

Part 3 – Comprehensive Agreement – Request for Detailed Proposal (RFDP) – December 31, 2008.

ROUTE 460 CORRIDOR IMPROVEMENT PROJECT QUESTIONS AND CLARIFICATIONS		CODES: A. ACCEPT COMMENT—WILL BE CORRECTED, ADDED, OR CLARIFIED. B. DESIGNER WILL EVALUATE. C. REJECT COMMENT. D. DEPARTMENT TO EVALUATE.		
UPC: 84272		Remarks by Offerors Clarifications by VDOT		
DESCRIPTION: ROUTE 460 REQUEST FOR DETAILED PROPOSAL PART 3, COMPREHENSIVE AGREEMENT		REVIEW PHASE & TYPE: DRAFT, REV.	DATE: FEBRUARY 9, 2009	
Ref #	Provide Reference Section # and Description	Remark(s)	Code	Response
1.	Section 3.01(e) – Basic Agreement	Please add the text: “in accordance with the requirements, frequencies and standards agreed to herein” after the word “oversight”.	C	Response: Article 3 is intended to set out general parameters of the parties’ roles and responsibilities and is subject to the more particular terms of the Agreement. The recommended change may not cover all situations and is not necessary. Proposed Addendum: None
2.	Section 3.02 (b) Parties to the Transaction “...Along with same information regarding the owners.”	Delete reference to ownership of the Concessionaire.	C	Response: No change Proposed Addendum: None
3.	Section 3.02 (d) (v) Parties to the Transaction “Operations and Maintenance Agreement, not later than 30 days prior to the Service Commencement Date”	Add “To the extent applicable, ” before “Operations”. The Concessionaire may choose to self perform.	A	Response: Agreed Proposed Addendum: Section 3.02(d)(v) will be amended.
4.	Article 4 – Grant of Concession; Term; PVR Calculation	May the concession term (70 years) be altered?	C	Response: No change Proposed Addendum: None
5.	Section 4.01 Grant of Permit.	Add standards that will procure the quiet enjoyment and peaceful possession by the Concessionaire of its rights under the Agreement.	A	Response: Agreed Proposed Addendum: Appropriate language will be added to Article 4.

6.	Section 4.02 – Term and Term Extension	Concession Term limitations are based on Gross Revenues rather than Equity IRR. This exposes the Offerors to the risk that although Gross Revenues may be high, the cost to achieve those high Gross Revenues was more than anticipated in the Base Case Financial Model and hence the Equity IRR has not been achieved. This mechanism could function as a cap on Equity IRR. This is an unequitable situation for Equity, being exposed to limitations on upside, but no limit on the downside risk.	C	Response: Equity IRR is not pertinent to the Term of the Concession under the PVR model. Proposed Addendum: None
7.	Section 4.02(a) – Term and Term Extension	Provision (iii) limits the upside that the Concessionaire can achieve over the full term of the Concession. This is not a balanced risk and commercial profile as the Concessionaire retains the revenue risk throughout the term. This point is a strong deterrent for potential Equity investors. Under (a) (iii) please clarify that PVRm is the <i>cumulative</i> PVR value at the conclusion of calendar month	A	Response: Agreed that (a) (iii) should be revised to add the reference to “cumulative”. Proposed Addendum: add “cumulative” in front of the word “value.”
8.	Section 4.02 (a) Term and Term Extension “The date that is 70 years after the Service Commencement Date.”	Consider extending the term to 99 years. The extension of the Term will help the feasibility of the project	C	Response: No change Proposed Addendum: None
9.	Section 4.02 (a) (iii) (B) PVR and Term calculations	In case of a long concession Term 72 months could not be enough time to obtain the 10% remaining of the PVR, especially if using a high PVR Discount Rate. This has to be determined once the PVR Discount Rate is known.	A	Response: Handback period will commence at the earlier of 72 months prior to the end of the Concession term, or upon reaching 95% of MPVR. Proposed Addendum: Section 4.02 (a) (iii) (B) will be amended.
10.	Section 4.02(b) – Term and Term Extension	Please add to the end of text of the first sentence: “, except as is extended due to a Delay Event”. Please delete the second sentence, as full MPVR attainment is of fundamental importance to the Concessionaire.	C	Response: No change will be made to the first sentence. The effect of Delay Events is covered under Section 13.01. No change to the second sentence will be made. The Department requires a maximum term and provides no guarantee of the attainment of MPVR. Proposed Addendum: None

11.	Section 4.03.(b)	The Offerors need to know the PVR discount Rate as soon as possible.		<p>Response: PVR Discount Rate to be provided on July 31, 2009 per schedule included in Part 1.</p> <p>Proposed Addendum: None</p>
12.	Section 5.01 (a) Tolling of the Project "...the Concessionaire shall have the right to charge and collect, and to implement a system for the collection of, Toll Revenues, in accordance with the terms of this Agreement."	Add ", enforce collection of," after "... charge and collect". There is no specific granting of a right to enforce.	A	<p>Response: Agreed</p> <p>Proposed Addendum: Section 5.01(a) will be modified as indicated.</p>
13.	Section 5.01 (a) Tolling of the Project "The Concessionaire shall have no right to charge or collect Toll Revenues, except as expressly authorized by this Agreement."	Erase this phrase. Nothing should hinder the concessionaire's general rights under applicable law, particularly in the absence of specific rights to act as agents of VDOT. Additionally section 5.01 (a) already states that such rights will only be exercised in accordance with the terms of the Agreement.	C	<p>Response: No change</p> <p>Proposed Addendum: None</p>
14.	Section 5.01(f)(iii) – Tolling of the Project	We presume any subordinated debt that meets the definition of Concessionaire Debt is included under this item, please confirm.	C	<p>Response: Yes, presumption is correct.</p> <p>Proposed Addendum: None</p>
15.	Section 5.01 (f) (iv) Tolling of the Project "All current and delinquent deposits to any Major Maintenance Reserve Fund, the Handback Reserve Fund and any other reserves contemplated by this Agreement."	Delete the reference to any other reserve contemplated by the Agreement.	C	<p>Response: No change</p> <p>Proposed Addendum: None</p>
16.	Section 5.02(a) – Toll Rates	<p>Can the toll rates set in Exhibit B-5 for the first calendar year following Service Commencement be revised with the permission of VDOT in order to optimize traffic flows prior to Detailed Proposal Submittal?</p> <p>Please also confirm if partial Service Commencement will be permissible.</p>	C	<p>Response: The Department intends to require Concessionaire to adhere to the toll rates proposed by the Successful Offeror per section 5.02(a). Also, reference C3 of Attachment C of Part 1.</p> <p>Partial Service Commencement is not permissible; however, the Department is open to further discussion in proprietary meetings.</p> <p>Proposed Addendum: None</p>

17.	Section 5.02(b) Toll Rates “The Concessionaire shall provide to the Department at least 180 days prior notice of any planned toll rate increase, and to the general public...”	Reduce the time period from 180 to 90 days.	A	Response: The Department agrees to change time period to 120 days. Proposed Addendum: Section will be revised to reflect 120 days.
18.	Section 5.02(c) – Toll Rates	The Concessionaire should be able to rely on its projections for toll revenues presented in its Detailed Proposal not being subjectively changed for the worse due to actions of the Department and/or outside of the control of Concessionaire. Neither should it be penalized for fortuitous circumstances leading to an opportunity for improved revenues, given the fixed MPVR restriction. Please revise this subsection accordingly.	A	Response: This section will be deleted. Proposed Addendum: Delete section 5.02(c).
19.	Section 5.02(c) Toll Rates	Delete this section. If the concessionaire complies with its proposed rate schedule, its rates shouldn't be affected by conditions or rates in competing roads. This could result in a tool to restrain the ability of the concessionaire to set the rates by adding tolls to a different road which is outside of the scope of the concessionaire. The concessionaire cannot accept changes in his contract based in circumstances that are exclusively under control of the Grantor. A threatened cap adds uncertainty, restricts the appetite for aggressive bids and is hardly bankable in the current market.	A	Response: This section will be deleted. Proposed Addendum: Delete section 5.02(c).
20.	Section 5.03 (b) Additional Provisions Respecting Tolls “Nothing in this Agreement shall obligate or be construed as obligating the Department, or any assignee thereof, to continue or cease collecting tolls after the end of the Term.”	Amend to read: “In the event of Termination, the Department shall develop and operate the Project, imposing user fees for the use thereof and revenues shall be collected for the benefit of, and paid to, the Concessionaire and the Lenders until final payment of all amounts due”	C	Response: No change Proposed Addendum: None
21.	Section 5.03(c) – Additional Provisions Respecting Tolls	We believe it only fair and reasonable that the Department should have an obligation to coordinate any changes of the interoperability or compatibility standards, requirements or protocols for toll collection systems with Concessionaire, as the latter will be an important long-term partner to the State for its toll road system - please revise said subsection accordingly (second sentence).	C	Response: Interoperability and compatibility standards are applicable throughout the Commonwealth and a number of other States. An exception cannot be made for any one operator regarding the EZ Pass system. As stated in the CA, the Department will endeavor to coordinate with the Concessionaire, as it will with other operators, in the implementation of such changes. Proposed Addendum: None

22.	Section 5.03(c) – Additional Provisions Respecting Tolls	<p>Concessionaire takes losses of Toll revenues potentially stemming from change in State interoperability or compatibility standards.</p> <p>The Offerors feels this should be included in the list of Compensation Events as this is a risk that the Concessionaire has no control on.</p>	C	<p>Response: The agreement for provision of services through the Department is at the Offeror's option. See also #21).</p> <p>Proposed Addendum: None</p>
23.	Section 5.03 (c) Additional Provisions Respecting Tolls; "Change to standards" "If the Department (or its successor) intends to change any State interoperability or compatibility standards, requirements or protocols for toll collection systems, it will endeavor to coordinate with the Concessionaire prior to the implementation of such changes so as to minimize the loss of Toll Revenues, disruption and cost to the Concessionaire, but the Department shall not be liable in any event for any such resulting loss of Toll Revenues, disruption or cost."	Amend the following wording "but the Department shall not be liable in any event for any such resulting loss of Toll Revenues, disruption or cost" to read "in which case the Department shall pay Concessionaire Damages to the Concessionaire."	C	<p>Response: No. See also #21 and #22</p> <p>Proposed Addendum: None</p>
24.	Section 5.03(d) – Additional Provisions Respecting Tolls	Concessionaire will expect to pay market-based fees or charges for any professional services it retains, including for toll violation processing services, please adjust text accordingly.	C	<p>Response: Concessionaire may elect to contract with the Department, self-perform, or contract with a third party for provision of toll collection or violation processing services. The Department currently offers these services and is willing to allow the Concessionaire to utilize the Department services in accordance with its then existing contracts. The contracts are subject to revision (including fees for such services), from time to time.</p> <p>Proposed Addendum: None. Note, however, that Part 3 will be revised to delete the ETC and VPS Agreement forms as exhibits. They will be provided, instead, as exhibits for reference purposes only in Part 1.</p>

25.	Section 5.03(d) Additional Provisions Respecting Tolls; "Violation Processing Services Agreement"	(i) The VPSA should be in final form at the time of the signature of the Agreement so the Concessionaire may opt to execute it, and have the Department execute it, at that time. (ii) Charges and a revision procedure should be agreed to at the time of signature to provide certainty on the prices. The Department will use all means available to the Department in order to minimize the impact of violators to the Concessionaire.	C	<p>Response: (i) VPSA is an option and may not be in year of operation form at the time of the CA execution. (ii) The risk of toll and violation collection will be borne by the Concessionaire.</p> <p>Proposed Addendum: Note the ETC Agreement and the VPS Agreement will be deleted as exhibits to the CA.</p>
26.	Section 5.03(d) and 5.03(f) Additional Provisions Respecting Tolls; "Other enforcement rights".	In addition to the VPSA and making available the benefits of the arrangements the Department is a party to, in order for the Concessionaire to achieve a successful enforcement of violators, per 5.03 (f), it will need additional enforcement rights. We consider the following to be basic rights in this respect: (i) instituting the Concessionaire as an agent to the Department ultimately allowing the issuance of fines or equivalent; (ii) obligation to collaborate reasonably with the Concessionaire in the enforcement of toll violators.	C	<p>Response: (i) No change in language; (ii) Reasonable collaboration is addressed in section 15. All toll operators have the legal authority to pursue violators regardless of whether they enter into agreement with the Department pursuant to VA code, section 46.2-819.1</p> <p>Proposed Addendum: None</p>
27.	<p>Section 5.03(e) Additional Provisions Respecting Tolls.</p> <p>"If the Concessionaire elects to contract with another party for these services, the Department will provide the same access to accounts as if the Concessionaire had continued its transaction account management services with the Department, if such access is permitted by Law and if the Concessionaire pays to the Department the reasonable costs of providing such access."</p>	Amend to read: "If the Concessionaire elects to self perform or contract with another party for these services, the Department will procure access to all accounts and plate databases, and the Concessionaire will pay the Department the reasonable costs of providing such access." This is a very important tool to the Concessionaire the Department should represent that access to the accounts is allowed by law.	C	<p>Response: The Concessionaire may elect to contract with the Department, self-perform, or contract with a third party. If the Concessionaire is a member of the E-ZPass IAG and contracts with a third party, they will receive the following daily transmissions:</p> <ul style="list-style-type: none"> • Tag Status File • Invalid Tag Customer File • Transaction File • Transaction Reconciliation File • Customer License Plate File <p>The following files are sent on an "as needed" basis:</p> <ul style="list-style-type: none"> • Correction File • Correction Reconciliation File <p>**NOTE: A detailed description of the files will be provided in the Data Room.</p> <p>However, the Department is open to further discussion in proprietary meetings.</p>

				Proposed Addendum: None
28.	Section 5.03(f) – Additional Provisions Respecting Tolls	If the Concessionaire chooses to retain the services of the Department for certain services, it is expected that the latter uphold professional standards of service provision and be held accountable for the same just like any other service provider retained. Please add to text accordingly.	C	Response: Concessionaire may elect to contract with the Department, self-perform, or contract with a third party for provision of toll collection or violation processing services. The Department currently offers these services and is willing to allow the Concessionaire to utilize the Department services in accordance with its then existing contracts. The contracts are subject to revision (including fees for such services), from time to time. Proposed Addendum: None
29.	Section 5.05 – Emergency Suspension of Tolls	Is the requirement of Section 33.1-252 of the Code of Virginia meant to apply to privately owned toll facilities or only VDOT owned toll facilities? The Code provision is very broad and will be questioned by Lenders possibly affecting financing. A reasonably defined protection in the CA could achieve the Departments aims.	C	Response: It has determined that this Section of the Code applies to the RT. 460 facility. Proposed Addendum: None
30.	Section 5.05 Emergency suspension of Tolls.	An emergency suspension of the tolls should (i) entitle the Concessionaire to an extension of the Maximum Term and (ii) be considered a Compensation Event, provided, any such suspension continues for a period of 5 consecutive Days,.	A	Response: Agreed Proposed Addendum: Modify as follows: “An emergency suspension of the tolls shall entitle the Concessionaire to an adjustment in the PVR, provided any such suspension equal or exceeds a period of 10 consecutive days.”
31.	Section 6.01 – Department’s Reimbursable Costs and Permit fees	Please provide a capped budget for Department’s Reimbursable Costs prior to Detailed Proposal submittal. With the exception of any VDOT-approved, budgeted costs for the Independent Engineer payable on normal commercial terms (i.e. 30 days after receipt of invoice), any costs for the Department’s oversight should furthermore in our opinion not constitute part of its Reimbursable Costs as this is a set of project specific tasks that would be conducted in the ordinary course of its business – please revise language in Exhibit E, Part A and Part B accordingly. Finally, any Permit Fee payable to VDOT shall be net of any operating and maintenance costs, including administration. Please revise Exhibit E, part C accordingly.	A	Response: The Department will provide its estimated Initial Reimbursable Cost through commercial close and the Annual Reimbursable Costs as provided in Section 2.3, Milestone #9. The Department’s costs will be established upon the execution of the CA, with the insertion of the applicable amounts in Exhibit E. The Department’s Reimbursable Costs will include the Department’s oversight expenses. Permit Fees payable pursuant to Paragraph C of Exhibit E will be net of all costs. Proposed Addendum: Exhibit E, Part A, 2.2 change to December 31, 2010 , Paragraph C will be updated as needed.
32.	Section 6.02(f) – Base Case	“Any refinancing anticipated in the model shall always be assumed to be at or above the rates of the then amortizing debt” Given that the Concessionaire is taking the revenue risk,	D	Response: Need to make distinction between refinancing contemplated in Base Case Model versus unanticipated refinancing.

	Financial Model Updates	the Offeror expects to be able to set its own financing assumptions.		Proposed Addendum: Section 7.07 (d) and 6.02 (f) languages will be modified.
33.	Section 7 Financial Close	Financial Close will be done at the risk of the Concessionaire and the Department will have no right to force the Concessionaire to close finance. This concept may be maintained through the Agreement (see section 8.01 (f)) but will not be an obligation to the Concessionaire, accordingly the definition of Financial Close Deadline needs to be deleted. The Department will hold the Concessionaire responsible for complying with the Works schedule presented in the offer and any damages to the Department will derive from the lack of compliance of the Concessionaire to achieve this irrespective of whether financial close has occurred. The Concessionaire shall be obligated to start work no sooner than three years from the time of execution of the Agreement, this notwithstanding the Concessionaire will have the right but not the obligation to start work prior to such date. See comment in section 8.03 (b) The Agreement should be adapted to reflect the above.	C	Response: Requested Change not accepted. Proposed Addendum: The addendum will include a revised Financial Close Deadline of 18 months. For additional information, please see item #58.
34.	Section 7 Other financial protections - TIFIA and PABS (two years)	We believe that the project is not viable without TIFIA and/or PABs. The offeror, with the assistance of the Department, will make all reasonable efforts to obtain the availability of TIFIA and/or PAB's. The Concessionaire should be able to walk away without penalty for a failure to achieve close of finance when TIFIA is included in the base proposal and at the time of closing TIFIA is not available after commercially reasonable efforts of the Concessionaire to reach an agreement. The Concessionaire should be able to walk away without penalty for a failure to achieve close of finance when PABs are included in the base proposal, and at the time of closing PABs are not available. The time limit to exercise this right should be two years	C	Response: Requested Change not accepted. Proposed Addendum: The addendum will include a revised Financial Close Deadline of 18 months; however, there will be no relief for failure to secure PABs or TIFIA assistance. For additional information, please see item #58.
35.	Section 7.01(a) - Concessionaire responsibility for Project Financing; No Department Liability for Concessionaire debt	Please add to the end of the first sentence the following text: ", except as otherwise herein agreed". Second sentence: please add same suggested text as above. Project and Concessionaire economics can change significantly due to financial market conditions or other actions completely outside of its control. It is therefore reasonable that the Concessionaire be able to invoke Delay and/or Compensation Events, as appropriate and in accordance with the Agreement, or if necessary, abandon its offer without risk of the Proposal Security being drawn should Financial Close	C	Response: Suggested text will not be added. Proposed Addendum: None

		not be attainable on at least the same terms and conditions offered in its Detailed Proposal.		
36.	Section 7.02(b) and (d) – Financial Close	Please delete these subsections – see Question 16 above for rationale.	C	<p>Response: .Requested change will not be made. However, Section 7.02 will be substantially revised (see below).</p> <p>Proposed Addendum: There will be an addendum which provides for an 18-month Financial Close Deadline. For additional information, please see item #58.</p>
37.	Section 7.02(g) – Financial Close	What happens if the initial Financial Proposal requires a concession term of 70 years and requires no Commonwealth funding, but by the time of Financial Close, through deterioration in the financial markets and changes to the Benchmark Interest Rates (but with no change to the Initial Equity IRR), recalculation of the Base Case Financial Model results in an additional funding requirement? Note that in this situation, the concession term bid was 70 years and is thus unable to be extended (per 7.02(h))	C	<p>Response: The maximum term remains 70 years. The Department cannot provide financial market/interest rate protection.</p> <p>Proposed Addendum: There will be an addendum which provides for an 18-month Financial Close Deadline. For additional information, please see item #58.</p>
38.	Section 7.02(g)(i) “First updating the values of the Initial Benchmark Interest Rates used in the Initial Base Case Financial Model to instead equal the actual market values of the respective Benchmark Interest Rates as of the time of Financial Close, while holding all other aspects of the model (including the Maximum PVR and the debt structure) constant except for the Equity IRR; and”	The Initial Base Case Financial Model should be reflective of the financial structure achieved at closing. Notwithstanding the forgoing, the Maximum PVR of the model should be kept constant. When updating the values of the Initial Benchmark Interest Rates in the Initial Base case Financial Model it should be adjusted the amount of debt and its different tranches to comply with the debt covenants.	C	<p>Response: No change</p> <p>Proposed Addendum: None</p>
39.	Section 7.02(h)	Please delete this section as it reduces the protection to the concessionaire or limit its possible upside. The Initial Base Case Financial Model should be reflective of the financial structure achieved at closing .In addition; the concessionaire should be entitled to all benefits that result from the optimization of the Project’s financial structure.	C	<p>Response: No change</p> <p>Proposed Addendum: None</p>

40.	Section 7.02(h)(ii)– Financial Close	Please delete this subsection - see Question 16 above for rationale.	C	Response: Section cannot be deleted. Proposed Addendum: None
41.	Article 7 – Project Financing; Lenders Right and Remedies Section 7.02 and 7.07	Capping equity IRR upside reduces concessionaire's interests and incentives for performance improvements. For example, restrictions in concessionaire's refinancing gains will reduce appetite to take refinancing risks that may be more cost-efficient to both VDOT and concessionaire. We suggest VDOT to balance and align downside risks with "performance rewards" in a measurement table similar to Part.3.Exhibit-H. Otherwise, the current asymmetry of the refinancing (gain is shared and the Department not compensating for refinancing downside) will discourage equity investment.	C	Response: Suggested text will not be added. Proposed Addendum: None
42.	Article 7 – Project Financing; Lenders Right and Remedies Section 7.03, 7.04 and 7.05	We have been provided with many conditions to be included in lenders' draft term-sheets. This may negatively impact bankability. For example, limitations on material adverse effects, senior lenders liens, curing, or step-in/restructuring rights, etc. Hence, VDOT may not get the best value for money. We suggest VDOT to revisit.	C	Response: The terms are standard. Proposed Addendum: None
43.	Section 7.03(a)(ii) – Project Financing Agreements; Department's Rights and Protections	Why are partial pledges, etc up to a maximum of 100% of Concessionaire's Interest not permissible?	C	Response: We do not allow subdivision of interests or multiple collateral agents. Proposed Addendum: None
44.	Section 7.03(a)(vii) "Each Financing Assignment also shall require that the Collateral Agent deliver to the Department, concurrently with the delivery to the Concessionaire or any other Person, every notice of election to sell, notice of sale or other notice required by Law or by the Financing Assignment in connection with the exercise of remedies under the Financing Assignment."	After the words "... by Law of by the Financing Assignment" include the words: ", that arise out of a material breach of the Concessionaire of its obligations under the Financial Assignment,"	C	Response: No change Proposed Addendum: None
45.	Section 7.03(a)(viii) "No Financing Assignment shall grant to a Lender any right to	Lenders need to have access to all reserve accounts as assurance of the continuity of debt service payments.	C	Response: No change

	apply funds in the Major Maintenance Reserve Fund, the Handback Reserve Fund or any other reserve contemplated by this Agreement, except to the express purposes for which the reserve is established;"			Proposed Addendum: None
46.	Section 7.03(a)(ix) Issuance of additional Concessionaire Debt to fund Safety Compliance Orders Each Financing Assignment shall provide that the Concessionaire may, without condition or qualification, issue additional Concessionaire Debt, secured by the Concessionaire's Interest, for the limited purpose of funding Safety Compliance Orders	Please remove this section. We believe Lenders will be reluctant to accept this open-ended commitment to provide additional funds for the project or accept additional debt with the same seniority. Furthermore, the Concessionaire has to be allowed flexibility to make his own decisions on how to fund depending on the best alternative available at the time.	C	Response: This is standard language. Proposed Addendum: None
47.	Section 7.03(a)(xv) Use of the reserves by the Department not to be conditioned by Banks. Each Financing Assignment shall expressly permit the Department to use and apply the Contingency Amount, as well as funds in the Major Maintenance Reserve Fund and the Handback Reserve Fund, without condition or qualification, for the purposes permitted by this Agreement;	Remove this section. Please see comment to Section 7.03(a) (viii)	C	Response: This is standard language. Proposed Addendum: None
48.	Section 7.03(a)(xv) - Project Financing Agreements; Department's Rights and Protections	If the Contingency Amount, Major Maintenance Reserve Fund and/or the Handback Reserve Fund are being used or applied by the Department without conditions, how shall the cost-efficiency of the use or application of such funds be established, and how shall the replenishing to any required level by Lender(s) be funded?	A	Response: Please refer to the conditions stated in Section 9.05 and Section 21.02 of the CA, with respect to the use of the Major Maintenance Reserve Fund and the Handback Reserve Fund, respectively. The Department will not revise this language. Note, that as these are two separate funds, the last sentence of Section 9.05 will be deleted. Note also that the Contingency Amount is not a fund, but in effect an allowance or amount which the Concessionaire must expend to resolve certain contingencies which are otherwise the responsibility of the Department.

				Proposed Addendum: Delete the last sentence of section 9.05.
49.	Section 7.05(a)(ii) – Collateral Agent’s Right to Cure	Collateral Agent’s right to cure is typically at 60 days as opposed to 45 days on top of any cure period granted to the Concessionaire.	C	Response: The Collateral Agent and Concessionaire are receiving simultaneous notification. The Department believes the Collateral Agent’s right to cure is properly limited to 45 days. Proposed Addendum: None
50.	Section 7.07 – Refinancing Requirements	The Offeror believes that the refinancing provisions should be set between the Concessionaire and the financiers. Particularly, the level of distributions, the need for a rating (which may be non applicable according to the type of debt being refinanced). Such constraint on refinancing is a significant deterrent to any Equity investor.	C	Response: The refinancing requirements are not inconsistent with other transactions in the marketplace. Proposed Addendum: None
51.	Section 7.07 – Refinancing Requirements	With a refinancing, if the project has outperformed up to the date of the refinancing, then the MPVR is reduced and thus the concession term is likely to become shorter. This again caps the upside for Equity.	C	Response: The suggested change is not relevant, as equity returns will always be limited if the project outperforms forecast by virtue of the [X%] MPVR test. Proposed Addendum: None
52.	Section 7.07(a)(iii) - Refinancing Requirements	30 days may be too long of a time frame to provide final Proposed Refinancing Documents in advance, we therefore propose at least 15 days. Submittal of the Pre-Refinancing Model also seems excessive since it is already in the possession of the Department- please revise text accordingly.	A	Response: The Department will revise the CA to require 75 day prior notice of material terms and delivery of the final agreements for Department review 30 days prior to closing. Proposed Addendum: Section 7.07(a)(iii) will be amended to reflect comments above.
53.	Section 7.07 (b) Department Approval Rights for Refinancings.	This section is far too restrictive and severely limits our ability to refinance as all refinancings must obtain approval. Section should read that all refinancings must obtain an investment grade rating from a Major Rating Agency. Under any circumstance the Concessionaire would require approval to perform a refinancing that is in the Base Case. Additionally, the concessionaire will have the right to make Distributions with the proceeds of a refinancing if allowed by de financing documents.	C	Response: No change. Proposed Addendum: None
54.	Section 7.07(b)(iii) - Refinancing Requirements	It appears that the interest payment and/or principal repayment of subordinated debt from the proceeds of refinancing is permissible, please confirm.	C	Response: This is correct. Proposed Addendum: None
55.	Section 7.07(c) - Refinancing Requirements	Last sentence- please see Question 22.	C	Response: We do not allow subdivision of interests or multiple collateral agents. Proposed Addendum: None

56.	Section 7.07 (d) Refinancing and PVR Discount Rate Adjustment.	Remove the entire section. Concessionaire should be entitle to all refinancing gains	D	<p>Response: The Department will allow the Concessionaire to retain gains from refinancings contemplated in Base Case Financial Model. Gain sharing will be required on any unanticipated refinancings.</p> <p>Proposed Addendum: Language in sections 7.07 (d) and 6.02 (f) will be modified accordingly.</p>
57.	Section 7.08 – Consents and Estoppel Certificates	Consent of Assignment is expected to be formalized into a direct agreement between the Lenders representative, the Concessionaire and the Department. In order to give sufficient comfort to the Lenders, such direct link should not be at the request of the Lenders but should be part of the documentation at Financial Close.	A	<p>Response: A direct agreement among the Lender’s representative, the Concessionaire, and the Department is not necessary, but the Department may consider a direct agreement between the Lenders and the Department on the same terms as set forth in Article 7.</p> <p>Proposed Addendum: None</p>
58.	Section 7.09 – Committed Investment	Requirement for the Equity Members to make cash deposits: the market standard is that the timing and the form of the equity investment are agreed between the financiers and the Equity Members. Given the projected length of the construction period, having to make 15% cash deposits will negatively impact IRRs and act as a deterrent to potential Equity Members.	A	<p>Response: The Committed Investment section will be revised.</p> <p>Proposed Addendum: There will be an addendum which provides for revised Committed Investment provision.</p> <p>Committed Investment Security</p> <ol style="list-style-type: none"> 1. At Commercial Close, the Successful Offeror will be required to provide an irrevocable direct pay Letter of Credit payable to the Department in an amount which is the greater of \$165 million or 25% of Committed Investment as Committed Investment Security. The Concessionaire will be required to maintain such security in effect from the date of Commercial Close through the Financial Close Date. 2. The Concessionaire will be required to fund work (i.e. design, ROW acquisition, utility relocation, etc.) in accordance with the Baseline Schedule, regardless as to when/if it achieves Financial Close. 3. The Concessionaire will have up to 18 months from Commercial Close to achieve Financial Close. There will be no relief or extension granted for failure to secure PABs or TIFIA 4. VDOT’s remedy for failure of Successful Offeror to achieve Financial Close <ol style="list-style-type: none"> a. VDOT may terminate the Comprehensive Agreement. b. Upon termination, the Concessionaire will transfer all design docs, construction material, parcels acquired, etc. to VDOT immediately, at no cost to VDOT. c. VDOT will have the right to recover from the Concessionaire the costs incurred by VDOT to windup the then ongoing design and construction activities of the Concessionaire, plus the costs to be incurred by VDOT to

				reprocure the development and operation of the Project (a liquidated sum to be determined). VDOT may elect to recover these damages from the Concessionaire by draws on then outstanding amount of the LC less the value of all work product and parcels transferred to VDOT, as determined by the Independent Engineer.
59.	Section 7.09 15% Cash deposit of the Equity Members.	Remove this obligation. We believe this introduces an unnecessary cost and hinders the feasibility of the Project. VDOT already has a performance LOC as security for the Concessionaire's obligations under this agreement during the work period.	C	Response: Requested Change not accepted. Proposed Addendum: Section 7.09 will be revised. For additional information, please see item #58.
60.	Section 7.09 – Committed Investment	Who will hold the cash deposit of 15% of equity investment and can the Offeror retain the interest on the deposit?	A	Response: The Committed Investment deposit will be provided via LC. Proposed Addendum: There will be an addendum which provides for revised Committed Investment provision. For additional information, please see item #58.
61.	Section 7.09(a)- Committed Investment	Please allow for the reduction of this deposit requirement to 10% of the Committed Investment instead of 15% and that a letter of credit be applied instead of cash, as this is more cost-efficient for the Project	D	Response: An LC will be allowed. Proposed Addendum: There will be an addendum which provides for revised Committed Investment provision. For additional information, please see item #58.
62.	Section 8.01(b) – General Obligations of the Concessionaire	VDOT should stand behind all and any data and other information that is material and that it has provided concerning the conditions referenced herein (without exempting the Concessionaire from undertaking its own reasonable due diligence as needed). Please adjust language accordingly.	C	Response: The Department maintains its current position that all information is provided without warranty and as reference material only. Proposed Addendum: None
63.	Section 8.01(c) - General Obligations of the Concessionaire	With respect to the processing and timely, accurate and complete execution of eminent domain (as needed), the Department should bear its own responsibility in full. Please adjust text accordingly.	A	Response: The Department will modify the definition of Department Caused Delay, Exhibit A, to commit to delivery of the certificate to the Concessionaire for recordation, within 60 days following Concessionaire's submission of all necessary documentation. Proposed Addendum: Amend part 2, set to 60 days to deliver Certificate.
64.	Section 8.01(c) General Obligations of the Concessionaire. “...the Concessionaire shall bear the risk of all conditions occurring on, under or about the Project Right of Way, including...(v) the presence or discovery of Hazardous Substances, including	The Department should take the risk of pre-existing hazardous substances. Amend to say: “the presence of Hazardous Substances in the Project Right of Way, but excluding all hazardous substances that were in the Project Right of Way prior to or at the time of Close of Finance.” These risks should be capped to a maximum amount above which VDOT should take over. Otherwise, the risk would be too large to bear for the Concessionaire. \$10 millions would be a reasonable cap.	C	Response: No change is warranted. The Department will reimburse the Concessionaire for Allocable Costs incurred by the Concessionaire with respect to the management, treatment, handling, storage, remediation and removal of Hazardous Substances found on the Project Right of Way during the Work Period, subject to the terms and limitations of Section 14.01 (k) of the CA. Proposed Addendum: None

	contaminated groundwater, (vi) the discovery at, near or on the Project Right of Way of any archeological, paleontological or cultural resources, and (vii) the discovery at, near or on the Project Right of Way of any species listed as threatened or endangered under federal or State endangered species Law.			
65.	Section 8.01(f) Definition of Guaranteed Substantial Completion Date.	This date should be calculated from the day that is the third anniversary of the signature of the Agreement. Please amend to say: "The Concessionaire shall achieve Substantial Completion no later than [insert time from the Concessionaire's proposal] from the day that is the third anniversary of the signature of the Agreement."	C	Response: That section will be completed upon selection of the Successful Offeror. Proposed Addendum: None
66.	Section 8.02(a)(v) Conditions Precedent to Commencement of Design Work	Remove this section. In our opinion there are no risk until the commencement of works and the insurance policies effective date should therefore be the Commencement of Works	C	Response: No change Proposed Addendum: none
67.	Section 8.03(a) – Issuance of Design Work Commencement or Construction Segment Approvals	Second sentence, please delete: "endeavor to", and please reduce amount to 14 days from 21 days.	C	Response: No change Proposed Addendum: None
68.	Section 8.03(b) Issuance of Design Work Commencement or Construction Segment Approvals "Upon receipt (or deemed waiver) of the Design Work Commencement Approval or Construction Segment Approval, as applicable, the Concessionaire shall promptly begin and diligently pursue the applicable portion of the Work so as to..."	Amend to say: "Upon receipt (or deemed waiver) of the Design Work Commencement Approval, if this is received or deemed waived within three years of the day this Agreement is signed, the Concessionaire may, but will not be obligated to, begin the applicable portion of the Work. Upon receipt (or deemed waiver) of the Design Work Commencement Approval, if this is received or deemed waived after the third anniversary of the signature of this Agreement, or Construction Segment Approval, as applicable, the Concessionaire shall begin and diligently pursue the applicable portion of the Work, in, in any case so as to..."	C	Response: The Department will only issue the Design Work Commencement Approval following request by the Concessionaire. If the intent of this statement is to allow for design work to begin three years from Agreement Date, this is not acceptable to the Department as such delay would likely cause the Concessionaire to exceed the Guaranteed Substantial Completion Date. Proposed Addendum: none
69.	Section 8.05(c) - Project Design and Construction	If the Department finds that the Design Public Hearing Documentation and/or Construction Documentation submitted is not in compliance, it shall also notify the Concessionaire specifically what part of such documentation is non-compliant. Please adjust language accordingly.	C	Response: The Department will notify the Concessionaire of the noncompliance of which the Department is then aware. Such notification shall not preclude the Department from raising other noncompliance issues. Proposed Addendum: None

70.	Section 8.05(d) - Project Design and Construction	What remedies are available to the Concessionaire upon failure of the Department to respond within the 21 days mentioned herein? A VDOT non-response should more appropriately be considered an approval, for the sake of timely Project advancement. Please adjust language accordingly.	C	Response: In the event that the Department fails to respond to Concessionaire's request for approval of the Right of Way Acquisition and Relocation Plan within 21 days of Concessionaire's request, such Plan shall be deemed to be disapproved by the Department. No remedies are proposed and such event shall not constitute a Department-Caused Delay. Proposed Addendum: None
71.	Section 8.05(g) - Project Design and Construction	Please delete last sentence- please see text in bold in Question 14 for rationale.	C	Response: This cost is beyond our normal oversight costs and not taken into account in establishing the fixed amount set forth in Exhibit E. Proposed Addendum: None
72.	Section 8.06(c) - Construction Management and Coordination	Please add the word "reasonably" to the "required" in the first sentence.	C	Response: No change Proposed Addendum: None
73.	Section 8.07(a) - Governmental Approvals and Third Party Agreements	It is requested that the Department assist in expediting all and any Governmental Approvals that are sought in its name (or are issued by it). Please insert reference to subsection (d) in this regard.	C	Response: There will be no permits sought in the Department's name, except those that may be needed to cross the Department property through the Land Use permit process. No cross-reference needed. Proposed Addendum: None
74.	Section 8.07(b) - Governmental Approvals and Third Party Agreements	Please add to last sentence: ", except as required of VDOT in said FEIS and/or ROD."	C	Response: Consistent with the CA and Technical Requirements the Concessionaire is responsible for compliance with all aspects and conditions of the NEPA documents applicable to the Project scope. Proposed Addendum: None
75.	Section 8.07(c) - Governmental Approvals and Third Party Agreements	Please add the word "materially" before "differs" in the first sentence. Also, if an ATC has been approved prior to Detailed Proposal submittal and subsequently such approval is revoked due to no fault of the Concessionaire it shall constitute a delay and/or Compensation Event. Please revise text accordingly.	C	Response: No, if an ATC has conditional approval, the Concessionaire takes the risk, if such conditions are not satisfied, and must then develop the Project without the benefit of such ATC. See also Part 1, 4.7.4.2 Proposed Addendum: None
76.	Section 8.07(d) - Governmental Approvals and Third Party Agreements	Please delete the second sentence - please see text in bold in Question 14 for rationale.	C	Response: This cost is beyond our normal oversight costs, as will be otherwise established by Exhibit E. Proposed Addendum: None

77.	Section 8.08 Acquisition of Project Right of Way and Utility Relocations.	Although the Concessionaire will not hold the Department liable for delays, disruptions or damages caused by any Utility Owner, this should be a Compensation Event and a Delay Event and the Concessionaire should be entitled to an extension of the term. ROW is a risk not acceptable by the lenders, even more in the current market conditions. The Department must assure a certain cost and schedule, not to exceed, for the Concessionaire to obtain all the ROW needed.	C	Response: This risk will be borne by the Concessionaire. Proposed Addendum: none
78.	Section 8.08 (b) – Acquisitions of Project Right of Way and Utility Relocations	Please delete reference to cost and expense reimbursement proviso in second sentence - please see Question 14 for rationale. Please also clarify that if any damages, delays or disruptions caused by a Utility Owner as a direct consequence of VDOT action or inaction, that it shall be liable for such damages delays and/or disruptions.	A	Response: This is a Concessionaire risk. Proposed Addendum: Revise 8.08 (b) to modify “costs and expenses” to “Allocable Costs”
79.	Section 8.10 (a) – Concessionaire requests for Deviations from Technical Requirements	Please advise as to the response time for Deviations that VDOT will abide by.	C	Response: The Department will not be bound by any response time, given that the complexity of the deviation may require significant time and/or approval of FHWA. Proposed Addendum: None
80.	Section 8.12(c) – Contractor Warranties; Defective Design and Construction	Please add to first sentence: “material” prior to “defect or efficiency” and add “, under this Agreement:” after “,in addition to any other remedies”.	C	Response: All defects and deficiencies (regardless of materiality) are subject to this provision. The Department will not limit its remedies to the Agreement; it may also resort to those available at law or equity. Proposed Addendum: None
81.	Section 8.13(a) – Performance Security	Please reduce the amount of said security to \$75,000,000.	C	Response: The security amount will not be reduced. Proposed Addendum: None
82.	Section 8.13(c)(ii)((B) (1)– Performance Security, Collateral Agent as Beneficiary; Department as Transferee Beneficiary	Please explain why the mere expiration of a letter of credit within 45 days should allow it to be drawn by the Department? We respectfully request deleting this provision.	C	Response: If the LOC will not be renewed, the Department must be able to draw on the LOC to ensure that funds are available to resolve design and construction shortfalls and maintain the level of Performance Security required by the Department. Proposed Addendum: None
83.	Section 8.13(d)– Performance Security, Applicability to Project Enhancements and Major Maintenance	Please delete last wording of this subsection, reading: ...”or other amount specified by the Department.”	A	Response: Agreed, with modification. Proposed Addendum: ”or other lesser amount specified by the Department.”

84.	Section 8.13(e) (B)– Performance Security, Letters of Credit	Please delete requirement that a financial institution issuer needs to have an office in Virginia, as any LOC endorsement can be handled by representative or correspondent local bank.	A	Response: This requirement will be modified such that the office must be located in the United States. Please note that the payment should be made directly to the Department. Proposed Addendum: Section 8.13(e)(B) will be modified.
85.	Section 8.13(e) (D)– Performance Security, Letters of Credit	Please delete final provision” without requirement to present original letter of credit” and add: “and a letter signed by a duly authorized Department official explaining the justification for requesting a drawing under the letter of credit, including a reference to the applicable Agreement provision”, for sake of clarity and proper reference.	C	Response: Given the relationship between the Collateral Agent and the Department, the Department cannot be required to present original LOC. Explanation of justification for the draw is not relevant to the issuer of the LOC. Proposed Addendum: None
86.	Section 8.13(e) (F)– Performance Security, Letters of Credit	Draws shall only be allowed multiple times up to the maximum of the letter of credit face amount. Please clarify text accordingly.	A	Response: The intent was not to refresh every time, the language will be modified. Proposed Addendum: Add to the end of Section 8.13 (a): “In the event of draws on the Performance Security, the amount of the Performance Security which Concessionaire is obliged to maintain pursuant to this Section 8.13 will be reduced by the cumulative amounts of such draws.”
87.	Section 8.13(e)(iii)– Performance Security, Letters of Credit	Please change “without prior notice” to “with prior notice” Please also change the 45-day requirement to 15 days. Please also delete last sentence, as this proviso is unreasonable.	C	Response: answered in Part 1 Proposed Addendum: None
88.	Section 8.13(e)(v) - Performance Security, Letters of Credit	Please delete this subsection – see question 52 for rationale.	C	Response: No change Proposed Addendum: None
89.	Section 8.14(b) - Project Recovery	Please add; “Except as function of a Delay Event,” prior to the beginning of the first sentence.	C	Response: The agreement currently allows for modification of the Substantial Completion Date for approved Delay Events. Proposed Addendum: None
90.	Section 9.01(c) - Conditions Precedent to Service Commencement of the Project	Please add: “except for any Work Period-related Concessionaire default” to the end of last sentence.	C	Response: No change Proposed Addendum: None
91.	Section 9.04(b) - Procedures Relating to Maintenance Work	Please reduce 90-day plan requirement to [80%].	C	Response: No change Proposed Addendum: None

92.	Section 9.04.c Procedure Relating to Maintenance Work	This approach limits the flexibility of the Concessionaire to manage the asset in the most efficient way. The overall maintenance principle must be performance based. Once an element is below a certain quality rating, the Concessionaire will need to fix that problem in a certain timeframe.	C	Response: The provision as currently written allows the Concessionaire to develop a Life Cycle Maintenance Plan and its own plan of action. This approach does not limit the Concessionaire to actively maintain the Project. The Department currently does not have performance-based technical requirements. Proposed Addendum: None
93.	Section 9.04(e) - Procedures Relating to Maintenance Work	Please add "and subsequent to expiry of the applicable cure period" after "...Life Cycle Maintenance Plan," in the first sentence.	C	Response: No change Proposed Addendum: None
94.	Section 9.06 Police and Enforcement Services	We request that the Department ensure that the level of police will at all times be the same as any other comparable road. We request authorization to contact the Virginia State Police in order to learn and negotiate the terms in which they would be interested in providing services in addition to the basic level of services mentioned above.	C	Response: No we will not ensure the level of police; however, each Offeror is able to coordinate with the Virginia State Police or others as needed to develop their Detailed Proposals. Proposed Addendum: None
95.	Section 10.02 – Right to Oversee Work	Please add: "with reasonable notice in advance (unless due to a public safety emergency situation)" after "at all times" in the first sentence.	C	Response: The Department will perform such Oversight Services as described. It is impractical to provide advance notice. Proposed Addendum: None
96.	Section 10.03 – Department Access and Inspection	Please add: "With due notice in advance," prior to beginning of first sentence.	C	Response: Notice cannot be a prerequisite to access by the Department or the IE. Proposed Addendum: None
97.	Section 10.04 – Compensation for Oversight Services	Please delete this section- please see text in bold in Question 14 for rationale.	C	Response: Absent Concessionaire's funding, the Department has none to implement necessary oversight. Proposed Addendum: None
98.	Section 10.05(b)- Limitations on Concessionaire's Right to Rely	a) Please add in parenthesis after Project Right of Way acquisition: "(except as it pertains to the Department exercising condemnation or eminent domain rights)". b) Also, if the Department has already accepted, certified, and/or approved Work, it shall be deemed to have forfeited any rights to exercise remedies for Nonconforming Work. Please adjust text accordingly.	A	Response: a) the Department will revise to take into account the accommodation provided by Question 35 (delivery of certificate of take). b) This remark is incorrect as the Department does not forfeit this right. As stated in this Section of the RFDP, the Department is entitled to remedies for Nonconforming work regardless of previous approval, etc. Proposed Addendum: a) 10.05 (b) after "Project Right of Way acquisition" insert "(except as otherwise provided by

