update (NEXT Final) will be inclusive of the Original HOT Lanes and the NEXT HOT Lanes.

(i) Upon the Department’s approval of the Base Case Financial Model Update (NEXT Final) such model shall be the most recent undisputed Base Case Financial Model Update. Thereafter, future Base Case Financial Model Updates will be governed by this Sections 5.04 and must be inclusive of the Original HOT Lanes and the NEXT HOT Lanes.

ARTICLE 6

PROJECT FINANCING; LENDER RIGHTS AND REMEDIES

Section 6.01 Concessionaire Responsibility for Project Financing; No Department Liability for Concessionaire Debt.

(a) Except as provided in Section 7.02(c), the Concessionaire is solely responsible for obtaining and repaying all financing, at its own cost and risk and without recourse to the State, the CTB or any other agency, instrumentality or political subdivision of the State, necessary to acquire, develop, permit, build, construct, maintain, improve, equip, modify, repair and operate the Project and any Concessionaire Project Enhancements. The Concessionaire also bears the risk of any changes in the interest rate, payment provisions or the other terms of its project financing plan; *provided*, however, it is acknowledged that the Department shall share in beneficial interest rate movements as contemplated in accordance with Section 5.02.

(b) None of the State, the Department, the CTB or any other agency, instrumentality or political subdivision of the State has any liability whatsoever for payment of the principal sum of any Concessionaire Debt, any other obligations issued or incurred by the Concessionaire in connection with this Agreement or the Project, or any interest accrued thereon or any other sum secured by or accruing under any Financing Assignment. Except for a violation by the Department of its express obligations to Lenders set forth in this Article 6, no Lender or Collateral Agent is entitled to seek any damages or other amounts from the Department due to the Department’s breach of this Agreement, whether for the Concessionaire Debt or any other amount; *provided*, that the foregoing shall not affect any rights or claims of a Lender as a successor to the Concessionaire’s Interest by foreclosure or transfer in lieu of foreclosure. The Department’s review of any Financing Assignments or other project financing documents is not a guarantee or endorsement of the Concessionaire Debt, any other obligations issued or incurred by the Concessionaire in connection with this Agreement or the Project, or any Traffic and Revenue Study, and is not a representation, warranty or other assurance as to the ability of the Concessionaire to perform its obligations with respect to the Concessionaire Debt or any other obligations issued or incurred by the Concessionaire in connection with this Agreement or the Project, or as to the adequacy of the Toll Revenues to provide for payment of the Concessionaire Debt or any other obligations issued or incurred by the Concessionaire in connection with this Agreement or the Project.

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

(d) PABs Financing

(i) The Concessionaire shall cause the PABs Issuer to issue the PABs as provided by and in accordance with the Initial Project Financing Agreements or the NEXT Project Financing Agreements, as applicable. The Concessionaire shall make a Financing Assignment with respect to the PABs as described in the Initial Project Financing Agreements or the NEXT Project Financing Agreements, as applicable.

(ii) Each of the Concessionaire and the Department agrees to cooperate with the PABs Issuer regarding the PABs Issuer responsibilities, if any, under SEC Rule 15c2-12 by providing information and documents available to it pertaining to the Project. The Concessionaire also shall provide requested information on the management, experience and financial condition of itself.

(iii) In connection with the foregoing, the Department will use reasonable efforts to assist the PABs Issuer, in its role as conduit issuer, by, in each case as applicable and required, executing, acknowledging and delivering consents, representations, certifications, opinions and other documentation in connection with the applicable financial close, including NEXT Financial Close, which may be qualified to the knowledge and belief of a designated representative of the Department.

(iv) The Concessionaire shall cause to be provided to the Department a complete transcript of all documents executed and delivered in connection with any issuance of the PABs promptly following the issuance thereof.

(e) Department Authorization of PABs, Related Lien, etc.

(i) To the extent required by Section 103 of the Code, Revenue Ruling 63-20 and Revenue Procedure 82-26, the Department, acting in its capacity as an agency of the executive branch of the State and pursuant to its authority as the Responsible Public Entity with respect to the Project under the PPTA, hereby approves and authorizes:

(A) the creation of the PABs Issuer for the Initial Project Financing Agreements as a Virginia nonstock, nonprofit corporation, for the purposes described in the following clauses (B) and (C) and activities incidental and ancillary thereto;

(B) the issuance of the PABs by the PABs Issuer for the Initial Project Financing Agreements in accordance with Initial Project Financing Agreements; and

(C) the loan by the PABs Issuer for the Initial Project Financing Agreements of the proceeds of the PABs to the Concessionaire to be used for (1) paying certain costs of the plan, design, development, renovation, construction and expansion of the GP Lanes; (2) paying a portion of the costs of any bond insurance or credit enhancement related to the PABs; (3) funding a portion of the capitalized interest during construction of the Project; (4) making any required deposits to any debt service reserve account with respect to the PABs; and (5) paying a portion of the cost of issuing the PABs (Items (1) through (5) are collectively referred to as "GP Project Costs").

(ii) The Department agrees that the PABs Issuer for the Initial Project Financing Agreements shall have the right to make a Financing Assignment with respect to the PABs, as described in the Initial Project Financing Agreements or any amendment thereto, which the Department may approve in writing in its sole discretion.

(iii) The PABs shall be issued in the name of the PABs Issuer for the Initial Project Financing Agreements “on behalf of” the State acting through the Department in its capacity as an agency of the executive branch of the State (within the meaning of the phrase “on behalf of,” as it is used for federal income tax purposes). The Department and the Concessionaire agree and acknowledge that the GP Lanes or any NEXT Department Asset financed by the PABs will be owned, operated and controlled by the State while the PABs remain outstanding and at all times thereafter.

(iv) The terms and pricing of the PABs issued by the PABs Issuer for the Initial Project Financing Agreements have been approved by the Department.

(v) The Department’s approval of the issuance of the PABs and of the related documentation pertaining to the PABs shall not be construed as a guarantee or endorsement of the PABs or any Traffic and Revenue Study or any representation, warranty or other assurance as to the ability of the PABs Issuer to perform its obligations with respect to the PABs or the adequacy of the Toll Revenues to provide for payment of the PABs. Each PAB shall include a conspicuous recital on its face to the effect that payment of the principal of and interest on that PAB shall be a valid claim only as against the PABs Issuer and the revenues pledged by the PABs Issuer therefor, shall not be an obligation of the State, the Department, CTB or any other agency, instrumentality or political subdivision of the State, moral or otherwise, and that neither the full faith and credit nor the taxing power of the State, the Department, CTB or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal of and interest on the PABs.

(vi) None of the State, the Department, CTB or any other agency, instrumentality or political subdivision of the State shall have any obligation to pay debt service on the PABs.

(f) NEXT Equity Contribution. The Concessionaire will make or cause to be made Equity Contributions in an amount equal to the NEXT Equity Commitment Amount in accordance with the NEXT Equity Funding Agreements (to the extent such Equity Contributions are actually made to the Concessionaire, the “NEXT Equity Contributions”).

Section 6.02 Project Financing Agreements; Department’s Rights and Protections.

(a) Original Project. The Concessionaire has previously entered into the Initial Project Financing Agreements listed on Exhibit H-1. On or within 30 days after the Closing Date, the Concessionaire Parties and the Department was reimbursed, from equity provided by members of the Concessionaire, for all documented fees, costs and expenses incurred on or after August 25, 2004, in connection with the investigation, development, negotiation and closing of the transactions described herein and in the Initial Project Financing Agreements; *provided*, however, that all such fees, costs and expenses shall be permissible for reimbursement in accordance with requirements of State and federal Law applicable to reimbursement of such types of fees, costs and expenses and if, upon subsequent audit in accordance with Section 18.07, any such reimbursed fees, costs and expenses are determined not to meet such State or federal reimbursement requirements then such non-qualifying amounts shall be repaid by the party having

received such reimbursement, within 30 days of receipt by such party of written notification of such non-qualification, to the trustee under the Master Indenture of Trust with the PABs Issuer dated as of December 1, 2007, or any successor trustee thereunder, and shall be deposited to the Construction Fund to be applied to other qualified costs of the Original Project.

(b) From time to time during the term of this Agreement, the Concessionaire has the right, at its sole cost and expense, to pledge, sell or otherwise transfer solely the Toll Revenues available for Distribution in connection with a Permitted Securitization or to pledge, hypothecate or assign the Concessionaire's Interest as security for any Concessionaire Debt, such debt to be issued on such terms and conditions as may be acceptable to any Lender and the Concessionaire, subject to the following terms and conditions (such pledge, hypothecation, assignment, or other security instrument, including the Initial Project Financing Agreements and the NEXT Project Financing Agreements, being referred to in this Agreement as a "Financing Assignment"):

(i) No Person other than an Institutional Lender is entitled to the benefits and protections accorded by a Financing Assignment, except that lenders of Concessionaire Debt may be Persons other than Institutional Lenders so long as any Financing Agreement securing such Concessionaire Debt made by such Person is held by an Institutional Lender acting as Collateral Agent, and PABs may be issued, acquired and held by parties other than Institutional Lenders so long as an Institutional Lender acts as indenture trustee for the PABs;

(ii) Subject to Section 6.02(b)(iv), no Financing Assignment shall encumber less than the entire Concessionaire's Interest; *provided*, that the foregoing does not preclude (A) subordinate Financing Assignments and (B) Permitted Securitizations;

(iii) The Concessionaire is strictly prohibited from pledging or encumbering the Concessionaire's Interest, or any portion thereof, to secure any indebtedness, and no Financing Assignment shall secure any indebtedness, (A) that is issued by any Person other than the Concessionaire, any special purpose company that directly or indirectly owns the Concessionaire and has no assets except as are directly related to the Project, or any special purpose subsidiary wholly owned by such company, or the PABs Issuer, or (B) the proceeds of which are used in whole or in part for any purpose other than the Project Purposes or any other purpose permitted in Section 6.02(b)(xiv) below;

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

(v) Any number of permitted Financing Assignments may be outstanding at any one time, and any Financing Assignment permitted hereunder may secure two or more separate loans from two or more separate Lenders; *provided*, that each such loan and the Financing Assignment securing the same complies with the provisions of this Article 6;

(vi) The Department shall not have any obligation to any Lender or Collateral Agent pursuant hereto, except as expressly set forth in this Article 6 or in any other instrument or agreement signed by the Department in favor of such Lender or Collateral Agent and unless the Concessionaire and/or the Collateral Agent have notified the Department of the existence of such Financing Assignment;

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

(viii) No Financing Assignment shall grant to a Lender any right to apply funds in any reserve contemplated by Section 16.09;

(ix) Each Financing Assignment shall provide that the Concessionaire may, without condition or qualification, issue additional Concessionaire Debt, secured by the Concessionaire's Interest, for the limited purpose of funding Safety Compliance Orders; *provided* that (A) the Lenders may limit such additional Concessionaire Debt if other funds are then available to the Concessionaire for the purpose of funding any such Safety Compliance Orders, (B) the Lenders may impose reasonable, customary requirements as to performance and supervision of the work related to such Safety Compliance Order and (C) the Concessionaire may agree to a cap to the principal amount of such additional Concessionaire Debt it may raise if such cap is approved by the Department in writing before the Concessionaire achieves NEXT Financial Close;

(x) Each Financing Assignment shall expressly state that the Collateral Agent and the Lenders shall not name or join the Department, the CTB or the State or any officer thereof in any legal proceeding seeking collection of the related debt or other obligations secured thereby or the foreclosure or other enforcement of the Financing Assignment except to the extent joining the Department is required as a necessary party in order to give the court jurisdiction over the dispute;

(xi) Each Financing Assignment shall expressly state that neither the Lenders nor the Collateral Agent shall seek any damages or other amounts from the Department due to the Department's breach of this Agreement, whether for Concessionaire Debt or any other amount, except damages for a violation by the Department of its express obligations to Lenders set forth in this Article 6; *provided*, that the foregoing shall not affect any rights or claims of a Lender as a successor to the Concessionaire's Interest by foreclosure or transfer in lieu of foreclosure;

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

(xiii) No Financing Assignment may secure Concessionaire Debt that prohibits prepayment or defeasance; *provided*, that the foregoing does not preclude imposition of Breakage Costs in order to prepay or defease; and

(xiv) Each Financing Assignment may only secure Concessionaire Loans the proceeds of which are used exclusively for the purpose of (A) acquiring, designing, permitting, building, constructing, improving, equipping, modifying, operating,

maintaining, reconstructing, restoring, rehabilitating or renewing the Project or any Project Enhancements, (B) paying reasonable fees, development costs and expenses incurred by the Concessionaire with the closing of this Agreement and the Initial Project Financing Agreements and the NEXT Project Financing Agreements not otherwise reimbursed, (C) paying reasonable development fees to any Concessionaire Party for services related to the Original Project but specifically not for the NEXT Project, (D) making Distributions, but only from the proceeds of Refinancings permitted pursuant to Section 6.06, and (E) any Refinancing of pre-existing Concessionaire Loans that conform to the provisions of this Section 6.02(b), including use of proceeds to pay the reasonable costs of closing the Refinancing (including lender fees, but excluding any amounts paid to Affiliates).

Notwithstanding anything to the contrary contained or implied herein, the provisions of Sections 6.02(b)(i), 6.02(b)(iii) and 6.02(b)(xiv) above shall not apply to or otherwise restrict any Financing Assignment that is a Permitted Securitization.

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

(d) Notwithstanding the enforcement of any security interest created by a Financing Assignment, the Concessionaire shall remain liable to the Department for the payment of all sums owing to the Department under this Agreement and the other Project Agreements and the performance and observance of all of the Concessionaire's covenants and obligations under this Agreement and the other Project Agreements.

(e) No Lender or Collateral Agent shall, by virtue of its Financing Assignment, acquire any greater rights to or interest in the Project or Revenues than the Concessionaire has at any applicable time under this Agreement, other than the provisions in this Article 6 for the specific protection of the Lenders and the Collateral Agent.

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

(g) No Financing Assignment shall be binding upon the Department in the enforcement of its rights and remedies as provided herein and by Law, unless and until the Department has received a copy (certified as true and correct by the Collateral Agent or by the administrative agent identified in the Project Financing Agreements) of the original thereof and a copy of a specimen bond, promissory note or other evidence of indebtedness (certified as true and correct by the Collateral Agent or by the administrative agent identified in the Project Financing Agreements) secured by such Financing Assignment, together with written notice of the address of the Collateral Agent to which notices may be sent. If applicable, after the recordation or filing thereof, the Collateral Agent shall provide to the Department a copy of the Financing Assignment bearing the date and instrument number or book and page of such recordation or filing. In the event of an assignment of any such Financing Assignment by the Collateral Agent, such assignment shall not be binding upon the Department unless and until the Department has received a certified copy thereof, together with written notice of the assignee thereof to which notices may be sent (and the assignee shall, if such assignment is required to be recorded, after such recordation deliver to the Department a copy thereof bearing the date and instrument number or book and page of such recordation).

(h) No Financing Assignment shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Article 6, unless the Financing Assignment complies

with this Section 6.02. If the Department has actual knowledge that any Financing Assignment or amendment thereto has been entered into and does not comply with this Section 6.02, the Department shall deliver a notice to the Collateral Agent. Unless and until such non-compliance is remedied, the Financing Assignment shall be neither valid nor effective, and the Lenders thereunder shall be entitled to none of the rights, benefits and protections of this Article 6.

Section 6.03 Notices to Collateral Agent; No Amendments.

As long as any Financing Assignment of record created in accordance with this Article 6 shall remain unsatisfied and the Department has received the notices and documents specified in Section 6.02(g), the following provisions shall apply with respect to any such Financing Assignment, the Collateral Agent and the related Lender or Lenders:

(a) The Department shall promptly provide the Collateral Agent with a copy of any notice it sends to the Concessionaire concerning a potential breach of this Agreement or a Concessionaire Default or a NEXT Concessionaire Breach.

(b) The Financing Assignments may provide that while the Financing Assignments are in existence the Concessionaire shall not agree to any modification of or amendment to this Agreement that in any way could have a material adverse effect on the rights or interests of the Lender(s) under such Financing Assignments or to any voluntary surrender or termination of this Agreement, in each case, without the Collateral Agent's consent, which shall not be unreasonably withheld or delayed, except if such modification or amendment is required by Law. Such consent shall be deemed to have been given in the event the Collateral Agent fails to respond within 60 days of delivery of a request for consent if the request states that such deemed consent will be given at the end of such time period.

(c) The Department shall give the Collateral Agent notice of any condemnation proceedings affecting the HOT Lanes. The Collateral Agent shall have the right to intervene and be made a party to any such condemnation proceedings, and the Department and the Concessionaire do hereby consent that the Collateral Agent may be made such party or an intervener.

Section 6.04 Collateral Agent's Rights.

The Collateral Agent's rights are set forth in the Direct Agreement and the NEXT Direct Agreement and each such agreement is hereby incorporated by reference.

Section 6.05 Reserved.

Section 6.06 Refinancing Requirements.

(a) Notice of Refinancing.

(i) The Concessionaire shall provide to the Department written notice of any proposed Refinancing at least 75 days prior to the proposed date for closing the Refinancing.

(ii) The Concessionaire shall provide to the Department concurrently with such written notice full details of the proposed Refinancing, including, details of the changes, if any, in the most recent Base Case Financial Model Update, any material changes in the Concessionaire's obligations (including, for the avoidance of doubt, contingent obligations) to the Lenders, and outline details of the changes and/or

replacements, as the case may be, to the Project Financing Agreements and Financing Assignments contemplated by the Refinancing.

(iii) The Concessionaire shall provide the Department the final proposed Project Financing Agreements and Financing Assignments in connection with the Refinancing promptly upon their receipt by the Concessionaire, and at least 10 days before the proposed date for closing the Refinancing.

(b) Department Approval Rights for Refinancings. Any Refinancing of Concessionaire Debt shall be subject to the Department's prior approval, which approval shall not be unreasonably withheld or delayed; *provided*, that no such approval shall be required if the Concessionaire first demonstrates to the Department that (i) the proposed Refinancing refinances existing Concessionaire Debt and does not increase the principal amount of Concessionaire Debt then outstanding other than by an amount equal to reasonable costs of closing the Refinancing, including lender fees, and the amount of any required reserves, or (ii) the proposed Refinancing has been assigned a rating (which may include a non-public rating) by a Rating Agency (without regard to bond insurance, if any) which is no lower than BBB minus or Baa3 or equivalent short or long term debt rating, or (iii) no portion of the proceeds of the Refinancing will be used to make Distributions or to pay non-capital costs and expenses (other than related costs of issuance and any required reserves). With respect to any proposed Refinancing for which the Department's approval is required, the Department shall not unreasonably withhold or delay its consent. Without limiting other reasonable grounds for withholding consent, the Department may withhold consent if it reasonably determines that:

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

(B) any change or series of changes in the obligations of the Concessionaire due to the Refinancing would or reasonably could be expected to result in a material increase in the Department's liabilities, obligations or risks;

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

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

(c) Other Requirements.

(i) Every Refinancing shall be subject to the provisions of Section 6.02 and the other provisions of this Agreement pertaining to Concessionaire Debt and Financing Assignments.

(ii) Any reimbursement agreement and related documents that the Concessionaire enters into in connection with obtaining a Letter of Credit shall, if they encumber the Concessionaire's Interest, constitute a Financing Assignment and be treated

as a Refinancing for all purposes under this Agreement. No such reimbursement agreement and related documents shall encumber less than the entire Concessionaire's Interest.

(iii) In connection with the consummation of any proposed Refinancing, the Department shall, promptly upon the reasonable request of the Concessionaire or the Collateral Agent or any Lender and such requesting party's agreement to cover any costs incurred by the Department in connection with the requested action, (A) review the Concessionaire's written analysis of whether the Department is required to approve such Refinancing and confirm whether the Department believes its approval is required for such Refinancing, and (B) execute, acknowledge and deliver consents, representations, certifications, opinions and other documentation, which may be qualified to the knowledge and belief of a designated representative of the Department and which are consistent with any consents, representations, opinions and certifications provided by the Department as of the Second Amended and Restated Agreement Date.

(iv) If the Department renders any assistance or performs any requested activity in connection with the Refinancing, then the Concessionaire shall reimburse the Department for all reasonable costs and expenses incurred by the Department in connection with such assistance or activity, at the time of the closing of the Refinancing transaction.

(v) The Department and the Concessionaire agree to use reasonable commercial efforts to cooperate and assist the other party to reach close on any Refinancing.

Section 6.07 Limitation on Beneficiaries.

Notwithstanding anything contained herein to the contrary, the provisions of this Article 6 that are binding on the Department shall inure only to the benefit of the Concessionaire and, subject to compliance with the terms of this Article 6, the holders of permitted Financing Assignments.

Section 6.08 NEXT Financial Close.

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

(i) at least 60 days prior to the scheduled NEXT Financial Close Date a list of and initial drafts of the NEXT Project Financing Agreements and Financing Assignments as set forth in Exhibit H-2, and all other documents required for NEXT Financial Close other than the documents referenced in Section 6.08(a)(ii) below;

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

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

(B) the Direct Agreement;

(C) the NEXT Direct Agreement;

(D) UCC filings; and

(E) any other material ancillary documents and disclosure documents related to NEXT Financial Close agreed by the parties at the time;

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

(iv) all subsequent versions of the drafts enumerated in Section 6.08(a)(i), and (ii) above, contemporaneously with the distribution of such drafts to the NEXT Lenders and other parties related to NEXT Financial Close (the Concessionaire shall cause the Department and its designees to be included on any external distribution list for such drafts) up and until the Concessionaire has furnished the materially final drafts pursuant to Section 6.08(a)(vii);

(v) all subsequent versions of the draft of the Base Case Financial Model Update (NEXT Final) enumerated in Section 6.08(a)(iii) above, contemporaneously with the external distribution of such drafts to the NEXT Lenders and other parties related to NEXT Financial Close up and until the Concessionaire has furnished the final draft pursuant to Section 6.08(b)(i);

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

(vii) at least 3 Days prior to the NEXT Financial Close Date, materially final drafts of the NEXT Project Financing Agreements and Financing Assignments.

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

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

(ii) the Concessionaire has provided the Department true and complete copies of the executed NEXT Project Financing Agreements and Financing Assignments listed in Exhibit H-2;

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

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

(v) the Concessionaire has provided the Department a true and complete executed copy of (A) the NEXT Equity Letter of Credit, which meets the definition of Letter of Credit; (B) the NEXT Equity Funding Guaranty; or (C) any combination of the foregoing, in each case, in an amount at least equal to the NEXT Equity Commitment Amount;

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

(vii) if utilized, the Concessionaire has caused the TIFIA Lender to provide the TIFIA Loan as provided by and in accordance with the NEXT Project Financing Agreements and has made a Financing Assignment with respect to such TIFIA Loan as described in the NEXT Project Financing Agreements;

(viii) the Concessionaire has delivered to the Department certificates, as may be reasonably requested by the Department, certifying as to the Concessionaire's compliance with the terms and conditions of this Agreement, the satisfaction of the conditions precedent to NEXT Financial Close, and the validity of the Concessionaire's representations and warranties set forth in Section 15.02, and confirming the NEXT Design-Build Contract both have been executed and remain in full effect;

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

(A) any required consents from the Project's Lenders pursuant to the Project Financing Agreements in effect prior to, and continuing in effect after, the date of NEXT Financial Close (if any), including (as applicable) to the execution of the Second Amended and Restated Comprehensive Agreement, the NEXT Design-Build Contract, final investment grade rating letters, and other related matters;

(B) the Direct Agreement, substantially in the form attached as Exhibit U-1;

(C) the NEXT Direct Agreement, substantially in the form attached as Exhibit U-2;

(D) the updated Electronic Toll Collection Services Agreement, substantially in the form of Exhibit D; and

(E) the NEXT Payment Bond and NEXT Performance Bond in the amounts and satisfying the requirements set forth in Section 14.04(b)(i).

(x) the Concessionaire has resolved to the satisfaction of the Department any (i) model deficiencies that have a direct quantitative impact within the Base Case Financial Model Update (NEXT Final) or (ii) inappropriate caveats, as reasonably determined by the Department, in the case of either (i) or (ii), that appear within the draft audit report and opinion delivered under Section 6.08(a)(vi) above; and

(xi) the Concessionaire has paid to the Department \$1,600,000 pursuant to the eighth bullet point in the global agreement between the parties dated July 13, 2012.

If the Concessionaire has satisfied all conditions precedent (or the Department, in its sole discretion, has waived any such conditions) identified in this Section 6.08(b), the Department will issue a certificate on the NEXT Financial Close Date confirming that all applicable conditions precedent have been satisfied.

(c) Payments at NEXT Financial Close.

(i) NEXT ROW Deposit. On the NEXT Financial Close Date, the Concessionaire will deposit the NEXT ROW Deposit as set forth in Section 7.08(d).

(ii) Concessionaire Development Costs and Reimbursements. On the NEXT Financial Close Date, the Concessionaire will receive amounts agreed to by the parties, from sources identified in the Base Case Financial Model (NEXT Final), for the properly documented internal and external costs related to (A) the development of the NEXT Project (such amount excluding any development fee, management fee or bonus for developing the NEXT Project) and (B) reimbursements for (1) NEXT Early Work, (2) hedging costs and (3) insurance costs. Such costs will be specifically itemized and identified in a schedule submitted to the Department at least seven (7) Days prior to the scheduled NEXT Financial Close Date. If the aggregate total of such costs (excluding any consent fees paid to the Project's existing Lenders) exceeds \$67,355,000 such schedule of costs will be updated and submitted to the Department for the Department's approval as a condition precedent to NEXT Financial Close.

(iii) Payments Due to the Department. On the NEXT Financial Close Date, the Concessionaire shall pay the Department the following amounts:

(A) \$3,340,000, which represents the 20% of the NEXT Department Development Recoupment Amount due on the NEXT Financial Close Date;

(B) \$976,374 as a reimbursement for the purchase of the required nutrient credits for the NEXT Project; and

(C) the Scott's Run Contribution.

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

(e) NEXT Financial Close Deadline.

(i) The Concessionaire must achieve NEXT Financial Close by the NEXT Financial Close Deadline. In the event NEXT Financial Close is not achieved by the NEXT Financial Close Deadline, either party may terminate the NEXT Project pursuant to Section 16.11(a).

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

the Concessionaire and the Department acknowledge that the NEXT Financial Close Security is reasonable to compensate the Department for damages it will incur as a result of the lost opportunity to the Department represented by this Agreement.

(f) NEXT Financial Close Security.

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

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

(A) the occurrence of a Department Default;

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

(C) the TIFIA Lender does not agree to provide a direct refinancing of no less than 100% of the outstanding balance (including capitalized interest) of the Existing TIFIA Loan;

(D) the TIFIA Lender requires payment or repayment of a capital charge or imposes any other upfront charges, in each case, that have not been accounted for in the Base Case Financial Model Update (NEXT Draft) as of the Second Amended and Restated Agreement Date and adds to the cost of the TIFIA Refinancing;

(E) starting from the maturity date of the TIFIA Refinancing and working backwards, the mandatory portion of total debt service on the new TIFIA Loan for each consecutive 12-month period is higher than the mandatory debt service (as a percentage of total debt service on the new TIFIA Loan) contemplated for the equivalent 12-month period on the I-66 Outside the Beltway Project as disclosed in the November 2017 PABs offering statement; or

(F) the weighted average life of the TIFIA Refinancing is materially shorter than the remaining weighted average life of the Existing TIFIA Loan.

For the avoidance of doubt, movement in interest rates will not (x) affect the Department's right to draw on the NEXT Financial Close Security nor (y) impair the Concessionaire's rights hereunder.

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

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

(h) Reasonable Commercial Efforts; Cooperation. Subject to the termination rights of each party pursuant to Section 16.11, the Department and the Concessionaire each agree to: (i) use reasonable commercial efforts to satisfy the conditions (including, without limitation, the conditions set forth in Section 6.01) within their control to reach NEXT Financial Close on or prior to the NEXT Financial Close Deadline; and (ii) use reasonable commercial efforts to cooperate and assist the other party to reach NEXT Financial Close by the NEXT Financial Close Deadline.

(i) Springing Provisions Related to the TIFIA Loan. If the Concessionaire executes the NEXT Project Financing Agreements related to a TIFIA Loan within six months of the NEXT Financial Close Date (which date may be extended by mutual agreement of the parties), this Agreement shall be amended and restated to incorporate the provisions set forth in the column labeled "New Language" in Exhibit G effective as of the date the Concessionaire executed such NEXT Project Financing Agreements.

ARTICLE 7

DESIGN, ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 7.01 General Obligations of the Concessionaire.

(a) The Concessionaire shall furnish or cause to be furnished all design, construction and other services, provide or cause to be provided all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding those services and efforts which the Project Agreements specify will be undertaken by the Department) to perform the Work reasonably inferable from the Project Agreements, Good Industry Practice, the Technical Requirements, all applicable Law and relevant Regulatory Approvals, and the Scope Document.

(b) The Department makes no warranties or representations as to any surveys, data, reports or other information provided by the Department or other Persons, concerning surface or subsurface conditions, including the presence of Utilities, Hazardous Substances, contaminated groundwater, archeological, paleontological and cultural resources, and endangered and threatened species, affecting the Rights of Way or surrounding locations. The Concessionaire acknowledges that such information is for the Concessionaire's reference only and has not been verified.

(c) Except as otherwise expressly provided herein, the Concessionaire shall bear the risk of all conditions occurring on, under or about the Rights of Way, including (a) physical conditions of an unusual nature that differ materially from those ordinarily encountered in the area, (b) changes in surface topography, (c) variations in subsurface moisture content, (d) Utility facilities, (e) the presence or discovery of Hazardous Substances, including contaminated groundwater, (f) the discovery at, near or on the Rights of Way of any archeological, paleontological or cultural resources, and (g) the discovery at, near or on the

Rights of Way of any species listed as threatened or endangered under federal or State endangered species Law.

(d) Any monitoring, auditing, review, comments or approvals provided by the Department (except as expressly stated) will not relieve the Concessionaire of independent responsibility for performance of the Work or for any acts or omissions of the design professionals, contractors and subcontractors engaged by the Concessionaire to perform the Work. The Department's review, comment on and/or approval of any submission shall not be deemed to transfer any liability from the Concessionaire to the Department.

(e) The Concessionaire shall provide that the Substantial Completion Date shall occur not later than five years after the Closing Date, subject only to the day-for-day extensions permitted by Section 13.01 for Delay Events during the Work Period (the "Guaranteed Substantial Completion Date").

(f) The Concessionaire understands that if the Concessionaire fails to achieve the timely completion of the Work that the Department will suffer damages which are difficult to determine and accurately specify. Accordingly, to compensate the Department for such damages, the Concessionaire hereby agrees as follows:

(i) If Substantial Completion of the Work is not attained by the Guaranteed Substantial Completion Date, the Concessionaire shall pay the Department \$21,000 as liquidated damages for each day, up to and through, but not exceeding, one calendar year and any such additional amount as Design-Build Contractor may agree to pay on or for the Department's account pursuant to Section 7.2 of the Design-Build Contract, that actual Substantial Completion of the Work extends beyond the Substantial Completion Date; *provided*, that such damages shall not be payable for any day for which the Department's aggregate compensation for Oversight Services and the Department's TMP activities during the Work Period has not exceeded \$45,000,000. This subsection shall not apply to the NEXT Project.

(ii) If the Department allows the temporary closure of lanes to traffic and the Concessionaire (or its contractors) failure to restore all such lanes to traffic by designated times in accordance with the Technical Requirements, the Concessionaire shall pay the Department the amount determined in accordance with the Technical Requirements as liquidated damages for any period beyond such designated times until the affected lanes are reopened to traffic.

(iii) If Final Acceptance is not attained by within 90 days after the Substantial Completion Date, the Concessionaire shall pay the Department \$5,000 as liquidated damages for each day that Final Acceptance remains to be achieved following the expiration of 90 days after the Substantial Completion Date; *provided*, that such damages shall not be payable for any day for which the Department's aggregate compensation for Oversight Services and the Department's TMP activities, during the Work Period has not exceeded \$45,000,000. This subsection shall not apply to the NEXT Project.

(iv) If NEXT Final Completion is not attained by the NEXT Guaranteed Final Completion Date, the Concessionaire shall pay the Department \$15,000 as liquidated damages for each day that NEXT Final Completion extends beyond the NEXT Guaranteed Final Completion Date up to and through the NEXT Long Stop Date.

(v) If NEXT Final Completion is not attained by the NEXT Long Stop Date, the Concessionaire shall pay the Department \$60,000 as liquidated damages for each day that NEXT Final Completion extends beyond the NEXT Long Stop Date.

(vi) The Concessionaire's overall liability for liquidated damages relating to Sections 7.01(f)(iv) and (v) shall in no event exceed \$14,000,000.

The parties acknowledge, recognize and agree on the following:

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

(B) that any sums which would be payable under this Section 7.01(f) are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure; and

(C) that any sums which would be payable under this Section 7.01(f) shall be in lieu of all liability of the Concessionaire and its contractors for any and all Losses, whether special or consequential, and of whatsoever nature incurred by Department which are occasioned by any delay described by this Section 7.01(f). Notwithstanding the above, liquidated damages are not intended to excuse Concessionaire or any of its contractors from liability for any other breach of its obligations under the Contract Documents, or limit the Department's recourse to other contract remedies hereunder such as termination pursuant to Articles 16 and 17; *provided*, that the sole termination remedy upon the occurrence of events described in Section 16.07(a)(i) or (ii) shall be as set forth in Section 16.07.

(g) The design and construction of the NEXT Project cannot preclude, pursuant to, and in accordance with, the Technical Requirements, the design, development and construction of: (i) any NEXT Project (Phase 2) Asset as set forth in Exhibit B-5 as of the Second Amended and Restated Agreement Date, (ii) the Bi-State Project as of the Second Amended and Restated Agreement Date or (iii) the 495 Ultimate Scope at DTR Interchange as set forth on Exhibit B-6 as of June 11, 2021.

(h) For the purposes of Article 7, the parties will manage as independent projects the Original Project and the NEXT Project, and each requirement listed in this Article 7, except as expressly set forth in this Article 7, will apply independently to each of the Original Project and the NEXT Project.

Section 7.02 Department Obligation to Contribute Funding for the Original Project.

(a) The Department agrees to provide to the Design-Build Contractor payments aggregating \$283,367,386 as financial support for the development, design, construction and start-up of the Original Project. Such payments will be used to partially fund (i) the I-66 interchange (other than any portion of the I-66 interchange that will provide access to the HOT Lanes for toll-paying vehicles), and (ii) other construction relating to the New Lanes and reconstruction of existing interchanges (other than any portion of such interchanges that will provide access to the HOT Lanes for toll-paying vehicles).

(b) In addition, the Department agrees to provide to the Design-Build Contractor payments aggregating \$125,528,168 as financial support for the development, design, construction and start-up of Springfield Interchange Phase VIII (other than equipment used for tolling).

(c) The foregoing amounts will be made available by advance by the Department pursuant to the VDOT Funding Agreement, a copy of which is attached as Exhibit Q, as follows:

- (i) \$157,207,586 on the Closing Date;
- (ii) \$11,625,200 no more than 60 days after the Closing Date;
- (iii) \$21,627,600 on October 1, 2008;
- (iv) \$65,067,000 on October 1, 2009;
- (v) \$66,017,000 on October 1, 2010;
- (vi) \$63,177,168 on October 1, 2011; and
- (vii) \$24,174,000 on October 1, 2012;

provided, such funds after the Closing Date shall be made available by the Department only if, at the time of the advance by the Department thereof: (A) the aggregate equity funds contributed by the members of the Concessionaire and proceeds of the PABs or a TIFIA Loan requisitioned by the Concessionaire for the development, design, construction and start-up of the Original Project are cumulatively at least equal to or greater than the cumulative advances made by the Department (excluding the initial advance described in clause (i) above made by the Department on the Closing Date) for the period to such date, (B) there exists no Concessionaire Default, and (C) neither the Concessionaire's nor the Design-Build Contractor's actions have resulted in FHWA withholding or withdrawing reimbursement for the Original Project. If the Design-Build Contract for the Original Project is terminated for any reason prior to Substantial Completion of the Work being funded by the foregoing payments, the Department agrees that it will provide any then-unfunded portion of such amounts described in Section 7.02(c) to any replacement contractor retained by the Concessionaire to carry out the completion of such Work.

Section 7.03 Conditions Precedent to Work.

(a) Conditions Precedent to Commencement of Work. The Concessionaire shall not permit the applicable Design-Build Contractor to commence Work unless and until the following conditions (in addition to the conditions set forth in Section 7.03(b) with respect to any construction of a Construction Segment, if applicable) have been satisfied or waived by the Department in either case in writing (the "Work Commencement Approval"):

(i) with respect to the Original Project, the Initial Project Financing Agreements shall have been executed and delivered by the parties thereto in substantially the forms attached hereto as Exhibit H-1 and with respect to the NEXT Project, the NEXT Project Financing Agreements shall have been executed and delivered by the parties thereto in substantially the forms attached hereto as Exhibit H-2;

(ii) with respect to the Original Project, the Concessionaire and the Original Design-Build Contractor shall have executed and delivered the Original Design-Build Contract, the Original Contractor Guarantor shall have executed and delivered the Original

Completion Guaranty, and the Concessionaire shall have delivered the Initial Baseline Schedule to the Department;

(iii) with respect to the NEXT Project, the Concessionaire and the NEXT Design-Build Contractor shall have executed and delivered the NEXT Design-Build Contract in substantially the form attached hereto as Exhibit I, the NEXT Contractor Guarantor shall have executed and delivered the NEXT Completion Guaranty, the Concessionaire shall have delivered the NEXT Payment Bond and the NEXT Performance Bond and the Concessionaire shall have delivered the NEXT Baseline Schedule to the Department;

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

(v) all representations and warranties of the Concessionaire set forth in Section 15.02 remain true in all material respects; and

(vi) there exists no uncured Concessionaire Default or NEXT Concessionaire Breach for which the Concessionaire has received notice from the Department.

This Section 7.03(a) does not apply to the NEXT Early Work.

(b) Conditions Precedent to Commencement of Construction. The Concessionaire shall not permit the Design-Build Contractor to commence construction of any Construction Segment unless and until the following conditions have been satisfied or waived by the Department in either case in writing (the "Construction Segment Approval"):

(i) The Concessionaire shall have delivered to the Department correct and complete copies of Design Documentation and Construction Documentation, as approved by the Department to the extent required under Section 7.05, relating to the applicable Construction Segment pursuant to Section 7.05;

(ii) All Regulatory Approvals (including Department Regulatory Approvals and any applicable FHWA approvals and agreements) necessary for the construction of the applicable Construction Segment shall have been acquired (and copies provided to the Department), and the Concessionaire has satisfied all applicable pre-construction requirements of the Regulatory Approvals; and

(iii) All rights of access or other property rights necessary for the commencement of construction within the applicable portion of a Construction Segment shall have been obtained.

(c) NEXT Early Work. Any NEXT Early Work will be at the Concessionaire's sole cost and expense. The scope of NEXT Early Work is defined in Exhibit B-5. The Department hereby authorizes the Concessionaire (without any further action required by the Concessionaire), to commence the NEXT Early Work as of the Second Amended and Restated Agreement Date.

Section 7.04 Delay in Work Approvals.

The Concessionaire shall deliver notice to the Department upon the satisfaction of the applicable conditions set forth in Section 7.03 and request that the Department issue a Work Commencement Approval

or Construction Segment Approval, as applicable, for such Work. The Department shall endeavor to respond to such request, within 21 days following delivery of such request to the Department, by delivery to the Concessionaire of either the requested Work Commencement Approval or Construction Segment Approval, as applicable, or notice of the conditions that the Department believes to be lacking. If the Concessionaire has not received a response within such 21-day period, such failure by the Department to respond shall be deemed approval, but shall not be deemed a waiver of the other conditions set forth in Section 7.03, including compliance with the Technical Requirements, Regulatory Approvals and applicable Law. This Section 7.04 shall not apply with respect to the NEXT Early Work.

Section 7.05 Approval of Design-Build Contract; Project Design and Construction Documentation.

(a) The Department has hereby approved (i) the Original Design-Build Contractor and the Original Design-Build Contract, including the schedules, exhibits and other attachments thereto and (ii) the NEXT Design-Build Contractor and the NEXT Design-Build Contract, including the schedules, exhibits and other attachments thereto, in substantially the form attached hereto as Exhibit I. Approval by the Department of the Design-Build Contractor and the Design-Build Contract shall not constitute the Department's waiver of any terms or requirements of this Agreement. The Design-Build Contract shall not impose obligations on the Department; the Department's Work Period obligations are provided in this Agreement. The Department shall be a third-party beneficiary of the Design-Build Contract. The Concessionaire shall not amend or modify the Design-Build Contract without the prior written consent of the Department, which consent shall not be unreasonably withheld, delayed or conditioned; *provided*, however, that the Department's consent shall not be required with respect to change orders that (x) neither: (i) constitute a change in the scope of the Work or Deviations from the Technical Requirements nor (ii) result in increases in the time to complete the Work pursuant to this Agreement or the imposition or enlargement of any of the Department's costs, liabilities or obligations or (y) reflect amendments, modifications and other changes necessary to effectuate the NEXT Modified Base Configuration and the finalization process thereof, pursuant to the provisions of Section 7.20(a). The Concessionaire shall provide the Department with notice of all proposed change orders whether or not the Department's consent is required. The Concessionaire shall ensure that the NEXT Design-Build Contract is assignable upon termination of this Agreement to the Department by the Concessionaire without the consent of the NEXT Design-Build Contractor, subject to the rights of Lenders in respect thereof.

(b) The Concessionaire shall submit to the Department accurate and complete copies of all Design Documentation and Construction Documentation relating to the Work, which is required to be submitted, within three Days after such documentation is delivered by the Design-Build Contractor to the Concessionaire under the applicable Design-Build Contract.

(c) Following the Department's initial approval pursuant to this Section 7.05, the Concessionaire will have the right to amend, supplement or otherwise modify the Design Documentation or the Construction Documentation or any part thereof, without the further approval of the Department; *provided*, that the Department's approval will be required with respect to amendments, supplements or modifications that (i) constitute a material change in the scope of the Work or Deviations from any of the Technical Requirements, (ii) except as otherwise extended pursuant to the terms of this Agreement, result in increases in the time to achieve (A) Substantial Completion beyond the Guaranteed Substantial Completion Date or (B) NEXT Final Completion beyond the NEXT Guaranteed Final Completion Date, or (iii) except to the extent directly attributable to a Compensation Event, impose on the Department any new or increased costs, liabilities or obligations; *provided*, further, that the Concessionaire will provide the Department notice of all such proposed amendments, supplements and modifications regardless of whether the Department's consent is required and will pay the Department for all the Allocable Costs it incurs to review and consider such proposed amendments, supplements or modifications that are subject to the

Department's approval (subject to Section 10.03(d)), unless such proposed amendments, supplements or modifications are necessary as a result of a Compensation Event caused by the Department, in which case, the Concessionaire shall not be required to pay the Department for any of the Allocable Costs it incurs to review and consider such amendments, supplements or modifications.

(d) The Concessionaire shall provide the Department with a schedule of its proposed submittals of Design Documentation and Construction Documentation (which schedule shall be updated periodically as necessary) so as to facilitate the Department's coordination and review of such Documents, and shall complete quality assurance reviews of all Design Documentation and Construction Documentation to ensure that they are accurate and complete and comply with the requirements of this Agreement and the Technical Requirements included as Exhibit N prior to any submission to the Department. Whenever the Department is entitled to review and comment on, or to affirmatively approve the Design Documentation and Construction Documentation and other items submitted in accordance with this Agreement or the Technical Requirements, the Department shall respond within 21 days after the Department's acknowledgement of receipt (which shall be promptly provided). Unless otherwise provided in this Agreement, if the Department fails to respond to a complete submittal or request which has been timely submitted or resubmitted, as the case may be within the applicable time periods, the Department will be deemed to have approved, certified, or taken other similar action with respect to, such submittal or request; *provided* that such deemed approval will not be deemed a waiver of the Department's other rights or the Concessionaire's other obligations pursuant to this Agreement, including compliance with the Technical Requirements, Regulatory Approvals, Good Industry Practice, and applicable Law. If the Department has responded, the Concessionaire shall respond to all of the Department's comments and objections and, to the extent Department approval is required pursuant hereto, make modifications to the Design Documentation and Construction Documentation necessary to fully reflect and resolve all such comments and objections, and resubmit such documentation to the Department for its review and approval in accordance with the foregoing procedures.

(e) In connection with the Original Project, the Concessionaire shall provide the Department with five sets (together with one electronic version in a format acceptable to the Department) of the following interim design submissions for approval, which submissions generally correspond to the Department's concurrent engineering process: (i) Design Public Hearing Documentation; (ii) Design Documentation for Field Inspection and Right-of-Way ("FI/RW"); and (iii) Construction Documentation issued for construction.

(f) In connection with the NEXT Project, the Concessionaire shall provide the Department with one set (comprised of one electronic version in a format acceptable to the Department) of the following for review, comment and/or approval, as applicable: (i) Design Documentation and (ii) Construction Documentation issued for construction, each as set forth in the Technical Requirements including any Project Development Plans for the NEXT Project, the NEXT Baseline Schedule, any NEXT Baseline Schedule updates, any quality assurance and quality control documentation and record as-built drawings. The Department's review, comment and/or approval of interim design submissions and the Construction Documentation are for the purpose of establishing the Concessionaire's compliance with the requirements of this Agreement and mutually establishing a conformed set of contract documents compatible with the requirements of the Work.

(g) On or about the time of the scheduled submissions, the Concessionaire shall meet with the Department and shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the contract documents, or, if applicable, previous design submissions. Minutes of the meetings will be maintained by the Concessionaire and provided to all attendees for review.

(h) Construction Documentation shall set forth in detail drawings and specifications describing the requirements for construction of the Work, in full compliance with all Law and Regulatory Approvals. The Construction Documentation shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting, as agreed upon in writing, and shall be submitted after Concessionaire has obtained all requisite Regulatory Approvals associated with the Work contained in such documents. Concessionaire shall proceed with construction in accordance with the approved Construction Documentation and shall submit one hard copy and one electronic copy (in a format acceptable to the Department) of approved Construction Documentation to Department prior to commencement of construction.

(i) In addition, the Concessionaire shall cause the applicable Design-Build Contractor to permit the Department and its agents and consultants access to its FTP website, or any similar electronic documentation management system maintained by the Concessionaire, for purposes of viewing and downloading copies of all Construction Documentation, Design Documentation and any other documents relevant to the design or construction of the Project.

Section 7.06 Construction Management and Coordination

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

(b) The Department's and the Concessionaire's project manager and senior representatives and other pertinent representatives of the parties shall meet within seven days after the Closing Date or the NEXT Financial Close Date, as applicable, to discuss issues affecting the administration of the 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.

(c) The Concessionaire shall hold monthly progress meetings with the Department. During such meetings, progress during the prior month shall be reviewed and the Concessionaire shall collect information from any key subcontractors/sub-consultants responsible for work completed during the specified duration and work scheduled during the upcoming reporting duration. These meetings shall be attended by the Concessionaire Representative and other personnel as requested by the Department. Meetings will occur monthly beginning the month after the Closing Date or the NEXT Financial Close Date, as applicable. The Concessionaire shall be responsible for preparing, maintaining and distributing minutes of the meetings to all attendees for review. The meeting minutes shall be provided to the Department within two calendar days after the monthly progress meeting.

(d) The Initial Baseline Schedule attached as Exhibit O-1 shall be the basis for monitoring the Concessionaire's performance of the Work for the Original Project until such time as a Baseline Schedule has been approved by the Department in accordance with subsection (e) below. The Baseline Schedule for the Original Project shall provide for a Guaranteed Substantial Completion Date in accordance with Section 7.01(e). The Initial NEXT Baseline Schedule shall be delivered to the Department on or prior to October 1, 2021 and such schedule shall be attached hereto as Exhibit O-2 (without further action of the Concessionaire or the Department); such Initial NEXT Baseline Schedule shall be the basis for monitoring the Concessionaire's performance of the Work for the NEXT Project until such time as a NEXT Baseline Schedule has been approved by the Department in accordance with subsection (e) below. The NEXT Baseline Schedule shall provide for a NEXT Guaranteed Final Completion Date in accordance with Section 7.01(e).

(e) Within 60 days of the date the applicable Work Commencement Approval is issued, the Concessionaire shall submit to the Department, for its review and approval, a CPM schedule that includes among other things: (i) the order in which the Concessionaire proposes to carry out of the Work (including each stage of the design, Rights of Way acquisition, Regulatory Approvals (including but not limited to permit acquisition), procurement, manufacture, delivery to Site, construction, inspection and testing); and (ii) the times when submissions to, and approvals or consents by, the Department are required (provided, however, that such times shall be no less than 21 days). This schedule shall be in compliance with the Technical Requirements and in a form acceptable to the Department. If the Department does not approve such submission, the Concessionaire shall resubmit a revised schedule to the Department within seven days of its receipt of the Department's comments on such schedule. This process shall continue until such time as a schedule is so approved by the Department (as updated or revised pursuant to this Agreement, the "Baseline Schedule" or with respect to the NEXT Project, the "NEXT Baseline Schedule"). The Concessionaire shall submit proposed updates to the applicable Baseline Schedule for the Department's review and approval, following the process outlined in this section, whenever there are changes that materially impact the critical path or the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable. Otherwise, monthly schedule updates shall be provided by the Concessionaire as noted below.

(f) As part of, and in conjunction with, the monthly meetings required by Section 7.06(c) above, the Concessionaire shall provide the Department with any proposed update of the applicable Baseline Schedule for the Department's review, and, if required under this Section 7.06 (other than Section 7.06(f)), approval, and a progress narrative that describes, at a minimum, the overall progress for the preceding month, a critical path analysis, a discussion of problems encountered and proposed solutions thereof, work calendars, constraints, delays experienced and any pending Time Impact Analysis ("TIA"), float consumption as a result of either Department and, Concessionaire, and/or Design-Build Contractor delays, documentation of any logic changes, duration changes, resource changes or other relevant changes. The monthly progress narrative shall also include the following:

(i) Comparisons of actual and planned progress, including: (1) illustrating schedule variance graphically by plotting the budgeted cost of work performed ("BCWP") and the budgeted cost of work scheduled ("BCWS"); and (2) reporting the schedule performance index ("SPI"), defined as the ratio of BCWP divided by BCWS; and

(ii) Statement by the Concessionaire that this is the only schedule being executed to perform the Work; and

(iii) Details of any aspects of the Work which may jeopardize the completion in accordance with this Agreement; and

(iv) Measures being (or to be) adopted to overcome such aspects and a list of approvals needed to adopt such measures.

(g) If the Department believes that the applicable Baseline Schedule needs a specific revision, either in logic, activity duration, manpower or cost, it will be requested from the Concessionaire in writing. The Concessionaire shall respond in writing within seven days, either agreeing with the Department's proposed revision, and henceforth including it in the next applicable Baseline Schedule update, or providing justification why it should not be accomplished. If revisions cannot be agreed upon either through written correspondence or subsequent meetings, the Department and Concessionaire shall agree to attempt to resolve the issues through the dispute resolution process described in Section 17.06. At no time shall the Concessionaire continue to reflect items of non-concurrence from the Department in the applicable Baseline Schedule updates.

(h) The Concessionaire shall submit two copies in electronic format of the applicable Baseline Schedule, including updates and narratives. A CD-ROM (or other medium agreed by the Department) containing the latest applicable Baseline Schedule update in electronic format shall be submitted for each schedule iteration along with two color coded plots 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. 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 or NEXT Final Completion, as applicable. The Concessionaire shall use the latest version of Primavera Project Planner software as the format for the applicable Baseline Schedule and all updates. The Concessionaire shall also provide two licenses with maintenance agreements covering the entire construction duration from Primavera Project Planner to the Department to enable it to access and analyze all such schedules.

(i) The Concessionaire shall, whenever required by the Department, provide in writing a general description of the arrangements and methods which the Concessionaire proposes to adopt for the execution of the Work. No significant alteration to the applicable Baseline Schedule, or to such arrangements and methods, shall be made without informing the Department and any alterations made shall reflect the requirement for coordination of the Work with the actions and obligations of the Department and the work to be carried out by the Department's separate contractors, if any. If any alteration affects any such actions, obligations or work, it shall not be made without the prior approval of the Department. If the progress of the Work does not conform to the applicable Baseline Schedule, as updated herein, the Concessionaire will reasonably consider revisions to the applicable Baseline Schedule proposed by the Department, to achieve completion within the timeframe set forth in this Agreement.

(j) The parties further agree to abide by the terms and procedures set forth in the Technical Requirements pertaining to project management and coordination matters.

(k) Whenever the Department is required to respond to the Concessionaire's request for the Department's approval or consent pursuant to this Article 7 (whether or not failure to respond is deemed approval or consent), the Department shall be deemed to have responded if it has notified the Concessionaire, within the applicable time period, that the Department requires additional time to obtain information or to perform reviews necessary or appropriate for a complete response.

Section 7.07 Regulatory Approvals.

(a) It shall be the sole responsibility of the Concessionaire, at its own cost and expense, to obtain and maintain in full force and effect and comply with all Regulatory Approvals necessary for the development, design, construction, management, operation and maintenance of the Project and any Project Enhancements throughout the Term; *provided* that (i) the Department shall obtain at its cost, all Department Regulatory Approvals, and (ii) any Regulatory Approval necessitated by a Department Change or Department Project Enhancement shall be governed by the provisions of Section 7.12 or Section 9.02, as applicable. The Department and the Concessionaire acknowledge that as of the Agreement Date all Department Regulatory Approvals for the Original Project are described in Exhibit M and have been obtained and that any additional permits and approvals required for the Project shall be the Concessionaire's responsibility. The Department and the Concessionaire acknowledge that all Department Regulatory Approvals for the NEXT Project are described in Exhibit M and have been obtained by the Department as of the dates set forth in Exhibit M or, in the case of Department Regulatory Approvals to be obtained following the Second Amended and Restated Agreement Date, shall be obtained by the Department on the dates set forth in Exhibit M and that any additional permits and approvals required for the Project (for the

avoidance of doubt, expressly excluding the GWMP Work Approvals) shall be the Concessionaire's responsibility.

(b) Subject to Section 7.07(c) below, the Department shall provide reasonable assistance and cooperation to the Concessionaire, as requested by the Concessionaire and at the Concessionaire's cost, in obtaining Regulatory Approvals relating to the Project or any Project Enhancements and any revisions, modifications, amendments, supplements, renewals, reevaluations and extensions of existing Regulatory Approvals.

(c) Except as otherwise provided in this Agreement or any other Project Agreement, the Department shall not unreasonably withhold or delay any Regulatory Approval for which it is the issuing Governmental Authority with respect to the design, construction, operation or maintenance of the Project or any Project Enhancement. For the avoidance of doubt, the provisions of this Section 7.07(c) are not intended to supersede any provision of this Agreement or any other Project Agreement providing for the conditions to or time of approval of any such Regulatory Approval, or any express right of the Department to withhold consent in its sole discretion.

(d) Regardless of the Department's exercise or failure to exercise any such rights, regardless of the issuance of permits or certificates of completion or acceptance, and regardless of Final Acceptance or NEXT Final Completion of the Project, as applicable, or any Project Enhancement, the Concessionaire at all times shall have an independent duty and obligation to obtain all Regulatory Approvals (except Department Regulatory Approvals) necessary to design, acquire, construct, equip, operate, maintain, police, renew, replace, provide traffic management for and otherwise manage the Project and Rights of Way in accordance with the standards and requirements set forth in the Project Agreements.

(e) The Department shall obtain all necessary Regulatory Approvals for the George Washington Memorial Parkway Interface by the dates set forth in Exhibit M.

Section 7.08 Acquisition of Project Right of Way, Utility Relocations and Drainage.

(a) The Concessionaire shall perform or cause the performance of all Project Right of Way acquisition Work and Utility Relocations necessary for the construction of the Project (including the NEXT Project) including but not limited to all appraisals and related expert reports, appraisal reviews, negotiations with landowners and utility owners, real estate settlements and closings (except pursuant to a condemnation proceeding under Section 7.08(b)), relocation assistance and advisory services, and legal services. The Concessionaire shall carry out the work, or cause the performance of the work, specified herein as follows:

(i) The Concessionaire shall acquire all Project Right of Way, at its sole cost and expense, except to the extent otherwise provided by Section 7.08(e), in accordance with the Technical Requirements (including VDOT Right of Way and Utilities Manuals, Vol. I and II), all federal and State laws and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the "Uniform Act") and Titles 25.1 and 33.2 of the Virginia Code.

(ii) The Concessionaire shall submit a Right of Way Acquisition Plan (as defined in the Technical Requirements) for Department approval. The Right of Way Acquisition Plan shall identify a schedule of right of way activities including the specific parcels to be acquired and all relocations. The Right of Way Acquisition Plan shall allow for the orderly relocation of displaced persons based on time frames not less than those provided by the Uniform Act. In the event the Department fails to respond in 21 days, such

failure by the Department shall not be deemed approval of the Right of Way Acquisition Plan. The Right of Way Acquisition Plan shall be updated as necessary during the life of the Project.

(iii) The Concessionaire shall exercise due diligence and use reasonable care in determining whether property to be acquired may contain wastes or other materials or hazards requiring Remedial Action or treatment and shall otherwise comply with the Technical Requirements, including the undertaking of studies, assessments and tests required by the Technical Requirements.

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

(v) The Department shall be responsible for providing to the Fairfax County Park Authority suitable replacement property in accordance with the terms of the approved Section 6(f) land transfer agreement at no cost to the Concessionaire.

(b) Condemnation. The Concessionaire shall use its best efforts (which shall not require the Concessionaire to pay more than fair market value for land or land rights) to settle claims with landowners amicably. If, despite the Concessionaire's best efforts, it is unable to reach a settlement with any landowners within a reasonable period of time, as a last resort the Department will handle any necessary condemnation proceedings subject to the following. Prior to the Department filing a condemnation proceeding, the Concessionaire shall prepare or cause to be prepared all necessary paperwork and supporting documentation required for the proceeding and it shall deliver that documentation to the Department. The Department then will file the condemnation proceeding(s) and handle such proceeding(s) in accordance with the Technical Requirements.

(c) Property outside the Project Right of Way. The Concessionaire shall be responsible, at its own cost and expense, for the acquisition of, or to cause the acquisition of, any property, temporary easements or other property rights outside of the Project Right of Way which may be necessary for any permanent or temporary works outside of the Project Right of Way, including those necessary to accommodate laydown, staging, drainage and other construction methods in connection with the construction of the Project, and for all facilities and improvements required for the opening and operation of the HOT Lanes Project.

(d) NEXT Project ROW Costs. The Concessionaire shall pay for the Right of Way acquisition activities and services specified herein. In addition, the Concessionaire shall be responsible for funding the cost of payments to property owners and landowner's condemnation costs for the NEXT Project. On the NEXT Project Financial Close Date, the Concessionaire will deposit \$5,000,000 with the Department for such Right of Way payments and costs (the "NEXT ROW Deposit"). If more than \$5,000,000 is needed to complete Right of Way acquisitions for the NEXT Project, the Concessionaire shall make such funds available to the Department within 30 days of notice thereof. The Concessionaire may provide written request, and the Department shall provide, reasonable documentation to support any additional deposits. The Department shall use the NEXT ROW Deposit and other funds deposited by the Concessionaire in connection with this subsection (d) to make any Right of Way payments directly to property owners and to manage the successful settlement of any condemnation proceedings, including reasonable internal and external Department administrative costs and any attorney costs. If the total costs for which the Concessionaire is responsible are less than the total amount provided by the Concessionaire

to the Department after all Right of Way for the NEXT Project has been acquired, the Department shall refund any remaining amounts to the Concessionaire within 90 days of the completion of all payments to property owners. Any Right of Way payments shall be separate and apart from the NEXT Department Development Recoupment Amount. If the Concessionaire incurs costs with respect to Right of Way acquisition activities and services in excess of \$10,000,000, such amounts in excess of \$10,000,000 shall be treated as NEXT SPV Contingency Costs. In addition, if the actual costs incurred by the Concessionaire with respect to all Right of Way acquisition activities and services are less than \$10,000,000, then the difference shall be the “NEXT ROW Cost Savings Amount.”

(e) Utility Relocations. The Concessionaire, at its sole cost and expense, will perform (or cause to be performed) all activities and services necessary for all Utility Relocations necessary to accommodate construction of the Project. Utility Relocations shall be performed in accordance with the Technical Requirements (including the Department’s Right of Way & Utilities Division Manual of Instructions – Volume II – Utility Relocation Policies and Procedures and any relevant agreements with the affected Utilities). Subject to all applicable Law, the Department shall provide to the Concessionaire the benefit of any (i) provisions in recorded utility or other easements, (ii) permits or other rights in real property affecting the Project which require the holders of such real property rights to relocate at their expense and the Department shall provide reasonable assistance to the Concessionaire in obtaining the cooperation of the holders of such real property rights in connection with Utility Relocations, it being understood that such assistance shall not entail the initiation of or participation in legal actions or proceedings, and that the Concessionaire shall reimburse the Department for its Allocable Costs in providing such assistance.

(f) Drainage.

(i) The Concessionaire will be solely responsible, at its own cost and expense, for the design and construction of new drainage and stormwater management features, or the repair and replacement (if required) of existing stormwater management features, located within and outside of the Project Right of Way for the NEXT Project in accordance with the Technical Requirements in accordance with the Part IIC technical criteria of the Virginia Stormwater Management Program Law and Regulations and the Department’s IIM-LD-195.12.

(ii) Nutrient credits shall be used to mitigate water quality impacts of the NEXT Project. The total amount of nutrient credits shall not exceed eighty percent (80%) of the total phosphorus removal requirement. The Department will purchase the required nutrient credits (up to 42 pounds) for the NEXT Project and the Concessionaire will reimburse the Department for the cost of such nutrient credits at NEXT Financial Close, which amount shall be separate and apart from the NEXT Department Development Recoupment Amount and the Department’s contribution to the NEXT Risk Pool. If the actual reimbursement paid by the Concessionaire to the Department for such Nutrient Credits is less than \$1,050,000, then the difference shall be the “Nutrient Credit Savings Amount.”

Section 7.09 Management of Hazardous Substances.

During the Work Period, the responsibilities of the parties with respect to the management, treatment, handling storage, remediation and removal of all Hazardous Substances shall be allocated and undertaken in accordance with the following terms and conditions:

(a) The Department shall reimburse the Concessionaire for its Allocable Costs incurred for the management, treatment, handling, storage, remediation and removal of Pre-Existing

Hazardous Substances discovered on the property owned as of the Agreement Date (for the Original Corridor) and as of the Second Amended and Restated Agreement Date (for the NEXT Corridor) by the Department within the Project Right of Way (“VDOT Existing ROW”), subject to compliance with Section 7.09(c).

(b) The Concessionaire shall be responsible for the management, treatment, handling storage, remediation and removal of all other Hazardous Substances discovered in the course of its work on the Project.

(c) The parties shall carry out their respective responsibilities in accordance with the provisions of the Technical Requirements, which entail, at a minimum, that: (i) the Concessionaire shall obtain all environmental site assessments of the affected property and submit copies of such assessments to the Department for its review and approval; (ii) the Concessionaire shall develop the plans, subject to the review and approval of the Department, for the management, treatment, handling, storage, remediation and removal of the Hazardous Substances, and shall obtain all necessary Regulatory Approvals to implement such plans; and (iii) the Concessionaire shall provide cost estimates with respect to such Work which is to be reimbursed by the Department, for the Department’s review and approval prior to proceeding with any such Work. If the Department has not responded to a request for such approval pursuant to this subsection (c) within 21 days after the Department’s acknowledgement of receipt, the request shall be deemed to be approved, except to the extent matters deviate from applicable Technical Requirements, Regulatory Approvals or Law.

(d) The Concessionaire shall seek pre-approval and pursue reimbursement from the Virginia Petroleum Underground Storage Tank Fund (“VPSTF”) for qualifying expense incurred during the course of investigation and/or containment, management, mitigation, remediation activities on underground storage tank sites. The Concessionaire shall promptly pay over to the Department all monies the Concessionaire receives from the VPSTF with respect to activities subject to reimbursement by the Department to the Concessionaire pursuant to Section 7.09(a).

Section 7.10 Regional Congestion Management Plan and TMP.

With respect to the Original Project, the Concessionaire will carry out any construction activities on the Original Project in accordance with the TMP developed by the Concessionaire for the Original Project in coordination with the Department.

With respect to the NEXT Project or any Project Enhancement (to the extent required), the Department will develop, fund (subject to Section 10.03(d)) and implement a regional TMP, which will be undertaken in coordination with the Concessionaire’s Maintenance of Traffic Plan for the NEXT Project. The Department will provide the Concessionaire with a reasonable opportunity to comment on the TMP. The TMP will set forth the program for traffic management that focuses on broader regional strategies and solutions to facilitate mobility and safety during the construction period for the NEXT Project. The Concessionaire shall be responsible for the preparation and implementation of a Maintenance of Traffic Plan for the NEXT Project and associated construction phase or location-specific maintenance of traffic plans and traffic control plans in accordance with the applicable requirements in the Technical Requirements. The Concessionaire shall maintain traffic and perform its work in accordance with these plans for the duration of the NEXT Project. The Concessionaire’s Maintenance of Traffic Plan for the NEXT Project will be consistent with, and included as part of, the TMP for the construction period for the NEXT Project. In connection with the TMP, the Concessionaire, at its sole cost and expense, will (i) develop and implement the Concessionaire’s Maintenance of Traffic Plan for the NEXT Project and (ii) be responsible for the Concessionaire’s share of public outreach for the TMP pursuant to the Technical Requirements.

Section 7.11 Public Information.

Prior to and during the construction thereof, the Concessionaire will provide information to the public concerning the Project, any Project Enhancements or any other construction activities in accordance with a Public Information Plan to be developed by the Concessionaire in coordination with the Department.

Section 7.12 Department Changes During the Work Period.

(a) Department's Right to Issue Change Orders. The Department may, at any time and from time to time during the Work Period, authorize and/or require changes (i) in the Work as set forth in the Scope Document pursuant to a Change Order or (ii) in the terms and conditions of the Technical Requirements (including changes in the standards applicable to the Work); *provided*, that increased costs resulting from a Department Change shall be borne by the Department, and *provided further*, that the Department has no right to require any change that:

- (i) Is not in compliance with applicable Law;
- (ii) Would contravene an existing Regulatory Approval and such contravention cannot be corrected by the issuance of a further or revised Regulatory Approval;
- (iii) Would cause an insured risk to become uninsurable; or
- (iv) Would materially and adversely affect the health or safety of users or employees of the Project.

The Concessionaire shall have no obligation to perform any Work outside the general scope of this Agreement, except on terms mutually acceptable to the Department and the Concessionaire. If a Department Change results in Concessionaire Damages, the Department shall compensate the Concessionaire in accordance with Sections 13.02 and 13.03; *provided*, that any Positive Revenue resulting from a Department Change shall be shared equally between the Concessionaire and the Department, in addition to and without regard to any amounts payable under Article 5, and the Department's share of such Positive Revenue shall be paid by the Concessionaire and deposited in the Concession Payments Account.

(b) Request for Change Proposal.

(i) If the Department desires to initiate a Department Change, then the Department shall issue a Request for Change Proposal. The Request for Change Proposal shall set forth the nature, extent and details of the proposed Department Change.

(ii) Within 21 days following Concessionaire's receipt of the Request for Change Proposal, the Concessionaire shall provide the Department with a preliminary written response, and within a reasonable time thereafter, with a definitive written response, as to whether, in the Concessionaire's opinion, the Department Change constitutes a Compensation Event, and, if so; (a) a detailed assessment of the cost, an estimate of any Concessionaire Damages, Toll Revenue and schedule impact of the proposed Department Change; (b) the effect of the proposed Department Change on the applicable Baseline Schedule, taking into account the Concessionaire's duty to mitigate delay to the extent reasonably practicable; and (c) the effect of the proposed Department Change on traffic volume and traffic flow on the HOT Lanes following the Service Commencement Date.

(iii) The Department may, but is not required to, obtain, at its sole cost a comprehensive report as to the proposed Department Change (including comments concerning the Concessionaire's estimate of the costs and other impacts) and a traffic and revenue study relevant to such impacts from a traffic and revenue consultant acceptable to the Department.

(iv) Following the Department's receipt of the reports described in clause (iii) and the traffic and revenue consultant if requested by the Department, or within 21 days following the delivery of the Concessionaire's response to the Department pursuant to (ii) above if the Department has not requested such reports, the Concessionaire and the Department shall exercise good faith efforts to negotiate a mutually acceptable Change Order, including adjustments to the applicable Baseline Schedule and, if the Department Change constitutes a Compensation Event, any Concessionaire Damages to which the Concessionaire may be entitled (taking into account the reports, if any, obtained by the Department).

(v) The Concessionaire shall perform the Work required to implement the Department Change in a timely manner and in accordance with a budget mutually agreed upon by the Department and the Concessionaire; *provided*, that:

(A) a Change Order setting forth the adjusted scope of work shall have been mutually agreed upon between the Department and the Concessionaire and issued by the Department;

(B) the Department and the Concessionaire shall have identified sufficient funds that may be made available to the Concessionaire to perform the work required to implement the Department Change;

(C) the applicable Baseline Schedule for the Work shall have been adjusted as agreed upon by the Department and the Concessionaire to reflect any projected delays in the timing of the Work as a result of the Department Change (taking into consideration the Concessionaire's duty to mitigate any delay to the extent reasonably practicable); and

(D) the Concessionaire shall have obtained (with the cooperation of the Department) all relevant Regulatory Approvals from all relevant Governmental Authorities required for such Work.

(vi) If the Department and the Concessionaire are unable to reach an agreement on a Change Order, the Department may deliver to the Concessionaire a Directive Letter, directing the Concessionaire to proceed with the performance of the Work in question, notwithstanding such disagreement. Upon receipt of the Directive Letter, pending final resolution through the dispute resolution procedures of the relevant Change Order, the Concessionaire shall implement and perform the Work in question as directed by the Department and the Department shall make interim payments to the Concessionaire on a monthly basis for the reasonable documented Allocable Costs of the Work in question, subject to subsequent adjustment through the dispute resolution procedures set forth in Section 17.06.

(c) If the Concessionaire has refused or fails to implement any such Department Change or the parties are unable to reach agreement on a Change Order, the Department shall have the right

to perform the work required to implement such Department Change; *provided* that the Department shall perform any such work in a manner that shall (i) not unduly interfere with the construction or operation of the Project or the generation of Toll Revenues and (ii) adhere to the requirements of this Agreement; *provided* that Positive Revenue resulting from a Department Change shall be shared equally between the Concessionaire and the Department, in addition to and without regard to amounts payable under Article 5, and the Department's share of such Positive Revenues shall be paid by the Concessionaire and deposited in the Concession Payments Account.

(d) Technical Requirement Revisions Treated as Department Change.

(i) The Concessionaire and the Department anticipate that from time to time after the Closing Date or the NEXT Financial Close Date, as applicable, the Department may adopt, through revisions to existing manuals and publications or new manuals and publications, changes, deletions, supplements or other modifications to the Technical Requirements for the design and construction of the Original Project, the design and construction of the NEXT Project, or the operation and maintenance of the Project (the "Technical Requirement Revisions"). The Department shall have the right to make Technical Requirement Revisions by delivering written notice to the Concessionaire, whereupon they shall constitute amendments to, and become part, of the Technical Requirements; *provided*, that if the Department elects to adopt Technical Requirement Revisions during the period before Substantial Completion or NEXT Final Completion, as applicable, such revisions shall be considered Department Changes and handled pursuant to the Change Order procedures for a Department Change in Sections 7.12(a), (b) and (c). In the absence of a Change Order relating to such Technical Requirement Revision, the Concessionaire shall not be obligated to (but may with the Department's approval) incorporate the same into its design and construction of the Project prior to the Substantial Completion Date or NEXT Final Completion Date, as applicable.

(ii) For the Original Project, references in the Technical Requirements to manuals or other publications prior to the Substantial Completion Date shall mean those versions of the documents in effect as of August 1, 2007, unless expressly provided otherwise by Technical Requirement Revisions or mutually agreed by the Department and the Concessionaire. For the Original Project, to the extent any Technical Requirement Revisions encompass matters that are addressed in versions of such manuals or other publications in effect as of August 1, 2007, they shall, upon delivery of the Department's written notice referred to in Section 7.12(d)(i), replace and supersede inconsistent provisions of the Technical Requirements. The Department shall identify any superseded provisions in its notice to the Concessionaire unless otherwise stated below.

(iii) For the NEXT Project, references in the Technical Requirements to manuals or other publications prior to the NEXT Final Completion Date shall mean those versions of the documents in effect as of May 10, 2021, unless expressly provided otherwise by Technical Requirement Revisions or mutually agreed by the Department and the Concessionaire. For the NEXT Project, to the extent any Technical Requirement Revisions encompass matters that are addressed in versions of such manuals or other publications in effect as of May 10, 2021, they shall, upon delivery of the Department's written notice referred to in Section 7.12(d)(i), replace and supersede inconsistent provisions of the Technical Requirements. The Department shall identify any superseded provisions in its notice to the Concessionaire unless otherwise stated below.

(iv) Either party is entitled to refer any dispute arising out of a proposed Department Change, other than the Department's adoption of Technical Requirement revisions, in accordance with the dispute resolution procedures set forth in Section 17.06.

(e) Department Delays Treated as Department Changes.

(i) The Concessionaire may submit to the Department a request for Change Order if the Design-Build Contractor incurs a material increase of its construction costs or incurs a material impact to the critical path which delays the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, due to a material breach or an inexcusable delay by the Department in performing any of its obligations described in Article 7 of this Agreement. For the purposes of this Section, an "inexcusable delay" shall mean a delay that is attributable solely to error or omission of the Department, and an inexcusable delay or a material breach specifically excludes delay or breach attributable to: (a) the submission of incomplete documentation for the Department's review, (b) required review or approvals from other Governmental Authorities necessary or appropriate to the Department's review, (c) failure to obtain appropriation and allocation of public funds, (d) consumption of available float, (e) submittals or requests that are "deemed approved" if no response is provided within 21 days, or (f) force majeure events. A response pursuant to Section 7.06(k) shall not be considered "deemed approved", and shall not be considered an "inexcusable delay" in the event that a delay is attributable to items (a) through (f) above or is not attributable solely to error or omission of the Department.

(ii) The Concessionaire shall submit its request for Change Order within 21 days after the occurrence giving rise to the request for adjustment or relief. The request for Change Order shall include sufficient information to advise Department of the circumstances giving rise to the request for adjustment and the basis of such request.

(iii) If the Department determines the Concessionaire is entitled to cost relief, the Concessionaire shall be entitled to recover only the direct costs reasonably and necessarily incurred by the Design-Build Contractor as a direct result of the Department's delay. However, under no circumstances will such recoverable costs include home office overhead incurred by the Design-Build Contractor's member companies or financing costs.

(iv) The Concessionaire's request for Change Order may include the price escalation for materials only if the Department's delay causes the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, to be delayed by at least one year and such delay is not attributable to the actions or negligence of the Concessionaire, a Concessionaire Party, or the Design-Build Contractor.

(v) The Department may extend the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, only if the Department's delay results in a material impact to the critical path set forth in the applicable Baseline Schedule.

(vi) If for any reason the Concessionaire fails to deliver the request for Change Order within the time period specified in Section 7.12(e)(ii), the Concessionaire shall be deemed to have irrevocably and forever waived and released any Claim or right to cost or schedule relief attributable to any such alleged Department delay.

(vii) If the Department grants to the Concessionaire cost relief, schedule relief, or both, the Concessionaire shall pass such relief to the Design-Build Contractor pursuant to the terms of the Design-Build Contract.

(viii) If the authorized project representatives of the Concessionaire and the Department fail to agree on the terms of any Change Order submitted pursuant to this Section 7.12(e) within 60 days after the request is received by the Department the matter shall be resolved at the discretion of the Department's Chief Engineer. Otherwise, the Concessionaire's sole recourse shall be litigation in accordance with Sections 17.06(c) and 17.06(d).

(f) Department Changes Related to the NEXT Project. If there are changes to the NEXT Project as set forth in Section 7.20 that are initiated, directed or requested solely by the Department, then such event shall be treated as a Department Change pursuant to this Section 7.12 and handled pursuant to the Change Order procedures for a Department Change; *provided* that any changes to the scope of any portion of the NEXT Project that are requested by the Concessionaire and approved by the Department shall not be treated as a Department Change.

(g) NEXT Department Assets. The parties agree that full and complete compensation for the full scope of the Work associated with the NEXT Department Assets is included within this Agreement as of the Second Amended and Restated Agreement Date, and nothing within the scope of such Work will, in and of itself, entitle the Concessionaire to any additional relief (including a Delay Event or a Compensation Event). Notwithstanding the foregoing, if a Delay Event or a Compensation Event occurs that impacts the performance of Work relating to the NEXT Department Assets, the Concessionaire will be entitled to seek relief in accordance with this Agreement. The NEXT Department Assets shall be turned over to the Department, and the care, custody and control and risk of loss (other than as covered by any applicable warranty) of the NEXT Department Assets shall transfer to and vest with the Department, in accordance with a turnover and allocation plan and maintenance maps to be agreed upon by the parties, as may be mutually updated by the parties from time to time, as well as the Joint Operating and Maintenance Protocols attached hereto as Exhibit E, as may be mutually updated by the parties from time to time.

Section 7.13 Concessionaire Requests for Deviations from Technical Requirements.

(a) The status of Deviations submitted to the Department as of the Agreement Date or the Second Amended and Restated Agreement Date, as applicable, shall be set forth in the Technical Requirements.

(b) The Concessionaire may request the Department to approve additional Deviations to the Technical Requirements by submitting to the Department a written change request in a form approved by the Department. The change request shall set forth the Concessionaire's estimate of impacts on costs, Toll Revenues and schedule attributable to the requested Deviation. The Department shall consider, in its sole discretion, any such request, and the Concessionaire shall bear the burden of persuading the Department that the Deviation sought constitutes sound and safe engineering consistent with Good Industry Practice and achieves the Department's applicable safety standards and criteria. No Deviation shall exist or be effective unless and until approval thereof is provided in writing by the Department; *provided*, that the failure of the Department to provide a written notice of approval of such Deviation within 21 days following receipt of the Concessionaire's request shall be deemed the Department's approval thereof, but shall not be deemed a waiver of applicable Law or Regulatory Approvals.

(c) The Concessionaire shall be solely responsible for payment of any increased costs, for any revenue losses and for any schedule delays or other impacts resulting from the implementation of a

Deviation from the Technical Requirements that has been approved, or deemed approved, by the Department.

(d) Positive Revenue resulting from any such Department approved additional Deviation in accordance with Section 7.13(b) shall be shared equally between the Concessionaire and the Department, in addition to and without regard to any amounts payable under Article 5, and the Department's share of such Positive Revenue shall be paid by the Concessionaire to the Department for deposit in the Concession Payments Account.

Section 7.14 Substantial Completion and Final Acceptance.

(a) Substantial Completion.

(i) The Concessionaire shall provide the Department with written notice of anticipated Substantial Completion at least 21 days prior to the anticipated Substantial Completion Date. During such 21-day period, the Concessionaire and the Department shall meet, confer and exchange information on a regular basis with the goal being the Department's orderly, timely inspection and review of the Project and final design and construction documents and the Department's issuance of a Substantial Completion Certificate. In addition, the Department shall conduct an inspection of the Project, the final design and construction documents, and such other matters as may be necessary to determine whether Substantial Completion is achieved and, not later than five days following the expiration of such 21-day period, shall deliver a written report of findings and recommendations to the Concessionaire.

(ii) If the Department disapproves the issuance of a Substantial Completion Certificate, then the Department shall provide a written notice to the Concessionaire specifying its reasons for such disapproval, and the Concessionaire shall have a reasonable opportunity to correct the defects or deficiencies in the Work to which the Department's disapproval relates. The Department may independently inspect, review and investigate the corrective work. If the Department and the Concessionaire cannot, despite good faith efforts, agree as to Substantial Completion, such dispute shall be resolved in accordance with the dispute resolution procedures set forth in Section 17.06. The Concessionaire shall provide notice to the Department if the Department has not approved or disapproved the issuance of a Substantial Completion Certificate within such 21-day period, and if the Department has not notified the Concessionaire of such approval or disapproval within 15 days after such Concessionaire notice, if the delay is not a result of a Concessionaire Party action or inaction, then such delay shall constitute a Compensation Event, and the Concessionaire shall be entitled to Concessionaire Damages, if any, pursuant to Sections 13.02 and 13.03.

