
**TURNKEY LUMP-SUM
DESIGN-BUILD CONTRACT
FOR
THE ROUTE 495 HOT LANES IN VIRGINIA PROJECT**

BETWEEN

**CAPITAL BELTWAY EXPRESS LLC,
AS CONCESSIONAIRE**

AND

**FLUOR-LANE LLC,
AS CONTRACTOR**

DATED AS OF DECEMBER 18, 2007

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EXHIBITS

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THIS TURNKEY LUMP-SUM DESIGN-BUILD CONTRACT FOR THE ROUTE 495 HOT LANES IN VIRGINIA PROJECT, dated as of December 18, 2007, is made by and between CAPITAL BELTWAY EXPRESS LLC, a Delaware limited liability company, as Concessionaire, and FLUOR-LANE LLC, a Delaware limited liability company, as Contractor.

W I T N E S S E T H:

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

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

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

ARTICLE 1

DEFINITIONS

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

“Affiliate” when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries has a ten percent (10%) or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with such specified Person, and a Person is deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

“Agreement” means this Design Build Contract for the Capital Beltway Route 495 High Occupancy Toll Lanes Project in Virginia, all written amendments, modifications and supplements hereto, and all Exhibits attached hereto, all of which by this reference are incorporated herein.

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

“Applicable Laws” means all laws, treaties, ordinances, judgments, decrees, injunctions, writs and orders of any Governmental Authority, and all rules, regulations, orders, interpretations and Permits of any Governmental Authority having jurisdiction over construction of the Project on the Project Right of Way, performance of the Work, operation of the Project, or the health, safety or environmental condition of the Project or the Project Right of Way, as the same may be in effect from time to time. Applicable Laws include but are not limited to VA. Code and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

“Applicable Permits” means all Permits required by Applicable Laws to be obtained or maintained in connection with design, development, acquisition, construction, equipping or provision of traffic management for, or other management of the Project and the Project Right of Way, or performance of the Work hereunder or to allow commencement of operation of the Project by Concessionaire or VDOT, as applicable, including Permits for lay-down and staging areas, state and federal environmental Permits, building Permits and heritage Permits, but shall exclude operating Permits other than those required to be obtained in order to commence operation of the Project.

“Applicable Standards” means those codes and standards listed in the Scope Document and the Technical Requirements; provided, however, that if any portion of such codes and standards conflicts with or is less stringent than Applicable Laws or other requirements in the Contract Documents, such conflicting or less stringent portions of such standards shall not be deemed “applicable.”

“ARCA Compensation Event” means one of the following specified events that constitutes a “Compensation Event” under the Comprehensive Agreement and that entitles Contractor to claim a Scope Change hereunder (which Scope Change may include an adjustment to the Contract Sum) if the same wholly or partly prevents, restricts or delays the performance of any material obligation of Contractor arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control of Contractor, (ii) Contractor has used Commercially Reasonable Efforts in order to prevent or avoid such event and mitigate the effect of such event on its ability to perform its obligations under this Agreement and which by the exercise of reasonable due diligence Contractor could not reasonably have been expected to avoid and which by the exercise of reasonable due diligence it has been unable to overcome, and (iii) such event is not the result of the negligence or the failure of, or caused by, Contractor:

(a) any delay beyond applicable time period in the issuance by VDOT of a “Substantial Completion Certificate” pursuant to Section 7.14(a) of the Comprehensive Agreement for which Contractor is entitled to claim a Scope Change pursuant to Section 12.8.2 hereof;

(b) any Department Change undertaken pursuant to Section 12.3 hereof, including any change in Applicable Law after the Agreement Date resulting in a change in the Technical Requirements for which Contractor is entitled to claim a Scope Change pursuant to Section 12.3.2 hereof; or

(c) an injunction or other legal proceeding enjoining or estopping either the Concessionaire or the Contractor from the performance of its respective obligations under

this Agreement, in any case for more than thirty (30) days in the aggregate, based solely on claims that were not time barred because the re-evaluation dated May 9, 2007 of the federal environmental impact study was not published in the Federal Register, for which Contractor is entitled to claim a Scope Change pursuant to Section 12.6.1 hereof.

“ARCA Delay Event” means one of the following specified events that constitutes a “Delay Event” under the Comprehensive Agreement and that entitles Contractor to claim a Scope Change hereunder (which Scope Change may include an adjustment to the Guaranteed Substantial Completion Date and the Project Schedule but not to the Contract Sum) if the same wholly or partly prevents, restricts or delays the performance of any material obligation of Contractor arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control of Contractor, (ii) Contractor has used Commercially Reasonable Efforts in order to prevent or avoid such event and mitigate the effect of such event on its ability to perform its obligations under this Agreement and which by the exercise of reasonable due diligence Contractor could not reasonably have been expected to avoid and which by the exercise of reasonable due diligence it has been unable to overcome, and (iii) such event is not the result of the negligence or the failure of, or caused by, Contractor:

(a) a Force Majeure Event for which Contractor is entitled to claim a Scope Change pursuant to Section 12.6.3 hereof;

(b) discovery of any of the following conditions: (A) subsurface conditions on the Project Right of Way that (1) vary materially from the conditions described in the data available to Contractor as of the Agreement Date, or (2) are unusual and could not be reasonably anticipated by a prudent contractor based on conditions ordinarily encountered in the general area of the Project Right of Way; (B) threatened or endangered species on the Project Right of Way or directly affecting the performance of the Work; (C) archaeological, paleontological or cultural resources on the Project Right of Way or directly affecting the performance of the Work; (D) Pre-Existing Hazardous Substances or Hazardous Substances spilled or otherwise placed on the Project Right of Way subsequent to the Agreement Date other than by Contractor or a Subcontractor in the course of performing the Work; or (E) Utilities on the Project Right of Way not known by or disclosed to the Contractor prior to the Agreement Date; the consequences of any such discovery are set forth in Section 12.7.2 (for events described in clause (b)(D) of this definition) or 12.12 hereof (for events described in clauses (b)(A), (b)(B), (b)(C) and (b)(E) of this definition);

(c) a failure to obtain, or delay in obtaining, any Applicable Permit from a Governmental Authority (provided that such failure or delay could not have been reasonably prevented by Contractor) for which Contractor is entitled to claim a Scope Change pursuant to Section 12.6.3 hereof;

(d) an injunction or other legal proceeding enjoining or estopping either VDOT or Concessionaire from the performance of its respective obligations under the Comprehensive Agreement, in each case for which Contractor is entitled to claim a Scope Change pursuant to Section 12.6.2 hereof; or

(e) a change in Applicable Laws occurring after the Agreement Date that imposes additional requirements that directly and materially adversely impact performance of the Work by Contractor and that could not have reasonably been anticipated by a reasonable contractor.

“Bonus” has the meaning set forth in Section 7.7 hereof.

“Business Day” means any calendar day other than Saturday, Sunday or other day observed as a holiday by either the Commonwealth of Virginia or the U.S. government.

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

“Capital Beltway” means that portion of the 64-mile long Interstate freeway (I-495) encircling Washington D.C. situated within the Commonwealth of Virginia, as it may be expanded or improved.

“Commencement Date” means the date on which Contractor is to commence performance of the entire Work, as specified in the Notice to Proceed delivered to Contractor by Concessionaire pursuant to Section 2.3 hereof.

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

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

“Comprehensive Agreement” means the Amended and Restated Comprehensive Agreement Relating to the Route 495 Hot Lanes in Virginia Project, dated as of December 19, 2007, entered into by and between Concessionaire and VDOT, and all exhibits and schedules thereto, as supplemented or further amended from time to time.

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

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

Agreement shall not constitute Concessionaire-Caused Delays. For the avoidance of doubt, no ARCA Compensation Event, ARCA Delay Event, or VDOT-caused delay resulting in a Department Change under Section 12.3.3 hereof shall be deemed to constitute a Concessionaire-Caused Delay.

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

“Concessionaire Delay Damages Rate” means, (i) if Contractor notifies Concessionaire more than six (6) months prior to the Guaranteed Substantial Completion Date that it does not believe Substantial Completion will occur on or before the Guaranteed Substantial Completion Date, \$195,185, (ii) if Contractor notifies Concessionaire more than three (3) months but fewer than six (6) months prior to the Guaranteed Substantial Completion Date that it does not believe Substantial Completion will occur on or before the Guaranteed Substantial Completion Date, \$215,207, and (iii) if Contractor notifies Concessionaire fewer than three (3) months prior to the Guaranteed Substantial Completion Date that it does not believe Substantial Completion will occur on or before the Guaranteed Substantial Completion Date, \$235,160. The foregoing rates shall be adjusted upon Concessionaire's closing of third-party debt financing to fund all project uses identified at the initial closing, that are not paid from the proceeds of the VDOT Funding or equity contributions from the owners of Concessionaire, such adjustments to be made in good faith by Concessionaire, with Contractor's consent, to reflect the difference in (A) the costs of debt assumed in the methodology used to derive the foregoing rates, from (B) the anticipated costs of debt to be incurred by Concessionaire pursuant to the closing of such third-party debt financing.

“Concessionaire Event of Default” has the meaning set forth in Section 15.3.1 hereof.

“Concessionaire Indemnified Parties” has the meaning set forth in Section 13.1.1 hereof.

“Concessionaire's Approval” means the right of Concessionaire to review and approve the items set forth on Exhibit Q or another matter as expressly provided in this Agreement (which approval by Concessionaire may be contingent upon its receipt of VDOT's approval to the extent required under the Comprehensive Agreement or as otherwise designated on Exhibit Q). Contractor shall submit items of Work subject to Concessionaire's Approval by the date specified in this Agreement or in Exhibit Q (or if a date is not specified, when Contractor desires), and Concessionaire shall provide its written approval or denial thereof within twenty-five (25) days of such submission, unless another time period for such approval is specified in Exhibit Q or in this Agreement. If Concessionaire determines to deny its approval, it shall provide a brief summary of the reasons for its determination. If Concessionaire does not respond within the time allotted, Concessionaire's Approval shall be deemed to have been given unless otherwise provided in Exhibit Q or in this Agreement with respect to the approval of such item. Unless the Parties expressly agree otherwise in writing, Concessionaire's Approval of any aspect of the Work (whether deemed or actual) shall not affect Contractor's obligation to provide the complete Project in accordance with the requirements of this Agreement or any of Contractor's other obligations hereunder, or change the scope of Work set forth in the Scope Document, or reduce, increase or waive Contractor's obligations under this Agreement and its independent responsibility for performance of the Work hereunder or for any acts or omissions of the

Contractor's design professionals or other Subcontractors engaged by Contractor to perform the Work, or constitute a waiver of Concessionaire's rights with respect thereto. Each Concessionaire's Approval is given by Concessionaire in reliance upon, and subject to, full and satisfactory performance by Contractor of its obligations hereunder.

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

"Concessionaire's Project Manager" means a person employed by Concessionaire to administer and act under this Agreement on behalf of Concessionaire.

"Concessionaire's Punch List" means an itemized list of Work prepared (and periodically revised) by Concessionaire, and submitted to Contractor, setting forth the items of Work which remain to be completed with respect to the Project after Substantial Completion has been achieved and before Final Completion, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the Project.

"Concessionaire's Review" means the right of Concessionaire to review the items set forth on Exhibit Q or inspect an aspect of the Work or another matter specified in this Agreement (which review may include review or inspection by VDOT to the extent required under the Comprehensive Agreement or otherwise designated on Exhibit Q). Contractor shall submit items of Work subject to Concessionaire's Review to Concessionaire by the applicable date specified in this Agreement or in Exhibit Q (or if a date is not specified, when Contractor desires), and Concessionaire shall provide its comments thereon, if any, within twenty-five (25) days of such submission, unless another time period is specified in Exhibit Q or in this Agreement. If Concessionaire fails to respond within the time allotted, Concessionaire's Review shall be deemed to have been made, unless otherwise provided in Exhibit Q or this Agreement with respect to such item. Unless the Parties expressly agree otherwise in writing, Concessionaire's Review of any aspect of the Work (whether deemed or actual) shall not affect Contractor's obligation to provide the complete Project in accordance with the requirements of this Agreement or any of Contractor's other obligations hereunder, or change the scope of Work set forth in the Scope Document, or reduce, increase or waive Contractor's obligations under this Agreement and its independent responsibility for performance of the Work hereunder or for any acts or omissions of the Contractor's design professionals or other Subcontractors engaged by Contractor to perform the Work, or constitute a waiver of Concessionaire's rights with respect thereto.

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

"Construction Segment" means any segment or portion of the Project designated as such pursuant to this Agreement for the purpose of scheduling construction and obtaining "Construction Segment Approval" from VDOT pursuant to Section 7.03(b) of the Comprehensive Agreement.

“Contract Documents” means, collectively, this Agreement, the Comprehensive Agreement, the Design Documents, all Scope Change Orders, the Quality Management System Plan, the Traffic Management Plan, the Performance Testing and Commissioning Plan and Program, the HS&S Plan, the Public Information Plan, the Project Right of Way Acquisition Plan and the Operating Manual.

“Contract Sum” has the meaning set forth in Section 4.1 hereof.

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

“Contractor Event of Default” means any of the events set forth in Section 15.2 hereof.

“Contractor Indemnified Parties” has the meaning set forth in Section 13.1.2 hereof.

“Contractor’s Punch List” means an itemized list of Work prepared (and periodically revised) by Contractor, and submitted to Concessionaire, setting forth the items of Work which remain to be completed with respect to the Project after Substantial Completion has been achieved and before Final Completion, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of the Project.

“Damages” has the meaning set forth in Section 13.1.1 hereof. Use of the defined term “Damages” shall not be construed to permit the recovery of consequential loss or damage where such recovery would otherwise be precluded by the terms of Article 9 hereof.

“Department Change” means any change in the scope of the Work or terms and conditions of the Technical Requirements (including changes in the standards applicable to the Work) that VDOT has directed the Concessionaire to perform through a Change Order or a Directive Letter, or that the Department performs pursuant to Section 7.12(c) of the Comprehensive Agreement.

“Design Documents” has the meaning set forth in Section 2.1.2.2 hereof.

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

“Equipment Performance Tests” means the tests of the ETTM System and other applicable systems in accordance with the Performance Testing and Commissioning Plan and Program.

“Environment” means soil, surface water, groundwater, land, stream sediments, surface or subsurface strata and ambient air.

“Environmental Laws” means any Applicable Law regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health, the Environment or Hazardous Substances, including by way of example and not limitation, the

Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC Section 9601 *et seq.*), the Resource Conservation and Recovery Act (42 USC 6901 *et seq.*), the Federal Clean Water Act (33 USC Section 1351 *et seq.*), the Occupational Safety and Health Act (29 USC Section 651 *et seq.*), each as currently in force or as hereinafter amended.

“ETTM” means electronic toll and traffic management.

“ETTM Data” means all data generated by or accumulated in connection with the operation of the ETTM System, including but not limited to customer lists, customer identification numbers, customer account information and billing records and other customer specific information, and including but not limited to use and enforcement data, origin and destination information, ETTM performance statistics, and real time traffic flow information.

“ETTM Equipment” means the automatic vehicle identification equipment, video monitoring equipment, vehicle occupancy detection equipment, toll violator systems, and electronic toll collection equipment, including its components, systems and subsystems; the transportation management system equipment; traffic management roadside equipment (including dynamic message signs, traffic cameras and traffic sensors); communications equipment, and all associated hardware and physical infrastructure and other computer hardware and software necessary to meet the performance specifications for the ETTM.

“ETTM Facilities” means the HOT Operations Center, toll gantries and technical cabinets, utility connections, lighting facilities and other facilities associated with the ETTM (including both the tolling subsystem and HOT Operations Center traffic management subsystem).

“ETTM System” means the ETTM Facilities, the ETTM Equipment and the software which monitors, controls or executes operation of the ETTM Equipment, all of which shall meet the performance criteria established by this Agreement and the Technical Requirements.

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

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

“Final Completion” means the performance milestones to be achieved by Contractor in the manner described in Section 6.7 hereof.

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

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

“Financial Closing” means the date of closing and initial funding of the construction financing for the Project, defined as the “Closing Date” under the Comprehensive Agreement.

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

“Force Majeure Event” means any intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, condemnation or confiscation of property or equipment by any Governmental Authority (other than VDOT), nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, earthquake, flood or other extreme weather that damages the Work or prevents access to the Project Right of Way, industry-wide or regional strikes or labor disputes, riot or other public disorder, epidemic, quarantine restriction, stop-work order or injunction issued by a Governmental Authority (other than VDOT) of competent jurisdiction, or governmental embargo, *provided* that such event neither is otherwise specifically dealt with in this Agreement nor arises by reason of:

- (i) the negligence or misconduct of Contractor;
- (ii) any act or omission by Contractor 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 Contractor;
- (iv) any strike, labor dispute or labor protest directed solely at Contractor or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of Contractor; or
- (v) any failure by Contractor to exercise reasonable care or to observe pertinent design standards when securing or shoring elements of the Work, or providing falsework for partially constructed elements of the Work, from or against the risks of the occurrence of earthquake, flood, windstorm or other weather event, or otherwise in the construction and design of elements of the Work to withstand loads or forces within design parameters.

It is specifically understood that other than floods or other extreme weather that damages the Work or prevents access to the Project Right of Way, Contractor shall assume the risk and other weather or conditions resulting from weather shall not constitute a Force Majeure Event. The impact of changes in Applicable Laws after the Agreement Date shall be governed exclusively by Section 12.5 hereof.

“General Warranty” has the meaning set forth in Section 10.1 hereof.

“Governmental Authority” means any court, federal, state or local government, department, commission, board, bureau, agency or other regulatory or governmental authority.

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

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

“Guaranteed Substantial Completion Date” means the date on which Substantial Completion shall occur, which date shall be no later than sixty (60) calendar months after the Commencement Date, as the same may be adjusted from time to time pursuant to the terms of this Agreement.

“Guarantor” means Fluor Corporation, a Delaware corporation.

“Hazardous Substances” means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is or could be considered a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, solid waste, hazardous material or hazardous substance which is or becomes regulated by 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, urea formaldehyde foam insulation and naturally occurring asbestos-containing soils or sulfidic geological materials).

“HOT Lanes” means (a) four-lane inner directional roadways (two in each direction), including shoulders and ramps exclusively providing ingress and egress to HOT lanes and terminating at the merge point with the general-purpose traffic lanes, comprising a portion of the Capital Beltway to be identified separately from the adjacent general-purpose lanes of the Capital Beltway, dedicated for use by qualifying HOT lanes traffic and to be operated by Concessionaire pursuant to the Comprehensive Agreement, and (b) when constructed or designated as such, any additional traffic lanes dedicated for use by qualifying HOT Lanes traffic or any Project enhancements. The HOT Lanes are shown on the drawings attached to this Agreement as Exhibit N-2 and, upon Substantial Completion of the Project, such drawings shall be superseded by the as-built drawings delivered to the Concessionaire hereunder.

“HOT Lanes Project Purposes” means the operations, maintenance, repair, preservation, modification, management and administration of the HOT Lanes, including establishing, imposing, charging, collecting, using and enforcing payment of tolls.

“HOT Lanes Right of Way” means all real property within the access control line for the HOT Lanes Project (as defined in the Comprehensive Agreement), including the separation zone from the adjacent general-purpose lanes of the Capital Beltway and dedicated for use by qualifying HOT Lanes traffic, together with all improvements thereon related to the HOT Lanes Project Purposes, including the HOT Operations Center site and easements for fiber optic routing to such HOT Operations Center, and the property on which the ETTM Facilities and ETTM

System are to be located, and all other facilities and improvements required for the opening and operations of the HOT Lanes. The area comprising the HOT Lanes Right of Way is indicated as the cross-hatched portion shown on the drawings attached to the Agreement as Exhibit N-2; such drawings will be updated, with VDOT's approval, to show the HOT Operations Center site when it is finally determined.

“HOT Operations Center” means the HOT Lanes operations center to be constructed as part of the Work and generally described in the Technical Requirements.

“HOT Operations Center Site Allowance” means the monetary allowance in the amount of \$8,000,000 established for the acquisition of necessary Real Estate Rights for the site of the HOT Operations Center and easements for fiber optic routing to the HOT Operations Center.

“HS&S Plan” has the meaning set forth in Section 2.7.1 hereof.

“Indemnified Party” means a Concessionaire Indemnified Party or a Contractor Indemnified Party, as the context may require.

“Indemnifying Party” means a Party having the obligation to indemnify an Indemnified Party hereunder.

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

“Interchange Justification Reports” mean those interchange justification reports produced by Contractor, as approved by VDOT and FHWA, whether prior to or after the Agreement Date.

“ITS” means intelligent transportation systems consisting of 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 VDOT or to manage and control traffic, and any future systems or services conceived or developed for the same or similar purposes; provided that ITS does not include the ETTM System.

“Jones Branch” means a four-lane connector roadway and structures connecting the HOT Lanes with Jones Branch Drive, as depicted in Exhibit N-2 hereto, which shall be designed to accommodate future expansion to six lanes and through traffic across the Capital Beltway to Route 123, and which shall constitute a part of the HOT Lanes Project (as the same is defined in the Comprehensive Agreement).

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

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

“Late Lane Opening Payment” has the meaning set forth in Section 7.8 hereof.

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

“Late Payment Rate” means the rate of interest per annum publicly announced from time to time by Citibank, N.A., as its “prime rate” or, if such rate is not so announced, the rate published from time to time in The Wall Street Journal as the “prime rate,” plus one percent (1%).

“Letter of Credit” means an irrevocable, transferable standby letter of credit in the form of Exhibit H-1 or H-2, as applicable, issued by a Qualified Issuer.

“Major Maintenance” means maintenance, repair, renewal, reconstruction or replacement of any portion or component of the Project, as applicable, of a type which is not normally included as an annually recurring cost in roadway maintenance and repair budgets.

“Maximum Cumulative Drawdown Schedule” means the schedule attached hereto as Exhibit J setting forth the Maximum Cumulative Contract Sum Payment and the Maximum Cumulative Project ROW Requisition, in each case stated as of any month during the Work Period.

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

“Maximum Cumulative ROW Requisition” means a cap, designated on the Maximum Cumulative Drawdown Schedule, on the aggregate amount of requisitions of sums payable to landowners to acquire portions of the Project Right of Way as of any month during the Work Period, as it may be modified from time to time pursuant to terms hereof.

“Monthly Progress Report” means a progress report containing the following information: (a) a description of Contractor’s and all Subcontractors’ activities and design, engineering, procurement and construction progress as compared with the Project Schedule (and, at the request of Concessionaire, an updated Project Schedule), (b) the information required in Section 2.1.1.2 hereof, (c) a detailed description of the Work which has been completed, including photographs showing the progress of the Work, and the progress payments which have been received, as compared with the Payment and Values Schedule, (d) the status of material and equipment deliveries, including the ETTM System, (e) copies of quality assurance documents and test results, (f) safety statistics, including details of any incidents involving Hazardous Substances and activities relating to environmental matters and public relations, (g) all EEO and other documentation required for federal-aid projects, to the extent applicable, and (h) all other information reasonably requested by Concessionaire or VDOT relating to the Work.

“Net Toll Revenues” means the difference between (i) all actual Toll Revenues derived by Concessionaire by operation of the Project, minus (ii) the sum of all Operating Costs incurred in generating such revenues.

“New Lanes” means the approximately fourteen-mile stretch of four new general purpose traffic lanes (two lanes in each direction) to be constructed on the outer sides of the existing Capital Beltway as more fully described in the Scope Document.

“New Lanes Substantial Completion” means the date on which the performance milestones have been achieved by Contractor in accordance with Section 6.2 hereof so that only minor deficiencies which do not affect safety or Toll Revenue earnings remain such that VDOT can operate the New Lanes, all as evidenced by Concessionaire’s delivery to Contractor of the fully countersigned New Lanes Substantial Completion Certificate.

“New Lanes Substantial Completion Certificate” means, a certificate of Contractor in the form of Exhibit Z, delivered to Concessionaire certifying that New Lanes Substantial Completion has occurred.

“New Lanes Turnover” means the procedure set forth in Section 6.2 hereof pursuant to which care, custody and control of the New Lanes is vested in VDOT under the Comprehensive Agreement.

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

“Notice of New Lanes Substantial Completion” has the meaning set forth in Section 6.2 hereof.

“Notice to Proceed” means the written notice to be delivered by Concessionaire to Contractor pursuant to Section 2.3 hereof setting forth the Commencement Date.

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

“Operating Costs” means, subject to adjustment by VDOT and Concessionaire in accordance with the Comprehensive Agreement, all reasonable costs incurred and paid for by Concessionaire in relation to the management of the HOT Lanes, including without limitation costs for operation and maintenance, consumables, payments under any lease, payments pursuant to the agreements for the management, operation and maintenance of the HOT Lanes, taxes (exclusive of taxes measured by net income), insurance, payments for oversight services, police services; and costs for any security, capital expenditures, permit fee payments to VDOT in accordance with Article 5 of the Comprehensive Agreement, payment of VDOT’s share of Positive Revenue (as defined in the Comprehensive Agreement), and any other reasonable expense paid for the development, completion, enhancement, expansion, major maintenance, repair, reconstruction, rehabilitation, renewal and replacement of the HOT Lanes, as well as payments of Concessionaire debt (including interest thereon) to the Financing Parties, but exclusive of (a) costs paid from total invested project funds, (b) any distributions, or (c) 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 VDOT in the regular course of business. Operating Costs do not include non-cash charges, such as depreciation, amortization or other bookkeeping entries of a similar nature.

“Operating Manual” means the complete ETTM System instructions and procedures for the start-up, operation and maintenance of the HOT Lanes to be provided by Contractor pursuant to Section 2.1.28 hereof.

“OS&S Contractor” has the meaning set forth in Section 2.1 hereof.

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

“Payment and Values Schedule” means the schedule of values of various items of Work based upon which Scheduled Payments of the Contract Sum will be made by Concessionaire as set forth in Exhibit L hereto, as the same may be adjusted pursuant to this Agreement. Contractor shall also incorporate in the Payment and Values Schedule the amounts of the VDOT Funding paid directly to Contractor from VDOT.

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

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

“Performance Testing and Commissioning Plan and Program” means plan and program, developed by Contractor and approved by Concessionaire and the Independent Engineer, for the conduct of Performance Tests of the ETTM System and other applicable systems necessary for the operation of the HOT Lanes.

“Permit” means any valid waiver, findings, exemption, variance, certification, consent decision, franchise, permit, authorization, license, ruling, registration, regulatory approval or order of or from Governmental Authority having jurisdiction over the matter in question.

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

“Pre-Existing Hazardous Substances” means any Hazardous Substance that was present on the Project Right of Way as of the Agreement Date.

“Project” means the Work Period-phase of the Route 495 HOT Lanes in Virginia Project contemplated in the Comprehensive Agreement. The Project is described generally in the Scope Document, and includes:

- (a) the construction of four new general-purpose traffic lanes (two lanes in each direction) to be constructed on the outer sides of the existing lanes of the Capital Beltway and all related improvements thereon;
- (b) the conversion of the existing four innermost lanes of the Capital Beltway (two in each direction) into HOT Lanes, including the installation of the ETTM Facilities and ETTM System necessary and appropriate for the operation of the HOT Lanes (including Advanced Transportation Management System elements), and all other facilities and improvements required for the opening and operation of the HOT Lanes;

(c) the construction of the following access points to the HOT Lanes (the locations of which may be adjusted to facilitate operational needs and construction phases): Braddock Road, Gallows Road, Lee Highway, I-66 Interchange, Route 7, Westpark Boulevard, Jones Branch Boulevard and the Dulles Toll Road/Dulles Airport Access Road;

(d) the reconstruction of the following ramps, interchanges, frontage roads, overpasses, underpasses, bridges and other crossings necessary to accommodate the new general-purpose lanes and the operation of the HOT Lanes: Braddock Road, Wakefield Park Pedestrian Bridge, Route 236, Gallows Road, Arlington Boulevard (Rt. 50), Lee Highway (Rt. 29), I-66, W&OD Pedestrian Bridge, Idylwood Road, Oak Street, Route 7, Route 123, and the Dulles Toll Road/Dulles Airport Access Road, and Lewinsville Road;

(e) the construction of Springfield Interchange Phase VIII;

(f) the construction of Jones Branch; and

(g) other related improvements as generally described in the Scope Document.

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

“Project Enhancement Account” means an account designated by VDOT into which certain funds shall be deposited as required by the Comprehensive Agreement.

“Project Right of Way” means (a) all real property within the access control line for the Project, including the HOT Lanes Right of Way, and (b) all other right of way, including temporary and permanent easements, that is necessary for the performance of the Work, in each case indicated as the cross-hatched portion shown on the map attached to this Agreement as Exhibit N-1.

“Project Right of Way Acquisition Plan” has the meaning set forth in Section 2.1.6.3 hereof.

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

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

“Public Information Plan” has the meaning set forth in Section 2.1.31 hereof.

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

“Qualified Issuer” means a U.S. commercial bank (or a foreign bank with a U.S. branch acceptable to Concessionaire) having total assets of at least \$10 billion and a senior unsecured long-term credit rating (unenhanced by third-party support) equivalent to “A-” or better as determined by Standard and Poor’s Ratings Services or its successor, and “A3” or better as determined by Moody’s Investors Service Inc. or its successor.

“Quality Management System Plan” is Contractor’s written quality control and quality assurance program for the Work, as set forth in Exhibit O attached hereto, including the written procedures to implement such program and detailing how Contractor will provide quality assurance and quality control for the design and construction elements of the Project, obtain samples for quality control testing, perform tests for quality control, provide inspection and exercise management control to ensure that the Work conforms to the requirements of the Contract Documents.

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

“Recovery Plan” has the meaning set forth in Section 2.1.1.4 hereof.

“Relocation” means the removal, relocation and/or protection in place, including provision of temporary services as necessary, of any and all Utilities that are necessary to permit development, construction and operation of the Project.

“ROW Acquisition Costs” means all costs required for the acquisition of the Project Right of Way including all closing costs, relocation expenses, environmental and other site assessments, acquisition expenses incurred by Contractor, and condemnation expenses, but excluding any and all expenses incurred in connection with the following (the costs of items (1), (2), and (5) of which are included as part of the Contract Sum, and the costs of item (3) and (4) are to be paid from the HOT Operations Center Site Allowance): (1) the remediation of Hazardous Substances found on property acquired by Contractor on behalf of the Department; (2) the acquisition of Real Estate Rights outside of the Project Right of Way; (3) the acquisition of the site of the HOT Operations Center and of facilities related to such center; (4) easements for fiber optic routing to the HOT Operations Center; or (5) services to acquire Project Right of Way that are to be provided by Contractor as part of the Work.

“ROW Allowance” means the monetary allowance established in the amount of \$42,011,750 to pay ROW Acquisition Costs.

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

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

“Scope Change Order” means a written order to Contractor, in the form of Exhibit G hereto, issued and signed by Concessionaire in accordance with the provisions of Article 12 hereof after the execution and delivery of this Agreement, authorizing a Scope Change and, if appropriate pursuant to the terms hereof, an adjustment in one or more of the Scope Document,

the Contract Sum, the Guaranteed Substantial Completion Date, the Payment and Values Schedule, or any other amendment of the terms and conditions of the Contract Documents.

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

“Service Commencement Date” means, as to the HOT Lanes or an applicable portion or segment thereof, the date Concessionaire is permitted to commence operations of the HOT Lanes.

“Spare Parts Allowance” means the allowance in the amount of \$60,000 to be provided by Concessionaire to Contractor in accordance with Section 2.1.15 hereof for a portion of procurement cost of spare parts for the equipment necessary for the HOT Lanes operation.

“Springfield Interchange Phase VIII” means high occupancy vehicle connector ramps from Route I-95 and Route I-395 to the Capital Beltway, which ramps constitute part of the Project and the Work. The limits of construction extend approximately 6,000 feet east and west along the Capital Beltway connecting Route I-95 to Route I-495 and approximately 1,500 feet north and south from Route I-95 to Route I-395. The Springfield Interchange Phase VIII component of the Project includes seven bridges, bi-directional ramps and loops to connect the I-95/395 high occupancy vehicle system to the Capital Beltway.

“Standard of Care” means the performance of the Work in accordance with prudent industry practices, methods, techniques and standards, and using the degree of care, skill and diligence, that would be expected to be exercised by a prudent, skilled and experienced contractor engaged in the same types of undertakings as the Project under the same or similar circumstances and conditions as those applying to the design, development and construction of the Project, all Applicable Laws, all Applicable Permits, all Applicable Standards, the requirements of the Comprehensive Agreement, the Technical Requirements, terms of insurance policies and the other requirements specified or referred to herein or in other Contract Documents.

“State Indemnitees” means VDOT, the Commonwealth Transportation Commissioner or any successor thereto, the Commonwealth Transportation Board or any successor thereto, the Commonwealth of Virginia and their respective officers, employees, agents, contractors and consultant.

“Structural Elements” means components of bridges or other structures including bridge superstructure, bridge substructure and retaining walls; provided that repairs shall be made to such Structural Elements as necessary to restore the structural capacity of the Structural Element, or to restore the functionality of the Structural Element.

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

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

“Substantial Completion” means the date on which the requirements of Section 6.6 hereof have been achieved by Contractor so that only minor deficiencies which do not affect safety or Toll Revenue earnings remain such that VDOT can operate the New Lanes and the adjacent existing general-purpose lanes not being converted into Hot Lanes, and Concessionaire can operate and collect tolls with respect to the HOT Lanes, all as evidenced by Concessionaire’s delivery to Contractor of the fully countersigned Substantial Completion Certificate pursuant to Section 6.6.3 hereof.

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

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

“Technical Requirements” means the Technical Requirements attached as Exhibit AA hereto, as the same may be revised by any Technical Requirements Revisions pursuant to Section 7.12(d) of the Comprehensive Agreement and Section 12.3.2.1 hereof.

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

“Technical Requirements Revisions” has the meaning set forth in Section 12.3.2.1 hereof.

“Termination For Cause” means a termination of this Agreement pursuant to Section 15.2 hereof.

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

“TIFIA” means the Transportation, Infrastructure, Finance and Innovation Act of 1998, as amended, under which certain funding is obtained by Concessionaire for the design, development and construction of the Project.

“Toll Revenues” means all amounts received by or on behalf of the Concessionaire from user fees applicable to vehicles for the privilege of traveling on the HOT Lanes imposed pursuant to the Comprehensive Agreement and from any other permitted use or operation of the HOT Lanes, including without limitations fees, tolls, rates, incidental charges and other charges (including administrative charges such as late fees, insufficient funds fees etc.).

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

“Utilities” means any public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, 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.

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

“VDOT” means the Virginia Department of Transportation, an agency of the Commonwealth of Virginia, and any other agency of the Commonwealth of Virginia succeeding to the powers, authorities and responsibilities of VDOT invoked by or under the Comprehensive Agreement.

“VDOT Change Proposal” has the meaning set forth in Section 12.3.1.1 hereof.

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

“VDOT Funding” has the meaning set forth in Section 4.10 hereof.

“VDOT Funding Agreement” means the agreement entered into by VDOT, Concessionaire, Contractor and Wells Fargo Bank, N.A., dated as of December 20, 2007, in respect to the VDOT Funding.

“Warranty Period” has the meaning set forth in Section 10.2 hereof.

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

“Work Order” is a written instruction from Concessionaire to Contractor to proceed with a Scope Change in accordance with the provisions of Sections 12.9 hereof, in lieu of the initial issuance of a Scope Change Order to govern such Scope Change.

“Work Period” means the date commencing on the Commencement Date and ending on the date Final Completion occurs under this Agreement.

ARTICLE 2

CONTRACTOR’S WORK AND OTHER OBLIGATIONS OF CONTRACTOR

2.1 Work to be Performed. Except as otherwise expressly set forth in Article 5 hereof, and subject to the specific provisions of and exclusions set forth in the Scope Document, Contractor shall perform or cause to be performed any and all work and services required or appropriate in connection with the design, engineering, procurement, procurement of Real Estate Rights, Project Right of Way acquisition in the name of VDOT, Project Right of Way clearance, construction, Commissioning, start-up, demonstration, testing and completion of the Project, and shall provide all materials, equipment, machinery, tools, labor, supervision, transportation, administration, training and other services and items required to complete and deliver to Concessionaire the fully integrated and operational Project such that VDOT may operate the New Lanes and the adjacent existing general-purpose lanes not being converted into Hot Lanes, and Concessionaire or its designee(s) (such designee(s), the “OS&S Contractor”) may operate the HOT Lanes, all on a lump-sum, fixed-price, turnkey basis, and otherwise in accordance with the Standard of Care, Applicable Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents (collectively, the “Work”). Certain details of the Work are described in the Contract Documents, but Contractor shall

perform or cause to be performed all Work necessary to complete the Project generally described in or reasonably inferable from the Contract Documents. Except as otherwise expressly provided in this Agreement, all obligations of Concessionaire under the Comprehensive Agreement with respect to the design, construction and completion of the Project shall be deemed to be included as part of Contractor's obligations hereunder and shall be fulfilled by Contractor on behalf of Concessionaire as part of the Work. Without limiting the foregoing, Contractor shall perform the following as part of the Work:

2.1.1 Scheduling and Milestones.

2.1.1.1 Project Schedule. Within fifty (50) days after the Commencement Date, Contractor shall submit for Concessionaire's Approval an updated detailed Project engineering, procurement and construction schedule within the time specified in Exhibit Q, which shall replace the initial "Project Schedule" attached as Exhibit M and include, among other things: (i) the order in which Contractor proposes to carry out the Work, including each stage of design, Project Right of Way acquisition, obtaining of Applicable Permits, procurement, manufacture, delivery to the Project Right of Way, construction, inspection and testing, and (ii) the times when submissions and Concessionaire's Approvals are requested. Contractor shall perform the Work in accordance with the Project Schedule and shall coordinate and incorporate the schedules of all Subcontractors into the Project Schedule as they become available.

2.1.1.2 Schedule Updates. As part of each Monthly Progress Report and in conjunction with the monthly progress meetings required in accordance with Section 2.2.7 hereof, Contractor shall provide Concessionaire with updates to the Project Schedule and a narrative that describes, as a minimum, the overall progress for the preceding month, a critical path analysis, a discussion of problems encountered and proposed solutions thereof, work calendars, constraints, delays experienced and any pending Time Impact Analysis ("TIA"), float consumption, documentation of any logic changes, duration changes, resource changes or other relevant changes. The narrative shall also include the following:

- (a) Comparisons of actual and planned progress, including: (i) illustrating schedule variance graphically by plotting the Budgeted Cost of Work Performed ("BCWP") and the Budgeted Cost of Work Scheduled ("BCWS"); and (ii) reporting the Schedule Performance Index ("SPI"), defined as the ratio of BCWP divided by BCWS;
- (b) Details of any aspects of the Work which may jeopardize completion in accordance with the Contract Documents; and
- (c) Measures being (or to be) adopted to overcome such aspects and a list of approvals needed to adopt such measures.

If Concessionaire believes that the Project Schedule needs a specific revision, either in logic, activity duration, manpower or cost, it will be requested from Contractor in writing. Contractor shall respond in writing within seven (7) days, either agreeing with Concessionaire's proposed revision, and henceforth including it in the next Project Schedule update, or providing justification why it should not be accomplished. If revisions cannot be agreed upon either

through written correspondence or subsequent meetings, Concessionaire and Contractor shall agree to attempt to resolve the issues through the dispute resolution process of Article 19 hereof. If Concessionaire and Contractor cannot agree on any revision to the Project Schedule, Contractor shall proceed under the previously approved schedule. Contractor may not change the date for any critical path milestone noted as such on the initial Project Schedule without Concessionaire's Approval.

2.1.1.3 Schedule Format. Contractor shall submit three (3) copies in electronic format of the Project Schedule update and narrative. A CD-ROM containing the latest schedule update in electronic format shall be submitted for each schedule iteration along with three (3) color coded plots of the current Time Scaled Logic Diagram, which shall be neatly organized and plotted time scaled from left to right on 11"x17" sheets with suitable notation relating the interface points among sheets. Time Scaled Logic Diagrams shall clearly depict the critical path, as well as activity identifications, activity descriptions, original durations, early start, early finish, late start, late finish, and actual dates as applicable. This process shall continue until Final Completion. The first day of the month ("data date") of each Project Schedule update shall coincide with Contractor's monthly request for payment made pursuant to Section 4.2.1 hereof. Contractor shall use Primavera Project Planner P3 v 3.1 software as the format for the Project Schedule and all updates. Contractor shall also provide one (1) license to Concessionaire and two (2) licenses to VDOT, with maintenance agreements covering the entire duration of the Work, for Primavera Project Planner P3 v 3.1 to enable them to access and analyze all such schedules.

2.1.1.4 Recovery Plans. If at any time prior to Substantial Completion the monthly Project Schedule update indicates that actual progress on the Work projects that Substantial Completion will occur more than five (5) months later than the then-current Guaranteed Substantial Completion Date, Concessionaire shall consult with Contractor and the collateral agent acting on behalf of the Financing Parties and Contractor shall accordingly prepare a written schedule recovery plan for Concessionaire's Review concurrent with the next monthly Project Schedule update detailing the actions proposed to improve progress, which recovery plan shall set forth a revised Project Schedule that shall be subject to Concessionaire's Approval for which the projected Substantial Completion shall not be later than 365 calendar days after the Guaranteed Substantial Completion Date or such later date as may be agreed to by Concessionaire and VDOT (the "Recovery Plan"). Contractor shall respond to Concessionaire's comments related to the proposed Recovery Plan, following the process outlined in Section 2.1.1.2 hereof, until Concessionaire has approved the revised Project Schedule. The foregoing process shall be repeated any time actual progress lags the then-approved Project Schedule by more than five (5) months. Concessionaire's Review of a Recovery Plan and Concessionaire's Approval of a revised Project Schedule shall not affect any of Concessionaire's rights or Contractor's obligations under this Agreement, including Contractor's obligations to pay Late Completion Payments.

2.1.1.5 Comprehensive Agreement Provisions. Contractor's obligations under this Section 2.1.1 shall include fulfilling Concessionaire's obligations to VDOT under Sections 7.05(b)-(d) of the Comprehensive Agreement, and Contractor shall coordinate with Concessionaire as appropriate such that Concessionaire may timely and fully perform such obligations.

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

2.1.2.1 Design. Contractor shall cause to be conducted all surveys, geotechnical engineering services and other tests and inspections of the Project Right of Way, and shall obtain written reports of all such tests and inspections as may be necessary or appropriate to design, procure and construct the Project, including the ETTM System, in accordance with the Standard of Care, Applicable Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents. Contractor shall satisfy itself with the accuracy and completeness of all such tests and inspections, and shall not be excused from any of its obligations under this Agreement for any condition affecting the Project, the Project Right of Way or the Work, subject to the provisions of Section 12.7 hereof. Contractor is responsible for the design of the Work. Design work shall include design for all civil works, structures, roadways, mechanical systems, electrical systems, preparation of drawings and specifications in accordance with the Scope Document, and coordination of data systems with VDOT and the OS&S Contractor. Contractor expressly acknowledges and agrees that while the Scope Document sets forth a general guide as to the requirements of the Project, Contractor shall have full responsibility for the adequacy, safety and stability of the design for the Work and of all Project Right of Way operations and methods of development, construction, maintenance, testing, Commissioning and completion of the Project in accordance with the Standard of Care, Applicable Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents, such that the whole of the Project is constructed, Commissioned and operational, the ETTM System is capable of recording and collecting tolls, and the entire Project may be safely operated and fulfills Concessionaire's obligations to provide the Project under the Comprehensive Agreement.

2.1.2.2 Design Documents. Contractor shall prepare all plans, drawings and specifications for the Project generally corresponding to VDOT's concurrent engineering process, including but not limited to design standards, design or durability reports, models, samples and calculation, "Field Inspection and Right-of-Way" and the Design Public Hearing Documentation (the "Design Documents"), in computer readable and written formats in full compliance with the Standard of Care, Applicable Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents and shall submit those set forth on Exhibit Q for Concessionaire's Review or Concessionaire's Approval (which may include review and approval by VDOT as provided in Exhibit Q). Contractor's obligations with respect to Design Documents include fulfilling the obligations of Concessionaire under Sections 7.03(b)(i) and 7.05 of the Comprehensive Agreement, and Contractor shall coordinate with Concessionaire as appropriate such that Concessionaire may timely and fully perform such obligations. Notwithstanding anything to the contrary in this Agreement, Concessionaire's Review or Concessionaire's Approval (as the case may be) of Design Documents shall be only a determination whether such documents (and the portions of the Work represented thereby) on their face meet the standards for the Work set forth in this Agreement, and shall not be

considered an evaluation or determination that such documents and the portions of the Work represented thereby in fact meet the standards for the Work or are otherwise satisfactory for their intended purpose. Based on the Scope Document and those Design Documents that have received Concessionaire's Approval, Contractor shall prepare comprehensive drawings and specifications setting forth in detail the requirements for the procurement and construction of the Project. As the drawings and specifications for the Project are issued and, if applicable, receive Concessionaire's Approval, they shall be clearly identified as Design Documents. Contractor may, with Concessionaire's Approval, apply for approvals from VDOT of interpretive engineering decisions concerning the meaning, scope, interpretation and application of the Technical Requirements. All applications for such approvals shall be in writing. Contractor acknowledges that VDOT may issue a written approval of Contractor's proposed interpretive engineering decision, if any (upon which Concessionaire and Contractor may rely), may issue its own interpretive engineering decision, or may disapprove any interpretive engineering decision Contractor proposes.

2.1.3 Procurement. Contractors shall procure and pay for, in Contractor's name as an independent contractor and not as agent for Concessionaire, all materials, equipment (including the ETTM System), supplies, consumables, transportation, labor, supervision and other necessary services (whether on or off the Project Right of Way), which are not expressly specified to be furnished by Concessionaire pursuant to Article 5 hereof, to complete the Project in accordance with the Contract Documents. Contractor shall be responsible for obtaining all customs clearances required in connection with the provision of equipment, materials and supplies necessary to complete the Work in accordance herewith, including any temporary clearances for construction and testing equipment and other items to be used in the Work.

2.1.4 Construction. Not later than sixty (60) days prior to scheduled commencement of construction work at the Project Right of Way, Contractor shall provide to Concessionaire an updated construction plan that includes updated manpower loading estimates, procedures for environmental protection, Project Right of Way security, and protection of areas adjacent to the Project Right of Way in accordance with the requirements of this Agreement. The updated construction plan shall conform with and implement the Quality Management System Plan. Contractor's obligations under this Section 2.1.4 include obtaining on behalf of Concessionaire each "Construction Segment Approval" required under Section 7.03(b) of the Comprehensive Agreement; Contractor may not commence construction of any Construction Segment until Construction Segment Approval has been obtained for such Construction Segment. Contractor shall construct and install the Project expeditiously and in accordance with the updated construction plan and the requirements of this Agreement. Contractor shall furnish to Concessionaire Monthly Progress Reports of progress of the Work, together with monthly work plans of activities being performed at the Project Right of Way and an updated Project Schedule (if applicable), as specified in Exhibit Q.

2.1.5 Labor Matters.

2.1.5.1 Contractor's Personnel. Contractor shall provide all labor and personnel required in connection with the Work, including: (a) professional engineers licensed to perform engineering services in each jurisdiction where the performance of the Work requires

such licensing; (b) a Project engineer, lead structural, mechanical, electrical, instrumentation and control and civil engineers, cost and schedule engineers, and procurement, construction, start-up and training supervisors, all of whom have had extensive experience in projects of similar technology and magnitude; (c) the Project Director and the Construction Manager; and (d) the Quality Manager and other quality assurance personnel (who shall report directly to Contractor's home office managers and not to the Project personnel located at the Project Right of Way). Contractor shall not remove or permit the release of any personnel described in clauses (a) through (d) without replacing them with other personnel of comparable or more extensive skill and experience. As of the Agreement Date, the Project Director is Mitch Lester, the Construction Manager is Robert Portley and the Quality Manager is Robert Bolduc. If any such persons are to be replaced, Contractor shall, upon Concessionaire's request, provide for Concessionaire's Approval the résumés of the Project Director, the Construction Manager and the Quality Manager, and shall arrange for interviews by Concessionaire of such persons if requested by Concessionaire.

2.1.5.2 Facilities and Other Personnel Requirements. Contractor shall provide sufficient and appropriate first-aid facilities, sanitary facilities and potable water for the benefit of all personnel employed or expected to be present at the Project Right of Way including Concessionaire's and VDOT personnel (other than any Concessionaire Contractors' personnel), and all such facilities shall be maintained in a clean and orderly condition. Contractor may conduct periodic searches of employees and other persons present at the Project Right of Way, including personal and professional possessions, automobiles, trucks, briefcases, lunchboxes and persons for the presence of firearms, alcohol and illegal drugs. Contractor shall immediately notify Concessionaire's Project Manager if firearms, alcohol or illegal drugs are found. Concessionaire shall have the right to require the immediate removal and permanent expulsion from the Project Right of Way and from any work associated with the Work of any Person that at any time is found in possession of firearms, alcohol or illegal drugs.

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

2.1.6 Project Right of Way and Real Estate Rights.

2.1.6.1 Project Right of Way. Contractor shall provide the services necessary to acquire all Project Right of Way necessary for the construction and operation of the Project in accordance with the Standard of Care, Applicable Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents, including the undertaking of studies, assessments and tests required thereby, temporary Utility Relocations and interchange expansions. Except as otherwise provided in Section 2.1.6.2, amounts requisitioned by Contractor for direct payments to the applicable landowners to acquire the Project Right of Way and for expenses proximately related to such acquisition shall be provided from the ROW

Allowance and the HOT Operations Center Site Allowance, as applicable. Contractor's Project Right of Way acquisition services shall include Utilities Relocation services in accordance with the requirements of the Contract Documents, assessment of the land required for the Work, preparation of the Project Right of Way Acquisition Plan, appraisals, appraisals reviews, negotiations with landowners and Utility owners using its Commercially Reasonable Efforts to settle claims, if any, amicably (but Contractor shall not be required to pay more than fair market value for any property), relocation assistance and advisory services, legal services, engagement of relevant property consultants and all other services other than exercise of power of condemnation and related services that is VDOT's responsibility. Contractor shall prepare, obtain execution of, and record documents conveying title to such properties in the Project Right of Way to the Commonwealth of Virginia in fee simple, except as may be specifically agreed to by VDOT, and shall deliver all executed and recorded general warranty deeds to Concessionaire. Contractor shall exercise due diligence and use Commercially Reasonable Efforts in determining whether property to be acquired may contain waste or other materials or hazards requiring remedial action or treatment and shall otherwise comply with the Technical Requirements, including the undertaking of studies, assessments and tests required by the Technical Requirements. The Parties acknowledge that VDOT has agreed under the Comprehensive Agreement that it shall (i) handle condemnation proceedings for the Project Right of Way in accordance with the Technical Requirements where agreement cannot be reached with property owners within a reasonable period of time, provided that prior to filing a condemnation proceeding, Contractor shall prepare or cause to be prepared all necessary paperwork and supporting documentation required for the proceeding and deliver it to VDOT (through Concessionaire), (ii) be responsible for all ROW Acquisition Costs that exceed the ROW Allowance and shall be entitled to the savings if such costs are below the ROW Allowance (such savings to be deposited by Concessionaire in the Project Enhancement Account, as required by Section 7.08(e) of the Comprehensive Agreement), (iii) provide the benefit of any provisions in recorded utility or other easement agreements entered into by VDOT affecting the Project which require easement holders to relocate at their expense and (iv) provide reasonable assistance in obtaining cooperation of the easement holders in connection with Utility Relocations, it being understood that such assistance shall not entail the initiation of or participation in legal actions or proceedings. Concessionaire shall use Commercially Reasonable Efforts to cause VDOT to comply with such obligations. Pursuant to Section 5.2, Concessionaire shall be responsible for all ROW Acquisition Costs for the site of the HOT Operations Center that, combined with ROW Acquisition Costs for easements for fiber optic routing to the HOT Operations Center, exceed the HOT Operations Center Site Allowance. Also, Contractor shall be entitled to claim a Scope Change Order as provided in Section 5.2 if the design or construction scope (physical work) associated with the site of the HOT Operations Center (inclusive of the HOT Operations Center building to occupancy stage originally proposed to be designed and constructed at 6400 Commerce St., Alexandria, Virginia, site civil work, demolition, and utilities, duct bank/conduit, and fiber optic runs) varies from that proposed in the Scope Document to the extent Contractor's time or cost to perform the Work is adversely affected by such variation.

2.1.6.2 Payment Procedures for Project Right of Way Acquisition Costs. Contractor shall submit with each request for payment made under Section 4.2.1 hereof a requisition for amounts to be paid to acquire any portion of the Project Right of Way pursuant to Section 2.1.6.1. Each such requisition shall include evidence of such payment obligation, copies of each agreement and instrument pursuant to which acquisition of such portion of the Project

Right of Way was effected, and such other information as may be requested by Concessionaire or VDOT relating to such acquisition. In accordance with the provisions of Section 4.2.2, Concessionaire shall provide the requisitioned amounts to Contractor (other than any portion thereof disputed by Concessionaire) in the form of checks or other negotiable instruments made payable to the applicable property owner(s); provided, however, that Concessionaire shall not be obligated to provide any amount that, when added to all previous requisitioned amounts, exceeds the amount designated as the “Maximum Cumulative ROW Requisition” for the corresponding month on the Maximum Cumulative Drawdown Schedule. Contractor shall pay over the requisitioned amounts directly to property owners for negotiated settlements and relocation benefits, as well as the payments to be deposited with any court.

2.1.6.3 Project Right of Way Acquisition Plan. Contractor shall prepare and submit for Concessionaire's Approval (which shall be subject to approval by VDOT pursuant to Section 7.08(a)(ii) of the Comprehensive Agreement) a plan for its acquisition of the Project Right of Way (the “Project Right of Way Acquisition Plan”) that identifies a schedule of the Project Right of Way acquisition activities, including the specific parcels to be acquired and all relocations of displaced persons based on time frames not less than those provided in Applicable Laws, and other requirements set forth in the Contract Documents. The Project Right of Way Acquisition Plan shall be updated by Contractor as necessary during term hereof with each subsequent update subject to Concessionaire's Approval.

2.1.6.4 Sufficiency of Project Right of Way. Contractor agrees that it has inspected and is fully familiar with the physical sufficiency of the Project Right of Way as represented on the drawings included in Exhibit N-1, and that the Project Right of Way is physically sufficient for Contractor to undertake and complete the Work (other than the portion thereof relating to the HOT Operations Center) in accordance with the requirements of this Agreement. If Contractor subsequently determines that the as-represented Project Right of Way is not physically sufficient for it to undertake and complete the Work (other than the portion thereof relating to the HOT Operations Center) for reasons other than those that would entitle Contractor to claim a Scope Change Order under this Agreement, Contractor shall promptly obtain, at Contractor's expense, any additions to the area of the Project Right of Way required by Contractor.

2.1.6.5 Real Estate Rights. Any Real Estate Rights that are required with respect to property not included in the Project Right of Way, but are needed for the performance and completion of the Work, shall be procured by Contractor at no cost to Concessionaire; however, to the extent VDOT provides Concessionaire with Real Estate Rights from other agencies of the Commonwealth of Virginia, Concessionaire shall make the same available to Contractor.

2.1.6.6 Contractor's Obligation to Maintain. Contractor shall maintain any part of the Project Right of Way of which it takes possession until care, custody and control is transferred to VDOT or Concessionaire in accordance with the terms of this Agreement.

2.1.7 Permitting. Contractor shall procure and maintain in full force and effect throughout the term hereof all Applicable Permits, excluding only those Applicable

Permits specified as being the responsibility of Concessionaire on Exhibit R, which are limited to Applicable Permits (A) passed through by Concessionaire from VDOT under the Comprehensive Agreement, including any provided by VDOT in connection with a Department Change, and (B) zoning Permits pertaining to the siting of the HOT Operations Center.

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

2.1.9 Inspection and Expediting. Contractor shall perform all inspection, expediting, quality surveillance and maintenance of traffic services that are required for performance of the Work on a timely basis. Contractor's responsibilities under this Section 2.1.9 shall include, without limitation, inspecting all materials and equipment, including the ETMM System, both on and off the Project Right of Way that comprise or will comprise the Project or that are to be used in performance of the Work hereunder. Contractor shall perform a detailed inspection of all Work in progress at intervals appropriate to the stage of construction or fabrication off the Project Right of Way as is necessary to ensure that such Work is proceeding in accordance with the Contract Documents and to protect Concessionaire against defects and deficiencies in such Work. On the basis of such inspections, Contractor shall keep Concessionaire continuously informed of the progress and quality of all Work and shall provide Concessionaire with written reports of deficiencies revealed through such inspections and of measures proposed by Contractor to remedy such deficiencies. Contractor shall use all reasonable efforts to secure for Concessionaire, VDOT and the Independent Engineer or their representatives the option of being present at all inspections off the Project Right of Way. In the event that the progress and quality of the Work is not proceeding in accordance with the Contract Documents, Concessionaire shall be entitled to make recommendations to Contractor for the purpose of remedying such deficiencies. Contractor shall provide Concessionaire with a detailed list of materials and equipment inspection points. Contractor shall provide Concessionaire and VDOT with at least five (5) days' prior written notice of all inspections and on a monthly basis, Contractor shall advise Concessionaire and VDOT of inspections planned for the forthcoming month. Concessionaire, VDOT and the Independent Engineer, and each of their designated representatives, shall have the right to be present at and participate in all inspections of the Project, the Work or the Project Right of Way undertaken by Contractor. No inspection performed or failed to be performed by Concessionaire, VDOT or the Independent Engineer, or any recommendation from Concessionaire, VDOT or the Independent Engineer in connection

therewith, shall be a waiver of any of Contractor's obligations hereunder or be construed as an approval or acceptance of any Work hereunder and shall not relieve Contractor of independent responsibility for performance of the Work hereunder or for any acts or omissions of the Contractor's design professionals or other Subcontractors engaged by Contractor to perform the Work.

2.1.10 Project Right of Way Access; Concessionaire's Accommodations; Project Right of Way Monthly Progress Meetings. Contractor shall provide Concessionaire, VDOT, the Independent Engineer and their designees access to the Project Right of Way at all times and arrange for access by Concessionaire, VDOT, the Independent Engineer and their designees to the engineering, manufacturing and fabricating premises of all Subcontractors sufficient to permit Concessionaire, VDOT, the Independent Engineer and their designees to inspect Work being performed and monitor compliance by Contractor and the Subcontractors with the terms hereof. Contractor shall provide to Concessionaire (as part of the Contract Sum) three (3) office spaces at Contractor's project offices for use by Concessionaire and VDOT. Contractor shall conduct regularly scheduled, monthly progress meetings at the Project Right of Way throughout construction of the Project beginning the month after Financial Closing to thoroughly discuss the progress and status of construction with Concessionaire's Field Representative and any other representatives of Concessionaire and VDOT that Concessionaire desires or VDOT may request. Such meetings shall be attended by Contractor's Construction Manager and Project Director, Concessionaire's representatives and representatives of Contractor's design staff, and during such meetings, progress during the prior month, as presented in the Monthly Progress Report, shall be reviewed and Contractor shall report information from any key Subcontractors responsible for the Work completed during the specified duration and the Work scheduled during the upcoming reporting duration. Contractor shall be responsible for preparing, maintaining and distributing minutes of the monthly progress meetings to all attendees for review and shall provide such minutes incorporating the attendees' comments, if any, to Concessionaire within twenty-four (24) hours of the meeting to enable Concessionaire to provide same to VDOT in accordance with the requirements of Section 7.06(c) of the Comprehensive Agreement.

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

2.1.12 Uncovering of Work. If any portion of the Work should be covered contrary to the written request of Concessionaire or to requirements specifically

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

2.1.13 Storage and Related Matters. Contractor shall warehouse or otherwise provide appropriate storage (in accordance with manufacturers' recommendations) for all materials, supplies and equipment required for permanent and temporary construction, and shall provide for the procurement or disposal of, as appropriate, all soil, gravel and similar materials required for performance of the Work hereunder. All materials, supplies and equipment which are stored at a location other than on the Project Right of Way shall be (a) stored in a bonded warehouse or other appropriate location and (b) properly secured, tagged and identified for the Project to establish the rights of title provided under Section 24.13 of this Agreement, and segregated from other goods. Prior to delivery at the Project Right of Way, all equipment shall be labeled with permanently affixed durable nameplates which will include the manufacturer's name, equipment model number, equipment serial number, equipment tag number and all appropriate design parameters.

2.1.14 Utilities; Fuel. Contractor shall arrange, install and pay for all temporary Utilities and temporary Utilities Relocations, and shall supply all fuel, chemicals and consumables, which are required to enable Contractor to perform the Work hereunder, including Project construction, start-up and testing.

2.1.15 Spare Parts. Contractor shall procure start-up and operating spare parts for all items of equipment necessary for the first year of operation of the HOT Lanes using the Spare Parts Allowance and shall be reimbursed by Concessionaire for the costs thereof exceeding such Spare Parts Allowance. Contractor shall use all reasonable efforts to secure the lowest pricing obtainable for such spare parts and shall store them under its control until Final Completion; provided, however, each such item shall be clearly labeled as a part designated for the Project. Contractor shall have the right to purchase at its own expense any spare parts that Concessionaire does not require Contractor to purchase and, to the extent any such spare parts are not used prior to Final Completion, shall remain the property of Contractor. Nothing contained herein shall (i) obligate Concessionaire to procure any spare parts or (ii) be construed to excuse Contractor from the performance of any of its obligations under this Agreement in the event that any particular spare part has not been procured for the Project.

2.1.16 Clean-Up and Waste Disposal. Contractor shall dispose of all water, soil, rock, gravel, sand, minerals, timber and other materials developed, obtained or excavated by Contractor or Subcontractors in the course of performance of the Work in compliance with all Applicable Laws. Contractor shall generally keep the Project Right of Way free from accumulation of waste materials, rubbish and other debris in accordance with the Standard of Care. On or before the date of Final Completion, Contractor shall remove from the Project Right of Way all waste materials, rubbish and other debris, as well as other tools,

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

2.1.17 Hazardous Substances.

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

2.1.17.2 Contractor shall be entitled to claim a Scope Change Order pursuant to Section 12.7.1 hereof in the event of the discovery of the Pre-Existing Hazardous Substances on the VDOT Existing ROW for which Contractor does not have responsibility pursuant to Section 2.1.17.1 and Section 5.6 to the extent Contractor's performance of the Work is materially adversely affected thereby and Contractor cannot, in the absence of incurring material cost or impacting the Project Schedule, overcome the effect thereof. Contractor shall give Concessionaire immediate (within twelve (12) hours) notice of the discovery of any Hazardous Substances or any pre-existing condition relating to Hazardous Substances on the VDOT Existing ROW. Clean-up and mitigation of spills or emissions or other problems (including management, treatment, storage, remediation and removal of contaminated soil) associated with Pre-Existing Hazardous Substances on the VDOT Existing ROW shall be Contractor's responsibility, but Contractor shall be entitled to be reimbursed therefor pursuant to

the Scope Change Order. Contractor shall, prior to proceeding with any such work, (i) obtain all environmental site assessments of the affected property and submit copies of such assessments to Concessionaire for Concessionaire's Approval (which shall be subject to receipt of VDOT's approval pursuant to Section 7.09(c) of the Comprehensive Agreement), (ii) develop the remediation plans, subject to Concessionaire's Approval (which shall be subject to receipt of VDOT's approval pursuant to Section 7.09(c) of the Comprehensive Agreement), for the management, treatment, handling, storage, remediation and removal of the Pre-Existing Hazardous Substances, (iii) obtain all Applicable Permits to implement such plans, and (iv) provide cost estimates for Concessionaire's Approval (which shall be subject to receipt of VDOT's approval pursuant to Section 7.09(c) of the Comprehensive Agreement) for such work for which Contractor is to be compensated pursuant to the Scope Change Order. Contractor shall seek pre-approval and pursue reimbursement from the Virginia Petroleum Underground Storage Tank Fund ("VPSTF") for qualifying expense incurred during the course of investigation and/or containment, management, mitigation, remediation activities on underground storage tank sites. All proceeds received from VPSTF for work that is to be reimbursed to Contractor by Concessionaire (as a pass-through from VDOT pursuant to Section 7.09(a) of the Comprehensive Agreement) shall be paid over to Concessionaire (to be, in turn, paid over to VDOT).

2.1.17.3 Contractor shall be entitled to claim a Scope Change Order pursuant to Section 12.7.2 hereof in the event of the discovery of (a) Pre-Existing Hazardous Substances on the Project Right of Way (other than on the VDOT Existing ROW, as to which Section 2.1.17.2 shall apply), or (b) Hazardous Substances spilled or placed on the Project Right of Way (including the VDOT Existing ROW) after the Agreement Date, in each case for which Contractor does not have responsibility pursuant to Section 2.1.17.1 and Section 5.6, to the extent Contractor's performance of the Work is materially adversely affected thereby and Contractor cannot, in the absence of impacting the critical path, overcome the effect thereof. Contractor shall give Concessionaire immediate (within twelve (12) hours) notice of the discovery of any such Hazardous Substances. Clean-up and mitigation of spills or emissions or other problems (including management, treatment, storage, remediation and removal of contaminated soil) associated with such Hazardous Substances on the Project Right of Way shall be Contractor's responsibility.

2.1.17.4 During the period of any clean-up or mitigation activities, Contractor shall continue the Work to the maximum extent possible on unaffected parts of the Project and areas of the Project Right of Way. Other than pursuant to Section 12.7, no Scope Change Order shall be issued in the event of the discovery of Hazardous Substances at the Project Right of Way.

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

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

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

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

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

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

on or off the Project Right of Way, caused by or arising in connection with the Work hereunder, other than to the extent contemplated as a result of Contractor's acquisition services necessary to acquire the Project Right of Way or as a result of damage caused by Concessionaire.

2.1.3 Coordination with Concessionaire and Other Contractors.

Contractor shall permit Concessionaire Contractors to introduce and store materials and perform their services. Contractor shall cooperate with Concessionaire and Concessionaire Contractors to coordinate the Work with the work of Concessionaire Contractors. Contractor shall attend any negotiations or meetings that Concessionaire has with a third party, including VDOT, on a matter which is or shall become Contractor's responsibility hereunder, including a meeting of Contractor's Project Director, the Concessionaire's Field Representatives and the Concessionaire's Project Manager and with VDOT within seven (7) days after Financial Closing to discuss issues affecting the administration of the Work and to implement the necessary procedures to facilitate the ability of the Parties to perform their obligations hereunder. Contractor agrees that if any such a negotiation or meeting occurs without a presence of a Contractor's representative, such event shall not constitute a breach of this Agreement unless such events occur repeatedly due to Concessionaire's intentional exclusion of Contractor from such negotiations or meetings.

2.1.4 Traffic Management Plan. Contractor shall develop, in coordination with Concessionaire and VDOT, a plan setting forth a program for traffic management and related activities (the "Traffic Management Plan") to be implemented in connection with the construction of the Project or any Work undertaken pursuant to any Department Change or approved Technical Requirements Deviations, all as contemplated in Section 7.10 of the Comprehensive Agreement and the Technical Requirements. Contractor shall carry out any Work on the Project in accordance with the Traffic Management Plan. In addition, Contractor shall participate in any federally approved regional congestion management plan that is implemented by VDOT or its designee with respect to the Capital Beltway and the regional transportation network as contemplated in Section 7.10 of the Comprehensive Agreement.

2.1.5 Contract Documents at Project Right of Way and FTP Website.

Contractor shall maintain at the Project Right of Way, on a current basis, one record copy of all of the Contract Documents, in good order and marked currently to record all changes, and a complete set of all working drawings required to be maintained for the Project pursuant to Applicable Laws. These shall be available upon request of Concessionaire, VDOT and the Independent Engineer. In addition, Contractor shall permit Concessionaire, VDOT and their agents and consultants access to its FTP website for purposes of viewing and downloading copies of all Contract Documents and any other documents relevant to the design or construction of the Project.

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

2.1.7 Operating Manual. Not later than six (6) months before the projected Substantial Completion Date as set forth on the Project Schedule, Contractor shall

submit for Concessionaire's Approval a draft of the complete equipment and system instructions and procedures for the operation and maintenance of the systems and items of plant and equipment incorporated into the Project, including the ETTM System. If Concessionaire does not approve the draft, it shall provide comments thereon to Contractor within thirty (30) days after receipt, and Contractor promptly shall incorporate or otherwise respond to Concessionaire's comments and submit a revised draft for Concessionaire's Approval. Such procedure shall be repeated until receipt of Concessionaire's Approval therefor, and the revised product shall be the "Operating Manual." Not later than forty-five (45) days before such scheduled commencement, Contractor shall prepare in individually numbered bound volumes and deliver to Concessionaire ten (10) sets of such approved Operating Manual for the Project as well as one (1) set to VDOT, and shall also provide each of Concessionaire and VDOT the same in an electronic form that may be edited and revised electronically.

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

2.1.9 Quality Management System. In accordance with the Standard of Care, Applicable Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents, Contractor shall be responsible for all quality assurance and quality control activities necessary to manage the development, design and construction of Project and shall develop and provide to Concessionaire the Quality Management System Plan in accordance with the Schedule of Submittals. Contractor shall fully observe and implement, and cause all Subcontractors to fully observe and implement, the Quality Management System Plan until Final Completion. Contractor shall provide oversight and management of the Project to control the scope, quality, cost, and on-time delivery of the Work and if the Work is not being performed in compliance with the Quality Management System Plan, Contractor shall increase and improve its management and oversight efforts such that repair or replacement of non-conforming items does not require any increase in Concessionaire's oversight of the Project. The Parties acknowledge that, pursuant to Section 7.17(d) of the Comprehensive Agreement, VDOT has the right to review Contractor's quality management system, including the right to inspect work and/or activities and to verify the accuracy and adequacy of quality management documentation. Contractor agrees to provide, and cause its Subcontractors to provide, the access and assistance as VDOT may reasonably require conducting such reviews. All tests, inspections and quality assurance procedures required by this Agreement, or recommended by Subcontractors, shall be in addition to, and not in lieu of, applicable Quality Management System Plan activity. Contractor shall regularly document and report to Concessionaire its compliance with the Quality Management System Plan in accordance with the procedures contained therein.

2.1.10 Public Information. Contractor shall, in coordination with Concessionaire and VDOT, prepare a plan setting forth a program for public information dissemination and related activities to be implemented by Contractor in connection with the construction of the Project (the "Public Information Plan") contemplated by Section 7.11 of the Comprehensive Agreement, which Public Information Plan shall be subject to Concessionaire's Approval. Prior to and during the construction of the Project, Contractor shall assist

Concessionaire with providing information to the public concerning the Project in accordance with the Public Information Plan.

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

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

2.2.1 Contractor's Assumption of Risk of Site Issues. Concessionaire expressly disclaims any responsibility for, and Contractor expressly waives its right to seek any increase in the Contract Sum or extension to the Guaranteed Substantial Completion Date for, any conditions at or on the Project Right of Way except as provided in Sections 2.1.17, 5.6, 12.7 and 12.12 hereof.

2.2.2 No Concessionaire's Warranties for Site Information. Concessionaire makes no warranties or representations as to any surveys, data, reports or other information provided by Concessionaire to Contractor (which surveys, data, reports or other information were obtained by Concessionaire from VDOT or other Persons) concerning surface or subsurface conditions affecting the Project Right of Way or surrounding locations, including the presence of Utilities, Hazardous Substances, contaminated groundwater, archeological, paleontological and cultural references and endangered and threatened species. Without prejudice to Contractor's right to claim a Scope Change Order under Sections 12.7 and 12.12, Contractor acknowledges that such information is for Contractor's reference only and has not been verified by Concessionaire or VDOT.

2.3 Commencement of the Work. Contractor shall commence performance of the Work and other services hereunder on the date which Concessionaire specifies (the "Commencement Date") in a written notice delivered to Contractor at Financial Closing in the form set forth as Exhibit A hereto (the "Notice to Proceed"); provided, however, that the Commencement Date may not occur unless and until Financial Closing shall have occurred and VDOT has issued the "Work Commencement Approval" pursuant to Section 7.03(a) of the Comprehensive Agreement. If Concessionaire fails to issue the Notice to Proceed at Financial Closing, Contractor shall be entitled to a day-to-day extension of the Project Schedule and the Guaranteed Substantial Completion Date, but there shall be no adjustment to the Contract Sum as a result of such delay. No item of construction for any Construction Segment of the Project shall be commenced until (i) Design Documents and Contract Documents pertaining to such Construction Segment and listed on Exhibit Q have been subject to Concessionaire's Review or received Concessionaire's Approval, as applicable, (ii) all Permits (including Permits issued by VDOT and FHWA) necessary for construction of the applicable Construction Segment shall have been obtained and all applicable pre-construction requirements of such Permits have been complied with by Contractor, (iii) any necessary Project Right of Way for the construction of the applicable Construction Segment shall have been obtained. Contractor shall proceed with

portions of Work prior to the Commencement Date only to the extent expressly directed to do so by Concessionaire in writing, and (iv) VDOT has issued its approval for commencement of the Work on the applicable Construction Segment pursuant to Sections 7.03(b) and 7.04 of the Comprehensive Agreement. In the event the Commencement Date does not occur within fifteen (15) days after the date of Financial Closing, then either Concessionaire or, so long as the delay in the Commencement Date is not attributable solely to the Contractor, Contractor, may terminate this Agreement upon written notice to the other Party, whereupon neither Party will have any liability to the other, except to the extent Concessionaire has expressly agreed in writing to make any payments to Contractor with respect to items procured prior to the Commencement Date. If the Agreement is so terminated, Contractor shall promptly return to VDOT such portion of the VDOT Funding that has been provided to it.

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

2.5 Compliance with Applicable Laws. Contractor shall comply with and shall cause the Work and the Project and all components thereof (including without limitation the design, engineering and construction of the Project) to comply with all Applicable Laws as they may be in effect at the time of Contractor's performance hereunder. Notwithstanding the foregoing, the effect of any change in Applicable Laws (excluding therefrom any change in Applicable Permits resulting from the acts or omissions of Contractor or any Subcontractor) enacted after the Agreement Date shall be determined under Section 12.5.

2.6 Independent Engineer. The Comprehensive Agreement and the documents which govern Concessionaire's transactions with the Financing Parties for the Project may provide to the Independent Engineer certain rights of review, inspection, certification and consultation with Concessionaire concerning the Project and the Work in order that the Independent Engineer may regularly and completely apprise VDOT and the Financing Parties of the progress and other aspects of the Project and the Work. Contractor shall fully and promptly cooperate with the Independent Engineer as reasonably requested by Concessionaire. Any acceptance or comment by the Independent Engineer, VDOT or the Financing Parties shall not be construed to impose on the Independent Engineer, VDOT or the Financing Parties any control of any portion of the Work, or relieve Contractor of any of its duties, liabilities or obligations under the Contract Documents. All communications to and from the Independent Engineer

regarding the Work shall be made through Concessionaire, except as Contractor is otherwise directed by Concessionaire.

2.7 Safety Precautions.

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

2.7.2 HS&S Plan. Contractor shall provide, for Concessionaire's Review, a HS&S Plan on or before the earlier of fifteen (15) days of the Commencement Date, or seven (7) days before Contractor intends to commence any construction-related activities at the Project Right of Way. Contractor shall not perform any construction related activity (including any activity that disturbs the Project Right of Way) until an acceptable HS&S Plan is in place.

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

2.8 Federal and State Requirements. In addition to complying with all other Applicable Laws, in performing the Work Contractor shall comply, and cause all Subcontractors to comply, with all legal requirements applicable to highways that are part of the interstate highway system, all applicable legal requirements for highway construction projects receiving federal aid, set forth in Exhibit V hereto, the prevailing wage requirements set forth in 42 U.S.C.

§ 276a, 23 U.S.C. § 113, as supplemented by 29 C.F.R. Part 5, 23 C.F.R. §§ 635.117(f), 635.118 and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements, the Buy America requirements set forth in Section 165 of the Surface Transportation Assistance Act of 1982 and implementing regulations (23 C.F.R. § 635.410), the applicable requirements of 49 C.F.R. Part 26 relating to the Disadvantaged Business Enterprise program, and all requirements imposed pursuant to VA. Code §§ 2.2-4367 *et seq.* (Ethics in Public Contracting).

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

ARTICLE 3

SUBCONTRACTS

3.1 Project Subcontractors. Contractor may enter into Subcontracts for discrete portions of the Work, but may not subcontract the entire Work. The identity of vendors supplying the equipment specified in Exhibit S shall require Concessionaire's approval, not to be unreasonably withheld. In addition, with respect to any Subcontractor providing construction services (as distinguished from suppliers of machinery or equipment) in connection with the performance by Contractor of the Work, any such Subcontractor executing Subcontracts or purchase orders having a value in excess of \$250,000 (other than Transurban (USA) Inc. and its subcontractors) shall be pre-qualified with VDOT to bid on contracts with VDOT or to act as a design-builder under contracts with VDOT.

3.2 Payments to Subcontractors. From and after the Commencement Date, Contractor shall be solely responsible for paying each Subcontractor and any other Person to whom any amount is due from Contractor for services, equipment, materials or supplies in connection with the Project. Pursuant to VA. Code §2.2-4354, Contractor agrees that, within seven (7) days following receipt of monies from Concessionaire for work performed by any Subcontractor, Contractor shall either: (a) pay the Subcontractor for the proportionate share of the total payment received from Concessionaire attributable to the work performed by the Subcontractor; or (b) notify Concessionaire and Subcontractor, in writing, of Contractor's intention to withhold all or a part of the Subcontractor's payment, specifying the reason for the

non-payment. Contractor also agrees that it shall include in all of its Subcontracts a provision that: (a) obligates Contractor to pay interest to Subcontractors on all amounts owed by Contractor that remain unpaid after seven (7) days following receipt of monies from Concessionaire for work performed by any Subcontractor, except for amounts withheld as allowed in the preceding sentence; (b) states, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."; and (c) obligates each Subcontractor to include or otherwise be subject to the same payment and interest requirements as specified in this Section 3.2 with respect to each lower-tier Subcontractor. Contractor's obligations to pay an interest charge to a Subcontractor shall not be construed to be an obligation of Concessionaire, nor shall any modification to this Agreement be allowed for the purpose of providing reimbursement for the interest charge. Cost reimbursement claims shall not include any amount for reimbursement for the interest charge.

3.3 Subcontractor Warranties. Contractor shall, for the protection of Concessionaire and VDOT, obtain from all Subcontractors guarantees and warranties on all machinery, equipment, services, materials, supplies and other items used and installed hereunder, and such guarantees and warranties shall not be amended, modified or otherwise discharged without the prior written consent of Concessionaire. Contractor shall use Commercially Reasonable Efforts to cause such guarantees and warranties from Subcontractors having Subcontracts for amounts in excess of \$500,000 to cover periods of not less than two (2) years from the date of Substantial Completion and to include parts, shipping, service and labor for all warranty repairs with respect thereto. Contractor shall enforce guarantees and warranties to the fullest extent thereof on behalf of Concessionaire and VDOT until expiration of the Warranty Period. At Concessionaire's request or, if later, upon the expiration of the Warranty Period, Contractor shall assign to Concessionaire or, as directed by Concessionaire or VDOT, all guarantees and warranties of all Subcontractors then remaining in effect; provided, however, that (i) such assignment shall not relieve Contractor of its warranty obligations under the Contract Documents and (ii) Contractor shall have the prior right to enforce the guarantees and warranties of Subcontractors to the extent necessary to assure satisfaction of Contractor's warranty obligations to Concessionaire under the Contract Documents. Neither Contractor, nor any Subcontractor or any Person under Contractor's control, shall take any action which could release, void, impair or waive any warranties or guarantees on equipment, materials or services that it procures from others.

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

3.5 Subcontracts. Each Subcontract to which Contractor is a Party shall contain or incorporate by reference the essential terms of this Agreement, and also must provide that such Subcontract may be freely assigned to Concessionaire upon the request of Concessionaire following termination of this Agreement or to VDOT upon the request of VDOT if it exercises its rights pursuant to Section 16.2 of this Agreement.

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

permitted under the Contract Documents of any portion of the Work or of any work in progress by Contractor or Subcontractors shall not relieve Contractor of any duties, liabilities or obligations under the Contract Documents.

3.7 Disadvantaged Business Enterprise (DBE) and Small, Women-Owned and Minority Business (SWAM) Goals. Contractor shall comply with the DBE/SWAM goals applicable to Concessionaire with respect to the Work Period as set forth in Sections 11.03(b)-(e) of the Comprehensive Agreement.

ARTICLE 4

PRICE AND PAYMENT

4.1 Contract Sum. As consideration to Contractor for the full and complete performance of the Work in accordance with the terms hereof and all costs incurred in connection therewith, Concessionaire shall pay, and Contractor shall accept, a firm, fixed-price, lump sum equal to \$1,346,560,025, to be paid in installments as set forth in Section 4.2 hereof (such amount, as it may be adjusted from time to time in accordance with this Agreement, herein referred to as the “Contract Sum”). The Contract Sum excludes the ROW Allowance and the HOT Operations Center Site Allowance and payments from such allowances shall be made by Concessionaire as provided in Section 2.1.6 hereof. The VDOT Funding described in Section 4.10 hereof will be utilized to pay a portion of the Contract Sum. Contractor agrees that (a) it will comply with the requirements of the VDOT Funding Agreement in order to obtain the VDOT Funding as and when the same is payable under the Comprehensive Agreement and the VDOT Funding Agreement, and (b) any failure of Concessionaire to pay that portion of any Scheduled Payment due to Contractor under this Agreement that was to be paid with the proceeds of the VDOT Funding shall not constitute a breach or default by Concessionaire to the extent resulting from the failure by VDOT to make the VDOT Funding available to Contractor at the time and in the amounts set forth in the Comprehensive Agreement and the VDOT Funding Agreement; however, Contractor may nevertheless suspend the applicable portion of the Work until payment is made, which suspension shall be treated as a suspension by Concessionaire entitling Contractor to claim a Scope Change Order under Section 15.1 hereof. Concessionaire agrees to pursue all rights it may have under the Comprehensive Agreement as a result of such VDOT failure and to provide Contractor with the benefit of any relief obtained by Concessionaire thereunder. The Contract Sum is not subject to adjustment for any reason other than pursuant to a Scope Change authorized by Concessionaire or to which Contractor is entitled to claim as specified herein. Contractor agrees and acknowledges that the Contract Sum is fixed and shall not increase in the event of any changes required as a result of Interchange Justification Reports approved by VDOT or FHWA except to the extent the same also results in a Department Change.

4.2 Payment Schedule. Other than the first installment of the Contract Sum, which is payable on the Commencement Date and shall not be subject to the conditions for payment set forth in this Section 4.2, the Contract Sum shall be paid by Concessionaire to Contractor in monthly installments (“Scheduled Payments”) based on percentage completion of the Work (other than Scheduled Payments designated as “Mobilization Payments” on the Payment and Values Schedule, which shall be payable at the times specified in the Payment and

Values Schedule), subject to the Maximum Cumulative Drawdown Schedule and in accordance with the Payment and Values Schedule, as may be adjusted from time to time pursuant to the terms of this Agreement.

4.2.1 Request for Payment. No earlier than the twentieth (20th) and no later than the twenty-third (23rd) day of each month, Contractor shall submit to Concessionaire its request for payment consisting of (a) an invoice in the amount of the applicable Scheduled Payment; (b) a certificate signed by the Contractor that Contractor has achieved the appropriate percentage of completion required for such Scheduled Payment in accordance with the Payment and Values Schedule and attaching reasonable documentary evidence of the performance of the relevant portion of the Work sufficient for Concessionaire and the Independent Engineer to reasonably determine that such portion of the Work has been performed to include at a minimum a current statused cost-loaded baseline schedule with activities sorted and subtotaled at the Payment and Values Schedule level; and (c) copies of the lien waivers specified in Section 4.5 or a bond meeting the requirements set forth in Section 4.5 with respect to any lien not waived. Notwithstanding anything to the contrary contained herein, Concessionaire shall not be obligated to make any payment to the extent that such payment, when added to all previous payments, exceeds the amount designated as the “Maximum Cumulative Contract Sum Payment” for the corresponding month on the Maximum Cumulative Drawdown Schedule or exceeds the cumulative physical percent complete of the Work as derived by the progress schedule. Also, with each payment request, Contractor shall furnish to Concessionaire all cost details relating to such payment request as necessary for Concessionaire to satisfy the requirements of the Financing Parties and the legal requirements of all Governmental Authorities. Such information shall be subject to audit in accordance with Section 20.2 hereof. Concessionaire and Contractor shall use all reasonable efforts to cooperate with each other to cause each request for payment to be reviewed and certified by the end of each calendar month. Contractor agrees that no information shall be submitted to the Independent Engineer under this Section 4.2.1 without its first being submitted to Concessionaire for review and approval.

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

- (i) Contractor’s request for payment does not include the certification required by Section 4.2.1 hereof or otherwise does not meet the requirements of Section 4.2.1 hereof;
- (ii) Contractor has not supplied Concessionaire with (i) the certification and the interim lien waivers as described in Section 4.5 hereof or (ii) the Monthly Progress Report for the month for which the request for payment has been made as described in Section 2.1.18 hereof;

(iii) one or more third parties have filed a mechanics' lien or similar claim against Concessionaire or the Project or Project Right of Way resulting from the actions or inactions of Contractor, any Subcontractor, or any person for whom Contractor is legally responsible and Contractor has not furnished in respect thereof a bond meeting the requirements of the penultimate sentence of Section 4.5 hereof;

(iv) Contractor has failed to make timely payments to Subcontractors as required under applicable Subcontracts and Applicable Law; provided, however, that the foregoing shall not apply if Concessionaire has wrongfully withheld payments due to Contractor;

(v) Contractor fails to pay any amounts owing to Concessionaire under the Contract Documents;

(vi) the Independent Engineer does not approve the request for payment;

(vii) any event which would permit a Termination For Cause of this Agreement by Concessionaire has occurred and is continuing beyond any applicable cure period; or

(viii) this Agreement is terminated before the Final Payment is made, in which event Concessionaire shall not be obligated to make further Scheduled Payments or other payments except in accordance with Section 4.4 or Section 15.2 hereof, as applicable.

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

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

4.3 Final Payment. Concessionaire shall pay the unpaid balance of the Contract Sum (the "Final Payment"), within thirty (30) days after the latest to occur of (i) Final Completion, (ii) receipt by Concessionaire of a final list and summary of the work performed by all Subcontractors, the amount due to each Subcontractor, and certification by Contractor that all undisputed amounts due to Subcontractors have been paid in full, (iii) receipt by Concessionaire of a final lien waiver, in the form of Exhibit B, of all liens that Contractor may have against Concessionaire, the Project and the Project Right of Way, (iv) receipt by Concessionaire from Contractor of final lien waivers in the form of Exhibit C (or, solely in the case of vendors

providing materials or equipment valued at less than \$50,000 in the aggregate, other evidence reasonably satisfactory to Concessionaire demonstrating that such vendor has waived or is not entitled to place any lien on any part of the Project or the Project Right of Way) from each Subcontractor with a Subcontract of more than \$50,000 in value (and from such other Subcontractors as may be necessary such that the aggregate value of all Subcontracts for which a final release and waiver has not been obtained does not exceed \$1,000,000) or, if Contractor is unable to obtain all such waivers, a letter of credit or bond that has received Concessionaire's Approval to protect Concessionaire, VDOT, the Project and the Project Right of Way from any and all claims made on account of such liens, and (v) the satisfaction of all other conditions to a Scheduled Payment contained in this Agreement or to which Contractor has otherwise agreed. Concessionaire may withhold from the Final Payment the sum of (x) one hundred fifty percent (150%) of the amount reasonably estimated by Concessionaire to cover the costs of causing the Project to reach Final Completion if not achieved by the Guaranteed Final Completion Date, plus (y) the amount of all Subcontracts for which a final release and waiver has not been obtained or for which Contractor has not provided a satisfactory payment bond to protect the Project and Concessionaire. Concessionaire shall pay over to Contractor the relevant portions of such withheld amount when the Work required to achieve Final Completion has been completed (less Concessionaire's cost of completing such Work) and when the statutory period by which any liens may be created has expired without such liens have been created.

4.4 Termination Payment. Upon a termination of this Agreement pursuant to Section 15.3 hereof, Contractor shall be entitled to receive a termination payment (the "Termination Payment") equal to the sum of (i) that portion of the Contract Sum, which is due and payable to Contractor by Concessionaire and applicable to the Work completed up to the date of termination and which has not previously been paid to Contractor, (ii) the direct, out-of-pocket costs reasonably incurred by Contractor in withdrawing its equipment and personnel from the Project Right of Way and in otherwise demobilizing, and (iii) the direct, out-of-pocket costs reasonably incurred by Contractor in terminating contracts with Subcontractors. Representatives of Concessionaire and Contractor shall determine the Contract Sum amount referred to in clause (i) above in accordance with the Payment and Values Schedule, and Contractor shall document the costs claimed under clause (ii) above to Concessionaire's reasonable satisfaction and shall supply Concessionaire with copies of the Subcontractor invoices covering amounts claimed under clause (iii) above. Contractor shall submit an invoice to Concessionaire for the Termination Payment with the supporting information and documents referred to above, and Concessionaire shall pay such invoice within thirty (30) days after its receipt of same subject to the provisions of this Section 4.4. and unless it disputes certain elements thereof, in which event only the undisputed portion of the Termination Payment need be made within such 30-day period and the dispute over the remainder of the claimed Termination Payment may be submitted to the appropriate dispute resolution process provided under Article 19. The Termination Payment shall be subject to offset for amounts payable by Contractor to Concessionaire. As a condition precedent to receiving the Termination Payment, Contractor shall comply with all the provisions of Section 15.4 hereof. Payment of the Termination Payment shall be the sole and exclusive liability of Concessionaire, and the sole and exclusive remedy of Contractor, with respect to termination of this Agreement pursuant to Section 15.3 hereof. In no event shall Concessionaire have any further liability to Contractor in any such event for actual, incidental, consequential or other damages, notwithstanding the actual amount of damages that Contractor may have sustained in connection with a termination pursuant to Section 15.3 hereof. Calculation of the

Termination Payment has been agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of such damages Contractor will actually sustain in the event of a termination of the Work pursuant to Section 15.3 hereof, and Concessionaire and Contractor agree that the calculation of the Termination Payment is reasonable.

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

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

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

4.8 Guaranty. Contractor shall cause the Guarantor to execute and deliver a guaranty in favor of Concessionaire and VDOT, in the form of Exhibit F hereto, as a security for

all obligations of Contractor hereunder. Such guaranty must be provided by no later than the Agreement Date.

4.9 Letter of Credit. On the Agreement Date Contractor shall provide Concessionaire with a Letter of Credit in the form of Exhibit H-1 hereto issued by a Qualified Issuer in an amount equal to seven-and-one-half percent (7.5%) of the Contract Sum as additional security for Contractor's performance of its obligations hereunder. Upon achievement of Substantial Completion of the New Lanes or any portion or segment thereof for which care, custody and control has passed to VDOT pursuant to this Agreement and the Comprehensive Agreement, the amount of the Letter of Credit in favor of Concessionaire shall be reduced by \$10,000,000, and Contractor shall provide VDOT with a Letter of Credit in the form of Exhibit H-2 hereto issued by a Qualified Issuer in an amount equal to \$10,000,000. Upon Substantial Completion of the entire Project, the amount of the Letter of Credit issued for the benefit of Concessionaire shall be adjusted to an amount equal to the difference between (x) three percent (3%) of the Contract Sum, minus (y) \$30,000,000, and be subject to draw by Concessionaire for the first two (2) years of the Warranty Period applicable to the portion of the Project other than the New Lanes, and the amount of the Letter of Credit issued for the benefit of VDOT shall be adjusted to an amount equal to \$30,000,000 and be subject to draw by VDOT (or Concessionaire, to the extent permitted pursuant to Section 7.19 of the ARCA) for the first two (2) years of the Warranty Period applicable to the New Lanes. If any General Warranty claims remain unresolved as of the date the applicable Letter of Credit (or applicable portion thereof) is otherwise permitted to expire pursuant to the preceding sentence, Contractor shall cause the applicable Letter of Credit (or applicable portion thereof) to remain in effect through the date of resolution of such General Warranty claims, provided that the amount of the Letter of Credit (or applicable portion thereof) shall be reduced following the end of first two (2) years of the applicable Warranty Period to an amount equal to one hundred fifty percent (150%) of the total amount of such outstanding claims. For so long as Contractor is obligated to maintain the Letter of Credit, not later than thirty (30) days prior to the stated expiration date of the Letter of Credit, Contractor shall renew, or cause the renewal of, each outstanding Letter of Credit, or replace, or cause the replacement of, each such Letter of Credit with one or more replacement Letters of Credit from a Qualified Issuer and having a stated amount equal to that of the Letter of Credit being renewed or replaced. For so long as Contractor is obligated to maintain the Letter of Credit, in the event (i) the issuer of a Letter of Credit shall fail to meet the requirements of a Qualified Issuer, (ii) an issuer of a Letter of Credit shall fail to honor the beneficiary's properly documented request to draw on an outstanding Letter of Credit, or (iii) the issuer of an outstanding Letter of Credit indicated its intent not to renew such Letter of Credit, within five (5) Business Days thereafter Contractor shall provide a substitute Letter of Credit from a Qualified Issuer other than the bank that has been downgraded or failed to honor the outstanding Letter of Credit. If Concessionaire (or VDOT) does not receive a replacement Letter of Credit from a Qualified Issuer within the time specified in either of the two preceding sentences, it may draw on the full available amount of the Letter of Credit. Amounts drawn in such circumstances shall be held directly by Concessionaire (or VDOT, as applicable) and shall be available to be applied by Concessionaire or VDOT under the conditions set forth in the Letter of Credit. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing or otherwise administering a Letter of Credit shall be borne by Contractor.

4.10 VDOT Funding. VDOT has agreed, pursuant to Section 7.02 of the Comprehensive Agreement, to provide to Contractor payments (the “VDOT Funding”) as financial support for the development, design, construction and start-up of certain portions of the Project in accordance with the VDOT Funding Agreement.

ARTICLE 5

CONCESSIONAIRE'S OBLIGATIONS

5.1 Representatives. Concessionaire shall designate a representative (the "Concessionaire's Project Manager") to administer the Contract Documents on behalf of Concessionaire. Concessionaire's Project Manager shall have the authority to (a) issue Concessionaire's instructions and other communications to Contractor, (b) determine achievement of milestones under the Payment and Values Schedule, (c) issue Concessionaire's determination regarding Substantial Completion, Final Completion, the Contractor's Punch List and the Concessionaire's Punch List, and (d) execute Proposal Requests and Scope Change Orders. Concessionaire's Project Manager shall be the recipient of notices and other written communications from Contractor under the Contract Documents. In furtherance of his/her responsibilities described hereunder, Concessionaire's Project Manager may conduct observations and inspections of the Project throughout design, procurement and construction, provided that no such observations or inspections shall relieve Contractor of any of its obligations under the Contract Documents. Concessionaire shall also designate a representative to observe the Work on the Project Right of Way ("Concessionaire's Field Representative"). Concessionaire's Field Representative shall have the right to be present at the Project Right of Way at all times, to occupy the field office of Concessionaire at the Project Right of Way and to participate in weekly Project status meetings conducted by Contractor. Concessionaire's Field Representative shall have the right to observe and inspect the progress of procurement and construction of the Project, and may offer advice to Contractor about the conformance of the Work with the Contract Documents. Contractor shall notify Concessionaire's Field Representative before commencing any significant items of construction for the Project. However, Concessionaire's Field Representative shall not have the authority to make decisions or give instructions binding upon Concessionaire, except to the extent expressly authorized by Concessionaire in writing. In the event Concessionaire employs or designates a different Concessionaire's Project Manager or Concessionaire's Field Representative, Concessionaire shall give Contractor written notice of the identity of the new Concessionaire's Project Manager or Concessionaire's Field Representative. Concessionaire's Project Manager or Concessionaire's Field Representative may delegate any or all of his/her authority to one or more delegates, but not such delegation shall be effective unless made in a written instrument from him/her delivered to Contractor naming the delegate, his/her tenure and the extent of his/her authority. In addition, Concessionaire shall have the right to retain one or more independent consultants to monitor and inspect the Work at the Project Right of Way or specific portions of the Work.

5.2 Project Right of Way. Concessionaire shall furnish all VDOT Existing ROW that is provided to Concessionaire from VDOT under the Comprehensive Agreement, such VDOT Existing ROW to be made available by the later of the Agreement Date under the Comprehensive Agreement or the Commencement Date under this Agreement. Concessionaire shall be responsible for all ROW Acquisition Costs for the site of the HOT Operations Center that, combined with ROW Acquisition Costs for easements for fiber optic routing to the HOT Operations Center, exceed the HOT Operations Center Site Allowance. The site of the HOT Operations Center will be determined by the Concessionaire. If the design or construction scope (physical work) associated with the site of the HOT Operations Center (inclusive of the HOT

Operations Center building to occupancy stage originally proposed to be designed and constructed at 6400 Commerce St., Alexandria, Virginia, site civil work, demolition, and utilities, duct bank/conduit, and fiber optic runs) various from that proposed in the Scope Document, then the Contractor will be entitled to claim a Scope Change Order in accordance with the procedures set forth in Article 12 adjusting one or more of the Contract Sum, the Payment and Values Schedule, the Project Schedule and the Guaranteed Substantial Completion Date to the extent Contractor's performance of the Work is adversely affected by such variation.

5.3 Permits. Concessionaire shall obtain all Applicable Permits which are designated on Exhibit R hereto as being the responsibility of Concessionaire. Concessionaire shall cooperate with Contractor in connection with Contractor's efforts to obtain the Applicable Permits that are designated as Contractor's responsibility on Exhibit R hereto.

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

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

5.6 Pre-Existing Hazardous Substances. The Parties acknowledge that pursuant to Section 7.09 of the Comprehensive Agreement, VDOT is responsible under the Comprehensive Agreement for costs associated with the Pre-Existing Hazardous Substances on the VDOT Existing ROW and has agreed in Section 14.03(c) of the Comprehensive Agreement that, except to the extent matters are addressed by the provisions of Section 14.03(a), to the extent permitted by Applicable Laws it shall assume responsibility for the discharge and satisfaction of liabilities and other Claims (as defined in the Comprehensive Agreement) asserted by a third party against the Concessionaire or a Concessionaire Party (as defined in the Comprehensive Agreement) for personal injury or damage or harm to its property or business due to the Pre-Existing Hazardous Substances on the VDOT Existing ROW. Concessionaire shall not be considered in breach of this Agreement in the event of the discovery of the Pre-Existing Hazardous Substances on the VDOT Existing ROW so long as it is using Commercially Reasonable Efforts to pursue its rights under the Comprehensive Agreement with respect to such Pre-Existing Hazardous Substances. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the amount of any claim to be made against VDOT pursuant to the Comprehensive Agreement as a consequence of the discovery of the Pre-Existing Hazardous Substance on the VDOT Existing ROW.

5.7 Comprehensive Agreement. Concessionaire shall perform its specified obligations under the Comprehensive Agreement to the extent such obligations are not required to be performed by Contractor hereunder.

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

ARTICLE 6

COMMISSIONING, COMPLETION AND ACCEPTANCE OF PROJECT

6.1 Project Commissioning. At least ninety (90) days before Commissioning of the Project is scheduled to begin, Contractor shall propose, for Concessionaire's Approval and the Independent Engineer's review and acceptance, a Performance Testing and Commissioning Plan and Program, including a Commissioning schedule, an organization chart of Contractor's personnel conducting the Commissioning, and a comprehensive procedure for the review of the Operating Manual and the application of its contents to Project systems. Concessionaire shall supply its start-up personnel as provided in Section 5.5 hereof to perform the labor necessary to start-up the Project and to observe and verify Commissioning tasks performed by Contractor. Upon Concessionaire and the Independent Engineer's acceptance of the Performance Testing and Commissioning Plan and Program for the Project, Contractor shall proceed to commission the Project. As Commissioning progresses, Contractor shall provide Concessionaire, VDOT and OS&S Contractor's personnel with comprehensive classroom and on-the-job training in the operation and maintenance of the Project. Contractor shall coordinate all training sessions in a manner sufficient to provide Concessionaire, VDOT and the OS&S Contractor's personnel with an adequate understanding of the basic and principal design, and the operation and maintenance aspects, of each dimension of the Project as an integrated whole.

6.2 New Lanes Substantial Completion and Turnover. At least thirty (30) days prior to the date when Contractor anticipates to achieve New Lanes Substantial Completion, it shall deliver to Concessionaire a notice thereof (the "Notice of New Lanes Substantial Completion"). The Notice of New Lanes Substantial Completion shall contain a report of results of, and a description of, all Work completed in respect to the New Lanes in a form acceptable to Concessionaire and the Independent Engineer and with sufficient detail to enable them to establish whether New Lanes Substantial Completion has been achieved, as well as a New Lanes Substantial Completion Certificate signed by Contractor. Within ten (10) days after receipt of the Notice of New Lanes Substantial Completion, Concessionaire shall inspect the New Lanes and all Work completed by Contractor related thereto and review the report submitted by Contractor and either (a) deliver to the Independent Engineer the signed New Lanes Substantial Completion Certificate for counter-signature, or (b) if reasonable cause exists for doing so, notify Contractor that New Lanes Substantial Completion has not been achieved stating the reasons therefor. If Concessionaire notifies Contractor that New Lanes Substantial Completion has not been achieved, Contractor shall promptly take such action or perform such additional Work as will permit achievement of New Lanes Substantial Completion and issue to Concessionaire and the Independent Engineer a revised Notice of New Lanes Substantial Completion signed by Contractor. The foregoing process shall be repeated until Concessionaire is satisfied with the Notice of New Lanes Substantial Completion and concurs that New Lanes Substantial Completion has occurred, whereupon it shall countersign the New Lanes Substantial Completion Certificate and forward the same to the Independent Engineer. Within twenty (20) days after Concessionaire has provided the Notice of New Lanes Substantial Completion to the Independent Engineer, Concessionaire, Contractor and the Independent Engineer will meet, confer and exchange information on a regular basis with a goal being Concessionaire's issuance of the New Lanes Substantial Completion Certificate countersigned by the Independent Engineer, provided that Concessionaire's issuance of such New Lanes Substantial Completion

Certificate hereunder shall be contingent upon issuance by VDOT of a "Substantial Completion Certificate" with respect to the New Lanes under Section 7.15 of the Comprehensive Agreement. New Lanes Substantial Completion shall be achieved hereunder if and only if:

(i) Contractor has performed all of the Work related to the New Lanes required by the Contract Documents, other than the items listed in Concessionaire's Punch List for the New Lanes;

(ii) All equipment and facilities necessary for the full, safe and continuously reliable operation of the New Lanes have been properly constructed, installed, insulated and protected where required for such operation, and correctly adjusted;

(iii) The New Lanes are fully capable of operation accordance with the Contract Documents;

(iv) All quality management documentation related to the New Lanes has been provided to and reviewed by Concessionaire in accordance with the Quality Management System Plan, all quality management issues have been resolved, and Contractor has provided final design and construction documents as required under Section 7.14(a) of the Comprehensive Agreement;

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

(vi) "Substantial Completion" with respect to the New Lanes has occurred under the Comprehensive Agreement as evidenced by VDOT's issuance of a "Substantial Completion Certificate" thereunder with respect to the New Lanes; and

(vii) Concessionaire has delivered to Contractor the New Lanes Substantial Completion Certificate signed by Contractor and countersigned by each of Concessionaire and the Independent Engineer.

Upon the satisfaction of the foregoing conditions, when the Independent Engineer countersigns the New Lanes Substantial Completion Certificate, Contractor, on behalf of Concessionaire, shall transfer the responsibility for operation and maintenance of the New Lanes to VDOT pursuant to Section 7.14(a)(iii) of the Comprehensive Agreement for the inclusion as part of the state

highway system. Contractor shall complete all items listed on the Concessionaire's Punch List for the New Lanes within ninety (90) days of New Lanes Substantial Completion.

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

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

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

6.6 Substantial Completion of the Project.

6.6.1 Substantial Completion of the Project shall be achieved hereunder if and only if:

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

(ii) Contractor has performed all of the Work required by the Contract Documents, except for any remaining items listed in Concessionaire's Punch List;

(iii) All equipment and facilities necessary for the full, safe and continuously reliable operation of the Project have been properly constructed, installed, insulated and protected where required for such operation, and correctly adjusted;

(iv) The Project is fully capable of operation accordance with the Contract Documents; and

(v) All quality management documentation has been provided to and reviewed by Concessionaire in accordance with the Quality Management System Plan, all quality management issues have been resolved, and Contractor has provided final design and construction documents as required under Section 7.14(a) of the Comprehensive Agreement;

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

(vii) "Substantial Completion" of the entire Project has occurred under the Comprehensive Agreement as evidenced by VDOT's issuance of a "Substantial Completion Certificate" thereunder; and

(viii) Concessionaire has delivered to Contractor the Substantial Completion Certificate signed by Contractor and countersigned by each of Concessionaire and the Independent Engineer.

6.6.2 Notice and Report of Substantial Completion of the Project. At least forty (40) days prior to the date when Contractor anticipates to achieve Substantial

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

6.6.3 Achievement of Substantial Completion of the Project. Within twenty (20) days after Concessionaire has provided the Notice of Substantial Completion to the Independent Engineer, Concessionaire, Contractor and the Independent Engineer will meet, confer and exchange information on a regular basis with a goal being Concessionaire's issuance of the Substantial Completion Certificate counter-signed by the Independent Engineer, provided that Concessionaire's issuance of such Substantial Completion Certificate hereunder shall be contingent upon issuance of a “Substantial Completion Certificate” by VDOT under Section 7.14(a) of the Comprehensive Agreement. Contractor acknowledges that, pursuant to Section 7.14(a) of the Comprehensive Agreement, the Independent Engineer is to conduct an inspection of the Project, the final Design Documents and the Contract Documents, and such other matters as may be necessary to determine whether Substantial Completion is achieved, and is to deliver a written report of findings and recommendations to VDOT and Concessionaire. VDOT may, independently or jointly with the Independent Engineer, conduct such inspection, review and investigation within the time provided under Section 7.14(a) of the Comprehensive Agreement. If VDOT notifies Concessionaire that it will not issue the “Substantial Completion Certificate” under Section 7.14(a) of the Comprehensive Agreement and identifies any defects and deficiencies in the Work, Concessionaire shall promptly provide such notice to Contractor, and Contractor shall promptly correct such defects and deficiencies in the Work identified by VDOT. The foregoing process shall be repeated until Substantial Completion has been achieved as evidenced by Concessionaire's and the Independent Engineer's countersigning of the Substantial Completion Certificate. For all purposes of this Agreement, the date of achievement of Substantial Completion shall be the date on which Concessionaire issues to Contractor such Substantial Completion Certificate that is countersigned by each of the Concessionaire and the Independent Engineer.

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

6.7.1 Demonstration of Final Completion. Final Completion shall be achieved hereunder if the following conditions have been met:

- (i) Contractor has performed all of the Work required by the Contract Documents;
- (ii) All items on Concessionaire's Punch List have been completed by Contractor in accordance with the Contract Documents;
- (iii) All conditions to Substantial Completion under Section 6.6.1 have been and remain satisfied;
- (iv) All quality management documentation has been provided to and reviewed by Concessionaire in accordance with the Quality Management System Plan, and all quality management issues have been resolved;
- (v) Contractor has delivered all required certifications from the engineer of record and the architect of record for the Project to all necessary Governmental Authorities and VDOT;
- (vi) Final As-Built Drawings and Documentation have been accepted by Concessionaire, VDOT and the Independent Engineer;
- (vii) Contractor has provided Concessionaire with all other work product required to be delivered under this Agreement;
- (viii) "Final Acceptance" has occurred under the Comprehensive Agreement as evidenced by VDOT's issuance of a "Final Acceptance Certificate" thereunder; and
- (ix) Concessionaire has delivered to Contractor the Final Completion Certificate signed by Contractor and countersigned by each of Concessionaire and the Independent Engineer.

6.7.2 Notice and Report of Final Completion of the Project. At least forty (40) days prior to the date when Contractor anticipates to achieve Final Completion, it shall deliver to Concessionaire a notice thereof (the "Notice of Final Completion"). The Notice of Final Completion shall contain a report in a form acceptable to Concessionaire and the Independent Engineer and with sufficient detail to enable them to establish that Contractor has completely performed all of the Work under the Contract Documents, including the items listed in Concessionaire's Punch List, as well as a Final Completion Certificate signed by Contractor. Concessionaire shall, within nineteen (19) days following receipt of the Notice of Final Completion, inspect the Project and all Work hereunder and review the report submitted by Contractor and either (a) deliver to the Independent Engineer the signed Final Completion Certificate for counter-signature, or (b) if reasonable cause exists for doing so, notify Contractor that Final Completion has not been achieved, stating in detail the reasons therefor. If Concessionaire notifies Contractor that Final Completion has not been achieved, Contractor shall promptly take such action or perform such additional Work as will permit achievement of Final

Completion, conduct another Performance Test, if necessary, and issue to Concessionaire and the Independent Engineer a revised Final Completion Certificate signed by Contractor. The foregoing process shall be repeated until Concessionaire is satisfied with the Notice of Final Completion and concurs that Final Completion has occurred, whereupon it shall countersign the Final Completion Certificate and forward the same to the Independent Engineer.

6.7.3 Achievement of Final Completion of the Project. Within twenty (20) days after Concessionaire has provided the Notice of Final Completion to the Independent Engineer, Concessionaire, Contractor and the Independent Engineer will meet, confer and exchange information with the goal being Concessionaire's issuance of the Final Completion Certificate counter-signed by the Independent Engineer, provided that Concessionaire's issuance of such Final Completion Certificate hereunder shall be contingent upon issuance of a "Final Acceptance Certificate" by VDOT under Section 7.14(b) of the Comprehensive Agreement. Contractor acknowledges that, pursuant to Section 7.14(b) of the Comprehensive Agreement, the Independent Engineer is to conduct an inspection of the completed Concessionaire's Punch List items, a review of the Final As-Built Drawings and Documentation and such other investigation as may be necessary to evaluate whether the conditions for Final Acceptance of the Project have been satisfied and is to deliver a written report of its findings and recommendations to VDOT and Concessionaire. VDOT may, independently or jointly with the Independent Engineer, conduct such inspection, review and investigation within the time provided under Section 7.14(b) of the Comprehensive Agreement. If VDOT notifies Concessionaire that it will not issue the "Final Completion Certificate" under Section 7.14(b) of the Comprehensive Agreement and identifies any defects and deficiencies in the Work, Concessionaire shall promptly provide such notice to Contractor, and Contractor shall promptly correct such deficiencies in the Work identified by VDOT. The foregoing process shall be repeated until Final Completion has been achieved as evidenced by Concessionaire's and the Independent Engineer's countersigning the Final Completion Certificate, provided, however, Contractor is obligated to achieve Final Completion within ninety (90) days after the date of Substantial Completion (the "Guaranteed Final Completion Date"). If Concessionaire reasonably and in good faith determines that Contractor is not proceeding with all due diligence to complete the Work in order to achieve Final Completion by the Guaranteed Final Completion Date, Concessionaire may complete such work at Contractor's expense. For all purposes of this Agreement, the date of achievement of Final Completion shall be the date on which Concessionaire issues to Contractor such Final Completion Certificate that is countersigned by each of Concessionaire and the Independent Engineer.

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

6.9 Operation of the Project. Upon Substantial Completion of the entire Project, VDOT shall take possession and control of the entire Project and, on the Service Commencement Date, Concessionaire shall commence operation of the HOT Lanes.

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

6.11 Substantial Completion of Portions of the Project. Contractor may seek that Concessionaire request VDOT to approve issuance of a Substantial Completion certificate in accordance with Section 7.15 of the Comprehensive Agreement with respect to certain fully functional and operational portions of the New Lanes or with respect to Springfield Interchange Phase VIII prior to issuance of the Substantial Completion Certificate with respect to the entire Project. Concessionaire shall at its discretion seek VDOT's approval of such issuance, in which case, solely for the purpose of processing such early acceptance, all references to Substantial Completion of the Project in Section 6.6 shall be deemed to be references to Substantial Completion of the portion of the Project that VDOT has agreed in its discretion to accept early pursuant to Section 7.15 of the Comprehensive Agreement.

ARTICLE 7

LATE COMPLETION PAYMENT, LATE LANE OPENING PAYMENT AND BONUS

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

7.2 Late Completion Payment. If Substantial Completion has not occurred on or before the Guaranteed Substantial Completion Date, then for each calendar day (or portion thereof) by which Substantial Completion occurs after the Guaranteed Substantial Completion Date, subject to the limitation set forth in Section 7.6 hereof, Contractor hereby agrees to pay to Concessionaire, as part of the consideration for awarding the contract, an amount equal to applicable Concessionaire Delay Damages Rate plus, to the extent Concessionaire is then obligated to pay the same to VDOT pursuant to Section 7.01(f)(i) of the Comprehensive Agreement, \$21,000 per calendar day to be paid over to VDOT, all as liquidated damages and not as a penalty (the "Late Substantial Completion Payment"). In addition, if Final Completion has not occurred on or before the Guaranteed Final Completion Date and if Concessionaire is then obligated to pay the same to VDOT pursuant to Section 7.01(f)(iii) of the Comprehensive Agreement, then for each calendar day (or portion thereof) by which Final Completion occurs after the Guaranteed Final Completion Date, Contractor hereby agrees to pay to Concessionaire, as part of the consideration for awarding the contract, \$5,000 per calendar day to be paid over to

VDOT, all as liquidated damages and not as a penalty (the “Late Final Completion Payment,” collectively with the Late Substantial Completion Payment, “Late Completion Payments”).

7.3 Liquidated Damages Reasonable. Concessionaire and Contractor hereby acknowledge and agree that the terms, conditions and amounts fixed pursuant to Section 7.2 for Late Completion Payment and pursuant to Section 7.8 below for Late Lane Opening Payment are fair and reasonable, considering the reduction in value of the Project to Concessionaire and the actual costs that Concessionaire will incur in the event of Contractor’s failure to achieve Substantial Completion by the Guaranteed Substantial Completion Date and/or Final Completion by the Guaranteed Final Completion Date or to re-open the lanes to traffic after the temporary closure thereof. The amount of liquidated damages is agreed upon and fixed hereunder because of the difficulty of ascertaining the exact amount of Damages that will be actually incurred by Concessionaire for late occurrence of Substantial Completion, Final Completion or lane re-opening, and Concessionaire and Contractor agree that the liquidated damages amounts specified in Sections 7.2 and 7.8 represent a reasonable estimate of fair compensation of Damages that may be reasonable anticipated for such late occurrences and shall be applicable regardless of the amount of such costs actually incurred by Concessionaire.

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

7.5 Late Completion Payment for Delay Only. The Late Completion Payment shall be the full measure of Contractor’s liability only for delay in achieving the Substantial Completion and/or Final Completion, and shall not limit Contractor’s liability for defects or deficiencies in the Work or for Contractor’s failure to perform its other obligations under the Contract Documents. The Late Completion Payment is in lieu of Concessionaire’s right to terminate this Agreement pursuant to Section 15.2(iv) hereof solely as a result of any schedule delay, except to the extent such delay otherwise constitutes an Event of Default under Section 15.2(iv) resulting from Contractor’s failure to achieve Substantial Completion within 365 calendar days after the Guaranteed Substantial Completion Date.

7.6 Limitation on Liquidated Damages. Contractor’s liability to Concessionaire under this Agreement for Late Substantial Completion Payments shall not exceed an amount equal to the product of (x) the sum of the applicable Concessionaire Delay Damages Rate plus \$21,000, multiplied by (y) 365; provided, that the foregoing limitation shall not apply if Contractor agrees to continue paying Late Substantial Completion Payments notwithstanding the foregoing limit and Concessionaire agrees to forestall exercise of its termination right under Section 15.2(iv) during a period to be agreed by the Parties. This Section 7.6 shall not be construed to limit Contractor’s other obligations or liabilities arising under or in connection with this Agreement.

7.7 Bonus. Subject to the requirements of TIFIA, Concessionaire shall pay a bonus to Contractor for achievement of Substantial Completion six (6) months prior to the original Guaranteed Substantial Completion Date (as the same may be extended pursuant to Section 12.8 solely due to a Concessionaire-Caused Delay) in the amount equal to fifty percent (50%) of Net Toll Revenues collected during the early completion duration (the “Bonus”). Concessionaire shall pay the Bonus to Contractor within two (2) years of the Guaranteed Substantial Completion Date, provided that Contractor has achieved Final Completion by the Guaranteed Final Completion Date. If under the terms of its financing documents Concessionaire is unable to pay the Bonus to Contractor in accordance with this Section 7.7, Concessionaire shall instead issue a subordinated debt instrument to Contractor.

7.8 Late Lane Re-Opening. If VDOT permits the temporary closure of lanes to traffic on the Capital Beltway to enable the Work to be performed hereunder and Concessionaire notifies Contractor thereof and the conditions of such permission, Contractor agrees that it will fully reopen the closed lanes to traffic by the time specified by VDOT in its permission, and that if it fails to do so, it shall pay Concessionaire the amount that Concessionaire must pay VDOT pursuant to Section 7.01(f)(ii) of the Comprehensive Agreement (the “Late Lane Opening Payment”) as liquidated damages and not as penalty. The Late Lane Opening Payment shall be the measure of Contractor’s liability only for delay in re-opening the lanes pursuant to this Section 7.8, and shall not limit Contractor’s liability for defects or deficiencies in the Work or for Contractor’s failure to perform its other obligations under the Contract Documents. The Late Lane Opening Payment shall be paid by Contractor or withheld by Concessionaire, as applicable, in arrears at the payment intervals applicable to Scheduled Payments beginning after the designed time for re-opening of the affected lanes. Concessionaire’s rights of set-off under Section 4.7 hereof expressly apply to any amounts of the Late Lane Opening Payment not timely paid to Concessionaire hereunder.

ARTICLE 8

PERFORMANCE GUARANTEES

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

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

ARTICLE 9

LIABILITY AND DAMAGES

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

- (i) the proceeds of insurance, not to exceed amounts required to be maintained by Contractor in accordance with the terms of this Agreement;
- (ii) costs, liabilities or obligations that arise from Gross Negligence, willful misconduct or actual fraud of Contractor;
- (iii) costs, liabilities or obligations that arise from Contractor's abandonment of the Work or from a Contractor Event of Default described in Section 15.2(i);
- (iv) Contractor's breach of its obligations in Section 10.4; or
- (v) Contractor's indemnity obligations under Article 13.

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

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

ARTICLE 10

WARRANTIES AND GUARANTEES

10.1 General Warranty. Contractor warrants and guarantees to Concessionaire and VDOT (the “General Warranty”) as follows:

10.1.1 The design of the Project shall satisfy the requirements of this Agreement, the Comprehensive Agreement and the Technical Requirements.

10.1.2 All Work (except as described in Section 10.1.1 hereof), including materials and equipment furnished as part of the construction, shall be new unless otherwise specified herein, of good quality, in conformance with the Standard of Care, Applicable Laws, Applicable Standards, the Technical Requirements, this Agreement and the other Contract Documents, free of defects in material and workmanship and fit for its intended purpose, and the completed Work shall be free of all defects and deficiencies in design, materials and workmanship.

10.1.3 The Final As-Built Drawings and Documentation shall be accurate and complete, comply with the requirements of the Contract Documents, and accurately reflect the condition of the Project as of Final Completion.

10.2 Breach of General Warranty; Warranty Period.

10.2.1 If Concessionaire (or VDOT) notifies Contractor in writing during the Warranty Period, or no later than fifteen (15) days after the expiration of the Warranty Period, that a breach of the General Warranty has occurred during the Warranty Period, Contractor shall promptly investigate and determine the source of the deficiency or defect (including any inaccuracy or other deficiency in the Final As Built Drawings and Documentation), and promptly rectify any defects or deficiencies in the Work at its expense without recourse to Concessionaire or VDOT. Contractor’s liability for such defects shall include labor, parts, transportation, factory repair and testing, dismantling, re-designing, re-construction, re-erecting, re-testing and re-Commissioning associated with the correction of such defects which are needed or appropriate to assure the continued performance of the Project for its intended functions as a complete operating system. If Contractor fails to repair and/or replace a defect or deficiency within reasonable time following Concessionaire’s (or VDOT’s) notice of a breach of the General Warranty, Concessionaire (or VDOT pursuant to the Comprehensive Agreement) shall have the right to employ another contractor to correct the deficiency or defect and complete the Work at Contractor’s expense.

10.2.2 The “Warranty Period” for the Project, and each component thereof unless otherwise provided herein, shall be five (5) years from the date of Substantial Completion of the entire Project; provided, however, that:

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

(ii) any warranties from third party suppliers longer than the Warranty Period shall be passed through to Concessionaire;

(iii) the Warranty Period as to individual pieces of equipment shall be two (2) years unless Contractor is able to obtain from the vendor thereof longer durations on commercially reasonable terms;

(iv) the Warranty Period with respect to the New Lanes shall be five (5) years from the date of issuance by VDOT of "Substantial Completion Certificate" with respect to the New Lanes under the Comprehensive Agreement, and upon New Lanes Substantial Completion Concessionaire shall assign in favor of VDOT the General Warranty coverage for the New Lanes under terms that provide for such warranties to run for the benefit of and extend to VDOT, but not to the exclusion of Concessionaire, who shall remain a beneficiary of such warranties and as a result shall be able to enforce such warranties directly against Contractor; and

(v) the Warranty Period with respect to the Springfield Interchange Phase VIII shall be five (5) years after the "Service Commencement Date" has occurred under the Comprehensive Agreement and upon occurrence of the "Service Commencement Date" under the Comprehensive Agreement Concessionaire shall assign in favor of VDOT all Concessionaire's rights under this Agreement relating to the Springfield Interchange Phase VIII, including warranties provided by Contractor and any Subcontractor required to provide such warranties hereunder, including the obligation of Contractor relating to Major Maintenance of any Structural Element of the Springfield Interchange Phase VIII set forth in Section 10.3 hereof.

10.2.3 Following the expiration of the first two (2) years of the applicable Warranty Period, the General Warranty shall extend only to repairs which exceed \$15,000 per single occurrence (but such threshold shall not apply if the same type of defect causes same type of repair more than twice), subject to an aggregate annual exclusion of \$60,000 in each of the third, fourth and fifth year of the applicable Warranty Period. The duties, liabilities and obligations of Contractor under this Section 10.2 do not extend to any repairs, adjustments, alterations, replacements or maintenance of materials which are required as a result of normal corrosion, erosion, or wear and tear in the operation of the Project other than as caused by the negligence of or breach of the Contract Documents by Contractor.

10.3 Major Maintenance Costs; Support Agreements. In addition to the General Warranty provided by Contractor to Concessionaire and VDOT as set forth in Sections 10.1 and 10.2 hereof, Contractor shall undertake the responsibility for Major Maintenance costs for any Structural Element of the Springfield Interchange Phase VIII improvements for a period of ten (10) years after Substantial Completion (except for Major Maintenance that is not due to substandard design or construction but is primarily required as a result of accidents or Force Majeure Events). If required by Concessionaire, Contractor shall provide program management efforts such that support agreements can be entered into between Concessionaire and Contractor's third party suppliers, the cost of such support agreements to be borne by Concessionaire.

10.4 No Liens or Encumbrances. Contractor warrants and guarantees that title to the Project, any portion or component of the Project, and all Work provided hereunder shall pass to VDOT as provided under Section 24.14 hereof, free and clear of all liens, claims, security interests and other encumbrances (other than inchoate liens provided by Applicable Laws to secure payments not yet delinquent), and that none of such work, materials, supplies or equipment shall be acquired by Contractor subject to any agreement under which a security interest or other lien or encumbrance is retained by any Person. Such warranty shall become effective as title to Work passes to VDOT under Section 24.14 hereof, subject to Concessionaire's obligation to pay for such Work in accordance with the Contract Documents.

10.5 Concessionaire's Right to Proceed. If, within fourteen (14) days after notification by Concessionaire of a breach of any warranty hereunder, Contractor has not, to the reasonable satisfaction of Concessionaire, commenced re-performance, repair, replacement or other performance as required herein or notified Concessionaire of its disagreement with such alleged breach and, within seven (7) days after such notice, provided reasonable evidence in support of its position, Concessionaire may retain a third party to undertake such re-performance, repair, replacement or other performance and the costs of retaining such third party shall be for the account of Contractor. Concessionaire's retention of such third-party contractor shall not in any way diminish Contractor's obligations or liabilities under the Contract Documents or reduce its warranty obligations under this Article 10 with respect to the work undertaken by such third party. Nothing herein shall be deemed to preclude Concessionaire from retaining a third-party contractor at its own cost to undertake any re-performance, repair, replacement or other performance of warranty claims hereunder. In addition, Concessionaire and Contractor acknowledge and agree that VDOT shall have such rights and remedies as provided by Section 7.19 of the Comprehensive Agreement.

10.6 EXCLUSIVE REMEDIES. THIS ARTICLE 10, ARTICLE 8 AND SECTION 15.2 HEREOF SET FORTH CONCESSIONAIRE'S EXCLUSIVE REMEDIES AGAINST CONTRACTOR, AND CONCESSIONAIRE HEREBY WAIVES ALL OTHER REMEDIES, REGARDING DEFECTS OR DEFICIENCIES IN THE WORK, WHETHER PATENT OR LATENT OR ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR PURSUANT TO OTHER LEGAL THEORY, EXCEPT FOR DEFECTS AND DEFICIENCIES IN THE WORK RESULTING FROM THE FRAUD OR DECEIT OF CONTRACTOR. CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE QUALITY OF THE WORK, PROVIDED, HOWEVER, THAT CONTRACTOR SHALL CONTINUE TO BE RESPONSIBLE FOR ALL OF ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING THE DESIGN AND CONSTRUCTION OF THE PROJECT, NOTWITHSTANDING THE PARTIES' AGREEMENT TO EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY UNDER THIS SECTION 10.6.

ARTICLE 11

FORCE MAJEURE

11.1 Excused Performance. If a Party is rendered wholly or partially unable to perform its obligations under the Contract Documents because of a Force Majeure Event, then that Party will be excused (but in the case of Contractor, solely to the extent provided in a Scope Change Order entered into pursuant to Section 12.6) from whatever performance is affected by the Force Majeure Event to the extent so affected, provided, that:

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

A Scope Change Order shall be executed by Concessionaire and Contractor as provided in Section 12.6 to account for the actual effect, if any, on Contractor's performance of its obligations as a result of a Force Majeure Event.

11.2 Disputes; Burden of Proof. If Concessionaire and Contractor are unable in good faith to agree that a Force Majeure Event has occurred, either Party may submit the dispute to the applicable dispute resolution process provided for under Article 19; provided, however, that the burden of proof as to whether a Force Majeure Event has occurred and whether the Force

Majeure Event excuses the Party from performance under Section 11.1 shall be upon the Party claiming such Force Majeure Event.

ARTICLE 12

SCOPE CHANGES

12.1 Scope Change Orders. A “Scope Change” means a material addition to, deletion from, suspension of or other modification to, the quality, function or intent of the Project as delineated in the Scope Document, or a material change to the requirements of this Agreement, but shall not include refinement, correction or detailing of the Work by Concessionaire and Contractor from time to time. Concessionaire may order Scope Changes to the Work, in which event, as more specifically set forth in Article 12, one or more of the Contract Sum, the Payment and Values Schedule, the Project Schedule and the Guaranteed Substantial Completion Date shall be adjusted accordingly, if necessary, as agreed by Concessionaire and Contractor. If either Concessionaire or Contractor believes a Scope Change is necessary, it shall proceed as set forth in this Article 12. If Concessionaire believes that a particular item of Work is within the then-existing scope of Work but Contractor believes that such Work constitutes a Scope Change, the Contractor shall diligently proceed with such Work as directed in writing by Concessionaire; provided, that if the disputed item of Work is subsequently determined to constitute a Scope Change (whether by mutual agreement of the Parties or by operation of the dispute resolution provisions in Section 12.14), then such Work shall be deemed to have been the subject of a Work Order under Section 12.9 and Concessionaire shall issue a Scope Change Order with respect thereto as provided in Section 12.10 hereof; otherwise, Contractor shall not be entitled to a Scope Change Order with respect to such item of Work. As a condition to Concessionaire’s obligation under this Article 12 to make payments to Contractor in respect to a Scope Change Order or Work Order, Contractor shall increase the amount of the Letter of Credit for the benefit of Concessionaire by an amount equal to seven-and-one-half percent (7.5%) of the increase in the Contract Sum resulting from the Scope Change Order or Work Order to the extent the aggregate increase in the Contract Sum resulting from all Scope Changes exceeds \$17,500,000; in lieu of increasing the Letter of Credit by the full amount required, Contractor may notify Concessionaire to withhold as retainage from payments of the Contract Sum the amount not provided pursuant to a Letter of Credit, such retainage not to exceed seven-and-one-half percent (7.5%) of each installment payment of the Contract Sum. Amounts withheld as retainage may be applied by Concessionaire to the same purposes for which draws on the Letter of Credit may be applied, and shall be released to Contractor in whole or in part at the time the amount of the Letter of Credit may be reduced pursuant to Section 4.9 hereof, it being understood that the Parties intend that the Letter of Credit is to be the primary form of additional security during the Warranty Period, and that amounts withheld as retainage will continue to be withheld during the Warranty Period only to the extent the amount of the Letter of Credit does not satisfy the requirements of Section 4.9. All Scope Changes shall be subject to VDOT's consent except to the extent otherwise provided in Section 7.05(a) of the Comprehensive Agreement, as described in Section 24.8 hereof. In the event VDOT requires modifications to the Contract Documents as a condition of its approval of any Scope Change, the Parties shall cooperate to effect such modifications.

12.2 Scope Change by Concessionaire. If a Scope Change is initiated by Concessionaire (including a Scope Change resulting from a change in Applicable Standards after the Agreement Date that Concessionaire determines should apply to the Work, if such changes do not otherwise constitute a change in Applicable Law covered by Section 12.5 hereof or a change in the Technical Requirements covered by Section 12.3.2 hereof), Concessionaire shall give Contractor a written “Proposal Request” (herein so called) setting forth in detail the nature of the requested change, and if the forecasted cost to carry out such Scope Change exceeds the amount of remaining overrun contingency built in the financial model, Concessionaire shall reasonably demonstrate to Contractor that it has sufficient funds to pay for the costs of such Scope Change. Upon receipt of a Proposal Request, Contractor shall promptly return to Concessionaire two (2) completed copies of its written “Change Order Proposal” (herein so called) setting forth in detail, with a separate pay item (addition or deletion) for purchase and installation of equipment and materials and an otherwise suitable breakdown of costs by trades and work classifications, a stipulated sum proposed as an adjustment to the Contract Sum for the performance of the Scope Change set forth in the Proposal Request, together with any proposed adjustment to the Guaranteed Substantial Completion Date, the Scope Document and the Payment and Values Schedule or other changes in the Contract Documents necessary because of such proposed Scope Change. The adjustment, if any, to the Guaranteed Substantial Completion Date and the Payment and Values Schedule specified in any Change Order Proposal shall be limited to the delays to the critical path directly attributable to and necessarily incurred as a result of the proposed Scope Change. Each Change Order Proposal shall be accompanied by appropriate data reasonably acceptable to Concessionaire supporting the proposed adjustments therein, including but not limited to bids, cost estimates, quotations from suppliers and wage schedules. If Concessionaire approves Contractor’s Change Order Proposal, Concessionaire will issue and Contractor will execute and accept a written Scope Change Order in the form attached to this Agreement as Exhibit G, and the Contract Sum, the Payment and Values Schedule and the Guaranteed Substantial Completion Date shall be adjusted as set forth in such Scope Change Order. If Concessionaire does not approve Contractor's Change Order Proposal, Concessionaire may, at its option, execute and deliver to Contractor a Work Order in accordance with Section 12.9 hereof in lieu of the Scope Change Order.

12.3 Scope Change by VDOT. VDOT has the right, at any time and from time to time during the term hereof, to require Scope Changes by initiating a Department Change pursuant to Section 7.12 of the Comprehensive Agreement, provided, however, that VDOT has no right to require any Scope Change that (i) is not in compliance with Applicable Laws, (ii) would contravene an existing Applicable Permit and such contravention cannot be corrected by the issuance of a further or revised Applicable Permit, (iii) would cause an insured risk to be uninsurable or (iv) would materially and adversely affect the health or safety of users or employees of the Project. If VDOT initiates such a Department Change, the obligations of Concessionaire under the Comprehensive Agreement with respect to the Department Change, as described below in Sections 12.3.1 and 12.3.2, shall be fulfilled by Contractor. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the amount of any claim to be made against VDOT pursuant to the Comprehensive Agreement in respect of a Department Change.

12.3.1 VDOT Change Proposal.

12.3.1.1 If VDOT desires to initiate a Department Change, then VDOT will issue to Concessionaire a proposal for the Scope Change setting forth the nature, extent and details of the proposed Department Change (the “VDOT Change Proposal”), which Concessionaire will promptly forward to Contractor.

12.3.1.2 Within eighteen (18) days following Contractor’s receipt of the VDOT Change Proposal, Contractor shall provide Concessionaire with a preliminary written response, and within a reasonable time thereafter, with a definitive written response, as to whether, in Contractor’s opinion, the Department Change constitutes a ARCA Compensation Event, and, if so, shall also provide (a) a detailed assessment of the cost of the proposed Department Change and an estimate of any compensation to be requested if the proposed Department Change constitutes an ARCA Compensation Event, and (b) an assessment of the effect of the proposed Department Change on the Project Schedule, taking into account Contractor’s duty to mitigate delay to the extent reasonably practicable.

12.3.1.3 Pursuant to Section 7.12(b)(iii) of the Comprehensive Agreement, VDOT is entitled to obtain a comprehensive report as to the proposed Department Change (including comments concerning Contractor’s estimate of the costs and other impacts) from the Independent Engineer and a traffic and revenue study relevant to such impacts from a traffic and revenue consultant acceptable to VDOT.

12.3.1.4 Following VDOT’s receipt of the reports from the Independent Engineer and the traffic and revenue consultant if requested by VDOT, or within twenty-one (21) days following the delivery by Concessionaire of Contractor’s response to VDOT pursuant to Section 12.3.1.2 above if VDOT has not requested such reports, Concessionaire and Contractor shall exercise Commercially Reasonable Efforts to negotiate a mutually acceptable Scope Change Order, including adjustments to the Project Schedule, and if the Department Change constitutes an ARCA Compensation Event, an adjustment to the Contract Sum.

12.3.1.5 Contractor shall perform the work required to implement the Department Change in a timely manner and in accordance with a budget agreed upon by VDOT, Contractor and Concessionaire; provided that:

(a) a “Change Order” (as defined in the Comprehensive Agreement) setting forth the adjusted scope of Work shall have been mutually agreed upon between VDOT and Concessionaire and issued by VDOT, and a Scope Change Order reflecting such Change Order shall have been mutually agreed upon between Concessionaire and Contractor and issued by Concessionaire under this Agreement;

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

(c) the Project Schedule for the Work shall have been adjusted as agreed upon by VDOT, Concessionaire and Contractor to reflect any projected delays in the

timing of the Work as a result of the Department Change (taking into consideration Contractor's duty to mitigate any delay to the extent reasonably practicable); and

(d) Contractor shall have obtained (with the cooperation of Concessionaire and VDOT) all relevant Applicable Permits from all relevant Governmental Authorities required for such work.

12.3.1.6 If VDOT and Concessionaire are unable to reach an agreement on a Scope Change Order, VDOT may deliver to Concessionaire a directive letter pursuant to Section 7.12(b)(vi) of the Comprehensive Agreement, directing Concessionaire to proceed with the performance of the Work in question, notwithstanding such disagreement. Upon Concessionaire's receipt of such directive letter, pending final resolution through the dispute resolution procedures of the relevant Scope Change Order, Concessionaire shall issue a Work Order pursuant to Section 12.9 hereof and Contractor shall implement and perform the Work in question in accordance with the Work Order. Concessionaire shall make interim payments to Contractor on a monthly basis for the reasonable documented allocable costs of the Work in question (subject to subsequent adjustment through the dispute resolution procedures, as between Concessionaire and VDOT, set forth in the Comprehensive Agreement) to the extent Concessionaire has received same from VDOT under the Comprehensive Agreement. Concessionaire shall proceed in accordance with Section 12.15(c) hereof to obtain such funds under the Comprehensive Agreement. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the amount or other terms of any claim to be made against VDOT pursuant to the Comprehensive Agreement in respect of a VDOT directive letter.

12.3.2 Technical Requirements Revisions Treated as Department Change.

12.3.2.1 Concessionaire and VDOT anticipate that from time to time after Financial Closing, VDOT may adopt, through revisions to existing manuals and publications or new manuals and publications, changes, deletions, supplements or other modifications to the Technical Requirements (the "Technical Requirements Revisions"). VDOT has the right in accordance with Section 7.12(d) of the Comprehensive Agreement to make Technical Requirements Revisions by delivering written notice thereof to Concessionaire (to be passed through to Contractor), whereupon they shall constitute amendments to, and become part, of the Technical Requirements; provided that if VDOT elects to adopt Technical Requirements Revisions during the period before Substantial Completion, such revisions shall be considered Department Changes and handled pursuant to the Scope Change Order procedures for a Department Change set forth above in Section 12.3.1. In the absence of a Scope Change Order or Work Order relating to such Technical Requirements Revision, Contractor shall not incorporate the same into its design and construction of the Project prior to Substantial Completion.

12.3.2.2 References in the Technical Requirements to manuals or other publications prior to Substantial Completion shall mean those versions of the documents in effect as of August 1, 2007, unless expressly provided otherwise by a Technical Requirements Revision or mutually agreed by VDOT and Concessionaire. To the extent any Technical

Requirements Revisions encompass matters that are addressed in versions of such manuals or other publications in effect as of August 1, 2007, they shall, upon delivery of the written notice referred to in Section 12.3.2.1 above, replace and supersede inconsistent provisions of the Technical Requirements. Concessionaire shall identify any superseded provisions in its notice to Contractor, provided that VDOT has identified such inconsistent provisions in its notice to Concessionaire pursuant to the Comprehensive Agreement.

12.3.3 VDOT Delays Treated as Department Changes.

12.3.3.1 In accordance with Section 7.12(e) of the Comprehensive Agreement, Concessionaire may submit to VDOT a request for “Change Order” (as defined in the Comprehensive Agreement) if Contractor incurs a material increase of its construction costs or incurs a material impact to the critical path which delays the Guaranteed Substantial Completion Date due to a material breach or an inexcusable delay by VDOT in performing any of its obligations described in Article 7 of the Comprehensive Agreement. For the purposes of this Section 12.3.3, an “inexcusable delay” shall mean a delay that is attributable solely to error or omission of VDOT, and an inexcusable delay or material breach specifically excludes delay or breach attributable to: (a) the submission of incomplete documentation for VDOT’s review, (b) required review or approvals from other Governmental Authorities necessary or appropriate to VDOT’s review, (c) failure to obtain appropriation and allocation of public funds, (d) consumption of available float, (e) submittals or requests that are “deemed approved” if no response is provided within twenty-one (21) days, and (f) force majeure events. A response by VDOT pursuant to Section 7.06(k) of the Comprehensive Agreement shall not be considered “deemed approved,” and shall not be considered an “inexcusable delay” in the event that a delay is attributable to items (a)-(f) above or is not attributable solely to error or omission of VDOT.

12.3.3.2 If Contractor desires that Concessionaire submit a request for a “Change Order” under the Comprehensive Agreement as a result of an “inexcusable delay” of VDOT, it shall prepare and submit a proposed “Change Order” to Concessionaire within eighteen (18) days after the occurrence giving rise to the request for adjustment or relief, which request shall include sufficient information to advise VDOT of the circumstances giving rise to the request for adjustment and the basis of such request, and Concessionaire shall submit such proposed “Change Order” to VDOT within the time required under Section 7.12(e)(ii) of the Comprehensive Agreement.

12.3.3.3 Contractor acknowledges and agrees that, pursuant to Section 7.12(e)(iii) of the Comprehensive Agreement, if VDOT determines that Concessionaire is entitled to cost relief, Concessionaire shall be entitled to recover only the direct costs reasonably and necessarily incurred by Contractor as a direct result of VDOT’s delay. However, under no circumstances will such recoverable costs include home office overhead incurred by Contractor’s member companies or financing costs.

12.3.3.4 Contractor’s request for a “Change Order” under this Section 12.3.3 may include the price escalation for materials only if VDOT’s delay causes the Guaranteed Substantial Completion Date to be delayed by at least one (1) year and such delay is not attributable to the actions or negligence of Concessionaire or Contractor.

12.3.3.5 Contractor acknowledges and agrees that, pursuant to Section 7.12(e) of the Comprehensive Agreement, VDOT may extend the “Guaranteed Substantial Completion Date” under the Comprehensive Agreement only if its delay results in a material impact to the critical path set forth in the Project Schedule.

12.3.3.6 If for any reason Contractor fails to deliver the request for a “Change Order” within the time period specified in Section 12.3.3.2, Contractor will have irrevocably and forever waived and released any claim or right to cost or schedule relief attributable to any such alleged VDOT delay.

12.3.3.7 If VDOT grants to Concessionaire cost relief, schedule relief, or both, Concessionaire shall pass such relief through to Contractor pursuant to a Scope Change Order under this Agreement.

12.3.3.8 Contractor acknowledges and agrees that, pursuant to Section 7.12(e)(viii) of the Comprehensive Agreement, if Concessionaire's Project Manager and VDOT fail to agree on the terms of any “Change Order” submitted pursuant to Section 7.12(e) of the Comprehensive Agreement within sixty (60) days after the request is received by VDOT, the matter shall be resolved at the discretion of VDOT's Chief Engineer. Otherwise, Concessionaire's sole recourse shall be litigation in accordance with Sections 17.06(c) and (d) of the Comprehensive Agreement. The provisions of Sections 12.14 and 12.15 hereof shall apply, *mutatis mutandis*, in the event Contractor and Concessionaire cannot agree whether to litigate against VDOT in such circumstance.

12.4 Scope Change by Contractor. If Contractor desires to initiate a Scope Change because of a Force Majeure Event or otherwise, Contractor shall, within ten (10) Business Days after first becoming aware (or should have been aware, using all reasonable due diligence) that a Scope Change may be necessary, provide notice thereof to Concessionaire. Within seven (7) Business Days thereafter, Contractor shall deliver to Concessionaire (i) a Change Order Proposal to Concessionaire meeting the requirements specified in Section 12.2, together with a detailed description of the proposed Scope Change, a reasonably detailed explanation of why Contractor believes the proposed Scope Change is necessary, all relevant back up documentation, including drawings (original vs. latest), relevant technical/commercial agreement references, and a description of the critical activity which is directly affected, and by how long, or (ii) such of the foregoing information as is known to Contractor at the time, together with its estimate of the date by which a full Change Order Proposal will be submitted to Concessionaire. Subject to the final sentence of this Section 12.4, Concessionaire shall approve a Change Order Proposal evidencing Contractor's entitlement to claim a Scope Change Order under Sections 12.5, 12.6, 12.7, 12.8 and 12.12 due to any of the causes specified therein, but if Concessionaire has a reasonable basis for objecting to any such Change Order Proposal, Concessionaire shall state such objections in writing to Contractor within ten (10) days of receipt of Contractor's Change Order Proposal and the Parties promptly shall meet to resolve their differences; Concessionaire is under no obligation to approve any other Change Order Proposal initiated by Contractor. If the Parties cannot agree on the Scope Change Order, either Party may submit the dispute for resolution pursuant to Section 12.14. Contractor shall not be entitled to submit a package of one or more Change Order Proposals more than once in any month (other than a Change Order Proposal which Contractor provides pursuant to Section 12.3 or which

Concessionaire must approve as set forth in the second preceding sentence, as to which there shall be no limits). Contractor acknowledges and agrees that timely notice as set forth in the first sentence of this Section 12.4 is essential to allow Concessionaire to review the Change Order Proposal while the facts and conditions underlying the request therefor are contemporaneous, that Concessionaire need not approve any Change Order Proposal to which Contractor is otherwise entitled under this Agreement if Contractor has failed to provide such timely notice, and that VDOT is not obligated under the Comprehensive Agreement to provide any relief in the event a Compensation Event or Delay Event is not claimed within twenty (20) Business Days after Concessionaire first becomes aware (or should have been aware, using all reasonable due diligence) of such Compensation Event or Delay Event. Contractor may also request Concessionaire to approve any material proposed or actual change, deviation, modification, alteration or exception from any of the Technical Requirements (the “Technical Requirements Deviations”) by submitting a Change Order Proposal containing details required by clause (i) of this Section 12.4, in addition to setting forth Contractor's estimate of impacts on costs and schedule attributable to the proposed Technical Requirements Deviation, and Concessionaire may in its sole discretion pass such Change Order Proposal for VDOT's consideration pursuant to Section 7.13(b) of the Comprehensive Agreement. No Technical Requirements Deviations shall exist or be effective for the purposes of the Project and the Contract Documents unless and until a written notice of VDOT's approval thereof is provided to Contractor by Concessionaire.

12.5 Scope Changes Due to Changes in Applicable Laws. To the extent an ARCA Delay Event described in clause (e) of the definition thereof causes a material delay in Contractor's performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust one or more of the Project Schedule, the Payment and Values Schedule and the Guaranteed Substantial Completion Date (but not the Contract Sum). Concessionaire's obligation to extend the Guaranteed Completion Date as a result of such a Scope Change Order shall be subject to Concessionaire's receipt of approval thereof from VDOT under the Comprehensive Agreement. Concessionaire shall proceed in accordance with Section 12.15(c) hereof to obtain such approval under the Comprehensive Agreement. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the length of the extension to be sought amount from VDOT pursuant to the Comprehensive Agreement in respect of such a Scope Change Order. For the avoidance of doubt, a change in Applicable Laws resulting in a change to the Technical Requirements shall be treated as a Department Change pursuant to Section 12.3.2 hereof.

12.6 Work Stoppages Due to Injunction; Effect of Force Majeure Events.

12.6.1 Scope Change Due to Injunction for More Than 30 Days (ARCA Compensation Event). To the extent an ARCA Compensation Event described in clause (c) of the definition thereof causes a material delay in Contractor's performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust one or more of the Guaranteed Substantial Completion Date, the Project Schedule, the Payment and Values Schedule and the Contract Sum. The Contract Sum shall be adjusted only in an amount

necessary to compensate Contractor for all reasonable costs and expenses incurred to mitigate or avoid the effects of such ARCA Compensation Event. Concessionaire's obligation to pay Concessionaire any increase on the Contract Sum as a result of such a Scope Change Order shall be subject to Concessionaire's receipt of necessary funds in respect thereof from VDOT under the Comprehensive Agreement. Concessionaire shall proceed in accordance with Section 12.15(c) hereof to obtain such funds under the Comprehensive Agreement. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the amount or other terms of any claim to be made against VDOT pursuant to the Comprehensive Agreement in respect of such a Scope Change Order.

12.6.2 Scope Change Due to Injunction (ARCA Delay Event). To the extent an ARCA Delay Event described in clause (d) of the definition thereof causes a material delay in Contractor's performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust one or more of the Project Schedule, the Payment and Values Schedule and the Guaranteed Substantial Completion Date (but not the Contract Sum). Concessionaire's obligation to extend the Guaranteed Completion Date as a result of such a Scope Change Order shall be subject to Concessionaire's receipt of approval thereof from VDOT under the Comprehensive Agreement. Concessionaire shall proceed in accordance with Section 12.15(c) hereof to obtain such approval under the Comprehensive Agreement. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the length of the extension to be sought from VDOT pursuant to the Comprehensive Agreement in respect of such a Scope Change Order.

12.6.3 Effect of Force Majeure Events (ARCA Delay Event). To the extent an ARCA Delay Event described in clause (a) of the definition thereof causes a material delay in Contractor's performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust one or more of the Project Schedule, the Payment and Values Schedule and the Guaranteed Substantial Completion Date (but not the Contract Sum). Concessionaire's obligation to extend the Guaranteed Completion Date as a result of such a Scope Change Order shall be subject to Concessionaire's receipt of approval thereof from VDOT under the Comprehensive Agreement. Concessionaire shall proceed in accordance with Section 12.15(c) hereof to obtain such approval under the Comprehensive Agreement. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the length of the extension to be sought amount from VDOT pursuant to the Comprehensive Agreement in respect of such a Scope Change Order.

12.7 Hazardous Substances Change Orders.

12.7.1 Scope Change Due to Discovery of Pre-Existing Hazardous Substances on the VDOT Existing ROW. To the extent a discovery of the Pre-Existing Hazardous Substances on the VDOT Existing ROW causes a material delay in Contractor's performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof, Contractor shall be entitled to claim a

Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust one or more of the Guaranteed Substantial Completion Date, the Project Schedule, the Payment and Values Schedule and the Contract Sum. The Contract Sum shall be adjusted only in an amount necessary to reimburse Contractor for all reasonable costs and expenses incurred to investigate, mitigate or avoid the effects of the discovery of the Pre-Existing Hazardous Substances on the VDOT Existing ROW. Concessionaire's obligation to pay Contractor any increase on the Contract Sum as a result of such a Scope Change Order shall be subject to Concessionaire's receipt of necessary funds in respect thereof from VDOT under Section 7.09(a) of the Comprehensive Agreement. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the amount or other terms of any claim to be made against VDOT pursuant to the Comprehensive Agreement in respect of such a Scope Change Order.

12.7.2 Other Hazardous Substances (ARCA Delay Event). To the extent an ARCA Delay Event described in clause (b)(D) of the definition thereof causes a material delay in Contractor's performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust one or more of the Project Schedule, the Payment and Values Schedule and the Guaranteed Substantial Completion Date (but not the Contract Sum). Concessionaire's obligation to extend the Guaranteed Completion Date as a result of such a Scope Change Order shall be subject to Concessionaire's receipt of approval thereof from VDOT under the Comprehensive Agreement. Concessionaire shall proceed in accordance with Section 12.15(c) hereof to obtain such approval under the Comprehensive Agreement. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the length of the extension to be sought from VDOT pursuant to the Comprehensive Agreement in respect of such a Scope Change Order.

12.8 Scope Changes Due to Concessionaire-Caused Delay or VDOT's Delay in Issuance of a "Substantial Completion Certificate" under the Comprehensive Agreement.

12.8.1 Scope Change Due to Concessionaire-Caused Delay. Except to the extent another consequence is expressly provided in this Agreement, Contractor shall be entitled to claim a Scope Change Order adjusting one or more of the Contract Sum, the Payment and Milestone Schedule and the Guaranteed Substantial Completion Date to the extent Contractor's performance of the Work is adversely affected by a Concessionaire-Caused Delay and in respect of which Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof.

12.8.2 Scope Change Due to VDOT's Delay in Issuance of a "Substantial Completion Certificate" under the Comprehensive Agreement. To the extent an ARCA Compensation Event described in clause (a) of the definition thereof causes a material delay in Contractor's performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust one or more of the Guaranteed Substantial Completion Date, the Project Schedule, the Payment and Values Schedule and the Contract Sum. The Contract Sum

shall be adjusted only in an amount necessary to compensate Contractor for all reasonable costs and expenses incurred to mitigate or avoid the effects of such ARCA Compensation Event. Concessionaire's obligation to pay Concessionaire any increase on the Contract Sum as a result of such a Scope Change Order shall be subject to Concessionaire's receipt of necessary funds in respect thereof from VDOT under the Comprehensive Agreement. Concessionaire shall proceed in accordance with Section 12.15(c) hereof to obtain such funds under the Comprehensive Agreement. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the amount or other terms of any claim to be made against VDOT pursuant to the Comprehensive Agreement in respect of such a Scope Change Order.

12.9 Work Orders. If Contractor's Change Order Proposal delivered pursuant to Section 12.2 hereof is not agreed to by Concessionaire, or, as contemplated by Section 12.3.1.6 hereof, if VDOT issues a directive letter pursuant to Section 7.12(b)(vi) of the Comprehensive Agreement, Concessionaire may, at its option, execute and deliver to Contractor a Work Order in lieu of the Scope Change Order procedures described in this Article 12. A "Work Order" is a written instruction to Contractor to proceed with the Scope Change that is the subject of a Change Order Proposal. Payment for Scope Changes undertaken pursuant to a Work Order shall be calculated in accordance with Attachment 1.5D Section 109.05 of the Technical Requirements unless and until an adjustment to the Contract Sum has been agreed between Concessionaire and Contractor pursuant to an executed Scope Change Order.

12.10 Performance of Scope of Changes. If Concessionaire executes and delivers to Contractor a Work Order, or if Concessionaire and Contractor agree to a Scope Change Order, Contractor promptly shall perform the Work described in the Work Order or Scope Change Order. Concessionaire shall not be responsible for premium time work unless (i) Concessionaire has expressly directed the performance of premium time work, (ii) the need for such premium time work was not caused by Contractor, and (iii) such premium time work was not contemplated by Contractor's original work plan. With respect to Work performed pursuant to a Work Order, Contractor shall deliver to Concessionaire, within twenty (20) days after completion, invoices, statements, payroll data and other evidence of the actual cost of the Work attributable to the Work Order that Concessionaire may reasonably require. Promptly following (a) completion of the Scope Change required under a Work Order, (b) agreement by Concessionaire and Contractor as to the adjustments to the Contract Sum, the Payment and Values Schedule, and the Guaranteed Substantial Completion Date which should be permitted as a result of such Work Order, and (c) receipt by Concessionaire of all required invoices, statements, payroll data and other evidence of the actual cost of the Work performed pursuant to such Work Order, Concessionaire shall issue a Scope Change Order adjusting one or more of the Contract Sum, the Payment and Values Schedule and the Guaranteed Substantial Completion Date. If the Scope Change under a Work Order is performed over a period of more than one (1) month, Contractor may request, and shall be entitled to, payments for the Scope Change performed during each month in the same manner as payments requested for other Work. Agreement on any Scope Change Order shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefor pursuant to this Agreement.

12.11 Scope Changes Due to Contractor Error. Notwithstanding anything in this Article 12 to the contrary, no Scope Change Order shall be issued and no adjustment of the Contract Sum, the Guaranteed Substantial Completion Date or the Payment and Values Schedule

shall be made in connection with any correction of errors, omissions, deficiencies, or improper or defective work on the part of Contractor or any Subcontractor in the performance of the Work hereunder, or correction of any improper, defective or deficient equipment supplied by Contractor or any Subcontractor.

12.12 Scope Change Due to Discovery of Certain Conditions; Familiarity with Conditions.

12.12.1 Scope Change Due to Certain Conditions. To the extent an ARCA Delay Event described in clause (b)(A), (b)(B), (b)(C) or (b)(E) of the definition thereof causes a material delay in Contractor's performance of the Work that Contractor cannot, in the absence of incurring material cost or impacting the critical path, overcome the effect thereof, Contractor shall be entitled to claim a Scope Change Order in accordance with the procedures of this Article 12 to appropriately adjust one or more of the Project Schedule, the Payment and Values Schedule and the Guaranteed Substantial Completion Date (but not the Contract Sum). Concessionaire's obligation to extend the Guaranteed Completion Date as a result of such a Scope Change Order shall be subject to Concessionaire's receipt of approval thereof from VDOT under the Comprehensive Agreement. Concessionaire shall proceed in accordance with Section 12.15(c) hereof to obtain such approval under the Comprehensive Agreement. The provisions of Section 12.15 hereof shall apply in the event Contractor and Concessionaire cannot agree on the length of the extension to be sought amount from VDOT pursuant to the Comprehensive Agreement in respect of such a Scope Change Order.

12.12.2 Familiarity with Conditions. Except as otherwise expressly provided in Sections 12.7 and 12.12.1 hereof, Contractor accepts the risk of mistake or error relating to all matters within the scope of the Work and acknowledges and agrees that no increase or adjustment in the Contract Sum, the Guaranteed Substantial Completion Date or the Payment and Values Schedule will be authorized by Concessionaire as a result of any such mistake or error. Contractor has received from Concessionaire and VDOT, for its reference purpose only, certain information pertinent to the Project Right of Way and the Work. Neither Concessionaire nor VDOT has made and will not make any express or implied warranty to Contractor as to the accuracy and completeness of such information, and neither Concessionaire nor VDOT shall be liable to Contractor with respect to such information.

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

schedule for the Project whenever possible, or to cause such Scope Change to be performed upon any other terms and conditions set forth in the change Order Proposal.

12.14 Scope Change Order Dispute; VDOT Claim Dispute. In the event Contractor makes a claim for a Scope Change Order to which it believes it is entitled under the terms hereof and (a) the Parties are unable to reach agreement regarding the terms of such Scope Change Order within ten (10) Business Days after Contractor's submission of the Change Order Proposal and supporting documentation, or (b) solely in respect of a proposed Scope Change Order resulting from the claimed occurrence of an ARCA Compensation Event, an ARCA Delay Event or the discovery of the Pre-Existing Hazardous Substances on the VDOT Existing ROW as contemplated in Section 12.7.1 hereof, Concessionaire determines that seeking relief under the ARCA is not appropriate and as a consequence thereof is unwilling to provide a Scope Change Order to Contractor, the Parties agree to a fast-track adjudication process in accordance with this Section 12.14:

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

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

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

(iv) Upon certification by the independent arbitrator, Concessionaire shall pay for the disputed Scope Change Order in accordance with this Agreement, and if Concessionaire fails to make such payment, Contractor shall be

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

(v) The disputes process employed by the Parties pursuant to this Section 12.14 shall be structured with the goal of fully resolving disputed Scope Change Orders and Contractor's claims thereto within ninety (90) days of submission by Contractor of such Scope Change Order.

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

12.15 Expedited Dispute Resolution Procedure for Claims Against VDOT. In the event Contractor and Concessionaire cannot agree on (1) the amount or other terms of any claim to be presented by Concessionaire to VDOT under the Comprehensive Agreement as a result of the occurrence of (A) an ARCA Compensation Event or (B) the discovery of the Pre-Existing Hazardous Substances on the VDOT Existing ROW as contemplated in Section 12.7.1 hereof, each entitling Contractor to claim a Scope Change Order hereunder, or (2) the period of time by which Concessionaire should request VDOT to extend the Guaranteed Substantial Completion Date under the Comprehensive Agreement upon the occurrence of an ARCA Delay Event entitling Contractor to claim a Scope Change Order hereunder, the Parties shall follow the following procedure:

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

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

(c) The determination of the independent arbitrator shall be final and binding upon the Parties, and Concessionaire shall thereafter exercise its rights under the Comprehensive Agreement to obtain from VDOT, in the case of an ARCA Compensation Event, the claim amount and other relief terms selected by the arbitrator, or in the case of an ARCA Delay Event, the length of the extension request selected by the arbitrator, unless in either instance Concessionaire determines to provide a Scope

Change Order to Contractor providing the outcome sought in Contractor's submission without regard for obtaining a corresponding "Change Order" under the Comprehensive Agreement. Concessionaire shall allow Contractor to participate in the presentation of the claim to and negotiations of the claim with VDOT. Any compromise with VDOT that is less favorable to Contractor than the relief selected by the arbitrator shall be subject to Contractor's approval.

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

ARTICLE 13

INDEMNIFICATION

13.1 General Indemnification.

13.1.1 Contractor. Contractor shall fully indemnify, save harmless and defend Concessionaire, the State Indemnitees, the Financing Parties, the Independent Engineer, each of their subsidiaries and Affiliates, and the directors, officers, agents, employees, successors and assigns of each of them (the "Concessionaire Indemnified Parties"), from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, interest and causes of action, including without limitation reasonable attorney's fees (collectively, the "Damages"; provided, that as used elsewhere in this Agreement other than this Article 13, "Damages" shall not include attorney's fees), directly or indirectly arising out of, resulting from or related to third-party claims associated with the design, procurement or construction of the Project, including without limitation any damage to or destruction of property of, or death of or bodily injury to, any Person (whether such person is an employee of a Concessionaire Indemnified Party, Contractor or any Subcontractor, or is a Person unaffiliated with the Project), to the extent caused or contributed to by Contractor's fault, intentional act, negligence or strict liability in the performance of the Work or otherwise relating to the design or construction of the Project, by Contractor's failure to provide security at the Project Right of Way or by any other breach by Contractor of the Contract Documents. Contractor's aforesaid indemnity is for the exclusive benefit of the Concessionaire Indemnified Parties and in no event shall inure to the benefit of any other Person.

13.1.2 Concessionaire. Concessionaire shall fully indemnify, save harmless and defend Contractor, each of its subsidiaries and Affiliates, and the directors, officers, agents, employees, successors and assigns of each of them, (the "Contractor Indemnified Parties"), from and against any and all Damages directly or indirectly arising out of, resulting from or related to third-party claims associated with the performance by Concessionaire of its obligations hereunder, including without limitation any damage to or destruction of property of, or death of or bodily injury to, any Person, to the extent caused by or contributed to by Concessionaire's fault, intentional act, negligence or strict liability in the performance of

Concessionaire's obligations hereunder or by any breach by Concessionaire of its obligations hereunder. Concessionaire's aforesaid indemnity is for the exclusive benefit of the Contractor Indemnified Parties and in no event shall inure to the benefit of any other Person.

13.2 Additional Indemnification. Contractor shall fully indemnify, save harmless and defend the Concessionaire Indemnified Parties from and against any and all Damages in favor of any Person with respect to: (a) payments of Taxes relating to Contractor's income or other Taxes required to be paid by Contractor without reimbursement hereunder, or (b) nonpayment of amounts due as a result of furnishing materials or services to Contractor or any Subcontractor in connection with the Work to the extent that Concessionaire has paid Contractor all undisputed amounts hereunder then due and payable from Concessionaire to Contractor.

13.3 Patent and Copyright Indemnification.

13.3.1 Contractor's Indemnity. Contractor shall fully indemnify, save harmless and defend the Concessionaire Indemnified Parties from and against any and all Damages which they may hereafter suffer or pay by reason of any claims, suits or proceedings arising out of allegations of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights, with respect to materials and information designed, procured or provided by Contractor or by any Subcontractor in performing the Work or in carrying on operations under the Contract Documents.

13.3.2 Action in Case of Injunction. If, in any claim, suit or proceeding identified in Section 13.1.1, a temporary restraining order or preliminary injunction is granted, Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If, in any such claim, suit or proceeding, the Project or any part, combination or process thereof is held to constitute an infringement and its use is permanently enjoined, Contractor shall at its own expense and without impairing performance requirements, either replace the infringing Work or part, combination or process thereof with non-infringing components or parts or modify the same so that they become non-infringing. If Contractor is unable to do so within a reasonable time, Contractor shall promptly make every reasonable effort to secure for Concessionaire a license, at no cost to Concessionaire, authorizing continued use of the infringing Work. Neither the Guaranteed Substantial Completion Date nor any of Contractor's scheduling requirements under this Agreement shall be extended due to any temporary restraining order or injunction described hereunder.

13.4 Notice and Legal Defense. Promptly after receipt by an Indemnifying Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity in favor of the Indemnified Parties provided for in Section 13.1, 13.2 or 13.3 hereof may apply, the Indemnifying Party shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense thereof with counsel reasonably satisfactory to the Indemnified Party; provided that (a) the Indemnified Party shall have the right to be represented therein by advisory counsel of its own selection and at its own expense, and (b) if the defendants in any such action include both Indemnifying Party and the Indemnified Party and the Indemnified Party shall have reasonably

concluded that there may be legal defenses available to it which are different from, additional to or inconsistent with those available to Indemnifying Party, then the Indemnified Party shall have the right to select separate counsel to participate in the defense of such action on its own behalf at the Indemnifying Party's expense.

13.5 Failure to Defend Action by Indemnifying Party. If any claim, action, proceeding or investigation arises as to which the indemnity in favor of the Indemnified Parties provided for in Section 13.1, 13.2 or 13.3 hereof may apply, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation, then the Indemnified Party may at the Indemnifying Party's expense contest (or, with the prior written consent of Indemnifying Party, settle) such claim; provided, that no such contest need be made and settlement or full payment of any such claim, action, proceeding or investigation may be made without the Indemnifying Party's consent (with the Indemnifying Party remaining obligated to indemnify the Indemnified Party under Section 13.1, 13.2 and 13.3 hereof) if, in the written opinion of the Indemnified Party's counsel, such claim is meritorious. All costs and expenses incurred by the Indemnified Party in connection with any such contest, settlement or payment shall be reimbursed by the Indemnifying Party to the Indemnified Party, with interest thereon at the Late Payment Rate, promptly following the Indemnifying Party's demand therefor.

13.6 Survival. The provisions of this Article 13 shall survive Final Completion and the termination of this Agreement.

ARTICLE 14

INSURANCE

14.1 Contractor-Provided Insurance. From the date on which the Work is to commence pursuant to the Notice to Proceed, Contractor shall provide the following insurance with the indicated limits, with insurance carriers and in form reasonably satisfactory to Concessionaire and VDOT, and shall maintain such insurance in full force and effect until Final Completion; provided, however, that Contractor shall provide all types of Liability insurance coverage required under this Article 14 and Workers' Compensation Coverage for all periods during which Contractor or any of its agents, subcontractors or employees enters onto the Project Site and provided, further, that such Liability insurance coverage and Worker's Compensation Coverage shall continue in full force and effect during the Warranty Period and Contractor shall provide Completed Operations Coverage and Commercial General Liability ("CGL") and certify to Concessionaire and the Financing Parties that such Completed Operations Coverage and CGL will be in effect for a period of three (3) years after the end of the Warranty Period.

14.1.1 Workers' Compensation insurance within the statutory limits of the workers' compensation laws applicable in the state in which the Work is being performed.

14.1.2 Employer's Liability Coverage.

14.1.3 Automobile Liability Coverage covering all owned, non-owned and hired automobiles, trucks and trailers, licensed or unlicensed.

14.1.4 CGL in a form (with explosion, collapse and underground exclusions removed), including independent contractors, personal injury, products and completed operations with broad form blanket contractual liability coverage and coverage for claims arising out of the construction of the Work for bodily injury and property damage.

14.1.5 Coverage in respect of Sections 14.1.1.2 (Employers Liability), 14.1.1.3 (Automobile Liability) and 14.1.1.4 (CGL) shall be \$100,000,000 any one claim and combined in the aggregate during the period of insurance. Such limit may be procured through a combination of primary and excess layer/umbrella policies.

14.1.6 Contractor's pollution liability insurance to indemnify the insured for sums that they are legally obligated to pay for bodily injury or property damage and sums that they are legally obligated to pay for clean up/remediation work arising out of the Work with limits of \$10,000,000 any one claim and in the aggregate, and with a deductible that does not exceed \$500,000. Such insurance shall continue in full force and effect for a period of five (5) years after Final Completion.

14.1.7 Contractor shall require that its lead design engineer maintains professional indemnity insurance to indemnify them for their acts, errors or omissions arising in connection with the Work for not less than \$15,000,000 any one claim and in the aggregate, to be maintained throughout the Work period and the Warranty Period and to include any work or design undertaken prior to the commencement of the Work.

14.2 Builder's Risk Insurance. Contractor shall pay for and provide the Builder's Risk insurance from the date of Notice to Proceed to Final Completion in form reasonably acceptable to Concessionaire and Concessionaire shall replace this coverage with permanent property coverage thereafter. Coverage shall be in an amount not less than the maximum foreseeable loss, shall include a delayed-opening endorsement and business interruption endorsement of not less than six (6) months of coverage, such coverage to apply from the date that but for the damage the project would have commenced commercial operation. Contractor shall provide Concessionaire with a sample policy wording of such Builder's Risk policy at least fifteen (15) days before the date of the Closing Date (as such term is defined in the Comprehensive Agreement). So long as Contractor maintains the policy in full force and effect, and except with respect to Concessionaire's intentional misconduct or negligence, Contractor shall bear the risk of and be responsible for paying for property losses not covered by such Builder's Risk insurance, including but not limited to uninsured losses and deductibles, provided that in no event will Contractor be responsible for delays in start-up or business interruptions except as provided in Article 7 hereof (it being understood that nothing in the foregoing is intended to release Contractor from, or impose on Contractor, and liability under Article 7 otherwise borne or not borne, as the case may be, by Contractor). Losses under said policy shall be adjusted with Contractor and shall be payable as the interests of the Parties may appear.

14.3 Certificates. Contractor shall furnish to Concessionaire, VDOT, the Financing Parties, the Independent Engineer and their respective permitted assigns and successors, upon request, certificates of insurance required hereunder in a form reasonably acceptable to Concessionaire, VDOT, the Financing Parties, the Independent Engineer and their respective permitted assigns and successors, as the case may be. All such certificates shall state

that thirty (30) days' prior written notice shall be given to each such party and VDOT in the event of cancellation or non-renewal of or material change in the relevant policy. Renewal certificates shall be provided upon request.

14.4 Responsibility for Deductibles. Deductibles under the foregoing policies of insurance shall be borne by Contractor; provided, however, that in no event shall Contractor be required to compensate Concessionaire for loss incurred during the waiting period (which shall be no more than fifteen (15) days) under the delay in start-up endorsement or the business interruption endorsement of the property coverage described in Section 14.2 hereof, whether during the construction period or otherwise. The Parties agree that the policies shall contain a single deductible, where available.

14.5 Waiver of Subrogation. All insurance policies supplied by Contractor or Concessionaire under this Article 14 shall include a waiver of any right of subrogation of the insurers thereunder against all State Indemnitees, and to the extent reasonably available, against Concessionaire, Contractor, its Subcontractors and the Financing Parties, the Independent Engineer and their respective permitted assigns, successors, subsidiaries, parent companies, Affiliates, employees insurers and underwriters and of any right of the insurers to any set-off or counterclaim or any other deduction, save for outstanding premium under the relevant insurance only, whether by attachment or otherwise, in respect of any liability of any Person insured under any such policy.

14.6 Failure to Procure Insurance. If Contractor fails to procure and maintain the required insurance, or any portion thereof, the other Party shall have the right, but not the obligation, to procure and maintain the required insurance for and in the name of such Party and shall promptly pay the cost thereof and shall furnish all information necessary to acquire and maintain such insurance. Neither Party shall violate or knowingly permit any violation. The required insurance shall include a severability of interest clause, and Contractor agrees that none of the insurance policies required under this Article 14 shall contain a clause that would void coverage due to the individual actions of any other insured parties.

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

14.8 Unemployment and Other Insurance Benefits. Contractor agrees to and does hereby accept full and exclusive responsibility and liability for the withholding and payment of any and all Taxes and contributions levied or assessed against Contractor for Unemployment Insurance and for Old Age Retirement Benefits, and for pensions and annuities now imposed, or hereafter imposed, by the Governmental Authorities with respect to, assessed

against or measured by wages, salaries or other remuneration paid to persons employed by Contractor in connection with the Work hereunder. Contractor further agrees to indemnify and hold harmless the Indemnified Parties from any and all liability therefor.

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

14.10 Additional Insureds. All insurance policies furnished by Contractor or its design engineer pursuant to this Article 14 (except Worker's Compensation Insurance, Automobile, Employer's Liability Insurance and Professional Indemnity Insurance) shall name all State Indemnitees, Concessionaire, the Financing Parties, the Independent Engineer and their respective permitted assigns, successors, subsidiaries and Affiliates as additional insureds as their respective interests may appear.

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

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

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

14.14 Approval of Insurance; Evidence of Insurance. Contractor will provide Concessionaire and VDOT copies of all policies required under this Agreement. The Parties have agreed on all coverage lines, policy limits and other significant policy issues as set forth in this Article 14. Specific policy forms, full policy language and proposed insurance program structure (including deductibles and sub-limits) will be reviewed and agreed by Concessionaire and Contractor prior to placement, but in any event prior to Financial Closing.

ARTICLE 15

TERMINATION

15.1 Concessionaire's Right to Suspend the Work. Concessionaire may elect to suspend completion of all or any part of the Work upon ten (10) days' prior written notice to Contractor (or, in emergency situations, upon such prior notice as circumstances permit) indicating (a) the portion of the Work the completion of which Concessionaire has elected to defer, (b) Concessionaire's estimate of the duration of such suspension; and (c) the effective date of such suspension of the Work. Upon receipt of and consistent with the effective date of such notice, Contractor shall stop performance of the portion of the Work which Concessionaire has elected to defer and shall continue to complete performance of the balance of the Work hereunder. In the event of a suspension of the Work pursuant to this Section 15.1, Concessionaire will authorize a Scope Change Order or, at its option, a Work Order if appropriate, making required adjustments to one or more of the Guaranteed Substantial Completion Date, the Contract Sum or the Payment and Values Schedule, as appropriate. Contractor shall mitigate to the fullest extent reasonable possible any additional expenses to be borne by Concessionaire as a result of suspension of the Work pursuant to this Section 15.1. In the event the entire Work is suspended pursuant to this Section 15.1 for a period of 365 consecutive days, Contractor may terminate this Agreement upon written notice to Concessionaire. In the event Contractor terminates this Agreement pursuant to this Section 15.1, Concessionaire shall pay the Termination Payment to Contractor in accordance with Section 4.4 as Contractor's sole and exclusive remedy.

15.2 Termination of Contractor for Cause. Concessionaire may elect, by ten (10) Business Days written notice to Contractor, at Concessionaire's sole option, to terminate this Agreement if any of the following events ("Contractor Events of Default") shall occur: (i) Contractor or the Guarantor makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding under any Applicable Law, now in existence or hereafter becoming effective, and, in the case of any such involuntary proceeding, it is not dismissed or stayed within sixty (60) days after it is commenced; (ii) Contractor fails, for any reason other than failure of Concessionaire to make payments to Contractor when obligated and in accordance with this Agreement, to make payments due to Subcontractors, which failure continues for thirty (30) days after written notice of such non-payment (which notice requirement shall be waived if Applicable Law prohibits the giving of such notice); (iii) Contractor intentionally or negligently disregards Applicable Laws in the performance of the Work and such failure continues for fifteen (15) days after written notice from Concessionaire (which notice requirement shall be waived if Applicable Law prohibits the giving of such notice), or, if such failure is not capable of being cured within such fifteen (15) day period, if Contractor has not commenced the cure within such period and thereafter diligently pursued the same until a cure is effected, not to exceed an additional thirty (30) days unless the failure is not susceptible of cure; (iv) Contractor fails to achieve Substantial Completion within 365 calendar days after the Guaranteed Substantial Completion Date; (v) Contractor fails to diligently implement a corrective action plan adopted pursuant to Section 2.1.1; (vi) Contractor abandons the Work, (vi) Contractor fails to maintain the Letter of Credit in effect in the amount required hereunder; (vii) failure by the Guarantor to maintain the guaranty

in effect as required hereunder, (viii) Contractor otherwise is in default of any provision of or has failed to perform its obligations under the Contract Documents and such failure continues for thirty (30) days after written notice from Concessionaire (which notice requirement shall be waived if Applicable Law prohibits the giving of such notice), or, if such failure is not capable of being cured within such thirty (30) day period, if Contractor has not commenced the cure within such period and thereafter diligently pursued the same until a cure is effected, not to exceed an additional ninety (90) days unless the failure is not susceptible of cure, provided, however, that Concessionaire shall not exercise its remedy provided in this clause (viii) of Section 15.2 if Contractor's default consists solely of a violation of Section 3.7 hereof, but Contractor shall nonetheless be responsible for payment of any fines and penalties applicable to such violation as may be imposed on Contractor, Concessionaire or any other Person for whom Contractor is responsible by the appropriate Governmental Authority; or (ix) VDOT terminates the Comprehensive Agreement as a result of a breach by Contractor of its obligations hereunder (including its obligations to fulfill Concessionaire's obligations under the Comprehensive Agreement to the extent required under this Agreement). With respect to any termination by Concessionaire pursuant to this Section 15.2 (a "Termination For Cause"):

(i) If Concessionaire terminates this Agreement in accordance with this Section 15.2, Concessionaire may cause the Work to be completed by other contractors, and Contractor shall pay for the cost of such completion and Damages suffered by Concessionaire to the extent the same exceeds the Contract Sum. Concessionaire shall, within a reasonable period of time after the Project is fully and finally completed by the work of one or more other contractors, determine the total cost (including contractor fees) to Concessionaire for completing the Work, including all sums previously paid or then owed to Contractor pursuant to this Agreement. If the Contract Sum is less than the sum of (i) the cost incurred by Concessionaire to fully and finally complete the Work, (ii) all other Damages suffered by Concessionaire as a result of a default or breach by Contractor of its obligations under the Contract Documents, and (iii) all amounts previously paid to Contractor pursuant to this Agreement, Contractor shall pay to Concessionaire on demand the amount of such difference. Any amount owed by Concessionaire to Contractor for the month and level of completion of the Work shall be retained by Concessionaire until after completion of the Work and applied by Concessionaire to pay any amounts and Damages owed by Contractor pursuant to this Section 15.2(a) or otherwise. Any excess shall be remitted to Contractor within sixty (60) days after the Project is fully and finally completed.

(ii) If a Contractor Event of Default has occurred for which a cure period is envisioned above in this Section 15.2, Contractor shall prepare a remedial program and submit the same for Concessionaire's Approval, and Contractor shall remedy such Contractor Event of Default in accordance with the agreed remedial program. To the extent Contractor fails to cure such Contractor Event of Default and Concessionaire elects not to exercise its termination rights hereunder, Concessionaire may remedy such Event of Default with the cost thereof to be borne by Contractor.

(iii) No compensation shall be payable to Contractor in the event of a Termination for Cause except to the extent provided in Section 15.2(a).

15.3 Concessionaire Default.

15.3.1 The following events shall constitute “Concessionaire Events of Default”: (i) Concessionaire makes a general assignment for the benefit of its creditors, is generally unable to pay its debts as they become due, or becomes the subject of any voluntary or involuntary bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding under any Applicable Law, now in existence or hereafter becoming effective, and, in the case of any such involuntary proceeding, it is not dismissed or stayed within sixty (60) days after it is commenced; (ii) Concessionaire fails to pay to Contractor any portion of a Scheduled Payment which is not in dispute and such failure continues for thirty (30) days after written notice of such non-payment (which notice requirement shall be waived if Applicable Law prohibits the giving of such notice); and (iii) only if relief cannot be provided by issuance of a Scope Change Order under Section 12.8, Concessionaire otherwise is in default or has failed to perform any of its other material obligations under the Contract Documents and such failure continues for thirty (30) days after written notice from Contractor (which notice requirement shall be waived if Applicable Law prohibits the giving of such notice), or, if such failure is not capable of being cured within such thirty (30) day period, if Concessionaire has not commenced the cure within such period and thereafter diligently pursued the same until a cure is effected, not to exceed an additional ninety (90) days unless the failure is not susceptible of cure.

15.3.2 Upon the occurrence of a Concessionaire Event of Default under Section 15.3.1(ii), Contractor may suspend performance of the Work hereunder and, if Concessionaire fails to pay the undisputed portion of the Scheduled Payment within ninety (90) days after written notice of such non-payment (which notice requirement shall be waived if Applicable Law prohibits the giving of such notice), terminate this Agreement upon ten (10) Business Days written notice to Concessionaire. In the case of any other Concessionaire Event of Default, Contractor may terminate this Agreement upon ten (10) Business Days written notice to Concessionaire. Any right of Contractor to terminate this Agreement shall be subject to all cure rights of VDOT under the Comprehensive Agreement and of the Financing Parties. In the event Contractor terminates this Agreement by Contractor pursuant to this Section 15.3.2, Concessionaire shall pay the Termination Payment to Contractor in accordance with Section 4.4 hereof as Contractor’s sole and exclusive remedy.

15.4 Requirements Following Termination. Upon termination of this Agreement, Concessionaire shall be immediately released from any and all obligations to Contractor (except for Concessionaire’s obligation to pay the Termination Payment or any amount specified in Section 15.2, if applicable), Contractor shall immediately discontinue the Work and remove its personnel and construction equipment from the Project Right of Way, and Concessionaire shall be entitled to take exclusive possession of the Project and all or any part of the equipment and materials delivered or enroute to the Project, to the extent that Concessionaire has paid Contractor all undisputed amounts hereunder then due and payable from Concessionaire to Contractor. If requested by Concessionaire, Contractor will make every reasonable effort to cancel any existing Subcontracts upon terms satisfactory to Concessionaire. Except as provided in Section 4.4 hereof, any payments to be made to a Subcontractor as a result of any such termination shall be at the expense of Contractor. Contractor shall also, upon request by Concessionaire, (i) deliver and assign to Concessionaire (but in no event shall Concessionaire be liable for any action or default of Contractor occurring prior to such delivery and assignment

except to the extent such action or default was caused by Concessionaire, and each Subcontract shall so provide) any and all Subcontracts, purchase order, bonds and options made by Contractor in performance of the Work, and (ii) deliver to Concessionaire originals of all Contract Documents and, if the termination occurs at a time when the design of the Project is incomplete, originals of all Design Documents in process (except that Contractor may keep for its records copies, and, if sufficient originals exist, an original set, of the Agreement and other Contract Documents executed by Concessionaire), all other materials relating to the Work which belong to Concessionaire, and all papers and documents relating to the Permits, orders placed, bills and invoices, lien releases and financial management under this Agreement. All deliveries hereunder shall be made free and clear of any liens, security interests or encumbrances, except such as may be created by Concessionaire. Notwithstanding any termination of Contractor's retention or this Agreement pursuant to this Article 15, Contractor shall for a period not to exceed five (5) days take such steps as are reasonable necessary to preserve and protect Work completed and in progress and to protect materials, equipment and supplies at the Project Right of Way, stored off-site, or in transit. Except as provided herein, no action taken by Concessionaire or Contractor after the termination of Contractor's retention of this Agreement shall prejudice any other rights or remedies of Concessionaire or Contractor provided by law, by the Contract Documents or otherwise upon such termination.

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

ARTICLE 16

ASSIGNMENTS

16.1 Assignment. Neither Party shall have the right, power or authority to assign or delegate this Agreement or any portion thereof, either voluntarily or involuntarily, or by operation of law, without the prior written consent of the other Party, which consent may be granted or withheld in the sole discretion of such other Party; provided, that Concessionaire may assign all of its rights and interests in and under this Agreement to the Financing Parties as collateral security for its obligations. Upon request by Concessionaire, Contractor shall enter into a consent to assignment to assign any or all of its rights under this Agreement to the Financing Parties, and the Financing Parties may further assign such rights without Contractor's consent thereto in connection with the exercise of remedies against Concessionaire. Concessionaire also may assign to VDOT any or all of its rights under this Agreement and the other Contract Documents without Contractor's consent. Nothing in this Section 16.1 shall be deemed to

preclude Contractor from subcontracting portions of the Work in accordance with Article 3 hereof.

16.2 Performance in Favor of VDOT and Financing Parties. Contractor agrees that in the event of a default by Concessionaire under the terms and conditions of any agreement between Concessionaire and VDOT or Concessionaire and any Financing Party, VDOT and/or the Financing Parties shall be entitled to use and enforce this Agreement, as the same may be amended or supplemented before or after such default, all without additional cost to VDOT or the Financing Parties. In the event VDOT or any Financing Party notifies Contractor in writing that Concessionaire has defaulted under any agreement between Concessionaire and the Financing Parties and/or any agreement between Concessionaire and VDOT and requests Contractor to continue performance under this Agreement, Contractor shall thereafter perform hereunder in accordance with the terms and provisions hereof, so long as Contractor shall be paid in accordance with this Agreement for the Work performed hereunder, including payment of any sums due to Contractor for Work performed to and including the date of Concessionaire's default. Contractor will consent to such other agreements with respect to VDOT's and/or the Financing Parties' enforcement of their liens and security interests as VDOT and/or the Financing Parties may reasonably request.

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

ARTICLE 17

DESIGN DOCUMENTS

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

17.2 Final As-Built Drawings and Documentation. As a condition to achievement of Final Completion, Contractor shall furnish for Concessionaire's Approval CAD disks and reproducible mylars of the Final As-Built Drawings and Documentation, including without limitation "as built" surveys illustrating the boundaries of the Project Right of Way, the established building setback lines, if any, and the location of the Project on the Project Right of

Way and within any established boundaries and setback lines. Together with the Final As-Built Drawings, Contractor shall furnish to Concessionaire a Project library in an electronic format that can be searched easily to include, without limitation: all Design Documents, geological data and observations, surveys and inspection reports, electronic management system and other documents prepared by Contractor and used in the performance of the Work hereunder. Contractor shall incorporate into the Final As-Built Drawings and Documentation all changes or corrections to the Work made at the Project Right of Way prior to Final Completion so as to accurately represent the completed Project. Contractor shall establish such systems and retain such personnel as are necessary to maintain full quality control and quality assurance with respect to the Final As-Built Drawings and Documentation. If Contractor fails to provide Final As-Built Drawings and Documentation which in all material respects comply with the provisions of this Section 17.2, Concessionaire, without limiting any other right or remedy it may have under the Contract Documents or under Applicable Laws, may engage a third party engineer to produce Final As-Built Drawings and Documentation complying herewith, and Contractor shall pay all fees and costs of such engineer.

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

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

ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 Confidentiality. Except as set forth in this Section 18.1, each Party shall hold in confidence for a period ending five (5) years after the earlier of (i) Final Completion of the entire Project or (ii) the earlier termination hereof, any confidential information (marked as

such) supplied to it by the other Party or otherwise related to the Contract Documents or the Project. Contractor shall inform its Subcontractors, suppliers, vendors and employees of its obligations under this Section 18.1 and shall require each of its Subcontractors, suppliers, vendors and employees to execute confidentiality arrangements substantially in the form of this Article 18. Notwithstanding the foregoing, each Party may disclose the following categories of information or any combination thereof:

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

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

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

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

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

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

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

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

ARTICLE 19

DISPUTE RESOLUTION

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

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

between the Parties to this Agreement is also the subject of a concurrent dispute under the Comprehensive Agreement, the Parties shall seek to cause the dispute hereunder to be consolidated with the dispute resolution process occurring under the Comprehensive Agreement. If such consolidation does not occur, then any ongoing proceeding regarding the dispute hereunder shall be stayed pending final resolution of the dispute under the Comprehensive Agreement, which resolution shall be binding on the Parties for all purposes of this Agreement.

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

ARTICLE 20

COST RECORDS

20.1 GAAP. Contractor shall maintain fiscal records and books of account pertaining to the Project in accordance with generally accepted American accounting principles consistently applied.

20.2 Inspection of Books, Records and Audit Rights. Contractor covenants and agrees to keep and maintain full, complete and detailed records of all its costs and allowances pertaining to Scope Changes. Contractor authorizes Concessionaire, VDOT (to the extent required under the Comprehensive Agreement) and independent third parties designated by Concessionaire to inspect and audit, during business hours, all of its records and books of account pertaining to the Project to the extent reasonably necessary to (i) establish or verify the amounts of cost-plus Change Orders or Work Orders, (ii) assemble data required to be submitted to Governmental Authorities, and (iii) calculate income, ad valorem or other taxes, prepare returns in connection therewith or obtain exemptions therefrom. Such records, books and accounts shall be preserved by Contractor for a period of three (3) years after Final Completion, at no additional cost to Concessionaire, and subject to Concessionaire inspection and audit during such period. All expenses of an audit by Concessionaire shall be paid by Concessionaire. No inspection or audit rights shall apply to the make-up of the lump-sum Contract Sum or to any unit price or rate used under this Agreement after such price or rate has been agreed by the Parties.

ARTICLE 21

INDEPENDENT CONTRACTOR

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

Contractor covenant and agree that in the performance of the Work by Contractor, Contractor shall not perform any act or make any representation to any Person to the effect that Contractor or any of its agents, representatives, Subcontractors is the agent of Concessionaire.

ARTICLE 22

REPRESENTATIVES AND WARRANTIES OF CONTRACTOR

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

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

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

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

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

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

this Agreement. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any Governmental Authority which is reasonably likely to have such a materially adverse effect or to result in such impairment.

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

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

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

ARTICLE 23

REPRESENTATIVES AND WARRANTIES OF CONCESSIONAIRE

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

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

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

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

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

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

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

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

ARTICLE 24

MISCELLANEOUS

24.1 Estoppel Certificate. Contractor shall at any time and from time to time furnish promptly upon request by Concessionaire or any Financing Party a written statement in such form as may be required by the requesting party stating that this Agreement is a valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; that this Agreement has not been released, subordinated or modified; and that there are no offsets or defenses against the enforcement of this Agreement

against Contractor; or if any of the foregoing statements are untrue, specifying the reasons therefor.

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

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

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

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

Capital Beltway Express LLC
565 5th Avenue, 18th Floor
New York, NY 10017
Attention: President
Telephone: (646) 278-0870
Facsimile: (646) 278-0839

With a copy to:

Transurban (USA), Inc.
1421 Prince Street
Suite 200
Alexandria, VA 22314
Attention: Vice President-Development
Telephone: (571) 527-2050
Facsimile: (571) 527-2060

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

Fluor-Lane LLC
c/o Fluor Corporation
100 Fluor Daniel Drive
Greenville, SC 29607
Attention: Mr. Herb Morgan, Vice President of Operations
Telephone: 803 330-5215
Fax: 803 560-9381

With a copy to:

Fluor Corporation
100 Fluor Daniel Drive
Greenville, SC 29607
Attention: Richard A. Fierce, Managing General Counsel
Telephone: 864-281-8096
Fax: 864-281-6868

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

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

24.7 Entire Agreement. The Contract Documents contain the entire agreement between Concessionaire and Contractor with respect to the Project, and supersede any and all prior and contemporaneous written and oral agreements, proposals, negotiations, understandings and representations pertaining to the Project.

24.8 Amendments. No amendments or modifications of the Contract Documents shall be valid unless evidenced by a Scope Change Order or by a written instrument signed by a duly authorized representative of the Party against whom enforcement is sought. The Parties acknowledge that they may not amend or modify this Agreement without the prior written consent of VDOT; provided, however, that VDOT's consent shall not be required with respect to Scope Change Orders that neither (i) constitute a change in the scope of the Work for purposes of the Comprehensive Agreement or a Technical Requirements Deviation nor (ii) result

in an increase in the time to complete the Work pursuant to the Comprehensive Agreement (even though such Scope Change Orders may result in an increase in the time permitted to complete the Work under this Agreement to the extent so provided in this Agreement) or the imposition or enlargement of any of VDOT's costs, liabilities or obligations under the Comprehensive Agreement. Contractor acknowledges that, pursuant to Section 7.05(a) of the Comprehensive Agreement, Concessionaire is to provide VDOT with notice of all proposed Scope Changes Order regardless of whether or not VDOT's consent is required for such Scope Change Order.

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

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

Where an irreconcilable conflict exists among Applicable Laws, this Agreement, the drawings included in the Design Documents, and the specifications in the Design Documents, the earliest item mentioned in this sentence involving a conflict shall control over any later mentioned item or items subject to such conflict, and if a conflict exists within or between parts of the Contract Documents, or between the Contract Documents and Applicable Laws, or among Applicable Laws themselves, the more stringent or higher quality requirements shall control. All obligations imposed on Contractor and each Subcontractor under the Contract Documents (other than this Agreement) or under Applicable Laws or Applicable Standards and not expressly imposed or addressed in this Agreement shall be in addition to and supplement the obligations imposed on Contractor under this Agreement, and shall not be construed to create an "irreconcilable conflict." Where a conflict exists among codes and standards applicable to the Project or Contractor's performance of the Work, the most stringent provision of such codes and standards shall govern.

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

24.11 Escrowed Pricing Documents. Contractor shall provide to Concessionaire all documents and information required pursuant to Section 18.05(a)(i) of the Comprehensive Agreement.

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

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

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

24.15 Obligation to Act in Good Faith. In all cases where approvals, consents or determinations are required to be provided hereunder, such approvals or consents shall not be withheld unreasonably and such determinations shall be made reasonably except in cases where

a different standard (such as, by way of example only, sole discretion) is specified. In cases where sole discretion is specified for an approval, consent, determination or other decision, the decision shall not be subject to dispute resolution hereunder.

24.16 Coordination with VDOT and Financing Parties. Contractor acknowledges that each of VDOT and the Financing Parties shall have the right to review and approve this Agreement, and that they may require to review and approve this Agreement, and that they may require as a condition to such approval certain rights for their benefit, including the rights (a) to receive notices of default by Contractor and notices of inspections and tests, (b) to approve payments, (c) to approve Final Completion, and (d) to have the Independent Engineer inspect the progress of the Project. Contractor agrees to make changes to this Agreement and to otherwise cooperate with each of VDOT and the Financing Parties to the extent reasonably required in order for Concessionaire to obtain VDOT approval and to obtain financing for the Project on terms satisfactory to Concessionaire.

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

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

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

CONCESSIONAIRE

CAPITAL BELTWAY EXPRESS LLC

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

CONTRACTOR

FLUOR-LANE LLC

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

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

CONCESSIONAIRE /

CAPITAL BELTWAY EXPRESS LLC

By: 

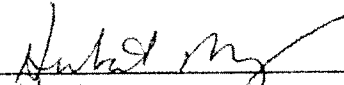
Name: *Brett Burns*

Title: *Power of Attorney*

Date:

CONTRACTOR

FLUOR-LANE, LLC

By: 
Name: Herbert Morgan
Title: President
Date: