Amended and Restated Comprehensive Agreement

(Relating to the Grant of a Permit)

to Develop and Operate the Route 895 Connector

Dated as of June 29, 2006

by and between

VIRGINIA DEPARTMENT OF TRANSPORTATION,

a Department of the Commonwealth of Virginia

and

TRANSURBAN (895) LLC,

a Delaware limited liability company

TABLE OF CONTENTS

ARTICLE 1. RECITALS 1

ARTICLE 2. DEFINITIONS 4

ARTICLE 3. ESTABLISHMENT OF PUBLIC-PRIVATE TRANSACTION 5

Section 3.01 Basic Agreement. 5

Section 3.02 Parties to Transaction; Roles and Responsibilities. 5

Section 3.03 Project Agreements. 7

Section 3.04 Nature of Parties' Interests Under Certain Project Agreements. 9

Section 3.05 Right to Cross Navigable Water Courses. 9

Section 3.06 Assignment of Warranties; Enforcement. 9

ARTICLE 4. TOLLING OF PROJECT 11

Section 4.01 Right to Charge Tolls. 11

Section 4.02 Rate Covenant. 13

Section 4.03 Change in User Classifications and Categories. 14

Section 4.04 Additional Provisions Respecting Tolls. 15

Section 4.05 Emergency Suspension of Tolls. 15

ARTICLE 5. PERMIT FEE 17

Section 5.01 Permit Fee 17

ARTICLE 6. PROJECT FINANCING; LENDER RIGHTS AND REMEDIES 19

Section 6.01 Operator Responsibility for Project Financing; No Department Liability for Operator Debt. 19

Section 6.02 Project Financing Agreements; Department's Rights and Protections. 20

Section 6.03 Notices to Collateral Agent; No Amendments. 23

Section 6.04 Collateral Agent's Right to Cure. 23

Section 6.05 Other Rights of Lenders. 25

Section 6.06 Refinancing Requirements. 28

Section 6.07 Limitation on Beneficiaries. 29

ARTICLE 7. DESIGN, ACQUISITION AND CONSTRUCTION; REGULATORY APPROVALS 30

Section 7.01 Operator Obligation to Design and Construct. 30

Section 7.02 Project Right of Way and Utilities. 30

Section 7.03 Quality Management. 31

Section 7.04 Construction Traffic Management. 32

Section 7.05 Public Information. 32
Section 7.06 Operator Obligation to Obtain Regulatory Approvals. 32
Section 7.07 NEPA Compliance. 33
Section 7.08 FHWA Agreement 33
Section 7.09 Federal Interstate Designation. 33
ARTICLE 8. PROJECT MANAGEMENT 34
Section 8.01 Conditions Precedent to Operation of Airport Connector Road. 34
Section 8.02 Operator Obligation to Manage and Operate. 34
Section 8.03 Temporary Delegation of Operations and Maintenance to the Department; Department Charges. 35
Section 8.04 The O&M Contractor. 36
Section 8.05 Annual Budget. 38
Section 8.06 Department Access and Inspection. 38
Section 8.07 Extraordinary Maintenance and Repair Reserve. 39
Section 8.08 Procedures Relating to Extraordinary Maintenance and Repair Work 42
Section 8.09 Ordinary Operation and Maintenance Letter of Credit. 44
Section 8.10 Obligation to Turn Over Project at End of Term. 45
Section 8.11 Transition Plan. 45
Section 8.12 Ethical Standards. 45
Section 8.13 Police Services. 46
Section 8.14 Hazardous Substances Management. 46
Section 8.15 Contract Services 49
Section 8.16 Richmond Traffic Model Maintenance 49
Section 8.17 Operations and Systems Management 49
Section 8.18 ETC 49
ARTICLE 9. AIRPORT CONNECTOR ROAD, PROJECT ENHANCEMENTS, DIRECTED CHANGES AND COMPLIANCE ORDERS 50
Section 9.01 Airport Connector Road. 50
Section 9.02 Project Enhancements by the Operator. 54
Section 9.03 Project Enhancements by the Department. 54
Section 9.04 Compliance Orders. 55
ARTICLE 10. DEPARTMENT OVERSIGHT AND OTHER SERVICES 57

Section 10.01 Right to Oversee Work. 57
Section 10.02 Compensation for Oversight Services. 57
ARTICLE 11. CONTRACTING PRACTICES 58
Section 11.01 Obligation to Refrain from Discrimination 58
Section 11.02 Subcontracting. 58
Section 11.03 Small, Women-Owned and Minority Business Reporting (SWAM). 60
Section 11.04 Federal Requirements. 60
ARTICLE 12. INTERRELATIONS AMONG TRANSPORTATION FACILITIES 61
Section 12.01 Competitive Transportation Facilities 61
Section 12.02 Coordination Regarding Certain Transportation Facilities 64
Section 12.03 Traffic Management Activities. 65
Section 12.04 ITS Activities. 66
Section 12.05 Directional Signs 66
ARTICLE 13. RELIANCE, INDEMNIFICATION, INSURANCE, AND DISCRIMINATORY ACTION 67
Section 13.01 Limitations on the Operator's Right to Rely 67
Section 13.02 Indemnities of the Operator. 68
Section 13.03 Responsibilities Regarding Insurance 69
Section 13.04 Operator Indemnifications Regarding Hazardous Substances 72
Section 13.05 Discriminatory Governmental Action; Toll Exemptions 73
Section 13.06 Reimbursable Tax Imposition 73
Section 13.07 Department's Payment Options for Operator Damages or Compensation for Net Revenue Impact. 73
Section 13.08 Compensation Events 75
Section 13.09 Mitigation 76
ARTICLE 14. DELAY AND FORCE MAJEURE EVENTS 77
Section 14.01 Delay Events. 77
Section 14.02 Force Majeure. 77
ARTICLE 15. REPRESENTATIONS, WARRANTIES AND FINDINGS 80
Section 15.01 Department Representations and Warranties. 80
Section 15.02 Operator Representations and Warranties. 81
Section 15.03 Survival of Representations and Warranties. 83

Section 15.04 The Department's Findings Under PPTA 83
ARTICLE 16. TERMINATION 85
Section 16.01 Termination for Public Convenience. 85
Section 16.02 Other Unilateral Rights to Terminate. 85
Section 16.03 Operator Actions Upon Termination. 85
Section 16.04 Liability After Termination 86
Section 16.05 Termination Other Than Pursuant to Agreement 87
Section 16.06 Exclusive Termination Remedies. 87
ARTICLE 17. DEFAULTS AND REMEDIES 88
Section 17.01 Operator Defaults. 88
Section 17.02 Department Remedies upon Operator Default 89
Section 17.03 Department Defaults. 91
Section 17.04 Remedies of the Operator upon Department Default. 92
Section 17.05 Determination of Fair Market Value 92
Section 17.06 Dispute Resolution; No Declaratory Judgment Procedure. 93
ARTICLE 18. RECORDS, REPORTS, WORK PRODUCT AND INTELLECTUAL PROPERTY 95
Section 18.01 Maintenance of Records. 95
Section 18.02 Public Records. 95
Section 18.03 Ownership of Work Product. 96
Section 18.04 Ownership of Intellectual Property. 97
Section 18.05 Source Code Escrow 98
Section 18.06 Reporting Requirements and Inspection and Audit Rights 99
ARTICLE 19. RESERVED RIGHTS 101
Section 19.01 Exclusions from the Operator's Interests 101
Section 19.02 Department Reservation of Rights 101
Section 19.03 Disgorgement. 101
Section 19.04 Alternate Treatment of Reserved Rights 102
Section 19.05 Change of Name. 102
ARTICLE 20. MISCELLANEOUS 103
Section 20.01 Transfers by the Operator. 103
Section 20.02 Assignment by the Department 104
Section 20.03 No Gift or Dedication. 104

Section 20.04	Notices.	104
Section 20.05	Binding Effect; Adoption of PPTA Amendments.	106
Section 20.06	Relationship of Parties.	106
Section 20.07	No Third-Party Beneficiaries.	106
Section 20.08	Limitation on Consequential Damages	106
Section 20.09	Waiver.	107
Section 20.10	No Brokers.	108
Section 20.11	Governing Law and Venue.	108
Section 20.12	Use of Police Power.	108
Section 20.13	Survival.	108
Section 20.14	Subpoena.	108
Section 20.15	Construction and Interpretation of Agreement.	108
Section 20.16	Counterparts.	110
Section 20.17	Entire Agreement; Amendment.	110
Section 20.18	Payment of Operator Damages and Other Amounts by the Department	110
Section 20.19	Interest on Overdue Amounts.	111

List of Exhibits:

A	Definitions
B	Project Description
C	[Reserved]
D	Form of Technical Support Agreement
E	[Reserved]
F	Toll Rates
G	[Reserved]
H	Operation and Maintenance Requirements and Extraordinary Maintenance and Repair Work
I	Consent to Assignment
J	List of Initial Project Financing Agreements
K	Life Cycle Maintenance Model
L	Depiction of Airport Connector Road
M	Unallowable Operating Costs Applicable to the Operator

AMENDED AND RESTATED COMPREHENSIVE AGREEMENT TO DEVELOP AND OPERATE THE ROUTE 895 CONNECTOR

This AMENDED AND RESTATED COMPREHENSIVE AGREEMENT TO DEVELOP AND OPERATE THE ROUTE 895 CONNECTOR ("**Agreement**") is made and entered into as of June 29, 2006, by and between the Virginia Department of Transportation (the "**Department**"), a department of the Commonwealth of Virginia, the address of which Department is 1401 East Broad Street, Richmond, Virginia 23219; and Transurban (895) LLC, (the "**Operator**"), a Delaware limited liability company, with a mailing address c/o Transurban (895) US Holdings LLC, Level 43, 405 Lexington Avenue, New York, NY 10017.

ARTICLE 1.

RECITALS

Section 1.01. On March 25, 1995 the Governor of the State signed into law, effective July 1, 1995, the Public-Private Transportation Act, which was amended and re-enacted by Chapters 504 and 562 of the 2005 Acts of Assembly and signed into law by the Governor, effective July 1, 2005 (as amended, the "**PPTA**").

Section 1.02. In re-enacting the PPTA, the State General Assembly found and declared, among other things, that:

(a) there is a public need for timely development and/or operation of transportation facilities within the State to address the needs identified by the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency and that such public need may not be wholly satisfied by existing methods of procurement in which qualifying transportation facilities are developed and/or operated;

(b) such public need may not be wholly satisfied by existing ways in which transportation facilities are developed and operated; and

(c) authorizing private entities to acquire, construct, improve, maintain, and/or operate one or more transportation facilities may result in the availability of such transportation facilities to the public in a more timely or less costly fashion, thereby serving the public safety and welfare.

Section 1.03. The PPTA grants the Department the authority to allow private entities to develop and/or operate qualifying transportation facilities if the Department determines there is a need for the facilities and private involvement would provide the facilities to the public in a timely and cost-effective fashion.

Section 1.04. On July 1, 1995 the Department adopted Implementation Guidelines developed by the Commissioner for the selection of solicited and unsolicited proposals for negotiation under the PPTA, which were revised in April 2001 and further revised on October 31, 2005.

Section 1.05. Pursuant to the PPTA, on November 8, 1995, FD/MK submitted an unsolicited conceptual proposal to the Department and on July 24, 1996, FD/MK submitted its detailed proposal for the design and construction of certain transportation facilities which collectively the Department referred to as the Route 895 Connector and which was subsequently designated as the Pocahontas Parkway.

Section 1.06. The proposed transportation facilities were the subject of long-term environmental planning and design, culminating in an environmental impact statement and record of decision, issued in 1994.

Section 1.07. After proposal clarification, the Advisory Panel evaluated the July 24, 1996 detailed proposal using the "Proposal Evaluation and Selection Criteria" set forth in the Implementation Guidelines. Based on such evaluation, the Advisory Panel, on May 5, 1997, recommended the Project to the Commissioner for development pursuant to the PPTA, subject to the successful negotiation, execution and delivery of a comprehensive agreement.

Section 1.08. On June 3, 1998, the Department and FD/MK entered into the Comprehensive Agreement to Develop and Operate Route 895 Connector (the "**Original Comprehensive Agreement**").

Section 1.09. On June 3, 1998, FD/MK, the Association and the Department entered into the Project Financing, Assignment and Assumption Agreement pursuant to which, among other things, FD/MK assigned to the Association, and the Association assumed, the rights and responsibilities of FD/MK as the Operator under the Original Comprehensive Agreement (other than certain construction and indemnification obligations).

Section 1.10. On June 3 1998, the Department and FD/MK entered into a design-build contract (the "**Design-Build Contract**") providing for the final design and construction of the transportation facilities.

Section 1.11. On June 3, 1998, the CTB and the Association entered into the SIB Loan Agreement, pursuant to which the CTB made a loan to the Association from the Toll Facilities Revolving Account in the principal amount of $18,000,000, evidenced by the SIB Bond.

Section 1.12. On July 9, 1998, the Association issued and sold to the underwriters the Series 1998 Senior Bonds.

Section 1.13. The transportation facilities designed and constructed pursuant to the Original Comprehensive Agreement constitute an approximately nine mile, four lane, limited access tollway located from the then eastern terminus of Chippenham Parkway (State Route 150) at I-95 to a connection with I-295 southeast of Richmond International Airport primarily in the southeastern portion of Henrico County (but extending for a short distance into the eastern tip of Chesterfield County and including a small portion in the City of Richmond), including a new

high-level bridge crossing Route I-95 and the James River south of the Port of Richmond's Deepwater Terminal.

Section 1.14. In September 2002, the Pocahontas Parkway was opened for public use.

Section 1.15. On October 21, 2004, the Association and the Department received a proposal from Transurban (USA), Inc. and DEPFA Bank, plc (the "**Consortium**") with respect to the proposed acquisition by the Consortium of the rights and obligations of the Association under the Original Comprehensive Agreement to manage, operate, maintain and collect tolls on the Pocahontas Parkway.

Section 1.16. On June 15, 2005, the Association, the Department and the Consortium entered into a letter agreement setting forth certain terms and conditions for negotiation of the proposed acquisition.

Section 1.17. On June 21, 2006, the Association and the Operator entered into an Asset Purchase Agreement, dated as of June 21, 2006, pursuant to which the Association has sold and assigned to the Operator, and the Operator has purchased and assumed from the Association, all of the Association's rights and obligations in connection with the Project, including its rights and obligations under the Original Comprehensive Agreement.

Section 1.18. On June 29, 2006 the Department consented to the assignment by the Association to the Operator of the Association's rights and obligations in connection with the Project (as defined herein), including its rights and obligations under the Original Comprehensive Agreement pursuant to a Consent to Assignment, dated June 29, 2006 ("**Consent to Assignment**"), in the form attached hereto as **Exhibit I**.

Section 1.19. On June 29, 2006, pursuant to the Asset Purchase Agreement, the Operator paid to the Association the Purchase Price (as defined in the Asset Purchase Agreement) and, on such date, the Association has applied a portion of such payment to the redemption and defeasance of the Series 1998 Senior Bonds and the SIB Loan.

Section 1.20. The Department and the Operator desire to amend and restate the Original Comprehensive Agreement, upon the terms set forth herein, to manage, operate, maintain and collect tolls on the Project.

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 Department and the Operator agree as follows:

ARTICLE 2.

DEFINITIONS

All capitalized terms used but not otherwise defined herein have the respective meanings given to them in **Exhibit A**.

ARTICLE 3.

ESTABLISHMENT OF PUBLIC-PRIVATE TRANSACTION

Section 3.01 Basic Agreement.

(a) The Department and the Operator agree that the Project, as described in **Exhibit B**, shall be developed, financed, maintained, improved, equipped, modified, repaired and operated in a transaction involving, together, a series of agreements setting forth distinct roles and responsibilities of several public and private sector participants.

(b) This **Article 3** identifies and establishes the basic roles and responsibilities of the Department and the Operator. This **Article 3** is not intended, and shall not be construed, to impose any obligations on any party, or provide any party with any rights, that are in addition to any rights or obligations set forth elsewhere in this Agreement and the other Project Agreements in connection with the subject matter thereof.

(c) The Operator's rights, obligations and liabilities with respect to the development of the Airport Connector Road or any Project Enhancements (the "**Development Duties**") shall be as stated in, or arising from, any Development Contract entered into in connection therewith. Notwithstanding any description of design and construction activities or of any Development Contract appearing in this Agreement, this Agreement shall neither add to nor diminish from the Operator's Development Duties.

Section 3.02 Parties to Transaction; Roles and Responsibilities.

(a) The parties to the transaction and the Project Agreements under which the Project shall be developed, financed, maintained, improved, equipped, modified, repaired and operated by the Operator are the Department, the Association, the Operator and the Technical Support Provider.

(b) As of the Agreement Date, the Operator is a wholly-owned indirect subsidiary of Transurban Holdings Limited, a company incorporated under the laws of the State of Victoria, Australia whose shares are traded on the Australian Stock Exchange. (c) The Department (in connection with the permit being granted to the Operator under this Agreement):

(i) shall establish, pursuant to this Agreement and the other Project Agreements, certain terms and conditions under which the Project will be developed, financed, maintained, improved, equipped, modified, repaired and operated;

(ii) hereby grants the Operator a permit under which the Operator has the exclusive right, as of the Closing Date, to develop, finance, maintain, improve, equip, modify, repair and operate the Project on the terms and conditions set forth in this Agreement and the other Project Agreements;

(iii) may perform Oversight Services with respect to the Project, including development of any Project Enhancements and the operation and maintenance of the Project, pursuant to **Article 10**;

(iv) if the Operator is obligated to construct and, to the extent provided herein, operate the Airport Connector Road in accordance with this Agreement, shall (A) at no cost to the Operator, grant a right of access to the Operator to all land that the Department has acquired as of December 31, 2005 that is part of the proposed Project Right of Way for the Airport Connector Road, (B) after December 31, 2005, acquire title to and, as necessary and appropriate, condemn, all additional required land for the Airport Connector Road, at Operator's sole cost and expense, except as otherwise provided in **Section 9.01(d)**, and (C) take acceptance of title to the Airport Connector Road upon satisfactory completion thereof. If the Department incurs costs under clause (B) above prior to Operator's close of the TIFIA financing pursuant to **Section 9.01(b)**, Operator shall reimburse the Department for such costs, except as otherwise provided in **Section 9.01(d)**, within ten days after Operator closes the TIFIA financing and receives Department's written invoice for such costs. If the Department's acquisition work continues after Operator closes the TIFIA financing, the Department will continue to submit invoices for its costs, which Operator shall pay within 30 days after the date of each invoice, except as otherwise provided in **Section 9.01(d)**;

(v) shall take acceptance of title to any Project Enhancements developed by the Operator, upon satisfactory completion thereof;

(vi) subject to **Section 20.18**, shall compensate the Operator with respect to the adverse economic impact, if any, of Competitive Transportation Facilities to the extent provided in **Sections 12.01 and 13.07** and pay Operator Damages to the Operator in the event of any other Compensation Event that occurs pursuant to this Agreement;

(vii) shall have the right and obligation to use its diligent efforts to complete the environmental review process and obtain a Record of Decision or other disposition under NEPA for the Airport Connector Road; and

(viii) if Operator develops the Airport Connector Road as part of the Project, shall assign to Operator, to the extent assignable, any Regulatory Approvals Department obtained prior to the Agreement Date for the Airport Connector Road.

(d) The Association shall have assigned, as of the Closing Date, all of its rights and obligations under the Original Comprehensive Agreement and the other agreements listed on Schedule 3.14(A) to the Asset Purchase Agreement to the Operator pursuant to the Asset Purchase Agreement.

(e) The Operator (in connection with the permit being granted to the Operator under this Agreement):

(i) shall have the exclusive right and exclusive obligation to develop, finance, maintain, improve, equip, modify, repair and operate the Project to the extent provided in, and subject to the provisions of, this Agreement and the other Project Agreements;

(ii) shall, subject to **Section 9.01**, have the right and obligation to plan, design, develop, finance, construct, operate and maintain the Airport Connector Road;

(iii) shall have the right to plan, design, develop, finance, construct, operate and maintain Project Enhancements to the extent provided in this Agreement and any Development Contract;

(iv) shall cause the Project to be insured, as and when provided in this Agreement and any Development Contract;

(v) shall comply with and perform all the duties and obligations of a "private entity" under the PPTA and of the Operator under this Agreement and the other Project Agreements, including the duties listed in Section 56-565 E. of the PPTA;

(vi) shall have the right and obligation to fix and charge tolls and other User Fees for vehicles using the Project and to modify the same from time to time, pursuant to **Sections 4.01** and **4.02**;

(vii) shall, or shall enter into subcontracts with others to, design, obtain Regulatory Approvals for, cooperate with the Department with respect to the acquisition of right of way for, relocate utilities respecting, and construct, install, test and open to the public Project Enhancements and improvements pursuant to Compliance Orders, in accordance with this Agreement and any related Development Contract;

(viii) shall have the right to enter onto and use the Project Right of Way as reasonably necessary for carrying out the foregoing purposes and all of its rights and obligations under the other Project Agreements; and

(ix) shall provide or cause to be provided an Operation and Maintenance Letter of Credit in accordance with **Section 8.09**.

(f) The Technical Support Provider shall provide technical support to the Operator in connection with the performance of its obligations as provided in this Agreement and the other Project Agreements, pursuant to a technical support agreement (the "**Technical Support Agreement**") in substantially the form attached to this Agreement as **Exhibit D**.

Section 3.03 Project Agreements.

The Project Agreements and their content are briefly described below. The Project Agreements are to be read and construed together, and together constitute the comprehensive agreement under the PPTA (notwithstanding the fact that this Agreement is entitled "**Comprehensive Agreement**").

(a) **Comprehensive Agreement**. The Department and the Operator are amending and restating the Original Comprehensive Agreement to modify the general structure and arrangements for implementing the Project and to establish rights and responsibilities of the Operator respecting the Project.

(b) **Development Contract**. Prior to the commencement of construction of the Airport Connector Road or any Project Enhancement, the Department and the Operator shall enter into a Development Contract containing such other terms as may be mutually agreed by the Department and the Operator, pursuant to which the Operator shall have, among other things:

(i) the obligation to use diligent efforts to satisfy all conditions precedent to the start of construction work on the Airport Connector Road or any Project Enhancement set forth in the relevant Development Contract;

(ii) the right and obligation to complete the design of and, subject to satisfaction of conditions precedent, construct the Airport Connector Road or any Project Enhancement;

(iii) the right and obligation to obtain all Regulatory Approvals (other than Regulatory Approvals that are the responsibility of the Department) required to construct the Airport Connector Road or any Project Enhancement and to open it for normal operation;

(iv) the right and obligation to cooperate with the Department in connection with right of way acquisition by the Department for the Airport Connector Road or any Project Enhancement;

(v) the right and obligation to perform Utility Relocation services;

(vi) the obligation to cause the construction contractor to deliver (A) a payment bond and a performance bond naming the Department as dual obligee in accordance with the terms of such Development Contract and (B) any credit support in respect of the construction contractor's obligations as shall be reasonably satisfactory to the Department;

(vii) the obligation to carry out final design of the Airport Connector Road or any Project Enhancement in accordance with Department standards, and Department-approved preliminary design and specifications for the Airport Connector Road or any Project Enhancement under applicable Laws;

(viii) the obligation to provide to the Department specified warranties against design and construction defects;

(ix) the obligation to insure the Project, including the Airport Connector Road or any Project Enhancement, and as and when provided in such Development Contract and this Agreement; and

(x) the right to enter onto right of way for the Airport Connector Road or a Project Enhancement as is reasonably necessary to carry out the construction work.

(c) **Technical Support Agreement**. Concurrently with the execution of this Agreement, the Technical Support Provider, the Operator, and the Department are executing and delivering the Technical Support Agreement.

(d) **Project Financing Agreements**. Concurrently with the execution of this Agreement, the Operator is entering into the Initial Project Financing Agreements listed on **Exhibit J**. The Operator may enter into other Project Financing Agreements, subject to the terms and conditions set forth in **Article 6**.

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

(a) The Operator has no fee title, leasehold estate, easement or other real property interest of any kind in or to the Project or the Project Right of Way by virtue of this Agreement, any of the other Project Agreements or otherwise.

(b) The Operator's property interests under this Agreement are limited to contract rights constituting intangible personal property (and not real estate interests), including without limitation the Operator's right, in accordance with the provisions of this Agreement, to impose, charge, collect and enforce payment of Toll Revenues (collectively the "**Toll Servicing Rights**"). The Operator's property interests under this Agreement are solely those of a permittee, and the Department and the Operator are not co-venturers, partners, lessor-lessee or principal-agent.

(c) The Department has or will have at all times during the Term fee simple title or other good and sufficient property interest in and to the Project and the Project Right of Way (including any additional Project Right of Way acquired in connection with the Airport Connector Road or any Project Enhancement) and all improvements constructed in connection with the Project, subject to Permitted Encumbrances and the Operator's rights to control and utilize the Project and the Project Right of Way as set forth in this Agreement and the other Project Agreements.

(d) The parties acknowledge that the rights and duties retained by the Department under this Agreement are necessary for the Department to fulfill its duties and responsibilities under applicable Law.

(e) The Operator will retain the Toll Servicing Rights (and the duties relating thereto) but will grant a security interest therein to the Collateral Agent, as part of the Operator's Interest, as security for the Operator Loans pursuant to one or more Financing Assignments in accordance with the terms and conditions of this Agreement.

Section 3.05 Right to Cross Navigable Water Courses.

Subject to applicable Laws and other requirements set forth in this Agreement, the Operator shall have the right to construct and operate the Project and any Project Enhancement across any canal or navigable water course so long as the crossing does not unreasonably interfere with then current navigation and use of the waterway.

Section 3.06 Assignment of Warranties; Enforcement.

If FD/MK consents to an assignment by the Department in favor of the Operator of all of the Department's rights under the Design-Build Contract, including warranties provided by FD/MK and any subcontractor or vendor required to provide warranties thereunder, the

Department shall assign such rights to the Operator. Otherwise, the Department shall designate the Operator as the Department's agent for the limited purpose of asserting and collecting claims that the Department has against FD/MK and such subcontractors or vendors, which shall include the right to prosecute any cause of action relating thereto in the Department's name; provided, that Operator shall be responsible for all costs and expenses relating thereto, shall defend any counterclaims, and shall indemnify the Department for all counterclaims and fees and expenses relating thereto, including fees and expenses of counsel. The Department shall cooperate with the Operator in the prosecution or defense thereof, shall not unreasonably withhold its consent to any settlement or compromise thereof which the Operator may propose, provided that the Department is fully protected from any costs or liabilities under any such settlement, including receipt of adequate security therefor reasonably acceptable to the Department, and shall assign and turn over to the Operator any amounts paid or payable in respect of such claims. Any settlement sums received by the Operator as compensation for loss of Revenues shall constitute Revenues and be subject to the provisions of **Sections 4.01(d) and (e)**.

ARTICLE 4.

TOLLING OF PROJECT

Section 4.01 Right to Charge Tolls.

(a) Subject to the limitations and conditions set forth in this **Section 4.01** and otherwise in this Agreement, the Department grants the Operator a permit under which the Operator has the exclusive right to fix, charge and collect tolls and other User Fees for the use of the Project from and after the Closing Date and until expiration or earlier termination of the Term. The Operator shall have the right to continue the utilization of the existing electronic tolling system and tolling facilities in place as of the Closing Date, or implement a different system for the collection of tolls and other User Fees and/or construct or relocate and maintain different or additional tolling facilities on the Project Right of Way in accordance with the terms of this Agreement (including on the Airport Connector Road, if the Airport Connector Road is constructed by the Operator at its expense pursuant to **Section 9.01**), except as otherwise provided in **Section 9.01(d)**), and on the Wilton Access Road.

(b) The Operator's rights granted in **subsection (a)** above are limited by, and conditioned on, among other provisions in this Agreement, the following:

(i) the toll rates in any year shall not exceed the maximum rates for such year as set forth in **Exhibit F** hereto, except as provided in **Sections 4.02, 13.07(d) and 14.02(a)**;

(ii) the Operator shall make a schedule of the then-current tolls available to any member of the public upon request;

(iii) the toll rates shall be the same for persons using the Project 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, traffic congestion and other traffic conditions and type of facilities (provided, that the Operator may adopt and implement discount programs for different classes or groups of persons using the Project under like conditions, subject to the provisions of **Section 11.01**);

(iv) the Operator shall exempt from tolls and other User Fees classes of vehicles or persons exempt from the payment of tolls pursuant to Law; and

(v) the Operator may charge, debit and collect tolls only at or through tolling facilities physically located on the Project Right of Way (including on the Wilton Access Road if the Wilton Access Road is constructed pursuant to **Section 9.02**), except that the foregoing does not apply to the Operator's enforcement and collection of toll violations.

(c) The foregoing authorization 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 fix, charge, enforce and collect with respect to electronic tolling accounts managed by Operator or the O&M Contractor 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) Reasonable administrative fees for account maintenance and account statements;

(iv) Reasonable fees, penalties and interest for toll violations, including costs of collection; and

(v) Other reasonable and customary incidental fees and charges.

All the foregoing amounts are deemed to be Toll Revenues. The amount of any Incidental Charges shall not exceed the amount reasonably necessary for the Operator 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 Operator may apply Incidental Charges to exempt vehicle operators that request transponders or other electronic tolling devices. Such transponders and electronic tolling devices shall be programmed to operate at a zero toll transaction amount.

(d) Revenues shall be used first to pay all current and delinquent costs and expenses of operating and maintaining the Project (including premiums for insurance, bonds and other performance security), before they are used for any other purpose.

(e) The Operator shall not use Toll Revenues to make any distribution to the holder of an equity interest in the Operator or to pay the non-competitive fees and charges of its Affiliates unless and until the Operator first pays (i) all current and delinquent costs and expenses of operating and maintaining the Project (including premiums for insurance, bonds and other performance security), (ii) current and delinquent debt service, and other current and delinquent amounts, due under any Operator Loan, (iii) all taxes currently due and payable or delinquent, (iv) all currently required or delinquent deposits to the Extraordinary Maintenance and Repair Reserve, (v) all current and delinquent costs and expenses of Extraordinary Maintenance and Repair Work not capable of funding from the Extraordinary Maintenance and Repair Reserve or Extraordinary Maintenance and Repairs Letter of Credit, and (vi) all current and delinquent amounts due to the Department under this Agreement, including any compensation due under **Article 5**, except with respect to any of clauses (i) through (vi), 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 Operator. If the Operator makes any distribution or payment to any holder of an equity interest in the Operator or any Affiliate thereof 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 Operator shall have no right to use Toll Revenues to pay any debt, obligation or liability unrelated to this Agreement, the Project, or the Operator's services under this Agreement. The foregoing restriction does not apply to or affect:

(i) the Operator's right to make distributions to the holders of equity interests in the Operator in accordance with the Operator's governing instruments and this Agreement; or

(ii) the Operator's ability to pledge, sell or otherwise transfer solely the Toll Revenues available for distribution to the holders of equity interests in the Operator pursuant to any asset securitization and in accordance with the Operator's governing instruments, senior Financing Assignments and this Agreement (with no other portion of the Revenues or Operator's Interest encumbered thereby or subject to the exercise of remedies), in each instance so long as:

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

(B) pursuant to the agreements that govern the asset securitization, the Operator'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 **subsections (d) and (e)** above, respecting use and application of Revenues.

(Any asset securitization that satisfies the requirements of clause (ii) of the immediately preceding sentence is referred to herein as a "**Permitted Securitization**.")

Section 4.02 Rate Covenant.

Notwithstanding **Section 4.01**, the Operator may fix, charge and collect tolls and other User Fees for vehicles using the Project in excess of the maximum levels set forth in **Exhibit F** hereto to the extent that the Operator fails to meet the debt service coverage requirements specified in Section 6.17 of the Initial Project Financing Agreement respecting the senior Operator Debt as in effect on the Closing Date and the Toll Consultant determines that toll increases in excess of such maximum levels are reasonably expected to improve Toll Revenues (but not in excess of the levels reasonably expected to enable the Operator to comply with such debt service coverage requirements). Debt service includes the Operator's payment of debt service on the then outstanding original principal amount of the Operator Debt at the original interest rate for such Operator Debt extended under such agreement and any payments resulting from related interest rate swap agreements executed in connection with the Initial Project Financing Agreement, but does not include any payments with regard to acceleration, default rates of interest, penalties or other charges arising out of a default and any termination payments arising from any interest rate swap agreement.

Section 4.03 Change in User Classifications and Categories.

(a) The Operator may not change the classifications or categories of vehicles or (to the extent applicable) Persons using the Project for purposes of determining tolls or other User Fees without the Department's express prior written consent pursuant to this **Section 4.03**, and payment by the Operator of any reasonable costs incurred by the Department relating to such change in classifications or categories of users and the costs of integrating such changes into any regional toll collection system.

(b) If the Operator desires to change classifications or categories of vehicles or (to the extent applicable) Persons using the Project for purposes of determining tolls or other User Fees, then the Operator shall apply to the Department for a supplemental permit entitling the Operator to implement such change at least 120 Days prior to the proposed effective date of such change. Such application shall set forth:

(i) the change in classification or category requested,

(ii) the date such change shall become effective,

(iii) the length of time such change shall be in effect,

(iv) the reason the Operator requests such change,

(v) the effect such change is likely to have upon users and traffic patterns,

(vi) a proposed schedule of User Fees reflecting such change, and

(vii) such other information and data as the Department reasonably may request.

(c) The Operator's application shall be deemed granted without conditions unless within 90 Days after receipt of a completed application the Department advises the Operator that it has granted the Operator's application with conditions or denied the Operator's application. The Department shall not deny an application or impose conditions unless the Department finds that the proposals set forth in the application are not reasonable under the circumstances, the supporting documentation is in error or is insufficient to support the proposal or that the assumptions of projections set forth in the application are unrealistic. If the Department makes such a finding the Operator may modify its application, supporting documentation and/or projections and resubmit the same to the Department or appeal the Department's decision pursuant to the dispute resolution procedures set forth in **Section 17.06**. If the Operator resubmits an application as aforesaid, the above procedures shall apply to the resubmitted application. If the Operator's application is deemed granted without conditions or is granted subject to conditions acceptable to the Operator, the Operator may implement such change in the classification or category of vehicles or (to the extent applicable) Persons using the Project on the effective date set forth in the application, subject to such reasonable conditions, if any, imposed by the Department, including, to the extent that the Department is required to incorporate such changes in the statewide toll system, payment by the Operator of the Department's costs and expenses therefor.

Section 4.04 Additional Provisions Respecting Tolls.

(a) The Operator 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 to which the Department is a party, other than Operator Damages or compensation in respect of Net Revenue Impact to the extent specified herein. The foregoing shall not affect the Operator's entitlement to Toll Revenues and other User Fees contemplated by this Agreement.

(b) Nothing in this Agreement shall obligate or be construed as obligating the Department to continue or cease tolls and other User Fees after the end of the Term.

(c) Throughout the Term, the Operator shall maintain a toll collection system, and utilize a violation enforcement system, which collection and enforcement systems shall be interoperable with the toll collection system utilized on State toll facilities.

(d) To the extent permitted by Law, the Department will implement and maintain a processing system for the enforcement of penalties for toll violations in Virginia (for both manual and electronic toll collection systems on roads). The Department shall use diligent efforts to cause such enforcement system to be provided for the benefit of the Project at the same levels of service as are provided by the Department for any other toll roads operated within the State.

Section 4.05 Emergency Suspension of Tolls.

(a) In addition to its rights granted pursuant to law, including Virginia Code §33.1-252 and the provisions of **Section 12.03**, the Department shall have the right to order immediate suspension of tolling in the event the Project is designated for immediate use as an emergency mass evacuation route. The Department shall have no liability to the Operator for the loss of Toll Revenues or the increase in costs and expenses attributable to such order, 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 Operator concurrently with the lifting of such order for all other designated tolled facilities.

(b) The Department shall lift such order as soon as the need for emergency mass evacuation ceases. The Department shall have no liability to the Operator for the loss of Toll Revenues or the increase in costs and expenses attributable to any order to suspend tolling to facilitate emergency mass evacuation issued pursuant to applicable Law by the Department or any other Governmental Authority.

(c) In the event the Project is designated for immediate use as the alternate route for diversion of traffic from another State Highway temporarily closed to all lanes in one or both directions due to an incident or emergency, the Department shall have the right to order immediate suspension of tolling in the direction(s) of diversion. The Department shall have no liability to the Operator for the loss of Toll Revenues or the increase in costs and expenses attributable to the hours that such order is in effect, except that if such order remains in effect for more than five days, the Department shall compensate the Operator for the Net Revenue Impact of such order beyond the first five days.

ARTICLE 5.

PERMIT FEE

Section 5.01 Permit Fee

(a) If, as of the close of any Semiannual Period,

(i) the Project shall have achieved the Initial Targeted Return but not the Secondary Targeted Return as of such date, the Operator shall pay to the Department, as a permit fee (payable *parri passu* with other Operating Costs), 40% of the 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 or on behalf of the Operator during such Semiannual Period (and during each subsequent Semiannual Period so long as, as of the close such Semiannual Period, the Project shall have achieved the Initial Targeted Return but not the Secondary Targeted Return), or

(ii) the Project shall have achieved the Secondary Targeted Return as of such date, the Operator shall pay to the Department, as a permit fee (payable *parri passu* with other Operating Costs), 80% of the 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 or on behalf of the Operator during such Semiannual Period (and during each subsequent Semiannual Period so long as, as of the close such Semiannual Period, the Project shall have achieved the Secondary Targeted Return),

which funds the Operator shall pay to the Department within 30 days after the close of each Semiannual Period for which amounts are payable.

(b) For purposes of **subsection (a)** above:

(i) the Initial Targeted Return shall be treated as having been achieved as of the close of a Semiannual Period if the Real Net Cash Flow of the Project for that Semiannual Period and for all prior Semiannual Periods combined shall yield a pre-tax internal rate of return on Total Invested Project Funds equal to the Base Case Initial Targeted Rate of Return; and

(ii) the Secondary Targeted Return shall be treated as having been achieved as of the close of a Semiannual Period if the Real Net Cash Flow of the Project for that Semiannual Period and for all prior Semiannual Periods combined shall yield a pre-tax internal rate of return on Total Invested Project Funds equal to the Base Case Secondary Targeted Rate of Return.

(c) At the request of either party from time to time (but not more than once per year), the Operator 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.

ARTICLE 6.

PROJECT FINANCING; LENDER RIGHTS AND REMEDIES

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

(a) The Operator is solely responsible for obtaining and repaying all financing, at its own cost and risk and without recourse to the Department, necessary to acquire, develop, permit, build, construct, maintain, improve, equip, modify, repair and operate the Project and the Project Enhancements developed by the Operator pursuant to **Section 9.02**. The Operator also bears the risk of any changes in the interest rate, payment provisions or the other terms of its project financing plan.

(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 Operator Debt, any other obligations issued or incurred by the Operator 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 Operator Debt or any other amount; provided that the foregoing shall not affect any rights or claims of a Lender as a successor to the Operator'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 Operator Debt, any other obligations issued or incurred by the Operator 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 Operator to perform its obligations with respect to the Operator Debt or any other obligations issued or incurred by the Operator in connection with this Agreement or the Project, or as to the adequacy of the Toll Revenues to provide for payment of the Operator Debt or any other obligations issued or incurred by the Operator in connection with this Agreement or the Project.

(c) Each bond or promissory note evidencing Operator 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 in the Project or the 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.

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

(a) Concurrently with the execution of this Agreement, the Operator has entered into the Initial Project Financing Agreements listed on **Exhibit J**.

(b) From time to time during the term of this Agreement, the Operator has the right, at its sole cost and expense, to pledge, sell or otherwise transfer solely the Toll Revenues available for distribution to the holders of equity interests in the Operator in connection with a Permitted Securitization or to pledge, hypothecate or assign the Operator's Interest as security for any Operator Debt, such debt to be issued on such terms and conditions as may be acceptable to any Lender and the Operator, subject to the following terms and conditions (such pledge, hypothecation, assignment, or other security instrument, including the Initial 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 Operator Debt may be Persons other than Institutional Lenders so long as any Financing Agreement securing such Operator Debt made by such Person is held by an Institutional Lender acting as Collateral Agent;

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

(iii) The Operator is strictly prohibited from pledging or encumbering the Operator'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 Operator, any special purpose company that directly or indirectly owns the Operator and has no assets except as are directly related to the Project, or any special purpose subsidiary wholly owned by such company, or (B) the proceeds of which are used in whole or in part for any purpose other than Project Purposes or any other purpose permitted in **subsection(b)(xv)** below.

(iv) No Financing Assignment or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against the Operator's Interest shall extend to or affect the fee simple interest of the Department in the Project 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 Operator 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 Operator is in default under the Operator Debt secured by the Financing Assignment or under the Financing Assignment and the Lender or Collateral Agent gives notice of such default to the Operator, 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 Operator 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 the Extraordinary Maintenance and Repair Reserve or funds from draws on an Extraordinary Maintenance and Repair Letter of Credit to the repayment of the Operator Debt or to any other obligation owing the Lenders; provided, however, that (A) any funds remaining after application to the cost of repair and restoration may be used and applied as Revenues in accordance with **Sections 4.01(d)** and **(e)**, and (B) any Lender or Substituted Operator shall, following foreclosure or transfer in lieu of foreclosure, automatically succeed to all rights, claims and interests of the Operator in and to the Extraordinary Maintenance and Repair Reserve;

(ix) Each Financing Assignment shall expressly provide that the Operator shall use and apply funds in the Extraordinary Maintenance and Repair Reserve or funds from draws on an Extraordinary Maintenance and Repair Letter of Credit solely for the purposes set forth in **Section 8.07(a)**;

(x) Each Financing Assignment shall provide that the Operator may, without condition or qualification, issue additional Operator Debt, secured by the Operator's Interest, for the limited purpose of funding Compliance Orders; provided, however, that (1) the Lenders may limit such additional Operator Debt if other funds are then available to the Operator for the purpose of funding any such Compliance Orders, (2) no Lender is required to grant pari passu or senior lien or payment status to any such additional Operator Debt, and (3) the Lenders may impose reasonable, customary requirements as to performance and supervision of the work related to such Compliance Order.

(xi) 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 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;

(xii) 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 Operator 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 Operator's Interest by foreclosure or transfer in lieu of foreclosure;

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

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

(xv) Each Financing Assignment may only secure Operator 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, costs and expenses incurred by the Operator in connection with the closing of the purchase of the assets of the Association and this Agreement, (C) making distributions to the equity investors in the Operator, but only from the proceeds of Refinancings permitted pursuant to **Section 6.06**, and (D) any Refinancing of pre-existing Operator Loans that conform to the provisions of this **Section 6.02**, 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 **subsections (b)(i), (iii) and (xv)** 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 Operator 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 Operator'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 Operator 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 the 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 Initial Project Financing Agreements) of the original thereof and a copy of a specimen bond, promissory note or other evidence of indebtedness (certified as true and correct by the Collateral Agent or by the administrative agent identified in the Initial Project Financing Agreements) 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 determines that any Financing Assignment or amendment thereto does not comply with this **Section 6.02**, the Department shall deliver a notice to the Collateral Agent, and the Lenders thereunder shall enter into appropriate amendments within 60 days of receipt of such notice (or such longer period as may be agreed to with the Department) to remedy such non-compliance. If non-compliance is not remedied within such time period, the Financing Assignment shall cease to be valid or effective, and the Lenders thereunder shall thereupon cease to be entitled to the rights, benefits and protections of this **Article 6**.

Section 6.03 Notices to Collateral Agent; No Amendments.

As long as any Financing Assignment created in accordance with this **Article 6** shall remain unsatisfied of record 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 Operator concerning a potential breach of this Agreement or an Operator Default.

(b) The Financing Assignments may provide that while the Financing Assignments are in existence the Department and the Operator 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.

Section 6.04 Collateral Agent's Right to Cure.

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 and the related Lender or Lenders.

(a) Should any event or condition occur which would either immediately or, following the applicable grace period or the giving of notice or both, enable the Department to

terminate or suspend its obligations under this Agreement, except for a Termination for Public Convenience (a "**Termination Event**"), the Department shall not terminate this Agreement until it first gives written notice of such Termination Event to the Collateral Agent, and provides the Collateral Agent a reasonable opportunity to cure such Termination Event, as provided below:

(i) If such Termination Event results from the Operator's failure to pay a monetary obligation, the Collateral Agent may cure such Termination Event by paying all amounts due within 30 days (such 30-day period to be in addition to any cure period provided to the Operator herein) after receipt of written notice thereof from the Department to the Collateral Agent.

(ii) If such Termination Event results from other than the Operator's failure to pay a monetary obligation, the Collateral Agent may, within 45 days (such 45-day period to be in addition to any cure period provided to the Operator herein) after receipt of written notice thereof from the Department to the Collateral Agent, remedy such Termination Event or cause the same to be remedied by an entity to be designated by the Collateral Agent reasonably acceptable to the Department. If the Termination Event is such that it cannot be remedied within such 45-day period despite the exercise of diligent efforts commencing promptly after delivery of the written notice of the Termination Event, or if possession is necessary in order to effect such cure, the Collateral Agent shall have commenced a cure within such period or shall have commenced the appropriate legal or other action to foreclose the liens of the relevant Financing Assignment so as to take possession of the Project and shall thereafter diligently continue to pursue such remedy to completion, but in all events in not more than 180 days after written notice provided in **subsection (a)** above, and in such case, the Lenders shall be entitled to the New Agreements as provided in **Section 6.05(c)**. If the Termination Event is peculiar to the Operator and is not curable by the Collateral Agent, such as an insolvency, bankruptcy or a similar proceeding, or liquidation of the Operator or its properties, then notwithstanding the Department's right to terminate, the Collateral Agent shall not be required to cure such Termination Event but shall instead be entitled to exercise its rights under the relevant Financing Assignments and this **Article 6**.

(iii) If the Collateral Agent is prohibited by any process, stay or injunction issued by any court or by any bankruptcy or insolvency proceeding involving the Operator from curing any Termination Event, the time specified above for curing any Termination Event shall be extended for the period of such prohibition, but not in excess of 180 days.

(b) If the Collateral Agent's right to cure an Operator Default has not expired, and the Collateral Agent is acting to cure such Operator Default in accordance with this **Section 6.04**, then the Department shall not exercise its right to terminate this Agreement by reason of such Operator Default. In furtherance of the foregoing, the Department shall permit the Collateral Agent and its Substituted Operator the same access to the Project as is permitted to the Operator hereunder. The Department shall accept any such performance by the Collateral Agent as though the same had been done or performed by the Operator.

(c) Any payment to be made or action to be taken by the Collateral Agent hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Collateral Agent if such payment is made or action is taken by a Substituted

Operator approved by the Department. The Department's approval of a proposed Substituted Operator may be withheld only if the Department reasonably determines that the proposed Substituted Operator does not have the financial resources, qualifications or experience to timely perform the Operator's obligations under this Agreement and the other Project Agreements. To be qualified, the proposed Substituted Operator and its Affiliates must not 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. The Department will approve or disapprove a proposed Substituted Operator within 30 days after it receives from the Collateral Agent a request for approval together with such information, evidence and supporting documentation concerning the financial resources, qualifications and experience of the proposed Substituted Operator as the Department may request in good faith.

(d) Any curing of any Termination Event by the Collateral Agent shall not be construed as an assumption by the Collateral Agent of any obligations, covenants or agreements of the Operator under any Project Agreement, except with respect to the work, services or actions taken or performed by or on behalf of the Collateral Agent.

(e) Nothing in this **Section 6.04** shall preclude or delay the Department from exercising any remedies for an Operator Default, other than termination of this Agreement.

Section 6.05 Other Rights of Lenders.

(a) Lender or the Collateral Agent may exercise its rights and remedies under a Financing Assignment with respect to all, but not less than all, the Operator's Interest. Upon any transfer of all the Operator's Interest pursuant to the exercise of remedies of a Lender or the Collateral Agent under a Financing Assignment:

(i) The transferee shall succeed to all the Operator's Interest, subject to all rights and remedies of the Department under this Agreement and the other Project Agreements, and shall be obligated to pay and perform or cause to be paid and performed in a professional and competent manner all the corresponding terms and conditions of this Agreement applicable after the date of such transfer and shall cure any outstanding defaults hereunder and under any other Project Agreements, it being understood that such transferee shall not be required to cure any non-monetary default that by its nature is not capable of cure by an entity other than the Operator, including, without limitation, the bankruptcy or insolvency of the Operator; and

(ii) Unless and until a Lender or the Collateral Agent has taken direct possession and control of the Operator's Interest, whether through foreclosure, transfer in lieu of foreclosure, or has been finally determined by a court of competent jurisdiction to have become a mortgagee-in-possession, the Lender or the Collateral Agent shall not be liable for any of the Operator's obligations under this Agreement. Except as provided in the preceding sentence, the Department acknowledges that upon such a transfer of the Operator's Interest to a transferee, such transferee will acquire the entire Operator's Interest, and will succeed to all of the right, title and interest and obligations of the Operator thereunder and may thereafter perform as if it were the Operator under the Project Agreements, subject to all rights and remedies of the Department

under this Agreement and the other Project Agreements. Once the Lender or the Collateral Agent transfers ownership of the entire Operator's Interest to a transferee in accordance with the provisions of this Agreement, the Lender or the Collateral Agent shall cease to be liable for any of the Operator's obligations under this Agreement accruing thereafter. Nothing in this section shall limit the Lenders' or the Collateral Agents' step-in rights (or similar right to take from the Operator temporary possession of the Project) under the Financing Assignment and related documents, provided that if at the time the Lender or the Collateral Agent exercises such right Department has not declared an Operator Default of a type that requires possession of the Project in order to cure, then any such step-in right shall not be exercised for longer than a 180-day period without the Department's reasonable written consent. (For the avoidance of doubt, a Lender's step-in or similar rights are conditioned, however, on compliance of the Financing Assignment with **Section 6.02**.)

(b) The exercise by Lender or the Collateral Agent of its rights with respect to any Project Agreement under the Financing Assignment, this **Article 6**, or otherwise, whether by judicial proceedings or by virtue of any power contained in the Financing Assignment, or by any conveyance from the Operator to Lender in lieu of foreclosure thereunder, shall not require the consent of the Department or constitute a breach of any provision of or a default under this Agreement or any other Project Agreement. Any subsequent transfer from the Lender or the Collateral Agent shall be limited to a Substituted Operator approved by the Department in accordance with **Section 6.04(c)**.