(iii) Subject to Section 7.14(c), when the requirements for Substantial Completion have been achieved with respect to the New Lanes in their entirety in accordance with this Section (without regard to the status of the remainder of the Project), (A) the Department shall issue a Substantial Completion Certificate for the New Lanes, (B) the Department shall assume responsibility from the Concessionaire for operation and maintenance of the New Lanes, (C) the Department shall include such constructed New Lanes as part of the State Highway system, and (D) the Concessionaire shall have no further obligations with respect to the New Lanes except as required to satisfy the conditions to Final Acceptance as provided in Section 7.13(b) and as required by Sections 7.19, 8.07, 14.01 and 14.03; *provided*, that solely for the purpose of processing such Final Acceptance,

all references to the Project in Section 7.13(a)(ii) and (iii) and (b) shall be changed to reference the New Lanes.

(b) Final Acceptance.

(i) Within 90 days following the issuance of the Certificate of Substantial Completion, the Concessionaire shall perform all remaining Work, including completion of all Punch List items for the Project.

(ii) The Concessionaire shall provide the Department with written notification when it has determined that the following conditions to Final Acceptance have been satisfied: (a) all requirements for Substantial Completion have been satisfied; (b) all Punch List items have been completed and delivered to the reasonable satisfaction of the Department; (c) the Concessionaire shall have delivered correct and complete copies of all as-built drawings of the Project to the Department; (d) all work that the Concessionaire is obligated to perform for or on behalf of third parties has been accepted by such third parties (other than disputed items); (e) the Concessionaire has paid for all work by third parties that the Concessionaire is obligated to pay (other than disputed amounts); (f) the Concessionaire has delivered all required certifications from the engineer of record and architect of record for the Project to all necessary Governmental Authorities and to the Department; (g) the Concessionaire has made all deliveries of Work Product to the Department that are required to be made under this Agreement; and (h) the conditions set forth in Section 6.7.1 of the Design-Build Contract have been satisfied, with the exception of the condition requiring that Final Acceptance has occurred under this Agreement. During the 21 day period following delivery of such notice, the Concessionaire and the Department shall meet, confer and exchange information with the goal being the Department's orderly, timely inspection of the Project and final acceptance by the Department in writing (such written acceptance the "Final Acceptance Certificate"), and the Department shall conduct an inspection of the Punch List items, a review of the final drawings and such other investigation as may be necessary to evaluate whether the conditions to Final Acceptance have been satisfied. The Department shall submit to the Concessionaire a report of its findings and recommendations prior to the expiration of such 21-day period.

(iii) Within five days following the expiration of such 21-day period, the Department shall issue a Final Acceptance Certificate or shall notify the Concessionaire why Final Acceptance has not been achieved; *provided*, that if the Department has failed to issue a Final Acceptance Certificate or to notify the Concessionaire why Final Acceptance had not been achieved within 21 days after the expiration of the 21 day period described in Section 7.14(b)(ii), a Final Acceptance Certificate shall be deemed to be issued.

(c) Substantial Completion of Portions of the Original Project. In the Department's sole discretion, it may issue a Substantial Completion Certificate with respect to certain segments of the New Lanes, or with respect to Springfield Interchange Phase VIII, prior to issuing a Substantial Completion Certificate for the balance of the New Lanes. In such case, solely for the purpose of processing such early acceptance, all references to the Project in Section 7.14(a)(i) and (iii) and (b) shall be deemed to refer to such portion of the Project that the Department has agreed in its sole discretion to accept early pursuant to this Section 7.14(c).

(d) This Section 7.14 shall not apply to the NEXT Project.

Section 7.15 NEXT Final Completion.

(a) The Concessionaire will achieve NEXT Final Completion on or before the NEXT Guaranteed Final Completion Date, subject to adjustment in accordance with this Agreement; *provided* that failure to achieve NEXT Final Completion by the NEXT Guaranteed Final Completion Date will not result in a NEXT Concessionaire Breach under Section 17.07, and failure to achieve NEXT Final Completion by the NEXT Guaranteed Final Completion Date or the NEXT Long Stop Date will not result in a Concessionaire Default under Section 17.01.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The Concessionaire will provide the Department with written notice of anticipated NEXT Final Completion at least 21 Days prior to the anticipated NEXT Final Completion Date. The parties will comply with the submittal and review procedures for Substantial Completion set forth in Section 7.14(a) as if such provisions applied to NEXT Final Completion.

Section 7.16 Failure to Achieve Substantial Completion by Outside Substantial Completion Date or NEXT Final Completion by the NEXT Long Stop Date; Recovery Plans.

(a) If at any time prior to Substantial Completion, the monthly schedule update indicates that actual progress projects that Substantial Completion will occur more than five months later than the then-current Guaranteed Substantial Completion Date, the Concessionaire shall consult with the Design-Build Contractor and the Collateral Agent, and shall prepare a schedule recovery plan. The Concessionaire shall submit its proposed plan to the Department concurrent with the next monthly schedule update. The updated schedule and recovery plan shall detail the actions proposed to improve progress, and shall set forth a revised applicable Baseline Schedule for which the projected Substantial Completion Date shall not be later than the Outside Substantial Completion Date, or such later date as may be mutually agreed to by the Concessionaire and the Department. The Concessionaire shall reasonably consider the Department's proposed changes or additions to the schedule recovery plan. The Concessionaire shall respond to the Department's schedule review comments, following the process outlined in Section 7.06(e), until the Department has approved the revised applicable Baseline Schedule. The Concessionaire shall continue to monitor progress of the work on a monthly basis, and shall repeat the process described in Section 7.16(a), above, whenever actual progress lags the then-approved schedule by more than five months.

(b) If at any time the Concessionaire determines that it is unlikely to achieve Substantial Completion by the Outside Substantial Completion Date, the Concessionaire shall provide prompt written notice to the Department. Within two months thereafter, the Concessionaire shall submit for the Department's review and approval a written work plan outlining the actions the Concessionaire proposes to take in order to cause Substantial Completion to occur as promptly as reasonably possible, which plan may include increasing work hours to the extent permitted under applicable Law and utilizing additional labor and equipment and other appropriate acceleration techniques to improve schedule progress and setting forth a Revised Outside Substantial Completion Date (the "Concessionaire Recovery Plan"). The parties shall meet within 21 days after the Department receives the Concessionaire Recovery Plan to

discuss the Concessionaire Recovery Plan after its submission to the Department, and the Concessionaire shall provide promptly any additional information and respond to any comments that the Department may have. The Department in its reasonable discretion may approve or disapprove the Concessionaire Recovery Plan, and the Department shall deliver its approval or disapproval within 21 days after the parties have met to discuss a Concessionaire Recovery Plan. The approval by the Department of a Concessionaire Recovery Plan or any other actions by the Department pursuant to this Section 7.16, shall not affect or reduce the Concessionaire's obligation to pay delay liquidated damages in accordance with Section 7.01(f) for the period after the Guaranteed Substantial Completion Date.

(c) If at any time prior to NEXT Final Completion, the monthly schedule update indicates that actual progress projects that NEXT Final Completion will occur more than eight (8) months later than the then-current NEXT Guaranteed Final Completion Date, the Concessionaire shall consult with the NEXT Design-Build Contractor and the Collateral Agent, and shall prepare a schedule recovery plan. The Concessionaire shall submit its proposed plan to the Department concurrent with the next monthly schedule update. The updated schedule and recovery plan shall detail the actions proposed to improve progress, and shall set forth a revised applicable Baseline Schedule for which the projected NEXT Final Completion Date shall not be later than the NEXT Long Stop Date, or such later date as may be mutually agreed to by the Concessionaire and the Department. The Concessionaire shall reasonably consider the Department's proposed changes or additions to the schedule recovery plan. The Concessionaire shall respond to the Department's schedule review comments, following the process outlined in Section 7.06(e), until the Department has approved the revised applicable Baseline Schedule. The Concessionaire shall continue to monitor progress of the work on a monthly basis, and shall repeat the process described in this paragraph above, whenever actual progress lags the then-approved schedule by more than eight (8) months.

(d) The Concessionaire will achieve NEXT Final Completion by the NEXT Long Stop Date. If at any time the Concessionaire determines that it is unlikely to achieve NEXT Final Completion by the NEXT Long Stop Date, the Concessionaire shall provide prompt written notice to the Department. The NEXT Long Stop Date will be extended one time if (i) the Concessionaire submits to the Department for the Department's review and approval a written recovery plan (the "NEXT Final Completion Recovery Plan") not later than 90 Days prior to the NEXT Long Stop Date; (ii) the NEXT Final Completion Recovery Plan outlines the actions the Concessionaire proposes to take in order to cause NEXT Final Completion to occur as promptly as reasonably possible, which NEXT Final Completion Recovery 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 NEXT Long Stop Date; (iii) such NEXT Final Completion Recovery Plan and new NEXT Long Stop Date is approved by the Department within 30 Days in its reasonable discretion, and (iv) the Concessionaire diligently implements the NEXT Final Completion Recovery Plan. In addition, the Department may, in its sole discretion, consent to a second NEXT Final Completion Recovery Plan upon such terms and conditions as it may establish in its sole discretion. The approval by the Department of a NEXT Final Completion Recovery Plan or any other actions by the Department pursuant to this Section 7.16, shall not affect or reduce the Concessionaire's obligation to pay delay liquidated damages in accordance with Section 7.01(f) for the period after the NEXT Guaranteed Final Completion Date.

Section 7.17 Quality Management.

(a) The Concessionaire shall provide oversight and management of the Project to control the scope, quality, cost, and on-time delivery of the Work. If the Work does not satisfy the applicable performance or quality standards, the Concessionaire shall increase and improve its management and oversight efforts such that repair or replacement of non-conforming items does not require any increase in the Department's limited oversight of the Project.

(b) In accordance with this Agreement and the Technical Requirements, the Concessionaire shall be responsible for all quality assurance and quality control activities necessary to manage the development, design, construction, operation and maintenance of the Project and any Concessionaire Project Enhancement or any Department Project Enhancement undertaken by the Concessionaire pursuant to Section 9.02, and will develop and provide to the Department its Quality Management Plans, manuals, and procedures. The Quality Management Plans, manuals and procedures for design and construction shall be consistent with the Department's quality assurance and quality control requirements, as well as the procedures and processes set forth in the Technical Requirements, as amended from time to time. Changes to the Technical Requirements during the Work Period shall be handled in accordance with Section 7.12(d).

(c) The Concessionaire will require each of its contractors, subcontractors and suppliers at every level to comply with the requirements of the Quality Management Plans.

(d) The Department has the right to review the Concessionaire's quality management system, including the right to inspect work and/or activities and to verify the accuracy and adequacy of quality management documentation. The Concessionaire will require its contractors and subcontractors to provide such access and assistance as the Department reasonably requires in conducting such reviews.

Section 7.18 NEPA Compliance.

(a) The parties acknowledge that (i) the EIS has been obtained, that a Record of Decision was issued for the Original Project, and that the re-evaluation of the Capital Beltway study was accepted by the Federal Highway Administration on May 9, 2007, and (ii) a Finding of No Significant Impact was approved for the Springfield Interchange Phase VIII on September 24, 1994 (the EIS, the Record of Decision and the Finding of No Significant Impact, together with all subsequent amendments, modifications and re-evaluations, being referred to as the "Original NEPA Documents").

(b) The parties acknowledge that the NEXT NEPA Documents have been obtained for the NEXT Project.

(c) The Concessionaire shall be responsible for compliance with the terms and conditions of the NEPA Documents, at the Concessionaire's sole cost and expense (but without limiting the Concessionaire's rights in the event of the occurrence of a Delay Event or Compensation Event).

Section 7.19 Construction Warranties.

(a) If and to the extent that the Concessionaire obtains general or limited warranties from any contractor in favor of the Concessionaire with respect to the design, materials, workmanship, equipment, tools, supplies, software or services, the Concessionaire also shall cause such warranties to be expressly extended to the Department.

(b) The Concessionaire shall obtain, and grant to and for the benefit of and expressly extended to the Department, construction warranty coverage; (i) with respect to the entire Original Project, excluding the HOT Lanes Project and the Springfield Interchange Phase VIII, for a term extending five years after issuance of a Substantial Completion Certificate therefor or for the applicable segment thereof, as applicable; (ii) with respect to the Springfield Interchange Phase VIII, for a term extending five years after the Initial Service Commencement Date and (iii) with respect to the NEXT Project, for a term extending five years after issuance of the NEXT Final Completion Certificate. Such warranty shall be supported by the following (which, together with the warranty itself, shall be in form and substance acceptable to the Department): for the Original Project, (1) commencing upon the first of the applicable

warranty commencement dates and continuing until at least the expiration of two years after the commencement of the last of the warranty commencement dates, an irrevocable letter of credit in favor of the Department, in an initial amount of \$10,000,000, which shall be replaced with another letter of credit in the amount of \$30,000,000 upon Substantial Completion of the entire Original Project; and (2) an unconditional guaranty from Fluor Corporation, in accordance with Section 3.02(c). The warranties shall include the following: (A) the design of each of the Original Project and the NEXT Project will satisfy the requirements of this Agreement and the Technical Requirements, and the applicable Design-Build Contract; (B) all Work (except for Work described in (A) above), including all materials and equipment furnished as part of the construction, is new unless otherwise specified in the applicable Design-Build Contract, of good quality, in conformance with this Agreement and the Technical Requirements and the applicable Design-Build Contract, free of defects in materials and workmanship and will be fit for its intended purpose; and (C) the completed Work will be free of defects and deficiencies in design, materials and workmanship. The warranty period shall be extended for an additional 12 months from the date of repair or replacement with respect to any portion of the Work that is repaired or replaced during the final year of the initial warranty period. Longer duration warranties from third party suppliers, if any, will be passed through to the Department. However, following the expiration of the first two years of the applicable warranty period, the warranty shall extend only to repairs which exceed \$15,000 per occurrence (but such threshold shall not apply if the same type of defect causes the same type of repair more than twice), subject to a per annum aggregate exclusion of \$60,000.

(c) In the event of the occurrence of a defect or deficiency in the Work encompassed by the warranty, the Department shall be entitled:

(i) to demand that either the Concessionaire or the Design-Build Contractor rectify such defect or deficiencies in the Work occurring during the warranty period at their sole expense, and the Concessionaire shall be permitted to draw on the letter of credit provided to the Department to the extent of the cost of any work performed by Concessionaire;

(ii) to rectify the defect or deficiency itself and to obtain reimbursement of its Allocable Costs from the Concessionaire or the Design-Build Contractor or from a draw on its letter of credit; *provided*, however, that the Department agrees that it shall not seek reimbursement from the Concessionaire, unless it has requested and the Concessionaire and Design-Build Contractor have failed to promptly rectify the defect or deficiency, and the Concessionaire shall be permitted to draw on the letter of credit provided to the Department to the extent of any amounts reimbursed by the Concessionaire; or

(iii) to seek performance or reimbursement from the Parent Guarantor, if applicable.

(d) Upon Substantial Completion of any segment of the Original Project, excluding the HOT Lanes, the Concessionaire shall assign in favor of the Department the Concessionaire's rights under the Design-Build Contract with respect to the construction warranty coverage for that segment under terms that provide for the warranties to run for the benefit of and expressly extend to the Department. Upon NEXT Final Completion, the Concessionaire shall assign in favor of the Department the Concessionaire's rights under the NEXT Design-Build Contract with respect to the construction warranty coverage for the NEXT Department Assets under terms that provide for the warranties to run for the benefit of and expressly extend to the Department.

(e) This Section 7.19, Section 8.07, Section 14.01, Section 14.04 and Articles 16 and 17 of this Agreement and the applicable provisions of the applicable Design-Build Contract set forth the

Department's exclusive remedies against the Concessionaire and the applicable Design-Build Contractor, and the Department hereby waives all other remedies, regarding defects or deficiencies in the Work, whether patent or latent in arising in contract, tort (including negligence) or pursuant to other legal theory, except for defects and deficiencies in the Work resulting from the fraud or deceit of any Concessionaire Party. The Concessionaire and the Concessionaire Party make no other warranties, express or implied, relating to the quality of the Work; *provided*, however, that Concessionaire shall continue to be responsible for all of its other obligations under this Agreement, including the design and construction of the Project pursuant to Section 3.01(c), notwithstanding the parties agreement to exclusive remedies for breach of warranty under this clause.

Section 7.20 Provisions Specific to the NEXT Project.

(a) Changes to the NEXT Design-Build Scope.

(i) The parties understand that the procedures of this Section 7.20(a) have been set out to allow the parties to agree on a final scope related to the George Washington Memorial Parkway Interface and facilitate the design and construction of the NEXT Project, and it is not the intention of the parties to change any other component of the NEXT Design-Build Work other than as may be necessary to incorporate the final scope for the George Washington Memorial Parkway Interface.

(ii) The Concessionaire will commence the NEXT Design-Build Work for the NEXT Project based on the NEXT Base Design-Build Scope in accordance with Section 7.03(c), any Work Commencement Approval or Construction Segment Approval issued or approved under, and otherwise in accordance with, this Agreement; notwithstanding the foregoing, the parties will use commercially reasonable efforts to undertake the NEXT Modified Base Configuration, as represented as of the Second Amended and Restated Agreement Date in the drawing attached hereto as Exhibit F-1 and Exhibit F-2, in accordance with this Section 7.20. The Department may, at its option, at any time direct the Concessionaire to commence the NEXT Modified Base Configuration as represented in Exhibit F-1, subject to the hold-point area demarcated on Exhibit F-3 that requires GWMP Work Approvals, each exhibit as attached hereto, by delivery of a written directive to the Concessionaire (the "Modified Base Work Directive").

(iii) No adjustment to the NEXT Design-Build Cost as of the Second Amended and Restated Agreement Date will be permitted as a result of the Department's direction to commence the NEXT Modified Base Configuration by delivery of the Modified Base Work Directive; *provided* that, if the Department delivers the Modified Base Work Directive at any time after October 1, 2021, such event, and the resulting delay to the Work in accordance with the NEXT Modified Base Configuration, shall be treated as a Department Change pursuant to Section 7.12 and handled pursuant to the Change Order procedures for a Department Change.

(iv) If the GWMP Work Approvals are not received by the Department by April 1, 2022, such event, and the resulting delay to the release of the hold-point area demarcated on Exhibit F-3, shall be treated as a Department Change pursuant to Section 7.12 and handled pursuant to the Change Order procedures for a Department Change.

(v) As the Concessionaire and the NEXT Design-Build Contractor develop the revised all-in cost to the NEXT Design-Build Contractor to design and construct the NEXT Project based on the NEXT Modified Base Configuration, which, in all cases, shall

assume that the Department has delivered the Modified Base Work Directive by no later than October 1, 2021 and has received the GWMP Work Approvals by no later than April 1, 2022 (the “NEXT Modified Base Configuration Cost”), the Concessionaire will share information with the Department regarding such cost as such information is reasonably available and at the reasonable request of the Department. As soon as reasonably practicable after execution by the Concessionaire and the NEXT Design-Build Contractor of a change order under the NEXT Design-Build Contract binding the NEXT Design-Build Contractor to deliver the NEXT Project for the NEXT Modified Base Configuration Cost, the Concessionaire will deliver to the Department a written notice of such NEXT Modified Base Configuration Cost (the date of such notice, the “NEXT Modified Base Configuration Cost Date”).

(vi) From the Second Amended and Restated Agreement Date, subject to any express provisions to the contrary, the Concessionaire will be responsible for all costs and expenses of the NEXT Project based on the NEXT Design-Build Scope in accordance with, and without limiting or impairing any provision of, this Agreement (including the Concessionaire’s rights in the event of the occurrence of a Delay Event or Compensation Event and the Concessionaire’s rights with respect to a Department Change pursuant to Section 7.20(a)(iii) and (a)(iv)); *provided*, that, if the NEXT Modified Base Configuration Cost as of the NEXT Modified Base Configuration Cost Date is less than the NEXT Design-Build Bid Price, then any such cost decrease shall initially reduce the Department’s contribution to pay NEXT SPV Contingency Costs pursuant to the NEXT SPV Contingency Risk Sharing Mechanism dollar-for-dollar (without duplication of any reduction under Section 7.20(c)(iv)) and thereafter, any remainder shall increase the NEXT Department Development Recoupment Amount dollar-for-dollar.

(vii) For the avoidance of doubt, any further enhancements, additions or other changes initiated, directed or requested by the Department for its benefit or for the benefit of third parties to the NEXT Modified Base Configuration on and after the earlier of (A) October 1, 2021 and (B) the date on which the Department delivers the Modified Base Work Directive shall be treated as a Department Change pursuant to Section 7.12 and handled pursuant to the Change Order procedures for a Department Change.

(viii) Without limiting the Department Change provisions of this Agreement, any enhancements, additions and other changes to the NEXT Design-Build Scope set forth in subsections (A), (B) and (C) below that are initiated, directed or requested by the Department for its benefit or for the benefit of third parties will be at the Department’s sole cost and expense and each shall be treated as a Department Change pursuant to Section 7.12 and handled pursuant to the Change Order procedures for a Department Change; *provided* that (1) if any of the following enhancements, additions or changes from the NEXT Design-Build Scope result in cost savings or otherwise have a neutral or positive impact on revenues, such enhancement, addition or change will not be treated as a Department Change and (2) if any of the following enhancements, additions or changes from the NEXT Design-Build Scope result in cost savings or otherwise have a positive impact on revenues, then the Department will receive the benefit of such cost savings or positive impact on revenues:

(A) subject to clauses (i)-(vii) of this Section 7.20(a), changes to the scope, obligations or schedule of the NEXT Design-Build Scope arising from additions or other changes to the George Washington Memorial Parkway Interface,

including, without limitation, as a result of any Regulatory Approvals related to the George Washington Memorial Parkway Interface;

(B) changes to the scope or schedule of the NEXT Project that are not at the request of the Concessionaire; and

(C) changes to the Fairfax County-related work and other community enhancement requests or mitigation measures in addition to those required by NEPA, Section 4(f) of the U.S. Department of Transportation Act of 1966 (now codified in 49 U.S.C. §303 and 23 U.S.C. §138), or Section 6(f) of the Land and Water Conservation Act (54 U.S.C. §200305).

(b) NEXT Risk Pool.

(i) The “NEXT Risk Pool” shall consist of (A) a contribution by the Concessionaire of a total amount of \$53,000,000 for the NEXT Project and (B) a commitment by the Department of up to \$53,000,000, which amount shall be determined in accordance with the NEXT Design-Build Risk Sharing Mechanism and the NEXT SPV Contingency Risk Sharing Mechanism. The purpose of the NEXT Risk Pool is to mitigate risks related to: (i) the NEXT Design-Build Bid Price and (ii) design and construction of the NEXT Project. The allocation of risks shall not restrict the use of the NEXT Risk Pool funds, which shall be available for the NEXT SPV Contingency Costs in all cases.

(ii) The Concessionaire shall submit requisitions monthly to the Department for payments of the Department’s contribution from the NEXT Risk Pool in a form similar to requisitions of other sources of funds for construction as required under the NEXT Project Financing Agreements after the Concessionaire has fully expended its portion of the NEXT Risk Pool. Such requisitions will include certifications by the Concessionaire that (A) the Concessionaire has fully expended its portion of the NEXT Risk Pool, (B) the amount being requisitioned is for items that have not been paid for or reimbursed by any previous disbursement by the Department, (C) the amount being requisitioned, together with all prior requisitions, does not exceed the Department’s maximum contribution from the NEXT Risk Pool in accordance with the NEXT Design-Build Risk Sharing Mechanism and the NEXT SPV Contingency Risk Sharing Mechanism, (D) the amount being requisitioned, together with all prior requisitions, is for costs necessary to design, construct, and implement the NEXT Project and payable in order to achieve NEXT Final Completion and Service Commencement on the NEXT Project, including amounts under the NEXT Design-Build Contract, (E) the amount being requisitioned is for payment of the Department’s share under the NEXT Design-Build Risk Sharing Mechanism or for payment of NEXT SPV Contingency Costs, as applicable, and (F) no NEXT Concessionaire Breach has occurred and is continuing. Such requisition shall also identify (1) the aggregate amount of costs that have been classified as NEXT SPV Contingency Costs and incurred during the month covered by the requisition and (2) the aggregate remaining amount of the Department’s contribution to the payment of NEXT SPV Contingency Costs pursuant to the NEXT SPV Contingency Risk Sharing Mechanism.

(iii) Absent manifest error, within 30 days of receipt of a requisition, the Department will disburse the requisitioned amount to the appropriate collateral account of the Concessionaire as required by the NEXT Project Financing Agreements.

(c) NEXT Design-Build Risk Sharing Mechanism. Since the NEXT Design-Build Bid Price is more than the NEXT Design-Build Bid Price Estimate as of the Second Amended and Restated Agreement Date:

(i) (A) The Concessionaire shall be responsible for the first \$10,000,000 of the overage; (B) the Department and the Concessionaire shall each be responsible for 50% of the next \$20,000,000 of the overage; (C) the Department shall be responsible for the next \$10,000,000 of the overage and (D) the Department and the Concessionaire shall each be responsible for 50% of the next \$13,000,000 of the overage (collectively, the “NEXT Design-Build Risk Sharing Mechanism”).

(ii) If the NEXT Design-Build Bid Price is more than \$53,000,000 above the NEXT Design-Build Bid Price Estimate, (A) each party has the right to cure such overage or agree to rescope the NEXT Project or (B) the parties can terminate the NEXT Project by mutual agreement.

(iii) For the purposes of the NEXT Design-Build Risk Sharing Mechanism, the Concessionaire shall be responsible for any increase to the NEXT Design-Build Bid Price arising from the scope validation process under the NEXT Design-Build Contract (such increased price, the “NEXT Increased Design-Build Price”) because any NEXT Increased Design-Build Price will not trigger a recalculation of the NEXT Design-Build Risk Sharing Mechanism and the Department’s contribution pursuant to the NEXT Design-Build Risk Sharing Mechanism shall not increase as a result of any NEXT Increased Design-Build Price.

(iv) For the purposes of the NEXT Design-Build Risk Sharing Mechanism, any decrease to the NEXT Design-Build Bid Price arising from the scope validation process under the NEXT Design-Build Contract (such decreased price, the “NEXT Decreased Design-Build Price”) will trigger a recalculation of the NEXT Design-Build Risk Sharing Mechanism and recalculate each party’s contribution to the NEXT Design-Build Risk Sharing Mechanism.

(d) NEXT SPV Contingency Risk Sharing Mechanism. The Concessionaire shall supply the Concessionaire-Supplied SPV Contingency Amount and the Department shall contribute to the payment of NEXT SPV Contingency Costs, as follows (the “NEXT SPV Contingency Risk Sharing Mechanism”):

(i) as of any date of determination, the “Concessionaire-Supplied SPV Contingency Amount” will be equal to: (A) \$53,000,000 plus (B) the Nutrient Credit Savings Amount (if any) plus (C) the NEXT ROW Cost Savings Amount (if any and if unknown at such date, shall be deemed to be zero), minus (D) the amount that the Concessionaire contributed through the NEXT Design-Build Risk Sharing Mechanism;

(ii) any eligible NEXT SPV Contingency Costs that are incurred by the Concessionaire will be accounted to the Concessionaire-Supplied SPV Contingency Amount until the Concessionaire-Supplied SPV Contingency Amount is fully consumed;

(iii) if the Concessionaire-Supplied SPV Contingency Amount is fully consumed following clauses (i) and (ii) above, any additional NEXT SPV Contingency Costs will be paid by the Department up to the amount that the Concessionaire contributed through the NEXT Design-Build Risk Sharing Mechanism, *provided* that in no instance

shall the Department's contribution to fund NEXT SPV Contingency Costs be greater than \$26,500,000;

(iv) if any unused Concessionaire-Supplied SPV Contingency Amount (other than any portion attributable to the Nutrient Credit Savings Amount (if any)) remains following Service Commencement on the NEXT Project, such residual amount will be shared equally by the parties and any payment due to the Department shall be payable to the Department no later than 30 days after the final payment to the NEXT Design-Build Contractor in accordance with the terms of the NEXT Design-Build Contract; and

(v) to the extent that at the end of the Right of Way acquisition process for the NEXT Project, there is a NEXT ROW Cost Savings Amount, the Concessionaire-Supplied SPV Contingency Amount shall be recalculated by adding the NEXT ROW Cost Savings Amount to the Concessionaire-Supplied SPV Contingency Amount, and if the Department had previously contributed funds for NEXT SPV Contingency Costs, reconciling the Department's contributions to fund the NEXT SPV Contingency Costs accordingly.

(e) Reporting and Audit of NEXT SPV Contingency Costs.

(i) Once the Concessionaire has expended all but \$5,000,000 of the Concessionaire-Supplied SPV Contingency Amount, the Concessionaire shall submit to the Department a certificate on a monthly basis thereafter until the Concessionaire submits its first requisition to the Department for payments under the NEXT Risk Pool, which certificate shall identify (a) the aggregate amount of costs that have been classified as NEXT SPV Contingency Costs and incurred during the month covered by the certificate and (b) the aggregate remaining amount of the Concessionaire-Supplied SPV Contingency Amount.

(ii) No less than 30 days before the Concessionaire anticipates that it will exhaust the entire Concessionaire-Supplied SPV Contingency Amount, the Concessionaire shall deliver to the Department written notice (the "Contingency Notice") establishing the date the Concessionaire expects to begin incurring NEXT SPV Contingency Costs to be funded by the Department under the NEXT SPV Contingency Risk Sharing Mechanism.

(iii) Upon receipt of the Contingency Notice, the Department shall have the right but not the duty to audit (no more frequently than once in each six month period) the NEXT SPV Contingency Costs for which the Concessionaire has sought reimbursement from the Department under the NEXT SPV Contingency Risk Sharing Mechanism. The purpose of any such audits will be to determine whether the costs for which the Concessionaire has sought reimbursement from the Department under the NEXT SPV Contingency Risk Sharing Mechanism meet the definition of NEXT SPV Contingency Costs. To the extent an audit discovers any costs funded by the Department that do not meet the definition of NEXT SPV Contingency Costs, the Department may offset such amounts from future contributions under the NEXT SPV Contingency Risk Sharing Mechanism.

(iv) The Department shall have the right but not the duty to conduct a final audit (the "Final Audit") within two years after Service Commencement on the NEXT Project. The purpose of the Final Audit will be to determine whether the costs for which the Concessionaire has sought reimbursement from the Department under the NEXT SPV Contingency Risk Sharing Mechanism meet the definition of NEXT SPV Contingency

Costs. To the extent the Final Audit discovers any costs funded by the Department that do not meet the definition of NEXT SPV Contingency Costs, the Concessionaire shall reimburse the Department for such costs.

(f) Scott's Run Contribution. The Concessionaire shall deposit with the Department on the NEXT Financial Close Date as set forth in Section 6.08(c), a one-time payment in an amount equal to \$1,387,000 to satisfy Fairfax County's request for funding to pay for restoration costs of Scott's Run adjacent to the Capital Beltway within the Project Right of Way for the NEXT Project (the "Scott's Run Contribution"), which amount shall be separate and apart from the NEXT Department Development Recoupment Amount. The Concessionaire shall not be responsible or have any liability to the Department, Fairfax County or any other person for the stream restoration of Scott's Run whatsoever beyond the payment of the Scott's Run Contribution and those limited elements previously agreed with the Department and incorporated into the NEXT Base Design-Build Scope.

(g) Soundwalls. The Concessionaire, at its sole cost and expense, will be responsible for the completion of the required public approvals for all soundwalls and noise barriers identified for the NEXT Project and the design and construction of all soundwalls and noise barriers at those locations required by Department policy (based on the final noise analyses completed by the NEXT Design-Build Contractor) and any other locations included in the NEXT Base Design-Build Scope. The Concessionaire, at its sole cost and expense, will also be responsible for any additional height to soundwalls shown in the final noise analyses completed by the NEXT Design-Build Contractor due to the Bi-State Project. Other than the foregoing, any additional soundwall or noise barrier locations initiated, directed or requested by the Department either for itself or on behalf of a third party shall be treated as a Department Change pursuant to Section 7.12 and handled pursuant to the Change Order procedures for a Department Change.

ARTICLE 8

PROJECT MANAGEMENT; OPERATIONS AND MAINTENANCE

Section 8.01 Conditions Precedent to Service Commencement of the HOT Lanes.

(a) The Concessionaire shall not initiate Service Commencement of the HOT Lanes until all of the following conditions have been satisfied:

(i) The Department has issued the Substantial Completion Certificate, or it has been determined pursuant to the dispute resolution procedures set forth herein that the Department should have issued such certificate;

(ii) The Concessionaire and the Department have agreed to a Punch List;

(iii) The Concessionaire shall have received and delivered to the Department copies of all Regulatory Approvals necessary to operate the HOT Lanes Project and shall have satisfied all conditions and requirements thereof which must be satisfied before the HOT Lanes can be lawfully opened for regular public use, all such Regulatory Approvals remain in full force and effect, and there exists no uncured material violation of the terms and conditions of any such Regulatory Approval;

(iv) All insurance policies required under this Agreement have been obtained and shall be in full force and effect (with coverage as of the Service Commencement Date) and the Concessionaire has delivered to Department the originals or copies thereof certified by the Concessionaire's insurance broker to be true and correct copies of the originals;

(v) The Concessionaire shall not then be in receipt of any notice of Concessionaire Default under this Agreement except as to any such noticed default that has been cured or for which Service Commencement will effect its cure;

(vi) All Project Agreements are in full force and effect;

(vii) The Concessionaire has certified to the Department in writing that the conditions set forth in subsections (iii) through (vi) have been satisfied as of the date of such certification, and, with respect to the Original Project, the Independent Engineer has confirmed to the Department in writing that the condition set forth in subsection (iii) has been satisfied as of the date of such certification; and

(viii) Subject to the provisions of Section 8.01(b), the Department issues, or shall have been deemed to have issued, a written notice (the “Service Commencement Notice”), evidencing its concurrence with the Concessionaire that the foregoing conditions of this Section 8.01 have been satisfied.

(b) If the Department has determined that all of the conditions to Service Commencement set forth in the preceding Section 8.01(a) have not been satisfied, it shall notify the Concessionaire in writing setting forth, as applicable, why the conditions to Service Commencement have not been satisfied. If the Concessionaire and the Department, despite good faith efforts, cannot reach agreement as to such matters, such dispute shall be resolved in accordance with the dispute resolution procedures set forth in Section 17.06. In the event that the Department has not notified the Concessionaire of a determination that all such conditions have not been satisfied or has delayed the issuance of the Service Commencement Notice by more than 21 days beyond the date on which certificates from the Concessionaire and the Independent Engineer (for the Original Project only) were received by the Department pursuant to Section 8.01(a), the Concessionaire shall give notice of such delay to the Department, and if the Department has not either notified the Concessionaire of such non-satisfaction or issued the Service Commencement Notice within 15 days after such Concessionaire notice, if the delay is not a result of a Concessionaire Party action or inaction, then such Service Commencement Notice shall be deemed to have been issued upon expiration of such 15 day period, but shall not be deemed a waiver of the other conditions set forth in Section 8.01(a) (i) through (vi).

(c) All the conditions precedent set forth in Section 8.01(a) above are for the sole benefit of the Department. The Department may waive any condition precedent; *provided*, that no person or entity shall be entitled to assume that the Department will waive or refuse to waive any condition precedent in the absence of strict compliance therewith. Unless the Department waives a condition precedent which requires action by the Concessionaire to be satisfied, the Concessionaire shall remain bound to use diligent efforts to satisfy the condition precedent. The Department’s issuance of the Service Commencement Notice shall not constitute a waiver by the Department of any then-existing Concessionaire Default.

Section 8.02 Conditions Precedent to Service Commencement of the NEXT HOT Lanes.

(a) The Concessionaire shall not initiate Service Commencement of the NEXT HOT Lanes until all of the following conditions have been satisfied:

(i) the Concessionaire has paid to the Department the full NEXT Department Development Recoupment Amount;

(ii) the Concessionaire determines that the NEXT Design-Build Work, including construction on the NEXT HOT Lanes has been completed by the NEXT Design-Build Contractor under and in accordance with the terms of the NEXT Design-Build Contract and this Agreement and the Concessionaire has otherwise completed the Work in accordance with this Agreement, including the Technical Requirements, and with the Construction Documentation, such that the Project Assets are in a physical condition that they can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit;

(iii) the Department has approved the Operations and Maintenance Plan, all other Project Documents and all other Project Development Plans required by the Technical Requirements to be submitted on or before the Service Commencement Date for the NEXT HOT Lanes;

(iv) the Concessionaire shall have received and delivered to the Department copies of all Regulatory Approvals necessary to operate the NEXT HOT Lanes and shall have satisfied all conditions and requirements thereof which must be satisfied before the NEXT HOT Lanes can be lawfully opened for regular public use, all such Regulatory Approvals remain in full force and effect, and there exists no uncured material violation of the terms and conditions of any such Regulatory Approval;

(v) all insurance policies required under this Agreement have been obtained and shall be in full force and effect (with coverage as of the Service Commencement Date) and the Concessionaire has delivered to Department the originals or copies thereof certified by the Concessionaire's insurance broker to be true and correct copies of the originals;

(vi) the Concessionaire shall not then be in receipt of any notice of Concessionaire Default or NEXT Concessionaire Breach under this Agreement except as to any such noticed default that has been cured or for which Service Commencement will effect its cure;

(vii) all Project Agreements applicable to Project NEXT are in full force and effect;

(viii) the Concessionaire has certified to the Department in writing that the conditions set forth in subsections (ii), (iv), (v) and (vi) have been satisfied as of the date of such certification; and

(ix) subject to the provisions of Section 8.02(b), the Department issues, or shall have been deemed to have issued, a written notice (the "NEXT Service Commencement Notice"), evidencing its concurrence with the Concessionaire that the foregoing conditions of this Section 8.02 have been satisfied.

(b) If the Department has determined that all of the conditions to Service Commencement set forth in the preceding Section 8.02(a) have not been satisfied, it shall notify the Concessionaire in writing setting forth, as applicable, why the conditions to Service Commencement have not been satisfied. If the Concessionaire and the Department, despite good faith efforts, cannot reach agreement as to such matters, such dispute shall be resolved in accordance with the dispute resolution procedures set forth in Section 17.06. In the event that the Department has not notified the Concessionaire of a determination that all such conditions have not been satisfied or has delayed the issuance of the NEXT Service Commencement Notice by more than 21 days beyond the date on which certificates from the

Concessionaire were received by the Department pursuant to Section 8.02(a), the Concessionaire shall give notice of such delay to the Department, and if the Department has not either notified the Concessionaire of such non-satisfaction or issued the NEXT Service Commencement Notice within 15 days after such Concessionaire notice, if the delay is not a result of a Concessionaire Party action or inaction, then such NEXT Service Commencement Notice shall be deemed to have been issued upon expiration of such 15 day period, but shall not be deemed a waiver of the other conditions set forth in Section 8.02(a) (i) through (vii), including, for the avoidance of doubt, the payments required under Section 8.01(a)(i) and (ii).

(c) All the conditions precedent set forth in Section 8.02(a) above are for the sole benefit of the Department. The Department may waive any condition precedent; *provided*, that no person or entity shall be entitled to assume that the Department will waive or refuse to waive any condition precedent in the absence of strict compliance therewith. Unless the Department waives a condition precedent which requires action by the Concessionaire to be satisfied, the Concessionaire shall remain bound to use diligent efforts to satisfy the condition precedent. The Department's issuance of the Service Commencement Notice shall not constitute a waiver by the Department of any then-existing Concessionaire Default or NEXT Concessionaire Breach.

Section 8.03 Concessionaire Obligation to Manage and Operate.

(a) The Concessionaire shall, from and after the first to occur of the applicable Service Commencement Date and the Final Acceptance Date or the NEXT Final Completion Date, as applicable, through the expiration or earlier termination of the Term, cause the HOT Lanes to be managed, maintained and operated in accordance with all applicable Law, all Regulatory Approvals, and the terms, conditions and standards set forth in this Agreement, including the operations and maintenance requirements set forth in the Technical Requirements, attached as Exhibit N-3. For the avoidance of doubt, the obligations of the Concessionaire under this Section 8.03 or with respect to Major Maintenance shall not include any obligation to maintain, repair or renew the Springfield Interchange Phase VIII or the NEXT Department Assets, which shall be the responsibility of the Department or, to the extent provided in the Design-Build Contract, the Design-Build Contractor. Without limiting the foregoing, the Concessionaire agrees to be responsible for the following, at its sole cost and expense:

(i) the management and control of traffic on the HOT Lanes, including but not limited to, incident response services and temporary partial or full closures of the HOT Lanes;

(ii) the maintenance and repair of the HOT Lanes Project and all systems and components thereof, including the ETTM System, which the Concessionaire may upgrade, modify, change and replace, as applicable, in accordance with this Agreement and the operations and maintenance requirements set forth in Exhibit N-3;

(iii) the operation of the HOT Lanes Project, the ETTM Facilities and the ETTM System and otherwise carrying out the collection and enforcement of tolls and other incidental charges respecting the HOT Lanes;

(iv) the maintenance, compliance with and renewal of Regulatory Approvals necessary and incidental to the foregoing activities;

(v) traffic management, and maintenance and repair responsibilities under Section 8.03(a) above in accordance with Exhibit N-3; and

(vi) carrying out activities in accordance with a TMP to be developed by the Concessionaire in coordination with the Department in accordance with Section 12.02(a).

(b) Drainage.

(i) The Department shall be responsible for the maintenance of drainage and stormwater management features located outside of the Project Right of Way for the NEXT Project. The Concessionaire shall make annual payments to the Department to cover the Department's costs related to such maintenance responsibilities equal to \$70,000 annually (escalated annually at CPI). Such annual payments may be added as part of other annual payments already made by the Concessionaire to the Department under this Agreement.

(ii) The Concessionaire, at its cost, will be responsible for the maintenance of drainage and stormwater management features with respect to any assets that are within the HOT Lanes Right of Way.

(c) Soundwalls. The Department will be responsible for maintenance of all soundwalls and noise barriers adjacent to the GP Lanes. The Concessionaire will be responsible for maintenance of all soundwalls and noise barriers on any HOT Lanes.

Section 8.04 Operations, Maintenance and Tolling; O&M Contractor.

(a) The operation and maintenance of the HOT Lanes Project shall, at all times from the Service Commencement Date and continuing during the Term, be under the direction of the Concessionaire, who may subcontract with the O&M Contractor or another active operator with the expertise, qualifications, experience, competence, skills and know-how to perform the operations and maintenance obligations of the Concessionaire in accordance with this Agreement (an "O&M Contractor"). For the avoidance of doubt, the O&M Contractor shall be the primary Person performing the management functions of the Concessionaire, all operations, tolling and maintenance functions with respect to the HOT Lanes, and, if a different Person, the primary contractor or subcontractor for the ETTM System, and any other contractor or subcontractor, shall not be the O&M Contractor, and this Section 8.04 shall not be applicable to such other contractors or subcontractors. Notwithstanding its use of an O&M Contractor, the Concessionaire remains ultimately responsible for the operation and maintenance of the HOT Lanes Project during the Term in accordance with this Agreement. The O&M Contractor shall at all times be subject to the direction and control of the Concessionaire, and any delegation to an O&M Contractor does not relieve the Concessionaire of any obligations, duties or liability hereunder. The Concessionaire shall immediately notify the Department upon the termination or resignation of an O&M Contractor. Any agreement between the Concessionaire and any O&M Contractor shall by its terms terminate without penalty at the election of the Department upon five days' notice to such O&M Contractor upon the termination of this Agreement. The O&M Contractor shall have no interest in or rights under this Agreement or the HOT Lanes Project.

(b) The Concessionaire shall not engage or appoint an O&M Contractor, unless the Department has approved such O&M Contractor (based upon a determination in accordance with the criteria set forth below). The Department will not withhold or delay its approval of a proposed O&M Contractor unless the Department reasonably determines that the engagement of such proposed O&M Contractor is prohibited by applicable Law or such proposed O&M Contractor is not capable of performing the obligations of the Concessionaire in accordance with this Agreement. The Department's determination may be based upon, or take into account, one or more of the following factors:

(i) the proposed O&M Contractor's financial strength, individually and, where appropriate, on a consolidated basis with its Affiliates;

(ii) the proposed O&M Contractor's experience in operating and maintaining comparable toll roads and highways;

(iii) the background, reputation and integrity of the proposed O&M Contractor and its Affiliates, including their respective officers, directors and employees, and the quality of any such Person's past or present performance on other comparable projects;

(iv) whether the proposed O&M Contractor or any of its Affiliates, including their respective officers, directors and employees, have been debarred or prohibited from participating in state or federally-funded projects, or indicted, convicted, pled guilty or nolo contendere to a violation of Law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows a similar lack of moral or ethical integrity; and

(v) the material terms of the proposed engagement of the O&M Contractor that could potentially impact the ability of the Concessionaire to comply with the terms of this Agreement and the other Project Agreements.

(c) The Department may also condition its approval of a proposed replacement O&M Contractor on that O&M Contractor's fulfillment of any additional reasonable conditions that the Department may choose to impose upon it.

(d) The Department hereby approves the initial O&M Contractor in accordance with the Operations and Support Services Agreement.

(e) The parties agree that there will be no access fee, costs, or any other initial fee or cost under the Operations and Support Services Agreement in connection with the NEXT Project.

Section 8.05 Annual Budget.

For each fiscal year and partial fiscal year from and after the Initial Service Commencement Date, the Concessionaire shall file with the Department an Annual Budget for the Project for such full or partial fiscal year at least 60 days prior to the start of such fiscal year or partial fiscal year. Each such Annual Budget shall be in a form reasonably acceptable to the Department and show in reasonable detail for such full or partial fiscal year:

- (a) all projected Revenues,
- (b) projected traffic;
- (c) projected Operating Costs,
- (d) projected debt service, and contributions to individual reserves,
- (e) projected Total Return on Investment,
- (f) projected Permit Fee payable to the Department under Article 5,
- (g) projected costs of Major Maintenance pursuant to the approved Life Cycle Maintenance Plan;
- (h) projected Major Maintenance Reserve Fund deposits and withdrawals;

- (i) projected Distributions, and
- (j) other related items for such period on an annual basis and such other information as the Department may reasonably require.

Section 8.06 Procedures Relating to Major Maintenance Work. The Concessionaire shall, at its sole cost and expense, perform all Major Maintenance with respect to the HOT Lanes, the ETTM Facilities and the ETTM System on the HOT Lanes Project in accordance with Life Cycle Maintenance Plans approved by the Department. All design and construction Work during the Operating Period must comply with the applicable Technical Requirements.

(a) Not later than 18 months prior to each projected Service Commencement Date, the Department and the Concessionaire shall agree upon baseline asset condition reports by the Department that evaluate (i) with respect to the Original HOT Lanes, the four inner lanes of the Capital Beltway and maintenance/repair requirements during the period preceding the Service Commencement Date, to be done at or about the time the New Lanes are opened, (ii) with respect to the NEXT HOT Lanes, the NEXT HOT Lanes and NEXT Access Ramps and (iii) the HOT Lanes and all other improvements and assets of the HOT Lanes Project (the HOT Lanes and all such other improvements and assets, collectively, the “HOT Lanes Assets”) and their physical conditions as of the date of such report (in the format set forth as Exhibit P, the “Baseline Report”). Further, prior to the applicable Service Commencement Date, the Department shall elect to (A) undertake the rehabilitation of any defect or outstanding maintenance item identified in the Baseline Report, at its sole cost, or (B) pay the Concessionaire the cost, as determined by the Department and the Concessionaire using the same methodology as employed by the Department for other State highways for similar purposes, of any such rehabilitation or maintenance not so undertaken or completed, as applicable, by the Department. The Baseline Report shall be revised to reflect completion of any such rehabilitation or maintenance. The Concessionaire shall be deemed to have accepted the HOT Lanes in their then current condition on the Service Commencement Date, except to the extent specified by delivery of written notice by the Concessionaire to the Department of any conditions that remain to be corrected pursuant to the Baseline Report.

(b) Every five years after the Initial Service Commencement Date, the Concessionaire shall conduct a reassessment of the physical condition of the HOT Lanes Assets, and prepare a comparative analysis of such conditions to the conditions as reported in the Baseline Report (or, with respect to any Project Enhancements, their condition upon completion thereof), such analysis to take into account any changes in Federal Requirements and changes to safety standards. After the Service Commencement Date for the NEXT Project, the Concessionaire shall include the NEXT HOT Lanes and the NEXT Access Ramps into such reassessment and analysis. If the condition of any HOT Lanes Asset is determined by the Concessionaire or the Department to fall below its assessment rating in the Baseline Report (or the original condition of such Project Enhancement), the Concessionaire shall, within 90 days of such assessment, develop and submit to the Department a plan to restore such HOT Lanes Asset to its baseline or original condition, as applicable, subject to ordinary wear and tear, including a budget, timeline and identification of the funding sources that will be utilized to restore such HOT Lanes Asset.

(c) No later than 90 days before the beginning of each fiscal year after the Initial Service Commencement Date, the Concessionaire shall annually prepare and provide to the Department for its review and approval a full five-year period maintenance plan on a rolling basis that describes life cycle asset maintenance for the HOT Lanes Project (the “Life Cycle Maintenance Plan”). After the Service Commencement Date for the NEXT Project, the Concessionaire shall include the NEXT HOT Lanes and the NEXT Access Ramps into the Life Cycle Maintenance Plan. The Life Cycle Maintenance Plan shall include a description of all Major Maintenance to be undertaken during such five-year period, by component, item or discrete project (each a “Task”), the estimated costs and timing relating to each Task,

and such other information as may be reasonably requested by the Department. The Concessionaire shall reasonably consider any changes or additions proposed by the Department to the proposed Life Cycle Maintenance Plan and shall modify the Life Cycle Maintenance Plan to reflect those changes and additions which are consistent with Good Industry Practice, applicable Law, Technical Requirements or Regulatory Approvals, and the Department shall deliver its approval or disapproval to the Concessionaire within 45 days after the Concessionaire has provided the assessment to the Department in accordance with the first sentence of this Section 8.06(b).

(d) In the event of any disagreement or dispute relating to a Life Cycle Maintenance Plan, the Department and the Concessionaire shall endeavor in good faith to resolve any such disagreement or dispute within 60 days after such assessment is provided to the Department. Any disagreements or disputes raised by the Department with respect to the Life Cycle Maintenance Plan must be based on whether such assessment and the underlying assumptions are reasonable, realistic and consistent with Good Industry Practice, Project experience and condition, the Technical Requirements and applicable Law. If no agreement is reached within such 60-day period as to any such matter, either party may submit the dispute to the disputes resolution procedures set forth in Section 17.06. Until resolution of any disagreement or dispute relating to a Life Cycle Maintenance Plan, the treatment of the disputed Tasks in the most recently-approved Life Cycle Maintenance Plan shall remain in effect and govern the requirements relating to such Tasks.

(e) If at any time the Concessionaire fails to complete all or any of the Tasks of the Major Maintenance within the time schedules agreed to by the Department and the Concessionaire in the relevant Life Cycle Maintenance Plan (as such schedule may be mutually extended or shortened by the Department and the Concessionaire) by more than 30 days or, if in the reasonable determination of the Department, the Concessionaire fails to perform any Task in accordance with Good Industry Practice, all applicable Law, Technical Requirements or Regulatory Approvals, the Department may, at its option, but is not obligated to, either (i) notify the Concessionaire that the Department will carry out such Task or correct such defective work using Department personnel, materials and equipment or (ii) procure the services for such Task or corrective work by one or more contractors. Upon such notice or such determination by the Department of the tentative winning contract award(s), as the case may be, the Department shall be entitled to demand that the Concessionaire pay to the Department an amount equal to the Department's good faith estimate of the Allocable Costs it will incur to complete such Task or corrective work, plus a 10% contingency, and its third-party costs incurred to procure such contract(s). The Concessionaire shall make such payment to the Department not later than 30 days after demand by the Department for such payment. If the Department's Allocable Costs to complete such Tasks and any third-party costs incurred to procure such contract(s), are greater or less than the amount the Concessionaire previously paid to the Department under this Section 8.06(e), the Concessionaire shall pay to the Department an amount equal to such excess or the Department shall reimburse the excess funds paid by the Concessionaire, as applicable. The Concessionaire or the Department shall make such payment not later than 30 days after the Department has finalized its calculation of the Allocable Costs to complete such Tasks and any third-party costs to procure such contract(s) and demand has been made for such payment.

(f) The Concessionaire may, by written notice delivered to the Department within 30 days, object to any demand by the Department in accordance with Section 8.06(e) above on the basis that the Concessionaire has completed the Task(s) specified in the Department's demand in accordance with Good Industry Practice, all applicable Law, Technical Requirements or Regulatory Approvals or that such Task(s) are not then delayed by more than 30 days, which notice will give details of the grounds for such objection. Upon the giving of any such notice, the parties will endeavor to reach agreement as to any matters referred to in the notice. If no agreement is reached as to any such matter within 30 days after the giving of such notice, either party may refer the matter to the dispute resolution procedures pursuant to Section 17.06 for determination.

Section 8.07 Springfield Interchange Phase VIII O&M Services and Major Maintenance.

(a) From and after the Initial Service Commencement Date, the Department shall be responsible, at its cost, for the management, operation (not to include ETTM or other toll collection) and maintenance of the Springfield Interchange Phase VIII. The Concessionaire may, in accordance with all Project Agreements and applicable Law, and at its cost, install, maintain and operate ETTM on the Springfield Interchange Phase VIII.

(b) Upon the Initial Service Commencement Date, the Concessionaire shall assign in favor of the Department all of the Concessionaire's rights under the Design-Build Contract relating to the Springfield Interchange Phase VIII, including warranties provided by the applicable Design-Build Contractor and any subcontractor or vendor required to provide warranties thereunder including the obligations of such Design-Build Contractor to provide all Major Maintenance for any Structural Element of the Springfield Interchange Phase VIII improvements (except for Major Maintenance that is not due to substandard design or construction but is primarily required as a result of accidents or Force Majeure Events) until 10 years after Substantial Completion. The Concessionaire shall not agree to any amendment of such warranty coverage without the prior written approval of the Department.

Section 8.08 Major Maintenance Reserve. The parties hereto acknowledge that any reserves, security and funding for Major Maintenance required by Section 8.06 shall be provided for in the Project Financing Agreements.

Section 8.09 Ethical Standards.

(a) The Concessionaire has adopted and provided copies to the Department of its written policies establishing ethical standards of conduct for all its directors, officers and supervisory or management personnel in dealing with the Department and employment relations. Such policy including any amendments or modifications shall include standards of ethical conduct concerning the following:

(i) Restrictions on gifts and contributions to, and lobbying of, the Department, the CTB and any of their respective commissioners, directors, officers and employees;

(ii) Protection of employees from unethical practices in the selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;

(iii) Protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting of illegal (including the making of a false claim), unethical or unsafe actions or failures to act by the Concessionaire or its personnel or any contractors;

(iv) Restrictions on directors, members, officers or supervisory or management personnel of the Concessionaire engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Project or employees;

(v) Restrictions on use of an office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director,

member, officer or supervisory or management person, rather than primarily for the benefit of the Concessionaire or the Project, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

(vi) Adherence to the Department's organizational conflict of interest rules and policies pertaining to the hiring of any Consultant which has assisted the Department in connection with the negotiation of this Agreement or the conduct of Oversight Services for the Project.

(b) The Concessionaire shall cause its directors, members, officers and supervisory and management personnel, and require those of its contractors, to adhere to and enforce the adopted policy on ethical standards of conduct. The Concessionaire shall establish reasonable systems and procedures to promote and monitor compliance with the policy.

Section 8.10 Police and Enforcement Services.

(a) The Department shall cause emergency services (fire and rescue) to be provided on the HOT Lanes at a level of service equivalent to that provided on comparable State Highways from time to time, which shall in any event not be less in scope, level or quality of service than that provided on the Capital Beltway as of the Closing Date.

(b) The Concessionaire will be responsible for any coordination with the Virginia State Police, including for traffic patrol and traffic law enforcement services, and the Department shall assist the Concessionaire in obtaining such services. The Concessionaire shall not engage or permit the engagement of private security services to provide traffic patrol or traffic law enforcement services on the HOT Lanes; *provided*, however, that the foregoing does not preclude the Concessionaire from engaging private security firms or employing other appropriate security devices, vehicle occupancy detection equipment or other automated technology to protect, collect and enforce the payment of Toll Revenues or to identify toll violators, subject to compliance with Law, nor does it limit the Concessionaire's right to enforce any private rights and civil remedies available to it respecting toll violations.

(c) If requested by the Concessionaire, the Department shall assist the Concessionaire in obtaining from the Virginia State Police enhanced levels of police services for the control of traffic for construction or maintenance activities or as otherwise as needed (and in each case, at the Concessionaire's sole cost and expense) or the Concessionaire may obtain such services from local government law enforcement agencies at its cost and expense, subject to compliance with all applicable Law.

(d) The Department shall not have any responsibility or liability to the Concessionaire resulting from or otherwise relating to the failure of the Virginia State Police or any other public agencies to provide policing services contemplated by this Section 8.10 or any of the acts or omissions of the Virginia State Police or such agencies with respect to such services.

Section 8.11 Hazardous Substances Management.

(a) Not later than 150 days prior to the projected Initial Service Commencement Date, the Concessionaire shall prepare and submit to the Department for its approval, not to be unreasonably withheld or delayed, a Hazardous Substances management plan describing a cost-effective approach to Hazardous Substances management in connection with the operations, maintenance and management of the HOT Lanes Project, and any construction activity relating to Concessionaire Project Enhancements during the Operating Period. Such management plans shall comply with applicable Law, Regulatory

Approvals, Technical Requirements, and any multi-agency agreements the Department may have related to hazardous material incident response, each as in effect from time to time.

(b) The Concessionaire shall review the Hazardous Substances management plans annually with the Department and make changes, subject to the Department's prior approval, not to be unreasonably withheld or delayed, as necessary to respond to changes in Law, Regulatory Approvals, industry practices and standards, and circumstances affecting the Project, as the case may be. The Hazardous Substances management plans shall address contamination encountered, impacted, caused by or occurring in connection with any work or activity of or on behalf of the Concessionaire, as well as the investigation and remediation of such contamination. The Concessionaire shall comply with the procedures and requirements set forth in the approved Hazardous Substances management plan and as required by the Technical Requirements.

(c) If during the Operating Period, the Concessionaire encounters Hazardous Substances within the Project Right of Way or the HOT Lanes Right of Way that under applicable Law or requirement of a regulatory agency must be handled, stored, monitored, treated, disposed of, removed, remediated or transported (collectively "Remedial Action"), the Concessionaire shall promptly notify the Department and shall proceed and act in accordance with the appropriate Hazardous Substances management plan. Such actions shall 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, (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 necessary Regulatory Approvals for Remedial Action plans, including Department approval, and (iv) carrying out the Remedial Action plan, including, as necessary, off-site disposal of the Hazardous Substances.

(d) Before any Remedial Action is taken that would inhibit the Department's ability to ascertain the nature and extent of the contamination, the Concessionaire shall afford the Department the opportunity to inspect areas and locations containing Hazardous Substances that must be remediated; *provided*, that in the case of a sudden release of Hazardous Substances the Concessionaire may take the minimum action necessary to stabilize and contain the release without prior notice or inspection, but shall immediately notify the Department of the sudden release and its location.

(e) The Concessionaire shall obtain all Regulatory Approvals relating to remedial work, including federal and State surface water and groundwater discharge permits and permits for recycling or reuse of Hazardous Substances. The Concessionaire shall be solely responsible for compliance with such Regulatory Approvals and applicable Environmental Laws concerning or relating to Hazardous Substances. In carrying out Remedial Action to be paid by the Department, the Concessionaire shall take such steps and actions as are required to protect and preserve the Department's potential claims of contribution and indemnity, statutory or otherwise, against potentially responsible parties.

(f) The Concessionaire shall bear all costs and expenses of preparing and complying with the Hazardous Substances management plans and Remedial Action plans, of complying with Law and obtaining and complying with Regulatory Approvals pertaining to Hazardous Substances, and otherwise of carrying out Remedial Action, except as otherwise provided by Section 8.11(h).

(g) Except for any Hazardous Substances that are the subject of the Concessionaire's indemnity in Section 14.03, the Concessionaire shall not be considered the generator of Hazardous Substances located within the VDOT Existing ROW. The Concessionaire shall be considered the generator of any Hazardous Substances that are the subject of the Concessionaire's indemnity in Section 14.03. Except with respect to Hazardous Substances that are the subject of the Concessionaire's indemnity in

Section 14.03, if the Concessionaire disposes of Hazardous Substances, the Concessionaire (i) shall use an EPA identification number or other appropriate legal device obtained by, and carried in the name of, the Department or another Person designated by the Department, and (ii) shall not be required to execute any Hazardous Substance manifests as a “generator”.

(h) The Department shall reimburse Concessionaire for its Allocable Costs incurred by the Concessionaire for the management, treatment, handling, storage, remediation and removal of Pre-Existing Hazardous Substances discovered on VDOT Existing ROW, during the Operating Period, subject to the Concessionaire’s compliance with the terms of this Section 8.11 and, specifically, the following terms: (i) the Concessionaire shall obtain all environmental site assessments of the affected property and submit copies of such assessments to the Department for its review and approval; (ii) the Concessionaire shall develop the plans, subject to the review and approval of the Department, for the management, treatment, handling, storage, remediation and removal of the Hazardous Substances, and shall obtain all necessary Regulatory Approvals to implement such plans; and (iii) the Concessionaire shall provide cost estimates with respect to such Work which is to be reimbursed by the Department, for the Department’s review and approval prior to proceeding with any such Work. If the Department has not responded to a request for such approval pursuant to this subsection (h) within 21 days after the Department’s acknowledgement of receipt (or in the case of an emergency a reasonably appropriate shorter period), the request shall be deemed to be approved, except to the extent matters deviate from applicable Technical Requirements, Regulatory Approvals or Law. In addition, the Concessionaire shall seek pre-approval and pursue reimbursement from the Virginia Petroleum Underground Storage Tank Fund (“VPSTF”) for qualifying expense incurred during the course of investigation and/or containment, management, mitigation, remediation activities on underground storage tank sites. The Concessionaire shall promptly pay over to the Department all monies the Concessionaire receives from the VPSTF with respect to activities subject to reimbursement by the Department pursuant to this Section 8.11(h).

Section 8.12 Contract Services.

If at any time the Department procures a contract for any maintenance services for State Highways on a regional or network basis in the area of the Capital Beltway Corridor, the Department shall require the contractor, so long as it is under contract with the Department, at Concessionaire’s request, to offer comparable services to the Concessionaire on comparable terms and conditions, subject to the contractor’s reasonable approval of Concessionaire’s ability to pay. Subject to Section 8.13 below, the Department shall have no obligation to provide any such services to the Concessionaire and shall have no liability with respect to the contractor’s performance or failure to perform. The Department shall have full discretion to establish priorities for its contractors regarding timing and location of services, materials and equipment, without liability to Concessionaire.

Section 8.13 Snow and Ice Removal.

(a) Beginning as of April 30, 2014 and subject to Section 8.13(c), the Department shall, at its own cost and expense, provide snow and ice removal services on the HOT Lanes at a comparable level of service to that it provides on the GP Lanes; *provided*, that within 30 days of April 30, 2014, the Concessionaire shall pay to the Department a fee of \$500,000 to reimburse the Department for snow and ice removal services provided for the HOT Lanes between the Service Commencement Date and April 30, 2014.

(b) The Department shall have no liability to the Concessionaire arising out of its ice and removal services. Subject to Section 8.13(a) the Department shall have full discretion to establish priorities for its contractors regarding timing and location of services, materials and equipment, without liability to the Concessionaire.

(c) If the Department fails at any time to provide snow and ice removal to the HOT Lanes at a level of service comparable to that it provides on the GP Lanes, with prior written notice to the Department, the Concessionaire may arrange for other contractors to provide such service, *provided* that such contractors shall not in any way hinder the removal of snow and ice from the GP Lanes. The Concessionaire shall provide at least 30 days written notice to the Department if such services are to be performed by any such other contractor.

Section 8.14 Obligation to Turn Over HOT Lanes at End of Term.

Upon the last day of the Term, whether upon expiration or earlier termination, the Concessionaire shall surrender and deliver the HOT Lanes Project to the Department as provided in Section 16.05 and in accordance with Section 16.09. Not later than 180 days preceding the end of the Term, the Concessionaire and the Department shall develop a plan to assure the orderly transition of the HOT Lanes to the Department or a Department contractor.

Section 8.15 User Confidentiality.

The Concessionaire shall comply with all applicable Law related to confidentiality and privacy of users of the HOT Lanes Project.

Section 8.16 Non-Compliance Point System.

(a) **Description of the System**

(i) Exhibit T to this Agreement sets forth a table for the identification of certain Concessionaire breaches or failures to perform its obligations under this Agreement that may result in the assessment by the Department of Non-Compliance Points. The Non-Compliance Points system is used by the Department to measure the Concessionaire's performance levels and the accumulation of Non-Compliance Points by the Concessionaire may trigger the remedies set forth or referenced in this Section 8.16. This Section 8.16 shall apply only during the Operating Period. The inclusion in Exhibit T of a breach or failure to perform shall not determine whether such breach or failure is material.

(ii) The Department may exercise any of its remedies under this Section 8.16 without prejudice to any other rights or remedies it has under this Agreement.

(iii) If the Department determines any breach or failure described in Exhibit T has occurred, the Department shall within five days of its determination deliver to the Concessionaire written notice thereof describing the breach or failure in reasonable detail. Within five days of receipt of the Department's notice, the Concessionaire shall investigate the Department's claim and provide a written report as to whether the breach or failure in performance has in fact occurred and describing any mitigating factors. Within 10 days after receiving the Concessionaire's report, the Department shall deliver to the Concessionaire a written determination setting forth the number of Non-Compliance Points, if any, the Department, in its sole discretion, has assessed to the Concessionaire.

(b) **Assessment of Points and Cure Periods**

The Department may assess Non-Compliance Points as described in Section 8.16(c) and (d) subject to the following terms and conditions.

(i) The Non-Compliance Points system will apply commencing on the fifth anniversary of the Initial Service Commencement Date. In addition, there will be a phased introduction of the Non-Compliance Points system, and for the initial year that the Non-Compliance Points system is applicable, the thresholds for “Total Cumulative Number of Uncured Points” specified on page 1 of Exhibit T will be increased by 50% for the first year, and over the period of the next five years such threshold will be reduced 10% per year such that the thresholds in Exhibit T (30, 45 and 68 total cumulative number of uncured points, respectively) apply.

(ii) The Department will not assess points for the first instance of each breach or failure provided that the breach or failure is cured within the cure period stated in Exhibit T. However, the Department will provide notice to the Concessionaire that a breach or failure has occurred. Any subsequent instances of each breach or failure may be subject to the assessment of Non-Compliance Points.

(iii) Exhibit T sets forth the maximum number of Non-Compliance Points the Department may assess for each breach or failure. The Department may, in its sole discretion, assess fewer Non-Compliance Points for a particular breach or failure based on the merits of the individual breach or failure.

(iv) Where a single act or omission gives rise to more than one breach or failure as described in Exhibit T, the Department may assess Non-Compliance Points for only one breach or failure. In such circumstances, the Department may, in its sole discretion, assess Non-Compliance Points for the breach or failure with the highest maximum number of Non-Compliance Points shall apply.

(v) For breaches or failures classified as category A in Exhibit T, Non-Compliance Points shall be assessed only at the end of the applicable cure period if the Concessionaire has failed to cure within that time. Additional Non-Compliance Points may be assessed again at the end of each subsequent cure period, until the breach or failure is cured, or the cumulative total of cured and uncured Non-Compliance Points equals or exceeds the level described in Section 8.16(e)(iii).

(vi) For breaches or failures classified as category B in Exhibit T, the Non-Compliance Points shall be assessed on the date of the written determination from the Department to the Concessionaire. Provided that the breach or failure is not then cured within the applicable cure period, Non-Compliance Points shall be assessed again at the end of the first and each subsequent cure period, until the breach or failure is cured, or the cumulative total of cured and uncured Non-Compliance Points equals or exceeds the level described in Section 8.16(e)(iii).

(vii) For breaches or failures identified as category C in Exhibit T (no applicable cure period), the Non-Compliance Points shall be assessed on the date of the written determination from the Department to the Concessionaire.

(viii) Any cure period specified in Exhibit T shall be extended day-for-day for any Delay Event that prevents performance of Work to cure a breach or failure.

(ix) At every 10 year anniversary of the Agreement Date, or upon significant revision of the Technical Requirements, either party, by written notice to the other party at least 90 days prior to such anniversary reserves the right to request a review of the Non-

Compliance Points system. Upon receiving the notice, both parties must review the existing non-compliance point system in place and agree in writing to any revisions required to the system.

(c) **Notification of Cure.** When the Concessionaire determines it has cured any breach or failure for which the Department has assessed Non-Compliance Points, the Concessionaire shall deliver written notice to the Department. The Concessionaire's written notice shall identify the breach or failure at issue and describe what steps were undertaken to cure it. The Department or its designee shall then promptly verify the cure through inspection or other means and provide to the Department a written certification of cure. The Department retains the right to verify independently that the breach or failure in performance has in fact been cured.

(d) **Accumulation of Non-Compliance Points**

(i) The total of uncured Non-Compliance Points assessed by the Department shall be monitored by the Department or its designee on an ongoing basis for the duration of the Operating Period.

(ii) The cumulative total of cured and uncured Non-Compliance Points assessed by the Department shall be monitored in rolling 365 day cycles from the time the breach has been cured for those breaches classified in categories A and B, and from the time the breach has occurred for those breaches classified in category C. At the end of each 365 day cycle, the Non-Compliance Points assessed for that specific breach will be subtracted for the cumulative total number of Non-Compliance Points the Concessionaire has been assessed.

(e) **Impact of Non-Compliance Points**

(i) Increased Monitoring. If the Concessionaire is assessed 135 or more Non-Compliance Points during any 365 day cycle or maintains 30 (or any higher applicable number during the phase-in period) or more uncured Non-Compliance Points at any time as described in Section 8.16(d), the Department may increase the level of monitoring of the Project in accordance with Section 10.03. The Concessionaire shall compensate the Department for its Allocable Costs incurred as a result of such increased level of monitoring. The Concessionaire may submit a cure plan describing specific actions the Concessionaire will undertake to improve its performance and avoid the need for increased monitoring, which the Department may accept or reject.

(ii) The Remedial Plan

(A) If the Concessionaire is assessed 200 or more Non-Compliance Points during any 365 day cycle or maintains 45 (or any higher applicable number during the phase-in period) or more uncured Non-Compliance Points at any time as described in Section 8.16(d), the Department may require the Concessionaire to prepare and submit a remedial plan for the Department's approval. The remedial plan shall be delivered to the Department within 45 days of its request. The remedial plan shall set forth a schedule and describe specific actions the Concessionaire will undertake to improve its performance as demonstrated by its incurring no additional Non-Compliance Points and by reducing the total number of uncured Non-Compliance Points it has accumulated to date. Such actions may include but are not limited to improvements to Concessionaire's quality

management practices, plans and procedures; changes in its organizational and management structures; increased monitoring and inspections; changes in key personnel; and the replacement of subcontractors.

(B) If, after 180 days following the implementation of the remedial plan, the Concessionaire can demonstrate that: (1) the remedial plan has reduced the number and frequency of Non-Compliance Points assessed as compared to the period prior to the implementation of the remedial plan; (2) the Concessionaire is complying in all material respects with the course of action described in the remedial plan; and (3) the Concessionaire has no uncured Non-Compliance Points, then the total number of Non-Compliance Points assessed over the course of the 180 day period shall be reduced by 50%. If the rolling 365 day cycle described in Section 8.16(d)(ii) ends at any time during the 180 day period described herein, the total number of Non-Compliance Points the Concessionaire has cured during that 365 day cycle shall carry over to the next 365 day cycle. However, if the total number of Non-Compliance Points assessed over the course of the 180 day period is reduced by 50% as described above, the total number of previously cured Non-Compliance Points that were carried over also shall be subtracted from the Concessionaire's cumulative total number of assessed Non-Compliance Points.

(iii) Default. If the Concessionaire: (1) fails to deliver to the Department the remedial plan within 45 days of the Department's request; or (2) fails to comply with the course of action set forth in the remedial plan and incurs a total of 245 Non-Compliance Points during any 365 day cycle or maintains 68 (or any higher applicable number during the phase-in period) or more uncured Non-Compliance Points at any time as described in Section 8.16(d)(i), the Department may notify the Concessionaire in writing that such failure is a breach of a material obligation hereunder, in which event such failure shall become breach of a Concessionaire Default under Section 17.01(c) unless cured following such notice within the time period specified in Section 17.01(c). Concessionaire shall have failed to perform a material obligation of this agreement under Section 17.01(c).

(f) **Disputes Regarding the Assessment of Non-Compliance Points**

(i) The Concessionaire may object to the assessment of Non-Compliance Points or the amount of Non-Compliance Points assessed by delivering to the Department written notice of its objection within 10 days of receipt of the Department's written determination assessing the Non-Compliance Points at issue. Such notice shall set forth with specificity the grounds for the Concessionaire's objection.

(ii) The Department will reasonably consider the Concessionaire's objections and Representatives of the Department and the Concessionaire will meet to discuss the matter within 30 days after the Concessionaire has provided its written objection. If, at the conclusion of this 30 day period, the Concessionaire still objects to the Department's decision, it may pursue dispute resolution under Section 17.06.

(iii) If for any reason the Concessionaire fails to deliver its written notice of objection within the time period specified in Section 8.16(f)(i), the Concessionaire shall have waived its right to challenge the Department's assessment of Non-Compliance Points.

ARTICLE 9

PROJECT ENHANCEMENTS; SAFETY COMPLIANCE ORDERS

Section 9.01 Project Enhancements by the Concessionaire.

(a) The Concessionaire shall have the right, at its sole cost and expense (unless the Department agrees to contribute funds for a Concessionaire Project Enhancement), at any time after the Initial Service Commencement Date, to design, develop, construct, operate and maintain Concessionaire Project Enhancements within the HOT Lanes Right of Way (or for any NEXT Project (Phase 2) Asset, within the Project Right of Way), including any fundamental change in the dimensions, character, quality, location or position of all or any part of the HOT Lanes; *provided*, that the Concessionaire shall not undertake any such Project Enhancements unless all aspects thereof are approved in writing by the Department in its sole discretion, and the Concessionaire has entered into a Development Contract with the Department with respect thereto.

(b) NEXT Project (Phase 2).

(i) The Concessionaire shall have the right, at its sole cost and expense, at any time after the Second Amended and Restated Agreement Date, to design, develop, construct, install and finance or otherwise fund any NEXT Project (Phase 2) Asset in any order and in each case as a Concessionaire Project Enhancement pursuant to this Section 9.01; *provided*, that the Concessionaire shall not undertake any such Project Enhancements unless all aspects thereof are approved in writing by the Department in its sole discretion, and the Concessionaire has entered into a Development Contract with the Department with respect thereto.

(ii) At any time after the Second Amended and Restated Agreement Date, the Department may provide written notice to the Concessionaire that it intends to design, develop, construct, install and finance or otherwise fund one or more NEXT Project (Phase 2) Asset in any order as a Department Project Enhancement pursuant to Section 9.02. Upon such written notice, the Concessionaire will have 90 days to elect to submit to the Department a binding proposal to develop such NEXT Project (Phase 2) Asset covered by the written notice as a Concessionaire Project Enhancement pursuant to this Section 9.01. If the Concessionaire elects to submit such a binding proposal, the parties will agree on a timeline for the Concessionaire to submit its binding proposal to the Department for acceptance or rejection. The Department may, at any time, use its own funds or funds made available by a third party to develop any NEXT Project (Phase 2) Asset not being developed by the Concessionaire and the Concessionaire will not be responsible for any NEXT Project (Phase 2) Asset not being developed by the Concessionaire.

(iii) For the avoidance of doubt, under no circumstance (other than the development of the new southbound auxiliary lane between Route 193 and Dulles Toll Road prior to the earlier of (A) service commencement of the Bi-State Project and (B) December 31, 2030) shall the design, development, construction, operation or maintenance of any NEXT Project (Phase 2) Asset result in a Compensation Event or liability for Concessionaire Damages.

(c) Georgetown Pike Interchange. The Concessionaire has the right to design and construct the interchange at Georgetown Pike to not preclude future express lanes-only ramps. Such

express-lanes only ramps may be implemented by the Concessionaire with the prior consent of the Department as a Concessionaire Project Enhancement under this Agreement.

Section 9.02 Project Enhancements by the Department.

(a) Subject to Section 9.02(e) below, the Department shall have the right from time to time after the Initial Service Commencement Date, at its sole cost and expense (unless the Concessionaire agrees to contribute funds for a Department Project Enhancement), to design, develop, construct, operate and maintain Department Project Enhancements. The Department shall have the right to design, develop, construct, operate and maintain Department Project Enhancements through one or more of the following mechanisms, as the Department selects from time to time in its sole discretion:

(i) use by the Department of its own personnel, materials and equipment;

(ii) contracting with third parties through requests for proposals, competitive bids, negotiations or any other lawful procurement process; and

(iii) authorizing and directing the Concessionaire, at the Department's sole cost and expense (unless the Concessionaire agrees to contribute funds for a Department Project Enhancement), to undertake the Department Project Enhancements through subcontracting for necessary traffic and revenue studies and for necessary planning, design, engineering, permitting, financial, right-of-way acquisition services, Utility Relocation, construction, installation, project management, operation, maintenance, repair and other work and services.

(b) If the Department authorizes and directs the Concessionaire to undertake Department Project Enhancements pursuant to Section 9.02(a)(iii) above, then the Concessionaire, in cooperation with the Department and subject (1) to the review and written approval by the Department in its sole discretion, and (2) to the Department making available to the Concessionaire sufficient funds, through monthly progress payments for work performed and costs incurred (plus 10% of such costs to reimburse the Concessionaire for costs of administering the work), including without limitation the costs of obtaining any Regulatory Approvals necessitated by such Department Project Enhancement, in order to perform the work required to design, construct, operate and maintain such Department Project Enhancement, shall have the right and obligation:

(i) to solicit, negotiate, enter into and enforce performance of subcontracts for all necessary work and services as described in Section 9.02(a)(iii) above;

(ii) to obtain or cause to be obtained payment and performance bonds, insurance policies, guarantees, indemnities, revenue subsidies and other risk management and credit instruments as may be appropriate in connection with the Department Project Enhancements;

(iii) to use diligent efforts to cause all Regulatory Approvals to be obtained for, and thereafter cause to be designed and constructed, such Department Project Enhancements, subject to prior written approval of the designs and plans therefor, and any changes thereto, by the Department in its sole discretion;

(iv) to show all such completed Department Project Enhancements on final, as-built plans and specifications submitted to the Department; and

(v) after completion, to collect tolls (on behalf and for the account of the Department), manage, operate, maintain and repair such Department Project Enhancements, subject to the Department's right at any time to assume responsibility for all or any portion of such functions.

(c) Notwithstanding the foregoing Section 9.02(a) and (b), but subject to Sections 9.01(b) and 9.02(f), if the Department determines that Additional Traffic Lanes are in the State's best interests, the Department shall consult with the Concessionaire as to an appropriate strategy to implement such Additional Traffic Lanes or, at the Department's sole discretion, permit the construction of additional lanes as part of the Project with a view to minimizing any detrimental impact on the Project or its ability to generate Revenues, and the Department will give the Concessionaire the opportunity to submit a proposal to construct new HOT Lanes or toll lanes at the Concessionaire's sole cost as a Concessionaire Project Enhancement so long as the Concessionaire demonstrates that it has or can obtain all required Regulatory Approvals for such Project Enhancement with appropriate assistance from the Department. In the event that the Concessionaire determines not to pursue the construction of new HOT Lanes or toll lanes or the Department does not approve such Project Enhancement, and the Department adds Additional Traffic Lanes (whether general purpose or tolled), such Additional Traffic Lanes shall be a Department Project Enhancement.

(d) The Department shall have unfettered rights to finance, develop, approve, expand, improve, modify, upgrade, add capacity to, reconstruct, renew and replace any existing and new transportation or other facilities. In no event shall the taking of any such action by the Department constitute a default by the Department under this Agreement. The Department shall also have the right, without liability (other than any obligation to pay any such compensation required hereby), to make discretionary and non-discretionary distributions of federal and other funds for any transportation projects (including any Additional Traffic Lanes) and programs, and the planning thereof, and exercise all of its authority to advise and recommend on transportation planning, development and funding, and to otherwise improve the GP Lanes and other roadways and structures within or adjacent to the Capital Beltway Corridor.

