

Dulles Toll Road Permit and Operating Agreement

Dated as of December 29, 2006

by and between

VIRGINIA DEPARTMENT OF TRANSPORTATION,

a Department of the Commonwealth of Virginia

and

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

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List of Exhibits:

- A Definitions**
- B Baseline Asset Condition Report**
- C Operations and Maintenance Standards and Performance Requirements**
- D The Airports Authority Financial Projections**
- E Summary of Design and Construction Standards**

DULLES TOLL ROAD PERMIT AND OPERATING AGREEMENT

This DULLES TOLL ROAD PERMIT AND OPERATING AGREEMENT ("**Agreement**") is made and entered into as of December 29, 2006, by and between the Virginia Department of Transportation (the "**Department**"), a department of the Commonwealth of Virginia, the address of which Department is 1401 East Broad Street, Richmond, Virginia 23219; and Metropolitan Washington Airports Authority (the "**Airports Authority**"), a body corporate and politic created by interstate compact between the Commonwealth of Virginia and the District of Columbia under Chapter 598 of the 1985 Acts of the Virginia Assembly, as amended, codified at Va. Code Ann. §5.1-152 et seq. (2001), and by the District of Columbia Regional Airports Authority Act of 1985, as amended, codified at D.C. Code Ann. §§9-901 et seq. (2001).

ARTICLE 1.

RECITALS

Section 1.01. On January 10, 1983, the United States Government, acting by and through the Federal Aviation Administration (the "**FAA**"), granted a Deed of Easement to the Commonwealth of Virginia, acting by and through the Virginia Department of Highways and Transportation (the "**Commonwealth**"), for the construction, operation and maintenance for a term of 99 years of a limited access highway (to be called the Dulles Toll Road and which is known today as Omer L. Hirst – Adelard L. Brault Expressway (the "**Toll Road**")). On November 23, 1983, the FAA granted a Deed of Easement to the Commonwealth for the purpose of operating and maintaining the Toll Road (the January 10 and November 23 Deeds of Easement are referred to herein as the "**1983 Easement**").

Section 1.02. On June 7, 1987, the Airports Authority assumed operating responsibility for Washington Dulles International Airport ("**Dulles Airport**") including certain property in Loudoun and Fairfax Counties, Virginia known as the Dulles International Airport Access Highway and Right-of-Way, including the extension generally between Interstate Routes I-495 and I-66 (the "**Dulles Access Highway**"), pursuant to a lease dated March 2, 1987 between the United States of America, acting by and through the Secretary of Transportation, and the Airports Authority, as amended (the "**Federal Lease**"), which was authorized by the Metropolitan Washington Airports Act of 1986, codified at 49 USC §§ 49101-49112.

Section 1.03. On January 9, 1990, the Airports Authority granted a Deed of Easement to the Commonwealth to certain property under the control of the Airports Authority for the purpose of enabling the Department to make improvements to the Toll Road.

Section 1.04. On June 11, 2004, pursuant to a proposal received under the Public-Private Transportation Act of 1995, Title 22 of Chapter 56, Code of Virginia, the Virginia Department of

Rail and Public Transportation ("**DRPT**") and Dulles Transit Partners, LLC ("**DTP**") entered into the Comprehensive Agreement to Develop the Dulles Corridor Rapid Transit Project (the "**Comprehensive Agreement**") concerning the development, design and construction of the Dulles Corridor Metrorail Project to be located in part within the Dulles Access Highway Right-of-Way and extending generally from the vicinity of the West Falls Church Metrorail Station in Fairfax County through Tysons Corner to Dulles Airport and terminating in the vicinity of Route 772 in Loudoun County.

Section 1.05. On January 17, 2006, the Airports Authority submitted a proposal to the Governor of the Commonwealth with respect to the operation of the Toll Road by the Airports Authority in consideration of the Airports Authority's agreement to use Toll Revenues to fund the Dulles Corridor Metrorail Project and for other transportation improvements in the Dulles Corridor (such proposal, the "**Dulles Corridor Proposal**").

Section 1.06. The Commonwealth, acting by and through the Secretary of Transportation, and the Airports Authority entered into a Memorandum of Understanding, dated March 24, 2006 (the "**Memorandum of Understanding**"), regarding the Dulles Corridor Proposal, subject to the parties entering into a binding agreement or agreements that would reflect their mutual understandings with respect to transfer of rights to operate, finance and maintain the Toll Road to the Airports Authority and certain related matters for the purpose of financing construction of the Dulles Corridor Metrorail Project and other transportation improvements in the Dulles Corridor.

Section 1.07 Simultaneously with the execution of this Agreement, a Master Transfer Agreement (the "**Transfer Agreement**") was executed by the Department and the Airports Authority which sets forth the terms and conditions for the effectiveness of this Agreement and the transfer of certain assets related hereto, including the assignment of the Comprehensive Agreement by DRPT to the Airports Authority under an assignment and assumption agreement (the "**Assignment Agreement**").

Section 1.08. The parties now desire to enter into this Agreement to provide the Airports Authority a permit to operate the Toll Road and collect Toll Revenues in consideration for the Airports Authority's obligation to fund and cause to be constructed the Dulles Corridor Metrorail Project and other transportation improvements in the Dulles Corridor as contemplated by the Airports Authority Financial Projections (the "**Financial Projections**") attached hereto as **Exhibit D**.

Section 1.09 The Department as representative of FHWA has a continuing stewardship obligation during the Term of this Agreement to ensure that the Toll Road meets all federal requirements applicable to highways that are part of the National Highway System.

Section 1.10 The Department recognizes that the Airports Authority exercises stewardship over vital transportation assets, and, during the Term hereof, will extend that stewardship to fund, operate, maintain and improve the Toll Road and to pursue the financing and construction of the Dulles Corridor Metrorail Project.

Section 1.11. This Agreement sets forth in greater detail the parties' understandings and agreement with respect to the foregoing matters, all upon the terms and conditions set forth herein.

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 Department and the Airports Authority agree as follows:

ARTICLE 2.

DEFINITIONS

All capitalized terms used but not otherwise defined herein have the respective meanings given to them in **Exhibit A**.

ARTICLE 3.

ESTABLISHMENT OF TRANSACTION

Section 3.01 Basic Agreement; Roles and Responsibilities

(a) This Section 3.01 identifies and establishes the basic roles and responsibilities of the Department and the Airports Authority under this Agreement. This Section 3.01 is not intended, and shall not be construed, to impose any obligations on any party, or provide any party with any rights, that are in addition to any rights or obligations set forth elsewhere in this Agreement in connection with the subject matter thereof.

(b) The Department:

(i) hereby grants the Airports Authority a permit (the "Permit") under which the Airports Authority has the exclusive right, as of the Effective Date, to

(A) maintain, improve, equip, modify, repair and operate the Toll Road; and

(B) establish, charge and collect tolls and other User Fees for vehicles using the Toll Road and to use, pledge, assign and modify the same from time to time in accordance with the terms of this Agreement;

(ii) hereby establishes, pursuant to this Agreement, certain terms and conditions under which the Toll Road and any Capital Improvements will be constructed, maintained, improved, equipped, modified, repaired and/or operated;

(iii) may review the Airports Authority's work under this Agreement with respect to the Toll Road and any Capital Improvements pursuant to Article 9; and

(iv) will take acceptance of title to and responsibility for, including but not limited to, maintenance of any Capital Improvements on the Toll Road Right-of-Way developed by the Airports Authority on and as of the expiration of the Term or earlier termination of this Agreement pursuant to Article 14 or Article 15, and will take acceptance of title to any other Capital Improvements developed by the Airports Authority upon satisfactory completion thereof.

(c) The Airports Authority shall:

(i) have the exclusive right and exclusive obligation to maintain, improve, equip, modify, repair and operate the Toll Road to the extent provided in, and subject to the provisions of, this Agreement;

(ii) transfer (x) the aggregate amount of funds that are necessary to fully pay, repay or defease, as provided by law, bond indenture, regulation or agreement, the outstanding series of bonds of the Commonwealth relating to financing of the construction and maintenance

of the Toll Road, and (y) the aggregate amount of funds that are necessary to enable the Department to fully pay or repay, together with reserves of Toll Road Revenues retained by the Department, the indebtedness evidenced by that certain promissory note, dated December 22, 1982, issued by the Virginia State Highway and Transportation Commission of the Commonwealth of Virginia in favor of Fairfax County, Virginia in the principal amount of \$4,325,000.00 (collectively, the “**Commonwealth DTR Financial Obligations**”), all of which are described in greater detail in the schedules attached to the Transfer Agreement;

(iii) cause Phases 1 and 2 of the Dulles Corridor Metrorail Project to be designed and constructed substantially in accordance with the conditions described in the March 2, 2005, Record of Decision of the Federal Transit Administration, as amended on November 17, 2006, and the July 12, 2005, Record of Decision of the Federal Aviation Administration on the Environmental Impact Statement for the Project, as they may be further amended or supplemented from time to time, and as provided in **Section 6.06**, all on an expedited schedule;

(iv) have the right to plan, develop, finance, construct, operate and maintain Capital Improvements to the extent provided in this Agreement;

(v) provide insurance, as and when provided in this Agreement;

(vi) have the right and obligation to establish and charge tolls and other User Fees for vehicles using the Toll Road and to modify the same from time to time, pursuant to **Section 4.01**;

(vii) have the right to collect, retain, use, pledge and assign Toll Revenues in accordance with **Section 4.01(d)**;

(viii) design, obtain Regulatory Approvals for, cooperate with the Department with respect to the acquisition of right of way for, relocate utilities respecting, and construct, install, test and open to the public Capital Improvements and other improvements pursuant to Safety Orders, in accordance with this Agreement;

(ix) have the right to enter onto, continuously occupy and use the Toll Road Right-of-Way for the Term hereof for carrying out the purposes set forth herein; and

(x) comply with and perform all other duties and obligations under this Agreement.

Section 3.02 Nature of Parties' Interests Under This Agreement.

(a) This Agreement does not grant the Airports Authority any additional fee title, leasehold estate, easement or other real property interest of any kind in or to the Toll Road. The Airports Authority's interests under this Agreement are contractual, including without limitation the Airports Authority's right, in accordance with the provisions of this Agreement, to impose, charge, collect, use and enforce payment of Toll Revenues (collectively the “**Toll Servicing**”

Rights”). Nothing in this Agreement is intended to alter the respective real property interests of the Department or the Airports Authority under the 1983 Easement or the Additional Easements.

(b) The Department has or will have at all times during the Term good and sufficient property interest in and to the Toll Road, subject to Permitted Encumbrances and the Airports Authority’s rights to control and utilize the Toll Road as set forth in this Agreement.

(c) During the Term, the Airports Authority will exercise its regulatory and law enforcement powers over the Toll Road and the property subject to the 1983 Easement and the Additional Easements in accordance with the Federal Lease and applicable Law.

(d) The Airports Authority will retain the Toll Servicing Rights (and the duties relating thereto) but may grant a security interest therein to the Trustee, as part of the Airports Authority’s Interest, as security for the Toll Revenue Bonds pursuant to one or more Indentures in accordance with the terms and conditions of this Agreement.

(e) Notwithstanding anything to the contrary herein or in the Transfer Agreement, the Airports Authority’s obligations hereunder shall be collectible and payable solely from the Airports Authority’s Interest, including, without limitation, the Airports Authority’s interest in Toll Revenues, proceeds of insurance obtained or required to be obtained pursuant to **Section 12.03** of this Agreement and proceeds of payments by contractors and subcontractors under warranties, guaranties, indemnities and other contractual provisions arising in connection with contracts entered into with respect to Toll Road Purposes, except as otherwise set forth in **Sections 4.04(b)** and **4.04(c)** hereof.

(f) The Department and the Airports Authority are not co-venturers, partners, lessor-lessee or principal-agent.

Section 3.03 Term.

Unless this Agreement is otherwise terminated in accordance with **Article 14** or **Article 15**, the term of the Permit granted herein shall commence on the Effective Date and shall expire on the fiftieth (50th) anniversary of the Effective Date, provided, however, that subject to the rights of holders of the Toll Revenue Bonds and other creditors of the Toll Road, the parties may mutually agree to modify such period in their sole discretion (the “**Term**”).

Section 3.04 Conditions to Effectiveness of Agreement.

This Agreement shall be effective upon the satisfaction or written waiver of each of the conditions set forth in Article VII of the Transfer Agreement, as certified by the Department or the Airports Authority, as applicable (the “**Effective Date**”).

ARTICLE 4.

TOLLING AND USE OF TOLL REVENUES

Section 4.01 Right to Charge Tolls.

(a) Subject to the limitations and conditions set forth in this Section 4.01 and otherwise in this Agreement, as of the Effective Date, the Department grants the Airports Authority the exclusive right to establish, charge and collect tolls and other User Fees for the use of the Toll Road from and after the Effective Date and until expiration of the Term or earlier termination of this Agreement pursuant to Article 14 or Article 15. The Airports Authority shall have the right to continue the utilization of the existing Toll Facilities in place as of the Effective Date, or implement a different system for the collection of tolls and other User Fees and/or construct or relocate and maintain different or additional tolling facilities on the Toll Road Right of Way in accordance with the terms of this Agreement.

(b) The Airports Authority's rights granted in subsection (a) above are limited by, and conditioned on, among other provisions in this Agreement, the following:

(i) the Airports Authority shall make a schedule of the then-current tolls and other User Fees available to any member of the public upon request;

(ii) the toll rates shall be the same for persons using the Toll Road under like conditions, and for this purpose "like conditions" may take into consideration type, weight and occupancy of the vehicle, number of axles, time-of-day and/or day-of-week travel, traffic congestion and/or other traffic conditions and type of facilities (provided, that the Airports Authority may adopt and implement discount programs for different classes or groups of persons using the Toll Road under like conditions, subject to the provisions of Article 10);

(iii) the Airports Authority shall exempt from tolls and other User Fees classes of vehicles or persons exempt from the payment of tolls pursuant to Law;

(iv) the Airports Authority may charge, debit and collect tolls only on vehicles using the Toll Road Right-of-Way; and

(v) prior to increasing any toll rate, the Airports Authority shall follow its regulatory process for promulgating regulations, including, without limitation, convening one or more public hearings in the Dulles Corridor to ensure that members of the public and the parties to the local funding agreements, including Fairfax County and Loudoun County have the ability to be informed and express their views on any proposed toll increase. The Airports Authority shall in a timely manner consult with the Dulles Corridor Advisory Committee with respect to the frequency, timing and amount of any new toll rates, provided, however that no consent or approval of the Dulles Corridor Advisory Committee is required to be obtained by the Airports Authority with respect to establishing, increasing or otherwise changing any toll rates.

(c) All Toll Revenues shall be the property of the Airports Authority to be retained, pledged, assigned and otherwise used by the Airports Authority without further approval of the Commonwealth, the Department, or any other Person, except as otherwise provided under this Agreement and the Toll Road Financing Documents. The Department agrees that it will not have any rights regarding such Toll Road collection methods or Toll Revenues, nor will it have any rights to proceeds received from the Airports Authority's issuance of bonds or other debt instruments, whether issued in connection with any activities referenced in **subsection (d)**, below, or otherwise, or to proceeds received from any other financing arrangements, except as otherwise provided in this Agreement. In addition, the Commonwealth, the Department or any other Person will not have any rights or responsibilities with respect to the amount, timing and extent of bonds or other debt issued by the Airports Authority or pursuant to other financing arrangements, except as otherwise provided in this Agreement.

(d) Not less frequently than annually, all Toll Revenues shall be budgeted and used solely to pay, in the following order of priority, (i) all costs and expenses of operating and maintaining the Toll Road, including the funding of any reasonable cash reserves or escrow accounts in respect thereof; (ii) debt service and other amounts payable under any Toll Road Financing Documents (including, without limitation, swaps, reimbursement agreements, commercial paper or any other similar products, or any scheduled TIFIA debt), together with deposits to any reserves created under any Toll Road Financing Documents, including the funding of any reasonable cash reserves or escrow accounts in respect thereof; (iii) all deposits in respect of the Renewal and Replacement Program (the "**Renewal and Replacement Reserves**") and costs of Renewal and Replacement Work incurred during such year not funded from Renewal and Replacement Reserves; (iv) all costs and expenses of constructing any Capital Improvements required to be paid during such year not paid from proceeds of Toll Revenue Bonds; (v) capital costs of the Dulles Corridor Metrorail Project then due and payable and not otherwise paid or reasonably expected to be paid from proceeds of the Toll Revenue Bonds, including the funding of a reasonable cash reserve in an amount not to exceed \$10 million plus any accrued interest earnings thereon for costs associated with remedying any latent defects related thereto, all in accordance with the WMATA Agreement; (vi) eligible costs and expenses for transit operations within the Dulles Corridor; and (vii) all remaining Toll Revenues shall be paid to the Commonwealth for allocation by the CTB for transportation programs and projects that are reasonably related to or benefit the users of the Toll Road. Notwithstanding the foregoing order of priority, the Airports Authority may change the order of priority of clauses (iv) through (vi), above. Any contemplated change to the order of priority of clauses (i) through (iii), above, or change in the use of Toll Revenues in clauses (i) through (vi), above, shall require the written consent of the Department.

(e) The Airports Authority shall have no right to use Toll Revenues to pay any debt, obligation or liability unrelated to Toll Road Purposes or Dulles Corridor Metrorail Project Purposes.

(f) Prior to the issuance by the FTA of the FFGA, Toll Revenues shall only be used for the items set forth in clauses (i), (ii), (iii) and (v) of **subsection 4.01(d)**, above, and payment of obligations then due and owing under contracts assigned to the Airports Authority by the

Department as identified in the Transfer Agreement or to complete capital projects specifically identified in the Transfer Agreement.

Section 4.02 Additional Provisions Respecting Tolls.

(a) Nothing in this Agreement, and nothing in the Toll Road Financing Documents, shall obligate or be construed as obligating the Department to continue or cease tolls and other User Fees after the end of the Term, except to the extent set forth in Section 14.01(c).

(b) Throughout the Term, the Airports Authority shall maintain a toll collection system, and utilize a violation enforcement system, which collection and enforcement systems shall be interoperable with the E-ZPass toll collection system or successor system utilized on State toll facilities. The Airports Authority may enter into an Electronic Toll Collection Agreement with the Department with respect to clearing of payments through the Department's electronic toll collection system.

(c) To the extent permitted by Law, the Department will implement and maintain a processing system for the enforcement of penalties for toll violations in Virginia (for both manual and electronic toll collection systems on roads). To the extent permitted by Law, the Department shall use diligent efforts to cause such enforcement system to be provided for the benefit of the Toll Road at the same levels of service as are provided by the Department for any other toll roads operated within the State.

(d) The Airports Authority shall reimburse the Toll Facilities Revolving Account established under Virginia Code § 33.1-23.03:4 to pay for costs of violation enforcement for the Toll Road.

(e) In setting toll rates, the Airports Authority shall analyze and forecast any diversion of traffic from the Toll Road and provide that information to the regional metropolitan planning organization.

Section 4.03 Emergency Suspension of Tolls.

(a) In addition to its rights granted pursuant to law, including Virginia Code §33.1-252 and the provisions of Section 11.02, the Department shall have the right, in its sole discretion reasonably exercised, to order immediate suspension of tolling in the event the Toll Road is designated for immediate use as an emergency mass evacuation route.

(b) The Department shall lift such order as soon as the need for emergency mass evacuation ceases. The Department shall have no liability to the Airports Authority for the loss of Toll Revenues or the increase in costs and expenses attributable to any order to suspend tolling to facilitate emergency mass evacuation issued pursuant to applicable Law by the Department or any other Governmental Authority. The Department will assist the Airports Authority in seeking any available reimbursement from the federal government for any lost Toll Revenues and expenses incurred during the emergency and for pursuing any applicable insurance coverage related thereto.

(c) In the event the Toll Road is designated for immediate use as the alternate route for diversion of traffic from another State Highway temporarily closed to all lanes in one or both directions due to a significant incident or emergency, the Department shall have the right to order immediate suspension of tolling in the direction(s) of diversion. The Department and the Airports Authority shall consult with each other on closure of the requested lane(s) and requested suspension(s) of tolling. The Department shall have no liability to the Airports Authority for the loss of Toll Revenues or the increase in costs and expenses attributable to the hours that such order is in effect.

Section 4.04 Funds and Accounts

(a) The Airports Authority shall maintain all funds and accounts containing Toll Revenues, separate and apart from all other funds and accounts of the Airports Authority. The revenues and expenses of the Toll Road and the Dulles Corridor Metrorail Project shall not be commingled with any other revenues or expenses of the Airports Authority. The Airports Authority shall create and maintain for the Term a segregated accounting and financial reporting mechanism for the Toll Road, including all Capital Improvements and the Dulles Corridor Metrorail Project, which shall be a separate fund with its own financial statements, and which shall constitute a proprietary "enterprise fund" as defined by the Governmental Accounting Standards Board.

(b) The Airports Authority shall not enter into agreements with holders of any debt incurred by the Airports Authority, except such debt issued for Toll Road Purposes and Dulles Corridor Metrorail Purposes, that contain a pledge or claim on the Toll Revenues, the Airports Authority's interest under this Agreement in the Toll Road, any Capital Improvements or the Dulles Corridor Metrorail Project. If, despite such efforts, Toll Revenues are applied to satisfy any debt of the Airports Authority that is not properly payable out of Toll Revenues in accordance with this Agreement, the Airports Authority shall reimburse in full any such Toll Road funds or accounts from any other available revenues or funds of the Airports Authority other than Toll Revenues.

(c) The Airports Authority shall not enter into airline agreements or other airport-related contracts that contain a pledge or claim on the Toll Revenues, the Airports Authority's interest under this Agreement in the Toll Road, any Capital Improvements or the Dulles Corridor Metrorail Project. The Airports Authority shall amend its airline agreements to provide that Toll Revenues do not constitute "airport revenues". If, despite such efforts, Toll Revenues are applied to satisfy any obligation of the Airports Authority under an airline agreements or other airport-related contracts, the Airports Authority shall reimburse in full any such Toll Road funds or accounts from any other available revenues or funds of the Airports Authority other than Toll Revenues.

