

INTERIM AGREEMENT
TO DEVELOP AND / OR OPERATE
THE I-95 / 395 HOT LANES PROJECT
IN VIRGINIA

DATED AS OF OCTOBER 24, 2006

BY AND AMONG

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

AND

FLUOR VIRGINIA, INC.,
a Delaware corporation

AND

TRANSURBAN (USA) DEVELOPMENT INC.,
a Delaware corporation

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EXHIBIT B: FORM OF GUARANTY OF PERFORMANCE AND COMPLETION

EXHIBIT C: CHAPTER 7 – GUIDELINES FOR PROCUREMENT AND MANAGEMENT

EXHIBIT D: DEPARTMENT DEBARMENT POLICY

EXHIBIT E: ADDITIONAL TERMS

This **INTERIM AGREEMENT** to develop and/or operate the I-95/395 HOT Lanes project in Virginia (the “Agreement”) is made and entered into as of October 24, 2006, by and among:

(1) the **VIRGINIA DEPARTMENT OF TRANSPORTATION** (“VDOT”), an agency of the Commonwealth of Virginia, whose address is 1401 East Broad Street, Richmond, Virginia 23219;

(2) **FLUOR VIRGINIA, INC.**, a Delaware corporation (“Fluor”), whose address is One Enterprise Drive, Aliso Viejo, CA 92656; and

(3) **TRANSURBAN (USA) DEVELOPMENT INC.**, a Delaware corporation (“Transurban”), whose address is 405 Lexington Avenue, 43rd Floor, New York, NY 10174.

RECITALS

WHEREAS, pursuant to the Public–Private Transportation Act of 1995, §§56-556 *et seq.* of the Virginia Code (the “PPTA”), the Commonwealth Transportation Secretary (the “Secretary”) has approved the procurement procedures in accordance with Virginia Code §56-573.1, and the Commonwealth Transportation Commissioner (the “Commissioner”) has approved the project described in Section 2.1 (the “Project”) in accordance with the Findings of Public Interest, attached as Exhibit A and incorporated by reference into this Agreement;

WHEREAS, the Parties have agreed to enter into this Agreement, consistent with the provisions of Virginia Code §56-566.1, to advance the development and/or operation of the Project; and

WHEREAS, the Parties agree that if a Comprehensive Agreement for the Project ultimately is executed, except as specifically may be provided in a Comprehensive Agreement, this Agreement no longer shall be of any force and effect, and the relationship of the Parties and the Project shall be governed by such Comprehensive Agreement and any other Project Agreements related to such Comprehensive Agreement.

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

ARTICLE 1 DEFINITIONS

1.1. Definitions. In this Agreement the following terms have the following respective meanings unless the context hereof clearly requires otherwise:

Agreement means this Interim Agreement.

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

Authorized VDOT Representative means the Commissioner, VDOT's Chief Engineer or any other person designated to act on behalf of VDOT by a certificate signed by the Commissioner and filed with the Private Entities.

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

Commonwealth means the Commonwealth of Virginia.

Completion Guaranty means the guaranty of performance and completion to be issued by an entity acceptable to VDOT to guaranty completion of the Project or any Phase thereof in accordance with the provisions of a Design-Build Contract, in substantially the form attached as Exhibit B with any changes as may be agreed upon by the parties thereto.

Comprehensive Agreement means a Comprehensive Agreement pursuant to the PPTA to develop and/or operate the Project among VDOT, and the Private Entities as described in Section 2.3, and all exhibits thereto.

CTB means the Commonwealth Transportation Board.

Day(s) mean calendar days, unless otherwise designated.

Design-Build Contract means any design-build agreement between VDOT and a Private Entity, or under a long-term concession structure between a design-build contractor and the party to the concession with VDOT, relating to the design and construction of the Project (or any Phase, as applicable).

Environmental Clearance Contingency means the written determination by an Authorized VDOT Representative, evidencing that VDOT has determined, in its reasonable discretion, that the Project (or any Phase, as applicable) is consistent with the alternative approved by FHWA through the Environmental Review Process.

Environmental Review Process means those procedures to be undertaken with respect to the Project (or any Phase, as applicable) to comply with Section 102 of NEPA.

Event of Default means an event of default described in Section 5.5.1 or 5.6.1, as applicable.

EZ Pass means the E-Z Pass Regional Electronic Toll Collection System.

Federal means of or relating to the central government of the United States of America.

FHWA means the Federal Highway Administration of the USDOT.

Financeable Traffic and Revenue Study means a traffic and revenue study with respect to the Project or any Phase, as applicable, addressing whether the related net revenues, after payment of the applicable roadway and electronic toll and violation enforcement systems operations and maintenance expenses, will support (a) investment grade credit ratings with

respect to publicly offered senior Project indebtedness from nationally recognized credit rating agencies or (b) other financing for the Project as evidenced by a firm commitment letter acceptable to VDOT from the provider proposed by the Private Entities of such other financing.

Financial Closing Date means the closing date of the issuance of tax-exempt bonds or the issuance of taxable debt and/or equity, the proceeds of which, in either case, are sufficient together with other available funds to finance the completion of the design and construction of the Project or the related Phase, as applicable.

Financial Plan Contingency means the written determination by VDOT evidencing approval, in VDOT's sole discretion, of a Plan of Finance submitted by the Private Entities in accordance with Section 3.2.

Fluor means Fluor Virginia, Inc., a Delaware corporation, and any successors and assigns permitted hereunder.

General Assembly means the General Assembly of the Commonwealth.

HOT means high occupancy toll, relating to a portion of a highway containing one or more travel lanes separated from other lanes that is accessed through an electronic toll collection system, and as further defined by the Virginia Code.

HOV means high occupancy vehicle, relating to one or more travel lanes of a highway reserved during periods designated by CTB, for the exclusive use of buses and vehicles transporting a specified number of occupants as determined by CTB.

Milestone has the meaning set forth in Article 4.

NEPA means the National Environmental Policy Act, 42 U.S.C. §§4321 *et seq.*, as amended and as it may be amended from time to time.

Parties mean VDOT, Fluor and Transurban, as signatories to this Agreement, each of whom is a "Party".

Phase(s) means any Project portion or portions of independent utility related to a separate Plan of Finance.

Plan of Finance means, as to the Project (or any Phase thereof, as applicable), a plan of finance for the Project (or such Phase thereof) acceptable to VDOT and to any applicable Federal agency having jurisdiction (*e.g.*, FHWA).

PPTA means the Public-Private Transportation Act of 1995, which is codified as Title 56, Chapter 22, §§56-556 *et seq.*, of the Virginia Code, as amended from time to time.

Private Entities or **Private Entity** means the Parties or a Party, as applicable, other than VDOT.

Project means the project described in Section 2.1.

Project Agreement means any of the agreements related to the Project between VDOT and one or more Private Entities or other parties acceptable to VDOT, each of which shall be incorporated by reference in the Comprehensive Agreement; and “Project Agreements” means all such agreements in the aggregate.

Project Management Plan means the project management plan required by Section 1904(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub.L. 109-59, 119 Stat. 1144), which amended 23 U.S.C. § 106(h) with respect to Major Projects (defined therein to be projects with an estimated total cost of \$500 million or more that receive Federal financial assistance).

Project Right of Way means all real property (which term is inclusive of all estates and interests in real property) necessary for ownership and operation of the Project, specifically including all property within the access control line for the Project.

Qualifying Costs means those reasonable costs incurred by a Private Entity in developing the Project, determined in accordance with Chapter 7 of VDOT’s current Guidelines for the Procurement and Management of Professional Services attached hereto as Exhibit C; *provided, however*, that to be a “Qualifying Cost,” such cost shall have been incurred by the Private Entity on or after February 1, 2006, and shall be a project development cost related primarily to the Project, including preliminary engineering, permitting, environmental and attorney and other third-party advisors costs, but excluding any expenses for lobbying and any expenses for business development not related to the Project, of which a Private Entity shall have provided VDOT written notice prior to incurring such costs and to which VDOT has not objected in writing within 15 Days after receipt of such notice, *provided* that such prior written notice (i) shall not be required with respect to third-party costs not in excess of \$50,000 per invoice and up to \$250,000 in the aggregate to any payee, and (ii) with respect to activities to be performed by employees of a Private Entity shall describe the general nature of such activities on a quarterly basis and no further prior notice shall be required for such activities. The Private Entities shall provide VDOT written reports, in such form as shall be reasonably acceptable to VDOT, of such cumulative Qualifying Costs incurred since February 1, 2006, as of the end of each calendar quarter commencing as of December 31, 2006, and continuing until the initial Financial Closing Date or earlier termination of this Agreement, within 14 Days after the end of such calendar quarter. Notwithstanding any other provision hereof or of any Project Agreement, (1) payment by VDOT of any amounts constituting Qualifying Costs shall be subject to appropriation by the General Assembly and allocation by CTB therefor and shall not accrue interest, and (2) if the source of original payment of any costs and expenses is public funds appropriated by the General Assembly, excluding proceeds of a TPOF loan, such costs and expenses shall not constitute Qualifying Costs.

ROD means a record of decision issued by FHWA pursuant to NEPA as a result of the Environmental Review Process.

Reserved Rights means all of the following:

- (a) subject to Section 7.16, the Commonwealth’s right to use, possess and enjoy any real and personal property over, on, under or adjacent to the Project Right of

Way for other transportation and transit facilities, including but not limited to tunnels, flyovers, interchanges and fixed guideways; and

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

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

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

(3) any equipment, facilities or capabilities for ITS studies or applications installed by VDOT and the right to install any such equipment, facilities or capabilities; and

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

Scope of Work means, as applicable, the documents attached to any (a) Design-Build Contract that contemplates all of the duties and services to be furnished and provided by the contractor authorized or planned to be authorized under such Design-Build Contract, and/or (b) agreement or long-term concession providing for operation and/or maintenance of the Project (or any Phase, as applicable).

Secretary means the Commonwealth Secretary of Transportation.

State Corporation Commission means the State Corporation Commission of the Commonwealth.

Termination Deliverables means Work Product and any other drawings, plans, specifications, studies, calculations, reports and documentation and other data, whether in paper copy or electronic format produced by or through a Private Entity developed specifically for the Project not previously delivered to VDOT, excluding, however, any proprietary methodologies, software code, calculations and formulas used to generate the traffic revenue reports and models. Termination Deliverables shall include without limitation the following relative to any traffic and revenue study undertaken with respect to the Project or any Phase: (a) any published results (in print or electronic), (b) any published reports (in print or electronic), (c) all assumptions used in the creation of such study or reports, (d) all survey data, including an inventory and mapping of data, (e) any MWCOC model with updated networks, including any modifications thereto, and (f) any FAMPO model with updated networks, including any modifications thereto.

TPOF means the Commonwealth Transportation Partnership Opportunity Fund created by §33.1-221.1:8 of the Virginia Code.

Transurban means Transurban (USA) Development Inc., a Delaware corporation, and any successors and assigns permitted hereunder.

USDOT means the United States Department of Transportation.

VDOT means the Virginia Department of Transportation, an agency of the Commonwealth, and any other Commonwealth agency succeeding to the powers, authorities and responsibilities of VDOT under this Agreement.

Virginia Code means the Code of Virginia of 1950, as amended.

Work Product means all drawings, plans, specifications, studies, calculations, reports and documentation and other data, whether in paper copy or electronic format produced by or through a Private Entity with respect to the Project that is furnished to VDOT. Work Product expressly excludes, however, proprietary methodologies, software code, calculations and formulas used to generate the traffic revenue reports and models, as well as any documents and information which (a) the Parties mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure under Section 7.15 and which is not conceived or first reduced to practice for Project purposes, such as but not limited to the proprietary financial and pricing information of the Private Entities, or (b) relate to the Plan of Finance, including any drafts thereof.