(e) The Department shall have the right to enter upon the Project Right of Way and the relevant rights of way for any purpose relating to Department Project Enhancements under this Section 9.02 to the extent reasonably necessary. If the Department elects to develop Department Project Enhancements without the Concessionaire's participation, then the Department shall coordinate such development with the Concessionaire so as to minimize to the extent reasonably feasible the disruption to the Concessionaire's operation and maintenance of the HOT Lanes and the generation of Toll Revenues.

(f) The parties agree that the Department may, at its sole cost and discretion, develop, design, finance, construct, operate, and maintain the following improvements: (i) a flyover ramp from the northbound GP Lanes to westbound lanes along I-66; (ii) improvements to I-66 outside the Capital Beltway Corridor; (iii) improvements to the interchange of the GP Lanes and the Dulles Toll Road (the "DTR"); (iv) right hand ramps and flyovers from the northbound GP Lanes to the westbound lanes of the DTR; (v) ramps or flyovers from southbound GP Lanes to eastbound along the DTR; (vi) connections from DTR/Dulles Airport Access Road (the "DAAR") westbound to the northbound and southbound HOT Lanes; and (vii) connections from the southbound HOT Lanes to the eastbound and westbound lanes of the DTR/DAAR.

(g) The improvements identified in Section 9.02(f) above may be considered a Department Project Enhancement or Department Change under Section 7.12, but shall not result in a Compensation Event or liability for Concessionaire Damages; *provided*, however, that a Department Change under Section 7.12 may be required if the Department chooses, at its sole cost and discretion, to undertake such improvements during the Work Period. The parties will agree, in connection with such a Department Change, on additional costs directly resulting from construction of the change, if any, for

modification of the Project that may be required to enable the improvements contemplated in Section 9.02(f).

(h) If any Regulatory Approvals require the construction of the flyover described in Section 9.02(f)(i) above, the Department accepts responsibility for the cost to develop, design, finance, construct, operate, and maintain the flyover and may issue a change order for such work to the Concessionaire. In such event, (1) the parties will agree to the terms of the change order, (2) such change order shall not be deemed a Compensation Event or result in liability for any Concessionaire Damages; and (3) the change order shall not affect the treatment allowed for the flyover ramp in accordance with Section 9.02(f) and (g).

(i) For the avoidance of doubt, the Department is not obligated to undertake any of the improvements described in Section 9.02(f), other than as expressly provided by Section 9.02(h), and the terms set forth in Section 9.02(f) and (g) in no way supersede any obligations or responsibilities otherwise stated in this Agreement regarding the parties' respective rights or obligations to obtain, maintain or comply with Regulatory Approvals.

(j) If any Department Project Enhancement carried out pursuant to Section 9.02(a), (b) or (c) results in Concessionaire Damages, such Department Project Enhancement shall constitute a Compensation Event and the Department shall compensate the Concessionaire in accordance with Sections 13.02 and 13.03, and any Positive Revenue resulting from Department Project Enhancements shall be shared equally between the Concessionaire and the Department, and the Department's share shall be paid by the Concessionaire and deposited in the Concession Payments Account, in accordance with Sections 13.02 and 13.03, in addition to and without regard to amounts payable under Article 5; *provided*, that in the case of Additional Traffic Lanes (i) if an aggregate of two or fewer Additional Traffic Lanes have been added, Concessionaire Damages shall not be payable with respect to any period after the HOT Lanes Project has achieved the Base Case Second Level Targeted Rate of Return, and (ii) if an aggregate of more than two Additional Traffic Lanes have been added, Concessionaire Damages shall not be payable with respect to any period after the HOT Lanes Project has achieved the Base Case Third Level Targeted Rate of Return; and *provided further*, that nothing herein shall limit the Department's ability to operate, maintain or improve the GP Lanes in any respect or, except as expressly provided above, give rise to a Compensation Event or any payment of Concessionaire Damages with respect thereto.

Section 9.03 Safety Compliance Orders.

(a) The Department may, but is not obligated to, issue Safety Compliance Orders to the Concessionaire at any time during the Operating Period; *provided*, that no Safety Compliance Order may in any event order or direct the Concessionaire to do any act in violation of any applicable Law or cause the Concessionaire to fail to be in compliance with this Agreement or any other Project Agreement to which the Department is a party.

(b) The Department shall use good faith efforts to inform the Concessionaire at the earliest practicable time of any circumstance or information relating to the HOT Lanes Project which in the Department's reasonable judgment is likely to result in a Safety Compliance Order. Except in the case of an emergency, the Department will consult with the Concessionaire prior to issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts and the availability of Concessionaire resources to fund the Safety Compliance Work. The Department may, in its discretion, monitor and inspect for the purpose of determining whether any circumstances exist that warrant issuance of a Safety Compliance Order and giving the Department and the Concessionaire reports and recommendations related to such matters.

(c) Expeditiously after the Department issues a Safety Compliance Order, the Concessionaire shall proceed with the necessary environmental, design and construction work to carry out the Safety Compliance Order, at the Concessionaire's sole cost and expense.

(d) The Concessionaire shall have the right to dispute a Safety Compliance Order by providing written notice to the Department setting forth the Concessionaire's claim that no condition exists to justify the disputed Safety Compliance Order and the Concessionaire's estimate of impacts on costs, Toll Revenues and the Construction Schedule, if applicable, attributable to such Safety Compliance Order. The Concessionaire shall nevertheless implement the Safety Compliance Order, but if it is finally determined in accordance with the dispute resolution procedures in Section 17.06 that conditions warranting the Safety Compliance Order did not exist, then the Safety Compliance Order shall be treated as a Department Change pursuant to Section 7.12 if the Safety Compliance Order was originally issued prior to Final Acceptance or NEXT Final Completion, as applicable, or a Department Project Enhancement pursuant to Section 9.02 if the Safety Compliance Order was originally issued after the Initial Service Commencement Date.

ARTICLE 10

DEPARTMENT OVERSIGHT AND OTHER SERVICES

Section 10.01 Right to Oversee Work.

The Department shall have the right at all times during the Term to carry out Oversight Services with respect to all aspects of the design, permitting, financing, acquisition, construction, installation, equipping, maintenance, repair, preservation, modification, operation, management and administration of the Project and the HOT Lanes Project, as the case may be, and any Change Orders or Project Enhancements. During the Work Period, Oversight Services shall include services with respect to the TMP. The Concessionaire shall fully cooperate with the Department to facilitate its conduct of Oversight Services. In the course of performing Oversight Services, the Department shall use reasonable efforts to minimize the effect and duration of any disruption to or impairment of the Work or the HOT Lanes Project and shall perform Oversight Services so as to minimize to the extent reasonably possible duplication or inefficiencies in the performance of such Oversight Services.

Section 10.02 Department Access and Inspection.

The Department and its duly authorized agents shall have unrestricted access at all times to enter upon, inspect, sample, measure and physically test any part of the Project or the Rights of Way. In the course of performing its inspections, sampling, measurements and tests hereunder, the Department shall use reasonable efforts to minimize the effect and duration of any disruption to or impairment of the Work or the HOT Lanes Operations, as the case may be, or the Concessionaire's rights or responsibilities under this Agreement. The Department shall also have the right, upon reasonable advance written notice to the Concessionaire and subject to Section 18.07, to inspect financial or other records relating to the Project. If at any time the Concessionaire has failed to perform any of its construction, operating or maintenance obligations in any material respect then, in addition to other remedies available under this Agreement and the other Project Agreements, the Department is entitled to increase the level of its monitoring (a) during the Work Period, of the Project, or (b) during the Operating Period, of the HOT Lanes Project, as the case may be, and the Concessionaire's compliance with its construction, operation and maintenance obligations under this Agreement until such time as the Concessionaire has demonstrated to the Department's reasonable satisfaction that it will perform and is capable of performing its construction, operation and maintenance obligations under this Agreement. The Concessionaire shall compensate the Department for all Allocable Costs incurred by the Department as a result of such increased level of monitoring.

Section 10.03 Compensation for Oversight Services and TMP; NEXT Department Development Recoupment Amount.

(a) The Department shall be compensated for all its Oversight Services under Section 10.01 and Section 10.02, including, but not limited to, Oversight Services relating to the design, inspection or permitting for the Project, any Project Enhancement pursuant to Section 9.01 or 9.02 or any Safety Compliance Orders pursuant to Section 9.03, and for all costs incurred by the Department with respect to the TMP.

(b) Such compensation shall be in an amount equal to the Department's Allocable Costs, together with all out-of-pocket expenses incurred, including, but not limited to, the cost of all legal, expert witness and other support services, and awards of litigation expenses; *provided*, that the aggregate amount payable by the Concessionaire pursuant to this Section 10.03 (i) for costs and expenses incurred during the Work Period for the Original Project with respect to Oversight Services and to the TMP shall not exceed \$45,000,000 in the aggregate for the Work Period for the Original Project, and (ii) for costs and expenses during the Operating Period with respect to Oversight Services for the Project shall not exceed \$65,000 per calendar year (pro-rated for any partial year and escalated at the beginning of each calendar year during the Term in accordance with increases in the CPI, using the ratio of the CPI published for the month immediately preceding the beginning of the calendar year to the CPI published for the month immediately prior to the Initial Service Commencement Date); and, *provided* that the amounts provided in (i) and (ii), (A) relate only to the Project and not to Oversight Services and TMP in connection with any contract related to any Project Enhancements, and (B) shall not limit the payment of Department costs as a result of increased levels of monitoring in accordance with Section 8.16(e). The costs of Oversight Services in connection with the Project and services with respect to the TMP in connection with the Project in excess of the foregoing maximum levels shall be borne by the Department. For the Original Project, if the aggregate Work Period payments by the Concessionaire to the Department for Oversight Services and with respect to the TMP are less than \$45,000,000, within 30 days after the Initial Service Commencement Date (or, if earlier, within 30 days after the Department notifies the Concessionaire that it has issued its final invoice for such services), the Concessionaire shall pay to the Department one-half of the difference between \$45,000,000 and the aggregate amount of the payments for such services, which payment shall be deposited to the Concession Payments Account.

(c) The Department shall prepare and submit to the Concessionaire the Department's invoices reasonably documenting amounts owing to the Department for Oversight Services provided. The Concessionaire shall pay each invoiced amount no later than 30 days after the Department prepares and delivers an invoice reasonably documenting the amount of such Oversight Services provided.

(d) With respect to the NEXT Project, the Department shall be responsible for the first \$7,600,000 of its own development costs. After the Department has covered the first \$7,600,000 of its own development costs, the Concessionaire shall reimburse or credit the Department for various risk amounts and allocations for the NEXT Project as set forth herein, including for the Department's development costs, the costs of the Department's Oversight Services, the costs of the TMP relating to the NEXT Project or other NEXT Project related costs as determined by the Department in consultation with the Concessionaire, all subject to a cap of \$16,700,000, which may be increased in accordance with the NEXT Design-Build Risk Sharing Mechanism and Section 7.20(a)(vi) (the "NEXT Department Development Recoupment Amount"). Any costs incurred by or on behalf of the Department in excess of the NEXT Department Development Recoupment Amount shall be the Department's responsibility. Subject in all cases to invoicing in accordance with clause (c) above, the Concessionaire shall reimburse the NEXT Department Development Recoupment Amount to the Department in accordance with the following limitations: (i) no more than 20% of the NEXT Department Development Recoupment Amount on the NEXT Financial Close Date as set forth in Section 6.08(c) and (ii) subsequently, on a monthly basis in equal installments over the

applicable twelve-month period as follows: (A) through the first anniversary of the NEXT Financial Close Date, an additional 25% of the NEXT Department Development Recoupment Amount over such year, (B) through the second anniversary of the NEXT Financial Close Date, an additional 25% of the NEXT Department Development Recoupment Amount over such year, (C) through the third anniversary of the NEXT Financial Close Date, an additional 20% of the NEXT Department Development Recoupment Amount over such year and (D) through the earlier to occur of the Service Commencement Date on the NEXT Project and the date on which the NEXT Department Development Recoupment Amount is fully expended, the final 10% of the NEXT Department Development Recoupment Amount. This Section 10.03(d) applies solely to the NEXT Project.

Section 10.04 Department Approvals.

(a) Except as otherwise expressly provided herein, in any case in which the Department's response to a request for its approval is required by the terms hereof within a specified time period (or such extended period of time as shall have been mutually agreed by the Department and the Concessionaire, and provided that any such time period shall be extended for the duration of the results of a Force Majeure Event that prevents such performance), the failure by the Department to respond to a written request for such approval within such specified time period (as may be so extended) shall be deemed to be the Department's approval of such request.

(b) In all cases where approvals, consents or determinations are required to be provided hereunder, such approvals or consents shall not be withheld unreasonably and such determinations shall be made reasonably except in cases where a different standard (such as, by way of example only, sole discretion) is specified. In cases where sole discretion is specified for an approval, consent, determination or other decision, the decision shall not be subject to dispute resolution hereunder.

Section 10.05 Limitations on the Concessionaire's Right to Rely.

(a) The Concessionaire expressly acknowledges and agrees that the Department's rights, if any, under the Project Agreements:

(i) to review, comment on, approve, disapprove and/or accept designs, plans, specifications, work plans, construction, equipment, installation, plans for maintenance, traffic management, policing and/or Project management, books, records, reports or statements, or documents pertaining to Concessionaire Loans and Financing Assignments,

(ii) to review, comment on and approve or disapprove qualifications and performance of, and to communicate with, contractors, subcontractors, architects, engineers or other Consultants of the Concessionaire, and

(iii) to perform Oversight Services: (A) exist solely for the benefit and protection of the Department, (B) do not create or impose upon the Department any standard or duty of care toward any Concessionaire Party, all of which are hereby disclaimed, (C) may not be relied upon, nor may the Department's exercise or failure to exercise any such rights be relied upon, by the Concessionaire in determining whether the Concessionaire has satisfied the standards and requirements set forth in this Agreement or any other Project Agreement, and (D) may not be asserted, nor may the Department's exercise or failure to exercise any such rights be asserted, against the Department by the Concessionaire as a defense, legal or equitable, to the Concessionaire's obligation to fulfill such standards and requirements.

(b) To the maximum extent permitted by Law, and subject to the provisions of this Agreement, the Concessionaire hereby releases and discharges the Department from any and all duty and obligation to cause permitting, Project Right of Way acquisition, Utility Relocation, construction, equipping, operations, maintenance, policing, renewal, replacement, traffic management or other management of or for the Project or the Rights of Way, by the Department, to satisfy the standards and requirements set forth in the Project Agreements.

(c) No rights of the Department described in Section 10.05(a) above, no exercise or failure to exercise such rights, no failure of the Department to meet any particular standard of care in the exercise of such rights, no issuance of permits or certificates of completion or acceptance and no Final Acceptance or NEXT Final Completion of the Project, as applicable, or any Project Enhancement shall:

(i) relieve the Concessionaire of its responsibility for the selection and the competent performance of all contractors, subcontractors, architects, engineers and other Consultants (except those hired by the Department);

(ii) relieve the Concessionaire of any of its obligations or liabilities under the Project Agreements;

(iii) be deemed or construed to waive any of the Department's rights and remedies under the Project Agreements; or

(iv) be deemed or construed as any kind of representation or warranty, express or implied, by the Department.

(d) Notwithstanding Sections 10.05(a), 10.05(b) and 10.05(c) above, (i) the Concessionaire shall be entitled to rely on specific written deviations and interpretative engineering decisions the Department gives under this Agreement in accordance with the Technical Requirements, the Design-Build Contract or any Development Contract, and any applicable Law, (ii) the Department is not relieved from any liability arising out of a knowing, intentional material misrepresentation under any written statement the Department delivers, and (iii) the Department is not relieved from its obligations under any Development Contract.

ARTICLE 11

CONTRACTING PRACTICES

Section 11.01 Obligation to Refrain from Discrimination.

The Concessionaire covenants and agrees that it shall not discriminate and it shall require all contractors not to discriminate against any person, or group of persons, on account of age, sex, marital status, race, creed, color, national origin, religion or the presence of any sensory, mental or physical handicap in the permitting, design, acquisition and construction of the Project, or the maintenance, operation or management of the HOT Lanes, nor shall the Concessionaire establish or permit any such practice or practices of discrimination or segregation with reference to the selection, use, hiring, firing, promotion or termination of employees, contractors, subcontractors and vendors or with reference to the use, occupancy or enjoyment of or access to or toll rates charged for use of the Project or the HOT Lanes, as the case may be; *provided*, that the prohibition against discrimination on the basis of sensory, mental or physical handicap shall not apply if the particular disability prevents the proper performance of the particular person involved.

Section 11.02 Subcontracting.

(a) Subject to Section 8.04, the Concessionaire may perform its permitting, construction, traffic management, ordinary maintenance and repair, and other responsibilities under this Agreement through use of its own personnel, materials and equipment, or by subcontracting to Persons with the expertise, qualifications, experience, competence, skills and know-how to perform the responsibilities being subcontracted in accordance with all applicable Law, all Regulatory Approvals and the terms, conditions and standards set forth in this Agreement.

(b) Each subcontract that the Concessionaire executes at a minimum:

(i) shall set forth a standard of professional responsibility or a standard for commercial practice equal to prudent industry standards for work of similar scope and scale and shall set forth effective procedures for claims and change orders;

(ii) shall establish provisions for prompt payment by the Concessionaire in accordance with the provisions of Sections 2.2-4347 through 4356 of the Virginia Code, which would apply if the Department was contracting with such subcontractor;

(iii) shall require the subcontractor to carry out its scope of work in accordance with all applicable Law, all Regulatory Approvals and the terms, conditions and standards set forth in this Agreement;

(iv) shall set forth warranties, guaranties and liability provisions of the contracting party in accordance with Good Industry Practice for work of similar, scope and scale;

(v) shall be fully assignable to the Department, such assignability to include the benefit of all subcontractor warranties, indemnities, guarantees and professional responsibility and include express requirements that, if the Department succeeds to the Concessionaire's rights under the subject contract (by assignment or otherwise), then the relevant subcontractor agrees that it will (A) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment supplier, designer, service provider), (B) permit audit thereof by the Concessionaire, and provide progress reports to the Concessionaire appropriate for the type of subcontract it is performing sufficient to enable the Concessionaire to provide the reports it is required to furnish the Department under this Agreement, and (C) allow the Department, to assume the benefit of the Concessionaire's subcontract rights and the work performed thereunder with liability only for those remaining obligations accruing after the date of assumption;

(vi) shall not be assignable by the subcontractor without the Concessionaire's prior written consent;

(vii) shall expressly require the subcontractor to participate in meetings between the Concessionaire and the Department, upon the Department's reasonable request, concerning matters pertaining to such subcontractor or its work, provided that all direction to such subcontractor shall be provided by the Concessionaire, and provided, further that nothing in this Section 11.02(b)(vii) shall limit the authority of the Department to give such direction or take such action which in the opinion of the Department is necessary to remove an immediate and present threat to the safety of life or property;

(viii) shall expressly provide that all Liens and claims of the subcontractor and its subcontractors at any time shall not attach to any interest of the Department in the Project or the Rights of Way; and

(ix) shall be consistent in all other respects with the terms and conditions of this Agreement to the extent such terms and conditions are applicable to the scope of work of such subcontractors.

(c) The Concessionaire shall not enter into any contract or subcontracts with any Person then debarred or prohibited from participating in state or federally-funded projects, or indicted, convicted, pled guilty or nolo contendere to a violation of Law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows a similar lack of moral or ethical integrity.

(d) The Concessionaire shall include a provision in each subcontract requiring the subcontractor to maintain all licenses required by applicable Law.

(e) The appointment of subcontractors by the Concessionaire shall not relieve the Concessionaire of its responsibility hereunder or for the quality of work, materials and services provided by it. The Concessionaire shall at all times be held fully responsible to the Department for the acts and omissions of its subcontractors and persons employed by them and no subcontract entered into by the Concessionaire will impose any obligation or liability upon the Department to any such subcontractor or any of its employees. Nothing in this Agreement will create any contractual relationship between the Department and a subcontractor of the Concessionaire.

(f) The Concessionaire shall not enter into or materially amend a contract or subcontract with an Affiliate (an “Affiliate Contract”) without notice to and consent of the Department, which consent shall not be unreasonably withheld or delayed if the contract or subcontract is entered into in the ordinary course of business and the Concessionaire demonstrates to the Department’s satisfaction that the contract or subcontract is on overall terms no less favorable or unfavorable to the Concessionaire than terms the Concessionaire could obtain in an arm’s-length transaction for comparable services with a Person that is not an Affiliate of the Concessionaire; *provided*, that no consent shall be required for (i) reasonable overhead sharing fees and reimbursement of third-party costs payable to an Affiliate for legal, accounting, tax, computer and other centralized management services provided to the Concessionaire in lieu of Concessionaire having its own employees for such functions; or (ii) the joint ownership of assets or property used for the operation or maintenance of the Project and other projects owned or operated by Affiliates of the Concessionaire so long as the cost of such assets and properties are reasonably shared and documented.

Section 11.03 Small, Women-Owned and Minority Business (SWaM), Disadvantaged Business Enterprise (DBE) and Veteran and Local Hiring Reporting.

(a) The parties recognize the importance of pursuing, inviting and developing the participation of minority, women-owned and small businesses through the federal Disadvantaged Business Enterprise (“DBE”) and Small, Women-Owned and Minority Business (“SWaM”) programs, where applicable. Accordingly, during the Operating Period, the Concessionaire will promote the participation of local small business as well as minority and women owned businesses in the Project. The Concessionaire will set annual goals and make a good faith effort to achieve or exceed them in contracts for operating and for goods and services related to operating the HOT Lanes Project. The Concessionaire will provide its participation on such matters to the Department Representative, and the Department may include those participation rates, as appropriately adjusted, with its own towards the Commonwealth’s long-term goal

established pursuant to the Office of the Governor's Executive Order 33 (2006). The long-term participation SWaM goal for the Concessionaire during the Operating Period shall be 40%.

(b) During the applicable Work Period, in an effort to comply with 49 CFR Part 26 and support Executive Order 33 (2006), the Department has established a goal of 15% for DBE participation and 25% for SWaM participation, such percentages relating to the value of the Design-Build Contract totaling an aggregate goal of 40% of the value of the Design-Build Contract during the applicable Work Period. The Department and the Concessionaire agree to manage this goal during the applicable Work Period as follows: (1) the Concessionaire will establish a goal for each bid item group (*i.e.*, aggregates, box culverts, clearing and grubbing, excavation, pavement marking) that equates to the overall goal of 40%; (2) the Concessionaire will prepare first draft of proposed goals and will submit such draft to the Department for review and comment; (3) the goals for each bid item group will be established 30 days after finalizing the agreement and reviewed annually; (4) if the goal cannot be achieved on a particular bid item group, the Department may, in its reasonable discretion, waive the goal on that item subject to the submission of acceptable Good Faith Effort ("GFE") documentation using form C-49 and other supplemental information as appropriate; and (5) the Concessionaire agrees that if the Department accepts the GFE documentation on a particular bid item group, the Concessionaire will make reasonable efforts to accomplish the overall goal using other bid item groups.

(c) Furthermore, during the Work Period, the parties will work cooperatively to accomplish the DBE and SWaM objectives. The Department will assist the Concessionaire in meeting the Work Period goals by offering assistance to include, but not limited to, the following items:

(i) Prior to items (b)(1) and (2) noted above, the Department will participate with the Concessionaire in a planning session to establish the above referenced goals for each bid item group by reviewing the work, available firms, strategies, anticipated obstacles and means to overcome obstacles,

(ii) The parties will jointly conduct outreach meetings for DBE / SWaM firms,

(iii) The Department will identify to the Concessionaire DBE and SWaM firms that are eligible to bid on the specific bid item groups, and

(iv) The Department will provide access to technical and managerial assistance to eligible DBE and SWaM firms through the Business Opportunity Workforce Development (BOWD) Center.

(d) The Concessionaire acknowledges that the Department's assistance and cooperation will not eliminate or reduce the Concessionaire's responsibility to achieve the Work Period goals or demonstrate GFE. The Concessionaire is expected to utilize a variety of means and methods and creative strategies to do so. These strategies should be employed for all phases of the Project. The Concessionaire is expected to meet the goal or demonstrate that a "good faith effort" has been made. The Concessionaire shall submit quarterly reports of good faith efforts' documentation, and DBE/SWaM payments on form C-63 to the Department Representative, who will make determinations on good faith efforts.

(e) When there is a contract goal during the Work Period, a contractor/consultant (Concessionaire) must make good faith efforts to meet such contract goal either through obtaining enough DBE/SWaM participation or documenting the GFE it made to do so. These means of meeting contract goal requirements are fully equivalent. 49 CFR Part 26 (the Rule) explicitly provides that the Department must not disregard showings of good faith efforts, and it gives concessionaires the right to have the Department

reconsider a decision that their good faith efforts were insufficient. The Department must seriously consider concessionaire's documentation of GFE. The Department will issue a Guidance Memorandum on good faith effort, providing examples, procedures and reporting requirements for the Concessionaire.

(f) If, at any time during the Work Period, the Department determines that the Concessionaire or a Concessionaire Party neither achieves the goals nor demonstrates GFE, the Concessionaire, such Concessionaire Party neither achieving the goals nor demonstrating GFE and/or their respective Affiliates may be enjoined or disqualified from additional work or new contracts with the Commonwealth; *provided*, however, that in the case of a failure to achieve the goals or demonstrate GFE with respect to the Design-Build Contract such parties subject to disqualification in accordance with the next sentence shall be solely the Design-Build Contractor, and the managing member of the Design-Build Contractor and its Affiliates. The Department will disqualify any such Persons for a minimum period of 90 days from the date of the Department's notice of disqualification. Such notice will also be provided to the FHWA and will be posted on the Department's web site. If, during any 90-day-period that any such Person is disqualified, the Concessionaire or such Concessionaire Party continues to fail to achieve the goals and fails to demonstrate GFE then the period of disqualification shall be extended for an additional 90 days.

(g) Veteran and Local Hires.

(i) General.

(A) The Commonwealth is committed to reducing barriers to employment to ensure a diverse workforce in the construction industry. Therefore, the purpose of the Veteran and Local Hiring Program set forth in SEP-14 is to support and grow the Commonwealth's commitment by means of a robust hiring and retention program for local workers and veterans and a robust on-the-job training program.

(B) The Concessionaire, the Design-Build Contractor and any subcontractors will comply with SEP-14 for the Original Project.

(C) The parties recognize the importance of recruiting, hiring, and technical and workplace training of local workers and veterans in the development and execution of the NEXT Project. As such, the Concessionaire will utilize workforce on-the-job training, apprenticeship and recruitment programs to actively recruit local workers and veterans.

(D) If debarment occurs as a result of the Department's exercise of such remedies, such debarment will not result in a Concessionaire Default or a NEXT Concessionaire Breach.

(ii) Work Period for the NEXT Project.

(A) During the Work Period for the NEXT Project, the Department has established an on-the-job training goal of twenty-seven (27) participants. New hire participation represents employees paid specifically for work performed on the NEXT Project and may be randomly verified through the checking of payrolls. Hiring by subcontractors will count toward meeting the goals.

(B) The Department and the Concessionaire agree to manage the foregoing goals as follows: (1) the Concessionaire will submit for the Department's review and approval an initial Hiring Development Plan, and an updated Hiring Development Plan as further described in this Agreement. The initial and updated Hiring Development Plan will be submitted within 30 Days after the NEXT Project has achieved NEXT Financial Close and on January 30 of each year prior to achieving NEXT Final Completion. The Hiring Development Plan will define the Concessionaire's approach to meeting the workforce minimum requirements set forth in Section 11.03(g)(ii)(A); and (2) the Concessionaire will designate resources, including a liaison officer designated and made known to the Department who is assigned the responsibility of administering and promoting an active and inclusive Hiring Development Plan to ensure all programs related to the Hiring Development Plan are compliant with the parts of Section 11.03 that apply to the NEXT Project. The designation and identity of this officer will be submitted as part of the initial and updated Hiring Development Plan.

(C) The Concessionaire acknowledges that the Department's assistance and cooperation will not eliminate or reduce the Concessionaire's responsibility to achieve the workforce minimum requirements set forth in Section 11.03(g)(ii)(A) or demonstrate GFE. The Concessionaire is expected to utilize a variety of means and methods and creative strategies to do so. These strategies should be employed for all phases of the NEXT Project. The Concessionaire will meet the workforce minimum requirements set forth in this Agreement or demonstrate that GFE has been made.

(D) When there is a workforce minimum requirement for the Work Period for the NEXT Project, the Concessionaire will make GFE to meet the workforce minimum requirement. The Department will not disregard showings of GFE. The Department must seriously consider the Concessionaire's documentation of GFE. The Department will issue GFE guidelines providing examples, procedures and reporting requirements for the Concessionaire's consideration.

(h) The Concessionaire will comply, and will cause its Contractors to comply, with the provisions set forth in the Labor, Employment and DBE/SWaM Related Matters attached as Exhibit X.

Section 11.04 Compliance with Law and Federal Requirements.

(a) The Concessionaire shall comply with applicable Law. The Concessionaire will keep fully informed of and comply and require its Contractors to comply with Law. The Concessionaire will execute and file the documents, statements, and affidavits required under any Law required by or affecting this Agreement or the execution of the Work. The Concessionaire will permit examination of any records made subject to such examination by such Law.

(b) The Concessionaire will comply and require its Contractors to comply with all Laws applicable to the Project as a result of the costs of the Project being financed in part with State funds, federal-aid funds and State bond proceeds, including the applicable Federal Requirements attached as Exhibit W.

Section 11.05 Shared Facilities Agreement.

The Concessionaire has entered into the Shared Facilities Agreement with 95 Express Lanes, LLC for the use of the Express Operations Center. In connection therewith, the Concessionaire agrees to provide to the Department copies of all notices received or given by the Concessionaire pursuant to the Shared Facilities Agreement, unless otherwise mutually agreed to by the parties. For the avoidance of doubt, the parties agree that there will be no access fee, costs, or any other initial fee or cost or other payments between the Department and the Concessionaire on one hand and the Concessionaire and its affiliates, including 95 Express Lanes, LLC, on the other hand, for the use of the Express Operations Center for the NEXT Project; *provided, however*, that on and after the Service Commencement Date with respect to the NEXT HOT Lanes, tolling transactions attributable to the NEXT HOT Lanes may be reflected in the calculation of the Concessionaire’s “Allocated Interest” under the Shared Facilities Agreement.

ARTICLE 12

INTERRELATIONS AMONG TRANSPORTATION FACILITIES

Section 12.01 Coordination Regarding Certain Transportation Facilities.

The Department shall have the right at any time (and without liability to the Concessionaire for any damages it may suffer, except as specifically provided in Section 12.01(c) or 12.01(d)) to modify existing facilities, to construct new facilities, including but not limited to Project Enhancements, and to perform planned and emergency maintenance, renewal and replacement, safety and repair activities on existing and new facilities adjacent to or near the Project regardless of the impact of such activities on the Project; *provided, that*:

- (a) the Department shall use diligent efforts to keep the Concessionaire informed of planned maintenance, renewal and replacement and repair activities which can reasonably be foreseen to impact activities on the HOT Lanes Project;
- (b) the Department shall provide to the Concessionaire copies of and other information concerning the Department’s then current maintenance, renewal and replacement and repair program, upon the Concessionaire’s reasonable request;
- (c) to the extent it relates to Department Project Enhancements, the provisions of Section 9.02 shall govern the Department’s liability to the Concessionaire therefor; and
- (d) to the extent it relates to Department Changes, the provisions of Section 7.12 shall govern the Department’s liability to the Concessionaire therefor.

Section 12.02 Traffic Management Activities.

(a) The Concessionaire shall cooperate with the Department in managing the HOT Lanes as part of the overall transportation network in Northern Virginia. The Concessionaire’s congestion pricing methodology on the HOT Lanes is not intended to be inconsistent with the Department’s plans and programs for highway system management of the overall transportation network in Northern Virginia; *provided*, that implementation of such congestion pricing methodology is not otherwise inconsistent with and will not materially impact (i) the Concessionaire’s financial plan for financing the costs of the Project or (ii) the financial performance of the Project, and will not result in a breach of the SAFETEA-LU or other agreed operational requirements. For purposes of this subsection, “congestion pricing methodology” means a tolling methodology intended to maintain free-flow traffic conditions.

(b) The Department may temporarily override any messages posted on variable message signs within or solely serving the HOT Lanes Project in order to post information regarding a declared emergency issued pursuant to applicable Law by the Department or any other Governmental Authority or a significant incident involving one or more casualties requiring hospitalization or treatment by a medical professional or one or more fatalities; *provided*, that any such activities must be coordinated with the Concessionaire in accordance with the protocols set forth in Exhibit E.

(c) The Department and the Concessionaire shall agree to the intersection control plans setting forth the management of the intersections and other junctions connecting the HOT Lanes to the surrounding roadway system to be included in or as amendments to the Joint Operating and Maintenance Protocols attached hereto as Exhibit E, as may be mutually updated by the parties from time to time. At the Concessionaire's request and expense, the Department shall be obligated from time to time to cooperate reasonably with the Concessionaire in reviewing and, if appropriate, revising the intersection control plans in order to assist the Concessionaire in meeting operational and performance targets for the HOT Lanes.

(d) Subject to the Concessionaire's obligations hereunder, during the Term the Department shall maintain, repair and, in accordance with the Department's normal course of operations and activities, cause to be continuously open and operational, so as to permit access to the HOT Lanes by Permitted Vehicles (except for closures for activities in the following proviso), the Capital Beltway and the ramps, bridges and roadways directly connecting to the HOT Lanes and the Capital Beltway Corridor that are part of the interstates and primary system of State Highways; *provided*, that the foregoing does not restrict the Department's right to operate existing or new facilities, to modify existing facilities, to construct new facilities, including but not limited to Project Enhancements, and to perform planned and emergency maintenance, renewal and replacement, safety and repair activities on existing and new facilities adjacent to or near the Project regardless of the impact of such activities on the Project.

Section 12.03 Intelligent Transportation Systems (ITS) Activities.

With the approval of the Concessionaire (such approval not to be unreasonably withheld), the Department shall have the right to perform ITS research and install ITS equipment on the HOT Lanes Right of Way for public, non-revenue generating purposes, *provided* that such ITS equipment does not materially interfere with the functioning of the ETTM System or existing ITS systems being utilized for the HOT Lanes, and does not materially and negatively impact toll operations or reduce vehicle throughput capacity of the HOT Lanes Project; and *provided, further*, that if the Department's ITS activities pursuant to this Section 12.03 result in the incurrence by the Concessionaire of Concessionaire Damages, the Concessionaire shall be entitled to compensation in accordance with Sections 13.02 and 13.03. The Department shall bear all installation, maintenance, operation, replacement and other costs and expenses relating to such ITS equipment and research and all claims and liabilities resulting therefrom, and subject to any applicable privacy Law, shall provide access to all transportation data generated thereby, including video streams, to the Concessionaire at no cost for the sole purpose of traffic management.

Section 12.04 Signage.

(a) The Concessionaire shall have the right, at its cost, to install and maintain variable messaging signs or static signs on or above any portion of the Capital Beltway Corridor notifying motorists of such information as the Concessionaire deems appropriate in the construction, operations and management of the Project, including, but not limited to, notice of construction and diversion to alternate directional routes, access to the HOT Lanes, the applicable High Occupancy Requirement and applicable tolls and fines for toll violations and, consistent with the Department's Reserved Rights, promotional and public relations materials, in accordance with applicable Law and the Technical Requirements. The

Department shall remain responsible, at its cost, for general directional signs on State Highways informing the public of the direction and distance to the HOT Lanes and other State Highways.

(b) The Concessionaire agrees that it shall, at its sole cost, install, operate and maintain on connecting State Highways such signs solely notifying motorists of the access to the HOT Lanes, the amount of tolls and fines for toll violations, the applicable High Occupancy Requirement, and other relevant information, in accordance with applicable Law and the Technical Requirements.

(c) During the Term, the Department shall also cooperate with, and use its best efforts to cause other public agencies or entities to cooperate with, the Concessionaire to install, at the Concessionaire's cost, additional signs along feeder roads and other roadways notifying motorists of the access to the HOT Lanes and any other communications relating to the HOT Lanes as are reasonably requested by the Concessionaire, subject to any obligation to obtain any necessary authorizations of any other Governmental Authority and in accordance with applicable Law, including, without limitation, the MUTCD. In connection with any such request, the Concessionaire will submit the proposed layout, location, type, size, color and content of all such traffic signs or other signs.

ARTICLE 13

DELAY EVENTS; COMPENSATION EVENTS; FORCE MAJEURE EVENTS

Section 13.01 Delay Events.

(a) If the Concessionaire is affected by a Delay Event, it shall give notice within 30 days following the date on which it first became aware (or should have been aware, using all reasonable due diligence) of such Delay Event to the Department (*provided*, that in the case of the same Delay Event being a continuing cause of delay, only one notice shall be necessary), which notice shall include (i) a statement of which Delay Event the claim is based upon, (ii) details of the circumstances from which the delay arises, and (iii) an estimate of the delay in the performance of obligations under this Agreement attributable to such Delay Event and information in support thereof, if known at that time. The Department shall, after receipt of the said notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the Department may reasonably consider necessary. If for any reason the Concessionaire fails to deliver such notice of a Delay Event within such 30 day period, the Concessionaire shall be deemed to have irrevocably and forever waived and released any Claim or right to time extensions or any other relief with respect to such Delay Event.

(b) The Concessionaire shall notify the Department within 15 days following the date on which it first became aware (or should have been aware, using all reasonable due diligence) that such a Delay Event has ceased.

(c) Subject to the Concessionaire giving the notice required in Section 13.01(a)(i), a Delay Event pursuant to this subsection (b) shall excuse the Concessionaire from whatever performance is prevented by the Delay Event referred to in such notice for such appropriate number of days as the Department and the Concessionaire jointly determine, each acting reasonably. During the Work Period, extensions for Delay Events affecting the Work shall be based on TIA and the then current applicable Baseline Schedule, taking into account impacts of the Delay Events on critical path items. If the Department and the Concessionaire cannot agree upon the period of extension, then either party shall be entitled to refer the matter to the dispute resolution procedure in Section 17.06. This Section 13.01(c)(iii) shall not excuse the Concessionaire from the performance and observance under this Agreement of all obligations and covenants not affected by the Delay Event. Notwithstanding the occurrence of a Delay Event, the Concessionaire shall continue its performance and observance under this Agreement of all of its obligations

and covenants to be performed to the extent that it is reasonably able to do so and shall use its reasonable efforts to minimize the effect and duration of the Delay Event. Nothing herein shall permit or excuse noncompliance with a change to applicable Law.

Section 13.02 Compensation Events.

(a) Either party hereto may submit a written notice to the other party of any Compensation Event, which notice shall be submitted within 30 days following the date on which the submitting party first became aware (or should have been aware, using all reasonable due diligence) that an event has occurred and that it is or will become a Compensation Event pursuant hereto (a “Compensation Event Notice”). The Compensation Event Notice shall set forth (i) the Compensation Event and its date of occurrence in reasonable detail, and (ii) the amount claimed as the Concessionaire Damages or as Positive Revenue, as applicable, and details of the calculation thereof including a written analysis and calculation of the estimated Net Cost Impact, if any, and estimated Net Revenue Impact.

(b) If for any reason the Concessionaire fails to deliver such written Compensation Event Notices within the foregoing time periods, the Concessionaire shall be deemed to have irrevocably and forever waived and released any Claim or right to compensation for any Concessionaire Damages or other adverse effects on Toll Revenues or on costs, expenses and liabilities attributable to such Compensation Event.

(c) After a party hereto submits a Compensation Event Notice, the other party may, but is not required to, obtain, at its sole cost (i) a comprehensive report as to the Concessionaire’s estimate of the Net Cost Impact attributable to the Compensation Event and (ii) 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 or Positive Revenue, as applicable, attributable to the Compensation Event. Within 90 days after receiving a Compensation Event Notice, the party in receipt of such notice shall provide to the party having given such notice a copy of such reports as it has elected to obtain. Within 120 days after the delivery of the Compensation Event Notice, the Concessionaire and Department shall commence good faith negotiations to determine the Concessionaire Damages, Positive Revenue or other compensation, if any, to which a party is entitled, including calculation of the present value of such Concessionaire Damages, Positive Revenue or other compensation pursuant to Section 13.03(a).

(d) If the Concessionaire and Department are unable to agree upon the amount of the Concessionaire Damages, Positive Revenue or other compensation, if any, or present value thereof, within 60 days after commencement of negotiations, either party, by written notice to the other party, may terminate the negotiations and request the dispute be resolved in accordance with Section 17.06.

(e) The Concessionaire shall take all steps reasonably necessary to mitigate the amount of the Concessionaire Damages attributable to, and other consequences of, any Compensation Event, including all steps that would generally be taken in accordance with Good Industry Practice.

Section 13.03 Payment Options for Concessionaire Damages and Positive Revenue.

(a) Subject to Section 20.18, following a determination of the Concessionaire Damages, including those determined under Sections 9.02, 12.03, 13.04, 13.05, 13.06 and 17.04, Positive Revenue under Sections 7.12, 9.02, and 13.04, compensation regarding certain Hazardous Substances under Section 8.10, or compensation for Net Revenue Impact or Net Cost Impact under Section 19.02, by mutual agreement or dispute resolution, the party owing such compensation shall pay such compensation; *provided*, that it may make such payment or payments in any of the following manners:

(i) a lump-sum payment of the present value of the compensation, discounted to the date of payment at the then applicable discount rate that an informed buyer and an informed seller of the future payment obligations, under no compulsion to buy or sell, would agree to use in determining the present value of such compensation;

(ii) through quarterly or other periodic payments of the compensation over the remaining life of the Term so long as such payment schedule provides for payment of such portion of the compensation within 90 days after such damages or compensation is projected to be incurred; *provided*, that if any such payment is made more than 90 days after the recipient party incurs or suffers the compensation or damages, the unpaid compensation shall accrue interest at the Bank Rate from and after such 90th day to the date such payment is made; and *provided further*, that if the payor elects to make quarterly or other periodic payments, at any later time it may choose to complete compensation through a lump-sum payment of the present value of the remaining compensation;

(iii) by set-off against amounts then due and owing to the Department pursuant to the Permit Fee arrangements detailed in Article 5; or

(iv) in such other manner as agreed upon by the parties or determined through dispute resolution.

(b) As a condition precedent to one party's obligation to compensate the other party for the Concessionaire Damages, Positive Revenue or otherwise under this Section 13.03, the party entitled to receive such compensation shall execute a full, unconditional, irrevocable release of any Claims or other rights to compensation or other monetary relief associated with such Compensation Event other than the right to receive the applicable Concessionaire Damages, Positive Revenue or otherwise under this Section 13.03.

Section 13.04 Change in Law.

(a) Subject to Section 20.18, if (i) a Discriminatory Change in Law occurs after the Agreement Date (with respect to the Original Project) or the Second Amended and Restated Agreement Date (with respect to the NEXT Project) and (ii) such Discriminatory Change in Law results in Concessionaire Damages, the Department shall compensate the Concessionaire in accordance with Sections 13.02 and 13.03; *provided*, that any Positive Revenue resulting from a Discriminatory Change in Law shall be shared equally between the Concessionaire and the Department and the Department's share of such Positive Revenue shall be paid by the Concessionaire and deposited in the Concession Payments Account, in addition to and without regard to any amounts payable under Article 5, and *provided further*, however, that none of the following shall be a Discriminatory Change in Law: (A) the development, redevelopment, construction, maintenance, modification or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of Toll Revenues or in the number of vehicles using the HOT Lanes Project, including any action described in Section 12.01(a); (B) an increase in Taxes of general application; or (C) a Reimbursable Tax Imposition.

(b) Subject to Section 20.18, if regulatory control and jurisdiction over the HOT Lanes is transferred or assigned to a Governmental Authority other than the State or a State agency during the Lock-up Period and the effect of such action has a Net Revenue Impact or Net Cost Impact, the Department shall pay to the Concessionaire any Concessionaire Damages with respect thereto in accordance with Sections 13.02 and 13.03. If regulatory control and jurisdiction over the HOT Lanes is transferred to a Governmental Authority other than the State or a State agency after the Lock-up Period, at least 60 days prior to any such transfer or assignment the Department shall consult with the Concessionaire about the

intended transfer or assignment and the Concessionaire shall have the opportunity to submit to the Department information as to the potential economic impact to the HOT Lanes Project of such transfer or assignment. Notwithstanding any other provision of this Agreement, if as a result of or subsequent to any such transfer or assignment to another Governmental Authority applicable local law or regulation has the effect of preventing the Concessionaire from meeting its obligations under this Agreement such effect may not in and of itself be the basis for any termination of this Agreement by the Department.

Section 13.05 Toll Exemptions; Excess High Occupancy Vehicle Usage.

(a) Subject to Section 20.18, if any Governmental Authority enacts, adopts, promulgates, modifies, or repeals any Law during the Term that (i) permits vehicles other than as provided by Section 4.04(b)(i) or (ii) to travel on the HOT Lanes without paying the full tolls established by the Concessionaire, including by any decrease in the High Occupancy Requirement to HOV-2 or below, or (ii) permits vehicles other than Permitted Vehicles to travel on the HOT Lanes, and the effect of such action has a Net Revenue Impact, the Department shall pay to the Concessionaire any Concessionaire Damages with respect thereto in accordance with Sections 13.02 and 13.03.

(b) The Department agrees to pay the Concessionaire, subject to Section 20.18, amounts equal to 70% of the Average Toll applicable to vehicles paying tolls for the number of High Occupancy Vehicles exceeding a threshold of 30% of the total flow of all Permitted Vehicles that are then using such Toll Section going in the same direction for the first 30 consecutive minutes during any day, and any additional 15 consecutive minute periods in such day, during which average traffic for a Toll Section going in the same direction exceeds a rate of 3,200 vehicles per hour based on two lanes. Notwithstanding the foregoing, (A) this Section 13.05(b) shall apply only with respect to periods beginning one year after the Initial Service Commencement Date and ending not later than 40 years after the Closing Date, (B) this Section 13.05(b) shall cease to apply once a pre-tax internal rate of return (rounded up, if necessary, to a whole multiple and 1/1000 of 1%) on Total Invested Project Funds of 12.98%, calculated based on the nominal Net Cash Flow of the HOT Lanes Project for the period from the Initial Service Commencement Date to the end of a calendar year, has been achieved, and (C) for purposes of determining the High Occupancy Vehicles as a percentage of flow, HOV-2 or below vehicles and Permitted Vehicles violating the High Occupancy Requirement shall not be counted as High Occupancy Vehicle usage but shall be counted as part of total flow. Failure by the Concessionaire to notify the Department in writing of its claim for a payment pursuant to this Section 13.05(b), and to provide audited or otherwise independently verified information relevant to this calculation, within 30 days after the end of each calendar month with respect to which this provision applies shall constitute a permanent waiver of any such claim with respect to such month. The Department will have 30 days upon receipt of this information to review the information and calculations provided and if the Department agrees with the calculation, make the calculated payment, together with interest on such amount, which interest shall commence accruing 30 days after the month to which the payment relates. To the extent there are amounts on deposit in the Concession Payments Account, such payments shall be made first from the Concession Payments Account and the interest due shall be calculated based on the average earnings rate on the Concession Payments Account, during such period. If there are no amounts on deposit therein then interest shall be based on the average earnings rate on the State's Transportation Trust Fund or any successor thereto, during such period. Any disputes with regards to the information or the calculation will be subject to the dispute resolution process in Section 17.06.

Section 13.06 Reimbursable Tax Imposition

Subject to Section 20.18, if a Reimbursable Tax Imposition occurs at any time during the Term, the Department shall pay to the Concessionaire the Concessionaire Damages with respect thereto in accordance with this Section 13.06 and Sections 13.02 and 13.03. The Concessionaire shall promptly

notify the Department if the Concessionaire obtains written advice or written information of any proposed or threatened change in Law that could result in a Reimbursable Tax Imposition or of any local taxing district or other Governmental Authority's intent to levy such a tax.

Section 13.07 Significant Force Majeure Event.

(a) Within 30 days following the date on which the Concessionaire first became aware of any Force Majeure Event that is reasonably expected to be a Significant Force Majeure Event, the Concessionaire shall give notice ("Force Majeure Notice") to the Department setting forth the date and details of the Force Majeure Event.

(b) If a Significant Force Majeure Event occurs, the Concessionaire shall have the right to extend the Term, contingent on the Concessionaire's agreement to diligently and completely restore of the HOT Lanes before the end of the existing Term of this Agreement (as of the date of the Force Majeure Event) to at least the same condition as it would have been had such Force Majeure Event not occurred, for a period of time that would be sufficient so as to restore the Concessionaire to the same economic position, based on the most recent Base Case Financial Model Update (as of the date of the Force Majeure Event), as it would have been in had such Force Majeure Event not occurred (a "Force Majeure Extension").

(c) If the Concessionaire elects to exercise the right to a Force Majeure Extension, the Concessionaire shall give notice ("Force Majeure Extension Notice") thereof to the Department during the period the result of such Force Majeure Event is continuing and within 180 days after the occurrence of such Force Majeure Event setting forth (i) the amount of time reasonably required to diligently restore the HOT Lanes to at least the same condition as it would have been had such Force Majeure Event not occurred (*provided*, that if this cannot occur before the end of the existing Term of this Agreement, there shall be no right to a Force Majeure Extension), and (ii) the extension of the Term claimed by the Concessionaire in accordance with Section 13.07(b). The Department shall, within 30 days after receipt of the Force Majeure Extension Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the Department may reasonably consider necessary. The Department shall, in writing within 30 days after receipt of the Force Majeure Extension Notice or, if later, within 30 days after receipt of such further information requested by the Department, either (A) accept the Force Majeure Extension Notice, or (B) dispute that a Significant Force Majeure Event has occurred or the amount of time required for such diligent restoration or the Force Majeure Extension period claimed in the Force Majeure Notice or Force Majeure Extension Notice, as applicable. If the Department accepts the Force Majeure Extension Notice, the Concessionaire shall diligently pursue the Work and restore any physical damage or destruction to the HOT Lanes Project; *provided*, that the Concessionaire shall not undertake such Work unless all aspects thereof are approved in writing by the Department, and the Concessionaire and the Department shall use all reasonable efforts to enter into a Development Contract with the Department with respect thereto within 60 days after the Department has accepted the Force Majeure Extension Notice. If the Department wishes to dispute that a Significant Force Majeure Event has occurred, the amount of time required for such diligent restoration or the Force Majeure Extension period claimed in the Force Majeure Notice or Force Majeure Extension Notice, as applicable, the Department shall give notice of dispute (the "Force Majeure Dispute Notice") to the Concessionaire within 30 days following the date of receipt of the Force Majeure Notice or Force Majeure Extension Notice, as applicable, stating the grounds for such dispute, and if neither the Force Majeure Extension Notice nor the Force Majeure Dispute Notice has been revised in a manner acceptable to the Department or withdrawn within 30 days following the date of receipt of the Force Majeure Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure set forth in Section 17.06.

ARTICLE 14

INDEMNIFICATION, INSURANCE AND PERFORMANCE SECURITY

Section 14.01 Indemnities of the Concessionaire.

(a) The Concessionaire shall indemnify and hold harmless each State Indemnitee from and against any Losses actually suffered or incurred by such State Indemnitee (except for such Losses to the extent caused by the negligence or willful misconduct of such State Indemnitee), due to Third Party Claims that are based upon, arise out of, relate to, are occasioned by or are attributable to (i) any failure by the Concessionaire to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, any breach by the Concessionaire of its representations or warranties set forth herein, (ii) any actual or alleged misconduct, negligence or other culpable act, error or omission of a Concessionaire Party in connection with the Project, (iii) any actual or alleged patent or copyright infringement or other actual or alleged improper appropriation or use of trade secrets, patents, proprietary information, know-how, trademarked or service marked materials, equipment, devices or processes, copyright rights or inventions by a Concessionaire Party in connection with the Project, (iv) inverse condemnation, trespass, nuisance or similar taking of or harm to real property committed or caused by a Concessionaire Party in connection with the Project, (v) any tax attributable to any Transfer of the Concessionaire's Interest or any part thereof or (vi) any claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the Concessionaire, its Affiliates or their respective Representatives in connection with this Agreement, any Transfer of the Concessionaire's Interest or any part thereof.

(b) The indemnities of the Concessionaire shall survive the expiration or earlier termination of this Agreement and the other Project Agreements to which the Concessionaire is a party and shall continue for six years following the expiration or termination of this Agreement; *provided*, that such six-year limitation on survival shall not apply in the event of fraud or a material misrepresentation with respect to a particular covenant, agreement, representation or warranty, and, *provided further*, that additional indemnification agreements shall be as provided in any Design-Build Contract and any other Project Agreement. Notwithstanding the foregoing, the Concessionaire's indemnification of any State Indemnitee shall be limited solely to its obligations under this Agreement and other Project Agreements to which the Concessionaire becomes a party.

(c) (1) In the event that any Third-Party Claim for which the Concessionaire may be required to indemnify a State Indemnitee hereunder is asserted in writing against the Department, it shall as promptly as practicable notify the Concessionaire in writing of such Claim, and such notice shall include a copy of the Claim and any related correspondence or documentation from the third party asserting the Claim; *provided*, that any failure to give such prompt notice shall not constitute a waiver of any rights of the Department, except to the extent that the rights of the Concessionaire are actually and materially prejudiced thereby. If any Third-Party Claim for which the Concessionaire may be required to indemnify a State Indemnitee hereunder is asserted in writing against a State Indemnitee other than the Department, a failure by such State Indemnitee to give the Concessionaire prompt notice in writing of such Claim together with a copy of the Claim and any related correspondence or documentation from the third party asserting the Claim, shall constitute a waiver of any rights of such State Indemnitee to indemnification to the extent, and only to the extent, that the rights of the Concessionaire are actually and materially prejudiced thereby.

(i) The Concessionaire shall be entitled and obligated to appoint counsel of its choice at the expense of the Concessionaire to represent a State Indemnitee in any action for which indemnification is sought (in which case the Concessionaire shall not thereafter be responsible for the fees and expenses of any separate counsel retained by that State

Indemnatee except as set forth below); *provided*, that such counsel shall be satisfactory to such State Indemnatee. Notwithstanding the Concessionaire's appointment of counsel to represent a State Indemnatee in any action, such State Indemnatee shall have the right to employ separate counsel, and the Concessionaire shall bear the reasonable fees, costs and expenses of such separate counsel, if (A) the use of counsel chosen by the Concessionaire to represent the State Indemnatee would present such counsel with a conflict of interest; (B) the actual or potential defendants in, or targets of, any such action include both the State Indemnatee and the Concessionaire and the State Indemnatee shall have reasonably concluded that there may be legal defenses available to it and/or other State Indemnitees which are different from or additional to those available to the Concessionaire; (C) the Concessionaire shall not have employed counsel to represent the State Indemnatee within a reasonable time after notice of the institution of such action; or (D) the Concessionaire shall authorize the State Indemnatee to employ separate counsel at the Concessionaire's expense. The Concessionaire shall not be liable for any settlement or compromise of any action or claim by an State Indemnatee affected except with the Concessionaire's prior written consent, which consent shall not be unreasonably withheld or delayed, or except where the settlement or compromise is approved by the court after the Concessionaire receives reasonable notice and the opportunity to be heard and such court approval has become final and nonappealable.

Section 14.02 Insurance Coverage Required.

(a) Required Insurance During the Work Period. The Concessionaire shall cause to be maintained during the Work Period for the Original Project, the insurance coverages required in the Original Design-Build Contract and any Major Subcontract related to the Original Project.

(b) Required Insurance During Operating Period. The Concessionaire shall provide and maintain at its own expense, or cause to be maintained, during the Operating Period and during any time period following the Term's expiration if the Concessionaire is required to return and perform any additional work, the insurance coverages specified below, insuring the HOT Lanes Project and all HOT Lanes Operations:

(i) Property and Business Interruption. The Concessionaire shall obtain property insurance at replacement cost, covering loss, damage or destruction to the HOT Lanes Project, including improvements and betterments; *provided*, that the limits of such coverage may be based on a maximum foreseeable loss analysis, subject to the Department's approval of such maximum foreseeable loss analysis by an independent third party that is reasonably acceptable to the Department, with such approval of the Department not to be unreasonably withheld, and, *provided further*, that:

(A) Coverage shall include, but not be limited to, the following: flood, earthquake, earth movement, collapse, water including overflow, leakage, utility interruption, debris removal, business ordinance or law for increased cost of construction, extra expense, valuable papers and terrorism.

(B) Coverage shall also insure against interruption or loss of projected Toll Revenues for at least one full year from the occurrence of the risk, resulting from physical damage to the HOT Lanes Project and any relevant feeder roads.

(C) The Department is to be named as an additional insured.

(D) The Concessionaire is responsible for all loss or damage to personal property (including, but not limited to, materials; fixtures/contents, equipment, tools and supplies) of the Concessionaire.

(ii) Commercial General Liability (Primary and Umbrella). The Concessionaire shall provide commercial general liability Insurance or its equivalent with limits of not less than \$50,000,000 per occurrence and in the aggregate in any one annual period of insurance for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to, the following: all premises and operations, products/completed operations, explosion, collapse, separation of insureds, defense, terrorism (if available) and contractual liability (to the extent such a clause can be obtained). The Department is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement and shall contain a cross liability clause so that the insurance shall operate in the circumstance that one insured brings a claim against another insured party. Such insurance shall also be required with regard to the periods described in (viii) below.

(iii) Automobile Liability (Primary and Umbrella). When any motor vehicles (owned, non-owned or hired) are used in connection with work to be performed, the Concessionaire shall provide or cause to be provided automobile liability insurance with limits of not less than \$10,000,000 combined single limit or per occurrence and in the aggregate in any one annual period insurance for bodily injury and property damage. Such limit may be combined with an umbrella limit applicable to (ii) above (commercial general liability). The Department is to be named as an additional insured on a primary, non-contributory basis.

(iv) Builder's Risk. Subject to the further requirements of any Development Contract, when the Concessionaire undertakes any construction, maintenance or repairs to the HOT Lanes Project, including improvements and betterments pursuant to this Agreement, the Concessionaire shall provide or cause to be provided, builder's risk insurance at replacement cost for material, supplies, equipment, machinery and fixtures that are or will be part of the HOT Lanes Project. Coverage shall include, but not be limited to, the following: right to partial occupancy, earthquake, earth movement, and flood. The Department shall be named as an additional insured on a primary, non-contributory basis.

(v) Workers' Compensation and Employer's Liability. The Concessionaire shall provide workers' compensation insurance, as prescribed by applicable Law, for all Concessionaire employees.

(vi) Contractor Pollution Liability. The Concessionaire shall provide or cause to be provided contractor pollution liability insurance of not less than \$10,000,000 any one claim and in the aggregate in any one annual period of insurance and a deductible that does not exceed \$500,000.

(c) Required Insurance For the NEXT Project. The Concessionaire will provide and maintain at its own expense, or caused to be provide and maintained, the insurance coverages specified in Exhibit Y.

(d) General Requirements Applicable to Insurance. The insurances which the Concessionaire is required to effect under Section 14.02(a) and Sections 14.02(b) above:

(i) shall be effected with insurers approved by the Department (such approval not to be unreasonably withheld);

(ii) shall be on terms approved by the Department (such approval not to be unreasonably withheld);

(iii) shall not contain any exclusion, endorsement or alteration, unless it is first approved by the Department (such approval not to be unreasonably withheld);

(iv) other than for workers compensation insurance and automobile liability insurance and contractor pollution liability insurance without inferring a right of cancellation that would not exist in the absence of these endorsements, shall contain a term which requires the insurer to give not less than 30 days' prior notice to the Department whenever the insurer gives the Concessionaire a notice of cancellation or any other notice with respect to the policy;

(v) with regard to workers compensation insurance, automobile liability insurance and contractor pollution liability insurance, shall be effected on a severability of interest basis for the purposes of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result);

(vi) shall be endorsed so that the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;

(vii) other than for workers compensation insurance, automobile liability insurance, contractor pollution liability insurance, shall contain a provision under which the insurer agrees that the failure of one insured to observe and fulfill the terms of the policy will not prejudice the policy with respect to the interests of the other insureds; and

(viii) other than for workers compensation insurance and automobile liability insurance, have each policy endorsed to the effect that the Department and the other insureds shall not be prejudiced by an unintended and/or inadvertent error, omission or misdescription of the risk interest in property insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured or failure to comply with a statutory requirement.

The Concessionaire shall give the Department proof satisfactory to it of currency and coverage of insurances, as soon as practicable after the Closing Date or the NEXT Financial Close Date, as applicable (with respect to insurance required during the Work Period), or no later than 30 days prior to the applicable Service Commencement Date (with respect to insurance required during the Operating Period) and also whenever reasonably requested by the Department.

Within Section 14.02(b), all stipulated monetary amounts shall be reviewed at three yearly intervals and increased as appropriate, in line with such amounts that would be insured by a prudent business similar to, and undertaking similar activities to, the Concessionaire.

(e) Unavailability of Insurance.

(i) If any insurance required to be maintained pursuant to this Section 14.02 (including the limits or deductibles or any other terms under policies for such insurance) ceases to be available on a commercially reasonable basis, the Concessionaire shall provide written notice to the Department accompanied by a letter from the Concessionaire's insurance advisor stating that such insurance is unavailable on a commercially reasonable basis. Such notice shall be given not less than 30 days prior to the scheduled date for renewal of any such policy. Except to the extent attributable to the Concessionaire, or any Concessionaire Party upon receipt of such notice by the Department, the Concessionaire and the Department shall immediately enter into good faith negotiations regarding the matters set forth in Section 14.02(d)(ii) and (iii) below.

(ii) In the event that the Concessionaire and the Department cannot reach a resolution acceptable to both parties within 10 days, the Concessionaire and the Department shall make arrangements for the formation of an insurance panel consisting of the Concessionaire's insurance advisor (or broker), the Department or its insurance advisor (or broker) and an independent insurance expert from a nationally recognized insurance brokerage firm, chosen by the Concessionaire and reasonably acceptable to the Department. Such independent expert shall conduct a separate review of the relevant insurance requirements of this Section 14.02 and the market for such insurance at the time, giving due consideration to the representations of both insurance advisors, and upon conclusion of such review shall issue a written report stating whether such insurance is available or unavailable on a commercially reasonable basis.

(iii) If the insurance expert concludes that such insurance is not available on a commercially reasonable basis, the insurance expert shall provide a written recommendation (which shall include the amount and type of insurance which is available upon a commercially reasonable basis) not less than 15 days before the date for renewal of such insurance. The Concessionaire shall, prior to the expiration of the insurance then in effect, obtain the insurance required by this Section 14.02 that is available on a commercially reasonable basis.

(iv) The Department makes no representation that the limits of liability specified for any insurance policy to be carried pursuant to this Agreement are adequate to protect the Concessionaire against its undertakings under this Agreement, to the Department, or any third party. No such limits of liability shall preclude the Department from taking any actions as are available to it under the Project Documents or applicable Law.

Section 14.03 Concessionaire Indemnifications Regarding Hazardous Substances.

(a) The Concessionaire shall indemnify, protect, hold harmless and release each State Indemnatee from and against any and all Losses, including attorneys' fees, such State Indemnatee incurs, and the Concessionaire shall defend each State Indemnatee from and against any Claims, asserted by third parties, arising out of the following:

(i) Any Hazardous Substances originally introduced to or brought onto the Project Right of Way or the HOT Lanes Right of Way by any Concessionaire Party or on property within the Project Right of Way acquired by the Concessionaire or the Design-Build Contractor for the Department pursuant to Section 7.08;

(ii) Failure of any Concessionaire Party to perform its obligations pursuant to Sections 7.08, 7.18 or 8.11, or any other provisions of this Agreement or any other Project Agreement related to Hazardous Substances or to otherwise comply with applicable Environmental Laws and Regulatory Approvals; and

(iii) Exacerbation, due to the negligence, recklessness or willful misconduct or failure to provide proper engineering controls of any Concessionaire Party, of the release, spreading, migration or toxicity of Pre-Existing Hazardous Substances which are or become known or apparent to or reasonably suspected by any Concessionaire Party prior to such exacerbation.

(b) Except to the extent provided in Sections 14.03(a), the Concessionaire shall not have any obligation to indemnify the Department or any third-party beneficiary or assignee with respect to any third party Claim relating to Pre-Existing Hazardous Substances.

(c) Except to the extent matters are addressed by the provisions of Section 14.03(a), the Department agrees that, to the extent permitted by applicable Law, it shall assume responsibility for the discharge and satisfaction of liabilities and other Claims asserted by a third party against the Concessionaire or a Concessionaire Party for personal injury or damage or harm to its property or business due to Pre-Existing Hazardous Substances.

Section 14.04 Funding and Performance Security.

(a) Performance Security – NEXT Equity Funding Guaranties or NEXT Equity Letters of Credit.

(i) With respect to the NEXT Project, the Concessionaire will cause the Equity Sponsor(s), collectively, to provide funding support in an aggregate amount equal to the NEXT Equity Commitment Amount, which support from any Equity Sponsor may take one or more of the following forms, in each case, for each Equity Sponsor so long as in the aggregate the funding support reflects at least such Equity Sponsor's respective pro rata portion of the NEXT Equity Commitment Amount: (A) one or more Letters of Credit in an aggregate amount equal to, in the aggregate with any other funding support acceptable to Lenders, at least such Equity Sponsor's respective pro rata portion of the NEXT Equity Commitment Amount (the "NEXT Equity Letter of Credit") in accordance with the NEXT Project Financing Agreements; and/or (B) an equity funding guaranty, which guarantees the funding of capital contributions of such Equity Sponsor in accordance with the terms of the NEXT Equity Funding Agreements, in an aggregate amount equal, in the aggregate with any other funding support acceptable to Lenders, at least such Equity Sponsor's respective pro rata portion of the NEXT Equity Commitment Amount (the "NEXT Equity Funding Guaranty").

(ii) The NEXT Direct Agreement will include a provision granting the Department the right, subject to the terms set forth in the NEXT Direct Agreement and the Project Financing Agreements, to direct the Collateral Agent to draw upon such Equity Sponsor's NEXT Equity Letter of Credit (if any), and/or such Equity Sponsor's NEXT Equity Funding Guaranty (if any), with respect to any amounts that the relevant Equity Sponsor has failed to fund when due and payable (whether at the scheduled date or upon acceleration upon an event of default under the NEXT Project Financing Agreements), and that the proceeds of such draw will be deposited in a project account as designated by the Collateral Agent in accordance with the NEXT Project Financing Agreements.

(b) NEXT Design-Build Contract Performance Security

(i) NEXT Payment Bond and NEXT Performance Bond. In connection with the NEXT Project, the Concessionaire will furnish or require the NEXT Design-Build Contractor to furnish (1) a Payment Bond from a surety or other firm acceptable to the Department (the “NEXT Payment Bond”) in an amount equal to 100% of the NEXT Design-Build Cost and (2) a Performance Bond from a surety or other firm acceptable to the Department (the “NEXT Performance Bond”) in an amount equal to 100% of the NEXT Design-Build Cost, each in substantially the forms set forth in Exhibit V.

(ii) Each of the NEXT Payment Bond and the NEXT Performance Bond may be provided in multiple forms that, in the aggregate, equal the required amount for each of such NEXT Payment Bond and the NEXT Performance Bond, as applicable. The NEXT Payment Bond and the NEXT Performance Bond each will name the Department and the Collateral Agent as an obligee, which may be pursuant to a multiple obligee rider, and will provide that it may be transferred by the Concessionaire to the Department or the Collateral Agent, as beneficiary, with rights to draw upon or exercise other remedies thereunder if the Department or the Collateral Agent, as applicable, succeeds to the position of the Concessionaire under the NEXT Design-Build Contract.

(iii) Any Major Subcontract in addition to the NEXT Design-Build Contract will be subject to customary competitive procurement, FHWA and Department review and approval, insurance, performance and payment security, and other requirements analogous to those applicable to the NEXT Design-Build Contract.

(c) Additional Requirements for all Performance Security.

(i) Unless otherwise specified in this Agreement, a draw on any Performance Security will not be conditioned on prior resort to any other security of, or provided for the benefit of, any Concessionaire Party. If the Department receives proceeds of a draw on any Performance Security in excess of the relevant obligation, the Department will promptly refund the excess to the Concessionaire (or to its designee) after all relevant obligations are satisfied in full; *provided* that (A) if such draw is with respect to Performance Security provided pursuant to Section 14.04(b) and (B) the Concessionaire is the party responsible for undertaking the obligation for which such Performance Security was drawn, then the full amount of such drawn Performance Security shall be transferred to the Concessionaire.

(ii) The Concessionaire will obtain and furnish all Performance Security and replacements thereof at its sole cost and expense, and will pay all charges imposed in connection with the Department’s presentment of sight drafts and drawing against any Performance Security or replacements thereof.

(iii) In the event the Department makes a permitted assignment of its rights and interests under this Agreement, the Concessionaire will cooperate so that concurrently with the effectiveness of such assignment, either replacement Performance Security for, or appropriate amendments to, the outstanding Performance Security will be delivered to the assignee naming the assignee as replacement beneficiary, at no cost to the Concessionaire.

(iv) The obligations of the Concessionaire during the Term to reimburse the issuer for draws under any Performance Security may be secured by a Financing Assignment if it encumbers the entire Concessionaire's Interest.

ARTICLE 15

REPRESENTATIONS, WARRANTIES AND FINDINGS

Section 15.01 Department Representations and Warranties.

The Department hereby represents and warrants to the Concessionaire as follows:

(a) The Department is an agency of the State and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement and other Project Agreements to which the Department is a party.

(b) Each person executing this Agreement or any other Project Agreement on behalf of the Department to which the Department is a party has been or at such time will be duly authorized to execute each such document on behalf of the Department.

(c) Neither the execution and delivery by the Department of this Agreement and the other Project Agreements executed concurrently herewith to which the Department is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.

(d) There is no action, suit, proceeding, investigation or litigation pending and served on the Department which challenges the Department's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Project Agreements to which the Department is a party, or which challenges the authority of the Department official executing this Agreement or the other Project Agreements, and the Department has disclosed to the Concessionaire any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Department is aware.

(e) Other than with respect to portions of the Rights of Way not yet acquired as of the Agreement Date or the Second Amended and Restated Agreement Date, as applicable, the Department has good and sufficient title and interest to the Rights of Way necessary for purposes of this Agreement free and clear of all Liens or other exceptions to title, except Permitted Encumbrances. As of the Agreement Date or the Second Amended and Restated Agreement Date, as applicable, no agreement, contract, option, commitment or other right exists which binds, or which in the future may become binding on, the Department to sell, transfer, convey, dispose of or encumber the Project. The Department has not assigned any interest in Revenues to any other party other than the Concessionaire under this Agreement.

(f) This Agreement has been duly authorized, executed and delivered by the Department and constitutes a valid and legally binding obligation of the Department, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(g) The Department has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other Project Agreements to which the Department is a party.

(h) The Department is in material compliance with all Law and Regulatory Approvals applicable to the Project and its activities in connection with this Agreement.

(i) Under State Law as of the Agreement Date or the Second Amended and Restated Agreement Date, as applicable, the State has regulatory control and jurisdiction over the interstates and primary system of State Highways, including the Capital Beltway, and the Capital Beltway is constructed and maintained under the direction and supervision of the CTB and the Commissioner.

Section 15.02 Concessionaire Representations and Warranties.

The Concessionaire hereby represents and warrants to the Department as follows:

(a) The Financial Model and Base Case Financial Model were prepared by or on behalf of Concessionaire in good faith and, as of the Agreement Date, represent reasonable projections; *provided*, that such projections are based upon a number of estimates and assumptions and are subject to significant business, economic and competitive uncertainties and contingencies and that, accordingly, no representation or warranty is made that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results. The Base Case Financial Model fully discloses financial assumptions and projections that the Concessionaire is using for disclosures to potential lenders, and has been audited and verified by an independent recognized model auditor acceptable to the Lenders prior to the Closing Date. The financial formulae in the Base Case Financial Model are the same financial formulae which the Concessionaire is utilizing in making its decisions to enter into this Agreement and is utilizing for disclosures to potential lenders and has been provided to the Department.

(b) The Concessionaire is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to conduct business in the State, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and the other Project Agreements to which the Concessionaire is a party and to perform each and all of the obligations of the Concessionaire provided for herein and therein.

(c) The Concessionaire has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other Project Agreements to which the Concessionaire is a party.

(d) Each person executing this Agreement or any other Project Agreement on behalf of the Concessionaire has been or will at such time be duly authorized to execute each such document on behalf of the Concessionaire.

(e) This Agreement has been duly authorized, executed and delivered by the Concessionaire and constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(f) Neither the execution and delivery by the Concessionaire of this Agreement and the other Project Agreements to which the Concessionaire is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of the governing instruments of the Concessionaire or any other agreements or instruments to which it is a party or by which it is bound.

(g) There is no action, suit, proceeding, investigation or litigation pending and served on the Concessionaire which challenges the Concessionaire's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Project Agreements to which the Concessionaire is a party, or which challenges the authority of the Concessionaire official executing this Agreement or the other Project Agreements; and the Concessionaire has disclosed to the Department any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Concessionaire is aware.

(h) The Concessionaire is in material compliance with all Law applicable to the Concessionaire or its activities in connection with this Agreement and the other Project Agreements.

(i) Except for any broker or advisor whose fees will be paid by the Concessionaire, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Concessionaire or any of its Affiliates (including the O&M Contractor) who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

(j) The Concessionaire shall cause all O&M Contractor representations and warranties contained in the Operations and Support Services Agreement to be made for the benefit of the Department.

(k) (i) As of the Agreement Date, (A) Transurban DRIVE Holdings LLC, a Delaware limited liability company ("DRIVE Holdings"), is the sole member of Transurban DRIVE LLC, a Delaware limited liability company, which in turn owns 90% of the membership interests in the Concessionaire; (B) Transurban DRIVE Management LLC, a wholly-owned subsidiary of Transurban International Ltd. ("TIL"), an Australian company whose securities are listed on the Australian Stock Exchange as part of the triple-stabled securities comprising the Transurban Group, provides management and oversight of the operations of DRIVE Holdings and its subsidiaries pursuant to a management agreement; and (C) Fluor Corporation, owns all of the shares of capital stock of Fluor Enterprises, which in turn owns 10% of the membership interests in the Concessionaire; and (ii) as of the Second Amended and Restated Agreement Date, the membership interests in the Concessionaire is 100% directly owned by Transurban Express Lanes LLC, and no other Person has a membership interest in the Concessionaire.

(l) The Concessionaire is not suspended or debarred or subject to a proceeding to suspend or debar it from bidding, proposing or contracting with any federal or State department or agency.

Section 15.03 Survival of Representations and Warranties.

The representations and warranties of the Department and the Concessionaire contained herein shall survive expiration or earlier termination of this Agreement and the other Project Agreements.

Section 15.04 The Department's Findings Under PPTA.

The Department, as the Responsible Public Entity with respect to the Project, makes the following findings:

(a) the actions taken by the Department pursuant to the PPTA facilitate the development, design, construction, management, operation and maintenance of the Project and the timely development of any Project Enhancements, and such public need may not be wholly satisfied by existing methods of procurement in which qualifying transportation facilities are developed and/or operated;

(b) there is a public need to construct and operate a qualifying transportation facility (as defined in Section 33.2-1800 of the Virginia Code) of the type of the Project;

(c) the Permit granted hereunder authorizing the Concessionaire to develop, design, construct, manage and operate and maintain the Project, including the development of any Project Enhancements, may result in their availability to the public in a more timely, more efficient and less costly fashion, thereby serving the public safety and welfare;

(d) the Project, its interconnections with existing transportation facilities, and the Concessionaire's plans for the development, design, construction, operation and maintenance of the Project are reasonable and compatible with the State transportation plan and with local comprehensive plans;

(e) the estimated cost of developing, designing, constructing, operating and maintaining the Project is reasonable in relation to similar transportation facilities;

(f) the Concessionaire's plans will result in the timely construction and operation and maintenance of the Project and in the development of any Project Enhancements;

(g) the Department will continue to have fee title or good and valid interest to the Project and the HOT Lanes Project will remain open for use by members of the public as a public road upon payment of the applicable tolls;

(h) through this Agreement the Department intends to encourage investment in the State by the Concessionaire to facilitate the development, construction, operation and maintenance of the Project and the development of any Project Enhancements; and

(i) the terms and conditions of this Agreement serve the public purpose of the PPTA.

ARTICLE 16

TERM AND TERMINATION

Section 16.01 Term.

(a) This Agreement shall take effect on the Second Amended and Restated Agreement Date, and shall remain in effect until the first to occur of: (a) December 19, 2087 or (b) the effective date of the earlier termination of this Agreement pursuant to this Article 16, subject to (i) day-for-day extensions solely for Delay Events during the Work Period permitted by Section 13.01, and (ii) extension related to certain Significant Force Majeure Events in accordance with Section 13.07 (the "Term"). The period during which the Concessionaire shall have the right to operate and maintain the HOT Lanes Project and collect tolls therefrom shall commence upon the applicable Service Commencement Date and end upon the expiration or earlier termination of this Agreement.

(b) The parties hereto hereby agree and acknowledge that (x) all of the rights or obligations of the parties under the First ARCA (A) that are not expressly amended, replaced or otherwise modified pursuant to the terms of this Agreement and (B) for which performance remains outstanding (and for the avoidance of doubt, obligations which were not performed in full prior to a stated termination or deadline with respect thereto shall be deemed continuing to be outstanding for purposes of this Agreement), in each case shall continue to exist and be in full force and effect and (y) the terms and provisions of the First ARCA with respect to such rights and obligations of the parties thereunder shall be deemed incorporated into this Agreement by reference herein and are hereby ratified and confirmed as remaining

unmodified and in full force and effect with respect thereto for the purposes of such rights and obligations; it being understood that it is the intent of the parties hereto that this Agreement does not constitute a novation of rights, obligations and liabilities of the respective parties exercised or performed prior to the Second Amended and Restated Agreement Date under the First ARCA, and such rights, obligations and liabilities, to the extent not fully performed or satisfied, shall continue and remain outstanding. For the avoidance of doubt, the foregoing shall not release, relieve or discharge the parties hereto from any liability under the First ARCA that may be due or become due to the other party for any period or periods prior to the Second Amended and Restated Agreement Date or for breach of any other obligation on either party's part to be performed under the First ARCA for or during such period or periods or maturing prior to the Second Amended and Restated Agreement Date.

Section 16.02 Termination Upon Expiration of Term.

Unless earlier terminated in accordance with the terms of this Article 16, all the rights and obligations of the parties hereunder shall cease and terminate without notice or demand on the last day of the Term.

Section 16.03 Termination for Significant Force Majeure Event.

(a) If a Significant Force Majeure Event occurs that has the effect of causing physical damage or destruction to the HOT Lanes, the Concessionaire shall within 120 days (or such fewer number of days as mutually agreed to in writing by the parties) after the Significant Force Majeure Event notify the Department in writing (the "Force Majeure Election") whether it will or will not, before the end of the existing Term of this Agreement (as of the date of the Force Majeure Event), diligently and completely restore the HOT Lanes to at least the same condition as they would have been had such Force Majeure Event not occurred (subject, as applicable, to the provisions of Section 13.07), and if it will such election shall specify the date by which such prompt restoration will occur. Thereafter, if the Force Majeure Election provided that the Concessionaire will not restore the HOT Lanes, either the Department or the Concessionaire may deliver to the other such party written notice of its election to terminate this Agreement ("Force Majeure Termination Notice").

(b) If this Agreement is terminated at the election of the Concessionaire pursuant to this Section 16.03, no amount shall be payable by the Department to the Concessionaire as a result of such termination. If this Agreement is terminated at the election of the Department pursuant to this Section 16.03, subject to Section 20.18 the Department must pay to the Concessionaire a sum equal to the lesser of (i) Project Value (as determined pursuant to Section 17.05) after such Force Majeure Event, or (ii) the lesser of (A) 80% of Senior Debt outstanding at the time of such event (including any PABs then outstanding), plus 80% of any TIFIA Loans then outstanding, or (B) 80% of Senior Debt (including PABs) plus 80% of the TIFIA Loans projected in the Base Case Financial Model Update (NEXT Final) to be then outstanding, in either such case (x) minus all cash and credit balances (if any) held under any Project Agreement, (y) minus the amount of all Distributions and all payments to Concessionaire Affiliates made on or after the relevant Force Majeure Event, and (z) minus the proceeds of any insurance (including casualty insurance and business interruption insurance) that is actually carried by or insuring any Concessionaire Party under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 14.02, and that provides coverage to pay, reimburse or provide for any of the Losses resulting from the Force Majeure Event. If the Concessionaire fails to diligently and completely restore the HOT Lanes and such failure constitutes a Concessionaire Default, the provisions of Section 17.01 shall apply. Subject to Section 20.18, the Department shall pay any sum due pursuant to this Section, together with interest, if any, as provided in this Section 16.03, within 60 days of the date of determination of Project Value; provided, that the Department may defer this payment for an additional 120 days if it reasonably determines that such additional period is necessary in order to obtain funds to make such payment; provided

further, that any payment of any such sum shall be made together with interest thereon at the average earnings rate on the State's Transportation Trust Fund, or any successor thereto, during such period from the date of termination to the date of determination of the Project Value and thereafter at the Bank Rate to the payment date thereof; and provided further, that a termination as contemplated by this Section 16.03 shall not be effective unless and until Project Value has been determined pursuant to Section 17.05.