(c) Without prejudice to the cure rights of a Lender or Collateral Agent under **Section 6.04**, if a trustee or person exercising the powers of trustee in any bankruptcy or insolvency proceeding rejects or disaffirms this Agreement, and if, within 60 days after such rejection or disaffirmation, the Lender or, as applicable, the Collateral Agent or Substituted Operator shall so request, and if the Lender or, as applicable, the Collateral Agent satisfies all the conditions precedent set forth below, the Department will terminate this Agreement and execute and deliver to the Lender or, as applicable, the Collateral Agent or its Substituted Operator, a new comprehensive agreement and new development contract (together the "**New Agreements**"). In addition, if a Termination Event occurs that cannot be cured by a Lender without having possession of the Project, if the Department terminates this Agreement by reason of such Termination Event after expiration, without cure, of the maximum 180-day period set forth in **Section 6.04(a)(ii)**, and if the Lender or, as applicable, the Collateral Agent satisfies all the conditions precedent set forth below, the Department will execute and deliver to the Lender or, as applicable, the Collateral Agent or its Substituted Operator, the New Agreements. The New Agreements shall run for the remainder of the Term of this agreement and the original Development Contract. The New Agreements shall otherwise contain the same covenants, terms and conditions and limitations as this Agreement and the original Development Contract (except for any requirements which have been fulfilled by the Operator or its successors prior to termination and except that **Section 15.02** shall be revised to be particular to the Collateral Agent or its Substituted Operator). The right of a Lender or, as applicable, the Collateral Agent (or its Substituted Operator) to the New Agreements is subject to its satisfaction of the following conditions precedent:

(i) Such Lender or the Collateral Agent (or its Substituted Operator) commits in writing to the Department, in a notice delivered to the Department, within 30 days after the

effective date of such rejection or disaffirmation, or after the Department's termination following the lapse of the 180-day period, as applicable, that the Lender or the Collateral Agent (or its Substituted Operator) will enter into the New Agreements, which notice is accompanied by a copy of such New Agreements, duly executed and acknowledged by the Lender or the Collateral Agent (or its Substituted Operator);

(ii) The Lender or the Collateral Agent (or its Substituted Operator) pays or causes to be paid to the Department, at the time of the execution and delivery of the New Agreements, all amounts which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Agreement or the Development Contract but for such termination;

(iii) Provided the Department furnishes a statement or invoice for such costs the Lender or the Collateral Agent (or its Substituted Operator) pays or causes to be paid to the Department all reasonable costs and expenses (including legal fees, expert witness fees, court costs and disbursements), Taxes, fees, charges and other sums paid or incurred by the Department in connection with such defaults and termination, the recovery of possession from the Operator, and in connection with the preparation, execution and delivery of the New Agreements and related agreements and documents specified in such statement or invoice, including all reasonable costs and expenses paid or incurred by the Department to manage, design, permit, build, construct, equip, install, operate, maintain, repair and insure the Project since cessation of the Operator's performance of such duties; and

(iv) Such Lender or the Collateral Agent (or its Substituted Operator), at the time of such written request, cures all then-existing defaults under this Agreement and the Development Contract (curable by the payment of money), or, if such defaults cannot be cured by the payment of money, such Lender (or its Substituted Operator) commits to the Department in the New Agreements to complete cure of all such other defaults promptly and diligently after execution of the New Agreements and receipt of possession of the Project, and in any event not later than 120 days after the date it obtains possession.

The provisions of this **Section 6.05(c)** shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this **Section** were a separate and independent contract made by the Department and the Lender or Collateral Agent.

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

(e) If the holders of more than one Financing Assignment shall make written requests upon the Department for New Agreements in accordance with **Section 6.05(c)**, the Department shall grant the New Agreements to, as applicable, the holder whose Financing Assignment was the earliest to be recorded or filed (unless otherwise agreed in writing by such holder); and thereupon the written requests of each holder whose Financing Assignment was recorded or filed later shall be deemed to be void.

Section 6.06 Refinancing Requirements.

(a) Notice of Refinancing.

(i) The Operator shall provide to the Department written notice of any proposed Refinancing at least 30 days prior to the proposed date for closing the Refinancing;

(ii) The Operator 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 Financial Model, any material changes in the Operator'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 Initial Project Financing Agreements and Financing Assignments contemplated by the Refinancing.

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

(b) Department Approval Rights for Refinancings.

(i) Any Refinancing of Operator 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 Operator first demonstrates to the Department that (A) the proposed Refinancing does not increase the principal amount of Operator Debt then outstanding other than by an amount equal to reasonable costs of closing the Refinancing, including lender fees, but excluding any amounts paid to Affiliates, or (B) the proposed Refinancing has been assigned a rating (which may include a non-public rating) by a Rating Agency (without regard to bond insurance, if any) which is no lower than BBB minus or Baa3 or equivalent rating, or (C) no portion of the proceeds of the Refinancing will be used to make Distributions to the equity investors in the Operator or to pay non-capital costs and expenses.

(ii) In respect of 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 Operator 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 Operator 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 Operator's incentives and disincentives to fully comply with the standards and requirements applicable to operations, maintenance and Extraordinary Maintenance and Repair Work.

(c) Other Requirements.

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

(ii) Any reimbursement agreement and related documents that the Operator enters into in connection with obtaining a Letter of Credit shall, if they encumber the Operator'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 Operator's Interest.

(iii) In connection with the consummation any proposed Refinancing, the Department shall, promptly upon the request of the Operator or any Collateral Agent or Lender, execute, acknowledge and deliver consents and representations with respect to this Agreement, which may be qualified to the best of the knowledge and belief of a designated representative of the Department and which are consistent with the consents provided by the Department as of the Closing Date.

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 holders of Financing Assignments.

ARTICLE 7.

DESIGN, ACQUISITION AND CONSTRUCTION; REGULATORY APPROVALS

Section 7.01 Operator Obligation to Design and Construct.

(a) The Operator shall design and construct the Airport Connector Road subject to **Section 9.01**, any Project Enhancements, and any Extraordinary Maintenance and Repair Work in accordance with Good Industry Practice and any related Development Contract or Compliance Order.

(b) Subject to **Section 9.01**, the Operator will carry out the design and construction work for the Airport Connector Road in accordance with an approved schedule and subject to the other terms and conditions set forth in the Development Contract entered into between the Department and the Operator, including such matters as receipt of Regulatory Approvals and grant of required access to the right of way.

(c) Any monitoring, auditing, review, comments or approvals provided by the Department (except as expressly stated) will not relieve the Operator of independent responsibility for performance of the work required under this Agreement and the other Project Agreements and for all acts or omissions of the design professionals, contractors and subcontractors engaged by the Operator to perform such work.

(d) Subject to **subsection (e)** below, the Department shall provide reasonable assistance to the Operator, as requested by the Operator and at the Operator's cost, in obtaining or renewing Regulatory Approvals relating to the Airport Connector Road or any Project Enhancements.

(e) 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 and construction of a Project Enhancement. For the avoidance of doubt, the provisions of this **Section 7.01(e)** 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.

Section 7.02 Project Right of Way and Utilities.

(a) If the Operator is obligated to construct and operate the Airport Connector Road in accordance with this Agreement, it shall be the sole responsibility of the Department (at Operator's expense as provided in **subsection (b)** below) to acquire title to and, as necessary and appropriate, condemn, all additional required Project Right of Way for the Airport Connector Road, and the Operator shall cooperate with the Department with respect to the acquisition of any Project Right of Way required for the Airport Connector Road and shall cause the relocation of Utilities in accordance with this Agreement and any related Development Contract and applicable Law.

(b) The Operator shall be responsible for paying all costs and expenses associated with the acquisition of real property interests and Utility Relocations necessary for the construction and/or operation of the Airport Connector Road, except as provided otherwise in **Section 9.01(d)**, and any Project Enhancements requested by the Operator, including land required for permanent or temporary works outside of the Project Right of Way, except as otherwise provided in any Development Contract.

(c) Utility Relocations will be performed in accordance with the related Development Contract (including without limitation the Department's Right of Way & Utilities Division Manual of Instructions – Volume II – Utility Relocation Policies and Procedures, November 2003) and any relevant agreements with Utilities.

(d) The Operator acknowledges that such costs and expenses will include those relating to the Department's acquisition of real property interests in conformity with, the Technical Requirements (including without limitation the Department's Right of Way & Utilities Division Manual of Instructions – Volume I – Right of Way Acquisition, July 1, 1999) and all applicable Laws relating to such acquisition, including without limitation the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

(e) The Department will provide to the Operator the benefit of any provisions in recorded utility or other easements affecting the Project which require the easement holders to relocate at their expense.

(f) The Department will handle eminent domain proceedings, if necessary, in accordance with the procedures and time frame established in the Technical Requirements (including without limitation the Department's Right-of-Way Manual).

(g) Delays in acquisition of any Project Right of Way with respect to Project Enhancements requested by the Operator are the Operator's risk other than Department-caused delays, as established by the Technical Requirements and any approved Project Right-of-Way acquisition plan.

Section 7.03 Quality Management.

(a) The Operator shall be responsible for all quality assurance and quality control activities necessary to manage the development, design, construction, operation and maintenance of any Project Enhancement, and will develop and submit for the Department's review and approval 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, procedures and processes set forth in the Department's standard road and bridge specifications, as amended from time to time. The Quality Management Plans, manuals and procedures respecting operations and maintenance shall be consistent with ISO 9000 or equivalent standards in accordance with the Technical Requirements; provided that such Quality Management Plans, manuals and procedures shall be required to comply with such standards only to the extent applicable to a Project Enhancement. ISO 9000 or other such equivalent standards shall not be applied retroactively to quality management plans, manuals and procedures approved as of the Closing Date. For the avoidance

of doubt, the quality management system that is in place as of the Closing Date shall be required to be maintained by the Operator only in accordance with historical practice prior to the Closing Date, and the Operator shall have no obligation to improve or update such quality management system to satisfy ISO 9000 or equivalent standards.

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

(c) The Department has the right to audit the Operator'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 Operator will require its contractors and subcontractors to provide such access and assistance as the Department reasonably requires in conducting such audits.

Section 7.04 Construction Traffic Management.

The Operator will carry out any construction activities in accordance with a Construction Traffic Management Plan approved by the Department.

Section 7.05 Public Information.

Prior to and during the construction thereof, the Operator will provide information to the public concerning the Airport Connector Road, any Project Enhancements or any other construction activities in accordance with a Public Information Plan approved by the Department.

Section 7.06 Operator Obligation to Obtain Regulatory Approvals.

(a) Throughout the Term or any portion thereof, the Operator shall obtain (except as otherwise provided herein), keep in effect, maintain and comply with, at its own cost and expense, all Regulatory Approvals necessary for the development, operation and maintenance of the Project.

(b) Subject to **Section 3.02(c)(vii)**, the Operator shall obtain(except as otherwise provided herein), maintain and comply with, at its own cost and expense, all Regulatory Approvals necessary for design, construction, operation and maintenance of the Airport Connector Road.

(c) In the event the Operator undertakes, at the direction of the Department, Project Enhancements, Compliance Order work or improvements respecting Reserved Rights, the Operator shall, at it own cost and expense, obtain all Regulatory Approvals required in connection therewith; provided, however, that the Department shall bear the cost of all fees, charges and other expenses incurred in connection with obtaining any Regulatory Approvals relating to Project Enhancements directed by the Department pursuant to **Section 9.03** or any exercise by the Department of its Reserved Rights; and provided, further, that the Operator shall not be in breach of its obligations to undertake work relating to such Project Enhancement (or Compliance Order which the Department has elected to treat as a Project Enhancement pursuant

to **Section 9.04(c)**) or Reserved Right if the Operator's failure to perform such work is caused by its inability despite diligent efforts to obtain the required Regulatory Approvals.

Section 7.07 NEPA Compliance.

The parties acknowledge that the EIS has been obtained and a record of decision issued for the Project, exclusive of the Airport Connector Road.

Section 7.08 FHWA Agreement

The Operator hereby assumes all the duties and obligations of the Operator under the FHWA Agreement and agrees to faithfully carry out and perform such duties and obligations. The Department hereby confirms that it reasonably believes that the terms of this Agreement are designed to produce a reasonable return to the private operator (within the meaning of the FHWA Agreement), and the Department agrees that it will not alter or revoke such determination.

Section 7.09 Federal Interstate Designation.

The Department acknowledges and agrees that the Operator is entitled to and may, at its sole discretion, seek and obtain designation of the Project as a federal interstate highway at any time during the Term, and the Department shall cooperate with the Operator, at Operator's cost, to facilitate the efforts of the Operator to obtain such designation; and further provided that Operator shall be responsible for, and shall indemnify Department with respect to, full compliance with all obligations imposed by FHWA with respect to such designation at Operator's sole cost and expense.

ARTICLE 8.

PROJECT MANAGEMENT

Section 8.01 Conditions Precedent to Operation of Airport Connector Road.

(a) If the Airport Connector Road is constructed by or on behalf of the Operator, the Department shall not authorize the opening of the Airport Connector Road for regular public use, and the Operator shall not open the Airport Connector Road for such use, until all the following conditions precedent are satisfied:

(i) the Department has issued its certificate of substantial completion under the Development Contract for the Airport Connector Road;

(ii) except as provided otherwise in the Development Contract, the Operator shall have obtained all Regulatory Approvals necessary to operate the Airport Connector Road and shall have satisfied all conditions and requirements thereof which must be satisfied before the Airport Connector Road can be lawfully opened for regular public use; and

(iii) all insurance policies required under this Agreement have been obtained and shall be in full force and effect and the Department has received the originals or copies certified by the Operator's insurance broker to be true and correct copies of the originals.

(b) All the conditions precedent set forth in **subsection (a)** above are for the sole benefit of the Department. The Department may waive any condition precedent; provided, however, 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. No waiver of any condition precedent shall be enforceable unless in writing signed by the Department's Representative. Unless the Department waives a condition precedent which requires action by the Operator to be satisfied, the Operator shall remain bound to use diligent efforts to satisfy the condition precedent. The Department's approval to proceed with opening of the Airport Connector Road shall not constitute a waiver by the Department of any then-existing Operator Default.

Section 8.02 Operator Obligation to Manage and Operate.

(a) The Operator shall, from and after the Closing Date, continuously and diligently cause the Project to be managed and operated in accordance with all Laws, all Regulatory Approvals and the terms, conditions and standards set forth in this Agreement, including the detailed performance standards and measurements set forth in **Exhibit H**. Without limiting the foregoing, the Operator agrees to perform, in accordance with this Agreement, all Laws and all Regulatory Approvals, the following responsibilities, at its sole cost and expense:

(i) to manage and control traffic on the Project, including but not limited to, emergency services, snow and ice removal, incident response services and temporary partial or full closures of the Project;

(ii) subject to **Section 13.03(d)**, to maintain, repair, renew, reconstruct and replace the Project and all systems and components thereof, including but not limited to the ETTM Facilities and ETTM System, for the duration of the Term, and including carrying out Extraordinary Maintenance and Repair Work;

(iii) to operate the ETTM Facilities and ETTM System and otherwise to carry out the collection of tolls and other User Fees respecting the Project (provided that that the Operator may upgrade, modify, change, and replace the ETTM Facilities and ETTM System in accordance with this Agreement and **Exhibit H**); and

(iv) to maintain, comply with and renew Regulatory Approvals necessary and incidental to the foregoing activities.

(b) The Operator shall perform its traffic management, ordinary maintenance and repair responsibilities and its Extraordinary Maintenance and Repair Work responsibilities under **subsection (a)** above in accordance with **Exhibit H**.

(c) From and after the Closing Date, the Operator shall cause the Project to be open for use by members of the public at all times, provided the applicable tolls and other User Fees are paid, and provided that temporary closures shall be permitted as provided in **Exhibit H**.

(d) The Operator may engage private security firms or employ other appropriate security devices or automated technology to protect, collect, accumulate, transfer and deposit Toll Revenues or to identify toll violators, subject to compliance with Laws.

Section 8.03 Temporary Delegation of Operations and Maintenance to the Department; Department Charges.

(a) There are hereby delegated to the Department, and the Department hereby accepts delegation of, and agrees to perform, in accordance with this Agreement, all Laws and all Regulatory Approvals and **Exhibit G**, the following responsibilities of the Operator, as if it were a subcontractor to the Operator, for a period ending not later than six months following the Closing Date (the "**Transitional Period**"):

(i) to manage and control traffic on the Project, including but not limited to provision of incident response services, snow and ice removal and temporary partial or full closures of the Project as the Department determines to be necessary or advisable;

(ii) only at the direct request of the Operator or in the interest of public safety, to carry out the maintenance and repair activities on the Project including but not limited to the ETTM Facilities and ETTM System, and including Extraordinary Maintenance and Repair Work;

(iii) to operate the ETTM Facilities and ETTM System and otherwise to carry out the collection of tolls and other User Fees, including violations enforcement in accordance with the Department's standard practice, respecting the Project; and

(iv) to maintain and comply with Regulatory Approvals necessary and incidental to the foregoing activities; and renew any Regulatory Approvals specifically identified in **Exhibit G**.

(b) No other responsibilities of the Operator are delegated to or assumed by the Department. Nothing in this **Section 8.03** shall relieve the Operator of its obligations under **Exhibit G**.

(c) The Department shall perform its traffic management and ordinary maintenance and repair responsibilities under **subsection (a)** above to generally the same standards it employs for comparable portions of State Highways through use of its own personnel, materials and equipment, or by contracting with third parties, subject to payment by the Operator of the costs of performing such responsibilities. In addition, the Department shall perform additional maintenance and repair activities requested by the Operator, subject to payment by the Operator of the costs of performing such responsibilities in accordance with **subsection (e)** below.

(d) For services the Department renders pursuant to this **Section 8.03**, the Operator shall pay the Department its Allocable Costs.

(e) The Department shall invoice the Operator on a monthly basis. Payment of other amounts owing to the Department shall be due and payable monthly in full no later than 30 Days after the Operator's receipt of the Department's invoice reasonably documenting the amount charged.

(f) The Department shall have the right and obligation to remit or cause its contractors to remit all the Toll Revenues it receives or its contractors receive directly to the Collateral Agent under the Initial Project Financing Agreements; provided, that the Department shall not be liable for any revenue collection loss unless the same results from gross negligence or willful misconduct or misapplication of funds by the Department.

Section 8.04 The O&M Contractor.

(a) The Project's operation and maintenance shall, at all times during the Term, be under the direction and supervision of an active operator (which may be the Operator with the support of the Technical Support Provider under the Technical Support Agreement) with the expertise, qualifications, experience, competence, skills and know-how to perform the obligations of the Operator in accordance with this Agreement (an "**O&M Contractor**"). For the avoidance of doubt, the O&M Contractor shall be the primary Person performing major operations and maintenance functions with respect to the Project, and, if a different Person, the primary contractor or subcontractor for the ETTM System, and other contractors and subcontractors shall not be O&M Contractors. Notwithstanding its use of an O&M Contractor, the Operator remains ultimately responsible for the operation and maintenance of the Project during the Term in accordance with this Agreement. The O&M Contractor shall at all times be subject to the direction, supervision and control of the Operator, and any delegation to an O&M Contractor does not relieve the Operator of any obligations, duties or liability hereunder. The Operator shall immediately notify the Department upon the termination or resignation of an O&M Contractor. Any agreement between the Operator and any O&M Contractor shall by its

terms terminate without penalty at the election of the Department upon three Business 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 Project.

(b) The Operator 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 **subsection (b)** below); provided, that no such consent shall be required for the continued use of the contractor for the ETTM System utilized by the Association prior to the Closing Date. 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 Operator 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 Operator to comply with the terms of this Agreement and the other Project Agreements.

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.

(c) Any operations and maintenance agreement entered into between the Operator and an O&M Contractor shall require that any Change in Control of the O&M Contractor shall be subject to the prior approval of the Department and the Operator. Such approval of the Department shall be granted or denied in accordance with **Section 8.04(b)** as if the O&M Contractor following such Change in Control were deemed a replacement O&M Contractor. In the event that a Change in Control of an O&M Contractor occurs without the Department's approval, the Operator will, if so directed by the Department, terminate the operations and maintenance agreement (subject to compliance with bankruptcy and similar laws affecting the

Operator's right to terminate such agreement), and provide a substitute O&M Contractor in accordance with the provisions of this **Section 8.04**.

(d) Any operations and maintenance agreement entered into between the Operator and an O&M Contractor shall include representations by the O&M Contractor to the effect that: (i) the O&M Contractor is duly organized and validly existing under the laws of the state of its organization; (ii) the controlling capital stock of the O&M Contractor (including options, warrants and other rights to acquire capital stock) is owned by the Persons set forth in the request delivered to the Department for its approval of such agreement; (iii) the O&M Contractor has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by the O&M Operator; (iv) the O&M Contractor has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the Project operations and maintenance responsibilities assigned to it under such agreement; and (v) the O&M Contractor is not in violation of any applicable Law that would have a material adverse effect on the operations or maintenance of the Project.

Section 8.05 Annual Budget.

For each Fiscal Year and partial Fiscal Year from and after the Closing Date, the Operator shall file with the Department an Annual Budget for the Project for such full or partial Fiscal Year. Each such Annual Budget shall be in a form reasonably acceptable to the Department and show in reasonable detail all projected Revenues, operating and maintenance expenses, debt service (identifying separately projected debt service and costs of Extraordinary Maintenance and Repair Work), contributions to reserves, distributions to holders of equity interests in the Operator and other related items for such period on a monthly basis and such other information as the Department may reasonably require.

Section 8.06 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 test any part of the Project or the Project Right of Way, so long as such activity does not unreasonably interfere with the operation of the Project; provided, however, that with respect to access to the executive offices of the Operator, including any inspection of financial or other records, the Department shall provide reasonable advance notice. 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 Project Operations or the Operator's rights or responsibilities under this Agreement. If at any time the Operator has failed to perform any of its 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 of the Project and the Operator's compliance with its operation and maintenance obligations under this Agreement until such time as the Operator has demonstrated to the Department's reasonable satisfaction that it will perform and is capable of performing its operation and maintenance obligations under this Agreement. The Operator will compensate the Department for all reasonable costs incurred by the Department as a result of such increased level of monitoring in accordance with **Section 10.02**.

Section 8.07 Extraordinary Maintenance and Repair Reserve.

(a) The Operator shall regularly fund a reserve (the "**Extraordinary Maintenance and Repair Reserve**") that shall be available exclusively for funding Extraordinary Maintenance and Repair Work in accordance with **Section 8.08** (provided that if the Operator establishes to the reasonable satisfaction of the Department that the costs of Extraordinary Maintenance and Repair Work for which funds on deposit in the Extraordinary Maintenance and Repair Reserve have been paid by the Operator or that such funds are in excess of the sum of (i) the amount actually expended plus (ii) 110% of the reasonably estimated remaining amount required for the Extraordinary Maintenance and Repair Work, then the Operator may withdraw such surplus funds from the Extraordinary Maintenance and Repair Reserve so long as such funds are applied in accordance with **Sections 4.01(d) and (e)**). Subject to **Section 8.07(b)**, the Extraordinary Maintenance and Repair Reserve shall be held in an account with the Collateral Agent or such other financial institution as may be nominated by the Operator and approved by the Department under arrangements that, to the maximum extent practicable, preclude it from being an asset of the Operator, so that it will be available to the Collateral Agent, the Department or Substituted Operator regardless of any bankruptcy event. Such arrangements shall be subject to the Department's prior written approval in its good faith discretion. Such institution may invest and reinvest any amounts deposited in the Extraordinary Maintenance and Repair Reserve from time to time in Eligible Investments at the direction of the Operator, and earnings thereon shall be paid to Operator provided that the Extraordinary Maintenance and Repair Reserve is fully funded in accordance with this **Section 8.07.** The Operator shall provide to the Department the details regarding the account, including the name, address and contact information for the depository institution and the account number. The Operator shall inform the depository institution of all the Department's rights and interests with respect to the Extraordinary Maintenance and Repair Reserve, including the Department's right to draw on the Extraordinary Maintenance and Repair Reserve as provided in this **Section 8.07** in the event the Operator has not paid or performed when due a duty, obligation or liability with respect to Extraordinary Maintenance and Repair Work. The Operator shall deliver such notice to the depository institution and execute such documents as may be required to establish and perfect the Department's interest in the Extraordinary Maintenance and Repair Reserve (which interest shall be subordinate and subject to any lien securing Operator Debt in favor of Persons who are not Affiliates of the Operator or any holder of a beneficial interest in the Operator). The Operator will have the right to payments from the Extraordinary Maintenance and Repair Reserve for the costs of Extraordinary Maintenance and Repair Work performed in accordance with **Section 8.08**. Except as provided otherwise in **Section 6.02(b)(viii)**, in no event shall any Lender or the Collateral Agent have any right to use or apply funds in the Extraordinary Maintenance and Repair Reserve for any purpose other than Extraordinary Maintenance and Repair Work.

(b) Subject to **subsection (c) below**, commencing with the first calendar half-year following the second anniversary of the Closing Date and continuing thereafter throughout the Term, the Operator shall cause amounts to be deposited to the Extraordinary Maintenance and Repair Reserve from time to time as shall be necessary to maintain the Extraordinary Maintenance and Repair Required Balance at all times. If at any time during the course of Extraordinary Maintenance and Repair Work on a Task the actual incurred costs thereof are such that the balance in the Extraordinary Maintenance and Repair Work Reserve for such Task is less than the total amount required to be funded to the Extraordinary Maintenance and Repair Work

Reserve for such Task, the Operator shall promptly increase its deposits in order to fully make up the difference. If after completion of and payment in full for Extraordinary Maintenance and Repair Work on a Task the actual incurred costs thereof are such that the balance in the Extraordinary Maintenance and Repair Work Reserve for such Task is more than the total amount funded to the Extraordinary Maintenance and Repair Work Reserve for such Task, the surplus shall be distributed to the Operator.

(c) It is the parties' intent that (i) the provisions of this **Section 8.07** establish the minimum requirements of Project Financing Agreements regarding reserves, security and funding for performance of major maintenance, repair, reconstruction, rehabilitation, renewal and replacement work during the Term, and (ii) the Extraordinary Maintenance and Repair Reserve serve as the major maintenance reserve required by the Collateral Agent, and not as an additional reserve. In the event any Project Financing Agreements impose more stringent requirements on the Operator regarding reserves, security and funding for performance of such work, then the Operator shall satisfy the more stringent requirements. So long as the Project Financing Agreements meet and are consistent with these minimum requirements, the Operator's compliance with the Project Financing Agreement requirements, terms, conditions and provisions regarding reserves, security and funding for performance of such work shall constitute compliance with this **Section 8.07**.

(d) (i) In lieu of establishing the Extraordinary Maintenance and Repair Reserve, the Operator may deliver to the Department (or, so long as a Project Financing Agreement is in effect, to the Collateral Agent) one or more Letters of Credit (each, an "**Extraordinary Maintenance and Repair Letter of Credit**"), on the terms and conditions set forth in **subsection (e)** below. If the Extraordinary Maintenance and Repair Reserve has been previously established, the Operator at any time thereafter may substitute one or more Extraordinary Maintenance and Repair Letters of Credit for all or any portion of the amounts required to be on deposit in the Extraordinary Maintenance and Repair Reserve, on the terms and conditions set forth in **subsection (e)** below. Upon receipt of the required substitute Extraordinary Maintenance and Repair Letter of Credit, the Department (or, so long as a Project Financing Agreement is in effect, the Collateral Agent) shall authorize the release to the Operator of amounts in the Extraordinary Maintenance and Repair Reserve equal to the face amount of the substitute Extraordinary Maintenance and Repair Letter of Credit, such released funds to be applied as set forth in **Sections 4.01(d) and (e)**. If the face amount of any Extraordinary Maintenance and Repair Letter of Credit will fall below the total amount required to be funded to the Extraordinary Maintenance and Repair Reserve prior to expiry of the Letter of Credit, the Operator shall be obligated to pay, when due, the shortfall into the Extraordinary Maintenance and Repair Reserve. Alternately, the Operator may deliver an Extraordinary Maintenance and Repair Letter of Credit with a face amount equal to at least the total amount required to be funded to the Extraordinary Maintenance and Repair Reserve during the period up to the expiry of the Letters of Credit, or may deliver additional Letters of Credit or cause the existing Letter of Credit to be amended to cover the shortfall before deposits of the shortfall to the Extraordinary Maintenance and Repair Reserve are due.

(ii) Notwithstanding **subsection (d)(i)** above, the Operator shall not be relieved of the obligation to maintain the Extraordinary Maintenance and Repair Reserve by issuing a Letter of Credit to the Collateral Agent in substitution for the Collateral Agent's major

maintenance reserve requirements unless the Operator delivers to the Department, upon the issuance of such Letter of Credit, documents reasonably satisfactory to the Department permitting the Department to become the transferee beneficiary under such Letter of Credit and to make drawings thereunder if the Department determines that (A) the Operator has breached its obligation to commence or perform Extraordinary Maintenance and Repair Work and that the Collateral Agent has failed to draw on such Letter of Credit in aid of causing the performance of such obligation by or on behalf of the Operator within ten days after the Department delivers written notice of such breach to the Operator and the Collateral Agent, or (B) the Letter of Credit will expire within 20 days, the Department has not received a certified copy of a replacement or extension of the Letter of Credit with required transfer documents, and the Department has no actual knowledge of a prior, full draw on the expiring Letter of Credit by the Collateral Agent. At a minimum, such transfer documents shall include a certified copy of the Letter of Credit and a present, executed transfer and assignment of the beneficiary rights from the Collateral Agent to the Department; and the Letter of Credit shall expressly authorize such transfer without condition and permit draw without presentation of the original Letter of Credit.

(e) Each Extraordinary Maintenance and Repair Letter of Credit shall:

(i) be a standby Letter of Credit payable at sight upon presentation by the Department (or, so long as a Project Financing Agreement is in effect, the Collateral Agent) of the Letter of Credit or a sight draft (provided that presentation of the Letter of Credit shall not be required), issued as provided in the definition of "Letter of Credit";

(ii) be in form reasonably satisfactory to the Department;

(iii) be conditioned only on written presentation from the Department or the Collateral Agent, as applicable, to the issuer of a certification stating that (A) the Operator has not performed when due a duty, obligation or liability owing by the Operator with respect to Extraordinary Maintenance and Repair Work under this **Article 8** for which the Extraordinary Maintenance and Repair Letter of Credit is held and that the amount being drawn represents the costs and expenses or reasonably projected costs and expenses relating thereto, or (B) the Department or the Collateral Agent, as applicable, is making the draw within 30 days prior to the expiration date and has received no extended, new or replacement letter of credit required from the Operator;

(iv) provide an expiration date not earlier than one year from the date of issue;

(v) allow for multiple draws;

(vi) name the Department or the Collateral Agent, as applicable, as payee; and

(vii) if the Letter of Credit is issued in favor of the Collateral Agent, permit transfer of the Letter of Credit to the Department in accordance with **subsection (d)** above.

(f) The Department or the Collateral Agent, as applicable, shall have the right to draw on the Extraordinary Maintenance and Repair Letter of Credit, with notice to the Operator, and use and apply the proceeds as provided in this **Article 8** for such letter of credit, if (i) the Operator has failed to pay or perform as and when due (subject to extension by reason of Delay

Events to the extent provided in **Section 14.01**) any obligation with respect to Extraordinary Maintenance and Repair Work under **Section 8.08** for which the Extraordinary Maintenance and Repair Letter of Credit is held or (ii) the Operator for any reason fails to deliver to the Department an extended, new or replacement Extraordinary Maintenance and Repair Letter of Credit, on the same terms, or at least a one year extension of the expiration date of the existing Extraordinary Maintenance and Repair Letter of Credit, by not later than 30 days before such expiration date, in which event the proceeds of the drawing of the expiring Extraordinary Maintenance and Repair Letter of Credit shall be deposited in the Extraordinary Maintenance and Repair Reserve. The Operator covenants not to commence or pursue any legal proceeding seeking, and irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any Extraordinary Maintenance and Repair Letter of Credit (without waiving the right in connection with any improper presentment or payment of sight drafts drawn under an Extraordinary Maintenance and Repair Letter of Credit to obtain from the Department, as the Operator's sole remedy, a refund of the amount of any sight draft the proceeds of which were drawn by the Department and misapplied by the Department and the reasonable costs incurred by the Operator as a result of such misapplication). After the Operator delivers to the Department (or, so long as a Project Financing Agreement is in effect, the Collateral Agent) a replacement Extraordinary Maintenance and Repair Letter of Credit complying with the provisions of this **Section 8.07**, the Department shall promptly deliver the original of any Extraordinary Maintenance and Repair Letter of Credit held by the Department and being replaced in accordance with the Operator's instructions.

(g) In the event the Department draws on the Extraordinary Maintenance and Repair Letter of Credit, the Department may apply the proceeds of such drawing to reimburse the Department for any costs incurred by Department in carrying out Extraordinary Maintenance and Repair Work or to pay a third-party contractor for such work, and any surplus shall be deposited by the Department to the Extraordinary Maintenance and Repair Reserve.

Section 8.08 Procedures Relating to Extraordinary Maintenance and Repair Work

(a) Prior to the Agreement Date, the Operator has prepared and submitted to the Department, and the Department has approved, the life cycle asset maintenance model for the Project (the "**Life Cycle Maintenance Model**"), a copy of which is attached hereto as **Exhibit K**. The Life Cycle Maintenance Model shall be accompanied by an Extraordinary Maintenance and Repair Work Schedule that includes a description of all Extraordinary Maintenance and Repair Work, by component, item or discrete project (each a "**Task**"), projected to be completed during the Term and estimated costs and timing relating to each Task, and such other information as may be reasonably requested by the Department.

(b) No later than 90 days before the beginning of each calendar year after the Agreement Date, the Operator shall prepare and submit to the Department for the Department's approval a written assessment of and projected costs for all Extraordinary Maintenance and Repair Work, by Task and in the aggregate, anticipated to be required over the following five-year period and the estimated costs and timing relating thereto (the "**Five-Year Assessments**"). The Five Year Assessments prepared in the last four years of the Term shall include full five year periods, including those years falling after the end of the Term. The Department's approval shall not be unreasonably withheld and the Department shall deliver its approval or disapproval

within 45 days after such assessment is provided to the Department. Each Five-Year Assessment shall include such updates and adjustments to the Life Cycle Maintenance Model as have been agreed to between the Operator and the Department to reflect the most recent assessment of maintenance operations and conditions, and shall be based upon the Operator's maintenance experience and the then-existing conditions respecting the Project, changes in estimated costs of Extraordinary Maintenance and Repair Work, changes in technology, changes in the Operator's planned means and methods of performing such work and other relevant factors.

(c) In the event of any disagreement or dispute relating to a Five-Year Assessment, the Department and the Operator 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 Five-Year Assessment 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 Laws. 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 Five-Year Assessment, the treatment of that portion in the most recently approved Five-Year Assessment shall remain in effect and govern.

(d) The Operator shall, at its own cost, carry out each Task of the Extraordinary Maintenance and Repair Work in accordance with the Five-Year Assessments (except that scheduled to be performed in years falling after the end of the Term) and in accordance with all Laws and Regulatory Approvals. Funds deposited to the Extraordinary Maintenance and Repair Work Reserve may be withdrawn to pay or reimburse the Operator for costs incurred for such Work. The Operator will provide the Department with quarterly reports on the progress of the Extraordinary Maintenance and Repair Work, by Task, and the Department shall be entitled to inspect and monitor the progress of the Extraordinary Maintenance and Repair Work.

(e) If at any time the Operator fails to complete all or any of the Tasks of the Extraordinary Maintenance and Repair Work within the time schedule agreed to by the Department and the Operator (as such schedule may be mutually extended or shortened by the Department and the Operator) by more than 30 days, the Department may, at its option, but is not obligated to, either (i) notify the Operator that the Department will carry out such Tasks using Department personnel, materials and equipment or (ii) competitively procure the services for such Tasks by one or more contractors under contract with the Department. 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 Operator pay to the Department (by transfer from the Extraordinary Maintenance and Repair Work Reserve or from other sources, as elected by the Operator) an amount equal to the Department's good faith estimate of the Allocable Costs it will incur to complete such Tasks, plus a 10% contingency, and its third-party costs incurred to publicly procure such contract(s). The Operator shall make such payment to the Department not later than 30 Days after demand by the Department for such payment. Such amount shall be held by the Department as segregated funds in an interest-bearing account, with any interest accrued on such amounts to be for the account of the Operator. Subject to reimbursement to the Department of its Allocable Costs, including its third-party costs incurred to publicly procure such contract(s), any surplus will be released to the Operator at such time as

all such Tasks have been fully performed in accordance with this Agreement and all Laws and all Regulatory Approvals. If the Department's Allocable Costs to complete such Tasks, including its third-party costs incurred to publicly procure such contract(s), exceed the amount the Operator previously paid to the Department under this **subsection (e)**, the Operator shall pay to the Department (by transfer from the Extraordinary Maintenance and Repair Work Reserve or from other sources, as elected by the Operator) an amount equal to such excess. Operator shall make such payment not later than 30 Days after demand by the Department for such payment. The foregoing remedy is in addition to any other remedies provided for in this Agreement or available at Law or in equity.

(f) The Operator may, by notice to the Department, object to any demand by the Department in accordance with **subsection (e)** above on the basis that the Operator has completed the Task(s) of the Extraordinary Maintenance and Repair Work specified in the Department's demand 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 8.09 Ordinary Operation and Maintenance Letter of Credit.

(a) At any time that a Budget Shortfall occurs or is projected to occur for the following year, the Operator shall deliver to the Department a Letter of Credit (an "**O&M Letter of Credit**") in an amount equal to 110% of the Budget Shortfall. The O&M Letter of Credit shall (i) be a standby Letter of Credit payable at sight upon presentation by the Department of a site draft, issued as provided in the definition of "Letter of Credit"; (ii) be in form reasonably satisfactory to the Department; (iii) be conditioned only on written presentation from the Department to the issuer of a certification stating that (A) the Operator has failed to perform ordinary operations and maintenance obligations when required under this Agreement or (B) the Department is making the draw within 30 days prior to the expiration date and has received no extended, new or replacement letter of credit required from the Operator; (iv) provide an expiration date one year from the date of issue; (v) allow for multiple draws; and (vi) name the Department as payee.

(b) Thereafter, not later than 30 days prior to the expiration of the then current O&M Letter of Credit, if a Budget Shortfall has occurred for the current year or is projected to occur for the following year, the Operator shall deliver a new or amended O&M Letter of Credit for the following one-year period in an amount equal to 110% of the Budget Shortfall, which O&M Letter of Credit shall be on the terms and conditions set forth in subsection (a) above.

(c) The Operator covenants not to commence or pursue any legal proceeding seeking, and irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any O&M Letter of Credit (without waiving the right in connection with any improper presentment or payment of sight drafts drawn under an O&M Letter of Credit to obtain from the Department a refund of the amount of any sight draft the proceeds of which were drawn by the Department and misapplied by the Department and the reasonable costs incurred by the Operator

as a result of such misapplication). The Operator's sole remedy in connection with the improper presentment or payment of sight drafts drawn under a Letter of Credit shall be the right to obtain from the Department a refund of the amount of any sight draft the proceeds of which were misapplied and the reasonable costs incurred by the Operator as a result of such misapplication.

(d) In the event the Department draws on an O&M Letter of Credit, the Department may apply the proceeds of such drawing to reimburse the Department for any costs incurred by Department in carrying out ordinary operations and maintenance obligations or to pay a third-party contractor for such work, and any surplus shall be deposited by the Department to any proceeds account maintained by the Collateral Agent or, if no Financing Assignment is outstanding, paid to the Operator.

(e) If O&M Letters of Credit shall not in the future be available at commercially reasonable terms and rates, the Operator shall furnish the Department with comparable security instruments or Eligible Investments approved by the Department.

Section 8.10 Obligation to Turn Over Project at End of Term.

Upon the last day of the Term, whether upon expiration or earlier termination, the Operator shall surrender and deliver the Project and related assets to the Department as provided in **Section 16.03**.

Section 8.11 Transition Plan.

Not later than 180 Days preceding the end of the Term, the Operator and the Department shall develop a plan to assure the orderly transition of the Project to the Department or a Department contractor.

Section 8.12 Ethical Standards.

(a) Within 150 days after the Closing Date, the Operator shall adopt written policies establishing ethical standards of conduct for all its directors, members, officers and supervisory or management personnel in dealing with the Department and employment relations. Such policy shall be subject to review and comment by the Department prior to its adoption. Such policy 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 Operator or its personnel or any contractors;

(iv) Restrictions on directors, members, officers or supervisory or management personnel of the Operator 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 Operator 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 Operator 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 Operator shall establish reasonable systems and procedures to promote and monitor compliance with the policy.

Section 8.13 Police Services.

The Department shall, at its sole cost and expense, enter into an agreement with the Virginia State Police obligating such Governmental Authority to provide police services and cause to be made available emergency services (fire and rescue), including traffic patrol and traffic law enforcement services, to be provided on the Project at a level of service equivalent to that provided on comparable State Highways, which shall in any event not be less in scope, level or quality of service than that provided on the Project as of the Closing Date. Such services shall be provided without any charge to the Operator or the Project. In addition, if requested by the Operator, the Department shall assist the Operator in obtaining enhanced levels of police services for the control of traffic for special events, construction or maintenance activities, predicted peak traffic patterns or as otherwise as needed (and in each case, at the Operator's sole cost and expense) or the Operator may obtain such services from a private entity at its cost and expense, subject to compliance with all applicable Laws. The Department shall not have any responsibility to the Operator resulting from or otherwise relating to the failure of the Virginia State Police to provide any services hereunder.

Section 8.14 Hazardous Substances Management.

(a) Within 150 days after the Closing Date, the Operator shall prepare and submit to the Department for its approval, not to be unreasonably withheld or delayed, a Hazardous Substances management plan for the Project. It shall describe a cost-effective approach to

Hazardous Substances management, both in connection with any construction activity and in connection with operations and maintenance, that complies with applicable Laws and Regulatory Approvals. The Operator shall review the Hazardous Substances management plan 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 Laws, Regulatory Approvals, industry practices and standards, and circumstances affecting the Project. The Hazardous Substances management plan shall address contamination encountered, impacted, caused by or occurring in connection with any work or activity of or on behalf of the Operator, as well as the investigation and remediation of such contamination. The Operator shall comply with the procedures and requirements set forth in the approved Hazardous Substances management plan and as required by the Technical Requirements.

(b) If during the Term the Operator encounters Hazardous Substances within the Project 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 Operator shall promptly notify the Department and shall proceed and act in accordance with the 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 obtain 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.

(c) The Operator shall afford the Department the opportunity to inspect areas and locations containing Hazardous Substances that must be remediated before any remedial action is taken that would inhibit the Department's ability to ascertain the nature and extent of the contamination; provided that in the case of a sudden release of Hazardous Substances the Operator 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.

(d) The Operator 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 Operator 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 Operator 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.

(e) The Operator shall bear all costs and expenses of preparing and complying with the Hazardous Substances management plan and remedial action plans prepared pursuant thereto, of complying with Laws and obtaining and complying with Regulatory Approvals pertaining to Hazardous Substances, and otherwise of carrying out remedial action, except as follows:

(i) If the Operator is obligated to undertake remedial action or other management activities regarding Pre-Existing Hazardous Substances, the Department shall reimburse the Operator for (A) the Allocable Costs the Operator incurs to obtain Regulatory Approvals in connection with such remedial action or other management activities, (B) the Allocable Costs the Operator incurs to pay third-party Consultants, contractors and subcontractors to perform such remedial action or other management activities, and (C) the Allocable Costs the Operator incurs to perform or supervise such remedial action or other management activities. Before undertaking any such remedial action or other management activities, the Operator and the Department shall confer and coordinate to determine whether cost-effective means and methods are available to avoid or minimize remedial action or other management activities and the costs thereof regarding such Hazardous Substances. If the combined cost of the remedial action or other management activities plus the extra cost to the Operator of means and methods to minimize the remedial action or other management activities are less than the cost to perform the remedial action or other management activities without such means and methods, then the Department shall be obligated only to pay the smaller, combined cost;

(ii) If any remedial action or other management activities is required or undertaken by an applicable federal or state Governmental Authority regarding the Pre-existing Hazardous Substances under and in the vicinity of the Project and such Governmental Authority seeks indemnity or contributions for the cost thereof from the Department or the Operator, except to the extent of any such Pre-existing Hazardous Substances that are the subject of the Operator's indemnity in **Section 13.04**, the Department shall have sole responsibility to negotiate, defend, settle, compromise and pay the portion of such cost due from the Department or the Operator; and

(iii) If the Operator constructs the Airport Connector Road, the Department shall reimburse the Operator for (A) the Allocable Costs the Operator incurs to obtain Regulatory Approvals in connection with remedial action or other management activities regarding Pre-Existing Hazardous Substances in, on or under the Project Right of Way for the Airport Connector Road, (B) the Allocable Costs the Operator incurs to pay third-party Consultants, contractors and subcontractors to perform such remedial action or other management activities and (C) the Allocable Costs the Operator incurs to perform or supervise such remedial action or other management activities, except in each instance to the extent of the Operator's indemnity liability regarding any such Pre-existing Hazardous Substances under **Section 13.04**.

(f) Except as provided below, the Operator shall not be considered the generator of Hazardous Substances located within the Project Right of Way; provided, however, that the foregoing shall not preclude or limit any rights or remedies that the Department may have against third parties and/or existing or prior owners, lessees, licensees and occupants of such properties. The Operator shall be considered the generator of any Hazardous Substances that are the subject of the Operator's indemnity in **Section 13.04**. Except with respect to Hazardous Substances that are the subject of the Operator's indemnity in **Section 13.04**, if the Operator disposes of Hazardous Substances, the Operator (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".

Section 8.15 Contract Services

If at any time the Department procures a contract for snow and ice removal or other maintenance services for State Highways on a regional or network basis in the area of the Project, the Department shall require the contractor, so long as it is under contract with the Department, at Operator's request, to offer comparable services to the Operator on comparable terms and conditions, subject to the contractor's reasonable approval of Operator's ability to pay. The Department shall have no obligation to provide any such services to Operator 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 Operator.

Section 8.16 Richmond Traffic Model Maintenance

The Operator will maintain a Richmond Metropolitan Strategic Model based on the model prepared for the Project and enhanced from time to time. The Operator's support for the model is intended to be sufficient to provide the Department with the tools to run the model for transportation strategic planning purposes. The Operator will enhance and upgrade the model based on traffic survey data provided by the Department and other parties plus any surveys carried out by the Operator associated with the Project. The initial modeling platform for the model maintenance will be Cube Voyager, the current software used by the Department. Neither the Operator nor the Department will be limited in terms of choices of modeling software and, if at some future time the parties adopt different software platforms, the Operator will make available all upgrade documentation in a form agreed by the parties.

Section 8.17 Operations and Systems Management

The Operator will provide the Department with advice on operations management and systems development based on the applications used by the Operator for projects under its control. This will include incident management, driver information systems, dynamic control and high occupancy toll lane operations. The Operator will develop a research platform using the Project as the basis of the development of operations management and systems design relating to high occupancy toll lanes and make these available to the Department.

Section 8.18 ETC

The Operator will support the Department in relation to the development and implementation of ETC specifications and systems. This will include input, as requested, to the Department in relation to initial documentation, test plans, acceptance processes and system audits. It will also provide for cooperation in relation to advice relating to legislative requirements to support ETC/Open Road Tolling operations and improvements. The Operator will provide the Department with the option to place the Department's personnel with the Operator to be trained in Open Road Tolling operations and improvements.

ARTICLE 9.

AIRPORT CONNECTOR ROAD, PROJECT ENHANCEMENTS, DIRECTED CHANGES AND COMPLIANCE ORDERS

Section 9.01 Airport Connector Road.

(a) Subject to **subsections (b) and (c)** below, the Operator shall develop, finance, design, construct and complete, at its sole cost and expense except as provided in **subsection (d)** below, the Airport Connector Road in accordance with and subject to the terms of this Agreement and the Development Contract pertaining thereto. Upon completion of the Airport Connector Road and its acceptance by the Department, (i) the Operator shall operate and maintain the Airport Connector Road in accordance with the provisions hereof as part of the Project; provided that the Department, at its own expense and without liability to Operator, shall have the sole right and obligation to (A) operate and maintain the traffic signals on the Northern Portion of the Airport Connector Road, (B) regulate, including handling requests and permitting for, adjacent property access and utility accommodations on the Northern Portion of the Airport Connector Road and (C) manage traffic on the Northern Portion of the Airport Connector Road, excluding, however, incident response services and snow and ice removal.

(b) The Operator shall have no obligation to develop, finance, design, construct or complete the Airport Connector Road unless it achieves financial close under a binding agreement it receives from the United States Department of Transportation, acting by and through the Federal Highway Administration, to provide loans under the TIFIA program of not less than $150,000,000 to provide additional funding capacity for the completion, enhancement and expansion of the Project. The Operator shall (i) submit a complete application for such TIFIA financing to the TIFIA Joint Program Office (and provide the Department a true and complete copy thereof) by not later than 30 days after the Agreement Date, (ii) use diligent efforts to obtain a written commitment for such TIFIA financing from the United States Department of Transportation, acting by and through the Federal Highway Administration, by not later than 60 days after conclusion of the NEPA process for the Airport Connector Road (and Operator shall provide Department a true and complete copy of such written commitment promptly upon receipt thereof), and (iii) use diligent efforts to obtain such TIFIA financing within 90 days after Operator receives such written commitment.

(c) If despite such diligent efforts the Operator is unable to obtain such TIFIA financing within 150 days after conclusion of the NEPA process for the Airport Connector Road or any extension of time the Department grants, or if the Department exercises its option to withdraw the Airport Connector Road from the Project as provided in **subsection (d)(vi)** below, then (i) except as provided in the following sentence, all rights of the Operator respecting the Airport Connector Road shall automatically cease and terminate, without compensation, and (ii) the Department may (but shall have no obligation to) construct the Airport Connector Road independently of the Operator, as a tolled or toll free roadway, through use by the Department of its own personnel, materials and equipment or through use of contracts with third parties procured under requests for proposals, competitive bids, negotiations or any other lawful

procurement process. In such event, (A) the Airport Connector Road shall not constitute part of the Project or a Project Enhancement, (B) the Airport Connector Road shall not constitute a Competitive Transportation Facility; (C) the Operator shall have no interest in or claim to any tolls received from tolling operations on the Airport Connector Road, and (D) the Operator shall have the right, at its expense, to locate tolling facilities on the Project near the interchange with the Airport Connector Road so as to ensure that vehicles entering from or exiting to the Airport Connector Road will pay a toll for use of the Project.

(d) Subject to Operator obtaining the TIFIA financing, the Department and Operator hereby establish pricing and assignment of cost risk for the Airport Connector Road according to the following terms and conditions.

(i) Within 30 days after the Operator obtains a written commitment for TIFIA financing, the Operator shall (A) propose to the Department a competitive, open-book process to procure a design-build contract for the full scope of work necessary to design, obtain necessary Regulatory Approvals for, and construct the Airport Connector Road, and (B) propose to the Department a procurement schedule, which shall be coordinated with the NEPA process for the Airport Connector Road and the TIFIA application schedule, with the intent to complete the procurement and be ready to issue a notice to proceed as close as possible to the closing of the TIFIA financing, consistent with applicable Laws. The procurement process and schedule shall be subject to the Department's prior written approval (which shall not be unreasonably withheld). The Operator shall carry out the procurement according to the approved process and schedule.

(ii) The procurement documents shall include for reference purposes the Department's estimate of the time reasonably necessary to substantially complete the Airport Connector Road. The procurement process shall, among other things, require proposers to submit a preliminary schedule for carrying out the work under the design-build contract. Such preliminary schedule shall be subject to the Department's prior approval if inconsistent with the Department's schedule estimate or with the scheduling provisions described in clause (iii) below. The Department may require the Operator to reject any proposal that is inconsistent therewith.

(iii) Prior to commencing the competitive procurement process, the Operator shall prepare and submit to the Department, for its written approval, the form of the design-build contract. The form of contract shall provide for a lump sum contract price for the scope of work. If the terms of the design-build contract include in the contractor's scope of work remedial action or other management activities respecting Pre-Existing Hazardous Substances, the procurement shall require the contractor to separately state its pricing for such work outside of the lump sum contract price. The design-build contract also shall require the contractor to develop a critical path schedule for the work, starting with notice to proceed, that (A) is consistent with the winning proposer's preliminary schedule for the work, and (B) schedules performance of work activities on the Southern Graphics parcel in a way that maximizes the time available to the Operator to carry out any remedial action regarding Pre-Existing Hazardous Substances on such parcel before such work activities become part of the critical path. The form of design-build contract also shall require that schedule float be treated as a project resource available for any cause of delay, including Department-caused delay.

(iv) The Department shall deliver to Operator the design documents that Department has prepared for the Airport Connector Road. The Operator shall make such design documents available to potential proposers during the competitive procurement process. The terms of the design-build contract shall require the contractor to independently review such design documents and verify the constructability of the designs and their compliance with applicable standards, Laws, and conditions and requirements of Regulatory Approvals, and to prepare final design documents and construction documents for the Airport Connector Road.

(v) The Operator shall select for tentative contract award the most favorable bid proposed from qualified, responsive contractors (giving due weight to the lowest price and excluding any separately stated pricing of work regarding Pre-Existing Hazardous Substances), and shall promptly report to the Department the result s of the competitive process, including the lowest price proposed, and a summary of the terms (including price of the tentative contract award and preliminary schedule).

(vi) Immediately after selection for tentative contract award, Department and Operator shall determine the Total ACR Development Cost. Total ACR Development Cost shall equal the sum of:

(A) the tentative winning contract amount, plus

(B) 10% of the amount described in clause (A) as an allowance to Operator for costs of contract and project administration and overhead of the Operator, and an independent engineer selected by the Operator, with the approval of Department, including any other related Allocable Costs of the Operator and comparable costs of the independent engineer, plus

(C) all costs incurred or to be incurred by the Department or Operator after December 31, 2005 for acquisition of Project Right of Way for the Airport Connector Road, including Utility Relocation costs and costs of related legal services for property acquisitions and relocations.

Total ACR Development Cost shall exclude the costs of remedial action or other management activities respecting Pre-Existing Hazardous Substances, responsibility for which is governed by **Section 8.14(e)**.

(vii) If the Total ACR Development Cost, as so determined, exceeds $45,200,000 (the "cost cap"), the Department shall have the option to withdraw the Airport Connector Road from the Project. The Department shall exercise such option by delivering to Operator written notice thereof within 30 days after the Department and Operator establish the Total ACR Development Cost. If the Department does not deliver such notice within such time period, Operator may deliver to the Department a written notice referencing the Department's option and stating that it will expire if the Department does not deliver written notice of exercise within 15 days after receipt of the Operator's notice. If the Department does not give notice of exercise within such 15-day period, then the option shall automatically expire. If the Department exercises such option, the Operator shall cancel the procurement of the design-build contract.

(viii) If the Total ACR Development Cost exceeds the cost cap and the Department does not exercise the foregoing option, then the Department shall be responsible to pay the portion of the Total ACR Development Cost that exceeds the cost cap. The Department shall reimburse the Operator for such excess after the Operator makes payments of costs within the Total ACR Development Cost equal to the cost cap. Payments from the Department shall be due not more often than monthly within 30 days after the Department receives from the Operator detailed evidence that it has made payments of costs within the Total ACR Development Cost equal to the cost cap, complete copies of all progress payment documentation required of the design-build contractor under the design-build contract, and any other documentation of the work performed and costs incurred as the Department reasonably requests.

(ix) In addition, subject to **Section 20.18**, the Department shall be responsible to pay for:

(A) increased costs (including for any change order compensating the design-build contractor for delay or disruption damages due to a delay to the critical path for the work, after consumption of all float) directly attributable to remedial action or other management activities respecting Pre-Existing Hazardous Substances on the Project Right of Way for the Airport Connector Road, except to the extent such costs are attributable to the negligence, misconduct or breach of obligation of the Operator or the design-build contractor (which payment obligation is in addition to that under **Section 8.14(e)(iii)**), and

(B) increased costs (including delay or disruption damages due to delay to the critical path for the work, after consumption of all float) directly attributable to interference with the work by the Department (which excludes the Department's rights of inspection, audit and oversight, and its rights to suspend work that does not conform to applicable standards, Laws or Regulatory Approvals or to require re-work of such non-conforming work) or wrongful failure by the Department to give any necessary approvals or consents within the time periods specified in the applicable Development Contract. Notwithstanding the foregoing, the Department shall not be obligated to pay for such increased costs to the extent such costs, together with the following costs, are within the cost cap: (I) the Total ACR Development Cost, plus (II) all additional compensation paid to the design-build contractor under change orders approved by Operator pursuant to the change order provisions of the design-build contract, plus (III) all costs the Operator reasonably incurs to enforce or pursue remedies for the design-build contractor's failure to perform in accordance with the design-build contract, reduced by any amount the Operator, through the exercise of reasonable action to enforce the attorneys' fees clause, if any, in the design-build contract, is or would be able to collect from the design-build contractor, plus (IV) if the design-build contractor fails to perform any work under the design-build contract, the excess of the reasonable compensation paid by the Operator to any other contractor to carry out such work over the amount the Operator would have paid to the design-build contractor for carrying out such work absent its failure to perform. Payments from the Department shall be due within 30 days after (1) it is finally determined that such increased costs exceed actual payments chargeable to the cost cap as described above and (2) the Department receives from Operator detailed evidence that it has made such payments together with complete copies of the applicable change order(s), all progress payment documentation required of the design-build contractor under the design-build contract, and any other documentation of the increased costs actually incurred as Department reasonably requests.

(x) The Operator shall bear all other risks of increase in the cost of the Airport Connector Road not specifically allocated to the Department under this **subsection (d)** or in **Section 8.14(e)(iii)**.

Section 9.02 Project Enhancements by the Operator.

The Operator shall have the right to develop, operate and maintain Project Enhancements; provided that the Operator shall not undertake any such Project Enhancements unless all aspects thereof are approved in writing by the Department in its sole discretion, and the Operator has entered into a Development Contract with the Department with respect thereto; provided that such approval shall not be unreasonably withheld or delayed with respect to the construction of the Wilton Access Road permitting direct access between the Project and a proposed residential development known as the Wilton Farm development, subject to the Operator meeting the Department's technical specifications with respect thereto.

Section 9.03 Project Enhancements by the Department.

(a) Subject to **subsection (d)** below, the Department shall have the right from time to time, at its sole cost and expense to develop, operate and maintain Project Enhancements. The Department shall have the right to develop, operate and maintain 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 Operator, at the Department's sole cost and expense, to undertake the Project Enhancements through subcontracting for necessary traffic and revenue studies and for necessary planning, design, engineering, permitting, financial, right-of-way acquisition, Utility Relocation, construction, installation, project management, operation, maintenance, repair and other work and services.

(b) If the Department authorizes and directs the Operator to undertake Project Enhancements pursuant to **subsection (a)(iii)** above, then the Operator, in cooperation with the Department and subject to the review and written approval by the Department in its sole discretion, and to the Department making available to the Operator sufficient funds, through monthly progress payments for work performed and costs incurred (plus 10% of such costs to reimburse the Operator for costs of administering the work), to perform the work required to design, construct, operate and maintain such 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 **subsection (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 the Department may require or authorize in its sole discretion in connection with the 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 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 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 Project Enhancements, subject to the Department's right at any time to assume responsibility for all or any portion of such functions.

(c) The Department shall have the right to enter upon the Project and the Project Right of Way for any purpose relating to Project Enhancements under this **Section 9.03** to the extent reasonably necessary. If the Department elects to develop Project Enhancements without the Operator's participation, then the Department shall coordinate such development with the Operator so as to minimize to the extent reasonably feasible the disruption to the Operator's operation of the Project.

(d) If a Project Enhancement carried out pursuant to this **Section 9.03** has a Net Cost Impact or Net Revenue Impact, the Department shall pay the amount of any Operator Damages relating thereto in accordance with **Sections 13.07** and **13.08**.

Section 9.04 Compliance Orders.

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

(b) Subject to **subsection (c)** below, after the Department issues a Compliance Order, the Operator shall proceed with necessary environmental, design and construction work to carry out the Compliance Order, at its sole cost and expense.

(c) The Operator will only be required to carry out any Compliance Order under **subsection (a)** of the definition thereof at the date on which the Department commences to carry out the changes ordered or directed therein for similar portions of already constructed State Highways, unless the Department elects in its sole discretion to treat such Compliance Orders in the same manner as Project Enhancements directed by the Department, in which case all the provisions of **Section 9.03** shall apply.

(d) The Operator shall, without condition or qualification, obtain debt or equity financing (including additional Operator Debt) to the extent that funds are not otherwise available, to pay the Operator's costs of carrying out the work required under Compliance Orders.

(e) The Operator shall have the right to dispute whether a Compliance Order should be compensated as a Project Enhancement under the dispute resolution procedures set forth in **Section 17.06**, but Operator shall have no right to delay the carrying out of the Compliance Order pending the resolution of the dispute.

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 respecting all aspects of the design, permitting, financing, acquisition, construction, installation, equipping, maintenance, repair, preservation, modification, operation, management and administration of the Project, the Airport Connector Road and Project Enhancements. The Operator 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 Project Operations or the Operator's ability to fulfill its responsibilities under this Agreement.

Section 10.02 Compensation for Oversight Services.

(a) The Department shall be compensated for all its Oversight Services under **Section 10.01** (other than Oversight Services related to the design and construction of the Airport Connector Road, any Project Enhancement directed by the Department pursuant to **Section 9.03**, any Compliance Order treated as a Project Enhancement pursuant to **Section 9.04** and any Oversight Services conducted during the Transitional Period) and those services of the Attorney General's office relating to Project Right of Way acquisition and Utility Relocation.

(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 purchase prices and condemnation awards paid for Project Right of Way, the cost of all legal, expert witness and other support services, and awards of litigation expenses; provided, however, that the aggregate amount payable by the Operator pursuant to this **Section 10.02** with respect to oversight of ordinary operation and maintenance activities shall not exceed $50,000 per calendar year, 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 of October immediately preceding the beginning of the calendar year to the CPI published for the third month prior to the month in which the Agreement Date occurs.

(c) The Department shall prepare and submit to the Operator the Department's invoices reasonably documenting amounts owing to the Department for Oversight Services provided. The Operator shall pay each invoiced amount no later than 45 Days after the Department prepares and delivers an invoice reasonably documenting the amount of such Oversight Services provided. Funds for acquisition purchase prices, condemnation awards and amounts owing to Utility Owners respecting Utility Relocations shall be paid by the Operator directly to the escrow respecting the purchase, to the court respecting the condemnation or the Utility Owner respecting the Utility Relocation, or as the Department may otherwise direct.

ARTICLE 11.

CONTRACTING PRACTICES

Section 11.01 Obligation to Refrain from Discrimination.

(a) The Operator 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, construction, maintenance, operation or management of the Project, nor shall the Operator 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; provided, however, 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.

(b) The Operator shall conduct its activities in connection with the Project in compliance with all other requirements imposed pursuant to Title 2.1, Chapter 25, Sections 374 et seq., Code of Virginia; Titles VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Americans With Disabilities Act of 1990; and applicable rules and regulations including but not limited to provisions of Title 23, Code of Federal Regulations and Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary of Transportation, Part 1 (49 C.F.R. Part 21), which are applicable to the Project by reason of use of federal funds for non-construction activities (such as design, Project Right of Way acquisition and Utility Relocation), and as said regulations may be amended.

Section 11.02 Subcontracting.

(a) Subject to **Section 8.04**, the Operator may perform its traffic management, ordinary maintenance and repair, Extraordinary Maintenance and Repair Work 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 Laws, all Regulatory Approvals and the terms, conditions and standards set forth in this Agreement.

(b) Each subcontract that the Operator 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 require the subcontractor to carry out its scope of work in accordance with all applicable Laws, all Regulatory Approvals and the terms, conditions and standards set forth in this Agreement;

(iii) 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;

(iv) 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 Operator'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 Operator, and provide progress reports to the Operator appropriate for the type of subcontract it is performing sufficient to enable the Operator 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 Operator's subcontract rights and the work performed thereunder with liability only for those remaining obligations accruing after the date of assumption;

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

(vi) shall expressly require the subcontractor to participate in meetings between the Operator 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 Operator, and provided further that nothing in this **subsection (b)(vi)** 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;

(vii) shall expressly provide that all liens, claims and charges of the subcontractor and its subcontractors at any time shall not attach to any interest of the Department in the Project or the Project Right of Way; and

(viii) 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 Operator shall not enter into any 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 Operator shall include a provision in each subcontract requiring the subcontractor to maintain all licenses required by applicable Laws.

(e) The appointment of subcontractors by the Operator shall not relieve the Operator of its responsibility hereunder or for the quality of work, materials and services provided by it. The Operator 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 Operator 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 Operator.

(f) The Operator 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 Operator demonstrates to the Department's satisfaction that the contract or subcontract is on overall terms no less favorable to the Operator than terms the Operator could obtain in an arm's-length transaction for comparable services with a Person that is not an Affiliate of the Operator; provided, that no consent shall be required for (i) the Technical Support Agreement (but not material amendments thereto); (ii) one or more contracts for management or operations and maintenance services requiring aggregate payments by the Operator of less than 2% of the budgeted ordinary operations and maintenance in any year; or (iii) 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 Operator in lieu of Operator having its own employees for such functions.

Section 11.03 Small, Women-Owned and Minority Business Reporting (SWAM).

The Operator is strongly encouraged to pursue, invite and develop the participation of certified SWAM and/or DBE vendors in the performance of its services hereunder. The parties agree to a long-term goal of 20% SWAM participation. The Operator is required to report monthly, through the Department's Civil Rights Division, actual payments, retainage, minority status, and the work type of all subcontractors and suppliers. Information necessary for reporting DBE utilization and SWAM may be obtained from the Department's Civil Rights Office. The Operator must maintain records and documents of payments to SWAM and DBEs for three years following performance of the relevant contract.

Section 11.04 Federal Requirements.

In the event that federal credit or funds are utilized for the Project, the Operator shall comply with applicable federal requirements, including prevailing wages, Buy America, any compliance certifications and milestone payment schedules required for TIFIA, if applicable, and other federal requirements affecting the work.

ARTICLE 12.

INTERRELATIONS AMONG TRANSPORTATION FACILITIES

Section 12.01 Competitive Transportation Facilities.

(a) The Department acknowledges that Competitive Transportation Facilities or the expansion of certain existing transportation facilities so as to become a Competitive Transportation Facility may adversely affect Toll Revenues. In consideration thereof and of the Operator's reliance on Toll Revenues, for a period commencing on the Closing Date and ending on the expiration or earlier termination of this Agreement, if there occurs any of the events described in clauses (i), (ii), (iii) and (iv) below, except as permitted in **subsection (b)** below, the Department shall be obligated to compensate the Operator in an amount equal to the Net Revenue Impact proximately caused by the event as determined and payable in accordance with **Section 13.07** and **Section 13.08.**

(i) opening and operation after the Closing Date of any Competitive Transportation Facility owned or operated by the Department;

(ii) opening and operation after the Closing Date of any expansion of an existing transportation facility owned or operated by the Department such that it becomes a Competitive Transportation Facility;

(iii) opening and operation after the Closing Date of a Competitive Transportation Facility owned or operated by any other governmental or private entity, but only where the Department failed to exercise discretionary authority (whether discretion to fund, permit, franchise or otherwise authorize) available to it under Laws to prevent the development thereof, or where a change in State Law after the Agreement Date deprived the Department of discretionary authority previously available to it under Laws to prevent the development thereof; and

(iv) opening and operation after the Closing Date of any expansion of an existing transportation facility owned or operated by any other governmental or private entity such that it becomes a Competitive Transportation Facility, but only where the Department failed to exercise discretionary authority (whether discretion to fund, permit, franchise or otherwise authorize) available to it under Laws to prevent the development thereof, or where a change in State Law after the Closing Date deprived the Department of discretionary authority previously available to it under Laws to prevent the development thereof.

(b) Notwithstanding anything to the contrary set forth in **subsection (a)** above or otherwise in this Agreement, the Department may without liability to the Operator:

(i) distribute federal funds to other Governmental Authorities for Competitive Transportation Facilities, provided that such distribution is a non-discretionary act mandated by federal laws, regulations or policies; and

(ii) render such advice and make such recommendations as it may deem to be in the best interests of the State.

(c) In no event shall the taking of any action by the Department described in **subsection (a)(i) through (iv)** above constitute a default by the Department under this Agreement.

(d) (i) Subject to **subsection (d)(ii)** below, the provisions of **subsection (a)** above shall cease to have force and effect, and shall not bind the Department, if the Level of Service of the Project has been E or lower (other than due to accidents, severe weather, maintenance or repair work, temporary lane closures or other abnormal traffic conditions) for at least 30 days in any 90-day period. The foregoing shall not apply to the extent that the Level of Service at any location is reduced to E or below as a result of conditions on a connecting ramp or connecting roadway that is not part of the Project.

(ii) Prior to **subsection (d)(i)** above taking effect, the Department will notify the Operator of the Department's intention to invoke it. The Operator shall have 90 days after delivery of such notice to prepare a practicable plan and program of finance and a diligent schedule to improve the Level of Service conditions. The Department and the Operator will negotiate in good faith during such 90-day period to develop a solution acceptable to both parties. **Subsection (d)(i)** above shall not apply if (A) the Operator agrees at its own expense to add additional lanes or implement other improvements reasonably satisfactory to the Department to improve the Level of Service, (B) the Operator thereafter carries out such improvements in accordance with a diligent schedule reasonably satisfactory to the Department (provided that the Operator shall not be required to award construction contracts to improve the Level of Service prior to the date that is 60 days after all Regulatory Approvals necessary to implement such proposal have been acquired (or should have been acquired through the Operator's exercise of diligent efforts) or the necessary rights of way have been obtained (or should have been obtained through the Operator's exercise of diligent efforts)), and (C) the lanes or other improvements in fact improve the Level of Service to D or better. Notwithstanding any data, opinion, evaluation or comment provided by the Department, the Operator shall be solely responsible for determining that its proposed solution, whether additional lanes or other improvements, will be effective to improve the Level of Service to D or better.

(e) Compensation, if any, owing by the Department under **subsection (a)** above shall be determined in accordance with the following procedures:

(i) The Department shall deliver to the Operator a notice of potential Competitive Transportation Facility at any time from and after the selection thereof as the preferred alternative under a NEPA decision or other applicable Regulatory Approval and prior to the opening of the potential Competitive Transportation Facility. The Department shall include in such notice (a) a reasonable description of the Competitive Transportation Facility, including any right-of-way alignments, number of lanes, location and other pertinent features, (b) a statement whether the potential Competitive Transportation Facility will be tolled, and if so the intended toll rate schedule by vehicle classification, and (c) a statement that the Department is invoking the procedures specified in this **Section 12.01(e)**, which notice shall be accompanied by any traffic and revenue studies and analyses available to the Department for the potential

Competitive Transportation Facility. If for any reason the Department fails to deliver this notice to the Operator prior to the opening of the potential Competitive Transportation Facility, the Department shall have 90 days following notice thereof from the Operator to deliver such notice before this failure constitutes a Department Default for purposes of **Section 17.03(b)**.

(ii) Within 90 days after the Department delivers such notice to the Operator, the Operator shall deliver to the Department a written notice stating whether the Operator believes the potential Competitive Transportation Facility will adversely affect Toll Revenues and, if so, a true and complete copy of a preliminary Traffic and Revenue Study and analysis showing the projected effects and a reasonably detailed statement quantifying such effect. Such analysis and quantification shall include data on past Toll Revenues and projected future Toll Revenues with and without the potential Competitive Transportation Facility, and projected costs (including Operator's Allocable Costs) of operation and maintenance, including Extraordinary Maintenance and Repair Work, with and without the potential Competitive Transportation Facility. At the Operator's request within such 90-day period, the Department shall grant reasonable extensions of time for the Operator to deliver the written notice, so long as the Operator is making good faith, diligent progress in completing its traffic and revenue analysis and Toll Revenue and cost impact analysis, provided that in no event shall the Department be obligated to grant extensions aggregating more than 90 days.

(iii) If for any reason the Operator fails to deliver such written notice and related information within the foregoing time period (as it may be extended), the Operator shall be deemed to have irrevocably and forever waived and released any Claim or right to compensation for any adverse effect on Toll Revenues attributable to the construction, operation and use of the subject potential Competitive Transportation Facility; provided that if the Department fails for any reason to deliver a notice in accordance with **subsection (e)(i)** above prior to the opening of a Competitive Transportation Facility to traffic, the Operator may at any time within three years after the opening of the Competitive Transportation Facility initiate the compensation procedures set forth herein by giving a notice in accordance with **subsection (e)(ii)** above as if the Department had delivered a notice in accordance with **subsection (e)(i)** above.

(iv) If the Operator timely delivers its written notice and related information, then at the Department's request the Operator shall engage in good faith, diligent negotiations with the Department to mutually determine and settle the amount of compensation owing from the Department to the Operator on account of the Net Revenue Impact of the potential Competitive Transportation Facility. The payment for the Net Revenue Impact shall be subject to the same conditions and limitations as for Operator Damages under **Section 13.07**. As part of such negotiations, the parties shall continue to refine and exchange (on an open-book basis) plans, drawings, configurations and other information on the potential Competitive Transportation Facility, traffic and revenue data, information, analyses and studies, and financial modeling and quantifications of projected Toll Revenue loss, if any, and project operating and maintenance cost reductions, if any. At the request of either party, the parties shall engage a neutral facilitator to assist with these negotiations. If the parties are successful in the negotiations, they shall execute and deliver written agreements and, if necessary, amendments to this Agreement, setting forth all the terms and conditions of settlement, which shall thereafter be final and binding and constitute a full settlement and release of any and all Claims, causes of

action, suits, demands and Losses of the Operator arising out of the Competitive Transportation Facility. Neither Party thereafter shall have the right to rescind or cancel the settlement for any reason, including differences between the amounts of actual future Toll Revenues or operating and maintenance costs and the amounts that were previously projected.

(v) If the parties are unable to agree upon compensation for the Operator within 90 days after commencement of such negotiations, then either party may terminate the negotiations upon written notice to the other party, in which event the Operator may enforce its claimed rights to compensation for Net Revenue Impact in accordance with **Section 17.06(c)**.

(vi) Notwithstanding the foregoing, the Department shall not be liable for any payment for Net Revenue Impact determined pursuant to the foregoing procedures unless and until the potential Competitive Transportation Facility for which such Net Revenue Impact has been calculated opens to traffic.

(f) The Operator acknowledges that the Department has a paramount public interest and duty to develop and operate whatever projects it deems to be in the best interests of the State, and that the compensation to which Operator is entitled on account of the events enumerated in **Sections 12.01(a)(i) through (iv)** is a fair and adequate remedy. Accordingly, the Operator shall have no right to institute, seek or obtain any injunctive relief or pursue any action, order or decree to restrain, preclude, prohibit or interfere with the Department's rights to plan, finance, develop, operate, maintain, toll or not toll, repair, improve, modify, upgrade, reconstruct, restore, rehabilitate, renew or replace Competitive Transportation Facilities; provided, however, that the foregoing shall not preclude the Operator from enforcing its rights to compensation under this **Section 12.01**. The filing of any such action seeking to restrain preclude, prohibit or interfere with the Department's rights shall automatically entitle the Department to recover all costs and expenses, including attorneys' fees, of defending such action and any appeals.

Section 12.02 Coordination Regarding Certain Transportation Facilities.

The Department shall have the right at any time (and without liability to the Operator for any damages it may suffer, except as specifically provided in **subsection (d)** or **(e)** below) 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, however, that:

(a) the Department shall use diligent efforts to keep the Operator informed of planned maintenance, renewal and replacement and repair activities which can reasonably be foreseen to impact activities on the Project;

(b) the Department shall provide to the Operator copies of and other information concerning the Department's then current maintenance, renewal and replacement and repair program;

(c) the Department shall use reasonable efforts consistent with the Department's budgetary and work force constraints to reduce any adverse impacts of such construction,

maintenance, renewal and replacement activities which the Operator may reasonably bring to the Department's attention;

(d) to the extent the modification of existing facilities or construction of new facilities relates to Competitive Transportation Facilities, the provisions of **Section 12.01** shall govern the Department's liability to the Operator therefor; and

(e) to the extent the modification of existing facilities or construction of new facilities relates to Project Enhancements, the provisions of **Section 9.01** shall govern the Department's liability to the Operator therefor.

Section 12.03 Traffic Management Activities.

(a) The Department shall have at all times, except as specifically provided elsewhere in this Agreement, the right to conduct traffic management activities on State Highways as well as the Project in accordance with its standard traffic management practices in effect from time to time, including, but not limited to:

(i) Regional traffic system management (but not on the Project);

(ii) Operational control of person capacity on the State transportation network in the area of the Project (but not on the Project);

(iii) Direction and management of traffic during periods of construction, special events and any declared national, state or regional emergency;

(iv) Provision of non-discriminating traveler and driver information provided that such information does not interfere with the functioning of the ETTM System and does not materially and negatively impact toll operations or reduce vehicle throughput capacity in a discriminatory manner;

(v) Direction and management of traffic off-site; and

(vi) Reversal of the direction of traffic flow during periods of declared national, state or regional emergency, including for mass evacuation.

(b) In carrying out its traffic management responsibilities, the Department shall be entitled to direct traffic and provide variable messages to accomplish the activities above anywhere on the State Highways and regional traffic system. Without limiting the foregoing, the Department at any time may override any messages posted on variable message signs within or serving the Project in order to post information regarding emergencies, incidences, traffic diversions and delays and other traffic management information.

(c) The Department reserves the right to install additional traffic management equipment and improvements on or serving the Project Right of Way at any time at the Department's expense, provided the same does not materially and negatively impact construction or operation of the Project.

(d) The Department shall be permitted to electronically interrogate AVI transponders for traffic management purposes provided this access shall be reasonably limited to minimize transponder battery drain and to avoid compromising motorists' privacy or toll collection system security.

(e) The Department shall have the right to receive, process, use, manipulate, disseminate and generate revenues from all toll and traffic related data generated by the ETTM System, including but not limited to origin/destination, speed, volume and toll rates in effect.

(f) The Department may make available to any contractor it retains to operate the Project pursuant to **Section 8.03** or to provide traveler information services any traffic management data which the Department possesses and which the contractor reasonably needs to operate the Project or provide such traveler information services.

Section 12.04 ITS Activities.

The Department shall have the right to perform ITS research and install ITS equipment on the Project Right of Way for public, non-revenue generating purposes as well as for commercial, revenue-generating purposes, provided that such ITS equipment does not materially interfere with the functioning of the ETTM System and does not materially and negatively impact toll operations or reduce vehicle throughput capacity of the Project; provided, further, that if the Department's ITS activities pursuant to this **Section 12.04** result in the incurrence by the Operator of any Operator Damages in excess of $20,000 per occurrence, the Department shall pay the amount of such Operator Damages in accordance with **Sections 13.07** and **13.08**. 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.

Section 12.05 Directional Signs.

(a) The Department agrees that it will, at its cost, maintain on connecting State Highways such signs notifying motorists of the access to the Project as are necessary in accordance with the Department's duties as highway authority and in accordance with all Laws, including, without limitation, the MUTCD.

(b) The Department will also install, at the Operator's cost, additional signs notifying motorists of the access to the Project as are reasonably requested by the Operator, subject to any obligation to obtain any necessary authorizations of any other Governmental Authority and in accordance with Laws in respect thereof, including, without limitation, the MUTCD. In connection with any such request, the Operator will submit the proposed layout, location, type, size, color and content of all such traffic signs or other signs.

ARTICLE 13.

RELIANCE, INDEMNIFICATION, INSURANCE, AND DISCRIMINATORY ACTION

Section 13.01 Limitations on the Operator's Right to Rely.

(a) The Operator 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 Operator 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 Operator, and

(iii) to perform Oversight Services (A) exist solely for the benefit and protection of the Department (except for the express standards set forth in **Section 8.03**), (B) do not create or impose upon the Department any standard or duty of care toward any Operator Party (except for the express standards set forth in **Section 8.03**), 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 Operator in determining whether the Operator 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 Operator as a defense, legal or equitable, to the Operator's obligation to fulfill such standards and requirements. 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 of the Airport Connector Road or any Project Enhancement, the Operator at all times shall have an independent duty and obligation (except for the duties and obligations expressly delegated to the Department under **Section 8.03**) to obtain all necessary Regulatory Approvals for, design, acquire, construct, equip, operate, maintain, police, renew, replace, provide traffic management for and otherwise manage the Project and Project Right of Way in accordance with the standards and requirements set forth in the Project Agreements.

(b) To the maximum extent permitted by Law, the Operator hereby releases and discharges the Department from any and all duty and obligation to cause permitting, right of way acquisition, Utility Relocation, construction, equipping, operations, maintenance, policing, renewal, replacement, traffic management or other management of or for the Project or Project Right of Way, by the Operator, to satisfy the standards and requirements set forth in the Project Agreements (except to the extent the Department is obligated to meet the express standards set forth in **Section 8.03**.

(c) No rights of the Department described in **subsection (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 of the Airport Connector Road or any Project Enhancement shall:

(i) relieve the Operator 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) except to the extent the Department is obligated to meet the express standards set forth in **Section 8.03**, relieve the Operator 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 **subsections (a)**, **(b)**, and **(c)** above, (i) the Operator shall be entitled to rely on specific written deviations and interpretative engineering decisions the Department gives under any Development Contract, (ii) the Department is not relieved of its obligations under **Section 8.03**, (iii) the Department is not relieved from any liability arising out of a knowing, intentional misrepresentation under any written statement the Department delivers, and (iv) the Department is not relieved from its obligations under any Development Contract.

Section 13.02 Indemnities of the Operator.

(a) The Operator 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 Operator to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, any breach by the Operator of its representations or warranties set forth herein, (ii) any actual or alleged misconduct, negligence or other culpable act, error or omission of an Operator 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, trade marked or service marked materials, equipment, devices or processes, copyright rights or inventions by an Operator Party in connection with the Project, (iv) inverse condemnation, trespass, nuisance or similar taking of or harm to real property committed or caused by an Operator Party in connection with the Project, (v) any Assumed Liabilities, (vi) any tax attributable to any Transfer of the Operator's Interest or any part thereof or (vii) any claim for brokerage commissions, fees or other-compensation by any Person who acted on behalf of the Operator, its Affiliates or their respective Representatives in connection with this Agreement, any Transfer of the Operator's Interest or any part thereof.

(b) The indemnities of the Operator shall survive the expiration or earlier termination of this Agreement.

(c) (i) In the event that any Third-Party Claim for which the Operator may be required to indemnify a State Indemnitee hereunder is asserted in writing against the Department, it shall as promptly as practicable notify the Operator 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, however, 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 Operator are actually and materially prejudiced thereby. If any Third-Party Claim for which the Operator 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 Operator 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 Operator are actually and materially prejudiced thereby.

(ii) The Operator shall be entitled and obligated to appoint counsel of its choice at the expense of the Operator to represent a State Indemnitee in any action for which indemnification is sought (in which case the Operator shall not thereafter be responsible for the fees and expenses of any separate counsel retained by that State Indemnitee except as set forth below); provided, however, that such counsel shall be satisfactory to such State Indemnitee. Notwithstanding the Operator's appointment of counsel to represent a State Indemnitee in any action, such State Indemnitee shall have the right to employ separate counsel, and the Operator shall bear the reasonable fees, costs and expenses of such separate counsel, if (A) the use of counsel chosen by the Operator to represent the State Indemnitee 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 Indemnitee and the Operator and the State Indemnitee 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 Operator; (C) the Operator shall not have employed counsel to represent the State Indemnitee within a reasonable time after notice of the institution of such action; or (D) the Operator shall authorize the State Indemnitee to employ separate counsel at the Operator's expense. The Operator shall not be liable for any settlement or compromise of any action or claim by an State Indemnitee affected except with the Operator'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 Operator receives reasonable notice and the opportunity to be heard and such court approval has become final and nonappealable.

Section 13.03 Responsibilities Regarding Insurance.

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

(i) Property & Business Interruption. The Operator shall obtain Property Insurance at replacement cost, covering loss, damage or destruction to the Project, including improvements and betterments; provided, however, that the limits of such coverage may be based on a probable maximum loss analysis, subject to the Department's approval of such probable maximum 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.

(A) Coverage shall include, but not be limited to, the following: flood, 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, if available, 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 Project and any relevant feeder roads.

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

(D) The Operator is responsible for all loss or damage to personal property (including, but not limited to, materials; fixtures/contents, equipment, tools and supplies) of the Operator except to the extent caused by the negligence or willful misconduct of the Department or its Representatives.

(ii) Commercial General Liability (Primary and Umbrella). The Operator shall provide Commercial General Liability Insurance or its equivalent with limits of not less than US$50,000,000 per occurrence 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.

(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 Operator shall provide or cause to be provided Automobile Liability Insurance with limits of not less than US$10,000,000 combined single limit or per occurrence for bodily injury and property damage. 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 Operator undertakes any construction, maintenance or repairs to the Project, including improvements and betterments pursuant to this Agreement, the Operator 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 Project. Coverage shall include, but not be limited to, the following: right to partial occupancy, boiler and machinery, earth movement, flood. The Department shall be named as an additional insured on a primary, non-contributory basis.

(v) Workers' Compensation and Employer's Liability. The Operator shall provide Workers' Compensation Insurance, as prescribed by applicable Law, for all Operator employees

(b) General Requirements Applicable to Insurance. The insurances which the Operator is required to effect under **subsections (a)(i)** through **(iv)** 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) shall contain a term which requires the insurer to give not less than 90 days prior notice to the Department whenever the insurer gives the Operator a notice of cancellation or any other notice in respect of the policy;

(v) shall contain a cross-liability clause:

(A) in which 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; and

(B) 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 contain a "no cancellation" clause to the extent that such a clause can be obtained by the use of best endeavors;

(vii) 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;

(viii) 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; and

(ix) The Operator shall give the Department proof satisfactory to it of currency and coverage of insurances, as soon as practicable after Closing Date and also whenever reasonably requested by the Department.

(c) Unavailability of Insurance.

(i) If any insurance required to be maintained pursuant to this **Section 13.03** (including the limits or deductibles or any other terms under policies for such insurance) ceases to be available on a commercially reasonable basis, the Operator shall provide written notice to the Department accompanied by a letter from the Operator'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. Upon receipt of such notice by the Department, the Operator and the Department shall immediately enter into good faith negotiations regarding the matters set forth in **subsection (c)(ii)** below.

(ii) If the Operator demonstrates to the Department's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to place the insurance coverages it is required to provide hereunder, and if despite such diligent efforts and through no fault of the Operator any of such coverages (or any of the required terms of such coverages, including policy limits) become unavailable on a commercially reasonable basis, the Department will consider in good faith alternative insurance packages and programs that provide risk coverage as comparable to that contemplated in this **Section 13.03** as is possible under then-existing insurance market conditions. If the required insurance coverage is available in the market for similar projects, the Department's decision to approve or disapprove a variance from the requirements of this **Section 13.03** is final and not subject to dispute resolution. The Operator shall not be excused from satisfying the insurance requirements of this **Section 13.03** merely because premiums for such insurance are higher than anticipated, so long as the insurance coverage is available on a commercially reasonable basis.

(iii) 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 Operator against its undertakings under this Agreement, to the Department, or any third party. Subject to **Section 14.02(c)** below, 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 13.04 Operator Indemnifications Regarding Hazardous Substances.

(a) The Operator shall indemnify, protect, hold harmless and release each State Indemnitee from and against any and all losses, damages, costs, fines, penalties and expenses, including attorneys fees, such State Indemnitee incurs, and the Operator shall defend each State Indemnitee from and against any Claims, asserted by third parties, arising out of the following:

(i) Any Hazardous Substances originally introduced to or brought onto any Project Right of Way or other Department property by any Operator Party;

(ii) Failure of any Operator Party to perform, in compliance with applicable Environmental Laws and Regulatory Approvals, remedial action work described in **Section 8.14** regarding any Hazardous Substance (provided that, with respect to Pre-Existing Hazardous Substances, such failure is due to the negligence, recklessness or willful misconduct or failure to provide proper engineering controls of any Operator Party); and

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

(b) Except to the extent provided in **subsections (a)(ii) and (iii)**, the Operator 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 provided in **subsection (a)(ii) and (iii)**, the Department shall be solely responsible for the satisfaction and discharge of, as and when due, any and all liabilities, obligations and other Claims by a third party for personal injury or damage or harm to its property or business due to Pre-existing Hazardous Substances suffered or incurred at any time.

Section 13.05 Discriminatory Governmental Action; Toll Exemptions.

Subject to **Section 20.18**, if (a)(i) any State or local Governmental Authority enacts, adopts, promulgates, modifies, or repeals any Law during the Term that has the effect of discriminating against the Project or the Operator (but, as to the Operator, only with respect to the Project), except where such action is in response to any act or omission on the part of the Operator that is illegal (other than an act or omission rendered illegal by virtue of the Discriminatory Action) or such action is otherwise permitted under this Agreement (a "**Discriminatory Action**"), and (ii) such Discriminatory Action has a Net Cost Impact and/or Net Revenue Impact, or (b) the State expands classes of vehicles or persons exempt from the payment of tolls and the effect of such action has a Net Revenue Impact, the Department shall pay to the Operator the Operator Damages with respect thereto in accordance with **Sections 13.07** and **13.08**; provided, however, that none of the following shall be a Discriminatory Action: (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 Project, including any action described in **Section 12.01(a)**; (B) an increase in Taxes of general application; or (C) a Reimbursable Tax Imposition.

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 Operator the Operator Damages with respect thereto in accordance with this **Section 13.06** and **Sections 13.07** and **13.08**. The Operator shall promptly notify the Department if the Operator 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 Department's Payment Options for Operator Damages or Compensation for Net Revenue Impact.

Subject to **Section 20.18**, following a determination of the Operator Damages, including those determined under **Sections 9.02, 9.03(c), 12.04, 13.05** and **13.06**, compensation regarding

certain Hazardous Substances under **Section 8.14(e)**, compensation for Net Revenue Impact under **Section 12.01**, or compensation for Net Revenue Impact or Net Cost Impact under **Section 19.02(c)**, by mutual agreement or dispute resolution, the Department shall pay such Operator Damages or compensation provided that it may make such payment or payments in any of the following manners:

(a) a lump-sum payment of the present value of the Operator Damages or other 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 Operator Damages or other compensation;

(b) through quarterly or other periodic payments of the Operator Damages or other compensation over the remaining life of the Term so long as such payment schedule provides for payment to the Operator of such portion of the Operator Damages or other compensation within 90 days after such damages are projected to have been incurred; provided that if the Operator Damages are calculated on the basis of an amount due and payable more than 90 days prior to a periodic payment from the Department, the unpaid Operator Damages or other compensation shall accrue interest at the Bank Rate from and after the date that is 90 days after the date the Operator pays the amount due until the date the Department makes the periodic payment;

(c) by set-off of amounts due and owing to the Department pursuant to the revenue-sharing formula detailed in **Article 5** so as to make up all or any portion of the Operator Damages or other compensation owing by the Department; provided that the set-off amounts must be made against amounts that are due and payable by the Operator under the revenue-sharing arrangement within 90 days after such damages are projected to have been incurred, and provided, further, that if the Operator Damages or other compensation are calculated on the basis of an amount due and payable more than 90 days prior to a periodic payment from the Department, any setoff shall be made by adding interest to the unpaid Operator Damages or other compensation at the Bank Rate from and after the date that is 90 days after the date Operator pays the amount due until the date the Operator makes the setoff;

(d) through an adjustment in the authorized maximum toll rates provided that the increase in Toll Revenues resulting from such adjustment must be projected to equal Operator Damages or other compensation as and when projected to be incurred, as supported by a revenue forecast by a Toll Consultant agreed to by the Department and Operator taking into account such increase in maximum toll rates; provided that if the Operator Damages or other compensation are calculated on the basis of an amount due and payable more than 90 days prior to recovery thereof through toll rate adjustment, any deferred payment by increased Toll Revenues shall be made with interest on the deferred Operator Damages or other compensation at the Bank Rate; or

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

If the Department 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 Operator Damages or other compensation or an adjustment in the authorized maximum toll rates as permitted in accordance with the foregoing.

Section 13.08 Compensation Events

(a) The Operator shall submit a written notice to the Department of any Compensation Event within 30 days following the date on which Operator first became aware (or within 120 days after the Operator 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 (an "**Initial Compensation Event Notice**"). The Initial Compensation Event Notice shall identify the Compensation Event and its date of occurrence in reasonable detail, describe the adverse effects of the Compensation Event. Within 180 days following the date of delivery of such notice, the Operator shall give the Department another notice (a "**Final Compensation Event Notice**") setting forth (i) the details of the effect of the Compensation Event and (ii) the amount claimed as the Operator Damages 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 Operator fails to deliver such written Compensation Event Notices within the foregoing time periods, the Operator shall be deemed to have irrevocably and forever waived and released any Claim or right to compensation for any Operator Damages or other adverse effects on Toll Revenues or on costs, expenses and liabilities attributable to such Compensation Event.

(c) Promptly after the Operator submits its Initial Compensation Event Notice, the Operator and Department shall commence good faith negotiations to determine the Operator Damages or other compensation, if any, to which the Operator is entitled, including calculation of the present value of such Operator Damages or other compensation pursuant to **Section 13.07(a)**.

(d) If the Operator and Department are unable to agree upon the amount of the Operator Damages or other compensation, if any, or present value thereof, within 90 days after submission of the Final Compensation Event Notice, then either party may, upon written notice to the other party, terminate the negotiations and request the appointment of an independent third-party expert to determine the Operator Damages, in which event the Operator Damages shall be determined according to the following procedures:

(i) Within 30 days after delivery of such notice, the Department and the Operator shall confer in good faith to mutually appoint an independent third-party expert, which must be a nationally recognized and experienced entity having appropriate expertise with respect to the matters in dispute (an "**Expert**").

(ii) If the parties are unable to agree upon such a single Expert within such 30-day period, then within ten days thereafter the Department and the Operator shall each appoint an independent third-party Expert and both such Experts shall be instructed jointly to select, within

15 days after they are appointed, a third independent third-party Expert. If the joint Experts are unable to appoint an independent third party Expert within 30 days after the time period under **subsection (i)** expires, then either party may petition the Circuit Court for the City of Richmond to appoint an independent third party Expert.

(iii) Each party shall pay the costs of its own Expert. The Department and the Operator shall pay in equal shares the reasonable costs and expenses of the independent Expert.

(iv) Once appointed, the Expert shall determine the Operator Damages and deliver to both parties a draft report. In preparing its draft report, the Expert shall afford reasonable and comparable opportunity to each party to provide the Expert with information, data, analysis and reasons supporting each party's view on the calculation of Operator Damages. The parties shall have 15 days after receipt of the draft report to comment thereon. After the opportunity to comment has expired, the Expert shall consider and evaluate all comments, prepare a final report stating the Operator Damages, and deliver the final report to both parties.

(v) The Expert's determination of Operator Damages shall be subject to dispute resolution. In any dispute resolution the Expert's determination shall be given substantial weight in the evidence, absent failure to properly apply the terms of this Agreement or applicable Laws.

(e) The Net Revenue Impact and Net Cost Impact shall represent the sole right to compensation and damages for the adverse financial effects of a Compensation Event. As a condition precedent to the Department's obligation to pay the Operator Damages, the Operator 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 Operator Damages.

Section 13.09 Mitigation

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

ARTICLE 14.

DELAY AND FORCE MAJEURE EVENTS

Section 14.01 Delay Events.

(a) If the Operator is affected by a Delay Event, it shall give notice within 10 Business Days following the date on which it first became aware (or should have been aware, using all reasonable due diligence) of the said 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 the said 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 Operator to provide such further supporting particulars as the Department may reasonably consider necessary.

(b) The Operator shall notify the Department within 10 Business Days following the date on which it first became aware (or should have been aware, using all reasonable due diligence) that a Delay Event has ceased.

(c) Subject to the Operator giving the notice required in **Section 14.01(a)**, a Delay Event shall excuse the Operator from whatever performance is prevented by the Delay Event referred to in such notice for such appropriate number of Business Days as the Department and the Operator jointly determine, each acting reasonably. If the Department and the Operator 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 14.01(c)** shall not excuse the Operator 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 Operator shall continue its performance and observance under this Agreement of all of its obligations and covenants 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 Laws.

Section 14.02 Force Majeure.

(a) If an event of Force Majeure occurs that has the effect of (i) causing physical damage or destruction to the Project that results in the Project being substantially unavailable for public use, or (ii) suspending toll collection on the Project, and such effect continues for a period in excess of 120 days and has a material adverse effect on the fair market value of the Operator's Interest, and insurance policies payable (or that should have been payable but for the breach of an obligation to take out and maintain such insurance policy by the Operator) or condemnation or other similar proceeds are insufficient to restore the Operator to the same economic position as it would have been in the absence of such event, then, notwithstanding **Section 4.02**, the Operator shall have the right to increase the tolls to a level that would be sufficient so as to compensate the Operator and to restore it to the same economic position as it would have been in

had such Force Majeure event not occurred (a "**Force Majeure Remedy**"). This **subsection (a)** does not apply to an event of Force Majeure causing damage or destruction to the Project bridge crossing the James River, which is exclusively governed by **subsection (c)** below, except as provided in the last sentence of **subsection (c)(iii)**.

(b) If the Operator elects to exercise the right to the Force Majeure Remedy, the Operator shall give notice ("**Force Majeure Notice**") to the Department within 30 days following the date on which the Operator first became aware of its right to the Force Majeure Remedy occurring setting forth (i) the details of the event of Force Majeure and its effect on either causing physical damage or destruction to the Project that results in the Project being substantially unavailable for transportation purposes or suspending toll collection on the Project, (ii) the amount claimed as compensation to restore the Operator to the same economic position as it would have been in had such Force Majeure event not occurred (including the details of the calculation thereof), and (iii) the details of the relationship between such compensation and the Force Majeure Remedy that it proposes. The Department shall, after receipt of the Force Majeure Notice, be entitled by notice to require the Operator to provide such further supporting particulars as the Department may reasonably consider necessary. If the Department wishes to dispute the occurrence of an event of Force Majeure or the Force Majeure Remedy claimed in the Force Majeure Notice, the Department shall give notice to dispute (the "**Force Majeure Dispute Notice**") to the Operator within 30 days following the date of receipt of the Force Majeure Notice stating the grounds for such dispute, and if neither the Force Majeure Notice nor the Force Majeure Dispute Notice has been withdrawn within 30 days following the date of receipt of the Force Majeure Dispute Notice by the Operator, the matter shall be submitted to the dispute resolution procedure in **Section 17.06**.

(c) Restoration or Repair of Bridge.

(i) If (A) the Project bridge crossing the James River is significantly damaged or destroyed by an event of Force Majeure such that the Project is substantially unavailable for public use, or toll collection on the Project must be suspended, (B) such effect continues for a period in excess of 120 days despite diligent efforts by the Operator to repair and restore the damage and place the bridge back in service, (C) such effect has a material adverse effect on the fair market value of the Operator's Interest, (D) the reasonably estimated cost to restore, repair and rebuild the bridge will exceed 15% of its full replacement cost, and (E) the risk of such event is not insured against by the Operator or required to be insured against under the Operator's obligations to maintain insurance pursuant to **Section 13.03**, then the Department shall have the option to (I), at its sole cost and expense, restore, repair and rebuild the bridge to a condition no worse than its condition immediately prior to the Force Majeure event or reimburse the Operator for all actual, reasonable costs, including Operator's reasonable Allocable Costs, incurred for such restoration, repair and rebuilding in excess of 15% of the bridge's full replacement cost per occurrence, or (II) terminate this Agreement (and the permit granted to the Operator hereunder). The Department shall exercise its option by giving notice to the Operator within 60 days after the expiration of such 120-day period.

(ii) If the Department provides funding for work performed by the Operator, (A) the Department and the Operator shall enter into a Development Contract for such work, (B) the Operator shall competitively obtain a fixed price design-build or other contract for the work

on terms and conditions approved by the Department, and (C) payments shall be subject to the Department's customary invoicing and payment procedures, based on the progress of the work, including retainage (unless the Operator obtains from the contractor substitute security in the form of an on demand Letter of Credit in form and amounts acceptable to the Department).

(iii) If the Department elects to terminate this Agreement, the Department shall pay the Operator, as sole compensation for such termination, an amount equal to the outstanding principal balance of the original senior Operator Debt (or the Operator Debt representing a Refinancing of such Debt but not exceeding the outstanding balance at the time of the Refinancing of the original senior Operator Debt) less the proceeds of insurance that are available on account of the damage or destruction (or that would be available under the Operator's obligations to maintain insurance pursuant to this **Section 13.03**), if any. The Operator shall have the right to avoid such termination, and to keep this Agreement in effect, by delivering written notice to the Department, not later than 30 days after receiving the Department's notice of election to terminate, that it waives all obligations of the Department under this **subsection (c)**, and assumes the obligation, at its own cost and expense, to restore, repair and rebuild the bridge. If the Operator makes this election, then the Operator shall be entitled to exercise its right to a Force Majeure Remedy, subject to the provisions of **subsection (b)** above.

ARTICLE 15.

REPRESENTATIONS, WARRANTIES AND FINDINGS

Section 15.01 Department Representations and Warranties.

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

(a) The Department is a department of the executive branch 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 Operator any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Department is aware.

(e) The Department has good and sufficient title to the Project Right 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 Closing Date, no agreement, contract, option, commitment or other right exists which binds, or which in the future may become binding on, the Department to sell, transfer, convey, dispose of or encumber the Project. The Department has not assigned any interest in Toll Revenues to any other party other than the Association under the Original Comprehensive Agreement and the Operator 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.

Section 15.02 Operator Representations and Warranties.

The Operator hereby represents and warrants to the Department and the Association as follows:

(a) The Financial Model and Base Case Financial Model were prepared by or on behalf of Operator in good faith and, as of the Agreement Date, represent reasonable projections; provided, however, 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 all financial assumptions and projections that Operator is using for disclosures to potential lenders, and will be audited and verified by an independent recognized model auditor by the Closing Date. The financial formulas in the Base Case Financial Model are the same financial formulas which the Operator is utilizing in making its decision to enter into this Agreement and is utilizing for disclosures to potential lenders.

(b) The Operator is a duly organized limited liability company created under the laws of the State of Delaware, 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 Operator is a party and to perform each and all of the obligations of the Operator provided for herein and therein. The Operator is a wholly-owned subsidiary of Transurban (895) Holdings Ltd., a company limited by shares organized, validly existing and in good standing under the laws of Bermuda. Transurban (895) Holdings Ltd. in turn is a wholly-owned subsidiary of Transurban (895) US Holdings LLC, a duly organized limited liability company created under the laws of the State of Delaware.

(c) The Operator 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 Operator is a party.

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

(e) This Agreement has been duly authorized, executed and delivered by the Operator and constitutes a valid and legally binding obligation of the Operator, 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 Operator of this Agreement and the other Project Agreements to which the Operator 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 Operator 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 Operator which challenges the Operator's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Project Agreements to which the Operator is a party, or which challenges the authority of the Operator official executing this Agreement or the other Project Agreements; and the Operator 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 Operator is aware.

(h) The Operator is in material compliance with all Laws applicable to the Operator 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 Operator, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Operator or any of its Affiliates (including the Technical Support Provider) who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

(j) The Technical Support Provider is a company duly incorporated under the laws of the Commonwealth of Australia, 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 the Technical Support Agreement and to perform each and all of the obligations of the Technical Support Provider provided for therein.

(j) The Technical Support Provider has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, the Technical Support Agreement.

(k) Each person executing the Technical Support Agreement on behalf of the Technical Support Provider has been or will at such time be duly authorized to execute each such document on behalf of the Technical Support Provider.