1.2. Rules of Usage. The following rules of usage shall apply to this Agreement unless otherwise required by the context:

(a) All personal pronouns, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and the plural shall include the singular.

(b) Unless otherwise indicated, references herein to articles, sections, subsections, paragraphs, clauses, subclauses, schedules or exhibits shall refer to the corresponding article, section, subsection, paragraph, clause, subclause, schedule or exhibit in or to this Agreement.

(c) Except where specifically restricted, reference to any Party includes that Party and its successors and permitted assigns.

(d) The headings, subheadings and table of contents are solely for convenience of reference and shall not constitute a part of this Agreement; nor shall they affect the meaning, construction or effect of any provision hereof.

(e) Except as otherwise expressly provided, reference to any agreement means such agreement as amended, modified or supplemented from time to time in accordance with the applicable provisions thereof.

ARTICLE 2
PROJECT DESCRIPTION
AND CORE TERMS OF THE AGREEMENT

2.1. Description and Scope of the Project. The general description of the Project is as follows: addition of up to three high occupancy toll (HOT) lanes on I-95/395, beginning south of the U.S. Route 17 By-Pass at Massaponax in Spotsylvania County and continuing north to south of the 14th Street Bridge in Arlington County, and other transportation facilities that benefit transit and other highway users; *provided* that the specific scope of the Project and any Phase shall be developed by the Private Entities under this Agreement, subject to approval thereof by VDOT.

2.2. Project Plan and Roles of the Parties. The Project shall be developed and operated pursuant to transactions described in a series of agreements setting forth distinct roles and responsibilities of VDOT and the Private Entities, as well as any other parties referred to therein. The Private Entities shall have the right to be the exclusive developers of the Project. The final Scope of Work for the Project or any Phase, as applicable, shall be developed upon satisfaction of the Environmental Clearance Contingency, and contemporaneously with the development of the Plan of Finance for the Project or any Phase. The roles of the Parties in furtherance of the Project shall be as follows:

.1 VDOT. VDOT shall be the sole owner of fee simple title, easement or other applicable property rights to the Project and the Project Right of Way and all improvements constructed, and all tangible personal property installed, thereon with full power and authority to possess, control and use the Project and Project Right of Way. VDOT shall:

.1 provide any public sector Commonwealth funds to the Project as specified in this Agreement or other Project Agreements;

.2 acquire title or other applicable property rights to, and as necessary and appropriate, condemn, all Project Right of Way, as provided in any Project Agreement; and

.3 pay to the Private Entities such amount as may be stipulated in this Agreement or in the other Project Agreements, in accordance with the conditions and limitations on payment contained in such agreements;

provided that the Parties acknowledge and agree that any payment of public funds is subject to Section 7.11.

.2 Private Entities. The Private Entities shall develop the final Scope of Work for the Project (or any Phase, as applicable), subject to approval by VDOT, and otherwise develop and/or operate the Project (or any Phase, as applicable), in accordance with all applicable laws, regulations and ordinances and shall have all of the applicable obligations, as set forth in this Agreement and a Comprehensive Agreement as

contemplated by the PPTA, including but not limited to the duties contemplated by Virginia Code §56-565.

.3 Other Parties. The Private Entities may propose other entities, acceptable to VDOT, to act as parties to other Project Agreements.

2.3. Comprehensive Agreement. Upon satisfaction of both the Environmental Clearance Contingency and Financial Plan Contingency, VDOT and the Private Entities shall negotiate in good faith with the objective to execute a Comprehensive Agreement for the Project. The Comprehensive Agreement shall be in accordance with the PPTA and shall, among other things: (a) establish the general structure and arrangements for implementing the Project; (b) define certain rights and responsibilities of the Parties respecting the Project; (c) contain provisions consistent with the provisions of this Agreement; (d) provide for development and/or operation of the Project, including without limitation a Plan of Finance and a Design-Build Contract; (e) provide for a Completion Guaranty; and (f) incorporate by reference any other Project Agreements related to the Project. It is understood that while the Parties may negotiate the terms of the Comprehensive Agreement prior to the satisfaction of the above-referenced contingencies, satisfaction of such contingencies is an express condition precedent to the execution and enforceability of the Comprehensive Agreement. Except as specifically may be provided in the Comprehensive Agreement, this Agreement shall be superseded once the Comprehensive Agreement is executed.

2.4. Additional Terms for Project Agreements. In addition to the specific terms set forth in the text of this Agreement, the Parties have agreed to the terms set forth on Exhibit E, which is incorporated herein by reference. The terms contained in Exhibit E, as applicable, shall be incorporated into and/or serve as the basis for the terms to be contained in the Comprehensive Agreement and/or other Project Agreements.

ARTICLE 3 COMPENSATION AND PROJECT FINANCING

3.1. Compensation for Services and Expenses in Connection with this Agreement. The following provisions shall constitute the full compensation to the Private Entities for services performed under this Agreement, and reimbursement to VDOT for expenses incurred in connection with this Agreement; *provided, however*, that the compensation and/or reimbursement rights of the Private Entities or VDOT, as applicable, in the event of a termination of the Agreement shall be governed by Article 5.

.1 Compensation to Private Entities. Subject to Section 7.11, the Private Entities shall be compensated for services performed under this Agreement as follows:

.1 The Private Entities shall be reimbursed by VDOT for 50% of Qualifying Costs incurred prior to the date any notice of termination in accordance with Article 5 is deemed effective pursuant to Section 7.3, including without limitation costs incurred pursuant to Section 3.3.3 in connection with completion of the environmental review and permitting required as part of the Environmental Review Process; *provided, however*, that costs paid with proceeds

of a TPOF loan shall not be reimbursable under this Section 3.1.1.1; *provided, further*, that the amount of any reimbursement to the Private Entities by VDOT under this Section 3.1.1.1 shall not exceed the amount of Qualifying Costs approved by FHWA for federal reimbursement.

.2 On the Financial Closing Date with respect to a Phase, from sources identified in the related Plan of Finance, the Private Entities shall receive an amount equal to: (a) reimbursement for all outstanding Qualifying Costs allocable to such Phase not reimbursable by VDOT pursuant to Section 3.1.1.1, plus (b) any amounts not constituting Qualifying Costs as shall be agreed to in the Plan of Finance.

.2 Reimbursable Qualifying Costs. Qualifying Costs reimbursable under Section 3.1.1 shall be calculated using a schedule of fixed billable rates for all personnel engaged in the development efforts. Such rates will be calculated and agreed using a multiplier developed in accordance with cost accounting principles contained in Part 31 of the Federal Acquisition Regulations, applied to average hourly wage levels per employment category, provided that such employment categories shall be subject to review and approval by VDOT. Separate categories will be provided for each of the Private Entities. Cost of time of partners or principals, to the extent that they perform technical or advisory services directly applicable to the project, shall be included at the technical or advisory rates stipulated in the schedule of fixed billable rates. The time of partners or principals as stated above shall be documented by the use of time sheets as the cost is incurred. The schedule of fixed billable rates will not be subject to adjustment for the duration of the Private Entities' efforts under this Agreement.

3. Reimbursement to VDOT. VDOT shall be reimbursed for the expenses certified by an Authorized VDOT Representative as being associated with VDOT's employees, third-party advisors (including but not limited to legal, financial and technical), and other expenses incurred on or after February 1, 2006, allocable to the Project and/or associated with the negotiation of this Agreement and all other Project Agreements, *provided* that VDOT has provided the Private Entities written notice prior to incurring third-party advisor costs and the Private Entities have not objected in writing within 15 Days after receipt of such notice, *provided, further*, that such prior written notice shall not be required with respect to third-party costs not in excess of \$50,000 per invoice and up to \$250,000 in the aggregate to any payee. Reimbursement shall be payable to, or as directed by, VDOT on the initial Financial Closing Date. Such expenses shall in no event exceed \$5 million without the Private Entities' prior written approval.

3.2. Plan(s) of Finance. As of the Agreement Date, sufficient funding to develop and operate the Project or any Phase has not been identified and agreed to. It is specifically agreed that the rights and obligations of the Private Entities to develop and/or operate the Project or any Phase are contingent on their development of a Plan of Finance for the Project or such Phase in accordance with Section 3.3.2 acceptable to VDOT and to any Federal agency having jurisdiction (*e.g.*, FHWA), as applicable. The Plan of Finance shall: (a) provide reasonable assurances that funding will be available to pay the development and/or operation services

included within the Project scope as and when expected to be due, including but not limited to (i) paying the contract price in accordance with the terms of any Design-Build Contract; (ii) paying or reimbursing expenses incurred by VDOT and compensation to the Private Entities as provided in Section 3.1, and repaying any loan from TPOF in accordance with the provision of the related loan agreement; (iii) paying or reimbursing the costs of issuance of any bonded debt or equity (including without limitation fees of underwriters, financial advisors and counsel); and (iv) paying or reimbursing the costs of other transportation facilities, including transit, that are not included in a Design-Build Contract; *provided, however*, that all Project operation and maintenance costs must be paid before, and have priority over, any payment or obligation to pay debt service and any payment not described in (i) or (ii) above; and (b) detail all sources of funds for payment of all costs, compensation and reimbursable expenses provided in Section 3.2(a) above.

3.3. Funding by the Parties. Except for the funds required to fulfill their obligations to perform services under this Agreement, neither VDOT nor the Private Entities shall have any obligation to make an investment in or advance funds to the Project or any Phase, except as may be provided in the Project Agreements executed by such Party.

.1 The Private Entities shall have the right and the obligation to make an investment at such returns and under such conditions as the Parties may agree. Except as provided in Section 3.3.3, the obligation of the Private Entities to fund such investment shall be subject to the development of a financially viable Plan of Finance and the execution of the Comprehensive Agreement, in each case acceptable in form and substance to VDOT and the Private Entities and subject to any final board approvals required by the Private Entities for such investments.

.2 The Private Entities shall develop a Plan of Finance for each Phase of the Project based on a comparative evaluation of all reasonable financial structures. Execution of a Comprehensive Agreement shall be subject to satisfaction of the Financial Plan Contingency for the Project or Phase, as applicable, including without limitation approval of scope, schedule, cost, and financing structure. The Plan of Finance shall, among other things, provide for transit funding included in the scope of each Phase, which will be either in the form of a cash payment at financial close of each Phase or, at the option of VDOT after consultation with CTB, paid over an agreed schedule. Payment of all Project operations and maintenance costs shall be made before any distribution for debt service, transit funding, or return on investment (whether investment of the Private Entities or any other person or entity). The Comprehensive Agreement shall designate the mechanism for distribution of any transit funding arising from the Project, including any revenue sharing that may be designated for transit funding.

.3 The Private Entities have applied for a loan from TPOF and shall comply with the provisions of any TPOF loan agreement. In the event that either Party determines that the amount of funding available from TPOF, together with any such appropriated and allocated amounts, will not be adequate to complete the Environmental Review Process and secure necessary permits, the Parties shall cooperate to identify funding sources adequate therefor, *provided* that the Private Entities shall complete studies and prepare documentation for the environmental review subject to VDOT

oversight if: (a) such environmental review does not entail an EIS, (b) the loan from TPOF is not less than \$10,000,000, and (c) VDOT has received concurrence from FHWA supporting VDOT's determination that projects currently identified as 0095-96A-107, P101 (UPC 70849) and 0095-966-109, P101 (UPC 70850) have logical termini, independent utility and are not connected actions. The Private Entities may elect in their discretion to undertake studies and prepare documentation for any applicable environmental review with respect to the Project, including an EIS and in any case costs incurred pursuant to this Section 3.3.3 shall be Qualifying Costs. In no event shall the Private Entities' responsibility under this Section 3.3.3 preclude any termination rights under Section 5.4.

.4 The Private Entities shall be responsible for completing the traffic and revenue analysis necessary for development of a Plan of Finance. The analysis shall be performed on a phased basis with the initial phase comprised of a preliminary study to support environmental reviews and development of a conceptual plan of finance. Subsequent analyses may be required to accommodate scope changes or to accommodate Project phasing. Prior to execution of a Comprehensive Agreement, the Private Entities shall complete, and deliver to VDOT, a Financeable Traffic and Revenue Study. Preliminary results of the analysis shall remain confidential. The Financeable Traffic and Revenue Study shall remain confidential until the related Financial Closing Date and made available only as required to support the placement of debt and private investment. The Private Entities agree to manage the traffic and revenue analysis for the Project in a collaborative, consultative, and transparent manner with VDOT consistent with the preservation of confidentiality of the results of the analysis. The Private Entities furthermore agree to cooperate with a review by VDOT of the Financeable Traffic and Revenue Study. VDOT agrees that such review will be of a limited scope and will not result in the generation of a separate traffic and revenue study.

ARTICLE 4 PROJECT MILESTONES

4.1. Milestones. The Parties shall cooperate to achieve the following milestones ("Milestones") by the dates set forth in this Article; *provided, however*, that the failure to achieve a Milestone shall not constitute an Event of Default by any Party or give rise to the right of a Party to exercise any rights and/or remedies at law or in equity. For the avoidance of doubt, the preceding sentence shall not impact the termination processes, and rights afforded the Parties to terminate, as set forth in Article 5.

4.2. Initial Phase Milestones.

.1 Not later than 90 Days after the Agreement Date, delivery by the Private Entities to VDOT of information and data necessary to prepare an initial Project Management Plan with respect to the Project, which initial Project Management Plan shall be provided by VDOT to FHWA.

.2 Delivery by the Private Entities to VDOT of a preliminary traffic and revenue study, to support the Environmental Review Process and development of a conceptual Plan of Finance, not later than 120 Days after Agreement Date. The Private Entities agree to cooperate with VDOT on a peer review of the preliminary traffic and revenue study that will have the purpose of ensuring that the Financeable Traffic and Revenue Study provides the reasonable assurances set forth in Section 3.2. The peer review will be of limited scope, including without limitation (i) the initial calibration of the consortium's traffic model and (ii) the assumptions used by the consortium for the base case project configuration.

.3 Completion of the Environmental Review Process and issuance of a ROD or other pertinent finding by FHWA, as applicable, with respect to the Project (or any Phase acceptable to VDOT) not later than December 31, 2008.

4.3. Project Determined to be Inconsistent with Alternative from Environmental Review Process. If (a) any Party determines, in its reasonable discretion, that the Project or any applicable Phase as submitted to the Environmental Review Process is inconsistent with the alternative approved by FHWA through the Environmental Review Process, or (b) the Parties agree in writing that the Project or any applicable Phase has changed since it was submitted to the Environmental Review Process and that such changed Project or Phase is inconsistent with the alternative approved by FHWA through the Environmental Review Process, then: (i) VDOT and the Private Entities each may terminate this Agreement pursuant to Section 5.4; or (ii) VDOT and the Private Entities may agree, in writing, not to terminate the Agreement (subject to subsection .3 below) and in such event the Parties shall cooperate to achieve the following Milestones, as applicable:

.1 solely in the situation described in (a) above, within six months after issuance of a ROD or other pertinent finding, attempt to revise the Project or any Phase, as applicable, in a manner acceptable to VDOT and the Private Entities so that the revised Project or such Phase is, in VDOT's reasonable discretion, consistent with the selected alternative;

.2 within 24 months after issuance of a ROD or other pertinent finding complete any additional environmental or FHWA review needed to evaluate the revised Project or Phase or other alternatives, including, without limitation, approval with respect to the Project or such Phase from any applicable FHWA designated Metropolitan Planning Organization (*i.e.*, the National Capital Region Transportation Planning Board ("TPB") or Fredericksburg Area Metropolitan Planning Organization ("FAMPO")) for any region in which all or a portion of the Project or such Phase, as applicable, is located, leading to a re-evaluation determination by FHWA; and

.3 within three months after issuance of a re-evaluation determination by FHWA, VDOT shall determine in its reasonable discretion whether the revised Project or Phase is consistent with the alternative approved by FHWA through the Environmental Review Process and any additional environmental or FHWA review. If it is determined to be inconsistent with the alternative selected, VDOT or the Private Entities may terminate this Agreement in accordance with Section 5.4.

4.4. Satisfaction of the Environmental Clearance Contingency. If the Environmental Clearance Contingency has been satisfied, the Parties shall cooperate to achieve the following Milestones:

.1 not later than three months after the date of the written determination evidencing satisfaction of the Environmental Clearance Contingency identify the initial Phase, if applicable, to be developed and/or operated;

.2 complete negotiations of the Project Agreements described in Sections 2.3 and 2.4, as follows:

.1 not later than six months after the date of the written determination evidencing satisfaction of the Environmental Clearance Contingency, satisfy the Financial Plan Contingency for the Project or Phase, as applicable;

.2 not later than nine months after the date of the written determination evidencing satisfaction of the Environmental Clearance Contingency, develop an operation plan for the Project or Phase, as applicable, acceptable to the Commissioner or his designee, which shall address, among other things, maintenance, HOT lanes toll operations and enforcement, connector/distributor lanes, HOV requirements, EZ Pass interoperability and transit assistance and accommodation;

.3 not later than six months after the date of the written determination evidencing satisfaction of the Financial Plan Contingency, (a) delivery by the Private Entities to VDOT of a Financeable Traffic and Revenue Study, and (b) unless this condition is waived by FHWA, the Private Entities shall have performed a value engineering study, the results of which shall be set out in a formal report delivered to VDOT and FHWA outlining recommendations for improving the Project and/or reducing its overall cost; and

.4 not later than eight months after the date of the written determination evidencing satisfaction of the Financial Plan Contingency, complete negotiation of the Comprehensive Agreement in execution form; *provided* that the Comprehensive Agreement shall be executed by the Commissioner only after a finding by the Commissioner or his designee that any funds identified in the Plan of Finance that are subject to appropriation by the General Assembly and allocation by the CTB are legally available, or are reasonably expected to be legally available at the time required by the applicable payment schedule noted in the Design-Build Contract or other pertinent Project Agreement.

4.5. Additional Phase Milestones. The Parties may agree in writing, and shall agree in the Comprehensive Agreement, to Milestones for any additional Phases of the Project similar to those set forth above and/or a methodology for establishing Milestones for further Phases.

4.6. Amendment of Milestones. The Parties may agree to extend or otherwise amend any Milestone at any time by mutual agreement in writing, executed on behalf of VDOT by an Authorized VDOT Representative.

ARTICLE 5 TERMINATION AND DEFAULT

5.1. Termination upon Expiration of Term or Execution of a Comprehensive Agreement. Except as specifically may be provided in a Comprehensive Agreement, all the rights and obligations of the Parties under this Agreement shall cease and terminate without notice or demand on the earlier of: (a) the execution by all parties thereto of a Comprehensive Agreement; or (b) the date certain of December 31, 2012, unless such rights and obligations have been terminated earlier in accordance with the following provisions of this Article 5.

5.2. Termination for Public Convenience. VDOT may terminate all of the rights and obligations of the Private Entities under this Agreement if VDOT determines, in its sole discretion, that such action is in the best interests of the public. If VDOT intends to take such action, it shall deliver to the Private Entities a notice (the “Notice of Termination for Public Convenience”), which shall identify, among other things, the process by which the Parties shall wind down their activities under this Agreement. If any other Project Agreement is in effect as of the date of such Notice, the Parties shall comply with the applicable termination for convenience provisions of such Project Agreements. As the sole and exclusive compensation to the Private Entities (other than any compensation as may be applicable under Section 5.9) for a Termination for Public Convenience, subject to Section 7.11 VDOT shall reimburse the Private Entities, as applicable, for Qualifying Costs incurred prior to the date such Notice is deemed effective hereunder pursuant to Section 7.3; *provided, however*, that any amount payable pursuant to this Section 5.2 shall not duplicate any amounts payable by VDOT pursuant to Section 3.1.

5.3. Termination by Mutual Agreement. VDOT and Private Entities may mutually agree in writing to end the contractual relationship established under this Agreement and waive and forego any and all rights, benefits and obligations between and among them under this Agreement.

5.4. Termination Related to Contingencies.

.1 In the event that any Party determines that the Project or any Phase, as applicable, is not consistent with the alternative approved by FHWA through the Environmental Review Process, such Party may terminate this Agreement upon 30 Days written notice to the other Parties. Each Party shall endeavor to make such determination within 30 Days after issuance of a ROD or other pertinent finding by the FHWA, but in no event later than 60 Days thereafter.

.2 In the event that any Party determines that the Project or any Phase, as applicable, is not viable based on the results of the Financeable Traffic and Revenue Study or the inability to obtain approval on a timely basis by any Federal agency having jurisdiction (*e.g.*, FHWA) of any financial (*e.g.*, Plan of Finance) or operational (*e.g.*,

tolling authority or agreement) terms necessary to develop or operate the Project in accordance with the Detailed Proposal with respect to the Project dated June 3, 2005, such Party may terminate this Agreement upon 30 Days written notice to the other Parties.

.3 In the event of a termination pursuant to this Section 5.4, the Parties shall have no further obligation to each other with respect to the Project, this Agreement or any other Project Agreement. Except as specifically may be provided in Section 3.1, each Party shall bear its own costs and expenses (including without limitation attorney's fees, costs incurred for any studies or analyses and preliminary engineering and development costs and expenses) incurred in connection with, arising out of or pertaining to the Project, this Agreement or any other Project Agreement.

5.5. Termination by VDOT Arising from Default of Private Entity. If there is an Event of Default by any Private Entity under this Agreement, VDOT shall have the right to terminate this Agreement for default, after affording the defaulting Party and the other Private Entities the opportunity to cure the default as provided below. Such termination shall be referred to as a "Termination for Private Entity Default."

.1 Events of Default. Each of the following shall constitute an Event of Default by a Private Entity:

.1 failure to undertake reasonable efforts to perform any material obligations under this Agreement, including but not limited to the obligation to develop an acceptable Plan of Finance;

.2 material inaccuracy in any representation or warranty made by a Private Entity in this Agreement, including but not limited to the provisions of Sections 7.4 and 7.9;

.3 failure to timely execute and deliver any Project Agreement after negotiations relating to such Project Agreement have been completed, including but not limited to the Completion Guaranty; or

.4 commencement of any insolvency, liquidation, bankruptcy, reorganization, appointment of a trustee, receiver or liquidator, or other proceeding of any kind, or any voluntary or involuntary proceeding of a similar nature, under Federal or state law, indicating a substantial risk that the Private Entity is or may be unable to fund and/or perform any and all of the obligations of the Project as contemplated in this Agreement.

.2 Notice of Default and Cure. If VDOT decides to exercise its right to terminate for default by any of the Private Entities, it shall provide written notice of the default to all Private Entities, including a detailed statement describing the event(s) of the default ("Notice of Private Entity Default"). The defaulting Private Entity shall have a period of 60 Days from receipt of the Notice of Private Entity Default in which to cure the default; *provided, however*, that: (a) if the default is based on Section 5.5.1.1, 5.5.1.2,

or 5.5.1.3 and is of such a nature that the cure cannot with diligence be completed within such time period; and (b) the Private Entity has commenced meaningful steps to cure, as agreed to by VDOT, immediately after receiving the Notice of Private Entity Default, then the Private Entity may be provided with an additional period of time as reasonably necessary to cure the default not to exceed 180 Days from the Notice of Private Entity Default.

.3 Rights of the Non-Defaulting Private Entities to Substitute for the Defaulting Party. A non-defaulting Private Entity may propose a new entity to act as a substitute for the defaulting Private Entity in the performance of this Agreement and any other Project Agreements to which the defaulting Private Entity's rights have been terminated. Such substitution shall be allowed only if mutually acceptable to VDOT and all other non-defaulting Parties, and shall be accomplished by execution of such agreements, novations, or other documents as may be required by VDOT. Any such substitutions shall occur within the cure periods specified above; *provided, however*, that VDOT shall have the right, in its sole discretion, to extend the time by which the non-defaulting Private Entities shall have the ability to find an acceptable substitute.

.4 VDOT Remedies for Private Entity Default. If the default by the Private Entity has not been fully cured within the applicable cure period, or if a substitute Private Entity has not been agreed upon as set forth in subsection .3 above, then VDOT shall have the right, in its sole discretion, to terminate this Agreement and/or the defaulting Private Entity by issuing a notice of such termination ("Notice of Termination for Default of Private Entity"), whereupon VDOT shall then have one or more of the following remedies:

.1 Reimbursement to VDOT for Monies Paid under this Agreement. Any Private Entity terminated for default shall reimburse VDOT for (a) all funds paid by VDOT to the date of the Notice of Termination for Default of Private Entity to the defaulting Private Entity, and (b) expenses incurred to the date of the Notice of Termination for Default of Private Entity for which VDOT would be entitled to receive reimbursement under Section 3.1.3. Such payments shall be made within 30 Days after the Notice of Termination for Default of Private Entity. The defaulted Private Entity shall have no right to receive any compensation whatsoever under this Agreement.

.2 Reimbursement to TPOF for Monies Distributed from TPOF. Notwithstanding Section 5.5.4.1, any Private Entity terminated for default shall reimburse to TPOF all monies distributed under the terms of any TPOF loan with respect to the Project, if and to the extent required by, and in accordance with, the related TPOF loan agreement. As of the date of the Notice of Termination for Default of Private Entity, there shall be no further right to receive any other distributions of any TPOF loan.

5.6. Termination by Private Entity Arising from VDOT Default. If there is an Event of Default by VDOT under this Agreement, the Private Entities shall have the right to

terminate this Agreement for default, after affording VDOT the opportunity to cure the default as provided below. Such termination shall be referred to as a “Termination for VDOT Default.”

.1 Events of Default. Each of the following shall constitute an Event of Default by VDOT:

.1 failure to undertake reasonable efforts to perform any material obligations under this Agreement, including but not limited to making payments as required by Section 3.1.1;

.2 material inaccuracy in any representation or warranty made by VDOT in this Agreement, including but not limited to the provisions of Sections 7.4 and 7.9; or

.3 the General Assembly shall enact legislation, and such legislation shall become effective, which (a) the Commonwealth intends to impact or does impact, only this Agreement; and (b) materially impairs the rights of a Private Entity under this Agreement to plan and cause the development of the Project, all as provided for in this Agreement and any other Project Agreement.

For the avoidance of doubt, except as provided in Section 5.6.1.3, the Private Entities hereby acknowledge that no act or omission of any Federal, state, regional or local government or agency thereof, other than VDOT, shall be construed to constitute a VDOT Event of Default.

.2 Notice of Default and Cure. If the Private Entities decide to exercise their right to terminate this Agreement for default of VDOT, they shall provide written notice of the default to VDOT, including a detailed statement describing the event(s) of the default (“Notice of VDOT Default”), promptly after a Private Entity knew, or in the reasonable exercise of diligence should have known, of the alleged default. VDOT shall have a period of 60 Days from receipt of the Notice of VDOT Default to cure the default; *provided, however*, that if a VDOT default is of such a nature that the cure cannot with diligence be completed within such time period and VDOT has commenced meaningful steps to cure immediately after receiving the Notice of VDOT Default, then VDOT shall have such additional period of time as is reasonably necessary to cure the default not to exceed 180 Days from the Notice of VDOT Default.

.3 Private Entities’ Remedies for VDOT Default. If the default by VDOT has not been cured in accordance with subsection .2 above, the Private Entities shall have the right, in their sole discretion, to terminate this Agreement by issuing a notice of termination (“Notice of Termination for VDOT Default”) and require VDOT to reimburse the Private Entities, as applicable, for Qualifying Costs, subject to Section 7.11.

5.7. Termination for Failure to Meet Milestones.

.1 If any Milestone with respect to the Project or a Phase set forth in Article 4, or agreed to in accordance with Section 4.5, is not achieved by the date set forth therein or agreed to, as applicable, as the same may be extended in accordance with Section 4.6, VDOT may terminate this Agreement and any related Project Agreement with respect to the Project or such Phase and all subsequent Phases, upon 30 Days written notice to the Private Entities.

.2 If any Milestone with respect to the Project or a Phase set forth in Article 4 or agreed to in accordance with Section 4.5 is not achieved by the date set forth therein or agreed to, as applicable, as the same may be extended in accordance with Section 4.6, for any reason outside the reasonable control of any Private Entity, any Private Entity may terminate this Agreement and any related Project Agreement with respect to the Project or such Phase and all subsequent Phases, upon 30 Days written notice to VDOT.

.3 If this Agreement or any other Project Agreement is terminated in whole or in part with respect to the Project or any such Phase in accordance with this Section 5.7, the Parties shall have no other obligations to each other with respect to the Project or such Phase, as applicable, subject to Section 5.9, and each Party shall bear its own costs and expenses (including without limitation attorney's fees, costs incurred for the studies and preliminary engineering and development costs and expenses) incurred in connection with, arising out of or pertaining to the Project or this Agreement.

5.8. Termination for Debarment, Etc.

.1 VDOT shall have the right to terminate the rights of any Debarred Party, as herein defined, under this Agreement and any other Project Agreements if:

.1 a Private Entity (the "Debarred Party"), or any of its respective officers or management employees has been jointly or individually (a) debarred or prohibited from participating in a Federally funded project, (b) debarred by VDOT as a result of a violation of VDOT's debarment policy set forth in Exhibit D (which shall apply to the Project), or (c) debarred by any other agency of the Commonwealth; or

.2 the Debarred Party, or any of its officers or management employees, has been indicted or convicted of, or has pled guilty or nolo contendere to, a violation of Commonwealth or Federal law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows a similar lack of moral or ethical integrity, as a result in whole or in part of activities relating to any project in the Commonwealth.

.2 If VDOT exercises its right of termination under Section 5.8.1, VDOT shall deliver written notice of such termination to each Private Entity and neither the Debarred Party nor VDOT shall have any further obligations to each other with respect to

the Project or any Project Agreement and the Debarred Party shall not be entitled to any compensation under any Project Agreement except in accordance with Section 5.9. Notwithstanding the foregoing, the rights and obligations of all parties other than the Debarred Party under this Agreement and any other Project Agreements shall not be affected solely as a result of such termination of the rights of the Debarred Party.

.3 VDOT and all other Parties to this Agreement (other than the Debarred Party) shall cooperate in good faith to identify and substitute as a party to this Agreement and any other Project Agreements as to which the Debarred Party's rights have been terminated by VDOT pursuant to Section 5.8.1, an entity that is mutually acceptable to VDOT and such other Parties.

5.9. Delivery of Termination Deliverables. On the effective date of termination of this Agreement for any reason, the Private Entities shall have delivered to VDOT a copy of any and all Termination Deliverables, and VDOT shall pay to the Private Entities, as applicable, an amount equal to the fair market value of such Termination Deliverables, if any, as determined by VDOT in its reasonable discretion, less the then outstanding amount of any TPOF loan; *provided, however*, that such fair market value shall not exceed the total amount of Qualified Costs incurred by the Private Entities; *provided, further*, that in the case of a termination under Section 5.5, the Private Entities shall deliver to VDOT all Termination Deliverables at no cost whatsoever to VDOT; and *provided, further*, that in the case of a termination under any section other than Section 5.5, any amount payable by VDOT under this Section 5.9 shall not duplicate any amounts payable by VDOT pursuant to Sections 3.1 and 5.2. VDOT shall have the full and unencumbered right to use the Termination Deliverables. Notwithstanding any other provision, any amounts payable pursuant to this Section 5.9 shall be subject to Section 7.11.

5.10. Liability after Termination. If this Agreement is terminated by reason other than default, thereafter no Party shall have any further obligation or liability to any other Party other than for performance of their respective obligations expressly stated in this Agreement or other Project Agreement to survive termination or by their sense and context are intended to survive termination. If this Agreement is terminated for default, such termination shall not excuse the defaulting Party from any obligation or liability arising out of such default as provided in this Agreement or any Project Agreement.

5.11. Exclusive Termination Remedies. This Article 5, together with the express provisions on termination set forth in any other Project Agreement, set forth the entire and exclusive provisions and rights of VDOT and the Private Entities regarding termination of this Agreement and the Project Agreements to which they are a party, and any and all other rights to terminate at law or in equity are hereby waived to the maximum extent permitted by law.

ARTICLE 6 DISPUTE RESOLUTION

6.1. Administrative Process. The Parties shall endeavor to resolve any dispute that may arise between them through good faith negotiations. If the dispute is not resolved to the mutual satisfaction of all Parties within 30 Days after written notification of a problem or claim,

or such longer time as is mutually agreed, then such dispute shall first be submitted administratively as set forth below.

.1 The Private Entity shall submit to an Authorized VDOT Representative a written claim for actual costs for material, labor and equipment, an original and three legible copies, which shall set forth all facts, including all pertinent data and correspondence that may substantiate the claim. Within 90 Days from the receipt of the claim, VDOT shall make an investigation and notify the Private Entity by registered mail of its decision. However, by mutual agreement, the Parties to the dispute may extend such 90 Day period for another 30 Days.

.2 If the Private Entity is dissatisfied with the decision, it shall notify the Commissioner in writing, within 30 Days from the receipt of VDOT's decision, that it desires to appear before him, whether in person or through counsel, and present additional facts and arguments in support of this claim. The Commissioner, or his designee, shall schedule and meet with the Private Entity within 30 Days after receiving the request, *provided* that such meeting may occur after 30 Days but not later than 60 Days after receiving the request by mutual agreement between such Private Entity and the Commissioner. Within 45 Days from the date of the meeting, the Commissioner, or his designee, shall investigate the claim, including the additional facts presented, and notify the Private Entity in writing of his decision, *provided* that such 45 Days may be extended for up to another 30 Days by mutual agreement between such Private Entity and the Commissioner. If the Commissioner deems that all or any portion of a claim is valid, he shall have the authority to negotiate a settlement with the Private Entity subject to the provision of Virginia Code §2.2-514.

.3 If the Private Entity is dissatisfied with the decision of the Commissioner, it may institute a civil action as to such portion of the claim as is denied by the Commissioner in accordance with Virginia Code §33.1-387.

6.2. Litigation. All litigation between the Parties arising out of or pertaining to this Agreement or its breach shall be filed, heard and decided in the Circuit Court of the City of Richmond, which shall be the exclusive jurisdiction and venue for any such civil actions brought by any Party against another Party; *provided, however*, that the foregoing does not affect any claims or matters which are governed by a different dispute resolution procedure set forth in any other Project Agreement.

6.3. Attorneys' Fees. Each Party shall bear its own attorney's fees and costs in any dispute or litigation arising out of or pertaining to this Agreement or any other Project Agreement, and no Party shall seek or accept an award of attorney's fees or costs.

6.4. Declaratory Judgments. As permitted by Virginia Code §56-568 as it exists on the Agreement Date hereof, the Parties expressly agree to waive and declare inapplicable any requirement under Virginia Code §56-568 that the State Corporation Commission issue a declaratory judgment regarding a material default (as defined in Virginia Code §56-557) as a prerequisite to either Party exercising any remedy available under this Agreement, any other Project Agreement, or applicable law.

**ARTICLE 7
MISCELLANEOUS**

7.1. Assignment.

.1 VDOT may transfer and assign its interests in the Project, this Agreement and any other Project Agreements to any other public agency or public entity as permitted by law, *provided* that the successor or assignee has assumed all of VDOT's obligations, duties and liabilities under this Agreement and the Project Agreements then in effect, and has provided the Private Entities with reasonable assurance of its legal and financial authority, ability and resources to honor and perform the same.

.2 The Private Entities shall not assign their rights or obligations under this Agreement without the prior written consent of VDOT.

.3 If any Party changes its name, such Party agrees to promptly furnish each of the other Parties with written notice of change of name and appropriate supporting documentation.

7.2. No Gift or Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Project, Project Right of Way or Work Product to VDOT or the general public or for any public use or purpose whatsoever, or be deemed to create any rights in the Project, Project Right of Way or Work Product except as expressly set forth herein.

7.3. Notices. Whenever under the provisions of this Agreement it shall be necessary or desirable for one Party to serve any notice, request, demand, report or other communication on another Party, the same shall be in writing and shall be effective for any purpose when actually received by the addressee or when served: (a) personally; (b) by independent, reputable, overnight commercial courier; (c) by facsimile transmission, where the transmitting Party includes a cover sheet identifying the name, location and identity of the transmitting Party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission is immediately followed by service of the original of the subject item in another manner permitted herein; or (d) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to VDOT:	Virginia Department of Transportation 1401 E. Broad Street Richmond, VA 23219 Attn: Chief Engineer Facsimile: (804) 786-2940
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<i>With copies to:</i>	Virginia Department of Transportation 1401 E. Broad Street
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Richmond, VA 23219
Attn: Director, IPD
Facsimile: (804) 786-7221

and

Virginia Department of Transportation
6400 Commerce Street
Springfield, VA 22150
Attn: Project Manager, I-95/395 HOT Lanes Project
Facsimile: (703) 313-6600

and

Office of the Attorney General
900 E. Main Street
Richmond, VA 23219
Attn: Senior Assistant Attorney General / Chief
Transportation Section
Facsimile: (804) 786-9136

If to Fluor:

Fluor Virginia, Inc.
6767 Forest Hill Avenue, Ste. 305
Richmond, VA 23225
Attn: Herb Morgan
Facsimile: (804) 560-9381

With a copy to:

Richard A. Fierce, Esquire
100 Fluor Daniel Drive
Greenville, SC 29607

If to Transurban:

Transurban (USA) Development Inc.
405 Lexington Avenue, 43rd Floor
New York, NY 10174
Attn: Michael Kulper
Facsimile: (646) 278-0839

and

Transurban (USA) Development Inc.
405 Lexington Avenue, 43rd Floor
New York, NY 10174
Attn: Tim Young
Facsimile: (646) 278-0839

With a copy to:

Transurban Ltd.

Rialto South Tower, Level 43
525 Collins Street
Melbourne, VIC 3000
Australia
Attn: Paul O'Shea

Any Party may, from time to time, by notice in writing served upon the other Parties as aforesaid, designate an additional and/or a different address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed.

7.4. Due Authorization; Binding Effect; Etc.

.1 Each person executing this Agreement on behalf of a Party represents and warrants that (a) he or she is duly authorized to execute this Agreement on behalf of the Party for whom that person is executing the Agreement, (b) any requisite approvals for execution of this Agreement and performance of its obligations hereunder have been obtained by such Party, and (c) the Party is authorized and has the power to perform its obligations hereunder.

.2 Each Party represents and warrants that there is no action, suit, proceeding, investigation, indictment or litigation pending and served on it which challenges its authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, or which challenges the authority of the Party or person executing this Agreement, and that the Party has disclosed to the other Parties any pending and unserved or threatened action, suit, proceeding, investigation, indictment or litigation with respect to such matters of which the Party is aware.

.3 This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective legal representatives, successors and permitted assigns, and wherever a reference in this Agreement is made to any of the Parties, such reference also shall be deemed to include, wherever applicable, a reference to the legal representatives, successors and permitted assigns of such Party, as if in every case so expressed.

.4 Each Party represents and warrants that it is in material compliance with all laws, regulations and ordinances applicable to this Agreement.

7.5. Relationship of Parties. The relationship of each of the Private Entities to VDOT shall be one of independent contractors, not agents, partners, joint venturers or employees, and VDOT shall have no rights to direct or control the activities of the Private Entities. Officials, employees and agents of VDOT shall in no event be considered employees, agents, partners or representatives of the Private Entities, or vice versa.

7.6. Audit Rights. Each Private Entity shall file and maintain a complete set of all books and records prepared or employed by such Party in its management, scheduling, cost accounting and otherwise with respect to the Project. Each Private Entity shall grant to VDOT such audit rights and allow VDOT such access to and the right to copy such books and records as

VDOT may request, but only as necessary and appropriate in connection with work to be performed on a reimbursable cost basis, issuance of change orders (other than all or a portion of change orders issued on a lump sum basis), and the resolution of disputes. FHWA shall have such audit rights, if any, respecting the Parties in the Project as shall be provided in accordance with applicable Federal laws and regulations.

7.7. No Third Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties to, any person or entity not a Party.

7.8. Waiver. No custom or practice between the Parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a Party to insist upon performance by any other Party in strict compliance with any other terms of this Agreement.

7.9. No Brokers. Each Party represents and warrants that it has not dealt with any real estate or business opportunity broker or agent or any finder in connection with this Agreement. To the extent permitted by law, each Party agrees to indemnify, protect, defend with counsel acceptable to the other Party and hold harmless the other Party against any claim for commission, finder's fee or like compensation asserted by any real estate or business opportunity broker, agent, finder or other person claiming to have dealt with the indemnifying Party in connection with this Agreement.

7.10. Governing Law. This Agreement and all Project Agreements shall be governed and construed in accordance with the laws of the Commonwealth.

7.11. VDOT's Responsibility for Payment. VDOT's payment of any compensation, monetary damages, award or other amount under this Agreement or any other Project Agreement shall be conditioned upon appropriation by the General Assembly and allocation by CTB of the payment to the Private Entities, as applicable, of such damages, compensation, award or amount, and such payment shall not accrue interest.

7.12. Use of Police Power. Nothing in this Agreement limits the authority of VDOT to exercise its regulatory and police powers granted by law, including but not limited to its powers of condemnation with respect to all or any part of the Project, the Project Right of Way and any of the rights of the Private Entities hereunder. The Parties waive any requirement by the State Corporation Commission to issue a declaratory judgment regarding condemnation pursuant to Virginia Code §56-568.

7.13. Right to Oversee Work. VDOT shall have the right at all times during the term of this Agreement and any other Project Agreements to oversee the performance of the Private Entities under this Agreement and the other Project Agreements to which a Private Entity is a party.

7.14. Obligation to Refrain from Discrimination. Each Private Entity shall conduct its activities in connection with the Project in compliance with all requirements imposed pursuant to (a) the Fair Employment Contracting Act, Virginia Code §2.2-4200, *et seq.*; (b) any applicable provisions of Federal law; and (c) all other applicable laws, rules and regulations; *provided, however*, the Parties understand and agree that, if toll collection is anticipated, toll

rates with respect to the Project may be variable and may take into consideration type, weight and occupancy of vehicle, use of vehicle for police and emergency services, number of axles, time of travel, traffic congestion and other traffic conditions, and the type of facilities provided.

7.15. Public Records. Any Work Product and/or Termination Deliverables VDOT owns pursuant to any Project Agreement, and any document of which VDOT obtains a copy, as well as any memoranda, staff evaluations, or other records prepared by or for VDOT for the evaluation and negotiation of proposals filed under the PPTA (with respect to the Project or any Phase, such memoranda, evaluations or records, collectively, “PPTA Records”), may be considered public records under the Virginia Public Records Act, Virginia Code §§42.1-76 *et seq.*, as in effect from time to time, or official records under the Virginia Freedom of Information Act, Virginia Code §§2.2-3700 *et seq.*, as in effect from time to time (the “Virginia Freedom of Information Act”), and as such may be subject to public disclosure.

If a Private Entity believes that any Work Product, Termination Deliverables or any document subject to transmittal to VDOT under the terms of this Agreement or any other Project Agreement contains proprietary or confidential information or trade secrets that are exempt or protected from disclosure pursuant to Commonwealth law, the applicable Private Entity shall comply with applicable provisions of the Virginia Freedom of Information Act, including without limitation Virginia Code §2.2-3705.6 or any successor thereto then in effect, in connection with transmittal of such information to VDOT.

Should any Work Product, Termination Deliverables or PPTA Records previously determined by VDOT to be exempt become the subject of a request for public disclosure, VDOT shall respond in accordance with Commonwealth law and shall involve the Private Entities as follows:

.1 VDOT shall use reasonable efforts to provide timely notice to the applicable Private Entities of such request and the date by which it anticipates responding.

.2 The applicable Private Entity must then assert in writing to VDOT any claim that such records contain proprietary information that is exempt from disclosure under the Virginia Freedom of Information Act, or is subject to protection pursuant to Virginia Code §59.1-339, or other Commonwealth law so that VDOT may consider such assertion in responding to the requester, *provided* that if the applicable Private Entity fails to make such assertion within three business days after the date VDOT notifies the applicable Private Entity of its intended response, VDOT shall have the right to make such disclosure.

.3 If a Private Entity makes a timely assertion that the requested records are exempt from disclosure or otherwise protected under Commonwealth law, upon consultation with the applicable Private Entity to agree upon a reasonable effort and legal cost, at the expense of the applicable Private Entity, VDOT and the applicable Private Entity shall seek judicial declaration of the rights of the parties. Until such declaration is made, VDOT shall, to the extent permitted by law, maintain the confidentiality of such records.

.4 If VDOT's denial of a request for disclosure of any Work Product, Termination Deliverables or PPTA Records is challenged in court, the applicable Private Entity shall assist VDOT in its defense and shall indemnify VDOT for any and all damages assessed and costs (including the fees and costs of VDOT's attorneys) VDOT incurs in such defense, including any attorney's fees assessed against VDOT or any other Commonwealth department or agency.

.5 In no event, however, shall VDOT be liable to a Private Entity as a result of any disclosure of such records by VDOT in compliance with the provisions of this Section 7.15 and Commonwealth law; *provided, however*, that if at any time VDOT in its reasonable discretion determines there to be a conflict between any provision of this Section 7.15 and Commonwealth Law, VDOT shall provide timely notice of such conflict to the Private Entities, and the Parties shall comply with Commonwealth Law.

7.16. Reserved Rights. The Private Entities' rights and interests in the Project and Project Right of Way shall be specifically limited only to such rights and interests which are necessary and required for Project purposes. The Private Entities' rights and interests specifically exclude all Reserved Rights. All rights to own, lease, sell, assign, transfer, utilize, develop or take advantage of the Reserved Rights are hereby reserved to VDOT; and the Private Entities shall not engage in any activity infringing upon the Reserved Rights. VDOT at any time may devote, use or take advantage of the Reserved Rights for any public purpose without any financial participation whatsoever by the Private Entities. VDOT hereby reserves to itself all ownership, development, maintenance, repair, replacement, operation, use and enjoyment of, and access to, the Reserved Rights. No VDOT activity or improvement respecting Reserved Rights shall materially interfere with the development, construction, operation, maintenance or tolling of the Project. If a Private Entity Default concerns a breach of the provisions of this Section 7.16, in addition to any other remedies under this Agreement, VDOT shall be entitled to disgorgement of all profits from the prohibited activity and to sole title to and ownership of the prohibited assets and improvements. Notwithstanding anything contained in this Agreement or any Project Agreement, VDOT may elect in its sole discretion to undertake the development of improvements respecting Reserved Rights.

7.17. VDOT Findings Under PPTA. As of the Agreement Date, VDOT, as the responsible public entity with respect to the Project, has made or hereby makes findings and determinations set forth on Exhibit A, which findings and determinations are independent of the on-going Environmental Review Process.

7.18. Indemnification; Insurance.

.1 General. Each Private Entity shall indemnify, defend and hold harmless the Commonwealth, VDOT, its officers, agents and employees from and against any and all damages, claims, suits, judgments, expenses, liability, actions and costs of every name and description for bodily injury (including death) or damages to property caused by (i) any negligent act or omission in the performance by such Private Entity, including, without limitation, those which it chooses to deliver through its subcontractors, agents or employees, of the services under this Agreement; or (ii) by the failure of such Private Entity to perform the services with the same degree and standard of care and skill

normally expected and provided in the performance of the same or similar service, *provided, however*, that indemnification under this Section 7.18.1 shall be limited to third party claims.

.2 Violation of Law, Patent or Copyright; Fraud. Except as otherwise expressly provided below, each Private Entity shall indemnify, protect, defend, hold harmless and release the Commonwealth and VDOT from and against any and all losses, damages, costs and expenses, including reasonable attorneys' fees, from third party claims arising out of the following:

.1 any violation by such Private Entity or its subcontractors, agents or employees of laws, regulations and ordinances in connection with, relating to or otherwise arising out of performance under this Agreement;

.2 infringement by any such Private Entity or its subcontractors, agents or employees (excluding third party equipment and software vendors providing commercially available equipment or software, *provided* that such Private Entity selects such vendors with commercially reasonable care and obtains commercially reasonable licenses and patent indemnification from such vendors that expressly benefit VDOT and *provided further* that such equipment or software has not been modified for use with respect to the Project) of any actually or allegedly patented, copyrighted, trademarked, service-marked or other proprietary materials, equipment, devices or processes (except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified or required by VDOT); and

.3 fraud or intentional misrepresentation by such Private Entity or its subcontractors, agents or employees.

.3 Acts by Other Party. To the fullest extent permitted by law, a Private Entity's indemnities exclude any portion of liability on a claim that is attributable to the negligent acts or omissions of or to any failure by the CTB, the Commissioner or Commonwealth or VDOT, their respective agents or employees, elected representatives, appointed officials and any authorized agents or representatives thereof (collectively the "State Indemnitees" and each a "State Indemnitee") to comply with NEPA or the PPTA. If the negligent acts or omissions of a State Indemnitee has contributed to a loss (in whole or in part), a Private Entity shall not be obligated to indemnify State Indemnitees for the proportionate share of such claim caused thereby. In no event, shall any Private Entity's indemnities include the portion of liability on any claim for which another Private Entity is responsible hereunder.

.4 Third Party Claims. For purposes of this Section 7.18, a "third party" means any person other than a State Indemnitee or a Private Entity, except that a third party includes any Commonwealth employee, agent and contractor or his or her heir or representative who asserts a claim arising out of death, bodily injury or property damage against a State Indemnitee or a Private Entity and which is not covered by the Commonwealth's workers' compensation program.

.5 Notice of Claim. If VDOT receives notice of or otherwise has actual knowledge of a claim which it believes is within the scope of a Private Entity's indemnification under Section 7.18, it shall by writing as soon as practicable (a) inform the applicable Private Entity (the "Affected Party") of such claim; (b) send to the Affected Party a copy of all written materials VDOT has received asserting such claim and (c) notify the Affected Party that either (i) the defense of such claim is being tendered to the Affected Party or (ii) VDOT has elected to conduct its own defense for a reason set forth in Section 7.18.9.

.6 Insurance Defense. If the insurer under any applicable insurance policy accepts tender of defense, the Affected Party and VDOT shall cooperate in the defense as required by the insurance policy. If no defense is provided by insurers under potentially applicable insurance policies, then Sections 7.18.7, 7.18.8, 7.18.9 and 7.18.10 shall apply.

.7 Notice from Affected Party. If the defense is tendered to the Affected Party, it shall within 20 Days of said tender deliver to VDOT a written notice stating that the Affected Party (a) accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter, (b) accepts the tender of defense but with a "reservation of rights" in whole or in part or (c) rejects the tender of defense if it reasonably determines it is not required to indemnify against the claim under Section 7.18. If such notice is not delivered within such 20 Days, the tender of defense shall be deemed rejected.

.8 Legal Counsel; Defense. If the Affected Party gives notice under Section 7.18.7, such party shall have the right to select legal counsel for the State Indemnitees, subject to reasonable approval of the Commonwealth's Attorney General, and shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense: (a) the Affected Party shall at its expense, fully and regularly inform VDOT of the progress of the defense and of any settlement discussions; and (b) VDOT shall, at the Affected Party's expense for all of VDOT's reasonable out-of-pocket third party expenses, fully cooperate in said defense, provide to the Affected Party all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to VDOT and maintain the confidentiality of all communications between it and the Affected Party concerning such defense to the extent allowed by law.

.9 VDOT Counsel and Defense. VDOT shall be entitled to select its own legal counsel and otherwise control the defense of such claim if: (a) the defense is tendered to the Affected Party and it refuses the tender of defense, or fails to accept such tender within 20 Days, or reserves any right to deny or disclaim such full indemnification thereafter, or (b) VDOT, at the time it gives notice of the claim or at any time thereafter, reasonably determines that (i) a conflict exists between it and the Affected Party which prevents or potentially prevents the Affected Party from presenting a full and effective defense or (ii) the Affected Party is otherwise not providing an effective defense in connection with the claim and the Affected Party lacks the financial capability to satisfy potential liability or to provide an effective defense. VDOT may assume its own defense pursuant to Section 7.18.9(b) by delivering to the Affected Party written notice of such

election and the reasons therefore. A refusal of, or failure to accept, a tender of defense may be treated by VDOT as a claim against the Affected Party subject to resolution pursuant to Section 6.1.

.10 Reimbursement of Costs. If VDOT is entitled and elects to conduct its own defense pursuant hereto, all reasonable costs and expenses it incurs in investigating and defending any claim for which it is entitled to indemnification hereunder (and any settlements or judgments resulting therefrom, including any interest thereon) shall be reimbursed by the Affected Party after completion of the proceeding.

.11 Right to Settle, Etc. In the event VDOT is entitled to and elects to conduct its own defense, then it shall have the right to settle or compromise the claim with the Affected Party's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court, and with the full benefit of the Affected Party's indemnity. Notwithstanding the foregoing, if VDOT elects to conduct its own defense and it is later determined that no indemnification obligation existed as to the particular claim, VDOT shall pay its own costs and expenses relating thereto. In addition, if VDOT elects to conduct its own defense because it perceives a conflict of interest, VDOT shall pay its own costs and expenses relating thereto.

.12 Acceptance Not a Waiver. Acceptance by VDOT of services or Work Product hereunder shall not waive any of the rights of VDOT contained in this section nor release or absolve the Private Entities from any liability, responsibility or duty contained in this Section 7.18.

.13 Required Insurance. Each Private Entity shall at all times provide for the insurance coverage, as applicable, described in Section 103.06 of VDOT's Road and Bridge Specifications (2002 version).

7.19. Waiver of Consequential Damages. In no event shall the Parties be liable to one another for, and they each waive, any and all claims for indirect, incidental or consequential damages of any nature, whether in contract, tort (including negligence) or other legal theory; *provided, however*, that the foregoing shall not apply to or affect: (a) the liability of any Private Entity or any of their directors, officers, employees or agents, arising out of fraud or intentional misrepresentation; (b) any provision in this Agreement or any other Project Agreement providing for recovery of liquidated damages; or (c) any liability under Section 7.18.1.

7.20. Survival. All representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the Agreement Date and at and as of all other applicable times during the performance of any work services related to this Agreement. All representations and warranties made in or pursuant to this Agreement, unless provided otherwise, shall survive for 10 years beyond the expiration or earlier termination of this Agreement; *provided, however*, that the 10 year limitation on survival shall not apply in the event of fraud or a material misrepresentation with respect to a particular representation or warranty, and *provided further* that survival of provisions of any other Project Agreement shall be as provided therein.

7.21. Subpoena. Except as provided for in Virginia Code §33.1-4, the Private Entities may subpoena any VDOT personnel; *provided, however*, that the Private Entities shall pay for such personnel's time at his/her fully burdened rate (including overhead and fringe benefits), together with all out-of-pocket expenses incurred, no later than 30 Days after receipt by the Private Entities of an invoice reasonably documenting the amount of such time provided and expenses. If VDOT subpoenas personnel of the Private Entities in connection with any litigation, VDOT shall pay for such personnel's time at his/her fully burdened rate together with all out-of-pocket expenses incurred determined in accordance with VDOT's Guidelines for the Procurement and Management of Professional Services in effect on the date hereof, attached as Exhibit C, no later than 30 Days after VDOT's receipt of an invoice reasonably documenting the amount of such time provided and expenses.

7.22. Construction and Interpretation of Agreement.

.1 This Agreement was carefully negotiated by the Parties, each with adequate representation by counsel, and shall not be interpreted or construed against the Party preparing it, and instead other rules of interpretation and construction shall be used.

.2 If any term or provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, *provided* that the deletion of the unenforceable provisions would not adversely affect the receipt of any material benefit by either Party hereunder.

7.23. Entire Agreement; Severability.

.1 This Agreement (including exhibits hereto) constitutes the entire and exclusive agreement between the Parties relating to the specific matters covered herein and therein. All prior or contemporaneous verbal or written agreements, understandings, representations and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose. No verbal agreement or implied covenant shall be held to vary the terms hereof, any statute, law or custom to the contrary notwithstanding.

.2 If any provisions of this Agreement are rendered obsolete or ineffective in serving their purpose by changes in applicable law, passage of time, financing requirements or other future events or circumstances, the Parties agree to negotiate in good faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to the extent practicable; *provided, however*, that no Party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under this Agreement in any material respect.

7.24. Amendment. This Agreement may be altered, amended or revoked only by an instrument in writing signed by each Party, or their respective successors or permitted assignees.

7.25. Headings. The Article and Section headings and the use of terms “Article” and “Section” in this Agreement are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

7.26. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an agency of the Commonwealth of Virginia

By: _____
David S. Ekern, P.E.

Its: _____
Commonwealth Transportation Commissioner

FLUOR VIRGINIA, INC.,
a Delaware corporation

By: _____
Herb Morgan

Its: _____
Vice President

TRANSURBAN (USA) DEVELOPMENT INC.,
a Delaware corporation

By: _____
Michael Kulper

Its: _____
Senior Vice President

EXHIBIT A
FINDINGS OF PUBLIC INTEREST

- 1.1 Pursuant to the Public-Private Transportation Act of 1995, on March 15, 2004, Fluor Enterprises, Inc. and Transurban Limited submitted an unsolicited competing conceptual proposal (the “Conceptual Proposal”) to VDOT for the development, design, financing, construction, operation and maintenance of the I-95/395 HOT Lanes System Project, which is referred to in the Interim Agreement dated October 24, 2006 (the “Interim Agreement”) as “I-95/395 HOT Lanes Project.”
- 1.2 In accordance with VDOT’s Implementation Guidelines, as revised April 1, 2001 (the “Guidelines”), adopted in furtherance of the PPTA, VDOT posted and published notice of the Conceptual Proposal and referred it to the Initial Review Committee for preliminary review.
- 1.3 Following a determination by the Initial Review Committee that the Conceptual Proposal merited further review, the Commonwealth Transportation Board on January 20, 2005 adopted a resolution approving both such conceptual proposal for further evaluation. The Deputy Secretary of Transportation invited two detailed proposals for consideration by the Public-Private Transportation Advisory Panel (the “Advisory Panel”) in accordance with the Guidelines.
- 1.4 On June 3, 2005, Fluor Virginia, Inc. (“Fluor”) and Transurban USA Inc. (“Transurban”) submitted a detailed proposal (the “Detailed Proposal”) to the Advisory Panel for consideration.
- 1.5 The Advisory Panel evaluated the two detailed proposals using the “Proposal Selection and Evaluation Criteria” set forth in the Guidelines. Based on such evaluation, on November 1, 2005, the Advisory Panel recommended to the Acting Commissioner that the Detailed Proposal be further developed pursuant to the PPTA.
- 1.6 Thereafter, the Acting Commissioner directed VDOT to negotiate an interim agreement with respect to the Project with Fluor and Transurban based on the Detailed Proposal, and not to negotiate with other entities relative to the Project so long as such negotiations are proceeding on a timely basis.
- 1.7 VDOT, as the responsible public entity with respect to the Project, has determined that (a) the development and/or operation of the Project as contemplated by the Detailed Proposal and by the Interim Agreement serves the public purpose of the PPTA, on the basis that (i) there is a public need for a transportation facility of the type contemplated by the Project, (ii) the improvements contemplated by the Project, and the proposed interconnections with existing transportation facilities are, in the opinion of VDOT, reasonable and shall address needs identified in the appropriate local or regional transportation plans or in the Commonwealth’s Statewide Transportation Improvement Program approved by FHWA and the Federal Transit Administration by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency,

(iii) the estimated cost of the Project, as reflected in the Detailed Proposal, is reasonable in relation to similar facilities, and (iv) the Private Entities' plans shall result in the timely development and/or operation of the Project and its more efficient operation; and (b) it is in the public's interest to enter into the Interim Agreement with multiple private entities.

- 1.8 The proposed I-95/395 HOT Lanes Project is described in Section 2.1 of the Interim Agreement (the "Project").
- 1.9 The Project is among the alternatives being considered in an ongoing Environmental Review Process by VDOT for the FHWA. It is anticipated that this Process will result in issuance of a Record of Decision, identifying an acceptable alternative in accordance with Section 102 of NEPA, or other pertinent finding by FHWA, as applicable.
- 1.10 FHWA approved VDOT's Special Experimental Project 14 work plan on June 27, 2006.
- 1.11 VDOT shall not determine what, if anything, will be constructed until the Environmental Review Process is complete, and VDOT may not authorize Fluor and Transurban to commence final design and construction of the Project until after the completion of the Environmental Review Process.
- 1.12 The parties to the Interim Agreement acknowledge that financing sufficient to construct the Project or any Phase thereof has not been obtained as of the date of the Interim Agreement, and that it is the responsibility of Fluor and Transurban to propose to VDOT an acceptable plan of finance. Fluor and Transurban have preliminarily identified alternative financial structures that shall be evaluated based on more definitive traffic and revenue projections when available. If at the conclusion of the Environmental Review Process the Project or any part thereof is consistent with the alternative selected, VDOT may choose to undertake improvements that include the Project or any part thereof. It is anticipated the Project may be constructed in several Phases with notice to proceed for each such Phase contingent upon securing regulatory approvals and full financing and satisfaction of other conditions precedent.

EXHIBIT B

FORM OF GUARANTY OF PERFORMANCE AND COMPLETION

This **GUARANTY OF PERFORMANCE AND COMPLETION** (“Guaranty”) is made as of _____, 200__, by **FLUOR CORPORATION**, a Delaware corporation (the “Guarantor”), to _____ [VDOT or the concessionaire, as applicable], a _____ (the “Contracting Party”) with respect to the obligations of _____, a _____ corporation (the “Contractor”) under (i) that certain _____ Agreement to Develop and Operate the I-95/395 Hot Lanes Project in Virginia (the “Agreement”) dated as of _____, 200__, by and between, the Virginia Department of Transportation (“VDOT”) and _____, (ii) that certain Design-Build Contract dated as of _____, 200__ by and between the Contracting Party and the Contractor (together, as amended, altered, varied or supplemented, the “Contracts”). The Contracts are hereby incorporated by reference herein, and capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Comprehensive Agreement. As a condition to entering into the Contracts, [each of] the Contracting Party [and VDOT] has required the Guarantor to execute and deliver this Guaranty. The Contractor is an Affiliate of the Guarantor. The Guarantor acknowledges that financial and direct benefits shall accrue to the Guarantor by virtue of entering into this Guaranty and that such benefits constitute adequate consideration therefor.

ARTICLE I

GUARANTY

Section 1.01 Guaranty. The Guarantor hereby guarantees to the Contracting Party, absolutely, unconditionally and irrevocably, that each and every payment and performance obligation and other liability of the Contractor now or hereafter arising under the Contracts or any of them, including but not limited to all obligations and liabilities of the Contractor under any and all representations and warranties made or given by the Contractor under the Contracts, under any and all liquidated or stipulated damage provisions of the Contracts and under any and all indemnities given by the Contractor under the Contracts (collectively the “Guaranteed Obligations”) shall be promptly paid and satisfied in full when due and without offset, and performed and completed when required.

Section 1.02 Obligations. Except as otherwise provided in Section 4.06 below, the obligations of the Guarantor hereunder are absolute and unconditional and independent of the Guaranteed Obligations of the Contractor and shall remain in full force and effect until all the Guaranteed Obligations have been paid, performed and completed in full, irrespective of any assignment, amendment, modification or termination of the Contracts.

Section 1.03 No Exoneration. Except as otherwise provided in Section 4.06 below, the obligations of the Guarantor hereunder shall not be released, discharged, exonerated or impaired in any way by reason of:

(a) any failure of the Contracting Party to retain or preserve any rights against any person;

(b) the lack of prior enforcement by the Contracting Party of any rights against any person and the lack of exhaustion of any bond, letter of credit or other security held by the Contracting Party;

(c) the lack of authority or standing of the Contractor or the dissolution of the Guarantor, the Contractor, or the Contracting Party;

(d) with or without notice to the Guarantor, the amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or failure to assert, any portion of the Guaranteed Obligations, the Contracts, any rights or remedies of the Contracting Party (including rights of offset) against the Contractor, or any bond, letter of credit, other guaranty, instrument, document, collateral security or other property given or available to the Contracting Party to secure all or any part of the Guaranteed Obligations; *provided* that, notwithstanding the foregoing, the Guarantor shall have available to it any and all defenses to performance of the Guaranteed Obligations that may be available to the Contractor based on any such amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination or failure to assert voluntarily made by the Contracting Party, except defenses available to the Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors;

(e) the extension of the time for payment of any amount owing or payable under the Contracts or of the time for performance or completion of any Guaranteed Obligation; *provided, however,* that to the extent the Contracting Party grants the Contractor an extension of time under the Design-Build Contract for performance of any of the obligations of the Contractor thereunder, such extension of time shall likewise extend the time for performance by the Guarantor;

(f) except as otherwise provided in subsections (d) and (e) above, the taking or the omission of any of the actions referred to in the Contracts or of any actions under this Guaranty;

(g) the existence now or hereafter of any other guaranty or endorsement by the Guarantor or anyone else of all or any portion of the Guaranteed Obligations;

(h) the acceptance, release, exchange or subordination of additional or substituted security for all or any portion of the Guaranteed Obligations;

(i) the taking of any action or the failure to take any action which would constitute a legal or equitable defense, release or discharge of a surety;

(j) any bankruptcy, arrangement, reorganization or similar proceeding for relief of debtors under federal or state law hereinafter initiated by or against the Contractor or any of its members, or the Contracting Party;

(k) any full or partial payment or performance of any Guaranteed Obligation which is required to be returned as a result of or in connection with the insolvency, reorganization or bankruptcy of the Contractor or any of its members or otherwise;

(l) the rejection of any Contract in connection with the insolvency, reorganization or bankruptcy of the Contractor or any of its members;

(m) an impairment of or limitation on damages due from the Contractor by operation of law in any insolvency, reorganization or bankruptcy proceeding by or against the Contractor or any of its members;

(n) failure by the Contracting Party to file or enforce a claim against the estate (either in administration, bankruptcy or other proceedings) of Contractor, any of its members, the Guarantor or any other guarantor;

(o) any merger, consolidation or other reorganization to which the Contractor, the Contracting Party or the Guarantor is a party;

(p) any sale or disposition of all or any portion of the Guarantor's direct or indirect ownership in the Contractor, or any other event which results in discontinuation or interruption in the business relations of Contractor with the Guarantor;

(q) except as otherwise provided in subsection (d) above, the lack of genuineness, validity, regularity or enforceability of any of the Guaranteed Obligations or the Contracts;

(r) the failure of the Contracting Party to assert any claim or demand, bring any action or exhaust its remedies against the Contractor or any security before proceeding against the Guarantor hereunder after the expiration of applicable notice and cure periods; or

(s) the termination of any Contract by reason of the Contractor's default thereunder.

Section 1.04 Enforcement of Contracts and Guaranteed Obligations.

(a) Nothing contained herein shall prevent or limit the Contracting Party from pursuing any of its rights and remedies under the Contracts, or any provisions thereof, according to their respective terms. The Contracting Party [or VDOT] may apply any moneys, property or security available to it in such manner and amounts and at such times to the payment or reduction or performance of any Guaranteed Obligation as the Contracting Party [or VDOT] may elect, and may generally deal with Contractor, the Guaranteed Obligations, such security and property as the Contracting Party [or VDOT] may see fit. Notwithstanding the foregoing, the Guarantor shall remain bound by this Guaranty.

(b) Subject to Section 4.06 below, the Guarantor shall be obligated to undertake all curative action which may be agreed upon between the Contracting Party, [VDOT,] the Guarantor and the Contractor. If following notice under Section 4.06 below, the Guarantor does not use commercially reasonable efforts to proceed promptly to effectuate such curative action within a reasonable time, or should no agreement on the curative action be reached within 14 days after the Contracting Party [or VDOT] notifies the Contractor and the Guarantor (or such longer period as may be permitted under Section 4.06 below) of the need for curative action (or immediately, in the case of emergency conditions), the Contracting Party [or VDOT], without further notice to the Guarantor, shall have the right to perform or have performed by third parties the necessary curative action, and the costs thereof shall be borne by the Guarantor.

(c) The Contracting Party [or VDOT] may bring and prosecute a separate action or actions against the Guarantor to enforce its liabilities hereunder, regardless of whether any action is brought against the Contractor and regardless of whether any other person is joined in any such action or actions. Nothing shall prohibit the Contracting Party [or VDOT] from exercising its rights against any of the Guarantor, the Contractor, any other guarantor of the Guaranteed Obligations, a performance bond or other security, if any, which insures the payment of the Guaranteed Obligations, or any other person simultaneously, or any combination thereof jointly and/or severally.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations and Warranties. The Guarantor hereby represents and warrants that:

(a) Consents. The Contractor is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation. The Contractor is a wholly-owned subsidiary of the Guarantor. Consent of the Contractor to any modification or amendment of the Contracts constitutes knowledge thereof and consent thereto by the Guarantor;

(b) Organization and Existence. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation;

(c) Power and Authority. The Guarantor has the full power and authority to execute, deliver and perform this Guaranty, and to own and lease its properties and to carry on its business as now conducted and as contemplated hereby;

(d) Authorization and Enforceability. This Guaranty has been duly authorized, executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with the terms hereof, subject as to enforceability of remedies to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating, to or affecting the enforcement of creditors' rights generally, as applicable to the Guarantor, and to general principles of equity;

(e) No Governmental Consents. No authorization, consent or approval of, notice to or filing with, any governmental authority, is required for the execution, delivery and performance by the Guarantor of this Guaranty;

(f) No Conflict or Breach. Neither the execution, delivery or performance by the Guarantor of this Guaranty, nor compliance with the terms and provisions hereof, conflicts or will conflict with or will result in a breach or violation of any material terms, conditions, or provisions of any Laws, Regulations and Ordinances applicable to the Guarantor or the charter documents, as amended, or bylaws, as amended, of the Guarantor, or any order, writ, injunction or decree of any court or governmental authority against the Guarantor or by which it or any of its properties is bound, or any indenture, mortgage or contract or other agreement or instrument to which the Guarantor is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties;

(g) No Proceedings. There are no suits or proceedings pending, or, to the knowledge of the Guarantor, threatened in any court or before any regulatory commission, board or other governmental administrative agency against the Guarantor which could reasonably be expected to have a material adverse affect on the business or operations of the Guarantor, financial or otherwise, or on its ability to fulfill its obligations hereunder; and

(h) Contracts. The Guarantor is fully aware of and consents to the terms and conditions of the Contracts.

ARTICLE III

WAIVERS, SUBROGATION AND SUBORDINATION

Section 3.01 Waivers.

(a) The Guarantor hereby unconditionally waives:

(i) notice of acceptance of this Guaranty or of the intention to act in reliance hereon and of reliance hereon;

(ii) notice of the incurring, contracting, amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or of the failure to assert, any Guaranteed Obligation or any Contract;

(iii) demand on the Guarantor in the event of default except demand as set forth in Section 4.06 below;

(iv) any invalidity of the Contracts due to lack of proper authorization of or a defect in execution thereof by the Contractor, its purported representatives or agents;

(v) demand for payment or performance, presentment, protest and notice of nonpayment or dishonor respecting any Guaranteed Obligation;

(vi) all other notices to which the Guarantor might otherwise be entitled, except notice as set forth in Section 4.06 below;

(vii) any demand for payment hereunder except as set forth in Section 4.06 below;

(viii) the provisions of Sections 49-25 and 49-26 of the Code of Virginia of 1950, as amended; and

(ix) any duty on the part of the Contracting Party to disclose to the Guarantor any facts the Contracting Party may now or hereafter know with regard to Contractor.

(b) The Guarantor also hereby waives any right to require, and the benefit of all laws now or hereafter in effect giving the Guarantor the right to require, any prior enforcement as referred to in Section 1.03(b) above, and the Guarantor agrees that any delay in enforcing or failure to enforce any such rights or in making demand on the Guarantor for the performance of the obligations of the Guarantor under this Guaranty shall not in any way affect the liability of the Guarantor hereunder.

(c) The Guarantor hereby waives, as against the Contracting Party or any person claiming under the Contracting Party, all rights and benefits which might accrue to the Guarantor by reason of any of bankruptcy, arrangement, reorganization or similar proceedings by or against the Contractor and agree that their obligations and liabilities hereunder shall not be affected by any modification, limitation or discharge of the obligations of the Contractor that may result from any such proceedings.

(d) Until the Contractor shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor hereby agrees not to file, or solicit the filing by others of, any involuntary petition in bankruptcy against the Contractor.

Section 3.02 Subrogation. Until the Contractor shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor shall not claim or enforce any right of subrogation, reimbursement or indemnity against the Contractor, or any other right or remedy which might otherwise arise on account of any payment made by the Guarantor or any act or thing done by the Guarantor on account of or in accordance with this Guaranty.

Section 3.03 Subordination.

(a) All existing or future indebtedness of the Contractor to the Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as Contractor shall be in default in the performance or payment of any Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Contractor to the Guarantor without the prior written notice to the Contracting Party.

(b) The Guarantor shall file all claims against Contractor in any bankruptcy or other proceedings in which the filing of claims is required or permitted by law upon any obligation or indebtedness of the Contractor to the Guarantor, and shall have assigned to the Contracting Party all of the Guarantor's rights thereunder to the extent of outstanding and unsatisfied Guaranteed Obligations. If the Guarantor does not file any such claim, the Contracting Party is authorized as the Guarantor's attorney-in-fact to do so in the Guarantor's name, or in the Contracting Party's discretion, the Contracting Party is authorized to assign the claim to, and cause proof of claim to be filed in the name of, the Contracting Party or its nominee. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to the Contracting Party or its nominee the full amount payable on the claim in the proceeding before making any payment to the Guarantor, and to the full extent necessary for that purpose, the Guarantor assigns to the Contracting Party all of its rights to any payments or distributions to which it otherwise would be entitled. If the amount so paid is in excess of the Guaranteed Obligations covered hereby, the Contracting Party shall pay the amount of the excess to the party determined by it to be entitled thereto.

ARTICLE IV

MISCELLANEOUS

Section 4.01 Enforcement of Guaranty.

(a) The terms and provisions of this Guaranty shall be governed by and interpreted in accordance with the laws of the State applicable to contracts executed and to be performed within the State.

(b) No supplement, amendment, modification, waiver or termination of this Guaranty shall be binding unless executed in writing and duly signed by the Guarantor and the Contracting Party. No waiver of any of the provisions of this Guaranty shall be deemed or shall constitute a waiver of any other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No failure on the part of the Contracting Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise of any other right.

(c) All disputes between the Contracting Party [or VDOT] and the Guarantor arising under or relating to this Guaranty or its breach shall be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, which shall have exclusive jurisdiction and venue. The Guarantor hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of any action or

proceedings in such court arising out of or relating to this Guaranty. The Guarantor agrees that a final non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Guarantor agrees and consents to service of process by delivery in the manner and to the address set forth in Section 4.02 below. Nothing in this section shall affect the right of the Contracting Party to serve legal process in any other manner permitted by law.

(d) The rights of the Contracting Party [or VDOT] hereunder are cumulative and shall not be exhausted by any one or more exercises of said rights against the Guarantor or other guarantors or by any number of successive actions until and unless all Guaranteed Obligations have been fully paid or performed.

(e) The Guarantor shall pay to the Contracting Party [or VDOT] all reasonable out-of-pocket legal fees and other reasonable out-of-pocket costs and expenses (including fees and costs on appeal) the Contracting Party [or VDOT] incurs by reason of any permitted enforcement by the Contracting Party [or VDOT] of its rights hereunder, *provided* that the Contracting Party [or VDOT] is the prevailing party with respect to a substantial portion of its claim.

(f) THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION OR CLAIM WHICH IS BASED ON, OR ARISES OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED BY THIS GUARANTY.

Section 4.02 Notices. All notices, demands or other communications under this Guaranty shall be in writing and shall be sent to each other party, at its address specified below (or such other address as a party may from time to time specify to the other parties by notice given in accordance with this Guaranty), and shall be deemed to have been duly given when actually received by the addressee or when served:

- (a) personally;
- (b) by independent, reputable, overnight commercial courier; or
- (c) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows

If to the Contracting Party:

[If to VDOT:

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attn: Commissioner

with a copy to:

Office of the Attorney General
900 E. Main Street
Richmond, Virginia 23219
Attention: Transportation Section]

If to the Guarantor:

Fluor Corporation
100 Fluor Daniel Drive
Greenville, SC 29607-2762
Attn: Tim Howard, Controller

with copies to:

Fluor Corporation
100 Fluor Daniel Drive
Greenville, SC 29602-2762
Attn: Richard Fierce, General Counsel

Section 4.03 Severability. If any provision of this Guaranty shall for any reason be held invalid or unenforceable, to the fullest extent permitted by law, such invalidity or unenforceability shall not affect any other provisions hereof, but this Guaranty shall be construed as if such invalid or unenforceable provision had never been contained herein.

Section 4.04 Assignment. Neither this Guaranty nor any of the rights, interest or obligations hereunder shall be assigned or delegated by the Guarantor without the prior written consent of the Contracting Party [and VDOT]. This Guaranty and all of the provisions hereof shall be binding upon the Guarantor and its successors and permitted assigns and shall inure to the benefit of the Contracting Party [and VDOT] and its respective successors and assigns.

Section 4.05 No Third Party Beneficiaries. Nothing in this Guaranty shall entitle any person other than the Contracting Party [or VDOT] and its successors and assigns to any claim, cause or action, remedy or right of any kind.

Section 4.06 Certain Rights, Duties, Obligations and Defenses. Notwithstanding Section 1.02, 1.03 and 3.01 above, the Guarantor shall have all rights, duties, obligations and defenses available to the Contractor under the Contracts relating to waiver, surrender, compromise, settlement, release or termination voluntarily made by the Contracting Party [or

VDOT] failure to give notice of default to the Contractor to the extent required by the Contracts, interpretation or performance of terms and conditions of the Contracts, or other defenses available to the Contractor under the Contracts except those expressly waived in this Guaranty and defenses available to the Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against the Guarantor shall be subject to no prior notice or demand except for 14 days' prior written notice to the Guarantor setting forth the default or breach of Guaranteed Obligation on the part of the Contractor and demand for payment or performance of such Guaranteed Obligation, provided that (i) if such default or breach is incapable of cure within 14 days despite the Guarantor's exercise of commercially reasonable efforts, such 14 day cure period shall be extended for such additional time as reasonably may be required to effect such cure, and (ii) immediate action after written notice may be required of the Guarantor in the case of emergency conditions.

Section 4.07 Mergers, etc. The Guarantor shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other person or sell, assign, convey, transfer, lease or otherwise dispose of any material portion of its properties and assets to any person or group of affiliated persons, unless:

(a) in case of a merger, the Guarantor shall be the continuing corporation; or

(b) the person (if other than the Guarantor) formed by such consolidation or into which the Guarantor merges or the person (or group of affiliated persons) that acquires by sale, assignment, conveyance, transfer, lease or other disposition a material portion of the properties and assets of the Guarantor shall expressly agree to perform all of the obligations of the Guarantor hereunder, as a joint and several obligor with the Guarantor if the Guarantor continues to exist after such transaction, by a writing in form and substance reasonably satisfactory to the Contracting Party [and VDOT].

Notwithstanding the agreement by any such person to perform the obligation of the Guarantor hereunder, the Guarantor shall not be released from its obligations hereunder unless released by operation of law or by consent.

Section 4.08 Survival. The obligations and liabilities of the Guarantor hereunder shall survive termination of any or all of the Contracts or the Contractor's rights thereunder due to default by the Contractor thereunder.

Section 4.09 Headings. The Article and Section headings in this Guaranty are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 4.10 Counterparts. This Guaranty may be executed in one or more counterparts, all of which shall constitute one and the same instrument.

Section 4.11 Entire Agreement. This Guaranty constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. The Guarantor agrees to execute, have acknowledged and delivered to the Contracting Party such other and further instruments as may be reasonably required by the Contracting Party to effectuate the intent and purpose hereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed as of the day and year first above written by its duly authorized officer.

FLUOR CORPORATION,
a Delaware corporation

By: _____

Name: _____

Title: _____

Receipt of this Guaranty is hereby acknowledged and accepted effective as of the ____ day of _____, 200_.

_____,
a _____

By: _____

Name: _____

Title: _____

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an agency of the Commonwealth of Virginia

By: _____

Name: _____

Title: _____

EXHIBIT C

CHAPTER 7 – GUIDELINES FOR PROCUREMENT AND MANAGEMENT

EXHIBIT D

DEPARTMENT DEBARMENT POLICY

EXHIBIT E

ADDITIONAL TERMS

- Project interoperability with VDOT's electronic toll collection utilized on other Commonwealth toll facilities and with the E-Z Pass Regional Electronic Toll Collection System.
- Compliance with any VDOT, Commonwealth or Federal Critical Infrastructure Information, Sensitive Security Information or other security requirements applicable to the Project.
- As provided in that certain FHWA NEPA Documentation Concurrence Form, dated August 31, 2006, concerning Project Number 0095-96A-107, P101, "The consultant will demonstrate that the northern improvement represented by the re-striping and shoulder reconstruction do not point the proverbial loaded gun at the roadway network at either termini forcing additional improvements be made beyond the scope of our project. In other words, the consultant will demonstrate, for example, that dumping three HOV lanes into existing I-95 at Dumfries does not exacerbate existing conditions. Should problems be identified, the project will need to be designed accordingly to preclude this."