

**AMENDED AND RESTATED COMPREHENSIVE AGREEMENT  
RELATING TO THE ROUTE 495 HOT LANES IN VIRGINIA PROJECT**

*DATED AS OF DECEMBER 19, 2007*

*BY AND AMONG*

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

**AND**

**CAPITAL BELTWAY EXPRESS LLC,  
a Delaware limited liability company**

(g) **Monitoring by Independent Engineer**

The Department may, in its discretion, request the Independent Engineer to undertake routine inspection responsibilities for monitoring and reporting to the Department any breaches or failures described in Exhibit T and providing written recommendations as to whether Performance Points should be assessed. The cost of such services shall be paid by the Concessionaire; *provided* that, except when increased monitoring is permitted at any time as described in Section 8.16(e)(i), the aggregate amount payable by the Concessionaire for such services and for costs and expenses with respect to other Oversight Services shall not exceed in any calendar year (pro rated for any partial year) the maximum amount specified in Section 10.03(b), and the costs of such services and other Oversight Services in excess of such maximum levels shall be borne by the Department.

**ARTICLE 9**

**PROJECT ENHANCEMENTS; SAFETY COMPLIANCE ORDERS**

**Section 9.01 Project Enhancements by the Concessionaire.**

The Concessionaire shall have the right, at its sole cost and expense, at any time after the Service Commencement Date, to design, develop, construct, operate and maintain Concessionaire Project Enhancements within the HOT Lanes Right of Way, including any fundamental change in the dimensions, character, quality, location or position of all or any part of the HOT Lanes; *provided*, that the Concessionaire shall not undertake any such Project Enhancements unless all aspects thereof are approved in writing by the Department in its sole discretion, and the Concessionaire has entered into a Development Contract with the Department with respect thereto.

**Section 9.02 Project Enhancements by the Department.**

(a) Subject to Section 9.02(e) below, the Department shall have the right from time to time after the Service Commencement Date, at its sole cost and expense to design, develop, construct, operate and maintain Department Project Enhancements. The Department shall have the right to design, develop, construct, operate and maintain Department Project Enhancements through one or more of the following mechanisms, as the Department selects from time to time in its sole discretion:

- (i) use by the Department of its own personnel, materials and equipment;
- (ii) contracting with third parties through requests for proposals, competitive bids, negotiations or any other lawful procurement process; and
- (iii) authorizing and directing the Concessionaire, at the Department's sole cost and expense, to undertake the Department Project Enhancements through subcontracting for necessary traffic and revenue studies and for necessary planning, design, engineering, permitting, financial, right-of-way acquisition services, Utility Relocation, construction, installation, project management, operation, maintenance, repair and other work and services.

(b) If the Department authorizes and directs the Concessionaire to undertake Department Project Enhancements pursuant to Section 9.02(a)(iii) above, then the Concessionaire, in cooperation with the Department and subject (1) to the review and written approval by the Department in its sole discretion, and (2) to the Department making available to the Concessionaire sufficient funds, through monthly progress payments for work performed and costs incurred (plus 10% of such costs to reimburse the Concessionaire for costs of administering the work), including without limitation the costs of obtaining any Regulatory Approvals necessitated by such Department Project Enhancement, in order to perform the work required to design, construct, operate and maintain such Department Project Enhancement, shall have the right and obligation:

(i) to solicit, negotiate, enter into and enforce performance of subcontracts for all necessary work and services as described in Section 9.02(a)(iii) above;

(ii) to obtain or cause to be obtained payment and performance bonds, insurance policies, guarantees, indemnities, revenue subsidies and other risk management and credit instruments as may be appropriate in connection with the Department Project Enhancements;

(iii) to use diligent efforts to cause all Regulatory Approvals to be obtained for, and thereafter cause to be designed and constructed, such Department Project Enhancements, subject to prior written approval of the designs and plans therefor, and any changes thereto, by the Department in its sole discretion;

(iv) to show all such completed Department Project Enhancements on final, as-built plans and specifications submitted to the Department; and

(v) after completion, to collect tolls (on behalf and for the account of the Department), manage, operate, maintain and repair such Department Project Enhancements, subject to the Department's right at any time to assume responsibility for all or any portion of such functions.

(c) Notwithstanding the foregoing Section 9.02(a) and (b), but subject to Section 9.02(f), if the Department determines that additional traffic lanes on the Capital Beltway Corridor are in the State's best interests, the Department shall consult with the Concessionaire as to an appropriate strategy to implement such additional traffic lanes on the Capital Beltway Corridor or, at the Department's sole discretion, permit the construction of additional lanes as part of the Project with a view to minimizing any detrimental impact on the Project or its ability to generate Revenues, and the Department will give the Concessionaire the opportunity to submit a proposal to construct new HOT Lanes or toll lanes at the Concessionaire's sole cost as a Concessionaire Project Enhancement so long as the Concessionaire demonstrates that it has or can obtain all required Regulatory Approvals for such Project Enhancement with appropriate assistance from the Department. In the event that the Concessionaire determines not to pursue the construction of new HOT Lanes or toll lanes or the Department does not approve such Project Enhancement, and the Department adds Additional Traffic Lanes (whether general purpose or tolled), such Additional Traffic Lanes shall be a Department Project Enhancement.

(d) The Department shall have unfettered rights to finance, develop, approve, expand, improve, modify, upgrade, add capacity to, reconstruct, renew and replace any existing and new transportation or other facilities. In no event shall the taking of any such action by the Department constitute a default by the Department under this Agreement. The Department shall also have the right, without liability (other than any obligation to pay any such compensation required hereby), to make discretionary and non-discretionary distributions of federal and other funds for any transportation projects (including any Additional Traffic Lanes) and programs, and the planning thereof, and exercise all of its authority to advise and recommend on transportation planning, development and funding, and to otherwise improve the GP Lanes and other roadways and structures within or adjacent to the Capital Beltway Corridor.

(e) The Department shall have the right to enter upon the Project and the relevant rights of way for any purpose relating to Department Project Enhancements under this Section 9.02 to the extent reasonably necessary. If the Department elects to develop Department Project Enhancements without the Concessionaire's participation, then the Department shall coordinate such development with the Concessionaire so as to minimize to the extent reasonably feasible the disruption to the Concessionaire's operation and maintenance of the HOT Lanes and the generation of Toll Revenues.

(f) The parties agree that the Department may, at its sole cost and discretion, develop, design, finance, construct, operate, and maintain the following improvements: (i) a flyover ramp from the northbound GP Lanes to westbound lanes along I-66; (ii) improvements to I-66 outside the Capital Beltway Corridor; (iii) improvements to the interchange of the GP Lanes and the Dulles Toll Road (the "DTR"); (iv) right hand ramps and flyovers from the northbound GP Lanes to the westbound lanes of the DTR; (v) ramps or flyovers from southbound GP Lanes to eastbound along the DTR; (vi) connections from DTR/Dulles Airport Access Road (the "DAAR") westbound to the northbound and southbound HOT Lanes; and (vii) connections from the southbound HOT Lanes to the eastbound and westbound lanes of the DTR/DAAR.

(g) The improvements identified in Section 9.02(f) above may be considered a Department Project Enhancement or Department Change under Section 7.12, but shall not result in a Compensation Event or liability for Concessionaire Damages; *provided*, however, that a Department Change under Section 7.12 may be required if the Department chooses, at its sole cost and discretion, to undertake such improvements during the Work Period. The parties will agree, in connection with such a Department Change, on additional costs directly resulting from construction of the change, if any, for modification of the HOT Lanes in Virginia Project that may be required to enable the improvements contemplated in Section 9.02(f).

(h) If any Regulatory Approvals require the construction of the flyover described in Section 9.02(f)(i) above, the Department accepts responsibility for the cost to develop, design, finance, construct, operate, and maintain the flyover and may issue a change order for such work to the Concessionaire. In such event, (1) the parties will agree to the terms of the change order, (2) such change order shall not be deemed a Compensation Event or result in liability for any Concessionaire Damages; and (3) the change order shall not affect the treatment allowed for the flyover ramp in accordance with Section 9.02(f) and (g).

(i) For the avoidance of doubt, the Department is not obligated to undertake any of the improvements described in Section 9.02(f), other than as expressly provided by Section 9.02(h), and the terms set forth in Section 9.02(f) and (g) in no way supersede any obligations or responsibilities otherwise stated in this Agreement regarding the parties' respective rights or obligations to obtain, maintain or comply with Regulatory Approvals.

(j) If any Department Project Enhancement carried out pursuant to Section 9.02(a), (b) or (c) results in Concessionaire Damages, such Department Project Enhancement shall constitute a Compensation Event and the Department shall compensate the Concessionaire in accordance with Sections 13.02 and 13.03, and any Positive Revenue resulting from Department Project Enhancements shall be shared equally between the Concessionaire and the Department, and the Department's share shall be paid by the Concessionaire and deposited in the Project Enhancement Account, in accordance with Sections 13.02 and 13.03, in addition to and without regard to amounts payable under Article 5; *provided*, that in the case of Additional Traffic Lanes (i) if an aggregate of two or fewer Additional Traffic Lanes have been added, Concessionaire Damages shall not be payable with respect to any period after the HOT Lanes Project has achieved the Base Case Second Level Targeted Rate of Return, and (ii) if an aggregate of more than two Additional Traffic Lanes have been added, Concessionaire Damages shall not be payable with respect to any period after the HOT Lanes Project has achieved the Base Case Third Level Targeted Rate of Return; and *provided further*, that nothing herein shall limit the Department's ability to operate, maintain or improve the GP Lanes in any respect or, except as expressly provided above, give rise to a Compensation Event or any payment of Concessionaire Damages with respect thereto.

### **Section 9.03 Safety Compliance Orders.**

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

(b) The Department shall use good faith efforts to inform the Concessionaire at the earliest practicable time of any circumstance or information relating to the HOT Lanes Project which in the Department's reasonable judgment is likely to result in a Safety Compliance Order. Except in the case of an emergency, the Department will consult with the Concessionaire, and may consult with the Independent Engineer, prior to issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts and the availability of Concessionaire resources to fund the Safety Compliance Work. The Department may, in its discretion, request the Independent Engineer to monitor and inspect for the purpose of determining whether any circumstances exist that warrant issuance of a Safety Compliance Order and giving the Department and the Concessionaire reports and recommendations related to such matters.

(c) Expeditiously after the Department issues a Safety Compliance Order, the Concessionaire shall proceed with the necessary environmental, design and construction work to carry out the Safety Compliance Order, at the Concessionaire's sole cost and expense.

number of days as the Department and the Concessionaire jointly determine, each acting reasonably. During the Work Period, extensions for Delay Events affecting the Work shall be based on TIA and the then current Baseline Schedule, taking into account impacts of the Delay Events on critical path items. If the Department and the Concessionaire cannot agree upon the period of extension, then either Party shall be entitled to refer the matter to the dispute resolution procedure in Section 17.06. This Section 13.01(c)(iii) shall not excuse the Concessionaire from the performance and observance under this Agreement of all obligations and covenants not affected by the Delay Event. Notwithstanding the occurrence of a Delay Event, the Concessionaire shall continue its performance and observance under this Agreement of all of its obligations and covenants to be performed to the extent that it is reasonably able to do so and shall use its reasonable efforts to minimize the effect and duration of the Delay Event. Nothing herein shall permit or excuse noncompliance with a change to applicable Law.

### **Section 13.02 Compensation Events.**

(a) Either party hereto may submit a written notice to the other party of any Compensation Event, which notice shall be submitted within 30 days following the date on which the submitting party first became aware (or should have been aware, using all reasonable due diligence) that an event has occurred and that it is or will become a Compensation Event pursuant hereto (a "Compensation Event Notice"). The Compensation Event Notice shall set forth (i) the Compensation Event and its date of occurrence in reasonable detail, and (ii) the amount claimed as the Concessionaire Damages or as Positive Revenue, as applicable, and details of the calculation thereof including a written analysis and calculation of the estimated Net Cost Impact, if any, and estimated Net Revenue Impact.

(b) If for any reason the Concessionaire fails to deliver such written Compensation Event Notices within the foregoing time periods, the Concessionaire shall be deemed to have irrevocably and forever waived and released any Claim or right to compensation for any Concessionaire Damages or other adverse effects on Toll Revenues or on costs, expenses and liabilities attributable to such Compensation Event.

(c) After a party hereto submits a Compensation Event Notice, the other party shall be entitled to obtain (i) from the Independent Engineer a comprehensive report as to the Concessionaire's estimate of the Net Cost Impact attributable to the Compensation Event and (ii) from a traffic and revenue consultant a traffic and revenue study, prepared in accordance with Good Industry Practice, analyzing and calculating the estimated Net Revenue Impact or Positive Revenue, as applicable, attributable to the Compensation Event. Within 90 days after receiving a Compensation Event Notice, the party in receipt of such notice shall provide to the party having given such notice a copy of such reports as it has elected to obtain. Within 120 days after the delivery of the Compensation Event Notice, the Concessionaire and Department shall commence good faith negotiations to determine the Concessionaire Damages, Positive Revenue or other compensation, if any, to which a party is entitled, including calculation of the present value of such Concessionaire Damages, Positive Revenue or other compensation pursuant to Section 13.03(a).

(d) If the Concessionaire and Department are unable to agree upon the amount of the Concessionaire Damages, Positive Revenue or other compensation, if any, or present value

thereof, within 30 days after commencement of negotiations, then either party may request that the matters under dispute be reviewed by the Independent Engineer (and, if the disputed matters involve issues outside the Independent Engineer's expertise, the Independent Engineer may consult with another independent third party expert having appropriate expertise with respect to the matters in dispute). If, despite the recommendations of the Independent Engineer, the parties are unable to agree upon the matters in dispute within 60 days after commencement of negotiations, either party, by written notice to the other party, may terminate the negotiations and request the dispute be resolved in accordance with Section 17.06.

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

### **Section 13.03 Payment Options for Concessionaire Damages and Positive Revenue.**

(a) Subject to Section 20.18, following a determination of the Concessionaire Damages, including those determined under Sections 9.02, 12.03, 13.04, 13.05, 13.06 and 17.04, Positive Revenue under Sections 7.12, 9.02, and 13.04, compensation regarding certain Hazardous Substances under Section 8.10, or compensation for Net Revenue Impact or Net Cost Impact under Section 19.02, by mutual agreement or dispute resolution, the party owing such compensation shall pay such compensation; *provided*, that it may make such payment or payments in any of the following manners:

(i) a lump-sum payment of the present value of the compensation, discounted to the date of payment at the then applicable discount rate that an informed buyer and an informed seller of the future payment obligations, under no compulsion to buy or sell, would agree to use in determining the present value of such compensation;

(ii) through quarterly or other periodic payments of the compensation over the remaining life of the Term so long as such payment schedule provides for payment of such portion of the compensation within 90 days after such damages or compensation is projected to be incurred; *provided*, that if any such payment is made more than 90 days after the recipient party incurs or suffers the compensation or damages, the unpaid compensation shall accrue interest at the Bank Rate from and after such 90th day to the date such payment is made; and *provided further*, that if the payor elects to make quarterly or other periodic payments, at any later time it may choose to complete compensation through a lump-sum payment of the present value of the remaining compensation;

(iii) by set-off against amounts then due and owing to the Department pursuant to the permit fee arrangements detailed in Article 5; or

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

(b) As a condition precedent to one party's obligation to compensate the other party for the Concessionaire Damages, Positive Revenue or otherwise under this Section 13.03, the

party entitled to receive such compensation shall execute a full, unconditional, irrevocable release of any Claims or other rights to compensation or other monetary relief associated with such Compensation Event other than the right to receive the applicable Concessionaire Damages, Positive Revenue or otherwise under this Section 13.03.

#### **Section 13.04 Change in Law.**

(a) Subject to Section 20.18, if (i) a Discriminatory Change in Law occurs after the Agreement Date and (ii) such Discriminatory Change in Law results in Concessionaire Damages, the Department shall compensate the Concessionaire in accordance with Sections 13.02 and 13.03; *provided*, that any Positive Revenue resulting from a Discriminatory Change in Law shall be shared equally between the Concessionaire and the Department and the Department's share of such Positive Revenue shall be paid by the Concessionaire and deposited in the Project Enhancement Account, in addition to and without regard to any amounts payable under Article 5, and *provided further*, however, that none of the following shall be a Discriminatory Change in Law: (A) the development, redevelopment, construction, maintenance, modification or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of Toll Revenues or in the number of vehicles using the HOT Lanes Project, including any action described in Section 12.01(a); (B) an increase in Taxes of general application; or (C) a Reimbursable Tax Imposition.

(b) Subject to Section 20.18, if regulatory control and jurisdiction over the HOT Lanes is transferred or assigned to a Governmental Authority other than the State or a State agency during the Lock-up Period and the effect of such action has a Net Revenue Impact or Net Cost Impact, the Department shall pay to the Concessionaire any Concessionaire Damages with respect thereto in accordance with Sections 13.02 and 13.03. If regulatory control and jurisdiction over the HOT Lanes is transferred to a Governmental Authority other than the State or a State agency after the Lock-up Period, at least 60 days prior to any such transfer or assignment the Department shall consult with the Concessionaire about the intended transfer or assignment and the Concessionaire shall have the opportunity to submit to the Department information as to the potential economic impact to the HOT Lanes Project of such transfer or assignment. Notwithstanding any other provision of this Agreement, if as a result of or subsequent to any such transfer or assignment to another Governmental Authority applicable local law or regulation has the effect of preventing the Concessionaire from meeting its obligations under this Agreement such effect may not in and of itself be the basis for any termination of this Agreement by the Department.

#### **Section 13.05 Toll Exemptions; Excess High Occupancy Vehicle Usage.**

(a) Subject to Section 20.18, if any Governmental Authority enacts, adopts, promulgates, modifies, or repeals any Law during the Term that (i) permits vehicles other than as provided by Section 4.04(b)(i) or (ii) to travel on the HOT Lanes without paying the full tolls established by the Concessionaire, including by any decrease in the High Occupancy Requirement to HOV-2 or below, or (ii) permits vehicles other than Permitted Vehicles to travel on the HOT Lanes, and the effect of such action has a Net Revenue Impact, the Department shall pay to the Concessionaire any Concessionaire Damages with respect thereto in accordance with Sections 13.02 and 13.03.

(b) The Department agrees to pay the Concessionaire, subject to Section 20.18, amounts equal to 70% of the Average Toll applicable to vehicles paying tolls for the number of High Occupancy Vehicles exceeding a threshold of 24% of the total flow of all Permitted Vehicles that are then using such Toll Section going in the same direction for the first 30 consecutive minutes during any day, and any additional 15 consecutive minute periods in such day, during which average traffic for a Toll Section going in the same direction exceeds a rate of 3,200 vehicles per hour based on two lanes. Notwithstanding the foregoing, (A) this Section 13.05(b) shall apply only with respect to periods beginning one year after the Service Commencement Date and ending not later than 40 years after the Closing Date, (B) this Section 13.05(b) shall cease to apply once a pre-tax internal rate of return (rounded up, if necessary, to a whole multiple and 1/1000 of 1%) on Total Invested Project Funds of 12.98%, calculated based on the nominal Net Cash Flow of the HOT Lanes Project for the period from the Service Commencement Date to the end of a calendar year, has been achieved, and (C) for purposes of determining the High Occupancy Vehicles as a percentage of flow, HOV-2 or below vehicles and Permitted Vehicles violating the High Occupancy Requirement shall not be counted as High Occupancy Vehicle usage but shall be counted as part of total flow. Failure by the Concessionaire to notify the Department in writing of its claim for a payment pursuant to this Section 13.05(b), and to provide audited or otherwise independently verified information relevant to this calculation, within 30 days after the end of each calendar month with respect to which this provision applies shall constitute a permanent waiver of any such claim with respect to such month. The Department will have 30 days upon receipt of this information to review the information and calculations provided and if the Department agrees with the calculation, make the calculated payment, together with interest on such amount, which interest shall commence accruing 30 days after the month to which the payment relates. To the extent there are amounts on deposit in the Project Enhancement Account, such payments shall be made first from the Project Enhancement Account and the interest due shall be calculated based on the average earnings rate on the Project Enhancement Account, during such period. If there are no amounts on deposit therein then interest shall be based on the average earnings rate on the State's Transportation Trust Fund or any successor thereto, during such period. Any disputes with regards to the information or the calculation will be subject to the dispute resolution process in Section 17.06.

### **Section 13.06 Reimbursable Tax Imposition**

Subject to Section 20.18, if a Reimbursable Tax Imposition occurs at any time during the Term, the Department shall pay to the Concessionaire the Concessionaire Damages with respect thereto in accordance with this Section 13.06 and Sections 13.02 and 13.03. The Concessionaire shall promptly notify the Department if the Concessionaire obtains written advice or written information of any proposed or threatened change in Law that could result in a Reimbursable Tax Imposition or of any local taxing district or other Governmental Authority's intent to levy such a tax.

### **Section 13.07 Significant Force Majeure Event**

(a) Within 30 days following the date on which the Concessionaire first became aware of any Force Majeure Event that is reasonably expected to be a Significant Force Majeure

respond in 21 days, such failure by the Department shall not be deemed approval of the Right of Way Acquisition Plan. The Right of Way Acquisition Plan shall be updated as necessary during the life of the Route 495 HOT Lanes in Virginia Project.

(iii) The Concessionaire shall exercise due diligence and use reasonable care in determining whether property to be acquired may contain wastes or other materials or hazards requiring remedial action or treatment and shall otherwise comply with the Technical Requirements, including the undertaking of studies, assessments and tests required by the Technical Requirements.

(iv) The Concessionaire shall make direct payments of benefits to property owners for negotiated settlements, relocation benefits, and payments to be deposited with the court.

(v) The Concessionaire shall prepare, obtain execution of, and record documents conveying title of the Project Right of Way to the State and deliver all executed and recorded general warranty deeds to the Department. For all property purchased in conjunction with the Route 495 HOT Lanes in Virginia Project, title will be acquired in fee simple except as may be specifically agreed to by the Department.

(b) Condemnation. The Concessionaire shall use its best efforts (which shall not require the Concessionaire to pay more than fair market value for land or land rights) to settle claims with landowners amicably. If, despite the Concessionaire's best efforts, it is unable to reach a settlement with any landowners within a reasonable period of time, as a last resort the Department will handle any necessary condemnation proceedings subject to the following. Prior to the Department filing a condemnation proceeding, the Concessionaire shall prepare or cause to be prepared all necessary paperwork and supporting documentation required for the proceeding and it shall deliver that documentation to the Department. The Department then will file the condemnation proceeding(s) and handle such proceeding(s) in accordance with the Technical Requirements.

(c) Property outside the Project Right of Way. The Concessionaire shall be responsible, at its own cost and expense, for the acquisition of, or to cause the acquisition of, any property, temporary easements or other property rights outside of the Project Right of Way which may be necessary for any permanent or temporary works outside of the Project Right of Way, including those necessary to accommodate laydown, staging, drainage and other construction methods in connection with the construction of the Project, and for all facilities and improvements required for the opening and operation of the HOT Lanes Project.

(d) Utility Relocations. The Concessionaire shall cause all Utility Relocations necessary to accommodate construction of the Route 495 HOT Lanes in Virginia Project. Utility Relocations shall be performed in accordance with the Technical Requirements (including the Department's Right of Way & Utilities Division Manual of Instructions – Volume II – Utility Relocation Policies and Procedures, November 2003 and any relevant agreements with the affected Utilities). Subject to all applicable Law, the Department shall provide to the Concessionaire the benefit of any provisions in recorded utility or other easements affecting the Project which require the easement holders to relocate at their expense and the Department shall