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

(m) Neither the execution and delivery by the Technical Support Provider of the Technical Support Agreement, nor the consummation of the transactions contemplated thereby, is in conflict with or will result in a default under or a violation of the governing instruments of the Technical Support Provider or any other agreements or instruments to which it is a party or by which it is bound.

(n) There is no action, suit, proceeding, investigation or litigation pending and served on the Technical Support Provider which challenges the Technical Support Provider's authority to execute, deliver or perform, or the validity or enforceability of, the Technical Support Agreement, or which challenges the authority of the Technical Support Provider official executing the Technical Support Agreement; and the Technical Support Provider 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 Technical Support Provider is aware.

(o) The Technical Support Provider is in material compliance with all Laws applicable to the Technical Support Provider or its activities in connection with the Technical Support Agreement.

Section 15.03 Survival of Representations and Warranties.

The representations and warranties of the Department and the Operator 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 Project's operation and maintenance 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 operate a qualifying transportation facility (as defined in Section 56-557 of the PPTA) of the type of the Project;

(c) the permit granted hereunder authorizing the Operator to 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 Operator's plans for the Project's operation and maintenance are reasonable and compatible with the State transportation plan and with local comprehensive plans;

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

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

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

(h) through this Agreement the Department intends to encourage investment in the State by the Operator to facilitate the Project's operation and maintenance 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.

TERMINATION

Section 16.01 Termination for Public Convenience.

(a) The Department may at any time after the 40th anniversary of the Agreement Date, when it determines in its sole discretion that such action is in the State's best interests, terminate this Agreement (and the permit granted to the Operator hereunder). Upon any such termination for convenience, the Department shall be deemed to have elected to terminate its rights and obligations under each other Project Agreement to which the Department is a party (without affecting its rights and liability up to such termination).

(b) If the Department elects to exercise this right, it must first deliver to the Operator a Notice of Termination for Public Convenience specifying the actual termination date.

(c) The Department must pay to the Operator the Project Value (as determined pursuant to **Section 17.05**) plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Operator, including its reasonable Allocable Costs, as a direct result of such termination. The Department shall pay the foregoing sum within 60 days of its determination. 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, that any deferred payment shall be made together with interest thereon at the Bank Rate from the date that is 60 days after the date of determination of the Project Value pursuant to **Section 17.05** to the payment date thereof.

Section 16.02 Other Unilateral Rights to Terminate.

(a) The Department is entitled to terminate this Agreement (and the permit granted to the Operator hereunder) and/or any other executory Project Agreement to which the Department is a party as provided in **Section 17.02(a)**.

(b) The Operator is entitled to terminate this Agreement only in the event of a material default by the Department as described in **Section 17.03** that materially impairs the Operator's rights to realize the benefits of the permit granted under this Agreement (more particularly, that materially impairs the Operator'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 16.03 Operator Actions Upon Termination.

(a) On the effective date of termination of this Agreement or the Operator's rights hereunder, whether due to expiration or earlier termination of the Term, the Operator 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 Operator or any Affiliate of Operator and relating to the Project or Project Operations;

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

(iii) all amounts in, or then required to be in, the Extraordinary Maintenance and Repair Reserve, free and clear of any and all Liens and encumbrances created, incurred or suffered by the Operator or anyone claiming under the Operator; provided that if the Department then holds an Extraordinary Maintenance and Repair Letter of Credit, it shall be entitled to immediately draw thereon up to the amount then required;

(iv) subject to **Sections 18.03 and 18.04**, all other intangible personal property used or owned by the Operator or any Affiliate of Operator and relating to or derived from the Project or Project Operations, excluding cash or similar investments other than the amounts under **subsection (a)(iii)** above and excluding any insurance proceeds (or any receivable relating thereto) referred to in **Section 14.02(c)(iii)**; and

(v) a recordable notice of termination of this Agreement, in the form required by the Department, executed and acknowledged by the Department. 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 Operator's rights hereunder, whether due to expiration or earlier termination of the Term, assume full responsibility for the Project Operations, and as of such date, the Operator shall have no liability or responsibility for such Project Operations occurring after such date; provided, however, that the Department and the Operator 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.

(c) Each of the Operator 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 Operator's rights hereunder, whether due to expiration or earlier termination of the Term, and the Operator shall not be liable for any costs, expenses and amounts incurred in connection with the Project Operations 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 Operator under this Agreement.

Section 16.04 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 16.05 Termination Other Than Pursuant to Agreement.

If this Agreement is terminated by the Department or the State other than pursuant to **Section 14.02(c), 16.01** or **16.02** or is canceled, rescinded or voided during the Term for any reason over the objection of the Operator and other than due to Operator Default, the termination shall be treated as if it is a termination for public convenience under **Section 16.01**. Each of the Department and Operator hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof.

Section 16.06 Exclusive Termination Remedies.

This **Article 16**, **Article 17** and **Section 14.02(c)** set forth the entire and exclusive provisions and rights of the Department and the Operator regarding termination of the Project Agreements, and any and all other rights to terminate at law or in equity are hereby waived to the maximum extent permitted by law.

ARTICLE 17.

DEFAULTS AND REMEDIES

Section 17.01 Operator Defaults.

The occurrence of any one or more of the following events during the Term shall constitute an "**Operator Default**" under this Agreement:

(a) if any representation or warranty made by the Operator 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) if the Operator fails to pay to the Department when due all monies payable to the Department under this Agreement or any other Project Agreement, and such failure continues unremedied for a period of 30 days following notice thereof;

(c) if the Operator 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 **Sections 8.16** through **8.18** or achieve the long-term goal of 20% SWAM participation in **Section 11.03** shall not constitute an Operator Default), and such failure continues unremedied for a period of 60 days following notice thereof (giving particulars of the failure in reasonable detail) from the Department to the Operator or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Operator 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, acting reasonably, and (iii) such failure is in fact cured within such period of time;

(d) if this Agreement or all or any portion of the Owner Interest is Transferred in contravention of **Section 20.01**;

(e) if the Operator (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 Operator 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 Operator, or of all or any substantial part of its properties or of the Project or any interest therein, or (iv) takes any corporate action in furtherance of any action described in this paragraph;

(f) if within 90 days after the commencement of any proceeding against the Operator 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 if, within 90 days after the appointment, without the consent or acquiescence of the Operator, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Operator 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 if, within 90 days after the expiration of any such stay, such appointment has not been vacated; or

(g) if 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 Operator Debt) created, incurred, assumed or suffered to exist by the Operator 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 Operator Default.

Upon the occurrence of an Operator Default, the Department may, by notice to the Operator with a copy to the Collateral Agent in accordance with the terms hereof, declare the Operator to be in default and may do any or all of the following as the Department, in its discretion, shall determine:

(a) As provided in Section 56-568A.2 of the PPTA, and subject to **Section 6.04**, the Department may terminate this Agreement (and the permit granted hereunder), together with all executory Project Agreements to which the Department is a party, by giving 60 days' prior written notice to the Operator and the Collateral Agent upon the occurrence of (i) an Operator Default that consists of a failure to comply with, perform or observe any operating standard if such Operator Default creates a material danger to the safety of the Project's operations or a material impairment to the Project or to the continuing use of the Project for transportation purposes or (ii) any material other Operator Default; provided, however, that the Operator is entitled to cure an Operator Default pursuant to this paragraph (i) if the Operator 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 Operator 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 Operator will ensure future compliance with the obligation, covenant, agreement, term or condition in this Agreement that the Operator failed to perform or observe, which work plan is approved by the Department, but any failure of the Operator to comply in any material respect with such approved work plan following 60 days' notice of such failure from the Department to the Operator shall be deemed to be an Operator Default described in **Section 17.01(b)** and the entitlement of the Operator to cure such Operator Default by the delivery of an approved work plan shall not apply thereto. Such termination shall automatically extinguish the Operator's Interest and all liens and claims on or against the Operator's Interest;

(b) if the Operator 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 Operator of such monies, and any amount so paid by the Department shall be payable by the Operator to the Department within three Business Days after demand therefor;

(c) the Department may cure the Operator Default (but this shall not obligate the Department to cure or attempt to cure an Operator Default or, after having commenced to cure or attempted to cure an Operator Default, to continue to do so), and all costs and expenses reasonably incurred by the Department in curing or attempting to cure the Operator Default, including the Department's reasonable Allocable Costs, together with an administrative fee equal to 15% of such costs and expenses, shall be payable by the Operator to the Department within three Business Days of demand; provided, however, that (i) the Department shall not incur any liability to the Operator for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any Operator Default, and (ii) the Department's cure of any Operator Default shall not affect the Department's rights against the Operator by reason of the Operator Default;

(d) the Department may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for an Operator Default;

(e) the Department may seek to recover its Losses arising from such Operator Default and any amounts due and payable under this Agreement (including the Operator'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 Operator Defaults that entitle the Department to terminate this Agreement pursuant to **Section 17.02(a)**, the Department may terminate the Operator'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, however, 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 Operator; provided, further, that any re-entry or termination of this Agreement made in accordance with this Agreement as against the Operator shall be valid and effective against the Operator even though made subject to the rights of the Collateral Agent to cure any default of the Operator and continue as in the place of the Operator 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 Operator's goods situated on the Project and the Operator 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.

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) if 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 Operator's rights or obligations under the Project Agreements results therefrom;

(b) if the Department fails to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement and such failure continues unremedied for a period of 90 days following notice thereof (giving particulars of the failure in reasonable detail) from the Operator to the Department or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Department has demonstrated to the satisfaction of the Operator, 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 Operator, acting reasonably, and (iii) such failure is in fact cured within such period of time;

(c) if a levy under execution or attachment has been made against all or any part of the Project or the Operator'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 Operator 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) if 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 if, 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 Operator upon Department Default.

Upon the occurrence of a Department Default by the Department under this Agreement, the Operator 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 Operator, in its discretion, shall determine:

(a) subject to **Section 16.02(b)**, the Operator may terminate this Agreement (and the permit granted hereunder), together with all executory Project Agreements to which the Department is a party, by giving 90 days' prior written notice to the Department; provided, however, that the Department shall be entitled to cure a Department Default pursuant to **Section 17.03(b)** by providing the Operator 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 Operator (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 Operator 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 the Department shall be obligated to pay to the Operator the Project Value (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 Operator as a result of such termination, including its reasonable Allocable Costs;

(b) the Operator may exercise any of its rights and remedies at law or in equity;

(c) subject to **Section 20.18**, the Operator 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 Operator may exercise any of its other rights and remedies provided for hereunder.

Section 17.05 Determination of Fair Market Value

In the event the Department owes the Project Value to the Operator pursuant to **Section 16.01, 16.05 or 17.04(a)**, the fair market value of the Operator'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 Operator 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 Operator 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 subsection (b) above within 30 days after the time period under subsection (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 Operator 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. 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 Laws.

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 any dispute within 15 days. If the parties are unable to resolve the dispute within 15 days, 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 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 an Operator 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 56-569 of the PPTA, the parties agree that any requirement that the State Corporation Commission issue a declaratory judgment regarding a material default (as defined in Section 56-565 of the PPTA) pursuant to such Section 56-569, as a prerequisite to exercising any remedy set forth in this Agreement, any other Project Agreements or such Section 56-569, shall not apply to this Agreement or any other Project Agreement.

ARTICLE 18.

RECORDS, REPORTS, WORK PRODUCT AND INTELLECTUAL PROPERTY

Section 18.01 Maintenance of Records.

The Operator 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.

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 Code of Virginia or official records under the Virginia Freedom of Information Act, Sections 2.2-3700 through 2.2-3714 of the Code of Virginia, and as such may be subject to public disclosure. 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, may contain information exempt from disclosure under Section 2.2-3705.6(11) of the Code of Virginia, may constitute trade secrets as defined in the Uniform Trade Secrets Act, Sections 59.1-336 through 59.1-343 of the Code of Virginia, and may include confidential information which is otherwise subject to protection from misappropriation or disclosure. Should such records become the subject of a request for public disclosure, the Department shall respond as follows:

(i) The Department shall use reasonable efforts to immediately notify the Operator of such request and the date by which it anticipates responding.

(ii) The Operator must then assert in writing to the Department any claim that such records contain proprietary information that is exempt from disclosure under the Virginia Freedom of Information Act, or is subject to protection pursuant to Section 59.1-339 of the Code of Virginia, or other State law so that the Department may consider such assertion in responding to the requester.

(iii) If the Operator fails to make such assertion within eight Days after the date the Department notifies the Operator of its intended response, the Department shall have the right to make such disclosure.

(iv) If the Operator makes a timely assertion and the Department in its sole and absolute discretion believes the Operator has a valid claim that the requested records contain proprietary information, trade secrets or confidential information, and thus are exempt from disclosure or otherwise protected under state law, the Department will deny the request for disclosure of such records or, upon consultation with the Operator to agree upon a reasonable effort and legal cost, at the Operator's expense, seek judicial declaration of the rights of the parties.

(v) If the Department's denial of a request for disclosure of records is challenged in court and the Department agrees to a request by the Operator to defend its position, the Operator shall assist the Department in its defense and shall indemnify the Department for any and all damages assessed and costs (including the fees and costs of the Department's attorneys) the Department incurs in such defense, including any attorneys' fees assessed against the Department.

(vi) If at any time, including prior to, during or after judicial consideration, the Department in its sole and absolute discretion believes the Operator does not have a valid claim that the requested records contain proprietary information, trade secrets or confidential information, and thus are not exempt from disclosure or otherwise protected under State law, it shall so notify the Operator no less than three Days prior to the date the Department intends to make the disclosure to allow it to take such action as it deems appropriate prior to disclosure. In no event shall the Department be liable to the Operator as a result of any disclosure of such records by the Department pursuant to this **Section 18.02**.

(b) If the Operator 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 Operator 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 Operator 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 Operator 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, the Association or the contractors of either has prepared or procured prior to the Closing Date, or prepares or procures after the Closing Date, shall be and remain the exclusive property of the Department; provided, that the Department shall make available to the Operator 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, the Airport Connector Road and any Project Enhancement that the Operator elects to or is directed to carry out.

(b) Prior to the expiration or earlier termination of this Agreement, all Work Product shall remain exclusively the property of the Operator, notwithstanding any delivery of copies thereof to the Department, except for plans, drawings and specifications delivered to the Department after completion of any construction-related project, which item of Work Product is 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 Operator for a Department Default, the Operator shall promptly turn over to the Department a copy of all Work Product the Operator owns, except Proprietary Work Product, but including any Proprietary

Work Product necessary for the Department to continue to operate and maintain the Project; and all such Work Product shall be considered the sole and exclusive property of the Department without compensation due the Operator or any other party (except to the extent the Operator is entitled to compensation due to a Department Default). The Department shall enter into a confidentiality agreement reasonably requested by the Operator with respect to any Proprietary Work Product, subject to **Section 18.02**. The Operator 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) Prior to the expiration or earlier termination of this Agreement, all Proprietary Intellectual Property of the Operator shall remain exclusively the property of the Operator, notwithstanding any delivery of copies thereof to the Department. Upon the expiration or earlier termination of 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 Operator 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 **subsection (b)** below). The Department shall not disclose any Proprietary Intellectual Property of the Operator (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 Operator with respect to any such Proprietary Intellectual Property, subject to **Section 18.02**. The Operator 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 Operator a nonexclusive, nontransferable, irrevocable, fully paid up license to use the Proprietary Intellectual Property of the Operator 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 Operator or the Department, the Operator shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner, both for the Operator and the Department, nonexclusive, nontransferable, irrevocable, fully paid up 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 **subsection (a)** above. The Operator shall also 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 **subsection (a)** above shall also apply to the Department's licenses in such Proprietary Intellectual Property.

(d) The Operator's name and/or other trademarks, service marks and tradenames owned by the Operator (the "**Operator 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 Operator shall remain the owner of the Operator Marks at the end of the Term, and the Operator may remove, at its expense, the Operator 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 Operator Marks.

(e) Prior to the Closing Date, the Department shall grant to the Operator a nonexclusive, nontransferable, irrevocable, fully paid up license to use any Proprietary Intellectual Property of the Department that has been developed for the Project, solely in connection with the operation, maintenance and other incidental activities of the Project. The Operator 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 Project. Prior to the Closing Date, the Department shall also assign in favor of the Operator the Department's rights in respect of any license by the Department's software suppliers for the use of any Proprietary Intellectual Property for the Project, together with an assignment of the Department's rights under any escrow for the Source Code and related documentation relating to such Proprietary Intellectual Property, which assignments shall be reasonably satisfactory to the Operator. The Operator shall not disclose any such Proprietary Intellectual Property (other than to its contractors, subcontractors, employees, attorneys and agents in connection with the Project who agree to be bound by any confidentiality obligations of the Operator relating thereto), and the Operator shall enter into a confidentiality agreement reasonably requested by the Department with respect to any such Proprietary Intellectual Property.

Section 18.05 Source Code Escrow

(a) The Department and the Operator acknowledge that the Operator and/or the Operator'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 Operator and/or the Operator's software suppliers, as public disclosure could deprive the Operator and/or the Operator'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, this Agreement is terminated for Operator Default, 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 Operator's Proprietary Intellectual Property, (A) this Agreement is terminated for Operator Default, (B) a business failure (including voluntary or involuntary bankruptcy, and insolvency)

of the Operator occurs or (C) the Operator 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) The Department and the Operator shall mutually select an escrow company ("Escrow Agent") engaged in the business of receiving and maintaining escrows of Source Code, related documentation, and other technology. The Department and the Operator 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 Operator 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.

Section 18.06 Reporting Requirements and Inspection and Audit Rights.

(a) The Operator shall deliver to the Department, as and when produced or received, all financial, narrative, Consultant, Toll Consultant and other reports, statements, certifications, budgets and information which it produces or causes to be produced or which it receives from any other Person. In addition, at the request of the Department or the State, the Operator and any issuer or guarantor of Operator Debt shall furnish or cause to be furnished to the Department such information and statements relating to the operation, maintenance and repair of the Project and the Operator's corporate ownership structure as the Department or the State may reasonably request for any purpose related to the Project, this Agreement or the other Project Agreements, including but not limited to compliance with the terms and conditions of this Agreement and the other Project Agreements.

(b) The Department and the State shall have audit rights respecting the Operator.

(c) 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 Operator related to the Project. 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 Operator to confirm the accuracy of books and records.

(d) At FHWA's request, Operator shall make all its records relating to the Project available to the FHWA for inspection and audit. In addition, Operator, at its expense, shall cause a reputable independent auditor to annually audit Operator's books and records relating to the Project, according to GAAP. Such audit shall include such information as is required by the FHWA under paragraph 4 of the FHWA Agreement. Operator shall cause the independent

auditor to deliver the audit report to the FHWA and the Department promptly after it is completed.

(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.

ARTICLE 19.

RESERVED RIGHTS

Section 19.01 Exclusions from the Operator's Interests.

The Operator's rights and interests in the Project and Project Right of Way have been granted to Operator under the permit set forth in this Agreement in order to enable it to accomplish the Project Purposes. Subject to **Section 19.04,** the Operator's rights and interests specifically exclude all Reserved Rights.

Section 19.02 Department Reservation of Rights.

(a) 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 Operator 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 Operator. The Department hereby reserves to itself all ownership, development, maintenance, repair, replacement, operation, use and enjoyment of, and access to, the Reserved Rights. No Department activity or improvement respecting Reserved Rights shall materially interfere with (i) the operation and maintenance of the Project, (ii) the ability of the Operator to expand traffic lanes or add additional traffic lanes in each direction to the main carriageways or the ramps connecting with the main carriageways, or (iii) the development, operation or maintenance of the Wilton Access Road or the maintenance by the Operator of tolling facilities thereon. The Department shall use reasonable efforts to minimize interference with the operation and maintenance of the Project in connection with the exercise of Reserved Rights.

(b) The Department hereby grants the Operator a nonexclusive license to use any name the Department may give to the Project during the Term.

(c) If the Department's exercise of the Reserved Rights includes construction or operation activity or any other entry or action on the Project that directly causes disruption of traffic on the Project or directly causes an increase in Operator's costs to design, construct, operate or maintain the Project, the Department shall compensate the Operator for the Net Revenue Impact of such traffic disruption and the Net Cost Impact of such costs, in accordance with **Section 13.07**. The Department shall owe no other compensation or damages on account of its exercise of Reserved Rights.

Section 19.03 Disgorgement.

If an Operator 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 9.03** shall apply.

Section 19.05 Change of Name.

If the Department changes the name of the Project, it shall, at the Department's expense, change any signage on the Project in connection therewith; provided, however, that the owner of such name grants a non-exclusive license of the name together with all related logos and marks to the Operator upon terms reasonably satisfactory to the Operator.

ARTICLE 20.

MISCELLANEOUS

Section 20.01 Transfers by the Operator.

(a) The Operator shall not Transfer, or otherwise permit the Transfer of, any or all of the Operator'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 Operator shall not Transfer, or otherwise permit the Transfer of, any or all of the Operator's Interest to or in favor of a Transferee, unless (i) the Department has approved (based upon a determination in accordance with **subsection (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 Operator and agrees to perform and observe all of the obligations and covenants of the Operator 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 Operator 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 Operator 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 **Section 8.04(b)**. 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 Operator'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 under **Section 6.04**, 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 **Section 6.04**,) shall be made or have any force or effect if, at the time of such Transfer there has occurred an Operator Default that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute an Operator Default.

(d) A Change in Control of the Operator shall be deemed to be a Transfer of the Operator's Interest for purposes of the foregoing provisions; provided, however, that (i) the first sentence of subsection (a) shall not apply to a Change in Control of the Operator and (ii) the second sentence of subsection (a) shall also apply to a Change in Control of the Operator during the Lock-up Period.

Section 20.02 Assignment by the Department.

The Department may transfer and assign its interests 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 Operator 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 No Gift or Dedication.

Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Project, Project Right of Way or Work Product to the Department or the general public or for any public use or purpose whatsoever, or be deemed to create any rights in the Project, Project Right of Way or Work Product except as expressly set forth herein.

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:

(i) personally,

(ii) by independent, reputable, overnight commercial courier,

(iii) by facsimile transmission:

(A) 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),

(B) 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

(C) where the facsimile transmission is immediately followed by service of the original of the subject item in the manner provided in **subsections (a)(i)**, **(ii)** or **(iv)** hereof, 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 Operator:
c/o Transurban (895) US Holdings LLC
Level 43, 405 Lexington Avenue
New York, NY 10017
Telephone: (646) 278 0870
Facsimile: (646) 278 0839
Fax:

With a copy to:

Transurban Limited
Attention: Group Financial Controller
Level 43, Rialto South Tower
525 Collins Street
Melbourne, Victoria 3000
Australia
Telephone: 613 9612 6999
Facsimile: 613 9649 7380

If to the Department:
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attn: Commissioner
Fax: (804) 786-6250

With a copy to:
John J. Beall, Jr., Esq.
Senior Assistant Attorney General
Commonwealth of Virginia, Office of the Attorney General
900 E. Main Street
Richmond, Virginia 23219
Fax: (804) 786-9136

And to:
Karen J. Hedlund
Nossaman, Guthner, Knox & Elliott, LLP

2111 Wilson Blvd., Suite 600
Arlington, VA 22201
Fax: (703) 351-9506

(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 in Virginia 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 U.S. 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; Adoption of PPTA Amendments.

(a) 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.

(b) The parties hereby adopt the amendments to the PPTA set forth in House Bill No. 2666, signed into law by the Governor, effective July 1, 2005.

Section 20.06 Relationship of Parties.

(a) The relationship of the Operator to the Department shall be one of an independent contractor, not an agent, partner, lessee, joint venturer or employee, and the Department shall have no rights to direct or control the activities of the Operator or any Operator Party.

(b) Officials, employees and agents of the Department shall in no event be considered employees, agents, partners or representatives of the Operator.

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 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 Operator as provided in any Development Contract;

(b) limit Operator's liability for any type of damage arising out of Operator's obligation to indemnify, defend and hold each State Indemnitee harmless from Third Party Claims under **Article XIII** and elsewhere in this Agreement;

(c) limit Operator's liability for any type of damage to the extent covered by insurance required hereunder;

(d) limit the amounts the Department 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 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 Project Right of Way and any of the Operator'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 date of this Agreement 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 33.1-4, the Operator may subpoena any Department personnel provided that the Operator 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 Operator'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, sections and subsections 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. 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. All references to a subsection "above" or "below" refer to the denoted subsection within the Section in which the reference appears.

(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, except as provided otherwise in **Section 3.01(b)**:

Highest:	A.	Agreement and Exhibit A
	B.	Executed Project Agreements
Lowest:	C.	Other Exhibits (B-L)

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) If any provisions of this Agreement are rendered obsolete or ineffective in serving their purpose by change in law, passage of time, financing requirements or other future events or circumstances, the parties agree to negotiate in good faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to the extent practicable; provided, however, that neither party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under this Agreement in any material respect.

Section 20.18 Payment of Operator Damages and Other Amounts by the Department

(a) The Department's payment of any Operator Damages, Losses or any other amounts due and owing by the Department to the Operator under this Agreement shall be subject to appropriation by the General Assembly and allocation by the CTB therefor; provided that

upon determination of Operator 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 Operator Damages or other amounts due and owing by the Department to the Operator under this Agreement, and (C) the CTB allocates such appropriated amounts as applicable for payment to the Operator, and (iii) notify the Operator 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 Operator; provided further that the parties hereto agree and acknowledge that such subject to appropriation obligation of the Department to pay the Operator Damages and other amounts was and is a material inducement and consideration for the execution and delivery of this Agreement by the Operator.

(b) If the Department owes money pursuant to Section 14.02(c) in circumstances where the Force Majeure event that causes material damage to the bridge crossing the James River also causes material damage to other structures and facilities of the Department, then the Operator agrees and recognizes that the State may have to make policy decisions on the order of priority for appropriations and CTB allocations, and that the Operator may not receive priority in appropriations or allocations for Section 14.02(c) purposes.

Section 20.19 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.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

VIRGINIA DEPARTMENT OF
TRANSPORTATION,
a department of the Commonwealth of Virginia

By: _____
Gregory A. Whirley
Acting Commonwealth Transportation
Commissioner

TRANSURBAN (895) LLC
a Delaware Limited Liability Company

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

VIRGINIA DEPARTMENT OF
TRANSPORTATION,
a department of the Commonwealth of Virginia

By:_____
Gregory A. Whirley
Acting Commonwealth Transportation
Commissioner

TRANSURBAN (895) LLC
a Delaware Limited Liability Company

By: M. Kulper
Name: MICHAEL KULPER
Title: VICE PRESIDENT

EXHIBIT A

DEFINITIONS

Accountant means any nationally-recognized certified public accountant or firm of certified public accountants or accounting corporation of recognized experience and qualifications.

Accountant's Certificate means a certificate or opinion signed by the Accountant.

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 means the Amended and Restated Comprehensive Agreement (Relating to the Grant of a Permit) to Develop and Operate the Route 895 Connector dated June 29, 2006, by and between the Department and the Operator.

Agreement Date means the date written on the cover page of this Agreement.

Airport Connector Road means an approximately 1.58-mile, four-lane roadway as depicted in **Exhibit L** to this Agreement that, if constructed, will provide motorists with direct access to the Richmond International Airport from the Project.

Allocable Costs means:

(a) for services performed using Department or Operator 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 normal wastage allowance per Department standards, and 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 Neilsen/DATAQUEST, Inc. of Palo Alto, California 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 Operator, 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 Operator for costs of administering the contract; plus

(iii) all costs the Department or Operator 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.

Association means Pocahontas Parkway Association, a Virginia nonstock, nonprofit corporation.

Assumed Liabilities means all debts, liabilities and obligations whatsoever relating to the Project and its operation that have been assumed by the Operator under the Asset Purchase Agreement (other than liabilities and obligations for which the Department is expressly responsible under this Agreement).

AVI means automatic vehicle identification equipment used as part of ETTM Equipment.

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 as of the Agreement Date: (a) on the basis of which the Operator and the Department entered into this Agreement; (b) which include certain projections and calculations with respect to revenues, expenses, the repayment of Operator Debt; and (c) which is prepared on the basis of the Base Case

Traffic Model, as it may be amended from time to time by mutual agreement of the parties.

Base Case Initial Targeted Rate of Return means a pre-tax internal rate of return (rounded up, if necessary, to a whole multiple of 1/1000 of 1%) on Total Invested Project Funds of 6.5%, calculated based on the Real Net Cash Flow of the Project for each Semi-Annual Period.

Base Case Secondary Targeted Rate of Return means a pre-tax internal rate of return (rounded up, if necessary, to a whole multiple of 1/1000 of 1%) on Total Invested Project Funds of 8.0%, calculated based on the Real Net Cash Flow of the Project for each Semi-Annual Period.

Base Case Traffic Model means the traffic and revenue model and the assumptions and information used by or incorporated in the traffic and revenue model, the results of operation of which are incorporated into the Base Case Financial Model.

Breakage Costs means any commercially reasonable breakage costs, make-whole payments or other prepayment amounts (including premiums) that the Operator must pay under any Project Financing Agreement as a result of the early repayment of such debt prior to its scheduled maturity date.

Budget Shortfall means, at any time, the greater of (a) the Operator's annual budget for ordinary operating, maintenance and repair costs and expenses for the forthcoming full year minus reasonably projected Toll Revenues, investment earnings and other Revenues in substitution or replacement of Toll Revenues for the forthcoming full year or (b) the Operator's ordinary operating, maintenance and repair costs and expenses for the full year then ended minus Toll Revenues, investment earnings and other Revenues in substitution or replacement of Toll Revenues for the full year then ended; provided, that if either such calculation results in a negative number, such amount shall be deemed to be zero.

Business Day means any day other than a Saturday, Sunday or other day observed as a holiday by either the State or the U.S. government.

Change in Control means, with respect to any Person, whether accomplished through a single transaction or a series of related or unrelated transactions, and whether accomplished directly or indirectly, either (a) a change in ownership so that 50% or more of the direct or indirect voting interests in such Person is transferred, (b) the power directly or indirectly to direct or cause the direction of management and policy of such Person, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred, or (c) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person; provided, however, that (i) clause (a) and clause (b) above does not apply to transactions in shares of a publicly-traded company and (ii) Transfers of direct or indirect ownership interests in the Operator (as applicable) between or among Persons that are under common "control" - (within the meaning contemplated

by the definition of Affiliate) do not constitute a "Change in Control" for the purposes of this Agreement.

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 the Comprehensive Agreement, the Consent to Assignment, the Memorandum and Assignment, the Technical Support Agreement, and the Acquisition Documents (as defined in the Asset Purchase Agreement described in **Section 1.17**) are executed and delivered by each of the parties hereto and thereto.

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 Operator to the Department. Initially, the Collateral Agent means the Institutional Lender listed as the collateral agent for the Lenders in the Initial Project Financing Agreements.

Commissioner means the Commonwealth Transportation Commissioner or any successor in function.

Compensation Event means any of the following, in each case to the extent the Agreement entitles the Operator to compensation on account of such event:

(a) claims or remediation work respecting certain Hazardous Substances pursuant to **Section 8.14(e)**;

(b) the development, construction, operation or maintenance of any Project Enhancement directed by the Department pursuant to **Section 9.02** or the Operator's compliance with or the implementation of any directive to develop, construct, operate or maintain any Project Enhancement pursuant to **Section 9.02** or any Compliance Order which is treated as a Project Enhancement pursuant to **Section 9.03(c)**;

(c) any event with respect to Competitive Transportation Facilities enumerated in **Section 12.01(a)**;

(d) the performance by the Department of certain ITS activities pursuant to **Section 12.04** that subject the Department to payment of Operator Damages;

(e) any Discriminatory Action pursuant to **Section 13.05**;

(f) any Reimbursable Tax Imposition pursuant to **Section 13.06**;

(g) the exercise by the Department of a Reserved Right pursuant to **Section 19.02**; or

(h) any other event the occurrence of which under the terms of this Agreement requires the payment of Operator Damages or other compensation in respect of Net Revenue Impact or Net Cost Impact.

Competitive Transportation Facilities means any State Highway, expressway, freeway or limited access highway crossing of the James River (a) which is within three miles of the centerline of the Project's bridge crossing of the James River; (b) which is first placed into service after the Closing Date; and (c) the operation of which could reasonably be foreseen to have a materially adverse impact on the annual amount of Toll Revenues.

Compliance Order means any written order or directive of the Department issued after the Closing Date, which directs the Operator to undertake certain improvements to the Project (a) to conform to changes in safety standards or methodologies agreed to or adopted by the Department for similar portions of State Highways; or (b) to correct a specific safety condition affecting the Project which the Department has determined to exist by investigation or analysis.

Comprehensive Agreement means the Amended and Restated Comprehensive Agreement (Relating to the Grant of a Permit) to Develop and Operate the Route 895 Connector between the Operator and the Department, dated as of June 29, 2006, and all exhibits thereto, as supplemented or further amended from time to time

Consent to Assignment is defined in **Section 1.18**.

Consortium is defined in **Section 1.15**.

Consultant means any Person at the time retained by or on behalf of the Department or the Operator, which Person is experienced and has a national and favorable reputation in the matters for which such Person is so employed.

Construction Traffic Management Plans means a plan setting forth a program for traffic management and related activities to be implemented by the Operator in connection with the construction of the Airport Connector Road or any Project Enhancement.

CPI means the "Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items" (not seasonally adjusted) of the U.S. Department of Labor, Bureau of Labor Statistics; provided, however, 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; provided, further, that if the CPI is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

CTB means the Commonwealth Transportation Board, a board of the State affiliated with the Department.

Days or **days** means calendar days, unless otherwise designated as Business Days.

Delay Event means:

(a) an event of Force Majeure;

(b) 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 technical and scheduling measures of the Operator);

(c) a change to Law arising after the Agreement Date;

(d) a delay caused by the performance of works carried out by a Governmental Authority or any utility or railway operator;

(e) a failure by the Department to perform or observe any of its covenants or obligations under this Agreement; or

(f) a delay caused by the presence in, on, under or around the Project of Hazardous Substances;

which in each case results in or would result in a delay or interruption in the performance by the Operator 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 Operator or its Representatives;

(ii) any act or omission by the Operator or its 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 Operator;

(iv) except to the extent such events constitute an event of Force Majeure, any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Operator or its 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 Operator or its Representatives;

(v) except to the extent such events constitute an event of Force Majeure, any weather conditions (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 Project.

Department means the Virginia Department of Transportation, a department of the State, and any other state agency succeeding to the powers, authorities and responsibilities of the Department invoked by or under the Comprehensive Agreement.

Department Default is defined in **Section 17.03**.

Department's Option is defined in **Section 6.07(a)**.

Design-Build Contract is defined in **Section 1.10**.

Development Contract means an agreement that is entered into by the Department and the Operator from time to time after the Closing Date that sets forth the parties' rights and obligations with respect to the design and construction of the Airport Access Road or a Project Enhancement, which shall include such terms as may be mutually agreed by the Operator and the Department.

Development Duties are defined in **Section 3.01(c)**.

Discriminatory Action is defined in **Section 13.05(a)**.

Distribution means any distribution, dividend or other payment, monetary or in-kind, made or projected to be made by the Operator to the shareholders, members, partners, joint venturers or other holders of an equity interest in the Operator, including from the proceeds of any Refinancing, on account of equity investment in the Operator.

Duff & Phelps means Duff & Phelps, LLC, an independent financial advisory firm.

EIS means that certain signed final environmental impact statement, record of decision and re-evaluation for the Project prepared and approved by FHWA in 1994.

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; and

(e) Other investments then customarily accepted by the State in similar circumstances;

provided, however, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

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.

Escrow Agent is defined in **Section 18.05(b)**.

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 AVI equipment; video monitoring equipment; toll violator systems, manual, automatic and electronic toll collection equipment; the transportation management system equipment; communications equipment; and all other computer hardware necessary to meet the performance specifications for ETTM.

ETTM Facilities means the administration/operations building, toll booths, canopies, utility connections, lighting facilities, pedestrian tunnels, etc.

ETTM System means the ETTM Equipment and the Software which monitors, controls or executes the ETTM Equipment.

Extraordinary Maintenance and Repair Work means maintenance, repair, renewal, reconstruction or replacement of any portion or component of the Project of a type which is not normally included as an annually recurring cost in the Operator's roadway maintenance and repair budgets.

Extraordinary Maintenance and Repair Reserve is defined in **Section 8.07(a)**.

Extraordinary Maintenance and Repair Required Balance means, at any time, with respect to the Extraordinary Maintenance and Repair Work set forth in the most recent Five Year Assessment, without duplication, the greater of:

(a) 110% of the projected costs of Extraordinary Maintenance and Repair Work scheduled to be performed in or by the end of the first year of such Five Year Assessment; or

(b) the summation of the following amounts:

(i) 100% of the projected costs of Extraordinary Maintenance and Repair Work scheduled to be performed in or by the end of the first year of such Five Year Assessment; plus

(ii) 66.67% of the projected costs of Extraordinary Maintenance and Repair Work scheduled to be performed in or by the end of the second year of such Five Year Assessment period; plus

(iii) 33.33% of the projected costs of Extraordinary Maintenance and Repair Work scheduled to be performed in or by the end of the third year of such Five Year Assessment period.

FD/MK means FD/MK Limited Liability Company, a Delaware limited liability company.

FHWA Agreement means the agreement among FHWA, the Department and the Association, dated September 29, 1999, as amended by that certain Modification Agreement, dated June 12, 2006, in which the parties agreed to be bound by, and to comply with, the provisions of Title 23 U.S. Code Section 129(a), as amended, for the Project.

Final Compensation Event Notice is defined in **Section 13.08(a)**.

Financial Model means the financial formulas that the Operator 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 Operator, which financial formulas are used as part of the Base Case Financial Model, but without the data and information used by or incorporated into the Base Case Financial Model.

Financing Assignment is defined in **Section 6.02(b)**.

Fiscal Year means the consecutive 12-month period beginning July 1 and ending June 30, or any other consecutive 12-month fiscal period used by the Department for financial accounting purposes.

Five-Year Assessment is defined in **Section 8.08(b)**.

Force Majeure means any event beyond the Operator's reasonable control that delays or interrupts the performance of its obligations hereunder, including an intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, sabotage, civil commotions, interference by civil or military authorities, 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, fire, earthquake, 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 Operator or its Representatives;

(b) any act or omission by the Operator or its 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 Operator;

(d) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Operator or its 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 practice or method of operation) or omission of the Operator or its Representatives;

(e) any weather conditions (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, except tornadoes and similar catastrophic weather conditions encountered or experienced at or in the vicinity of the Project; or

(f) 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 Project.

Force Majeure Dispute Notice is defined in **Section 14.02(b)**.

Force Majeure Notice is defined in **Section 14.02(b)**.

Force Majeure Remedy is defined in **Section 14.02(a)**.

Generally Accepted Accounting Principles or **GAAP** means such accepted accounting practice as, in the opinion of the Accountant, conforms at the time to generally accepted accounting principles in the United States of America, consistently applied.

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 operator 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, local or foreign government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority.

Hazardous Substance means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, subject 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 gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation).

Incidental Charges is defined in **Section 4.01(c)**.

Initial Compensation Event Notice is defined in **Section 13.08(a)**.

Initial Project Financing Agreements means, collectively, the Project Financing Agreements listed on **Exhibit J**.

Initial Targeted Return has the meaning specified in **Section 5.01(b)(i)**.

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; or

(d) any other financial institution or entity designated by the Operator 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);

provided, however, 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; 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 ETTM books and records, toll-setting and traffic management algorithms, and Software and associated documentation used in connection

with the Project (including but not limited to Software and associated documentation used for management of traffic on the Project), the ETTM Data, 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, including *pocahontasparkway.com*, inventions, trade secrets, proposals, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and 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.

ISO 9000 means the series of quality of assurance standards for manufacturing and services industries approved and published by the International Organization for Standardization (ISO), as amended or updated from time to time.

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, all items listed in the Federal Highway Administration Intelligent Transportation Systems Summary Report dated January 19, 1995, and any future systems or services conceived or developed for the same or similar purposes; however ITS does not include the ETTM System as used for Project Purposes.

Law means any current or future order, writ, injunction, decree, judgment, law, ordinance, decision, opinion, ruling, policy, 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.

Lender's Notice is defined in **Section 6.07(a)**.

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 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 Operator's Interest.

Level of Service means the measurement system utilized by the Transportation Research Board of the National Academy of Sciences to measure traffic congestion in its most recently published Highway Capacity Manual. Should the Level of Service measurement be discontinued or revised during the Term, such other measurement index with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if such revision or replacement had not occurred.

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 Model is defined in **Section 8.08(a)**.

Lock-up Period means the three-year period commencing on the Closing Date and ending on the third 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.

Memorandum and Assignment is defined in **Section 3.03(e)**.

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 standards used by road managers nationwide to install and maintain traffic control devices on all streets and highways. FHWA publishes 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.

Net Cash Flow means, in respect of each Semiannual Period after the Closing Date, (a) 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 Operator during such

Semiannual Period, less (b) the Operating Costs paid during such Semiannual Period, less (c) contributions during such Semiannual Period to the Extraordinary Maintenance and Repair Reserve or any other reserve for operation and maintenance costs required under any Financing Assignment for senior Operator Debt.

Net Cost Impact means the net increase or decrease in Operator's costs (including design, construction, operating and finance costs, and including Operator's reasonable Allocable Costs) directly attributable to a Compensation Event, as compared with what the Operator's costs (including Operator's reasonable Allocable Costs) would have been absent occurrence of the Compensation Event, less the increased costs that can reasonably be mitigated by the Operator in accordance with **Section 13.08**, and taking into account any savings in Operator's operating and finance costs resulting from the Compensation Event. Net Cost Impact shall not include, with respect to any Compensation Event, an aggregate amount that is de minimis.

Net Revenue Impact means (a) the loss of Toll Revenue attributable to a Compensation Event as compared with what the Toll Revenues would have been absent occurrence of the Compensation Event, less (b) the loss that can reasonably be mitigated by the Operator in accordance with **Section 13.08** (excluding any mitigation of costs subtracted from Net Cost Impact for the same Compensation Event), less (c) the lost Toll Revenue that would be returned to the Department under the revenue-sharing formula detailed in **Article 5**, and less (d) any savings in facility operating and maintenance costs resulting from the Competitive Transportation Facilities or a Compensation Event (excluding any savings in costs subtracted from Net Cost Impact for the same Competitive Transportation Facilities or Compensation Event). Net Revenue Impact shall not include, with respect to any Compensation Event, an aggregate amount that is de minimis.

New Agreements is defined in **Section 6.05(c)**.

Northern Portion of the Airport Connector Road means that portion of the Airport Connector Road defined at the southerly end by a line parallel to the centerline of the proposed "Site Road" at station 20+20.000, excluding that portion of the Airport Connector Road contained within the Limited Access Line ending left of station 20+28.644 and ending right of station 20+07.243; defined at the northerly end by a line parallel to the centerline of "Charles City Road" at approximate station 34+56; and to include the proposed storm water management basin on the southeast corner of the intersection of Airport Drive and Charles City Road, as well as the drainage improvements necessary to convey any storm water outfall from the proposed basin to proposed drainage structure # 15-18, all as shown on Exhibit L to this Agreement. This Northern Portion of the Airport Connector Road shall adjoin that portion of the intersection of Airport Drive and Charles City Road that is to be maintained by the County of Henrico.

Notice of Termination for Public Convenience means a written notice from the Department to the Operator under which the Department elects to terminate the Agreement pursuant to **Section 16.01(a)**.

O&M Contractor is defined in **Section 8.04(a)**.

O&M Letter of Credit is defined in **Section 8.09(a)**.

Operating Costs means all reasonable costs incurred and paid for by the Operator in relation to the Project, including without limitation costs for operation and maintenance, consumables, payments under any lease (other than a financing lease constituting Operator Debt), payments pursuant to the agreements for the management, operation and maintenance of the Project, taxes (exclusive of taxes measured by net income), insurance, payments for Oversight Services, police services; costs for any Extraordinary Maintenance and Repair Letter of Credit, O&M Letter of Credit or other security, capital expenditures, payments to the Department in accordance with **Section 5.01** and any other reasonable expense paid for the development, completion, enhancement, expansion, major maintenance, repair, reconstruction, rehabilitation, renewal, and replacement of the Project, but exclusive of (a) costs paid from funds deposited to the Extraordinary Maintenance and Repair Reserve or any reserve for operation and maintenance costs, (b) costs paid from Total Invested Project Funds, (c) payments of Operator Debt (including interest thereon), (d) any Distributions ,(e) 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 and any other costs which are not allowable pursuant to the list attached as **Exhibit M**. Operating Costs do not include non-cash charges, such as depreciation, amortization or other bookkeeping entries of a similar nature.

Operator has the meaning assigned to such term in Section 56-557 of the PPTA and, for purposes of the Comprehensive Agreement, means the Association until the Closing Date and Transurban (895) LLC from such date and thereafter until the end of the Term of the Comprehensive Agreement, and its permitted successors and assigns.

Operator Damages means, with respect to any Compensation Event, the sum of (a) the Net Revenue Impact and (b) the Net Cost Impact.

Operator Debt means any bona fide debt (including principal, accrued interest and fees and customary and reasonable lender, agent and trustee costs and expenses with respect thereto, and including all payment obligations under interest rate hedging agreements with respect thereto) relating to the Project and granted by a Person (other than an Affiliate of the Operator 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 Operator) pursuant to an agreement entered into prior to the Notice of Termination for Public Convenience given pursuant to **Section 16.01** or the declaration of a Department Default giving rise to the payment of amounts for or in respect of termination under this Agreement ; provided that if the Department shall not pay such termination amount within sixty days of the date when due under this Agreement, then the foregoing limitation on entering into agreements for debt shall not thereafter be applicable. Operator Debt, however, does not include any increase in debt to the extent

such increase is the result of an agreement or other arrangement entered into after the Operator receives a Notice of Termination for Public Convenience or declares a Department Default. In addition, no debt shall constitute Operator Debt unless the Collateral Agent provided the Department with a Notice of Operator Debt in accordance with the notice requirements of **Section 6.02(b)(iii)**. Except with respect to the incurrence of debt under the Initial Project Financing Agreements, Operator Debt shall not include any debt that would cause the Operator Debt to increase unless such debt is approved by the Department pursuant to **Section 6.06** or otherwise meets the requirements of **subclause (A), (B) or (C) of Section 6.06(b)(i)**.

Operator Default is defined in **Section 17.01**.

Operator's Interest means the interest of the Operator in and to (a) the Project, (b) this Agreement, (c) the Development Contract, (d) Revenues, (e) the Toll Servicing Rights and (f) any other property or rights of the Operator under this Agreement.

Operator Loans means the aggregate principal amount of Operator Debt outstanding from time to time under the Project Financing Agreements and secured by the Financing Assignments, excluding any indebtedness owed to the Operator's Affiliates.

Operator Marks is defined in **Section 18.04(d)**.

Operator Party means the Operator and any Affiliate and any agents, officers, directors, employees, contractors (other than the Department), subcontractors, suppliers and materialmen of the Operator or any Affiliate.

Original Comprehensive Agreement is defined in **Section 1.08**.

Outcomes and Performance Targets means the outcomes, performance targets, tolerances and criteria listed in Attachment A to Exhibit H.

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, manage, administer or audit the Project Agreements or the work or performance of the Operator thereunder.

Permitted Encumbrance means, with respect to the Project:

(a) the rights and interests of the Operator 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 or the right and benefits of the Operator 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 Operator 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 4.01(f)**.

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.

Plans means the following to be prepared by the Operator in accordance with the requirements of **Exhibit H**:

- Management Plan
- Maintenance Plan
- Inspection Plan
- Incident Response Plan
- Traffic Control Plan
- Customer Service/Response Plan
- Public Information Plan
- Environmental Protection Plan
- Quality Assurance and Quality Control Plan
- Detour Plan
- O&M Manual.

PPTA is defined in **Section 1.01**.

Pre-Existing Hazardous Substances means any Hazardous Substance that was present within the Project Right of Way limits at any time prior to the Closing Date or, with respect to the Airport Connector Road, prior to the date the Department tenders to

the Operator possession and control of the Project Right of Way for the Airport Connector Road (but only after the Operator obtains a written commitment for TIFIA financing pursuant to **Section 9.01**).

Project means, collectively, the approximately nine-mile, four-lane, limited access tollway and all related improvements depicted in **Exhibit B** to the Agreement, extending from the current eastern terminus of Chippenham Parkway (State Route 150) at I-95 to a connection with I-295 southeast of Richmond International Airport, known as the Pocahontas Parkway, as well as (a) the ramps, loops, bridges, and auxiliary lanes providing access to and from such tollway as shown in **Exhibit B**, (b) all other improvements constructed pursuant to the Design-Build Contract and any change orders or directive letters issued by the Department in connection therewith; (c) the ETTM Facilities and ETTM System, (d) when constructed by the Operator at its expense (except as otherwise provided in **Section 9.01(d)**), but not otherwise, and opened to public traffic, the Airport Connector Road, (e) when constructed, any Project Enhancements, and (f) all associated assets as identified in **Exhibit H**.

Project Agreement means any of this Agreement, the Consent to Assignment, the Development Contract, the Technical Support Agreement, the Memorandum and Assignment, and the Initial Project Financing Agreements; and the term **Project Agreements** means all such agreements and documents in the aggregate.

Project Enhancements means any extensions of, additions to, or major modifications, replacements or reconstruction of the Project undertaken by the Department or, with its approval, the Operator after the Agreement Date, including (a) the portion of the Wilton Access Road maintained by the Operator and any tolling facilities maintained by the Operator on the Wilton Access Road, (b) any other additional ramps or interchanges providing direct access to and from the Project, (c) addition of traffic lanes for bus only, high occupancy vehicle or high occupancy/toll use, or similar restricted use. Notwithstanding the foregoing, Project Enhancements exclude the Airport Connector Road.

Project Financing Agreements means the Initial Project Financing Agreements, the Financing Assignments and any other documents evidencing Operator Debt obtained in compliance with the terms of this Agreement, together with any and all amendments and supplements thereto.

Project Operations means (a) the operation, management, maintenance, rehabilitation and tolling of the Project and (b) all other actions relating to the Project or otherwise that are to be performed by or on behalf of the Operator pursuant to this Agreement.

Project Purposes means and is limited to the developing, permitting, design, financing, acquisition, construction, installation, equipping, maintenance, repair, preservation, modification, operation, management and administration of the Project.

Project Right of Way means (a) all real property within the access control line for the Project, including all real property within the access control line for the Airport Connector Road if constructed by Operator at its expense, and (b) the property on which the ETTM Facilities are located.

Project Value means:

(a) at the time a Notice of Termination for Public Convenience is given pursuant to **Section 16.01** (Termination for Convenience), the Department terminates this Agreement pursuant to **Section 16.05**, or a Department Default occurs giving rise to the payment of amounts for or in respect of termination under this Agreement (but excluding the effect of such termination or Department Default), the greater of:

(i) the then fair market value of the Operator's Interest; or

(ii) the sum of:

(A) the total outstanding principal amount of Operator Debt, plus

(B) accrued and unpaid interest on such Operator Debt, excluding any interest at default rates, plus

(C) Breakage Costs respecting such Operator Debt, plus

(D) an amount that would be required for the Project to yield as of the termination date a pre-tax Real IRR on the total cash equity investment in the Operator (compounded annually) equal to 10.5%, taking into account all prior distributions to holders of beneficial or equity interests in Operator and all cash balances available for distribution to such holders as of the termination date.

(b) Fair market value, for purposes of Project Value, will be determined according to the appraisal procedures set forth in **Section 17.05**.

Proprietary Intellectual Property means any Intellectual Property patented or copyrighted by the Operator, 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 Operator, 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 Operator, 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 Operator, 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 Operator in connection with the construction of the Airport Connector Road or any Project Enhancement.

Quality Management Plans-- means the plans for quality management of the Project to be prepared and delivered by the Operator pursuant to **Section 7.03(a)**.

Rating Agency means any of Duff & Phelps, S&P, Moody's or Fitch Investors Service, Inc. or any similar entity or any of their respective successors.

Real IRR means an internal rate of return adjusted to remove the effects of inflation from the calculation of the internal rate of return (such adjustment to be calculated by reference to changes in the CPI from the Closing Date to the calculation of the internal rate of return).

Real Net Cash Flow means, for any Semiannual Period, Net Cash Flow but reduced to remove the effects of inflation from the calculation of Net Cash Flow (such reduction to be calculated by reference to changes in the CPI from the Closing Date to the close of the applicable Semiannual Period).

Refinancing means:

(a) Any amendment, variation, novation or supplement of any Operator Debt, Initial Project Financing Agreement or Financing Assignment that results in an increase of such Operator Debt;

(b) The issuance by Operator of any Operator Debt in addition to the Operator Debt incurred in connection with the Initial 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 Operator or another person which has an effect similar to clause (a) or (b) above.

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 EIS.

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 Operator; and

(b) any license fee or tax on or measured by receipts, levied, rated, charged, imposed or assessed by the State or any county, city or town of the State against the Operator and attributable to the Project or the Operator's Interest, but excluding:

(i) any 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 Operator 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 Operator's Interest or of any interest in the Operator.

Report means the following to be prepared by the Operator in accordance with the requirements of **Exhibit H**:

- Quarterly Reports
- Annual Reports
- Pre-Transfer Assessment Report

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:

(a) subject to **Section 12.01** and the last sentence of **Section 19.02** of this Agreement, the Department's right to use, possess and enjoy any real and personal property over, under or adjacent to the Project Right-of-Way for other transportation and transit facilities, including but not limited to tunnels, flyovers, interchanges and fixed guideways; and

(b) all right to use, and use of:

(i) all electrical, fiber optic and wireless conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity existing over, under or adjacent to any Project Right of Way installed by anyone, whether before or after the Agreement Date, and all Software which executes such equipment and hardware and related documentation, in each case to the extent not necessary and required for traffic management for the Project or for other Project Purposes;

(ii) ETTM Data or other data generated from operation of the Project or toll collection technology except as required solely for Project Purposes;

(iii) any area or space over, under or adjacent to the Project Right of Way for development and operation of any office, commercial, industrial or mixed use real estate project, such as but not limited to revenue-generating service or rest areas;

(iv) 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;

(v) toll collection technology for other than Project Purposes;

(vi) any area or space over, on, under or adjacent to the Project Right of Way for any other commercial or non-commercial development or use; and

(vii) naming rights to the Project.

Responsible Public Entity has the meaning assigned to such term in Section 56-557 of the PPTA and, for purposes hereof, means the Department.

Revenues means all amounts received by or on behalf of the Operator from Toll Revenues; proceeds from insurance (other than proceeds of fire and other casualty insurance but including proceeds from business interruption insurance), amounts received pursuant to any judgment or settlement with respect to the Project, amounts received with respect to Operator Damages or other compensation from the Department, condemnation awards with respect to the Project; all amounts payable to the Operator (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 Operator's Interest (excluding, however, the proceeds of any direct or indirect sale of equity interests in the Operator); amounts derived as grants, loans or otherwise from the United States of America, the State or any other Person by the Operator 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 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 Operator with respect to which the Operator 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 Operator Debt or capital contributions to the Operator.

S&P means Standard & Poor's Rating Service, a division of The McGraw-Hill Companies, Inc. or any successor thereto.

Secondary Targeted Return has the meaning specified in **Section 5.01(b)(ii)**.

Semiannual Period means (a) initially the period commencing on the Closing Date and terminating June 30 and (b) thereafter, each semiannual period commencing on January 1 and terminating June 30 and commencing July 1 and terminating December 31.

Series 1998 Senior Bonds means $353,877,863 Route 895 Connector Senior Toll Road Revenue Bonds, Series 1998A, 1998B, and 1998C issued by the Association on July 9, 1998.

SIB Bond means the Series 1998D Second Tier Subordinate Bond issued to the CTB under the Indenture and in accordance with the SIB Loan Agreement evidencing the SIB Loan, and any and all supplements and amendments thereto.

SIB Loan means the $18,000,000 loan made by the CTB to the Association pursuant to the SIB Loan Agreement, and evidenced by the Series 1998D Second Tier Subordinate Bond.

SIB Loan Agreement means the SIB Loan Agreement among the CTB, the Association and the Trustee, and any and all amendments and supplements thereto.

Software means (a) computer instructions, including programs, routines and databases and applications supplied, procured or developed by the Operator or the Department in connection with the operation of the Project or other 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 Documentation means the program level Software design documentation, associated data files, data structures and algorithm descriptions necessary to make program code level modifications to delivered Software.

Source Code Escrows is defined in **Section 18.04(c)(ii)**.

State means the Commonwealth of Virginia.

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

State Indemnitee means and includes the Department, the Commissioner, the CTB, the State and their respective Representatives.

Substituted Operator means any person or entity selected by the Lenders (acting through the Collateral Agent) and approved by the Department in accordance with **Section 6.04(c)** to perform the Operator's obligations and succeed to the Operator's Interests after any such Lender, or any such Person, acquires the Operator's Interests by foreclosure or transfer in lieu of foreclosure, or after the Collateral Agent takes possession and control of the Project.

Task is defined in **Section 8.08(a)**.

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 Internal Revenue Code of 1986, as amended), 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.

Technical Requirements means the documents detailing the Operator's responsibilities with respect to the operation and maintenance of the Project during the Term.

Technical Support Agreement means that certain technical support agreement, entered into among the Technical Support Provider, the Department and the Operator in substantially the form attached hereto as **Exhibit D**.

Technical Support Provider means Transurban Limited, a company incorporated under the laws of the State of Victoria, Australia whose shares are traded on the Australian Stock Exchange.

Term means 99 years from the Agreement Date, unless earlier terminated or extended pursuant to this Agreement.

Termination Event is defined in **Section 6.04(a)**.

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.

TIFIA means the Transportation Infrastructure Finance and Innovation Act of 1998, as amended.

Toll Consultant means any nationally recognized traffic and revenue consulting firm the Operator 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 Operator from tolls and other User Fees applicable to vehicles for the privilege of traveling on the Project imposed pursuant to this Agreement. Toll Revenues excludes revenues and proceeds arising out of or relating to Reserved Rights.

Toll Servicing Rights is defined in **Section 3.04(b)**.

Total ACR Development Cost has the meaning set forth in **Section 9.01(d)(vi)**.

Total Invested Project Funds means (a) all amounts paid by the Operator to the Association pursuant to the Asset Purchase Agreement or deposited by the Operator or its Affiliates into any reserves as of the Closing Date as required by this Agreement or the Initial Project Financing Agreements (minus any amounts of cash or securities acquired by the Operator from the Association under the Asset Purchase Agreement, except to the extent deposited by the Operator or its Affiliates into the reserves as of the Closing Date); (b) all documented fees, costs and expenses incurred by the Operator or its Affiliates on or after April 28, 2005 and paid by the Operator or its Affiliates in connection with the investigation, evaluation, negotiation, and closing of the purchase under the Asset Purchase Agreement and this Agreement; and (c) all capital contributions or debt advances made by the members of the Operator or its Affiliates after the Closing Date and Operator Debt incurred after the Closing Date (other than (i) capital contributions, debt advances or Operator Debt incurred or used directly or indirectly to fund Distributions or (ii) any Refinancing to the extent that it does not increase the principal amount of Operator Debt then outstanding).

Traffic and Revenue Study means any study of the projected traffic and revenue for the Project prepared by or on behalf of Operator, 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)**.

Transitional Period is defined in **Section 8.03(a)**.

User Fees means fees, tolls, rates, incidental charges and other charges (including administrative charges such as late fees, insufficient funds fees, etc.) in respect of vehicles using the Project and imposed by or on behalf of the Operator pursuant to this Agreement.

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 operator 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 or Project Enhancements.

Wilton Access Road means the road that will provide direct access from Route 895 into the proposed development known as Wilton Farms which was approved by the Henrico Board of Supervisors on January 25, 2005 as Conditional Rezoning Case C-56C-04, including the interchange between such Road and the Project. This interchange will be located at approximately the same location as the existing toll collection facility (2500' east of the James River). For the purposes of this Agreement, the Wilton Access Road will only include that portion of the access ramps designated as "state maintained" and will not include any portion of the ramps designated as being maintained by the County of Henrico.

Work Product means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Operator solely or primarily for the Project or Project Right 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 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 Operator 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 Operator.

Work Schedule is defined in **Section 8.08(a)**.

EXHIBIT B

PROJECT DESCRIPTION

DESCRIPTION OF PROJECT

The Project (the Route 895 Connector) is the approximately nine-mile, four-lane, limited access tollway and all related improvements, extending from the current eastern terminus of Chippenham Parkway (State Route 150) at I-95 to a connection with I-295 southeast of Richmond International Airport and crossing Route I-95 and the James River south of the Port of Richmond's deepwater terminal, known as the Pocahontas Parkway, as well as:

(a) the ramps, loops, bridges, and auxiliary lanes providing access to and from such tollway,

(b) all other improvements constructed pursuant to the Design-Build Contract and any change orders or directive letters issued by the Department in connection therewith;

(c) the ETTM Facilities and ETTM System,

(d) when constructed by the Operator at its expense, but not otherwise, and opened to public traffic, the Airport Connector Road,

(e) when constructed, any Project Enhancements, and

(f) all associated assets as identified in **Exhibit H**.

The point of transfer of responsibility for any overpasses constructed pursuant to the Design-Build Contract and crossing the tollway will be the back of the abutment backwall at either end of these structures.

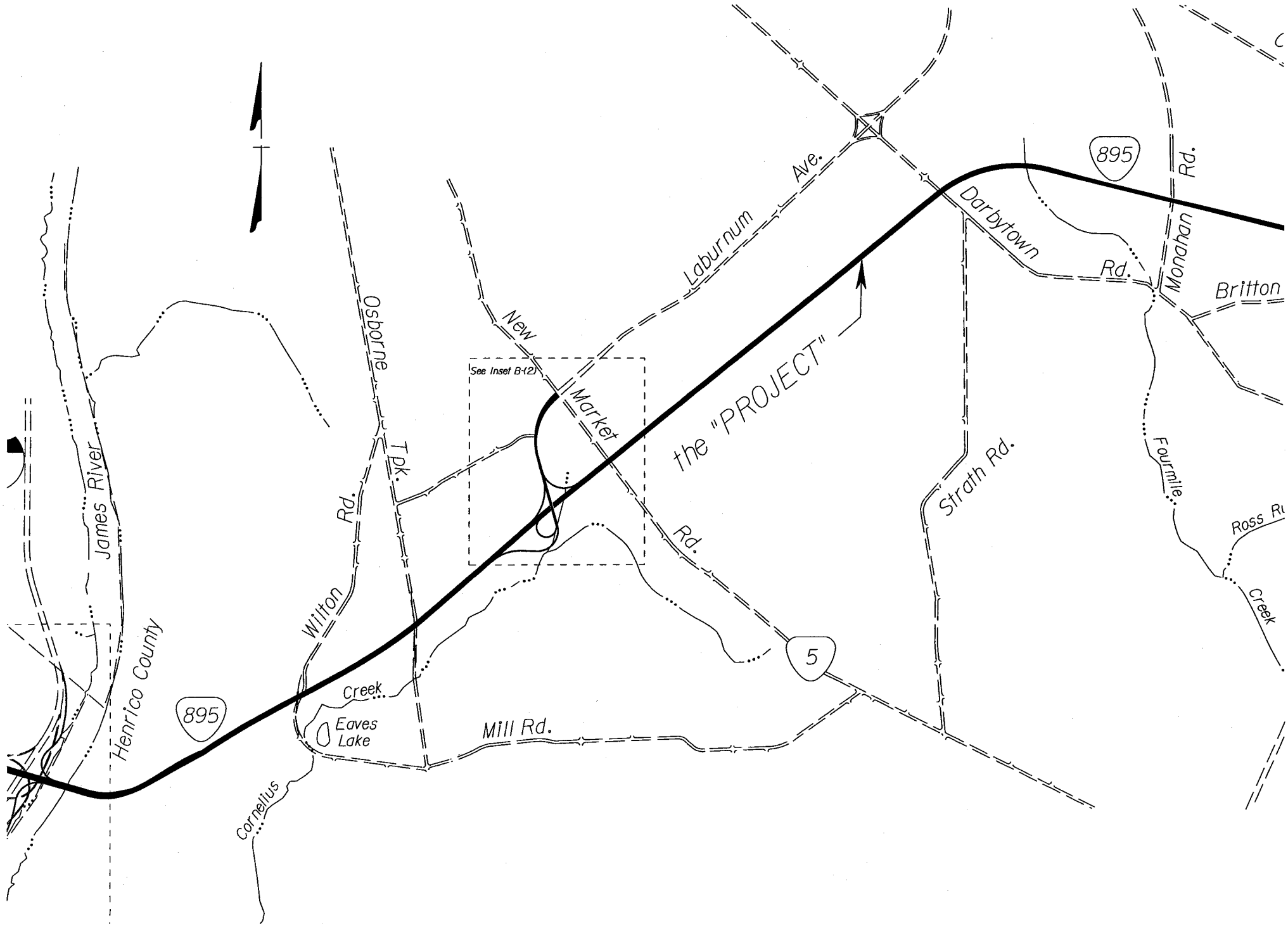
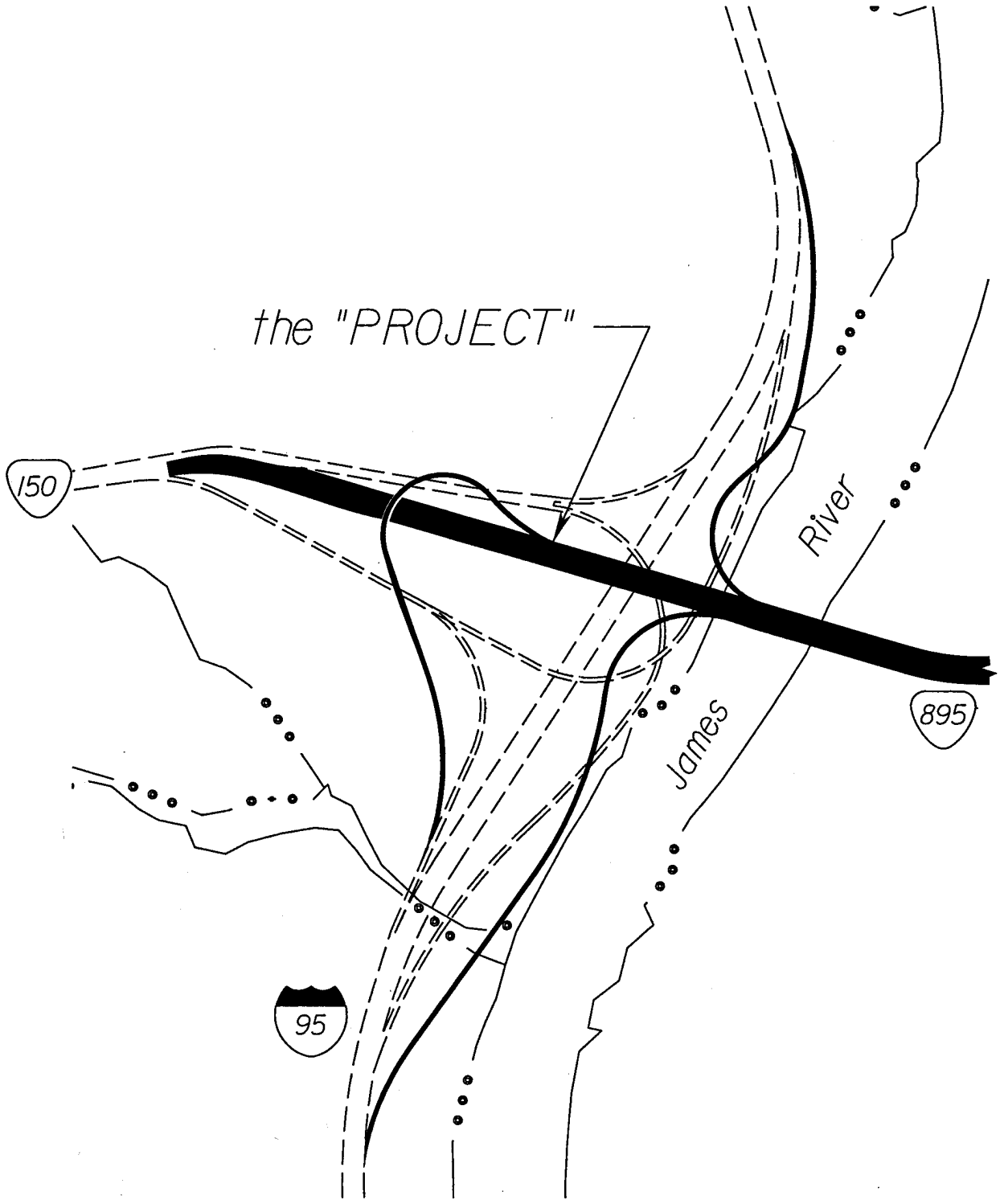

James River
Henrico County
895
Wilton Rd.
Osborne Tpk.
Creek
Eaves Lake
Cornelius
Mill Rd.
New Market Rd.
See Inset B-(2)
Laburnum Ave.
the "PROJECT"
5
Strath Rd.
Darbytown Rd.
895
Monahan Rd.
Fourmile Creek
Ross Ru
Britton

EXHIBIT B - Inset B-(1)



2/24/2006

EXHIBIT B - Inset B-(2)

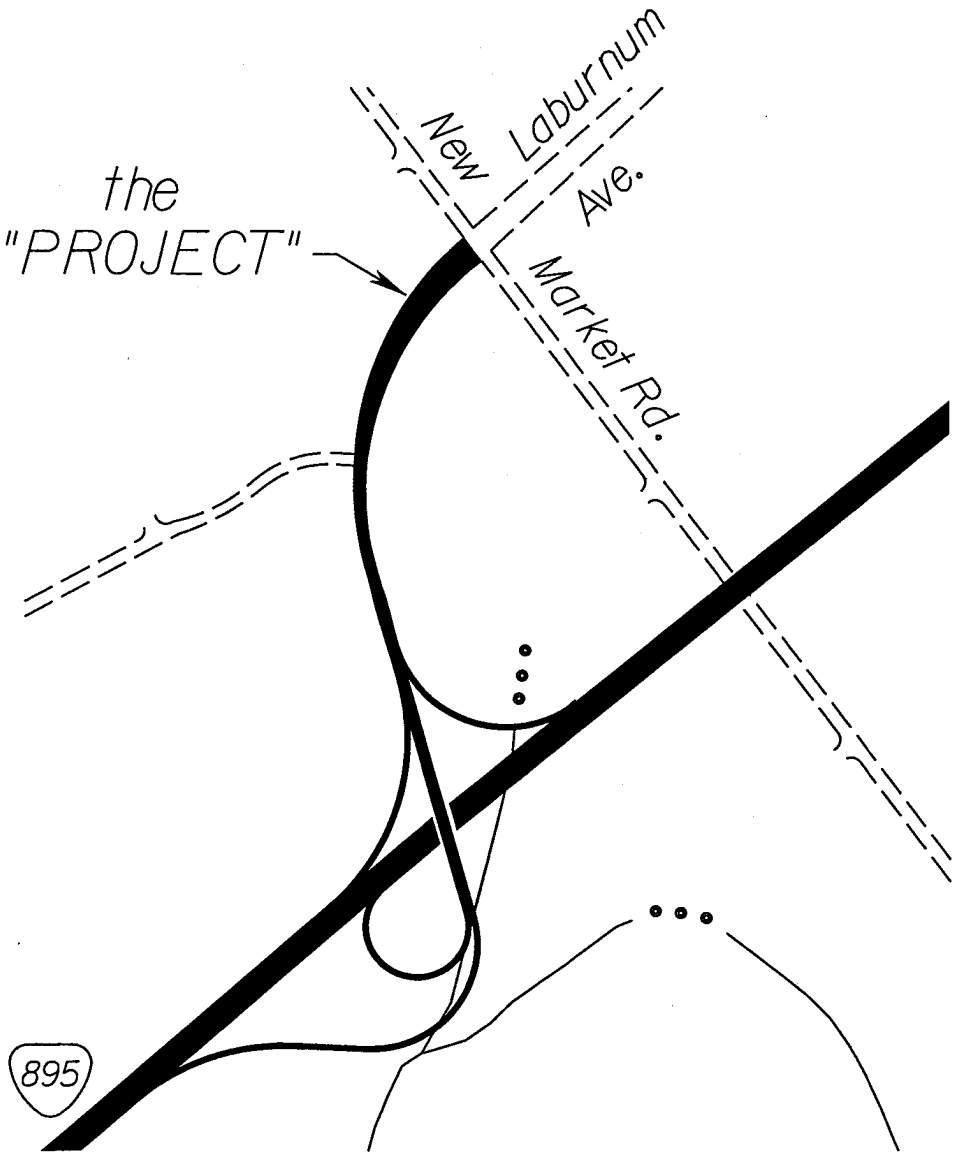


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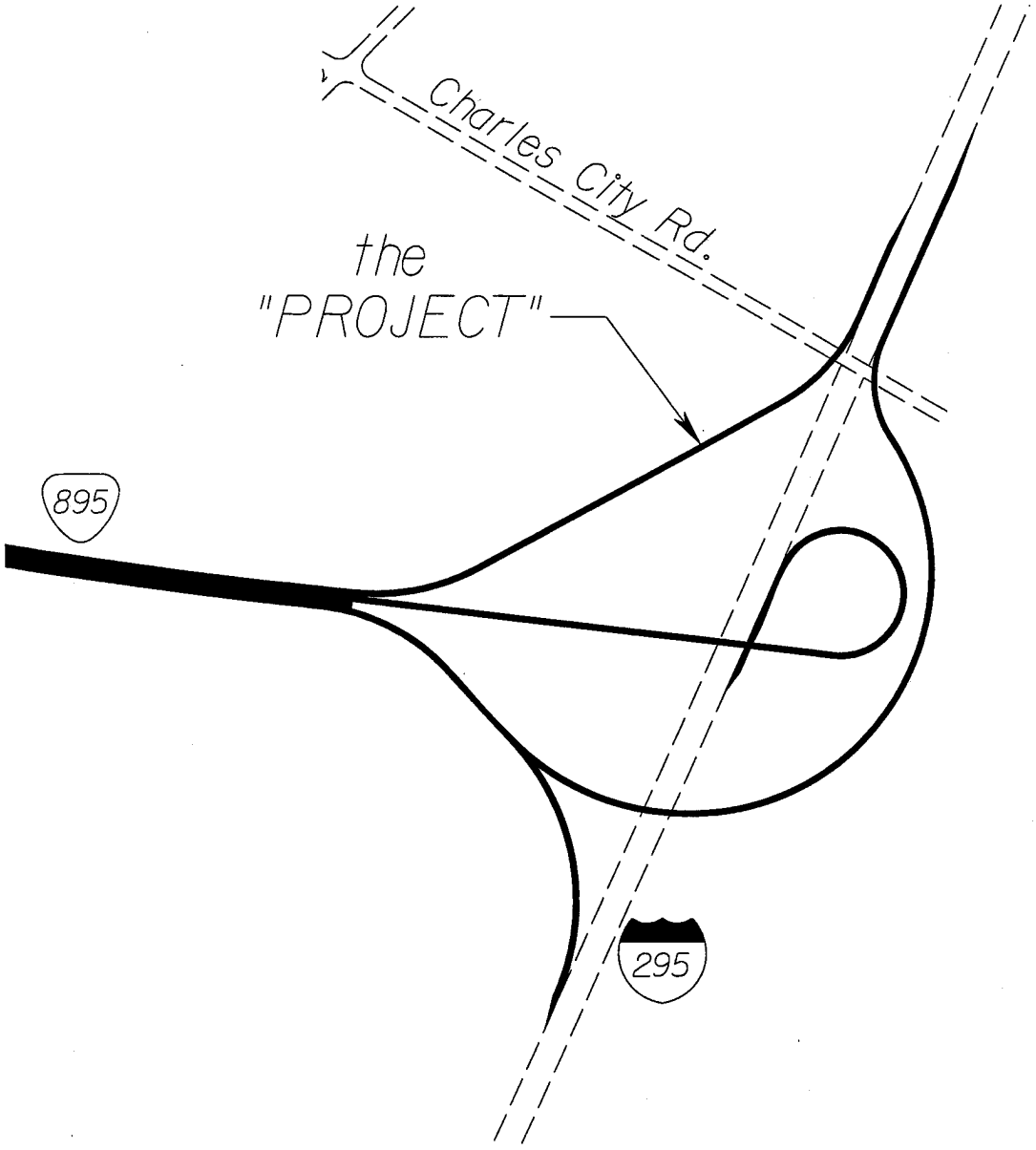
EXHIBIT B - Inset B-(3)



2/24/2006

[RESERVED]

Pocahontas Parkway

Technical Support Agreement

Virginia Department of Transportation

Transurban Limited

Trasurban (USA) Development Inc.

Transurban (895) LLC

TECHNICAL SUPPORT AGREEMENT

This TECHNICAL SUPPORT AGREEMENT (this "Agreement") is made and entered into as of June 29, 2006, by and among the Virginia Department of Transportation, a department of the Commonwealth of Virginia (the "Department"), Transurban Limited, a company incorporated under the laws of the State of Victoria, Australia whose shares are traded on the Australian Stock Exchange ("Transurban Limited"), Transurban (USA) Development Inc., a _____ company ("Transurban Development" and, together with Transurban Limited, "Transurban") and Transurban (895) LLC, a Delaware limited liability company (the "Operator").

Recitals

A. Transurban (895) LLC, a Delaware limited liability company, is the Operator under the Amended and Restated Comprehensive Agreement to Develop and Operate the Route 895 Connector, dated as of June 29, 2006, by and between the Department and the Operator (the "Comprehensive Agreement"), pursuant to which the Department has granted to the Operator the rights and privileges to develop, operate, maintain and improve the Project, all as provided in the Comprehensive Agreement.

B. Transurban has agreed to provide technical support to the Operator to assist the Operator in the performance of its obligations under the Comprehensive Agreement in accordance with the terms and conditions of this Agreement.

1. Definitions and interpretation

1.1 Definitions

Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in Exhibit A (Definitions) to the Comprehensive Agreement.

1.2 Interpretation

The provisions of this Agreement will be construed in accordance with the following:

(a) In this Agreement headings are for convenience only and do not affect their interpretation. Except to the extent that the context otherwise requires or except as expressly stated otherwise:

(i) references to this Agreement include references to all the schedules, annexes and exhibits to this Agreement;

(ii) references to appendices, clauses, paragraphs, sub-paragraphs, schedules, annexes or exhibits in this Agreement are references to appendices, clauses, paragraphs, sub-paragraphs, schedules, annexes and exhibits of and to this Agreement;

(iii) references to any document or agreement (including this Agreement) include references to such document or agreement as amended, novated, replaced or supplemented from time to time;

(iv) references to any statute, regulation, by-law or guideline or to any provision of any statute, regulation, by-law or guideline include any modification or re-enactment of, or any provision substituted for, and (in the case of a statute) all statutory and subordinate instruments issued under, such statute, regulation, by-law or guideline or such provision;

(v) words denoting the singular include the plural and vice versa;

(vi) words denoting individuals or Persons include corporations, partnerships, joint ventures, unincorporated organisations and Governmental Authorities and vice versa;

(vii) words denoting either gender include both genders;

(viii) references to any party or Person include that party's or person's successors and permitted assigns;

(ix) to the extent used in this Agreement, all accounting terms used in this Agreement will have the meaning given to those terms under, and all calculations and determinations as to financial matters will be made in accordance with, U.S. GAAP consistently applied;

(x) the term 'including', 'include' and 'includes' shall be deemed to be followed by the phrase 'without limitation'.

(b) If there is any inconsistency between a provision of this Agreement and a provision of the Comprehensive Agreement, this Agreement will prevail.

2. Transurban's Technical Assistance Undertaking to the Department

2.1 Undertaking

Transurban unconditionally and irrevocably undertakes, during the Term, to provide technical advice and assistance to the Operator to assist the Operator in the performance of its obligations under the Comprehensive Agreement, which shall include:

(a) performing the following tasks to the extent required in the Comprehensive Agreement:

(i) attending meetings with the Operator, the Department and any other duly authorised persons, when required or as

requested by the Department, to address specific inquiries related to the Project Operations;

(ii) providing the Operator with the technical information, support and assistance as it reasonably requires to enable it to prepare, amend and update all operations and maintenance plans, systems operation plans and documentation, and project management plans, including all quality management plans, traffic and traffic incident management plans, public information plans, remedial work plans and any other relevant plans or reports required of the Operator under the Comprehensive Agreement;

(iii) entering into discussions and negotiations with all appropriate Governmental Authorities as required under the Comprehensive Agreement or as otherwise requested by the Department;

(iv) preparing and commenting on all operation and maintenance manuals;

(v) formulation of job descriptions, remuneration packages and a recruitment strategy to enable the Operator to recruit necessary qualified and experienced personnel in connection with the Project Operations;

(vi) selection, procurement and operation of all necessary equipment , including the method of purchasing, commissioning, maintaining and replacing any such equipment or otherwise required in connection with the Project Operations;

(vii) providing all licences and authorisations that are necessary to enable the Operator to meet its obligations under the Comprehensive Agreement (other than authorisations that the Department must provide thereunder);

(viii) developing, implementing and improving maintenance standards and systems to the extent required or permitted under the Comprehensive Agreement;

(ix) designing and organising an adequate training programme for the Operator's staff to assist in performing the Project Operations, which will include, as appropriate, training in maintenance and repair; and

(b) providing the Operator with such other technical support and assistance as it reasonably requires to enable it to perform the foregoing obligations under the Comprehensive Agreement.

2.2 Further Assistance

Without limiting its obligations in clause 2.1, Transurban must also provide the following services during the Term:

(a) provide information at regular intervals and as requested by the Operator or the Department on general policy or updated techniques utilised by operating companies owned or controlled by Transurban whose tasks and functions are comparable with those of the Operator;

(b) provide continuing training and education to the Operator's operating and maintenance manager comparable to training and education provided to personnel of similar standing employed by other operating companies owned or controlled by Transurban;

(c) ensure that the Operator has adequate access at all times to suitable personnel, data and systems at Transurban to give such advice and assistance as the Operator may reasonably require in connection with the performance of its obligations under the Comprehensive Agreement;

(d) provide such assistance as the Operator may require in connection with any upgrade, installation, modification or repair of the ETTM Facilities and ETTM System and any other systems, components and equipment comprising the Project; and

(e) provide such other technical and managerial assistance as the Operator requires to comply with its obligations under the Comprehensive Agreement.

2.3 Payment of Fee

(a) In consideration of the services rendered by Transurban pursuant to this Agreement, the Operator shall pay to Transurban an annual fee (the "Fee") in an amount equal to $300,000, as adjusted from time to time in accordance with the following paragraph. Except for a reasonable initial mobilization payment on the date of this Agreement, the Fee shall be payable in installments, in arrears, for services actually rendered.

(b) The Fee shall be adjusted annually by the percentage increase, if any, in the Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items (not seasonally adjusted) of the U.S. Department of Labor, Bureau of Labor Statistics (the "CPI Index") most recently published prior to an annual payment date, over the CPI Index most recently published prior to the previous annual payment date (or, in the case of the payment on the first anniversary of the date of this Agreement, over the CPI Index most recently published prior to the date of this Agreement). If the CPI Index for any such annual period decreases, then the Fee payable immediately following such period shall equal the Fee for the immediately preceding year. If at any relevant time the CPI Index shall not be available in the same format as

referred to in the preceding sentence, the Operator and Transurban, subject to the Department's consent, shall substitute any official index published by the U.S. Department of Labor, Bureau of Labor Statistics which is most nearly equivalent thereto.

2.4 Reliance by the Department

Transurban acknowledges that (a) the Department is relying on Transurban to fulfill its obligations under this Agreement to assist the Operator to perform its obligations under the Comprehensive Agreement, and (b) the Department shall have the right, as a direct party to this Agreement, to enforce all rights and remedies against Transurban available at law or in equity on account of any failure of Transurban to fulfill its obligations under this Agreement.

3. Operator's Liability under Comprehensive Agreement

Despite any other provision in this Agreement, Transurban acknowledges that the Department may proceed against the Operator for any failure of the Operator to comply with any obligation under the Comprehensive Agreement.

4. Representations and Warranties

Transurban hereby represents and warrants that:

(a) It is a corporation validly existing under the laws of its place of incorporation as stated in this Agreement.

(b) It has the corporate power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by it.

(c) It has taken all necessary corporate action to authorise the entry into and performance of this Agreement and to carry out the transactions contemplated by it.

(d) This Agreement is valid and binding and enforceable in accordance with its terms, subject to equitable principles and laws relating to bankruptcy or insolvency.

5. Termination and Assignment

5.1 Termination

(a) This Agreement shall remain in full force and effect until the earlier of (i) the expiration or earlier termination of the Comprehensive Agreement, and (ii) such time as the Operator Interest has been Transferred to any Person that is not an Affiliate of Transurban (895)

LLC or Transurban in accordance with Section 20.01 of the Comprehensive Agreement (any event in clauses (i) and (ii), a "Termination Event"), at which time this Agreement shall terminate automatically. Subject to clause 5.1(b), Transurban shall have no further obligations pursuant to this Agreement after a Termination Event.

(b) The obligations of Transurban under this Agreement shall survive termination of the Comprehensive Agreement to the extent that they are necessary for the performance of any obligations of Transurban (895) LLC or of any other Operator that is an Affiliate of Transurban (895) LLC or Transurban that remain outstanding after a Termination Event and relate to the period prior to the Termination Event.

5.2 Assignment

The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Transurban may not transfer or assign any of its rights or obligations in this Agreement without the prior written consent of the Department.

6. 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:

(i) personally,

(ii) by independent, reputable, overnight commercial courier,

(iii) by facsimile transmission:

(A) 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),

(B) 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

(C) where the facsimile transmission is immediately followed by service of the original of the subject item in the manner provided in **subsections (a)(i), (ii)** or **(iv)** hereof, 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 Operator:

_____

_____

_____

Fax: [ ]

With a copy to:
Daniel A. Mathews
Orrick, Herrington & Sutcliffe LLPOrrick
666 Fifth Avenue
New York, NY 10103-0001
Fax: (212) 506-5151

If to the Department:
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attn: Commissioner
Fax: (804) 786-6250

With a copy to:
John J. Beall, Esq
Senior Assistant Attorney General
Commonwealth of Virginia, Office of the Attorney General
900 E. Main Street
Richmond, Virginia 23219
Fax: (804) 786-9136

And to:
Karen J. Hedlund
Nossaman, Guthner, Knox & Elliott, LLP
2111 Wilson Blvd., Suite 600
Arlington, VA 22201
Fax: (703) 351-9506

If to Transurban:
Level 43, Rialto Tower
525 Collins Street
Melbourne, Victoria 3000
Australia
Attention: Company Secretary
Fax: +613 9649 7380

(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 U.S. 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).

7. General

7.1 Waiver

Subject to the express provisions of this Agreement, if a party or any other person fails or delays in exercising or enforcing any right or remedy under this Agreement, it will not preclude or amount to a waiver of any further exercise or enforcement of that right or remedy, or of any other right or remedy, under this Agreement or provided by Law.

7.2 Amendment

No amendment or waiver of any provision of this Agreement, and no consent to any departure by Transurban therefrom, shall be effective unless in writing signed by all the parties to this Agreement.

7.3 Severability of provisions

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

7.4 Further assurance

Each party must sign, execute, deliver and do all such acts and things as may reasonably be required of it to carry out and give full effect to this Agreement and the rights and obligations of the parties to them.

7.5 Headings

The headings of articles, sections, exhibits and schedules, if any, have been included herein for convenience of reference only, are not part of this Agreement, and shall not be taken into consideration in interpreting this Agreement.

7.6 Counterparts

This Agreement may be executed in any number of counterparts and all counterparts taken together will constitute one and the same instrument.

7.7 Governing Law

(a) This Agreement will be governed by, and construed in accordance with, the laws of the State applicable to contracts executed and to be performed within the State.

(b) Venue for any legal action arising out of this Agreement shall lie in the Circuit Court in the City of Richmond, Virginia, Division I.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
a department of the Commonwealth of Virginia

By: Gregory A. Whirley
Name: Gregory A. Whirley
Title: Acting Commissioner

By:
Name:
Title:

TRANSURBAN LIMITED

By:
Name:
Title:

By:
Name:
Title:

TRANSURBAN (USA) DEVELOPMENT INC.

By:
Name:
Title:

By:
Name:
Title:

PAGE 2/2 * RCVD AT 6/28/2006 1:56:06 PM [Eastern Daylight Time] * SVR:WMCD-FAX/0 * DNIS:0 * CSID:7572216982 * DURATION (mm-ss):00-54

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
a department of the Commonwealth of Virginia

By:_____
Name:
Title:

By:_____
Name:
Title:

TRANSURBAN LIMITED

By:_____
Name:
Title: KIMBERLEY EDWARDS
MANAGING DIRECTOR

By:_____
Name: Mark Licciardo
Title: Company Secretary

TRANSURBAN (USA) DEVELOPMENT INC.

By:_____
Name: James Christopher Brant
Title: Director

By:_____
Name: Mark Licciardo
Title: Company Secretary

TRANSURBAN (895) LLC

By: _____
Name: James Christopher Brant
Title: Director

By: _____
Name: Mark Licciardo
Title: Company Secretary

RESERVED

EXHIBIT F

TOLL RATES

Section 1. Notices.

(a) *Notice of Pending Toll Changes.* If the Operator desires to change any toll (including increases or decreases in any toll or different methods of charging tolls), it shall give notice of such change (a "Pending Toll Change") (i) to the Department no later than 60 days prior to the implementation of such change and (ii) to the public in accordance with Section 1(b) of this Exhibit F, beginning, but not earlier than, 60 days prior to the implementation of such change.

(b) *Notice to Public.* The Operator shall use commercially reasonable efforts to (i) provide notice to the public of all tolls for the use of the Project and (ii) inform the public of a Pending Toll Change during the 60-day period prior to the implementation of such change. Such efforts shall include written notices to all account holders with their account statements prior to the change and email notices prior to the change to all account holders that provide email addresses. The Operator shall maintain a website on the Internet that states all tolls, temporary discounts and Pending Toll Changes. The Operator may modify any of the aforesaid means of communication with the public consistent with any developments in common practice relating to means of comparable communication.

(c) *Notice of Temporary Discounts.* Notwithstanding Section 1(a) of this Exhibit F if the Operator desires to establish or terminate a temporary discount with respect to any toll, it shall give notice of the establishment or termination of such temporary discount to the Department at least three (3) Business Days prior to the implementation or termination of such temporary discount.

(d) *Timing of Certain Calculations.* Any calculation to be made pursuant to Sections 2(a)(ii) and 2(a)(iii) and Sections 2(b) and 2(c) of this Exhibit F may be made at any time after the data necessary to make such calculation has been released to the public, and any change in tolls that is dependent upon such calculation shall be subject to notice being given under this Section 1 of this Exhibit F following such calculation.

Section 2. Tolling Level Requirements.

(a) The maximum toll levels applicable for use of a vehicle on the Project shall be determined in accordance with Section 2(a), 2(b), 2(c) or 2(d) of this Exhibit F and to the extent a determination pursuant to Section 2(a), 2(b), 2(c) or 2(d) of this Exhibit F is not an amount equal to a twentieth of a dollar denomination, such maximum toll level shall be increased to an amount equal to the next greatest twentieth of a dollar denomination.

(i) Initial Period 1 January 2006 up to and including 31 December 2007:

Vehicle Class	Main Toll Plaza	Laburnum	Airport Connector Road*	Wilton Farm East	Wilton Farm West
2 Axle	2.25	0.75	0.75	0.75	2.25
3 Axle	3.25	1.75	1.75	1.75	3.25
4 Axle	4.25	2.75	2.75	2.75	4.25
5 Axle	5.25	3.75	3.75	3.75	5.25
6 Axle	6.25	4.75	4.75	4.75	6.25

* Applies only if and when the Airport Connector Road opens for traffic. If, however, the Airport Connector Road opens for traffic, but does not become a part of the Project as detailed in Section 9.01(c) of the Agreement, then the Operator's tolling facilities may not be located on the Airport Connector Road..

(ii) Period 1 January 2008 up to and including 31 December 2010:

Vehicle Class	Main Toll Plaza	Laburnum	Airport Connector Road*	Wilton Farm East	Wilton Farm West
2 Axle	2.75	1.00	1.00	1.00	2.75
3 Axle	3.75	2.00	2.00	2.00	3.75
4 Axle	4.75	3.00	3.00	3.00	4.75
5 Axle	5.75	4.00	4.00	4.00	5.75
6 Axle	6.75	5.00	5.00	5.00	6.75

* Applies only if and when the Airport Connector Road opens for traffic. If, however, the Airport Connector Road opens for traffic, but does not become a part of the Project as detailed in Section 9.01(c) of the Agreement, then the Operator's tolling facilities may not be located on the Airport Connector Road.

Provided that if for any given vehicle class, the toll amount that results from increasing the maximum toll for the period 1 January 2006 up to and including 31 December 2007 by the CPI is greater than the maximum toll level as of 1 January 2008, then the maximum toll level permitted for the period from 1 January 2008 up to and including 31 December 2010 shall be such greater amount.

(iii) Period 1 January 2011 up to and including 31 December 2012:

Vehicle Class	Main Toll Plaza	Laburnum	Airport Connector Road*	Wilton Farm East	Wilton Farm West
2 Axle	3.00	1.25	1.25	1.25	3.00
3 Axle	4.00	2.25	2.25	2.25	4.00
4 Axle	5.00	3.25	3.25	3.25	5.00
5 Axle	6.00	4.25	4.25	4.25	6.00
6 Axle	7.00	5.25	5.25	5.25	7.00

* Applies only if and when the Airport Connector Road opens for traffic. If, however, the Airport Connector Road opens for traffic, but does not become a part of the Project as detailed in Section 9.01(c) of the Agreement, then the Operator's tolling facilities may not be located on the Airport Connector Road.

Provided that if for any given vehicle class, the toll amount that results from increasing the maximum toll for the period 1 January 2008 up to and including 31 December 2010 by the CPI is greater than the maximum toll level as of 1 January 2011, then the maximum toll level permitted for the period from 1 January 2011 up to and including 31 December 2012 shall be such greater amount.

(iv) Period 1 January 2013 up to and including 31 December 2013:

Vehicle Class	Main Toll Plaza	Laburnum	Airport Connector Road*	Wilton Farm East	Wilton Farm West
2 Axle	3.25	1.50	1. 50	1. 50	3.25
3 Axle	4. 25	2. 50	2. 50	2. 50	4. 25
4 Axle	5. 25	3. 50	3. 50	3. 50	5. 25
5 Axle	6. 25	4. 50	4. 50	4. 50	6. 25
6 Axle	7. 25	5. 50	5. 50	5. 50	7. 25

* Applies only if and when the Airport Connector Road opens for traffic. If, however, the Airport Connector Road opens for traffic, but does not become a part of the Project as detailed in Section 9.01(c) of the Agreement, then the Operator's tolling facilities may not be located on the Airport Connector Road.

Provided that if for any given vehicle class, the toll amount that results from increasing the maximum toll for the period 1 January 2011 up to and including 31 December 2012 by the CPI is greater than the maximum toll level as of 1 January 2013, then the maximum toll level permitted for the period from 1 January 2013 up to and including 31 December 2013 shall be such greater amount.

(v) Period 1 January 2014 up to and including 31 December 2014:

Vehicle Class	Main Toll Plaza	Laburnum	Airport Connector Road*	Wilton Farm East	Wilton Farm West
2 Axle	3.50	1.75	1.75	1.75	3.50
3 Axle	4. 50	2.75	2.75	2.75	4. 50
4 Axle	5. 50	3.75	3.75	3.75	5. 50
5 Axle	6. 50	4.75	4.75	4.75	6. 50
6 Axle	7. 50	5.75	5.75	5.75	7. 50

* Applies only if and when the Airport Connector Road opens for traffic. If, however, the Airport Connector Road opens for traffic, but does not become a part of the Project as detailed in Section 9.01(c) of the Agreement, then the Operator's tolling facilities may not be located on the Airport Connector Road.

Provided that if for any given vehicle class, the toll amount that results from increasing the maximum toll for the period 1 January 2013 up to and including 31 December 2013 by the CPI is greater than the maximum toll level as of 1 January 2014, then the maximum toll level permitted for the period from 1 January 2014 up to and including 31 December 2014 shall be such greater amount.

(vi) Period 1 January 2015 up to and including 31 December 2015:

Vehicle Class	Main Toll Plaza	Laburnum	Airport Connector Road*	Wilton Farm East	Wilton Farm West
2 Axle	3.75	2.00	2.00	2.00	3.75
3 Axle	4. 75	3.00	3.00	3.00	4. 75
4 Axle	5. 75	4.00	4.00	4.00	5. 75
5 Axle	6. 75	5.00	5.00	5.00	6. 75
6 Axle	7. 75	6.00	6.00	6.00	7. 75

* Applies only if and when the Airport Connector Road opens for traffic. If, however, the Airport Connector Road opens for traffic, but does not become a part of the Project as detailed in Section 9.01(c) of the Agreement, then the Operator's tolling facilities may not be located on the Airport Connector Road.

Provided that if for any given vehicle class, the toll amount that results from increasing the maximum toll for the period 1 January 2014 up to and including 31 December 2014 by the CPI is greater than the maximum toll level as of 1 January 2015 then the maximum toll level permitted for the period from 1 January 2015 up to and including 31 December 2015 shall be such greater amount.

(vii) Period 1 January 2016 up to and including 31 December 2016:

Vehicle Class	Main Toll Plaza	Laburnum	Airport Connector Road*	Wilton Farm East	Wilton Farm West
2 Axle	4.00	2.25	2.25	2.25	4.00
3 Axle	5.00	3.25	3.25	3.25	5.00
4 Axle	6.00	4.25	4.25	4.25	6.00
5 Axle	7.00	5.25	5.25	5.25	7.00
6 Axle	8.00	6.25	6.25	6.25	8.00

* Applies only if and when the Airport Connector Road opens for traffic. If, however, the Airport Connector Road opens for traffic, but does not become a part of the Project as detailed in Section 9.01(c) of the Agreement, then the Operator's tolling facilities may not be located on the Airport Connector Road.

Provided that if for any given vehicle class, the toll amount that results from increasing the maximum toll for the period 1 January 2015 up to and including 31 December 2015 by the CPI is greater than the maximum toll level as of 1 January 2016 then the maximum toll level permitted for the period from 1 January 2016 up to and including 31 December 2016 shall be such greater amount.

(b) *Period Maximum toll level at 1 January 2017.*

The Maximum Tolls as at 1 January 2017 (MT^n) will be recalculated on that date in accordance with the following formula:

$$MT^n = MT^{n-1} \times PI$$

MT^{n-1}:	Maximum Toll as at 31 December 2016
PI :	Period Increase
n :	1 January 2017
n-1:	1 January 2016

where PI = the greater of $\frac{GDP^n}{GDP^{n-1}}$ or $\frac{CPI^n}{CPI^{n-1}}$ or 1.028

GDP:	Real Gross Domestic Product per Capita
CPI:	Consumer Price Index

(c) *Maximum toll level adjustments after 1 January 2017.*

The Maximum Tolls after 1 January 2017 will be recalculated not more often than quarterly, if an all electronic toll and traffic system is in place, or not more often than annually if cash tolling is in effect for any portion of the Project, upon the availability of new statistics (currently published monthly with respect to CPI and quarterly with respect to GDP) in accordance with the following formula where the:

$$MT^n = MT^{n-1} \times PI$$

MT: Maximum Toll
PI : Period Increase
n : Recalculation Date
n-1 : Last Recalculation Date

where PI = the greater of $\frac{GDP^n}{GDP^{n-1}}$ or $\frac{CPI^n}{CPI^{n-1}}$ or Minimum Rate

The rates to be used for GDP or CPI will be the last published rate prior to the relevant *n* and *n-1*

Minimum Rate $=1.028^{\wedge(\frac{Period}{365})}$

Period: Number of days between *n* and *n-1* last recalculation date.

(d) *Toll Level Requirements as Maximum Tolls.* Subject to Sections 4.02, 13.07(d) and 14.02(a) of the Agreement and Section 3 of this Exhibit F, the toll levels authorized pursuant to Sections 2(a), 2(b) and 2(c) of this Exhibit F shall constitute maximum toll levels. The Operator shall have the right to implement:

(i) tolls lower than the applicable maximum toll levels, including discount programs;

(ii) time-of-day variable rate tolling;

(iii) congestion-related tolling, including high-occupancy-toll lanes; or

(iv) any other method of charging tolls;

provided, however, that, subject to Sections 4.02, 13.07(d) and 14.02(a) of the Agreement and Section 3 of this Exhibit F, the Operator shall not charge a toll that exceeds the applicable maximum toll levels set forth in Sections 2(a), 2(b) and 2(c) of this Exhibit F.

Section 3. Discount – Electronic Toll Collection

For the period 1 January 2006 to 31 December 2006, a 25 cents per transaction discount will be granted, where the toll charge is collected electronically.

From 1 January 2007, the Operator has the right to discontinue this discount. If the Operator elects to discontinue the discount, Operator shall give the requisite notification in line with Section 1 of this Exhibit F.

Section 4. For purposes of this Exhibit F (Toll Rates), the following terms have the meanings set forth below:

(a) "**CPI**" means the "Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items" (not seasonally adjusted) of the U.S. Department of Labor, Bureau of Labor Statistics; provided, however, 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; provided, further, that if the CPI is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

(b) "**GDP**" means the U.S. Annual Per Capita Gross Domestic Product (in chained dollars) as published by the U.S. Department of Commerce Bureau of Economic Analysis in the National Income and Product Accounts Tables; provided that if such historical index is converted to a different standard reference base or is otherwise revised, the Operator will use the new standard reference base and adjust prior years if necessary; provided further that if such historical index is no longer available, such historical index as the Operator and the Department may mutually select that measures all goods and services in the economy per capita adjusted for real price change.

RESERVED

EXHIBIT H

OPERATIONS AND MAINTENANCE STANDARDS AND PERFORMANCE REQUIREMENTS€

I. GENERAL **2**
- A. Operator Responsibilities 2
- B. Plan Preparation and Submission Requirements 2
- C. Manuals, Standards and Procedures 3
- D. Permits 5
- E. Management and Administration 5
- F. Quarterly and Annual Reporting 6
- G. O&M Manual 8

II. Maintenance **8**
- A. Maintenance Plans 8
- B. Inspection 9
- C. Toll Facilities and Systems Upgrades 10

III. Operations **12**
- A. Operations Plans 12
- B. Incident Response 14
- C. Police Services and Snow and Ice Removal 15
- D. Safety Management and Traffic Control 15
- E. Interagency Coordination 16
- F. Road Closures 16
- G. Customer Service 16

IV. Transfer Requirements **17**
- A. Pre-Transfer Assessment 17
- A. Minimum Quality of Road at Transfer 18

V. Performance Standards **18**
- A. Operations and Maintenance 18
- B. Quality Assurance and Quality Control 18

I. GENERAL

This Exhibit further details the Operator's traffic management, ordinary maintenance and repair responsibilities and its Extraordinary Maintenance and Repair Work responsibilities.

A. Operator Responsibilities

Reference is made to the following provisions of the Comprehensive Agreement:

1. Exhibit B: Project Description;
2. Article 3: Establishment of Public-Private Transaction; and
3. Section 8.02: Operator Obligation to Manage and Operate.

Exhibit B lists the assets ("Assets") included in the Project that shall be included in the Operator's operations and maintenance work.

Article 3 identifies and establishes the basic roles and responsibilities of the Department and the Operator.

Section 8.02 lists the general operations and maintenance responsibilities of the Operator.

B. Plan Preparation and Submission Requirements

The Operator must prepare a number of Plans and Reports, which are subject to the Department's review, comment and approval in accordance with the terms of this Exhibit H.

The Plans include:

- Permit Processing Plan
- Management Plan
- Maintenance Plan
- Inspection Plan
- Incident Response Plan
- Traffic Control Plan
- Customer Service/Response Plan
- Public Information Plan
- Environmental Protection Plan
- Quality Assurance and Quality Control Plan
- Detour Plan
- O&M Manual

The Reports include:

- Quarterly Reports
- Annual Reports
- Pre-Transfer Assessment Report

The Operator shall submit each of the Plans and Reports to the Department by the relevant deadline specified in this Exhibit. Once it is received, the Department shall review and comment on each such document. The Operator shall modify all Plans and Reports submitted for approval based on the Department's comments and shall promptly submit revised Plans and Reports to the Department for its approval, which shall not be unreasonably withheld.

C. Manuals, Standards and Procedures

The Operator shall perform all of its responsibilities with respect to the Assets in accordance with the documents listed below, as they may be revised, amended or supplemented from time to time ("Manuals, Standards and Procedures"):

- Road and Bridge Specifications (2002), and Special Provisions and Copied Notes (As issued)
- VDOT Tree Trimming Policy
- Drainage Manual (2002)
- Road Design Manual, Volumes I and II (2005)
- Road and Bridge Standards - Volumes I and II (2001)
- Maintenance Policy Manual (January 1994)
- Virginia Operational Information System (VOIS) Procedure Manual (November 2005)
- Maintenance Rating Program Manual (MRP-2004)
- Land Use Permit Manual (Current edition)
- AASHTO Standard Specifications for Highway Bridges (1992) (with annual revisions)
- Virginia Modifications to the AASHTO Standard Specifications for Highway Bridges
- AASHTO Standard Specifications for Structural Support for Highway Signs, Luminaries and Traffic Signals
- Virginia Work Area Protection Manual (2003)
- Manual on Uniform Traffic Control Devices (November 2003)

The Operator shall manage all Assets within the Project Right of Way and perform its work such that it produces results that at least equal those achieved pursuant to the Manuals, Standards and Procedures. The Operator, however, is not required to comply with any prescriptive requirements in the Manuals, Standards and Procedures that are inconsistent with the Outcomes and

Performance Targets,[1] applicable Laws and Regulatory Approvals and the Project Agreements.

In addition to the Manuals, Standards and Procedures, the Operator should also review the following documents for informational purposes so that it will better understand what the Department considers to be Good Industry Practice[2] within the State:

- Construction Manual (January 2002)
- DBE Directory (Published monthly)
- SWAM (Small, Women Owned and Minority Vendors) Directory
- Roadside Design Guide (AASHTO-January 1996)
- Environmental Permit Manual (May 1996)
- Environmental Document Handbook (January 1994)
- Instructional and Informational Memoranda (Revised as needed)
- Public Involvement Policy and Procedures Manual (2005):
- VDOT Erosion and Sediment Control and Stormwater Management Program Manual (Revised as needed)
- Culvert Repair Practices Manual, Volumes I and II (FHWA-May 1995)
- Bridge Maintenance Training Manual (FHWA-May 1994)
- Asset Management "Best Practices" (October 2004)
- AASHTO Maintenance Manual (1999)
- Memorandum of Agreement (MOU) with the Department of Motor Vehicles (DMV)
- Hurricane Evacuation Plan (Hampton Roads and Richmond District)
- Asset Management System Data Dictionary (Current version)
- VDOT Enterprise Data Management Policy (DPM 1-22)
- Data Modeling Guidelines
- Geo-Spatial Data Standard (TIMSC Policy 01-02)
- VDOT Data Object Naming Standards
- VDOT Geospatial Data Technical Standard
- VDOT Standard Organizational Codes
- Global Positioning Systems (GPS) (COV Guide 94-3)
- Information Technology Security Guideline (COV ITRM Guideline SEC2001-01.1)
- Information Technology Security (COV Policy 90-1)
- Information Technology Security Standard (COV ITRM Standard SEC2001-01.1)
- Model Virginia Map Accuracy Standards (COV Guide 92-1)
- Spatial Data Transfer Standard (SDTS) (COV Std 94-1)

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[1] "Outcomes and Performance Targets" is defined in the ARCA and means the outcomes, performance targets, tolerances and criteria listed in Attachment A to Exhibit H.

[2] "Good Industry Practice" is defined in the ARCA and means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator 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.

- Material Manual of Instructions (February 2005)
- Right of Way Manual of Instructions - Volumes I and II (July 1999)
- 1994 Metric Road and Bridge Standards (Volumes I and II) (1994)
- Condition Evaluation of Bridges (1995)
- Structure and Bridge Instructional and Information Memos (Revised as needed)
- Pavement Markings Study Guide (1995)
- Traffic Engineering Division Memoranda (Revised as needed)

D. Permits

Reference is made to the following provisions of the Comprehensive Agreement:

1. Section 3.02: Parties to Transaction; Roles and Responsibilities; and
2. Section 7.06: Operator Obligation to Obtain Regulatory Approvals.

The Operator shall prepare and the Department shall review all permit applications in accordance with the Land Use Permit Manual (Current edition) and any other relevant Manuals, Standards and Procedures.

The Operator shall prepare and process all permits so that they may be timely submitted to the Department for its approval or denial. The Department shall approve or deny permits submitted by the Operator within 60 days of the date on which the Department receives a complete permit application. As part of its submission for each permit application, the Operator shall include an analysis and its reasoning for why that particular permit is required.

The Operator shall enter all permit-related data into a permit tracking system.

<u>Permit Processing Plan</u>

Delivery: No later than 60 days before the Transitional Period[3] is scheduled to end.

The Operator shall submit a Permit Processing Plan for Department review and approval that includes:

1. Details concerning the permitting process; and
2. Overview of how the Operator intends to comply with the various permitting requirements.

E. Management and Administration

[3] The period not to exceed six months following the Closing during which the Operator will temporarily delegate operations and maintenance responsibilities to the Department.

Reference is made to the following provisions of the Comprehensive Agreement:

1. Section 3.02: Parties to Transaction; Roles and Responsibilities;
2. Section 8.02 Operator Obligation to Manage and Operate;
3. Section 8.03 Temporary Delegation of Operations and Maintenance to the Department; Department Charges;
4. Section 8.04 The Operator;
5. Section 8.06: Department Access and Inspection;
6. Section 8.13: Police Services; Snow Removal;
7. Section 9.02: Project Enhancements by the Department;
8. Section 10.01: Right to Oversee Work;
9. Section 10.02: Compensation for Oversight of Project Enhancements; and
10. Exhibit A: Definitions.

At all times the Operator shall have designated and appropriate staff available to operate and maintain the Project. The staff shall have the authority and responsibilities set forth in the Comprehensive Agreement. In designating or replacing the Operator's onsite project manager, the Operator shall afford the Department an opportunity to meet with, and shall obtain the Department's approval of, the Persons it is considering for appointment to this position. If the Department determines, in its sole discretion, that the onsite project manager or any other Person employed by the Operator or the O&M Contractor is not performing the services properly and skillfully, or who is otherwise incompatible with a good working environment and the success of the Project, then the Department shall so inform the Operator of the reasons for its conclusion and the Operator shall use its best efforts, consistent with applicable Laws and Regulatory Approvals, to replace such Person.

Management Plan

Delivery: No later than 60 days before the Transitional Period is scheduled to end.

The Operator shall submit a Draft Management Plan for the Department's review that includes:

1. Staffing levels; and
2. An organizational chart depicting individual responsibilities and reporting assignments.

F. Quarterly and Annual Reporting

Reference is made to the following provisions of the Comprehensive Agreement:

1. Article 18: Records, Reports, Work Product And Intellectual Property;
2. Section 8.07: Extraordinary Maintenance and Repair Reserve; and

3. Section 8.08: Procedures Relating to Extraordinary Maintenance and Repair Work.

Quarterly Report

Not later than 15 days after the end of the relevant calendar quarter (*i.e.*, by April 15, July 15, October 15 and January 15), the Operator shall deliver to the Department a quarterly report ("Quarterly Report"). The report shall provide advice to the Department on any asset, operation or customer service event that requires:

1. A variation in budget expenditure for the quarter by an amount of more than ten percent;
2. The bringing forward of works and / or expenditure for works by more than a quarter; and
3. Departure from standard operating arrangements.

The report shall also provide:

4. Quarterly traffic records on the Project volumes by month;
5. Incident and emergency response logs;
6. Confirmation of completed work, and status of work scheduled to be completed in the quarter but not yet completed; and
7. Summary of any asset or operation that varies from the Outcomes and Performance Targets.

Annual Report

No later than the 30 days after the end of a calendar year, the Operator shall deliver to the Department an annual report ("Annual Report"). The form and substance of the Annual Report (which is in addition to the Annual Budget) shall be satisfactory to the Department, and shall cover the Operator's maintenance and operations activities and accomplishments during the prior year with respect to the Assets.

In addition to the information required for a Quarterly Report, the Annual Report shall include, at a minimum, the following information:

1. Data on new, delayed, pending, and completed Tasks[4], whether or not they appear on the Extraordinary Maintenance and Repair Work Schedule;
2. The current status of the Extraordinary Maintenance and Repair Reserve Fund; and

[4] "Task" is defined in the ARCA and means a component, item or discrete project related to Extraordinary Maintenance and Repair Work.

3. An expenditures report for Extraordinary Maintenance and Repair Work against each asset type.

The Department shall attach to the Annual Report the calculated Maintenance Rating Program (MRP) ratings for that year.

G. O&M Manual

Delivery: No later than 60 days before the Transitional Period is scheduled to end.

The Operator shall prepare and deliver to the Department for its review an operation, maintenance and repair manual ("O&M Manual"), which shall include:

1. A general overview and philosophy for how the Project should be operated and the Assets maintained and describing how the Operator will achieve the Outcomes and Performance Targets;
2. Manufacturer's specifications and existing maintenance procedures including provisions for Hazardous Substances handling;
3. The Life Cycle Maintenance Model;
4. All Plans identified in this Exhibit;
5. Any additional information deemed relevant by the Operator for the effective maintenance and operation of the Project.

II. Maintenance

Reference is made to the following provisions of the Comprehensive Agreement:

1. Section 8.02: Operator Obligation to Manage and Operate;
2. Section 8.07: Extraordinary Maintenance and Repair Reserve; and
3. Section 8.08: Procedures Relating to Extraordinary Maintenance and Repair Work.

The Operator is responsible for the installation and maintenance of regulatory, warning, informational and facility (airport, railroad, commuter parking, rest area, welcome center) signs. See the Manual on Uniform Traffic Control Devices (November 2003) for further details.

A. Maintenance Plans

The Operator shall submit, for Department review and approval, maintenance-related Plans according to the deadlines stated in the below description.

All Plans shall be incorporated into the O&M Manual.

Maintenance Plan

Delivery: No later than 30 days before the Transitional Period is scheduled to end officers of the Department, the Operator, an independent engineer selected by the Operator and approved by the Department and the O&M Contractor shall undertake a joint 'walk through' of the project to assess the current condition of the project taking into account recent reports, the requirements relating to relevant permits. Based on the observed conditions, the Operator shall prepare a Maintenance Plan.

The Maintenance Plan shall include, as a minimum, the following:

1. Outstanding works to be completed by the Department prior to the end of the Transition Period;
2. Actions required to enable the Operator to complete the preparation of the ongoing Maintenance Plan (e.g., supply of spare parts and manuals);
3. The Operator's expected program for routine maintenance activities separated by each asset; and
4. The Operator's preventive maintenance and minor repairs program for each asset (including repair times for each asset); and
5. The Operator's Life Cycle Maintenance Model and Extraordinary Maintenance and Repair Work Schedule for each asset.

Inspection Plan

Delivery: No later than 60 days before the Transitional Period is scheduled to end.

The Inspection Plan shall include, as a minimum, the following:

1. For each asset, the Operator's expected program for routine inspections to be performed by Operator staff; and
2. For each asset, the Operator's expected program for yearly Extraordinary Maintenance and Repair Work inspections to be performed by Operator staff.

The Operator shall at least annually inspect each Asset.

B. Inspection

1. Operator Inspections

Reference is made to the following provisions of the Comprehensive Agreement:

1. Section 8.02: Operator Obligation to Manage and Operate;

2. Section 8.08: Procedures Relating to Extraordinary Maintenance and Repair Work; and
3. Exhibit K: Life Cycle Maintenance Model.

The Operator shall be responsible for establishing, scheduling and performing routine maintenance inspections for all Assets. The purpose of these inspections is to identify and note defects, monitor known problems, and monitor the performance of new construction and recent repairs.

These routine maintenance activities shall be performed at a frequency that ensures uniform and consistent compliance with the Maintenance Rating Program ("MRP") criteria, the required maintenance rating level, Attachment A to this Exhibit and any other requirements of the Department.

The Operator shall biennially inspect all Project bridges and provide to the Department the information necessary to comply with the FHWA's National Bridge Inventory reporting requirements.

2. Department's Right to Inspect

Reference is made to the following provisions of the Comprehensive Agreement:

1. Section 3.02: Parties to Transaction; Roles and Responsibilities;
2. Section 8.06: Department Access and Inspection;
3. Section 10.01: Right to Oversee Work;
4. Section 10.02: Compensation for Oversight of Project Enhancements; and
5. Section 18.05: Reporting Requirements and Inspection and Audit Rights.

C. Toll Facilities and Systems Upgrades

The Operator shall upgrade, as required, the Toll Facilities and Systems equipment and subsystems at intervals within the Term in order to ensure:

- Customers are not charged more than the toll permitted under Exhibit F; and
- Outcomes and Performance Targets for the toll systems are met or exceeded, allowing for non-routine events, incidents and maintenance activities.

The Operator shall be responsible for the operation of the Toll Facilities and systems equipment including subsystems to ensure:

- That the reliability of the systems is always maintained at a high level; and
- That the risk of an extended systems failure that would have a significant impact on roadway operations is minimized.

Upgrade intervals are unique to each subsystem and shall be based on the industry standard life-cycle/life-span for each subsystem.

By performing system upgrades or in some cases complete system restorations within the Term it ensures that following the end of the Term, the Department shall take over systems that shall adhere to all the above mentioned criteria.

At the end of the Term the Operator shall replace all equipment or subsystems that do not meet the performance requirements. It is therefore the Operator's responsibility to provide the Department with equipment that is in good condition for delivery to the Department.

Upon the end of the Term, the Operator shall provide systems technology equal to or better than those installed in similar projects throughout the United States.

The Operator shall provide these technology upgrades and restorations to ensure that:

1. The building and toll systems equipment and subsystems to be delivered to the Department shall be in a working condition that provides for the achievement of the Outcomes and Performance Targets.

Reference is made to the following provisions of the Comprehensive Agreement:

1. Section 12.03: Traffic Management Activities; and
2. Section 12.04: ITS Activities.

The Operator shall adhere to the Department's ITS standards for any planned ITS initiatives.

The Operator shall be responsible for the installation, operation and maintenance of any ITS-related equipment installed based on its own initiatives.

III. Operations

A. Operations Plans

The Operator shall submit, for Department review and approval, operations-related Plans according to the delivery deadlines set forth below.

All such Plans shall be incorporated with and into the O&M Manual.

Incident Response Plan

Delivery: No later than 60 days before the Transitional Period is scheduled to end.

The Incident Response Plan shall include, as a minimum, the following:

1. Details on public/agency notifications;
2. Incident management procedures;
3. How the safety of motorists will be insured;
4. How information will be communicated to motorists during an incident;
5. How Hazardous Substances will be handled;
6. General procedures for coordination with the Department, the Smart Traffic Center, the State police and other emergency personnel with respect to emergency incidents and occurrences, including vehicle accidents, Hazardous Substance spills or releases, and adverse weather conditions such as rain, snow, ice, flooding, fog and hurricanes;
7. Incidents related to traffic control procedures;
8. Contents and recipients of incident reports;
9. Procedures for the establishment and maintenance of detour routes when needed for closure of the interstate and primary roads;
10. Procedures for emergency repairs and the removal of debris;
11. Procedures for a response to any force majeure event;
12. Procedures related to evacuation activities;
13. Procedures related to homeland security issues; and
14. a Detour Plan.

Traffic Control Plan

Delivery: No later than 60 days before any activity requiring road closure, diversions or restriction of traffic is scheduled.

Prior to commencing any activity, the appropriate undertaking of which will require restriction or diversion of traffic, including lane closures, road closures and detours, the Operator shall prepare, and furnish to the Department for its review and approval a Traffic Control Plan for all affected portions of the Project.

Customer Service/Response Plan

Delivery: No later than 60 days before the Transitional Period is scheduled to end. The Operator shall provide to the Department an updated copy before July 1st of each year during the Term.

This Plan shall include a discussion of how the Operator intends to inform the public about its customer service center, methods the public may use to contact the Operator, and the procedures to be used for resolving any customer complaints.

Public Information Plan

Delivery: No later than 60 days before the Transitional Period is scheduled to end.

The Department and the Operator shall jointly develop a Public Information Plan. The Operator shall coordinate in advance its media contacts with the Department to the extent reasonably practicable.

Environmental Protection Plan

Delivery: No later than 60 days before the Transitional Period is scheduled to end.

The Environmental Protection Plan shall include, at a minimum, the Operator's procedures for handling the following:

1. Protection of Natural Resources – Alternative evaluation must be performed if work will affect certain sensitive sites;
2. Noise Control – Operator should consult with the local public and mitigate noise impacts;
3. Water Quality – No decrease in surrounding water quality is allowed;
4. Air Quality; [redacted]
5. Dust Control – Dust must be controlled using best practices; and
6. Threatened and Endangered Species – An assessment must be made on the effects to these species during the Term. Plans should minimize the possibility of jeopardizing these species.

Quality Assurance and Quality Control Plan

Delivery: No later than 60 days before the Transitional Period is scheduled to end.

The Quality Assurance and Quality Control Plan shall include the Operator's approach to quality assurance and quality control, which includes the monitoring of its own performance and how it will demonstrate compliance with the Outcomes and Performance Targets during the Term.

B. Incident Response

Reference is made to the following provisions of the Comprehensive Agreement:

1. Section 8.13: Police Services; Snow Removal.

The Operator shall have incident response procedures in place to ensure proper response timeliness and ensure proper coordination of the handling of Hazardous Substances encountered within the Project Right of Way.

The Operator shall comply with all Laws, Regulatory Approvals, Project Agreements, and Department policy dealing with incidents, evacuation and the handling and disposal of Hazardous Substances.

The Operator shall immediately notify the Department's Smart Traffic Center (STC), Department Project Manager of all roadway closures and re-openings, or major incidents upon their occurrence.

The Operator shall enter the event into the Virginia Operational Information System ("VOIS") in accordance with the relevant procedures, unless otherwise instructed by the Department.

The Operator shall respond and deploy resources immediately upon notification, 24 hours per day, 7 days per week, including holidays, to any emergency occurring on the Project Right of Way.

The Operator shall arrive on-site, prepared to take necessary action with necessary manpower and typical emergency response equipment, within a maximum time of 20 minutes during work hours and 60 minutes after work hours from initial notification of the incident.

The Operator shall be responsible for all aspects of traffic control related to an incident, including, but not limited to, the coordination and assistance with responsible parties for the entire detour route off the Project Right of Way and onto other state or non-state roads.

Detour Plan

The Operator shall work with the Department to develop a Detour Plan and shall present this Plan no later than 60 days prior to the end of the Transitional Period.

The Operator shall immediately notify the Department's Smart Traffic Center (STC), Department Project Manager of all roadway closures and re-openings, or major incidents upon their occurrence.

The Operator shall enter the event into the Virginia Operational Information System ("VOIS") in accordance with the relevant procedures, unless otherwise instructed by the Department.

The Operator shall cooperate with the Department and may be required to furnish its forces (to include subcontractors) to supplement the Department in force majeure preparedness, evacuation plans and implementation of such plans, for the duration of the event.

C. Police Services and Snow and Ice Removal

Reference is made to the following provisions of the Comprehensive Agreement:

1. Section 8.13: Police Services; Snow Removal.

Snow removal performance measures are listed under the Inclement Weather section of Attachment A.

D. Safety Management and Traffic Control

Reference is made to the following provisions of the Comprehensive Agreement:

1. Section 12.03: Traffic Management Activities.

The Operator shall perform all work in accordance with the current Virginia Work Area Protection Manual and shall comply with the Department's lane closure restrictions/requirements. If possible, lane closures for planned work shall be performed at night.

Prior to commencing any activity, the appropriate undertaking of which will require restriction or diversion of traffic, including lane closures and detours, the Operator shall prepare, and furnish to the Department for its review and approval a Traffic Control Plan for all affected portions of the Project.

The Operator shall be responsible for the safety of motorists and the public during the performance of all work under the direct or indirect control of the Operator, its agents or employees or subcontractors.

Whenever the Operator's operations require it, the Operator shall cause to be furnished, erected and maintained such fences, temporary railing, barricades, lights, signs and other devices and take such other protective measures as are

necessary to prevent accidents, damage or injury to the public, and as required by the Traffic Control Plan and the Manuals, Standards and Procedures.

The Operator shall perform its operations in a manner that keeps the Project fully open to the public 24 hours per day, every day, subject only to closures permitted by the Traffic Control Plan, emergency closures and detours due to an incident or declared emergency. The Operator shall also comply with the Department's holiday and event travel restrictions.

E. Interagency Coordination

Reference is made to the following provisions of the Comprehensive Agreement:

1. Section 8.13: Police Services; Snow Removal;
2. Section 12.02: Coordination Regarding Certain Transportation Facilities; and
3. Section 12.03: Traffic Management Activities.

The Operator shall make every attempt to establish, maintain and provide coordination with agencies that are adjacent to the Project and provide assistance in on-going operations.

It shall be the Operator's sole responsibility to coordinate with such agencies so that the continual operation of the Project is not disrupted in any manner.

F. Road Closures

The Operator shall be entitled to close any part of the Project for the purpose of safety, scheduled or emergency maintenance and cleaning.

The Department may at any time demand that all or any part of the Project be closed or remain closed for the purpose of public safety or in the event of a local, state, or national emergency or if required by national security interests.

The Operator shall make certain that planned road closures for maintenance and construction result in minimal disruption to normal Project activity and that motorist safety is ensured.

The Operator shall make certain that road closures for an emergency event is immediately communicated to motorists, the Richmond Smart Traffic Center, and the Department's Project Manager.

G. Customer Service

The Operator shall maintain a customer service log, which shall detail any complaints or requests it may receive, and the disposition of the items contained in that log.

The Operator shall make the customer service log available to the Department for its review upon request.

The Operator shall contact the customer within 48 hours and resolve any customer service request within 2 weeks.

In some cases, the Department may direct the Operator to respond immediately due to the urgency or as otherwise may be in the best interests of the Department.

IV. Transfer Requirements

Reference is made to the following provisions of the Comprehensive Agreement:

1. Section 8.07: Extraordinary Maintenance and Repair Reserve;
2. Section 8.08: Procedures Relating to Extraordinary Maintenance and Repair Work;
3. Section 8.10: Obligation to Turn Over Project at End of Term;
4. Section 8.11: Transition Plan;
5. Section 8.12: Ethical Standards;
6. Section 16.03: Operator Actions Upon Termination; and
7. Section 16.04: Liability After Termination.

A. Pre-Transfer Assessment

The Operator shall arrange for an assessment to be completed by a qualified Person of all Project assets 15 years before the end of the Term (the "Pre-Transfer Assessment Report"). A "qualified Person" for purposes of this assessment means a Person with experience evaluating assets similar to the Assets and a reputation for accurately assessing their condition.

Within 60 days after the qualified Person complete this final asset assessment, the Operator shall submit for the Department's review and approval the Pre-Transfer Assessment Report, which should discuss the following topics:

1. The residual life of each Project asset;
2. The needed Extraordinary Maintenance and Repair Work for each Asset;
3. The status of the Extraordinary Maintenance and Repair Reserve Fund; and
4. Any remaining warranties applicable to each Asset.

A. Minimum Quality of Road at Transfer

The Operator shall ensure, at a minimum, that at the end of the Term all Project assets are in a condition that meets the applicable Outcomes and Performance Targets, and that all work scheduled to be performed in the final year of the Term under the then Five Year Assessment, as modified as provided below, is performed and completed.

One year before the end of the Term, or at such other time as the Department and Operator agree upon, they shall conduct a thorough inspection of the Project assets to determine their condition and work necessary to meet applicable Outcomes and Performance Targets at the end of the Term, and to verify the accuracy of the then Five-Year Assessment. Department and Operator shall prepare a list of the work identified as so necessary, and shall modify the Five-Year Assessment as indicated by the inspection findings.

Thirty days before the end of the Term, or at such other time as the Department and Operator agree upon, they shall conduct a final inspection of the Project assets to re-determine their condition and remaining work necessary, if any, to meet applicable Outcomes and Performance Targets at the end of the Term and to verify completion of the work scheduled in the final year of the Term under the then Five Year Assessment. If any Outcomes and Performance Target is not satisfied, or if any final year Five Year Assessment work is not completed, Operator shall perform or cause to be performed the work necessary to meet the Outcomes and Performance Targets and complete the final year Five Year Assessment Work before the end of the Term or as soon as possible after the end of the Term.

V. Performance Standards

A. Operations and Maintenance

The Operator, as a minimum, must achieve and maintain the Outcomes and Performance Targets.

The Department or its authorized representative and the Operator shall assess performance using the Department's MRP handbook as updated.

B. Quality Assurance and Quality Control

The Operator is required to implement a complete quality assurance and quality control program, which includes monitoring of its own performance and which demonstrates the Operator's compliance with the Outcomes and Performance Targets throughout the Term.

It shall be the Operator's responsibility to ensure all subcontractors and sub-consultants comply with the requirements of the quality assurance and quality control program.

ATTACHMENT A – PERFORMANCE MEASURES

Revised: December 15, 2005

DEFINITIONS **3**

ROADWAY **6**

Cross Pipes & Culverts 6

Ditches 8

Drainage and Subdrain Systems 8

Curb & Gutter 9

Sidewalks 9

Handicap / Sidewalk 10

Ramps 10

Grass and Legumes 10

Debris & Road Kill 10

Litter 10

Landscaping/ Wildflower/ Plant Bed/ Weeds 10

Bike Lane/ Bridal Path 12

Brush, Shrubs & Trees 12

Concrete Barriers/ Temporary Concrete Barriers 12

Sound Barriers 12

Slopes 12

Graffiti Removal 13

Fence 13

Signals 13

Guardrail 13

Impact Attenuators 13

Regulatory and Non-Regulatory Signs, and Overhead Signs 13

Roadway and Sign Lighting 14

Object Markers & Delineators 14

Glare Foils 14

Pavement Markings & Messages 14

Pavement Markers 14

Asphalt Paved Lanes 14

Concrete Paved Lanes 15

Paved Shoulders 16

Unpaved Shoulders 16

INCLEMENT WEATHER 17

BRIDGE 18

Pipes and Culverts 19

Retaining Walls 19

Channel and Slope Protection 19

Graffiti Removal 20

TOLL FACILITIES AND SYSTEMS 21

DEFINITIONS

Asset	Definition
Asphalt Paved Lane	An asphalt pavement consists of a mixture of heated asphalt cement and aggregate, commonly referred to as "hot mix". This hot mix is placed on a prepared base using a mechanical spreader or grader and compacted. These surfaces are commonly known as flexible pavements.
Bridge Deck	Bridge Deck includes and not limited to the bridge roadway surface, approach slabs, curbs, sidewalks, parapets, railing system, drainage system, lighting, expansion joints
Bridge Substructure	Bridge Substructure includes and not limited to abutments, backwalls, seats, piers, columns, wingwalls, weep holes
Bridge Superstructure	Bridge Superstructure includes and not limited to beams, girders, diaphragms, bracings, truss members, bearing devices
Brush Control	Brush control is the eradication or control of undesirable, naturalized woody vegetation using integrated vegetation management techniques.
Concrete Barrier	Concrete barriers are a type of traffic barrier. Traffic barriers are devices installed to improve the safety of vehicular traffic by redirecting errant vehicles or enabling the vehicle to come to rest or slow sufficiently to allow the driver to regain control. A concrete barrier is a concrete wall or modular retaining system. It is usually placed between lanes of opposing traffic.
Concrete Paved Lane	A concrete pavement surface is a road surface made of a mixture of Portland cement, aggregates and water and is commonly referred to as "rigid pavement".
Culvert	A culvert is a drainage structure designed to allow the passage of surface water under a Roadway, railway or roadside entrance.
Curb and Gutter	A curb and gutter is a concrete or asphalt drainage system constructed for the purpose of carrying surface water. Curbs and gutters are maintained to accommodate efficient drainage of pavement surface water accumulations and to protect side slopes from erosion resulting from unconstrained water spilling over shoulders and embankments.
Debris and Roadkill	Debris control involves the collection and removal of debris from the highway. Debris consists of, but is not limited to, items such as, rubbish, dead animals, batteries, tires, unlabelled containers and rocks.
Ditch	A ditch is an open drainage facility constructed to carry water to an outlet.

Asset	Definition
Drainage Systems	Drainage systems refers to catchbasins, drainage maintenance access points, ditch inlets and outfalls that are maintained to provide efficient underground drainage of pavement surface water and subdrain accumulations. Drainage systems protect side slopes by carrying water in urban areas or on narrow roads.
Fence	Fences are barriers constructed to control access to and from facilities.
Graffiti Removal	The removal of the illegal or unauthorized defacing of a building, wall or other edifice or object by painting or otherwise marking it with words, pictures or symbols.
Guardrail	A protective railing designed to prevent people or vehicles from falling into an open space.
Litter	Litter means any garbage, rubbish, trash, refuse, can, bottle, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, dead animal or identifiable abandoned material.
Overhead Signs	Overhead sign are those that extend partially or completely above traffic (i.e.: structure-mounted, cantilever, mono-tube and aluminum or steel truss).
Pavement Markers	Pavement markers are various types of recessed or surface-mounted reflective markers.
Pavement Markings	Pavement markings are symbols and lane lines applied to the roadway, which warn and guide motorists and enhance the movement of traffic.
Paved Shoulders	Shoulders give lateral support to the traveled portion of the roadway, allow run-off of surface water and provide an area for traffic to pull off the traveled portion. A paved shoulder consists of concrete, asphalt or surface treatment.
Regulatory and Non-regulatory Signs	Signs are devices that inform the motoring public of traffic regulations, roadway characteristics, roadway hazards and provide directional information.
Retaining Walls	A wall built to keep a bank of earth in place.
Roadway and Sign Lighting	Roadway and sign lighting includes conventional roadway lighting, mast lighting and sign lighting.
Sidewalk	That portion of a highway, road or street specifically constructed for the use of pedestrians on the outside edge of the vehicular travel way.

Asset Type	Definition
	Sidewalks are typically, but not always, curb-separated from the roadway and made of concrete, brick, asphalt or another hard surface materials.
Slopes	An elevated geological formation.
Sound Barrier	A solid masonry wall built between the freeway and adjacent businesses or residences designed to reduce noise impacts.
Subdrain Systems	Subdrain systems refers to perforated pipes placed in the sub-grade adjacent to or underneath the pavement edge to intercept and collect subgrade water. This water is then discharged into side ditches or other drainage structures.
Tree and Shrub Maintenance	Tree and shrub maintenance consists of various activities required to keep planted trees and shrubs healthy.
Unpaved Shoulders	Shoulders give lateral support to the traveled portion of the roadway, accommodate run-off of surface water, and provide an area for traffic to pull off the traveled portion. An unpaved, gravel shoulder is constructed with compacted granular material.

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
			ROADWAY	
Cross Pipes & Culverts	Open Drains No Erosion	95	Debris and/or other material which is restricting water flow in a culvert shall be removed within 120 days. All maintenance and repair work shall be done within 30 days unless otherwise noted. The Contractor shall provide maintenance for the different types of culverts as follows: 1. Concrete Culverts a) The loss or displacement of hand-laid and grouted rip-rap shall be repaired; b) Scouring around the footings or any undermining of concrete aprons or cut-offs shall be repaired; c) The condition where the stream bed at a box-culvert (open-footing construction) is found to be lower than the bottom of the culvert (footing) shall be repaired; d) Washouts or erosion of culvert backfill, which may damage the culvert causing settlement or cracking, shall be repaired; e) Exposed reinforcing steel shall be repaired; f) Visible cracks and other evidence of deterioration of the concrete shall be repaired; g) Broken or damaged bars or grids, which have been installed to prevent entry by unauthorized personnel, shall be replaced. Culvert inlets with bars and grids installed shall be inspected monthly and after severe storms to ensure that debris does not accumulate and cause blockage; and h) Scouring at inlets or outlets shall be repaired.	EA

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
			ROADWAY	
			2. Metal Culverts/Corrugated Steel Pipe a) Deformed ends preventing the free flow of drainage shall be repaired; b) The loss or displacement of hand-laid and grouted rip-rap shall be repaired; c) Headwall movement away from the culvert shall be repaired; d) Erosion under or around metal culverts and any change in the shape of culverts over 27 inches in diameter shall be repaired; e) Scouring at inlets, outlets or around footings shall be repaired; f) Signs of pipe uplift at inlet or outlet ends shall be repaired; and g) Culvert corrosion shall be repaired. 3. Plastic Culverts a) The loss or displacement of hand-laid or grouted rip-rap shall be repaired; b) Erosion of culvert backfill, which may damage the culvert and cause settlement, shall be repaired; c) Signs of pipe ends that are uplifting shall be repaired; and d) Deformed ends preventing the free flow of drainage shall be repaired.	

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
			ROADWAY	
Ditches	Clean	90	The Contractor shall comply with the following: 1. Obstructions: All non-planned obstructions that are stopping, rerouting or reducing the free flow of water and may cause flooding shall be repaired within 30 days. 2. Ditch Erosion: a) Damage to ditch lining shall be repaired within 60 days. b) Eroded or damaged ditch side-slopes, back-slopes and slope protection shall be repaired within 60 days.	LFT
Drainage and Subdrain Systems	Functional	90	All maintenance and repair work shall be done within 60 days unless otherwise noted. The Contractor shall provide the following: 1. Cleaning and Obstructions All debris shall be removed from the maintenance access points, catchbasins, ditch inlets and outfalls such that the sump shall never be filled to capacity with debris and/or other material. If the water flow appears to be obstructed, the connecting pipes shall be inspected and impediments removed. 2. Structure a) All defects in concrete work, all ladder rungs that are broken, missing or badly rusted, and bricking that is crumbling or broken shall be repaired; b) Pipe ends that have been crushed shall be repaired; and c) All missing frames or grates shall be replaced within 24 hours. All damaged frames and grates shall be replaced within 30 days. 3. Settlement a) Depressions and heaving around catchbasins and maintenance access	EA

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
			ROADWAY	
			points shall be repaired; and b) Depressions along the subdrain alignment, which may indicate a failure of the pipe, shall be repaired. 4. Erosion a) Undermining of the sewer outfall structure or bank erosion of the outfall channel shall be repaired; and b) Ditch or stream outfall discharge erosion shall repaired. Erosion repairs and obstruction removal at the stream outfall and ditch, that are reducing the flow capacity, shall be addressed and repaired.	
Curb & Gutter	In-line	95	All maintenance and repair work shall be done within 60 days unless otherwise noted. The Contractor shall ensure the following: 1. Curb and Gutter: Gaps of two inches or wider between curb and gutter and pavement surface shall be repaired. Obstructions, which could impede proper drainage, shall be removed as detected. 2. Erosion: Shoulder and embankment areas behind the curb and gutter shall be inspected for erosion and restored to their original profiles. 3. Settlement: Settlement around maintenance access points, catchbasins and structure approaches shall be repaired. 4. Vegetation or Debris: Vegetation or Debris impeding drainage shall be removed as detected.	LFT
Sidewalks	Structurally safe/sound	90	The Contractor shall maintain clean and safe functional sidewalks with minimal obstruction at all times. Sidewalks shall have less than two inches undermining with no unsealed cracks greater than 0.5 inch and no misalignment greater than 0.5 inch.	LFT

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
			ROADWAY	
			Maintenance and repair work shall be done within 60 days.	
Handicap / Sidewalk **Ramps**	Structurally safe/sound	90	The Contractor shall maintain clean and safe functional handicap/sidewalk ramps with minimal obstruction at all times. There shall be less than two inches undermining with no unsealed cracks greater than 0.5 inch, and no misalignment greater than 0.5 inch. Maintenance and repair work shall be done within 30 days.	EA
Grass and Legumes	Healthy growing Neat appearance Acceptable coverage and erosion control.	90	The Department approves the following grasses and legumes: Fescue, Bermuda, Crown Vetch and Lespedeza. The Contractor shall ensure that the height does not exceed 12 inches. The mow height shall not be less than two to six inches. All grass shall be neatly trimmed around fixed objects. There shall be less than 10% bare ground. Grass impeding drainage or contributing to erosion by destroying desirable groundcovers shall be trimmed accordingly.	ACRE
Debris & Road Kill	Roadway free of obstruction.	100	The Contractor shall respond immediately upon detection. Road kill and debris shall be removed promptly from the right-of-way and properly disposed. The Contractor shall ensure that: Items within the road that may have an impact on public health and safety shall be addressed immediately upon notification.	EA
Litter	Neat Attractive	90	The Contractor shall ensure that the roadside appears neat and clean. The Contractor shall ensure that there is no more than 10 pieces of litter per 0.1-mile section and no more than six cubic feet per acre of total litter accumulation. Illegal dumping shall be reported immediately. Litter shall be legally disposed of in accordance with federal, state, and city waste disposal laws and ordinances. Areas of excessive litter, which exceed the above numbers shall be removed within 48 hours.	ACRE
Landscaping/ Wildflower/ Plant Bed/ Weeds	Neat Attractive	90	The Contractor shall maintain a neat overall landscape appearance. Ornamentals and shrubs shall be pruned for optimum aesthetics and plant health. Plant beds shall be regularly mulched and weed free, at all times. Wildflowers shall be planted and managed to meet or exceed the Department's usual practice. Weeds shall be controlled before they obscure regulatory signs. Noxious weeds identified posing a negative economic impact to the horticultural or agricultural use of adjacent lands shall be controlled within 14 days. Weeds impeding	ACRE

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
			ROADWAY	
			drainage or contributing to erosion by destroying desirable groundcovers shall be removed within 30 days.	

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
			ROADWAY	
Bike Lane/ Bridal Path	Neat Attractive	90	The Contractor shall maintain a neat bike lane/bridal path at all times.	LFT
Brush, Shrubs & Trees	Unobstructed sight distance & vertical clearance.	95	The Contractor shall ensure that brush and trees do not obstruct signs and sight distance. There shall be a vertical clearance of 20 feet over roadway and shoulder, and seven feet over sidewalks. There shall be no dead trees/shrubs, or leaning trees that present a hazard, or weed/invasive trees (e.g. Ailanthus, Mimosa, etc.). Brush impeding drainage or contributing to erosion by destroying desirable groundcovers shall be removed within 30 days.	ACRE
Concrete Barriers/ Temporary Concrete Barriers	Structurally safe/sound	95	The Contractor shall ensure that all concrete barriers are clean and free of vegetation at all times Concrete defects such as cracks and missing concrete, that affect the integrity of the barrier wall shall be addressed within 24 hours of detection and permanent repairs shall be scheduled within 7 days. Other concrete defects that do not affect integrity such as spalling, scaling and cracking shall be repaired within 120 days or as weather permits.	EA
Sound Barriers	Functional	95	The Contractor shall ensure that all sound barriers are free of damaging vegetation at all times. Any damage to the structural integrity or stability shall be addressed within 24 hours and scheduled for repairs within 7 days. All non-structural damage shall be repaired within 45 days or as weather permits.	LFT
Slopes	Stable No erosion	95	The Contractor shall maintain the slopes in general conformance to the original graded cross-sections. There shall be no erosion showing a pattern that will endanger the stability of the slope. For slide areas, which develop and infringe upon the roadway, shoulder area and/or ditch area, the Contractor shall provide temporary traffic control and maintain ditch drainage. Slide areas shall be rectified within 120 days or as weather permits.	LFT

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
			ROADWAY	
Graffiti Removal	None present	95	The Contractor shall remove graffiti within 7 days of detection from all roadway surfaces, included but not limited to concrete barriers, temporary concrete barriers and sound barriers.	LFT
Fence	Limited access present. Structurally sound.	90	The Contractor shall maintain all existing fence intact and functional as designed and ensure that no greater than 10% is damaged as to allow access. There shall be no present or leaning vegetation on the fence. Where sections of farm or security fence are damaged and pedestrians, livestock and unauthorized vehicles may access the right of way, temporary repairs shall be made immediately. Where the fence is privately owned, the owner shall be responsible for the cost of the repairs.	LFT
~~**Signals**~~	~~Operational~~ ~~Unobstructed~~ ~~Present~~	~~100~~	~~The Contractor shall repair or replace signal items within one hour of detection.~~	~~EA~~
Guardrail	Strong Undamaged Repairs, per current NCHRP Standards	100	The Contractor shall respond immediately upon notification to all failures due to incidents, accidents, etc., which includes site mitigation and repairs. There shall be no dents that decrease structural integrity. Badly damaged guardrail shall be repaired/replaced within two days following detection. Damaged but functional guardrail shall be repaired/replaced within seven days following detection. The Contractor shall ensure that all guardrail shall be generally maintained and functional.	LFT
Impact Attenuators	Present Operational with Only Non-Functional Damage Properly Aligned	100	The Contractor shall ensure properly maintained impact attenuators that are undamaged with no missing parts. The Contractor shall respond immediately to all failures due to incidents, accidents, etc., which includes site mitigation/other repairs. The Contractor shall repair deficiencies in impact attenuators and/ or replace damaged impact attenuators within 7 days of detection. Any time impact attenuators are replaced, they shall be replaced with devices meeting the current highway standards.	EACH
Regulatory and Non-Regulatory Signs, and Overhead Signs	Present Functional Sound Clear & Clean Good Reflectivity Visible (coveys message and function as intended by day and night)	90	The Contractor shall respond immediately to all failures due to incidents, accidents, etc., which includes site mitigation/other repairs. Badly damaged regulatory and safety signs shall be repaired/replaced within one day following detection. All other damaged but functional signs shall be repaired/replaced within five days following detection. The Contractor shall replace broken/damaged posts and posts that lean more than one inch per foot within 5 days.	EACH

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
			ROADWAY	
Roadway and Sign Lighting	Fully Operational	90	The Contractor shall ensure that 90% of all lighting is working at all times. There shall be no more than two consecutive lights out for conventional roadway lighting; no more than two bulbs per structure not working for high mast lighting; no more than one luminarie per sign not working for sign lighting. All access panels shall be in place at all times. The Contractor shall be responsible for lighting systems originating at service entrances. Replacements and/or repairs to roadway and sign lighting, including burnt-out bulbs, shall be made within 7 days, safety issues will be mitigated immediately.	EACH
				EA
Object Markers & Delineators	Present Reflective Functional Visible	90	The Contractor shall ensure proper mounting and correct positioning. There shall be no sight distance/ sign obstructions. There shall be less than 10% of all object markers and delineators damaged. Deficiencies in markers and delineators indicating hazards (e.g. bridge rail) shall be repaired within 7 days of detection. Any other deficiencies shall be repaired within 30 days of detection.	EA
Glare Foils	Present Reflective Functional	90	There shall be no sight distance or sign obstructions. There shall be less than 10% of all glare foils damaged. Maintenance and repair work shall be done within 30 days.	EA
Pavement Markings & Messages	Present Reflective Visible	90	The Contractor shall ensure clear and legible pavement markings at 120 feet. The Contractor shall repair or replace markings when they have deteriorated to the point of being illegible or when any part of the message cannot be easily read. Deficiencies in pavement markings shall be repaired within 45 days of detection.	LFT
Pavement Markers	Present Reflective Visible	90	The Contractor shall repair or replace deficient pavement markers within 30 days of detection.	EA
Asphalt Paved Lanes	Safe Durable Smooth Comfort	95	The Contractor shall respond immediately to all incidental pavement failures (potholes, cracks, raveling, shoving, edge drop-offs, rutting, etc.) that are cause for safety concern, which includes permanent patch repairs and/or site mitigation. Potholes: Potholes shall not be greater than 0.5 square feet x one inch deep and shall be repaired within 30 days.	SFT

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
			ROADWAY	
			All other pavement failures, including but not limited to the following, shall be repaired within 120 days: Cracks: Unsealed cracks shall not be greater than 0.25 inches. Raveling: There shall be no continuous section of edge raveling four inches or wider exceeding 25 feet in length. Shoving: The shoved area shall not exceed a cumulative 25 feet. Edge Drop-offs: Edge drop-offs shall not be greater than two inches and less than four inches and more than 50 feet in length. Or edge drop-offs shall not be greater than four inches. Rutting: Rutted areas shall not be greater than one inch deep.	
Concrete Paved Lanes	Safe Durable Smooth Comfort	95	The Contractor shall respond immediately to all incidental concrete pavement failures (potholes, cracks, joint failures, etc.) that are cause for safety concern, which includes permanent patch repairs and/or site mitigation Potholes: Potholes shall not be greater than 0.5 square feet x one inch deep and shall be repaired within 30 days. All other pavement failures, including but not limited to the following, shall be repaired within 120 days: Cracks: Unsealed cracks shall not be larger than 0.25 inches. Joints:	SFT

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
			ROADWAY	
			Joints shall not exceed a differential of two inches vertically. Joints shall be cleaned as part of routine maintenance operations.	
Paved Shoulders	Safe Smooth	90	The Contractor shall respond immediately to all incidental pavement failures (potholes, cracks, etc.) that are cause for safety concern, permanent patch repairs or site mitigation shall be done within 60 days. Asphalt Paved Shoulders Pothole: Potholes shall not be greater than 0.5 square feet x 1.5 inch deep. Cracks: No unsealed cracks larger than 0.25 inches. Rutting: Rutted areas shall not be greater than one inch deep. Raveling: No continuous section of edge raveling four inches or wider exceeds 50 feet in length. Concrete Paved Shoulders Pothole: Potholes shall not be greater than 0.5 square feet x 1.5 inch deep. Cracks: Unsealed cracks shall not be greater than 0.25 inches. Joints: Joints shall not be wider than 0.25 inches.	SFT
Unpaved Shoulders	Safe Smooth	90	The Contractor shall ensure that unpaved shoulders have less than 10% with an edge drop off greater than 1.5 inch (linear measure); less than 10% with a separation greater than 0.5 inch (linear measure); less than 10% of shoulder causes water to drain back into the pavement. Rocks greater than four inches in diameter on the surface of gravel shoulders shall be removed as detected. Repairs to remove ruts deeper than four inches shall be carried out within 14 days.	LFT

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
INCLEMENT WEATHER				
Frozen Inclement Weather Pavement Management	Open Free of frozen precipitation Safe	100	All pavement travel lanes, turn lanes, crossovers, and intersections shall be kept open and free of frozen precipitation so that traffic can proceed in a safe and orderly manner throughout the inclement weather occurrence.**1)** Frozen precipitation removal activities shall continue in full force from the onset of a snow event until such time as all pavement travel lanes are 100% free of frozen precipitation and any other frozen accumulations by no later than (6) six hours after the end of a winter weather event. **2)** All shoulders shall be plowed (pushed back) within twelve (12) hours of the cessation of falling precipitation.	EA

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
			BRIDGE	
Bridge Deck[1]	Safe Clean Functional Joints intact Minimal Spalls or Breakouts Drains Open Deck in Good Repair	90	The Contractor shall maintain a safe and functional bridge deck at all times. The Contractor shall perform all maintenance including but not limited to patching, joint cleaning and repair, sweeping, washing and cleaning. The Contractor shall clean and flush drainage system (drains, scuppers, trough, etc.) and ensure railings are intact, and bolts are tight.	SFT
Bridge Superstructure[2]	Safe Clean Functional	90	The Contractor shall maintain a safe and functional bridge superstructure at all times. The Contractor shall perform all maintenance including but not limited to washing, clearing of all obstructions, painting of metal surfaces, patching and repairing, where required. Bridge components shall be free of damaging vegetation. The Contractor shall clean and lubricate bearing assemblies, and clean and wash the end five feet of beams and girders. The Contractor shall perform additional inspection if required under the following conditions: a) accident or vehicle collision with structure; b) unusual/severe weather conditions or natural disasters; c) where a structural integrity or safety issue is suspected; and/or d) flooding/ice jams.	SFT

[1] Bridge Deck includes and not limited to the bridge roadway surface, approach slabs, curbs, sidewalks, parapets, railing system, drainage system, lighting, expansion joints

[2] Bridge Superstructure includes and not limited to beams, girders, diaphragms, bracings, truss members, bearing devices

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
			BRIDGE	
Bridge Substructure[3]	Safe Clean Functional	90	The Contractor shall maintain a safe and functional bridge substructure at all times. The Contractor shall perform all maintenance including but not limited to washing, clearing of all obstructions, painting of metal surfaces, patching and repairing, where required. Bridge components shall be free of damaging vegetation. The Contractor shall clean and wash horizontal surfaces to include bridge seats and bearing areas, and maintain proper function of weep holes.	SFT
Pipes and Culverts	Safe Clean Functional Stable	90	Debris and/or other material which is restricting water flow in a culvert shall be removed within 120 days. All maintenance and repair work shall be done within 30 days unless otherwise noted. . The Contractor shall stabilize any erosion and scour at inlet and outlet ends; and shall ensure end walls/wing-walls are clear of vegetation and debris.	EA
Retaining Walls	Safe Clean Functional Stable	90	The Contractor shall ensure that all retaining walls are clean and free of vegetation at all times. The Contractor shall perform all maintenance including but not limited to patching, sealing cracks, cleaning and painting of metal components, maintaining proper function of weep holes, and removal of de-icing chemicals and winter abrasives. Any damage to the structural integrity or stability shall be addressed within 24 hours and scheduled for repairs within 7 days. All non-structural damage shall be repaired within 120 days or as weather permits.	LFT
Channel and Slope Protection	Safe Clean Functional Stable	90	The Contractor shall perform maintenance including but not limited to removal of channel drift, stabilization, erosion control, cutting, removing and disposing of vegetation, and brush and trees that are on, adjacent to, or under bridges. The Contractor shall maintain	LFT

[3] Bridge Substructure includes and not limited to abutments, backwalls, seats, piers, columns, wingwalls, weep holes

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
BRIDGE				
			bridge slope protection as designed. All channel and slope protection repair work shall be done within 120 days or as weather permits.	
Graffiti Removal	None present	95	The Contractor shall remove graffiti within 7 days of detection from all bridge surfaces.	LFT