Section 16.04 Default Termination.

(a) Subject to the provisions of the Direct Agreement and the NEXT Direct Agreement, the Department is entitled to terminate this Agreement (and the Permit granted to the Concessionaire hereunder) and/or any other Project Agreement to which the Department is a party as provided in Section 17.02(a). In the case of any such termination pursuant to Section 17.02(a), no compensation would be payable to the Concessionaire as a result of such termination.

(b) The Concessionaire is entitled to terminate this Agreement only in the event of a material default by the Department as described in Section 17.04(a) that materially impairs the Concessionaire's rights to realize the benefits of the permit granted under this Agreement (more particularly, that materially impairs the Concessionaire's rights under this Agreement to plan, develop, finance, construct and operate the Project and to impose and collect tolls on the users thereof).

Section 16.05 Concessionaire Actions Upon Termination.

(a) On the effective date of termination of this Agreement or the Concessionaire's rights hereunder, whether due to expiration or earlier termination of the Term, the Concessionaire shall deliver to the Department:

(i) subject to Sections 18.03 and 18.04, all tangible personal property, reports, books, records, Work Product and Intellectual Property used or owned by the Concessionaire or any Affiliate relating to the Project, the Work or HOT Lanes Operations;

(ii) possession and control of the Project and Rights of Way, free and clear of any and all Liens created, incurred or suffered by the Concessionaire or anyone claiming under the Concessionaire;

(iii) subject to Sections 18.03 and 18.04, all other intangible personal property used or owned by any Concessionaire Party and relating to or derived from the Project, the Work or the HOT Lanes Operations and the Handback Reserve; and

(iv) a recordable notice of termination of this Agreement, in the form required by the Department, executed and acknowledged by the Concessionaire. The Department may record such notice of termination in the land records of each county in which the Project is located and of the City of Richmond.

(b) The Department shall, as of the effective date of termination of this Agreement or the Concessionaire's rights hereunder, whether due to expiration or earlier termination of the Term, assume full responsibility for the HOT Lanes Operations or, if Substantial Completion or NEXT Final Completion, as applicable, has not been achieved or other Work has otherwise not been completed as of such date, be permitted to assume full responsibility for such outstanding Work, and as of such date, the Concessionaire shall have no liability or responsibility for such HOT Lanes Operations or Work, as the case may be, occurring after such date; *provided*, that the Department and the Concessionaire shall remain fully responsible for all of their respective obligations or liabilities under this Agreement or any other Project

Agreement arising before the effective date of termination and those obligations under this Agreement or other Project Agreements which survive termination.

(c) Each of the Concessionaire and the Department shall be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to but not including the effective date of termination of this Agreement or the Concessionaire's rights hereunder, whether due to expiration or earlier termination of the Term, and the Concessionaire shall not be liable for any costs, expenses and amounts incurred in connection with the HOT Lanes Operations or the Work on and after such date, except to the extent such costs, expenses and amounts are properly included in the measure of any damages due to the Department arising from a default by the Concessionaire under this Agreement.

Section 16.06 Liability After Termination.

(a) If this Agreement or any other Project Agreement is terminated by reason of a material default, such termination shall not excuse the defaulting party from any liability arising out of such default as provided in the Project Agreements.

(b) If this Agreement or any other Project Agreement is terminated for reason other than a default, no party shall have any further obligation or liability except for performance of their respective obligations which are either expressly stated in a Project Agreement to survive termination or by their sense and context are intended to survive termination.

Section 16.07 Termination of the Original Project for Failure to Achieve Substantial Completion.

(a) The Department is entitled to terminate this Agreement by written notice to the Concessionaire upon the occurrence of any of the following:

(i) the Concessionaire fails to achieve Substantial Completion by the Outside Substantial Completion Date (unless a recovery plan has been approved prior to such date in accordance with Section 7.16); or

(ii) if a recovery plan has been approved in accordance with Section 7.16, (A) the Concessionaire fails to diligently pursue such recovery plan or (B) the Concessionaire fails to achieve Substantial Completion by the Revised Outside Substantial Completion Date; *provided*, that the Department shall not exercise the termination remedy pursuant to this clause (ii) prior to the Outside Substantial Completion Date.

(b) The Department agrees that any termination of this Agreement pursuant to Section 16.07(a)(i) or (ii) shall be exercised reasonably.

(c) If this Agreement is terminated pursuant to Section 16.07(a), subject to Section 20.18, the Department must pay to the Concessionaire the lesser of (i) construction value of the Project completed to date as determined by the Independent Engineer, minus funding contributed to such date by the Department pursuant to Section 7.02, minus the positive difference, if any, between the Department's estimated cost to complete the Project (which shall be concurred with by the Independent Engineer) and the Design-Build Contract fixed price, and (ii) the lesser of all Senior Debt then outstanding (including PABs) plus any TIFIA Loan then outstanding or Senior Debt (including PABs) plus any TIFIA Loan projected in the Base Case Financial Model Update (NEXT Final) to be then outstanding, and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department. The Department shall pay the foregoing sum, together with interest, if any as provided

in this Section 16.07, within 60 days of the date of determination of the payment amount in clause (i)(A) of this Section 16.07(b); *provided*, that the Department may defer this payment for an additional 120 days if it reasonably determines that such additional period is necessary in order to obtain funds to make such payment; and *provided further*, that any payment of the foregoing sum (unless calculated pursuant to clause (i)(B) of this Section 16.07(b)) shall be made together with interest thereon at the average earnings on the State's Transportation Trust Fund or any successor thereto from the date of termination to the payment date thereof.

(d) A termination as contemplated by this Section 16.07 and the determination of construction value pursuant to this Section 16.07 shall be subject to the dispute resolution process of Section 17.06.

Section 16.08 Other Termination.

If this Agreement is terminated by the Department or the State prior to the end of the Term, other than pursuant to Section 16.03, 16.04, 16.07 or 17.02, or is canceled, rescinded or voided during the Term, subject to Section 20.18 the Department must pay to the Concessionaire the greater of (a) Project Value (determined, without regard to the effect of such termination, pursuant to Section 17.05) plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire, including its reasonable Allocable Costs, as a direct result of such termination and (b) the lesser of 100% of Concessionaire Debt then outstanding or 100% of Concessionaire Debt projected in the Base Case Financial Model Update (NEXT Final) to be then outstanding, and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department. The Department shall pay the foregoing sum, together with interest, if any as provided in this Section 16.08, within 60 days of the date of determination of Project Value pursuant to Section 17.05; *provided*, that the Department may defer this payment for an additional 120 days if it reasonably determines that such additional period is necessary in order to obtain funds to make such payment; and *provided further*, that any payment of the foregoing sum shall be made together with interest thereon at the average earnings rate on the State's Transportation Trust Fund or any successor thereto during such period from the date of determination of Project Value pursuant to Section 17.05 to the date that is 60 days after the date of determination of the Project Value and thereafter at the Bank Rate to the payment date thereof. A termination as contemplated by this Section 16.08 shall not be effective unless and until Project Value has been determined pursuant to Section 17.05.

Each of the Department and Concessionaire hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof.

Section 16.09 Handback Obligations and Reserve.

(a) Upon the end of the Term, the Concessionaire shall hand-back the HOT Lanes Project to the Department, at no charge to the Department, with asset condition having a remaining life of the greater of: (i) five years; or (ii) life within its normal lifecycle (collectively referred to as the "Handback Requirements"). In addition, if requested by the Department, the Concessionaire will dismantle the HOT Lanes toll system as required to convert the HOT Lanes back to GP Lanes; *provided* that the Department shall notify the Concessionaire at least one year prior to the end of the Term if the HOT Lanes are to be converted back to GP Lanes. Any such dismantling of the HOT Lanes toll system shall be at Concessionaire's sole cost and expense.

(b) Beginning 20 years prior to the expiration of the Term and every five years thereafter, the Concessionaire and the Department will jointly conduct inspections of the HOT Lanes Project, for the purposes of jointly (i) determining and verifying the condition of all HOT Lanes Project

assets and their residual lives, and (ii) determining, revising and updating the Life Cycle Maintenance Plan to reflect the Handback Requirements.

(c) Beginning five years prior to the expiration of the Term, the Concessionaire and the Department will jointly conduct annual inspections of the HOT lanes to ensure that the Handback Requirements will be met.

(d) The Concessionaire shall diligently perform and complete all work contained in the Life Cycle Maintenance Plan prior to reversion of the HOT Lanes Project back to the Department, based on the required adjustments and changes to the Life Cycle Maintenance Plan resulting from the inspections and analysis under Section 16.09 (b) and (c). The Concessionaire shall complete all such work prior to the end of the Term.

(e) Starting five years prior to the expiration of the Term, the Concessionaire shall post a ten-year irrevocable stand-by Letter of Credit or a Performance Bond to the Department for a period of five years after expiration of the Term in an amount equal to 50% of the nominal lifecycle cost expended in the previous five years of the Term pursuant to the most recent Life Cycle Maintenance Plan approved by the Department. This Letter of Credit or Performance Bond would be drawn upon by the Department only in the event that subsequent to termination or expiration of the Term, the HOT Lane assets are found to fail to address the Handback Requirements and in the amount required to address such failures up to the full amount of the Letter of Credit or Performance Bond.

(f) The Department will determine whether the HOT Lane assets meet the Handback Requirements based on routine inspections up to five years after termination or expiration of the Term (“Handback Period”). If the Concessionaire disagrees with the Department’s determination of the condition of the HOT Lanes during the Handback Period, the Concessionaire may, at its own expense, retain an engineer to inspect the facility and review the findings of the Department. Resolution of the issue will be subject to dispute resolution process contained in Section 17.06.

Section 16.10 Exclusive Termination Remedies.

This Article 16 and Article 17 set forth the entire and exclusive provisions and rights of the Department and the Concessionaire regarding termination of this Agreement or the NEXT Project, and any and all other rights to terminate at law or in equity are hereby waived to the maximum extent permitted by law. The parties hereto agree that, upon any termination of this Agreement or the NEXT Project, the payments provided herein shall constitute the Concessionaire’s sole compensation pursuant to this Agreement in the event the Department or any designee or licensee of the Department imposes tolls for travel on the HOT Lanes after termination of this Agreement, neither the Concessionaire nor any beneficiary or Lender as a result of a Financing Assignment shall be entitled to any further compensation in respect thereof. In furtherance of the foregoing, the parties hereto agree that the provisions of Virginia Code Section 33.2-1813B shall not apply to the Project after the termination of this Agreement.

Section 16.11 Termination of the NEXT Project for Failure to Achieve NEXT Financial Close.

(a) If the Concessionaire fails to achieve NEXT Financial Close by the NEXT Financial Close Deadline, either party may, at its sole discretion, elect to terminate the NEXT Project and the terms and provisions of this Agreement (to the extent such terms and provisions solely relate to the NEXT Project) will revert back to the terms and provisions set forth in the First ARCA.

(b) If a party elects to terminate the NEXT Project pursuant to this Section 16.11(a), such party will provide written notice of termination to the other party, and such termination will be effective immediately upon delivery of such notice. In addition to any such termination rights, the Department will have the right to draw on the NEXT Financial Close Security, subject to the limitations set out in Section 6.08(f)(ii).

(c) In the event of termination of the NEXT Project pursuant to Section 16.11(a), the Concessionaire will retain its right to operate and maintain the Original HOT Lanes, but will lose its right to develop and operate the NEXT HOT Lanes, and the Department may complete the NEXT Project, the NEXT Project (Phase 2) or any portion thereof, in which case the Department's completion of the NEXT Project, the NEXT Project (Phase 2) or any portion thereof will not be treated as a Compensation Event. In the event of termination of the NEXT Project pursuant to this Section 16.11, the Concessionaire and the Department will follow the procedures in Section 16.05 applied to the NEXT Project alone, and not applied to the Original Project.

(d) In the event of termination of the NEXT Project pursuant to Section 16.11(a), the Concessionaire will assign the NEXT Design-Build Contract to the Department or its designee upon receipt of written notice by the Department to be provided at the Department's sole discretion, and the parties agree that the provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties related to the NEXT Project and the NEXT Corridor are null and void and no longer applicable to the Project, and the First ARCA, including all exhibits thereto will be reinstated and will govern the Project.

Section 16.12 Termination of NEXT Project for NEXT Concessionaire Breach

(a) Subject to the provisions of the NEXT Direct Agreement, and except for a NEXT Concessionaire Breach occurring under Section 17.07(d), at any time after the occurrence and during the continuance of a NEXT Concessionaire Breach, the Department is entitled to terminate the NEXT Project and any provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties that solely relates to the NEXT Project.

(b) If the Department elects to terminate the NEXT Project pursuant to this Section 16.12, the Department will deliver to the Concessionaire and the Collateral Agent written notice of its election to terminate the NEXT Project, which termination will take effect not less than 60 Days after the delivery of such notice.

(c) In the event of termination of the NEXT Project pursuant to this Section 16.12, the Department will pay to the Concessionaire in accordance with Section 20.18, the NEXT Concessionaire Breach Termination Amount. In addition, the Concessionaire will deliver to the Department all NEXT Work Product in accordance with Section 18.03(c).

(d) In the event of termination of the NEXT Project pursuant to this Section 16.12, the Concessionaire will retain its right to operate and maintain the Original HOT Lanes, but will lose its right to develop and operate the NEXT HOT Lanes, and the Department may complete the NEXT Project, NEXT Project (Phase 2) or any portion thereof, in which case the Department's completion of the NEXT Project, NEXT Project (Phase 2) or any portion thereof will not be treated as a Compensation Event. In the event of termination of the NEXT Project pursuant to this Section 16.12, the Concessionaire and the Department will follow the procedures in Section 16.05 applied to the NEXT Project alone, and not applied to the Original Project.

(e) In the event of termination of the NEXT Project pursuant to this Section 16.12, the parties agree that the provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties related to the NEXT Project and the NEXT Corridor are null and void and no longer applicable to the Project, and the First ARCA, including all exhibits thereto will be reinstated and will govern the Project; *provided, however*, that notwithstanding the foregoing, if any TIFIA Loans entered into pursuant to the NEXT Project Financing Agreements are then outstanding as of the date of termination of the NEXT Project pursuant to this Section 16.12, each of (i) the provisions and definitions set forth in the column labeled “New Language” in Exhibit G, (ii) the definitions in this Agreement of the defined terms set forth in the provisions and definitions described in clause (i) above and (iii) the Direct Agreement shall remain in full force and effect until such time as all such TIFIA Loans are repaid in full.

ARTICLE 17

DEFAULTS AND REMEDIES; DISPUTE RESOLUTION

Section 17.01 Concessionaire Defaults.

The occurrence of any one or more of the following events (each a “Concessionaire Default Triggering Event”) during the Term shall constitute a “Concessionaire Default” under this Agreement:

(a) Any representation or warranty made by the Concessionaire herein or in any other Project Agreement is inaccurate or misleading in any respect on the date made and a material adverse effect upon the Project or the Department’s rights or obligations under the Project Agreements results therefrom;

(b) The Concessionaire fails to pay to the Department when due all monies payable to the Department under this Agreement or any other Project Agreement or to deposit funds to any reserve or account in the amount and within the time period required by this Agreement, and such failure continues unremedied for a period of 30 days following written notice thereof;

(c) The Concessionaire fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement or any other Project Agreement (*provided*, that the failure to comply with the provisions of Section 8.13 or achieve any goals relating to SWaM or DBE participation in Section 11.03 shall not constitute a Concessionaire Default), including material failure to perform any Work relating to the design, construction, operation and maintenance of the Project or any material portion thereof in accordance with this Agreement, and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Department to the Concessionaire or for such longer period as may be reasonably necessary to cure such failure; *provided*, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the Department, acting reasonably, that (i) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Department, and (iii) such failure is in fact cured within such period of time;

(d) This Agreement or all or any portion of the Concessionaire’s Interest is Transferred in contravention of Section 20.01;

(e) The Concessionaire (i) admits, in writing, that it is unable to pay its debts as they become due, (ii) makes an assignment for the benefit of its creditors, (iii) files a voluntary petition under Title 11 of the U.S. Code, or if such petition is filed against it and an order for relief is entered, or if the Concessionaire files any petition or answer seeking, consenting to or acquiescing in any reorganization,

arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire, or of all or any substantial part of its properties or of the Project or any interest therein, or (iv) takes any action in furtherance of any action described in this paragraph;

(f) Within 90 days after the commencement of any proceeding against the Concessionaire seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or, within 90 days after the appointment, without the consent or acquiescence of the Concessionaire, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties or of the Project or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or, within 90 days after the expiration of any such stay, such appointment has not been vacated; or

(g) A levy under execution or attachment has been made against all or any part of the Project or any interest therein as a result of any Lien (other than a Lien relating to permitted Concessionaire Debt) created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 days, unless such levy resulted from actions or omissions of the Department or its Representatives.

Section 17.02 Department Remedies upon Concessionaire Default.

Upon the occurrence of a Concessionaire Default, the Department may, by notice to the Concessionaire with a copy to the Collateral Agent in accordance with the terms hereof, declare the Concessionaire to be in default and may, subject to the provisions of the Direct Agreement and the NEXT Direct Agreement, do any or all of the following as the Department, in its discretion, shall determine:

(a) As provided in Section 33.2-1813 of the Virginia Code, the Department may terminate this Agreement (and the permit granted hereunder), and any executory Project Agreements to which the Department is a party, by giving 60 days' prior written notice to the Concessionaire and the Collateral Agent upon the occurrence of a material Concessionaire Default; *provided*, that (i) the Concessionaire is entitled to cure a Concessionaire Default pursuant to this Section 17.02(a) if the Concessionaire Default is a failure to pay monies due the Department, by paying the full amount due together with interest at the Bank Rate within such 60-day period, and (ii) if the Concessionaire Default is other than a failure to pay monies due, by providing the Department with a written work plan within such 60-day period outlining the actions by which the Concessionaire will ensure future compliance with the obligation, covenant, agreement, term or condition in this Agreement that the Concessionaire failed to perform or observe, which work plan is approved by the Department, but any failure of the Concessionaire to comply in any material respect with such approved work plan following 60 days' notice of such failure from the Department to the Concessionaire shall be deemed to be a Concessionaire Default described in Section 17.01(b) and the entitlement of the Concessionaire to cure such Concessionaire Default by the delivery of an approved work plan shall not apply thereto. Such termination shall automatically extinguish the Concessionaire's Interest and all Liens and claims on or against the Concessionaire's Interest; *provided further*, that the Department shall not exercise the remedy provided in this Section 17.02(a) if the Concessionaire Default consists solely of a violation of Section 11.01, 11.02(a), (b) and (d)-(f), or 11.03, but any such violation shall nonetheless subject the Concessionaire to such fines and penalties otherwise applicable to such violation as may be imposed by the appropriate Governmental Authority; and *provided*

further, that the sole termination remedy upon the occurrence of events described in Section 16.07(a)(i) or (ii) shall be as set forth in Section 16.07;

(b) If the Concessionaire Default is by reason of the failure to pay any monies, the Department may (without any obligation to do so) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the Department shall be payable by the Concessionaire to the Department within five days after demand therefor;

(c) The Department may cure the Concessionaire Default (but this shall not obligate the Department to cure or attempt to cure a Concessionaire Default or, after having commenced to cure or attempted to cure a Concessionaire Default, to continue to do so), and all costs and expenses reasonably incurred by the Department in curing or attempting to cure the Concessionaire Default, including the Department's reasonable Allocable Costs, shall be payable by the Concessionaire to the Department within five days of demand, including accrued interest at the Bank Rate from the date such costs or expenses were incurred to the repayment date; *provided*, that (i) the Department shall not incur any liability to the Concessionaire for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any Concessionaire Default, and (ii) the Department's cure of any Concessionaire Default shall not affect the Department's rights against the Concessionaire by reason of the Concessionaire Default;

(d) The Department may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Concessionaire Default;

(e) The Department may seek to recover its Losses arising from such Concessionaire Default and any amounts due and payable under this Agreement (including the Concessionaire's obligation to pay interest at the Bank Rate from the date a payment is due until paid) and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;

(f) With respect to those Concessionaire Defaults that entitle the Department to terminate this Agreement pursuant to Section 17.02(a), the Department may terminate the Concessionaire's right of possession of the Project, and in such event, the Department or the Department's agents and servants may immediately or at any time thereafter re-enter the Project and remove all persons and all or any property therefrom, by any available action or proceeding at law or in equity, and with or without terminating this Agreement, and repossess and enjoy the Project; *provided*, that no reentry by the Department shall be construed as an election on its part to terminate this Agreement unless a notice of such intention is given to the Concessionaire; *provided, further*, that any re-entry or termination of this Agreement made in accordance with this Agreement as against the Concessionaire shall be valid and effective against the Concessionaire even though made subject to the rights of the Collateral Agent to cure any default of the Concessionaire and continue as in the place of the Concessionaire under this Agreement or a new concession and lease agreement as provided herein;

(g) The Department may, subject to applicable Law, distrain against any of the Concessionaire's goods situated on the Project and the Concessionaire waives any statutory protections and exemptions in connection therewith;

(h) The Department may close any and all portions of the Project; and

(i) The Department may exercise any of its other rights and remedies provided for hereunder or at law or equity, except where an exclusive remedy is expressly provided herein.

Section 17.03 Department Defaults.

The occurrence of any one or more of the following events during the Term shall constitute a “Department Default” under this Agreement:

(a) Any representation or warranty made by the Department herein or in any other Project Agreement is inaccurate or misleading in any respect on the date made and a material adverse effect upon the Project or the Concessionaire’s rights or obligations under the Project Agreements results therefrom;

(b) The Department fails to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement or any other Project Agreement to which it is a party and such failure continues unremedied for a period of 90 days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the Department or for such longer period as may be reasonably necessary to cure such failure, in the latter case, that the Department has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that (i) it is proceeding with all due diligence to cure or cause to be cured such failure, (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably, and (iii) such failure is in fact cured within such period of time;

(c) A levy under execution or attachment has been made against all or any part of the Project or the Concessionaire’s Interest as a result of any Lien (other than a permitted Lien) created, incurred, assumed or suffered to exist by the Department or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 days, unless such levy resulted from actions or omissions of the Concessionaire or its Representatives or if all or a material part of the Project is subject to a condemnation or a similar taking by the State or any agency thereof; and

(d) The Department (i) admits, in writing, that it is unable to pay its debts as they become due, (ii) makes an assignment for the benefit of its creditors, (iii) files a voluntary petition under Title 11 of the U.S. Code, or if such petition is filed against it and an order for relief is entered, or if the Department files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Department, or of all or any substantial part of its properties (in each case, to the extent applicable to a state agency), or (iv) takes any action in furtherance of any action described in this paragraph; or if within 90 days after the commencement of any proceeding against the Department seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or, within 90 days after the appointment, without the consent or acquiescence of the Department, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Department or of all or any substantial part of its properties (in each case, to the extent applicable to a state agency), such appointment has not been vacated or stayed on appeal or otherwise, or if, within 90 days after the expiration of any such stay, such appointment has not been vacated.

Section 17.04 Remedies of the Concessionaire upon Department Default.

Upon the occurrence of a Department Default under this Agreement, the Concessionaire may by notice to the Department declare the Department to be in default and may, subject to the provisions of Section 17.03(b), do any or all of the following as the Concessionaire, in its discretion, shall determine:

(a) Subject to Section 16.04(b), the Concessionaire may terminate this Agreement (and the permit granted hereunder), and any executory Project Agreements to which the Concessionaire is a party, by giving 90 days' prior written notice to the Department; *provided*, that the Department shall be entitled to cure a Department Default pursuant to Section 17.03(b) by providing the Concessionaire with a written work plan within such 90-day period outlining the actions by which the Department will ensure future compliance with the obligation, covenant, agreement, term or condition in this Agreement that the Department failed to perform or observe, which work plan is approved by the Concessionaire (which approval shall not be unreasonably withheld, delayed or conditioned), but any failure of the Department to comply in any material respect with such approved work plan following 90 days' notice of such failure from the Concessionaire to the Department shall be deemed to be a Department Default described in Section 17.03(b) and the entitlement of the Department to cure such Department Default by the delivery of an approved work plan shall not apply thereto; and upon such termination, subject to the limitations of Section 20.18, the Department shall be obligated to pay to the Concessionaire the greater of (i) Project Value determined without regard to the effect of the relevant Department Default (with fair market value determined pursuant to Section 17.05) plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination, including its reasonable Allocable Costs and (ii) the lesser of 100% of Concessionaire debt then outstanding or 100% of Concessionaire Debt projected in the Base Case Financial Model Update (NEXT Final) to be then outstanding and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department;

(b) The Concessionaire may exercise any of its rights and remedies at law or in equity;

(c) Subject to Section 20.18, the Concessionaire may seek to recover its Losses and any amounts due and payable under this Agreement (including the Department's obligation to pay interest at the Bank Rate from the date a payment is due until paid) and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt; and

(d) The Concessionaire may exercise any of its other rights and remedies provided for hereunder.

Notwithstanding any provision to the contrary in this Agreement, neither a Department Default nor, except as provided in clause (g) of the definition of Compensation Event, a Compensation Event will be deemed to have occurred if an injunction or other legal proceeding has enjoined or estopped the Department from the performance of its obligations under this Agreement.

Section 17.05 Determination of Project Value.

In the event the Department owes the Concessionaire an amount calculated by reference to the Project Value pursuant to Sections 16.03, 16.08 or 17.04(a), the fair market value of the Concessionaire's Interest shall be determined according to the following procedures:

(a) Within 30 days after a party requests the appointment thereof, the Department and the Concessionaire shall confer in good faith to mutually appoint an independent third-party appraiser to determine the fair market value by written appraisal. This appraiser must be nationally recognized and experienced in appraising similar assets.

(b) If the parties are unable to agree upon such a single appraiser within such 30-day period, then within ten days thereafter the Department and the Concessionaire shall each appoint an independent third-party appraiser and both such appraisers shall be instructed jointly to select, within 15

days after they are appointed, a third independent third-party appraiser who is nationally recognized and experienced in appraising similar assets to make the appraisal referred to above.

(c) If the parties are unable to appoint an independent third party appraiser under Section 17.05(b) above within 30 days after the time period under Section 17.05(a) expires, then either party may petition the Circuit Court for the City of Richmond to appoint an independent third party appraiser having such reputation and experience.

(d) Each party shall pay the costs of its own appraiser. The Department and the Concessionaire shall pay in equal shares the reasonable costs and expenses of the independent appraiser.

(e) Once appointed, the independent appraiser shall conduct an appraisal of the fair market value and deliver to both parties a draft appraisal report and draft valuation. The appraiser shall appraise fair market value by taking into account projected cash flows and projected costs of the Project for the remainder of the Term had this Agreement not been terminated, as determined by the appraiser without regard to the effect of such termination. In conducting the appraisal, and before issuing a draft appraisal report, the independent appraiser shall afford reasonable and comparable opportunity to each party to provide the appraiser with information, data, analysis and reasons supporting each party's view on the fair market value. The parties shall have 15 days after receipt of the draft appraisal report to comment thereon. After the opportunity to comment has expired, the independent appraiser shall consider and evaluate all comments, prepare a final appraisal report stating the fair market value, and deliver the final appraisal report to both parties.

(f) The independent appraiser's determination of fair market value shall be subject to dispute resolution. In any dispute resolution the independent appraiser's determination shall be given substantial weight in the evidence, absent failure to properly apply the terms of this Agreement or applicable Law.

Section 17.06 Dispute Resolution; No Declaratory Judgment Procedure.

(a) Any dispute arising out of, relating to, or in connection with this Agreement shall be resolved as set forth in this Section 17.06.

(b) The parties shall attempt in good faith to resolve the dispute within 15 days or such other time period as may be specifically established for such dispute under this Agreement. If the parties are unable to resolve the dispute within that timeframe, and upon notice by either party to the other, the dispute shall be referred to mediation or any other form of alternative dispute resolution that is acceptable to both of them. They must share equally the expenses of the mediator or other alternative dispute resolution process. If, after 180 days (or, in the case of disputes relating to the Project arising prior to Substantial Completion or NEXT Final Completion, as applicable, 60 days) following the date of the referral, the dispute remains unresolved, then either party may litigate the matter in a court of law as set forth in Section 17.06(c). The provisions of this Section 17.06(b) shall not be applicable to any dispute regarding a Concessionaire Default described in Section 17.02(a)(i).

(c) All litigation between the parties arising out of or pertaining to this Agreement or its breach shall be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, which shall have exclusive jurisdiction and venue; *provided*, that the foregoing does not affect any claims or matters which are governed by a different dispute resolution procedure set forth in any other Project Agreement.

(d) Each party shall bear its own attorneys' fees and costs in any dispute or litigation arising out of or pertaining to this Agreement or any other Project Agreement, and no party shall seek or accept an award of attorneys' fees or costs, except as otherwise expressly set forth in this Agreement.

(e) As permitted by Section 33.2-1814 of the Virginia Code, the parties agree that any requirement that the State Corporation Commission issue a declaratory judgment regarding a material default (as defined in Section 33.2-1800 of the Virginia Code) pursuant to such Section 33.2-1814, as a prerequisite to exercising any remedy set forth in this Agreement, any other Project Agreements or such Section 33.2-1814, shall not apply to this Agreement or any other Project Agreement.

(f) The Department will proceed to make payment to the Concessionaire of any undisputed amount of any sum due to the Concessionaire hereunder at the time and in the manner required by this Agreement, subject to any deferment rights expressly granted to the Department herein, without regard to any ongoing dispute resolution procedures.

(g) The Concessionaire will proceed to make payment to the Department of any undisputed amount of any sum due to the Department hereunder at the time and in the manner required by this Agreement, subject to any deferment rights expressly granted to the Concessionaire herein, without regard to any ongoing dispute resolution procedures.

Section 17.07 NEXT Concessionaire Breach

The occurrence of any one or more of the following events (each a "NEXT Concessionaire Breach Triggering Event"), in each case as such event relates to the NEXT Project during the Construction Period for the NEXT Project will constitute a "NEXT Concessionaire Breach" pursuant to this Agreement:

(a) any representation or warranty made by the Concessionaire herein or in any other Project Agreement is inaccurate or misleading in any respect on the date made and a material adverse effect upon the NEXT Project or the Department's rights or obligations under the Project Agreements results therefrom;

(b) the Concessionaire fails to pay to the Department when due all monies payable to the Department with respect to the NEXT Project under this Agreement or any other Project Agreement or to deposit funds to any reserve or account in the amount and within the time period required by this Agreement, and such failure continues unremedied for a period of 30 days following written notice thereof;

(c) the Concessionaire fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement or any other Project Agreement (provided, that the failure to comply with the provisions of Section 8.13 or achieve any goals relating to SWaM or DBE participation or Veteran and Local Hiring Program in Section 11.03 shall not constitute a NEXT Concessionaire Breach), including material failure to perform any Work relating to the design, construction, operation and maintenance of the Project or any material portion thereof in accordance with this Agreement, and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Department to the Concessionaire or for such longer period as may be reasonably necessary to cure such failure; provided, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the Department, acting reasonably, that (i) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Department, and (iii) such failure is in fact cured within such period of time; and

(d) (i) the Concessionaire fails to achieve NEXT Final Completion by the NEXT Long Stop Date, as such date may be extended pursuant to this Agreement or (ii) in the case where a new NEXT Long Stop Date has been established pursuant to Section 7.16(d) hereof, the Concessionaire fails to diligently implement the NEXT Final Completion Recovery Plan.

Section 17.08 Limitations on NEXT Concessionaire Breach

(a) A NEXT Concessionaire Breach shall arise from a NEXT Concessionaire Breach Triggering Event that affects only the NEXT Project. If a single event affects more than just the NEXT Project (even if the event otherwise meets the definition of a NEXT Concessionaire Breach Triggering Event), the parties will treat it as a Concessionaire Default Triggering Event unless otherwise mutually agreed.

(b) Concessionaire Default Triggering Events under Sections 17.01(e) and (f) will always be treated as Concessionaire Default Triggering Events unless otherwise mutually agreed.

(c) After NEXT Final Completion, Sections 16.12, 17.07, 17.08 and 17.09, will no longer apply and all events giving rise to Concessionaire Default will be governed by Section 17.01.

Section 17.09 Department Remedies upon NEXT Concessionaire Breach

Upon the occurrence of a NEXT Concessionaire Breach, the Department may, subject to the provisions of the NEXT Direct Agreement, do any or all of the following as the Department, in its sole discretion, will determine:

(a) except for a NEXT Concessionaire Breach occurring under Section 17.07(d), the Department may terminate the NEXT Project and any provisions in and terms of this Agreement and any other Project Agreements to which the Department and the Concessionaire are both parties that solely relates to the NEXT Project, to the extent provided in Section 16.12;

(b) if the NEXT Concessionaire Breach is by reason of the failure to pay any undisputed monies to a third party, the Department may (but will have no obligation to) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the Department will be payable by the Concessionaire to the Department within five Days after demand, including accrued interest at the Bank Rate from the date such payment is made by the Department to the repayment date; *provided*, that (i) the Department will not incur any liability to the Concessionaire for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any NEXT Concessionaire Breach and (ii) the Department's cure of any NEXT Concessionaire Breach will not waive or affect the Department's rights against the Concessionaire by reason of the NEXT Concessionaire Breach; and

(c) the Department may cure the NEXT Concessionaire Breach (but this will not obligate the Department to cure or attempt to cure a NEXT Concessionaire Breach or, after having commenced to cure or attempted to cure a NEXT Concessionaire Breach, to continue to do so), and all costs and expenses reasonably incurred by the Department in curing or attempting to cure the NEXT Concessionaire Breach, including the Department's Allocable Costs, will be payable by the Concessionaire to the Department within five Days of demand, including accrued interest at the Bank Rate from the date such costs or expenses were incurred to the repayment date; *provided*, that (i) the Department will not incur any liability to the Concessionaire, and the Concessionaire hereby irrevocably waives and releases any liability of the Department to the Concessionaire, for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any NEXT Concessionaire Breach and (ii) the

Department's cure of any NEXT Concessionaire Breach will not waive or affect the Department's rights against the Concessionaire by reason of the NEXT Concessionaire Breach.

ARTICLE 18

RECORDS, REPORTS, WORK PRODUCT AND INTELLECTUAL PROPERTY

Section 18.01 Maintenance of Records.

The Concessionaire shall maintain or cause to be maintained proper books of records and accounts in which complete and correct entries shall be made of its transactions in accordance with Generally Accepted Accounting Principles. Such books and records shall be maintained at a location situated within the contiguous United States as designated by the Concessionaire by delivery of notice of such location to the Department.

Section 18.02 Public Records.

(a) Any Work Product the Department owns and any document of which the Department obtains a copy that relates to the Project may be considered public records under the Virginia Public Records Act, Sections 42.1-76 through 42.1-91 of the Virginia Code or official records under the Virginia Freedom of Information Act, Sections 2.2-3700 through 2.2-3714 of the Code of Virginia, and as such may be subject to public disclosure. The Department recognizes that certain Work Product the Department owns, and certain documents of which the Department obtains a copy that relate to the Project, including EPDs obtained under Section 18.05, may contain information exempt from disclosure under Section 2.2-3705.6(11) of the Virginia Code, may constitute trade secrets as defined in the Uniform Trade Secrets Act, Sections 59.1-336 through 59.1-343 of the Virginia Code, and may include confidential information which is otherwise subject to protection from misappropriation or disclosure, and the Department shall keep such information confidential unless disclosure is required by applicable Law. Should such records become the subject of a request for public disclosure, the Department shall promptly notify the Concessionaire of such request and the date by which the Department anticipates responding and shall consider the objections received from the Concessionaire in advance of such date.

(b) If the Concessionaire believes that any Work Product or any document subject to transmittal to or review by the Department under the terms of this Agreement or any other Project Agreement contains proprietary or confidential information or trade secrets that are exempt or protected from disclosure pursuant to State law, the Concessionaire shall use its best efforts to identify such information prior to such transmittal or review and it and the Department shall confer on appropriate means of ensuring compliance with applicable laws prior to transmittal or review. Upon the written request of either party, the Concessionaire and the Department shall mutually develop a protocol for the transmittal, review and disclosure of Work Product or other documents produced or obtained by the Concessionaire so as to avoid violations of any applicable Law.

Section 18.03 Ownership of Work Product.

(a) All Work Product, including but not limited to reports, studies, data, information, logs, records, designs, drawings, plans, plans and specifications, record plans and specifications, intangible property and the like (including records thereof in software form), which the Department or the contractors thereof has prepared or procured prior to the Closing Date or the NEXT Financial Close Date, as applicable, or prepares or procures after the Closing Date or the NEXT Financial Close Date, as applicable, shall be and remain the exclusive property of the Department; *provided*, that the Department shall make available to the Concessionaire without charge, and without representation or warranty of any kind, any documents

in the possession of the Department relating to the planning, design, engineering and permitting of the Project and any Project Enhancement that the Concessionaire elects to or is directed to carry out.

(b) Prior to the expiration or earlier termination of this Agreement, all Original Work Product prepared by or on behalf of the Concessionaire shall remain exclusively the property of the Concessionaire, notwithstanding any delivery of copies thereof to the Department, except for any related plans, drawings and specifications which shall be delivered to the Department after Final Acceptance with respect to the New Lanes and any construction-related project, which items of Original Work Product shall constitute the exclusive property of the Department. Upon the expiration or earlier termination of this Agreement for any reason, including but not limited to termination by the Concessionaire for a Department Default, the Concessionaire shall promptly turn over to the Department a copy of all Original Work Product the Concessionaire owns, except Proprietary Original Work Product (inclusive of Proprietary Intellectual Property), but including any Proprietary Work Product necessary for the Department to continue to operate and maintain the Project; and all such Original Work Product shall be considered the sole and exclusive property of the Department without compensation due the Concessionaire or any other party (except to the extent the Concessionaire is entitled to compensation due to a Department Default). The Department shall enter into a confidentiality agreement reasonably requested by the Concessionaire with respect to any Proprietary Work Product, subject to Section 18.02. The Concessionaire shall continue to have a full and complete right to use any and all duplicates or other originals of such Proprietary Work Product in any manner it chooses.

(c) Prior to the earlier termination of the NEXT Project, all NEXT Work Product prepared by or on behalf of the Concessionaire for the NEXT Project shall remain exclusively the property of the Concessionaire, notwithstanding any delivery of copies thereof to the Department. Upon the earlier termination of the NEXT Project pursuant to Section 16.12, the Concessionaire shall promptly turn over to the Department a copy of all NEXT Work Product the Concessionaire owns, except Proprietary Work Product (inclusive of Proprietary Intellectual Property), but including any Proprietary Work Product necessary for the Department to continue to operate and maintain the NEXT Project; and all such NEXT Work Product shall be considered the sole and exclusive property of the Department without compensation due the Concessionaire or any other party (except to the extent the Concessionaire is entitled to compensation due to a Department Default). The Department shall enter into a confidentiality agreement reasonably requested by the Concessionaire with respect to any Proprietary Work Product, subject to Section 18.02. The Concessionaire shall continue to have a full and complete right to use any and all duplicates or other originals of such Proprietary Work Product in any manner it chooses.

Section 18.04 Ownership of Intellectual Property.

(a) All Proprietary Intellectual Property of the Concessionaire shall remain exclusively the property of the Concessionaire, notwithstanding any delivery of copies thereof to the Department. Upon the expiration or earlier termination of, or any assignment by the Concessionaire of its rights under, this Agreement for any reason whatsoever, the Department shall have a nonexclusive, nontransferable, irrevocable, fully paid up license to use the Proprietary Intellectual Property of the Concessionaire solely in connection with the Project. The Department shall not at any time sell any such Proprietary Intellectual Property or use or allow any party to use any such Proprietary Intellectual Property for any purpose whatsoever other than in connection with the Project (except as permitted use on other State Highways in accordance with Section 18.04(b) below). The Department shall not disclose any Proprietary Intellectual Property of the Concessionaire (other than to its concessionaires, contractors, subcontractors, employees, attorneys and agents in connection with the Project who agree to be bound by any confidentiality obligations of the Department relating thereto), subject to Section 18.02 and the Department shall enter into a confidentiality agreement reasonably requested by the Concessionaire with respect to any such Proprietary Intellectual Property, subject to Section 18.02. The Concessionaire shall

continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

(b) The Department shall have the right to purchase from the Concessionaire a nonexclusive, nontransferable, irrevocable, fully paid up license to use the Proprietary Intellectual Property of the Concessionaire on any other tolled State Highway owned and operated by the Department or other State agency on commercially reasonable terms.

(c) With respect to any Proprietary Intellectual Property owned by a Person other than the Concessionaire or the Department, the Concessionaire shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner, both for the Concessionaire and the Department, nonexclusive, nontransferable, irrevocable, fully paid up (other than with respect to ongoing maintenance and support fees) licenses to use such Proprietary Intellectual Property solely in connection with the Project, of at least identical scope, purpose, duration and applicability as the licenses granted by Section 18.04(a) above. The Concessionaire shall use commercially reasonable efforts to obtain from such owner a right in favor of the Department to purchase from such owner a nonexclusive, nontransferable, irrevocable, fully paid up license to use such owner's Proprietary Intellectual Property on any other tolled State Highway owned and operated by the Department or other State agency on commercially reasonable terms. The limitations on sale and disclosure by the Department set forth in Section 18.04(a) above shall also apply to the Department's licenses in such Proprietary Intellectual Property.

(d) The Concessionaire's name and/or other trademarks, service marks and tradenames owned by the Concessionaire (the "Concessionaire Marks") may appear on some of the Project assets, including supplies, materials, stationery and similar consumable items at the Project on the last day of the Term. The parties agree that the Concessionaire shall remain the owner of the Concessionaire Marks at the end of the Term, and the Concessionaire may remove, at its expense, the Concessionaire Marks prior to the end of the Term. The Department acknowledges and agrees that it shall have no right, title, interest or license in the Concessionaire Marks.

(e) Prior to the Closing Date or the NEXT Financial Close Date, as applicable, the Department shall grant to the Concessionaire a nonexclusive, nontransferable, irrevocable, fully paid up license to use any Proprietary Intellectual Property of the Department that has been developed for the HOT Lanes Project, solely in connection with the operation, maintenance and other incidental activities of the HOT Lanes Project. The Concessionaire shall not at any time sell such Proprietary Intellectual Property or use or allow any party to use such Proprietary Intellectual Property for any purpose whatsoever other than in connection with the HOT Lanes Project. Prior to the Closing Date or the NEXT Financial Close Date, as applicable, the Department shall also assign in favor of the Concessionaire the Department's rights with respect to any license by the Department's software suppliers for the use of any Proprietary Intellectual Property for the HOT Lanes Project, together with an assignment of the Department's rights under any escrow for the Source Code and related documentation relating to such Proprietary Intellectual Property, which assignments shall be reasonably satisfactory to the Concessionaire. The Concessionaire shall not disclose any such Proprietary Intellectual Property (other than to its contractors, subcontractors, employees, attorneys and agents in connection with the HOT Lanes Project who agree to be bound by any confidentiality obligations of the Concessionaire relating thereto), and the Concessionaire shall enter into a confidentiality agreement reasonably requested by the Department with respect to any such Proprietary Intellectual Property.

Section 18.05 Escrowed Pricing Documents.

(a) Scope.

(i) Pursuant to subsection (e) below, the Concessionaire shall submit to the Department, on or before the Agreement Date the following material hereinafter referred to collectively as the “Original EPDs”): one copy of all documentary information generated with respect to (i) the expected costs of the Original Project available to the Concessionaire under the Original Design-Build Contract (the “Original Design-Build EPDs”), and (ii) the components of, and formulae for, the Financial Model and the initial Base Case Financial Model including, without limitation, forecast revenue and expected non-financial costs of the Project during the Operating Period included in the initial Base Case Financial Model (the “Original Financing EPDs”).

(ii) Pursuant to subsection (e) below, the Concessionaire shall submit to the Department, on or before the Second Amended and Restated Agreement Date the following material hereinafter referred to collectively as the “NEXT EPDs”): one copy of all documentary information generated with respect to (i) the expected costs of the NEXT Project available to the Concessionaire under the NEXT Design-Build Contract (the “NEXT Design-Build EPDs”), and (ii) the components of, and formulae for, the Base Case Financial Model Update (NEXT Final) including, without limitation, forecast revenue and expected non-financial costs of the Project during the Operating Period included in the Base Case Financial Model Update (NEXT Final) (the “NEXT Financing EPDs”).

(b) Ownership.

(i) The EPDs are, and shall always remain, the property of the Concessionaire, subject to joint review by the Department and the Concessionaire, as provided herein.

(ii) The Department stipulates and expressly acknowledges that the EPDs constitute trade secrets. This acknowledgement is based on the Department’s express understanding that the information contained in the EPDs is not known outside the Concessionaire’s business, is known only to a limited extent and only by a limited number of employees of the Concessionaire, is safeguarded while in the Concessionaire’s possession, is extremely valuable to the Concessionaire and could be extremely valuable to the Concessionaire’s competitors by virtue of its reflecting Concessionaire’s contemplated techniques of design and construction. The Department further acknowledges that the Concessionaire expended substantial sums of money in developing the information included in the EPDs and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. The Department further acknowledges that the EPDs and the information contained therein are made available to the Department only because such action is an express prerequisite to the execution and delivery of this Agreement. The Department further acknowledges that the EPDs include a compilation of the information used in the Concessionaire’s business, intended to give the Concessionaire an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation.

(c) Purpose. EPDs may be used to assist in the negotiation of price adjustments and Change Orders and in the settlement of disputes and claims.

(d) Format and Contents.

(i) The Concessionaire may submit EPDs in their usual cost estimating format; *provided*, that all information is clearly presented and ascertainable. It is not the intention of this Section 18.05 to cause the Concessionaire extra work, but to ensure that the EPDs will be adequate to enable complete understanding and proper interpretation for their intended use. The EPDs shall be submitted in English.

(ii) It is required that the EPDs clearly itemize the estimated costs of performing each item of the Project, including financing, administrative and related costs. Cost items shall be separated into sub-items as required to present a detailed cost estimate and allow a detailed cost review. The EPDs shall include: estimates for costs of the design professionals and consultants itemized by discipline both for development of the design, all quantity take-offs, crew size and shifts, equipment, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, and memoranda, narratives, drawings and sketches showing site or work area layouts and equipment, add/deduct sheets, geotechnical reviews and consultant reports, all other information used by the Concessionaire to arrive at the estimated prices for the Project, and all information and formulae used by the Concessionaire in developing the most recent Base Case Financial Model Update. Estimated costs shall be broken down into estimate categories for items such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials and subcontract costs as appropriate. Plant and equipment, indirect costs, bond rates and calculations, insurance costs and financing should be detailed. The Concessionaire's allocation of indirect costs, contingencies, and mark-up shall be identified.

(iii) All costs shall be identified. For items amounting to less than \$50,000, estimated unit costs are acceptable without a detailed cost estimate, *provided*, that labor, equipment, materials and subcontracts, as applicable, are specified, and *provided further*, that indirect costs, contingencies, and mark-up, as applicable, are allocated.

(e) Submittal.

(i) The EPDs shall be submitted in a sealed containers, the Design-Build EPDs in one and the Financing EPDs in another, to the Department, which containers shall be clearly marked on the outside with the Concessionaire's name, reference to the "Route 495 HOT Lanes in Virginia Project," and the words "Design-Build Escrow Pricing Documents" or "Financing Escrow Pricing Documents" as applicable.

(ii) On or about the Agreement Date or the Second Amended and Restated Agreement Date, as applicable, the EPDs will be transferred to the Escrow Agent and will be examined, organized and inventoried by representatives of the Department, assisted by members of the Concessionaire's staff who are knowledgeable in how the EPDs were prepared. This examination is to ensure that the EPDs are legible and complete. It will not include review of, and will not constitute approval of proposed construction methods, estimating assumptions, or interpretations of any Project Agreements, including the Design-Build Contract. Such examination will not alter any condition or term of any Project Agreement.

(iii) Timely submission of complete EPDs as of the Agreement Date or the Second Amended and Restated Agreement Date, as applicable, is an essential element of

the Concessionaire's responsibility and a prerequisite to the execution and delivery of this Agreement by the Department.

(iv) Upon each Base Case Financial Model Update submitted in accordance with Section 5.04, such Base Case Financial Model Update shall be submitted by the Concessionaire to the Escrow Agent promptly and in any event within seven days after the Base Case Financial Model Update has not been challenged or any such challenge has been resolved, in either case in accordance with Section 5.04 for inclusion as part of the Financing EPDs.

(v) If the Concessionaire's proposal is based upon subcontracting any part of the work, each subcontractor whose total subcontract price exceeds 5% of the Project costs, shall provide separate similar documentation to be included with those of the Concessionaire. Such documents shall be opened and examined in the same manner and at the same time as the examination described above for the Concessionaire.

(vi) If the Concessionaire is otherwise permitted by this Agreement to subcontract any portion of the work after the Agreement Date or the Second Amended and Restated Agreement Date, as applicable, the Department retains the right to require the Concessionaire to submit similar documentation from the subcontractor before the subcontract is approved.

(f) Storage. The EPDs shall be stored at the following address:

SunTrust Bank
919 East Main Street, 7th Floor
Richmond, Virginia 23219
Attention: Corporate Agency Services
(804) 782-5400

The cost for storing the EPDs will be paid by the Concessionaire.

(g) Examination.

(i) The EPDs shall be examined by the Department and the Concessionaire, at any time deemed necessary by the Department.

(ii) The Department may delegate review of EPDs to members of the Department's staff or consultants. The foregoing notwithstanding, the EPDs and information contained therein may be used in the resolution of any claim or dispute before any entity selected to resolve disputes and in any litigation or arbitration commenced hereunder. No other person shall have access to the EPDs.

(iii) Access to the documents will take place in the presence of duly designated representatives of both the Department and the Concessionaire, except that, if the Concessionaire refuses to be present or to cooperate in any other way in the review of the documents, the Department may upon notice to the Concessionaire, review such documents without the Concessionaire being present.

(h) Final Disposition and Return of EPDs. The applicable Design-Build EPDs will be returned to the Concessionaire at such time as the applicable Design-Build Contract has been completed,

final payment has been made, and all claims or disputes arising under or related to the applicable Design-Build Contract have been fully and finally resolved and/or adjudicated. The Financing EPDs will be returned to the Concessionaire at such time as this Agreement has terminated in accordance with the provisions hereof and all claims or disputes arising hereunder or related hereto have been fully and finally resolved and/or adjudicated.

(i) Execution of EPD Escrow Agreement. The Concessionaire, as a condition of the execution and delivery of this Agreement by the Department, agrees to execute the EPD Escrow Agreement in substantially the form set forth in Exhibit R hereto.

Section 18.06 Source Code Escrow.

(a) The Department and the Concessionaire acknowledge that the Concessionaire and/or the Concessionaire's software suppliers may not wish to disclose directly to the Department at the time of installation the Source Code and related documentation of software which is Proprietary Intellectual Property of the Concessionaire and/or the Concessionaire's software suppliers, as public disclosure could deprive the Concessionaire and/or the Concessionaire's software suppliers of commercial value, but that the Department must be ensured access to such Source Code and related documentation in either of the following circumstances:

(i) In the case of Source Code and related software documentation that is a contractor's or subcontractor's Proprietary Intellectual Property, if this Agreement is terminated for Concessionaire Default or upon assignment by Concessionaire of its rights under this Agreement, the Department assumes the contract or subcontract with such software supplier, and either (A) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the software supplier occurs or (B) the software supplier fails or ceases to provide services as necessary to permit continued use of the software by the Department as contemplated by the Project Agreements; or

(ii) In the case of Source Code and related software documentation that is the Concessionaire's Proprietary Intellectual Property, (A) this Agreement is terminated for Concessionaire Default, (B) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the Concessionaire occurs or (C) the Concessionaire fails or ceases to provide services as necessary to permit continued use of the software by the Department as contemplated by the Project Agreements.

(b) By no later than the Initial Service Commencement Date, the Department and the Concessionaire shall establish one or more escrows (the "Source Code Escrows") with the Escrow Agent on terms and conditions reasonably acceptable to the Department and to the Concessionaire into which such Source Code and related documentation shall be escrowed, including all relevant commentary, explanations and other documentation, as well as instructions to compile such Source Code and all modifications, additions or substitutions made to such Source Code and related documentation.

(c) The escrow provided for herein shall survive any termination of this Agreement regardless of the reason.

(d) The Concessionaire shall pay the reasonable costs and expenses of the Escrow Agent.

Section 18.07 Inspection and Audit Rights.

(a) Subject to Section 18.07(c), the Concessionaire shall make available to the Department, and allow the Department such access to, such books, records and documents as the Department may reasonably request in connection with the Project for any purpose related to the Project, this Agreement or the other Project Agreements, including but not limited to monitoring compliance with the terms and conditions of this Agreement and the other Project Agreements.

(b) Subject to Section 18.07 (c), the Department and the State shall have the right to carry out an audit of information relating to (i) the operation, maintenance and repair of the Project or (ii) other information required to be maintained or delivered by the Concessionaire under this Agreement or any other Project Agreement. Such audit may extend, without limitation, to calculations undertaken, and financial or business reports provided, by or on behalf of the Concessionaire under this Agreement and the other Project Agreements. The Department or its agents, auditors, attorneys and Consultants, at the Department's own expense, at any time upon 48 hours' prior written notice (or unannounced and without prior notice where there is good faith suspicion of fraud), may examine, copy, take extracts from and audit all the books and records of the Concessionaire related to the Project, including all subcontracts entered into under Section 11.02. In addition, the Department or its agents, auditors, attorneys and Consultants, at the Department's own expense, at any time upon 48 hours' prior written notice (or unannounced and without prior notice where there is good faith suspicion of fraud), may conduct a re-audit and observe the business operations of the Concessionaire to confirm the accuracy of books and records.

(c) The Concessionaire reserves the right to assert exemptions from Persons other than the Department from disclosure for information that would be exempt under applicable Law from discovery or introduction into evidence in legal actions. Unless otherwise required by applicable Law or this Agreement, the Concessionaire may make available copies of books, records and documents containing trade secrets or confidential proprietary information with such information redacted.

(d) At FHWA's request, the Concessionaire shall make all its records relating to the Project available to the FHWA for inspection and audit. In addition, Concessionaire, at its expense, shall cause a reputable independent auditor to annually audit the Concessionaire's books and records relating to the Project, according to GAAP. Concessionaire shall cause the independent auditor to deliver the audit report to the FHWA and the Department promptly after it is completed, but in any event within 120 days of the end of each of the Concessionaire's fiscal years.

(e) Nothing contained in this Agreement or any other Project Agreement shall in any way limit the constitutional and statutory powers, duties and rights of elected state officials, including the independent rights of the State Auditor of Public Accounts, in carrying out his or her legal authority.

(f) No audit rights shall extend to the make-up of any lump sum amount or unit price or rate under the Design-Build Contract once such amount, price or rate has been agreed.

(g) At the request of the Department, the Concessionaire shall furnish or cause to be furnished to the Department such information relating to the operation, maintenance and repair of the Project as the Department may reasonably request for any purpose related to the Project or this Agreement and as shall be in the possession and control of the Concessionaire, any Concessionaire Party, or any of their Representatives. Unless disclosure is required by applicable Law, the Department shall keep confidential any information obtained from the Concessionaire, any Concessionaire Party or their Representatives that (i) constitutes trade secrets or commercial or financial information (A) where the trade secrets or commercial or financial information are proprietary, privileged or confidential, or (B) where disclosure of the trade secrets or commercial or financial information may cause competitive harm and (ii) is designated as such by the Concessionaire, a Concessionaire Party or their Representatives in writing to the Department.

ARTICLE 19

RESERVED RIGHTS

Section 19.01 Exclusions from the Concessionaire's Interests.

The Concessionaire's rights and interests in the Project and Rights of Way have been granted to Concessionaire under the permit set forth in this Agreement in order to enable it to accomplish the Project Purposes. Subject to Section 19.04, the Concessionaire's rights and interests specifically exclude all Reserved Rights.

Section 19.02 Department Reservation of Rights.

All rights to own, lease, sell, assign, transfer, utilize, develop or take advantage of the Reserved Rights are hereby reserved to the Department; and the Concessionaire shall not engage in any activity infringing upon the Reserved Rights. The Department may, at any time at its sole cost and expense, devote, use or take advantage of the Reserved Rights for any public purpose without any financial participation whatsoever by the Concessionaire. The Department hereby reserves to itself all ownership, development, maintenance, repair, replacement, operation, use and enjoyment of, and access to, the Reserved Rights. The Department shall use reasonable efforts to minimize interference with the construction, operation and maintenance of the Project in connection with the exercise of Reserved Rights. The Department shall owe no compensation or damages on account of its exercise of Reserved Rights, subject to any rights the Concessionaire has with respect to Department Project Enhancements.

Section 19.03 Disgorgement.

If a Concessionaire Default concerns a breach of the provisions of Section 19.01 or 19.02, in addition to any other remedies under this Agreement, the Department shall be entitled to disgorgement of all profits from the prohibited activity and to sole title to and ownership of the prohibited assets and improvements.

Section 19.04 Alternate Treatment of Reserved Rights.

Notwithstanding Sections 19.01 and 19.02, the Department may elect in its sole discretion to treat any development of improvements respecting Reserved Rights that it undertakes as Project Enhancements, in which case all the provisions of Section 9.02 shall apply.

Section 19.05 Names for Capital Beltway and HOT Lanes.

(a) The Department hereby grants the Concessionaire (with the right to sub-license such rights to the O&M Contractor) a nonexclusive, royalty-free license to use, solely in connection with the operation of the HOT Lanes and the performance by the Concessionaire of its obligations hereunder, any name the Department may give to the Capital Beltway during the Term (including as part of the logos and marks used in connection with the HOT Lanes Operations); *provided*, that naming rights for the HOT Lanes shall be reserved to the Concessionaire, subject to approval of any such name by the Department and to compliance with applicable Law. The Concessionaire shall request the Department's approval of a name for the HOT Lanes in writing and no such approval shall be effective unless and until provided in writing by the Department; *provided*, that the failure of the Department to respond in writing to such request within 21 days following receipt of the Concessionaire's request shall be deemed the Department's approval thereof. The Concessionaire may sub-license any such rights to the O&M Contractor.

(b) If the Department changes the name of the Capital Beltway, the Concessionaire shall, at the Department's expense, change any signage on the HOT Lanes referring to the Capital Beltway. If the Concessionaire changes the name of the HOT Lanes, the Concessionaire shall reimburse the Department for the cost of changing names on signs maintained by the Department pursuant to Section 12.04.

ARTICLE 20

MISCELLANEOUS

Section 20.01 Transfers by the Concessionaire.

(a) The Concessionaire shall not Transfer, or otherwise permit the Transfer of, any or all of the Concessionaire's Interest to or in favor of any Person (a "Transferee") during the Lock-up Period (unless it is the Collateral Agent or a transferee from the Collateral Agent, in each case if permitted under Article 6, or unless it is the issuer, special-purpose entity, trustee or collateral agent in a Permitted Securitization or a transferee therefrom, in each case if permitted under Article 6). Following the Lock-up Period, the Concessionaire shall not Transfer, or otherwise permit the Transfer of, any or all of the Concessionaire's Interest to or in favor of a Transferee, unless (i) the Department has approved (based upon a determination in accordance with Section 20.01(b)) such proposed Transferee (unless it is the Collateral Agent permitted under Article 6 or the issuer, special-purpose entity, trustee or collateral agent in a Permitted Securitization) and (ii) the proposed Transferee (unless it is the Collateral Agent permitted under Article 6 or the issuer, special-purpose entity, trustee or collateral agent in a Permitted Securitization) enters into an agreement with the Department in form and substance satisfactory to the Department, acting reasonably, wherein the Transferee acquires the rights and assumes the obligations of the Concessionaire and agrees to perform and observe all of the obligations and covenants of the Concessionaire under this Agreement. Any Transfer made in violation of the foregoing provision shall be null and void ab initio and of no force and effect.

(b) The Department's approval of a proposed Transferee may be withheld only if the Department reasonably determines that the proposed Transfer is prohibited by applicable Law or such proposed Transferee is not capable of performing the obligations and covenants of the Concessionaire under this Agreement, which determination may be based upon, or take into account, one or more of the following factors: (i) the financial strength and integrity of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (ii) the capitalization of the proposed Transferee; (iii) the experience of the proposed Transferee or the Concessionaire to be engaged by the proposed Transferee in operating toll roads or highways and performing other projects; (iv) the background and reputation of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects); and (v) the O&M Contractor engaged by the proposed Transferee, and whether it meets the conditions set forth in the Direct Agreement and the NEXT Direct Agreement. If the Department is not reasonably satisfied that these conditions are met, it may condition its consent on provision of reasonable additional security or other reasonable arrangements.

(c) No Transfer of all or any of the Concessionaire's Interest (except a Transfer to the Collateral Agent upon its exercise of remedies under the Financing Assignments and a subsequent transfer to the Lender's transferee that has been approved the Direct Agreement and the NEXT Direct Agreement, and except a Transfer to the issuer, special-purpose entity, trustee or collateral agent in a Permitted Securitization and a subsequent transfer to such holder's transferee that has been approved under the Direct

Agreement and the NEXT Direct Agreement) shall be made or have any force or effect if, at the time of such Transfer there has occurred a Concessionaire Default that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute a Concessionaire Default.

(d) A Change in Control of the Concessionaire shall be deemed to be a Transfer of the Concessionaire's Interest for purposes of the foregoing provisions.

Section 20.02 Assignment by the Department.

The Department may transfer and assign its interests, in whole or in part, in the Project, this Agreement and any other Project Agreements to any other public agency or public entity of the State as permitted by law; *provided*, that the successor or assignee has assumed all of the Department's obligations, duties and liabilities under this Agreement and the Project Agreements then in effect and has provided the Concessionaire with reasonable assurance of its legal authority and sufficient financial resources to honor and perform the same; *provided*, that the successor or assignee shall not be required to have financial resources in excess of those then available to the Department.

Section 20.03 Authorized Representatives.

Each of the Concessionaire and the Department hereby designate the individuals indicated on Exhibit S as its initial Concessionaire Representative(s) and Department Representative(s), respectively, to administer this Agreement on its respective behalf.

The Concessionaire Representatives and the Department Representatives shall have the authority to issue instructions and other communications on behalf of the Concessionaire and Department, respectively, and shall be the recipient of notices and other written communications from the other party under this Agreement (except any notice initiating or relating to the dispute resolution the procedures of Section 17.06 shall be given in accordance with Section 20.04). However, such representatives shall not have the authority to make decisions or give instructions binding upon the Concessionaire or the Department, except to the extent expressly authorized by Concessionaire or the Department, as the case may be, in writing. In the event the Concessionaire or Department designates different representatives, it shall give the other party written notice of the identity of and contact information for the new Concessionaire Representative(s) or Department Representative(s), as the case may be.

Section 20.04 Notices.

(a) Whenever under the provisions of this Agreement it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless and until actually received by the addressee or unless served (a) personally, (b) by independent, reputable, overnight commercial courier, (c) by facsimile transmission, where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission is immediately followed by service of the original of the subject item in another manner permitted herein, or (d) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Department: Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Commissioner
Facsimile: (804) 786-2940

With copies to: Office of the Attorney General
202 N. 9th Street
Richmond, VA 23219
Attention: Chief Transportation Section
Facsimile: (804) 786-9136

If to the Concessionaire: Capital Beltway Express LLC
6440 General Green Way
Alexandria, VA 22312
Attention: Group General Manager
Facsimile: (571) 419-6101

With copies to: Capital Beltway Express LLC
6440 General Green Way
Alexandria, VA 22312
Attention: Legal Counsel

(b) Any party may, from time to time, by notice in writing served upon the other party as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally shall be deemed delivered upon receipt, if served by mail or independent courier shall be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile (provided the original is thereafter delivered as aforesaid).

Section 20.05 Binding Effect.

Subject to the limitations of Sections 20.01 and 20.02, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns, and wherever a reference in this Agreement is made to any of the parties hereto, such reference also shall be deemed to include, wherever applicable, a reference to the legal representatives, successors and permitted assigns of such party, as if in every case so expressed.

Section 20.06 Relationship of Parties.

(a) The relationship of the Concessionaire to the Department shall be one of an independent contractor, not an agent, partner, lessee, joint or co-venturer or employee, and neither the Department nor the Concessionaire shall have any rights to direct or control the activities of the other or their respective Affiliates, contractors or consultants, except as expressly provided by this Agreement.

(b) Officials, employees and agents of the Concessionaire or the Department shall in no event be considered employees, agents, partners or representatives of the other.

Section 20.07 No Third-Party Beneficiaries.

Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement, except rights expressly contained herein for the benefit of the Lenders and/or the Collateral Agent.

Section 20.08 Limitation on Consequential Damages.

Except as expressly provided in this Agreement to the contrary, neither party shall be liable to the other for punitive damages or special, indirect, incidental or consequential damages of any nature, whether arising in contract, tort (including negligence) or other legal theory. The foregoing limitation shall not, however, in any manner:

(a) prejudice Department's right to recover liquidated damages from Concessionaire as provided in this Agreement or any Development Contract;

(b) limit Concessionaire's liability for any type of damage arising out of Concessionaire's obligation to indemnify, defend and hold each State Indemnitee harmless from Third Party Claims under Article 14 and elsewhere in this Agreement;

(c) limit Concessionaire's liability for any type of damage to the extent covered by insurance required hereunder;

(d) limit the amounts the Department or the Concessionaire may owe under the express provisions of this Agreement for Compensation Events or events of termination.

Section 20.09 Waiver.

(a) No waiver by any party of any right or remedy under this Agreement or the other Project Agreements shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or the other Project Agreements. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(b) No act, delay or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such party under this Agreement or any other Project Agreement, or to relieve the other party from the full performance of its obligations under this Agreement and the other Project Agreements.

(c) No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party.

(d) The acceptance of any payment or reimbursement by a party shall not: (i) waive any preceding or then-existing breach or default by the other party of any term, covenant or condition of this Agreement, other than the other party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or reimbursement; or (ii) continue, extend or affect (A) the service of any notice, any suit, arbitration or other legal proceeding or final judgment, (B) any time within which the other party is required to perform any obligation or (C) any other notice or demand.

(e) No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.

Section 20.10 No Brokers.

Except for any financial adviser or investment banker whose fee will be paid by the party retaining such adviser or banker, each party represents and warrants that it has not dealt with any real estate or business opportunity broker or agent or any finder in connection with this Agreement. Each party agrees, to the extent permitted by Law, to indemnify, protect, defend with counsel acceptable to the other party and hold harmless the other party against any claim for commission, finder's fee or like compensation asserted by any real estate or business opportunity broker, agent, finder or other person claiming to have dealt with the indemnifying party in connection with this Agreement.

Section 20.11 Governing Law and Venue.

This Agreement shall be governed and construed in accordance with the laws of the State applicable to contracts executed and to be performed within the State. Venue for any legal action arising out of this Agreement shall lie in the Circuit Court in the City of Richmond, Virginia, Division I.

Section 20.12 Use of Police Power.

Nothing in this Agreement limits the authority of the Department to exercise its regulatory and police powers granted by law, including but not limited to its powers of condemnation with respect to all or any part of the Project, the Rights of Way and any of the Concessionaire's rights hereunder.

Section 20.13 Survival.

All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Second Amended and Restated Agreement Date and at and as of all other applicable times during the Term. All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall survive the expiration or earlier termination of this Agreement and shall not be waived by the execution and delivery of this Agreement, by completion of construction, by any investigation by the Department or by any other event except a specific written waiver by the party against whom waiver is asserted.

Section 20.14 Subpoena.

Except as provided for in Virginia Code Section 33.2-206, the Concessionaire may subpoena any Department personnel; *provided*, that the Concessionaire shall pay for such personnel's time at its fully burdened rate (including overhead and fringe benefits), together with all out-of-pocket expenses incurred, no later than 30 days after the Concessionaire's receipt of an invoice reasonably documenting the amount of such time provided.

Section 20.15 Construction and Interpretation of Agreement.

(a) The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party

has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(b) If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the parties in good faith shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

(c) The captions of the articles and sections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(d) References in this instrument to this “Agreement” mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation and/or undertaking “herein,” “hereunder” or “pursuant hereto” (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. All references to a subsection or clause “above” or “below” refer to the denoted subsection or clause within the section in which the reference appears. Unless expressly provided otherwise, all references to Articles and Sections refer to the Articles and Sections set forth in this Agreement. Unless otherwise stated in this Agreement or the Project Agreements, words which have well-known technical or construction industry meanings are used in this Agreement or the Project Agreements in accordance with such recognized meaning. Wherever the word “including,” “includes,” or “include” is used in this Agreement or the Project Agreements, except where immediately preceded by the words “not”, it will be deemed to be followed by the words “without limitation”. Wherever reference is made in the Project Agreements to a particular Governmental Authority, it includes any public agency succeeding to the powers and authority of such Governmental Authority.

(e) As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

(f) This Agreement, its exhibits and the other Project Agreements are intended to be complementary and consistent with each other and shall, to the maximum extent possible, be construed according to such intent. In the event of an irreconcilable conflict or inconsistency between the terms and conditions of this Agreement, the exhibits to this Agreement and/or the executed Project Agreements, the conflict or inconsistency shall be resolved by applying the following order of document precedence:

Highest:	A. Agreement and <u>Exhibit A</u>
	B. Exhibits other than Technical Requirements and Scope Document
	C. Technical Requirements
	D. Scope Document
	E. Other Project Agreements to which Department is a party
Lowest:	F. Other Project Agreements, including Design-Build Contract, to which Department is not a party

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

Section 20.16 Counterparts.

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 20.17 Entire Agreement; Amendment.

(a) THIS AGREEMENT AND THE PROJECT AGREEMENTS CONSTITUTE THE ENTIRE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SPECIFIC MATTERS COVERED HEREIN AND THEREIN. ALL PRIOR WRITTEN AND PRIOR OR CONTEMPORANEOUS VERBAL AGREEMENTS, UNDERSTANDINGS, REPRESENTATIONS AND/OR PRACTICES RELATIVE TO THE FOREGOING ARE HEREBY SUPERSEDED, REVOKED AND RENDERED INEFFECTIVE FOR ANY PURPOSE. THIS AGREEMENT MAY BE ALTERED, AMENDED OR REVOKED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY EACH PARTY HERETO, OR ITS PERMITTED SUCCESSOR OR ASSIGNEE. NO VERBAL AGREEMENT OR IMPLIED COVENANT SHALL BE HELD TO VARY THE TERMS HEREOF, ANY STATUTE, LAW OR CUSTOM TO THE CONTRARY NOTWITHSTANDING.

(b) This Agreement and the other Project Agreements attempt to set forth in full all requirements applicable under the PPTA as to the development, operation, maintenance, repair, management and financing of the Project and attempt to define in full the rights and responsibilities of each party in connection therewith. To the extent requirements and rights and responsibilities have not been addressed in this Agreement and the other Project Agreements, the parties agree to carry out their respective responsibilities in the spirit of cooperation contemplated by the PPTA, recognizing that they may not have defined in a sufficient detail or anticipated fully all activities necessary for the full implementation of the Project.

(c) For the avoidance of doubt, Amendment No. 4 to the Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project, Development Framework Agreement Capital Beltway Express Lanes Northern Extension, executed by the Parties and dated January 29, 2019 is superseded and is null and void as of the Second Amended and Restated Agreement Date, subject to any provision that survives by its terms. In addition, the Parties acknowledge and agree the (i) NEXT Proposal Specifications and (ii) the Major Business Terms for the CBE Northern Extension Project in the Commonwealth of Virginia dated May 12, 2021, are both superseded and without legal effect as of the Second Amended and Restated Agreement Date.

Section 20.18 Payment of Concessionaire Damages and Other Amounts by the Department.

The Department's payment of any Concessionaire Damages, Losses or any other amounts due and owing by the Department to the Concessionaire under this Agreement shall be subject to appropriation by the General Assembly and allocation by the CTB therefor; *provided* that upon determination of Concessionaire Damages or such other amounts the Department shall with all practical dispatch consistent in all respects with applicable law and its obligations under this Agreement (i) deliver to the Governor and the Director of the Department of Planning and Budget of the State, before December 1 with respect to any such payment requested to be appropriated by the next regular session of the General Assembly, a statement of the amount of any such payment due or expected to be due and a request that the Governor include in his budget to be delivered to the next session of the General Assembly a provision that there be appropriated such amounts for such purpose to the extent required, from any legally available funds, (ii) use its diligent efforts to have (A) the Governor include, in each biennial or any supplemental budget the Governor presents to the General Assembly, the amounts set forth in any statement delivered pursuant to (i) above, (B) the General Assembly appropriate and reappropriate, as applicable, such amounts to or on behalf of the Department for the purpose of paying any Concessionaire Damages or other amounts due and owing by the Department to the Concessionaire under this Agreement, and (C) the CTB allocates such appropriated amounts as applicable for payment to the Concessionaire, and (iii) notify the Concessionaire promptly upon becoming aware of any failure by (A) the Governor to include such amounts in his budget delivered to the next session of the General Assembly, (B) the General Assembly to appropriate such amounts during such next session of the General Assembly or (C) the CTB to so allocate such amounts for payment to the Concessionaire; and *provided further*, that the parties hereto agree and acknowledge that such subject to appropriation obligation of the Department to pay the Concessionaire Damages and other amounts was and is a material inducement and consideration for the execution and delivery of this Agreement by the Concessionaire.

Section 20.19 Payments to Department.

Except as otherwise expressly provided herein or in any Project Agreement, payments due to the Department hereunder shall be due and payable within 30 days of receipt by the Concessionaire of an invoice therefor. Each party will be entitled to deduct, offset or withhold from any amounts due from one party to the other party any amounts then due and owing from such other party. Except as otherwise provided, neither party is required to pay amounts due that are being contested in accordance with the dispute resolution procedures described in Section 17.06.

Section 20.20 Interest on Overdue Amounts.

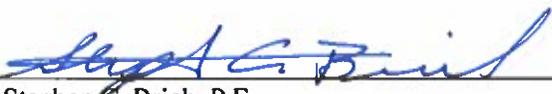
Any amount not paid when due under this Agreement shall bear interest from the date such payment is due until payment is made (after as well as before judgment) at a variable rate per annum at all times

equal to the Bank Rate, which interest shall be payable on demand. Interest will be compounded annually and payable on the date on which the related overdue amount is paid.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK,
SIGNATURE PAGE (S) TO FOLLOW]

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Second Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project as of the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an agency of the Commonwealth of Virginia

By: 
Name: Stephen C. Brich, P.E.
Title: Commissioner of Highways

CAPITAL BELTWAY EXPRESS LLC,
a Delaware limited liability company

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Second Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project as of the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an agency of the Commonwealth of Virginia

By: _____
Name: Stephen C. Brich, P.E.
Title: Commissioner of Highways

CAPITAL BELTWAY EXPRESS LLC,
a Delaware limited liability company

By:  _____
Name: Pierce Coffee
Title: President

EXHIBITS

EXHIBIT A	Definitions
EXHIBIT B	Scope of Work
EXHIBIT B-1-A	Project Description (Original Project)
EXHIBIT B-1-B	Project Description (NEXT Project)
EXHIBIT B-2	Map of HOT Lanes Project
EXHIBIT B-3	Map of Project Right of Way
EXHIBIT B-4	Initial Scope Document
EXHIBIT B-5	NEXT Scope Document
EXHIBIT B-6	495 Ultimate Scope at DTR Interchange
EXHIBIT C	Operations and Support Services Agreement
EXHIBIT D	Form of Electronic Toll Collection Services Agreement
EXHIBIT E	Joint Operating and Maintenance Protocols
EXHIBIT F-1	NEXT Modified Base Configuration Drawing
EXHIBIT F-2	Comparison Exhibit – Base Scope to Modified Base Configuration
EXHIBIT F-3	Areas of GWMP Interchange subject to additional Department approvals
EXHIBIT G	Springing Provisions Related to TIFIA Loan
EXHIBIT H-1	List of Initial Project Financing Agreements
EXHIBIT H-2	List of NEXT Project Financing Agreements
EXHIBIT I	NEXT Design-Build Contract
EXHIBIT J-1	Original Completion Guaranty
EXHIBIT J-2	NEXT Completion Guaranty
EXHIBIT K	Toll MOU
EXHIBIT L	Permit Fee
EXHIBIT M	Department Regulatory Approvals
EXHIBIT N-1	Technical Requirements – Original Project
EXHIBIT N-2	Technical Requirements – NEXT Project
EXHIBIT N-3	Technical Requirements – Operations and Maintenance
EXHIBIT O-1	Initial Baseline Schedule
EXHIBIT O-2	Initial NEXT Baseline Schedule
EXHIBIT P	Format of Baseline Report
EXHIBIT Q	VDOT Funding Agreement
EXHIBIT R	EPD Escrow Agreement
EXHIBIT S	Initial Authorized Representatives
EXHIBIT T	Non-Compliance Points
EXHIBIT U-1	Form of Direct Agreement
EXHIBIT U-2	Form of NEXT Direct Agreement
EXHIBIT V	Forms of NEXT Payment Bonds and NEXT Performance Bonds
EXHIBIT W	Federal Requirements
EXHIBIT X	Labor, Employment and DBE/SWaM Related Matters
EXHIBIT Y	Insurance Requirements for the NEXT Project
EXHIBIT Z-1	Transit and Corridor Investment Payment
EXHIBIT Z-2	Excess Sharing Amount

EXHIBIT A
DEFINITIONS

Acronym	
AASHTO	American Association of State Highway and Transportation Officials
AID	Automatic Incident Detection
AMRL	AASHTO Materials Reference Laboratory
ASTM	American Society for Testing Materials
ATMS	Advanced Traffic Management System
BCOM	Virginia Department of General Services' Bureau of Capital Outlay Management
CCCS	Central Control Computer System
CCTV	Closed-Circuit Television
CI	Critical Infrastructure
CII	Critical Infrastructure Information
CII/SSI	Critical Infrastructure Information/Sensitive Security Information
CLRP	Constrained Long-Range Transportation Plan
CPI	Consumer Price Index
CPM	Critical Path Method
CPT	Cone Penetration Test
CPTED	Crime Prevention Through Environmental Design
CTB	Commonwealth Transportation Board
DAAR	DTR/Dulles Airport Access Road
DBE	Disadvantaged Business Enterprise
DBE/SWaM	Disadvantaged Business Enterprise/Small, Women- and Minority-owned Business Enterprise
DEM	Digital Elevation Model
DGS	Department of General Services
DMS	Dynamic Message Signs
DMT	Dilatometer Test
DMV	Department of Motor Vehicles
DTM	Digital Terrain Model
DTR	Dulles Toll Road
EDMS	Electronic Document Management System
EIR	Environmental Impact Review
EPD	Escrow Proposal Documents
ESC	Erosion and Sediment Control
ESCCC	Erosion and Sediment Control Contractor Certification
ETC	Electronic Toll Collection
ETTM	Electronic Toll and Traffic Management
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FI/RW	Field Inspection and Right of Way
FOIA	Freedom of Information Act
FTP	File Transfer Protocol
GAAP	Generally Accepted Accounting Principles
GFCI	Ground Fault Circuit Interrupter
GFE	Good Faith Effort
GUI	Graphical User-Interface

Acronym	
HOT/HOV	High Occupancy Toll/High Occupancy Vehicle
HOV	High Occupancy Vehicle
IAG	InterAgency Group
IDSP	Integrated Directional Sign Program
IIM or I&IM	Instructional and Informational Memorandum
IJR	Interchange Justification Report
IMR	Interchange Modification Report
IP	Intellectual Property
ISA	In Service Availability
ISO	International Organization for Standardization
IT	Information Technology
ITS	Intelligent Transportation System
IVHS	Intelligent Vehicle Highway System
LED	Light Emitting Diode
LRTP	Long Range Transportation Plan
MWCOG	Metropolitan Washington Council of Governments'
MMS	Maintenance Management System
MOI	Department Manual of Instructions for Material Division
MOT	Maintenance of Traffic
MPO	Metropolitan Planning Organization
MTBF	Mean Time Between Failure
MTTR	Mean Time To Repair
MUTCD	Manual on Uniform Traffic Control Devices
NEPA	National Environmental Policy Act
NFPA	National Fire Protection Association
NS	Norfolk Southern
ORT	Open Road Tolling
OSHA	Occupational Health and Safety
PA	Programmatic Agreement
PABs	Private Activity Bonds
PCI	Payment Card Industry
PDP	Project Development Plan
PPTA	Public-Private Transportation Act
PTZ	Pan Tilt Zoom
QMSP	Quality Management System Plan
RLD	Responsible Land Disturber Certification
ROD	Record of Decision
ROW	Right of Way
RUMS	Right of Way and Utilities Management System
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (Public Law 109-59)
SAT	Site Acceptance Testing
SEC	U.S. Securities and Exchange Commission
SPI	Schedule Performance Index
SPT	Standard Penetration Test
SPV	Special Purpose Vehicle
SRA	Safety Rest Area
STIP	State Transportation Improvement Plan

Acronym	
STRAHNET	Strategic Highway Network
SWaM	Small Woman-Owned and Minority Business
SYIP	Six-Year Improvement Program
SWM	Storm Water Management
SWPPP	Storm Water Pollution Prevention Plan
TIA	Time Impact Analysis
TIFIA	Transportation Infrastructure Finance and Innovation Act
TMP	Transportation Management Plan
TMS	Traffic Management System
TRI	Total Return on Investment
TTMS	Toll and Traffic Management System
UCC	Uniform Commercial Code
UPS	Uninterruptible Power Source
USDOT	United States Department of Transportation
VA SHPO	Virginia State Historic Preservation Officer
VCRI	Verification Cross Reference Index
VDOT	Virginia Department of Transportation
VPDES	Virginia Department of Environmental Quality's Virginia Pollutant Discharge Elimination System
VPS	Violation Processing System
VPSTF	Virginia Petroleum Underground Storage Tank Fund
VSMP	Virginia Stormwater Management Program
VSP	Virginia State Police
VTIB	Virginia Transportation Infrastructure Bank

495 Ultimate Scope at DTR Interchange means the configuration for the interchange of the Capital Beltway and Dulles Toll Road/Dulles Airport Access Road as described on Exhibit B-6.

Actual Gross Revenue is defined in Section 4.09(e)(ii).

Additional Traffic Lanes means traffic lanes within the Capital Beltway Corridor beyond the improvements included within the Project.

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 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.

Affiliate Contract is defined in Section 11.02(f).

Agreement or **ARCA** means the Second ARCA, as subsequently amended, restated, supplemented and otherwise modified from time to time, and all exhibits and schedules thereto, in each case, as amended, restated, supplemented, and otherwise modified from time to time.

Agreement Date means December 19, 2007.

Allocable Costs means:

(a) for services performed using Department or Concessionaire personnel, materials and equipment, the sum of:

(i) an amount equal to the fully burdened hourly rate (including overhead and fringe benefits) of each employee providing such services multiplied by the actual number of hours such employee performs such services; plus

(ii) the cost of all materials used, including sales taxes, freight and delivery charges and any allowable discounts; plus

(iii) the use, operating, maintenance, fuel, storage and other costs of all deployed tools (excluding small tools) and equipment, calculated at hourly rates determined from the most current volume of the Rental Rate Blue Book published by Nielsen/DATAQUEST, Inc. of Palo Alto, California, or its successors, or at any lesser hourly rate the Department may approve from time to time in its sole discretion, without area adjustment, but with equipment life adjustment made in accordance with the rate adjustment tables, *provided* that if rates are not published for a specific type of tool or equipment, the Department shall establish a rate for it that is consistent with its cost and use in the industry; or

(b) if the services are performed by a contractor under contract with the Department or the Concessionaire, the sum of:

(i) the amount owing under such contract; *provided* that if the contract is an Affiliate Contract, the lesser of the contract amount or the amount that would be reasonably obtained in an arm's length transaction for comparable services with a person that is not an Affiliate; plus

(ii) 10% of such amount to reimburse the Department or the Concessionaire for costs of administering the contract; plus

(iii) all costs the Department or the Concessionaire reasonably incurs to enforce or pursue remedies for the contractor's failure to perform in accordance with the contract, except in the case of a contract that is an Affiliate Contract.

Available Revenues is defined in Section 4.08(b).

Average Toll means for a given time period in which (a) the total volume exceeds 3,200 vehicles per hour in the same direction for any Toll Section and (b) the number of High Occupancy Vehicles exceeds 30% of all Permitted Vehicles going in such direction then using such Toll Section, (1) the total revenue for all toll paying vehicles going in such direction for such Toll Section in such period, divided by (2) the number of toll paying vehicles going in such direction using such Toll Section in such time period.

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

Base Case Financial Model means the Financial Model and the assumptions and information used by or incorporated in the Financial Model: (a) as of the Agreement Date on the basis of which the Concessionaire and the Department entered into this Agreement; (b) which include certain projections and

calculations with respect to revenues, expenses, the repayment of Concessionaire Debt; and (c) which is prepared on the basis of the Base Case Traffic Model, as such Financial Model shall be updated pursuant to Section 5.04.

Base Case Financial Model Update means the Base Case Financial Model, as most recently updated pursuant to Section 5.04.

Base Case Financial Model Update (NEXT Draft) means the iterative financial model submitted by the Concessionaire initially with its written proposal to develop and construct the NEXT Project, and updated at various times by the Concessionaire before NEXT Financial Close, as set forth in Section 5.04.

Base Case Financial Model Update (NEXT Final) is defined in Section 5.04(g).

Base Case First Level Targeted Rate of Return means 7.800%.

Base Case Second Level Targeted Rate of Return means 8.347%.

Base Case Third Level Targeted Rate of Return means 8.808%.

Base Case Traffic Model means the traffic and revenue model and the assumptions and information used by or incorporated in the model to provide the Capital Beltway HOT Lanes Investment Grade Traffic and Revenue Study dated February 2007, the results of operation of which are incorporated into the Base Case Financial Model.

Baseline Report is defined in Section 8.06(a).

Baseline Schedule means (a) with respect to the Original Project, the Original Project Baseline Schedule, and (b) with respect to the NEXT Project, the NEXT Baseline Schedule.

BCWP is defined in Section 7.06(f)(i).

BCWS is defined in Section 7.06(f)(i).

Bi-State Project means the project to be delivered in accordance with the cooperative agreement to be entered into between the State and the State of Maryland to provide: a new American Legion Bridge and new bicycle and pedestrian access to connect trails on both sides of the Potomac River; and to provide a seamless regional dynamic toll lane network with each state operating its system with independence.

Breakage Costs means any commercially reasonable breakage costs, make-whole payments or other prepayment amounts (including premiums) that the Concessionaire must pay under any Project Financing Agreement as a result of the early repayment of such debt prior to its scheduled maturity date.

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

Capital Beltway means that portion of the 64-mile long Interstate freeway (I-495) encircling Washington D.C. situated within the State, as it may be expanded or improved after the Agreement Date.

Capital Beltway Corridor means the Original Corridor and the NEXT Corridor.

Change in Control, as to the Concessionaire, means the transfer of 50% or more of the membership interests in the Concessionaire by the members of the Concessionaire as of the Second Amended and Restated Agreement Date and any assignment, sale, transfer of interest or other transaction of any type or

description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of the Concessionaire or a significant aspect of its business; *provided*, that the following shall not constitute a Change in Control:

(a) A change in possession of the power to direct or control the management of the Concessionaire or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, excluding such transactions involving an initial public offering;

(b) A change in possession of the power to direct or control the management of the Concessionaire or a material aspect of its business due solely to a bona fide transaction involving securities or beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of the Concessionaire, unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;

(c) An upstream reorganization or transfer of direct or indirect interests in the Concessionaire so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of such person, whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise;

(d) The exercise of preferred or minority equity holder veto or voting rights (whether provided by applicable Law or by the Concessionaire's organizational documents) over major business decisions of the Concessionaire; or

(e) The grant of Financing Assignments in accordance with Section 6.02(b), or the exercise of Lender remedies thereunder, including foreclosure; or

(f) Transfers of direct or indirect ownership interests in the Concessionaire (as applicable) between or among Persons that are under common "control" (within the meaning of control contemplated by the definition of Affiliate).

Change Order means a written order issued by the Department to the Concessionaire delineating changes in the Work or in the terms or conditions of the Technical Requirements, as applicable, in accordance with Section 7.12.

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

Closing Date means the date on which each of the following has occurred: (i) the Concessionaire enters into the Design-Build Contract for the Original Project and issues the notice to proceed thereunder, (ii) the Concessionaire enters into a binding loan agreement for the TIFIA Loan for the completion of the design and construction of the Original Project, and (iii) the members of the Concessionaire pay the initial installment of the equity commitments under each Guaranty of Investment Obligations, which Closing Date shall be December 20, 2007, unless another date is mutually agreed upon in writing by the Department and the Concessionaire.

CLRP or Constrained Long-Range Transportation Plan means the constrained long-range transportation plan that is adopted by the applicable metropolitan planning organization (which in the metropolitan Washington, D.C. region is the Transportation Planning Board) and approved by the FHWA

and the Federal Transit Administration as a prerequisite to receiving Federal transportation funds and/or approvals.

Code means the Internal Revenue Code of 1986, as amended.

Collateral Agent means the Institutional Lender acting on behalf of or at the direction of the other Lenders or the Person or Persons so designated in an intercreditor agreement or other document executed by all Lenders to whom Financing Assignments are outstanding at the time of execution of such document, a copy of which shall be delivered by the Concessionaire to the Department. Initially, the Collateral Agent means Wells Fargo Bank, National Association, a national banking association, in its capacity as trustee under the Master Indenture of Trust with the PABs Issuer, dated as of December 1, 2007, or any successor trustee thereunder.

Commissioner means the Commissioner of Highways or any successor in function.

Compensation Event means any of the following events, in each case to the extent the Agreement entitles the Concessionaire to Concessionaire Damages:

(a) any delay beyond the applicable time period in the issuance by the Department of a Substantial Completion Certificate pursuant to Section 7.14(a) or a NEXT Final Completion Certificate pursuant to Section 7.15(b);

(b) the development or implementation of any Department Change pursuant to Section 7.12 or any Department Project Enhancement pursuant to Section 9.02;

(c) the performance by the Department of certain ITS activities pursuant to Section 12.03 that results in Concessionaire Damages;

(d) any Discriminatory Change in Law pursuant to Section 13.04;

(e) any Reimbursable Tax Imposition pursuant to Section 13.06;

(f) an event related to toll exemptions described in Section 13.05(a); or

(g) an injunction or other legal proceeding enjoining or estopping the Concessionaire from the performance of its obligations under this Agreement, in any case for more than 30 days in the aggregate, based solely on claims that were not time barred because the re-evaluation dated May 9, 2007 of the federal environmental impact study was not published in the Federal Register;

provided, that under no circumstances will any of the following events (including associated construction activities) result in a Compensation Event (although, for the avoidance of doubt, such exclusion from Compensation Events does not exclude such events from otherwise being considered Department Changes or Delay Events, in each case, pursuant to, and in accordance with, the terms of the Agreement):

(i) the development or implementation of any projects listed in the MWCOG CLRP dated as of October 17, 2018 within the NEXT Corridor;

(ii) the development or implementation of the Bi-State Project; and

(iii) the development or implementation of any NEXT Project (Phase 2) Asset, other than the development or implementation of the new southbound auxiliary lane between Route 193 and Dulles Toll Road to the extent it commences prior to the

earlier of: (1) service commencement of the Bi-State Project and (2) December 31, 2030.

Compensation Event Notice is defined in Section 13.02.

Completed Work Value means the greater of zero and an amount equal to $(A - [B + C + D])$, where:

A = the total contract price of the Original Design-Build Contract and the NEXT Design-Build Contract, as applicable, plus the value of all change orders to each of the Original Design-Build Contract and the NEXT Design-Build Contract approved by the Department;

B = the estimated cost to complete all of the Work required to be undertaken in order to achieve Service Commencement for the Original HOT Lanes or the NEXT HOT Lanes, as applicable;

C = the Department's estimate of all those costs (internal and external) that it is reasonably likely to incur in retendering: (i) this Agreement and/or (ii) a replacement agreement to complete the NEXT Project, as applicable; and

D = the aggregate of all amounts paid to the Concessionaire by the Department in respect of (i) the Original Project, (ii) the NEXT Project and (iii) any other amounts paid by the Department to the Concessionaire as compensation for the Work, as applicable, on or prior to the date of termination of this Agreement or the NEXT Project, as applicable.

Completion Guaranty means (a) for the Original Project, the Original Completion Guaranty and (b) for the NEXT Project, the NEXT Completion Guaranty.

Concession Payments Account is defined in Section 5.03.

Concessionaire has the meaning assigned to such term in Section 56-557 of the Virginia Code and, for purposes of this Agreement, means Capital Beltway Express LLC and its permitted successors and assigns.

Concessionaire Damages means, with respect to any Compensation Event, the sum of (a) any Net Cost Impact relating thereto and (b) any Net Revenue Impact relating thereto. Concessionaire Damages shall not include, with respect to any Compensation Event, an aggregate amount that is *de minimis*.

Concessionaire Debt means any bona fide debt (including principal, accrued interest, and customary and reasonable lender or financial insurer, agent and trustee fees, costs, premiums, expenses and reimbursement obligations with respect thereto, and including all payment obligations under interest rate hedging agreements and reimbursement obligations to any financial insurer with respect thereto) relating to the Project and granted by a Person (other than an Affiliate of the Concessionaire except if the terms of such debt are comparable to the terms that could have been obtained, on an arms-length basis, from a Person that is not an Affiliate of the Concessionaire) pursuant to an agreement entered into prior to the declaration of a Department Default or Force Majeure Event giving rise to the payment of amounts for or with respect to termination under this Agreement. No debt shall constitute Concessionaire Debt unless the Collateral Agent provided the Department with a Notice of Concessionaire Debt in accordance with the notice requirements of Section 20.04. Except with respect to the incurrence of debt under the Initial Project Financing Agreements or the NEXT Project Financing Agreements, Concessionaire Debt shall not include any debt that would cause the Concessionaire Debt to increase unless such debt is approved by the Department pursuant to Section 6.06(b) or otherwise meets the requirements of subclause (A), (B) or (C)

of Section 6.06(b). For the avoidance of doubt, the NEXT Equity Commitment Amount shall not be considered Concessionaire Debt.

Concessionaire Default is defined in Section 17.01.

Concessionaire Default Triggering Event is defined in Section 17.01.

Concessionaire Loan means the aggregate principal amount of Concessionaire Debt outstanding from time to time under the Project Financing Agreements and secured by the Financing Assignments, excluding any indebtedness owed to the Concessionaire's Affiliates.

Concessionaire Marks is defined in Section 18.04(d).

Concessionaire Party means the Concessionaire and any Affiliate and any agents, officers, directors, employees, contractors (other than the Department), subcontractors, suppliers and materialmen of the Concessionaire or any Affiliate.

Concessionaire Project Enhancements means any extensions of, additions to, or major modifications undertaken by the Concessionaire after the Initial Service Commencement Date pursuant to Section 9.01 or 9.02(c) (including the NEXT Project (Phase 2)), except those required as part of maintenance or repair of assets.

Concessionaire Representative means an individual designated in accordance with Section 20.03(b).

Concessionaire Recovery Plan is defined in Section 7.16(b).

Concessionaire-Supplied SPV Contingency Amount is defined in Section 7.20(d)(i).

Concessionaire's Interest means the interest of the Concessionaire in and to (a) the Project and (b) this Agreement and the other Project Agreements.

Construction Costs means all capital expenditure payments, as funded by Total Invested Project Funds, made for the construction, development and completion of the Project excluding amounts paid for Operating Costs and Major Maintenance.

Construction Documentation means all Design Documentation and all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary for construction of the Project and/or the Utility Relocations included in the Work, in accordance with this Agreement and the other Project Agreements.

Construction Reserves means reserves funded by the Concessionaire to meet future Construction Costs.

Construction Segment means any segment or portion of the Project which the Design-Build Contractor and the Concessionaire have designated pursuant to the Design-Build Contract for the purpose of scheduling construction, as approved by the Department.

Construction Segment Approval is defined in Section 7.03(b).

Contingency Notice is defined in Section 7.20(e)(ii).

Contractor means any Person with whom the Concessionaire has entered into any contract to perform any part of the Work or provide any materials, equipment or supplies for the Project and/or the Utility Relocations included in the Work, on behalf of the Concessionaire, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers. The term “Contractor” shall include the Design-Build Contractor and the O&M Contractor.

Contractor Guarantor means (a) for the Original Project, the Original Contractor Guarantor and (b) for the NEXT Project, the NEXT Contractor Guarantor.

Contractor Recovery Plan is defined in Section 7.16(a).

CPI means the “Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items” (not seasonally adjusted), or its successor, of 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 shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor.

Credit Balances means the aggregate of any amounts standing to the credit of any bank account held by or on behalf of the Concessionaire.

CTB means the Commonwealth Transportation Board, a board of the State affiliated with the Department.

Day or **day** means a calendar day.

Delay Event means:

(a) with respect to the Work Period, “Delay Event” means the occurrence of one or more of the following during the Work Period:

(i) a Work Period Force Majeure Event;

(ii) discovery of any of the following conditions: (A) subsurface conditions on the Project Right of Way that (1) vary materially from the conditions described in the data available to Concessionaire or the Design-Build Contractor (x) as of the Agreement Date with respect to the Original Project or (y) as of the Second Amended and Restated Agreement Date with respect to the NEXT Project, or (2) are unusual and could not be reasonably anticipated based on conditions ordinarily encountered in the general area of the Project Right of Way; (B) threatened or endangered species; (C) archaeological, paleontological or cultural resources; (D) Hazardous Substances present on the Project Right of Way (1) as of the Agreement Date with respect to the Original Project or (2) as of the Second Amended and Restated Agreement Date with respect to the NEXT Project; (E) Hazardous Substances spilled or otherwise placed other than by a Concessionaire Party in the course of performing the Work (1) subsequent to the Agreement Date with respect to the Original Project or (2) subsequent to the Second Amended and Restated Agreement Date with respect to the NEXT Project; or (E) unknown Utilities;

(iii) a failure to obtain, or delay in obtaining, any Regulatory Approval or other authorization from a Governmental Authority (*provided* that such failure or delay could not have been reasonably prevented by the Concessionaire);

(iv) an injunction or other legal proceeding enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement; or

(v) a change in applicable Laws occurring (A) after the Agreement Date with respect to the Original Project or (B) after the Second Amended and Restated Agreement Date with respect to the NEXT Project, that imposes additional requirements that directly and materially adversely impacts performance of the Work and that could not have reasonably been anticipated by a reasonable contractor.

(b) with respect to the Operating Period, "Delay Event" means the occurrence of one or more of the following during the Operating Period:

(i) a Force Majeure Event; or

(ii) an injunction or other legal proceeding enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement; or

(c) which in each case of either (a) or (b) above results in a delay or interruption in the performance by the Concessionaire of any obligation under this Agreement; *provided*, that such delay or the cause thereof is neither specifically dealt with in this Agreement nor arises by reason of:

(i) the negligence or misconduct of the Concessionaire, a Concessionaire Party or their Representatives;

(ii) any act or omission by the Concessionaire, a Concessionaire Party or their Representatives in breach of the provisions of this Agreement;

(iii) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire;

(iv) except to the extent the same constitutes a Force Majeure Event, any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Concessionaire, a Concessionaire Party or their Representatives to supply materials or services for or in connection with the Project's operation 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 the Concessionaire, a Concessionaire Party or their Representatives;

(v) except to the extent the same constitutes a Force Majeure Event, any weather condition (including any flooding) whether or not such weather conditions or the severity of such weather conditions are not or have not ordinarily or customarily been encountered or experienced; or

(vi) the development, redevelopment, construction, modification, maintenance or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of User Fees or in the number of vehicles using the HOT Lanes Project.

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 under this Agreement.

Department Change means any change in the scope of the Work or terms and conditions of the Technical Requirements (including changes in the standards applicable to the Work) that the Department has directed the Concessionaire to perform through a Change Order or a Directive Letter or that the Department performs pursuant to Section 7.12(c).

Department Default is defined in Section 17.03.

Department Project Enhancements means any extensions of, additions to, or major modifications of the HOT Lanes or the Additional Traffic Lanes, except as part of maintenance, repair, reconstruction, rehabilitation, restoration or replacement of any improvements and assets, within the Capital Beltway Corridor undertaken by the Department after the Initial Service Commencement Date pursuant to Section 9.02.

Department Regulatory Approvals mean (a) with respect to the Original Project, (i) SEP-14 approval from the FHWA for the Original Project, (ii) any approvals necessary to obtain the Record of Decision or finding of no significant impact from the FHWA, as part of the environmental review process, (iii) adoption of the Project within the CLRP, the TIP and Air Quality Conformity Analysis from the Transportation Planning Board, (iv) FHWA approval of the STIP, (v) the Toll Agreement, and (vi) approval by the CTB of the funding for the Project included in the SYIP; and (b) with respect to the NEXT Project, such regulatory approvals as described in Exhibit M.

Department Representative means an individual designated in accordance with Section 20.03(a).

Design-Build Contract means (a) for the Original Project, Original Design-Build Contract and (b) for the NEXT Project, the NEXT Design-Build Contract, each for the Work, as it may be amended or supplemented.

Design-Build Contractor means (a) for the Original Project, Original Design-Build Contractor and (b) for the NEXT Project, the NEXT Design-Build Contractor.

Design-Build EPDs means the Original Design-Build EPDs and the NEXT Design-Build EPDs.

Design Documentation means such plans, drawings, specifications and other design documentation (including design standards, design or durability reports, models, samples and calculations) in computer readable and written formats prepared by or on behalf of the Concessionaire for the purposes of the construction of the Work or any component thereof.

Design Public Hearing Documentation means documents approved by the Department's Chief Engineer following a required public hearing relative to design of the Project.

Development Contract means any agreement that is entered into by the Department and the Concessionaire from time to time after the Agreement Date that sets forth the parties' rights and obligations with respect to the design and construction of a Project Enhancement, which shall include such terms as may be mutually agreed by the Concessionaire and the Department.

Deviation means any material proposed or actual change, deviation, modification, alteration or exception from any of the Technical Requirements.

Direct Agreement means the Direct Agreement executed among the Department, the Concessionaire, and the Collateral Agent related to the Project, substantially in the form attached as Exhibit U-1.

Directive Letter means an order issued by the Department in accordance with Section 7.12(b)(vi) directing the Concessionaire to perform Work.

Discriminatory Change in Law means the adoption of any State Law or any change in any State Law or in the interpretation or application thereof during the Term that has the effect of discriminating against the HOT Lanes Project or the Concessionaire (but as to the Concessionaire only with respect to the HOT Lanes Project), except where such Law or change in Law or in interpretation or application is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law) or such Law or change in Law or in interpretation or application is otherwise permitted under this Agreement.

Distribution means (a) any distribution, dividend or other payment, monetary or in-kind, made by the Concessionaire to the shareholders, members, partners, joint venturers or other holders of an equity interest in the Concessionaire, including from the proceeds of any Refinancing, on account of equity investment in the Concessionaire, or (b) any payment by the Concessionaire to an Affiliate other than pursuant to an Affiliate Contract to which the Department has consented in accordance with Section 11.02(f).

DTR Ramp means a new ramp from the southbound high-occupancy toll lanes to eastbound Dulles Toll Road (ramp E2) (including necessary adjustments to the existing ramp G1).

EIS means that certain signed final environmental impact statement, record of decision and re-evaluation for the Original Project approved by FHWA in May 2007.

Electronic Toll Collection Services Agreement means the Electronic Toll Collection Services Agreement between the Concessionaire and the Department, as it may be amended or supplemented, attached as Exhibit D.

Eligible Investments means any one or more of the following securities:

(a) Direct obligations of, and obligations fully and unconditionally guaranteed by, (i) the United States of America or (ii) any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America;

(b) Demand or time deposits, federal funds or bankers' acceptances issued by any depository institution or trust company, *provided* that (i) any demand or time deposit or certificate of deposit is fully insured by the Federal Deposit Insurance Corporation or (ii) any commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such depository institution or trust company at the time of such investment or contractual commitment providing for such investment have been rated "A" or higher by a Rating Agency;

(c) Commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) which has been rated "A" or higher by a Rating Agency at the time of such investment;

(d) Any money market funds, the investments of which consist of cash and obligations fully and unconditionally guaranteed by (i) the United States of America or (ii) any agency or

instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America and which have been rated “A” or higher by a Rating Agency;

(e) Any guaranteed investment contract satisfying the requirements for the same provided in the applicable Project Financing Agreement; and

(f) Other investments then customarily accepted by the State in similar circumstances.

Eligible Sharing Amount is defined in Section 4.09(e)(ii).

Environment means soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air.

Environmental Laws means any Laws applicable to the Project regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health, the Environment or Hazardous Substances, including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 USC 6901 *et seq.*, the Federal Clean Water Act, 33 USC Section 1351 *et seq.*, the Occupational Safety and Health Act, 29 USC Section 651 *et seq.*, as currently in force or as hereafter amended.

EPD Escrow Agreement means the Amended and Restated EPD Escrow Agreement dated as of the Second Amended and Restated Agreement Date by and among the Concessionaire, the Department and the Escrow Agent, which will be in substantially the form attached as Exhibit R, as it may be amended or supplemented from time to time.

EPDs means the Original EPDs and the NEXT EPDs.

Equity Contributions means (without duplication) (i) cash, (ii) funds available for distribution in a distribution account established under the Project Financing Agreements that have not yet been distributed and are made available for Project-related expenditures, and (iii) funds made available from the NEXT Equity Funding Agreements, each in form and substance acceptable to the Department in its reasonable sole discretion.

Equity Sponsor(s) means as of and after the Second Amended and Restated Agreement Date, Transurban Express Lanes LLC.

ESA Payment Date is defined in Section 4.09(a).

ESA Reserve Account is defined in Section 4.09(c).

Escrow Agent means SunTrust Bank, and its successors and assigns, in its role as escrow agent under Sections 18.05 and 18.06, or such other entity serving as escrow agent thereunder as may be agreed to in writing by the Department and the Concessionaire.

ETTM means electronic toll and traffic management.

ETTM Data means all data generated by or accumulated in connection with the operation of the ETTM System, including but not limited to customer lists, customer identification numbers, customer account information and billing records and other customer specific information, and including but not

limited to use and enforcement data, origin and destination information, ETTM performance statistics, and real time traffic flow information.

ETTM Equipment means the automatic vehicle identification equipment, video monitoring equipment, vehicle occupancy detection equipment, toll violator systems, and electronic toll collection equipment, including its components, systems and subsystems; the traffic management system equipment; communications equipment, and all associated hardware and physical infrastructure and other computer hardware and software necessary to meet the performance specifications for ETTM.

ETTM Facilities means the administration/operations building, toll gantries and technical cabinets, utility connections, lighting facilities and other facilities. associated with electronic toll and traffic management (including both the tolling subsystem and the Express Operations Center traffic management subsystem).

ETTM System means the ETTM Facilities, ETTM Equipment and the Software which monitors, controls or executes the ETTM Equipment, all of which shall meet the minimum performance criteria established by the Technical Requirements.

Excess Sharing Amount is defined in Section 4.09(a).

Exempt Vehicles means emergency vehicles and law-enforcement vehicles using the HOT Lanes in the performance of their duties.

Existing TIFIA Loan means the TIFIA Loan outstanding under the Amended and Restated TIFIA Loan Agreement dated as of June 1, 2008 between the Concessionaire the TIFIA Lender.

Express Operations Center means the HOT OC Services facilities located at 6440 General Green Way, Alexandria, Virginia.

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 W.

FHWA means the Federal Highway Administration.

Final Acceptance means the occurrence of all the events and satisfaction of all the conditions with respect to the Work as set forth in Section 7.14(b) of the Agreement.

Final Acceptance Certificate means the certificate issued by the Department pursuant to Section 7.14(b) of the Agreement.

Final Acceptance Date means the date on which the Department issues the Final Acceptance Certificate.

Final Audit is defined in Section 7.20(e)(iv).

Financial Model means the financial formulas that the Concessionaire and the Department have agreed upon as of the Agreement Date for projecting over the Term the pre-tax internal rate of return on Total Invested Project Funds and the pre-tax internal rates of return to equity investors in Concessionaire, which financial formulas are used as part of the Base Case Financial Model and each Base Case Financial Model Update, but without the data and information used by or incorporated into the Base Case Financial

Model and each Base Case Financial Model Update, as modified from time to time with the approval of both parties.

Financing Assignment is defined in Section 6.02(b).

FI/RW is defined in Section 7.5(e).

Financing EPDs means the Original Financing EPDs and the NEXT Financing EPDs.

First ARCA is defined in the Recitals to this Agreement.

First Level Targeted Rate of Return has the meaning specified in Exhibit L.

Fitch Ratings mean Fitch Ratings, and any successor thereto which is a nationally recognized rating agency.

Fluor Corporation is defined in Section 3.02(b).

Fluor Enterprises is defined in the Recitals to this Agreement.

Force Majeure Dispute Notice has the meaning specified in Section 13.07(c).

Force Majeure Election is defined in Section 16.03(a).

Force Majeure Event means any intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, condemnation or confiscation of property or equipment by any Governmental Authority (other than the Department), nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, earthquake that causes ground accelerations in excess of the AASHTO bridge design standards for the site, floods in excess of the base flood (as defined in the Department's Division I Amendment), hurricane force winds, tornados, industry-wide or regional strikes or labor disputes, riot or other public disorder, epidemic, quarantine restriction, stop-work order or injunction issued by a Governmental Authority (other than the Department) of competent jurisdiction, governmental embargo, *provided* that such event neither is otherwise specifically dealt with in this Agreement nor arises by reason of:

(a) the negligence or misconduct of the Concessionaire, a Concessionaire Party or their Representatives;

(b) any act or omission by the Concessionaire, a Concessionaire Party or their Representatives in breach of the provisions of this Agreement;

(c) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire;

(d) any strike, labor dispute or labor protest directed solely at Concessionaire, or a Concessionaire Party or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the Concessionaire, a Concessionaire Party or their Representatives;

(e) the development, redevelopment, construction, modification, maintenance or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of User Fees or in the number of vehicles using the HOT Lanes; or

(f) during the Operating Period, damage to the Project caused by severe weather, flood or earthquake if such damage would not have occurred but for the Project's failure to have been designed or constructed in accordance with the Technical Requirements.

It is specifically understood that other than earthquakes causing ground acceleration in excess of the AASHTO bridge design standards for the site, floods in excess of the base flood (as defined in the Department's Division I Amendment), hurricane force winds or tornados, the Concessionaire shall assume the risk and other weather or conditions resulting from weather shall not constitute a Force Majeure Event.

Force Majeure Extension is defined in Section 13.07(b).

Force Majeure Extension Notice is defined in Section 13.07(c).

Force Majeure Notice is defined in Section 13.07(a).

Force Majeure Termination Note is defined in Section 16.03(a).

Fragnet or Fragmentary Network means the sequence of new activities and/or activity revisions, logic relationships, and resource changes that are proposed to be added to the existing schedule to demonstrate the influence of impacts to the schedule.

Generally Accepted Accounting Principles or GAAP means such accepted accounting practice as conforms at the time to generally accepted accounting principles in the United States of America, consistently applied.

George Washington Memorial Parkway Interface means accommodation of the Bi-State Project's design and interface with the George Washington Memorial Parkway.

GFE is defined in Section 11.03(b).

Good Industry Practice means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Concessionaire or contractor seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and Regulatory Approvals and engaged in the same type of undertaking under similar circumstances and conditions.

Governmental Authority means any court, federal, state, or local government, department, commission, board, bureau, agency or other regulatory or governmental authority.

GP Lanes means the general-purpose traffic lanes (in either or both directions, as applicable) on the Capital Beltway.

Guaranteed Substantial Completion Date is defined in Section 7.01(e).

Guaranty of Investment Obligations means each Guaranty of Investment Obligations dated as of December 19, 2007 to the Department, one from Transurban and one from Fluor Corporation, as they may be amended or supplemented.

GWMP Work Approvals means the additional Department approvals related to the NEXT Project sufficient to advance the hold-point area as demarcated in Exhibit F-3, beyond preliminary engineering.

GWMP Work Directive is defined in Section 7.20(a)(ii).

Handback Requirements is defined in Section 16.09(a).

Hazardous Substance means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is or could be considered a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, solid waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including but not limited to gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation, and naturally asbestos-containing soils or sulfidic geological materials).

High Occupancy Requirement means the number of Persons in accordance with Law applicable to HOT Lanes required to be traveling in a vehicle for the vehicle to use the HOT Lanes without the payment of a toll.

High Occupancy Vehicles means, at any given time during the Term, Permitted Vehicles traveling with at least that number of persons required by the High Occupancy Requirement applicable at such time.

Hiring Development Plan means the plan developed by the Concessionaire that describes its approach to complying with the Department's geographic labor and veterans hiring preference work plan.

HOT Lanes means the (a) Original HOT Lanes, (b) the NEXT HOT Lanes and NEXT Access Ramps and (c) when constructed or designated as such, any Additional Traffic Lanes dedicated for use by qualifying HOT Lanes traffic or other Project Enhancements (including any portion of any NEXT Project (Phase 2) Asset that is dedicated for use by qualifying HOT Lanes traffic). The HOT Lanes are shown on the drawings attached to the Agreement as Exhibit B-2 and, upon Substantial Completion of the Original Project and upon NEXT Final Completion, as applicable, such drawings shall be superseded by the as-built drawings delivered to the Concessionaire under the applicable Design-Build Contract.

HOT Lanes Assets is defined in Section 8.06(a).

HOT Lanes Operations means (a) the operation, management, maintenance and tolling of the HOT Lanes Project and (b) all other actions relating to the HOT Lanes Project or otherwise that are to be performed by or on behalf of the Concessionaire during the Operating Period pursuant to this Agreement.

HOT Lanes Project means (a) the HOT Lanes Right of Way, the Express Operations Center and the HOT Lanes, together with all improvements thereon, including the ETTM Facilities and ETTM System, and all associated assets including signage the cost of which is borne by the Concessionaire under the Agreement, in each case as more fully described in the applicable Scope Document, and (b) when constructed, any Project Enhancements intended by the Department to be included in the HOT Lanes Project. The HOT Lanes Project shall not include frontage roads, overpasses, underpasses, bridges and other crossings that cross the HOT Lanes Right of Way.

HOT Lanes Project Purposes means the operations, maintenance, repair, preservation, modification, management and administration of the HOT Lanes Project, including establishing, imposing, charging, collecting, using and enforcing payment of tolls.

HOT Lanes Right of Way means all real property within the access control line for the HOT Lanes Project, including the separation zone from the adjacent general-purpose lanes of the Capital Beltway and dedicated for use by qualifying HOT Lanes traffic, together with all improvements thereon related to in accordance with the HOT Lanes Project Purposes, including the Express Operations Center site and easements for fiber optic routing to the Express Operations Center, and the property on which the ETTM

Facilities and ETTM System is located, and all other facilities and improvements required for the opening and operations of the HOT Lanes. The area comprising the HOT Lanes Right of Way is indicated as the cross-hatched portion shown on the map attached to the Agreement as Exhibit B-3.

HOV-2 means a High Occupancy Requirement of at least two persons.

Independent Engineer means the independent engineering consultant retained by the Concessionaire and the Department in accordance with an Independent Engineer Agreement.

Independent Engineer Agreement means with respect to the Original Project and the Original HOT Lanes, the Independent Engineer Agreement dated as of December 19, 2007 among the Concessionaire, the Department, the Collateral Agent and the Independent Engineer, as it may be amended or supplemented.

Initial Baseline Schedule means the preliminary construction schedule attached to this Agreement as Exhibit O-1. The Initial Baseline Schedule will be superseded by a subsequent Baseline Schedule to be updated periodically throughout the Work Period in accordance with this Agreement.

Initial NEXT Baseline Schedule means the preliminary construction schedule to be delivered by the Concessionaire on or before October 1, 2021 and attached to this Agreement as Exhibit O-2. The Initial NEXT Baseline Schedule will be superseded by a subsequent NEXT Baseline Schedule to be updated periodically throughout the Work Period in accordance with this Agreement.

Initial Project Financing Agreements means, collectively, the Project Financing Agreements listed on Exhibit H-1 of this Agreement.

Initial Scope Document means the document attached as Exhibit B-4.

Initial Service Commencement Date means November 17, 2012.

Initial Transit and Corridor Investment Payment is defined in Section 4.08(a).

Institutional Lender means:

(a) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;

(b) any (i) savings bank, commercial bank, investment bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States of America or any state thereof, (iii) pension fund, hedge fund, foundation or university or college endowment fund, (iv) entity which is formed for the purpose of securitizing mortgages, whose securities are sold by public offering or to qualified investors under the U.S. Securities Act of 1933, as amended, (v) Person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the U.S. Securities Act of 1933, as amended, within one year of its making (provided that an entity described in this clause (b) only qualifies as an Institutional Lender if it is subject to the jurisdiction of state and federal courts in the State in any actions);

(c) any “qualified institutional buyer” under Rule 144(a) under the Securities Act or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms;

(d) any other financial institution or entity designated by the Concessionaire and approved by the Department (provided that such institution or entity, in its activity under this Agreement, is acceptable under then current guidelines and practices of the State); or

(e) provided, that each such entity (other than entities described in clause (b)(iv) and clause (c) of this definition) or combination of such entities if the Institutional Lender is a combination of such entities shall have individual or combined assets, as the case may be, of not less than \$1 billion; and provided, further, that an entity described in clause (b)(iv) of this definition must have assets of not less than \$100 million.

Intellectual Property means the ETTM books and records, toll-setting and traffic management algorithms, EPDs and Software and associated documentation used in connection with the HOT Lanes Project (including but not limited to Software and associated documentation used for management of traffic on the HOT Lanes), copyrights (including moral rights), trade marks (registered and unregistered), designs (registered, including applications, and unregistered), patents (including applications), circuit layouts, plant varieties, business and domain names, inventions, trade secrets, proposals, copyrightable works, customer and supplier lists and information, and other results of intellectual activity, copies and tangible embodiments of all of the foregoing (in whatever form or medium) and licenses granting any rights with respect to any of the foregoing (to the extent assignable), in each case, relating to the Project.

ITS means any application of computer, electronics and/or telecommunications equipment and software and supporting fixtures and equipment whose function is to provide information, data and/or services to the traveling public or the Department or to manage and control traffic, and any future systems or services conceived or developed for the same or similar purposes; *provided* that ITS does not include the ETTM System as used for HOT Lanes Project Purposes.

Jones Branch means a four lane connector roadway and structures connecting the HOT Lanes with Jones Branch Drive, as depicted in Exhibit B-2, which shall be designed to accommodate future expansion to six lanes and through traffic across the Capital Beltway to Route 124, and which shall constitute a part of the HOT Lanes Project.

Labor, Employment and DBE/SWaM Related Matters means Exhibit X

Law means any current or future order, writ, injunction, decree, judgment, law, ordinance, decision, opinion, ruling, statute, code, rule or regulation of any Governmental Authority.

Lenders means each of the Institutional Lenders that are parties to the Project Financing Agreements, including the Collateral Agent, and their respective successors and assigns who also qualify as Institutional Lenders.

Letter of Credit means an irrevocable, unconditional, standby letter of credit, in favor of the Department (or where indicated, the Collateral Agent with the Department as permitted transferee), in form and content reasonably acceptable to the Department, payable in U.S. dollars upon presentation of a sight draft and a certificate confirming that the Department has the right to draw under such letter of credit in the amount of such sight draft, without presentation of any other document, statement or authorization, which letter of credit (a) is issued by a commercial bank or trust company that is a member of the New York Clearing House Association, that has a combined capital and surplus of at least \$1,000,000,000, that 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 that has a current credit rating of A1 or better by S&P and an equivalent credit rating by another Rating Agency (or an equivalent credit rating from at least two nationally recognized Rating Agencies if S&P ceases to publish ratings) (or such other commercial bank or trust company reasonably acceptable to the Department and approved by the Department prior to the submission of the letter of credit), and (b) provides for the continuance of such letter of credit for a period of at least one year or as otherwise provided in this Agreement. The office for presentment of sight drafts specified in the Letter of Credit shall be located at a specified street address within the City of Richmond, Virginia or City of New York, New York. For the avoidance of doubt, the obligations of the account party during the Term to reimburse the issuer for draws under any Letter of Credit may be secured by a Financing Assignment if it encumbers the entire Concessionaire's Interest.

Lien means any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Virginia Uniform Commercial Code).

Life Cycle Maintenance Plan is defined in Section 8.06(b).

Lock-up Period means the 10-year period commencing on the Closing Date and ending on the tenth anniversary of the Closing Date.

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.

Major Maintenance means maintenance, repair, renewal, reconstruction or replacement of any portion or component of the Project or the HOT Lanes Project, as applicable, of a type which is not normally included as an annually recurring cost in roadway maintenance and repair budgets.

Major Maintenance Reserve Fund means any reserve required pursuant to the Project Financing Agreements to meet the Major Maintenance requirements of the Project.

Major Subcontract means a contract entered into by the Concessionaire for the construction, installation, or development of the NEXT Project with a value in excess of \$10,000,000.

Mass Transit Vehicles and **Commuter Buses** means vehicles providing a scheduled transportation service to the general public over designated routes with specified stops and for purposes of Section 4.04(b)(ii) transporting at minimum the High Occupancy Requirement. Such vehicles shall comprise non-profit, publicly or privately owned or operated transportation services, programs, or systems that may be funded pursuant to Section 58.1-638 of the Virginia Code.

Modified Base Work Directive is defined in Section 7.20(a)(ii).

Moody's means Moody's Investor Service, Inc. and any successor thereto which is a nationally recognized rating agency.

MUTCD means the *Manual on Uniform Traffic Control Devices*, which defines the guidelines used by road managers nationwide to install and maintain traffic control devices on all streets and highways. FHWA references the MUTCD under 23 Code of Federal Regulations (CFR), Part 655, Subpart F.

NEPA means the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., as amended and as it may be amended from time to time.

NEPA Documents means the Original NEPA Documents and the NEXT NEPA Documents.

Net Cash Flow means:

- (a) Prior to the applicable Service Commencement Date:
 - (i) any aggregate Toll Revenues, investment earnings and other Revenues in substitution or replacement of Toll Revenues (including any compensation the Department pays for Net Revenue Impact) received by the Concessionaire for the period from the Agreement Date or the Second Amended and Restated Agreement Date, as applicable, to the applicable Service Commencement Date; plus
 - (ii) Refinancing Gains for the Work Period; plus
 - (iii) amounts deposited to Construction Reserves during the period from the Agreement Date or the Second Amended and Restated Agreement Date, as applicable, to the applicable Service Commencement Date; less
 - (iv) draws from such Construction Reserves to meet payment for Construction Costs as required; less
 - (v) any Operating Costs, maintenance costs, reasonable administrative or other fees incurred during the Work Period.
- (b) As of any date after the applicable Service Commencement Date:
 - (i) aggregate Toll Revenues, investment earnings and other Revenues in substitution or replacement of Toll Revenues (including any compensation the Department pays for Net Revenue Impact) received by the Concessionaire; plus
 - (ii) Refinancing Gains; plus
 - (iii) withdrawals from Major Maintenance Reserve Fund and any operating reserves; plus
 - (iv) any amounts released from debt service reserve accounts funded prior to the applicable Service Commencement Date and any amounts released from other reserves other than amounts used to pay principal or interest on Concessionaire Debt, except for funds used to meet payment for Construction Costs after the applicable Service Commencement Date which shall be a deduction from Net Cash Flow; less
 - (v) aggregate Operating Costs paid during such period; less

(vi) aggregate amounts contributed to any reserve for Operating Costs, Major Maintenance, debt service or Distributions (other than proceeds from Total Invested Project Funds).

Net Cost Impact means any net increase or decrease in the Concessionaire's costs (including the Concessionaire's reasonable Allocable Costs and taking into account any savings in the Concessionaire's operating and finance costs resulting from the Compensation Event) directly attributable to a Compensation Event, as compared with what the Concessionaire's costs (including the Concessionaire's reasonable Allocable Costs) would have been absent occurrence of the Compensation Event, less the increased costs that can reasonably be mitigated by the Concessionaire in accordance with Section 13.02.

Net Revenue Impact means (a) any net increase or decrease in Toll Revenue directly attributable to a Compensation Event (taking into account the lost Toll Revenue that would be returned to the Department under the permitting fee arrangements detailed in Article 5), and less (b) any savings in facility operating and maintenance costs resulting from a Compensation Event (excluding any savings in costs subtracted from Net Cost Impact for the same Compensation Event) as compared with what the Toll Revenues would have been absent occurrence of the Compensation Event, less (c) any lost Toll Revenues that can reasonably be mitigated by the Concessionaire in accordance with Section 13.02 (excluding any mitigation of costs subtracted from Net Cost Impact for the same Compensation Event).

New Lanes means the four new general-purpose traffic lanes (two lanes in each direction) to be constructed on the outer sides of the existing Capital Beltway as part of the Original Project, as more fully described in the Scope Document.

NEXT Access Ramps means the following new access ramps: (a) eastbound Dulles Toll Road to northbound HOT lanes (ramp E1) (including necessary adjustments to the existing ramp D2); (b) westbound Dulles Toll Road to northbound HOT lanes (ramp E3) (including necessary adjustments to the existing ramp G10); (c) northbound 495 Express Lanes to eastbound George Washington Memorial Parkway; and (d) westbound George Washington Memorial Parkway to southbound 495 Express Lanes.

NEXT Base Design-Build Scope means the scope set forth in the NEXT Final RFP and included in the NEXT Design-Build Proposals. For the avoidance of doubt, the term "scope" as used in this definition shall mean the "base scope" set forth in the NEXT Final RFP and/or NEXT Design-Build Proposals and shall not mean any other scope set forth in the NEXT Final RFP and/or NEXT Design-Build Proposals, including the "AMELI scope" or any scope that includes accommodating the Maryland Express Lanes interface or the George Washington Memorial Parkway Interface (howsoever described).

NEXT Baseline Schedule means the revised construction schedule that will supersede the Initial NEXT Baseline Schedule, which will be updated periodically throughout the Work Period in accordance with this Agreement.

NEXT Binding Proposal Base Case Financial Model means the financial model delivered by the Concessionaire to the Department on June 11, 2021, in conjunction with the Concessionaire's binding proposal relating to the NEXT Project.

NEXT Completion Guaranty means the Guaranty of Performance and Completion issued by the NEXT Contractor Guarantor in substantially the form attached to the Agreement as Exhibit J-2, as it may be amended or supplemented.

NEXT Concessionaire Breach is defined in Section 17.07.

NEXT Concessionaire Breach Termination Amount means the lesser of (a) the Completed Work Value and (b) 80% of Concessionaire Debt (for the NEXT Project) then outstanding.

NEXT Concessionaire Breach Triggering Event is defined in Section 17.07.

NEXT Contractor Guarantor means is defined in Section 3.02(b).

NEXT Corridor means that portion of the Capital Beltway with a northern terminus of the George Washington Memorial Parkway overpass and a southern terminus of the Old Dominion Drive Bridge (Route 738) just south of Georgetown Pike (Route 193).

NEXT Decreased Design-Build Price is defined in Section 7.20(c)(iv).

NEXT Department Asset means any NEXT Project Asset other than the NEXT HOT Lanes and the NEXT Access Ramps.

NEXT Department Development Recoupment Amount is defined in Section 10.03(d).

NEXT Design-Build Bid Price means \$441,700,000.

NEXT Design-Build Bid Price Estimate means \$438,000,000.

NEXT Design-Build Contract means the design-build contract to be entered into between the Concessionaire and the NEXT Design-Build Contractor.

NEXT Design-Build Contractor means The Lane Construction Corporation.

NEXT Design-Build Cost means (a) as of the Second Amended and Restated Agreement Date, \$441,700,000 and (b) as of the NEXT Modified Base Configuration Cost Date, the NEXT Modified Base Configuration Cost.

NEXT Design-Build EPDs is defined in Section 18.05(a)(ii).

NEXT Design-Build Proposals means the proposals received by the Concessionaire in response to the NEXT Final RFP.

NEXT Design-Build Risk Sharing Mechanism is defined in Section 7.20(c)(i).

NEXT Design-Build Scope means (a) as of the Second Amended and Restated Agreement Date, the NEXT Base Design-Build Scope and (b) as of NEXT Modified Base Configuration Cost Date, the NEXT Modified Base Configuration.

NEXT Direct Agreement means the Direct Agreement executed among the Department, the Concessionaire, and the Collateral Agent related to the NEXT Project, substantially in the form attached as Exhibit U-2.

NEXT Early Work is defined in Exhibit B-5.

NEXT EPDs is defined in Section 18.05(a)(ii).

NEXT Equity Commitment Amount means the Equity Commitment Amount in the Base Case Financial Model Update (NEXT Final) delivered before Financial Close.

NEXT Equity Contributions is defined in Section 6.01(f).

NEXT Equity Funding Agreements means the equity funding agreements by and among each Equity Sponsor, the Concessionaire, and the agent for the Lenders relating to each Equity Sponsor's duty to fund the NEXT Project.

NEXT Equity Funding Guaranty is defined in Section 14.04(a)(i).

NEXT Equity Letter of Credit is defined in Section 14.04(a)(i).

NEXT Final Completion means the satisfaction of the conditions set forth in Section 7.15, as and when confirmed by the Department's issuance of the NEXT Final Completion Certificate.

NEXT Final Completion Certificate means a letter or certificate issued by the Department in accordance with Section 7.15(b) evidencing the Department's determination that NEXT Final Completion has occurred.

NEXT Final Completion Date means the date the Department issues the NEXT Final Completion Certificate.

NEXT Final Completion Recovery Plan is defined in Section 7.16(c).

NEXT Final Design-Build Cost is defined in Section 7.20(a)(v).

NEXT Final Design-Build Cost Date is defined in Section 7.20(a)(v).

NEXT Final Design-Build Scope means the final design-build scope for the NEXT Project agreed upon by the Department and the Concessionaire, attached hereto as Exhibit F-1.

NEXT Final RFP means the request for proposals as of the final addendum date of May 10, 2021.

NEXT Financial Close means the satisfaction (or waiver by the Department in its sole discretion) of all conditions precedent set forth in Section 6.08(b).

NEXT Financial Close Date means the date all of the conditions precedent set forth in Section 6.08(b) are satisfied (or waived by the Department in its sole discretion) such that the Department issues a certificate confirming that all such conditions precedent have been satisfied.

NEXT Financial Close Deadline means the date by which NEXT Financial Close must occur, which is December 31, 2021, which is 221 days from the date the Concessionaire delivers to the Department a written notice of intent to award the NEXT Design-Build Contract or another date as may be mutually agreed by the Concessionaire and the Department.

NEXT Financial Close Security means a Letter of Credit in the minimum amount of \$10,000,000 delivered pursuant to Section 6.08(f).

NEXT Financing EPDs is defined in Section 18.05(a)(ii).

NEXT Guaranteed Final Completion Date means 1,592 days following the date of issuance of the Work NTP under, and as defined in, the NEXT Design-Build Contract.

NEXT HOT Lanes means four new HOT lanes (two lanes in each direction) and all related improvements thereon to be constructed on the outer sides of the existing lanes of the NEXT Corridor consisting of: (a) northbound HOT lanes from current northern terminus to the George Washington Memorial Parkway overpass with temporary transition to the northbound GP Lanes and (b) southbound HOT lanes from the George Washington Memorial Parkway overpass to the current northern terminus with temporary transition from southbound GP Lanes.

NEXT Increased Design-Build Price is defined in Section 7.20(c)(iii).

NEXT Lenders means the Lenders for the NEXT Project.

NEXT Long Stop Date means the date that is 365 Days after the NEXT Guaranteed Final Completion Date; provided that a new NEXT Long Stop Date may be established pursuant to a NEXT Final Completion Recovery Plan proposed and approved pursuant to Section 7.16(c) as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

NEXT Modified Base Configuration means the modified design-build scope for the NEXT Project agreed upon by the Department and the Concessionaire, attached hereto as Exhibit F-1, as may be modified, on or after the earlier of (A) October 1, 2021 and (B) the date on which the Department delivers the Modified Base Work Directive, by one or more descoping Department Changes implemented by the Department to further reduce the otherwise applicable NEXT Modified Base Configuration Cost. For clarity, the modifications between the NEXT Base Design-Build Scope and NEXT Modified Base Configuration as of the Second Amended and Restated Agreement Date are depicted on Exhibit F-2.

NEXT Modified Base Configuration Cost is defined in Section 7.20(a)(v).

NEXT Modified Base Configuration Cost Date is defined in Section 7.20(a)(v).

NEXT NEPA Documents is defined in Exhibit M.

NEXT Payment Bond is defined in Section 14.04(b)(i).

NEXT Performance Bond is defined in Section 14.04(b)(i).

NEXT Project means the project described in Exhibit B-1-B.

NEXT Project Asset means:

- (a) the NEXT HOT Lanes,
- (b) four bridge replacements, two bridge rehabilitations, one bridge widening and one bridge modification as follows:
 - (i) bridge replacement at the Georgetown Pike overpass (to include bicycle /pedestrian facilities),
 - (ii) bridge replacement at the Old Dominion Drive overpass (to include bicycle /pedestrian facilities),
 - (iii) bridge replacement at the Live Oak Drive overpass (to include bicycle /pedestrian facilities),

- (iv) bridge replacement at the 495 GP Lanes northbound over Dulles Toll Road to the 495 GP Lanes northbound ramp,
- (v) rehabilitations of two George Washington Memorial Parkway overpasses,
- (vi) widening of the 495 GP and Express Lanes Bridge over Scott's Run Creek, and
- (vii) bridge modification at the Lewinsville Road bridge and approaches to enhance pedestrian facilities,
- (c) a new northbound 495 auxiliary lane in the GP Lanes between Dulles Toll Road and Route 193,
- (d) the NEXT Access Ramps,
- (e) any required improvements or expansion of the ETTM System and all other facilities and improvements on the HOT Lanes (inclusive of the NEXT HOT Lanes),
- (f) the design and construction of a parallel bicycle/pedestrian trail along the NEXT Corridor (from Lewinsville Road to the vicinity of George Washington Memorial Parkway),
- (g) the widening of ramp G3 to two lanes to accommodate ramp E1 tie-in,
- (h) the following Fairfax County-related work:
 - (i) shared use paths paralleling I-495 between Lewinsville Road and the George Washington Memorial Parkway,
 - (ii) pedestrian accommodations, including sidewalk, bike lanes, and crossings at Old Dominion Road, Georgetown Pike, Live Oak Drive, and Lewinsville Road,
 - (iii) two additional enhanced outfalls along Scott's Run,
 - (iv) stream bank stabilization along Scott's Run,
 - (v) additional 200 linear feet of noise barriers along Live Oak Drive, and
 - (vi) tree survey within the NEXT Project's construction limits,
- (i) the George Washington Memorial Parkway Interface,
- (j) preservation of land for future operations/maintenance facility within the interchange of I-495 and the Dulles Toll Road and
- (k) any additional scope mutually agreed by the parties.

NEXT Project (Phase 2) means the financing, design, development, construction, expansion, reconstruction, installation and/or implementation of the NEXT Project (Phase 2) Assets.

NEXT Project (Phase 2) Asset means the following: (a)(i) a new southbound 495 auxiliary lane between Route 193 and Dulles Toll Road; (ii) the DTR Ramp; (iii) the realignment of the existing

southbound GP Lanes to the westbound Dulles Toll Road (ramp G5); (iv) the provision of a direct ramp connection from the southbound general purpose lanes to westbound Dulles Airport Access Road (ramp D3) and associated widening of southbound I-495 between Lewinsville Road and eastbound Dulles Airport Access Road overpass; (v) the widening of the existing ramp from eastbound Dulles Toll Road to the northbound GP Lanes (ramp G3) to two lanes; and (vi) any additional scope mutually agreed to by the parties and (b) the tolling, operation, maintenance, and repair of the DTR Ramp in accordance with the Second ARCA, as amended from time to time.

NEXT Project Financing Agreements means the Project Financing Agreements entered into by the Concessionaire on or about the NEXT Financial Close Date in the form agreed between the parties.

NEXT Proposal Specifications means the Concessionaire Proposal Specifications for Final Proposal to Develop the NEXT Project dated June 4, 2021.

NEXT Risk Pool is defined in Section 7.20(b)(i).

NEXT ROW Cost Savings Amount is defined in Section 7.08(d).

NEXT ROW Deposit is defined in Section 7.08(d).

NEXT Scope Document means the document attached as Exhibit B-5.

NEXT Service Commencement Notice is defined in Section 8.02(a)(viii).

NEXT SPV Contingency Costs means all eligible costs and expenses incurred by the Concessionaire that are necessary to design, construct, and implement the NEXT Project and payable in order to achieve NEXT Final Completion and Service Commencement on the NEXT Project, including amounts under the NEXT Design-Build Contract, once all amounts in the construction budget (other than the line item for “SPV Contingency Costs”) are expended. NEXT SPV Contingency Costs do not include the costs of (a) discretionary betterments or enhancements to the NEXT Project, where “discretionary” means not required to satisfy the technical specifications or necessary to comply with all safety and other operational laws, or (b) Department Changes in respect of the NEXT Project, unless otherwise agreed by the parties.

NEXT SPV Contingency Risk Sharing Mechanism is defined in Section 7.20(d).

NEXT Work Period means for the NEXT Project, the period commencing on the date on which the Department grants its Work Commencement Approval pursuant to Section 7.03 of this Agreement through the NEXT Final Completion Date.

NEXT Work Product means Work Product with respect to the NEXT Project.

Nonconforming Work means Work that the Concessionaire, any Governmental Authority or the Department, as applicable, determines does not conform to the requirements of the Design-Build Contract, relevant Regulatory Approvals, applicable Law or the Design Documentation.

Non-Reimbursable Concessionaire Damages means that portion of any Concessionaire Damages previously paid to the Concessionaire that compensated the Concessionaire for Net Cost Impacts and/or Net Revenue Impacts attributable to the period after the effective date of termination of this Agreement.

Nutrient Credit Savings Amount is defined in Section 7.08(f)(ii).

O&M Contractor is defined in Section 8.04(a), and initially shall be Transurban (USA) Operations, Inc., a Delaware corporation.

Operating Costs means, subject to adjustment in accordance with Section 5.03(b) and Exhibit C, all reasonable costs incurred and paid for by the Concessionaire in relation to the management of the HOT Lanes Project, including without limitation (and without duplication) costs for operation and maintenance, consumables, payments under any lease (other than a financing lease constituting Concessionaire Debt), payments pursuant to the agreements for the management, operation and maintenance of the HOT Lanes Project, taxes (exclusive of taxes measured by net income), insurance, payments for Oversight Services, police services; and costs for any security, capital expenditures, NEXT SPV Contingency Costs, Transit and Corridor Investment Payments made to the Department in accordance with Section 4.08 (solely to the extent actually paid to the Department), Excess Sharing Amount payments made to the Department in accordance with Section 4.09 (solely to the extent actually paid to the Department), Permit Fee payments to the Department in accordance with Article 5, payments to the Department in accordance with Section 6.08(c)(iii), Right of Way payments made to the Department in accordance with Section 7.08(d) (solely to the extent actually paid to the Department and not returned to the Concessionaire), payments to the Department in accordance with Section 8.03(b)(i), payment of Department's share of Positive Revenue, and any other reasonable expense paid for the development, completion, enhancement, expansion, major maintenance, repair, reconstruction, rehabilitation, renewal and replacement of the HOT Lanes Project, but exclusive of (a) costs paid from Total Invested Project Funds, (b) payments of Concessionaire Debt (including interest thereon), (c) any Distributions, or (d) third-party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships, in each case to the extent that such costs would not be reimbursed to an employee of the Department in the regular course of business. Operating Costs do not include non-cash charges, such as depreciation, amortization or other bookkeeping entries of a similar nature.

Operating Period means the period during which the Concessionaire shall operate and maintain the HOT Lanes Project, such period commencing on the applicable Service Commencement Date and ending at the expiration or earlier termination of the Term.

Operations and Maintenance Agreement is defined in Section 3.02(d).

Original Completion Guaranty means the Guaranty of Performance and Completion issued by the Original Contractor Guarantor in substantially the form attached to the Agreement as Exhibit I-1, as it may be amended or supplemented.

Original Comprehensive Agreement is defined in the Recitals to this Agreement.

Original Contractor Guarantor is defined in Section 3.02(b).

Original Corridor means that portion of the Capital Beltway with a northern terminus of the Old Dominion Drive Bridge (Route 738) just south of Georgetown Pike (Route 193) and a southern terminus that encompasses the Springfield Interchange Phase VIII.

Original Design-Build Contract means the Design-Build Contract, dated as of December 19, 2007, between the Concessionaire and the Original Design-Build Contractor.

Original Design-Build Contractor means Fluor-Lane, LLC, a Delaware limited liability company.

Original Design-Build EPDs is defined in Section 18.05(a)(i).

Original EPDs is defined in Section 18.05(a)(i).

Original Financing EPDs is defined in Section 18.05(a)(i).

Original HOT Lanes means four-lane inner directional roadways (two in each direction), including shoulders and ramps exclusively providing ingress or egress to the Original HOT Lanes and terminating at the merge point with the GP Lanes, comprising a portion of the Capital Beltway to be identified separately from the adjacent general-purpose lanes of the Capital Beltway and dedicated for use by qualifying HOT Lanes traffic and operated by the Concessionaire commencing on the applicable Service Commencement Date.

Original NEPA Documents is defined in Section 7.18(a).

Original Project is defined in Exhibit B-1-A to this Agreement.

Original Work Period means for the Original Project, the period commencing on the date on which the Department grants its Work Commencement Approval pursuant to Section 7.03 of this Agreement through the Final Acceptance Date.

Original Work Product means Work Product with respect to the Original Project.

Outside Substantial Completion Date means the date that is 24 months after the Guaranteed Substantial Completion Date; *provided*, that the Outside Substantial Completion Date shall be extended day-for-day by reason of any Delay Event during the period after the Guaranteed Substantial Completion Date that causes a delay to the achievement of Substantial Completion.

Oversight Services means those services and functions the Department has the right or obligation to perform or to cause to be performed under Laws or any Project Agreement in order to monitor, review, approve, administer or audit the Project Agreements or the work or performance of the Concessionaire thereunder.

PABs means bonds, notes or other evidence of indebtedness issued by the PABs Issuer pursuant to the provisions of Code Sections 142(a)(15) and (m), including, without limitation, bond anticipation notes.

PABs Issuer means the Capital Beltway Funding Corporation of Virginia, a Virginia nonstock, nonprofit corporation, for the Initial Project Financing Agreements, and the Virginia Small Business Financing Authority, for the NEXT Project Financing Agreements.

Payment Bond means a payment bond made on official forms furnished by the Department, executed by a surety company rated in one of the two top categories by two nationally recognized rating agencies or at least A- (A minus) or better or Class VIII or better by "AM Best & Company and authorized to do business in the State in accordance with the Laws of the State and the rules and regulations of the State Corporation Commission.

Performance Bond means a performance bond made on official forms furnished by the Department, executed by a surety company rated in one of the two top categories by two nationally recognized rating agencies or at least A- (A minus) or better or Class VIII or better by "AM Best & Company and authorized to do business in the State in accordance with the Laws of the State and the rules and regulations of the State Corporation Commission.

Performance Security means (a) each of the funding and performance securities required under Section 14.04, or (b) any surety bond, letter of credit, guaranty, or similar instrument acceptable to the Department in its reasonable discretion procured in accordance with the terms of the Agreement.

Permit is defined in Section 4.01.

Permit Cost is defined in Section 3.04(b).

Permit Fee means the payments received (if any) by the Department as compensation for the Department's grant to the Concessionaire of the Permit, as set forth in Exhibit L.

Permitted Encumbrance means, with respect to the Project:

- (a) the rights and interests of the Concessionaire under this Agreement;
- (b) any Lien that is being contested by the Department (but only for so long as such contestation effectively postpones enforcement of any such Lien);
- (c) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's or other similar Liens arising in the ordinary course of business of the Project or the Department's performance of its obligations hereunder, and either (A) not delinquent or (B) which are being contested by the Department (but only for so long as such contestation effectively postpones enforcement of any such Lien);
- (d) any easement, covenant, condition, right-of-way, servitude, or any zoning, building, environmental, health or safety Law relating to the development, use or operation of the Project (or other similar reservation, right and restriction) or other defects and irregularities in the title to the Project that do not materially interfere with the operations of the Project or the right and benefits of the Concessionaire under this Agreement;
- (e) any right reserved to or vested in any Governmental Authority (other than the Department) by any statutory provision;
- (f) any other encumbrance permitted hereunder;
- (g) any Lien created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it; and
- (h) any amendment, extension, renewal or replacement of any of the foregoing.

Permitted Securitization is defined in Section 4.04(f)(ii).

Permitted Vehicles means (a) any vehicle with two axles including motorcycles; (b) Mass Transit Vehicles and Commuter Buses and school buses; and (c) Exempt Vehicles. Permitted Vehicles shall not include any vehicle pulling a trailer except Exempt Vehicles.

Person means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

Positive Revenue means a net increase in Toll Revenue resulting from Compensation Events described in Section 7.12, 9.02, 13.04 and 19.02(c), excluding any such increase that has been taken into

account to reduce any Net Cost Impact relating thereto. Positive Revenue shall not include, with respect to any event, an aggregate amount that is *de minimis*.

PPTA means the Public-Private Transportation Act, which was amended and re-enacted by Chapter 612 of the 2015 Acts of Assembly and signed into law by the Governor, effective July 1, 2015.

Pre-Existing Hazardous Substances means any Hazardous Substance that was present on VDOT Existing ROW as of the Agreement Date (for the Original Corridor) and as of the Second Amended and Restated Agreement Date (for the NEXT Corridor).

Project means the Original Project and the NEXT Project, as each is further defined in Exhibit B-1-A and Exhibit B-1-B, respectively, to this Agreement.

Project Agreement means any of this Agreement, the Original Design-Build Contract, the NEXT Design-Build Contract, the Original Completion Guaranty, the NEXT Completion Guaranty, any Guaranty of Investment Obligations, any Development Contract, the Operations and Maintenance Agreement, the Electronic Toll Collection Services Agreement, the Independent Engineer Agreement, the Toll Agreement, the Toll MOU, the Direct Agreement, the NEXT Direct Agreement, the Initial Project Financing Agreements and the NEXT Project Financing Agreements; and the term Project Agreements means all such agreements and documents in the aggregate.

Project Enhancements means, collectively, Concessionaire Project Enhancements and Department Project Enhancements.

Project Financing Agreements means the Initial Project Financing Agreements, the NEXT Project Financing Agreements, the Financing Assignments and any other documents evidencing Concessionaire Debt obtained in compliance with the terms of this Agreement, together with any and all amendments and supplements thereto.

Project Purposes means (a) the development, permitting, design, financing, acquisition, construction, installation, equipping, management and administration of the Project and (b) the HOT Lanes Project Purposes.

Project Right of Way means (a) all real property within the access control line for the Project including the HOT Lanes Right of Way and (b) all other right of way, including temporary and permanent easements, that is necessary for the performance of the Work. The area comprising the Project Right of Way is indicated as the cross-hatched portion shown on the map attached to this Agreement as Exhibit B-3.

Project Value means fair market value of the Concessionaire's Interest determined according to the appraisal procedures set forth in Section 17.05.

Proprietary Intellectual Property means any Intellectual Property that is patented or copyrighted by the Concessionaire, the Department or any other Person, as applicable, or any of its respective contractors or subcontractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential information by the Concessionaire, the Department or any other Person, as applicable, or any of its respective contractors or subcontractors, but excludes any item of Intellectual Property that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Project.

Proprietary Software means all Software and associated documentation patented or copyrighted by the Concessionaire, the Department or any other Person, as applicable, or any of its respective

contractors or subcontractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential information by the Concessionaire, the Department or any such other Person, as applicable, or any of its respective contractors or subcontractors, but excludes any item of software that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Project (*e.g.* “shrink-wrap” software).

Proprietary Work Product means any Work Product that consists of, incorporates or discloses Proprietary Intellectual Property or Proprietary Software.

Public Information Plan means a plan setting forth a program for public information dissemination and related activities to be implemented by the Concessionaire and approved by the Department in connection with the construction and operation of the Project or any Project Enhancement or any Work performed pursuant to a Department Change or approved Concessionaire request for Deviations.

Punch List means an itemized list of Work which remains to be completed with respect to the Original 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 Original Project.

Quality Management Plan means a plan that details how the Design-Build Contractor will provide quality control and quality assurance for both the design and construction elements of the Project, obtain samples for Design-Build Contractor quality control testing, perform tests for Design-Build Contractor quality control, provide inspection, and exercise management control (*e.g.*, quality assurance testing) to ensure the Work conforms to the contract requirements.

Rating Agency means any nationally recognized statistical rating organization, such as Moody’s, Fitch Ratings, or S&P or any similar entity, or any of their respective successors.

Refinancing means:

(a) Any amendment, variation, novation or supplement of any Concessionaire Debt, Initial Project Financing Agreement, NEXT Project Financing Agreement or Financing Assignment that results in an increase of such Concessionaire Debt;

(b) The issuance by Concessionaire of any Concessionaire Debt other than the Concessionaire Debt incurred pursuant to the Initial Project Financing Agreements or the NEXT Project Financing Agreements, secured or unsecured, including issuance of any reimbursement agreement respecting a Letter of Credit; or

(c) Any other arrangement put in place by Concessionaire or another person which has an effect similar to clause (a) or (b) above,

excluding, however any capitalization of interest or accretion of principal or other committed increases on any Concessionaire Debt incurred or committed on or prior to the Closing Date or the NEXT Financial Close Date, as applicable.

Refinancing Gain means any Refinancing proceeds, after repayment of any outstanding Concessionaire Debt refinanced with such Refinancing and payment of costs of issuance not to exceed 2% of the principal amount of such Refinancing and any required deposits, that are used directly or indirectly to make Distributions.

Regulatory 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 applicable Laws prior to undertaking any particular activity contemplated by this Agreement or a Development Contract. The term “Regulatory Approvals” includes any supplements to the NEPA Documents.

Reimbursable Tax Imposition means:

(a) any State or local property tax or similar ad valorem tax or charge (including but not limited to property taxes under Section 58.1-3203 of the Code of Virginia, as amended from time to time) or recordation tax on a deed, release or other document recorded in connection with this Agreement, unless recorded by or at the behest of the Concessionaire; and

(b) any license fee or tax on or measured by receipts or revenues levied, rated, charged, imposed or assessed by the State or any county, city or town of the State against the Concessionaire and attributable to the HOT Lanes Project or the Concessionaire’s Interest,

but excluding:

(i) any (A) taxes of general application on overall net income or (B) other taxes of general application on or measured by receipts levied, rated, charged, imposed or assessed by the State in substitution for or replacement of any other State tax of general application and applicable to the Concessionaire as of July 1, 2006, or

(ii) any taxes levied, rated, charged, imposed or assessed in connection with any Transfer during the Term of all or any portion of the Concessionaire’s Interest or of any interest in the Concessionaire.

Remedial Action is defined in Section 8.11(c).

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 at 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 all of the following rights:

(a) the Department’s right to use, possess, operate, maintain and enjoy State or local highways or roadways that cross the HOT Lanes Right of Way and any other real and personal property over, under or adjacent to the Capital Beltway for any purpose not expressly prohibited by the Project Agreements, including, but not limited to the following permitted purposes:

(i) develop, design, construct, operate and maintain other transportation-related projects, improvements or facilities (*provided* that if located within the HOT Lanes Right of Way this shall constitute a Department Project Enhancement);

(ii) develop, design, construct, operate and maintain office, commercial, industrial or mixed use real estate projects (*provided* that if located within the HOT Lanes Right of Way this shall constitute a Department Project Enhancement);

(iii) use, install, maintain, repair, or authorize the use, installation, maintenance, or repair, of utilities;

(iv) perform and exercise Project oversight and audit rights as provided in the Concession;

(v) perform policing and emergency response services; and

(vi) perform, exercise or enforce other rights and duties provided in the Project Agreements;

(b) the naming rights for the Project (but not including the naming rights for the HOT Lanes reserved to the Concessionaire pursuant to Section 19.05(b)), and any portion thereof, and shall have the exclusive right to place or allow advertisements on, above or under the Rights of Way, the Project or Project Enhancements, it being agreed that the Department may sell such rights to third parties, without compensation to the Concessionaire; and

(c) all right to use, and use of:

(i) all electrical, fiber optic, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity existing now or in the future over, under or adjacent to any Rights of Way installed by anyone, whether before or after the Agreement Date; and all Software which executes such equipment and hardware and related documentation;

(ii) ETTM Data or other data generated from operation of the HOT Lanes Project or toll collection technology; and

(iii) any equipment, facilities or capabilities for ITS studies or applications installed by the Department and the right to install any such equipment, facilities or capabilities other than the ETTM System.

Responsible Public Entity has the meaning assigned to such term in Section 33.2-1800 of the Code of Virginia and, for purposes hereof, means the Department.

Revenues means all amounts received by or on behalf of the Concessionaire from Toll Revenues; proceeds from insurance (other than proceeds of fire and other casualty insurance but including proceeds from business interruption insurance), Refinancing Gain, amounts received pursuant to any judgment or settlement with respect to the Project, amounts received with respect to Concessionaire Damages or other compensation from the Department, condemnation awards with respect to the Project; all amounts payable to the Concessionaire (but not the Department) as liquidated damages under contracts, in each case, to the extent the same relate to the Project; all amounts derived from the sale or other disposition of the Concessionaire's Interest (excluding, however, the proceeds of any direct or indirect sale of equity interests in the Concessionaire); amounts derived as grants, loans or otherwise from the United States of America, the State or any other Person by the Concessionaire for the acquisition, development, construction, management, operation and maintenance of the Project; and all other amounts derived from or in respect of the operation of the HOT Lanes Project which constitute revenues in accordance with Generally Accepted Accounting Principles, including without limitation tolls and any interest income earned on any funds on deposit in any bank account or securities account. Revenues exclude the costs of goods and/or services in kind provided to the Concessionaire with respect to which the Concessionaire has no obligation of repayment and revenues and proceeds arising out of or relating to Reserved Rights or the disposition of

surplus or residual property. Revenues exclude the proceeds of Concessionaire Debt or capital contributions to the Concessionaire.

Revised Outside Substantial Completion Date means the date specified in a Concessionaire Recovery Plan approved by the Department by which Substantial Completion must occur.

Rights of Way means the Project Right of Way and the HOT Lanes Right of Way (including any additional right of way acquired by or for the Department during the Work Period pursuant to requirements of this Agreement).

ROW Acquisition Costs means all costs required for the acquisition of the Project Right of Way including all closing costs, relocation expenses, environmental and other site assessments, and acquisition service expenses incurred by the Design-Build Contractor and condemnation expenses, but excluding any and all expenses incurred in connection with the following (all of which shall be included within the fixed price of the Design-Build Contract): (1) the remediation of hazardous materials or substances found on property acquired by the Design-Build Contractor or Concessionaire on behalf of the Department; (2) the acquisition of right of way or other property interests outside of the Project Right of Way shown in Exhibit B-3 pursuant to Section 7.09; (3) the HOT Lanes operation center and facilities related to such center (including, for example, easements for fiber optic routing to the center); or (4) acquisition and property management services.

ROW Allowance means \$42,011,750.

S&P means Standard & Poor's Rating Service, a division of The McGraw-Hill Companies, Inc. or any successor thereto.

Safety Compliance Order means any written order or directive of the Department issued after the Agreement Date, which directs the Concessionaire to undertake certain improvements to the HOT Lanes Project to correct a specific safety condition affecting the HOT Lanes Project, which the Department has determined to exist by investigation or analysis, or (b) to conform to changes in safety standards or methodologies agreed to or adopted by the Department for similar portions of the State Highways.

Scope Document means the Initial Scope Document or the NEXT Scope Document, as applicable.

Scott's Run Contribution is defined in Section 7.20(f).

Second Amended and Restated Agreement Date means the date on the cover of the Second ARCA.

Second Amended and Restated Comprehensive Agreement or **Second ARCA** means the Second Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project dated the Second Amended and Restated Agreement Date between the Department and the Concessionaire.

Second Level Targeted Rate of Return has the meaning specified in Exhibit L.

Senior Debt means Concessionaire Debt that is secured by the entire Concessionaire's Interest and that has first priority to such security and except as otherwise provided in the Agreement, Senior Debt excludes any indebtedness secured by anything less than the entire Concessionaire's Interest, such as indebtedness secured only by an assignment of interest in the Concessionaire or of rights to cash flow or dividends from the Concessionaire.

SEP-14 means the Special Experimental Program 14 for Innovative Contracting.

Service Commencement means (i) with respect to the Original HOT Lanes, the occurrence of all the events and satisfaction of all the conditions therefor set forth in Section 8.01 and (ii) with respect to the NEXT HOT Lanes, the occurrence of all the events and satisfaction of all the conditions therefor set forth in Section 8.02.

Service Commencement Date means (i) with respect to the Original HOT Lanes, the first date on which all of the conditions set forth in Section 8.01 have been satisfied and the Department has issued the Service Commencement Notice and (ii) with respect to the NEXT HOT Lanes, the first date on which all of the conditions set forth in Section 8.02 have been satisfied and the Department has issued the NEXT Service Commencement Notice.

Service Commencement Notice is defined in Section 8.01(a)(viii).

Shared Facilities Agreement means the Shared Facilities Agreement dated as of July 31, 2012 between the Concessionaire and 95 Express Lanes, LLC, as it may be updated from time to time.

Significant Force Majeure Event means a Force Majeure Event occurring after the Service Commencement Date for which insurance is not obtainable at commercially reasonable rates that (a) has the effect of causing physical damage or destruction to the HOT Lanes, or any ramp, feeder road or bridge within 3 miles of the HOT Lanes constituting a direct traffic route to or from the HOT Lanes, and (b) results in the HOT Lanes being substantially unavailable for public use for a period in excess of 120 consecutive days or the suspension or substantial reduction toll collections on the HOT Lanes for a period in excess of 120 consecutive days; *provided*, that such Force Majeure Event shall not become a Significant Force Majeure Event by reason of a Concessionaire Party's failure to mitigate or cure the result of such Force Majeure Event through the exercise of reasonably diligent efforts.

Software means (a) computer instructions, including programs, routines and databases and applications supplied, procured or developed by the Concessionaire or the Department in connection with the operation of the HOT Lanes Project or HOT Lanes Project Purposes 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 means Software program higher order language listings, internal documentation embedded in program listings, associated data files and data structures, in electronic and/or printed form, necessary for maintenance of and modifications to the Software.

Source Code Escrows is defined in Section 18.06(b).

SPI is defined in Section 7.06(f)(i).

Springfield Interchange Phase VIII means construction of HOV connector ramps from I-95 and I-395 to the Capital Beltway. The limits of construction extend approximately 6,000 feet east and west along the Capital Beltway connecting I-95 to I-495 and approximately 1,500 feet north and south from I-95 to I-495. The Project includes seven bridges, bi-directional ramps and loops to connect the I-95/NEXT HOV system to the Capital Beltway.

State means the Commonwealth of Virginia.

State Highway means any highway designated a State Highway pursuant to Title 33.2, Chapter 3 of the Code of Virginia.

State Indemnitee means and includes the Department, the Commissioner, the CTB, the State and their respective Representatives.

STIP or **Statewide Transportation Improvement Program** means the state improvement program that schedules the detailed funding for all Federally supported surface transportation projects/programs within the boundaries of the state, for the next three fiscal years, that is approved by the FHWA and the Federal Transportation Administration as a prerequisite to receiving Federal transportation funds and/or agreements. Projects/programs in the STIP have to be consistent with the long-range plans of the State and/or the metropolitan planning organizations within the boundaries of the state.

Structural Elements means components of bridges or other structures including bridge superstructure, bridge substructure and retaining walls; *provided*, that repairs shall be made to such Structural Elements as necessary to restore the structural capacity of the Structural Element, or to restore the functionality of the Structural Element.

Substantial Completion means completion of the Work of the Original Project, the New Lanes or, in the Department's sole discretion pursuant to Section 7.14(c), certain segments of the Original Project, in accordance with the Design-Build Contract, the Design Documentation and the Construction Documentation, subject only to Punch List items, so that Department (or in the case of the HOT Lanes, the Concessionaire) can occupy and use the Original Project, and that the Department and the public (traveling and general) will have full and unrestricted use and benefit of the Work, from both an operational and safety standpoint, with only minor incidental Work remaining to be performed, corrected or repaired, as confirmed by the Department's issuance of a Substantial Completion Certificate in accordance with Section 7.14 of the Agreement, subject to agreement by the Department and the Concessionaire upon a Punch List.

