

ATTACHMENT V – Ownership and Maintenance Agreement for the Wilson Bridge

**AGREEMENT COVERING THE OWNERSHIP, OPERATION,
INSPECTION, MAINTENANCE, AND REHABILITATION OF THE
WOODROW WILSON MEMORIAL BRIDGE**

June 15, 2001

**AGREEMENT COVERING THE OWNERSHIP, OPERATION,
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**AGREEMENT COVERING THE OWNERSHIP, OPERATION,
INSPECTION, MAINTENANCE, AND REHABILITATION OF
THE WOODROW WILSON MEMORIAL BRIDGE**

THIS AGREEMENT made and entered into this _____ day of _____ 2001, by and among:

1. the United States Department of Transportation and the Federal Highway Administration (collectively **FHWA**), acting by and through the Secretary of the United States Department of Transportation and the Administrator of the Federal Highway Administration;

2. the State of Maryland (**Maryland**), acting by and through the Administrator of the Maryland State Highway Administration;

3. the Commonwealth of Virginia (**Virginia**), acting by and through the Commissioner of the Department of Transportation, with the approval of the Commonwealth Transportation Board; and

4. the District of Columbia (**District**), acting by and through the Director of the Department of Public Works; and

WHEREAS, all four of the above entities are sometimes collectively referred to as the **Parties**; and

WHEREAS, **Maryland, Virginia, and the District** are sometimes referred to collectively as the **Capital Region Jurisdictions**; and

WHEREAS, the existing Woodrow Wilson Memorial Bridge (**Existing Bridge**) is presently owned by the United States Government with the **FHWA** having custody and accountability as the holding agency; and

WHEREAS the **FHWA**, in cooperation with the **Capital Region Jurisdictions**, has selected an alternative to upgrade the Interstate Route 95 Potomac River crossing by building a new Woodrow Wilson Bridge (**Bridge**) and upgrading the approaches thereto and the related interchanges (**Project**) as described, in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321), in the June 16, 2000 Record of Decision and the April 14, 2000 Final Supplemental Environmental Impact Statement / Section 4 (f) Evaluation; and

WHEREAS, Section 1116 (c) of the Transportation Equity Act for the 21st Century [PL 105-178, (June 9, 1998)] added Section 412 to the Woodrow Wilson Memorial Bridge Authority Act of 1995 [PL 104-59 (November 28, 1995)] that authorized to be appropriated from the Highway Trust Fund \$900,000,000 to pay the costs of the **Project** but restricted the expenditure of funds for construction prior to the execution of an agreement described in Section 407 (c) of the Woodrow Wilson Memorial Bridge Authority Act of 1995 [PL 104-59 (November 28, 1995)], as amended by Section 1116 (b) of the Transportation Equity Act for the 21st Century [PL 105-178, (June 9, 1998)], (**Ownership Agreement**) under which an Authority or one or more **Capital Region Jurisdictions** agreed to accept ownership of the **Bridge**; and

WHEREAS, on July 13, 2000 [PL 106-246, § 134] Congress authorized the immediate release of up to \$170,000,000 for dredging and foundation activities for construction prior to the execution of an **Ownership Agreement**; and

WHEREAS, **Maryland** is contracting for dredging and foundation activities for construction utilizing the available \$170,000,000; and

WHEREAS, on October 23, 2000 [PL 106-346, § 379], Congress amended Section 412 of the Woodrow Wilson Memorial Bridge Authority Act of 1995 [PL 104-59 (November 28, 1995)], as amended, and appropriated an additional \$600,000,000 to pay the costs of the **Project**; and

WHEREAS, the **Parties** desire to enter into the **Ownership Agreement** required by Section 407 (c) of the Woodrow Wilson Memorial Bridge Authority Act of 1995, as amended, so that construction, utilizing the \$1,500,000,000 authorized by Congress, may proceed beyond the initial dredging and foundation work; and

WHEREAS, in addition to the required **Ownership Agreement**, the **Parties** desire to enter into an Agreement regarding the future operation, inspection, maintenance, and rehabilitation of the **Bridge**.