				Section 14.01 for Department-Caused Delay related to the Department's failure to timely provide a certificate of take for recordation to the Concessionaire)" b) None
99.	Section 10.05(c)(iii) - Limitations on Concessionaire's Right to rely	Please delete this subsection.	C	Response: No change Proposed Addendum: None
100.	Section 11.02 - (b) (iv) (A) (B) and (C) - Assessment of Performance Points and Liquidated Damages, Categories	Liquidated Damages should be capped per event and cumulatively, and should only be applicable after the applicable cure period has expired. Please also delete subsection (C).	C	Response: The amount of LDs will be tied to each breach or failure and not capped. Category D breaches have no cure period. Subsection (C) is standard language. Proposed Addendum: None
101.	Section 11.04(a) – Notification of Cure	Please change five days to ten days for written certification of a cure.	C	Response: The Department will not revise Section 11.04(a). Proposed Addendum: None
102.	Section 11.06(a) – Impact of Performance Points, Monitoring Period	Please delete last two sentences- please see text in bold in Question 14 for rationale.	C	Response: No change Proposed Addendum: None
103.	Section 11.06(b)(ii) – Impact of Performance Points, Monitoring Period	Please change "50%" to "100%" in last sentence, as the current wording would constitute retroactive penalization.	C	Response: No change Proposed Addendum: None
104.	Section 11.07 (a) Disputes Regarding the Assessment of Performance Points. "The Concessionaire may object to the assessment of Performance Points (but not the number of Performance Points assessed within the maximum set forth in Exhibit H)."	Erase the words in brackets "(but not the number of Performance Points assessed within the maximum set forth in Exhibit H)."	A	Response: No change Proposed Addendum: None
105.	Section 12.02(a)(iii) - Project Enhancements by the Department	Please add: "Subject to Concessionaire resource availability and adequate compensation" prior to beginning of first sentence.	C	Response: No change Proposed Addendum: None
106.	Section 12.02(a)(iii) Project Enhancement by the	The Department cannot force the Concessionaire to incur in undefined costs without its previous agreement.	C	Response: The Department has the right to direct the Concessionaire to undertake Department Project Enhancements. Compensation is addressed in Article 14. It is

	Department.			<p>anticipated that this would be a coordinated effort between the Department and the Concessionaire.</p> <p>Proposed Addendum: None</p>
107.	Section 12.02(b)(i) and (ii) Project Enhancement by the Department.	Any adverse impact that Concessionaire suffers that is originated by a Project Enhancement done by the Department, directly or indirectly, should be subject to compensation for loss of revenue damages and costs, including the ones derived from operating and maintaining the Project Enhancement. Under its current wording the Department may or may not issue a Department Change.	C	<p>Response: The Department has the right to direct the Concessionaire to undertake Department Project Enhancements. Compensation is addressed in Article 14. It is anticipated that this would be a coordinated effort between the Department and the Concessionaire.</p> <p>Proposed Addendum: None</p>
108.	Section 12.02(b)(ii) - Project Enhancements by the Department	Please confirm that the assessment of the compensation due, or share of Positive Net revenue Impact or net Cost Saving will be managed by the Independent Engineer or other professional third party.	C	<p>Response: The answer is no, IE will not be arbiter. The Department is not allowed to submit to binding arbitration.</p> <p>Proposed Addendum: None</p>
109.	Section 12.03(a) – Development of Other Facilities	This subsection should be deleted or rewritten taking into consideration the fact that the prospect of obtaining financing commitments and/or reaching Financial Close will substantially be hampered, if not impossible, by VDOT retaining full freedom to build a directly competing road facility within or near this Project during the Term, serving the same transportation needs.	C	<p>Response: No change</p> <p>Proposed Addendum: None</p>
110.	Section 12.03 (c) Other Facilities. “In no event shall the taking of any action described in Section 12.03 (a) or (b) by the CTB or the Department (i) constitute a default by the Department under this Agreement or (ii) entitle the Concessionaire to the Concessionaire Damages or compensation, except to the extent provided in Section 12.02 with respect to any such existing and new transportation or other facilities that constitute Department Project Enhancements.”	The Concessionaire needs certainty and assurance by the Department that the traffic inputs on which the revenue estimation is based is not adversely affected by any other facility, otherwise the assumptions on which the bid is based can suffer dramatically without access by the Concessionaire to compensation. Please erase section (ii) and add new section instating a compensation procedure that will return the Concessionaire to the economic situation it would have been without the other facility.	C	<p>Response: The Department will not compensate for competing facilities.</p> <p>Proposed Addendum: none</p>

111.	Section 12.04(c) – Safety Compliance Orders	Work conducted under a Department issued Safety Compliance Order not contemplated in the Work plan as per the Detailed proposal Submittal shall constitute a Delay Event and/or Compensation Event, as the case may be after joint agreement between the parties. Please revise text accordingly.	C	Response: As contemplated by this Agreement, a Safety Compliance Order is issued as a result of Concessionaire (or its contractors) non-compliance with environmental or safety Laws and will not be considered for a Delay or Compensation Event, unless as provided in Section 12.04(d). Proposed Addendum: None
112.	Section 12.04 Safety Compliance Orders	If the Concessionaire is complying with all applicable safety standards, any Safety Compliance Order should trigger a compensation event to the extent it materially and adversely affects the Concessionaire.	C	Response: see comment #111 Proposed Addendum: None
113.	Section 13.01 – Delay Events	During the work period, the market standard is to see Excuse of Performance as opposed to the Time Impact Analysis.	C	Response: It is the Department’s standard practice to require a Time Impact Analysis. No change Proposed Addendum: None
114.	Section 13.02(d): Force Majeure Extensions: “The Concessionaire shall not be entitled to request an extension if the Project cannot be restored before the end of the existing Term (as forecasted in the Base Case Financial Model)...”	Please delete this section. This section is overly punitive to the Concessionaire as it could lead to a scenario where the Concessionaire has an already underperforming road and is burdened by a Force Majeure event and gets no compensation. For example, if the base case model anticipates a 40 year term but traffic is 30% below projections and we have a Force Majeure event in year 39, we would not be entitled to any extension nor compensation	A	Response: Agreed. Proposed Addendum: Section 13.02 (d) will be amended. Delete this section with the provision that the Department will consider an extension of term, not to exceed 10 years aggregate.
115.	Article 14 – Compensation Events; Contingency Amount; Department Changes; Positive Net Revenue Impacts	Will the \$50 million contingency for compensation events be escrowed?	C	Response: No. As presently contemplated by the CA, the Contingency Amount is not a funded account. It represents the amount that the Concessionaire will be required to expend from its own funds to address certain contingencies (“Contingency Compensation Events”), before the Department will be required to expend funds to address those Contingency Compensation Events. Once the Concessionaire has expended a sum equal to the Contingency Amount, the Department will be required to address such Contingency Compensation Events with its own funds. Proposed Addendum: None
116.	Section 14.01 (a) Compensation Events. “If the Concessionaire is affected by a Compensation Event, it shall give written notice to the Department within 15 days following the date on which the Concessionaire first became	Amend to allow 30 days. Additionally erase the words “or should have been aware using all reasonable due diligence”, if the Concessionaire is waiving forever his rights to a compensation to which he is entitled, the trigger has to be certain and not subject to interpretation.	A	Response: The Department will amend the time to 30 days. The other requested changes will not be made as this is standard language. Proposed Addendum: “30 days”

	aware (or should have been aware using all reasonable due diligence) that an event has occurred and that it is or will become a Compensation Event...”			
117.	Section 14.01 (b) Compensation Events. Timing to start negotiations to determine the Concession Damages.	This section allows 90 and 120 days for review and starting negotiations. Please amend each of them to say 30 days, this is sufficient to procure the evaluation of the event by a third party and should be enough to start negotiations. The Concessionaire may at this time be facing a problem of cash flow.	C	Response: This is standard language. Proposed Addendum: None
118.	Section 14.01 (d) Compensation Events. Discount rate.	Please amend the wording to read “For the purpose of discounting, the parties shall use the Equity IRR for calculating the...”	C	Response: No change Proposed Addendum: None
119.	Section 14.01 (d) Compensation Events. Deductible of USD 50,000.00 for Compensation Event.	Remove this deductible, if the amounts are owed to the Concessionaire there is no reason why the Concessionaire should be obligated to waive the first USD50,000.00.	C	Response: No change Proposed Addendum: None
120.	Section 14.01 (h) (i) Compensation Events. The Department shall have the right, in its sole discretion, to apply any available Contingency Amount to the Concessionaire Damages pursuant to Section 14.02.	Erase this section (i).	C	Response: No change Proposed Addendum: None
121.	Section 14.01 (k) (i), (ii) and (iii) Compensation Events. “The Department shall reimburse the Concessionaire for Allocable Costs [...] except for: (1) Hazardous Substances that were known by the Concessionaire to be present on or before the submission of its Detailed Proposal or should have been known by the Concessionaire to be present by undertaking reasonable investigation prior to submission of the	(a) The Department should be fully responsible for pre existing Hazardous Substances, erase reference to Allocable Costs and change to Concessionaire Damages. (b) Erase Exceptions (1) and (2). (c) in (4) change the negligence standard to gross negligence. (d) after the word “parties” in (5) please add “after commencement of the Works”. It’s controversial to determine what the Concessionaire should have reasonably foreseen. As the aim of the compensation event should be to lower the risk of the Concessionaire, this goal is not attained since there is no objective method to distinguish known from unknown haz-mats. Regarding subsections (ii) and (iii) please delete exception (A)	A	Response: (a) Department will be responsible as defined in 14.01(k) for Allocable Costs, (b) no, Concessionaire is responsible for known, pre-existing hazmat and hazmat related to ATCs (c) no, (d) agreed, after the word “parties” add “after the Concessionaire has conveyed title to the property to the Commonwealth” The Department has completed Phase I and Phase II hazmat investigations and provided this information to the Offerors for use in development of their cost estimates and associated risks. Proposed Addendum: modify as stated above in (d)

	concessionaire's Detailed Proposal; (2) Hazardous Substances that are present at the time or acquisition on parcels acquired to accommodate an Alternative Technical Concept approved by the Department as set forth in Exhibit B-4 of the Agreement; [...] (4) Allocable Costs incurred to rectify exacerbation, due to the negligence, recklessness or willful misconduct or [...] or (5) releases of Hazardous Substances by third parties.”			
122.	Section 14.02 Liability for Contingency Compensation Events.	Erase the entire section.	C	Response: No change Proposed Addendum: None
123.	Section 14.02 – Liability for Contingency Compensation Events	The Concessionaire is required to reserve \$50m in the project in case of a Compensation Event. Is that \$50m required to be escalated? If so, what is the escalation mechanism?	C	Response: The CA presently does not provide for an escalation of the Contingency Amount. Proposed Addendum: None
124.	Section 14.04 Positive Net Revenue Impacts; Net Cost Savings	Remove all except for subsection (e). As the term of the concession is governed by the PVR, it is logical that any Positive Net Revenue Impacts / Cost Savings should only impact the term of the Concession. In accordance with the compensation to the Concessionaire in the event of Negative Net Revenue Impacts / Cost Savings, there should be no revenue sharing with the Department.	C	Response: No change Proposed Addendum: None
125.	Section 15.01 (h) (i) and (ii) Indemnities of the Concessionaire. “(i) Any Concessionaire Party’s breach of duty or obligation that the Department owes to a third party, including Governmental Authorities, under Law or under any agreement between the Department and a third party, where the Department	Remove this section. The Concessionaire has an obligation to comply with the Agreement. The Department should be the one indemnifying and compensating the Concessionaire for any mismatch between the Agreement and any other agreement or obligation of the Department.	C	Response: No change Proposed Addendum: None

	has delegated performance of the duty or obligation to the Concessionaire pursuant to this Agreement, or (ii) the acts or omissions of any concessionaire Party which render the Department unable to perform or abide by a duty or obligation that the Department owes to a third Person, including Governmental Authorities, under any agreement between the Department and a third Person, where the agreement is previously disclosed or known to the Concessionaire;”			
126.	Section 15.03 Indemnification by the Department	Include standard indemnities in favor of the Concessionaire including in respect of (i) all Hazardous Substances for which it is liable. Make current section 15.03 bilateral (ii) Project Enhancements (iii) Other Facilities (section 12.03) (iv) third party claims in respect of Safety Compliance Orders.	C	Response: No change Proposed Addendum: None
127.	Section 16.01 (d) Management of Hazardous Substances. “The Concessionaire shall obtain all Governmental Approvals relating to Remedial Action, The Concessionaire shall be solely responsible for compliance with such Governmental Approvals and applicable Environmental Laws concerning or relating to Hazardous Substances.”	Include a standard of reasonable efforts. Should the Concessionaire not get the Governmental Approval despite its efforts it would be in breach of the agreement with no fault. Include as well an obligation by the Department to collaborate in getting the Governmental Approval.	C	Response: The Concessionaire bears the risk of obtaining Governmental Approvals. The Department will assist as per Section 8.07(d). Proposed Addendum: none
128.	Section 16.01 (f) Management of Hazardous Substances. “The Concessionaire shall carry out the responsibilities of generator of any Hazardous Substances.”	Amend to say: “The Concessionaire shall carry out the responsibilities of generator of any Hazardous Substances for which it is directly liable. The Department shall be considered generator for all third party generated Hazardous Substances and any other Hazardous Substance that was present at the Right of Way at the time of commencement of the Works.” Furthermore VDOT should also assume the arranger status.	D	Response: The Department will further consider revisions to this section. Revisions, if deemed appropriate by the Department, will be incorporated into an addendum. Proposed Addendum:

129.	Section 16.02 (a) (ii) Concessionaire Indemnifications Regarding Hazardous Substances. "Any Hazardous Substances on property within the Project Right of Way which were known by the Concessionaire prior to the submittal of its Detailed Proposal or should have been known by the Concessionaire by undertaking reasonable investigation prior to submission of its Detailed Proposal."	Erase subsection (ii)	C	<p>Response: No change</p> <p>Proposed Addendum: None</p>
130.	Section 18.01 (a) (ii) Commercial General Liability Coverage "The Concessionaire shall provide or cause to be provided commercial general liability insurance including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability with limits of at least \$2,000,000 per occurrence and \$4,000,000 million annual aggregate."	Contractual liability coverage should only be undertaken if available at commercially reasonable terms	C	<p>Response: Contractual Liability coverage is readily available in the commercial insurance market as a coverage part under the Commercial General Liability insurance policy. Thus, there is no reason to change this provision.</p> <p>Also, should a future issue develop relative to accessing this coverage; the Concessionaire is protected by Section 18.05, which already provides a procedure to address the "unavailability of insurance."</p> <p>Proposed Addendum: None</p>
131.	Section 18.01 (a) (v) Commercial General Liability Coverage "The Concessionaire shall provide or cause to be provided architects/engineers professional liability insurance covering the lead design engineer for acts, errors or omissions arising in connection with the Work for not less than \$15,000,000 any one claim and in the aggregate."	In our opinion the required Professional Indemnity Liability premium is too high. Please consider lowering the limit to \$10,000,000	C	<p>Response: Adequate professional liability insurance protecting the Department and other parties is an important component of the over-all risk management and insurance program for this project. Given the magnitude of the undertaking, a \$15 million requirement on the lead design firm is both reasonable and commercially available. Should the lead design firm not carry this level of coverage for their "practice" policy, there are options including requiring the lead design firm to procure a Project-Specific Excess policy (e.g., \$5 million excess of a \$10 million practice policy). In the alternative, the Concessionaire could purchase an Owner's Professional Protective Insurance (OPPI) policy providing excess coverage over the practice policies of all project design firms or a Project-Specific Professional Liability program covering all engineers, architects and related consultants on the project for all such liabilities.</p> <p>Proposed Addendum: None</p>

132.	Section 18.01 (a) (vi) Contractor's Pollution Liability The Concessionaire shall provide or cause to be provided contractor's pollution liability insurance to indemnify for bodily injury or property damage or amounts which the Contractor or his or her agents, subcontractors or employees are legally obligated to pay for clean up/remediation work arising out of the Work. Such insurance shall have minimum limits of \$10,000,000 any one claim and in the aggregate and shall remain in full force and effect until at least five years after the Final Acceptance Date. The Department is to be named as an additional insured on a primary, non-contributory basis.	In our opinion the required Contractor's Pollution Liability premium is too high. Please consider lowering the limit to \$5,000,000	A	<p>Response: The Department will reduce the requirement for Contractor's Pollution Liability insurance for the Design-Builder to \$5 million.</p> <p>Proposed Addendum: modify limits</p>
133.	Section 18.01(a)(vii) – Insurance Coverage Required	Insurance - Builders Risk - 100% of construction value is not market and is unreasonable. Suggest maximum probable loss as the market standard.	A	<p>Response: The Department will consider allowing Builder's Risk coverage to be placed with a limit equivalent to the maximum probable loss, subject to review and approval by the Department of the actual limit proposed.</p> <p>Proposed Addendum: Section 18.01(a)(vii) will be revised accordingly.</p>
134.	Section 18.01 (b) (i) (B) Property and Business Interruption Coverage "Coverage shall include the following: flood, earthquake, earth movement, collapse, water including overflow, leakage, utility interruption, debris removal, business ordinance or law for increased cost of construction, extra expense, valuable papers and terrorism."	Terrorism coverage should only be undertaken if available at commercially reasonable terms.	C	<p>Response: Similar to our response regarding "contractual liability coverage" (see comment #130 above), the Concessionaire is protected by the language of Section 18.05 which references how the issue will be handled if insurance becomes unavailable. This coverage- terrorism- is generally readily available outside of major centers like New York City and Washington, DC and is relatively inexpensive.</p> <p>Proposed Addendum: None</p>

135.	<p>Section 18.01 (b) (i) (C) Property and Business Interruption Coverage "Coverage shall also insure against interruption or loss of projected Gross Revenues for at least one full year from the occurrence of the risk, resulting from physical damage to the Project and any relevant feeder roads resulting from occurrence of an insured risk."</p>	<p>Business Interruption resulting from Property Damage of adjacent roads (not included under the Project) is always limited under any Property Damage Policy. Therefore, this text should be removed or limited as follows: maximum period of indemnity : 1 month (instead of 12 months) and include the following text "any relevant feeder roads within a 5 kilometers occurring within a radius of 5 kilometers of the insured property" or clarify if the aforementioned "relevant feeder roads" are included in the Project.</p>	A	<p>Response: Similar to our response regarding "contractual liability coverage" (see Reference #130 above), the Concessionaire is protected by the language of Section 18.05 which references how the issue will be handled if insurance becomes unavailable.</p> <p>Proposed Addendum: change "feeder road" to "connecting road"</p>
136.	<p>Section 18.01 (b) (iv) Builder's Risk. :Subject to the further requirements of any Development Contract, when the Concessionaire undertakes any construction, maintenance or repairs to the Project, including Project Enhancements or other improvements and betterments pursuant to this Agreement, the Concessionaire shall provide or cause to be provided builder's risk insurance at replacement cost for material, supplies, equipment, machinery and fixtures that are or will be part of the Project. Coverage shall include right to partial occupancy, earthquake, earth movement, and flood. The Department shall be named as an additional insured on a primary, non-contributory basis."</p>	<p>Builder's risk insurance coverage under the operation period should only be undertaken provided such cover is not available under the Property Damage Policy. Otherwise it should be included under operation property damage coverage.</p>	A	<p>Response: The Department agrees.</p> <p>Proposed Addendum: Add language that builders risk not be required if available under your commercial general liability insurance</p>
137.	<p>Section 18.01 (c) Railroad Protective Liability Insurance "The Concessionaire shall procure and keep in force, or cause to be procured and kept in force, railroad protective</p>	<p>The required Railroad Protective Liability Insurance coverage should be quantified and not opened to an agreement between the Department and a railroad. A limit of \$5,000,000 would agree with industry practice.</p>	C	<p>Response: The Concessionaire must contact each railroad to obtain information regarding the railroad's insurance requirements. The Department does not anticipate being party to the railroad agreement. Additionally, the Department does not have control over the amount or requirements for Railroad Protective policies.</p>

	<p>liability insurance as may be required by any railroad in connection with Work across, under or adjacent to the railroad's tracks or railroad right-of-way. In the event any agreement between the Department and a railroad includes railroad protective insurance requirements applicable to the Work, the Concessionaire shall procure and keep in force or cause to be procured and kept in force, insurance meeting such requirements. The railroad shall be the named insured on any such policy."</p>			<p>Proposed Addendum: None</p>
138.	<p>Section 18.02 (h) General Requirements Applicable to Insurance "other than for workers compensation insurance and automobile liability insurance, have each policy endorsed to the effect that the Department and the other insureds shall not be prejudiced by an unintended and/or inadvertent error, omission or misdescription of the risk interest in property insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured or failure to comply with a statutory requirement"</p>	<p>Insurers will be reluctant to accept this provision unless we limit the scope to " incorrect declaration of values ,provided that the total liability of the Underwriters under each Part of this Policy to the Assured collectively shall not exceed the Limit of Indemnity stated to be insured thereby"</p>	A	<p>Response: The language will remain as is. The Department is open to further discussion during proprietary meetings.</p> <p>Proposed Addendum: None</p>

139.	Section 18.03 (b) Proof of Coverage. "The Concessionaire shall deliver to the Department duplicate originals or copies of each insurance policy certified by the Concessionaire's insurance broker to be true and correct copies of the originals. The Concessionaire shall make such delivery within the time set forth in Section 8.02(a)(v), 8.02(b)(vi) or 9.01(a)(iv), as applicable, and thereafter during the Term within 60 days after each policy renewal or replacement."	Please remove reference to 8.02(a)(v) as per our comment to section 8.02(a)(v)	C	<p>Response: see comment #66</p> <p>Proposed Addendum: None</p>
140.	Section 19.05 (a), (f) and (g) Escrowed Pricing Documents	<p>Erase the phrase "one copy of all documentary information generated with respect to the expected costs of the Work available to the Concessionaire under the Design-Build Contract". The D&B team will provide a fix price and schedule to the Concessionaire guaranteed by the D&B contract. The Concessionaire does not necessarily know, nor will it have access to the breakdown of prices.</p> <p>Additionally, the level of detail required in the EPD documents is excessive, especially when the requirements are cascaded to lower tiers. The construction price should be broke down in the same degree of detail used in hard bid contracts. i.e. a comprehensive list of line items with the quantity and price next to them. Demanding any more detail from lower tiers would be very unpractical and contradicts the philosophy stated in point (d) For the same reason sections (f) and (g) should be erased.</p>	C	<p>Response: The Department requires this for resolution of potential future claims.</p> <p>Proposed Addendum: None</p>
141.	Section 19.05 (k) Escrowed Pricing Documents The documents placed into escrow (EPDs) to be used in the resolution of any Claim	This may be so only to the extent requested by a tribunal.	C	<p>Response: The Concessionaire must adhere to the minimum requirements for the EPDs. There is no tribunal.</p> <p>Proposed Addendum: None</p>
142.	Section 20.01 (a) Concessionaire Defaults. Failure to achieve financial close.	Delete. This is in accordance with our general comments to art. 7, it may be substituted with failure to commence work under section 8.03 (b) at the time the Concessionaire is obligated to commence work pursuant to the suggested wording.	D	<p>Response: The Department is evaluating this issue and may amend the document based on the results of the evaluation.</p>

				Proposed Addendum:
143.	Section 20.03 (b) Liquidated Damages for Failure to Achieve Financial Close.	Delete. May be substituted with LDs adjudicated for failure to commence work at the time the Concessionaire is obligated to commence work in accordance with Section 8.03 (b) pursuant to the suggested wording.	D	Response: The Department is evaluating this issue and may amend the document based on the results of the evaluation. Proposed Addendum: tbd
144.	Section 20.03 – Damages; Liquidated Damages for Certain Concessionaire Defaults	\$75m Liquidated Damages in case the Financial Close Deadline is breached is not acceptable as such and needs be qualified according to potential exceptional market conditions.	C	Response: The time allowed to achieve Financial Close will be extended, but no provision can be made for exceptional market conditions. Proposed Addendum: The addendum will revise 20.03 (b). For additional information, please see item #58.
145.	Section 20.03 – Damages; Liquidated Damages for Certain Concessionaire Defaults	On what basis is the \$21,000 per day Liquidated Damages for failure to achieve Substantial Completion calculated?	A	Response: The Department is updating its estimate for the liquidated damage amount necessary taking into consideration certain variables that impact the development and use of the roadway. Proposed Addendum: LD to be updated pending revised estimate.
146.	Section 20.04 Department Defaults.	Change to 45 days cure periods for defaults.	C	Response: No change Proposed Addendum: None
147.	Section 20.05 (a) (ii) Remedies of the Concessionaire upon Department Defaults.	Amend to read: “The Concessionaire may exercise any of its other rights and remedies provided for under this Agreement and applicable Law...”	A	Response: “Agreement” added. Proposed Addendum: ...under this Agreement or applicable Law...
148.	Section 20.05 (b) Remedies of the Concessionaire upon Department Defaults. “If the Department’s failure constitutes a Delay Event or Compensation Event, the Concessionaire’s sole recourse shall be to seek remedies pursuant to Articles 13 and 14.”	After “... to Articles 13 and 14” include the following language “; provided that if the Department fails to comply with any determination thereof, the Department will be in default and this section 20.05 will apply.”	C	Response: No change necessary. Failure to comply with Articles 13 and 14 may constitute a Department Default under Section 20.04. Proposed Addendum: None
149.	Article 21 Termination	All debt that is outstanding from time to time should be protected in all termination scenarios.	C	Response: No change

				Proposed Addendum: None
150.	Section 21.03 – Termination for a Force Majeure Event	<p>The current version of the Agreement contemplates no compensation at all to the Concessionaire if the Concessionaire elects to terminate for Force Majeure. This point is not as per current commercial market standards where Lenders are kept whole in case of any Termination for Force Majeure. Such exception is not acceptable to bidders and financiers.</p> <p>Clause 21.03 (b): The calculation compensation doesn't allow for recovery of the Equity in case of Force Majeure Termination elected by the Department. We expect this point to be a major deterrent for potential investors as those have no control on such decision while market standards for this point show that Equity investors get compensated.</p>	C	<p>Response: 1st part, no changes will be made. 2nd part, no changes will be made. It is the Department's position that it will not reimburse Equity investors.</p> <p>Proposed Addendum: None</p>
151.	Section 21.04 – Default Termination	The standard market terms are for the Grantor to keep Lenders whole while the Concessionaire will suffer the loss of its Equity and return. The absence of Compensation for the Lenders is unacceptable to them, especially as they do not benefit from a Direct Agreement.	C	<p>Response: No change</p> <p>Proposed Addendum: None</p>
152.	Section 21.04 (b) Default Termination. "If the Concessionaire terminates this Agreement for grounds which are later determined not to justify a termination by the Concessionaire pursuant to this Section 21.04(b), such termination shall be deemed to constitute a termination for Concessionaire Default pursuant to Section 21.04(a)."	Delete. The operation should be null and deemed never to have happened and the Concessionaire will bear the damages adjudicated by the person who determined that the termination was not justified.	C	<p>Response: This approach is not practical. The Department would have already resumed possession of the Project.</p> <p>Proposed Addendum: None</p>
153.	Section 21.05 Termination for failure to Achieve Financial Close.	Erase this section in accordance with our comment to section 7.	D	<p>Response: Requested Change not accepted.</p> <p>Proposed Addendum: The addendum will revise this section to reflect the forfeiture of the balance of the Committed Investment Security. For additional information, please see item #58.</p>
154.	Section 21.06 – Termination	The optionality for the Department to terminate this Agreement after 10 years is a deterrent to Equity Investors and Lenders	A	Response: The Department reserves the right to terminate for public convenience, at any time. Such termination would require the Department to provide appropriate compensation to

	for Convenience	who typically enter the Project with a longer time horizon.		the Concessionaire in such event. Note, that for consistency with the request made in Comment #169, the Department agrees to reduce both the Termination for Convenience Period and Lock-up Period from 10 to 5 years. Proposed Addendum: Section 21.06 and the definition for Lock-up Period will be modified.
155.	Section 21.06(c) Termination for Convenience. "In the event of termination pursuant to Section 21.06(a), the Department must pay to the concessionaire a sum equal to that set forth in option A or option B below, as selected by the Department in its sole discretion:..."	Amend to say: "In the event of termination pursuant to Section 21.06(a), the Department must pay to the concessionaire a sum equal to that set forth in option A or option B below, as selected by the Concessionaire in its sole discretion:..."	C	Response: No change Proposed Addendum: None
156.	Section 21.08(a) Liability After Termination; Consequences of Termination.	Erase the phrase: "Notwithstanding the foregoing any termination of this Agreement shall automatically extinguish any Claim of the Concessionaire to payment of Concessionaire Damages for adverse Net Cost Impacts and Net Revenue Impacts accruing after the effective date of termination from Compensation Events that occurred prior to termination."	C	Response: No change Proposed Addendum: None
157.	Section 21.09 Exclusive Termination Remedies	Erase this entire section and substitute with the following language: "In the event of Termination, the Department shall develop and operate the Project, imposing user fees for the use thereof and revenues shall be collected for the benefit of, and paid to, the Concessionaire and the Lenders until final payment of all amounts due."	C	Response: No change Proposed Addendum: None
158.	Section 22 – Dispute Resolutions	This section should include the right for Lenders. To the extent that an event of default then exists under the financing documents to initiate, or participate in, any dispute resolution proceedings under the Concession Agreement in the Concessionaire's name, place.	C	Response: The CA presently allows for the Lenders, through the Collateral Agent, to succeed to the rights of the Concessionaire in connection with the resolution of defaults by the Concessionaire. The Department is not willing to allow the participation of both the Concessionaire and the Lenders under such circumstances. Proposed Addendum: None
159.	Section 22.01 (a) Dispute Resolution; No Declaratory Judgment Procedure.	Erase the following phrase: "However, it is understood and agreed that: (i) matters that are expressly stated in this Agreement to be within the sole discretion of a party shall not be subject to this Section, but shall be final as determined by such party; and (ii) matters that are expressly stated in this Agreement to be within the good faith discretion of a party shall only be overturned if such party's actions or determinations are found to be arbitrary or capricious."	C	Response: No change Proposed Addendum: None

160.	Section 22.01 (f) Dispute Resolution; No Declaratory Judgment Procedure.	Erase this section	C	Response: This is standard language. Proposed Addendum: None
161.	Section 22.01 Dispute Resolution; No Declaratory Judgment Procedure.	Add a new section (g) waiving Sovereign Immunity of the Department to the extent permitted by law.	C	Response: The Department will not waive its sovereign immunity. Proposed Addendum: None
162.	Section 23.02 Department Reservation of Rights	Erase the phrase “without any financial participation whatsoever by the Concessionaire.” And amend the wording at the end of the section to read “The Department shall compensate the Concessionaire and owe Concession Damages on account of its exercise of Reserved Rights”	C	Response: No change Proposed Addendum: None
163.	Section 23.03 Disgorgement	Erase this section.	C	Response: No change Proposed Addendum: None
164.	Section 24.01 (f) Department Representations and Warrants	Erase the words “and to general principles of Equity”. Or, alternatively, please explain why these principles should apply to the Department.	C	Response: This is standard language. Proposed Addendum: None
165.	Section 24.01 Department Representations and Warrants	The Department will also represent (i) that access to accounts and databases as provided for in Section 5.03(e) of the Agreement, is in compliance with law (ii) all environmental approvals are final at the time of execution of the Agreement.	C	Response: (i) Correct; (ii) The Department can only make those representations set forth in the first sentence of Section 8.07(b). Proposed Addendum: None
166.	Section 24.02 (a) (ii) y (b) Concessionaire Representations and Warranties	Please Delete.	C	Response: No change Proposed Addendum: None
167.	Section 25.02(h) – Contracting	Transactions with Affiliates - these require VDOT consent and need to demonstrate "arms length terms". This may not be acceptable to the Offerors as VDOT may not consider all factors when making the consent decision (such as experience and ability to deliver, cost must not be the only consideration).	C	Response: This is standard language. Proposed Addendum: None

168.	Section 25.03 Small, Women-Owned and Minority Business (SWAM) and Disadvantaged Business Enterprise (DBE) Reporting. (b) During the Work Period, in an effort to comply with 49 CFR Part 26 and support Executive Order 33 (2006), the Department has established a goal of 13% for DBE participation and 27% for SWAM participation, such percentages relating to the value of the Design-Build Contact totaling an aggregate goal of 40% of the value of the Design-Build Contact during the Work Period	The aggregate 40% of the contract as goal for DBE/SWAM seems very difficult to meet. We suggest using the overall goal for VDOT during FY 2008-2009 which is a 8.88% according to the public notice for participation of DBEs.: Home>Business>Civil rights Division>Public notice for participation of DBEs.pdf	C	Response: See responses to Part 1 Proposed Addendum: None
169.	Section 26.01 – Transfers by the Concessionaire	Transfers of Equity interests during Lock up period. Ten years is a long time, suggest 5 years.	A	Response: The Department is willing to change to 5 years. Proposed Addendum: The time will be changed, additionally, the definition of Lock Up Period will be modified, see also comment #154.
170.	Section 26.01 (a) Transfer by the Concessionaire	Amend to say that “The Concessionaire shall not directly Transfer, or otherwise permit the direct transfer of, any or all of the Concessionaire’s Interest...” Please confirm that this section (a) is not intended to limit any transfer of shareholders’ interest unless by reference of Section 26.01(d)	C	Response: This section is intended to limit direct and indirect transfer of the Concessionaire’s Interest, including transaction that effect a Change of Control pursuant to 26.01(d). Proposed Addendum: None
171.	Section 26.03 Assignment by the Department	Amend the language to read “... provided that the successor or assignee has assumed and is able to perform all of the Department’s obligations, duties and liabilities under this Agreement and the Project Agreements then in effect in a manner that has no material adverse impact to the Concessionaire.”	C	Response: No change Proposed Addendum: None
172.	Section 26.07 Relationship of Parties	This section states that Concessionaire is not agent of the Department. Please amend this and expressly appoint the Concessionaire as the Department’s agent so that it may enforce toll violations.	C	Response: All toll operators have the legal authority to pursue violators regardless of whether they enter into agreement with the Department pursuant to VA code, section 46.2-819.1. Proposed Addendum: None
173.	Attachment 2 to Exhibit C	A cost of \$11.65 per one-notice transaction is a huge VDOT	C	Response: These fees will not be negotiated. The agreement for provision of services through the Department is at the Offeror’s option. The agreement is revised, including

		enforcement fee. Can this be negotiated?		applicable fees, annually. Proposed Addendum: None
174.	Exhibit A – Acronyms and Definitions Compensation Event	Provision (1), add gross to negligence of Concessionaire The list is currently narrow to a point that is not acceptable to bidders. It should include change in Federal law, change in tax regime and development of competing routes.	C	Response: No change Proposed Addendum: None
175.	Definition of Compensation Event	Add the following concepts: - Change in standards (5.03(c)) - Project Enhancements (12.02) - Development of Other Facilities (12.03) - Safety Compliance Orders (12.04) - Use of Reserved Rights (23.02) Additionally amend wording of the definition to say “provided that each of the above events neither is otherwise specifically dealt with in the Agreement nor arises solely by reason of...”		Response: 5.03(c) See also #21-23 12.02 – covered by 12.02 12.03 – no 12.04 – no 23.02 – no Proposed Addendum: None
176.	Exhibit A – Acronyms and Definitions Concessionaire Debt	The last sentence should read: incurred after and not prior to the date of Termination for Convenience, Force Majeure etc.	A	Response: Agree, sentence should read “after.” Proposed Addendum: edit as above
177.	Exhibit A – Acronyms and Definitions Delay Event	Overall, the list of Delay Events and Compensation is too restrictive and should include: Should include material adverse changes in financial market conditions during the period from Detailed Proposal Submittal until Financial Close. Should include delays caused by the performance of works carried out by a Governmental Authority or any utility or railway operator or Department employed contractor on utility relocations.	D C	Response: The Department is evaluating this issue and may amend the document based on the results of the evaluation. 2nd Comment - It is the Department’s position, that the Concessionaire bears the risk as related to performance of work by others. Delays caused by Governmental Authorities are covered in the definition of Delay Event (a)(iii). Section 8.08 further defines the Department’s position on Utility caused delays. Proposed Addendum: None

178.	Definition of Delay Event	Add the following concept: - Delays, disruptions or damages caused by any Utility Owner upon condemnation by the Department pursuant to Section 8.08 of the Agreement. Amend wording of the definition to say "provided that each of the above events neither is otherwise specifically dealt with in the Agreement nor arises solely by reason of..."	C	Response: This is standard language. Proposed Addendum: None
179.	Definition of Discriminatory Change in Law	Amend the definition: (i) where it says "solely against the Project" it should say "principally borne by the Concessionaire or private toll road operators in the State" (ii) where it says "For the avoidance of doubt, none of the following shall be a Discriminatory Change in Law..." it should say "For the avoidance of doubt, all of the following shall be a Discriminatory Change in Law..."	C	Response: No change Proposed Addendum: None
180.	Exhibit A – Acronyms and Definitions Financial Close Deadline	Financial Close Deadline shall be 180 days "unless reigning financial market conditions cause the terms and conditions of any Concessionaire Debt to be materially worse than at Detailed Proposal submittal, which shall constitute a Delay Event."	C	Response: The definition will be revised. Proposed Addendum: The addendum will revise the Financial Close Deadline to the date by which Financial Close must occur, which shall be no later than 18 months from the Agreement Date. For additional information, please see item #58.
181.	Definition of Financial Close Deadline	Delete. See comment to section 7. Should the Department wish to keep this concept it should provide the Offeror the ability to extend the period for two years from signature of the Agreement and the Concessionaire will not be obligated to initiate works until financial close is achieved.	A	Response: The definition will be revised. Proposed Addendum: The addendum will revise the Financial Close Deadline to the date by which Financial Close must occur, which shall be no later than 18 months from the Agreement Date. For additional information, please see item #58.
182.	Exhibit A – Acronyms and Definitions Force Majeure	Delete parenthetical "(other than the Department)".	C	Response: This is standard language. Proposed Addendum: None
183.	Exhibit A – Acronyms and Definitions Force Majeure	Please add terrorism, hurricane, force majeure related- evacuations to definition.	C	Response: This is standard language. Proposed Addendum: None
184.	Exhibit A – Acronyms and Definitions Lock-up Period	Lock-up Period should be reduced to the Work (=construction) Period.	A	Response: This will be reduced to 5 years, see also Item #169. Proposed Addendum:
185.	Exhibit A – Acronyms and	Should include interest costs as well.	C	Response: No change is necessary in view of the present definition.

	Definitions Net Cost Impact			Proposed Addendum: None
186.	Definition of Net Cost Impact	Erase section (b)	C	Response: No change Proposed Addendum: None
187.	Exhibit A – Acronyms and Definitions Performance Security	Will VDOT accept a Performance & Payment Bond from the Design Build Contractor in lieu of a Letter of Credit from the Concessionaire? If so, will VDOT accept Performance and Payment Bond forms similar to the standard Commonwealth of Virginia Department of Transportation Contract Performance and Payment Bond forms but running from the Design Build Contractor as Principal to the Concessionaire as Obligee and naming VDOT as an Additional Obligee guaranteeing construction obligations?	C	Response: The Department will not accept Performance and Payment bonds. Proposed Addendum: None
188.	Exhibit A – Acronyms and Definitions Reserved Rights	Very limiting upon Concessionaire; should allow for it to seize additional business opportunities during the Term within the Project such as via service stations etc in order to improve the expected revenue flows, which all things equal should mean an earlier Handback of the concession to VDOT.	C	Response: This is standard language. State law will not permit the development of service stations or other retail enterprises in connection with the development of PPTA projects. Proposed Addendum: None
189.	General Exhibit C and D	<p>The approach suggested entails several steps of reimbursements, suggested interactions and interrelations between VDOT and the Participant that do not generate value to the project. The same also introduces several uncertainties as regards costs and revenue streams that potentially substantially deteriorate the value of the project and to VDOT.</p> <p>An alternative approach may prove to be easier to manage and provide a clean cut between VDOT and the Participant allowing both to have 100% control of its own destiny, profitability and operations.</p> <p>Such alternative, in short, could be that the Participant provides VDOT with proof of vehicle passage (Tag transaction and/or LPN image) for which VDOT pays the Participant a fixed toll fee. Irrespective of if the vehicle has an account, is a violator etc.)</p> <p>VDOT will process these transactions and add appropriate</p>	C	Response: The agreement for provision of services through the Department is at the Offeror's option. The Department will not take the risk of toll and violation collection. Proposed Addendum: Note the ETC Agreement and the VPS Agreement will be deleted as exhibits to the C.

		<p>surcharges and/or admin fees and charge the vehicle owners directly, or proceed to court when necessary.</p> <p>We would be readily available to discuss and elaborate further on how we believe this would be of advantage to VDOT.</p>		
190.	Exhibit C – 7 – VDOT Standard of Care	<p>VDOT expressly disclaims any and all liability for, and provides no guarantee against, system failures, interruptions or other malfunctions.</p> <p>This is an unusual disclaimer for a commercial service agreement. Such disclaimer will unnecessarily reduce the value of the project.</p>	C	<p>Response: The agreement for provision of services through the Department is at the Offeror's option. The Department will not take the risk of system failures, interruptions or other malfunctions.</p> <p>Proposed Addendum: Note the ETC Agreement and the VPS Agreement will be deleted as exhibits to the CA.</p>
191.	Exhibit C – 10 – Term “..120 days” 11 – Termination of VPS Operations VDOT shall notify the Participant of VDOT's intention to terminate its existing agreements with VPS Providers, its operations of its Violation Processing Center, and/or the provision of Violations Processing Services.	<p>This provision would be acceptable should there already be a readily available alternative for the Participant to process its transactions. However, if such cannot be identified, a period in excess of 1 year appears more realistic.</p>	C	<p>Response: The agreement for provision of services through the Department is at the Offeror's option.</p> <p>Proposed Addendum: Note the ETC Agreement and the VPS Agreement will be deleted as exhibits to the CA.</p>
192.	Exhibit C – 13 – Payment Terms	<p>“...fees and charges set forth in Exhibit B (as amended from time to time).”</p> <p>This disclaimer allowing VDOT to adjust fees and charges requires a more in-depth discussion.</p> <p>All such uncertainties have the potential to significantly erode the value of the project.</p>	C	<p>Response: The agreement for provision of services through the Department is at the Offeror's option.</p> <p>Proposed Addendum: Note the ETC Agreement and the VPS Agreement will be deleted as exhibits to the CA.</p>
193.	Attachment 2 to Exhibit C	<p>It appears that further consideration needs to be given to suit an Open Road Tolling Environment (ORT). In an ORT the patrons need to be categorized in more sub-classes than in a</p>	C	<p>Response: Agree with the suggestion. However, we cannot commit to these at this time. At such time that the Department's toll processing services are modified to support video tolling in an ORT environment, the fee schedule may be modified accordingly. Recommend</p>

	V3 to V8	<p>conventional facility. Eg:</p> <ol style="list-style-type: none"> 1. Tag account holders 2. Video account holders 3. Infrequent users pre-paying 4. Infrequent users voluntary post-paying 5. Infrequent users post paying upon notice 6. Violators <p>The fee schedule needs to adopt an ORT environment.</p>		<p>no change in language.</p> <p>Proposed Addendum: None</p>
194.	Attachment 2 to Exhibit C v9	It is unclear to what level VDOT intends to forward such charges and to what extent such can be recovered. Clarification and detailing required.	C	<p>Response: The Department is open to further discussion in proprietary meetings.</p> <p>Proposed Addendum: None</p>
195.	General Attachment 3 to Exhibit C	It appears that the document requires several further adaptations to suit an Open Road Tolling Environment (ORT). In such a non-payer becomes a Violator only upon refusal to pay, or when fraudulent behavior is detected.	C	<p>Response: Agree with the suggestion. However, the Department cannot commit to these at this time. At such time that the Department's toll processing services are modified to support video tolling in an ORT environment, the fee schedule will be modified accordingly.</p> <p>Proposed Addendum: None</p>
196.	Exhibit D – Form of Electronic Toll Collection Agreement Section 2.6 – Payments by the ETC Servicer	<p>ETC Servicer is obligated to pay VDOT lost revenues or any other sum resulting from the default in or the non-performance of its duties and obligations under the ETC Services Agreement, VDOT shall promptly remit to the Participant its pro rata portion of such sums.</p> <p>This principle does not reflect common practice for a professional service agreement. In such, each party takes full liability for its responsibility, whether or not outsourced.</p>	C	<p>Response: The agreement for provision of services through the Department is at the Offeror's option.</p> <p>Proposed Addendum: None</p>
197.	Exhibit D – Section 3.3 – Modifications to Systems	There is no guarantee against adverse impacts to the performance of the hardware or software in Participant's or others' systems. While precautions will be taken by VDOT to help mitigate the risk of occurrence of such adverse impacts, VDOT shall not, unless it is in breach of its duty of due care and diligence, be financially responsible for the occurrence of	C	<p>Response: The Department is not liable. The agreement for provision of services through the Department is at the Offeror's option.</p> <p>Proposed Addendum: None</p>

		adverse impact to the Participant. This statement appears inadequate and not in line with common practice for a professional service agreement. Where any service provider is fully liable for actions or occurrences resulting in additional cost or loss of income by the service.		
198.	Part 3 - Exhibit G Form of Performance Security	Will the L/C or Performance and Payment Bond amount be \$125 million or \$225 million. There is a discrepancy in the Exhibit G Form of Performance Security	A	Response: The amount should be \$125 million. Proposed Addendum: Correct in Part 3 (Exhibit G) and ensure consistency with Part 1.