Substantial Completion Certificate means a letter or certificate issued by the Department in accordance with Section 7.14 of the Agreement evidencing the Department's determination that Substantial Completion has occurred.

Substantial Completion Date means the date on which Substantial Completion is achieved.

Substituted Concessionaire means any person or entity selected by the Lenders (acting through the Collateral Agent) and approved by the Department in accordance with the Direct Agreement and the NEXT Direct Agreement to perform the Concessionaire's obligations and succeed to the Concessionaire's Interests after any such Lender, or any such Person, acquires the Concessionaire's Interests by foreclosure or transfer in lieu of foreclosure, or after the Collateral Agent takes possession and control of the Project(s).

SYIP or **Six-Year Improvement Program** means the CTB's approved allocation of funding in accordance with Title 33.2, Chapter 3, Article 5 of the Code of Virginia.

Task is defined in Section 8.06(b).

Tax means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Code), customs duties, permit fees, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind whatsoever payable, levied, collected, withheld or

assessed at any time, including any interest, penalty or addition thereto, whether disputed or not, including in each case utility rates or rents.

TCI Payment Date is defined in Exhibit Z-1.

Technical Requirement Revisions is defined in Section 7.12(d)(i).

Technical Requirements means, as context may require, the Technical Requirements for the design and construction of the Original Project or the Technical Requirements for the design and construction of the NEXT Project, included as Exhibit N-1 and Exhibit N-2 to this Agreement, respectively, and/or the Technical Requirements for the operation and maintenance of the Project, included as Exhibit N-3 to this Agreement, as each may be separately revised and updated from time to time by any Technical Requirement Revisions in accordance with Section 7.12(d).

Term is defined in Section 16.01.

Tested Excess Sharing Portion is defined in Section 4.09(a).

Third Level Targeted Rate of Return has the meaning specified in Exhibit L.

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

TIA means a time impact analysis, (i) establishing the influence of an event on the Baseline Schedule, and shall include a Fragnet, and for events that have not yet occurred (such as proposed changes or Project Enhancements), the Fragnet shall demonstrate how the Concessionaire proposes to incorporate such event in the Baseline Schedule, and (ii) demonstrating: (1) the time impact based on the date the event occurred or notice of a proposed change is given to the Concessionaire, (2) the status of the Work at such point of time; and (3) the time computation of all affected activities, as described in the Technical Requirements.

TIFIA means The Transportation Infrastructure Finance and Innovation Act of 1998.

TIFIA Lender means the United States Department of Transportation.

TIFIA Loan(s) means any direct loan, loan guarantee, standby letter of credit or other such credit assistance as may be authorized and approved under the TIFIA Federal credit program administered by the U.S. Department of Transportation.

TIFIA Refinancing means the refinancing by the TIFIA Lender of the Existing TIFIA Loan.

TIP or **Transportation Improvement Program** means the transportation improvement program that schedules the detailed funding for projects, project phases and programs that will be implemented in the next six fiscal years. The TIP is adopted by the metropolitan planning organization (the Transportation Planning Board in the metropolitan Washington region) and approved by the FHWA and the Federal Transportation Administration as a prerequisite to receiving Federal transportation funds and/or approvals.

TMP means a plan setting forth a program for traffic management and related activities to be implemented by the Concessionaire in connection with the construction of the Project or any Project Enhancement, or any work undertaken pursuant to any Department Change or approved Concessionaire requests for Deviations.

Toll Agreement means the Toll Agreement executed by the Department and FHWA approved by the FHWA on December 12, 2007.

Toll MOU is defined in Section 3.03(g).

Toll Consultant means any internationally recognized traffic and revenue consulting firm the Concessionaire selects (with the consent and approval of the Department) to perform and carry out the duties imposed on the Toll Consultant under this Agreement.

Toll Revenues means all amounts received by or on behalf of the Concessionaire applicable to vehicles for the privilege of traveling on the HOT Lanes imposed pursuant to this Agreement and from any other permitted use or operation of the HOT Lanes, including without limitation fees, tolls, rates, incidental charges and other charges (including administrative charges such as late fees, insufficient funds fees, etc.).

Toll Section means a portion of the HOT Lanes for which a single toll point applies and would include the length from the entry into the HOT Lanes until the last exit before a second toll point would be passed.

Total Invested Project Funds means, without duplication, (a) all documented fees, costs and expenses incurred by the Concessionaire or its Affiliates on or after August 25, 2004 and paid by the Concessionaire or its Affiliates in connection with the investigation, development, negotiation, and closing of the transactions described in the Agreement; (b) all capital contributions or debt advances made by the members of the Concessionaire or its Affiliates on or after the Closing Date; (c) all Concessionaire Debt incurred by the Concessionaire on or after the Closing Date; (d) the NEXT Equity Contributions; and (e) all Concessionaire Debt incurred by the Concessionaire in connection with NEXT Financial Close (other than (i) capital contributions, debt advances or Concessionaire Debt incurred or used directly or indirectly to fund Distributions or to reimburse the Concessionaire or its Affiliates for amounts referred to in the foregoing clause (a) or (ii) any Refinancing to the extent that it does not increase the principal amount of Concessionaire Debt then outstanding, *provided*, that capital contributions, debt advances or Concessionaire Debt deposited to reserves and potentially available directly or indirectly to fund Distributions shall be included as Total Invested Project Funds when paid, contributed, incurred or received, as the case may be, and any such amounts released from reserves to fund Distributions shall be included as a revenue for purposes of the calculation of Net Cash Flow).

Total Return on Investment or **TRI** means as of any date after the Closing Date, the rate (rounded up, if necessary, to a whole multiple of 1/1000 of 1%) that should be used to discount the sum of the Total Invested Project Funds and Net Cash Flows (calculated from the respective dates on which Total Invested Project Funds and Net Cash Flows are paid, contributed, incurred, or received as the case may be) so that the sum of the then discounted Total Invested Project Funds and Net Cash Flows as at the Closing Date is zero.

Traffic and Revenue Study means any study of the projected traffic and revenue for the HOT Lanes Project prepared by or on behalf of Concessionaire, as well as all data, charts, tables, analyses and other documentation assembled or prepared in connection therewith and all existing and future updates, reissuances, supplements and amendments thereto.

Transfer means to sell, convey, assign, sublease, mortgage, encumber, transfer or otherwise dispose of.

Transferee is defined in Section 20.01(a).

Transit and Corridor Investment Payment is defined in Section 4.08(a).

Transportation Trust Fund means the State's Transportation Trust Fund, which is codified in Virginia Code Section 33.2-1524.

Transurban means Transurban (USA) Inc., a Delaware corporation.

Uniform Act is defined in Section 7.08(a)(i)(1).

Utility or **utility** means a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, 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 or **utility owner** means the owner or concessionaire of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

Utility Relocation means the removal, relocation and/or protection in place (including provision of temporary services as necessary) of any and all utility facilities that have to be removed, relocated and/or protected in place in order to permit construction of the Project.

Virginia Code means the Code of Virginia of 1950, as amended from time to time.

VDOT Existing ROW is defined in Section 7.09(a).

VPSTF is defined in Section 8.11(h).

Work means:

(a) during the Work Period, all of the work required to be furnished and provided by or on behalf of the Concessionaire under this Agreement, including all administrative, design, engineering, real property acquisition support services, occupant relocation, construction, Utility Relocations, utility accommodation, procurement, supply, installation, testing, verification, labor, materials, equipment, construction management services, documentation and other duties and services, except for those efforts which this Agreement expressly specifies will be performed by persons other than the Concessionaire or the Design-Build Contractor; and

(b) during the Operating Period, all of the work required to be furnished and provided by the Concessionaire pursuant to this Agreement, including Major Maintenance work.

For the avoidance of doubt, Work shall not include the operations and maintenance of the NEXT Department Assets.

Work Commencement Approval is defined in Section 7.03(a).

Work Period means the Original Work Period and the NEXT Work Period, as applicable.

Work Period Force Majeure Event means any intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, condemnation or

confiscation of property or equipment by any Governmental Authority (other than the Department), nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, earthquake, flood or other extreme weather that damages the Work or prevents access to the Project site, industry-wide or regional strikes or labor disputes, riot or other public disorder, epidemic, quarantine restriction, stop-work order or injunction issued by a Governmental Authority (other than the Department) of competent jurisdiction, or governmental embargo, in each case occurring during the Work Period, *provided* that such event neither is otherwise specifically dealt with in this Agreement nor arises by reason of:

(a) the negligence or misconduct of the Concessionaire, a Concessionaire Party or their Representatives;

(b) any act or omission by the Concessionaire, a Concessionaire Party or their Representatives in breach of the provisions of this Agreement;

(c) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire;

(d) any strike, labor dispute or labor protest directed solely at Concessionaire, or a Concessionaire Party or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the Concessionaire, a Concessionaire Party or their Representatives; or

(e) any failure by Concessionaire to exercise reasonable care or to observe pertinent design standards when securing or shoring elements of the Work, or providing falsework for partially constructed elements of the Work, from or against the risks of the occurrence of earthquake, flood, windstorm or other weather event, or otherwise in the construction and design of elements of the Work to withstand loads or forces within design parameters.

It is specifically understood that other than floods or other extreme weather that damages the Work or prevents access to the Project site, the Design-Build Contractor shall assume the risk and other weather or conditions resulting from weather shall not constitute a Work Period Force Majeure Event.

Work Product means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Concessionaire for the Project or the Rights of Way, including but not limited to drawings, plans and specifications, record and as-built plans and specifications, engineering documents, geotechnical soils and soil boring data, analyses, reports and records, property acquisition files, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all construction documents relating to the Work or Project Enhancements), engineers' and inspectors' diaries and reports, Utility Relocation plans and agreements, right of way record maps and surveys, Traffic and Revenue Studies, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, air quality monitoring data, environmental reviews, studies and reports, mitigation studies and reports, data, assessments, studies and reports regarding Hazardous Substance investigations, testings, borings, monitoring and analyses, manifests regarding handling, storage or transportation of Hazardous Substances, correspondence and agreements relating to Regulatory 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, Toll Equipment and Toll Facilities records and reports, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which the Concessionaire and the Department mutually agree in writing, or which a court determines, to be

exempted or protected from public disclosure under Section 18.02 and which is not conceived or first reduced to practice for Project Purposes, such as proprietary financial and pricing information of the Concessionaire.

EXHIBIT B
SCOPE OF WORK

EXHIBIT B-1-A

PROJECT DESCRIPTION (ORIGINAL PROJECT)

(A) The “Original Project” consists of:

(1) the financing, design, development, construction, expansion, reconstruction, installation and/or implementation of the following improvements described below and as depicted on Exhibit B-2:

(a) four new general-purpose traffic lanes (two lanes in each direction) to be constructed on the outer sides of the existing lanes of the Original Corridor, where required due to the conversion of existing lanes as defined in (b) below, and all related improvements thereon to accommodate the Original Project, beginning at the southern terminus in the vicinity of Backlick Road (Route 617) to the northern project terminus in the vicinity of Route 738 (a distance of approximately 14 miles);

(b) the conversion of the existing four innermost lanes of the Original Corridor (two in each direction) into HOT Lanes, except where new pavement will be constructed to support the HOT Lanes traffic on independent alignments, including the installation of the Electronic Toll and Traffic Management Equipment, Facilities and System necessary and appropriate for the operation of the HOT Lanes, and all other facilities and improvements required for the opening and operation of the HOT Lanes;

(c) the following access points to the HOT Lanes (the geometry of which may be adjusted during design development to facilitate operational needs and construction phases): Braddock Road, Gallows Road, Lee Highway, I-66 Interchange, Route 7, Westpark Boulevard, Jones Branch Drive and the Dulles Toll Road/Dulles Airport Access Road;

(d) the reconstruction of the following ramps, interchanges, frontage roads, overpasses, underpasses, bridges and other crossings necessary to accommodate the new general-purpose lanes and the operation of the HOT Lanes: Braddock Road, Wakefield Park Pedestrian Bridge, Route 236, Gallows Road, Arlington Boulevard (Rt. 50), Lee Highway (Rt. 29), I-66, W&OD Pedestrian Bridge, Idylwood Road, Oak Street, Route 7, Route 123, and the Dulles Toll Road/Dulles Airport Access Road, and Lewinsville Road;

(e) Springfield Interchange Phase VIII;

(f) Phase I of Jones Branch shall be a four-lane connector roadway and structures connecting the HOT Lanes with Jones Branch Drive, as depicted in Exhibit B-2, the design of which shall accommodate the planned future expansion (Phase II of Jones Branch), to six lanes and through traffic across the Capital Beltway to Route 123, in accordance with applicable state and local design standards, which Phase I shall be a part of the HOT Lanes Project until Phase II of Jones Branch is constructed;

(g) the construction of a new auxiliary lane along I-495 northbound, between the I-66 eastbound to northbound general purpose on ramp and the Route 7 northbound general purpose off ramp; and

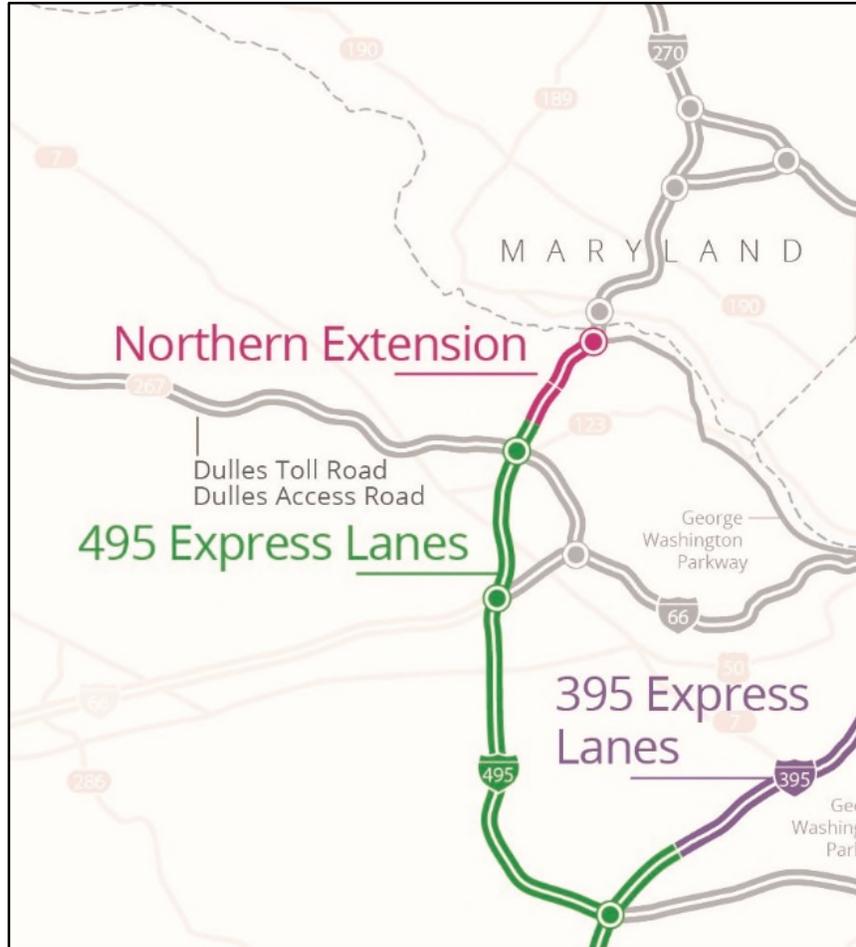
(h) all other improvements constructed pursuant to the Agreement, as amended from time to time, and enhancements to the HOT Lanes and/or the general-purpose lanes the Department determines are necessary to facilitate the operation of the HOT Lanes as intended by the Agreement; and

(2) the tolling, operation, maintenance, and repair of the HOT Lanes Project in accordance with the Agreement, as amended from time to time.

EXHIBIT B-1-B

PROJECT DESCRIPTION (NEXT PROJECT)

The NEXT Project is an extension of the 495 HOV/HOT Lanes (Express Lanes) in Fairfax County, Virginia. As shown in the figure below, the NEXT Project will extend along Interstate 495 (I-495) from the current northern terminus of the 495 Express Lanes near Old Dominion Drive (Route 738) to the vicinity of the George Washington Memorial Parkway (GW Parkway), and improvements to the Dulles Toll Road, Georgetown Pike and GW Parkway interchanges, existing bridges and the General Purpose lanes. I-495 currently operates with four General Purpose lanes in each direction along the Project corridor.



The primary objective of the NEXT Project is to extend the 495 Express Lanes further north to provide additional capacity in the corridor, which will be available at no charge to HOV 3+ vehicles, and open to other authorized vehicles paying a toll. This extension will be subject to the same operating rules and regulations as the existing 495 Express Lanes, and when complete, will operate as a single, fully integrated 495 Express Lanes facility between the Springfield Interchange and the GWMP.

EXHIBIT B-2

MAP OF HOT LANES PROJECT

[See attached]

EXHIBIT B-3

MAP OF PROJECT RIGHT OF WAY

[See attached]

EXHIBIT B-4
INITIAL SCOPE DOCUMENT

[See attached]

EXHIBIT B-5

NEXT SCOPE DOCUMENT

[See attached]

EXHIBIT B-6

BI-STATE PROJECT AND 495 ULTIMATE SCOPE AT DTR INTERCHANGE

[See attached]

EXHIBIT C
OPERATIONS AND SUPPORT SERVICES AGREEMENT

[See attached]

EXHIBIT D

FORM OF ELECTRONIC TOLL COLLECTION SERVICES AGREEMENT

[See attached]

EXHIBIT E

JOINT OPERATING AND MAINTENANCE PROTOCOLS

[See attached]

EXHIBIT F-1

NEXT MODIFIED BASE SCOPE CONFIGURATION

[See attached]

EXHIBIT F-2

NEXT MODIFIED BASE SCOPE CONFIGURATION DRAWING

[See attached]

EXHIBIT F-3

MAP OF HOLD-POINT AREA

[See attached]

EXHIBIT G

SPRINGING PROVISIONS RELATED TO TIFIA LOAN

Section	Existing Language	New Language
6.02(b)(xiii)	(xiii) No Financing Assignment may secure Concessionaire Debt that prohibits prepayment or defeasance; <i>provided</i> , that the foregoing does not preclude imposition of Breakage Costs in order to prepay or defease; and	(xiii) No Financing Assignment may secure Concessionaire Debt <u>(other than any Financing Assignment that secures a TIFIA Loan)</u> that prohibits prepayment or defeasance; <i>provided</i> , that the foregoing does not preclude imposition of Breakage Costs in order to prepay or defease; and
7.12(e)(i)	(i) The Concessionaire may submit to the Department a request for Change Order if the Design Build Contractor incurs a material increase of its construction costs or incurs a material impact to the critical path which delays the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, due to a material breach or an inexcusable delay by the Department in performing any of its obligations described in <u>Article 7</u> of this Agreement. For the purposes of this Section, an “inexcusable delay” shall mean a delay that is attributable solely to error or omission of the Department, and an inexcusable delay or a material breach specifically excludes delay or breach attributable to: (a) the submission of incomplete documentation for the Department’s review, (b) required review or approvals from other Governmental Authorities necessary or appropriate to the Department’s review, (c) failure to obtain appropriation and allocation of public funds, (d) consumption of available float, (e) submittals or requests that are “deemed approved” if no response is provided within 21 days, or (f) force majeure events. A response pursuant to <u>Section 7.06(k)</u> shall not be considered “deemed approved”, and shall not be considered an “inexcusable delay” in the event that a delay is attributable	(i) The Concessionaire may submit to the Department a request for <u>a Change Order for a Department-Caused Delay</u> Change Order if the Design Build Contractor incurs a material increase of its construction costs or incurs a material impact to the critical path which delays the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, due to a material breach or an inexcusable delay by the Department in performing any of its obligations described in Article 7 of this Agreement. For the purposes of this Section, an “inexcusable delay” shall mean a delay that is attributable solely to error or omission of the Department, and an inexcusable delay or a material breach specifically excludes delay or breach attributable to: (a) the submission of incomplete documentation for the Department’s review, (b) required review or approvals from other Governmental Authorities necessary or appropriate to the Department’s review, (c) failure to obtain appropriation and allocation of public funds, (d) consumption of available float, (e) submittals or requests that are “deemed approved” if no response is provided within 21 days, or (f) force majeure events. A response pursuant to Section 7.06(k) shall not be considered “deemed approved”, and shall not be considered an “inexcusable delay” in the event that a delay is attributable to items (a) through (f) above or is not attributable solely to error or omission of the Department.

	to items (a) through (f) above or is not attributable solely to error or omission of the Department.	
7.12(e)(iii)	(iii) If the Department determines the Concessionaire is entitled to cost relief, the Concessionaire shall be entitled to recover only the direct costs reasonably and necessarily incurred by the Design Build Contractor as a direct result of the Department's delay. However, under no circumstances will such recoverable costs include home office overhead incurred by the Design Build Contractor's member companies or financing costs.	(iii) If the Department determines the Concessionaire is entitled to cost relief, the Concessionaire shall be entitled to <u>Concessionaire Damages</u> recover only the direct costs reasonably and necessarily incurred by the Design Build Contractor as a direct result of the Department's delay. However, under no circumstances will such recoverable costs include home office overhead incurred by the Design Build Contractor's member companies or financing costs.
7.12(e)(iv)	(iv) The Concessionaire's request for Change Order may include the price escalation for materials only if the Department's delay causes the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, to be delayed by at least one year and such delay is not attributable to the actions or negligence of the Concessionaire, a Concessionaire Party, or the Design-Build Contractor.	(iv) The Concessionaire's request for Change Order may include the price escalation for materials only if the Department's delay <u>Department-Caused Delay</u> causes the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, to be delayed by at least one year and such delay is not attributable to the actions or negligence of the Concessionaire, a Concessionaire Party, or the Design-Build Contractor.
7.12(e)(v)	(v) The Department may extend the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, only if the Department's delay results in a material impact to the critical path set forth in the applicable Baseline Schedule.	(v) The Department may extend the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, only if the Department's delay <u>Department-Caused Delay</u> results in a material impact to the critical path set forth in the applicable Baseline Schedule.
7.12(e)(vi)	(vi) If for any reason the Concessionaire fails to deliver the request for Change Order within the time period specified in <u>Section 7.12(e)(ii)</u> , the Concessionaire shall be deemed to have irrevocably and forever waived and released any Claim or right to cost or schedule relief attributable to any such alleged Department delay or breach.	(vi) If for any reason the Concessionaire fails to deliver the request for Change Order within the time period specified in <u>Section 7.12(e)(ii)</u> , the Concessionaire shall be deemed to have irrevocably and forever waived and released any Claim or right to cost or schedule relief attributable to any such alleged Department delay <u>Department-Caused Delay</u> .

<p>16.03(b)</p>	<p>(b) If this Agreement is terminated at the election of the Concessionaire pursuant to this <u>Section 16.03</u>, no amount shall be payable by the Department to the Concessionaire as a result of such termination. If this Agreement is terminated at the election of the Department pursuant to this <u>Section 16.03</u>, subject to <u>Section 20.18</u> the Department must pay to the Concessionaire a sum equal to the lesser of (i) Project Value (as determined pursuant to <u>Section 17.05</u>) after such Force Majeure Event, or (ii) the lesser of (A) 80% of Senior Debt outstanding at the time of such event (including any PABs then outstanding), plus 80% of any TIFIA Loans then outstanding, or (B) 80% of Senior Debt (including PABs) plus 80% of the TIFIA Loans projected in the Base Case Financial Model Update (NEXT Final) to be then outstanding, in either such case (x) minus all cash and credit balances (if any) held under any Project Agreement, (y) minus the amount of all Distributions and all payments to Concessionaire Affiliates made on or after the relevant Force Majeure Event, and (z) minus the proceeds of any insurance (including casualty insurance and business interruption insurance) that is actually carried by or insuring any Concessionaire Party under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to <u>Section 14.02</u>, and that provides coverage to pay, reimburse or provide for any of the Losses resulting from the Force Majeure Event. If the Concessionaire fails to diligently and completely restore the HOT Lanes and such failure constitutes a Concessionaire Default, the provisions of <u>Section 17.01</u> shall apply. Subject to <u>Section 20.18</u>, the Department shall pay any sum due pursuant to this Section, together with interest, if any, as provided in this <u>Section 16.03</u>, within 60 days of the date of determination of Project Value; provided, that the Department may defer this payment for an additional 120 days if it reasonably</p>	<p>(b) If this Agreement is terminated at the election of the Concessionaire pursuant to this <u>Section 16.03</u>, no amount shall be payable by the Department to the Concessionaire as a result of such termination. If this Agreement is terminated at the election of the Department pursuant to this <u>Section 16.03</u>, subject to <u>Section 20.18</u>20.18, the Department must pay to the Concessionaire a sum equal to the lesser of (i) Project Value (as determined pursuant to <u>Section 17.05</u>) after such Force Majeure Event, or (ii) the lesser of (A) 80% of Senior 100% of Concessionaire Debt outstanding at the time of such event (including any PABs then outstanding), plus 80% of any TIFIA Loans then outstanding, or (B) 80% of Senior Debt (including PABs) plus 80% of the TIFIA Loans projected in the Base Case Financial Model Update (NEXT Final) to be then outstanding, in either such case (x) plus Demobilization Costs minus all cash and credit balances (if any) held under any Project Agreement, (y) minus the amount of all Distributions and all payments to Concessionaire Affiliates made on or after the relevant Force Majeure Event, and (z) bank account held by or on behalf of the Concessionaire that is pledged for the benefit of the Collateral Agent, and minus the proceeds of any insurance (including casualty insurance and business interruption insurance) that is actually carried received by or insuring any Concessionaire Party prior to the delivery of the Force Majeure Termination Notice, under policies solely with respect to the Project and the Work, regardless of whether such insurance is required to be carried pursuant to <u>Section 14.02</u>, and that pays, reimburses or provides coverage to pay, reimburse or provide for any of the Losses resulting from the Force Majeure Event. If the Concessionaire fails to diligently and completely restore the HOT Lanes and such failure constitutes a Concessionaire Default, the provisions of <u>Section 17.01</u> shall apply. Subject to <u>Section 20.18</u>, the Department shall pay any sum due pursuant to this Section, together with interest, if any, as provided in this <u>Section 16.03</u>, within 60 days of the date of determination of Project Value the delivery of the relevant Force Majeure Termination Notice; provided, that the Department may defer this payment for an additional 120 days if it reasonably determines that such additional period is necessary in order to obtain funds to make</p>
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	<p>determines that such additional period is necessary in order to obtain funds to make such payment; provided further, that any payment of any such sum shall be made together with interest thereon at the average earnings rate on the State's Transportation Trust Fund, or any successor thereto, during such period from the date of termination to the date of determination of the Project Value and thereafter at the Bank Rate to the payment date thereof; and provided further, that a termination as contemplated by this <u>Section 16.03</u> shall not be effective unless and until Project Value has been determined pursuant to <u>Section 17.05</u>.</p>	<p>such payment; provided further, that any payment of any such sum shall be made together with interest thereon at the average earnings rate on the State's Transportation Trust Fund, or any successor thereto, during such period from the date of termination to the date of determination of the Project Value and thereafter at the Bank Rate to the payment date thereof; and provided further, that a termination as contemplated by this <u>Section 16.03</u> shall not be effective unless and until Project Value has been determined pursuant to <u>Section 17.05</u>. <u>Following the Department's payment of any sum due pursuant to this Section, the Concessionaire shall either (i) reimburse the Department for any further proceeds of any insurance (including casualty insurance and business interruption insurance) that is actually received by any Concessionaire Party, after delivery of the Force Majeure Termination Notice, under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 14.02, and that pays, reimburses or provides for any of the Losses resulting from the Force Majeure Event, or (ii) assign such insurance policies with respect to the Project and the Work to the Department for its benefit, upon delivery of the Force Majeure Termination Notice. Any such reimbursement payments received by any Concessionaire Party with respect to such insurance policies shall be paid to the Department when such further insurance proceeds are received.</u></p>
16.04(a)	<p>(a) Subject to the provisions of the Direct Agreement and the NEXT Direct Agreement, the Department is entitled to terminate this Agreement (and the Permit granted to the Concessionaire hereunder) and/or any other Project Agreement to which the Department is a party as provided in <u>Section 17.02(a)</u>. In the case of any such termination pursuant to <u>Section 17.02(a)</u>, no compensation would be payable to the Concessionaire as a result of such termination.</p>	<p>(a) Subject to the provisions of the Direct Agreement and the NEXT Direct Agreement, the Department is entitled to terminate this Agreement (and the Permit granted to the Concessionaire hereunder) and/or any other Project Agreement to which the Department is a party as provided in <u>Section 17.02(a)</u>. In the case of any such termination pursuant to <u>Section 17.02(a)</u>, no compensation would be payable to the Concessionaire as a result of such termination.</p>
16.08	<p>If this Agreement is terminated by the Department or the State prior to the end of the Term, other than pursuant to</p>	<p>If this Agreement is terminated by the Department or the State prior to the end of the Term, other than pursuant to <u>Section 16.03, 16.04, 16.07</u></p>

<p><u>Section 16.03, 16.04, 16.07 or 17.02</u>, or is canceled, rescinded or voided during the Term, subject to <u>Section 20.18</u> the Department must pay to the Concessionaire the greater of (a) Project Value (determined, without regard to the effect of such termination, pursuant to <u>Section 17.05</u>) plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire, including its reasonable Allocable Costs, as a direct result of such termination and (b) the lesser of 100% of Concessionaire Debt then outstanding or 100% of Concessionaire Debt projected in the Base Case Financial Model Update (NEXT Final) to be then outstanding, and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department. The Department shall pay the foregoing sum, together with interest, if any as provided in this <u>Section 16.08</u>, within 60 days of the date of determination of Project Value pursuant to <u>Section 17.05</u>; <i>provided</i>, that the Department may defer this payment for an additional 120 days if it reasonably determines that such additional period is necessary in order to obtain funds to make such payment; and <i>provided further</i>, that any payment of the foregoing sum shall be made together with interest thereon at the average earnings rate on the State’s Transportation Trust Fund or any successor thereto during such period from the date of determination of Project Value pursuant to <u>Section 17.05</u> to the date that is 60 days after the date of determination of the Project Value and thereafter at the Bank Rate to the payment date thereof. A termination as contemplated by this <u>Section 16.08</u> shall not be effective unless and until Project Value has been determined pursuant to <u>Section 17.05</u>.</p>	<p>or <u>17.02</u>, or is canceled, rescinded or voided during the Term, subject to <u>Section 20.18</u> the Department must pay to the Concessionaire the greater of (a) Project Value (determined, without regard to the effect of such termination, pursuant to Section 17.05) plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire, including its reasonable Allocable Costs, as a direct result of such termination and (b) the lesser of 100% of Concessionaire Debt then outstanding or 100% of Concessionaire Debt projected in the Base Case Financial Model Update (NEXT Final) to be then outstanding, and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department <u>Termination Amount</u>. The Department shall pay the foregoing sum, together with interest, if any as provided in this <u>Section 16.08</u>, within 60 days of the date of determination of Project Value pursuant to <u>Section 17.05</u>; <i>provided</i>, that the Department may defer this payment for an additional 120 days if it reasonably determines that such additional period is necessary in order to obtain funds to make such payment; and <i>provided further</i>, that any payment of the foregoing sum shall be made together with interest thereon at the average earnings rate on the State’s Transportation Trust Fund or any successor thereto during such period from the date of determination of Project Value pursuant to <u>Section 17.05</u> to the date that is 60 days after the date of determination of the Project Value and thereafter at the Bank Rate to the payment date thereof. A termination as contemplated by this <u>Section 16.08</u> shall not be effective unless and until Project Value has been determined pursuant to <u>Section 17.05</u>.</p> <p>Each of the Department and Concessionaire hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof.</p>
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	<p>Each of the Department and Concessionaire hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof.</p>	
<p>17.02(a)</p>	<p>(a) As provided in Section 33.2-1813 of the Virginia Code, the Department may terminate this Agreement (and the permit granted hereunder), and any executory Project Agreements to which the Department is a party, by giving 60 days' prior written notice to the Concessionaire and the Collateral Agent upon the occurrence of a material Concessionaire Default; <i>provided</i>, that (i) the Concessionaire is entitled to cure a Concessionaire Default pursuant to this <u>Section 17.02(a)</u> if the Concessionaire Default is a failure to pay monies due the Department, by paying the full amount due together with interest at the Bank Rate within such 60-day period, and (ii) if the Concessionaire Default is other than a failure to pay monies due, by providing the Department with a written work plan within such 60-day period outlining the actions by which the Concessionaire will ensure future compliance with the obligation, covenant, agreement, term or condition in this Agreement that the Concessionaire failed to perform or observe, which work plan is approved by the Department, but any failure of the Concessionaire to comply in any material respect with such approved work plan following 60 days' notice of such failure from the Department to the Concessionaire shall be deemed to be a Concessionaire Default described in <u>Section 17.01(b)</u> and the entitlement of the Concessionaire to cure such Concessionaire Default by the delivery of an approved work plan shall not apply thereto. Such termination shall automatically extinguish the Concessionaire's Interest and all Liens and claims on or against the Concessionaire's Interest; <i>provided further</i>, that the Department shall not exercise the remedy provided in this <u>Section 17.02(a)</u> if the Concessionaire Default consists solely of a violation of</p>	<p>(a) As provided in Section 33.2-1813 of the Virginia Code, the Department may terminate this Agreement (and the permit granted hereunder), and any executory Project Agreements to which the Department is a party, by giving 60 days' prior written notice to the Concessionaire and the Collateral Agent upon the occurrence of a material Concessionaire Default; <i>provided</i>, that (i) the Concessionaire is entitled to cure a Concessionaire Default pursuant to this <u>Section 17.02(a)</u> if the Concessionaire Default is a failure to pay monies due the Department, by paying the full amount due together with interest at the Bank Rate within such 60-day period, and (ii) if the Concessionaire Default is other than a failure to pay monies due, by providing the Department with a written work plan within such 60-day period outlining the actions by which the Concessionaire will ensure future compliance with the obligation, covenant, agreement, term or condition in this Agreement that the Concessionaire failed to perform or observe, which work plan is approved by the Department, but any failure of the Concessionaire to comply in any material respect with such approved work plan following 60 days' notice of such failure from the Department to the Concessionaire shall be deemed to be a Concessionaire Default described in <u>Section 17.01(b)</u> and the entitlement of the Concessionaire to cure such Concessionaire Default by the delivery of an approved work plan shall not apply thereto; <u>and upon such termination, subject to the limitations of Section 20.18, the Department shall be obligated to pay to the Concessionaire the Concessionaire Default Termination Amount.</u> Such termination shall automatically extinguish the Concessionaire's Interest and all Liens and claims on or against the Concessionaire's Interest; <i>provided further</i>, that the Department shall not exercise the remedy provided in this <u>Section 17.02(a)</u> if the Concessionaire Default consists solely of a violation of <u>Section 11.01, 11.02(a), (b) and (d)-(f), or 11.03</u>, but any such violation shall nonetheless subject the Concessionaire to such fines and penalties otherwise applicable to such violation as may be</p>

	<p><u>Section 11.01, 11.02(a), (b) and (d)-(f), or 11.03</u>, but any such violation shall nonetheless subject the Concessionaire to such fines and penalties otherwise applicable to such violation as may be imposed by the appropriate Governmental Authority; and <i>provided further</i>, that the sole termination remedy upon the occurrence of events described in <u>Section 16.07(a)(i) or (ii)</u> shall be as set forth in <u>Section 16.07</u>;</p>	<p>imposed by the appropriate Governmental Authority; and <i>provided further</i>, that the sole termination remedy upon the occurrence of events described in <u>Section 16.07(a)(i) or (ii)</u> shall be as set forth in <u>Section 16.07</u>;</p>
<p>17.04(a)</p>	<p>(a) Subject to <u>Section 16.04(b)</u>, the Concessionaire may terminate this Agreement (and the permit granted hereunder), and any executory Project Agreements to which the Concessionaire is a party, by giving 90 days' prior written notice to the Department; <i>provided</i>, that the Department shall be entitled to cure a Department Default pursuant to <u>Section 17.03(b)</u> by providing the Concessionaire with a written work plan within such 90-day period outlining the actions by which the Department will ensure future compliance with the obligation, covenant, agreement, term or condition in this Agreement that the Department failed to perform or observe, which work plan is approved by the Concessionaire (which approval shall not be unreasonably withheld, delayed or conditioned), but any failure of the Department to comply in any material respect with such approved work plan following 90 days' notice of such failure from the Concessionaire to the Department shall be deemed to be a Department Default described in <u>Section 17.03(b)</u> and the entitlement of the Department to cure such Department Default by the delivery of an approved work plan shall not apply thereto; and upon such termination, subject to the limitations of <u>Section 20.18</u>, the Department shall be obligated to pay to the Concessionaire the greater of (i) Project Value determined without regard to the effect of the relevant Department Default (with fair market value determined pursuant to <u>Section 17.05</u>) plus, without</p>	<p>(a) Subject to <u>Section 16.04(b)</u>, the Concessionaire may terminate this Agreement (and the permit granted hereunder), and any executory Project Agreements to which the Concessionaire is a party, by giving 90 days' prior written notice to the Department; <i>provided</i>, that the Department shall be entitled to cure a Department Default pursuant to <u>Section 17.03(b)</u> by providing the Concessionaire with a written work plan within such 90-day period outlining the actions by which the Department will ensure future compliance with the obligation, covenant, agreement, term or condition in this Agreement that the Department failed to perform or observe, which work plan is approved by the Concessionaire (which approval shall not be unreasonably withheld, delayed or conditioned), but any failure of the Department to comply in any material respect with such approved work plan following 90 days' notice of such failure from the Concessionaire to the Department shall be deemed to be a Department Default described in <u>Section 17.03(b)</u> and the entitlement of the Department to cure such Department Default by the delivery of an approved work plan shall not apply thereto; and upon such termination, subject to the limitations of <u>Section 20.18</u>, the Department shall be obligated to pay to the Concessionaire the greater of (i) Project Value determined without regard to the effect of the relevant Department Default (with fair market value determined pursuant to Section 17.05) plus, without duplication, the reasonable out of pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination, including its reasonable Allocable Costs and (ii) the lesser of 100% of Concessionaire debt then outstanding or 100% of Concessionaire Debt projected in the Base Case Financial Model Update (NEXT Final) to be</p>

	<p>duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination, including its reasonable Allocable Costs and (ii) the lesser of 100% of Concessionaire debt then outstanding or 100% of Concessionaire Debt projected in the Base Case Financial Model Update (NEXT Final) to be then outstanding and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department;</p>	<p>then outstanding and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department <u>Termination Amount</u>;</p>
17.04	<p>Notwithstanding any provision to the contrary in this Agreement, neither a Department Default nor, except as provided in clause (g) of the definition of Compensation Event, a Compensation Event will be deemed to have occurred if an injunction or other legal proceeding has enjoined or estopped the Department from the performance of its obligations under this Agreement.</p>	<p>Notwithstanding any provision to the contrary in this Agreement, neither a Department Default nor, except as provided in clause (g) of the definition of Compensation Event, a Compensation Event will be deemed to have occurred if an injunction or other legal proceeding has enjoined or estopped the Department from the performance of its obligations under this Agreement.</p>
17.05(e)	<p>(e) Once appointed, the independent appraiser shall conduct an appraisal of the fair market value and deliver to both parties a draft appraisal report and draft valuation. The appraiser shall appraise fair market value by taking into account projected cash flows and projected costs of the Project for the remainder of the Term had this Agreement not been terminated, as determined by the appraiser. In conducting the appraisal, and before issuing a draft appraisal report, the independent appraiser shall afford reasonable and comparable opportunity to each party to provide the appraiser with information, data, analysis and reasons supporting each party's view on the fair market value. The parties shall have 15 days after receipt of the draft appraisal report to comment thereon. After the opportunity to comment has expired, the independent appraiser shall consider and evaluate all comments, prepare a final appraisal report stating the fair</p>	<p>(e) Once appointed, the independent appraiser shall conduct an appraisal of the fair market value and deliver to both parties a draft appraisal report and draft valuation. <u>The appraisal shall determine Project Value as of the effective date of termination of this Agreement, based on the then condition of the Project (determined without regard to the effect of such termination).</u> The appraiser shall appraise fair market value by taking into account projected cash flows and projected costs of the Project for the remainder of the Term had this Agreement not been terminated, as determined by the appraiser. <u>For the avoidance of doubt, the calculation of Project Value is the sum of (i) the fair market value of the projected Distributions for the remainder of the Term without taking into consideration any terminations pursuant to Article 16 and (ii) the fair market value of any Concessionaire Debt outstanding as of the date of the calculation, and will include Concessionaire Damages for adverse Net Cost Impacts and Net Revenue Impacts accruing after the effective date of termination from Compensation Events</u></p>

	<p>market value, and deliver the final appraisal report to both parties.</p>	<p><u>that occurred prior to termination.</u> In conducting the appraisal, and before issuing a draft appraisal report, the independent appraiser shall afford reasonable and comparable opportunity to each party to provide the appraiser with information, data, analysis and reasons supporting each party's view on the fair market value. The parties shall have 15 days after receipt of the draft appraisal report to comment thereon. After the opportunity to comment has expired, the independent appraiser shall consider and evaluate all comments, prepare a final appraisal report stating the fair market value, and deliver the final appraisal report to both parties.</p>
<p>Definitions</p>	<p>Compensation Event means any of the following events, in each case to the extent the Agreement entitles the Concessionaire to Concessionaire Damages:</p> <p>(a) any delay beyond the applicable time period in the issuance by the Department of a Substantial Completion Certificate pursuant to Section 7.14(a) or a NEXT Final Completion Certificate pursuant to Section 7.15(b);</p> <p>(b) the development or implementation of any Department Change pursuant to Section 7.12 or any Department Project Enhancement pursuant to Section 9.02;</p> <p>(c) the performance by the Department of certain ITS activities pursuant to Section 12.03 that results in Concessionaire Damages;</p> <p>(d) any Discriminatory Change in Law pursuant to Section 13.04;</p> <p>(e) any Reimbursable Tax Imposition pursuant to Section 13.06;</p> <p>(f) an event related to toll exemptions described in Section 13.05(a); or</p> <p>(g) an injunction or other legal proceeding enjoining or estopping the Concessionaire from the performance of its</p>	<p>Compensation Event means any of the following events, in each case to the extent the Agreement entitles the Concessionaire to Concessionaire Damages:</p> <p>(a) any delay beyond the applicable time period in the issuance by the Department of a Substantial Completion Certificate pursuant to Section 7.14(a) or a NEXT Final Completion Certificate pursuant to Section 7.15(b);</p> <p>(b) the development or implementation of any Department Change pursuant to Section 7.12 or any Department Project Enhancement pursuant to Section 9.02;</p> <p>(c) the performance by the Department of certain ITS activities pursuant to Section 12.03 that results in Concessionaire Damages;</p> <p>(d) any Discriminatory Change in Law pursuant to Section 13.04;</p> <p>(e) any Reimbursable Tax Imposition pursuant to Section 13.06;</p> <p>(f) an event related to toll exemptions described in Section 13.05(a); or</p> <p>(g) an injunction or other legal proceeding enjoining or estopping the Concessionaire from the performance of its obligations under this Agreement, in any case for more than 30 days in the aggregate, based solely on claims that were not time barred because the re-evaluation dated May 9, 2007 of the federal environmental impact study was not published in the Federal Register;</p>

	<p>obligations under this Agreement, in any case for more than 30 days in the aggregate, based solely on claims that were not time barred because the re-evaluation dated May 9, 2007 of the federal environmental impact study was not published in the Federal Register;</p> <p>provided, that under no circumstances will any of the following events (including associated construction activities) result in a Compensation Event (although, for the avoidance of doubt, such exclusion from Compensation Events does not exclude such events from otherwise being considered Department Changes or Delay Events, in each case, pursuant to, and in accordance with, the terms of the Agreement):</p> <p>(i) the development or implementation of any projects listed in the MWCOG CLRP dated as of October 17, 2018 within the NEXT Corridor;</p> <p>(ii) the development or implementation of the Bi-State Project; and</p> <p>(iii) the development or implementation of any NEXT Project (Phase 2) Asset, other than the development or implementation of the new southbound auxiliary lane between Route 193 and Dulles Toll Road to the extent it commences prior to the earlier of: (1) service commencement of the Bi-State Project and (2) December 31, 2030.</p>	<p><u>(h) a Department-Caused Delay; or</u></p> <p><u>(i) any change in applicable Laws taking effect prior to the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date that specifically affects the physical construction of the Project in such a way as to increase the costs of the Work;</u></p> <p>provided, that under no circumstances will any of the following events (including associated construction activities) result in a Compensation Event (although, for the avoidance of doubt, such exclusion from Compensation Events does not exclude such events from otherwise being considered Department Changes or Delay Events, in each case, pursuant to, and in accordance with, the terms of the Agreement):</p> <p>(i) the development or implementation of any projects listed in the MWCOG CLRP dated as of October 17, 2018 within the NEXT Corridor;</p> <p>(ii) the development or implementation of the Bi-State Project; and</p> <p>(iii) the development or implementation of any NEXT Project (Phase 2) Asset, other than the development or implementation of the new southbound auxiliary lane between Route 193 and Dulles Toll Road to the extent it commences prior to the earlier of: (1) service commencement of the Bi-State Project and (2) December 31, 2030.</p>
Definitions	No existing defined term.	<p>New defined term:</p> <p>Concessionaire Default Termination Amount means:</p> <p>(a) with respect to termination prior to the Substantial Completion Date for the Original HOT Lanes, the lesser of A or B;</p> <p>(b) with respect to termination following the Substantial Completion Date for the Original HOT Lanes but prior to the NEXT</p>

		<p>Final Completion Date, (i) the lesser of C or D, plus (ii) the lesser of E or F;</p> <p>(c) with respect to termination following all of (i) the Substantial Completion Date for the Original HOT Lanes and (ii) the NEXT Final Completion Date, the lesser of G or H;</p> <p>where:</p> <p>A = the Completed Work Value (for the Original HOT Lanes only);</p> <p>B = 80% of Concessionaire Debt (for the Original HOT Lanes only) then outstanding;</p> <p>C = the Project Value (for the Original HOT Lanes only);</p> <p>D = 100% of Concessionaire Debt (for the Original HOT Lanes only) then outstanding;</p> <p>E = the Completed Work Value (for the NEXT HOT Lanes, but not the Original HOT Lanes);</p> <p>F = 80% of Concessionaire Debt (for the NEXT Project, but not the Original HOT Lanes) then outstanding;</p> <p>G = the Project Value (for the Original HOT Lanes and the NEXT HOT Lanes); and,</p> <p>H = 100% of Concessionaire Debt then outstanding;</p> <p>in each case, less:</p> <p>(i) Credit Balances held under any bank account held by or on behalf of the Concessionaire that is pledged for the benefit of the Collateral Agent under any Project Financing Agreement; provided, however, that such Credit Balances will not be deducted from the Project Value unless the Project Value is increased on account of such Credit Balances;</p> <p>(ii) unpaid and/or accrued default interest;</p> <p>(iii) Breakage Costs;</p>
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		<p>(iv) any other amounts referred to in the definition of Concessionaire Debt that arise as a consequence of the termination of the Agreement or the acceleration of or requirement to mandatorily prepay the Concessionaire Debt;</p> <p>(v) Non-Reimbursable Concessionaire Damages; provided, however, that Non-Reimbursable Concessionaire Damages will only be deducted from Concessionaire Debt and only to the extent the Non-Reimbursable Concessionaire Damages were used to make Distributions; and</p> <p>(vi) Allocable Costs incurred by the Department in terminating the Agreement for Concessionaire Default.</p>
<p>Definitions</p>	<p>Delay Event means:</p> <p>(a) with respect to the Work Period, “Delay Event” means the occurrence of one or more of the following during the Work Period:</p> <p>(i) a Work Period Force Majeure Event;</p> <p>(ii) discovery of any of the following conditions: (A) subsurface conditions on the Project Right of Way that (1) vary materially from the conditions described in the data available to Concessionaire or the Design-Build Contractor (x) as of the Agreement Date with respect to the Original Project or (y) as of the Second Amended and Restated Agreement Date with respect to the NEXT Project, or (2) are unusual and could not be reasonably anticipated based on conditions ordinarily encountered in the general area of the Project Right of Way; (B) threatened or endangered species; (C) archaeological, paleontological or cultural resources; (D) Hazardous Substances present on the Project Right of Way (1) as of the Agreement Date with respect to the Original Project or (2) as of the Second Amended and Restated Agreement Date with respect to the NEXT Project; (E) Hazardous Substances spilled or otherwise placed other than by a</p>	<p>Delay Event means:</p> <p>(a) with respect to the Work Period, “Delay Event” means the occurrence of one or more of the following during the Work Period:</p> <p>(i) a Work Period Force Majeure Event;</p> <p>(ii) discovery of any of the following conditions: (A) subsurface conditions on the Project Right of Way that (1) vary materially from the conditions described in the data available to Concessionaire or the Design-Build Contractor (x) as of the Agreement Date with respect to the Original Project or (y) as of the Second Amended and Restated Agreement Date with respect to the NEXT Project, or (2) are unusual and could not be reasonably anticipated based on conditions ordinarily encountered in the general area of the Project Right of Way; (B) threatened or endangered species; (C) archaeological, paleontological or cultural resources; (D) Hazardous Substances present on the Project Right of Way (1) as of the Agreement Date with respect to the Original Project or (2) as of the Second Amended and Restated Agreement Date with respect to the NEXT Project; (E) Hazardous Substances spilled or otherwise placed other than by a Concessionaire Party in the course of performing the Work (1) subsequent to the Agreement Date with respect to the Original Project or (2) subsequent to the Second Amended and Restated Agreement Date with respect to the NEXT Project; or (E) unknown Utilities;</p>

<p>Concessionaire Party in the course of performing the Work (1) subsequent to the Agreement Date with respect to the Original Project or (2) subsequent to the Second Amended and Restated Agreement Date with respect to the NEXT Project; or (E) unknown Utilities;</p> <p>(iii) a failure to obtain, or delay in obtaining, any Regulatory Approval or other authorization from a Governmental Authority (provided that such failure or delay could not have been reasonably prevented by the Concessionaire);</p> <p>(iv) an injunction or other legal proceeding enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement; or</p> <p>(v) a change in applicable Laws occurring (A) after the Agreement Date with respect to the Original Project or (B) after the Second Amended and Restated Agreement Date with respect to the NEXT Project, that imposes additional requirements that directly and materially adversely impacts performance of the Work and that could not have reasonably been anticipated by a reasonable contractor.</p> <p>(b) with respect to the Operating Period, “Delay Event” means the occurrence of one or more of the following during the Operating Period:</p> <p>(i) a Force Majeure Event; or</p> <p>(ii) an injunction or other legal proceeding enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement; or</p> <p>(c) which in each case of either (a) or (b) above results in a delay or interruption in the performance by the Concessionaire of any obligation under this Agreement;</p>	<p>(iii) a failure to obtain, or delay in obtaining, any Regulatory Approval or other authorization from a Governmental Authority (provided that such failure or delay could not have been reasonably prevented by the Concessionaire);</p> <p><u>(iv) a Department-Caused Delay;</u></p> <p><u>(v) an injunction or other legal proceeding enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement; or</u></p> <p><u>(vi) a change in applicable Laws occurring (A) after the Agreement Date with respect to the Original Project or (B) after the Second Amended and Restated Agreement Date with respect to the NEXT Project, that imposes additional requirements that directly and materially adversely impacts performance of the Work and that could not have reasonably been anticipated by a reasonable contractor.</u></p> <p>(b) with respect to the Operating Period, “Delay Event” means the occurrence of one or more of the following during the Operating Period:</p> <p>(i) a Force Majeure Event; or</p> <p><u>(ii) a Department-Caused Delay;</u></p> <p><u>(iii) an injunction or other legal proceeding enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement; or</u></p> <p><u>(iv) a change in applicable Laws occurring after the applicable Service Commencement Date that imposes one or more changed or additional requirements that directly and materially adversely impact the performance of the Work and that could not have been reasonably anticipated by a reasonable concessionaire;</u></p> <p>(c) which in each case of either (a) or (b) above results in a delay or interruption in the performance by the Concessionaire of any obligation under this Agreement; provided, that such delay or the cause thereof is neither specifically dealt with in this Agreement nor arises by reason of:</p>
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<p>provided, that such delay or the cause thereof is neither specifically dealt with in this Agreement nor arises by reason of:</p> <p>(i) the negligence or misconduct of the Concessionaire, a Concessionaire Party or their Representatives;</p> <p>(ii) any act or omission by the Concessionaire, a Concessionaire Party or their Representatives in breach of the provisions of this Agreement;</p> <p>(iii) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire;</p> <p>(iv) except to the extent the same constitutes a Force Majeure Event, any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Concessionaire, a Concessionaire Party or their Representatives to supply materials or services for or in connection with the Project's operation 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 the Concessionaire, a Concessionaire Party or their Representatives;</p> <p>(v) except to the extent the same constitutes a Force Majeure Event, any weather condition (including any flooding) whether or not such weather conditions or the severity of such weather conditions are not or have not ordinarily or customarily been encountered or experienced; or</p> <p>(vi) the development, redevelopment, construction, modification, maintenance or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of User Fees or in the number of vehicles using the HOT Lanes Project.</p>	<p>(i) the negligence or misconduct of the Concessionaire, a Concessionaire Party or their Representatives;</p> <p>(ii) any act or omission by the Concessionaire, a Concessionaire Party or their Representatives in breach of the provisions of this Agreement;</p> <p>(iii) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire;</p> <p>(iv) except to the extent the same constitutes a Force Majeure Event, any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Concessionaire, a Concessionaire Party or their Representatives to supply materials or services for or in connection with the Project's operation 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 the Concessionaire, a Concessionaire Party or their Representatives;</p> <p>(v) except to the extent the same constitutes a Force Majeure Event, any weather condition (including any flooding) whether or not such weather conditions or the severity of such weather conditions are not or have not ordinarily or customarily been encountered or experienced; or</p> <p>(vi) the development, redevelopment, construction, modification, maintenance or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of User Fees or in the number of vehicles using the HOT Lanes Project.</p>
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Definitions	No existing defined term.	<p>New defined term:</p> <p>Demobilization Costs means the amount necessary to reimburse the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire, including its reasonable Allocable Costs, to demobilize and terminate contracts between the Concessionaire and third parties or Affiliates for performance of Work, excluding the Concessionaire’s non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates.</p>
Definitions	No existing defined term.	<p>New defined term:</p> <p>Department-Caused Delay means:</p> <p>(a) a delay or failure by the Department in performing any of its material obligations pursuant to the Agreement; or</p> <p>(b) performance of work by the Department or its contractors (other than the Concessionaire and its Contractors performing the Work) within or immediately adjacent to the HOT Lanes or the HOT Lanes Right of Way that causes physical damage to the HOT Lanes or the Work or limits access to the HOT Lanes Right of Way and such physical damage or limited access delays the Concessionaire’s Work; provided, however, that a Department-Caused Delay specifically excludes a delay attributable to:</p> <p>(i) the submission of incomplete documentation for the Department’s review;</p> <p>(ii) required review of any Regulatory Approval or other authorization from a Governmental Authority necessary or appropriate to the Department’s review;</p> <p>(iii) failure to obtain appropriation and allocation of public funds;</p> <p>(iv) consumption of available float;</p> <p>(v) submittals or requests that are “deemed approved” if no response is provided within the applicable timeframe;</p>

		<p>(vi) Force Majeure Events; or</p> <p>(vii) the resolution of disputed payment amounts in connection with Service Commencement pursuant to Section 8.01 or Section 8.02.</p>
Definitions	No existing defined term.	<p>New defined term:</p> <p>Department Termination Amount means the greater of (i) Project Value determined without regard to the effect of the relevant Department Default (with fair market value determined pursuant to Section 17.05) plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of the termination, cancellation, rescission or voiding (as applicable) of this Agreement, including its reasonable Allocable Costs and (ii) 100% of Concessionaire Debt then outstanding and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department, minus, in each case of clauses (i) and (ii), all cash and Credit Balances (if any) held under any bank account held by or on behalf of the Concessionaire that is pledged for the benefit of the Collateral Agent under any Project Financing Agreement that are available to be used to repay Concessionaire Debt in connection with a termination of this Agreement; <i>provided</i> that such cash and Credit Balances will not be deducted from the amount calculated in clause (i) of this definition unless the calculation of Project Value includes such cash and Credit Balances, and minus, in clause (i) only, the amount of all Distributions and all payments to Concessionaire Affiliates on or after the termination date; <i>provided</i> that such amount of Distributions will not be deducted from the amount calculated in clause (i) unless the calculation of Project Value includes such Distributions.</p>
Definitions	Discriminatory Change in Law means the adoption of any State Law or any change in any State Law or in the interpretation or application thereof during the Term that has the effect of discriminating against the HOT Lanes Project or the Concessionaire (but as to the Concessionaire only with respect to the HOT Lanes Project), except where	Discriminatory Change in Law means the adoption of any State Law or any change in any State Law or in the interpretation or application thereof during the Term that <u>(a)</u> has the effect of discriminating against the HOT Lanes Project or, the Concessionaire (but as to the Concessionaire only with respect to the HOT Lanes Project) <u>or operators of toll roads in the State</u> , except where such Law or change

	<p>such Law or change in Law or in interpretation or application is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law) or such Law or change in Law or in interpretation or application is otherwise permitted under this Agreement.</p>	<p>in Law or in interpretation or application <u>(i)</u> is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law) or such Law or change in Law or <u>(ii)</u> in interpretation or application is otherwise permitted under this Agreement; <u>or (b) limits the Concessionaire’s right to impose, charge, collect and enforce tolls and incidental charges in accordance with Section 4.04.</u></p>
<p>Definitions</p>	<p>Significant Force Majeure Event means a Force Majeure Event occurring after the Service Commencement Date for which insurance is not obtainable at commercially reasonable rates that (a) has the effect of causing physical damage or destruction to the HOT Lanes, or any ramp, feeder road or bridge within 3 miles of the HOT Lanes constituting a direct traffic route to or from the HOT Lanes, and (b) results in the HOT Lanes being substantially unavailable for public use for a period in excess of 120 consecutive days or the suspension or substantial reduction toll collections on the HOT Lanes for a period in excess of 120 consecutive days; <i>provided</i>, that such Force Majeure Event shall not become a Significant Force Majeure Event by reason of a Concessionaire Party’s failure to mitigate or cure the result of such Force Majeure Event through the exercise of reasonably diligent efforts.</p>	<p>Significant Force Majeure Event means a Force Majeure Event occurring after the Service Commencement Date for which insurance is not obtainable at commercially reasonable rates that (a) <u>(i)</u> has the effect of causing physical damage or destruction to the HOT Lanes, or any ramp, feeder road or bridge within 3 miles of the HOT Lanes constituting a direct traffic route to or from the HOT Lanes, and (b)(i) results in the HOT Lanes being substantially unavailable for public use for a period in excess of +20<u>180</u> consecutive days or the suspension or substantial reduction of toll collections on the HOT Lanes for a period in excess of +20<u>180 consecutive days or (b) halts the performance of the Work on the NEXT Project by the NEXT Design-Build Contractor during the NEXT Work Period for a period in excess of 180</u> consecutive days; <i>provided</i>, that such Force Majeure Event shall not become a Significant Force Majeure Event by reason of a Concessionaire Party’s failure to mitigate or cure the result of such Force Majeure Event through the exercise of reasonably diligent efforts.</p>

EXHIBIT H-1

LIST OF INITIAL PROJECT FINANCING AGREEMENTS

1. Master Indenture of Trust, dated as of December 1, 2007, between Capital Beltway Funding Corporation of Virginia (the “Issuer”) and Wells Fargo Bank, N.A., as Trustee (the “Trustee”).
2. Financing documents providing for the issuance of Senior Lien Toll Revenue Bonds (I-495 HOT Lanes Project), Series 2008A and 2008B (the “Senior Lien Bonds”) and the credit enhancement and/or liquidity facilities with respect thereto, including, without limitation, a First Supplemental Indenture of Trust, to be entered into by and between the Issuer and the Trustee, a Loan Agreement, to be entered into by and among the Issuer, Capital Beltway Express, LLC (the “Borrower”) and the Trustee, relating to the loan of proceeds of the Senior Lien Bonds to the Borrower, and the Forward Delivery Bond Purchase Contract, dated as of December 20, 2007, by and among Goldman, Sachs & Co., the Issuer and the Borrower.
3. Second Supplemental Indenture of Trust, dated as of December 1, 2007, between the Issuer and the Trustee, relating to the Subordinate Lien TIFIA Toll Revenue Bonds (I-495 HOT Lanes Project), Series 2007-1.
4. TIFIA Loan Agreement with Capital Beltway Express, LLC for up to \$588,922,875 for the Route 495 HOT Lanes in Virginia (TIFIA 20071004A), dated as of December 1, 2007, by and among the United States Department of Transportation (“USDOT”), the Issuer and the Borrower.
5. Intercreditor Agreement, dated as of December 20, 2007, by and among USDOT and the Trustee.
6. Long-Form Confirmations, dated as of December 20, 2007, issued by Goldman Sachs Capital Markets, L.P.
7. Long-Form Confirmations, dated as of December 20, 2007, issued by DEPFA Bank plc.
8. Security Agreement, dated as of December 1, 2007, between the Borrower and the Trustee.
9. Membership Interest Pledge Agreement, dated as of December 1, 2007, between Transurban DRIVe USA LLC (the “Transurban Member”) and the Trustee.
10. Membership Interest Pledge Agreement, dated as of December 1, 2007, between Fluor Enterprises, Inc. (the “Fluor Member”) and the Trustee.
11. Equity Funding Agreement, dated as of December 20, 2007, by and among Transurban Member, the Borrower, the Trustee and the Pre-Issuance Hedging Banks (as defined in such Equity Funding Agreement).
12. Fluor Equity Funding Agreement, dated as of December 20, 2007, by and among Fluor Member, the Borrower, the Trustee and the Pre-Issuance Hedging Banks.
13. Equity Funding Guaranty, dated as of December 20, 2007, by and among Transurban Holdings Limited, Transurban International Limited, and Transurban Infrastructure Management Limited, collectively as the Guarantor, the Borrower, the Trustee, the Virginia Department of Transportation (the “Department”) and the Pre-Issuance Hedging Banks.

14. Equity Funding Guaranty, dated as of December 20, 2007, by and among Fluor Corporation, as the Guarantor, the Borrower, the Trustee, the Department and the Pre-Issuance Hedging Banks.

15. VDOT Consent to Collateral Assignment, dated as of December 20, 2007, by and among the Department, the Borrower, and the Trustee.

EXHIBIT H-2

LIST OF NEXT PROJECT FINANCING AGREEMENTS

EXHIBIT I
NEXT DESIGN-BUILD CONTRACT

[See attached]

EXHIBIT J-1

ORIGINAL COMPLETION GUARANTY

[See attached]

EXHIBIT J-2

NEXT COMPLETION GUARANTY

[See attached]

EXHIBIT K

TOLL MOU

[See attached]

EXHIBIT L

PERMIT FEE

1. Concessionaire Responsibilities and Department Rights

- 1.1. On or before April 30 of each calendar year following the Initial Service Commencement Date through fiscal year 2022 and thereafter on or before October 31 of each fiscal year and continuing until the October 31 of the fiscal year immediately succeeding the year in which the end of the Term, or the termination of the Agreement, the Concessionaire shall provide to the Department:
 - (a) a calculation of the actual Total Return on Investment (“TRI”) as at that calendar year end or fiscal year end, as applicable;
 - (b) a reconciliation of Permit Fees paid during the year and the required Permit Fees payable based upon the actual nominal TRI throughout the year; and
 - (c) the Concessionaire’s audited calculation of the Permit Fee, together with all other data relevant to the calculation of the Permit Fee.
- 1.2. Note that prior to achieving the First Level Targeted Rate of Return as described below, Concessionaire’s responsibilities in this section still apply. In periods where no Permit Fee is payable Concessionaire is required to explicitly note this as part of 1.1 ii).
- 1.3. The Permit Fee will be payable by the Concessionaire to the Department, *pari passu* with other Operating Costs, to be deposited in accordance with Section 5.3 of the Second ARCA.
- 1.4. The Department shall have the right to dispute the Concessionaire’s calculation of the Permit Fee or to request additional information, clarification or amendment of such calculation, at any time for a period of one year following the submission of the audit and other data referenced above. The Concessionaire shall deliver to the Department such information, clarification or amendment within 30 days following the delivery of the Department’s request. If the Department does not agree with the calculation of the Permit Fee, the dispute shall be resolved according to the dispute resolution procedures of Section 17.06 of the ARCA.

2. Targeted Rate of Return Levels

- 2.1. The First Level Targeted Rate of Return shall be treated as having been achieved if during a calendar year or fiscal year, as applicable, nominal TRI equals the Base Case First Level Targeted Rate of Return;
- 2.2. The Second Level Targeted Rate of Return shall be treated as having been achieved if during a calendar year or fiscal year, as applicable, nominal TRI equals the Base Case Second Level Targeted Rate of Return; and
- 2.3. The Third Level Targeted Rate of Return shall be treated as having been achieved if during a calendar year or fiscal year, as applicable, nominal TRI equals the Base Case Third Level Targeted Rate of Return.

3. Calculation of Permit Fees

- 3.1. If, as of the end of any calendar year or fiscal year, as applicable, the Project shall have achieved the First Level Targeted Rate of Return as of such date, the Concessionaire shall pay to the Department, as a Permit Fee, an amount equal to 5% of the aggregate Revenues received by or on

behalf of the Concessionaire during such calendar year or fiscal year, as applicable, in excess of such portion of such Revenues that resulted in the Concessionaire achieving the First Level Targeted Rate of Return (but excluding (1) any such Revenues that may have resulted in the Concessionaire achieving a return in excess of the Second Level Targeted Rate of Return and (2) any such Revenues that were paid to the Department as Transit and Corridor Investment Payments and an Excess Sharing Amount).

- 3.2. If, as of the end of any calendar year or fiscal year, as applicable, the Project shall have achieved the Second Level Targeted Rate of Return as of such date, the Concessionaire shall pay to the Department, as a Permit Fee, an amount equal to 15% of the aggregate Revenues received by or on behalf of the Concessionaire during such calendar year or fiscal year, as applicable, in excess of such portion of such Revenues that resulted in the Concessionaire achieving the Second Level Targeted Rate of Return (but excluding (1) any such Revenues that may have resulted in the Concessionaire achieving a return in excess of the Third Level Targeted Rate of Return and (2) any such Revenues that were paid to the Department as Transit and Corridor Investment Payments and an Excess Sharing Amount).
- 3.3. If, as of the end of any calendar year or fiscal year, as applicable, the Project shall have achieved the Third Level Targeted Rate of Return as of such date, the Concessionaire shall pay to the Department, as a Permit Fee, an amount equal to 30% of the aggregate Revenues received by or on behalf of the Concessionaire during such calendar year or fiscal year, as applicable, in excess of such portion of such Revenues that resulted in the Concessionaire achieving the Third Level Targeted Rate of Return (but excluding any such Revenues that were paid to the Department as Transit and Corridor Investment Payments and an Excess Sharing Amount).
- 3.4. At the request of either party from time to time (but not more than once per year), the Concessionaire and the Department will discuss in good faith possible adjustments to the Operating Costs, using the federal Contract Cost Principles and Procedures, 48 C.F.R. 31.205, as non-binding guidance to ensure that only reasonable and customary costs are included as Operating Costs.

4. Example of the Permit Fee Calculations

4.1. Calculation of the first Permit Fee Payable

The amounts payable on or before April 30th following the first calendar year end or October 31st following the first fiscal year end, as applicable, in which the First Level Targeted Rate of Return is breached are shown as follows:

$$\text{First Year Permit fee payable} = \{ [A - B - C] \times 5\% \} \times \{ [1 + D\%]^{E/365} \}$$

Where:

A = Total Gross Revenue for the full calendar year or fiscal year, as applicable

B = Total Gross Revenue accumulated from the beginning of the calendar year or fiscal year, as applicable, to the end of the calendar quarter during which the First Level Targeted Rate of Return was breached

C = Transit and Corridor Investment Payments and Excess Sharing Amounts paid to the Department for the period from the end of the calendar quarter during which the First Level Targeted Rate of Return was breached, to the end of the full calendar year or fiscal year, as applicable

D = calculated average annual earnings rate on the Project Enhancement Fund.

E = the number of days after the calendar year end or fiscal year end, as applicable, before the payment is made, understanding that payment is required by 30th April or 31st October, as applicable.

4.2. Subsequent Permit Fee Payments

(a) Concessionaire Requirements

Within 30 days following the close of any quarter within any calendar year or fiscal year, as applicable, following the calendar year or fiscal year, as applicable, in which the First Level Targeted Rate of Return was breached, the Concessionaire shall remit to the Department an amount equal to the Permit Fee for such immediately preceding calendar quarter based on the sharing percentage as calculated in the most recent audited calendar year end or fiscal year end, as applicable, Permit Fee calculation submitted by Concessionaire and agreed by the Department.

(b) Quarterly Permit Fees

The amounts payable shall be calculated based on the following formula:

$$\text{Quarterly Permit Fee payable} = (A - B) \times C$$

Where:

A = Total Gross Revenues for the preceding quarter

B = Transit and Corridor Investment Payments and Excess Sharing Amounts paid to the Department for the preceding quarter

C = the Permit Fee sharing percentage as determined in the most recent audited Permit Fee calculation provided by the Concessionaire and agreed by the Department.

(c) Second Level Target Rate of Return Permit Fee Calculation

If the audited TRI calculation as submitted to the Department by the Concessionaire shows that during the preceding calendar year or fiscal year, as applicable, the nominal TRI breached the Second Level Target Rate of Return, then the Concessionaire shall identify the amounts payable to the Department within a reconciliation of the amounts payable and amounts paid as required in Section 1 of this Exhibit L.

The calculation of such amount is shown as below:

$$\text{Total Required Permit Fee} = \{[A - B - C] \times 15\% \} + \{[B - D] \times 5\% \}$$

$$\text{Total Paid Permit Fee} = (A - E) \times 5\%$$

$$\text{Amounts due} = \{ \text{Total Required PF} - \text{Total Paid PF} \} \times \{ [1 + F\%]^{G/365} \}$$

Where:

A = Total Gross Revenue for the full calendar year or fiscal year, as applicable,

B = Total Gross Revenue accumulated from the beginning of the calendar year or fiscal year, as applicable, to the end of the calendar quarter during which the Second Level Target Rate of Return was breached

C = Transit and Corridor Investment Payments and Excess Sharing Amounts paid to the Department for the period from the end of the calendar quarter during which the Second Level Targeted Rate of Return was breached, to the end of the full calendar year or fiscal year, as applicable

D = Transit and Corridor Investment Payments and Excess Sharing Amounts paid to the Department for the period from the beginning of the calendar year or fiscal year, as applicable, to the end of the calendar quarter during which the Second Level Target Rate of Return was breached

E = Transit and Corridor Investment Payments and Excess Sharing Amounts paid to the Department for the full calendar year or fiscal year, as applicable

F = calculated average annual earnings rate on the Project Enhancement Fund.

G = the number of days after the calendar year end or fiscal year end, as applicable, before the payment is made, understanding that payment is required by 30th April or 31st October, as applicable.

(d) Third Level Target Rate of Return Permit Fee Calculation

If the audited TRI calculation as submitted to the Department by the Concessionaire shows that during the preceding calendar year or fiscal year, as applicable, the nominal TRI breached the Third Level Target Rate of Return, then the Concessionaire shall identify the amounts payable to the Department within a reconciliation of the amounts payable and amounts paid as required in Section 1 of this Exhibit L.

The calculation of such amount is shown as below:

$$\text{Total Required Permit Fee} = \{[A - B - C] \times 30\% \} + \{[B - D] \times 15\% \}$$

$$\text{Total Paid Permit Fee} = (A - E) \times 15\%$$

$$\text{Amounts due} = \{ \text{Total Required PF} - \text{Total Paid PF} \} \times \{ [1 + F\%]^{G/365} \}$$

Where:

A = Total Gross Revenue for the full calendar year or fiscal year, as applicable,

B = Total Gross Revenue accumulated from the beginning of the calendar year or fiscal year, as applicable, to the end of the calendar quarter during which the Third Level Target Rate of Return was reached

C = Transit and Corridor Investment Payments and Excess Sharing Amounts paid to the Department for the period from the end of the calendar quarter during which the Third Level Targeted Rate of Return was breached, to the end of the full calendar year or fiscal year, as applicable

D = Transit and Corridor Investment Payments and Excess Sharing Amounts paid to the Department for the period from the beginning of the calendar year or fiscal year, as

applicable, to the end of the calendar quarter during which the Third Level Target Rate of Return was breached

E = Transit and Corridor Investment Payments and Excess Sharing Amounts paid to the Department for the full calendar year or fiscal year, as applicable

F = calculated average annual earnings rate on the Project Enhancement Fund.

G = the number of days after the calendar year end or fiscal year end, as applicable, before the payment is made, understanding that payment is required by 30th April or 31st October, as applicable.

(e) Additional Total Invested Project Funds

If additional Total Invested Project Funds are invested in the Project during a quarter the calculation of the Permit Fee payable on in each calendar quarter shall continue as described in 4.2 b), noting that all amounts paid and payable are reconciled annually in the audited calculation of the Permit Fee.

For illustrative purposes refer to the following example.

If additional Total Invested Project Funds are invested during the year causing the nominal TRI to fall from the Third Level Rate of Return to the Second Level Rate of Return then the Concessionaire shall identify the amounts payable to the Department within a reconciliation of the amounts payable and amounts paid as required in Section 1 of this Exhibit L.

The calculation of such amount is shown as below:

$$\text{Total Required Permit Fee} = \{[A - B - C] \times 15\% \} + \{[B - D] \times 30\% \}$$

$$\text{Total Paid Permit Fee} = (A - E) \times 30\%$$

$$\text{Amounts due or payable} = \{ \text{Total Required PF} - \text{Total Paid PF} \} \times \{ [1 + F\%]^{G/365} \}$$

Where:

A = Total Gross Revenue for the full calendar year or fiscal year, as applicable,

B = Total Gross Revenue accumulated from the beginning of the calendar year or fiscal year, as applicable, to the end of the calendar quarter during which the nominal TRI fell below Third Level Target Rate of Return as a result of additional Total Invested Project Funds.

C = Transit and Corridor Investment Payments and Excess Sharing Amounts paid to the Department for the period from the end of the calendar quarter during which the nominal TRI fell below Third Level Target Rate of Return as a result of additional Total Invested Project Funds, to the end of the full calendar year or fiscal year, as applicable

D = Transit and Corridor Investment Payments and Excess Sharing Amounts paid to the Department for the period from the beginning of the calendar year or fiscal year, as applicable, to the end of the calendar quarter during which the nominal TRI fell below Third Level Target Rate of Return as a result of additional Total Invested Project Funds

E = Transit and Corridor Investment Payments and Excess Sharing Amounts paid to the Department for the full calendar year or fiscal year, as applicable

F = the rate of interest assumed on funds payable by the Concessionaire shall be the average annual earnings rate on the Project Enhancement Fund while the rate of interest assumed on funds payable by the Department shall be floating 6 month LIBOR minus 50 basis points.

G = the number of days after the calendar year end or fiscal year end, as applicable, before the payment is made, understanding that payment is required by 30th April or 31st October, as applicable.

The investment of additional Total Invested Project Funds shall not entitle Concessionaire or any issuer of such funds to any reimbursement of Permit Fees deposited into the Project Enhancement fund at any time prior to the date of such additional funds.

5. Payment of Permit Fees

Payment of the First Permit Fee

- 5.1. In the first year in which a Permit Fee becomes payable, as a result of the First Level Rate of Return being achieved, the Concessionaire shall submit to the Department, along with the requirements of section 1 of this Exhibit L, and no later than April 30 or October 31, as applicable, following the calendar year end or fiscal year end, as applicable, of the year in which the First Level Rate of Return has been achieved, the Permit Fee payable by Concessionaire to the Department together with interest, from January 1 or July 1, as applicable, of the then current calendar year or fiscal year, as applicable, to the date of payment, calculated at the average earnings rate on the Project Enhancement Fund during such period.

Payment of Subsequent Permit Fees

- 5.2. In each calendar year or fiscal year, as applicable, following the calendar year or fiscal year, as applicable, in which the Concessionaire first achieves the First Level Targeted Rate of Return, the Concessionaire shall remit to the Department within 30 days after the end of each calendar quarter an amount equal to the estimated Permit Fee for such immediately preceding calendar quarter.
- 5.3. The Permit Fee for each calendar quarter shall be based upon the total gross revenues for the preceding calendar quarter and a sharing percentage as calculated and audited at the most recent calendar year end or fiscal year end, as applicable.
- 5.4. On or before April 30 or October 31, as applicable, of the following year, promptly after the Concessionaire has calculated the Permit Fee, if any, for the preceding calendar year or fiscal year, as applicable, the Concessionaire shall pay to the Department any unpaid portion of the Permit Fee together with interest from January 1 or July 1, as applicable, of the current calendar year or fiscal year, as applicable, to the date of payment calculated at the average earnings rate on the Concession Payments Account during such period.
- 5.5. On or before April 30 of the following year, after the Concessionaire has delivered the requirements of 1.1 of this Exhibit L to the Department and in the event that the calculation and reconciliation results in an amount payable by the Department to the Concessionaire (as contemplated in Section 4.2(e)) then the Department shall reimburse to the Concessionaire amounts due together with interest from January 1 of the current year to the date of payment calculated at the average rate of floating 6 month LIBOR minus 50 basis points.

EXHIBIT M

DEPARTMENT REGULATORY APPROVALS

Department Regulatory Approvals, as defined in Exhibit A to the ARCA, are more particularly described below.

- (a) With respect to the Original Project:
- (i) SEP-14 approval from the FHWA for the Project:
- Special Experimental Project 14 (SEP-14) – FHWA approval received on April 22, 2005
- (ii) Any approvals necessary to obtain the Record of Decision or a Finding of No Significant impact from FHWA, as part of the environmental review process:
- Final Environmental Assessment: Section 4(f) Evaluation: I-95/I-395/I-495 Interchange Improvement Study – FHWA approval received on September 23, 1994
 - Final Environmental Impact Statement issued by FHWA and the Department on April 28, 2006
 - Record of Decision (ROD) – FHWA approval received on June 29, 2006
 - Re-evaluation of the Capital Beltway Study – accepted by FHWA on May 9, 2007
 - Capital Beltway HOT Lanes Interchange Justification Report supporting the 2007 Reevaluation – approved on December 20, 2007
 - Reevaluation of the Capital Beltway Study NEPA (National Environmental Policy Act) Decision at the Dulles Interchange – dated November 25, 2009 and accepted by FHWA on November 25, 2009
 - Capital Beltway / Dulles Interchange – Interchange Justification Report supporting the 2009 NEPA Re-evaluation – approved by FHWA on December 15, 2009
- (iii) Adoption of the Project within the CLRP, the TIP and Air Quality Conformity Analysis from the Transportation Planning Board:
- 2006 Constrained Long Range Plan (CLRP) – National Capital Region Transportation Planning Board (TPB) approved October 18, 2006
 - FY2007-2012 Transportation Improvement Program (TIP) - National Capital Region Transportation Planning Board (TPB) approved October 18, 2006, amendment approved March 21, 2007
 - Air Quality Conformity Determination - National Capital Region Transportation Planning Board (TPB) approved on October 18, 2006.
- (iv) FHWA approval of the STIP:

VDOT UPC 56356 (Flyover) – STIP amendment approved by FHWA on December 17, 2007, contingent upon Metropolitan Planning Organization (MPO) concurrence

VDOT UPC 68805 (I-495 HOT Lanes) – STIP amendment to change preliminary engineering costs and add right of way and construction approval was approved by FHWA on December 17, 2007, contingent upon MPO concurrence

VDOT UPC 84742 (Pavement and Rehab) – STIP amendment approved by FHWA on December 17, 2007, contingent upon MPO concurrence

VDOT UPC 87396 (Congestion Management Plan) – In STIP

VDOT UPC 14682 (Springfield Interchange Phase VIII) – In STIP, and preliminary engineering and construction authorized by FHWA on September 6, 2007

(v) Toll Agreement:

- FHWA approved on December 12, 2007.

(vi) Approval by the CTB of the funding for the Project included in the SYIP:

- Commonwealth Transportation Board (CTB) resolution approving the FY2008 SYIP with Capital Beltway (Route 495) HOT Lanes Projects (UPC 68805, 14682, 56356, 87396, and 84742) along with Transportation Partnership Opportunity Fund (TPOF) appropriation

(b) With respect to the NEXT Project:

(i) Approvals necessary to obtain a NEPA decision and/or NEPA Reevaluation concurrence from FHWA, as part of the environmental review process (the “NEXT NEPA Documents”):

- Environmental Assessment: I-495 Express Lanes Northern Extension (NEXT) – FHWA approval received on February 24, 2020
- Section 106 No Adverse Effect Concurrence: I-495 NEXT – signature provided by National Park Service on April 29, 2020
- Section 4(f) Temporary Occupancy and *De Minimis* Impact Determination Concurrence: I-495 NEXT – signature provided by National Park Service on May 6, 2021
- Section 4(f) Temporary Occupancy and *De Minimis* Impact Determination Concurrence: I-495 NEXT – signature provided by Fairfax County Park Authority on May 17, 2021
- Revised Environmental Assessment: I-495 NEXT – VDOT dated May 2021
- Finding of No Significant Impact: I-495 NEXT – issued by FHWA on June 29, 2021
- I-495 NEXT Interchange Justification Report supporting the 2021 Revised Environmental Assessment – approved by FHWA on June 14, 2021, and any required addenda.

- (ii) Anticipated Future Approvals:
 - Categorical Exclusion for NPS / VA DCR for land use conversion of Section 6(f) property at SRNP and replacement land
- (iii) GWMP Work Approvals by April 1, 2022
- (iv) Adoption of the I-495 NEXT Project within the CLRP, the TIP, and Air Quality Conformity Analysis from the Transportation Planning Board:
 - 2018 CLRP (Visualize 2045) – National Capital Region Transportation Planning Board (TPB) approved on October 17, 2018
 - 2020 Conformity Analysis Amendment to CLRP (Visualize 2045) – National Capital Region Transportation Planning Board (TPB) approved on March 18, 2020
- (v) FHWA approval of the STIP:
 - **VDOT UPC 113414 (I-495 NEXT)** – 2021 – 2024 STIP approved September 30, 2020.
 - **VDOT UPC 115401, VDOT UPC 116754** – Anticipated 2021.
- (vi) Toll Memorandum of Understanding:
 - FHWA approved on June 29, 2021
- (vii) Agreements between Virginia Department of Transportation (VDOT) and Maryland State Highway Administration (MDSHA):
 - Signing Agreement for installation, removal, and relocation of signs and ancillary equipment along I-495 in Maryland – anticipated approval by December 2022
- (viii) Approval by the CTB of the funding for the Project included in the SYIP:
 - Commonwealth Transportation Board (CTB) resolution(s) approving the FY2020 SYIP with I-495 NEXT:
 - VDOT UPC 113414 – for NEPA Document and pre-Financial Close costs.
 - VDOT UPC 116754 – for I-495 NEXT Oversight, post Financial Close, combined with TMP.
 - VDOT UPC 115401 – for budget/reporting reasons ONLY, with overall project cost.

EXHIBIT N

TECHNICAL REQUIREMENTS

[Exhibit N-1, Exhibit N-2 and Exhibit N-3]

[See attached]

EXHIBIT O-1

INITIAL BASELINE SCHEDULE

[See attached]

EXHIBIT O-2

INITIAL NEXT BASELINE SCHEDULE

To be attached in accordance with the terms of the Agreement.

EXHIBIT P
FORMAT OF BASELINE REPORT

[See attached]

EXHIBIT Q

VDOT FUNDING AGREEMENT

This VDOT Funding Agreement (this "Agreement"), dated as of December 19, 2007, is entered into by and among the VIRGINIA DEPARTMENT OF TRANSPORTATION, an agency of the Commonwealth of Virginia (the "Department"); FLUOR-LANE LLC, a Delaware limited liability company (the "Design-Build Contractor"); CAPITAL BELTWAY EXPRESS, LLC, a Delaware limited liability company (the "Concessionaire"); and WELLS FARGO BANK, N.A., a national banking association (the "Trustee").

WITNESSETH:

WHEREAS, the Concessionaire and the Department have entered into an Amended and Restated Comprehensive Agreement dated as of December 19, 2007 (the "ARCA"), which sets out the parties' respective rights and obligations with respect to the Route 495 HOT Lanes in Virginia Project (as defined in the ARCA and referred to as the "Project" in this Agreement);

WHEREAS, the Concessionaire and the Design-Build Contractor have entered into a Turnkey Lump-Sum Design-Build Contract for the Route 495 HOT Lanes in Virginia Project dated as of December 18, 2007 (the "Design-Build Contract") providing for the design, turnkey engineering, procurement, construction, testing and related services for the Project on a lump sum, fixed price basis in accordance with the terms and conditions specified therein;

WHEREAS, pursuant to and subject to the conditions set forth in Section 7.02 of the ARCA, the Department has agreed to provide to the Design-Build Contractor payments aggregating \$408,895,554, as financial support for the development, design, construction and start-up of certain portions of the Project as specified by Section 7.02 (a) and (b) of the ARCA (the "VDOT Work");

WHEREAS, it is the sole purpose of this Agreement to provide the mechanism by which the Department shall provide such payments, specifically by way of: (i) the deposit of the applicable funds to the VDOT Funding Account (as hereafter defined), by the Department, and (ii) the disbursement of funds from such Account to make progress payments to the Design-Build Contractor for the VDOT Work; and

WHEREAS, the Trustee and Capital Beltway Funding Corporation of Virginia, LLC, a Virginia nonstock, nonprofit corporation (the "Issuer"), have entered into a Master Indenture of Trust dated as of December 1, 2007 (the "Indenture") to, among other things, authorize the issuance and sale of bonds by the Issuer from time to time for the purpose of making loans to the Concessionaire to finance a portion of the cost of development, design, construction and start-up of the Project.

For and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Department, the Design-Build Contractor, the Concessionaire, and the Trustee agree as follows:

1. Definitions.

All capitalized terms used but not otherwise defined herein shall have the respective meanings given to such terms in the ARCA or, if not defined therein, in the Indenture. As used herein, the following terms have the following meanings:

- (a) "VDOT Funding" means the payments made by the Department, in the amounts and on

the dates set forth to Section 7.02 (c) of the ARCA, which payments shall be made to the Trustee in accordance with this Agreement.

(b) “VDOT Funding Account” means the VDOT Funding Account maintained by the Trustee in the name of the Department pursuant to the Indenture.

(c) “VDOT Work” means the Work described in Section 7.02 (a) and (b) of the ARCA that is performed by the Design-Build Contractor.

2. VDOT Deposits.

2.1 Subject to the terms and conditions of the ARCA, the Department agrees to pay the VDOT Funding to the Trustee for deposit in the VDOT Funding Account (collectively, the “VDOT Deposits”) in the amounts and on the dates set forth in Section 7.02 (c) of the ARCA. For the payments in Section 7.02(c), such amounts are due and payable subject to Virginia General Assembly appropriation pursuant to Section 20.18 of the ARCA, but not subject to federal appropriation.

2.2 Funds on deposit (including earnings thereon) in the VDOT Funding Account shall constitute property of the Department until disbursed to the Design-Build Contractor in accordance with this Agreement or returned to the Department in accordance with this Section or Section 3.4 of this Agreement. In the event that the ARCA is terminated prior to disbursement, the funds remaining in the VDOT Funding Account shall be paid to the Department by the Trustee. The VDOT Funding Account shall not constitute part of the Trust Estate (as defined in the Indenture).

2.3 Any interest, gain or other amount of income earned on the VDOT Deposits shall become part of, and be held as an additional portion of, the VDOT Funding Account, but shall remain the exclusive property of the Department, subject to disbursement to the Design-Build Contractor under this Agreement. The parties hereto agree that VDOT shall be treated as the owner of the VDOT Funding Account for tax purposes unless and until disbursed to the Design-Build Contractor in accordance with this Agreement, and that all interest on or other taxable income, if any, earned from the investment of the VDOT Deposits shall be treated for tax purposes as income of VDOT. To effectuate this agreement, the Trustee shall file with the Internal Revenue Service and issue to VDOT appropriate Treasury Form 1099 reflecting such earnings for each calendar year from the investment of the VDOT Deposit.

3. Disbursements from VDOT Funding Account.

3.1 The VDOT Deposits (including earnings thereon) shall be available for disbursement by the Trustee to the Design-Build Contractor to pay for reasonable and auditable costs of the VDOT Work, based on percentage completion of the VDOT Work, subject to the terms and provisions of the Design-Build Contract and this Agreement. All such funds shall be disbursed solely upon a requisition signed and presented by a Concessionaire Representative and the Independent Engineer to pay for costs that are eligible for reimbursement.

3.2 The Concessionaire and the Design-Build Contractor shall maintain, and shall allow the Department, FHWA and its representatives to audit and inspect, upon the Department’s request, all books and records relevant to the verification and audit of such costs, in accordance with Section 18.07 of the ARCA. All such costs must be eligible for reimbursement from federal-aid funds from FHWA.

3.3 In the event that, at any given time, the amount in the VDOT Funding Account exceeds the then remaining cost of VDOT Work as verified by the Independent Engineer, then the Concessionaire may direct the Trustee, upon submission of written notice to the Trustee and the Department, to transfer from

the VDOT Funding Account to the Construction Fund the lesser of: (i) the sum of the prior, unreimbursed payments by the Concessionaire for VDOT Work (which payments shall be deemed to have been made by the Concessionaire to the Design-Build Contractor on the Department's behalf); or (ii) the amount of such excess then in the VDOT Funding Account. The Concessionaire may thereafter obtain disbursements from the Construction Fund for reimbursement of such payment in accordance with the terms of the Indenture.

3.4 Upon the Department's direction to the Trustee, the Trustee shall transfer any balance remaining in VDOT Funding Account (other than any portion then determined to be transferred to the Construction Fund in accordance with Section 3.3), following VDOT's Final Acceptance of the VDOT Work, to the Department or the Concession Payments Account.

3.5 The Design-Build Contractor certifies that the amounts received from the VDOT Funding Account as payments for construction services will be included as taxable income under the Design-Build Contractor's method of accounting.

4. VDOT Default.

4.1 In the event that the Department fails to make a deposit to the VDOT Funding Account as required by Section 2.1 (a "VDOT Default"), and the Trustee notifies the Concessionaire that amounts available in the VDOT Funding Account are insufficient to pay a requisition pursuant to Section 3.1 of this Agreement, as a direct and sole consequence of a VDOT Default, then the following terms and conditions shall apply:

4.1.1 Concessionaire shall deliver notice to the Department of the VDOT Default, within 5 days following the Trustee's notice that the funds in the VDOT Funding Account are insufficient to pay such requisition;

4.1.2 The Department shall be entitled to cure such VDOT Default, by depositing the lesser of the amount needed to pay the authorized disbursement from the VDOT Funding Account or the deficiency in the cumulative amount of the VDOT Funding Deposits then required by Section 7.02(c), within 30 days of its receipt of notice from the Concessionaire pursuant to Section 4.1.1; and

4.1.3 If the Department fails to timely cure such VDOT Default pursuant to Section 4.1.2, then the Design-Build Contractor shall be entitled: (A) to initiate legal proceedings against the Department for enforcement of the Department's obligations pursuant to Section 2.1 of this Agreement; and (B) to recover interest on the delinquent VDOT Deposit in accordance with Section 20.20 of the ARCA, which interest shall be deposited in satisfaction of, and in lieu of any payment otherwise due to the Concessionaire in connection with, such interest claim, by the Department in the VDOT Funding Account.

4.2 The remedies set forth in Section 4.1 constitute the sole and exclusive remedies available to the Concessionaire or the Design-Build Contractor due to a VDOT Default. The Department shall not otherwise be liable under this Agreement or the ARCA for indirect, direct, incidental or consequential damages of any nature, whether arising in contract, tort (including negligence) or other legal theory.

5. Miscellaneous.

5.1 All notices, certificates or other communications hereunder shall be in writing and shall be deemed sufficiently given when mailed by certified or registered mail, postage prepaid, addressed as follows:

If to the Department:

Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Engineer
Facsimile: (804) 786-2940

With copies to:

Office of the Attorney General
900 E. Main Street
Richmond, VA 23219
Attention: Chief Transportation Section
Facsimile: (804) 786-9136

If to the Design-Build Contractor:

Fluor-Lane LLC
c/o Fluor Corporation
100 Fluor Daniel Drive
Greenville, SC 29607
Attention: Mr. Herb Morgan, Vice President of Operations
Telephone: 803-330-5215
Fax: 803-560-9381

With copies to:

Fluor Corporation
100 Fluor Daniel Drive
Greenville, SC 29607
Attention: Richard A. Fierce, Managing General Counsel
Telephone: 864-281-8096
Fax: 864-281-6868

and

The President
Capital Beltway Express LLC
565 5th Avenue, 18th Floor
New York, NY, 10017
Phone: 646-278-0870
Facsimile: 646-278-0839

5.2 Nothing contained in this Agreement shall be deemed to modify, increase or enlarge the obligations of the Department beyond those set forth in the ARCA. In the event of any inconsistency between the ARCA and this Agreement, the provisions of the ARCA shall prevail. This Agreement shall inure to the benefit of and shall be binding upon the Department, the Design-Build Contractor, the Concessionaire and the Trustee and their respective successors and assigns; provided, however, that notwithstanding any other provision hereof, the Design-Build Contractor shall have no more rights

hereunder than the Concessionaire has with respect to the matters addressed herein, including without limitation VDOT Funds and amounts in the VDOT Funding Account, under the ARCA.

5.3 In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

5.4 This Agreement shall be governed by and construed and interpreted in accordance with the law of the Commonwealth of Virginia.

5.5 This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Department, the Design-Build Contractor; the Concessionaire and the Trustee have executed this Agreement as of the date first above written.

**VIRGINIA DEPARTMENT OF
TRANSPORTATION**

By: _____
Title:

FLUOR-LANE LLC

By: _____
Title:

CAPITAL BELTWAY EXPRESS, LLC

By: _____
Title:

WELLS FARGO BANK, N.A., as Trustee

By: _____
Title:

EXHIBIT R

EPD ESCROW AGREEMENT

This **FIRST AMENDED AND RESTATED ESCROW AGREEMENT** (“Escrow Agreement”) is made and entered into as of September 30, 2021 (the “Effective Date”) by and among the **VIRGINIA DEPARTMENT OF TRANSPORTATION** (the “Department”), an agency of the Commonwealth of Virginia, **CAPITAL BELTWAY EXPRESS LLC**, a Delaware limited liability company (the “Concessionaire”), and **TRUIST BANK**, a North Carolina banking corporation (successor in interest to SunTrust Bank), as escrow agent hereunder (the “Escrow Agent”) (the Department, the Concessionaire and the Escrow Agent are herein referred to collectively as the “Parties”).

RECITALS

WHEREAS, the Department, Fluor Enterprises, Inc., a California corporation, and Transurban (USA), Inc., a Delaware corporation, entered into a Comprehensive Agreement to Develop, Design, Finance, Construct, Maintain and Operate the Route 495 HOT Lanes in Virginia, dated April 28, 2005 (the “Original Comprehensive Agreement”), pursuant to which the Department granted a permit to an affiliate of Concessionaire which includes (i) the right and obligation to develop, design, finance, construct, operate and maintain the 495 Hot Lanes Project, and (ii) the right to establish, impose, charge, collect, use and enforce payment of tolls and related charges;

WHEREAS, on December 19, 2007, the Department and the Concessionaire entered into an Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project; on April 30, 2014, the Department and the Concessionaire entered into Amendment No. 1 to the Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project; on December 15, 2014, the Department and the Concessionaire entered into Amendment No. 2 to the Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project; on or about January 2018, the Department and the Concessionaire entered into Amendment No. 3 to the Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project; and on January 29, 2019, the Department and the Concessionaire entered into Amendment No. 4 to the Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project, which has been supplemented and amended from time to time (as further supplemented and amended from time to time, the “First ARCA”);

WHEREAS, on September 30, 2021, the Department and the Concessionaire entered into a Second Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project (the “Second ARCA”), which added the NEXT Project to the Original Project (collectively referred to hereafter as the “Project”);

WHEREAS, under the Second ARCA, the Department has granted a permit to the Concessionaire, which includes (i) the right and obligation to develop, design, finance, construct, operate, and maintain the Project and (ii) from and after the applicable Service Commencement Date and until the end of the term of the Second ARCA, the right to manage, operate, maintain, improve and equip the Project;

WHEREAS, pursuant to Section 18.05 of the Second ARCA, (a) Concessionaire has submitted to the Department and the Escrow Agent is holding in escrow as of the date hereof the Original Design-Build EPDs and the Original Financing EPDs; and (b) Concessionaire is required to submit to the Department the NEXT Design-Build EPDs and the NEXT Financing EPDs to be held in escrow by the Escrow Agent (the

Original Design-Build EPDs and NEXT Design-Build EPDs being collectively, the “Design-Build EPDs”, the Original Financing EPDs and NEXT Financing EPDs being collectively, the “Financing EPDs”, and the Design-Build EPDs and Financing EPDs being collectively, the “EPDs”);

WHEREAS, pursuant to Section 18.05(e)(iv) of the Second ARCA, the Concessionaire is required to submit to the Department any Base Case Financial Model Updates (collectively, the “Revised Financial Models”);

WHEREAS, pursuant to Section 18.06 of the Second ARCA, the Concessionaire is required to establish an escrow for Concessionaire and its contractors and subcontractors to deposit their respective Source Code and all related documentation, including all relevant commentary and explanations and other documentation, as well as instructions to compile such Source Code and all modifications, additions, or substitutions made to such Source Code related documentation (the “Source Code Materials” and, together with the EPDs and the Revised Financial Models, the “Escrow Materials”);

WHEREAS, the Parties now desire to amend and restate that certain Escrow Agreement dated December 19, 2007 by and between the Department, Concessionaire, and Escrow Agent to account for the execution of the Second ARCA.

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

ARTICLE 1.

DEFINITIONS AND ORDER OF PRECEDENCE

Section 1.01 Definitions

All capitalized terms used in this Escrow Agreement, but not otherwise defined herein, shall have the respective meanings given to such terms in the Second ARCA; provided, however, that the Parties acknowledge that the Escrow Agent is not a party to the Second ARCA and has no obligations beyond this Escrow Agreement.

Section 1.02 Order of Precedence

In the event of any conflict, ambiguity or inconsistency between the provisions of the Second ARCA and the provisions of this Escrow Agreement, the provisions of this Escrow Agreement shall prevail. This Escrow Agreement constitutes the entire agreement between the Parties in connection with the subject matter of this Escrow Agreement, and no other agreement entered into between the Parties, including, without limitation, the Second ARCA, shall be considered as adopted or binding, in whole or in part, upon the Escrow Agent notwithstanding that any such other agreement may be deposited with the Escrow Agent or the Escrow Agent may have knowledge thereof.

Section 1.03 No Effect on Second ARCA

Nothing in this Escrow Agreement amends or modifies any of the Concessionaire’s or the Department’s obligations and rights under the Second ARCA.

ARTICLE 2.

ESCROW ARRANGEMENTS

Section 2.01 Appointment of Escrow Agent

The Concessionaire and the Department hereby appoint the Escrow Agent to serve as escrow agent hereunder, and the Escrow Agent hereby accepts such appointment, subject to the terms and conditions set forth in this Escrow Agreement. The Escrow Agent shall hold, manage, provide access to and dispose of the Escrow Materials in accordance with the terms hereof.

Section 2.02 Deposit of EPDs

(a) In accordance with Section 18.05 of the Second ARCA, the Department shall deliver and deposit with the Escrow Agent the Escrow Materials in the same sealed containers in which the Concessionaire delivered the Escrow Materials to the Department, which containers shall not have been opened or the contents thereof altered or modified in any way by the Department or any other person. The Escrow Agent shall provide to each Party written acknowledgment of the receipt of the Escrow Materials, and any additional Escrow Materials deposited with the Escrow Agent from time-to-time, promptly upon receipt thereof. The Escrow Agent is not required to take notice of the Escrow Materials or the contents thereof, which the Escrow Agent shall hold only for custodial purposes.

(b) In accordance with Section 18.05 of the Second ARCA, promptly upon or simultaneous with Escrow Agent's receipt of the Escrowed Materials, the Department shall schedule a mutually convenient time with the Escrow Agent during normal business hours to perform a review the contents of the Escrowed Materials in the presence of the Concessionaire, during which the Escrowed Materials will be examined, organized, and inventoried by representatives of the Department, assisted by members of the Concessionaire's staff who are knowledgeable in how the EPDs were prepared.

(c) Within seven days after an update has not been challenged or any such challenge has been resolved, the Concessionaire shall deliver and deposit with the Escrow Agent the Revised Financial Models for inclusion as part of the Financing EPDs. The Escrow Agent shall provide each Party written acknowledgement of the receipt of the Revised Financial Models, and any subsequent additions or modifications to the Revised Financial Models, promptly upon receipt thereof. The Escrow Agent is not required to take notice of the Revised Financial Models or the contents thereof, which the Escrow Agent shall hold only for escrow purposes.

(d) At any time before or after the applicable Service Commencement Date, the Concessionaire and all of its relevant contractors or subcontractors (each, a "Source Code Owner") shall or shall have deliver(ed) and deposit(ed) with the Escrow Agent any Source Code Materials and any modifications, additions, or substitutions made to such Source Code Material. The Escrow Agent shall provide written acknowledgement of the receipt of the Source Code Materials to the Source Code Owner (with a copy of such acknowledgement to Concessionaire and the Department), and any subsequent additions or modifications to the Source Code Materials, promptly upon receipt thereof. The Escrow Agent is not required to take notice of the Source Code Materials or the contents thereof, which the Escrow Agent shall hold only for escrow purposes.

(e) Upon delivering any Escrow Materials to the Escrow Agent, the delivering Party shall designate whether the Escrow Materials are Design-Build EPDs, Financing EPDs, Revised Financial Models, or Source Code Materials. The Escrow Agent shall not be required to review any of the Escrow Materials delivered to it and shall be entitled to conclusively rely upon without inquiry the designation assigned to such Escrow Materials by the delivering Party.

Section 2.03 Ownership; Use and Review of EPDs

(a) The Parties hereby acknowledge and agree that the EPDs and the Revised Financial Models are, and shall always be, the property of the Concessionaire. The Escrow Agent shall provide prompt access to the EPDs and the Revised Financial Models upon receipt by it of a written notice requesting such access signed by the Department and the Concessionaire together with the certificate of the Department or the Concessionaire referred to below in this Section 2.03(a). The Escrow Agent shall not permit access to the EPDs and the Revised Financial Models to any person other than duly authorized representatives of the Department and the Concessionaire. Such authorized representatives of the Concessionaire and the Department shall be entitled to conduct joint examinations and reviews of the EPDs and the Revised Financial Models (excepting that where Department certifies to Escrow Agent that (a) Department has provided notice to Concessionaire of its intention to conduct the subject examination; and (b) Concessionaire refuses to be present or to cooperate in any other way with respect to such examination, the Department shall be granted access to review any EPDs and/or Revised Financial Models without the Concessionaire being present) in accordance with the provisions set forth in Section 18.05(g) of the Second ARCA. As a condition to allowing access to the EPDs and the Revised Financial Models to any person, the Escrow Agent shall be entitled to receive and to conclusively rely upon without inquiry, as applicable, (i) a certificate of the Concessionaire that such person is an authorized representative of the Concessionaire and is entitled to access to the EPDs and the Revised Financial Models pursuant to this Escrow Agreement and the Second, or (ii) a certificate from the Department that such person is a duly authorized representative of the Department and is entitled to access to the EPDs and the Revised Financial Models pursuant to this Escrow Agreement.

(b) The Escrow Agent shall not use the Source Code or permit access to the Source Code Materials to any person other than duly authorized representatives of the appropriate Source Code Owner. As a condition to allowing access to any Source Code Materials to any person, the Escrow Agent shall be entitled to receive and to conclusively rely upon without inquiry a certificate of the applicable Source Code Owner that such person is a duly authorized representative of such Source Code Owner and is entitled to access to such Source Code Materials pursuant to this Escrow Agreement. As a condition to allowing access to any Source Code Materials to the Department, the Escrow Agent shall be entitled to receive and to conclusively rely upon without inquiry a certificate of the Department that (a) the Department is permitted to access such Source Code Materials pursuant to Section 18.06(a) of the Second ARCA; and (b) such person is a duly authorized representative of the Department and is otherwise entitled to access to such Source Code Materials pursuant to this Escrow Agreement.

Section 2.04 Release and Return of Escrow Materials.

(a) The Escrow Agent shall hold the Escrow Materials in its possession at its offices in Richmond, Virginia until directed to deliver such Escrow Materials upon receipt of a written certification delivered pursuant to Section 2.04(b), (c) or (d) below whereupon the Escrow Agent shall deliver the appropriate EPDs and Revised Financial Models, and Source Code Materials, to the Concessionaire or the Source Code Materials to the applicable Source Code Owner, as appropriate.

(b) The Escrow Agent shall release the NEXT Design-Build EPDs to the Concessionaire upon receipt by the Escrow Agent of a certification from the Concessionaire and the Department stating that the NEXT Project has achieved NEXT Final Completion, final payment has been made to the NEXT Design-Build Contractor, and all claims or disputes arising under or related to the NEXT Design-Build Contract have been fully and finally resolved and/or adjudicated.

(c) The Escrow Agent shall release the Financing EPDs and Revised Financials Models to the Concessionaire upon receipt by the Escrow Agent of a certification from the Concessionaire and the

Department stating that the Second ARCA has been terminated in accordance with the provisions thereof and all claims or disputes arising under or related to the Second ARCA have been fully and finally resolved and/or adjudicated.

(d) The Escrow Agent shall release the Source Code Documentation to the applicable Source Code Owner upon receipt by the Escrow Agent of a certification from the Concessionaire and the Department stating that the Second ARCA has terminated in accordance with the provisions thereof and all claims or disputes arising under or related to the Second ARCA have been fully and finally resolved and/or adjudicated.

Section 2.05 Termination

This Escrow Agreement shall continue in effect and shall automatically terminate at such time as the last of the Escrow Materials are released to the Concessionaire or Source Code Owner as provided in Section 2.04 hereof. It is agreed and understood that in the event of disagreement between the Parties hereto or any of the Source Code Owners, the Escrow Agent will, and does, reserve the right to hold the Escrow Materials in its possession, and all papers in connection with or concerning this escrow, until mutual agreement has been reached between the Parties and the Source Code Owners, as applicable, or until delivery thereof is ordered pursuant to a final disposition reached pursuant to the dispute resolution provisions of Section 17.06 of the Second ARCA and the Escrow Agent shall not be or become liable in any way or to any Party, any Source Code Owner or any other person or entity for its continuing to hold the Escrow Materials and all other such papers in its possession until receipt of such mutual agreement of the Parties and the Source Code Owners, as applicable, or such final disposition.

ARTICLE 3.

ESCROW AGENT

Section 3.01 Liability of Escrow Agent

The Escrow Agent undertakes to perform only those duties that are expressly set forth in this Escrow Agreement, and the Parties hereto acknowledge that these duties are purely ministerial in nature. The Escrow Agent shall have no responsibility to any person in connection with this Escrow Agreement except as specifically provided herein and shall not be responsible for anything done or omitted to be done by it except for its own gross negligence or willful default in the performance of any obligation imposed on it hereunder. Unless specifically provided herein, the Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of the other Parties with respect to arrangements or contracts with others, the Escrow Agent's sole duty hereunder being to safeguard the Escrow Materials and to dispose of and deliver the same in accordance with this Escrow Agreement. No provision of this Escrow Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement. In no event shall the Escrow Agent be liable for incidental, indirect, special, consequential, or punitive damages of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. If the Escrow Agent is called upon by the terms of this Escrow Agreement to determine the occurrence of any event or contingency, the Escrow Agent may request from the other Parties or any other person such reasonable additional evidence as the Escrow Agent in its discretion may deem necessary to determine any fact relating to the occurrence of such event or contingency, and in this connection may inquire and consult with the other Parties, among others, at any time. The permissive rights of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties. In carrying out its duties and obligations under the terms of this Escrow

Agreement, the Escrow Agent shall be protected in acting upon any written instruction, notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which the Escrow Agent in good faith believes to be genuine and what it purports to be, including, but not limited to, items requesting or authorizing release, disbursement or retainage of the subject matter of this Escrow Agreement and items amending the terms of the Escrow Agreement. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through affiliates or agents. The Escrow Agent shall not be obligated to take any legal action or to commence any proceedings in connection with this Escrow Agreement or any property held hereunder or to appear in, prosecute or defend in any such legal action or proceedings. The Escrow Agent may request an opinion of counsel for a determination of any legal issue which might arise in the performance of its duties hereunder and such opinion of counsel shall be full and complete authorization for any action taken, suffered or omitted by the Escrow Agent in reliance thereon and the Concessionaire shall pay the reasonable fees and expenses of such counsel. This Escrow Agreement sets forth exclusively the duties of the Escrow Agent with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into this Escrow Agreement against the Escrow Agent. The Escrow Agent shall in no event be deemed to be a fiduciary to any Party or any other person or entity under this Escrow Agreement.

Section 3.02 Payment of Escrow Agent; Indemnity

(a) The Escrow Agent acknowledges receipt of good and valuable consideration for the services rendered or to be rendered by it pursuant to this Escrow Agreement. The Concessionaire shall pay the Escrow Agent's reasonable fees and expenses in connection with the performance of its duties under this Escrow Agreement. The annual administrative fee is \$2,500, and shall be payable at signing by the Concessionaire or within 30 days of receipt of an invoice from the Escrow Agent. The Escrow Agent and the Concessionaire acknowledge and agree that the Department shall have no liability in respect of any fees or expenses of the Escrow Agent. The provisions of this section shall survive the termination of this Escrow Agreement and any resignation or removal of the Escrow Agent.

(b) The Concessionaire agrees to indemnify, defend, and hold harmless the Escrow Agent and each of the Escrow Agent's officers, directors, agents and employees (the "Indemnified Parties") from and against any and all losses, liabilities, claims, damages, expenses and costs (including, without limitation, attorneys' fees and expenses and the fees and expenses of enforcing the terms of this Escrow Agreement including the indemnifications provided herein) of every nature whatsoever (collectively, "Losses") whether brought by any Party hereto or third party which any such Indemnified Party may incur and which arise directly or indirectly from this Escrow Agreement or which arise directly or indirectly by virtue of the Escrow Agent's undertaking to serve as Escrow Agent hereunder; provided, however, that no Indemnified Party shall be entitled to indemnity with respect to Losses that have been finally adjudicated by a court of competent jurisdiction to have been directly caused by such Indemnified Party's gross negligence or willful misconduct. The provisions of this section shall survive the termination of this Escrow Agreement and any resignation or removal of the Escrow Agent.

Section 3.03 Resignation and Replacement of Escrow Agent

The Escrow Agent may resign, and thereby become discharged from the duties and obligations hereby created, by written notice given to the Department and the Concessionaire, not less than 15 days before such resignation shall take effect. Such resignation shall take effect immediately, however, upon the earlier appointment of a new Escrow Agent hereunder and acceptance of the duties hereunder. The Escrow Agent shall continue to serve as Escrow Agent until a successor is appointed and the Escrow Materials have been properly transferred to the successor Escrow Agent. In the event of the resignation of the Escrow Agent prior to the expiration of this Escrow Agreement, the Escrow Agent shall rebate to the Concessionaire a ratable portion of any prepaid fee theretofore paid by the Concessionaire to the Escrow Agent for its

services hereunder. After any notice of resignation of the Escrow Agent, the Concessionaire shall undertake to appoint a replacement Escrow Agent on terms reasonably acceptable to the Concessionaire and the Department.

ARTICLE 4.

GENERAL PROVISIONS

Section 4.01 Address for Notices

(a) Whenever under the provisions of this Escrow Agreement it will be necessary or desirable for one Party to serve any approval, notice, request, demand, report or other communication on another Party, the same will be in writing and will not be effective for any purpose unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by E-mail transmission, or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Department:

Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Engineer
Facsimile: (804) 786-2940

Email:

With copies to:

Office of the Attorney General
900 E. Main Street
Richmond, VA 23219
Attention: Chief Transportation Section
Facsimile: (804) 786-9136

If to the Concessionaire:

Secretary
Capital Beltway Express LLC
6440 General Green Way
Alexandria, VA 22312
Phone: (571)-620-7954
Facsimile: (571) 419-6101
Email: LWilliams@transurban.com

If to the Escrow Agent:

Truist Bank
919 East Main Street, 2nd Floor
Richmond, Virginia 23219

Attention: Escrow Services
Phone: (804) 782-7087
Email: Charles.Henderson@truist.com

(b) Any Party may, from time to time, by notice in writing served upon the other Parties as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally will be deemed delivered upon receipt, if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by facsimile transmission will be deemed delivered on the date of receipt as shown on the received facsimile (provided, that the original is thereafter delivered as aforesaid); provided, however, that notwithstanding anything to the contrary herein provided, the Escrow Agent shall not be deemed to have received any demand, notice, approval, or other communication hereunder prior to the Escrow Agent's actual receipt thereof.

Section 4.02 Successors and Assigns

This Escrow Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and permitted assigns. Except as hereinafter provided, neither this Escrow Agreement nor any rights or obligations hereunder may be assigned by any Party without the express written consent of each of the other Parties. The Department and the Escrow Agent hereby consent to the collateral assignment (the "Assignment") of this Escrow Agreement in whole by the Concessionaire to the Collateral Agent as security for the performance of the Concessionaire's obligations under the Project Financing Agreements. Pursuant to the Assignment, the Collateral Agent and its designee or assignee shall have the right to assume the benefits and obligations of the Concessionaire under this Escrow Agreement. In the event that the Collateral Agent or such designee or assignee exercise such right by notice to the Escrow Agent, as of the date of such assumption of benefits and obligations of the Concessionaire hereunder, the Collateral Agent may, in connection with any default under any Project Financing Agreement, assign any rights assigned to it hereunder to any other entity. However, the Escrow Agent shall have no obligation in performing this Escrow Agreement to recognize any successor or assign of the Concessionaire unless the Escrow Agent receives clear, authoritative and conclusive written evidence of the change of Party together with a written assumption of the obligations of the Concessionaire by the successor or assign in form and substance reasonably acceptable to the Escrow Agent and any information requested by the Escrow Agent with respect to the successor or assign to enable the Escrow Agent to satisfy the requirements of the customer identification program under the USA PATRIOT Act.

Section 4.03 Counterparts

This Escrow Agreement may be executed in several counterparts (including in electronic .pdf format) each of which shall be an original and all of which together shall constitute one and the same instrument.

Section 4.04 Waiver

Any term of this Escrow Agreement may be waived by the Party entitled to the benefits thereof, provided that any such waiver must be in writing and signed by the Party against whom the enforcement of the waiver is sought. No waiver of any condition, or breach of any provision of this Escrow Agreement, in any one or more instances, shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed the waiver of that right or remedy.

Section 4.05 Benefit of Agreement; Amendments

(a) This Escrow Agreement is made for the benefit of the Concessionaire and the Department, and, with respect to the Source Code Materials, for the benefit of each Source Code Owner, except as otherwise expressly provided herein.

(b) This Escrow Agreement shall not be amended without the prior written consent of the Concessionaire, the Department, and the Escrow Agent.

Section 4.06 Severability

In the event any one or more of the provisions contained in this Escrow Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Escrow Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 4.07 Prior Contracts Superseded

This Escrow Agreement constitutes the sole agreement of the Parties hereto with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the Parties respecting such subject matter and no other agreement entered into between the other Parties or either of them with any other person or entity, including, without limitation, the Second ARCA, shall be considered as adopted or binding, in whole or in part, upon the Escrow Agent notwithstanding that any such other agreement may be deposited with the Escrow Agent or the Escrow Agent may have knowledge thereof.

Section 4.08 Effect of Breach

Without prejudice to any rights a Party may otherwise have, a breach of this Escrow Agreement shall not of itself give rise to a right to terminate the Second ARCA.

Section 4.09 No Third-Party Beneficiaries

Nothing contained in this Escrow Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward, any person or entity that is not a Party.

Section 4.10 No Partnership

Nothing contained in this Escrow Agreement shall be deemed to constitute a partnership between the Parties hereto. None of the Parties shall hold itself out contrary to the terms of this Section 4.10.

Section 4.11 Governing Law

This Escrow Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia applicable to contracts executed and to be performed within the State, without regard for conflict of laws principles. Venue for any legal action arising out of this Escrow Agreement shall lie in the Circuit Court in the City of Richmond, Virginia, Division I.

Section 4.12 Certificate of Incumbency

Contemporaneously with the execution and delivery of this Escrow Agreement and, if necessary, from time to time thereafter, each of the parties hereto (other than the Escrow Agent) shall execute and deliver to the Escrow Agent a Certificate of Incumbency substantially in the form of Exhibit A hereto (a “Certificate of Incumbency”), for the purpose of establishing the identity and authority of persons entitled to issue notices, instructions or directions to the Escrow Agent on behalf of each such party. Until such time as the Escrow Agent shall receive an amended Certificate of Incumbency replacing any Certificate of Incumbency theretofore delivered to the Escrow Agent, the Escrow Agent shall be fully protected in relying, without further inquiry, on the most recent Certificate of Incumbency furnished to the Escrow Agent. Whenever this Escrow Agreement provides for joint written notices, joint written instructions or other joint actions to be delivered to the Escrow Agent, the Escrow Agent shall be fully protected in relying, without further inquiry, on any joint written notice, instructions or action executed by persons named in such Certificate of Incumbency.

IN WITNESS WHEREOF, the Parties have caused this First Amended and Restated Escrow Agreement to be executed by their duly authorized representatives as of the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION
an agency of the Commonwealth of Virginia

By: _____
Name:
Title:

CAPITAL BELTWAY EXPRESS LLC
a Delaware limited liability company

By: _____
Name:
Title:

TRUIST BANK,
a North Carolina banking corporation

By: _____
Name:
Title:

[Signature Page to Escrow Agreement]

EXHIBIT A

Certificate of Incumbency

(List of Authorized Representatives)

Client Name: VIRGINIA DEPARTMENT OF TRANSPORTATION

As an Authorized Officer of the above referenced entity, I hereby certify that each person listed below is an authorized signor for such entity, and that the title and signature appearing beside each name is true and correct.

Name	Title	Signature	Phone Number(s)	Email Address

IN WITNESS WHEREOF, this certificate has been executed by a duly authorized officer on:

_____.
Date

By: _____

Name: _____

Its: _____

EXHIBIT A

Certificate of Incumbency
(List of Authorized Representatives)

Client Name: CAPITAL BELTWAY EXPRESS LLC

As an Authorized Officer of the above referenced entity, I hereby certify that each person listed below is an authorized signor for such entity, and that the title and signature appearing beside each name is true and correct.

Name	Title	Signature	Phone Number(s)	Email Address

IN WITNESS WHEREOF, this certificate has been executed by a duly authorized officer on:

_____.
Date

By: _____

Name: _____

Its: _____

EXHIBIT S-1

AUTHORIZED DEPARTMENT REPRESENTATIVES

The persons responsible for the positions within the Virginia Department of Transportation listed below, any of whom may act, are the Authorized Representatives of the Virginia Department of Transportation, an Agency of the Commonwealth of Virginia, as indicated under the Amended and Restated Comprehensive Agreement Relating To The Route 495 HOT Lanes In Virginia Project, dated December 19, 2007 (the "Agreement").

<u>Position</u>	<u>Current Incumbent</u>	<u>Current Contact Information</u>
Chief Engineer	Barton A. Thrasher, P.E.	Virginia Department of Transportation 1401 East Broad Street Richmond, VA 23219 Phone: (804) 786-4798 Facsimile: (804) 786-2940

The current incumbent is listed for convenience only. Each of the persons in the above named positions shall serve in such capacities until his or her successor has been appointed. This designation may be updated at any time, as evidenced by the signature of the Commonwealth Transportation Commissioner and upon written notification to the Concessionaire. Upon proper delivery, any such updated designation will supersede any earlier designation of authorized representatives for the Agreement.

EXHIBIT S-2

AUTHORIZED CONCESSIONAIRE REPRESENTATIVES

The person responsible for the position(s) within Capital Beltway Express listed below, any of whom may act, is an Authorized Representative of the Concessionaire, as indicated under the Amended and Restated Comprehensive Agreement Relating To The Route 495 HOT Lanes In Virginia Project, dated December 19, 2007 (the "Agreement").

<u>Position</u>	<u>Current Incumbent</u>	<u>Current Contact Information</u>
Vice President, Operations	Amanda J. Baxter	Capital Beltway Express 7900 Westpark Drive Suite T500 Tysons, VA 22102 Phone: (571) 527-9155 Email: abaxter@transurban.com

The current incumbent is listed for convenience only. Each of the persons in the above named positions shall serve in such capacities until his or her successor has been appointed. This designation may be updated at any time, as evidenced by the signature of the President of the Concessionaire and upon written notification to the Department. Upon proper delivery, any such updated designation will supersede any earlier designation of authorized representatives for the Agreement.

EXHIBIT T
NON-COMPLIANCE POINTS

Non-Compliance Point Categories. Each Concessionaire breach will be classified in one of three categories and assessed points as follows:

Category	Cure Periods	Assessment of Non-Compliance Points
A	Cure period shall be deemed to start upon the date the Concessionaire first obtained knowledge of, or first reasonably should have known of, the breach or failure. For this purpose the Concessionaire shall be deemed to first obtain knowledge of the breach or failure not later than the date of delivery of the initial notice to the Concessionaire, as described in <u>§ 8.16(a)</u> of the Agreement.	Provided that the breach or failure is not cured, Non-Compliance Points shall first be assessed at the end of the first cure period, and shall be assessed again at the end of each subsequent cure period, as described in <u>§ 8.16</u> of the Agreement.
B	Cure period shall be deemed to start from the date on which the breach or failure occurred, whether or not an initial notice has been delivered to the Concessionaire, as described in <u>§ 8.16(a)</u> of the Agreement	Non-Compliance Points shall first be assessed on the date of the initial notification under <u>§ 8.16</u> of the Agreement (the start of the first cure period). Provided that the breach or failure is not then cured, Non-Compliance Points shall be assessed again at the end of the first and each subsequent cure period.
C	No Cure Period applicable	Non-Compliance Points shall be assessed on the date of the initial notification under <u>§ 8.16</u> of the Agreement.

Total Point Trigger Levels. Non-Compliance Points will accumulate and upon reaching certain thresholds, the Department will be granted certain rights as follows:

Total Cumulative Number of Uncured Points	Total Cumulative Number of Cured and Uncured Points	Implications
30	135	Increased Monitoring by the Department
45	200	Remediation Plan to be submitted to the Department
68	245	VDOT may exercise its rights under § 17.01 of the Agreement

Non-Compliance Points are measured on a 365-day rolling period.

	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
1a	Tolling	Transactions	Exhibit N – § 4.6	The Concessionaire transmits duplicate transactions or incorrect toll amounts to the Customer Service Center (to be determined on a per transmission basis).	C	None	5
1b	Tolling	Transactions	Exhibit N – § 4.6	Upon notification of a duplicate transaction or an incorrect toll amount on a per transmissions basis, the Concessionaire fails to reconcile or audit the data transmission within one Business Day to identify any and all other duplicate transactions or incorrect toll charges that may have occurred (to be determined on a per transmission basis). Upon identification, the Concessionaire does not transmit the correct information to the customer service center for rectification including appropriate correspondence and crediting/debiting of accounts within five days.	A	3 day	5

	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
2	Tolling	Cross-Reads	Exhibit N – § 4.6	Concessionaire transmits tag reads to the Customer Service Center from vehicles traveling in the GP. Following receipt of two or more complaints within 30 days emanating from a single toll point Concessionaire shall investigate claims of tag reads from GP lanes and in the event that a cross-read occurred, or reasonable doubt exists as to whether a cross-read occurred, Concessionaire shall prepare correspondence that can be sent to all customers who have made such a complaint regarding the erroneous GP reads within 15 days of receipt of such second complaint within a 30 day period . The Concessionaire shall provide information to the public outlining the issue with reads from tags in the GP lanes within 15 days of the receipt of such second complaint within a 30 day period.	C	None	5
3b	Tolling		Exhibit N – § 4.6	<p>Within seven days of receiving notice that an incorrect toll amount has been charged (and provided that customer information has been provided) and that the incorrect charge has been validated, the Concessionaire fails to provide the customer service center correspondence to be sent to the customer informing the customer that his or her account will be credited for errors in excess of \$0.25 (to be determined on a per transmission basis).</p> <p>Upon receiving notice that an incorrect toll has been charged, the Concessionaire fails to submit a plan to the Department for approval to rectify the billing problem.</p>	B	7 days	5

	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
3c	Tolling	Signage	Exhibit N – § 4.6	Upon notification of the display of an incorrect toll amount, the Concessionaire fails to reconcile or audit the data transmission within one Business Day to identify any and all other customer accounts that may have been impacted by the incorrect signage (to be determined on a per transmission basis).	A	3 day	5
4	Tolling	Privacy	Exhibit N	The Concessionaire fails to comply with standards applicable to the retention of and use of customer records pursuant to applicable Law, including § 33.1-56.4 of the Code of Virginia.	C	None	5
5	Tolling	Transactions	Exhibit N 4.6.3(1)	The Concessionaire requests payment from an account not on the list of current active tags transmitted by the Department (to be determined on a per transmission basis).	C	None	5
6	Communications	Public Information	Exhibit N 2.1.1	The Concessionaire issues information to the public or in press releases whether through variable message signs or other means that is factually incorrect.	C	None	5
7a	Customer Service		Exhibit N	The Concessionaire fails to respond within seven days to customer inquiries and complaints about the HOT lanes where contact details of customers have been provided no matter whether the complaint is received directly from customers, the customer service center, or from the Department.	A	2 days	5
8	Communications	Public Information	Exhibit N - 2.1.4	The Concessionaire's does not regularly include in its marketing and public relations materials information about how HOV users can access the facility and the HOV information is not approved by the Department prior to its public release.	A	7 days	5

	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
9	Project Management	Project Plans	Exhibit N	The Concessionaire fails to produce, review, and, if necessary, update the following plans during the Operating Period in accordance with the Agreement including but not limited: (1) the Concessionaire Management Plan; (2) the Hazardous Substances Management Plan; (3) the Communication, Public Outreach, and Community Education Plan; (4) the Life Cycle Maintenance Plan; and (5) the Operation and Maintenance Plan.	A	30 days	5
11	Operations	Incident Management	Exhibit N – § 4.3	The Concessionaire fails to achieve an incident response time that complies with the Law.	C	None	
14	Operations	Information Sharing	Exhibit N – § 4	The Concessionaire fails to transmit the following to the Department’s Northern Virginia Public Safety Traffic Operations Center: (1) incident management data; (2) real time speed and volume data for the HOT Lanes; and (3) streaming video from CCTV cameras with a view of the HOT Lanes. The minimum refresh rates for such data transmissions shall be developed pursuant to the Joint Operating and Maintenance Protocols (Exhibit E to the ARCA), as may be mutually updated by the parties from time to time.	A	5 days	5
15	Operations	Systems Control	Exhibit N	The Concessionaire fails to relinquish control to the Department of nominated ITS field devices within 10 minutes of receiving such a request from an Authorized Officer of the Department in the prescribed manner in accordance with the ARCA.	B	10 minutes	5

	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
17	Operations	Work Zone Management	Exhibit N	The Concessionaire fails to meet requirements of I&IM 241 relative to work zone safety, management, Maintenance of Traffic and diversion routes for regular maintenance during operations.	B	60 minutes	5
18	Inspections	Qualification of Inspectors	Exhibit N – § 4.1.1	The Concessionaire fails to have all inspectors certified pursuant to the Department’s Standards and Specifications.	A	14 days	5
19	Inspections	Quality of Inspection	Exhibit N – § 4.1	The Concessionaire fails to identify material defects in the inspection reports, life cycle maintenance plan, or work currently undertaken.	C	None	5
20	Inspections	Quality of Inspection	Exhibit N – § 4.1	The Concessionaire fails to include identified material defects in the next Life Cycle Maintenance Plan and/or the Operations and Maintenance Plan.	A	14 days	5
21a	Maintenance	Performance Requirements	Exhibit N – Attachment 4.4	The Concessionaire fails to meet the performance requirements for each asset as defined in Attachment 4.4 as measured in cycles adopted in the industry for each asset.	A	30 days	5
21b	Maintenance	Performance Requirements	Exhibit N – Attachment 4.4	The Concessionaire fails to act in accordance with Exhibit N - Attachment 4.4 with regard to responding to safety hazard issues.	A	Stated timeline requirements	5

	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
22	Level of Service	Degradation of the facility		<p>The Concessionaire fails to appropriately manage the dynamic tolling mechanism to ensure the level of service of the HOT Lanes Project does not become degraded as required by Law</p> <p>In addition and to be measured separately, upon receiving notice of a problem with the dynamic tolling mechanism, the Concessionaire fails to submit a rectification plan to the Department for approval.</p>	B	7 days	5
23	ARCA Obligations	Discrimination	ARCA § 11.01	The Concessionaire is found to have engaged in discriminatory employment practices which violate state and/or federal law such practices or the Concessionaire admits to having engaged in such practices.	C	None	5
24	ARCA Obligations	Subcontracting	ARCA § 11.01	The Concessionaire fails to include provisions in all of its subcontracts requiring its subcontractors to refrain from discrimination as described in § 11.01 of ARCA.	C	None	5
25	ARCA Obligations	Subcontracting	ARCA § 11	The Concessionaire enters into a subcontract with any Person (as defined by the ARCA) debarred or prohibited from participating in state or federally-funded projects or any Person who has been indicted, convicted, pled guilty, or pled <i>non contendere</i> to a violation of any Law (as defined by the ARCA) involving fraud, conspiracy, collusion, bribery, or any other act showing a similar lack of moral or ethical integrity.	C	None	5

	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
26	ARCA Obligations	Subcontracting	ARCA § 11.02 (f)	The Concessionaire enters into a contract or subcontract with an Affiliate (as that term is defined by the ARCA) without providing notice and/or obtaining consent from the Department (to the extent that such notice and/or consent is required by the ARCA).	A	30 days	5
27	ARCA Obligation	Suspension of Tolls	ARCA § 4.06(a) and 4.06(b)	The Concessionaire fails to suspend tolls within 10 minutes of receipt of the Department's request which will be delivered in accordance with the ARCA by an Authorized VDOT officer in an agreed manner.	A	10 minutes	5
28	ARCA Obligation	Permit Fee	ARCA §5.04(c)	The Concessionaire fails to deliver audited calculations of the Permit Fee by April 30 of each year after First Level Targeted Rate of Return has been reached.	B	14 days	5
29	ARCA Obligations	Permit Fee	ARCA §5.04(e)	The Concessionaire fails to deliver requested additional information or clarifications to audited calculations within 30 days of receiving a request for such information from the Department.	B	14 days	5
30	ARCA Obligations	Updates to Financial Model	ARCA § 5.04	The Concessionaire fails to provide the Department with updated Financial Model within the following timeframes: (i) 120 days within the end of the calendar year; (ii) 60 days after the occurrence of a compensation event; (iii) 60 days after agreement for amendments to the Project; or (iv) concurrently with written notice of a proposed Refinancing.	B	7 days	5

	Heading	Sub-Heading	§ Reference	Breach or Failure	Category	Cure Period	Max Points
31	ARCA Obligations	Refinancing	ARCA § 6.06(a)	The Concessionaire fails to provide the Department with written notice of any proposed Refinancing at least 75 days prior to the proposed date of closing of the Refinancing along with supporting documents.	B	7 days	5
32	ARCA Obligations	O&M Contractor	ARCA § 8.04(b), (d)	The Concessionaire fails to seek approval from the Department before engaging an O&M Contractor <u>other than the initial O&M Contractor</u> identified in the Operations and Support Services Agreement as of the date of the Agreement.	B	7 days	5
33	ARCA Obligations	Maintenance Budget	ARCA § 8.05	The Concessionaire fails to file annually with the Department an annual budget in the required form at least 90 days prior to the start of each calendar year.	B	7 days	5
34	ARCA Obligations	Department Access and Inspection	ARCA § 10.02, § 18.07	The Concessionaire fails to provide financial or other records within 14 days after receiving a request for such records from the Department, the Independent Engineer, and/or FHWA.	B	3 days	5

EXHIBIT U-1

FORM OF DIRECT AGREEMENT

This **DIRECT AGREEMENT** (this “Agreement”) relates to the **SECOND AMENDED AND RESTATED COMPREHENSIVE AGREEMENT RELATING TO THE ROUTE 495 HOT LANES IN VIRGINIA PROJECT**, is dated [●], 20[●], and is among the VIRGINIA DEPARTMENT OF TRANSPORTATION (the “Department”), an agency of the Commonwealth of Virginia (the “State”), the address of which Department is 1401 East Broad Street, Richmond, Virginia 23219; CAPITAL BELTWAY EXPRESS LLC, a Delaware limited liability company (the “Concessionaire”) whose address is 6440 General Green Way, Alexandria, Virginia 22312; and [●], as agent for the Lenders in accordance with the terms of the Project Financing Agreements (the “Collateral Agent”), whose address is [●].

RECITALS

WHEREAS, the Department and the Concessionaire entered into a Second Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes Project (the “Project”), dated as of [●], 20[●] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Second ARCA”); and

WHEREAS, the provision of Concessionaire Debt to the Concessionaire is conditioned upon the Department providing the Lenders with certain assurances (as more particularly set forth in this Agreement) regarding the Lenders’ rights in the event of a default by the Concessionaire under the Second ARCA or the Project Financing Agreements.

AGREEMENT

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

ARTICLE 1.

DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

Section 1.01 Definitions

Capitalized terms used but not otherwise defined in this Agreement have the respective meanings set forth in Exhibit A to the Second ARCA. In addition, the following terms have the meanings specified below:

Bankruptcy Related Default means a Concessionaire Default that arises pursuant to Section 17.01(e) or (f) of the Second ARCA.

Collateral Agent Notice has the meaning given to it in Section 2.02(d)(i).

Combined Project Financing Agreements means the Initial Project Financing Agreements and the NEXT Project Financing Agreements.

Cure Period means the period commencing on the date that the Collateral Agent receives a Department Notice pursuant to Section 2.02(a) and ending on the earliest of:

- (a) the relevant Cure Period Completion Date;
- (b) any Step-out Date or Substitution Effective Date; or
- (c) the last day of the Term.

Cure Period Completion Date means, subject to Section 8.02:

(a) with respect to any Payment Default, the date falling 30 Days after the later of (i) the date that the Collateral Agent receives the relevant Department Notice, and (ii) the expiration of any applicable cure period granted to the Concessionaire pursuant to Section 17.01(b) of the Second ARCA;

(b) with respect to any Bankruptcy Related Default, the date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice;

(c) with respect to any Concessionaire Default not referred to in clauses (a) through (b) above, the date falling 90 Days after later of (i) the date that the relevant Department Notice is received by the Collateral Agent and (ii) expiration of any applicable cure period granted to the Concessionaire pursuant to Section 17.01 of the Second ARCA; provided, however, that such period will, at the request of the Collateral Agent, be extended up to a maximum of 60 additional Days, but only to the extent that:

(i) within the 90 Day period, the Collateral Agent and the Department (each acting reasonably) agree to a plan specifying the remedial action to be taken in respect of the relevant Concessionaire Default; and

(ii) the extension requested by the Collateral Agent represents (in the reasonable opinion of the Department) a reasonable period of time to remedy the relevant Concessionaire Default.

Department Notice has the meaning given to it in Section 2.02(a).

Designated Account means the [Concessionaire Damages Account] as defined in the [Collateral Agency and Account Agreement, dated as of [●], 20[●] (the “Collateral Agency Agreement”) between the Concessionaire and [●], as Collateral Agent, or such other account in accordance with the terms of the Collateral Agency Agreement.

Discharge Date means the date on which all of the obligations of the Concessionaire under the Combined Project Financing Agreements have been irrevocably discharged in full to the satisfaction of the Collateral Agent.

Equity Member means the Equity Member as of the date of this Agreement, which is Transurban Express Lanes LLC.

Event of Default has the meaning given to such term in the Combined Project Financing Agreements.

Initial Period means:

(a) with respect to any Payment Default, the date falling 30 Days after the later of (i) the date that the Collateral Agent received the relevant Department Notice and (ii) the expiration of any applicable cure period granted to the Concessionaire pursuant to the Second ARCA;

(b) with respect to any Bankruptcy Related Default, the date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice; and

(c) with respect to any Concessionaire Default not referred to in (a) or (b) above, the date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice;

in each case, as may be extended pursuant to Section 8.02.

Initial Project Financing Agreements has the meaning set forth in the Second ARCA, as the same may be amended or modified from time to time.

NEXT Project Financing Agreements has the meaning set forth in the Second ARCA, as the same may be amended or modified from time to time.

Payment Default means a Concessionaire Default that arises pursuant to Section 17.01(b) of the Second ARCA that has not been cured within a period of thirty (30) days of the Concessionaire receiving written notice from the Department of such Concessionaire Default.

Property means any right or interest in or to property of any kind whatsoever, whether real, personal, or mixed and whether tangible or intangible.

Qualified Substitute Concessionaire means a Person who:

(a) has the legal capacity, power and authority to become a party to, and perform the obligations of the Concessionaire under, the Second ARCA;

(b) has the resources available to it (including committed financial resources) to perform the obligations of the Concessionaire under the Second ARCA;

(c) employs or subcontracts with Persons having the appropriate qualifications, experience and technical competence available to it that are sufficient to enable it to perform the obligations of the Concessionaire under the Second ARCA; and

has not been:

(i) debarred or prohibited from participating in state or federally-funded projects;

(ii) indicted, convicted, pled guilty or nolo contendere to a violation of law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that show a similar lack of moral or ethical integrity; or

(iii) barred or prohibited from owning or operating the Project under law, including the Foreign Investment and National Security Act of 2007, 50 USC App. 2170 (HR 556).

[Revenue Account] has the meaning given to such term in the Collateral Agency Agreement.

Step-in Date has the meaning given to it in Section 4.01(c).

Step-in Entity has the meaning given to it in Section 4.01(b).

Step-in Entity Accession Agreement means the agreement to be entered into by a Step-in Entity pursuant to Section 4.01(c).

Step-in Notice has the meaning given to it in Section 4.01(a).

Step-in Period in relation to a Step-in Entity means the period from and including the Step-in Date until the earliest of:

- (a) the last day of the Cure Period;
- (b) the Substitution Effective Date;
- (c) the Step-out Date;
- (d) the date of termination of the Second ARCA by the Department in accordance with this Agreement and the Second ARCA; and
- (e) the last day of the Term.

Step-out Date in relation to a Step-in Entity means the date upon which any Step-out Notice is served by such Step-in Entity pursuant to Section 4.03.

Step-out Notice has the meaning given to it in Section 4.03(a).

Substitute has the meaning given to it in Section 5.01.

Substitute Accession Agreement means the agreement to be entered into by a Substitute pursuant to Section 6.01.

Substitution Effective Date has the meaning given to it in Section 6.01.

Substitution Notice has the meaning given to it in Section 5.01.

Section 1.02 Order of Precedence

In the event of any conflict, ambiguity or inconsistency between the provisions of the Second ARCA and the provisions of this Agreement, the provisions of this Agreement will prevail.

Section 1.03 No Effect on Second ARCA

Nothing in this Agreement amends or modifies any of the Concessionaire's obligations to the Department under the Second ARCA.

ARTICLE 2.
CONSENT TO SECURITY AND NOTICES

Section 2.01 Consent to Security

Notwithstanding anything to the contrary in the Second ARCA:

- (a) the Department acknowledges notice and receipt of and consents to:
 - (i) the assignment by the Concessionaire to the Collateral Agent of all of the Concessionaire's Interest pursuant to the Combined Project Financing Agreements; and
 - (ii) the grant by each of the Equity Members to the Collateral Agent of a security interest in their respective equity interests in the Concessionaire, in each case pursuant to the Combined Project Financing Agreements;
- (b) none of the security interests referred to in Section 2.01(a):
 - (i) constitute (or with the giving of notice or lapse of time, or both, could constitute) either a breach by the Concessionaire of its obligations under the Second ARCA or a Concessionaire Default; or
 - (ii) require any consent of the Department that is either additional or supplemental to those granted pursuant to this Section 2.01;
- (a) for the avoidance of doubt, the Collateral Agent will not, by virtue of the security interests referred to in Section 2.01(a), acquire any greater rights to the Concessionaire's Interest than the Concessionaire itself has at any particular time pursuant to the Second ARCA; and
- (b) for so long as any amount under the Combined Project Financing Agreements is outstanding, the Department will not, without the prior written consent of the Collateral Agent, consent to any assignment, transfer, pledge or hypothecation by the Concessionaire of the Second ARCA or any interest therein by the Concessionaire, other than as specified in this Agreement.

Section 2.02 Notice Requirements

- (a) The Department will give the Collateral Agent written notice (a "Department Notice") promptly upon becoming aware of the occurrence of any Concessionaire Default giving rise to the Department's right to terminate or give notice terminating the Second ARCA, and will specify in the Department Notice:
 - (i) the unperformed obligations of the Concessionaire under the Second ARCA of which the Department is aware (having made reasonable inquiry) and grounds for termination of the Second ARCA in sufficient detail to enable the Collateral Agent to assess the scope and amount of any liability of the Concessionaire resulting therefrom;
 - (ii) all amounts due and payable by the Concessionaire to the Department under the Second ARCA, if any, on or before the date of the Department Notice and which remain unpaid at such date and, by cross-reference to the applicable provision(s) of the Second ARCA, the nature of the Concessionaire's obligation to pay such amounts; and

(iii) the amount of any payments that the Department reasonably foresees will become due from the Concessionaire during the applicable Cure Period.

(b) The Department will update any Department Notice issued pursuant to Section 2.02(a) as and when it becomes aware of any unperformed obligations of the Concessionaire (including non-payment of amounts that have become due) under the Second ARCA that were not specified in the relevant Department Notice.

(c) For the avoidance of doubt, nothing in this Agreement will prevent multiple Department Notices running concurrently.

(d) The Collateral Agent will:

(i) promptly upon becoming aware of any Event of Default (whether or not a Department Notice has been served in connection with the same event) give the Department written notice (a “Collateral Agent Notice”);

(ii) specify in any Collateral Agent Notice the circumstances and nature of the Event of Default to which the Collateral Agent Notice relates; and

(iii) notify the Department of any decision to accelerate amounts outstanding under the Combined Project Financing Agreements or to exercise any enforcement remedies under the Combined Project Financing Agreements.

Section 2.03 Department Payments under the Second ARCA

(a) The Department will, unless directed otherwise by the Collateral Agent, deposit all amounts payable by it under the Second ARCA into the Revenue Account and the Concessionaire agrees that any payment made in accordance with this Section 2.03 will constitute a complete discharge of the Department’s relevant payment obligations under the Second ARCA.

(b) The Collateral Agent acknowledges that all of the Department’s payment obligations to the Concessionaire pursuant to the Second ARCA are subject to Section 20.18 of the Second ARCA.

ARTICLE 3. **RIGHTS AND OBLIGATIONS DURING THE CURE PERIOD**

Section 3.01 No Termination during the Cure Period

At any time during a Cure Period, the Department will not, subject to the terms of this Agreement:

(a) terminate or give notice terminating the Second ARCA for Concessionaire Default or exercise any rights under Section 17.02 (other than Sections 17.02(b) and 17.02(c)) of the Second ARCA; or

(b) take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of the Concessionaire or for the composition or readjustment of the Concessionaire’s debts, or any similar insolvency procedure in relation to the Concessionaire, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for the Concessionaire or for any part of the Concessionaire’s Property.

Section 3.02 Collateral Agent Rights

(a) At any time during an Event of Default (but, in the case of a Concessionaire Default, only for so long as the Initial Period has not expired), without giving a Step-in Notice, the Collateral Agent may (but shall have no obligation), at its sole option and discretion, perform or arrange for the performance of any act, duty, or obligation required of the Concessionaire under the Second ARCA, or remedy any breach of the Concessionaire thereunder at any time, which performance or remedy by or on behalf of the Collateral Agent will be accepted by the Department in lieu of performance by the Concessionaire and in satisfaction of the Concessionaire's obligations under the Second ARCA. To the extent that any breach of the Concessionaire under the Second ARCA is remedied and/or any payment liabilities or obligations of the Concessionaire are performed by the Collateral Agent under this Section 3.02(a), such action will discharge the relevant liabilities or obligations of the Concessionaire to the Department. No such performance by or on behalf of the Collateral Agent under this Section 3.02(a) will be construed as an assumption by the Collateral Agent, or any person acting on the Collateral Agent's behalf, of any of the covenants, agreements or other obligations of the Concessionaire under the Second ARCA.

- (b) At any time during a Cure Period or an Event of Default, the Collateral Agent may:
- (i) issue a Step-in Notice in accordance with the requirements of Section 4.01; or
 - (ii) issue a Substitution Notice in accordance with the requirements of Section 5.01.

ARTICLE 4. STEP-IN ARRANGEMENTS

Section 4.01 Step-in Notice

(a) Provided that all unperformed payment obligations of the Concessionaire identified in a Department Notice will have been remedied in full or waived by the Department on or before the Step-in Date, the Collateral Agent may provide the Department with a written notice ("Step-in Notice") under this Section 4.01 at any time during any Cure Period or Event of Default.

- (b) The Collateral Agent will nominate, in any Step-in Notice, any one of:
- (i) the Collateral Agent, a Lender or any of their respective Affiliates; or
 - (ii) any Person approved by the Department in its discretion, such approval not to be unreasonably withheld or delayed if such Person meets all the criteria to be a Qualified Substitute Concessionaire and the Department has been provided with the relevant information required under Section 5.03 with respect to such Person (it being understood that if the Department has failed to respond to the Collateral Agent within 60 days of the date on which the Department has received the information specified in Section 5.03 in respect of any such nominated Person, the approval of the Department shall be deemed to have been given), (each a "Step-in Entity"), stating that the Step-in Entity is to become a joint and several obligor with the Concessionaire under the Second ARCA and this Agreement in accordance with the terms hereof.

(c) The Step-in Entity named in the Step-in Notice will be deemed to become a party to the Second ARCA and this Agreement on and from the date it executes a duly completed Step-in Entity Accession Agreement, substantially in the form attached hereto as Annex 1 (Form of Step-in Entity Accession Agreement), and submits it to the Department (the "Step-in Date").

Section 4.02 Rights and Obligations on Step-in

(a) On and from the Step-in Date and during the Step-in Period, the Step-in Entity will be:

(i) jointly and severally entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to the Concessionaire under the Second ARCA and this Agreement;

(ii) entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Entity under this Agreement; and

(iii) jointly and severally liable with the Concessionaire for the payment of all sums due from the Concessionaire under or arising out of the Second ARCA at the Step-in Date and for the performance of all of the Concessionaire's obligations under or arising out of the Second ARCA on or after the Step-in Date.

(b) Without prejudice to Article 7 (Reinstatement of Remedies), during the Step-in Period:

(i) the Department undertakes:

A. not to terminate or give notice terminating the Second ARCA for Concessionaire Default or exercise any of its rights under Section 17.02 (other than Sections 17.02(b) and 17.02(c)) of the Second ARCA, unless:

(1) the grounds for termination or giving notice of termination or exercise of any of its rights under Section 17.02 (other than Sections 17.02(b) and 17.02(c)) of the Second ARCA arose during the Step-in Period; or

(2) the Step-in Entity fails to comply with the requirements of any plan agreed between the Department and the Collateral Agent in connection with the extension of the relevant Cure Period Completion Date; and

B. not to take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of the Concessionaire or for the composition or readjustment of the Concessionaire's debts, or any similar insolvency procedure in relation to the Concessionaire, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for the Concessionaire or for any part of the Concessionaire's Property;

C. not to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Concessionaire) under the Second ARCA, unless the grounds for suspension of performance arose during the Step-in Period; and

D. to continue to make payments required to be made to Concessionaire under the Second ARCA to the Designated Account and the Revenue Account.

(ii) the Department will owe its obligations under the Second ARCA and this Agreement to the Concessionaire and such Step-in Entity jointly; provided, however, that:

A. subject to Section 4.02(b)(ii)(B), the performance of such obligations by the Department in favor of either such Step-in Entity or the Concessionaire will be a good

and effective discharge of such obligations under this Agreement and the Second ARCA;
and

B. the Collateral Agent will be entitled at any time by notice in writing to the Department to direct (such direction being binding on the Collateral Agent, the Department and the Concessionaire) that, at all times thereafter while such Step-in Entity is deemed to be a party to the Second ARCA and this Agreement and subject to any further notice from the Collateral Agent, such Step-in Entity will be solely entitled to make any decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with the Department under the Second ARCA and this Agreement.

(c) The Concessionaire will not be relieved from any of its obligations under the Second ARCA, whether arising before or after the Step-in Date, by reason of the Step-in Entity becoming a party to the Second ARCA pursuant to a Step-in Entity Accession Agreement, except to the extent provided in Section 3.02(a) and Section 6.02(a).

Section 4.3 Step Out

(a) A Step-in Entity may, at any time, by giving not less than 30 Days' prior written notice ("Step-out Notice") to the Department, terminate its obligations to the Department under the Second ARCA and this Agreement, whereupon the Step-in Entity will, upon the expiry of such notice, no longer be deemed to be a party to the Second ARCA and this Agreement and, except as provided in Section 4.03(b), will be released from all obligations under the Second ARCA and this Agreement. The obligations of the Department to the Step-in Entity in such capacity under the Second ARCA and this Agreement will also terminate upon the expiry of such notice.

(b) Nothing in this Section 4.03 will have the effect of releasing the Step-in Entity from any liability that relates to the performance or non-performance of the Second ARCA or this Agreement by the Concessionaire or the Step-in Entity during the Step-in Period.

ARTICLE 5. SUBSTITUTION PROPOSALS

Section 5.01 Notice of Proposed Substitute

To the extent that the Collateral Agent or the Lenders at any time propose to require the Concessionaire to assign its rights and obligations under the Second ARCA and/or this Agreement to a Person (a "Substitute") designated by the Collateral Agent or the Lenders (whether by mutual agreement or enforcement of rights under the Combined Project Financing Agreements), the effectiveness of such assignment will be conditional upon:

(a) the Collateral Agent issuing a notice (a "Substitution Notice") to the Department requesting the prior approval of the proposed Substitute;

(b) the Department approving the identity of the proposed Substitute pursuant to Sections 5.02 or 5.04; and

(c) the proposed Substitute executing a Substitute Accession Agreement in accordance with Section 6.01.

Section 5.02 Grounds for Refusing Approval

The Department will only be entitled to withhold its approval to any proposed Substitute that is the subject of a Substitution Notice if:

- (a) the proposed Substitute is not a Qualified Substitute Concessionaire; or
- (b) subject to Section 6.04, there are outstanding breaches of the Second ARCA that have been previously notified by the Department to the Collateral Agent and have not, to the reasonable satisfaction of the Department, been remedied or waived prior to the date of the Substitution Notice; unless the Department has approved (such approval not to be unreasonably withheld or delayed) a plan specifying the remedial action that the Substitute will be required to take after the Substitution Effective Date in order to remedy each such breach.

Section 5.03 Provision of Information

The Collateral Agent will, as soon as practicable, provide to the Department such information in relation to the proposed Substitute and any Person who, it is proposed, will enter into a material subcontract with the proposed Substitute in relation to the Project, as the Department will reasonably require to enable it to reasonably determine whether the proposed Substitute is a Qualified Substitute Concessionaire, including:

- (a) the name and address of the proposed Substitute;
- (b) unless such proposed Substitute is a publicly-traded entity, the names of the proposed Substitute's shareholders or members and the share capital or partnership or membership interests, as the case may be, held by each of them;
- (c) the manner in which it is proposed to finance the proposed Substitute and the extent to which such financing is committed (to the extent relevant);
- (d) copies of the proposed Substitute's most recent financial statements (and if available, such financial statements will be for the last three financial years and audited), or in the case of a special purpose company, its opening balance sheet;
- (e) a copy of the proposed Substitute's organizational documents;
- (f) details of the resources available to the proposed Substitute and the proposed Substitute's appropriate qualifications, experience and technical competence available to the proposed Substitute to enable it to perform the obligations of the Concessionaire under the Second ARCA; and
- (g) the names of the proposed Substitute's directors and any key personnel who will have responsibility for the day-to-day management of its participation in the Project.

Section 5.04 Deemed Approval

If the Department has failed to respond to the Collateral Agent within 60 days of the date on which the Department has confirmed it has received the information specified in Section 5.03 in respect of any proposed Substitute, the approval of the Department will be deemed to have been given.

ARTICLE 6.
SUBSTITUTION

Section 6.01 Substitution Effective Date

If the Department approves (or is deemed to have approved) the identity of a proposed Substitute pursuant to Article 5, the Substitute will execute a duly completed Substitute Accession Agreement substantially in the form set out in Annex 2 to this Agreement and submit it to the Department (with a copy of it to the other parties to this Agreement). Such assignment will become effective on and from the date on which the Department countersigns the Substitute Accession Agreement or the date that is 10 days after the date the Department receives the completed Substitute Accession Agreement if the Department fails to countersign the Substitute Accession Agreement (the “Substitution Effective Date”).

Section 6.02 Effectiveness of Substitution

On and from the Substitution Effective Date:

(a) such Substitute will become a party to the Second ARCA and this Agreement in place of the Concessionaire who will be immediately released from its obligations arising under, and cease to be a party to, the Second ARCA and this Agreement from that Substitution Effective Date; and

(b) such Substitute will exercise and enjoy the rights and perform the obligations of the Concessionaire under the Second ARCA and this Agreement, and

(c) the Department shall owe its obligations (including, without limitation, any undischarged liability in respect of any loss or damage suffered or incurred by the Concessionaire prior to the Substitution Effective Date) under the Second ARCA and this Agreement to such Substitute in place of the Concessionaire and any Step-in Entity.

Section 6.03 Facilitation of Transfer

The Department will use its reasonable efforts to facilitate the transfer to the Substitute of the Concessionaire’s obligations under the Second ARCA and this Agreement.

Section 6.04 Settlement of Outstanding Financial Liabilities

(a) The Substitute will pay to the Department within 30 Days after the Substitution Effective Date any amount due from the Concessionaire to the Department under the Second ARCA and this Agreement as of the Substitution Effective Date (as notified by the Department to the Substitute reasonably in advance of such Substitution Effective Date).

(b) If the Substitute fails to satisfy its obligations pursuant to Section 6.04(a), the Department will be entitled to exercise its rights under the Second ARCA in respect of the amount so due and unpaid.

Section 6.05 Consequences of Substitution

On and from the Substitution Effective Date:

(a) subject to Section 6.04, any right of termination or any other right suspended by virtue of Section 3.01 will be of no further effect and the Department will not be entitled to terminate the Second

ARCA and this Agreement by virtue of any act, omission or circumstance that occurred prior to such Substitution Effective Date;

(b) if any Step-in Entity is a party to or has any obligations under the Second ARCA and this Agreement on the Substitution Effective Date, such Step-in Entity will cease to be a party thereto and hereto and will be discharged from all obligations thereunder and hereunder; and

(c) the Department will enter into an equivalent direct agreement on substantially the same terms as this Agreement, save that the Concessionaire will be replaced as a party by the Substitute.

ARTICLE 7. **REINSTATEMENT OF REMEDIES**

If a Department Notice has been given, the grounds for that notice are continuing and have not been remedied or waived by the Department and:

(a) no Step-in Entity or Substitute becomes a party to the Second ARCA and this Agreement before the Cure Period Completion Date relating thereto; or

(b) a Step-in Entity becomes a party to the Second ARCA and this Agreement, but the Step-in Period relating to such Step-in Entity ends without a Substitute becoming a party thereto and hereto,

then, on and from the Cure Period Completion Date or the date such Step-in Period expires, the Department will be entitled to:

(i) act upon any and all grounds for termination available to it in relation to the Second ARCA in respect of Concessionaire Defaults under the Second ARCA that have not been remedied or waived by the Department;

(ii) pursue any and all claims and exercise any and all remedies against the Concessionaire; and

(iii) if and to the extent that it is then entitled to do so under the Second ARCA, take or support any action of the type referred to in Section 3.01(b).

ARTICLE 8. **IMPACT OF BANKRUPTCY OR INSOLVENCY PROCEEDINGS**

Section 8.01 Rejection of the Second ARCA

(a) If the Second ARCA is rejected by a trustee or debtor-in-possession in, or terminated as a result of, any bankruptcy or insolvency proceeding involving the Concessionaire and, within 150 days after such rejection or termination, the Collateral Agent will so request and will certify in writing to the Department that the Collateral Agent or the Collateral Agent's permitted designee or assignee, including a Qualified Substitute Concessionaire, intends to perform the obligations of the Concessionaire as and to the extent required under the Second ARCA, the Department will execute and deliver to the Collateral Agent (or any Substitute satisfying the requirements of this Agreement if directed to do so by the Collateral Agent) a new comprehensive agreement. The new comprehensive agreement will contain conditions, agreements, terms, provisions and limitations which are the same as those of the Second ARCA, except for any obligations that have been fulfilled by the Concessionaire, any party acting on behalf of or stepping-in for

the Concessionaire or the Collateral Agent prior to such rejection or termination. References in this Agreement to the “Second ARCA” will be deemed also to refer to any such new comprehensive agreement.

(b) The effectiveness of any new comprehensive agreement referred to in Section 8.01(a) above will be conditional upon the Collateral Agent first reimbursing the Department in respect of its Allocable Costs incurred in connection with the execution and delivery of such new comprehensive agreement.

Section 8.02 Extension of Cure Period Completion Date and Initial Period

If the Collateral Agent is prohibited by any court order, bankruptcy or insolvency proceedings from:

- (a) remedying the Concessionaire Default that is the subject of a Department Notice; or
- (b) from commencing or prosecuting foreclosure proceedings,

each of the relevant Cure Period Completion Date and Initial Period will be extended by a period of time equal to the shorter of the period of such prohibition or 150 Days.

**ARTICLE 9.
TERMINATION OF THIS AGREEMENT**

This Agreement will remain in effect until the earliest to occur of:

- (a) the Discharge Date;
- (b) the time at which all of the parties’ respective obligations and liabilities under the Second ARCA and this Agreement have expired or have been satisfied in accordance with the terms of the Second ARCA and this Agreement; and
- (c) any assignment to a Substitute has occurred under Article 6 and the Department shall have entered into an equivalent direct agreement on substantially the same terms as this Agreement, save that the Concessionaire has been replaced as a party by the Substitute.

**ARTICLE 10.
PRESERVATION OF FUNDS**

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Combined Project Financing Agreements, the Collateral Agent agrees for itself and on behalf of the Lenders that it will not exercise any rights under the Combined Project Financing Agreements or take any other steps that would prejudice the operation of Sections 4.08 (Transit and Corridor Investment), 8.08 (Major Maintenance Reserve) and 16.09 (Handback Obligations and Reserve) of the Second ARCA.

**ARTICLE 11.
GENERAL PROVISIONS**

Section 11.01 Representations and Warranties

(a) The undersigned signatory for the Collateral Agent hereby represents and warrants that he or she is an officer of the Collateral Agent and that he or she has full and complete authority to enter into this Agreement on behalf of the Collateral Agent.

(b) The Collateral Agent hereby represents and warrants that the Collateral Agent has full power, right and authority to execute and perform each and all of its obligations under this Agreement. These representations and warranties are made for the purpose of inducing the Department and the Concessionaire to enter into this Agreement.

(c) The Collateral Agent represents and warrants that this Agreement has been duly authorized, executed and delivered by the Collateral Agent and constitutes a valid and legally binding obligation of the Collateral Agent, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) The undersigned signatory for the Concessionaire hereby represents and warrants that he or she is an officer of the Concessionaire and that he or she has full and complete authority to enter into this Agreement on behalf of the Concessionaire.

(e) The Concessionaire hereby represents and warrants that the Concessionaire has full power, right and authority to execute and perform each and all of its obligations under this Agreement and the Second ARCA. These representations and warranties are made for the purpose of inducing the Department and the Collateral Agent to enter into this Agreement.

(f) The Concessionaire represents and warrants that each of this Agreement and the Second ARCA has been duly authorized, executed and delivered by the Concessionaire and constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(g) The Concessionaire represents and warrants that there is no Concessionaire Default or, to the best of its knowledge, no Department Default, there exists no event or condition that would, with the giving of notice or passage of time or both, constitute such a Concessionaire Default or, to the best of its knowledge, a Department Default, and no such Concessionaire Default or, to the best of its knowledge, Department Default has occurred prior to the date hereof.

(h) The undersigned signatory for the Department hereby represents and warrants that he or she is an authorized official of the Department and has full and complete authority to enter into this Agreement on behalf of the Department

(i) The Department has full power, right and authority to execute and perform each and all of its obligations under this Agreement and the Second ARCA. These representations and warranties are made for the purpose of inducing the Collateral Agent to enter into this Agreement.

(j) The Department represents and warrants that each of this Agreement and the Second ARCA has been duly authorized, executed and delivered by the Department and constitutes a valid and legally binding obligation of the Department, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(k) The Department represents and warrants that there is no Department Default or, to the best of its knowledge, no Concessionaire Default, there exists no event or condition that would, with the giving of notice or passage of time or both, constitute such a Department Default or, to the best of its knowledge, a Concessionaire Default, and no such Department Default or, to the best of its knowledge, Concessionaire Default has occurred prior to the date hereof.

Section 11.02 Public Information and Confidentiality

The Department and the Collateral Agent will, for each other's benefit, comply with the requirements of Section 18.02 of the Second ARCA as if any reference to the Concessionaire therein was a reference to the Collateral Agent.

Section 11.03 Amendments and Waivers

(a) No amendment of this Agreement, and no waiver of any term, covenant or condition of this Agreement, will be effective unless in writing and signed by the parties to this Agreement.

(b) The exercise by a party of any right or remedy provided under this Agreement or law will not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any party of any right or remedy under this Agreement or law will be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or law. The consent by one party to any act by the other party requiring such consent will not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

Section 11.04 Non-Collusion

(a) The Collateral Agent warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Collateral Agent, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from making of this Agreement.

(b) For breach or violation of this warranty, the Department will have the right to terminate this Agreement without liability.

Section 11.05 Disputes

(a) In the event of any dispute between the Department and the Collateral Agent under this Agreement, the parties will resolve the dispute according to the dispute resolution procedures set forth in the Second ARCA, with the Collateral Agent having the same rights and obligations of the Concessionaire under the disputes resolution procedures set forth in Section 17.06 of the Second ARCA.

(b) Nothing in Section 11.05(a) affects the Collateral Agent's rights and remedies against the Concessionaire and the Concessionaire's Interest under the Combined Project Financing Agreements and Financing Assignments or the procedures available to the Collateral Agent under law to exercise its security interests thereunder.

Section 11.06 Successors and Assigns

(a) No party to this Agreement may assign or transfer any part of its rights or obligations hereunder without the prior written consent of the other parties; *provided*, however, that the Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Combined Project Financing Agreements and the Department may transfer its rights or obligations hereunder in accordance with and subject to the terms and conditions set forth in Section 20.02 of the Second ARCA. In connection with any such assignment or transfer, the Department agrees to enter into a new direct agreement with the successor Collateral Agent on terms that are substantially the same as those of this Agreement.

(b) This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 11.07 Severability

In the event any one or more of the provisions contained in this Agreement will, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision thereof and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 11.08 Prior Contracts Superseded

This Agreement constitutes the sole agreement of the parties hereto with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the parties respecting such subject matter.

Section 11.09 Notices and Communications

(a) Whenever under the provisions of this Agreement it will be necessary or desirable for one party to serve any approval, notice, request, demand, report or other communication on another party, the same will be in writing and will not be effective for any purpose unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by facsimile transmission, where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission is immediately followed by service of the original of the subject item in another manner permitted herein or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Department:
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Financial Officer
Facsimile: (804) 786-2940

With copies to:
Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
Attention: Chief, Transportation Section
Facsimile: (804) 786-9136

If to the Concessionaire:
Capital Beltway Express LLC
6440 General Green Way
Alexandria, Virginia 22312
Attention: President
Facsimile: (571) 419-6101

If to the Collateral Agent:

[●]
[●]
[●]
Attention: [●]
Facsimile: [●]

(b) Any party may, from time to time, by notice in writing served upon the other parties as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally will be deemed delivered upon receipt, if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by facsimile transmission will be deemed delivered on the date of receipt as shown on the received facsimile (*provided*, that the original is thereafter delivered as aforesaid).

Section 11.10 Effect of Breach

Without prejudice to any rights a party may otherwise have, a breach of this Agreement will not of itself give rise to a right to terminate the Second ARCA.

Section 11.11 Counterparts

This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 11.12 No Third-Party Beneficiaries

Nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

Section 11.13 No Partnership

Nothing contained in this Agreement will be deemed to constitute a partnership between the parties hereto. None of the parties will hold itself out contrary to the terms of this Section 11.13.

Section 11.14 No Interference

The Concessionaire joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not to knowingly do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

Section 11.15 Collateral Agent

(a) Notwithstanding anything to the contrary in this Agreement, but subject to Article 4 (solely to the extent the Collateral Agent or any of its Affiliates is the Step-In Entity), Section 11.01 and Section 11.15(b), the Collateral Agent shall not have any liability to the Department under this Agreement, unless the Collateral Agent expressly assumes such liability in writing.

(b) The Department acknowledges and agrees that the Collateral Agent shall not be obligated or required to perform any of Concessionaire's obligations under the Second ARCA, except during any Step-in Period (solely to the extent the Collateral Agent or any of its Affiliates is the Step-In Entity).

Section 11.16 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia applicable to contracts executed and to be performed within the State, without regard for conflict of laws principles that would result in the application of laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an agency of the Commonwealth of Virginia

By: _____
Name: Stephen Brich, P.E.
Title: Commissioner of Highways

CAPITAL BELTWAY EXPRESS LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

[●], as Collateral Agent

By: _____
Name: _____
Title: _____

ANNEX 1

FORM OF STEP-IN ENTITY ACCESSION AGREEMENT

[Date]

To: [Name of the Department's Representative]
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Facsimile: (804) 786-2940

Copied to: Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
Attention: Chief Transportation Section
Facsimile: (804) 786-9136

[Lenders and other parties to Finance Documents to be listed]

[insert address]

For the attention of: [●]

From: [Step-in Entity]

ROUTE 495 HOT LANES IN VIRGINIA PROJECT

STEP-IN ENTITY ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Second Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project (the "Project"), dated as of [●] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Second ARCA"), between the Virginia Department of Transportation (the "Department") and Capital Beltway Express LLC (the "Concessionaire") and the Direct Agreement, dated as of [●] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Direct Agreement"), among the Department, the Concessionaire, and [●], as Collateral Agent.

Terms not otherwise defined herein will have the same meaning given to them in the Direct Agreement.

1. We hereby confirm that we are a Step-in Entity pursuant to Article 4 of the Direct Agreement.

2. We acknowledge and agree that, upon and by reason of our execution of this Step-in Entity Accession Agreement, we will become a party to the Second ARCA and the Direct Agreement jointly and severally with the Concessionaire as a Step-in Entity and, accordingly, will have the rights and powers and

assume the obligations of the Concessionaire under the Second ARCA and the Direct Agreement in accordance with the terms of the Direct Agreement.

3. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Step-in Entity]

4. This Step-in Entity Accession Agreement will be governed by, and construed in accordance with, the law of the Commonwealth of Virginia, without regard for conflict of laws principles that would result in the application of laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

The terms set forth herein are hereby agreed to:

[*Step-in Entity*]

By _____
Name:
Title:

ANNEX 2

FORM OF SUBSTITUTE ACCESSION AGREEMENT

[Date]

To: [Name of the Department's Representative]
Virginia Department of Transportation
1401 E. Broad Street Richmond
VA 23219
Facsimile: (804) 786-2940

Copied to: Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
Attention: Chief Transportation Section
Facsimile: (804) 786-9136

From: [Substitute]

ROUTE 495 HOT LANES IN VIRGINIA PROJECT

SUBSTITUTE ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Second Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project (the "Project"), dated as of [●] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Second ARCA"), between the Virginia Department of Transportation (the "Department") and Capital Beltway Express LLC (the "Concessionaire") and the Direct Agreement, dated as of [●] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Direct Agreement"), among the Department, the Concessionaire, and [●], as Collateral Agent.

Terms defined not otherwise defined herein will have the same meaning given to them in the Direct Agreement.

1. We hereby confirm that we are a Substitute pursuant to Article 6 of the Direct Agreement.
2. We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement, we will become a party to the Second ARCA and the Direct Agreement as a Substitute and, accordingly, will have the rights and powers and assume the obligations of the Concessionaire under the Second ARCA and the Direct Agreement in accordance with the terms of the Direct Agreement.
3. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Substitute]

4. This Substitute Accession Agreement will be governed by, and construed in accordance with, the law of the Commonwealth of Virginia, without regard for conflict of laws principles that would result in the application of laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

The terms set forth herein are hereby agreed to:

[Substitute]

By _____
Name:
Title:

Agreed for and on behalf of:
Virginia Department of Transportation

By _____
Name:
Title:

[Provided under separate cover]

EXHIBIT U-2

FORM OF NEXT DIRECT AGREEMENT

This **NEXT DIRECT AGREEMENT** (this “Agreement”) relates to the **SECOND AMENDED AND RESTATED COMPREHENSIVE AGREEMENT RELATING TO THE ROUTE 495 HOT LANES IN VIRGINIA PROJECT**, is dated as of [●], 20[●], and is among the VIRGINIA DEPARTMENT OF TRANSPORTATION (the “Department”), an agency of the Commonwealth of Virginia (the “State”), the address of which Department is 1401 East Broad Street, Richmond, Virginia 23219; CAPITAL BELTWAY EXPRESS LLC, a Delaware limited liability company (the “Concessionaire”) whose address is 6440 General Green Way, Alexandria, Virginia 22312; and [●], as agent for the Lenders in accordance with the terms of the Project Financing Agreements (the “Collateral Agent”), whose address is [●].

RECITALS

WHEREAS, the Department and the Concessionaire have entered into a Second Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project (the “Project”), dated as of [●], 20[●] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Second ARCA”); and

WHEREAS, the provision of Concessionaire Debt to the Concessionaire is conditioned upon the Department providing the Lenders with certain assurances (as more particularly set forth in this Agreement) regarding the Lenders’ rights in the event of a NEXT Concessionaire Breach by the Concessionaire under the Second ARCA or a default under the Combined Project Financing Agreements; and

WHEREAS, the purpose of this Agreement is to govern the rights of the Collateral Agent and the Lenders regarding a NEXT Concessionaire Breach occurring prior to the NEXT Final Completion Date.

AGREEMENT

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

ARTICLE 1.

DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

Section 1.01 Definitions

Capitalized terms used but not otherwise defined in this Agreement have the respective meanings set forth in Exhibit A to the Second ARCA. In addition, the following terms have the meanings specified below:

Collateral Agent Notice has the meaning given to it in Section 2.02(d)(i).

Combined Project Financing Agreements means the Initial Project Financing Agreements and the NEXT Project Financing Agreements.

Cure Period means the period commencing on the date that the Collateral Agent receives a Department Notice pursuant to Section 2.02(a) and ending on the relevant Cure Period Completion Date.

Cure Period Completion Date means:

(a) with respect to any Payment Breach, the date falling 30 Days after the later of (i) the date that the Collateral Agent receives the relevant Department Notice, and (ii) expiration of any applicable cure period granted to the Concessionaire pursuant to Section 17.07(b) of the Second ARCA;

(b) with respect to any Non-Completion Breach, the date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice; provided, however, that such period will be extended by such reasonable period of time as may be required to achieve NEXT Final Completion (subject to a maximum extension of 275 days), but only to the extent that:

(i) in the reasonable opinion of the Department, there is a reasonable prospect of achieving NEXT Final Completion within 365 days of the relevant Department Notice; and

(ii) within the 90-Day period, the Collateral Agent and the Department (each acting reasonably) agree to a plan in relation to achieving NEXT Final Completion; and

(c) with respect to any NEXT Concessionaire Breach not referred to in clauses (a) and (b) above, the date falling 90 Days after the later of (i) date that the relevant Department Notice is received by the Collateral Agent and (ii) expiration of any applicable cure period granted to the Concessionaire pursuant to Section 17.07 of the Second ARCA; provided, however, that such period will, at the request of the Collateral Agent, be extended up to a maximum of 60 additional Days, but only to the extent that:

(i) within the 90 Day period, the Collateral Agent and the Department (each acting reasonably) agree to a plan specifying the remedial action to be taken in respect of the relevant NEXT Concessionaire Breach; and

(ii) the extension requested by the Collateral Agent represents (in the reasonable opinion of the Department) a reasonable period of time to remedy the relevant NEXT Concessionaire Breach.

Department Notice has the meaning given to it in Section 2.02(a).

Designated Account means the [Concessionaire Damages Account] as defined in the [Collateral Agency and Account Agreement, dated as of [●], 20[●]] (the "Collateral Agency Agreement") between the Concessionaire and [●], as Collateral Agent, or such other account in accordance with the terms of the Collateral Agency Agreement.

Equity Member means the Equity Member as of the date of this Agreement, which is Transurban Express Lanes LLC.

Initial Period means:

(a) with respect to any Payment Breach, the later of (i) the date falling 30 Days after the date that the Collateral Agent received the relevant Department Notice and (ii) expiration of any applicable cure period granted to the Concessionaire pursuant to the Second ARCA;

(b) with respect to any NEXT Concessionaire Breach not referred to in (a) above, the later of (i) the date falling 90 Days after the date that the Collateral Agent receives the relevant Department Notice and (ii) expiration of any applicable cure period granted to the Concessionaire pursuant to the Second ARCA.

Initial Project Financing Agreements has the meaning set forth in the Second ARCA, as the same may be amended or modified from time to time.

NEXT Project Financing Agreements has the meaning set forth in the Second ARCA, as the same may be amended or modified from time to time.

Non-Completion Breach means a NEXT Concessionaire Breach that arises pursuant to Section 17.07(d) of the Second ARCA.

Payment Breach means a NEXT Concessionaire Breach that arises pursuant to Section 17.07(b) of the Second ARCA that has not been cured within a period of thirty (30) days of the Concessionaire receiving written notice from the Department of such NEXT Concessionaire Breach.

Property means any right or interest in or to property of any kind whatsoever, whether real, personal, or mixed and whether tangible or intangible.

Qualified Substitute Concessionaire means a Person who has the legal capacity, power and authority to become a party to, and perform the obligations of the Concessionaire under, the Second ARCA:

(a) who has the resources available to it (including committed financial resources) to perform the obligations of the Concessionaire under the Second ARCA;

(b) who employs or subcontracts with Persons having the appropriate qualifications, experience and technical competence available to it that are sufficient to enable it to perform the obligations of the Concessionaire under the Second ARCA; and

(c) who has not been:

(i) debarred or prohibited from participating in State or federally-funded projects;

(ii) indicted, convicted, pled guilty or nolo contendere to a violation of law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that show a similar lack of moral or ethical integrity; or

(iii) barred or prohibited from owning or operating the Project under law, including the Foreign Investment and National Security Act of 2007, 50 USC App. 2170 (HR 556).

[Revenue Account] has the meaning given to such term in the Collateral Agency Agreement.

Step-in Date has the meaning given to it in Section 4.01(c).

Step-in Entity has the meaning given to it in Section 4.01(b).

Step-in Entity Accession Agreement means the agreement to be entered into by a Step-in Entity pursuant to Section 4.01(c).

Step-in Notice has the meaning given to it in Section 4.01(a).

Step-in Period in relation to a Step-in Entity means the period from and including the Step-in Date until the earliest of:

(a) the last day of the Cure Period;

- (b) the Substitution Effective Date;
- (c) the Step-out Date;
- (d) the date of termination of the Second ARCA by the Department in accordance with this Agreement and the Second ARCA; or
- (e) the last day of the Term.

Step-out Date in relation to a Step-in Entity means the date upon which any Step-out Notice is served by such Step-in Entity pursuant to Section 4.03.

Step-out Notice has the meaning given to it in Section 4.03(a).

Substitute has the meaning given to it in Section 5.01.

Substitute Accession Agreement means the agreement to be entered into by a Substitute pursuant to Section 6.01.

Substitution Effective Date has the meaning given to it in Section 6.01.

Substitution Notice has the meaning given to it in Section 5.01.

Section 1.02 Order of Precedence

In the event of any conflict, ambiguity or inconsistency between the provisions of the Second ARCA and the provisions of this Agreement, the provisions of this Agreement will prevail.

Section 1.03 No Effect on Second ARCA

Nothing in this Agreement amends or modifies any of the Concessionaire's obligations to the Department under the Second ARCA.

ARTICLE 2. CONSENT TO SECURITY AND NOTICES

Section 2.01 Consent to Security

Notwithstanding anything to the contrary in the Second ARCA:

- (a) the Department acknowledges notice and receipt of and consents to:
 - (i) the assignment by the Concessionaire to the Collateral Agent of all of the Concessionaire's Interest pursuant to the Combined Project Financing Agreements; and
 - (ii) the grant by the Equity Member to the Collateral Agent of a security interest in its equity interests in the Concessionaire pursuant to the Combined Project Financing Agreements; and
 - (iii) the grant by the Concessionaire to the Collateral Agent of the security interests in all of the property and assets of the Concessionaire pursuant to the Combined Project Financing Agreements;

- (b) none of the security interests referred to in Section 2.01(a):
- (i) constitute (or with the giving of notice or lapse of time, or both, could constitute) a NEXT Concessionaire Breach; or
 - (ii) require any consent of the Department that is either additional or supplemental to those granted pursuant to this Section 2.01;
- (b) without prejudice to the rights granted to the Collateral Agent pursuant to this Agreement, the Collateral Agent will not, by virtue of the security interests referred to in Section 2.01(a), acquire any greater rights to the Concessionaire's Interest than the Concessionaire itself has at any particular time pursuant to the Second ARCA; and
- (c) for so long as any amount under the Combined Project Financing Agreements is outstanding, the Department will not, without the prior written consent of the Collateral Agent, consent to any assignment, transfer, pledge or hypothecation by the Concessionaire of the Second ARCA or any interest therein by the Concessionaire, other than as specified in this Agreement.

Section 2.02 Notice Requirements

- (a) The Department will give the Collateral Agent written notice (a "Department Notice") promptly upon becoming aware of the occurrence of any NEXT Concessionaire Breach or other event that permits the Department to suspend its performance under the Second ARCA with respect to the NEXT Project or terminate the NEXT Project (whether immediately, with the giving of notice, or upon the passage of time (or any combination of the foregoing)) and will specify in the Department Notice:
- (i) the unperformed obligations of the Concessionaire with respect to the NEXT Project under the Second ARCA of which the Department is aware (having made reasonable inquiry) and grounds for termination of the NEXT Project in sufficient detail to enable the Collateral Agent to assess the scope and amount of any liability of the Concessionaire resulting therefrom;
 - (ii) all amounts due and payable by the Concessionaire to the Department under the Second ARCA with respect to the NEXT Project, if any, on or before the date of the Department Notice and which remain unpaid at such date and, by cross-reference to the applicable provision(s) of the Second ARCA, the nature of the Concessionaire's obligation to pay such amounts; and
 - (iii) the amount of any payments that the Department reasonably foresees will become due from the Concessionaire during the applicable Cure Period.
- (b) The Department will update any Department Notice issued pursuant to Section 2.02(a) as and when it becomes aware of any unperformed obligations of the Concessionaire with respect to the NEXT Project (including non-payment of amounts that have become due) under the Second ARCA that were not specified in the relevant Department Notice.
- (c) For the avoidance of doubt, nothing in this Agreement will prevent multiple Department Notices running concurrently.
- (d) The Collateral Agent will:

(i) promptly upon becoming aware of any NEXT Concessionaire Breach (whether or not a Department Notice has been served in connection with the same event) give the Department written notice (a “Collateral Agent Notice”);

(ii) specify in any Collateral Agent Notice the circumstances and nature of the NEXT Concessionaire Breach to which the Collateral Agent Notice relates; and

(iii) notify the Department of any decision to accelerate amounts outstanding under the Combined Project Financing Agreements or to exercise any enforcement remedies under the Combined Project Financing Agreements.

Section 2.03 Department Payments under the Second ARCA

(a) The Department will, unless directed otherwise by the Collateral Agent, deposit all amounts payable by it under the Second ARCA into the Revenue Account and the Concessionaire agrees that any payment made in accordance with this Section 2.03 will constitute a complete discharge of the Department’s relevant payment obligations under the Second ARCA.

(b) The Collateral Agent acknowledges that all of the Department’s payment obligations to the Concessionaire pursuant to the Second ARCA are subject to Section 20.18 of the Second ARCA.

ARTICLE 3.
RIGHTS AND OBLIGATIONS DURING THE CURE PERIOD

Section 3.01 No Termination of the NEXT Project during the Cure Period

At any time during a Cure Period, the Department will not, subject to the terms of this Agreement:

(a) terminate or give notice terminating the NEXT Project for NEXT Concessionaire Breach or exercise any rights under Section 17.09 of the Second ARCA; or

(b) suspend its performance under the Second ARCA with respect to the NEXT Project.

Section 3.02 Collateral Agent Rights

(a) At any time during a NEXT Concessionaire Breach, only for so long as the Initial Period has not expired, the Collateral Agent may (but shall have no obligation), at its sole option and discretion, perform or arrange for the performance of any act, duty, or obligation required of the Concessionaire under the Second ARCA with respect to the NEXT Project, or remedy any NEXT Concessionaire Breach at any time, which performance or remedy by or on behalf of the Collateral Agent will be accepted by the Department in lieu of performance by the Concessionaire and in satisfaction of the Concessionaire’s obligations under the Second ARCA with respect to the NEXT Project. To the extent that any NEXT Concessionaire Breach is remedied and/or any payment liabilities or obligations of the Concessionaire are performed by the Collateral Agent under this Section 3.02(a), such action will discharge the relevant liabilities or obligations of the Concessionaire to the Department. No such performance by or on behalf of the Collateral Agent under this Section 3.02(a) will be construed as an assumption by the Collateral Agent, or any person acting on the Collateral Agent’s behalf, of any of the covenants, agreements or other obligations of the Concessionaire under the Second ARCA.

Section 3.03 Extension of Cure Period Completion Date and Initial Period

If the Collateral Agent:

- (a) is prohibited by any court order, bankruptcy or insolvency proceedings from remedying the NEXT Concessionaire Breach that is the subject of a Department Notice; or
- (b) pursues with good faith, diligence and continuity lawful processes and steps to obtain the appointment of a court receiver for the NEXT Project and possession, custody and control of the NEXT Project, but despite such efforts the Collateral Agent is unable to obtain such possession, custody and control of the NEXT Project;

then each of the relevant Cure Period Completion Date and Initial Period will be extended by a period of time equal to the shorter of the period of such prohibition or 180 Days.

**ARTICLE 4.
STEP-IN ARRANGEMENTS**

Section 4.01 Step-in Notice

(a) Provided that all unperformed payment obligations of the Concessionaire identified in a Department Notice will have been remedied in full or waived by the Department on or before the Step-in Date, the Collateral Agent may provide the Department with a written notice ("Step-in Notice") under this Section 4.01 at any time during any Cure Period or NEXT Concessionaire Breach.

(b) The Collateral Agent will nominate, in any Step-in Notice, any one of:

(i) subject to the Department's approval, which will not to be unreasonably withheld or delayed, the Collateral Agent, a Lender or any of their respective Affiliates; or

(ii) any Person approved by the Department, such approval not to be unreasonably withheld or delayed if such Person meets all the criteria to be a Qualified Substitute Concessionaire and the Department has been provided with the relevant information required under Section 5.03 with respect to such Person (each a "Step-in Entity"), stating that the Step-in Entity is to become a joint and several obligor with the Concessionaire under the Second ARCA and this Agreement in accordance with the terms hereof.

(c) The Step-in Entity named in the Step-in Notice will be deemed to become a party to the Second ARCA and this Agreement on and from the date it executes a duly completed Step-in Entity Accession Agreement, substantially in the form attached hereto as Annex 1 (Form of Step-in Entity Accession Agreement), and submits it to the Department (the "Step-in Date").

Section 4.02 Rights and Obligations on Step-in

(a) On and from the Step-in Date and during the Step-in Period, the Step-in Entity will be:

(i) jointly and severally entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to the Concessionaire under the Second ARCA and this Agreement;

(ii) entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Entity under this Agreement; and

(iii) jointly and severally liable with the Concessionaire for the payment of all sums due from the Concessionaire under or arising out of the Second ARCA at the Step-in Date and for the performance of all of the Concessionaire's obligations under or arising out of the Second ARCA on or after the Step-in Date.

(b) Without prejudice to Article 7 (Reinstatement of Remedies), during the Step-in Period:

(i) the Department undertakes:

A. not to terminate or give notice terminating the NEXT Project for NEXT Concessionaire Breach under Section 17.09(a) of the Second ARCA, unless:

(1) the grounds for termination or giving notice of termination or exercise of any of its rights under Section 17.09 of the Second ARCA arose during the Step-in Period; or

(2) the Step-in Entity fails to comply with the requirements of any plan agreed between the Department and the Collateral Agent in connection with the extension of the relevant Cure Period Completion Date; and

B. not to take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of the Concessionaire or for the composition or readjustment of the Concessionaire's debts, or any similar insolvency procedure in relation to the Concessionaire, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for the Concessionaire or for any part of the Concessionaire's Property;

C. not to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Concessionaire) under the Second ARCA, unless the grounds for suspension of performance arose during the Step-in Period; and

D. to continue to make payments required to be made to Concessionaire under the Second ARCA to the Designated Account and the Revenue Account.

(ii) the Department will owe its obligations under the Second ARCA and this Agreement to the Concessionaire and such Step-in Entity jointly; provided, however, that:

A. subject to Section 4.02(b)(ii)(B), the performance of such obligations by the Department in favor of either such Step-in Entity or the Concessionaire will be a good and effective discharge of such obligations under this Agreement and the Second ARCA; and

B. the Collateral Agent will be entitled at any time by notice in writing to the Department to direct (such direction being binding on the Collateral Agent, the Department and the Concessionaire) that, at all times thereafter while such Step-in Entity is deemed to be a party to the Second ARCA and this Agreement and subject to any further notice from the Collateral Agent, such Step-in Entity will be solely entitled to make any decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with the Department under the Second ARCA and this Agreement.

(c) The Concessionaire will not be relieved from any of its obligations under the Second ARCA, whether arising before or after the Step-in Date, by reason of the Step-in Entity becoming a party to the Second ARCA pursuant to a Step-in Entity Accession Agreement, except to the extent provided in Section 3.02.

Section 4.03 Step Out

(a) A Step-in Entity may, at any time, by giving not less than 30 Days' prior written notice ("Step-out Notice") to the Department, terminate its obligations to the Department under the Second ARCA and this Agreement, whereupon the Step-in Entity will, upon the expiry of such notice, no longer be deemed to be a party to the Second ARCA and this Agreement and, except as provided in Section 4.03(b), will be released from all obligations under the Second ARCA and this Agreement. The obligations of the Department to the Step-in Entity in such capacity under the Second ARCA and this Agreement will also terminate upon the expiry of such notice.

(b) Nothing in this Section 4.03 will have the effect of releasing the Step-in Entity from any liability that relates to the performance or non-performance of the Second ARCA or this Agreement by the Concessionaire or the Step-in Entity during the Step-in Period.

ARTICLE 5. SUBSTITUTION PROPOSALS

Section 5.01 Notice of Proposed Substitute

To the extent that the Collateral Agent or the Lenders at any time propose to require the Concessionaire to assign its rights and obligations under the Second ARCA and/or this Agreement to a Person (a "Substitute") designated by the Collateral Agent or the Lenders (whether by mutual agreement or enforcement of rights under the Combined Project Financing Agreements), the effectiveness of such assignment will be conditional upon:

(a) the Collateral Agent issuing a notice (a "Substitution Notice") to the Department requesting the Department's prior approval of the proposed Substitute;

(b) the Department approving the identity of the proposed Substitute pursuant to Section 5.02;
and

(c) the proposed Substitute executing a Substitute Accession Agreement in accordance with Section 6.01.

Section 5.02 Grounds for Refusing Approval

The Department will only be entitled to withhold its approval to any proposed Substitute that is the subject of a Substitution Notice if:

(a) In the Department's reasonable opinion, the proposed Substitute is not a Qualified Substitute Concessionaire; or

(b) subject to Section 6.04, there are outstanding breaches of the Second ARCA that have been previously notified by the Department to the Collateral Agent and have not, to the reasonable satisfaction of the Department, been remedied or waived prior to the date of the Substitution Notice; unless the Department has approved (such approval not to be unreasonably withheld or delayed) a plan specifying the

remedial action that the Substitute will be required to take after the Substitution Effective Date in order to remedy each such breach.

Section 5.03 Provision of Information

The Collateral Agent will, as soon as practicable, provide to the Department such information in relation to the proposed Substitute and any Person who, it is proposed, will enter into a material subcontract with the proposed Substitute in relation to the Project, as the Department will reasonably require to enable it to reasonably determine whether the proposed Substitute is a Qualified Substitute Concessionaire, including:

- (a) the name and address of the proposed Substitute;
- (b) unless such proposed Substitute is a publicly-traded entity, the names of the proposed Substitute's shareholders or members and the share capital or partnership or membership interests, as the case may be, held by each of them;
- (c) the manner in which it is proposed to finance the proposed Substitute and the extent to which such financing is committed (to the extent relevant);
- (d) copies of the proposed Substitute's most recent financial statements (and if available, such financial statements will be for the last three financial years and audited), or in the case of a special purpose company, its opening balance sheet;
- (e) a copy of the proposed Substitute's organizational documents;
- (f) details of the resources available to the proposed Substitute and the proposed Substitute's appropriate qualifications, experience and technical competence available to the proposed Substitute to enable it to perform the obligations of the Concessionaire under the Second ARCA; and
- (g) the names of the proposed Substitute's directors and any key personnel who will have responsibility for the day-to-day management of its participation in the Project.

ARTICLE 6. **SUBSTITUTION**

Section 6.01 Substitution Effective Date

If the Department approves the identity of a proposed Substitute pursuant to Article 5, the Substitute will execute a duly completed Substitute Accession Agreement substantially in the form set out in Annex 2 to this Agreement and submit it to the Department (with a copy of it to the other parties to this Agreement). Such assignment will become effective on and from the date on which the Department countersigns the Substitute Accession Agreement (the "Substitution Effective Date").

Section 6.02 Effectiveness of Substitution

On and from the Substitution Effective Date:

- (a) such Substitute will become a party to the Second ARCA and this Agreement in place of the Concessionaire who will be immediately released from its obligations arising under, and cease to be a party to, the Second ARCA and this Agreement from that Substitution Effective Date; and

(b) such Substitute will exercise and enjoy the rights and perform the obligations of the Concessionaire under the Second ARCA and this Agreement, and

(c) the Department shall owe its obligations (including, without limitation, any undischarged liability in respect of any loss or damage suffered or incurred by the Concessionaire prior to the Substitution Effective Date) under the Second ARCA and this Agreement to such Substitute in place of the Concessionaire and any Step-in Entity.

Section 6.03 Facilitation of Transfer

The Department will use its reasonable efforts to facilitate the transfer to the Substitute of the Concessionaire's obligations under the Second ARCA and this Agreement.

Section 6.04 Settlement of Outstanding Financial Liabilities

(a) The Substitute will pay to the Department within 30 Days after the Substitution Effective Date any amount due from the Concessionaire to the Department under the Second ARCA and this Agreement as of the Substitution Effective Date (as notified by the Department to the Substitute reasonably in advance of such Substitution Effective Date).

(b) If the Substitute fails to satisfy its obligations pursuant to Section 6.04(a), the Department will be entitled to exercise its rights under the Second ARCA in respect of the amount so due and unpaid.

Section 6.05 Consequences of Substitution

On and from the Substitution Effective Date:

(a) subject to Section 6.04, any right of termination or any other right suspended by virtue of Section 3.01 will be of no further effect, however, the Department will not be entitled to terminate the Second ARCA and this Agreement based on any act, omission, or circumstance that occurred prior to such Substitution Effective Date; and

(b) if any Step-in Entity is a party to or has any obligations under the Second ARCA and this Agreement on the Substitution Effective Date, such Step-in Entity will cease to be a party thereto and hereto and will be discharged from all obligations thereunder and hereunder; and the Department will enter into an equivalent direct agreement on substantially the same terms as this Agreement, save that the Concessionaire will be replaced as a party by the Substitute.

**ARTICLE 7.
REINSTATEMENT OF REMEDIES**

If a Department Notice has been given, the grounds for that notice are continuing and have not been remedied or waived by the Department and:

(a) no Step-in Entity or Substitute becomes a party to the Second ARCA and this Agreement before the Cure Period Completion Date relating thereto; or

(b) a Step-in Entity becomes a party to the Second ARCA and this Agreement, but the Step-in Period relating to such Step-in Entity ends without a Substitute becoming a party thereto and hereto,

then, on and from the Cure Period Completion Date or the date such Step-in Period expires, the Department will be entitled to:

- (i) act upon any and all grounds for termination of the NEXT Project available to it in respect of NEXT Concessionaire Breaches under the Second ARCA that have not been remedied or waived by the Department;
- (ii) pursue any and all claims and exercise any and all remedies against the Concessionaire in respect of NEXT Concessionaire Breaches under the Second ARCA; and
- (iii) if and to the extent that it is then entitled to do so under the Second ARCA, take or support any action of the type referred to in Section 3.01(b).

ARTICLE 8.
TERMINATION OF THIS AGREEMENT

This Agreement will remain in effect until NEXT Final Completion.

ARTICLE 9.
PRESERVATION OF FUNDS

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Combined Project Financing Agreements, the Collateral Agent agrees for itself and on behalf of the Lenders that it will not exercise any rights under the Combined Project Financing Agreements or take any other steps that would prejudice the operation of Sections 4.08 (Transit and Corridor Investment), 8.08 (Major Maintenance Reserve) and 16.09 (Handback Obligations and Reserve) of the Second ARCA.

ARTICLE 10.
GENERAL PROVISIONS

Section 10.01 Representations and Warranties

(a) The undersigned signatory for the Collateral Agent hereby represents and warrants that he or she is an officer of the Collateral Agent and that he or she has full and complete authority to enter into this Agreement on behalf of the Collateral Agent.

(b) The Collateral Agent hereby represents and warrants that the Collateral Agent has full power, right and authority to execute and perform each and all of its obligations under this Agreement. These representations and warranties are made for the purpose of inducing the Department and the Concessionaire to enter into this Agreement.

(c) The Collateral Agent represents and warrants that this Agreement has been duly authorized, executed and delivered by the Collateral Agent and constitutes a valid and legally binding obligation of the Collateral Agent, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) The undersigned signatory for the Concessionaire hereby represents and warrants that he or she is an officer of the Concessionaire and that he or she has full and complete authority to enter into this Agreement on behalf of the Concessionaire.

(e) The Concessionaire hereby represents and warrants that the Concessionaire has full power, right and authority to execute and perform each and all of its obligations under this Agreement and the Second ARCA. These representations and warranties are made for the purpose of inducing the Department and the Collateral Agent to enter into this Agreement.

(f) The Concessionaire represents and warrants that each of this Agreement and the Second ARCA has been duly authorized, executed and delivered by the Concessionaire and constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(g) The Concessionaire represents and warrants that there is no Concessionaire Default or NEXT Concessionaire Breach or, to the best of its knowledge, no Department Default, there exists no event or condition that would, with the giving of notice or passage of time or both, constitute such a Concessionaire Default or NEXT Concessionaire Breach or, to the best of its knowledge, a Department Default, and no such Concessionaire Default or NEXT Concessionaire Breach or, to the best of its knowledge, Department Default has occurred prior to the date hereof.

(h) The undersigned signatory for the Department hereby represents and warrants that he or she is an authorized official of the Department and has full and complete authority to enter into this Agreement on behalf of the Department.

(i) The Department has full power, right and authority to execute and perform each and all of its obligations under this Agreement and the Second ARCA. These representations and warranties are made for the purpose of inducing the Collateral Agent to enter into this Agreement.

(j) The Department represents and warrants that each of this Agreement and the Second ARCA has been duly authorized, executed and delivered by the Department and constitutes a valid and legally binding obligation of the Department, enforceable against the Department in accordance with the terms hereof and thereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(k) The Department represents and warrants that there is no Department Default or, to the best of its knowledge, no Concessionaire Default or NEXT Concessionaire Breach, there exists no event or condition that would, with the giving of notice or passage of time or both, constitute such a Department Default or, to the best of its knowledge, a Concessionaire Default or NEXT Concessionaire Breach, and no such Department Default or, to the best of its knowledge, Concessionaire Default or NEXT Concessionaire Breach has occurred prior to the date hereof.

Section 10.02 Public Information and Confidentiality

The Department and the Collateral Agent will, for each other's benefit, comply with the requirements of Section 18.02 of the Second ARCA as if any reference to the Concessionaire therein was a reference to the Collateral Agent.

Section 10.03 Amendments and Waivers

(a) No amendment of this Agreement, and no waiver of any term, covenant or condition of this Agreement, will be effective unless in writing and signed by the parties to this Agreement.

(b) The exercise by a party of any right or remedy provided under this Agreement or law will not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. The remedies provided herein are cumulative and not exclusive of any remedies provided by law and may be exercised by the Collateral Agent or the Lenders and any permitted designee, transferee or assignee thereof from time to time. No waiver by any party of any right or remedy under this Agreement or law will be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or law. The consent by one party to any act by the other party requiring such consent will not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

Section 10.04 Non-Collusion

(a) The Collateral Agent warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Collateral Agent, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from making of this Agreement.

(b) For breach or violation of this warranty, the Department will have the right to terminate this Agreement without liability.

Section 10.05 Disputes

(a) In the event of any dispute between the Department and the Collateral Agent under this Agreement, the parties will resolve the dispute according to the dispute resolution procedures set forth in the Second ARCA, with the Collateral Agent having the same rights and obligations of the Concessionaire under the disputes resolution procedures set forth in Section 17.06 of the Second ARCA.

(b) Nothing in Section 10.05(a) affects the Collateral Agent's rights and remedies against the Concessionaire and the Concessionaire's Interest under the Combined Project Financing Agreements or the procedures available to the Collateral Agent under law to exercise its security interests thereunder.

Section 10.06 Successors and Assigns

(a) No party to this Agreement may assign or transfer any part of its rights or obligations hereunder without the prior written consent of the other parties; *provided*, however, that the Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Combined Project Financing Agreements and the Department may transfer its rights or obligations hereunder in accordance with and subject to the terms and conditions set forth in Section 20.02 of the Second ARCA. In connection with any such assignment or transfer, the Department agrees to enter into a new direct agreement with the successor Collateral Agent on terms that are substantially the same as those of this Agreement.

(b) This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 10.07 Severability

In the event any one or more of the provisions contained in this Agreement will, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision thereof and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 10.08 Prior Contracts Superseded

This Agreement constitutes the sole agreement of the parties hereto with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the parties respecting such subject matter.

Section 10.09 Notices and Communications

(a) Whenever under the provisions of this Agreement it will be necessary or desirable for one party to serve any approval, notice, request, demand, report or other communication on another party, the same will be in writing and will not be effective for any purpose unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by facsimile transmission, where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission is immediately followed by service of the original of the subject item in another manner permitted herein or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Department:
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Financial Officer
Facsimile: (804) 786-2940

With copies to:
Office of the Attorney General
202 N. 9th Street
Richmond, VA 23219
Attention: Chief, Transportation Section
Facsimile: (804) 786-9136

If to the Concessionaire:
Capital Beltway Express LLC
6440 General Green Way
Alexandria, Virginia 22312
Attention: President
Facsimile: (571) 419-6101

If to the Collateral Agent:
[•]
[•]
[•]
Attention: [•]
Facsimile: [•]

(b) Any party may, from time to time, by notice in writing served upon the other parties as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different

person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally will be deemed delivered upon receipt, if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by facsimile transmission will be deemed delivered on the date of receipt as shown on the received facsimile (*provided*, that the original is thereafter delivered as aforesaid).

Section 10.10 Effect of Breach

Without prejudice to any rights a party may otherwise have, a breach of this Agreement will not of itself give rise to a right to terminate the NEXT Project.

Section 10.11 Counterparts

This instrument may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Section 10.12 No Third-Party Beneficiaries

Nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

Section 10.13 No Partnership

Nothing contained in this Agreement will be deemed to constitute a partnership between the parties hereto. None of the parties will hold itself out contrary to the terms of this Section 10.13.

Section 10.14 No Interference

The Concessionaire joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not to knowingly do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

Section 10.15 Collateral Agent

(a) Notwithstanding anything to the contrary in this Agreement, but subject to Section 10.01 and Section 10.15(b), neither the Collateral Agent nor any Lender shall have any liability to the Department under this Agreement, unless the Collateral Agent or such Lender expressly assumes such liability in writing.

(b) The Department acknowledges and agrees that the Collateral Agent shall not be obligated or required to perform any of the Concessionaire's obligations under the Second ARCA except during any Step-in Period (solely to the extent the Collateral Agent or any of its Affiliates is the Step-In Entity).

(c) The Department acknowledges and agrees that no Lender shall be obligated or required to perform any of the Concessionaire's obligations under the Second ARCA.

Section 10.16 Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia applicable to contracts executed and to be performed within the State, without regard to conflicts of law principles that would result in the application of the laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an agency of the Commonwealth of Virginia

By: _____
Name: _____
Title: _____

CAPITAL BELTWAY EXPRESS LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

[•]

By: _____
Name: _____
Title: _____

ANNEX 1

FORM OF STEP-IN ENTITY ACCESSION AGREEMENT

[Date]

To: Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Financial Officer
Facsimile: (804) 786-2940

Copied to: Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
Attention: Chief Transportation Section
Facsimile: (804) 786-9136

[Lenders and other parties to Finance Documents to be listed]

[insert address]

For the attention of: [•]

From: [Step-in Entity]

NEXT HOT LANES PROJECT

STEP-IN ENTITY ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Second Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project, dated as of [•], 20[•] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Second ARCA”), between the Virginia Department of Transportation (the “Department”) and Capital Beltway Express LLC (the “Concessionaire”) and the NEXT Direct Agreement, dated as of [•], 20[•] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “NEXT Direct Agreement”), among the Department, the Concessionaire, and [•], as Collateral Agent.

Terms not otherwise defined herein will have the same meaning given to them in the NEXT Direct Agreement.

We hereby confirm that we are a Step-in Entity pursuant to Article 4 of the NEXT Direct Agreement.

We acknowledge and agree that, upon and by reason of our execution of this Step-in Entity Accession Agreement, we will become a party to the Second ARCA and the NEXT Direct Agreement jointly and severally with the Concessionaire as a Step-in Entity and, accordingly, will have the rights and powers and

assume the obligations of the Concessionaire under the Second ARCA and the NEXT Direct Agreement in accordance with the terms of the NEXT Direct Agreement.

Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Step-in Entity]

This Step-in Entity Accession Agreement will be governed by, and construed in accordance with, the law of the Commonwealth of Virginia, without regard for conflict of laws principles that would result in the application of the laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

The terms set forth herein are hereby agreed to:
[Step-in Entity]

By _____
Name:
Title:

ANNEX 2

FORM OF SUBSTITUTE ACCESSION AGREEMENT

[Date]

To: Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Financial Officer
Facsimile: (804) 786-2940

Copied to: Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
Attention: Chief Transportation Section
Facsimile: (804) 786-9136

From: [Substitute]

NEXT HOT LANES PROJECT

SUBSTITUTE ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Second Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project, dated as of [●], 20[●] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Second ARCA"), between the Virginia Department of Transportation (the "Department") and Capital Beltway Express LLC (the "Concessionaire") and the NEXT Direct Agreement, dated as of [●], 20[●] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "NEXT Direct Agreement"), among the Department, the Concessionaire and [●], as Collateral Agent.

Terms defined not otherwise defined herein will have the same meaning given to them in the NEXT Direct Agreement.

We, [entity name and entity type and state of formation], hereby confirm that we are a Substitute pursuant to Article 6 of the NEXT Direct Agreement.

We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement, we will become a party to the Second ARCA and the NEXT Direct Agreement, and we will assume all rights, duties, and obligations of the "Concessionaire" under the Second ARCA and the NEXT Direct Agreement and will complete the Work for the benefit of the Department.

Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Substitute]

This Substitute Accession Agreement will be governed by, and construed in accordance with, the law of the Commonwealth of Virginia, without regard for conflict of laws principles that would result in the application of the laws of another jurisdiction. Venue for any legal action arising out of this Agreement will lie in the Circuit Court in the City of Richmond, Virginia, Division I.

The terms set forth herein are hereby agreed to:

[Substitute]

By: _____
Name:
Title:

Agreed for and on behalf of:
Virginia Department of Transportation

By: _____
Name:
Title:

[Provided under separate cover]

EXHIBIT V
FORMS OF NEXT PAYMENT BONDS AND
NEXT PERFORMANCE BOND

[See attached]

EXHIBIT W
FEDERAL REQUIREMENTS

[See attached]

EXHIBIT X

LABOR, EMPLOYMENT AND DBE/SWAM RELATED MATTERS

[See attached]

EXHIBIT Y

INSURANCE REQUIREMENTS FOR THE NEXT PROJECT

Section 1. Insurance Coverages Prior to NEXT Final Completion

Except as set forth below, the Concessionaire will obtain and maintain, or cause the NEXT Design-Build Contractor to obtain and maintain, with each of the Concessionaire and the NEXT Design-Build Contractor as named insureds, the following insurance coverage types and amounts during the performance of the work under the NEXT Design-Build Contract (the “NEXT Design-Build Work”). Unless required otherwise, all insurance coverages listed below may be provided under corporate insurance programs maintained by the Concessionaire (or the NEXT Design-Build Contractor, as applicable) and need not be project-specific. Policy coverage limits may be achieved through a combination of insurance policies (e.g. primary and/or excess).

(a) **Workers’ Compensation and Employer’s Liability Insurance** with statutory workers’ compensation (Coverage A) limits and employer’s liability (Coverage B) limits of \$2,000,000 bodily injury by accident, each accident, and \$2,000,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers’ Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$2,000,000 per occurrence and \$4,000,000 annual aggregate applicable on a per project basis. The Department is to be named as an additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$2,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Department is to be named as an additional insured on a primary, non-contributory basis.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer’s liability, commercial general liability, and automobile liability in the amount of \$100,000,000 per occurrence and in the aggregate. The Department is to be named as an additional insured on a primary, non-contributory basis.

(e) **Builder’s Risk Insurance** for physical loss, destruction, or physical damage to the NEXT Design-Build Work. The Builder’s Risk insurance, which must be in place prior to the commencement of any construction work on the project, will cover the Concessionaire, the NEXT Design-Build Contractor, the Department, and other Contractors of all tiers prior to NEXT Final Completion; *provided*, that the limits of such coverage may be based on a maximum probable loss analysis, subject to the Department’s approval of such maximum probable loss analysis by an independent third party acceptable to the Department. In no event will the limits of such coverage be less than \$75,000,000. Further, the policy will include sub-limits for certain specified perils including, but not limited to: Offsite Storage, Property in Transit, Expediting Expenses, Demolition and Increased Cost of Construction, Debris Removal, Professional Fees/ Loss adjustment expenses and adjacent property of others within the Project limits. At the NEXT Design-Build Contractor’s option, Mobile Equipment may be covered under the Builder’s Risk Insurance or a separate Equipment Floater Policy may be purchased. The policy also will include replacement cost coverage for materials, supplies, equipment, machinery, and fixtures that are or will be part of the NEXT Project. Coverage will include, but not be limited to, the following: right to partial occupancy, earthquake, earth movement, flood, windstorm, transit, temporary and permanent works, expediting expenses, debris

removal, offsite storage, soft costs, and delayed opening loss of revenue for a period of at least six (6) months.

(f) **Contractor's Pollution Liability Insurance** to indemnify for bodily injury, property damage, or amounts which the Concessionaire, its employees, its agents, or its Contractors are legally obligated to pay for clean-up/remediation work arising out of the NEXT Design-Build Work, including coverage, if needed, for marine operations and coverage for liabilities under the Oil Pollution Act of 1990 (33 U.S.C. §§ 2701-2762) and the Comprehensive Environmental Response, Liability, and Compensation Act (42 U.S.C. §§ 9601-9675) for marine operations. Such insurance will have minimum limits of \$5,000,000 any one claim and in the aggregate and will remain in full force and effect for the period of the NEXT Design-Build Work and five years completed operations extension after NEXT Final Completion.

(g) **Marine Protection and Indemnity Insurance** – if any of the NEXT Design-Build Work requires marine operations, the Concessionaire and its Contractors shall provide protection and indemnity coverage with respect to bodily injury or property damage arising from marine operations including damage to piers, wharves, other fixed or movable structures, and loss or damage to any other vessel, craft, or property on such other vessel or craft. Such insurance will have minimum limits of \$5,000,000 in the aggregate. The Concessionaire is not obligated to purchase a project-specific Marine Protection and Indemnity Insurance, but will cause such insurance coverage to name the Department as an additional insured on a primary, non-contributory basis.

(h) **Railroad Protective Liability Insurance**, as may be required by any railroad in connection with NEXT Design-Build Work across, under or adjacent to the railroad's tracks or railroad right-of-way.

(i) **Architects/Engineers Professional Liability Insurance** covering the NEXT Design-Build Contractor's lead design engineer for acts, errors, or omissions arising in connection with the NEXT Design-Build Work, including any design and engineering work, for not less than \$10,000,000 for any one claim and in the aggregate. Such insurance, which may be purchased and maintained by the NEXT Design-Build Contractor's lead design engineer, will remain in full force and effect during the performance of the NEXT Design-Build Work and with an extended reporting period for five years after NEXT Final Completion.

Section 2. Insurance Coverages Required for the NEXT Project During the Operating Period

The Concessionaire will obtain and maintain, or cause the O&M Contractor to obtain and maintain with each the O&M Contractor and the Concessionaire as named insureds the following insurance coverages applicable to operations and maintenance (the "NEXT O&M Work"). Policy coverage limits may be achieved through a combination of insurance policies (e.g. primary and/or excess).

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1,000,000 bodily injury by accident, each accident, and \$1,000,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$2,000,000 per occurrence and \$4,000,000 annual aggregate, applicable on a per location basis. The Department is to be named as an additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$2,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Department is to be named as an additional insured on a primary, non-contributory basis.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$100,000,000 per occurrence and in the aggregate. The Department is to be named as an additional insured on a primary and non-contributory basis.

(e) **Property and Business Interruption Insurance** at replacement cost covering loss, damage, or destruction to the Project, including improvements and betterments; *provided*, that the limits of such coverage may be based on a maximum probable loss analysis, subject to the Department's approval of such maximum probable loss analysis by an independent third party acceptable to the Department. In no event will the limits of such coverage be less than \$50,000,000. Coverage will include, but not be limited to, the following: flood, earthquake, earth movement, windstorm, collapse, water (including overflow), leakage, utility interruption, debris removal, business ordinance or law for increased costs of construction, extra expenses, valuable papers, and terrorism. Subject to the applicable deductible, such coverage also will insure against interruption or loss of projected Toll Revenues for at least six months from the occurrence of the risk, resulting from physical damage to the Project and any relevant feeder roads. The Department is to be named as an additional insured on a primary, non-contributory basis. The Concessionaire is responsible for all loss or damage to personal property (including but not limited to materials, fixtures/contents, equipment, tools, and supplies) of the Concessionaire.

(f) **Pollution Liability Insurance** to indemnify for bodily injury, property damage, or amounts which the Concessionaire, its employees, its agents, or its Contractors are legally obligated to pay for clean-up/remediation work arising out of the NEXT O&M Work, including coverage, if needed, for marine operations and coverage for liabilities under the Oil Pollution Act of 1990 (33 U.S.C. §§ 2701-2762) and the Comprehensive Environmental Response, Liability, and Compensation Act (42 U.S.C. §§ 9601-9675) for marine operations. Such insurance will have minimum limits of \$5,000,000 for any one claim and in the aggregate.

(g) **Marine Protection and Indemnity Insurance** – if any of the NEXT O&M Work requires marine operations, the Concessionaire and its Contractors shall provide protection and indemnity coverage with respect to bodily injury or property damage arising from marine operations including damage to piers, wharves, other fixed or movable structures and loss or damage to any other vessel, craft, or property on such other vessel or craft. Such insurance will have minimum limits of \$5,000,000 in the aggregate.

Section 3. Insurance Coverage Requirements for Other Contractors

The Concessionaire will cause all contractors (other than the NEXT Design-Build Contractor and the O&M Contractor) performing any portion of the Work for the NEXT Project to obtain and maintain the following insurance coverages or be responsible for maintaining such coverages on their behalf, which requirements shall apply both during the design and construction of the NEXT Project, and during the Operating Period:

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1,000,000 bodily injury by accident, each accident, and \$1,000,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** will include coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and contractual liability with limits no less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate annually. The Concessionaire and the Department are to be named as additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$500,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Concessionaire and the Department are to be named as additional insured on a primary, non-contributory basis.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability and automobile liability in the amount \$5,000,000 per occurrence and in the aggregate for contracts greater than \$500,000.

(e) **Professional Liability Insurance** (applicable only to Contractors rendering professional services, including, but not limited to, architects, engineers, traffic consultants, accountants, attorneys, etc.) with limits of at least \$1,000,000 per claim and in the aggregate. Such insurance will remain in full force and effect during the performance of such professional services and with an extended reporting period for two years after completion of such professional services.

(f) **Technology Errors & Omissions Insurance (applicable only to TMS Work)** with limits of at least \$2,000,000 per claim and in the aggregate. Such insurance shall include coverage for claims arising from errors and omissions of any TMS Contractor or Consultant and shall include in addition to technology errors & omissions coverage the following: network security cyber liability, privacy liability, cyber business income interruption, and related coverages. Such policy shall remain in full force and effect during the performance of such technology-related services and with an extended reporting period for two years after completion of such professional services.

Section 4. Insurance Coverages for NEXT Early Work

The Concessionaire will obtain and maintain, or cause the NEXT Design-Build Contractor to obtain and maintain, the following insurance coverage types and amounts during the performance of NEXT Early Work. Unless required otherwise, all insurance listed below may be provided under corporate (so-called "practice") insurance policies and need not be purchased on a project-specific basis. Policy coverage limits may be achieved through a combination of insurance policies (e.g. primary and/or excess).

(a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$1,000,000 bodily injury by accident, each accident, and \$1,000,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

(b) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate applicable on a per project basis. The Department is to be named as an additional insured on a primary, non-contributory basis.

(c) **Automobile Liability Insurance** with a limit of at least \$1,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Department is to be named as an additional insured on a primary, non-contributory basis.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$4,000,000 per occurrence and in the aggregate. The Department is to be named an additional insured on a primary, non-contributory basis.

(e) **Architects/Engineers Professional Liability Insurance** covering the NEXT Design-Build Contractor's lead design engineer for acts, errors, or omissions arising in connection with the NEXT Early Work for not less than \$10,000,000 for any one claim and in the aggregate. Such insurance, which may be purchased and maintained by the NEXT Design-Build Contractor's lead design engineer, will remain in full force and effect during the performance of the NEXT Early Work.

EXHIBIT Z-1

TRANSIT AND CORRIDOR INVESTMENT PAYMENT

1. Transit and Corridor Investment Payment - Concessionaire Responsibilities and Department Rights

- 1.1. The Transit and Corridor Investment Payments will commence after the Initial Transit and Corridor Investment Payment is paid on June 30, 2025 and the Concessionaire achieves Service Commencement on the NEXT HOT Lanes, subject to the terms of Section 4.08(e) of the Agreement, and then continue on a semi-annual basis until the end of the Term or the termination of the Agreement.
- 1.2. The Transit and Corridor Investment Payment will be payable, by the Concessionaire to the Department, subject to Available Revenues (at the priority required by the terms of Section 4.08(c) of the Agreement) from the collateral account into which revenue of the Project is generally deposited and which is subject to the cashflow waterfall in accordance with the terms of the Agreement and the Project Financing Agreements (the "Revenue Account").

2. Payment of the Transit and Corridor Investment Payments

Payment of the Initial Transit and Corridor Investment Payment

- 2.1. On June 30, 2025, the Concessionaire shall pay to the Department the Initial Transit and Corridor Investment Payment as scheduled in section 3 herein.

Payment of Subsequent Transit and Corridor Investment Payments

- 2.2. Subject to section 1.1 herein, the Concessionaire shall pay to the Department on each June 30th and December 31st (or, if any such date falls on a non-Business Day, the immediately following Business Day) (each, a "TCI Payment Date") the estimated Transit and Corridor Investment Payment for the semi-annual period immediately preceding such June 30 or December 31 as scheduled in section 3 herein, from Revenue Account in accordance with the terms of the Agreement and the Project Financing Agreements.
- 2.3. The Transit and Corridor Investment Payment paid for each semi-annual period shall be based upon Available Revenues (at the priority required by the terms of Section 4.08(c) of the Agreement) on such TCI Payment Date.
- 2.4. Pursuant to Section 4.08(b) of the Agreement, except for the Initial Transit and Corridor Investment Payment, amounts of the Transit and Corridor Investment Payment that are not paid on any TCI Payment Date to the Department, including due to insufficient Available Revenues, will not rollover to the next TCI Payment Date; *provided*, however that the Concessionaire shall not be allowed to make any Distributions for the semi-annual period ending on the June 30 or December 31 on or immediately prior to each TCI Payment Date unless and until the Concessionaire pays the semi-annual Transit and Corridor Investment Payment scheduled in section 3 herein as payable on such TCI Payment Date in full.
- 2.5. If the Concessionaire has not achieved Service Commencement on the NEXT HOT Lanes on or after June 30, 2025 and on or prior to December 31, 2025, then no Transit and Corridor Investment Payments shall be due and payable on any TCI Payment Date until the Concessionaire has achieved Service Commencement on the NEXT HOT Lanes.

2.6. Notwithstanding section 2.5 above, if the Concessionaire receives liquidated damages payments from the NEXT Design-Build Contractor in connection with any delay in achieving Service Commencement on the NEXT HOT Lanes, then any Transit and Corridor Investment Payments otherwise scheduled for such period of delay in Service Commencement on the NEXT HOT Lanes shall be paid to the Department, subject to Available Revenues and without any further rollover to subsequent TCI Payment Dates pursuant to and in accordance with Section 4.08(b) of the Agreement, at the time any such remaining liquidated damages payments are transferred to the Revenue Account for application through the cashflow waterfall under the terms of the NEXT Project Financing Agreements. For the avoidance of doubt, if at the time of the special delay Transit and Corridor Investment Payment described in this section 2.6, the Concessionaire has not achieved Service Commencement on the NEXT HOT Lanes, then no further Transit and Corridor Investment Payments shall be due and payable on any TCI Payment Date occurring thereafter until the Concessionaire has achieved Service Commencement on the NEXT HOT Lanes.

3. Transit and Corridor Investment Payment Schedule

Transit and Corridor Investment Payment Schedule			
Payment Due Date	Minimum Annual Transit and Corridor Investment Payment (\$ Nominal)	Payment Due Date	Minimum Annual Transit and Corridor Investment Payment (\$ Nominal)
Jun 30, 2025	\$2,200,000.00	Dec 31, 2056	\$2,424,132.63
Dec 31, 2025	\$1,127,500.00	Jun 30, 2057	\$2,424,132.63
Jun 30, 2026	\$1,127,500.00	Dec 31, 2057	\$2,484,735.95
Dec 31, 2026	\$1,155,687.50	Jun 30, 2058	\$2,484,735.95
Jun 30, 2027	\$1,155,687.50	Dec 31, 2058	\$2,546,854.35
Dec 31, 2027	\$1,184,579.69	Jun 30, 2059	\$2,546,854.35
Jun 30, 2028	\$1,184,579.69	Dec 31, 2059	\$2,610,525.70
Dec 31, 2028	\$1,214,194.18	Jun 30, 2060	\$2,610,525.70
Jun 30, 2029	\$1,214,194.18	Dec 31, 2060	\$2,675,788.85
Dec 31, 2029	\$1,244,549.03	Jun 30, 2061	\$2,675,788.85
Jun 30, 2030	\$1,244,549.03	Dec 31, 2061	\$2,742,683.57
Dec 31, 2030	\$1,275,662.76	Jun 30, 2062	\$2,742,683.57
Jun 30, 2031	\$1,275,662.76	Dec 31, 2062	\$2,811,250.66
Dec 31, 2031	\$1,307,554.33	Jun 30, 2063	\$2,811,250.66
Jun 30, 2032	\$1,307,554.33	Dec 31, 2063	\$2,881,531.92
Dec 31, 2032	\$1,340,243.19	Jun 30, 2064	\$2,881,531.92
Jun 30, 2033	\$1,340,243.19	Dec 31, 2064	\$2,953,570.22
Dec 31, 2033	\$1,373,749.27	Jun 30, 2065	\$2,953,570.22
Jun 30, 2034	\$1,373,749.27	Dec 31, 2065	\$3,027,409.48
Dec 31, 2034	\$1,408,093.00	Jun 30, 2066	\$3,027,409.48
Jun 30, 2035	\$1,408,093.00	Dec 31, 2066	\$3,103,094.71
Dec 31, 2035	\$1,443,295.32	Jun 30, 2067	\$3,103,094.71
Jun 30, 2036	\$1,443,295.32	Dec 31, 2067	\$3,180,672.08
Dec 31, 2036	\$1,479,377.71	Jun 30, 2068	\$3,180,672.08
Jun 30, 2037	\$1,479,377.71	Dec 31, 2068	\$3,260,188.88
Dec 31, 2037	\$1,516,362.15	Jun 30, 2069	\$3,260,188.88
Jun 30, 2038	\$1,516,362.15	Dec 31, 2069	\$3,341,693.61
Dec 31, 2038	\$1,554,271.20	Jun 30, 2070	\$3,341,693.61
Jun 30, 2039	\$1,554,271.20	Dec 31, 2070	\$3,425,235.95
Dec 31, 2039	\$1,593,127.98	Jun 30, 2071	\$3,425,235.95
Jun 30, 2040	\$1,593,127.98	Dec 31, 2071	\$3,510,866.85
Dec 31, 2040	\$1,632,956.18	Jun 30, 2072	\$3,510,866.85
Jun 30, 2041	\$1,632,956.18	Dec 31, 2072	\$3,598,638.52

Transit and Corridor Investment Payment Schedule			
Payment Due Date	Minimum Annual Transit and Corridor Investment Payment (\$ Nominal)	Payment Due Date	Minimum Annual Transit and Corridor Investment Payment (\$ Nominal)
Dec 31, 2041	\$1,673,780.09	Jun 30, 2073	\$3,598,638.52
Jun 30, 2042	\$1,673,780.09	Dec 31, 2073	\$3,688,604.48
Dec 31, 2042	\$1,715,624.59	Jun 30, 2074	\$3,688,604.48
Jun 30, 2043	\$1,715,624.59	Dec 31, 2074	\$3,780,819.59
Dec 31, 2043	\$1,758,515.20	Jun 30, 2075	\$3,780,819.59
Jun 30, 2044	\$1,758,515.20	Dec 31, 2075	\$3,875,340.08
Dec 31, 2044	\$1,802,478.08	Jun 30, 2076	\$3,875,340.08
Jun 30, 2045	\$1,802,478.08	Dec 31, 2076	\$3,972,223.58
Dec 31, 2045	\$1,847,540.04	Jun 30, 2077	\$3,972,223.58
Jun 30, 2046	\$1,847,540.04	Dec 31, 2077	\$4,071,529.17
Dec 31, 2046	\$1,893,728.54	Jun 30, 2078	\$4,071,529.17
Jun 30, 2047	\$1,893,728.54	Dec 31, 2078	\$4,173,317.40
Dec 31, 2047	\$1,941,071.75	Jun 30, 2079	\$4,173,317.40
Jun 30, 2048	\$1,941,071.75	Dec 31, 2079	\$4,277,650.34
Dec 31, 2048	\$1,989,598.54	Jun 30, 2080	\$4,277,650.34
Jun 30, 2049	\$1,989,598.54	Dec 31, 2080	\$4,384,591.60
Dec 31, 2049	\$2,039,338.51	Jun 30, 2081	\$4,384,591.60
Jun 30, 2050	\$2,039,338.51	Dec 31, 2081	\$4,494,206.39
Dec 31, 2050	\$2,090,321.97	Jun 30, 2082	\$4,494,206.39
Jun 30, 2051	\$2,090,321.97	Dec 31, 2082	\$4,606,561.55
Dec 31, 2051	\$2,142,580.02	Jun 30, 2083	\$4,606,561.55
Jun 30, 2052	\$2,142,580.02	Dec 31, 2083	\$4,721,725.58
Dec 31, 2052	\$2,196,144.52	Jun 30, 2084	\$4,721,725.58
Jun 30, 2053	\$2,196,144.52	Dec 31, 2084	\$4,839,768.72
Dec 31, 2053	\$2,251,048.13	Jun 30, 2085	\$4,839,768.72
Jun 30, 2054	\$2,251,048.13	Dec 31, 2085	\$4,960,762.94
Dec 31, 2054	\$2,307,324.34	Jun 30, 2086	\$4,960,762.94
Jun 30, 2055	\$2,307,324.34	Dec 31, 2086	\$5,084,782.02
Dec 31, 2055	\$2,365,007.45	Jun 30, 2087	\$5,084,782.02
Jun 30, 2056	\$2,365,007.45	Dec 19, 2087	\$5,211,901.57
Total Transit Corridor Investment Payments			\$334,164,026.82

EXHIBIT Z-2

EXCESS SHARING AMOUNT

1. Excess Sharing Amount - Concessionaire Responsibilities and Department Rights

- 1.1. Beginning in fiscal year 2026 (July 1, 2025 – June 30, 2026) and for each fiscal year thereafter, continuing until the end of the Term or the termination of the Agreement has occurred, the Concessionaire shall provide, within 15 Business Days after each June 30th and December 31st, to the Department the following (collectively, the “ESA Report”) for the initial semi-annual period of such fiscal year (solely for the purposes of, and in accordance with, the reserve requirements set forth in Section 4.09(b) of this Agreement and this Exhibit Z-2) or the preceding fiscal year, as the case may be (the “Corresponding Period”):
 - (a) a calculation of the actual Eligible Sharing Amount (which may be zero), the actual available revenues generated by the NEXT HOT Lanes and the Actual Gross Revenue for the Eligible Sharing Amount for the Corresponding Period;
 - (b) a reconciliation of the Excess Sharing Amount paid or reserved during the Corresponding Period (if any) and the required Excess Sharing Amount based upon the actual Eligible Sharing Amount and actual available revenues generated by the NEXT HOT Lanes and the Actual Gross Revenue for the Excess Sharing Amount throughout the Corresponding Period;
 - (c) for any Corresponding Period ending December 31st, the calculation of the amount to be reserved in the ESA Reserve Account (if any) for the purposes of making semi-annual Distributions from otherwise available amounts; and
 - (d) the Concessionaire’s audited calculation of the Excess Sharing Amount for the Corresponding Period, together with all other data relevant to the calculation of such Excess Sharing Amount.
- 1.2. The Excess Sharing Amount (if calculated to be greater than zero in accordance with this Exhibit Z-2) will be payable, by the Concessionaire to the Department in accordance with section 4 herein, subject to Actual Gross Revenues generated by the NEXT HOT Lanes (at the priority required by the terms of Section 4.09(c) of the Agreement) from the Revenue Account and the ESA Reserve Account in accordance with the terms of the Agreement and the Project Financing Agreements (“Actual Available Revenue”).
- 1.3. The Department shall have the right to dispute the Concessionaire’s calculation of the Excess Sharing Amount or to request reasonably required additional information, clarification or amendment of such calculation, at any time for a period of one year following the submission of the audit and other data referenced above. The Concessionaire shall deliver to the Department such reasonably required information, clarification or amendment within 30 days following the delivery of the Department’s request therefor. If the Department does not agree with the calculation of the Excess Sharing Amount, the dispute shall be resolved according to the dispute resolution procedures of Section 17.06 of the Agreement.

2. Excess Sharing Amount – Verification Process

- 2.1. Starting in fiscal year 2026, the parties will verify the Excess Sharing Amount for each Corresponding Period ending on each June 30th and December 31st according to the principles as set forth in section 2 herein.

- 2.2. The Actual Available Revenue generated by the NEXT HOT Lanes in a Corresponding Period shall be calculated as a percentage of the total Toll Revenue in that period as set forth in section 5 herein. The Eligible Sharing Amount shall be calculated as the amount by which the Actual Available Revenue generated by the NEXT HOT Lanes in a Corresponding Period exceeds the Minimum Threshold amount for that period as set forth in section 5 herein. The foregoing calculations are referred to herein as the “Verification Process”.
- 2.3. If the Verification Process determines that the Actual Available Revenue generated by the NEXT HOT Lanes in the Corresponding Period exceeds the Minimum Threshold amount for that period (the Verification Process is “Passed”), the Concessionaire will make payment of the Excess Sharing Amount (or reserve a portion thereof in the ESA Reserve Account as the case maybe) in accordance with Section 4.09 of the Agreement and this Exhibit Z-2. If the Verification Process determines that the Actual Available Revenue generated by the NEXT HOT Lanes in a Corresponding Period equals or is less than the Minimum Threshold amount for that period (the Verification Process is “Failed”), then no payments (or reservations) will be made for the Corresponding Period.
- 2.4. Within 15 Business Days following the end of each semi-annual period (June 30th and December 31st), the Verification Process will be run for the applicable Corresponding Period by the Concessionaire per the terms of this Exhibit Z-2, section 2 and the resulting ESA Report shall be delivered to the Department. The Department shall review the ESA Report for manifest error and, so long as no manifest error is found, shall (a) for a Corresponding Period ending June 30th in which the Verification Process is Passed, send an invoice to the Concessionaire in the amount of the verified Eligible Sharing Amount and (b) for a Corresponding Period ending December 31st in which the Verification Process is Passed, notify the Concessionaire in writing that it accepts the amount to be reserved in the ESA Reserve Account set forth in the ESA Report. If the Department fails to notify the Concessionaire in accordance with clause (b) above within 15 Business Days after receipt of the applicable ESA Report, the Department will be deemed to have approved such reservation amount for all purposes of this Agreement (including the making of any semi-annual Distributions by the Concessionaire after reservation of such amount).
- 2.5. Pursuant to Section 4.09(a) of the Agreement, the Excess Sharing Amount for year 1 shall be payable to the Department from the Eligible Sharing Amount for year 1, as follows: (i) first, 100% of the Eligible Sharing Amount up to a maximum amount of \$1,000,000 escalated by 2.5% p.a. (see section 6 below for full escalated schedule) and (ii) second, 70% of the remaining Eligible Sharing Amount (with the remaining 30% to the Concessionaire), with the Department’s aggregate share under both clauses (i) and (ii) in year 1 capped at a total maximum amount of \$5,000,000 (and annually thereafter, the maximum \$5,000,000 cap escalated by 2.5% p.a.) (see Section 6 below for full escalated schedule). The Excess Sharing Amount as calculated for any fiscal year in accordance with the foregoing is hereinafter referred to as the “Annual Excess Sharing Amount”.
- 2.6. Each Annual Excess Sharing Amount shall be payable only from Actual Available Revenue generated by the NEXT HOT Lanes.
- 2.7. There are no catch ups or rollovers for either the Department or the Concessionaire in the mechanism; *provided* however, that the Concessionaire shall not be allowed to make any semi-annual Distributions (a) for the Corresponding Period ending on the December 31st immediately prior to any projected ESA Payment Date unless and until the Concessionaire reserves from Actual Available Revenue one-half of the Excess Sharing Amount calculated based on the historical performance for the semi-annual period ending on such December 31, capped at one-half of the otherwise applicable maximum Excess Sharing Amount for such year, in the ESA Reserve

Account at the level of the cash flow waterfall required by Section 4.09(c) of this Agreement (subject to section 2.4 herein) and (b) for the Corresponding Period ending on June 30th immediately prior to any projected ESA Payment Date unless and until the Concessionaire pays from amounts on reserve in the ESA Reserve Account and from Actual Available Revenue any Excess Sharing Amount due to the Department, recalculated based on the historical performance for the prior fiscal year and payable on such ESA Payment Date (subject to section 4.1 herein).

2.8. The forecasted minimum threshold amount of the Actual Available Revenue required to make any Excess Sharing Amount is referred to herein as the “Minimum Threshold” as set out on an annual basis in Exhibit Z-2, section 5.

3. Deposits in the ESA Reserve Account after Semi-Annual Periods ending December 31st

3.1. Beginning in the fiscal year 2026 and after the Verification Process occurring for each December 31st has been Passed, the Concessionaire shall reserve from Actual Available Revenue one half (50%) of the otherwise applicable maximum yearly Excess Sharing Amount set forth for such fiscal year in section 5 herein (or if less, 50% of the anticipated yearly Excess Sharing Amount). The anticipated yearly Excess Sharing Amount is to be calculated based on doubling the Actual Available Revenue generated by the NEXT HOT Lanes for the Corresponding Period ending on such December 31st.

4. Payment of Excess Sharing Amounts

4.1. Beginning in fiscal year 2026, the Concessionaire shall pay to the Department the verified Excess Sharing Amount for such fiscal year no later than 30 days after the invoice therefor has been received by the Concessionaire from the Department. If the invoice for the prior fiscal year’s verified Excess Sharing Amount has not been received by the Concessionaire by January 31st, then the Concessionaire may make Distributions for such period so long as the Concessionaire reserves from the amounts otherwise available for Distribution an amount no less than the verified Excess Sharing Amount set forth in the applicable ESA Report for payment to the Department within 30 days after the applicable invoice has been received.

4.2. The verified Excess Sharing Amount paid for each fiscal year shall be based upon the Eligible Sharing Amount and Actual Available Revenue generated by the NEXT HOT Lanes (at the priority required by the terms of Section 4.09(c) of the Agreement) in such fiscal year and audited at the fiscal year end.

5. Excess Sharing Amounts Schedule

Excess Sharing Amounts Minimum Threshold and Maximum Payment					
Fiscal Year End Date	Minimum Threshold	% of Total Toll Revenue to calculate Actual Available Revenue generated by NEXT HOT Lanes	100% Payable escalated by 2.5%	Maximum Payment escalated by 2.5%	Max Add'l Next Rev required to make max 70% Payable
Jun 30, 2026	10,075,951	7.65%	1,000,000	5,000,000	5,714,286
Jun 30, 2027	16,025,965	10.88%	1,025,000	5,125,000	5,857,143

Excess Sharing Amounts					
Minimum Threshold and Maximum Payment					
Fiscal Year End Date	Minimum Threshold	% of Total Toll Revenue to calculate Actual Available Revenue generated by NEXT HOT Lanes	100% Payable escalated by 2.5%	Maximum Payment escalated by 2.5%	Max Add'l Next Rev required to make max 70% Payable
Jun 30, 2028	18,494,138	11.64%	1,050,625	5,253,125	6,003,571
Jun 30, 2029	20,175,045	11.97%	1,076,891	5,384,453	6,153,661
Jun 30, 2030	21,598,548	12.13%	1,103,813	5,519,064	6,307,502
Jun 30, 2031	23,069,955	12.30%	1,131,408	5,657,041	6,465,190
Jun 30, 2032	24,673,589	12.48%	1,159,693	5,798,467	6,626,820
Jun 30, 2033	26,213,469	12.65%	1,188,686	5,943,429	6,792,490
Jun 30, 2034	27,898,559	12.82%	1,218,403	6,092,014	6,962,302
Jun 30, 2035	29,662,940	12.98%	1,248,863	6,244,315	7,136,360
Jun 30, 2036	31,597,384	13.13%	1,280,085	6,400,423	7,314,769
Jun 30, 2037	33,441,304	13.29%	1,312,087	6,560,433	7,497,638
Jun 30, 2038	35,461,375	13.43%	1,344,889	6,724,444	7,685,079
Jun 30, 2039	37,572,918	13.58%	1,378,511	6,892,555	7,877,206
Jun 30, 2040	39,889,953	13.72%	1,412,974	7,064,869	8,074,136
Jun 30, 2041	42,083,632	13.86%	1,448,298	7,241,491	8,275,990
Jun 30, 2042	44,489,655	13.99%	1,484,506	7,422,528	8,482,889
Jun 30, 2043	47,000,861	14.12%	1,521,618	7,608,091	8,694,961
Jun 30, 2044	49,758,887	14.25%	1,559,659	7,798,294	8,912,336
Jun 30, 2045	52,353,671	14.38%	1,598,650	7,993,251	9,135,144
Jun 30, 2046	55,202,880	14.50%	1,638,616	8,193,082	9,363,523
Jun 30, 2047	58,172,437	14.62%	1,679,582	8,397,909	9,597,611
Jun 30, 2048	61,436,512	14.73%	1,721,571	8,607,857	9,837,551
Jun 30, 2049	64,488,906	14.84%	1,764,611	8,823,053	10,083,490
Jun 30, 2050	67,844,294	14.95%	1,808,726	9,043,630	10,335,577
Jun 30, 2051	71,336,983	15.05%	1,853,944	9,269,720	10,593,966
Jun 30, 2052	75,179,505	15.15%	1,900,293	9,501,464	10,858,815
Jun 30, 2053	78,752,675	15.25%	1,947,800	9,739,000	11,130,286
Jun 30, 2054	82,685,237	15.34%	1,996,495	9,982,475	11,408,543
Jun 30, 2055	86,774,226	15.43%	2,046,407	10,232,037	11,693,757
Jun 30, 2056	91,277,058	15.52%	2,097,568	10,487,838	11,986,100
Jun 30, 2057	95,442,249	15.61%	2,150,007	10,750,034	12,285,753

Excess Sharing Amounts					
Minimum Threshold and Maximum Payment					
Fiscal Year End Date	Minimum Threshold	% of Total Toll Revenue to calculate Actual Available Revenue generated by NEXT HOT Lanes	100% Payable escalated by 2.5%	Maximum Payment escalated by 2.5%	Max Add'l Next Rev required to make max 70% Payable
Jun 30, 2058	100,032,059	15.69%	2,203,757	11,018,785	12,592,897
Jun 30, 2059	104,799,859	15.77%	2,258,851	11,294,254	12,907,719
Jun 30, 2060	110,055,364	15.85%	2,315,322	11,576,611	13,230,412
Jun 30, 2061	114,892,807	15.92%	2,373,205	11,866,026	13,561,172
Jun 30, 2062	120,230,083	16.00%	2,432,535	12,162,677	13,900,202
Jun 30, 2063	125,769,608	16.07%	2,493,349	12,466,743	14,247,707
Jun 30, 2064	131,881,820	16.14%	2,555,682	12,778,412	14,603,900
Jun 30, 2065	137,481,649	16.21%	2,619,574	13,097,872	14,968,997
Jun 30, 2066	143,667,757	16.27%	2,685,064	13,425,319	15,343,222
Jun 30, 2067	150,083,300	16.33%	2,752,190	13,760,952	15,726,802
Jun 30, 2068	157,168,977	16.40%	2,820,995	14,104,976	16,119,973
Jun 30, 2069	163,631,992	16.46%	2,891,520	14,457,600	16,522,972
Jun 30, 2070	170,780,278	16.51%	2,963,808	14,819,040	16,936,046
Jun 30, 2071	178,188,278	16.57%	3,037,903	15,189,516	17,359,447
Jun 30, 2072	186,377,720	16.63%	3,113,851	15,569,254	17,793,433
Jun 30, 2073	193,815,859	16.68%	3,191,697	15,958,486	18,238,269
Jun 30, 2074	202,052,152	16.73%	3,271,490	16,357,448	18,694,226
Jun 30, 2075	210,581,579	16.78%	3,353,277	16,766,384	19,161,582
Jun 30, 2076	220,019,034	16.83%	3,437,109	17,185,544	19,640,621
Jun 30, 2077	228,555,364	16.88%	3,523,036	17,615,182	20,131,637
Jun 30, 2078	238,017,948	16.93%	3,611,112	18,055,562	20,634,928
Jun 30, 2079	247,810,107	16.97%	3,701,390	18,506,951	21,150,801
Jun 30, 2080	258,653,509	17.02%	3,793,925	18,969,625	21,679,571
Jun 30, 2081	268,421,487	17.06%	3,888,773	19,443,865	22,221,560
Jun 30, 2082	279,260,261	17.10%	3,985,992	19,929,962	22,777,099
Jun 30, 2083	290,467,693	17.15%	4,085,642	20,428,211	23,346,527
Jun 30, 2084	302,887,400	17.19%	4,187,783	20,938,916	23,930,190
Jun 30, 2085	314,029,055	17.22%	4,292,478	21,462,389	24,528,445
Jun 30, 2086	326,401,636	17.26%	4,399,790	21,998,949	25,141,656
Jun 30, 2087	339,185,620	17.30%	4,509,784	22,548,922	25,770,197

Excess Sharing Amounts					
Minimum Threshold and Maximum Payment					
Fiscal Year End Date	Minimum Threshold	% of Total Toll Revenue to calculate Actual Available Revenue generated by NEXT HOT Lanes	100% Payable escalated by 2.5%	Maximum Payment escalated by 2.5%	Max Add'l Next Rev required to make max 70% Payable
Dec 19, 2087	176,465,030	17.32%	2,311,265	11,556,323	13,207,226