NOW THEREFORE, for and in consideration of the premises and mutual covenants herein set forth, the **Parties** hereto agree as follows:

I. GENERAL PROVISIONS

1. DEFINITIONS & ABBREVIATIONS

A. **Project** refers to the entire reconstruction/rehabilitation of I-95/495 (Capital Beltway) from the Telegraph Road interchange in **Virginia** extending to the MD210 interchange in **Maryland**, including the **Bridge** over the Potomac River as well as the roadways, ramps and interchanges, as described in more detail in the June 16, 2000 Record of Decision and the April 14, 2000 Final Supplemental Environmental Impact Statement / Section 4 (f) Evaluation.

B. **Bridge** is defined as that part of the **Project** that, when built, will be the actual structure carrying I-95/495 (Capital Beltway) over the Potomac River between Oxon Hill, **Maryland** and Alexandria, **Virginia** and passing through the **District**. **Bridge** does not include: 1) the approach roadways, interchanges and associated structures beyond the limits of the abutments; 2) any deck or overpass structures that may be located near the ends of the **Bridge** in **Maryland** and/or **Virginia**; 3) any current or future features under the **Bridge** which are not integral to the **Bridge**; or 4) any portion of the **Project** or other current or future feature near or associated with the **Bridge** which is not integral to the **Bridge**.

C. **Existing Bridge** refers to the existing Woodrow Wilson Memorial Bridge opened in 1961 and currently carrying I-95/495 (Capital Beltway) over the Potomac River between Oxon Hill, **Maryland** and Alexandria, **Virginia** and passing through the **District**.

D. **FHWA** refers collectively to the United States Department of Transportation and the Federal Highway Administration.

E. **Maryland** refers to the State of Maryland.

F. **Virginia** refers to the Commonwealth of Virginia.

G. **District** refers to the District of Columbia.

H. **Parties** and **Party** refer collectively to **FHWA, Maryland, Virginia, and the District.**

I. **Capital Region Jurisdictions** refers to **Maryland, Virginia, and the District.**

J. **Ownership Agreement** refers to the agreement described in Section 407 (c) of the Woodrow Wilson Memorial Bridge Authority Act of 1995, as amended.

K. **Routine maintenance** is defined as ordinary and normal care and maintenance work including, but not necessarily limited to: signing, minor patching of the deck, replacing or repairing damaged barrier sections, and cleaning drainage systems. **Routine maintenance** does not include **long term maintenance and rehabilitation.**

L. **Long term maintenance and rehabilitation** is defined as extraordinary care and maintenance work including, but not necessarily limited to: deck replacement, deck overlay, major deck patching or repair, painting, replacement or repair of portions of substructures, and replacement or repair of deteriorated structural steel units.

2. SCOPE OF THE AGREEMENT

A. In General

Except as expressly provided, this Agreement covers only the **Bridge**.

B. Prior Agreements

This Agreement supersedes all prior agreements between the **Parties** regarding the **Existing Bridge** and the **Project**, except that all terms of the April 19, 1985 Ownership Agreement not inconsistent with this Agreement shall remain in effect until traffic has been shifted onto the first span of the **Bridge** and the **Existing Bridge** is closed to traffic.

3. ROLE OF THE DISTRICT

A. Permanent Easement from the District to Maryland and Virginia

The **District** has granted (or will grant) **Maryland** and **Virginia** a perpetual bridge easement for an area physically located within the District boundaries and adjacent to the **Bridge** in order to provide sufficient space and access for **Maryland** and **Virginia** to perform all necessary construction, operation, maintenance, rehabilitation and repair activities.

B. Relinquishment by the District of all Rights and Interests in the Bridge and Project

The **District** immediately and for all time relinquishes all rights and interests in the **Bridge** and the **Project**, except as otherwise provided in this Agreement, when

traffic has been shifted onto the first span of the **Bridge** and the **Existing Bridge** is closed to traffic.

4. SOVEREIGN IMMUNITY, AGENCY, AND INDEMNIFICATION

A. Sovereign Immunity and Agency

The **Capital Region Jurisdictions** desire to preserve their sovereign immunity and extend their sovereign immunity to each other to the greatest extent permitted by applicable state law. Nothing in this Agreement shall be construed as a waiver by any **Capital Region Jurisdiction** of their sovereign immunity.

For all work related to this Agreement, each **Capital Region Jurisdiction** shall be considered an agent(s) of the **Capital Region Jurisdiction** in which it is operating, with all rights and privileges thereunto appertaining.

B. Indemnity

To the extent permitted by applicable state law each **Capital Region Jurisdiction** shall indemnify the other **Capital Region Jurisdictions** for loss, damage, or injury to persons or property arising from, growing out of, or in any manner or degree caused by, attributable to, or resulting from the work, operation or maintenance performed in carrying out their respective responsibilities under the terms of this Agreement.

To the extent permitted by applicable state law each **Capital Region Jurisdiction** shall defend and hold harmless the other **Capital Region Jurisdictions**

from any and all claims, demands and/or liabilities arising from the discharge of their duties of this Agreement.

Each **Capital Region Jurisdiction** shall require their contractors and consultants selected to perform or carry out their respective responsibilities under the terms of this Agreement to indemnify the other **Capital Region Jurisdictions** and to maintain the other **Capital Region Jurisdictions** as additional named insureds on any policy of insurance required by the contract.

Nothing in this Agreement is intended to or shall be construed to modify the Financial Plan attached as Exhibit A to this Agreement.

5. COOPERATION AND ADDITIONAL ACTIONS

The **Parties** agree to cooperate fully to effectuate the terms of this Agreement to ensure the efficient and timely construction of the **Project** and the efficient operation, inspection, maintenance and rehabilitation of the **Bridge**. The **Parties** agree to take additional actions necessary to effectuate the terms of this Agreement and to accomplish this goal.

II. OWNERSHIP

1. PROJECT

Upon completion and final acceptance for maintenance of each **Bridge** construction contract, **Maryland** and **Virginia** agree to accept joint ownership and title to the completed work.

For all other non-**Bridge** construction contracts, the responsible contracting **Capital Region Jurisdiction** agrees to retain ownership and title to the completed work.

2. LANDS UNDER AND ADJACENT TO THE BRIDGE

FHWA represents that it has transferred all interests in land under and adjacent to the **Bridge** to allow **Maryland** and/or **Virginia** to build and maintain the **Project**.

If there are any other interest in land owned by the Federal Government that are necessary to build or maintain the **Bridge** they shall be appropriated by **FHWA** and transferred to **Virginia** and/or **Maryland**.

3. EXISTING BRIDGE

All right, title and interest of the United States in and to the **Existing Bridge** and all duties and responsibilities associated with the **Existing Bridge** will be conveyed jointly to Maryland and Virginia when traffic has been shifted onto the first span of the **Bridge** and the **Existing Bridge** is closed to traffic. Until such time as the **Project** is constructed and operational, this conveyance shall not:

- (1) relieve the **Capital Region Jurisdictions** of the sole and exclusive responsibility to maintain and operate the **Existing Bridge** as defined in the 1985 Agreement For The Ownership, Maintenance, Operation, and Rehabilitation of the Woodrow Wilson Memorial Bridge; or

(2) relieve the FHWA of the responsibility to rehabilitate the **Existing Bridge** or to comply with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*) and all other requirements applicable with respect to the **Existing Bridge**.

All portions of the **Existing Bridge** shall remain the property of the FHWA until such time as traffic has been shifted onto the first span of the **Bridge** and the **Existing Bridge** is closed to traffic. The **Existing Bridge** shall be removed and disposed of in its entirety as part of the construction **Project**, with the possible exception of portions of the existing foundations and/or piling which may be left in place below the finished ground line or river bottom. The portions of the **Existing Bridge** that are removed shall become the property of the contractor performing the removal except the medallions that shall become the property of FHWA and except as otherwise provided by the June 16, 2000 Record of Decision and the April 14, 2000 Final Supplemental Environmental Impact Statement / 4 (f) Evaluation. No claim shall be made by any **Party** regarding the disposition of the removed materials or to any salvage value of the materials.

III. FINANCIAL PLAN

The **Parties** agree to the Financial Plan attached as Exhibit A and that it satisfies the requirements of Section 407 (c)(2)(B) of the Woodrow Wilson Bridge Authority Act of 1995, as amended, that requires agreement regarding a financial plan prior to the execution of the **Ownership Agreement** that specifies:

- (i) the total cost of the Project, including any cost-saving measures;
- (ii) a schedule for implementation of the Project, including whether any expedited design and construction techniques will be used; and
- (iii) the sources of funding that will be used to cover any costs of the Project not funded from funds made available under section 412.