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
TOLL FACILITIES AND SYSTEMS				
Buildings	Safe Clean Functional	100	Buildings shall include: 1. Toll plaza building exteriors and interiors and appurtenances; 2. Any storage facilities; 3. Equipment rooms; and 4. Toll plaza canopies. The Contractor shall perform building maintenance operations to extend the life and investment of the toll facilities. A qualified person shall do a detailed inspection within two days if: 1. A deficiency is found due to unusual/severe weather conditions or natural disasters; 2. A deficiency is found due to an accident or vehicle collision with structure; or 3. A structural integrity or safety issue is suspected. A qualified person is defined as a person with valid credentials relating to the structure or component. Repairs shall follow based on the recommendations of the qualified person. No deficiency shall remain for longer than two weeks.	EA
Building Systems	Inspected and Functional	100	The Contractor shall maintain and keep in constant operation all building systems / arrangements / apparatuses / installations including, but not limited to, the following: 1. HVAC system; 2. Plumbing; 3. Electrical systems; 4. Communications systems; 5. Fire suppression and precaution; 6. Medical prevention and attention; 7. Security systems; and 8. Emergency power supply systems. Any interruption of operation of the fixed functional equipment, for maintenance purposes, shall be properly scheduled.	EA

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
TOLL FACILITIES AND SYSTEMS				
			Any sudden interruption in the operation of the fixed functional equipment, due to damage, breakdown or malfunction, shall be restored within the period specified in the Operation and Maintenance Manual.	
Toll Collection Systems	Inspected and Functional	100	The Contractor, subject to maintenance or sudden interruptions (see below) shall maintain and keep in constant operation all toll collection related systems / arrangements / apparatuses / installations including, but not limited to, the following: 1. Toll collection equipment; 2. Toll booth and plaza lighting; 3. Toll plaza electronic signage; and 4. Toll violation and enforcement system. Any interruption of operation of the fixed functional equipment, for maintenance purposes, shall be properly scheduled. Any sudden interruption in the operation of the fixed functional equipment, due to damage, breakdown or malfunction, shall be restored within the period specified in the Operation and Maintenance Manual.	EA
	System accuracy for toll transaction creation and transmission	99.5		
	Vehicle Transponder identification and account association	99.5		
	Vehicle classification accuracy	99.5		
	Violation image accuracy	85		

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
TOLL FACILITIES AND SYSTEMS				
	Toll collection lane availability	99		
	Computer system availability	99.5		
Grassed Areas	Attractive, mowed, no bare ground	95	The Contractor shall ensure that all grass areas to be attractive, managed, uniform in height (not to exceed six inches). There shall be no bare ground areas larger than five square feet. There shall be no prohibited, invasive or noxious weeds present.	EA
Edging	No encroachment of vegetation or debris	95	The Contractor shall ensure the completion of sufficient edging and trimming so that there is no encroachment of vegetation or debris for more than two inches onto any curb or sidewalk located throughout each rest area. There shall be no deviation of soil or mulch above or below the top of the curb.	EA
Vegetation	Attractive, pruned	95	The Contractor shall maintain an overall appearance that is neat. Ornamentals and shrubs shall be pruned for optimum aesthetics. Plant beds shall be regularly mulched and weed free, at all times. Wildflowers shall be planted and managed to meet or exceed usual practice of the Department.	EA
Litter	Site free of litter	95	The Contractor shall maintain the site free of any visible litter, all litter shall be properly disposed.	EA
Trash Receptacles	Available, sufficient quantity	100	The Contractor shall ensure that all trash receptacles are available for use, all trash receptacles are clean, complete and secure, no overflowing trash receptacles, all dumpsters secured and out of sight. There shall be a sufficient number of trash receptacles on site to handle traffic volume.	EA
Fencing	Secure and unbroken	100	The Contractor shall ensure that all fencing along the facility right-of-way is free of any defect, and shall not contain any opening greater than two square feet. Any defective fencing shall be replaced within 30 days.	LFT
Flower Bed	Attractive, decorative	100	The Contractor shall ensure that annual installation and maintenance of flower beds meet	EA

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
TOLL FACILITIES AND SYSTEMS				
			or exceed existing design.	
Directional Signs	Present, functional, sound	100	The Contractor shall ensure that all directional, informational, safety and any other sign in the toll facility is properly installed, contain accurate information and be visible from a reasonable distance. Any defective sign shall be replaced within 30 days.	EA
Striping	Visible	95	The Contractor shall maintain all striping intact and all parking and access areas clearly marked. Any defect in the striping shall be corrected within 30 days, or as weather permits.	LFT
Curb	In-line	95	The Contractor shall maintain all curb in place and intact. All maintenance and repair work shall be done within 60 days unless otherwise noted.	LFT
Sidewalks	Structurally sound	90	The Contractor shall maintain clean and safe functional sidewalks with minimal obstruction at all times. Sidewalks shall have less than two inches undermining with no unsealed cracks greater than 0.5 inch and no misalignment greater than 0.5 inch. Maintenance and repair work shall be done within 60 days.	LFT
Roofs, gutters	Clear and good condition	100	All roofs and gutters shall be clear of debris and functional. Any leaks or defects shall be reported immediately and repairs made within 48 hours.	LFT
Fire Extinguishers	Inspected and functional	100	All required fire extinguishers shall be in place and inspected per regulation.	EA
Parking lot surface	Smooth and safe	90	The parking lot pavement shall be free of potholes and depressions greater than one square foot and deeper than two inches. All maintenance and repair work shall be done within 120 days unless otherwise noted.	LFT
Parking lot and ramp shoulders	Stable	90	The Contractor shall ensure that no shoulder buildup is greater than two inches. There shall be no shoulder drop-off greater than three inches. There shall be no ruts or washouts greater than six inches in depth.	LFT

PERFORMANCE MEASURES

ASSET	OUTCOME	PERFORMANCE TARGET (%)	TOLERANCE & CRITERIA	UNIT OF MEASURE
TOLL FACILITIES AND SYSTEMS				
			All maintenance and repair work shall be done within 30 days unless otherwise noted.	
Drainage	Drain, free of debris	90	The Contractor shall ensure drainage that is functioning with no obstruction to water flow. All grates shall be without defect. All maintenance and repair work shall be done within 60 days unless otherwise noted.	LFT
VOSH	Compliant	100	Toll facilities shall be fully compliant with all Virginia Occupational Safety and Health (VOSH) regulations. The Contractor shall be responsible for arranging annual inspection by the Department and for all corrective actions.	EA

Exhibit H: Asset Lifecycle Estimates

Reference No	Asset Element	Maintenance Element	Design Life (yrs)	Treatment
P-P-01	**Flexible Pavement**	Asphalt surface	15	Pavement Rehabilitation
P-P-02	**Rigid Pavement**	Asphalt surface	15	Pavement Rehabilitation
P-P-03	**Sealed Shoulders**	Sprayed Bitumen Seal	15	Pavement Rehabilitation
P- B-01	**Concrete Bridges**	Superstructure Substructure	50 50	Repairs as required Repairs as required Repaint
P - B-02	**Steel Bridges**	Superstructure Substructure	50 50	Repairs as required Repairs as required
P - B-03	**Bridge Joints**	Expansion Joints	20	Repairs as required
P - B-04	**Bridge Bearings**	Elastomeric Bearings Metal Bearings	50 50	Routine Maintenance Item Routine Maintenance Item
P - B-05	**Bridge Railings**	Metal / Concrete Railings	40	Routine Maintenance Item
P - B-06	**Scuppers /Deck Drainage System**	Bridge Drains	40	Routine Maintenance Item
P - B-07	**Underpasses Stock / Fauna/Peds**	Walls / Drainage / Ceilings	40	Repaint
P - B-08	**Bridge Waterways**	Piers/ Abuttments	100	Routine Maintenance Item
P -T-01	**Longitudinal Marking**	Thermoplastic Waterborne	6 4	Renew Renew

Exhibit H: Asset Lifecycle Estimates

Reference No.	Asset Element	Maintenance Element	Design Life (yrs)	Treatment
P - T-02	**Transverse Marking**	Thermoplastic Waterborne	4 4	Renew Renew
P T-03	**Pavement Symbols**	Thermoplastic Waterborne	4 4	Renew Renew
P -T-04	**Raised Pavement Markers**	Reflective / non-reflective	6	Replace
P T-05	**Warning Signs**	Curves,intersection, clearences etc.	12	Replace
P -T-06	**Regulatory Signs**	Stop / speed / crossing etc	12	Replace
P -T-07/8	**Major / Minor Guide Signs**	Directional / route / feature etc	12	Replace
P T-09	**Non-Pavement Delineators**	Guide Posts / safety fencing	6	Replace
P - T-10	**Guard Barriers**	Guardrail/ wire barrier / New Jersey	40	Replace
P - T-11	**Safety Fence / Terminals**	BCT / EAB's	20	Repair as necessary Replace
P - T-12	**Street Lighting**	Standard Poles Non standard Poles Luminaries - Type 1 Luminaries - Type 2 Luminaries - Type 3 Lighting over help phone	20 20 4.5 4.5 4.5 2.28	Replace Replace Routine Maintenance Item Routine Maintenance Item Routine Maintenance Item Routine Maintenance Item
P - T-13	**Traffic Devices**	Traffic Domes / bollards / grab rails	40	Renew/Replace

Exhibit H: Asset Lifecycle Estimates

Reference No.	Asset Element	Maintenance Element	Design Life (yrs)	Treatment
P - R-01	**Retaining Walls**	Reinforced concrete / gabion, crib etc.	100	Repair as necessary
P - R-02	**Batters**	Unprotected / shotcrete / jute etc.	100	Routine Maintenance Item
P - R-03	**Kerb and Gutter**	Footpath / median	40	Routine Maintenance Item
P - R-04	**Drains, Channels or Swales**	Lined / Unlined	40	Routine Maintenance Item
P - R-05	**Drainage Pits**	Kerb / median / batter / table	40	Routine Maintenance Item
P - R-06	**Underground Drainage**	Culvert / drainage line / GPT	100	Routine Maintenance Item
P - R-07	**Sedimentation Basins**	Temporary / Permanent	40	Mechanical Cleaning
P - R-08	**Sub-surface Drains**		100	Routine Maintenance Item
P -R-09	**Noise Barriers**	Concrete / Earth / Timber	40	None
P - R10	**Boundary Fencing / Gates**	Manproof / timber / wire / metal	20	Replace
P - R-11	**Median Areas**	Paved / grassed / landscaped	40	Routine Maintenance Item
P - R-12	**Roadside and Rest Areas**	Grassed / Landscaped	40	None
P - R-13	**Travel Lanes**			
P - M-01	**Help Phone (ramps)** **Help Phone (Open Road)**	Phones Phones	25 25	None None

Exhibit H: Asset Lifecycle Estimates

Reference No.	Asset Element	Maintenance Element	Design Life (yrs)	Treatment
P - M-02	**Variable Message Signs**	Variable Message Signs Enhanced Message Sign	10	None None
	Closed Circuit TV (open road) **Trivision**	CCTV Trivision (CMS)	7 15	None None
P - M-04	**Incident Detection System**	AID Cameras	7	None
P - M-06	**Trip Information Sign**	Traveller Information Signs	17	None
P - M-07	**Not Used**			
P - M-08	**Moveable Physical Barrier**	Portal Barriers	15	None
P -M-09	**Ramp Control Sign**	Ramp Control Signs	17	None
P - M-10	**Not Used**			
P - M-11	**Emergency Median Gate Open**	EMGO	15	None
P - M-12	**Lane Use Signs** **Variable Speed Signs (open-road)** **Cabinets**	Lane Use Signal Variable Speed Signs	17 17 20	None None None
P - M-14	**Not Used**			
P - C-02	**TMCS**	PMCS/TMCS Control Room HW & SW		Replace
	Toll Collection Equipment	Technical Shelter Electronics	7	Refurbish

Exhibit H: Asset Lifecycle Estimates

Reference No	Asset Element	Maintenance Element	Design Life (Yrs)	Treatment
		Roadside Equipment Maintenance Major Ganrty Equipment	15 15	Routine Maintenance Refurbish
	General	Miscellaneous Reimbursable Spares Inventory		

Exhibit B
to Asset Purchase Agreement

Exhibit I
to Amended and Restated Comprehensive Agreement

CONSENT TO ASSIGNMENT

This CONSENT TO ASSIGNMENT (this "Consent"), entered into and effective June 29, 2006, is executed by the Virginia Department of Transportation, a department of the Commonwealth of Virginia (the "Department"), for the benefit of Transurban (895) LLC, a Delaware limited liability company (the "Assignee").

RECITALS

A. The Department and Pocahontas Parkway Association, a non-stock, not-for-profit corporation (as assignee of FD/MK Limited Liability Company ("FD/MK") pursuant to that certain Project Financing, Assignment and Assumption Agreement dated June 3, 1998 and hereinafter, the "Association") are parties to that certain Comprehensive Agreement to Develop and Operate Route 895 Connector, dated June 3, 1998 (the "Original Comprehensive Agreement"), pursuant to which the limited access tollway known as the Route 895 Connector located in Richmond, Virginia (and informally known as the Pocahontas Parkway) was developed and constructed and is being managed and operated (the "Project"). Each capitalized term used and not otherwise defined herein shall have the meanings assigned to such term in the Original Comprehensive Agreement.

B. In connection with the development, operation and management of the Project, the Department has also entered into the E-ZPass Electronic Toll Collection Agreement, dated as of August 31, 2005, including the Reciprocity Agreement attached thereto (the "ETC Agreement").

C. The Association and the Assignee have entered into an Asset Purchase Agreement, dated as of June 21, 2006 (the "Asset Purchase Agreement"), pursuant to which the Association intends to transfer, convey, sell and assign to the Assignee, and the Assignee intends to purchase, acquire and assume, all of the assets, properties and rights to manage, operate, maintain and collect tolls on the Project, and certain liabilities relating thereto, on the terms and subject to the conditions set forth in the Asset Purchase Agreement (such acquisition and other transactions contemplated by the Asset Purchase Agreement being referred to herein collectively as the "Transactions").

D. In order to consummate the Transactions on the Closing Date (as defined in the Asset Purchase Agreement), the Association will be required to assign all of its right, title and interest as Operator in, to and under the Original Comprehensive Agreement to the Assignee. The Association may not do so, however, without the Department's prior written consent as required by Section 20.1(a) of the Original Comprehensive Agreement.

E. On the Closing Date, the Department is delivering this Consent to enable the Association to assign its right, title and interest as Operator in, to and under the Original Comprehensive Agreement and the ETC Agreement to the Assignee and to address the other matters as set forth hereunder, because the Department is satisfied that the Transactions provide the following benefits to the Department:

(1) the purchase price paid by the Assignee to the Association provides sufficient funds to repay the SIB Bond, including accrued interest thereon;

(2) the Association is repaying to the Department all interest and expenses owed to the Department for certain operation and maintenance costs incurred by the Department since the Project opened to traffic;

(3) the Assignee is entering into an amendment and restatement of the Original Comprehensive Agreement (the "Amended and Restated Comprehensive Agreement") in the form attached hereto as Appendix A, which, among other things, relieves the Department of its long-term operations and maintenance responsibilities under Section 8.3 of the Original Comprehensive Agreement; and

(4) the Assignee is reimbursing the Department on the Closing Date for its out-of-pocket expenses incurred in connection with the Transaction.

NOW, THEREFORE, in consideration of the foregoing recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Department, intending to be legally bound, hereby agrees as follows:

1. Consent to Assignment. In accordance with Section 20.1(a) of the Original Comprehensive Agreement, the Department hereby irrevocably consents to the assignment by the Association of its right, title and interest as Operator in, to and under each of the Original Comprehensive Agreement and the ETC Agreement to the Assignee; provided that none of FD/MK's duties, obligations and liabilities arising under the Design-Build Contract (as defined in the Original Comprehensive Agreement) or its indemnity obligations pursuant to the Original Comprehensive Agreement, shall be assigned to the Assignee. The Department hereby acknowledges and raises no objections to the consummation of the Transactions contemplated by the Asset Purchase Agreement and the other Acquisition Documents (as defined in the Asset Purchase Agreement).

2. Assignment by the Department.

(a) The Department hereby irrevocably and absolutely assigns to the Assignee all of the Department's rights under the Design-Build Contract, including warranties provided by FD/MK and by any subcontractor or vendor required to provide warranties thereunder.

(b) Pursuant to Section 18.04(e) of the Amended and Restated Comprehensive Agreement, the Department hereby (x) grants to the Assignee a nonexclusive, nontransferable,

irrevocable, fully paid-up license to use any Proprietary Intellectual Property (as defined in the Amended and Restated Comprehensive Agreement) of the Department that has been developed for the Project, solely in connection with the operation, maintenance and other incidental activities of the Project, and (y) assigns in favor of the Assignee the Department's rights in respect of any license by the Department's software suppliers for the use of any of their respective intellectual property for the Project, and the Department's rights under any escrow for source code and related documentation relating to such intellectual property, including, without limitation, its rights and interest in that certain Source Code Escrow Agreement, dated May 4, 2004, among the Department, InTranS Group Inc., FD/MK and SunTrust Bank, as escrow agent. The assignment provided in paragraph 2(b)(y) is revocable by the Department upon the termination of the Amended and Restated Comprehensive Agreement as provided therein (including by reason of any Operator Default under Section 17.01 of the Amended and Restated Comprehensive Agreement) or upon any earlier repossession of the Project in accordance with the terms of the ARCA.

3. Status of Project Agreements on Closing Date. To the best of its knowledge and belief, the Department certifies as of the date hereof that:

(a) A true, correct and complete copy of the Original Comprehensive Agreement is attached hereto as Appendix B, which copy of the Original Comprehensive Agreement represents the entire agreement between the Department and Association as to the matters referred to therein. The Original Comprehensive Agreement has not been rescinded or terminated and is in full force and effect, and there have been no amendments or modifications to the Original Comprehensive Agreement other than as provided for in the Directive Letters described in the following clause (b) and as contemplated by the Amended and Restated Comprehensive Agreement.

(b) True, correct and complete copies of the following directive letters issued pursuant to the Original Comprehensive Agreement are attached hereto as Appendix C:

(i) a Directive Letter – Discretionary Directed Change, dated November 28, 2000, regarding the Route 895/I-295 ramps,

(ii) a Directive Letter dated November 28, 2000 regarding the Airport Connector preliminary engineering,

(iii) a Directive Letter – Discretionary Directed Change, dated November 12, 2002, regarding the Airport Connector and,

(iv) a Directive Letter – Discretionary Directed Change, dated April 22, 2003, regarding Britton Road over Route 895 (collectively, the "Directive Letters").

Except for such Directive Letters, no other directive letters or other amendments, supplements or modifications to the Original Comprehensive Agreement have been executed.

(c) A true, correct and complete copy of the ETC Agreement attached hereto as Appendix D represents the entire agreement between the Department and the Association as to the matters referred to therein. The ETC Agreement has not been rescinded or terminated and is in full force and effect, and there have been no amendments or modifications to the ETC Agreement.

The documents contained in Appendices A through D are collectively referred to herein as the "Project Agreements."

(d) No FD/MK Default or Association Default as defined in Sections 17.1 and 17.4 of the Original Comprehensive Agreement attributable to FD/MK or the Association, as applicable, has occurred and is continuing and no breach, default, unsatisfied condition or other event has occurred, and no circumstance exists, that constitutes such an FD/MK Default or Association Default, as applicable, or that, with the giving of notice by the Department or the passage of time (including the passage of time during which a default has occurred and has not yet been cured during any applicable grace period) or both, would constitute an FD/MK Default or Association Default or would otherwise allow the Department to terminate the Original Comprehensive Agreement, suspend the Department's performance thereunder or otherwise excuse the Department from any failure to perform thereunder.

(e) No Department Default as defined in Section 17.7 of the Original Comprehensive Agreement attributable to the Department has occurred and is continuing, and no breach, default, unsatisfied condition or other event has occurred, and no circumstance exists, that constitutes such a Department Default or that, with the giving of notice by the Association or the passage of time (including the passage of time during which a default has occurred and has not yet been cured during any applicable grace period) or both, would constitute such a Department Default.

(f) The Department has no knowledge of any facts entitling the Department to any claim, counterclaim, offset or defense against the Association in respect of any of the Project Agreements and there exists no dispute between the Association and the Department.

(g) The Department has not received notice of any assignment of all or any part of the right, title and interest of the Association in, to and under any of the Project Agreements.

(h) As of the date hereof, there are no proceedings pending or threatened against or affecting the Department in any court or by or before any governmental authority or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of the Department to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Consent or any of the Project Agreements.

(i) As of the date hereof, no default or breach or other event or condition exists under any of the Project Agreements that (i) permits any party thereto to

terminate such agreement or suspend its performance thereunder or excuse such party from any failure to perform thereunder or (ii) is reasonably likely to result in a material breach or material default thereunder.

4. Third-Party Beneficiary.

(a) The Assignee may rely upon the certifications and representations made by the Department in this Consent and is a third-party beneficiary hereto.

(b) This Consent shall be binding upon the Department and its successors and assigns. This Consent is provided for the sole benefit of the Assignee, and, except as specifically provided herein, shall not confer any rights or remedies upon any Person other than the Assignee and its respective successors and permitted assigns. No third party, including FD/MK, may rely on any statements of fact or representation or warranty made by the Department in this Consent, and the Department retains any claims it may have against such third parties.

5. Representations and Warranties. The Department represents and warrants to each of the Association and the Assignee that:

(a) The Department has all requisite power and authority to execute and deliver and to perform its obligations under each of the Project Agreements and this Consent.

(b) The execution, delivery and performance by the Department of each of the Project Agreements and this Consent have been duly authorized by all necessary action.

(c) Each of the Project Agreements and this Consent constitutes a legal, valid and binding obligation of the Department enforceable against it in accordance with the respective terms thereof, subject to (i) the effect of bankruptcy, insolvency, reorganization, moratorium or other similar laws and judicial decisions now or hereafter in effect affecting, generally, the enforcement of creditor's rights and remedies, (ii) the effect of rules of law governing equitable remedies and defenses, and the discretion of any court of competent jurisdiction in awarding equitable remedies, and (iii) the effect of rules of law governing enforcement and collection of damages against the Commonwealth of Virginia.

(d) The execution, delivery and performance of this Consent will not violate any applicable Law.

(e) The execution, delivery and performance of this Consent does not amend, modify or otherwise alter in any way the Original Comprehensive Agreement and the rights, duties and obligations of the parties as specified therein, other than as contemplated by the Transactions.

6. Miscellaneous.

(a) Notices. All notices, other communications and approvals required or permitted by this Consent shall be in writing and shall be delivered, sent by certified or registered mail (return receipt requested and postage prepaid), addressed as follows:

(i) in the case of the Department:

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attention: Commissioner
Facsimile: (804) 786-6250

With a copy to:

Senior Assistant Attorney General
Commonwealth of Virginia, Office of the Attorney General
900 E. Main Street
Richmond, Virginia 23219
Attention: John J. Beall, Jr., Esq.
Facsimile: (804) 786-9136

and to:

Karen J. Hedlund, Esq.
Nossaman, Guthner, Knox & Elliott, LLP
2111 Wilson Blvd., Suite 600
Arlington, Virginia 22201
Facsimile: (703) 351-9506

(ii) in the case of the Assignee:

Transurban (895) LLC
P.O. Box 7693
Richmond, Virginia 23231
Facsimile: (804) 795-1782

with a copy to:

Daniel A. Mathews
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, New York 10103-0001
Facsimile: (212) 506-5151

or such other persons or addresses as either party may from time to time designate by notice to the other. A notice, other communication or approval shall be deemed to have been sent and received (i) on the day it is delivered, or if such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice, other communication or approval shall be deemed to have been sent and received on the next Business Day, or (ii) on the fourth Business Day after mailing if sent by U.S. registered mail. For purposes of this Consent, "Business Day" shall have the meaning specified in the Amended and Restated Comprehensive Agreement.

(b) Headings. The headings herein are for convenience only and shall be ignored in construing this Consent.

(c) Governing Law. This Consent shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Venue for any legal action arising out of this Consent shall lie in the Circuit Court in the City of Richmond, Virginia, Division I.

(d) Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

[signatures to follow]

IN WITNESS WHEREOF, the parties have executed this Consent as of the date first written above.

VIRGINIA DEPARTMENT OF
TRANSPORTATION

By: _____
Name: _____
Title: _____

Appendix A Copy of the Amended and Restated Comprehensive Agreement
Appendix B Copy of the Original Comprehensive Agreement
Appendix C Copy of the Directive Letters
Appendix D Copy of the ETC Agreement

Exhibit J

List of Initial Project Financing Agreements

1. Loan Agreement, dated as of June 22, 2006 among Transurban (895) US Holdings LLC, a Delaware limited liability company (the "Borrower"), the several banks and financial institutions party thereto as Lenders, DEPFA Bank plc, as administrative agent for the Lenders (in such capacity, the "Administrative Agent"), and Bayerische Hypo- und Vereinsbank AG, New York branch, Banco Espirito Santo de Investimento, S.A., and DEPFA Bank plc., as Mandated Lead Arrangers.

2. Collateral Agency Agreement dated as of June 22, 2006 among the Borrower; Transurban (895) Finance, Inc., a Delaware corporation ("T-Finance"); Transurban (895) Holdings Ltd., a Bermuda limited liability company ("T-Holdings"); Transurban (895) LLC, a Delaware limited liability company ("T895" and collectively with the Borrower, T-Finance and T-Holdings, the "Borrower Parties"); the Administrative Agent; and Wells Fargo Bank, N.A., in its capacity as collateral agent (in such capacity, the "Collateral Agent").

3. Security Agreement dated as of June 22, 2006 between the Borrower and the Collateral Agent.

4. Guarantee and Security Agreement dated as of June 29, 2006 between T895, T-Holdings, T-Finance, and the Collateral Agent.

5. Membership Interest Pledge Agreement, dated as of June 29, 2006, by Transurban (895) General Partnership, a Delaware general partnership in favor of the Collateral Agent.

6. the ISDA Master Agreement, dated as of June 22, 2006, between the Borrower and DEPFA Bank plc ("DEPFA"), the related Schedule to the ISDA Master Agreement, dated as of June 22, 2006, between the Borrower and DEPFA, and the related Confirmation, dated as of June 23, 2006, between the Borrower and DEPFA.

7. the ISDA Master Agreement, dated as of June 22, 2006, between the Borrower and Banco Espirito Santo, S.A. ("BES"), the related Schedule to the ISDA Master Agreement, dated as of June 22, 2006, between the Borrower and BES, and the related Confirmation, dated as of June 23, 2006, between the Borrower and BES.

8. the ISDA Master Agreement, dated as of June 22, 2006, between the Borrower and Bayerische Hypo- und Vereinsbank AG ("BHV"), the related Schedule to the ISDA Master Agreement, dated as of June 22, 2006, between the Borrower and BHV, and the related Confirmation between the Borrower and BHV.

Exhibit K: Asset Life Cycle

Reference No.	Asset Element	Maintenance Element	Design Life (yrs)	Treatment
P-P-01	**Flexible Pavement**	Asphalt surface	15	Pavement Rehabilitation
P-P-02	**Rigid Pavement**	Asphalt surface	15	Pavement Rehabilitation
P-P-03	**Sealed Shoulders**	Sprayed Bitumen Seal	15	Pavement Rehabilitation
P- B-01	**Concrete Bridges**	Superstructure Substructure	50 50	Repairs as required Repairs as required Repaint
P - B-02	**Steel Bridges**	Superstructure Substructure	50 50	Repairs as required Repairs as required
P - B-03	**Bridge Joints**	Expansion Joints	20	Repairs as required
P - B-04	**Bridge Bearings**	Elastomeric Bearings Metal Bearings	50 50	Routine Maintenance Item Routine Maintenance Item
P - B-05	**Bridge Railings**	Metal / Concrete Railings	40	Routine Maintenance Item
P - B-06	**Scuppers /Deck Drainage System**	Bridge Drains	40	Routine Maintenance Item
P - B-07	**Underpasses Stock / Fauna/Peds**	Walls / Drainage / Ceilings	40	Repaint
P - B-08	**Bridge Waterways**	Piers/ Abuttments	100	Routine Maintenance Item
P -T-01	**Longitudinal Marking**	Thermoplastic Waterborne	6 4	Renew Renew
P - T-02	**Transverse Marking**	Thermoplastic Waterborne	4 4	Renew Renew
P T-03	**Pavement Symbols**	Thermoplastic Waterborne	4 4	Renew Renew
P -T-04	**Raised Pavement Markers**	Reflective / non-reflective	6	Replace
P T-05	**Warning Signs**	Curves,intersection, clearences etc.	12	Replace
P -T-06	**Regulatory Signs**	Stop / speed / crossing etc	12	Replace
P -T-07/8	**Major / Minor Guide Signs**	Directional / route / feature etc	12	Replace
P T-09	**Non-Pavement Delineators**	Guide Posts / safety fencing	6	Replace
P - T-10	**Guard Barriers**	Guardrail/ wire barrier / New Jersey	40	Replace
P - T-11	**Safety Fence / Terminals**	BCT / EAB's	20	Repair as necessary Replace
P - T-12	**Street Lighting**	Standard Poles Non standard Poles Luminaries - Type 1 Luminaries - Type 2 Luminaries - Type 3 Lighting over help phone	20 20 4.5 4.5 4.5 2.28	Replace Replace Routine Maintenance Item Routine Maintenance Item Routine Maintenance Item Routine Maintenance Item
P - T-13	**Traffic Devices**	Traffic Domes / bollards / grab rails	40	Renew/Replace
P - R-01	**Retaining Walls**	Reinforced concrete / gabion, crib etc.	100	Repair as necessary
P - R-02	**Batters**	Unprotected / shotcrete / jute etc.	100	Routine Maintenance Item

Exhibit K: Asset Life Cycle

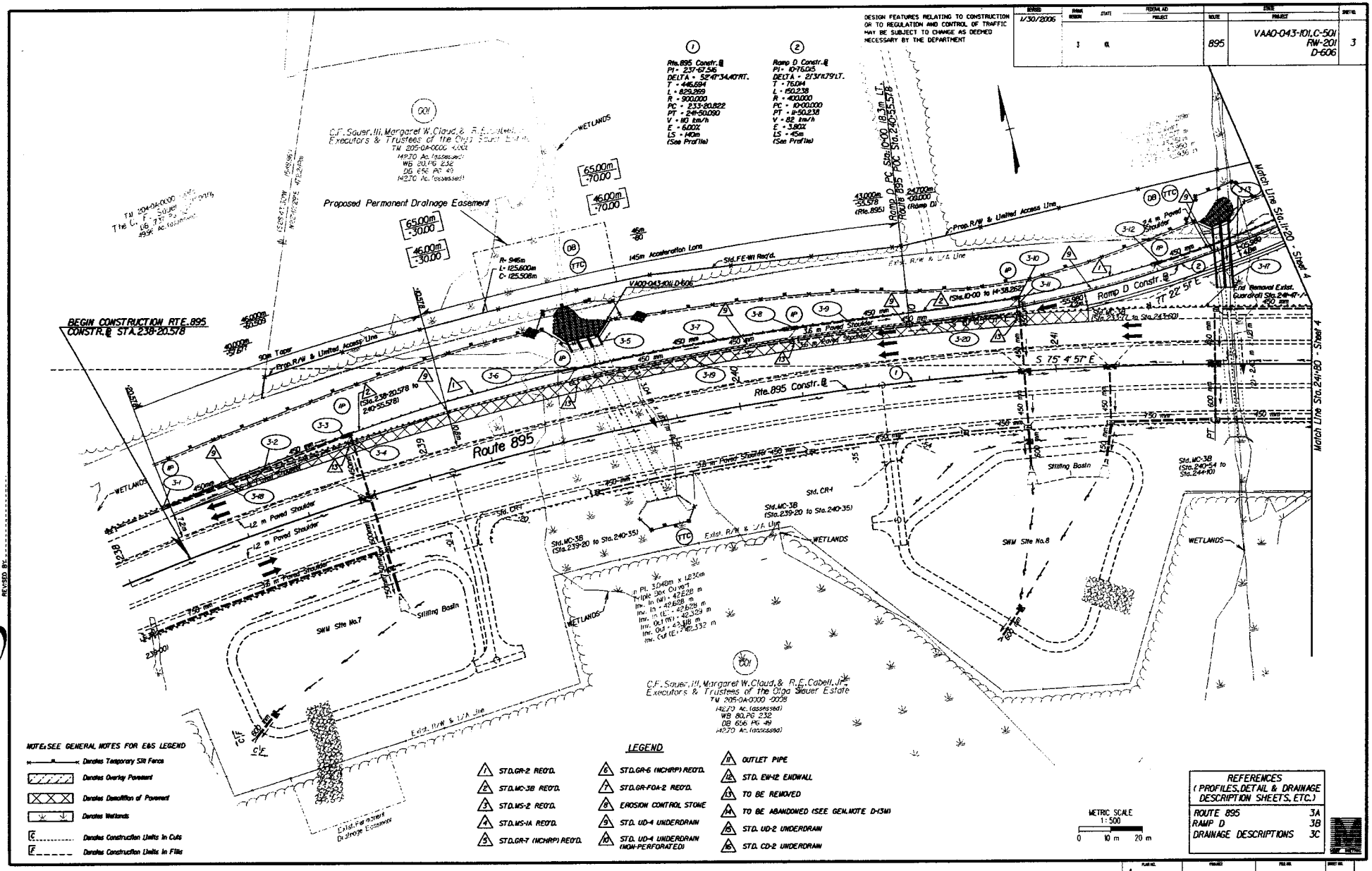
Reference No.	Asset Element	Maintenance Element	Design Life (yrs)	Treatment
P - R-03	**Kerb and Gutter**	Footpath / median	40	Routine Maintenance Item
P - R-04	**Drains, Channels or Swales**	Lined / Unlined	40	Routine Maintenance Item
P - R-05	**Drainage Pits**	Kerb / median / batter / table	40	Routine Maintenance Item
P - R-06	**Underground Drainage**	Culvert / drainage line / GPT	100	Routine Maintenance Item
P - R-07	**Sedimentation Basins**	Temporary / Permanent	40	Mechanical Cleaning
P - R-08	**Sub-surface Drains**		100	Routine Maintenance Item
P -R-09	**Noise Barriers**	Concrete / Earth / Timber	40	None
P - R10	**Boundary Fencing / Gates**	Manproof / timber / wire / metal	20	Replace
P - R-11	**Median Areas**	Paved / grassed / landscaped	40	Routine Maintenance Item
P - R-12	**Roadside and Rest Areas**	Grassed / Landscaped	40	None
P - R-13	**Travel Lanes**			
P - M-01	**Help Phone (ramps)** **Help Phone (Open Road)**	Phones Phones	25 25	None None
P - M-02	**Variable Message Signs**	Variable Message Signs Enhanced Message Sign	10	None None
	Closed Circuit TV (open road) **Trivision**	CCTV Trivision (CMS)	7 15	None None
P - M-04	**Incident Detection System**	AID Cameras	7	None
P - M-06	**Trip Information Sign**	Traveller Information Signs	17	None
P - M-07	**Not Used**			
P - M-08	**Moveable Physical Barrier**	Portal Barriers	15	None
P -M-09	**Ramp Control Sign**	Ramp Control Signs	17	None
P - M-10	**Not Used**			
P - M-11	**Emergency Median Gate Open**	EMGO	15	None
P - M-12	**Lane Use Signs** **Variable Speed Signs (open-road)** **Cabinets**	Lane Use Signal Variable Speed Signs	17 17 20	None None None
P - M-14	**Not Used**			
P - C-02	**TMCS**	PMCS/TMCS Control Room HW & SW		Replace
	Toll Collection Equipment	Technical Shelter Electronics Roadside Equipment Maintenance Major Ganrty Equipment	7 15 15	Refurbish Routine Maintenance Refurbish
	General	Miscellaneous Reimbursable Spares Inventory		

LIMITED ACCESS HIGHWAY

By Resolution of Commonwealth Transportation Board dated February 21, 2002

DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

REVISED	FEDERAL AID PROJECT	STATE	ROUTE	PROJECT	SHEET NO.
1/30/2006	3	VA	895	VAAO-043-101,C-501 RW-201 D-606	3



NOTE: SEE GENERAL NOTES FOR E&S LEGEND

- Denotes Temporary Silt Fence
- Denotes Overlay Pavement
- Denotes Demolition of Pavement
- Denotes Wetlands
- Denotes Construction Limits In Cuts
- Denotes Construction Limits In Fills

LEGEND

1. STD.GR-2 REQ'D.
2. STD.MC-3B REQ'D.
3. STD.MS-2 REQ'D.
4. STD.MS-1A REQ'D.
5. STD.GR-7 (NCHRP) REQ'D.
6. STD.GR-6 (NCHRP) REQ'D.
7. STD.GR-FOA-2 REQ'D.
8. EROSION CONTROL STONE
9. STD. UD-4 UNDERDRAIN
10. STD. UD-4 UNDERDRAIN (NON-PERFORATED)
11. OUTLET PIPE
12. STD. EW-12 ENDWALL
13. TO BE REMOVED
14. TO BE ABANDONED (SEE GEN.NOTE D-13M)
15. STD. UD-2 UNDERDRAIN
16. STD. CD-2 UNDERDRAIN

REFERENCES (PROFILES, DETAIL & DRAINAGE DESCRIPTION SHEETS, ETC.)	
ROUTE 895	3A
RAMP D	3B
DRAINAGE DESCRIPTIONS	3C

SURVEYED BY: AVI CONSTRUCTION SERVICES, INC.
SUPERVISED BY: RAPAH VINT, 804-786-6420
AVI CONSTRUCTION SERVICES, INC. PHONE: 540-951-8888/804-377-2300
REVISED BY:

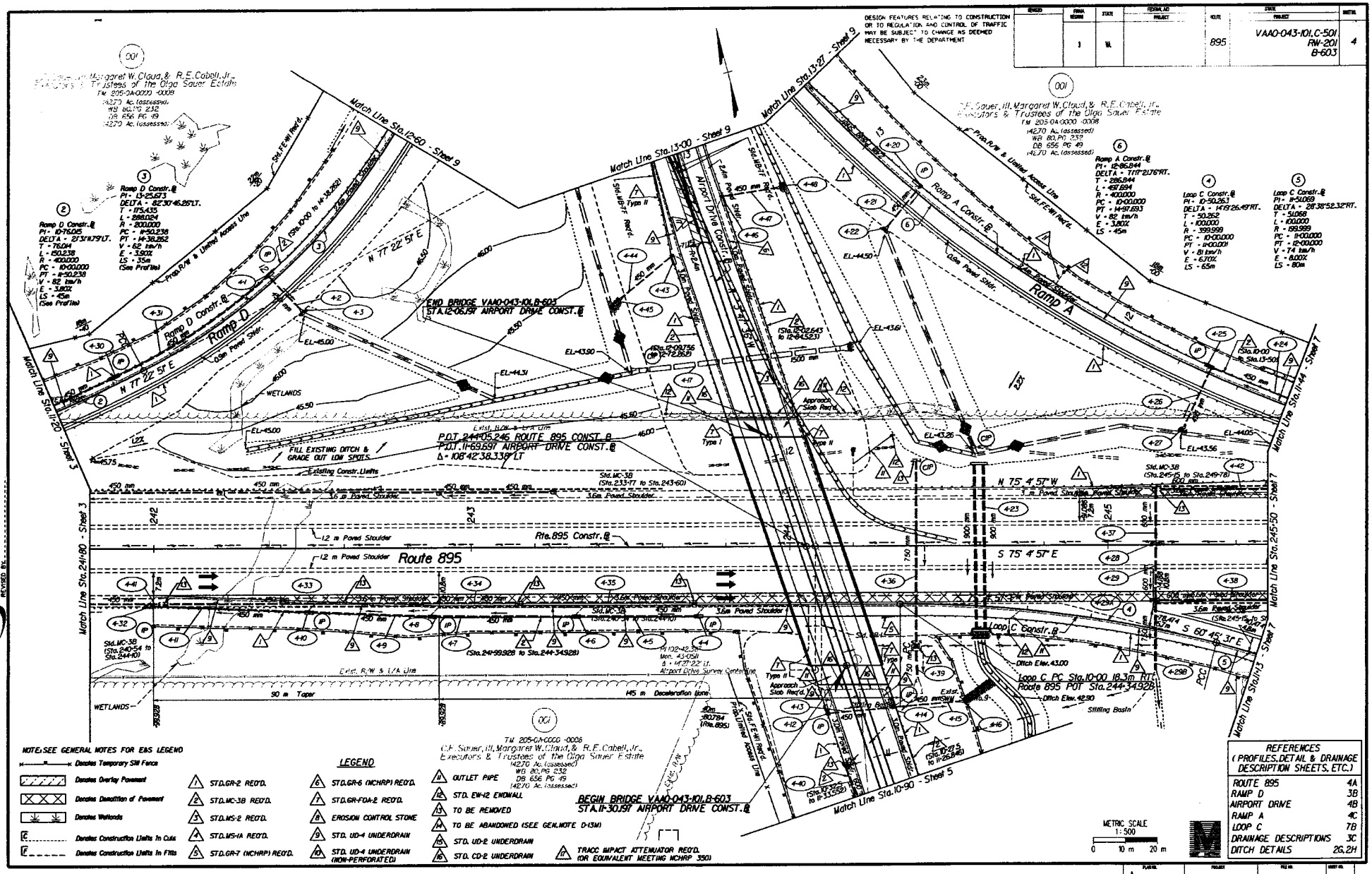
PLAN NO.	PROJECT	FIG. NO.	SHEET NO.
A	VAAO-043-101		3

LIMITED ACCESS HIGHWAY

By Resolution of Commonwealth Transportation Board dated February 21, 2002

DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

REVISED	FINAL VERSION	STATE	FEDERAL AID PROJECT	ROUTE	STATE PROJECT	SHEET NO.
	1	VA.		895	VAAO-043-101,C-501 RW-201 B-603	4



REFERENCES (PROFILES, DETAIL & DRAINAGE DESCRIPTION SHEETS, ETC.)	
ROUTE 895	4A
RAMP D	3B
AIRPORT DRIVE	4B
RAMP A	4C
LOOP C	7B
DRAINAGE DESCRIPTIONS	3C
DITCH DETAILS	2G,2H

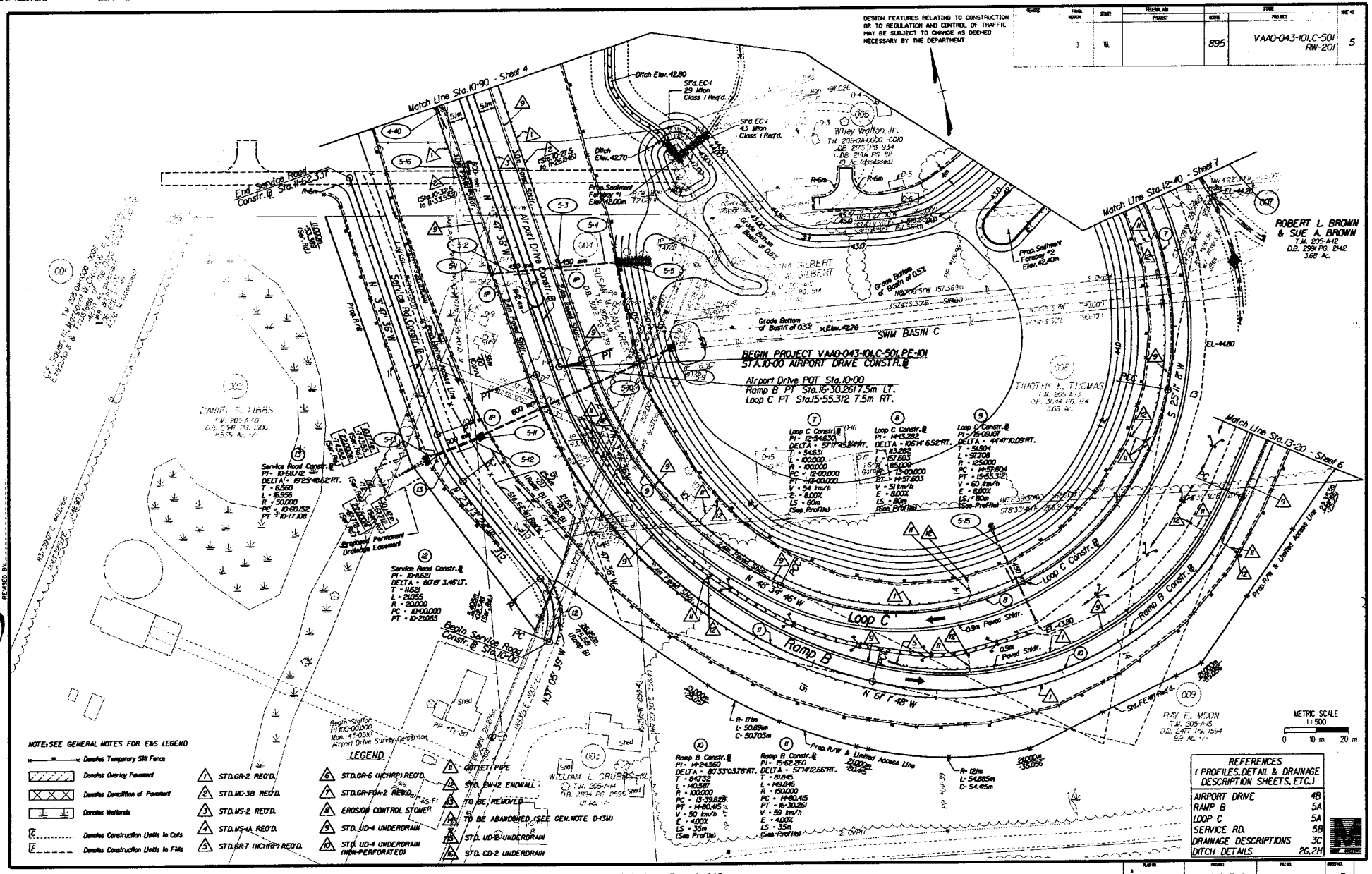
PLAN NO.	PROJECT	FILE NO.	SHEET NO.
A	VAAO-043-101		4

LIMITED ACCESS HIGHWAY

By Resolution of Commonwealth Transportation Board dated February 21, 2002

DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

REVISED	FINAL REVISION	STATE	FEDERAL AID PROJECT	ROUTE	STATE PROJECT	SHEET NO
	1	VA		895	VAAO-043-101, C-501 RW-201	5



NOTE: SEE GENERAL NOTES FOR E&S LEGEND

LEGEND

- Denotes Temporary Silt Fence
- Denotes Overlay Pavement
- Denotes Demolition of Pavement
- Denotes Wetlands
- C..... Denotes Construction Limits In Cuts
- F..... Denotes Construction Limits In Fills

1. STD.GR-2 REQ'D.
2. STD.MC-3B REQ'D.
3. STD.MS-2 REQ'D.
4. STD.MS-1A REQ'D.
5. STD.GR-7 (MCHRP) REQ'D.
6. STD.GR-6 (MCHRP) REQ'D.
7. STD.GR-FDA-2 REQ'D.
8. EROSION CONTROL STONE
9. STD. UD-4 UNDERDRAIN
10. STD. UD-4 UNDERDRAIN (NON-PERFORATED)
11. OUTLET PIPE
12. STD. EW-12 ENDWALL
13. TO BE REMOVED
14. TO BE ABANDONED (SEE GEN.NOTE D-13M)
15. STD. UD-12 UNDERDRAIN
16. STD. CD-2 UNDERDRAIN

REFERENCES (PROFILES, DETAIL & DRAINAGE DESCRIPTION SHEETS, ETC.)

AIRPORT DRIVE	4B
RAMP B	5A
LOOP C	5A
SERVICE RD.	5B
DRAINAGE DESCRIPTIONS	3C
DITCH DETAILS	2G, 2H

SURVEYED BY: JEL CONSTRUCTION SERVICES, INC.
SUPERVISED BY: RAPPAHANNOCK SURVEYS, INC.
ASSIGNED BY: SMITH ASSOCIATES, P.C.
CADD OPERATOR:
REVISED BY:

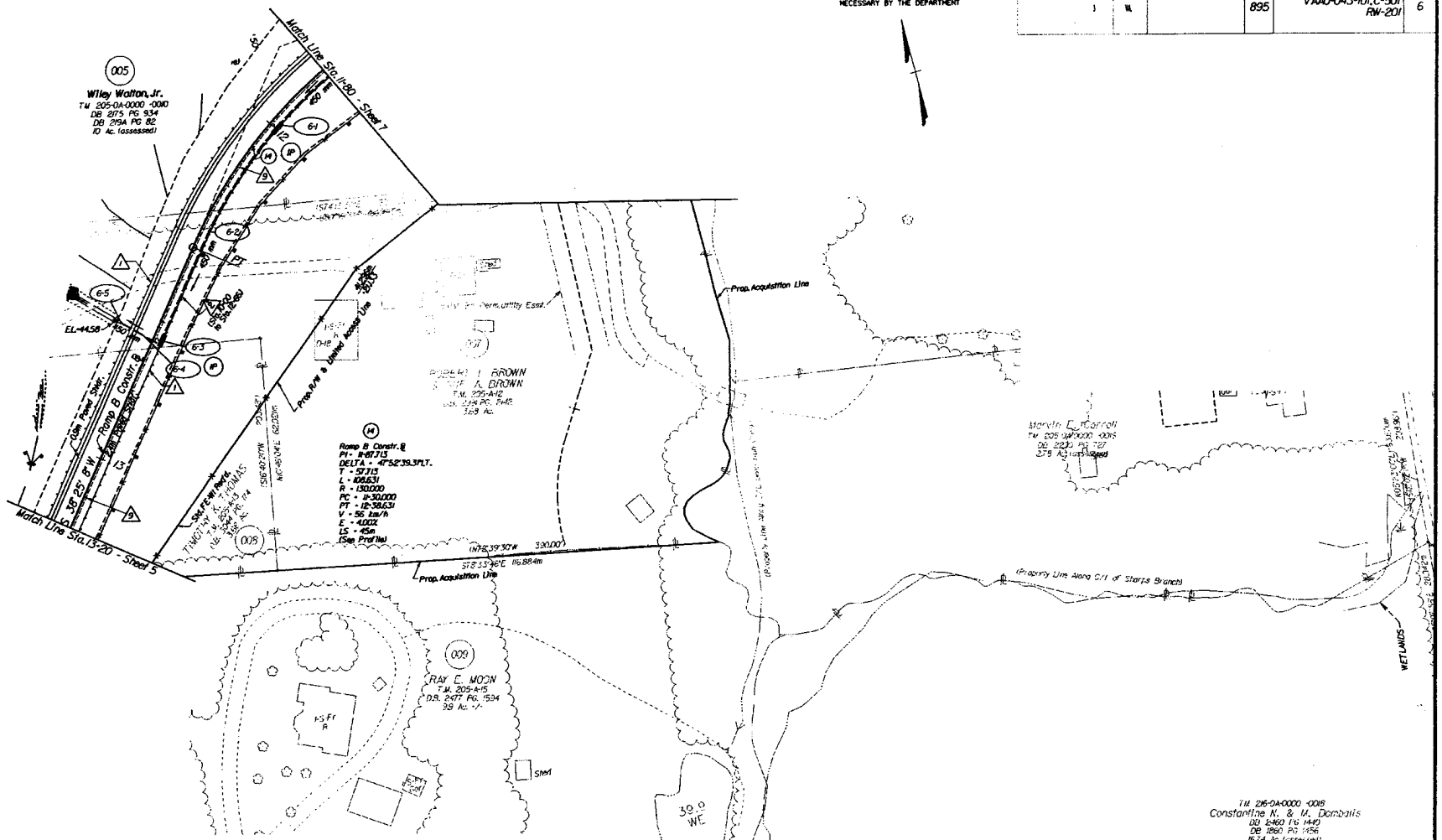
PLAN NO.	PROJECT	FILE NO.	SHEET NO.
A	VAAO-043-101		5

LIMITED ACCESS HIGHWAY

By Resolution of Commonwealth Transportation Board dated February 21, 2002

DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

REVISED	FHWA REGION	STATE	FEDERAL AID PROJECT	STATE ROUTE	STATE PROJECT	SHEET NO
	3	VA		895	VAAO-043-101,C-501 RW-201	6



NOTE: SEE GENERAL NOTES FOR E&S LEGEND

LEGEND

- Denotes Temporary Silt Fence
- Denotes Demolition of Pavement
- Denotes Wetlands
- Denotes Construction Limits In Cuts
- Denotes Construction Limits In Fills

1. STD.GR-2 REQ'D.
2. STD.MC-3B REQ'D.
3. STD.MS-2 REQ'D.
4. STD.MS-1A REQ'D.
5. STD.GR-7 (NCHRP) REQ'D.
6. STD.GR-6 (NCHRP) REQ'D.
7. STD.GR-FOA-2 REQ'D.
8. EROSION CONTROL STONE
9. STD. UD-4 UNDERDRAIN
10. STD. UD-4 UNDERDRAIN (NON-PERFORATED)
11. OUTLET PIPE
12. STD. EW-12 ENDWALL
13. TO BE REMOVED
14. TO BE ABANDONED (SEE GEN.NOTE D-13M)
15. STD. UD-2 UNDERDRAIN
16. STD. CD-2 UNDERDRAIN

REFERENCES (PROFILES, DETAIL & DRAINAGE DESCRIPTION SHEETS, ETC.)	
RAMP B	7B
DRAINAGE DESCRIPTIONS	3C
DITCH DETAILS	2G, 2H

SURVEYED BY: NVL CONSTRUCTION SERVICES, INC.
SUPERVISED BY: R.G. Pugh VDOT 804-786-5430
DESIGNED BY: Kirk Smith Associates 804-377-2300
CADD OPERATOR:
REVISED BY:

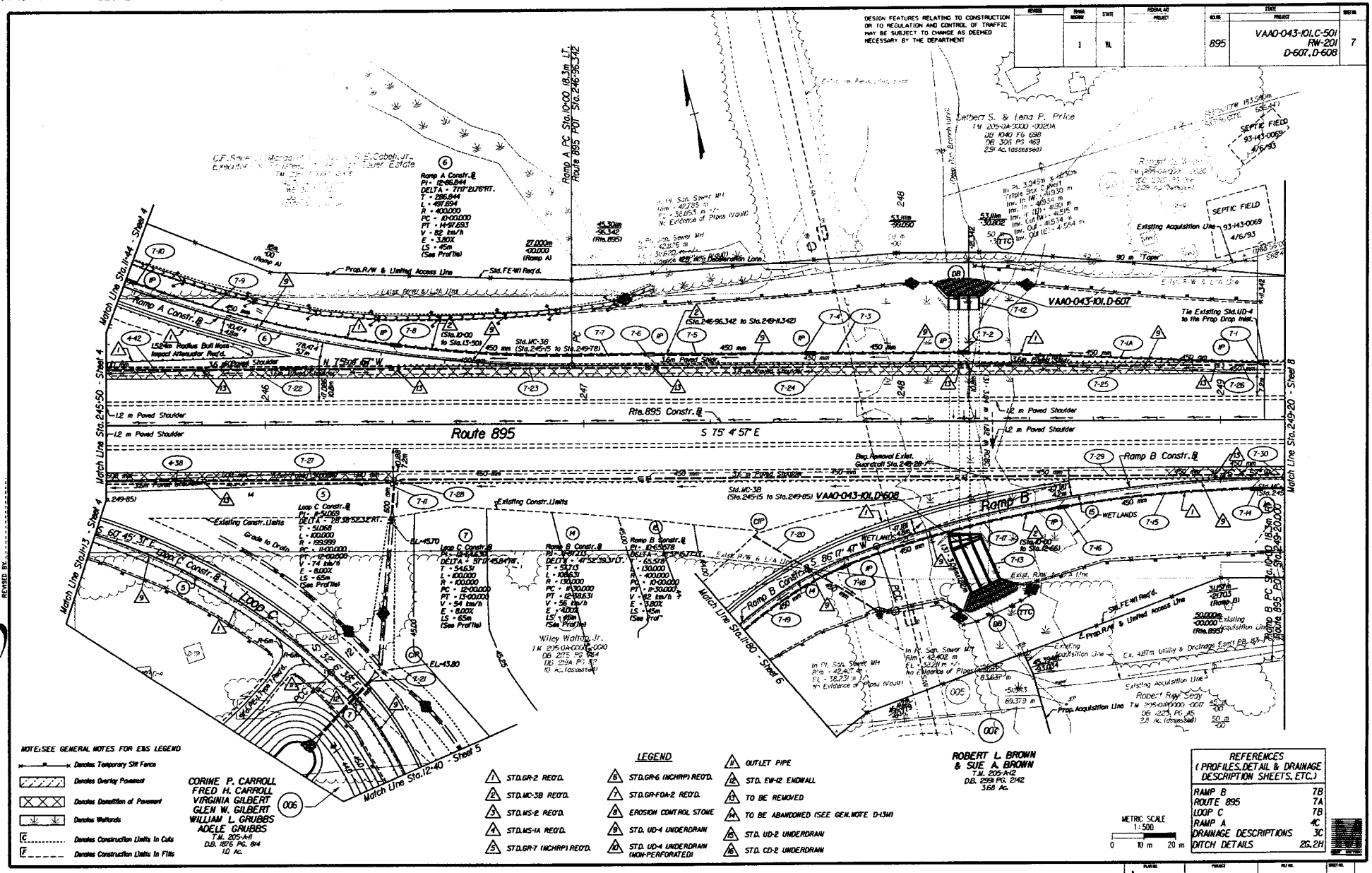
PLANNING	PROJECT	FILE NO.	SHEET NO.
A	VAAO-043-101		6

LIMITED ACCESS HIGHWAY

By Resolution of Commonwealth Transportation Board dated February 21, 2002

DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

REVISED	FHWA REGION	STATE	FEDERAL AID PROJECT	ROUTE	STATE PROJECT	SHEET NO.
	1	VA		895	VAAO-043-101,C-501 RW-201 D-607,D-608	7



REFERENCES (PROFILES, DETAIL & DRAINAGE DESCRIPTION SHEETS, ETC.)	
RAMP B	7B
ROUTE 895	7A
LOOP C	7B
RAMP A	4C
DRAINAGE DESCRIPTIONS	3C
DITCH DETAILS	2G,2H

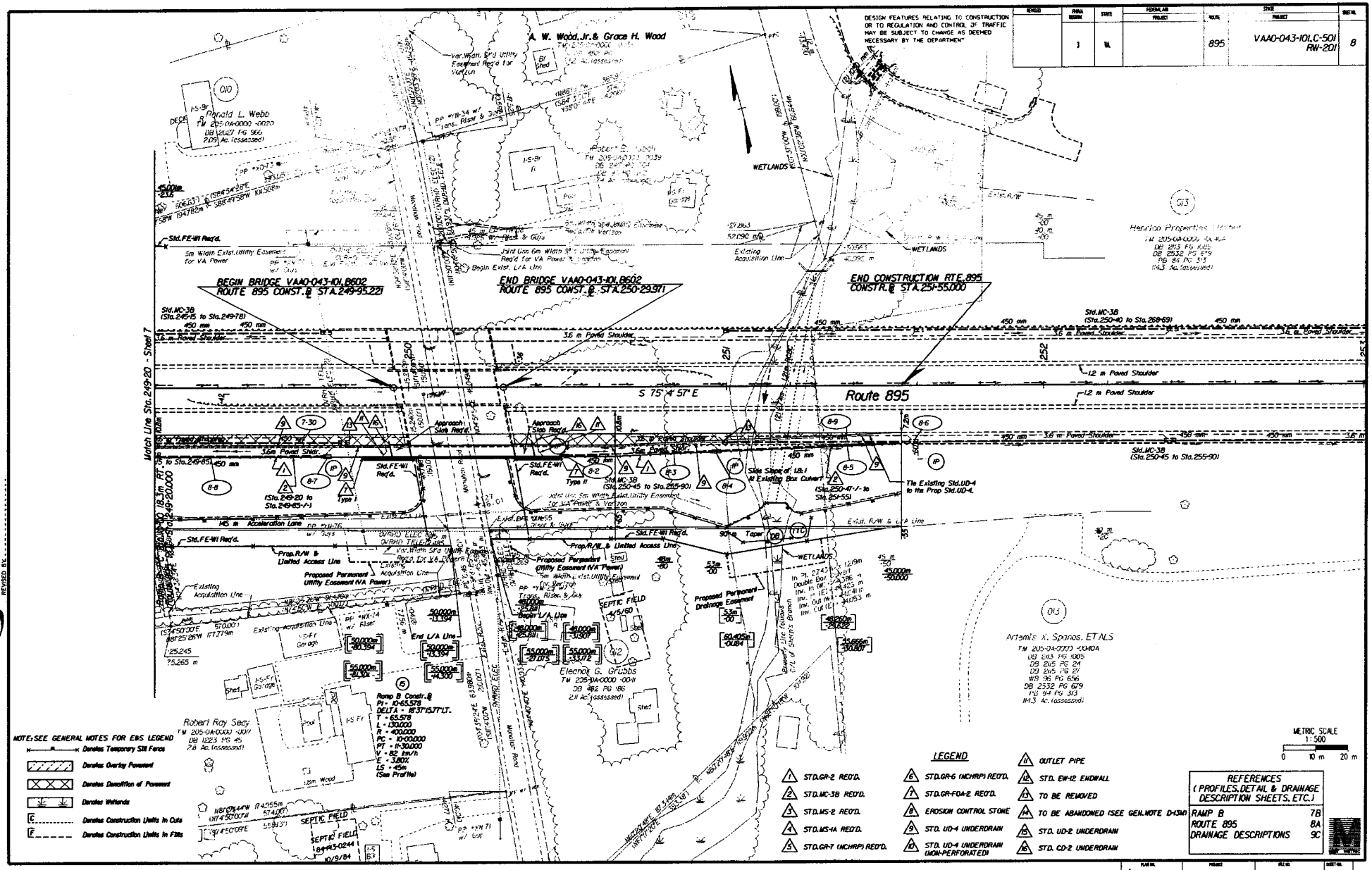
PLAN NO.	PROJECT	FILE NO.	SHEET NO.
A	VAAO-043-101		7

LIMITED ACCESS HIGHWAY

By Resolution of Commonwealth Transportation Board dated February 21, 2002

DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

REVISED	FIRMA REGION	STATE	FEDERAL AID PROJECT	ROUTE	STATE PROJECT	SHEET NO.
	3	VA		895	VAAO-043-101,C-501 RW-201	8



SURVEYED BY: FOX CONSTRUCTION SERVICES, INC.
SUPERVISED BY: JOHN WOOD, 804-786-8430
ACCEPTED BY: JOHN WOOD, 804-786-8430
CAD OPERATOR: JOHN WOOD, 804-377-2300
REVISED BY:

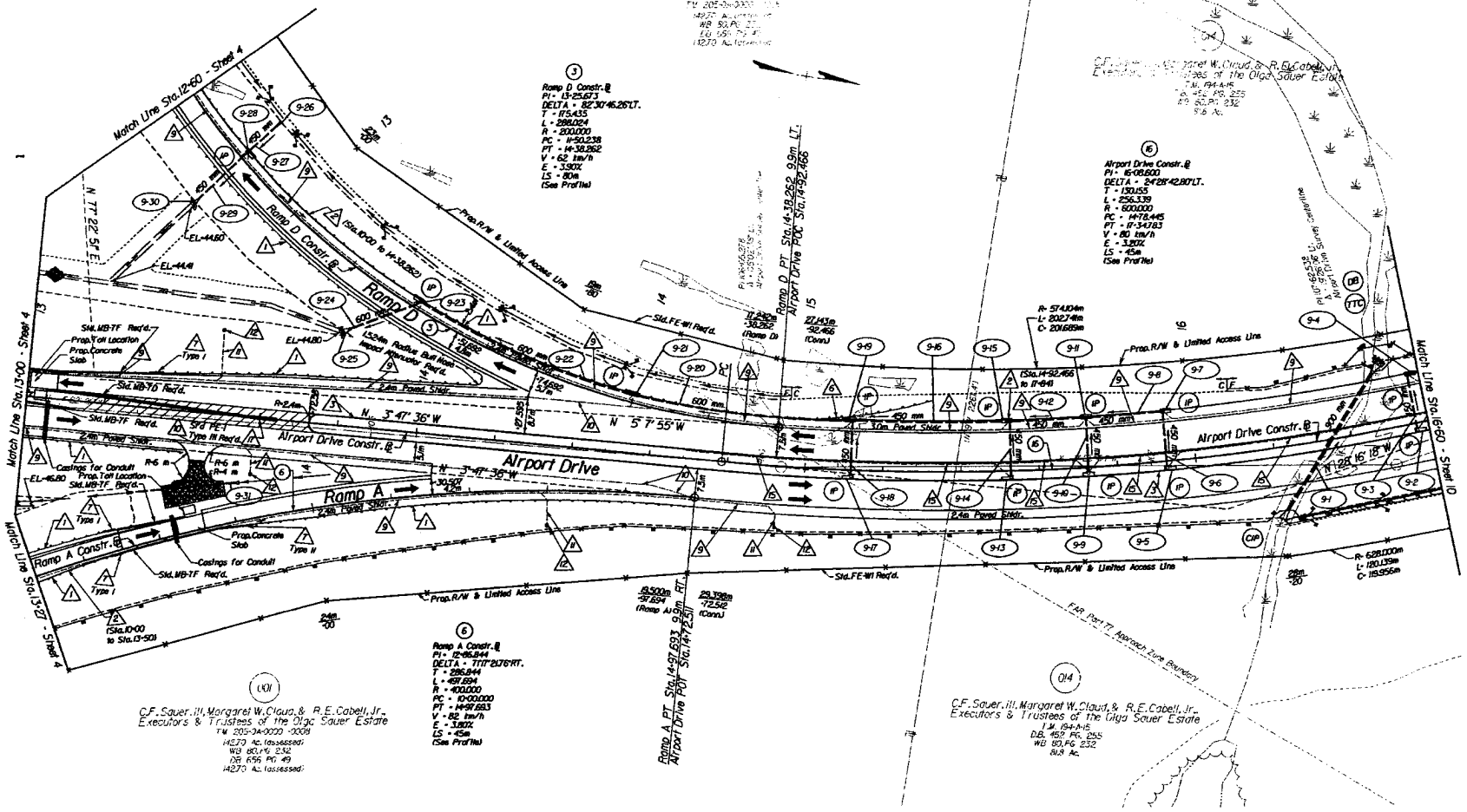
PLANS NO.	PROJECT	FILE NO.	SHEET NO.
A	VAAO-043-101		8

LIMITED ACCESS HIGHWAY

By Resolution of Commonwealth Transportation Board dated February 21 2002

DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

REVISED	FEDERAL AID PROJECT	STATE	PROJECT	SHEET NO.
1	VA	895	VAAO-043-101, C-501 RW-201	9



NOTE: SEE GENERAL NOTES FOR E&S LEGEND

Denotes Temporary Silt Fence
Denotes Overlay Pavement
Denotes Demolition of Pavement
Denotes Wetlands
C Denotes Construction Limits In Cuts
F Denotes Construction Limits In Fills

LEGEND

1. STD.GR-2 REQ'D.
2. STD.MC-3B REQ'D.
3. STD.MS-2 REQ'D.
4. STD.MS-1A REQ'D.
5. STD.GR-7 (NCHRP) REQ'D.
6. STD.GR-6 (NCHRP) REQ'D.
7. STD.GR-F0A-2 REQ'D.
8. EROSION CONTROL STONE
9. STD. UD-4 UNDERDRAIN
10. STD. UD-4 UNDERDRAIN (NON-PERFORATED)
11. OUTLET PIPE
12. STD. EW-12 ENDWALL
13. TO BE REMOVED
14. TO BE ABANDONED (SEE GEN.NOTE D-13M)
15. STD. UD-2 UNDERDRAIN
16. STD. CD-2 UNDERDRAIN
17. TRACC IMPACT ATTENUATOR REQ'D. (OR EQUIVALENT MEETING NCHRP 350)

METRIC SCALE 1:500
0 10 m 20 m

REFERENCES (PROFILES, DETAIL & DRAINAGE DESCRIPTION SHEETS, ETC.)	
AIRPORT DRIVE	9A
RAMP A	9B
RAMP D	9B
DRAINAGE DESCRIPTIONS	9C
DITCH DETAILS	26, 2H

PLAN NO. A | PROJECT VAAO-043-101 | FILE NO. | SHEET NO. 9

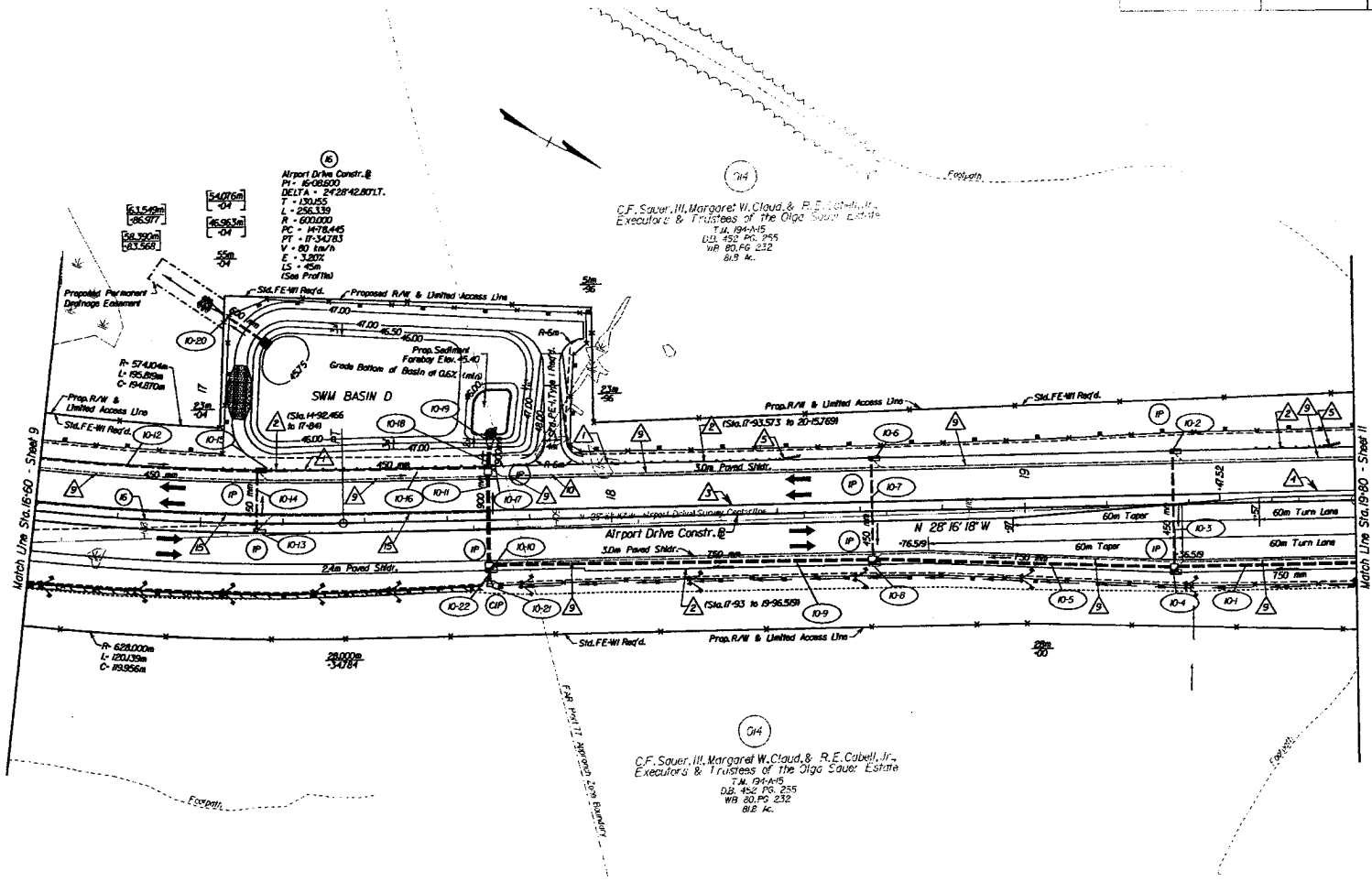
SURVEYED BY: JOL CONSTRUCTION SERVICES, INC.
SURVEYED BY: P.O. Box 1127, Bristol, VA 24203
PHONE: 540-669-2500, FAX: 540-669-2501
DRAWN BY:
REVISED BY:

LIMITED ACCESS HIGHWAY

By Resolution of Commonwealth Transportation Board dated February 21, 2002

DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

REVISED	FHWA REGION	STATE	FEDERAL AID PROJECT	ROUTE	STATE PROJECT	SHEET NO
	1	VA		895	VAAO-043-101, C-501 RW-201	10



NOTE: SEE GENERAL NOTES FOR E&S LEGEND

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LEGEND

1. STD.GR-2 REQ'D.
2. STD.MC-3B REQ'D.
3. STD.MS-2 REQ'D.
4. STD.MS-1A REQ'D.
5. STD.GR-7 (NCHRP) REQ'D.
6. STD.GR-6 (NCHRP) REQ'D.
7. STD.GR-FOA-2 REQ'D.
8. EROSION CONTROL STONE
9. STD. UD-4 UNDERDRAIN
10. STD. UD-4 UNDERDRAIN (NON-PERFORATED)
11. OUTLET PIPE
12. STD. EW-12 ENDWALL
13. TO BE REMOVED
14. TO BE ABANDONED (SEE GEN.NOTE D-13M)
15. STD. UD-2 UNDERDRAIN
16. STD. CD-2 UNDERDRAIN

METRIC SCALE 1:500
0 10 m 20 m

REFERENCES (PROFILES, DETAIL & DRAINAGE DESCRIPTION SHEETS, ETC.)	
AIRPORT DRIVE	10A
DRAINAGE DESCRIPTIONS	9C
DITCH DETAILS	2G, 2H

SURVEYED BY: HYL CONSTRUCTION SERVICES, INC.
SUPERVISED BY: AGA Pub VDOT 804/786-5430
AGA-DESIGN GROUP, Wilmer, Smith, Associates, 804-377-5300
CADD OPERATOR:
REVISED BY:

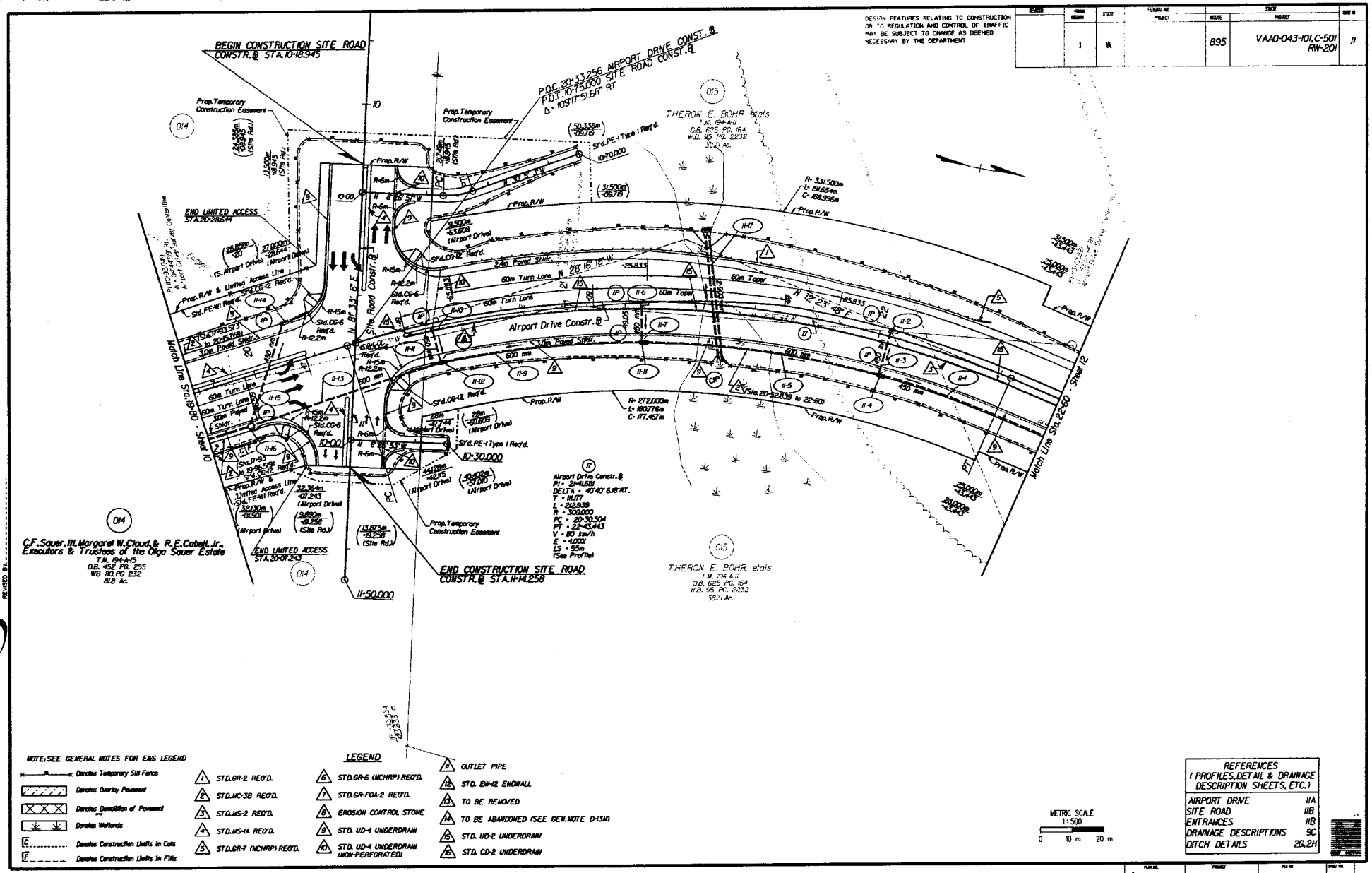
PLAN NO.	PROJECT	FILE NO.	SHEET NO.
A	VAAO-043-101		10

LIMITED ACCESS HIGHWAY

By Resolution of Commonwealth Transportation Board dated February 21, 2002

DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

REVISION	FEDERAL REGION	STATE	FEDERAL AID PROJECT	STATE ROUTE	STATE PROJECT	SHEET NO
	1	VA		895	VAAO-043-101, C-501 RW-201	11



NOTE: SEE GENERAL NOTES FOR E&S LEGEND

Denotes Temporary Silt Fence
Denotes Overlay Pavement
Denotes Demolition of Pavement
Denotes Wetlands
Denotes Construction Limits in Cuts
Denotes Construction Limits in Fills

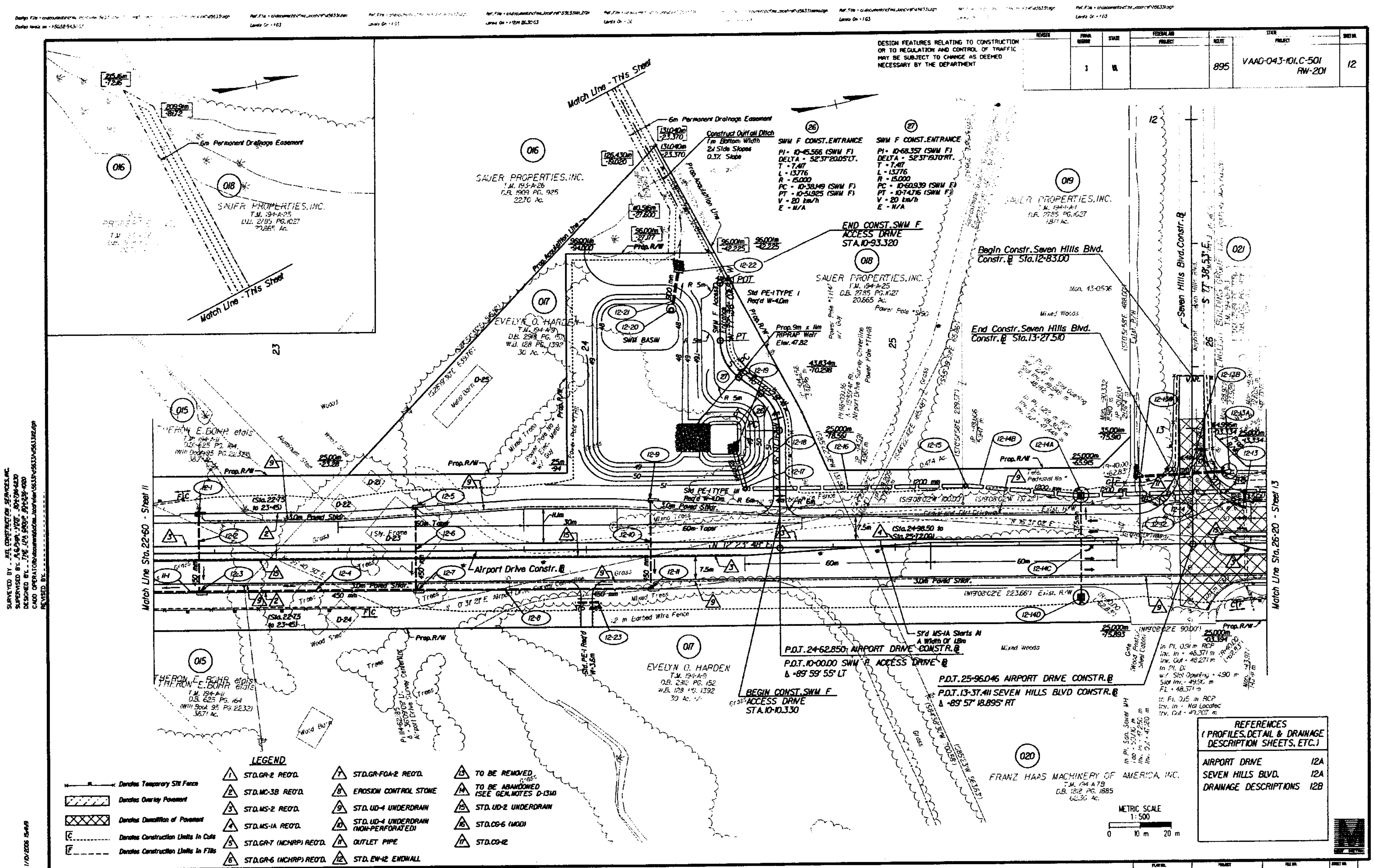
LEGEND

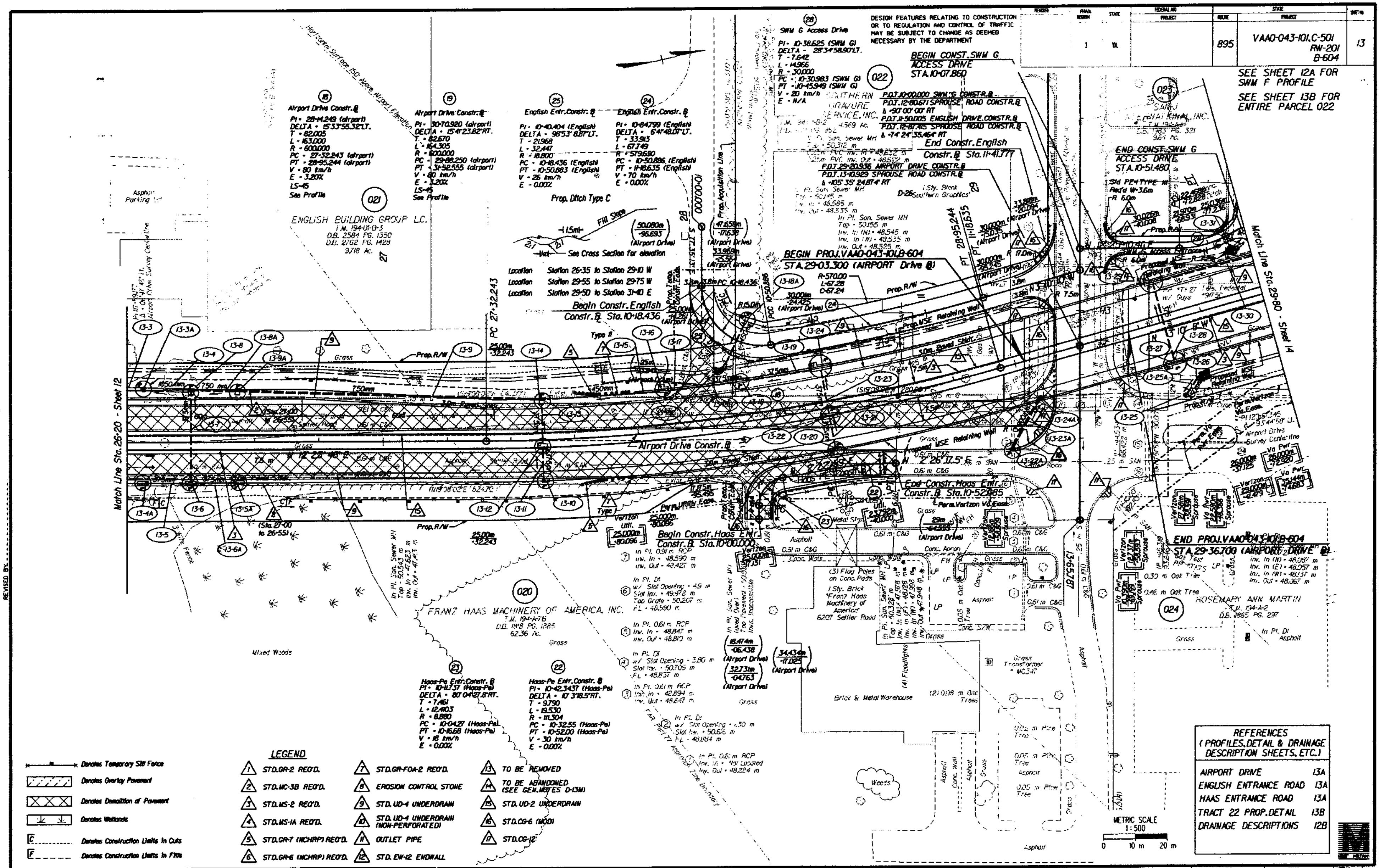
1. STD. GR-2 REQ'D.
2. STD. MC-3B REQ'D.
3. STD. MS-2 REQ'D.
4. STD. MS-1A REQ'D.
5. STD. GR-7 (NCHRP) REQ'D.
6. STD. GR-6 (NCHRP) REQ'D.
7. STD. GR-FOA-2 REQ'D.
8. EROSION CONTROL STONE
9. STD. UD-4 UNDERDRAIN
10. STD. UD-4 UNDERDRAIN (NON-PERFORATED)
11. OUTLET PIPE
12. STD. EW-12 ENDWALL
13. TO BE REMOVED
14. TO BE ABANDONED (SEE GEN. NOTE D-13M)
15. STD. UD-2 UNDERDRAIN
16. STD. CD-2 UNDERDRAIN

REFERENCES (PROFILES, DETAIL & DRAINAGE DESCRIPTION SHEETS, ETC.)	
AIRPORT DRIVE	11A
SITE ROAD	11B
ENTRANCES	11B
DRAINAGE DESCRIPTIONS	9C
DITCH DETAILS	2G, 2H

SURVEYED BY - RS CONSTRUCTION SERVICES, INC.
SUPERVISED BY - DAVID L. ROSENBERGER
DRAWN BY - ROBERT A. SCHOLL
REVISED BY - WAYNE J. SMITH, ROANOKE, 540-977-6300

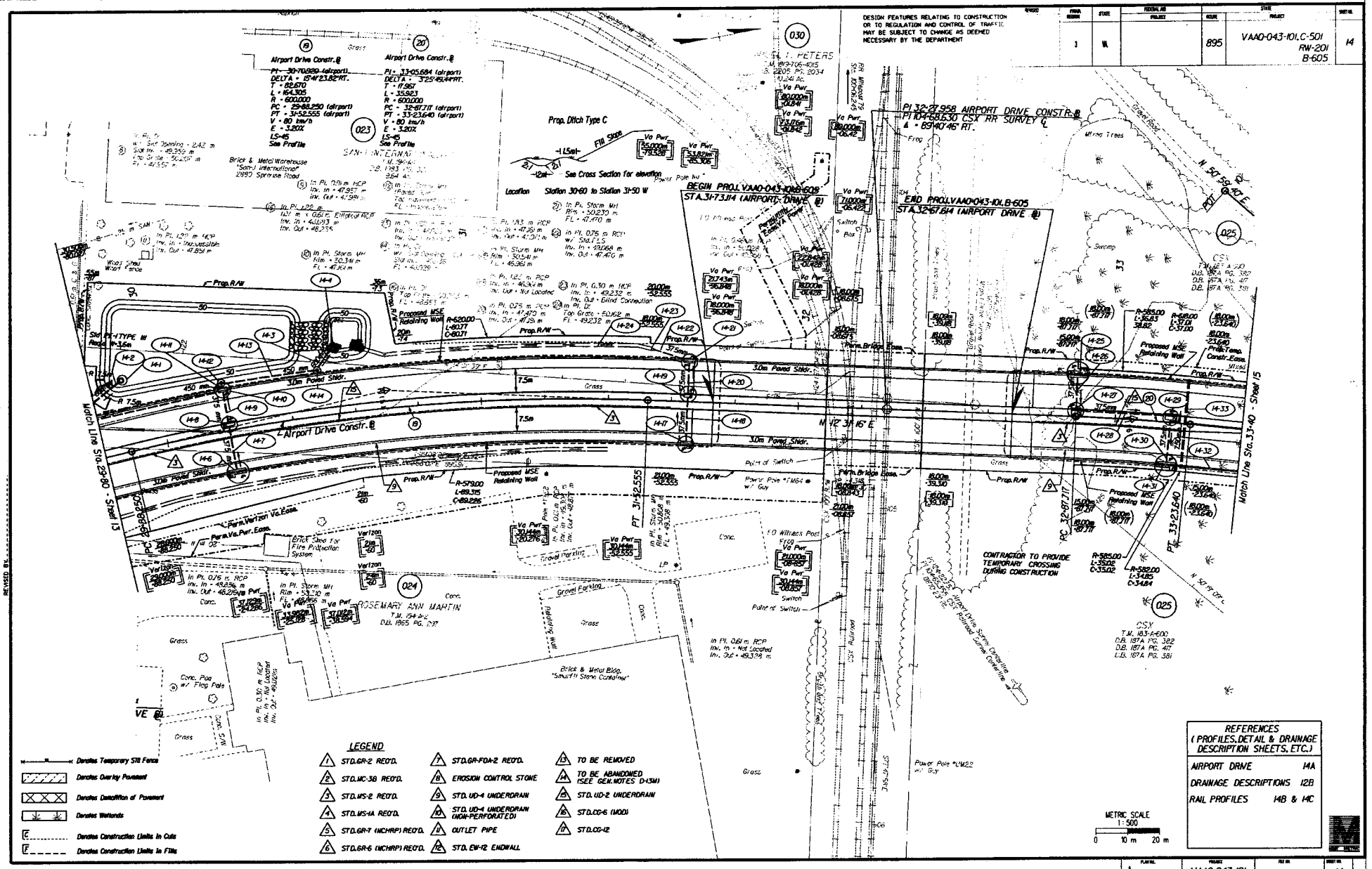
PLAN NO.	PROJECT	FILE NO.	SHEET NO.
A	VAAO-043-101		11


DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT
895
VAA0-043-101,C-501
RW-201
12
SAUER PROPERTIES, INC.
EVELYN O. HARDEN
THERON E. BOHR etals
FRANZ HAAS MACHINERY OF AMERICA, INC.
SWM F CONST. ENTRANCE
END CONST. SWM F ACCESS DRIVE STA.10+93.320
BEGIN CONST. SWM F ACCESS DRIVE STA.10+10.330
Begin Constr. Seven Hills Blvd. Constr. Sta.12+83.00
End Constr. Seven Hills Blvd. Constr. Sta.13+27.510
P.O.T. 24+62.850 AIRPORT DRIVE CONSTR.
P.O.T. 10+00.00 SWM F ACCESS DRIVE
P.O.T. 25+96.046 AIRPORT DRIVE CONSTR.
P.O.T. 13+37.411 SEVEN HILLS BLVD CONSTR.
Airport Drive Constr.
Seven Hills Blvd. Constr.
Match Line Sta.22+60 - Sheet 11
Match Line Sta.26+20 - Sheet 13
Match Line - This Sheet
SWM BASIN
LEGEND
Denotes Temporary Silt Fence
Denotes Overlay Pavement
Denotes Demolition of Pavement
Denotes Construction Limits In Cuts
Denotes Construction Limits In Fills
STD.GR-2 REQ'D.
STD.MC-3B REQ'D.
STD.MS-2 REQ'D.
STD.MS-1A REQ'D.
STD.GR-7 (NCHRP) REQ'D.
STD.GR-6 (NCHRP) REQ'D.
STD.GR-FOA-2 REQ'D.
EROSION CONTROL STONE
STD.UD-4 UNDERDRAIN
STD.UD-4 UNDERDRAIN (NON-PERFORATED)
OUTLET PIPE
STD. EW-12 ENDWALL
TO BE REMOVED
TO BE ABANDONED (SEE GEN.NOTES D-13)
STD. UD-2 UNDERDRAIN
STD.CG-6 (MOD)
STD.CG-12
REFERENCES (PROFILES, DETAIL & DRAINAGE DESCRIPTION SHEETS, ETC.)
AIRPORT DRIVE 12A
SEVEN HILLS BLVD. 12A
DRAINAGE DESCRIPTIONS 12B
METRIC SCALE 1:500
VAA0-043-101


DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT
895
VAAO-043-101.C-501 RW-201 B-604
13
SEE SHEET 12A FOR SWM F PROFILE
SEE SHEET 13B FOR ENTIRE PARCEL 022
BEGIN CONST. SWM G ACCESS DRIVE STA.10+07.860
End Constr. English Constr. B Sta.11+41.777
END CONST. SWM G ACCESS DRIVE STA.10+51.480
BEGIN PROJ.VAAO-043-101,B-604 STA.29+03.300 (AIRPORT Drive B)
END PROJ.VAAO-043-101,B-604 STA.29+36.700 (AIRPORT DRIVE B)
Begin Constr. English Constr. B Sta.10+18.436
Begin Constr. Haas Entr. Constr. B Sta.10+00.000
End Constr. Haas Entr. Constr. B Sta.10+52.085
Airport Drive Constr. B
Match Line Sta.26+20 - Sheet 12
Match Line Sta.29+80 - Sheet 14
ENGLISH BUILDING GROUP LC.
FRANZ HAAS MACHINERY OF AMERICA, INC.
ROSEMARY ANN MARTIN
Brick & Metal Warehouse
Mixed Woods
LEGEND
STD.GR-2 REQ'D.
STD.MC-3B REQ'D.
STD.MS-2 REQ'D.
STD.MS-1A REQ'D.
STD.GR-7 (NCHRP) REQ'D.
STD.GR-6 (NCHRP) REQ'D.
STD.GR-FOA-2 REQ'D.
EROSION CONTROL STONE
STD. UD-4 UNDERDRAIN
STD. UD-4 UNDERDRAIN (NON-PERFORATED)
OUTLET PIPE
STD. EW-12 ENDWALL
TO BE REMOVED
TO BE ABANDONED (SEE GEN. NOTES D-13M)
STD. UD-2 UNDERDRAIN
STD.CG-6 (MOD)
STD.CG-12
Denotes Temporary Silt Fence
Denotes Overlay Pavement
Denotes Demolition of Pavement
Denotes Wetlands
Denotes Construction Limits in Cuts
Denotes Construction Limits in Fills
METRIC SCALE 1:500
0 10 m 20 m
REFERENCES (PROFILES, DETAIL & DRAINAGE DESCRIPTION SHEETS, ETC.)
AIRPORT DRIVE 13A
ENGLISH ENTRANCE ROAD 13A
HAAS ENTRANCE ROAD 13A
TRACT 22 PROP. DETAIL 13B
DRAINAGE DESCRIPTIONS 12B
VAAO-043-101
13

DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

FINAL REGION	STATE	FEDERAL AID PROJECT	SHEET NO.	STATE PROJECT	SHEET NO.
1	WI		895	VAAO-043-101, C-501 RW-201 B-605	14



LEGEND

- Denotes Temporary Silt Fence
- Denotes Overlay Pavement
- Denotes Detoffition of Pavement
- Denotes Wetlands
- Denotes Construction Limits in Cuts
- Denotes Construction Limits in Fills

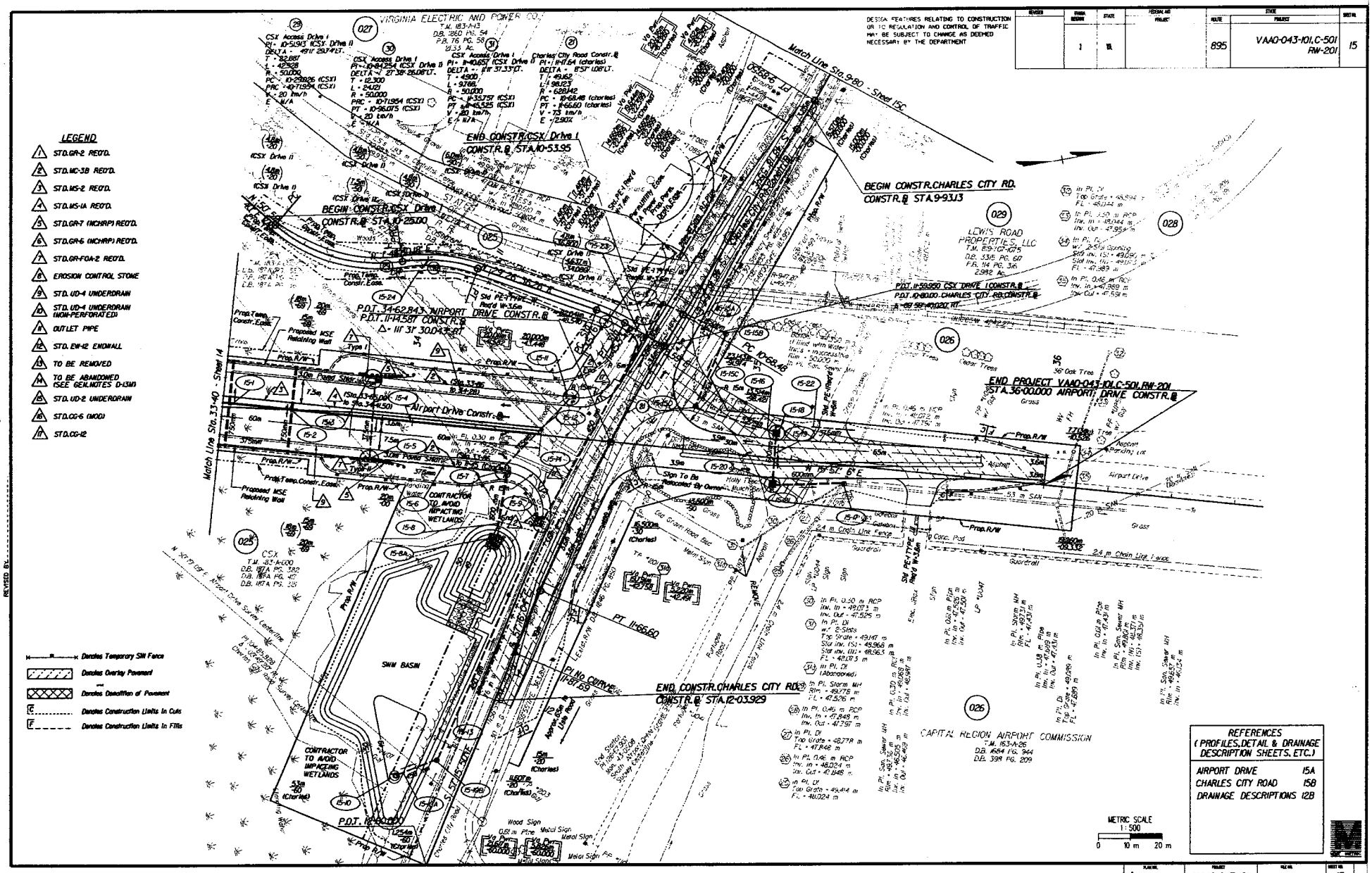
1. STD.GR-2 REQ'D.
2. STD.MC-3B REQ'D.
3. STD.MS-2 REQ'D.
4. STD.MS-1A REQ'D.
5. STD.GR-7 (NCHRP) REQ'D.
6. STD.GR-6 (NCHRP) REQ'D.
7. STD.GR-FOA-2 REQ'D.
8. EROSION CONTROL STONE
9. STD. UD-4 UNDERDRAIN
10. STD. UD-4 UNDERDRAIN (NON-PERFORATED)
11. OUTLET PIPE
12. STD. EW-12 ENDWALL
13. TO BE REMOVED
14. TO BE ABANDONED (SEE GEN. NOTES D-13M)
15. STD. UD-2 UNDERDRAIN
16. STD.CG-6 (MOD)
17. STD.CG-12

REFERENCES (PROFILES, DETAIL & DRAINAGE DESCRIPTION SHEETS, ETC.)	
AIRPORT DRIVE	14A
DRAINAGE DESCRIPTIONS	12B
RAIL PROFILES	14B & 14C

PLANNING	PROJECT	FILE NO.	SHEET NO.
A	VAAO-043-101		14

DESIGN FEATURES RELATING TO CONSTRUCTION OR TO REGULATION AND CONTROL OF TRAFFIC MAY BE SUBJECT TO CHANGE AS DEEMED NECESSARY BY THE DEPARTMENT

REVISED	FEDERAL AID PROJECT	STATE	ROUTE	PROJECT	SHEET NO.
	1	VA	895	VAA0-043-101,C-501 RW-201	15



REFERENCES (PROFILES, DETAIL & DRAINAGE DESCRIPTION SHEETS, ETC.)

AIRPORT DRIVE	15A
CHARLES CITY ROAD	15B
DRAINAGE DESCRIPTIONS	12B

SURVEYED BY: ... CONTRACTOR SERVICES, INC.
SURVEYED BY: ... (804) 649-1102, 804-796-4630
DESIGNED BY: ... (VE, LA) (PROJ. ROA-09-020)
CADD OPERATOR: ...
REVISED BY:

1/11/2006 09:05:44

PLAN NO.	PROJECT	FILE NO.	SHEET NO.
A	VAA0-043-101		15

Exhibit M
Unallowable Operating Costs Applicable to the Operator[1]

- 31.205-8 Contributions or donations
- 31.205-13 Employee morale, health, welfare, food service, and dormitory costs and credits
- 31.205-14 Entertainment costs
- 31.205-15 Fines, penalties, and mischarging costs
- 31.205-22 Lobbying and political activity costs
- 31.205-27 Organization costs
- 31.205-34 Recruitment costs
- 31.205-35 Relocation costs
- 31.205-43 Trade, business, technical and professional activity costs
- 31.205-44 Training and education costs
- 31.205-47 Costs related to legal and other proceedings
- 31.205-51 Costs of alcoholic beverages

[1] These provisions do not exclude all costs identified. Rather, they distinguish between allowable and unallowable costs that fall within the applicable category. These provisions may be viewed online at the following link: http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title48/48cfr31_main_02.tpl