(d) In the event that Airports Authority funds other than Toll Revenues or proceeds of the Airports Authority's Interest are applied to satisfy an obligation of the Airports Authority that is properly payable from Toll Revenues or the Airports Authority Interest, the Airports Authority may use Toll Revenues to reimburse such other funds.

(e) All Toll Revenues shall be held in accounts with a financial institution under arrangements that, to the extent reasonably practicable, preclude such funds from being an asset subject to claims of creditors of the Airports Authority other than holders of Toll Revenue Bonds and holders of claims related to Toll Road Purposes or Dulles Corridor Metrorail Purposes.

ARTICLE 5.

BOND FINANCING; BONDHOLDER RIGHTS AND REMEDIES

Section 5.01 The Airports Authority's Responsibility for Bond Financing; No Department Liability for Toll Revenue Bonds.

(a) The Airports Authority is solely responsible for obtaining and repaying all financing, at its own cost and risk and without recourse to the Department, necessary to maintain, improve, equip, modify, repair and operate the Toll Road and any Capital Improvements throughout the Term and necessary to develop and construct the Dulles Corridor Metrorail Project.

(b) None of the State, the Department, the CTB or any other agency, instrumentality or political subdivision of the State has any liability whatsoever for payment of the principal sum of any Toll Revenue Bonds, any other obligations issued or incurred by the Airports Authority in connection with this Agreement, the Toll Road or the Dulles Corridor Metrorail Project, or any interest accrued thereon or any other sum secured by or accruing under any Toll Road Financing Document. Except for a violation by the Department of its express obligations to a Trustee set forth in this Article 5, the Toll Road Financing Documents shall not contain any provisions whereby a Trustee would be entitled to seek any damages or other amounts from the Department due to the Department's breach of this Agreement, whether for the Toll Revenue Bonds or any other amount; provided that the foregoing shall not affect any rights or claims of a Trustee as a successor to the Airports Authority's Interest by foreclosure or transfer in lieu of foreclosure. The Department's review of any Indentures or other project financing documents is not a guarantee or endorsement of the Toll Revenue Bonds, any other obligations issued or incurred by the Airports Authority in connection with this Agreement, the Toll Road or the Dulles Corridor Metrorail Project, or any traffic and revenue study, and is not a representation, warranty or other assurance as to the ability of the Airports Authority to perform its obligations with respect to the Toll Revenue Bonds or any other obligations issued or incurred by the Airports Authority in connection with this Agreement, the Toll Road or the Dulles Corridor Metrorail Project, or as to the adequacy of the Toll Revenues to provide for payment of the Toll Revenue Bonds or any other obligations issued or incurred by the Airports Authority in connection with this Agreement, the Toll Road or the Dulles Corridor Metrorail Project.

(c) Each bond or promissory note evidencing Toll Revenue Bonds must include a conspicuous recital on its face to the effect that payment of the principal thereof and interest thereon does not constitute a claim against the Department's interest in the Toll Road or the Toll Road Right-of-Way, the Department's interest hereunder or its interest and estate in and to the Toll Road or any part thereof, is not an obligation of the State, the Department, CTB or any other agency, instrumentality or political subdivision of the State, moral or otherwise, and neither the full faith and credit nor the taxing power of the State, the Department, CTB or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal thereof and interest thereon.

Section 5.02 Toll Road Financing Documents; Department's Rights and Protections.

(a) The Airports Authority shall have the right, at its sole cost and expense, to pledge, hypothecate or assign the Airports Authority's Interest as security for any Toll Revenue Bonds, subject to the following terms and conditions:

(i) To the extent practicable, the Airports Authority shall engage the minimum aggregate number of Trustees in connection with the Toll Road Financing Documents;

(ii) The Airports Authority shall not pledge or encumber the Airports Authority's Interest, or any portion thereof, to secure any indebtedness, nor shall any Indenture secure any indebtedness, (A) that is issued by any Person other than the Airports Authority or (B) the proceeds of which are used in whole or in part for any purpose other than Toll Road Purposes or Dulles Corridor Metrorail Purposes;

(iii) No Indenture or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against the Airports Authority's Interest shall extend to or affect the interest of the Department in the Toll Road Right-of-Way or the Department's interests hereunder or its interest and estate in and to the Toll Road or any part thereof;

(iv) The Department shall not have any obligation to any bondholder or Trustee pursuant hereto, except as expressly set forth in this Article 5 or in any other instrument or agreement signed by the Department in favor of such bondholder or Trustee and unless the Airports Authority and/or the Trustee have notified the Department of the existence of such Indenture;

(v) Each Indenture shall require that if the Airports Authority is in default under the Toll Revenue Bonds secured by the Indenture or under the Indenture and the bondholder or Trustee gives notice of such default to the Airports Authority, then the Trustee shall also give concurrent notice of such default to the Department. Each Indenture also shall require that the Trustee deliver to the Department, concurrently with delivery to the Airports Authority or any other Person, every notice of election to sell, notice of sale or other notice required by Law or by the Indenture in connection with the exercise of remedies under the Indenture;

(vi) No Indenture shall grant to a bondholder any right to apply funds in the Extraordinary Maintenance and Repair Reserve to the repayment of the Toll Revenue Bonds or to any other obligation owing the bondholders;

(vii) Each Indenture shall expressly provide that the Airports Authority shall use and apply funds in the Renewal and Replacement Fund account solely for the purposes set forth in Section 7.06(c), provided, however, that any funds remaining after application to the cost of repair and restoration may be used and applied as Toll Revenues in accordance with Section 4.01(d);

(viii) Each Indenture shall expressly state that the Trustee and the bondholders shall not name or join the Department, the CTB or the State or any officer thereof in any legal proceeding seeking collection of the debt or other obligations secured thereby or the foreclosure or other enforcement of the Indenture except to the extent joining the Department is required as a necessary party in order to give the court jurisdiction over the dispute;

(ix) Each Indenture shall expressly state that neither the bondholders nor the Trustee shall seek any damages or other amounts from the Department due to the Department's breach of this Agreement, whether for Toll Revenue Bonds or any other amount, except damages for a violation by the Department of its express obligations to bondholders set forth in this **Article 5**, provided that the foregoing shall not affect any rights or claims of a bondholder as a successor to the Airports Authority's Interest by foreclosure or transfer in lieu of foreclosure;

(x) The Airports Authority agrees that it shall use its best efforts to obtain a response from bondholders or the Trustee to any request from the Department and the Airports Authority for consent to a modification or amendment of this Agreement within a reasonable period of time;

(xi) No Indenture may secure Toll Revenue Bonds that prohibits prepayment or defeasance, provided that the foregoing does not preclude imposition of customary no call periods or Breakage Costs in order to prepay or defease;

(xii) Each Indenture may only secure Toll Revenue Bonds the proceeds of which are used exclusively for the purpose of (A) Toll Road Purposes or Dulles Corridor Metrorail Purposes, (B) paying reasonable fees, costs and expenses incurred by the Airports Authority in connection with the closing of the issuance of Toll Revenue Bonds, and (C) any refinancing of pre-existing Toll Revenue Bonds that conform to the provisions of this **Section 5.02**, including use of proceeds to pay the reasonable costs of closing the refinancing (including lender fees); and

(xiii) No Toll Revenue Bonds shall have a maturity date beyond the end of the Term.

(b) The Department shall have no obligation to join in, execute or guarantee any Indenture.

(c) Notwithstanding the enforcement of any security interest created by a Indenture, the Airports Authority shall remain liable to the Department for the payment of all sums owing to the Department under this Agreement and the performance and observance of all of the Airports Authority's covenants and obligations under this Agreement.

(d) No bondholder or Trustee shall, by virtue of its Indenture, acquire any greater rights to or interest in the Toll Road or Toll Road Revenues than the Airports Authority has at any applicable time under this Agreement, other than the provisions in this **Article 5** for the specific protection of the bondholders and the Trustee.

(e) All rights acquired by the bondholders or the Trustee under any Indenture shall be subject to the provisions of this Agreement and to the rights of the Department hereunder and thereunder.

(f) No Indenture shall be binding upon the Department in the enforcement of its rights and remedies as provided herein and by Law, unless and until the Department has received a copy (certified as true and correct by the Trustee) of the original thereof and a copy of a specimen bond, promissory note or other evidence of indebtedness (certified as true and correct by the Trustee) secured by such Indenture, together with written notice of the address of the Trustee to which notices may be sent. In the event of an assignment of any such Indenture by the Trustee, such assignment shall not be binding upon the Department unless and until the Department has received a certified copy thereof, together with written notice of the assignee thereof to which notices may be sent (and the assignee shall, if such assignment is required to be recorded, after such recordation deliver to the Department a copy thereof bearing the date and instrument number or book and page of such recordation).

(g) No Trustee or bondholder shall be entitled to the rights, benefits and protections of this Article 5, unless the Indenture complies with this Section 5.02.

Section 5.03 Trustee's Right to Cure.

As long as any Indenture created in accordance with this Article 5 shall remain unsatisfied and the Department has received the notices and documents specified in Section 5.02(f), the following provisions shall apply with respect to any such Indenture and the related bondholder or bondholders.

(a) Should any event or condition occur which would either immediately or, following the applicable grace period or the giving of notice or both, enable the Department to terminate or suspend its obligations under this Agreement, except as a remedy for a Non-Compliance described in Section 15.01(h) (a "Termination Event"), the Department shall not terminate this Agreement until it first gives written notice of such Termination Event to the Trustee, and provides the Trustee a reasonable opportunity to cure such Termination Event, as provided below:

(ii) The Trustee may, within 45 days (such 45-day period to be in addition to any cure period provided to the Airports Authority herein) after receipt of written notice thereof from the Department to the Trustee, remedy such Termination Event or cause the same to be remedied by an entity to be designated by the Trustee reasonably acceptable to the Department. If the Termination Event is such that it cannot be remedied within such 45-day period despite the exercise of diligent efforts commencing promptly after delivery of the written notice of the Termination Event, or if possession is necessary in order to effect such cure, the Trustee shall have commenced a cure within such period or shall have commenced the appropriate legal or other action to foreclose the liens of the relevant Indenture so as to take possession of the Toll Road and shall thereafter diligently continue to pursue such remedy to completion, but in all events in not more than 180 days after written notice provided in subsection (a) above, and in such case, the bondholders shall be entitled to the New Agreements as provided in Section 5.04(c). If the Termination Event is peculiar to the Airports Authority and is not curable by the

Trustee, such as an insolvency, bankruptcy or a similar proceeding, or liquidation of the Airports Authority or its properties, then notwithstanding the Department's right to terminate, the Trustee shall not be required to cure such Termination Event but shall instead be entitled to exercise its rights under the relevant Indentures and this Article 5.

(ii) If the Trustee is prohibited by any process, stay or injunction issued by any court or by any bankruptcy or insolvency proceeding involving the Airports Authority from curing any Termination Event, the time specified above for curing any Termination Event shall be extended for the period of such prohibition, but not in excess of 180 days.

(b) If the Trustee's right to cure an Airports Authority Non-Compliance has not expired, and the Trustee is acting to cure such Airports Authority Non-Compliance in accordance with this Section 5.03, then the Department shall not exercise its right to terminate this Agreement by reason of such Airports Authority Non-Compliance. In furtherance of the foregoing, the Department shall permit the Trustee and its Substituted Operator the same access to the Toll Road as is permitted to the Airports Authority hereunder. The Department shall accept any such performance by the Trustee as though the same had been done or performed by the Airports Authority.

(c) Any payment to be made or action to be taken by the Trustee hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Trustee if such payment is made or action is taken by a Substituted Operator approved by the Department. The Department's approval of a proposed Substituted Operator may be withheld only if the Department reasonably determines that the proposed Substituted Operator does not have the financial resources, qualifications or experience to timely perform the Airports Authority's obligations under this Agreement. To be qualified, the proposed Substituted Operator and its Affiliates must not have been debarred or prohibited from participating in state or federally-funded projects, or indicted, convicted, pled guilty or nolo contendere to a violation of Law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows a similar lack of moral or ethical integrity. The Department will approve or disapprove a proposed Substituted Operator within 30 days after it receives from the Trustee a request for approval together with such information, evidence and supporting documentation concerning the financial resources, qualifications and experience of the proposed Substituted Operator as the Department may request in good faith.

(d) Any curing of any Termination Event by the Trustee shall not be construed as an assumption by the Trustee of any obligations, covenants or agreements of the Airports Authority under this Agreement, except with respect to the work, services or actions taken or performed by or on behalf of the Trustee.

(e) Nothing in this Section 5.03 shall preclude or delay the Department from exercising any remedies for an Airports Authority Non-Compliance, other than termination of this Agreement.

Section 5.04 Other Rights of Bondholders.

(a) Bondholders or the Trustee may exercise its rights and remedies under an Indenture with respect to all, but not less than all, of the Airports Authority's Interest, provided that if there is more than one Trustee under Indentures securing Toll Revenue Bonds, only the Trustee under the most senior lien Indenture shall have rights under this **Section 5.04**. Upon any transfer of the entirety of the Airports Authority's Interest pursuant to the exercise of remedies of a bondholder or the Trustee under an Indenture:

(i) The transferee shall succeed to all of the Airports Authority's Interest, subject to all rights and remedies of the Department under this Agreement, and shall be obligated to pay and perform or cause to be paid and performed in a professional and competent manner all the corresponding terms and conditions of this Agreement applicable after the date of such transfer and shall cure any outstanding defaults or non-compliance hereunder, it being understood that such transferee shall not be required to cure any non-monetary default or non-compliance that by its nature is not capable of cure by an entity other than the Airports Authority, including, without limitation, the bankruptcy or insolvency of the Airports Authority; and

(ii) Unless and until a bondholder or the Trustee has taken direct possession and control of the Airports Authority's Interest, whether through foreclosure, transfer in lieu of foreclosure, or has been finally determined by a court of competent jurisdiction to have become a mortgagee-in-possession, the bondholders or the Trustee shall not be liable for any of the Airports Authority's obligations under this Agreement. Except as provided in the preceding sentence, the Department acknowledges that upon such a transfer of the Airports Authority's Interest to a transferee, such transferee will acquire the entirety of the Airports Authority's Interest, and will succeed to all of the right, title and interest and obligations of the Airports Authority thereunder and may thereafter perform as if it were the Airports Authority under this Agreement, subject to all rights and remedies of the Department under this Agreement. Once the bondholder or the Trustee transfers ownership of the entirety of the Airports Authority's Interest to a transferee in accordance with the provisions of this Agreement, the bondholder or the Trustee shall cease to be liable for any of the Airports Authority's obligations under this Agreement accruing thereafter. Nothing in this section shall limit the bondholders' or the Trustees' step-in rights (or similar right to take from the Airports Authority temporary possession of the Toll Road) under the Indenture and related documents, provided that if at the time the bondholder or the Trustee exercises such right Department has not declared an Airports Authority Non-Compliance of a type that requires possession of the Toll Road in order to cure, then any such step-in right shall not be exercised for longer than a 180-day period without the Department's reasonable written consent. (For the avoidance of doubt, a bondholder's step-in or similar rights are conditioned, however, on compliance of the Indenture with **Section 5.02**.)

(b) The exercise by a bondholder or the Trustee of its rights with respect to this Agreement under the Indenture, this **Article 5**, or otherwise, whether by judicial proceedings or by virtue of any power contained in the Indenture, or by any conveyance from the Airports Authority to a bondholder in lieu of foreclosure thereunder, shall not require the consent of the Department or constitute a breach of any provision of or a default under this Agreement. Any

subsequent transfer from the bondholder or the Trustee shall be limited to a Substituted Operator approved by the Department in accordance with Section 5.03(c).

(c) Without prejudice to the cure rights of a bondholder or Trustee under Section 5.03, if a trustee or person exercising the powers of trustee in any bankruptcy or insolvency proceeding rejects or disaffirms this Agreement, and if, within 60 days after such rejection or disaffirmation, the bondholder or, as applicable, the Trustee or Substituted Operator shall so request, and if the bondholder or, as applicable, the Trustee satisfies all the conditions precedent set forth below, the Department will terminate this Agreement and execute and deliver to the bondholder or, as applicable, the Trustee or its Substituted Operator, a new agreement and new development contract (together the "New Agreements"). In addition, if a Termination Event occurs that cannot be cured by a bondholder without having possession of the Toll Road, if the Department terminates this Agreement by reason of such Termination Event after expiration, without cure, of the maximum 180-day period set forth in Section 5.03(a)(ii), and if the bondholder or, as applicable, the Trustee satisfies all the conditions precedent set forth below, the Department will execute and deliver to the bondholder or, as applicable, the Trustee or its Substituted Operator, the New Agreements. The New Agreements shall run for the remainder of the Term of this Agreement. The New Agreements shall otherwise contain the same covenants, terms and conditions and limitations as this Agreement (except for any requirements which have been fulfilled by the Airports Authority or its successors prior to termination and except that Section 13.02 shall be revised to be particular to the Trustee or its Substituted Operator). The right of a bondholder or, as applicable, the Trustee (or its Substituted Operator) to the New Agreements is subject to its satisfaction of the following conditions precedent:

(i) Such bondholder or the Trustee (or its Substituted Operator) commits in writing to the Department, in a notice delivered to the Department, within 30 days after the effective date of such rejection or disaffirmation, or after the Department's termination following the lapse of the 180-day period, as applicable, that the bondholder or the Trustee (or its Substituted Operator) will enter into the New Agreements, which notice is accompanied by a copy of such New Agreements, duly executed and acknowledged by the bondholder or the Trustee (or its Substituted Operator);

(ii) The bondholder or the Trustee (or its Substituted Operator) pays or causes to be paid to the Department, at the time of the execution and delivery of the New Agreements, all amounts which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Agreement but for such termination;

(iii) Provided the Department furnishes a statement or invoice for such costs the bondholder or the Trustee (or its Substituted Operator) pays or causes to be paid to the Department all reasonable costs and expenses (including legal fees, expert witness fees, court costs and disbursements), Taxes, fees, charges and other sums paid or incurred by the Department in connection with such defaults and termination, the recovery of possession from the Airports Authority, and in connection with the preparation, execution and delivery of the New Agreements and related agreements and documents specified in such statement or invoice, including all reasonable costs and expenses paid or incurred by the Department to manage,

design, permit, build, construct, equip, install, operate, maintain, repair and insure the Toll Road since cessation of the Airports Authority's performance of such duties; and

(iv) Such bondholder or the Trustee (or its Substituted Operator), at the time of such written request, cures all then-existing defaults under this Agreement (curable by the payment of money), or, if such defaults cannot be cured by the payment of money, such bondholder (or its Substituted Operator) commits to the Department in the New Agreements to complete cure of all such other defaults promptly and diligently after execution of the New Agreements and receipt of possession of the Toll Road, and in any event not later than 120 days after the date it obtains possession.

The provisions of this **Section 5.04(c)** shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this **Section** were a separate and independent contract made by the Department and the bondholder or Trustee.

(d) The Department shall give the Trustee notice of any condemnation proceedings affecting the Toll Road. The Trustee shall have the right to intervene and be made a party to any such condemnation proceedings, and the Department and the Airports Authority do hereby consent that the Trustee may be made such party or an intervener.

(e) If the holders of more than one Indenture shall make written requests upon the Department for New Agreements in accordance with **Section 5.04(c)**, the Department shall grant the New Agreements to, as applicable, the holder whose Indenture was the earliest to be recorded or filed (unless otherwise agreed in writing by such holder); and thereupon the written requests of each holder whose Indenture was recorded or filed later shall be deemed to be void.

Section 5.05 Limitation on Beneficiaries.

Notwithstanding anything contained herein to the contrary, the provisions of this **Article 5** that are binding on the Department shall inure only to the benefit of the Airports Authority and the bondholders and Trustee under any Indentures.

Section 5.06 Airports Authority's Financing Program.

Subject to the foregoing provisions of this **Article 5** and the provisions of **Article 4** of this Agreement, the Airports Authority shall have the exclusive right to issue such bonds or other forms of indebtedness (public or private), to enter into such financing documents, to create such liens, and to make such covenants, pledges, transfers, hypothecations, and assignments as it may deem necessary or desirable (a) to fulfill the Airports Authority's obligations hereunder and (b) to secure and provide for the payment of such bonds or other indebtedness, including the creation of reserves therefor.

ARTICLE 6.

DESIGN, ACQUISITION AND CONSTRUCTION; REGULATORY APPROVALS

Section 6.01 The Airports Authority's Obligation to Design and Construct.

(a) The Airports Authority shall design and construct any Capital Improvements and any Renewal and Replacement Program Work in accordance with (i) all applicable Regulatory Approvals and Laws, including all applicable federal requirements; (ii) all professional engineering and construction practices and procedures customarily accepted as industry standards for projects similar in nature, size and complexity to the Capital Improvement or Renewal and Replacement Program Work; and (iii) the requirements of this Agreement, including design and construction specifications, criteria, standards and procedures established by or acceptable to the Department as listed in Exhibit E attached hereto.

(b) Any monitoring, auditing, review, comments or approvals provided by the Department (except as expressly stated) will not relieve the Airports Authority of independent responsibility for performance of the work required under this Agreement and for all acts or omissions of the design professionals, contractors and subcontractors engaged by the Airports Authority to perform such work.

(c) The Department shall provide reasonable assistance to the Airports Authority, as requested by the Airports Authority and at the Airports Authority's cost, in obtaining or renewing Regulatory Approvals relating to any Capital Improvements.

Section 6.02 Right of Way and Utilities.

(a) The Airports Authority shall be responsible for paying all costs and expenses associated with the acquisition of real property interests and Utility Relocations necessary for the construction, maintenance and/or operation of any Capital Improvement (except to the extent paid by third parties or otherwise provided for), including land required for permanent or temporary works outside of the Toll Road Right-of-Way.

(b) Unless otherwise agreed to by the Department, Utility Relocations will be performed in accordance with the Department's Right of Way & Utilities Division Manual of Instructions – Volume II – Utility Relocation Policies and Procedures, November 2003, as amended, and any relevant agreements with Utilities.

(c) The Airports Authority acknowledges that such costs and expenses will include those relating to the Department's acquisition of real property interests in conformity with the Department's Right of Way & Utilities Division Manual of Instructions – Volume I – Right of Way Acquisition, July 1, 1999, as amended, and all applicable Laws relating to such acquisition, including without limitation the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

(d) The Department will provide to the Airports Authority the benefit of any provisions in recorded utility or other easements affecting the Toll Road, any Capital Improvement or the Dulles Corridor Metrorail Project which require the permittee or easement holders to relocate at their expense.

(e) When requested by the Airports Authority and as provided by Law, the Department will be responsible for eminent domain proceedings related to the construction, maintenance and operation of the Dulles Corridor Metrorail Project, in accordance with the conditions set forth in Section 5.7(b) of the Comprehensive Agreement, provided that for purposes of this **Section 6.02(e)**, all references in Section 5.7(b) of the Comprehensive Agreement to "the Department" shall be deemed to refer to the Department under this Agreement. The Airports Authority will be responsible for the costs associated with such eminent domain proceedings and for the payment of all compensation and damages for the properties acquired.

(f) Delays in acquisition of any right of way with respect to the Dulles Corridor Metrorail Project are the Airports Authority's risk.

Section 6.03 Quality Management.

(a) The Airports Authority shall be responsible for all quality assurance and quality control activities necessary to manage the development, design, construction, operation and maintenance of any Capital Improvement, and will develop and provide to the Department its Quality Management Plans, manuals, and procedures. The Quality Management Plans for design and construction shall not be inconsistent with the Department's quality assurance and quality control requirements, procedures and processes set forth in the Department's standard road and bridge specifications, as amended from time to time.

(b) The Airports Authority will require each of its contractors, subcontractors and suppliers to comply with the requirements of the Quality Management Plans.

(c) The Department has the right to review the Airports Authority's quality management system, including the right to inspect work and/or activities and to verify the accuracy and adequacy of quality management documentation. The Airports Authority will require its contractors and subcontractors to provide such access and assistance as the Department reasonably requires in conducting such reviews.

Section 6.04 Public Information.

Prior to and during the construction thereof, the Airports Authority will provide information to the public concerning any Capital Improvements wherever located or any other construction activities on the Toll Road.

Section 6.05 The Airports Authority's Obligation to Obtain Regulatory Approvals.

Throughout the Term or any portion thereof, the Airports Authority shall obtain (except as otherwise provided herein), keep in effect, maintain and comply with, at its own cost and

expense, all Regulatory Approvals necessary for the development, operation and maintenance of the Toll Road and any Capital Improvements.

Section 6.06 Dulles Corridor Metrorail Project

The Airports Authority will use its best efforts to achieve substantial completion of the Dulles Corridor Metrorail Project by December 31, 2015, or as such date may be extended pursuant to this Section. The Airports Authority will confirm or modify the December 31, 2015 date in writing to the Department within 60 days of execution of the FFGA, which shall be consistent with the terms and conditions of the FFGA, and again within 60 days of completion of preliminary engineering for Phase 2 of the Dulles Corridor Metrorail Project, in each case notifying the Department of the reasons for any changes to such date. To confirm or modify the substantial completion date, the Airports Authority shall consider the entire Dulles Corridor Metrorail Project and consider, among other relevant reasons, engineering and design efficiencies and effectiveness, variations in construction costs, financing costs and market timing, public interests as such items would relate to schedule trade-offs, and events beyond the Airports Authority's ability to influence and control. Thereafter, the Airports Authority may request further changes to the substantial completion date only with the concurrence of the Department, which shall not be unreasonably withheld.

ARTICLE 7.

TOLL ROAD MANAGEMENT

Section 7.01 The Airports Authority's Responsibilities.

(a) The Airports Authority shall, throughout the Term, cause the Toll Road to be managed and operated in compliance with all Laws, all Regulatory Approvals and the terms, conditions and standards set forth in this Agreement, including the detailed performance standards and measurements set forth in Exhibit C. Without limiting the foregoing, the Airports Authority agrees to be responsible for the following, at its sole cost and expense:

(i) the management and control of traffic on the Toll Road, including but not limited to, provision of emergency services, snow and ice removal, incident response services and temporary partial or full closures of the Toll Road;

(ii) the maintenance, repair, renewal, reconstruction and replacement of the Toll Road and all systems and components thereof, including but not limited to the ETTM Facilities and ETTM System, for the duration of the Term, and including carrying out Renewal and Replacement Program Work;

(iii) the operation of the ETTM Facilities and ETTM System and otherwise carrying out the collection of tolls and other User Fees respecting the Toll Road; and

(iv) the maintenance and renewal of all Regulatory Approvals applicable to the foregoing activities.

(b) The Airports Authority will consider, in its sole discretion, private proposals to operate and maintain the Toll Road.

(c) Throughout the Term, the Airports Authority shall cause the Toll Road to be open for use by members of the public at all times, provided the applicable tolls and other User Fees are paid, and provided that temporary closures shall be permitted as provided in Exhibit C.

Section 7.02 Temporary Delegation of Operations and Maintenance to the Department; Department Charges.

(a) The Airports Authority hereby delegates to the Department, and the Department hereby accepts delegation of, and agrees to perform, in accordance with this Agreement, all Laws and all Regulatory Approvals, the following responsibilities of the Airports Authority, as a subcontractor to the Airports Authority, for a period beginning on the Effective Date and ending not later than 365 days following execution of the FFGA, but not sooner than the day which is the later of (i) the date of execution of the FFGA and (ii) 90 days after written notice is delivered to the Department (the "**Transition Period**"):

(i) to manage and control traffic on the Toll Road, including but not limited to provision of incident response services, snow and ice removal and temporary partial or full closures of the Toll Road as the Department determines to be necessary or advisable;

(ii) only at the direct request of the Airports Authority or in the interest of public safety, to carry out the maintenance and repair activities on the Toll Road including but not limited to the ETTM Facilities and ETTM System;

(iii) to operate the ETTM Facilities and ETTM System and otherwise to carry out the collection of tolls and other User Fees, including violations enforcement in accordance with the Department's standard practice and applicable Law, respecting the Toll Road; and

(iv) to maintain and comply with all Regulatory Approvals applicable to the foregoing activities; and renew any such Regulatory Approvals.

(b) No other responsibilities of the Airports Authority are delegated to or assumed by the Department.

(c) The Department shall perform its traffic management and ordinary maintenance and repair responsibilities under subsection (a) above in accordance with the standards set forth above in **Section 7.01(a)** through use of its own personnel, materials and equipment, or by contracting with third parties, subject to the Airport Authority's approval of any new or renewed contracts, which approval shall not be unreasonably withheld, and subject to payment by the Airports Authority of the costs of performing such responsibilities. In addition, the Department shall perform additional maintenance and repair activities requested by the Airports Authority, subject to payment by the Airports Authority of the costs of performing such responsibilities in accordance with subsection (e) below.

(d) For services the Department renders pursuant to this **Section 7.02**, the Airports Authority shall pay the Department its Allocable Costs.

(e) The Department shall invoice the Airports Authority on a monthly basis. Payment to the Department shall be due and payable monthly in full no later than 30 Days after the Airports Authority's receipt of the Department's invoice reasonably documenting the amount charged.

(f) The Department shall have the right and obligation to remit or cause its contractors to remit all the Toll Revenues it receives or its contractors receive as directed by the Airports Authority; provided, that the Department shall not be liable for any revenue collection loss unless the same results from gross negligence or willful misconduct or misapplication of funds by the Department.

(g) Not later than the later of (i) 180 days after the last day of the Transition Period and (ii) 45 days after receipt by the Airports Authority of the Department's invoice, the Airports Authority shall reimburse the Department for amounts owed to Toll Road employees that are affected as a result of the transfer of operation of the Toll Road to the Airports Authority under this Agreement pursuant to the Commonwealth's Layoff Policy (promulgated by the Virginia

Department of Resource Management) or under the Workforce Transition Act, §2.2-3200 et seq., Code of Virginia.

(h) During the Transition Period, the Airports Authority may make offers of employment to Department employees engaged in the operation and maintenance of the Toll Road, subject to prior notice to the Department.

Section 7.03 Toll Facilities.

The Toll Road's Toll Facilities shall, at all times during the Term, be under the direction and supervision of Airports Authority personnel or contract operators selected by the Airports Authority (a "**Toll Facilities Contractor**"), in either case with the expertise, qualifications, experience, competence, skills and know-how to perform the obligations of this Agreement. Notwithstanding its use of a Toll Facilities Contractor, the Airports Authority remains ultimately responsible for the operation and maintenance of the Toll Facilities during the Term in accordance with this Agreement. The Toll Facilities Contractor shall at all times be subject to the direction, supervision and control of the Airports Authority, and any delegation to a Toll Facilities Contractor does not relieve the Airports Authority of any obligations, duties or liability hereunder. The Airports Authority shall notify the Department of the selection, termination, or resignation of a Toll Facilities Contractor. Any agreement between the Airports Authority and any Toll Facilities Contractor shall by its terms terminate without penalty at the election of the Department upon three Business Days' notice to such Toll Facilities Contractor upon the termination of this Agreement. The Toll Facilities Contractor shall have no interest in or rights under this Agreement or the Toll Road.

Section 7.04 Annual Budget; Annual Financial Report; Other Financial Documents.

(a) For each Fiscal Year and partial Fiscal Year from and after the Effective Date, the Airports Authority shall provide the Department and the Dulles Corridor Advisory Committee a copy of its annual budget for the Toll Road for such full or partial Fiscal Year, which shall show in reasonable detail all projected Toll Revenues and the application thereof in accordance with **Section 4.01(d)**.

(b) For each Fiscal Year and partial Fiscal Year from and after the Effective Date, the Airports Authority shall provide the Department and the Dulles Corridor Advisory Committee a copy of the comprehensive annual financial report prepared by the Airports Authority in the ordinary course in connection with its collection and use of Toll Revenues, audited in accordance with Generally Accepted Auditing Standards ("**GAAS**").

(c) For each Fiscal Year and partial Fiscal Year from and after the Effective Date, the Airports Authority shall provide the Department and the Dulles Corridor Advisory Committee copies of all documents, reports and notices it is required to provide to the Trustee and the holders of Toll Revenue Bonds under the Toll Road Financing Documents.

(d) The Airports Authority shall promptly furnish to the Department copies of all reports and notices it delivers to bondholders or any Trustee.

Section 7.05 Access and Inspection.

(a) Upon reasonable advance written notice, if practicable, the Department and its duly authorized agents shall have unrestricted access at all times to enter upon, inspect, sample, measure and physically test any part of the Toll Road or the Toll Road Right-of-Way, so long as such activity does not unreasonably interfere with the operation of the Toll Road. In the course of performing its inspections, sampling, measurements and tests hereunder, the Department shall use reasonable efforts to minimize the effect and duration of any disruption to or impairment of the Toll Road Operations or the Airports Authority's rights or responsibilities under this Agreement. The Department shall also have the right, upon reasonable advance written notice to the Airports Authority, to inspect at the offices of the Airports Authority all financial or other records related to the Toll Road and/or Toll Revenues.

(b) In the event that there is a request from the Federal Highway Administration (the "FHWA") in accordance with FHWA procedures, the Airports Authority shall make all of its records relating to the Toll Road available to the FHWA, or its designee, for inspection and audit.

(c) The Airports Authority, at its expense, shall cause a reputable independent auditor to annually audit the Airports Authority's books and records relating to the Toll Road, in accordance with GAAS. The Airports Authority shall cause the independent auditor to deliver the audit report to the Department promptly after it is completed. If the annual audit expresses a qualified opinion or signals a misstatement or management concern with internal controls or a potential violation of the requirements of OMB Circular A-133, then the Department shall have a right to audit all of the books and records of the Airports Authority related to the Toll Road.

Section 7.06 Budgeting and Funding for Renewal and Replacement Program.

(a) Not later than the Effective Date, the Airports Authority shall provide to the Department a base line asset condition report that evaluates Toll Road assets and their physical condition(s) as of the date of such report (the "**Baseline Asset Condition Report**"), a copy of which will be attached hereto as **Exhibit B**. Every eight years thereafter, the Airports Authority shall conduct a re-assessment of the physical condition of Toll Road assets, including any Capital Improvements on the Toll Road Right-of-Way, and compare such conditions to the conditions as they were rated in the initial Baseline Asset Condition Report (or with respect to any new Capital Improvements on the Toll Road Right of Way, their condition upon completion of such Capital Improvements), and taking into account changes in federal requirements and issuance of any Safety Orders. If and to the extent the condition of any identified Toll Road asset or Capital Improvement on the Toll Road Right-of-Way falls below its assessment rating in the initial Baseline Asset Condition Report or the original condition of the Capital Improvements on the Toll Road Right-of-Way, the Airports Authority will, within 120 days of the delivery of such assessment, develop and submit to the Department a plan to restore such Toll Road asset, including any such Capital Improvement, to its baseline or original condition, as applicable, including a budget(s), timeline and identification of the funding sources that will be utilized to bring such Toll Road asset or such Capital Improvement to its baseline or original condition, as applicable.

(b) The Airports Authority shall annually prepare and provide to the Department a full five-year period maintenance plan that considers life cycle asset maintenance for the Toll Road (the “**Life Cycle Maintenance Plan**”). The Life Cycle Maintenance Plan shall include a description of all Renewal and Replacement Program Work to be undertaken during the following five years, the estimated costs and timing relating to each task specified therein, and such other information as may be reasonably related to the foregoing.

(c) The Airports Authority shall annually budget and, at a minimum but not less than annually, fund a renewal and replacement program for the Toll Road (the “**Renewal and Replacement Program**”) that shall be available exclusively for funding major maintenance expenditures, including, but not limited to, overlays, bridge deck replacements, erosion and drainage control, and Toll Road plaza renovations and similar projects not normally encompassed in routine maintenance activities. The Airports Authority shall base its budget on, among other factors, the amounts necessary to be expended to meet the performance standards set forth in Exhibit C and the requirements of **subsections (a) and (b)**, above.

Section 7.07 Extraordinary Maintenance and Repair Reserve.

The Airports Authority shall establish an Extraordinary Maintenance and Repair Reserve which will be funded with the maintenance reserves previously created and maintained by the Department and identified in the Transfer Agreement and transferred to the Airports Authority on the Effective Date. The moneys in the Extraordinary Maintenance and Repair Reserve, including all interest earnings thereon, shall be deposited with a third party trustee and shall be supplemented by the Airports Authority on an annual basis as necessary, taking into account accumulated earnings thereon, such that the total amount in the Extraordinary Maintenance and Repair Reserve is increased in accordance with the U.S. Implicit Price Deflator Index. All moneys in the Extraordinary Maintenance and Repair Reserve shall be invested in Eligible Investments. All moneys to be provided by the Airports Authority pursuant to this **Section** shall be treated as an operating and maintenance expense of the Toll Road. The Airports Authority shall provide to the Department the details regarding the account, including the name, address and contact information for the third party trustee and the account number. The Airports Authority shall inform the third party trustee of the Department’s rights and interests with respect to the Extraordinary Maintenance and Repair Reserve. All amounts in the Extraordinary Maintenance and Repair Reserve shall be held by the third party trustee for the benefit of the Department; provided, however, that with the prior written approval of the Department, the Airports Authority shall have the ability to use all or any portion of such funds for any Toll Road Purpose, any Dulles Corridor Metrorail Purpose or any transportation improvements in the Dulles Corridor. If any funds are expended as provided herein, the Airports Authority shall replace all such expended funds over the ensuing five-year period out of Toll Revenues. Upon expiration of the Term or earlier termination of this Agreement pursuant to **Article 14** or **Article 15**, the balance in the Extraordinary Maintenance and Repair Reserve shall be paid over in full to the Department.

Section 7.08 Obligation to Turn Over Toll Road at End of Term.

Upon the last day of the Term or earlier termination of the Term pursuant to Article 14 or Article 15, the Airports Authority shall surrender and deliver the Toll Road and all Capital Improvements on the Toll Road Right-of-Way, free and clear of any and all Liens and encumbrances created, incurred or suffered by the Airports Authority or anyone claiming under the Airports Authority, except for Permitted Encumbrances that existed as of the Effective Date and any Airports Authority Permitted Encumbrances, and in the same or better condition than that existed on the date of the initial Baseline Asset Condition Report, or its original condition, as applicable, and any and all cash reserves or escrow accounts containing Toll Revenues to the Department as provided in Section 14.02.

Section 7.09 Transition Plan.

Not later than 180 Days preceding the end of the Term, the Airports Authority and the Department shall develop a transition plan to assure the orderly transition of the Toll Road to the Department or a Department contractor.

Section 7.10 Police Services.

The Airports Authority shall, at its sole cost and expense, enter into an agreement with the Virginia State Police, or use its own forces, to provide police services and cause to be made available emergency services (fire and rescue), including traffic patrol and traffic law enforcement services, to be provided on the Toll Road at a level of service equivalent to that provided on comparable State Highways, which shall in any event not be less in scope, level or quality of service than that provided on the Toll Road as of the Effective Date. The Department shall not have any responsibility to the Airports Authority resulting from or otherwise relating to the failure of the Virginia State Police to provide any services hereunder.

Section 7.11 Name of the Toll Road.

The Airports Authority shall not use any name for the Toll Road except the "Dulles Toll Road" or the "Omer L. Hirst – Adelard L. Brault Expressway", or as such name may be changed in the future by act of the General Assembly of the Commonwealth.

ARTICLE 8.

CAPITAL IMPROVEMENTS AND SAFETY ORDERS

Section 8.01 Dulles Corridor Capital Improvement Plan.

Subject to the adequacy of Toll Revenues, the Airports Authority shall have the right to design, construct, operate and maintain Capital Improvements within the Toll Road Right-of-Way, including those considered in developing the Airports Authority's Financial Projections, and shall have the right, subject to the approval of the Department, to design and construct all other Capital Improvements, in either case subject to the requirements of Section 8.02.

Section 8.02 Capital Improvements.

(a) The Department and the Airports Authority shall jointly review on an annual basis needs for Capital Improvements to the Toll Road and in the Dulles Corridor. Either party may make recommendations for such Capital Improvements. For Capital Improvements within the Toll Road Right-of-Way, the Airports Authority shall identify to the Department the Capital Improvements that the Airports Authority intends to design, construct, finance, operate and maintain. Thereafter, the Airports Authority shall have the right to proceed with these Capital Improvements. The Airports Authority and the Department shall mutually agree on Capital Improvements outside the Toll Road Right-of-Way but within the Dulles Corridor that the Airports Authority should design, construct and finance, and the Airports Authority thereafter shall have the right to proceed with these Capital Improvements in accordance with the then agreed terms and conditions.

(b) If the Airports Authority undertakes Capital Improvements pursuant to subsection (a) above, then the Airports Authority shall:

(i) obtain all Regulatory Approvals for, and thereafter cause to be designed and constructed, such Capital Improvements, subject to Section 9.01(b);

(ii) show all such completed Capital Improvements on final, as-built plans and specifications submitted to the Department;

(iii) after completion, manage, operate, maintain and repair the Capital Improvements within the Toll Road Right-of-Way, and

(iv) comply with the requirements of Article 6.

(c) All Capital Improvements shall be designed and constructed in accordance with all applicable Laws and Regulatory Approvals, including all applicable federal requirements, the metropolitan planning process, the Constrained Long-Range Transportation Plan (CLRP) for the Washington, D.C. metropolitan area, as amended, and any other applicable regional transportation plans.

(d) Nothing in this **Section 8.02** shall affect the Department's right, from time to time, and at its sole cost and expense, to design, construct, operate and maintain Capital Improvements outside of the Toll Road Right-of-Way but within the Dulles Corridor.

Section 8.03 Safety Orders.

(a) The Department may, but is not obligated to, issue Safety Orders to the Airports Authority at any time during the Term; provided that no such Safety Order may in any event order or direct the Airports Authority to do any act in violation of any applicable Law or cause the Airports Authority to fail to be in compliance with this Agreement.

(b) Subject to **subsection (c)** below, after the Department issues a Safety Order, the Airports Authority shall proceed with necessary environmental, design and construction work to carry out the Safety Order, at its sole cost and expense.

(c) The Airports Authority will only be required to carry out any Safety Order under **subsection (a)** of the definition thereof at the date on which the Department commences to carry out the changes ordered or directed therein for similar portions of already constructed State Highways.

(d) The Airports Authority shall, without condition or qualification, obtain debt financing (including additional Toll Revenue Bonds which may be issued on the most junior lien basis) to the extent that funds are not otherwise available, to pay the Airports Authority's costs of carrying out the work required under Safety Orders.

(e) The Airports Authority shall have the right to dispute whether a Safety Order should be compensated by the Department at its sole cost and expense under the dispute resolution procedures set forth in **Section 15.05**, but the Airports Authority shall have no right to delay the carrying out of the Safety Order pending the resolution of the dispute.

ARTICLE 9.

DEPARTMENT REVIEW

Section 9.01 Right to Review Work.

(a) Upon reasonable advance written notice, the Department shall have the right at all times during the Term to review all aspects of the design, permitting, acquisition, construction, installation, equipping, maintenance, repair, preservation, modification, operation, management and administration of the Toll Road and any Capital Improvements. The Airports Authority shall fully cooperate with the Department to facilitate its reviews. In the course of its reviews, the Department shall use reasonable efforts to minimize the effect and duration of any disruption to or impairment of the Toll Road Operations or the Airports Authority's ability to fulfill its responsibilities under this Agreement.

(b) The Department shall have the right to review and approve the design of (i) any Capital Improvement located within the Toll Road Right-of-Way that has an expected useful life that extends beyond the Term of this Agreement and requires such review and approval in accordance with Section 8.02(c), and (ii) any Capital Improvement located outside the Toll Road Right-of-Way. In connection therewith, the Department shall have the right to review and approve any deviations or exceptions from the design standards listed in Exhibit E.

Section 9.02 Compensation for Department's Reviews.

(a) The costs and expenses of the Department's reviews under Section 9.01 shall be reimbursed by the Airports Authority in accordance with this Section 9.02.

(b) The costs and expenses of the Department's reviews under Section 9.01 shall be in an amount equal to the Department's Allocable Costs, together with all out-of-pocket expenses incurred; provided, however, that the aggregate amount payable by the Airports Authority pursuant to this Section 9.02 with respect to review of ordinary operation and maintenance activities shall not exceed \$75,000 per calendar year, escalated at the beginning of each calendar year during the term in accordance with increases in the CPI, using the ratio of the CPI published for the month of October immediately preceding the beginning of the calendar year to the CPI published for the third month prior to the month in which the Effective Date occurs. Compensation for the Department's reviews related to Capital Improvements shall be in an amount agreed to by the parties in advance of such reviews.

(c) The Department shall prepare and submit to the Airports Authority the Department's invoices reasonably documenting amounts owing to the Department for its reviews. The Airports Authority shall pay each invoiced amount no later than 45 Days after the Department prepares and delivers an invoice reasonably documenting the amounts referenced in subsection (b), above. Funds for acquisition purchase prices, condemnation awards and amounts owing to Utility Owners respecting Utility Relocations shall be paid by the Airports Authority directly to the escrow respecting the purchase, to the court respecting the

condemnation or the Utility Owner respecting the Utility Relocation, or as the Department may otherwise direct.

ARTICLE 10.

CONTRACTING PRACTICES

Section 10.01 Obligation to Refrain from Discrimination.

During the performance of this Agreement, the Airports Authority agrees as follows:

(a) The Airports Authority covenants and agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Airports Authority. The Airports Authority agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the Airports Authority has contracts of over \$10,000.

(b) The Airports Authority will, in all solicitations or advertisements for employees placed by or on behalf of the Airports Authority, state that the Airports Authority is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this **subsection (b)**.

(c) The Airports Authority shall include the provisions of **subsections (a) and (b)** in every contract or purchase order of over \$10,000, so that such provisions shall be binding upon each contractor or vendor.

(d) Nothing contained in this **Section** shall be deemed to empower the Airports Authority to require any contractor to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance that may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by the contractor in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the Commonwealth.

Section 10.02 Compliance with Anti-Discrimination Laws.

The Airports Authority shall conduct its activities in connection with the Toll Road in compliance with all requirements imposed pursuant to Titles VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Americans With Disabilities Act of 1990; and all other applicable federal and state rules and regulations, as amended.

Section 10.03 Contracting.

(a) Subject to Section 7.03, the Airports Authority may perform its traffic management, ordinary maintenance and repair, Renewal and Replacement Program Work, and other responsibilities under this Agreement for Toll Road Purposes through use of its own personnel, materials and equipment, or by contracting through its own published contracting procedures to Persons with the expertise, qualifications, experience, competence, skills and know-how to perform the responsibilities being contracted in accordance with all applicable Laws, all Regulatory Approvals and the terms, conditions and standards set forth in this Agreement, including, without limitation, during the Transition Period.

(b) Each contract that the Airports Authority executes:

(i) shall set forth a standard of professional responsibility or a standard for commercial practice equal to prudent industry standards for work of similar scope and scale and shall set forth effective procedures for claims and change orders;

(ii) shall require the contractor to carry out its scope of work in accordance with all applicable Laws, all Regulatory Approvals and the terms, conditions and standards set forth in this Agreement;

(iii) shall set forth warranties, guaranties and liability provisions of the contracting party in accordance with Standard Industry Practice for work of similar, scope and scale;

(iv) shall be fully assignable to the Department or, with respect to material contracts relating to the Dulles Corridor Metrorail Project, to DRPT, such assignability to include the benefit of all contractor warranties, indemnities, guarantees and professional responsibility; provided, however, that if the Airports Authority cannot, using its best efforts, obtain such a provision, said contract shall be subject to immediate termination upon termination of this Agreement for any reason without any further liability by the Airports Authority or any other Person other than for amounts then due and owing under such contract without respect to any termination thereof;

(v) shall include express requirements that, if the Department succeeds to the Airports Authority's rights under the subject contract (by assignment or otherwise), then the relevant contractor agrees that it will (A) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged (e.g., constructor, equipment supplier, designer, service provider), (B) permit audit thereof by the Department, and provide progress reports to the Department appropriate for the type of contract it is performing, and (C) allow the Department, to assume the benefit of the Airports Authority's contract rights and the work performed thereunder with liability only for those remaining obligations accruing after the date of assumption;

(vi) shall not be assignable by the contractor without the Airports Authority's prior written consent;

(vii) shall expressly provide that all liens, claims and charges of the contractor and its subcontractors at any time shall not attach to any interest of the Department in the Toll Road or the Toll Road Right-of-Way;

(viii) shall be subject to termination for convenience if the Department succeeds to the Airports Authority's rights under the subject contract (by assignment or otherwise), upon payment of any customary termination payments as may be set forth in such contract, except as set forth in clause (iv), above; and

(ix) shall be consistent in all other respects with the terms and conditions of this Agreement to the extent such terms and conditions are applicable to the scope of work of such contractors.

(c) The Airports Authority shall use its best efforts not to enter into any contracts with any Person then debarred or prohibited from participating in state or federally-funded projects.

(d) The Airports Authority shall include a provision in each contract requiring the contractor to maintain all licenses required by applicable Laws with respect to the work being performed thereunder.

(e) The appointment of contractors by the Airports Authority shall not relieve the Airports Authority of its responsibility hereunder or for the quality of work, materials and services provided by it. The Airports Authority shall at all times be held fully responsible to the Department for the acts and omissions of its contractors and persons employed by them and no contract entered into by the Airports Authority will impose any obligation or liability upon the Department to any such contractor or any of its employees. Nothing in this Agreement will create any contractual relationship between the Department and a contractor of the Airports Authority.

(f) The Airports Authority shall not enter into or materially amend any contract or subcontract on other than an arm's length basis.

Section 10.04 Disadvantaged Business Enterprise (DBE) and Local Disadvantaged Business Enterprise (LDBE) Participation.

The parties recognize the importance of pursuing, inviting and developing the participation of minority, women-owned and small businesses through the federal DBE program, where applicable, and through the Airports Authority's existing LDBE program. The Airports Authority will utilize its LDBE program to promote the participation of local small businesses as well as minority and women owned businesses. The Authority will set goals and make a good faith effort to achieve or exceed them in contracts for construction and for goods and services relating to the Toll Road and Capital Improvements. The Airports Authority will provide its LDBE participation data to the Department's Civil Rights Division, and the Department may include those participation rates, as appropriately adjusted, with its own towards the Commonwealth's overall goal established pursuant to the Office of the Governor's Executive

Order 33 (2006). The Airports Authority shall maintain records and documents of payments to DBE and LDBE firms for three years following completion of their contracts.

Section 10.05 Federal Requirements.

The Airports Authority shall comply with all applicable federal requirements, including all requirements applicable to highways that are part of the National Highway System.

ARTICLE 11.

INTERRELATIONS AMONG TRANSPORTATION FACILITIES

Section 11.01 Coordination Regarding Certain Transportation Facilities.

The Department shall have the right (and without liability to the Airports Authority for any damages it may suffer) to modify existing facilities, to construct new facilities, including but not limited to Capital Improvements, and to perform planned and emergency maintenance, renewal and replacement, safety and repair activities on existing and new facilities adjacent to or near the Toll Road regardless of the impact of such activities on the Toll Road; provided, however, that:

(a) the Department shall use diligent efforts to keep the Airports Authority informed of planned maintenance, renewal and replacement and repair activities which can reasonably be foreseen to impact activities on the Toll Road;

(b) the Department shall provide to the Airports Authority copies of and other information concerning the Department's then current maintenance, renewal and replacement and repair program; and

(c) the Department shall use reasonable efforts consistent with the Department's budgetary and work force constraints to reduce any adverse impacts of such construction, maintenance, renewal and replacement activities of which the Department is aware.

Section 11.02 Traffic Management Activities.

(a) The Department shall have at all times, except as specifically provided elsewhere in this Agreement, the right to conduct traffic management activities on State Highways as well as the Toll Road in accordance with its standard traffic management practices in effect from time to time, including, but not limited to:

(i) Regional traffic system management (but not on the Toll Road);

(ii) Operational control of person capacity on the State transportation network in the area of the Toll Road (but not on the Toll Road);

(iii) Direction and management of traffic during special events and any declared national, state or regional emergency, in consultation with the Airports Authority;

(iv) Direction and management of traffic during periods of construction, taking into consideration impacts on the Toll Road and other highways;

(v) Provision of non-discriminating traveler and driver information in cooperation with the Airports Authority, provided that such information does not interfere with

the functioning of the ETTM System and does not materially and negatively impact toll operations or reduce vehicle throughput capacity in a discriminatory manner;

(vi) Direction and management of traffic off the Toll Road; and

(vii) Reversal of the direction of traffic flow during periods of declared national, state or regional emergency, including for mass evacuation, in consultation with the Airports Authority.

(b) In carrying out its traffic management responsibilities, the Department shall be entitled to direct traffic and provide variable messages to accomplish the activities above anywhere on the State Highways and regional traffic system. Without limiting the foregoing, the Department at any time may override any messages posted on variable message signs within or serving the Toll Road in order to post information regarding emergencies, incidents, traffic diversions and delays and other traffic management information. The Airports Authority and the Department will develop procedures to accomplish the foregoing.

(c) The Department reserves the right to install additional traffic management equipment and improvements on or serving the Toll Road Right-of-Way at any time at the Department's expense unless otherwise agreed to by the parties, provided the same does not materially conflict with the Airports Authority's operation of the Toll Road.

(d) The Department shall be permitted to electronically interrogate AVI transponders for traffic management purposes provided this access shall be reasonably limited to minimize transponder battery drain and to avoid compromising motorists' privacy or toll collection system security. This information shall be provided to the Airports Authority upon its request and at its expense.

(e) The Department may make available to any contractor it retains to operate the Toll Road pursuant to **Section 7.02** or to provide traveler information services any traffic management data which the Department possesses and which the contractor reasonably needs to operate the Toll Road or provide such traveler information services.

Section 11.03 ITS Activities.

In cooperation with the Airports Authority, the Department shall have the right to perform ITS research and install ITS equipment on the Toll Road Right-of-Way for public, non-revenue generating purposes, provided that such ITS equipment does not materially interfere with the functioning of the ETTM System and does not materially conflict with toll operations or reduce vehicle throughput capacity of the Toll Road. The Department shall bear all installation, maintenance, operation, replacement and other costs and expenses relating to such ITS equipment and research and all claims and liabilities resulting therefrom, and, subject to any applicable privacy Laws, shall provide access to all transportation data generated thereby, including video streams, to the Airports Authority at no cost for the sole purpose of traffic management.

Section 11.04 Directional Signs.

(a) The Department agrees that it will, at its cost, maintain on connecting State Highways such signs notifying motorists of the access to the Toll Road as are necessary in accordance with the Department's duties as highway authority and in accordance with all Laws, including, without limitation, the MUTCD.

(b) The Department will also install, at the Airports Authority's cost, additional signs notifying motorists of the access to the Toll Road as are reasonably requested by the Airports Authority, subject to any obligation to obtain any necessary authorizations of any other Governmental Authority and in accordance with Laws in respect thereof, including, without limitation, the MUTCD. In connection with any such request, the Airports Authority will submit the proposed layout, location, type, size, color and content of all such traffic signs or other signs.

Section 11.05 Congestion Management and Pricing.

(a) The Airports Authority shall cooperate with the Department in managing the Toll Road as part of the overall transportation network in Northern Virginia. In connection therewith, at the request of the Department, and at the Airports Authority's sole cost and expense, the Airports Authority shall implement a congestion pricing methodology on the Toll Road that is not inconsistent with the Department's then current plans and programs for highway system management of the overall transportation network in Northern Virginia, provided that (i) the Airports Authority does not project that the implementation of such congestion pricing methodology will violate the Airports Authority's rate covenant(s) set forth in its Toll Road Financing Documents, or (ii) implementation of such congestion pricing methodology is not otherwise inconsistent with the Airports Authority's financial plan for financing the costs of the Dulles Corridor Metrorail Project. For purposes of this subsection, "congestion pricing methodology" means a tolling methodology intended to maintain free-flow traffic conditions.

(b) The Airports Authority will carry out any construction activities on the Toll Road or with respect to any Capital Improvements in accordance with a Construction Traffic Management Plan to be developed by the Airports Authority and in coordination with the Department. In addition, the Airports Authority shall participate in and provide the proportionate share of the cost of a Congestion Management Plan developed by the Department, or its designee, for the Northern Virginia region to address traffic congestion caused by the construction of transportation projects in the region.

ARTICLE 12.

RELIANCE, INDEMNIFICATION, AND INSURANCE

Section 12.01 Limitations on the Airports Authority's Right to Rely.

(a) The Airports Authority expressly acknowledges and agrees that the Department's rights, if any, under this Agreement:

(i) to review, comment on, approve, disapprove and/or accept designs, plans, specifications, work plans, construction, equipment, installation, plans for maintenance, traffic management, policing and/or Toll Road management, books, records, reports or statements, or documents pertaining to Toll Revenue Bonds and Indentures, and

(ii) to review, comment on, and communicate with contractors or subcontractors of the Airports Authority

(A) exist solely for the benefit and protection of the Department (except for the express standards set forth in Section 7.02), (B) do not create or impose upon the Department any standard or duty of care toward any Airports Authority Party (except for the express standards set forth in Section 7.02), (C) may not be relied upon, nor may the Department's exercise or failure to exercise any such rights be relied upon, by the Airports Authority in determining whether the Airports Authority has satisfied the standards and requirements set forth in this Agreement, and (D) may not be asserted, nor may the Department's exercise or failure to exercise any such rights be asserted, against the Department by the Airports Authority as a defense, legal or equitable, to the Airports Authority's obligation to fulfill such standards and requirements. Regardless of the Department's exercise or failure to exercise any such rights, regardless of the issuance of permits or certificates of completion or acceptance, and regardless of final acceptance of any Capital Improvement, the Airports Authority at all times shall have an independent duty and obligation (except for the duties and obligations expressly delegated to the Department under Section 7.02) to obtain all necessary Regulatory Approvals for, design, acquire, construct, equip, operate, maintain, police, renew, replace, provide traffic management for and otherwise manage the Toll Road and Toll Road Right-of-Way in accordance with the standards and requirements set forth in this Agreement.

(b) To the maximum extent permitted by Law, the Airports Authority hereby releases and discharges the Department from any and all duty and obligation to cause permitting, right of way acquisition, Utility Relocation, construction, equipping, operations, maintenance, policing, renewal, replacement, traffic management or other management of or for the Toll Road or Toll Road Right-of-Way, by the Airports Authority, to satisfy the standards and requirements set forth in this Agreement (except to the extent the Department is obligated to meet the express standards set forth in Section 7.02).

(c) No rights of the Department described in subsection (a) above, no exercise or failure to exercise such rights, no failure of the Department to meet any particular standard of

care in the exercise of such rights, no issuance of permits or certificates of completion or acceptance and no final acceptance of any Capital Improvement shall:

(i) relieve the Airports Authority of its responsibility for the selection and the competent performance of all contractors, subcontractors, architects, engineers and other Consultants (except those hired by the Department);

(ii) except to the extent the Department is obligated to meet the express standards set forth in Section 7.02, relieve the Airports Authority of any of its obligations or liabilities under this Agreement;

(iii) be deemed or construed to waive any of the Department's rights and remedies under this Agreement; or

(iv) be deemed or construed as any kind of representation or warranty, express or implied, by the Department.

(d) Notwithstanding subsections (a), (b), and (c) above, (i) the Airports Authority shall be entitled to rely on specific written deviations and interpretative engineering decisions the Department gives under this Agreement, (ii) the Department is not relieved of its obligations under Section 7.02, (iii) the Department is not relieved from any liability arising out of a knowing, intentional misrepresentation under any written statement the Department delivers, and (iv) the Department is not relieved from its obligations under this Agreement.

Section 12.02 Indemnities of the Airports Authority.

(a) To the extent permitted by law, the Airports Authority shall indemnify and hold harmless each State Indemnitee from and against any Losses actually suffered or incurred by such State Indemnitee (except for such Losses to the extent caused by the negligence or willful misconduct of such State Indemnitee), due to Third Party Claims that are directly related to or arise out of (i) any failure by the Airports Authority to comply with, observe or perform in any material respect any of the covenants, obligations, agreements, terms or conditions in this Agreement or, any breach by the Airports Authority of its representations or warranties set forth herein, (ii) any actual or willful misconduct or negligence of an Airports Authority Party in direct connection with the Toll Road or any Capital Improvement, (iii) any actual or alleged patent or copyright infringement or other actual or alleged improper appropriation or use of trade secrets, patents, proprietary information, know-how, trade marked or service marked materials, equipment, devices or processes, copyright rights or inventions by an Airports Authority Party in direct connection with the Toll Road or any Capital Improvement, (iv) inverse condemnation, trespass, nuisance or similar taking of or harm to real property committed or caused by an Airports Authority Party in direct connection with the Toll Road or any Capital Improvement, or (v) any Assumed Liabilities.

(b) The indemnities of the Airports Authority shall survive the expiration or earlier termination of this Agreement.

(c) (i) In the event that any Third-Party Claim for which the Airports Authority may be required to indemnify a State Indemnatee hereunder is asserted in writing against the Department, it shall as promptly as practicable notify the Airports Authority in writing of such Claim, and such notice shall include a copy of the Claim and any related correspondence or documentation from the third party asserting the Claim; provided, however, that any failure to give such prompt notice shall not constitute a waiver of any rights of the Department, except to the extent that the rights of the Airports Authority are actually and materially prejudiced thereby. If any Third-Party Claim for which the Airports Authority may be required to indemnify a State Indemnatee hereunder is asserted in writing against a State Indemnatee other than the Department, a failure by such State Indemnatee to give the Airports Authority prompt notice in writing of such Claim together with a copy of the Claim and any related correspondence or documentation from the third party asserting the Claim, shall constitute a waiver of any rights of such State Indemnatee to indemnification to the extent, and only to the extent, that the rights of the Airports Authority are actually and materially prejudiced thereby.

(ii) The Airports Authority shall be entitled and obligated to appoint counsel of its choice at the expense of the Airports Authority to represent a State Indemnatee in any action for which indemnification is sought (in which case the Airports Authority shall not thereafter be responsible for the fees and expenses of any separate counsel retained by that State Indemnatee except as set forth below); provided, however, that such counsel shall be satisfactory to such State Indemnatee. Notwithstanding the Airports Authority's appointment of counsel to represent a State Indemnatee in any action, such State Indemnatee shall have the right to employ separate counsel, and the Airports Authority shall bear the reasonable fees, costs and expenses of such separate counsel, if (A) the use of counsel chosen by the Airports Authority to represent the State Indemnatee would present such counsel with a conflict of interest; (B) the actual or potential defendants in, or targets of, any such action include both the State Indemnatee and the Airports Authority and the State Indemnatee shall have reasonably concluded that there may be legal defenses available to it and/or other State Indemnitees which are different from or additional to those available to the Airports Authority; (C) the Airports Authority shall not have employed counsel to represent the State Indemnatee within a reasonable time after notice of the institution of such action; or (D) the Airports Authority shall authorize the State Indemnatee to employ separate counsel at the Airports Authority's expense. The Airports Authority shall not be liable for any settlement or compromise of any action or claim by an State Indemnatee affected except with the Airports Authority's prior written consent, which consent shall not be unreasonably withheld or delayed, or except where the settlement or compromise is approved by the court after the Airports Authority receives reasonable notice and the opportunity to be heard and such court approval has become final and nonappealable.

Section 12.03 Responsibilities Regarding Insurance.

(a) Insurance Coverage Required. The Airports Authority shall provide and maintain at its own expense, or cause to be maintained, during the Term and during any time period following the Term's expiration if the Airports Authority is required to return and perform any additional work, the insurance coverages specified below, insuring the Toll Road and all Toll Road Operations.

(i) Property & Business Interruption. The Airports Authority shall obtain Property Insurance at replacement cost, covering loss, damage or destruction to the Toll Road, including improvements and betterments; provided, however, that the limits of such coverage may be based on a probable maximum loss analysis.

(A) Coverage shall include, but not be limited to, the following: flood, earth movement, collapse, water including overflow, leakage, utility interruption, debris removal, business ordinance or law for increased cost of construction, extra expense, valuable papers and, if available, terrorism, subject to reasonable sublimits.

(B) Coverage shall also insure against interruption or loss of projected Toll Revenues for at least one full year from the occurrence of the risk, resulting from physical damage to the Toll Road and any relevant feeder roads.

(C) The Department is to be named as an additional insured.

(D) The Airports Authority is responsible for all loss or damage to personal property (including, but not limited to, materials; fixtures/contents, equipment, tools and supplies) of the Airports Authority except to the extent caused by the negligence or willful misconduct of the Department or its Representatives.

(ii) Commercial General Liability (Primary and Umbrella). The Airports Authority shall provide Commercial General Liability Insurance or its equivalent with limits of not less than US\$50,000,000 per occurrence for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to, the following: all premises and operations, products/completed operations, explosion, collapse, separation of insureds, defense, terrorism (if available) and contractual liability (to the extent such a clause can be obtained). The Department is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement.

(iii) Automobile Liability (Primary and Umbrella). When any motor vehicles (owned, non-owned or hired) are used in connection with work to be performed, the Airports Authority shall provide or cause to be provided Automobile Liability Insurance with limits of not less than US\$10,000,000 combined single limit or per occurrence for bodily injury and property damage. The Department is to be named as an additional insured on a primary, non-contributory basis.

(iv) Builder's Risk. When the Airports Authority undertakes any construction, maintenance or repairs to the Toll Road, including any Capital Improvements, the Airports Authority shall provide or cause to be provided, Builder's Risk Insurance at replacement cost for material, supplies, equipment, machinery and fixtures that are or will be part of the Toll Road. Coverage shall include, but not be limited to, the following: right to partial occupancy, boiler and machinery, earth movement, flood. The Department shall be named as an additional insured on a primary, non-contributory basis.

(v) Workers' Compensation and Employer's Liability. The Airports Authority shall provide Workers' Compensation Insurance, as prescribed by applicable Law, for all Airports Authority employees.

(b) General Requirements Applicable to Insurance. The insurances which the Airports Authority is required to effect under subsections (a)(i) through (iv) above:

(i) shall be effected with insurers authorized to do business in the Commonwealth;

(ii) shall contain a provision which requires the insurer to give not less than 30 days prior notice to the Department whenever the insurer gives the Airports Authority a notice of cancellation or any other notice in respect of the policy, provided, however, that if 30 days notice is not obtainable on commercially reasonable terms, the insurer shall be required to give not less than 10 days prior notice to the Department;

(iii) shall contain a cross-liability clause:

(A) in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured; and

(B) for the purposes of which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result);

(iv) shall contain a provision under which the insurer agrees that the failure of one insured to observe and fulfill the terms of the policy will not prejudice the policy with respect to the interests of the other insureds;

(v) shall have each policy endorsed to the effect that the Department and the other insureds shall not be prejudiced by an unintended and/or inadvertent error, omission or misdescription of the risk interest in property insured under the policies, incorrect declaration of values, failure to advise insurers of any change of risk interest or property insured or failure to comply with a statutory requirement; and

(vi) The Airports Authority shall give the Department proof satisfactory to it of currency and coverage of insurances, as soon as practicable after the Effective Date and also whenever reasonably requested by the Department.

(c) Unavailability of Insurance.

(i) If any insurance required to be maintained pursuant to this Section 12.03 (including the limits or deductibles or any other terms under policies for such insurance) ceases to be available on a commercially reasonable basis, the Airports Authority shall provide written notice to the Department accompanied by a letter from the Airports Authority's insurance advisor stating that such insurance is unavailable on a commercially reasonable basis. Such notice shall be given not less than 30 days prior to the scheduled date for renewal of any such policy. Upon

receipt of such notice by the Department, the Airports Authority and the Department shall immediately enter into good faith negotiations regarding the matters set forth in subsection (c)(ii) below.

(ii) If the Airports Authority demonstrates to the Department's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to place the insurance coverages it is required to provide hereunder, and if despite such diligent efforts and through no fault of the Airports Authority any of such coverages (or any of the required terms of such coverages, including policy limits) become unavailable on a commercially reasonable basis, the Department will consider in good faith alternative insurance packages and programs that provide risk coverage as comparable to that contemplated in this Section 12.03 as is possible under then-existing insurance market conditions. The Airports Authority shall not be excused from satisfying the insurance requirements of this Section 12.03 merely because premiums for such insurance are higher than anticipated, so long as the insurance coverage is available on a commercially reasonable basis.

(iii) The Department makes no representation that the limits of liability specified for any insurance policy to be carried pursuant to this Agreement are adequate to protect the Airports Authority against its undertakings under this Agreement, to the Department, or any third party. No such limits of liability shall preclude the Department from taking any actions as are available to it under this Agreement or applicable Law.

(d) Self Insurance. The Airports Authority reserves the right to implement reasonable levels of self-insurance through programs using deductibles and/or self-insured retentions.

Section 12.04 The Airports Authority's Indemnifications Regarding Hazardous Substances.

The Airports Authority shall indemnify, protect, hold harmless and release each State Indemnitee from and against any and all losses, damages, costs, fines, penalties and expenses, including reasonable attorneys' fees, such State Indemnitee incurs, and the Airports Authority shall defend each State Indemnitee from and against any Claims, asserted by third parties, arising out of the following:

(a) (i) Any pre-existing Hazardous Substances located within the Toll Road Right-of-Way, and (ii) from and after the Effective Date, any Hazardous Substances located within the Toll Road Right-of-Way originally introduced to or brought onto the Toll Road Right-of-Way during the Term by any Airports Authority Party or any other Person other than a State Indemnitee or any Representative of the Department, the Commissioner, the Secretary of Transportation, or the CTB; and

(b) Exacerbation, due to the negligence, recklessness or willful misconduct or failure to provide proper engineering controls of any Airports Authority Party, of the release, spreading, migration or toxicity of Hazardous Substances which are or become known by any Airports Authority Party prior to such exacerbation.

(c) Any Hazardous Substance in, on or under any Capital Improvement located outside the Toll Road Right-of-Way, except any Hazardous Substance introduced after acceptance of title thereto by the Department, and provided that the Department shall be responsible for the maintenance of any mitigation technique after acceptance of title thereto by the Department.

ARTICLE 13.

REPRESENTATIONS, WARRANTIES AND FINDINGS

Section 13.01 Department Representations and Warranties.

The Department hereby represents and warrants to the Airports Authority that, as of the Effective Date:

- (a) The Department is a department of the executive branch of the State and has full power, and exclusive right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement.
- (b) Each person executing this Agreement on behalf of the Department has been or at such time will be duly authorized to execute this Agreement on behalf of the Department.
- (c) Neither the execution and delivery by the Department of this Agreement, nor the consummation of the transactions contemplated hereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.
- (d) There is no action, suit, proceeding, investigation or litigation pending and served on the Department which challenges the Department's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, or which challenges the authority of the Department official executing this Agreement, and the Department has disclosed to the Airports Authority any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Department is aware.
- (e) The Department has a good and sufficient interest in the Toll Road Right-of-Way necessary for purposes of this Agreement free and clear of all Liens or other exceptions to title, except Permitted Encumbrances. As of the Effective Date, no agreement, contract, option, commitment or other right exists which binds, or which in the future may become binding on, the Department to sell, transfer, convey, dispose of or encumber the Toll Road. The Department has not assigned any interest in Toll Revenues to any other party other than the Airports Authority under this Agreement.
- (f) This Agreement has been duly authorized, executed and delivered by the Department and constitutes a valid and legally binding obligation of the Department, enforceable against it in accordance with the terms hereof, subject only to (i) the effect of bankruptcy, insolvency, reorganization, moratorium or other similar laws and judicial decisions now or hereafter in effect affecting, generally, the enforcement of creditor's rights and remedies, (ii) the effect of rules of law governing equitable remedies and defenses, and the discretion of any court of competent jurisdiction in awarding equitable remedies, and (iii) the effect of rules of law governing enforcement and collection of damages against the Commonwealth of Virginia.

(g) The Department has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.

(h) The Department is in material compliance with all Laws and Regulatory Approvals applicable to the Toll Road and its activities in connection with this Agreement.

(i) Except for any broker or advisor whose fees will be paid by the Department, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Department or any of its Affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 13.02 The Airports Authority's Representations and Warranties.

The Airports Authority hereby represents and warrants to the Department that, as of the Effective Date:

(a) The Airports Authority is a body corporate and politic created by interstate compact between the Commonwealth of Virginia and the District of Columbia under Chapter 598 of the 1985 Acts of the Virginia Assembly, as amended, codified at Va. Code Ann. §5.1-152-178 (2001), and by the District of Columbia Regional Airports Authority Act of 1985, as amended, codified at D.C. Code Ann. §§9-901 et seq. (2001), has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and to perform each and all of the obligations of the Airports Authority provided for herein.

(b) The Airports Authority has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement.

(c) Each person executing this Agreement on behalf of the Airports Authority has been or will at such time be duly authorized to execute this Agreement on behalf of the Airports Authority.

(d) This Agreement has been duly authorized, executed and delivered by the Airports Authority and constitutes a valid and legally binding obligation of the Airports Authority, enforceable against it in accordance with the terms hereof, subject only to (i) the effect of bankruptcy, insolvency reorganization, moratorium or other similar laws and judicial decisions now or hereinafter in effect affecting, generally, the enforceability of creditor's rights and remedies, (ii) the effect of rules of law governing equitable remedies and defenses, and the discretion of any court of competent jurisdiction in awarding equitable remedies, and (iii) the effect of rules of law governing enforcement and collection of damages against the Airports Authority.

(e) Neither the execution and delivery by the Airports Authority of this Agreement, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of the governing instruments of the Airports Authority or any other agreements or instruments to which it is a party or by which it is bound.

(f) There is no action, suit, proceeding, investigation or litigation pending and served on the Airports Authority which challenges the Airports Authority's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, or which challenges the authority of the Airports Authority official executing this Agreement; and the Airports Authority has disclosed to the Department any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Airports Authority is aware.

(g) The Airports Authority is in material compliance with all Laws applicable to the Airports Authority and its activities in connection with this Agreement.

(h) Except for any broker or advisor whose fees will be paid by the Airports Authority, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Airports Authority who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 13.03 Survival of Representations and Warranties.

The representations and warranties of the Department and the Airports Authority contained in this **Article 13** shall survive until 25 years after the Effective Date of this Agreement.

ARTICLE 14.

TERMINATION

Section 14.01 Rights to Terminate.

(a) The Department is entitled to terminate this Agreement as provided in Section 15.02(a).

(b) The Airports Authority is entitled to terminate this Agreement pursuant to Section 15.04(a) only in the event of a material Non-Compliance by the Department as described in Section 15.03 that materially impairs the Airports Authority's rights to realize the benefits of the Permit granted under this Agreement (more particularly, that materially impairs the Airports Authority's rights under this Agreement to operate the Toll Road and to impose and collect tolls on the users thereof).

(c) If the Department exercises its right of termination under **subsection (a)** above pursuant to Section 15.01(h), then the Department shall (i) enter into an agreement with the Trustee under the Indenture to continue to collect tolls on the Toll Road and remit them to the Trustee for the benefit of the bondholders in accordance with the terms of the Indenture, or (ii) provide sufficient funds to the Airports Authority to pay, purchase, redeem, defease or otherwise provide for the satisfaction of any outstanding Toll Revenue Bonds in accordance with the Indenture, provided, however, that the Department will be entitled to receive from the Airports Authority the remaining proceeds from any outstanding Toll Revenue Bonds.

(d) In carrying out its obligations in **clause (i) of the first sentence of subsection (c)**, the Department annually shall request necessary appropriations of Toll Revenues from the General Assembly generally in accordance with the procedures described in Section 18.17.

(e) Upon termination of this Agreement, the Department will assume, to the extent assignable, all outstanding contractual obligations of the Airports Authority related to the Toll Road and, at its option, to be exercised in its sole discretion, the Department or its designee will either assume any or all outstanding contractual obligations of the Airports Authority with respect to the design and construction of the Dulles Corridor Metrorail Project or the Department will direct the Airport Authority to terminate any contractual obligations not so assumed, and any termination charges payable in connection therewith shall be payable out of Toll Revenues, subject to Section 10.03(b).

(f) In the event the FFGA is not issued by the FTA by December 31, 2008, the parties may mutually agree thereafter to terminate this Agreement.

Section 14.02 The Airports Authority's Actions Upon Termination.

(a) On the effective date of termination of this Agreement or the Airports Authority's rights hereunder, whether due to expiration or earlier termination of the Term, the Airports Authority shall deliver to the Department:

(i) subject to Sections 16.03 and 16.04, all tangible personal property, reports, books, records, work product and Intellectual Property used or owned by the Airports Authority or any Affiliate of the Airports Authority and relating to the Toll Road or Toll Road Operations;

(ii) possession and control of the Toll Road and Toll Road Right-of-Way, free and clear of any and all Liens and encumbrances created, incurred or suffered by the Airports Authority or anyone claiming under the Airports Authority, except for Permitted Encumbrances that existed as of the Effective Date and any Airports Authority Permitted Encumbrances;

(iii) all amounts that appear in the financial records of the Airports Authority relating to Toll Road Operations and the Toll Road, including, without limitation, all such amounts that are classified as operating reserves, revenue funds, reserve maintenance funds, or debt service funds, and all amounts in, or then required to be in, the Extraordinary Maintenance and Repair Reserve, free and clear of any and all Liens and encumbrances created, incurred or suffered by the Airports Authority or anyone claiming under the Airports Authority;

(iv) subject to Sections 16.03 and 16.04, all other intangible personal property used or owned by the Airports Authority and relating to or derived from the Toll Road or Toll Road Operations, including all contracts, licenses, agreements, purchase orders and other agreements or arrangements of the Airports Authority that are related to the Toll Road or Toll Road Operations;

(v) all of the Toll Road collections, grant proceeds and other financial payments received or receivable by the Airports Authority that solely relate to or are derived from the Toll Road and Toll Road Operations;

(vi) all of the Airports Authority's accounts and notes receivable and other deposits, advances, pre-payments and suppliers' and vendors' rebates and other receivables of the Airports Authority that relate to the Toll Road and Toll Road Operations;

(vii) all operational information and data, books and records and customer files and records relating to the Toll Road and Toll Road Operations;

(viii) all of the equipment, machinery, supplies, furniture, leasehold improvements and other miscellaneous tangible personal and movable property of the Airports Authority that are located upon and/or solely used in connection with the Toll Road or Toll Road Operations;

(ix) all actions of any kind (including rights to insurance proceeds and rights under and pursuant to all warranties, representations and guarantees made by suppliers of products, materials or equipment, or components thereof), pertaining to, arising out of, and inuring to the benefit of the Airports Authority to the extent solely related to the Toll Road; and

(x) except for those which are not assignable by operation of the laws of the relevant Governmental Entity, all permits, licenses, approvals, certificates and authorizations granted by a Governmental Entity that solely relate to the Toll Road or Toll Road Operations.

(b) The Department shall, as of the effective date of termination of this Agreement or the Airports Authority's rights hereunder, whether due to expiration or earlier termination of the Term, assume full responsibility for the Toll Road Operations, and as of such date, the Airports Authority shall have no liability or responsibility for such Toll Road Operations occurring after such date; provided, however, that the Department and the Airports Authority shall remain fully responsible for all of their respective obligations or liabilities under this Agreement arising before the effective date of termination.

(c) Each of the Airports Authority and the Department shall be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to but not including the effective date of termination of this Agreement or the Airports Authority's rights hereunder, whether due to expiration or earlier termination of the Term, and the Airports Authority shall not be liable for any costs, expenses and amounts incurred in connection with the Toll Road Operations on and after such date, except to the extent such costs, expenses and amounts are properly included in the measure of any damages due to the Department arising from a default or non-compliance by the Airports Authority under this Agreement.

Section 14.03 Liability After Termination.

If this Agreement is terminated pursuant to Sections 15.02(a) or 15.04(a), no party shall have any further obligation or liability except for performance of their respective obligations which are either expressly stated in this Agreement to survive termination or by their sense and context are intended to survive termination.

Section 14.04 Exclusive Termination Remedies.

This Article 14 and Article 15 set forth the entire and exclusive provisions and rights of the Department and the Airports Authority regarding termination of this Agreement, and any and all other rights to terminate at law or in equity are hereby waived to the maximum extent permitted by law.

ARTICLE 15.

NON-COMPLIANCE AND REMEDIES

Section 15.01 Airports Authority Non-Compliance.

The occurrence of any one or more of the following events during the Term shall constitute an "Airports Authority Non-Compliance" under this Agreement:

- (a) if any representation or warranty made by the Airports Authority herein is inaccurate or misleading in any respect as of the Effective Date, and a material adverse effect upon the ability of the Airports Authority to meet its obligations under this Agreement or the Department's rights under this Agreement results therefrom;
- (b) if the Airports Authority fails to pay to the Department when due all monies payable to the Department under this Agreement, and such failure continues unremedied for a period of 30 days following notice thereof;
- (c) if the Airports Authority fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement, and such failure is not excused by Force Majeure and continues unremedied for a period of 90 days following notice thereof (giving particulars of the failure in reasonable detail) from the Department to the Airports Authority or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Airports Authority has demonstrated to the satisfaction of the Department, acting reasonably, that (i) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Department, acting reasonably, and (iii) such failure is in fact cured within such period of time;
- (d) if this Agreement or all or any portion of the Owner Interest is Transferred in contravention of Section 18.01;
- (e) if the Airports Authority (i) admits, in writing, that it is unable to pay its debts as they become due, (ii) makes an assignment for the benefit of its creditors, (iii) files a voluntary petition under Title 11 of the U.S. Code, or if such petition is filed against it and an order for relief is entered, or if the Airports Authority files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Airports Authority, or of all or any substantial part of its properties or of the Toll Road or any interest therein, or (iv) takes any corporate action in furtherance of any action described in this paragraph;

(f) if within 90 days after the commencement of any proceeding against the Airports Authority seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within 90 days after the appointment, without the consent or acquiescence of the Airports Authority, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Airports Authority or of all or any substantial part of its properties or of the Toll Road or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or if, within 90 days after the expiration of any such stay, such appointment has not been vacated;

(g) if a levy under execution or attachment has been made against all or any material portion of the Toll Road, funds or accounts containing Toll Revenues in excess of an amount equal to the annual average of aggregate Toll Revenues received by the Airports Authority (or the Department if prior to the Effective Date) in each of the previous eight years, or any interest in Toll Revenues as a result of any Lien (other than a Lien relating to permitted Toll Revenue Bonds) created, incurred, assumed or suffered to exist by the Airports Authority or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 days, unless such levy resulted from actions or omissions of the Department or its Representatives; or

(h) if the Airports Authority fails to comply with its obligation to use its best efforts to complete the Dulles Corridor Metrorail Project by the date as set forth in **Section 6.06**, or as it may be extended pursuant to such **Section 6.06**, and such failure to use best efforts continues unremedied for a period of 120 days following notice thereof (giving particulars of the failure in reasonable detail) from the Department to the Airports Authority or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Airports Authority has demonstrated to the satisfaction of the Department, acting reasonably, that (i) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Department, acting reasonably, and (iii) such failure is in fact cured within such period of time. For the avoidance of doubt, any failure by the Airports Authority to complete the Dulles Corridor Metrorail Project by the date set forth in **Section 6.06**, as it may be extended pursuant to such **Section 6.06**, despite its best efforts, shall not constitute Non-Compliance under this subsection (h).

Section 15.02 Department Remedies upon Airports Authority Non-Compliance.

Upon the occurrence of an Airports Authority Non-Compliance, the Department may, by notice to the Airports Authority with a copy to the Trustee in accordance with the terms hereof, declare the Airports Authority to be in non-compliance with this Agreement and may do any or all of the following as the Department, in its discretion, shall determine:

(a) Subject to **Section 5.03**, the Department may terminate this Agreement by giving 60 days' prior written notice to the Airports Authority and the Trustee (to the extent required under **Section 5.03(a)**) upon the occurrence of (i) an Airports Authority Non-Compliance that consists of a failure to comply with, perform or observe any operating standard if such Airports

Authority Non-Compliance creates a material and immediate danger to the safety of the Toll Road's operations or a failure to use the Toll Road for vehicular transportation purposes or (ii) any Airports Authority Non-Compliance described in Section 15.01(d) – (h); provided, however, that the Airports Authority is entitled to cure an Airports Authority Non-Compliance pursuant to this paragraph by providing the Department with a written work plan within such 60-day period outlining the actions by which the Airports Authority will ensure future compliance with the obligation, covenant, agreement, term or condition in this Agreement that the Airports Authority failed to perform or observe, which work plan is approved by the Department, but any failure of the Airports Authority to comply in any material respect with such approved work plan following 60 days' notice of such failure from the Department to the Airports Authority shall be deemed to be an Airports Authority Non-Compliance described in Section 15.01(b) and the entitlement of the Airports Authority to cure such Airports Authority Non-Compliance by the delivery of an approved work plan shall not apply thereto. Such termination shall automatically extinguish the Airports Authority's Interest and all liens and claims on or against the Airports Authority's Interest;

(b) if the Airports Authority Non-Compliance is by reason of the failure to pay any monies, the Department may (without any obligation to do so) make payment on behalf of the Airports Authority of such monies, and any amount so paid by the Department shall be payable by the Airports Authority to the Department within three Business Days after demand therefore;

(c) the Department may cure the Airports Authority Non-Compliance (but this shall not obligate the Department to cure or attempt to cure an Airports Authority Non-Compliance or, after having commenced to cure or attempted to cure an Airports Authority Non-Compliance, to continue to do so), and all costs and expenses reasonably incurred by the Department in curing or attempting to cure the Airports Authority Non-Compliance, including the Department's reasonable Allocable Costs, together with an administrative fee equal to 15% of such costs and expenses, shall be payable by the Airports Authority to the Department within three Business Days of demand; provided, however, that (i) the Department shall not incur any liability to the Airports Authority for any act or omission of the Department or any other Person in the course of remedying or attempting to remedy any Airports Authority Non-Compliance, and (ii) the Department's cure of any Airports Authority Non-Compliance shall not affect the Department's rights against the Airports Authority by reason of the Airports Authority Non-Compliance;

(d) the Department may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for an Airports Authority Non-Compliance;

(e) the Department may seek to recover its Losses arising from such Airports Authority Non-Compliance and any amounts due and payable under this Agreement (including the Airports Authority's obligation to pay interest at the Bank Rate from the date a payment is due until paid) and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;

(f) with respect to an Airports Authority Non-Compliance that entitles the Department to terminate this Agreement pursuant to this Section 15.02, subject to Section

14.01(c) above, the Department may (i) terminate the Airports Authority's right of possession of the Toll Road and in such event, the Department or the Department's agents may immediately or at any time thereafter re-enter the Toll Road and remove all persons and all or any property therefrom, by any available action or proceeding at law or in equity, and with or without terminating this Agreement, and repossess and enjoy the Toll Road; provided, however, that no reentry by the Department shall be construed as an election on its part to terminate this Agreement unless a notice of such intention is given to the Airports Authority; provided, further, that any re-entry or termination of this Agreement made in accordance with this Agreement as against the Airports Authority shall be valid and effective against the Airports Authority even though made subject to the rights of the Trustee to cure any default or non-compliance of the Airports Authority and continue as in the place of the Airports Authority under this Agreement or any other agreement as provided herein; (ii) subject to applicable Law, distrain against any of the Airports Authority's goods situated on the Toll Road, and the Airports Authority waives any statutory protections and exemptions in connection therewith; and/or (iii) close any and all portions of the Toll Road;

(g) in the event any Toll Revenues are used to pay a claim or obligation unrelated to Toll Road Purposes and Dulles Corridor Metrorail Purposes, the Airports Authority shall reimburse such funds in full to the Toll Road account containing such funds, or, if this Agreement has been terminated, shall repay the amount of such Toll Revenues to the Department, without interest, in either case from any other available revenues or funds of the Airports Authority (other than Toll Revenues), which obligation shall survive the termination of this Agreement; and

(h) the Department may exercise any of its other rights and remedies provided for hereunder or at law or equity.

Section 15.03 Department Non-Compliance.

The occurrence of any one or more of the following events during the Term shall constitute a "**Department Non-Compliance**" under this Agreement:

(a) if any representation or warranty made by the Department herein is inaccurate or misleading in any respect as of the Effective Date, and a material adverse effect upon the Toll Road or the Airports Authority's rights or obligations under this Agreement results therefrom;

(b) if the Department fails to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement, and such failure is not excused by Force Majeure and continues unremedied for a period of 90 days following notice thereof (giving particulars of the failure in reasonable detail) from the Airports Authority to the Department or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Department has demonstrated to the satisfaction of the Airports Authority, acting reasonably, that (i) it is proceeding with all due diligence to cure or cause to be cured such failure, (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Airports Authority, acting reasonably, and (iii) such failure is in fact cured within such period of time;

(c) if a levy under execution or attachment has been made against all or any part of the Toll Road or the Airports Authority's Interest as a result of any Lien (other than a permitted Lien) created, incurred, assumed or suffered to exist by the Department or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 days, unless such levy resulted from actions or omissions of the Airports Authority or its Representatives or if all or a material part of the Toll Road is subject to a condemnation or a similar taking by the State or any agency thereof; and

(d) if the Department (i) admits, in writing, that it is unable to pay its debts as they become due, (ii) makes an assignment for the benefit of its creditors, (iii) files a voluntary petition under Title 11 of the U.S. Code, or if such petition is filed against it and an order for relief is entered, or if the Department files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Department, or of all or any substantial part of its properties (in each case, to the extent applicable to a state agency), or (iv) takes any action in furtherance of any action described in this paragraph; or if within 90 days after the commencement of any proceeding against the Department seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within 90 days after the appointment, without the consent or acquiescence of the Department, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Department or of all or any substantial part of its properties (in each case, to the extent applicable to a state agency), such appointment has not been vacated or stayed on appeal or otherwise, or if, within 90 days after the expiration of any such stay, such appointment has not been vacated.

Section 15.04 Remedies of the Airports Authority upon Department Non-Compliance.

Upon the occurrence of a Department Non-Compliance by the Department under this Agreement, the Airports Authority may by notice to the Department declare the Department to be in non-compliance and may, subject to the provisions of Section 15.03(b), do any or all of the following as the Airports Authority, in its discretion:

(a) subject to Section 14.01(b), the Airports Authority may terminate this Agreement by giving 90 days' prior written notice to the Department; provided, however, that the Department shall be entitled to cure a Department Non-Compliance pursuant to Section 15.03(b) by providing the Airports Authority with a written work plan within such 90-day period outlining the actions by which the Department will ensure future compliance with the obligation, covenant, agreement, term or condition in this Agreement that the Department failed to perform or observe, which work plan is approved by the Airports Authority (which approval shall not be unreasonably withheld, delayed or conditioned), but any failure of the Department to comply in any material respect with such approved work plan following 90 days' notice of such failure from the Airports Authority to the Department shall be deemed to be a Department Non-

Compliance described in **Section 15.03(b)** and the entitlement of the Department to cure such Department Non-Compliance by the delivery of an approved work plan shall not apply thereto; and upon such termination the Department shall be obligated to take the actions set forth in **Section 14.01(c)**, above, plus pay, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Airports Authority as a result of such termination, including its reasonable Allocable Costs, provided, however, that the Department will be entitled to receive from the Airports Authority the remaining proceeds from any outstanding Toll Revenue Bonds;

(b) the Airports Authority may exercise any of its rights and remedies at law or in equity;

(c) subject to **Section 18.17**, the Airports Authority may seek to recover its Losses and any amounts due and payable under this Agreement (including the Department's obligation to pay interest at the Bank Rate from the date a payment is due until paid) and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt; and

(d) the Airports Authority may exercise any of its other rights and remedies provided for hereunder.

Section 15.05 Dispute Resolution; No Declaratory Judgment Procedure.

(a) Any dispute arising out of, relating to, or in connection with this Agreement shall be resolved as set forth in this **Section 15.05**.

(b) The parties shall attempt in good faith to resolve any dispute within 15 days. If the parties are unable to resolve the dispute within 15 days, and upon notice by either party to the other, the dispute shall be referred to mediation or any other form of alternative dispute resolution that is acceptable to both of them. They must share equally the expenses of the mediator or other alternative dispute resolution process. If, after 180 days following the date of the referral, the dispute remains unresolved, then either party may litigate the matter in a court of law as set forth in **subsection (c)**. The provisions of this **Section 15.05(b)** shall not be applicable to any dispute regarding an Airports Authority Non-Compliance described in **Section 15.02(a)(i)**.

(c) 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 for Fairfax County, Virginia, which shall have exclusive venue.

(d) Each party shall bear its own attorneys' fees and costs in any dispute or litigation arising out of or pertaining to this Agreement, and no party shall seek or accept an award of attorneys' fees or costs, except as otherwise expressly set forth in this Agreement.

ARTICLE 16.

RECORDS, REPORTS, WORK PRODUCT AND INTELLECTUAL PROPERTY

Section 16.01 Maintenance of Records.

The Airports Authority shall maintain or cause to be maintained proper books of records and accounts in which complete and correct entries shall be made of its transactions in accordance with Generally Accepted Accounting Principles.

Section 16.02 Public Records.

(a) Any Work Product the Department owns and any document of which the Department obtains a copy that relates to the Toll Road may be considered public records under the Virginia Public Records Act, Sections 42.1-76 through 42.1-91 of the Code of Virginia or official records under the Virginia Freedom of Information Act, Sections 2.2-3700 through 2.2-3714 of the Code of Virginia, and as such may be subject to public disclosure. The Department recognizes that certain Work Product the Department owns, and certain documents of which the Department obtains a copy that relate to the Toll Road may constitute trade secrets as defined in the Uniform Trade Secrets Act, Sections 59.1-336 through 59.1-343 of the Code of Virginia and may include confidential information which is otherwise subject to protection from misappropriation or disclosure.

(b) If the Airports Authority believes that any Work Product or any document subject to transmittal to or review by the Department under the terms of this Agreement contains proprietary or confidential information or trade secrets that are exempt or protected from disclosure pursuant to State law, the Airports Authority shall use its best efforts to identify such information prior to such transmittal or review and it and the Department shall confer on appropriate means of ensuring compliance with applicable laws prior to transmittal or review. Upon the written request of either party, the Airports Authority and the Department shall mutually develop a protocol for the transmittal, review and disclosure of Work Product or other documents produced or obtained by the Airports Authority so as to avoid violations of any applicable Law.

Section 16.03 Ownership of Work Product.

(a) All Work Product, including but not limited to reports, studies, data, information, logs, records, designs, drawings, plans, plans and specifications, record plans and specifications, intangible property and the like (including records thereof in software form), which the Department or any of its contractors has prepared or procured prior to the Effective Date, or prepares or procures after the Effective Date, shall be and remain the exclusive property of the Department; provided, that the Department shall make available to the Airports Authority without charge, and without representation or warranty of any kind, any documents in the possession of the Department relating to the planning, design, engineering and permitting of the

Toll Road and any Capital Improvement that the Airports Authority elects to or is directed to carry out.

(b) All Work Product of the Airports Authority shall remain exclusively the property of the Airports Authority, notwithstanding any delivery of copies thereof to the Department, except for plans, drawings and specifications delivered to the Department with respect to Capital Improvements outside of the Toll Road Right-of-Way after completion of any construction-related project, which item of Work Product is the exclusive property of the Department. Upon the expiration or earlier termination of this Agreement for any reason, including but not limited to termination by the Airports Authority for a Department Non-Compliance, the Airports Authority shall promptly turn over to the Department a copy of all Work Product the Airports Authority owns, except Proprietary Work Product, but including any Proprietary Work Product necessary for the Department to continue to operate and maintain the Toll Road; and all such Work Product shall be considered the sole and exclusive property of the Department without compensation due the Airports Authority or any other party (except to the extent the Airports Authority is entitled to compensation due to a Department Non-Compliance). The Department shall enter into a confidentiality agreement reasonably requested by the Airports Authority with respect to any Proprietary Work Product, subject to Section 16.02. The Airports Authority shall continue to have a full and complete right to use any and all duplicates or other originals of such Proprietary Work Product in any manner it chooses.

Section 16.04 Ownership of Intellectual Property.

(a) All Proprietary Intellectual Property of the Airports Authority shall remain exclusively the property of the Airports Authority, notwithstanding any delivery of copies thereof to the Department. Upon the expiration or earlier termination of this Agreement for any reason whatsoever, the Department shall have a nonexclusive, nontransferable, irrevocable, fully paid up license to use the Proprietary Intellectual Property of the Airports Authority in connection with the Toll Road or any other tolled State Highway owned and operated by the Department or other State agency on commercially reasonable terms. The Department shall not disclose any Proprietary Intellectual Property of the Airports Authority (other than to its concessionaires, contractors, subcontractors, employees, attorneys and agents in connection with the Toll Road who agree to be bound by any confidentiality obligations of the Department relating thereto), subject to Section 16.02, and the Department shall enter into a confidentiality agreement reasonably requested by the Airports Authority with respect to any such Proprietary Intellectual Property, subject to Section 16.02. The Airports Authority shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

(b) With respect to any Proprietary Intellectual Property owned by a Person other than the Airports Authority or the Department, the Airports Authority shall use its commercially reasonable efforts to obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner, both for the Airports Authority and the Department, nonexclusive, nontransferable, irrevocable, fully paid up licenses to use such Proprietary Intellectual Property solely in connection with the Toll Road, of at least identical scope, purpose, duration and applicability as the licenses granted by subsection (a) above. The

Airports Authority shall also use its commercially reasonable efforts to obtain from such owner a right in favor of the Department to purchase from such owner a nonexclusive, nontransferable, irrevocable, fully paid up license to use such owner's Proprietary Intellectual Property on any other tolled State Highway owned and operated by the Department or other State agency on commercially reasonable terms. The limitations on sale and disclosure by the Department set forth in subsection (a) above shall also apply to the Department's licenses in such Proprietary Intellectual Property.

(c) All Proprietary Intellectual Property of the Department shall remain exclusively the property of the Department, notwithstanding any delivery of copies thereof to the Airports Authority. As of the Effective Date, the Department shall grant to the Airports Authority a nonexclusive, nontransferable, irrevocable, fully paid up license to use any Proprietary Intellectual Property of the Department that has been developed for the Toll Road, in connection with the operation, maintenance and other incidental activities of the Toll Road. As of the Effective Date, the Department shall also use its commercially reasonable efforts to assign in favor of the Airports Authority the Department's rights in respect of any license by the Department's software suppliers for the use of any Proprietary Intellectual Property for the Toll Road, together with an assignment of the Department's rights under any escrow for the Source Code and related documentation relating to such Proprietary Intellectual Property, which assignments shall be reasonably satisfactory to the Airports Authority. The Airports Authority shall not disclose any such Proprietary Intellectual Property (other than to its contractors, subcontractors, employees, attorneys and agents in connection with the Toll Road who agree to be bound by any confidentiality obligations of the Airports Authority relating thereto), and the Airports Authority shall enter into a confidentiality agreement reasonably requested by the Department with respect to any such Proprietary Intellectual Property.

Section 16.05 Source Code Escrow

(a) The Department and the Airports Authority acknowledge that the Airports Authority and/or the Airports Authority's software suppliers may not wish to disclose directly to the Department at the time of installation of the Source Code and related documentation of software which is Proprietary Intellectual Property of the Airports Authority and/or the Airports Authority's software suppliers, as public disclosure could deprive the Airports Authority or the Airports Authority's software suppliers of commercial value, but the Airports Authority shall use commercially reasonable efforts to provide the Department with access to such Source Code and related documentation in either of the following circumstances:

(i) In the case of Source Code and related software documentation that is a contractor's or subcontractor's Proprietary Intellectual Property, this Agreement is terminated for an Airports Authority Non-Compliance, the Department assumes the contract or subcontract with such software supplier, and either (A) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the software supplier occurs or (B) the software supplier fails or ceases to provide services as necessary to permit continued use of the software by the Department as contemplated by this Agreement; or

(ii) In the case of Source Code and related software documentation that is the Airports Authority's Proprietary Intellectual Property, (A) this Agreement is terminated for Airports Authority Non-Compliance, (B) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the Airports Authority occurs or (C) the Airports Authority fails or ceases to provide services as necessary to permit continued use of the software by the Department as contemplated by this Agreement.

(b) The Airports Authority shall select an escrow company ("**Escrow Agent**") engaged in the business of receiving and maintaining escrows of Source Code, related documentation, and other technology. The Airports Authority shall establish one or more escrows (the "**Source Code Escrows**") with the Escrow Agent into which such Source Code and related documentation shall be escrowed, including all relevant commentary, explanations and other documentation, as well as instructions to compile such Source Code and all modifications, additions or substitutions made to such Source Code and related documentation. Upon earlier expiration of the Term or earlier termination of this Agreement pursuant to Article 14 or Article 15, the Airports Authority shall assign to the Department all of its rights under its agreement with the Escrow Agent.

(c) The escrow provided for in subsections (a) and (b), above, shall survive any termination of this Agreement regardless of the reason.

(d) The Department shall make available to the Airports Authority any source code escrow similar to that described in subsection (b), above, created for its benefit with respect to any software transferred to the Airports Authority in connection with this Agreement.

Section 16.06 No Limitation of Constitutional or Statutory Powers.

Nothing contained in this Agreement, other than the contractual rights granted herein, shall in any way limit or enhance the constitutional and statutory powers, duties and rights of elected state officials, including the independent rights of the State Auditor of Public Accounts, in carrying out his or her legal authority.

ARTICLE 17.

RESERVED RIGHTS

Section 17.01 Exclusions from the Airports Authority's Interests.

The Airports Authority's rights and interests in the Toll Road and Toll Road Right-of-Way have been granted to the Airports Authority under the Permit set forth in this Agreement in order to enable it to accomplish the Toll Road Purposes and Dulles Corridor Metrorail Purposes. Except as set forth in Section 17.04, the Airports Authority's rights and interests specifically exclude all Reserved Rights.

Section 17.02 Department Reservation of Rights.

All rights to own, lease, sell, assign, transfer, utilize, develop or take advantage of the Reserved Rights are hereby reserved to the Department; and the Airports Authority shall not engage in any activity infringing upon the Reserved Rights. The Department may, at any time at its sole cost and expense, devote, use or take advantage of the Reserved Rights for any public purpose without any financial participation whatsoever by the Airports Authority. The Department hereby reserves to itself all ownership, development, maintenance, repair, replacement, operation, use and enjoyment of, and access to, the Reserved Rights. No Department activity or improvement respecting Reserved Rights shall materially interfere with (i) the operation and maintenance of the Toll Road, or (ii) the ability of the Airports Authority to expand traffic lanes or add additional traffic lanes in each direction to the main carriageways or the ramps connecting with the main carriageways. The Department shall use reasonable efforts to minimize interference with the operation and maintenance of the Toll Road in connection with the exercise of Reserved Rights.

Section 17.03 Disgorgement.

If an Airports Authority Non-Compliance concerns a breach of the provisions of Section 17.01 or 17.02, in addition to any other remedies under this Agreement, the Department 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.

Section 17.04 Airports Authority Reservation of Rights.

The Airports Authority reserves all of its rights under the Federal Lease with respect to the 1983 Easement and the Additional Easements, including air rights, if any. The Airports Authority will notify the applicable local jurisdiction(s) of its plans to develop any air rights and provide the local jurisdiction(s) an opportunity to discuss these plans with the Airports Authority. The Airports Authority agrees that any development of the air rights over the Toll Road shall, to the extent that development is leased to a taxable entity, be subject to the local jurisdiction's generally applicable leasehold interest tax and to any special taxing district created to finance the Dulles Corridor Metrorail Project that is applicable to the property beyond the Toll

Road Right of Way. The Airports Authority agrees to advise and discuss with the Dulles Corridor Advisory Committee its plans for the development of any use or enterprise that is on or above the Toll Road or the Dulles Access Highway that would directly affect a local jurisdiction, and that is not essential to the transportation of persons or goods in the Dulles Corridor.

ARTICLE 18.

MISCELLANEOUS

Section 18.01 Transfers by the Airports Authority.

(a) Without the written consent of the Department, the Airports Authority shall not Transfer, or otherwise permit the Transfer of, any or all of the Airports Authority's Interest to or in favor of any Person (a "Transferee") unless it is the Trustee, a bondholder or a transferee from the Trustee, in each case if permitted under Article 5, or in accordance with **subsection (b)**, below. Any Transfer made in violation of the foregoing provision shall be null and void *ab initio* and of no force and effect.

(b) With the express written consent of the Department, the Airports Authority may enter into a concession or similar agreement with a private Person to operate and maintain the Toll Road. Provided, however, the Airports Authority is not precluded from entering into an agreement with any Person to provide contract services to the Airports Authority.

(c) No Transfer of all or any of the Airports Authority's Interest (except a Transfer to the Trustee upon its exercise of remedies under the Indentures and a subsequent transfer to the bondholder's transferee that has been approved under Section 5.03) shall be made or have any force or effect if, at the time of such Transfer there has occurred an Airports Authority Non-Compliance that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute an Airports Authority Non-Compliance.

Section 18.02 Assignment by the Department.

The Department may transfer and assign its interests in the Toll Road and this Agreement to any other public agency or public entity as permitted by law, the 1983 Easement and the Additional Easements, provided that the successor or assignee has assumed all of the Department's obligations, duties and liabilities under this Agreement, and has provided the Airports Authority with reasonable assurance of its legal authority and sufficient financial resources to honor and perform the same; provided, that the successor or assignee shall not be required to have financial resources in excess of those then available to the Department.

Section 18.03 No Gift or Dedication.

Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Toll Road, Toll Road Right-of-Way or Work Product to the Airports Authority or the general public or for any public use or purpose whatsoever, or be deemed to create any rights in the Toll Road, Toll Road Right-of-Way or Work Product except as expressly set forth herein.

Section 18.04 Notices.

(a) 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 not be effective for any purpose unless and until actually received by the addressee or unless served:

- (i) personally,
- (ii) by independent, reputable, overnight commercial courier,
- (iii) by facsimile transmission:

(A) 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),

(B) 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

(C) where the facsimile transmission is immediately followed by service of the original of the subject item in the manner provided in subsections (a)(i), (ii) or (iv) hereof, or

(iv) 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 Airports Authority:

Metropolitan Washington Airports Authority
1 Aviation Circle
Washington, DC 20001
Attn: President and CEO
Tel: (703) 417-8615
Fax: (703) 417-8967

with a copy to:

Metropolitan Washington Airports Authority
1 Aviation Circle
Washington, DC 20001
Attn: General Counsel

and to:

Metropolitan Washington Airports Authority
1 Aviation Circle
Washington, DC 20001
Attn: Chief Financial Officer

If to the Department:

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attn: Commissioner
Fax: (804) 786-2940

With a copy to:

Commonwealth of Virginia, Office of the Attorney General
900 E. Main Street
Richmond, Virginia 23219
Fax: (804) 786-9136

(b) Any party may, from time to time, by notice in writing served upon the other party as aforesaid, designate an additional and/or a different mailing address in Virginia or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally shall be deemed delivered upon receipt, if served by mail or independent courier shall be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the U.S. Postal Service or independent courier, and if served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile (provided the original is thereafter delivered as aforesaid).

Section 18.05 Binding Effect.

Subject to the limitations of Sections 18.01 and 18.02, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns, and wherever a reference in this Agreement is made to any of the parties hereto, 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.

Section 18.06 Relationship of Parties.

(a) The relationship of the Airports Authority to the Department shall be one of an independent contractor, not an agent, partner, lessee, joint venturer or employee, and the Department shall have no rights to direct or control the activities of the Airports Authority or any Airports Authority Party.

(b) Officials, employees and agents of the Department shall in no event be considered employees, agents, partners or representatives of the Airports Authority.

Section 18.07 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 hereto toward, any person or entity not a party to this Agreement, except rights contained herein expressly for the benefit of the bondholders and/or the Trustee.

Section 18.08 Limitation on Consequential Damages

Except as expressly provided in this Agreement to the contrary, neither party shall be liable to the other for indirect, incidental or consequential damages of any nature, whether arising in contract, tort (including negligence) or other legal theory. The foregoing limitation shall not, however, in any manner:

(a) limit the Airports Authority's liability for any type of damage arising out of the Airports Authority's obligation to indemnify, defend and hold each State Indemnitee harmless from Third Party Claims under Article 12; or

(b) limit the Airports Authority's liability for any type of damage to the extent covered by insurance required hereunder.

Section 18.09 Waiver.

(a) No waiver by any party of any right or remedy under this Agreement shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(b) No act, delay or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such party under this Agreement, or to relieve the other party from the full performance of its obligations under this Agreement.

(c) No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party.

(d) The acceptance of any payment or reimbursement by a party shall not: (i) waive any preceding or then-existing breach, default or non-compliance by the other party of any term, covenant or condition of this Agreement, other than the other party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach, default or non-compliance at the time of acceptance of such payment or reimbursement; or (ii) continue, extend or affect (A) the service of any notice, any suit, arbitration or other legal proceeding or final judgment, (B) any time within which the other party is required to perform any obligation or (C) any other notice or demand.

(e) 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 the other party in strict compliance with the terms of this Agreement.

Section 18.10 Governing Law and Venue.

This Agreement shall be governed and construed in accordance with the laws of the State applicable to contracts executed and to be performed within the State. Venue for any legal action arising out of this Agreement shall lie in the Circuit Court for Fairfax County, Virginia.

Section 18.11 Use of Governmental Powers.

Nothing in this Agreement limits the authority of the Department or the Airports Authority to exercise powers granted by Law, including but not limited to regulatory and police powers.

Section 18.12 Survival.

Except as otherwise provided herein, all covenants, agreements, representations and warranties made in or pursuant to this Agreement shall survive the expiration or earlier termination of this Agreement and shall not be waived by the execution and delivery of this Agreement, by completion of construction, by any investigation by the Department or by any other event except a specific written waiver by the party against whom waiver is asserted.

Section 18.13 Subpoena.

Except as provided for in Virginia Code Section 33.1-4, the Airports Authority may subpoena any Department personnel provided that the Airports Authority shall pay for such personnel's time at its fully burdened rate (including overhead and fringe benefits), together with all out-of-pocket expenses incurred, no later than 30 Days after the Airports Authority's receipt of an invoice reasonably documenting the amount of such time provided.

Section 18.14 Construction and Interpretation of Agreement.

(a) The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable

period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(b) If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, 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. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the parties in good faith shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

(c) The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(d) References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any exhibits hereto (which are hereby incorporated herein by reference), and any riders, exhibits, addenda and attachments which may in the future be included herein or other future documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation and/or undertaking "herein," "hereunder" or "pursuant hereto" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this Agreement. All terms defined in this Agreement shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this Agreement unless the context thereof clearly requires the contrary. Unless expressly provided otherwise, all references to Articles and Sections refer to the Articles and Sections set forth in this Agreement. Unless otherwise stated in this Agreement, words which have well-known technical or construction industry meanings are used in this Agreement in accordance with such recognized meaning. All references to a subsection "above" or "below" refer to the denoted subsection within the Section in which the reference appears.

(e) As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

(f) This Agreement and its exhibits are intended to be complementary and consistent with each other and shall, to the maximum extent possible, be construed according to such intent. In the event of an irreconcilable conflict or inconsistency between the terms and conditions of this Agreement and/or the exhibits to this Agreement, the conflict or inconsistency shall be resolved by applying the following order of document precedence:

Highest: A. This Agreement and Exhibit A

Lowest: B. Other Exhibits (B-E)

Section 18.15 Counterparts.

This instrument 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.

Section 18.16 Entire Agreement; Amendment.

(a) THIS AGREEMENT AND THE TRANSFER AGREEMENT CONSTITUTE THE ENTIRE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SPECIFIC MATTERS COVERED HEREIN AND THEREIN. ALL PRIOR WRITTEN AND PRIOR OR CONTEMPORANEOUS VERBAL AGREEMENTS, UNDERSTANDINGS, AND/OR REPRESENTATIONS ARE HEREBY SUPERSEDED, REVOKED AND RENDERED INEFFECTIVE FOR ANY PURPOSE. THIS AGREEMENT MAY BE ALTERED, AMENDED OR REVOKED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY EACH PARTY HERETO, OR ITS PERMITTED SUCCESSOR OR ASSIGNEE. NO VERBAL AGREEMENT OR IMPLIED COVENANT SHALL BE HELD TO VARY THE TERMS HEREOF, ANY STATUTE, LAW OR CUSTOM TO THE CONTRARY NOTWITHSTANDING.

(b) This Agreement attempts to define in full the rights and responsibilities of each party in connection therewith. To the extent requirements and rights and responsibilities have not been addressed in this Agreement, the parties agree to carry out their respective responsibilities in the spirit of cooperation, recognizing that they may not have defined in a sufficient detail or anticipated fully all activities necessary for the full implementation of the Agreement.

(c) If any provisions of this Agreement are rendered obsolete or ineffective in serving their purpose by change in 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 neither 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.

Section 18.17 Payment of Amounts Due by the Department.

The Department's payment of any amounts due and owing by the Department to the Airports Authority under this Agreement shall be subject to appropriation by the General Assembly and allocation by the CTB therefor; provided that upon determination of such amounts due, the Department shall with all practical dispatch consistent in all respects with applicable law and its obligations under this Agreement (i) deliver to the Governor and the Director of the Department of Planning and Budget of the State, before December 1 with respect to any such payment requested to be appropriated by the next regular session of the General Assembly, a statement of the amount of any such payment due or expected to be due and a request that the Governor include in his budget to be delivered to the next session of the General Assembly a

provision that there be appropriated such amounts for such purpose to the extent required, from any legally available funds, (ii) use its diligent efforts to have (A) the Governor include, in each biennial or any supplemental budget the Governor presents to the General Assembly, the amounts set forth in any statement delivered pursuant to (i) above, (B) the General Assembly appropriate and reappropriate, as applicable, such amounts to or on behalf of the Department for the purpose of paying any amounts due and owing by the Department to the Airports Authority under this Agreement, and (C) the CTB allocates such appropriated amounts as applicable for payment to the Airports Authority, and (iii) notify the Airports Authority promptly upon becoming aware of any failure by (A) the Governor to include such amounts in his budget delivered to the next session of the General Assembly, (B) the General Assembly to appropriate such amounts during such next session of the General Assembly or (C) the CTB to so allocate such amounts for payment to the Airports Authority; provided further that the parties hereto agree and acknowledge that such subject to appropriation obligation of the Department to pay the amounts due was and is a material inducement and consideration for the execution and delivery of this Agreement by the Airports Authority.

Section 18.18 Interest on Overdue Amounts.

Any amount not paid when due under this Agreement shall bear interest from the date such payment is due until payment is made (after as well as before judgment) at a variable rate per annum at all times equal to the Bank Rate, which interest shall be payable on demand.

Section 18.19 Dulles Corridor Advisory Committee.

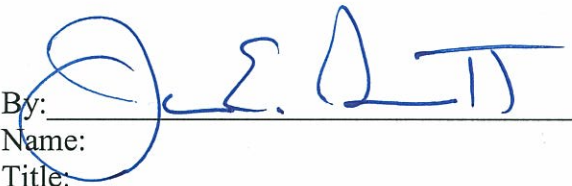
The parties will request that the Dulles Corridor Advisory Committee hold its first meeting within 30 days of the Effective Date and meet, at a minimum, two times annually thereafter, unless otherwise agreed to by the members of the Committee.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

VIRGINIA DEPARTMENT OF
TRANSPORTATION,
a department of the Commonwealth of Virginia

By: _____
David S. Ekern
Commonwealth Transportation Commissioner

METROPOLITAN WASHINGTON AIRPORTS
AUTHORITY

By:  _____
Name: _____
Title: _____

By:  _____
Name: _____
Title: _____

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By: David S. Ekern
David S. Ekern
Commonwealth Transportation Commissioner

METROPOLITAN WASHINGTON AIRPORTS
AUTHORITY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

DEFINITIONS

Additional Easements means (i) the Deed of Easement, dated May 26, 1987, between the United States of America, acting by and through the Federal Aviation Administration, and the Commonwealth of Virginia, acting by and through the Department, (ii) the Deed of Easement, dated January 7, 1990, between the Airports Authority and the Commonwealth of Virginia, acting by and through the Department, and (iii) the Deed of Easement, dated May 23, 1997, between the Airports Authority and the Commonwealth of Virginia, acting by and through the Department.

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

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

Airports Authority's Interest means the interest of the Airports Authority in and to (a) the Toll Road, (b) this Agreement, (c) Toll Revenues, (d) the Toll Servicing Rights and (e) any other property or rights of the Airports Authority under this Agreement.

Airports Authority Non-Compliance is defined in Section 15.01.

Airports Authority Party means the Airports Authority and any agents, officers, directors, employees, contractors (other than the Department), subcontractors, suppliers or materialmen of the Airports Authority.

Airports Authority Permitted Encumbrance means, with respect to the Toll Road:

- (a) any easement, covenant, condition, right-of-way, servitude, or any zoning, building, environmental, health or safety Law relating to the development, use or operation of the Toll Road (or other similar reservation, right and restriction);
- (b) any right reserved to or vested in any Governmental Authority (other than the Department) by any statutory provision; and
- (c) any other encumbrance permitted hereunder.

Allocable Costs means:

- (a) for services performed using Department or the Airports Authority personnel, materials and equipment, the sum of:
 - (i) an amount equal to the fully burdened hourly rate (including fringe benefits) of each employee providing such services multiplied by the actual number of hours such employee performs such services; plus
 - (ii) the cost of all materials used, including normal wastage allowance per Department standards, and including sales taxes, freight and delivery charges and any allowable discounts; plus
 - (iii) the use, operating, maintenance, fuel, storage and other costs of all deployed tools (excluding small tools) and equipment, calculated at hourly rates determined from the most current volume of the Rental Rate Blue Book published by Neilsen/DATAQUEST, Inc. of Palo Alto, California or at any lesser hourly rate the Department may approve from time to time in its sole discretion, without area adjustment, but with equipment life adjustment made in accordance with the rate adjustment tables, provided that if rates are not published for a specific type of tool or equipment, the Department shall establish a rate for it that is consistent with its cost and use in the industry; or
- (b) if the services are performed by a contractor under contract with the Department or the Airports Authority, the sum of:
 - (i) the amount owing under such contract, provided that if the contract is an Affiliate Contract, the lesser of the contract amount or the amount that would be reasonably obtained in an arm's length transaction for comparable services with a person that is not an Affiliate; plus
 - (ii) 10% of such amount to reimburse the Department or the Airports Authority for costs of administering the contract; plus
 - (iii) all costs the Department or the Airports Authority reasonably incurs to enforce or pursue remedies for the contractor's failure to perform in accordance with the contract, except in the case of a contract that is an Affiliate Contract.

Assignment Agreement is defined in Section 1.07.

AVI means automatic vehicle identification equipment used as part of ETTM Equipment.

Bank Rate means the prime rate of interest announced publicly by *The Wall Street Journal* (or its successors) as the so-called "prime rate."

Baseline Asset Condition Report is defined in Section 7.06(a).

Breakage Costs means any commercially reasonable breakage costs, make-whole payments or other prepayment amounts (including premiums) that the Airports Authority must pay under any Indenture as a result of the early repayment of any Toll Road Revenue Bond prior to its scheduled maturity date.

Business Day means any day other than a Saturday, Sunday or other day observed as a holiday by either the State or the U.S. government.

Capital Improvements means any extensions of, additions to, or major modifications, replacements or reconstruction of the Toll Road or any other roads or highways within the Dulles Corridor, excluding the Dulles Access Highway, undertaken by the Airports Authority during the Term, including but not limited to (a) additional ramps or interchanges providing direct access to and from the Toll Road, or (b) addition of traffic lanes for bus only, high occupancy vehicle or high occupancy/toll use, or similar restricted use.

Claims means any and all claims, disputes, causes of action, demands, suits, proceedings, damages, injuries, liabilities, obligations, losses, costs and expenses.

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

Commonwealth DTR Financial Obligations are defined in Section 3.01(c)(2).

Comprehensive Agreement means the Comprehensive Agreement to Develop the Dulles Corridor rapid Transit Project dated as of June 11, 2004 by and between the Department and Dulles Transit Partners, LLC, including all exhibits and as amended and supplemented from time to time.

Congestion Management Plan is defined in Section 11.05(b).

Consultant means any Person at the time retained by or on behalf of the Department or the Airports Authority, which Person is experienced and has a national and favorable reputation in the matters for which such Person is so employed.

Construction Traffic Management Plan means a plan setting forth a program for traffic management and related activities to be developed by the Airports Authority in connection with the construction of any Capital Improvement.

CPI means the "Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items" (not seasonally adjusted) of the U.S. Department of Labor, Bureau of Labor Statistics; provided, however, that if the CPI is changed so that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics; provided, further, that if the CPI is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

CTB means the Commonwealth Transportation Board, a board of the Commonwealth with the powers described in Article 33 of the Code of Virginia.

Days or days means calendar days, unless otherwise designated as Business Days.

Department means the Virginia Department of Transportation, a department of the State, and any other state agency succeeding to the powers, authorities and responsibilities of the Department.

Department Non-Compliance is defined in Section 15.03.

Design-Build Contract means the Design-Build Contract for the design and construction of Phase 1 of the Dulles Corridor Metrorail Project.

DRPT means the Virginia Department of Rail and Public Transportation, a department of the Commonwealth of Virginia.

Dulles Corridor means the transportation corridor with an eastern terminus of the East Falls Church Metrorail station at Interstate Route 66 and a western terminus of Virginia Route 772 in Loudoun County, including without limitation the Dulles Toll Road, the Dulles Access Road, outer roadways adjacent or parallel thereto, mass transit, including rail, bus rapid transit, and capacity enhancing treatments such as High-Occupancy Vehicle lanes, High-Occupancy Toll (HOT) lanes, interchange improvements, commuter parking lots, and other transportation management strategies.

Dulles Corridor Advisory Committee means the eight-member committee ("Committee") composed of the two representatives denoted below for each of the Airports Authority, Fairfax County, Loudoun County, and the Commonwealth to provide the Airports Authority with advice on issues related to the management, improvement and expansion of the Dulles Corridor, as well as changes to toll rates on the Toll Road. The Airports Authority's representatives shall be the Airports Authority's Board Chairman and the President and CEO. Fairfax County will be represented by the Chairman of the Board of Supervisors and the County Executive. Loudoun County will be represented by the Chairman of the Board of Supervisors and the County Administrator. The Commonwealth's representatives shall be the Secretary of Transportation or his designee and a Northern Virginia member of the CTB.

Dulles Corridor Metrorail Project means Phases 1 and 2 of the rail facility as defined and per the conditions described in the March 2, 2005, Record of Decision of the Federal Transit Administration, as amended on November 17, 2006, and the July 12, 2005, Record of Decision of the Federal Aviation Administration on the Environmental Impact Statement for the project, as they may be further amended or supplemented from time to time, including all related systems, stations, parking and maintenance facilities.

Dulles Corridor Metrorail Purposes means and is limited to the developing, permitting, design, financing, construction, installation and equipping of the Dulles Corridor Metrorail Project.

Effective Date means the date of the effectiveness of the Agreement, which date shall be the date on which all of the conditions precedent set forth in Article VII of the Transfer Agreement have been satisfied or waived.

Eligible Investments means any security that eligible for the investment of public funds under Virginia Code § 2.2-4501 A.

Environment means soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air.

Environmental Laws means any Laws applicable to the Toll Road regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health, the Environment or Hazardous Substances.

Escrow Agent is defined in Section 16.05(b).

ETTM means electronic toll and traffic management.

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

ETTM Equipment means the AVI equipment; video monitoring equipment; toll violator systems, manual, automatic and electronic toll collection equipment; the transportation management system equipment; communications equipment; and all other computer hardware necessary to meet the performance specifications for ETTM.

ETTM Facilities means the administration/operations building, toll booths, canopies, utility connections, lighting facilities, pedestrian tunnels, etc related to the ETTM System.

ETTM System means the ETTM Equipment and the Software which monitors, controls or executes the ETTM Equipment.

Extraordinary Maintenance and Repair Reserve is defined in Section 7.07.

FFGA means the Full Funding Grant Agreement to be entered into between the Airports Authority and the FTA for federal grant funding of a portion of the costs of Phase 1 of the Dulles Corridor Metrorail Project.

Financial Projections means the Financial Projections attached to this Agreement as Exhibit D.

Fiscal Year means the consecutive 12-month period beginning July 1 and ending June 30, or any other consecutive 12-month fiscal period used by the Department or the Airports Authority for financial accounting purposes.

Force Majeure means any event beyond the Airports Authority's reasonable control that delays or interrupts the performance of its obligations hereunder, including an intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, sabotage, civil commotions, interference by civil or military authorities, condemnation or confiscation of property or equipment by any Governmental Authority (other than the Department), nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, earthquake, hurricane, riot or other public disorder, epidemic, quarantine restriction, stop-work order or injunction issued by a Governmental Authority (other than the Department) of competent jurisdiction, governmental embargo, provided that such event neither is otherwise specifically dealt with in this Agreement nor arises by reason of:

- (a) the negligence or misconduct of the Airports Authority or its Representatives;
- (b) any act or omission by the Airports Authority or its Representatives in breach of the provisions of this Agreement;
- (c) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Airports Authority;
- (d) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Airports Authority or its Representatives to supply materials or services for or in connection with the Toll Road's operation or any strike, labor dispute or labor protest caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the Airports Authority or its Representatives;
- (e) any weather conditions (including any flooding) whether or not such weather conditions or the severity of such weather conditions are not or have not ordinarily or customarily been encountered or experienced, except tornadoes and similar catastrophic weather conditions encountered or experienced at or in the vicinity of the Toll Road; or
- (f) the development, redevelopment, construction, modification, maintenance 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 User Fees or in the number of vehicles using the Toll Road.

FTA means the Federal Transit Administration.

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

Hazardous Substance means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, subject waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation).

Indenture means any indenture, trust agreement or similar instrument between the Airports Authority and a trustee or collateral agent pursuant to which the Toll Revenues are pledged to the holders of debt issued by the Airports Authority.

Intellectual Property means ETTM system design documents, toll-setting and traffic management algorithms, and Software and associated documentation used in connection with the Toll Road (including but not limited to Software and associated documentation used for management of traffic on the Toll Road), the ETTM Data, copyrights (including moral rights), trade marks (registered and unregistered), designs (registered, including applications, and unregistered), patents (including applications), circuit layouts, plant varieties, business and domain names, inventions, trade secrets, proposals, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, and other results of intellectual activity, copies and tangible embodiments of all of the foregoing (in whatever form or medium) and licenses granting any rights with respect to any of the foregoing (to the extent assignable), in each case, relating to the Toll Road.

ITS means any application of computer, electronics and/or telecommunications equipment and software and supporting fixtures and equipment whose function is to provide information, data and/or services to the traveling public or the Department or to manage and control traffic, all items listed in the Federal Highway Administration Intelligent Transportation Systems Summary Report dated January 19, 1995, and any future systems or services conceived or developed for the same or similar purposes; however ITS does not include the ETTM System as used for Toll Road Purposes.

Law means any current or future order, writ, injunction, decree, judgment, law, ordinance, decision, opinion, ruling, policy, statute, code, rule or regulation of any Governmental Authority.

Lien means any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Virginia Uniform Commercial Code).

Life Cycle Maintenance Plan is defined in Section 7.06(b).

Losses means, with respect to any Person, any losses, liabilities, judgments, damages, fees, penalties, fines, sanctions, charges or out-of-pocket and documented costs or expenses actually suffered or incurred by such Person, including as a result of any injury to or death of persons or damage to or loss of property.

MUTCD means the *Manual on Uniform Traffic Control Devices*, which defines the standards used by road managers nationwide to install and maintain traffic control devices on all streets and highways. FHWA publishes the MUTCD under 23 Code of Federal Regulations (CFR), Part 655, Subpart F.

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.

New Agreements is defined in Section 5.04(c).

Permitted Encumbrance means, with respect to the Toll Road:

- (a) the rights and interests of the Airports Authority under this Agreement;
- (b) any Lien that is being contested by the Department (but only for so long as such contestation effectively postpones enforcement of any such Lien);
- (c) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's or other similar Liens arising in the ordinary course of business of the Toll Road or the Department's performance of its obligations hereunder, and either (A) not delinquent or (B) which are being contested by the Department (but only for so long as such contestation effectively postpones enforcement of any such Lien);
- (d) any easement, covenant, condition, right-of-way, servitude, or any zoning, building, environmental, health or safety Law relating to the development, use or operation of the Toll Road (or other similar reservation, right and restriction) or other defects and irregularities in the title to the Toll Road that do not materially interfere with the operations or the right and benefits of the Airports Authority under this Agreement;
- (e) any right reserved to or vested in any Governmental Authority (other than the Department) by any statutory provision;
- (f) any other encumbrance permitted hereunder;
- (g) any Lien created, incurred, assumed or suffered to exist by the Airports Authority or any Person claiming through it;
- (h) any amendment, extension, renewal or replacement of any of the foregoing occurring prior to the Effective Date; and

- (i) rights of the Department in any existing facilities or structures crossing over or under the Toll Road.

Person means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

Proprietary Intellectual Property means any Intellectual Property patented or copyrighted by the Airports Authority, the Department or any other Person, as applicable, or any of its respective contractors or subcontractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential information by the Airports Authority, the Department or any other Person, as applicable, or any of its respective contractors or subcontractors, but excludes any item of Intellectual Property that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Project.

Proprietary Software means all Software and associated documentation patented or copyrighted by the Airports Authority, the Department or any other Person, as applicable, or any of its respective contractors or subcontractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential information by the Airports Authority, the Department or any such other Person, as applicable, or any of its respective contractors or subcontractors, but excludes any item of software that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Toll Road (e.g. "shrink-wrap" software).

Proprietary Work Product means any Work Product that consists of, incorporates or discloses Proprietary Intellectual Property or Proprietary Software.

Quality Management Plans means the plans for quality management of the Toll Road to be prepared and delivered by the Airports Authority pursuant to Section 6.03(a).

Regulatory Approvals means all local, regional, state and federal agreements, studies, findings, permits, approvals, authorizations, certifications, consents, decisions, exemptions, filings, leases, licenses, registrations, rulings and other governmental authorizations required to be obtained or completed under applicable Laws prior to undertaking any particular activity contemplated by this Agreement. The term "Regulatory Approvals" includes any supplements to the EIS.

Renewal and Replacement Program is defined in Section 7.06(c).

Renewal and Replacement Program Work means maintenance, repair, renewal, reconstruction or replacement of any portion or component of the Toll Road of a type which is not normally included as an annually recurring cost in the Airports Authority's Toll Road maintenance and repair budgets.

Renewal and Replacement Reserves are defined in Section 4.01(d)(iii).

Representative means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, Consultant, engineer, contractor, other Person for whom such Person is at law responsible or other representative of such Person and any professional advisor, Consultant or engineer designated by such Person as its "Representative."

Reserved Rights means all of the following:

- (a) subject to the last sentence of **Section 17.02** of this Agreement, the Department's rights existing as of the Effective Date to use, possess, operate, maintain and enjoy State or local highways or roadways that cross the Toll Road Right-of-Way; and
- (b) all right to use, and use of:
 - (i) all electrical, fiber optic and wireless conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity on an existing highway or roadway over, under or adjacent to the Toll Road 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 each case to the extent not necessary and required for traffic management for the Toll Road or for other Toll Road Purposes;
 - (ii) ETTM Data or other data generated from operation of the Toll Road or toll collection technology except as required solely for Toll Road Purposes; and
 - (iii) any equipment, facilities or capabilities for ITS studies or applications installed by the Department and the right to install any such equipment, facilities or capabilities other than the ETTM System.

Safety Order means any written order or directive of the Department which directs that certain improvements to the Toll Road be undertaken (a) to conform to changes in safety standards or methodologies agreed to or adopted by the Department for similar portions of State Highways; or (b) to correct a specific safety condition affecting the Toll Road which the Department has determined to exist by investigation or analysis.

Software means (a) computer instructions, including programs, routines and databases and applications supplied, procured or developed by the Airports Authority or the Department in connection with the operation of the Toll Road or other Toll Road Purposes or in connection with Reserved Rights, including but not limited to that which monitors, controls or executes on ETTM Equipment or ITS equipment or hardware, and (b) all modifications, updates and revisions made to the matter described in clause (a) above, including those made to correct errors or to support new models of computer equipment and/or new releases of operating systems.

Source Code means Software program higher order language listings, internal documentation embedded in program listings, associated data files and data structures, in

electronic and/or printed form, necessary for maintenance of and modifications to the Software.

Source Code Documentation means the program level Software design documentation, associated data files, data structures and algorithm descriptions necessary to make program code level modifications to delivered Software.

Source Code Escrows is defined in Section 16.05(b).

Standard Industry Practice means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator or contractor seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and Regulatory Approvals and engaged in the same type of undertaking under similar circumstances and conditions.

State means the Commonwealth of Virginia.

State Highway means any highway designated a State Highway pursuant to Title 33.1, Chapter 1, Sections 25, 48 and 67, Code of Virginia.

State Indemnatee means and includes the Department and its employees, the Commissioner, the Secretary of Transportation and employees of his office, the CTB, and the State.

Substituted Operator means any person or entity selected by the Trustee and approved by the Department in accordance with Section 5.04(c) to perform the Airports Authority's obligations and succeed to the Airports Authority's Interests after any Person acquires the Airports Authority's Interests by foreclosure or transfer in lieu of foreclosure, or after the Trustee takes possession and control of the Toll Road.

Termination Event is defined in Section 5.03(a).

Third-Party Claim means any Claim asserted against a State Indemnatee by any Person who is not a party to this Agreement.

TIFIA means the Transportation Infrastructure Finance and Innovation Act of 1998, as amended.

Toll Facilities means ETTM Facilities, the ETTM Equipment, the ETTM System and the administration/operations building, toll booths, canopies, utility connections, lighting facilities, pedestrian tunnels, etc related to the manual toll collection system, including all manual toll collection equipment and systems.

Toll Facilities Contractor is defined in Section 7.03.

Toll Facilities Revolving Account means the account described in Section 33.1-23.03:4 of the Code of Virginia.

Toll Revenue Bonds means the bonds, notes or other financial obligations secured by Toll Revenues outstanding from time to time under the Toll Road Financing Documents, including obligations issued in connection with any TIFIA loans.

Toll Revenues means all amounts received by or on behalf of the Airports Authority from tolls and other User Fees applicable to vehicles for the privilege of traveling on the Toll Road imposed pursuant to this Agreement or from proceeds of any concession or similar agreement as contemplated by Section 18.01(b). Subject to the foregoing, Toll Revenues excludes revenues and proceeds arising out of or relating to Reserved Rights.

Toll Road means, collectively, (a) the Omer L. Hirst – Adelard L. Brault Expressway (formerly the Dulles Toll Road), extending from Virginia Route 28 immediately east of Washington Dulles International Airport to the vicinity of Interstate 495, (b) all related operating assets, tangible and intangible, which are used in the operation of the Toll Road, (c) if and when constructed, any Capital Improvements located thereon, and (d) any associated assets as identified in Exhibit C.

Toll Road Financing Documents means the Indentures and any other documents relating to the issuance of Toll Revenue Bonds issued in accordance with the terms of this Agreement, together with any and all amendments and supplements thereto.

Toll Road Operations means (a) the operation, management, maintenance, rehabilitation and tolling of the Toll Road and (b) all other actions relating to the Toll Road or otherwise that are to be performed by or on behalf of the Airports Authority pursuant to this Agreement.

Toll Road Purposes means and is limited to the developing, permitting, design, financing, acquisition, construction, installation, equipping, maintenance, repair, preservation, modification, operation, management and administration of the Toll Road or any Capital Improvement.

Toll Road Right-of-Way means the property on which the Toll Road is located, as it was originally granted to the Commonwealth of Virginia for the construction, operation and maintenance of a limited access highway (which later became the Toll Road) pursuant to the 1983 Easement and the Additional Easements.

Toll Servicing Rights is defined in Section 3.02(a).

Transfer means to sell, convey, assign, sublease, mortgage, encumber, transfer or otherwise dispose of.

Transferee is defined in Section 18.01(a).

Transition Period is defined in Section 7.02(a).

Trustee means a commercial bank or trust company duly organized and existing under the laws of any State or the United States of America, which is authorized to

exercise corporate trust powers and is subject to examination by federal authority, appointed as a trustee or collateral agent pursuant to an Indenture, and its successor or its successors.

U.S. Implicit Price Deflator Index means the then most recently issued year-to-year U.S. GNP Implicit Price Deflator Index, issued by the United States Department of Commerce, or, if such index shall be discontinued, a successor index as designated by the United States Government.

User Fees means fees, tolls, rates, incidental charges and other charges (including administrative charges such as late fees, insufficient funds fees, etc.) in respect of vehicles using the Toll Road and imposed by or on behalf of the Airports Authority pursuant to this Agreement.

Utility or **utility** means a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water not connected with the highway drainage and similar substances that directly or indirectly serve the public. The term "Utility" specifically excludes (a) storm water lines connected with the highway drainage, and (b) traffic signals, street lights, and electrical systems for roadways.

Utility Owner or **utility owner** means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

Utility Relocation means the removal, relocation and/or protection in place (including provision of temporary services as necessary) of any and all utility facilities that have to be removed, relocated and/or protected in place in order to permit construction of any Capital Improvements.

WMATA Agreement means the 2007 Agreement between the Airports Authority and the Washington Metropolitan Area Transit Authority (WMATA) for WMATA's oversight services during the term of the Design Build Contract, the provision of rail cars for the Dulles Corridor Metrorail Project, the transfer of the Dulles Corridor Metrorail Project and for other services.

Work Product means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Department or the Airports Authority solely or primarily for the Toll Road or Toll Road Right-of-Way or any Capital Improvements, including but not limited to drawings, plans and specifications, record and as-built plans and specifications, engineering documents, geotechnical soils and soil boring data, analyses, reports and records, property acquisition files, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all construction documents relating to any Capital Improvements), engineers' and inspectors' diaries and reports, Utility Relocation plans and agreements, right of way record maps and surveys, Traffic and

Revenue Studies, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, air quality monitoring data, environmental reviews, studies and reports, mitigation studies and reports, data, assessments, studies and reports regarding Hazardous Substance investigations, testings, borings, monitoring and analyses, manifests regarding handling, storage or transportation of Hazardous Substances, correspondence and agreements relating to Regulatory Approvals, change orders, final quantities, pile driving records, records of accidents and traffic management, field test records and reports, concrete pour records, surfacing depth check records, grade and alignment books, cross-section notes, drainage notes, photographs, false work and form plans, records of construction materials, toll equipment and Toll Facilities records and reports, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which the Airports Authority and the Department mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure under **Section 16.02** and which is not conceived or first reduced to practice for Toll Road Purposes, such as any proprietary financial and pricing information of the Department or the Airports Authority.

1983 Easement is defined in **Section 1.01.**

EXHIBIT B

BASELINE ASSET CONDITION REPORT

[To be attached]

EXHIBIT C

OPERATIONS AND MAINTENANCE STANDARDS AND PERFORMANCE REQUIREMENTS

[To be attached]

EXHIBIT D

THE AIRPORTS AUTHORITY FINANCIAL PROJECTIONS

Total rail construction of \$5.0 billion w/ \$900 million Federal Grant,		2007	2008	2009	2010	2011	2012	2013	2014	2015
		Year	Year	Year	Year	Year	Year	Year	Year	Year
	Budget 2006	1	2	3	4	5	6	7	8	9
PHASE 1	Budget	First 10 years of MWAA Toll Road Operations								
Transactions	114,566,687	122,049,091	125,487,623	129,022,955	132,657,784	133,202,955	133,750,284	134,299,953	134,851,780	135,405,000
Average Toll	\$ -	\$ 0.60	\$ 0.60	\$ 0.60	\$ 0.70	\$ 0.70	\$ 0.70	\$ 0.70	\$ 0.70	\$ 0.70
Present value of Toll	\$0.00	\$0.59	\$0.57	\$0.55	\$0.63	\$0.61	\$0.59	\$0.57	\$0.56	\$0.54
Revenue using VDOT activity projections	69,271,301	\$ 73,795,442	\$ 75,874,507	\$ 78,012,101	\$ 93,475,633	\$ 93,859,780	\$ 94,245,449	\$ 94,632,766	\$ 95,021,605	\$ 95,412,000
Interest earnings	1,103,000	1,269,282	1,305,042	1,341,808	1,607,781	1,614,388	1,621,022	1,627,684	1,634,372	1,641,000
Total Revenue	70,374,301	75,064,724	77,179,549	79,353,909	95,083,414	95,474,169	95,866,471	96,260,450	96,655,976	97,053,000
Total Operating Expense	(14,146,563)	(15,078,451)	(15,832,838)	(16,630,768)	(15,663,953)	(16,297,855)	(16,956,904)	(17,642,095)	(18,354,435)	(17,730,000)
Total Capital Maintenance	(5,367,592)	(3,896,572)	(4,013,470)	(2,283,511)	(2,352,016)	(2,422,577)	(2,495,254)	(2,570,111)	(2,647,215)	(2,726,000)
Fairfax County Busing Operations		(32,800,000)								
Total O&M	(19,514,155)	(51,775,024)	(19,846,308)	(18,914,279)	(18,015,969)	(18,720,431)	(19,452,157)	(20,212,207)	(21,001,650)	(20,457,000)
Operating Income	50,860,147	23,289,700	57,333,241	60,439,630	77,067,445	76,753,737	76,414,314	76,048,243	75,654,326	76,595,000
CoV and Fairfax Outstanding Debt Amortization		(593,154)	(4,086,331)	(4,087,731)	(4,091,331)	(4,086,931)	(4,084,731)	(4,089,531)	(4,085,931)	(4,087,000)
Annual Toll Road Debt Service	(11,283,937)	(1,622,828)	(8,743,449)	(8,743,249)	(8,744,449)	(8,746,849)	(8,745,249)	(8,744,649)	(8,744,849)	(8,742,000)
Income Before Rail Debt Service	39,576,210	21,073,718	44,503,460	47,608,649	64,231,664	63,919,957	63,584,333	63,214,062	62,823,545	63,766,000
Interim Financing for GANS/FFGA Cash Flow		-	-	(0)	(1,061,521)	(11,384,362)	(14,275,482)	(12,906,303)	(6,964,609)	(1,968,000)
DTR Rail Bonds		-	(33,036,812)	(35,520,723)	(47,756,654)	(37,168,023)	(33,990,961)	(30,302,981)	(35,911,815)	(41,645,000)
Phase I Debt Service Coverage		10.5099	1.2500	1.2500	1.2500	1.2503	1.2507	1.3570	1.3581	1.3
TIFIA Debt Service for Phase I Dulles Rail		-	-	(3,241,357)	(4,133,101)	(4,133,101)	(4,133,101)	(8,873,572)	(8,873,572)	(8,940,000)
Phase I Debt Service Coverage	4.5073	10.5099	1.2500	1.1715	1.1715	1.1715	1.1715	1.1715	1.1715	1.1
Net revenue after Phase I Rail Debt	39,576,210	21,073,718	11,466,648	8,846,569	11,280,387	11,234,470	11,184,788	11,131,207	11,073,549	11,211,000
Maintenance Reserve	(1,584,512)	(1,632,047)	(1,681,008)	(1,731,439)	(1,783,382)	(1,836,883)	(1,891,990)	(1,948,749)	(2,007,212)	(2,067,000)
PHASE 2										
2010 Phase 2 toll increase (toll rate)		-	-	-	0.15	0.15	0.15	0.17	0.17	0.17
2010 Phase 2 toll increase (incremental revenue)		-	-	-	19,898,668	19,980,443	20,062,543	22,529,896	22,622,469	22,715,000
Inflationary toll increase of "Base" Phase 1 toll					0.78	0.78	0.78	0.87	0.87	0.87
Inflationary toll increase of "Base" Phase 1 toll (incremental revenue)					9,495,794	9,534,818	9,573,996	21,954,713	22,044,923	22,135,000
Net toll increase					29,394,461	29,515,261	29,636,539	44,484,608	44,667,392	44,850,000
Operating Income	50,860,147	23,289,700	57,333,241	60,439,630	77,067,445	76,753,737	76,414,314	76,048,243	75,654,326	76,595,000

	2048	2049	2050	2051	2052	2053	2054	2055	2056	2057	
2016	Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	
10	42	43	44	45	46	47	48	49	50	51	
Final 10 Years of MWAA Toll Road Operations											
35,962,453	161,155,142	162,041,495	162,932,723	163,828,853	164,729,912	165,635,927	166,546,924	167,462,932	168,383,978	169,310,090	
0.70	\$ 0.70	\$ 0.70	\$ 0.70	\$ 0.70	\$ 0.70	\$ 0.70	\$ 0.70	\$ 0.70	\$ 0.70	\$ 0.70	
\$0.52	\$0.20	\$0.20	\$0.19	\$0.19	\$0.18	\$0.18	\$0.17	\$0.17	\$0.16	\$0.16	Total 2007 - 2057
95,804,226	\$ 113,555,936	\$ 114,180,494	\$ 114,808,487	\$ 115,439,933	\$ 116,074,853	\$ 116,713,265	\$ 117,355,188	\$ 118,000,641	\$ 118,649,645	\$ 119,302,218	\$ 5,283,359,793
1,647,833	1,953,162	1,963,904	1,974,706	1,985,567	1,996,487	2,007,468	2,018,509	2,029,611	2,040,774	2,051,998	\$ 90,873,788
97,452,059	115,509,098	116,144,399	116,783,193	117,425,500	118,071,341	118,720,733	119,373,697	120,030,252	120,690,419	121,354,216	\$ 5,374,233,581
(18,262,851)	(47,028,353)	(48,439,203)	(49,892,379)	(51,389,151)	(52,930,825)	(54,518,750)	(56,154,312)	(57,838,942)	(59,574,110)	(61,361,333)	\$ (1,648,165,634)
(2,808,430)	(7,231,940)	(7,448,898)	(7,672,365)	(7,902,536)	(8,139,612)	(8,383,801)	(8,635,315)	(8,894,374)	(9,161,205)	(9,436,042)	\$ (255,763,779)
											\$ (32,800,000)
(21,071,281)	(54,260,293)	(55,888,102)	(57,564,745)	(59,291,687)	(61,070,438)	(62,902,551)	(64,789,627)	(66,733,316)	(68,735,315)	(70,797,375)	\$ (1,936,729,413)
76,380,777	61,248,806	60,256,297	59,218,448	58,133,813	57,000,903	55,818,182	54,584,070	53,296,936	51,955,103	50,556,841	\$ 3,437,504,168
(4,083,431)	-	-	-	-	-	-	-	-	-	-	\$ (82,340,783)
(8,742,349)	-	-	-	-	-	-	-	-	-	-	\$ (263,963,856)
63,554,997	61,248,806	60,256,297	59,218,448	58,133,813	57,000,903	55,818,182	54,584,070	53,296,936	51,955,103	50,556,841	\$ 3,091,199,529
-	-	-	-	-	-	-	-	-	-	-	\$ (48,561,012)
(42,209,025)	(18,456,526)	(48,205,038)	(47,374,759)	(46,507,051)	(45,600,722)	(44,654,546)	(43,667,256)	(42,637,549)	(41,564,083)	(40,445,473)	\$ (1,262,571,042)
1.3879	3.3185	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	
(10,166,092)	(33,827,271)	-	-	-	-	-	-	-	-	-	\$ (1,229,320,447)
1.1715	1.1715	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	
11,179,880	8,965,008	12,051,259	11,843,690	11,626,763	11,400,181	11,163,636	10,916,814	10,659,387	10,391,021	10,111,368	\$ 550,747,029
(2,129,451)	(5,483,513)	(5,648,018)	(5,817,459)	(5,991,982)	(6,171,742)	(6,356,894)	(6,547,601)	(6,744,029)	(6,946,350)	(7,154,740)	\$ (191,244,523)
0.19	0.57	0.64	0.64	0.64	0.72	0.72	0.72	0.80	0.80	0.80	
25,509,055	92,563,582	104,091,265	104,663,767	105,239,418	118,345,725	118,996,626	119,651,108	134,552,217	135,292,254	136,036,362	\$ 2,939,126,046
0.97	2.97	3.32	3.32	3.32	3.72	3.72	3.72	4.16	4.16	4.16	
36,199,778	365,441,165	424,469,948	426,804,532	429,151,957	496,339,423	499,069,289	501,814,170	578,278,830	581,459,364	584,657,390	\$ 10,153,682,402
61,708,833	458,004,747	528,561,213	531,468,300	534,391,375	614,685,147	618,065,916	621,465,278	712,831,048	716,751,618	720,693,752	\$ 13,092,808,448
76,380,777	61,248,806	60,256,297	59,218,448	58,133,813	57,000,903	55,818,182	54,584,070	53,296,936	51,955,103	50,556,841	\$ 3,437,504,168
138,089,610	519,253,552	588,817,510	590,686,748	592,525,189	671,686,050	673,884,098	676,049,348	766,127,984	768,706,721	771,250,593	\$ 16,530,312,616
(55,034,806)	(18,456,526)	(48,205,038)	(47,374,759)	(46,507,051)	(45,600,722)	(44,654,546)	(43,667,256)	(42,637,549)	(41,564,083)	(40,445,473)	\$ (1,657,436,693)
(55,436,882)	(293,374,265)	(422,848,970)	(425,174,640)	(427,513,100)	(491,748,118)	(494,452,732)	(497,172,222)	(570,264,838)	(573,401,295)	(576,555,002)	\$ (8,948,174,688)
1.2500	1.6652	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	
-	(107,971,981)	-	-	-	-	-	-	-	-	-	\$ (2,051,695,038)
(10,166,092)	(141,799,253)	-	-	-	-	-	-	-	-	-	\$ (3,281,015,485)
1.1447	1.1447	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	1.2500	
(2,129,451)	(5,483,513)	(5,648,018)	(5,817,459)	(5,991,982)	(6,171,742)	(6,356,894)	(6,547,601)	(6,744,029)	(6,946,350)	(7,154,740)	\$ (191,244,523)
15,322,379	60,139,995	112,115,484	112,319,891	112,513,055	128,165,468	128,419,925	128,662,269	146,481,568	146,794,994	147,095,378	
15,322,379	60,139,995	112,115,484	112,319,891	112,513,055	128,165,468	128,419,925	128,662,269	146,481,568	146,794,994	147,095,378	
11,401,289	17,378,006	31,453,207	30,592,769	29,752,797	32,904,757	32,009,792	31,136,115	34,415,887	33,484,977	33,553,497	
\$ 1.16	\$ 3.55	\$ 3.97	\$ 3.97	\$ 3.97	\$ 4.44	\$ 4.44	\$ 4.44	\$ 4.96	\$ 4.96	\$ 4.96	
\$0.86	\$1.02	\$1.11	\$1.08	\$1.05	\$1.14	\$1.11	\$1.07	\$1.17	\$1.13	\$1.13	

- VDOT Survey Manual (2002 Edition)
- VDOT Manual of Instruction for Material Division
- VDOT Manual of Structure and Bridge Division, Vol. III,V and VII
- VDOT Structure and Bridge Checklists as posted on VDOT website
- VDOT 2005 Virginia Work Area Protection Manual
- VDOT Mobility Management Division Memoranda
- VDOT Water Quality Permit Manual , Revised - March 28, 2006
- VDOT Wetland Compensation Manual (1999)
- AASHTO Standard Specification for Seismic Design of Highway Bridges
- AASHTO Standard Specifications for the Design of Highway Bridges 1996, 1997 and 1998 Interim Specifications and VDOT Modifications
- AASHTO A Policy on Geometric Design of Highways and Streets (2004)
- AASHTO Guide Specifications for Horizontally Curved Highway Bridges (Current Edition)
- AASHTO Fracture Critical Non-Redundant Steel Bridge Members Current Spec. with all Interim Specifications
- AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaries, and Traffic Signals, -1994 Edition
- AASHTO Guide for the Development of Bicycle Facilities (1999)
- AASHTO Guide for the Planning, Design, and Operation of Pedestrian Facilities (2004)
- AASHTO Guide for Design of Pavement Structures (Rigid Pavement and Flexible Pavement) (1993 Edition)
- USDOT FHWA Standard Highway Signs
- National Electric Code (NEC)
- Manual of Uniform Traffic Control Devices (MUTCD)
- Virginia Supplement to MUTCD
- Guide for Protective Screening of Overpass Structures
- 2002 Traffic Calming Guide for Local Residential Streets
- DCR Virginia Stormwater Management Handbook (First Edition - 1999)

- DCR Virginia Erosion and Sediment Control Handbook (Third Edition - 1992)
- American Water Works Associations Standards
- Americans with Disabilities Act Accessibility Guidelines for State and Local Government Facilities
- Transportation Research Board Highway Capacity Manual, Third Edition (1994)

In the event of a discrepancy between VDOT and non-VDOT standards and references listed herein, the VDOT specifications, design standards and manuals shall take precedence.

EXHIBIT E

SUMMARY OF DESIGN AND CONSTRUCTION STANDARDS

The design and construction of any Capital Improvements and any Renewal and Replacement Program Work shall be performed in accordance with the following standards, specifications and reference documents. The Airports Authority must verify and use the latest version of the documents listed herein. The Airports Authority must meet or exceed minimum standards and criteria.

- VDOT 2002 Drainage Manual (including current Errata Sheet)
- VDOT Hydraulic Design Advisories (all current)
- VDOT CADD Manual (Version 2004)
- VDOT Construction Manual (2005)
- VDOT Post Construction Manual (1997 Edition)
- VDOT Construction Inspection Manual (December 2001)
- VDOT Traffic Engineering Design Manual
- VDOT 2003 Minimum Standards of Entrances to State Highways
- VDOT Right of Way and Utilities Division Manuals, Vol. I (July 1999) and II (November 2003)
- VDOT Current Land Use Permit Manual
- VDOT Policy Manual for Public Participation in Transportation Projects (updated September 2004)
- VDOT Instructional & Information Memorandums (I&IM) All Divisions
- VDOT Policy for Integrating Bicycle and Pedestrian Accommodations
- VDOT Road and Bridge Standards, Vol. 1 and Vol. 2 (2001)
- VDOT Road and Bridge Specifications (2002) , including all revisions
- VDOT Guardrail Installation Training Manual (GRIT) February 2006
- VDOT Road Design Manual, Vol. I
- VDOT Guidelines for 1993 AASHTO Pavement Design, Revised - May 2003