Nothing in this Agreement is intended to or shall be construed to prevent any required revisions or modifications to the Financial Plan attached as Exhibit A to this Agreement.

IV. DESIGN AND CONSTRUCTION OF THE PROJECT

1. IN GENERAL

The **Parties** agree that the **Project** will be built in a manner consistent with the June 16, 2000 Record of Decision and the April 14, 2000 Final Supplemental Environmental Impact Statement / Section 4 (f) Evaluation in satisfaction of the requirement of Section 407 (c) (2) (C) of the Woodrow Wilson Memorial Bridge Authority Act of 1995, as amended, that requires the **Ownership Agreement** shall:

- (C) require that--
 - (i) the Project include not more than 12 traffic lanes, including 8 general purpose lanes, 2 merging/diverging lanes, and 2 high occupancy vehicle, express bus, or rail transit lanes;
 - (ii) the design, construction, and operation of the Project reflect the requirements of clause (i);
 - (iii) all provisions described in the environmental impact statement for the Project or a record of decision for the Project (including in the attachments to the statement and record) for mitigation of environmental and other impacts of the Project be implemented; and
 - (iv) ... the Capital Region jurisdictions develop a process to integrate affected local governments, on an ongoing basis, in the process of carrying out the engineering, design, and construction phases

of the project, including planning for implementing the provisions described in clause (iii).

2. DESIGN AND CONSTRUCTION OF THE BRIDGE

The design engineering and preparation of the plans, specifications and estimate for the **Bridge** shall be performed by **Maryland**.

Maryland shall have the right to divide the **Bridge** construction into multiple contracts at its discretion. **Maryland** shall advertise the contracts for the receipt of competitive bids and award them in accordance with applicable law and its usual procedures.

The supervision of the construction of the **Bridge** shall be performed at the direction of **Maryland**, utilizing available in-house or consultant resources, including, if necessary, the services of the General Engineering Consultant (GEC), currently under contract to **Maryland**.

3. DESIGN AND CONSTRUCTION OF THE NON-BRIDGE PORTIONS OF THE PROJECT

The design engineering and preparation of the plans, specifications and estimate for those non-**Bridge** portions of the **Project** shall be performed by the **Capital Region Jurisdiction** into which that portion of the **Project** extends.

Each **Capital Region Jurisdiction** shall have the right to divide their construction into multiple contracts at their discretion. Each **Capital Region Jurisdiction** shall have the right, with the consent of any other **Capital Region Jurisdiction** affected, to contract for the construction of non-**Bridge** portions of the

Project over which they would otherwise have no responsibility. Each **Capital Region Jurisdiction** shall advertise the contracts for the receipt of competitive bids and award them in accordance with applicable law and their usual procedures.

The supervision of this construction shall be performed at the direction of the appropriate **Capital Region Jurisdiction**, utilizing available in-house or consultant resources, including, if necessary, the services of the General Engineering Consultant (GEC), currently under contract with **Maryland and Virginia**.

4. OBLIGATION OF ALL PARTIES

A. Right of Way

All rights-of-way necessary to complete the **Project**, including those held by the Federal government, shall be secured by the appropriate **Capital Region Jurisdiction** or **FHWA** and made available at no cost to all other **Parties** and their contractor(s). To the extent that the costs incurred in acquiring the necessary rights of way are eligible for reimbursement under the Federal-aid Highway program or other federal funding source, each **Capital Region Jurisdiction** may seek reimbursement from available **Project** funds.

B. Right of Entry

All real property owned or controlled by the **Parties** shall be made available for construction activities, at no cost, to the others **Parties** and their contractor(s).

C. Utility Relocation

All utility relocations and agreements necessary to complete the **Project** shall be secured by the appropriate **Capital Region Jurisdiction** and made available, at no cost, to the other **Capital Region Jurisdictions** and their contractor(s). To the extent that the costs incurred in relocating utilities are eligible for reimbursement under the Federal-aid Highway program or other federal funding source, each **Capital Region Jurisdiction** may seek reimbursement from **Project** funds.

FHWA represents that there are no utilities under the control of the Federal Government that need to be relocated to build or maintain the **Project**. If any such utilities are discovered, **FHWA** will secure the appropriate utility relocation agreements and make them available to the **Capital Region Jurisdictions** and their contractor(s), with reimbursement of eligible relocation costs from **Project** funds.

D. Permits

Each **Party** will be responsible for obtaining necessary permits required for the work within its jurisdiction, even if the work is to be contracted for and performed by others.

E. Review and Comment on Project Plans

Each **Party** shall be provided reasonable opportunity to review and comment on the plans and contract documents, and proposed changes in design which are developed for any work on the **Project**, at the various stages (preliminary, semi-final,

and final, etc.). The **Parties** recognize that all proposed design changes are subject to environmental review by **FHWA** under the terms of the National Environmental Policy Act of 1969 (42 U.S.C. § 4231 *et seq.*).

V. FUTURE OPERATION, INSPECTION, MAINTENANCE, AND REHABILITATION

1. IN GENERAL

The **Parties** desire to enter into an Agreement regarding the future operation, maintenance, inspection, and rehabilitation of the **Bridge** and the costs associated therewith.

2. EXCLUSIONS

Each **Capital Region Jurisdiction** shall maintain the non-**Bridge** portions of the **Project** located within its jurisdiction.

Requests for, review and issuance of, and administration of oversized, overweight, and hazardous materials permits shall be the responsibility of either **Maryland** or **Virginia** depending upon the origin of the proposed move.

3. OBLIGATIONS AND RIGHTS OF ALL PARTIES

A. Right of Entry

All interests in real property owned or controlled by each **Party** shall be made available for the purposes of inspection, maintenance, and repair of the **Bridge**, at no cost, to the other **Parties**.

B. Use of Crossovers and Other Facilities

Official vehicles of each **Party** shall be permitted to use any median crossover or other facilities belonging to or under the control of any other **Party** on or in the immediate vicinity of the **Bridge** for the purposes of inspection, maintenance, or repair of the **Bridge**

C. Right to Contract

Maryland or **Virginia** may choose to utilize the services of a consultant or contractor selected pursuant to applicable procurement law to perform any or all of their assigned responsibilities without affecting any of the terms of this Agreement, including the cost sharing described below.

4. OBLIGATIONS OF VIRGINIA

Virginia shall:

Maintain all highway, air safety, aesthetic and navigational lighting for the entire **Bridge** and shall enter into an agreement with the appropriate utility necessary to provide all electrical power and servicing for the main power line and the standby line, including the maintenance of the feeders from the meter to the distribution panel of the **Bridge**.

Provide all electrical power necessary for lighting the **Bridge** and for operating all movable span elements and for the provision of telephone, radio and other communication service.

Provide necessary electrical, water and sewer service for the operator's house and shall provide water service for any fire protection systems on as much of the **Bridge** as is possible.

5. OBLIGATIONS OF MARYLAND

Maryland shall:

Remove snow and ice and apply the necessary abrasives and chemicals on the entire length of the **Bridge**.

Install paint and maintain pavement markings and Intelligent Transportation Systems for the entire length of the **Bridge**.

Perform **routine maintenance** work on the entire **Bridge**.

Provide operators on a 24-hour basis, or as otherwise required by the United States Coast Guard, for the operation of the **Bridge** bascule span.

Maintain the pier protection system, the electrical controls and mechanical machinery associated with the movable span, and the operator's house.

Provide water service for any fire protection systems for any part of the **Bridge** for which **Virginia** is unable to provide service.

6. LONG TERM MAINTENANCE AND REHABILITATION

A. In General.

Maryland and **Virginia** recognize that the **Bridge** will require, and agree to provide, **long-term maintenance and rehabilitation**.

B. Bridge Inspection

The above-water portions of the **Bridge** shall be inspected in their entirety at least once every two years in accordance with National Bridge Inspection Standards.

The below-water portions of the **Bridge** shall be inspected at least once every five years.

Unless **Maryland** or **Virginia** volunteers to have its own employees or its Consultant inspect the **Bridge**, a Consultant shall be engaged by **Maryland** to perform the inspections and prepare a report that is made available to **Maryland** and **Virginia**.

C. Decisions regarding Long Term Maintenance and Rehabilitation

A standing committee, consisting of the chief bridge engineer in **Maryland** and **Virginia**, or their authorized designees, shall meet as needed to evaluate the results of the periodic inspections, to determine any work efforts that are necessary for the maintenance and rehabilitation of the **Bridge**, and to discuss any other topics related to the **Bridge**.

The committee shall agree as to the scope of the work required and which jurisdiction shall perform the work. All work to be performed on the **Bridge**, whether it is entirely within one jurisdiction or in multiple jurisdictions, must be agreed to by the entire committee, if it is to be subject to the cost sharing described below.

D. Emergency Repairs

In the event of emergency or other situations requiring immediate attention, **Maryland** or **Virginia** may take immediate action to address the emergency in a safe and expeditious manner. However, in this event the standing committee shall meet as quickly as possible to address the emergency or situation requiring immediate attention. Any work performed in response to an emergency or other situation requiring immediate attention for which prior approval of the standing committee was

not possible shall, to the maximum extent possible, be subject to the cost sharing described below.

7. COST SHARING OF FUTURE MAINTENANCE, ETC

A. In General

All costs for the work necessary to operate, maintain, inspect, repair and rehabilitate the **Bridge** shall be borne equally by **Maryland** and **Virginia**.

B. Accounting

Within a reasonable time after June 30 of each year, **Maryland** and **Virginia** shall provide to each other a statement of all expenses incurred, excluding customary administrative and general overhead costs, regarding the **Bridge** during the preceding fiscal year (July 1 to June 30).

Neither **Maryland** nor **Virginia** shall bear more than one-half of the total cost of all operation, maintenance, inspection, repair and rehabilitation work either covered specifically in this Agreement, agreed to by **Maryland** and **Virginia**, or reasonably performed by either **Maryland** or **Virginia** .

Appropriate adjustments and/or reimbursements will be made within a reasonable time after June 30 of each year.

C. Use of Excess Project Funds

To the extent consistent with Federal laws and regulations, any funds remaining from the currently authorized \$1,500,000,000.00, or from any subsequent legislation which makes additional funds available for the construction of the **Project**,

shall be made available to **Maryland** and **Virginia** as 100% Federal Funding for any work involving maintenance, reconstruction, resurfacing, restoration or rehabilitation to the **Bridge** that becomes necessary in the future, until the total of all available funds is exhausted.

D. Additional Federal Funding - Reimbursement

No provision of this Agreement will preclude the jurisdictions from seeking any type of Federal-aid funding for any work on the **Bridge** or **Project** at any time in the future.

IN WITNESS WHEREOF, the **Parties** hereto have caused this Agreement to be executed by their proper officers thereunto authorized the day and year first above written.

Witness:

STATE OF MARYLAND
Maryland State Highway Administration

Kevin Reynolds

BY: *James R. Will*
Maryland State Highway Administrator

APPROVED FOR FORM
AND LEGAL SUFFICIENCY:

Kevin Reynolds
Title: *Assistant Attorney General*

Witness:

[Signature]

COMMONWEALTH OF VIRGINIA
Virginia Department of Transportation

BY [Signature]
Commissioner, Virginia Department of Transportation

APPROVED FOR FORM
AND LEGAL SUFFICIENCY:

[Signature]
Title: Senior Counsel Attorney General

Commonwealth Transportation Board

[Signature]

BY [Signature]
Title: Vice Chairman and Commonwealth Transportation Commissioner

APPROVED FOR FORM
AND LEGAL SUFFICIENCY:

[Signature]
Title: Senior Counsel Attorney General

Witness:

[Signature]

DISTRICT OF COLUMBIA
District of Columbia Department of Public Works

BY [Signature]
Director, Department of Public Works

APPROVED FOR FORM
AND LEGAL SUFFICIENCY:

[Signature]
Title: Assistant Corporation Counsel

Witness:

UNITED STATES OF AMERICA
United States Department of Transportation

BY _____
Secretary, United States Department of
Transportation

APPROVED FOR FORM
AND LEGAL SUFFICIENCY:

Title:

Federal Highway Administration

BY _____
Federal Highway Administrator

APPROVED FOR FORM
AND LEGAL SUFFICIENCY:

Title: