-- STATE OF NORTH CAROLINA--
DEPARTMENT OF TRANSPORTATION
RALEIGH, N.C.

REQUEST FOR PROPOSALS, VOLUME II
COMPREHENSIVE AGREEMENT

TIP I-3311C, I-5405, I-4750AA

August 8, 2013

Addendum No. 1: Issued August 29, 2013
Addendum No. 2: Issued November 13, 2013
Addendum No. 3: Issued December 20, 2013

DATE AND TIME OF PROPOSAL SUBMISSION:

Technical Proposal Due Date: **FEBRUARY 20, 2014** BY **3:00 PM**
Financial Proposal Due Date: **MARCH 13, 2014** BY **3:00 PM**

CONTRACT ID: C 203406

WBS ELEMENT NO. 45454.3.P3S1

FEDERAL-AID NO. NHPF-077-1(216)

COUNTY: Mecklenburg and Iredell Counties

ROUTE NO. I-77 and I-277

LOCATION: I-77 from I-277 to Exit 36, and I-277 from I-77 to Exit 3A/B

TYPE OF WORK: PUBLIC PRIVATE PARTNERSHIP FOR I-77 HOT LANES AS SPECIFIED IN THE RFP

NOTICE:

ALL PROPOSERS SHALL COMPLY WITH ALL APPLICABLE LAWS REGULATING THE PRACTICE OF GENERAL CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA WHICH REQUIRES THE PROPOSER TO BE LICENSED BY THE N.C. LICENSING BOARD FOR CONTRACTORS WHEN BIDDING ON ANY NON-FEDERAL AID PROJECT WHERE THE PROPOSAL IS $30,000 OR MORE, EXCEPT FOR CERTAIN SPECIALTY WORK AS DETERMINED BY THE LICENSING BOARD. PROPOSERS SHALL ALSO COMPLY WITH ALL OTHER APPLICABLE LAWS REGULATING THE PRACTICES OF ELECTRICAL, PLUMBING, HEATING AND AIR CONDITIONING AND REFRIGERATION CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA. NOT WITHSTANDING THESE LIMITATIONS ON BIDDING, THE PROPOSER WHO IS AWARDED ANY PROJECT SHALL COMPLY WITH CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA FOR LICENSING REQUIREMENTS WITHIN 60 CALENDAR DAYS OF ANNOUNCEMENT OF APPARENT BEST VALUE PROPOSER, REGARDLESS OF FUNDING SOURCES.

COMPREHENSIVE AGREEMENT

I-77 HOT LANES PROJECT

Between

North Carolina Department of Transportation

and

_____,
a _____

Dated as of _____, 2014

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COMPREHENSIVE AGREEMENT

I-77 HOT LANES PROJECT

This Comprehensive Agreement (this "Agreement") is entered into and effective as of _____, 2014 by and between the North Carolina Department of Transportation, a public agency of the State of North Carolina ("NCDOT"), and _____, a _____ ("Developer").

R E C I T A L S

A. The State of North Carolina (the "State") desires to facilitate private sector investment and participation in the development of the State's transportation system via public-private partnership agreements, and has North Carolina General Statutes § 136-18(39) et seq. (the "Statute"), to accomplish that purpose.

B. The Statute grants NCDOT the authority to enter into agreements with private entities to develop, design, build, finance, operate and maintain transportation facilities.

C. Pursuant to the provisions of the Statute and NCDOT's Public Private Partnerships Policy & Procedure (the "P3 Policy"), NCDOT issued a Request for Qualifications on February 15, 2012, as amended.

D. NCDOT received four statements of qualification by March 15, 2012, and subsequently shortlisted all four proposers.

E. On August 8, 2013, NCDOT issued to the shortlisted proposers a Request for Proposals to Develop, Design, Build, Finance, Operate and Maintain the I-77 HOT Lanes Project (as subsequently amended by addenda, the "RFP").

F. By March 13, 2014, NCDOT received technical and financial responses to the RFP, including the technical and financial response of _____ on behalf of Developer (the "Proposal").

G. An RFP evaluation committee determined that Developer was the proposer which best met the selection criteria contained in the RFP and that its Proposal was the one which provided the best value to the State.

H. This Agreement and the other CA Documents are entered into in accordance with the provisions of the RFP, the Statute and the P3 Policy.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the Parties hereby agree as follows:

ARTICLE 1. DEFINITIONS; CA DOCUMENTS; ORDER OF PRECEDENCE

1.1 Definitions

Definitions for the terms used in this Agreement and the other CA Documents are contained in Exhibit 1.

1.2 CA Documents; Order of Precedence

The term "CA Documents" shall mean the documents listed in Section 1.2.1. Each of the CA Documents is an essential part of the agreement between the Parties. The CA Documents are intended to be complementary and to be read together as a complete agreement.

1.2.1 Subject to Section 1.2.2, in the event of any conflict, ambiguity or inconsistency among the CA Documents, the order of precedence, from highest to lowest, shall be as follows:

1.2.1.1 Change Orders, Agreement amendments, and all exhibits and attachments thereto;

1.2.1.2 Book 1 (this Agreement, including all exhibits and the executed originals of exhibits that are contracts, except Exhibit 2);

1.2.1.3 Book 2 (Technical Provisions) amendments, including all exhibits and attachments thereto;

1.2.1.4 Book 2 (Technical Provisions), including all exhibits and attachments;

1.2.1.7 Book 3 (certain Technical Documents) amendments, provided that NCDOT in its sole discretion may designate that such amendments or portions thereof take precedence over the Technical Provisions to the extent provided in Sections 7.2.6 and 8.2.2.2;

1.2.1.8 Book 3 (certain Technical Documents); and

1.2.1.9 Developer's Proposal commitments set forth in Exhibit 2; provided that, to the extent specified in Exhibit 2, certain provisions therein shall supersede the specified provisions of the other CA Documents. Moreover, if the Proposal commitment set forth in Exhibit 2 includes statements, offers, terms, concepts or designs that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the other CA Documents or to perform services or meet standards in addition to or better than those otherwise required, or otherwise contains terms or designs which are more advantageous to NCDOT than the requirements of the other CA Documents, then Developer's obligations hereunder shall include compliance with all such statements, offers, terms, concepts and designs, which shall have the priority of Agreement amendments and Technical Provisions amendments, as applicable.

1.2.2 If the CA Documents contain differing provisions on the same subject matter, the provisions that establish the higher quality, manner or method of performing the Work, establish better Good Industry Practice or use more stringent standards will prevail. Additional details in a lower priority CA Document shall be given effect except to the extent they irreconcilably conflict with requirements, provisions and practices contained in the higher priority

CA Document. If the CA Documents contain differing provisions on the same subject matter that cannot be reconciled by applying the foregoing rules, then the provisions (whether setting forth performance or prescriptive requirements) contained in the document of higher order of precedence shall prevail over the provisions (whether setting forth performance or prescriptive requirements) contained in the document of lower order of precedence.

1.2.3 Where there is an irreconcilable conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project set forth in one or more manual(s) or publication(s) referenced within a CA Document or set of CA Documents with the same order of priority (including within documents referenced therein), the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless NCDOT in its sole discretion approves otherwise in writing. If there is an irreconcilable conflict between manuals or publications referenced in CA Documents of differing order of priorities, the order of precedence set forth in Section 1.2.1 shall apply. If either Party becomes aware of any such conflict, it shall promptly notify the other party of the conflict. NCDOT shall issue a written determination respecting which of the conflicting items is to apply promptly after it becomes aware of any such conflict.

1.3 Reference Information Documents

1.3.1 Developer acknowledges that NCDOT has provided and disclosed to Developer the Reference Information Documents. NCDOT represents that it has not knowingly and intentionally provided Developer any materially false or inaccurate information within the Reference Information Documents. The Reference Information Documents are not mandatory or binding on Developer. Developer is not entitled to rely on the Reference Information Documents as presenting design, engineering, operating or maintenance solutions or other direction, means or methods for complying with the requirements of the CA Documents, Governmental Approvals or Law.

1.3.2 Except as expressly set forth herein, Developer acknowledges that NCDOT does not represent or warrant that the information contained in the Reference Information Documents is complete or accurate or that such information is in conformity with the requirements of the CA Documents, Governmental Approvals or Laws, and neither NCDOT nor its consultants involved in the preparation of the Reference Information Documents shall be responsible or liable in any respect for any causes of action, claims or Losses whatsoever suffered by any Developer-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Reference Information Documents.

1.3.3 Although the Reference Information Documents may include interpretations, extrapolations, analyses and recommendations concerning data, design solutions, technical issues and solutions and constructions means and methods, such interpretations, extrapolations, analyses and recommendations are (a) preliminary in nature and, in many cases, are obsolete; (b) based upon or contain assumptions the accuracy of which may not have been verified and may or may not be accurate due to subsequently changed conditions; (c) not intended to express the views or preferences of NCDOT or any other Governmental Entity or represent any statement of approval or acceptance thereof by NCDOT or any other Governmental Entity; and (d) not intended to necessarily form the basis of Developer's design solutions, technical solutions or construction or tolling means and methods. Developer shall use or not use the Reference Information Documents at their sole risk and remain solely responsible and liable for (x) all investigations and analyses relating to the Project, including those relating

to site conditions, geotechnical conditions, Utilities, environmental conditions, traffic, tolling system, structures, revenue forecasts and bridge design; (y) the preparation of Developer's Proposal commitments set forth in Exhibit 2; and (z) any design, tolling and construction solutions, means, and methods that they select, in each case, without regard to anything contained in the Reference Information Documents, except as otherwise expressly provided in the CA Documents.

1.3.4 The Parties acknowledge that general industry or general government manuals and publications that are part of the Reference Information Documents may be revised, changed, added to or replaced from time to time by the agencies or organizations that issue such manuals and publications. Without prejudice to Developer's rights, if any, under the Agreement, all such revisions, changes, additions or replacements shall, when issued, automatically become part of the Reference Information Documents.

1.3.5 Where the Technical Provisions expressly require compliance with specified general industry or general government manuals and publications or portions thereof, then the manual, publication or portion thereof to be complied with is not considered a Reference Information Document and instead is considered to be part of, and at the same level of priority as, the Technical Provisions.

ARTICLE 2. GRANT OF CONCESSION; TERM

2.1 Grant of Concession

2.1.1 Pursuant to the provisions of the Statute and subject to the terms and conditions of the CA Documents, NCDOT hereby grants to Developer the exclusive right, and Developer accepts the obligation, to finance, develop, design, construct, operate and maintain the Project described in the Technical Provisions, and to toll the HOT Lanes pursuant to Section 3.1.

2.1.2 From and after issuance of any NTP1, Developer and its authorized Developer-Related Entities shall have the right to enter onto the Project Right of Way owned by, or subject to the control of, NCDOT and, with the reasonable consent of NCDOT, other lands owned by NCDOT necessary for the purposes of carrying out the NTP1 Work. From and after issuance of NTP2, Developer and its authorized Developer-Related Entities shall have the right to enter onto the Project Right of Way owned by NCDOT and, with the reasonable consent of NCDOT, other lands owned by NCDOT for the purposes of carrying out its obligations under the CA Documents. Absent agreement by the Parties as to a later date, Developer's rights to enter and use the Project Right of Way shall automatically terminate at the end of the Term.

2.1.3 Subject to Section 2.1.2, Developer has no fee title, leasehold estate, possessory interest, permit, easement or other real property interest of any kind in or to the Project or the Project Right of Way by virtue of this Agreement, any of the other CA Documents or otherwise.

2.1.4 Developer's property interests under this Agreement are limited to contract rights constituting intangible personal property (and not real estate interests). Developer's property interests under this Agreement are solely those of an independent contracting party, and NCDOT and Developer are not in a relationship of co-venturers, partners, lessor-lessee or principal-agent (except to the extent the CA Documents expressly appoint Developer as NCDOT's agent for specified purposes).

2.1.5 Developer's rights granted in this Section 2.1 are subject to the terms and conditions of the CA Documents, including the following:

2.1.5.1 Receipt of all Governmental Approvals necessary for the Work to be performed and satisfaction of any requirements applicable under the Governmental Approvals (including the NEPA Approval) for the Work to be performed;

2.1.5.2 NCDOT's ownership of fee simple title to or other property interest or right in the Project and Project Right of Way and all improvements constructed thereon; and

2.1.5.3 NCDOT's rights and remedies under the CA Documents.

2.1.6 Developer's rights granted in this Section 2.1 are subject to, and Developer shall be responsible for compliance with, the provisions of all agreements, easements, rights of entry, Governmental Approvals, and other instruments under which NCDOT has received or will receive title, rights of entry or rights of access on and to properties owned by Governmental Entities, including the State of North Carolina, including paying all applicable charges and related fees and obtaining all consents or approvals for access by any Developer-Related Entity to the Project Right of Way to perform any Work required under this Agreement, as such matters are described in the CA Documents. NCDOT shall provide reasonable assistance to Developer in obtaining any consents or approvals required from such Governmental Entities to access such properties.

2.1.7 Developer shall have the exclusive right and obligation on the applicable Substantial Completion Date and ending at the end of the Term, to toll the HOT Lanes for the applicable Project Section pursuant to the terms of the CA Documents.

2.2 Term of Concession

2.2.1 This Agreement shall take effect on the Effective Date, and shall remain in effect until the date that is 50 years after all Project Sections have achieved Substantial Completion or earlier termination of this Agreement (the "Term") in accordance with the CA Documents.

2.2.2 NCDOT and Developer acknowledge their mutual intent that, despite NCDOT's retention of fee title and/or right of easement to the Project and the Project Right of Way and despite the payment by Developer of a material portion of the total capital improvement costs of the Project, Developer be treated, to the maximum extent permitted by Law, as the owner for federal income tax purposes of such portion of the Project for which Developer is not reimbursed its total capital improvement costs for the Project by the Public Funds Amount. NCDOT and Developer acknowledge their mutual intent that, despite the payment by Developer of 100% of the total capital improvement costs of the Project, the payment of the Public Funds Amount by NCDOT to Developer is a reimbursement of the portion of Developer's total capital improvement costs of the Project that are expended by Developer on behalf of, and for the benefit of, NCDOT and shall not be treated as compensation or consideration of any kind paid by NCDOT to Developer for federal income tax purposes. NCDOT will not file any documentation with the U.S. government inconsistent with this intention. This provision is not intended to have any bearing on ownership status under Environmental Laws regarding Hazardous Materials or on allocation of risk and liability under the CA Documents.

ARTICLE 3. TOLLING

3.1 Tolling of HOT Lanes

3.1.1 Except as provided in this Article 3 and Exhibit 18, Developer shall have the exclusive right to (a) impose tolls and Incidental Charges upon the Users of the HOT Lanes, (b) establish, modify and adjust the rate of such tolls and Incidental Charges in accordance with Law, and (c) enforce and collect tolls and Incidental Charges from the Users of the HOT Lanes, all in accordance with and subject to the terms and conditions contained in the CA Documents.

3.1.2 Developer has no authority or right to impose any toll or Incidental Charges (a) on any HOT Lanes until the Substantial Completion Date for the applicable Project Section or (b) for use of any portion of the Project other than the HOT Lanes. Developer has no authority or right to impose any fee, charge or other amount for use of the Project other than the tolls and Incidental Charges specifically authorized by this Article 3. Prior to setting any toll rates on the HOT Lanes, Developer, in coordination with NCDOT, shall hold a public hearing as required by, and in accordance with, applicable Law.

3.1.3 Developer shall implement toll collection systems that charge, debit and collect tolls only at or through the electronic tolling facilities physically located on the Project Right of Way or through global positioning system technologies or other remote sensing technologies that charge, debit and collect tolls only for actual vehicular use of the HOT Lanes; provided, however, that such toll collection method is in compliance with the requirements of Section 8.6.

3.1.4 Except as otherwise provided in Section 19.9, nothing in this Agreement shall obligate or be construed as obligating NCDOT to continue or cease tolls after the end of the Term.

3.2 Toll Collection Administration

3.2.1 Subject to Developer's rights and remedies under Exhibit 18, NCDOT shall provide certain electronic toll collection services in accordance with Exhibit 18, and Developer shall pay NCDOT the charges for such services in accordance with Exhibit 18.

3.2.2 Developer understands and agrees that, notwithstanding anything to the contrary in this Agreement or any other CA Document, the risk of collection of tolls and Incidental Charges that may be payable to Developer remains with Developer, and that NCDOT does not, and will not be deemed to, guarantee collection or collectability of such tolls and Incidental Charges to Developer or any Person; provided, however, that the foregoing will not limit NCDOT's obligations or duties under Exhibit 18 or any other CA Documents.

3.3 Changes in User Classifications and Toll Regulation

3.3.1 The User Classifications are set forth in the Toll Regulation. Developer may not change from the User Classifications selected, and may not change, add to or delete any of the User Classifications as set forth in the Toll Regulation, without NCDOT's express prior written consent pursuant to this Section 3.3.

3.3.2 If Developer desires to make any changes to the User Classifications, Developer shall apply to NCDOT for permission to implement such changes at least 120 days prior to the proposed effective date of such change. Such application shall set forth:

3.3.2.1 Each proposed change, addition or deletion;

3.3.2.2 The date each change, addition or deletion shall become effective;

3.3.2.3 The length of time each change, addition or deletion shall be in effect;

3.3.2.4 The reason Developer requests each change, addition or deletion;

3.3.2.5 The effect each change, addition or deletion is likely to have upon Users and traffic patterns;

3.3.2.6 A thorough report and analysis of the effect each change, addition or deletion is anticipated to have on Developer's Equity IRR, including the effects on the Base Case Financial Model Update (or, if there has been no Base Case Financial Model Update, on the Base Case Financial Model) and on the assumptions and data therein; and

3.3.2.7 Such other information and data as NCDOT may reasonably request.

3.3.3 NCDOT may deny an application or impose conditions to granting an application in its sole discretion, including conditioning approval on new or an adjustment of compensation for NCDOT under this Agreement. NCDOT's decision shall not be subject to the Dispute Resolution Procedures. If Developer finds NCDOT's conditions to the grant of an application to be unacceptable, Developer may withdraw the application and continue with the then-existing User Classifications. If Developer resubmits an application after rejection or imposition of conditions, the above procedures shall apply to the resubmitted application.

3.3.4 If Developer's application is granted without conditions or is granted subject to conditions acceptable to Developer, then:

3.3.4.1 Developer may implement such change in User Classification, subject to any such conditions, if any, imposed by NCDOT or applicable Law, on the later of (a) 120 days after NCDOT's receipt of the completed application or (b) the proposed effective date set forth in the application;

3.3.4.2 Developer shall communicate to the public the then-current User Classification within the region where the Project is located; and

3.3.4.3 The Parties shall promptly amend (a) the Toll Regulation to incorporate the change, addition or deletion and (b) this Agreement as necessary in accordance with the accepted conditions.

3.3.5 Prior to implementing any changes in the Toll Regulation, Developer, in coordination with NCDOT, shall report such changes as required by, and in accordance with, applicable Law. .

3.4 Exempt Vehicles

3.4.1 Exempt Vehicles shall: (a) receive a discount of 100% of the applicable toll rate if equipped with a Transponder as provided in Section III of the Toll Regulation and (b) not

be charged any Incidental Charges. Developer shall not be entitled to any reimbursement from NCDOT for such discount or Incidental Charges; provided, however, that nothing in this Section 3.4.1 shall prohibit Developer from charging and collecting for the issuance of Transponders to Exempt Vehicles in accordance with Exhibit 18.

3.4.2 Developer shall implement means to accurately identify and track Exempt Vehicles in order to assure compliance with their exemption from tolls in accordance with Section 24.3.2.2 of the Technical Provisions.

3.5 Suspension of Tolls

3.5.1 In the event NCDOT or the State designates the Project or a portion of the Project (a) for immediate use as an Emergency evacuation route, (b) as a route to respond to a disaster proclaimed by the Governor of North Carolina or his/her designee or to respond to an Emergency, or (c) as a route to respond to a Presidential Disaster Declaration, NCDOT shall have the right to order immediate suspension of tolling of the HOT Lanes or any portion of the HOT Lanes. Developer shall be entitled to compensation subject to satisfying the requirements of Article 13 for the loss of Toll Revenues or the increase in costs and expenses attributable to such order; provided, however, that NCDOT shall have no liability to Developer, including any obligation to compensate Developer, under this Section 3.5.1 if NCDOT:

3.5.1.1 Concurrently suspends tolling on all other NCDOT-operated tolled facilities and other tolled facilities over which NCDOT has the authority to order such suspension that are situated to directly facilitate travel from the area designated for evacuation or from the proclaimed disaster area; and

3.5.1.2 Lifts such order as soon as the need to use the Project for evacuation or disaster response ceases.

3.5.2 NCDOT shall have the right to order immediate suspension of tolling on any portion of the HOT Lanes to minimize disruption to the traveling public caused by an Unavailabiltiy Event. In no event shall Developer be entitled to seek compensation for the loss of Toll Revenues or the increase in costs and expenses attributable to such order.

3.6 Toll Revenues

3.6.1 At all times during the Term, Developer shall have the exclusive right, title, entitlement and interest in and to the Toll Revenues as compensation for the Work performed under this Agreement, except as provided in and subject to the terms and conditions of the CA Documents (including NCDOT's rights to compensation in accordance with this Agreement), the Project Trust Agreement and the security interests in Toll Revenues under the Security Documents.

3.6.2 Developer may use Toll Revenues to make any Distribution or to pay non-competitive fees and charges of Affiliates, provided Developer first pays (a) all current and delinquent amounts due to NCDOT under this Agreement, including any compensation due under Article 5 and Article 17, (b) all current and delinquent costs and expenses of O&M Work performed by Developer or of otherwise operating and maintaining the Project (including premiums for insurance, bonds and other performance security, and including Safety Compliance work and Handback Requirements work), (c) current and delinquent debt service, and other current and delinquent amounts, due under any Funding Agreement or Security

Document, (d) all currently required or delinquent deposits to any reserves for Renewal Work to be performed by Developer and the Handback Requirements Reserve, (e) all Taxes currently due and payable by Developer or delinquent (except to the extent being contested in good faith and appropriate reserves have been established in accordance with U.S. GAAP), and (f) all current and delinquent costs and expenses of Renewal Work performed by Developer. If Developer makes any Distribution or makes any payment to an Affiliate in violation of this provision, the same shall be deemed to be held in trust by the recipient for the benefit of NCDOT and the Collateral Agent under the senior Security Documents, and shall be payable to NCDOT or the Collateral Agent on demand. If NCDOT collects any such amounts held in trust, it shall make them available for any of the purposes set forth above and, at the request of the Collateral Agent, deliver them to the Collateral Agent net of any amounts under clause (a) above.

3.6.3 Toll Revenues shall be used first to pay all due and payable operations and maintenance costs, specifically including all amounts due to NCDOT under Sections 5.3 before they may be used and applied for any other purpose.

3.6.4 Developer shall have no right to use Toll Revenues to pay any debt, obligation or liability unrelated to this Agreement, the Project, the Work or Developer's services under this Agreement. The foregoing does not apply to or affect Developer's right to service debt required for the Project, to pay interest or any kind of equity bridge or shareholder's loan required for the Project or to make Distributions in accordance with Developer's governing instruments and subject to the limitations in Section 3.6.2.

3.6.5 Developer acknowledges and agrees that it shall not be entitled to receive any compensation, return on investment or other profit for providing the services contemplated by this Agreement other than those resulting from cost savings, Toll Revenues, Compensation Amounts, Termination Compensation and any other compensation expressly provided herein in accordance with the provisions of this Agreement, and earnings and interest accruing thereon. The Parties acknowledge that this Agreement contains commercially reasonable provisions and, as contemplated by the Equity IRR, allow Developer no more than a reasonable rate of return and compensation commensurate with risk.

3.6.6 Toll Revenues shall be deposited in the appropriate account under the Project Trust Agreement established for the purposes of holding Toll Revenues.

ARTICLE 4. FINANCING; REFINANCING

4.1 Developer Right and Responsibility to Finance

4.1.1 Developer may grant security interests in or assign the entire Developer's Interest (but not less than the entire Developer's Interest) to Lenders for purposes of securing the Project Debt, subject to the terms and conditions contained in the CA Documents. Developer is strictly prohibited from pledging or encumbering the Developer's Interest, or any portion thereof, to secure any indebtedness of any Person other than (a) Developer, (b) any special purpose entity that owns Developer but no other assets and has powers limited to Developer, the Project and Work, (c) a special purpose entity subsidiary owned by Developer or an entity described in clause (b) above, or (d) the PABs Issuer.

4.1.2 Developer is solely responsible for obtaining and repaying all financing, at its own cost and risk and without recourse to NCDOT, necessary for the acquisition, design,

permitting, development, construction, equipping, operation, maintenance, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Project.

4.1.3 If Developer has not entered into the Initial Funding Agreements and Initial Security Documents on or before the Effective Date, the following provisions shall apply:

4.1.3.1 Unless Developer or NCDOT elects to terminate this Agreement pursuant to Section 19.13, Section 19.14, or Section 19.15, Developer shall be unconditionally obligated to enter into the Initial Funding Agreements and Initial Security Documents and complete closing for all the Initial Project Debt (including any sub-debt), in a total amount which, when combined with all unconditional equity commitments acceptable to the Collateral Agent, any Public Funds Amount, and other sources of funds, is sufficient to fund all capital requirements described in the Project Plan of Finance, by not later than the Project Financing Deadline. Except as expressly provided for herein, if Developer fails to achieve Financial Close by the Project Financing Deadline, then NCDOT shall have the liquidated damage and termination remedies set forth in Sections 17.4.4 and 19.3.4, after delivering written notice of such Developer Default to Developer and Developer's failure to cure the same within the cure period set forth in Section 17.1.2.1.

4.1.3.2 Subject to the parties' right to terminate pursuant to Section 19.13, Section 19.14 and Section 19.15, the Project Financing Deadline may be extended by either Party for the period of delay in Developer's ability to achieve Financial Close directly caused by a Relief Event or those circumstances described in Section 4.1.3.4; provided that the Party seeking to extend the Project Financing Deadline provides a written notice of its election within seven days of obtaining knowledge of the Relief Event or those circumstances described in Section 4.1.3.4. If the Project Financing Deadline is extended pursuant to this Section 4.1.3.2, Developer shall extend the expiration of the Financial Close Security for a period that is at least ten Business Days beyond the extended Project Financing Deadline. Developer shall be entitled to reimbursement from NCDOT for Developer's reasonable costs to extend the expiration of the Financial Close Security.

4.1.3.3 Except to the extent expressly permitted in writing by NCDOT, Developer shall not be deemed to have achieved Financial Close until all of the following conditions have been satisfied:

(a) Developer has delivered to NCDOT, or made available to NCDOT via an Intellectual Property Escrow, for review and comment under Section 6.3.5, except clause (b) thereof, drafts of those proposed Initial Funding Agreements and Initial Security Documents that will contain the material commercial terms relating to the Initial Project Debt not later than 15 Business Days prior to the proposed date for Financial Close;

(b) Developer has delivered to NCDOT for execution the Lender's Direct Agreement executed by Developer and the Collateral Agent in the form attached as Exhibit 10;

(c) Developer has delivered to NCDOT for execution the Project Trust Agreement executed by Developer and the Collateral Agent in the form attached to this Agreement as Exhibit 17;

(d) All applicable parties have entered into and delivered the Initial Funding Agreements and Initial Security Documents (other than minor ancillary documents

normally delivered after Financial Close and containing no new material commercial terms) meeting the requirements of Section 4.1.3.1 and Developer has delivered to NCDOT or to an Intellectual Property Escrow true and complete copies of the executed Initial Funding Agreements and Initial Security Documents (other than minor ancillary documents normally delivered after Financial Close and containing no new material commercial terms);

(e) Developer has completed all necessary steps to obtain and close any TIFIA financing (if applicable);

(f) Developer has furnished updated written opinion or opinions from counsel for Developer that previously furnished an opinion or opinions pursuant to Volume I of the RFP (Instructions to Proposers), in substantially the form attached as Exhibit 19-A to this Agreement (with such additional opinions as are reasonably requested by NCDOT, such changes as agreed by NCDOT, in its sole discretion, and such qualifications and assumptions as agreed to by NCDOT in its reasonable discretion); provided, however, that opinions from multiple legal counsel are acceptable as long as the letters in the aggregate provide the opinions requested in Exhibit 19-A;

(g) Developer has furnished to NCDOT a certificate updating certain representations and warranties as set forth in and in the form attached as Exhibit 19-B;

(h) NCDOT has received for the Base Case Financial Model an update of the audit and opinion obtained from the independent model auditor that provided to NCDOT an opinion on the suitability of the Base Case Financial Model under Section 6.1.2 of Volume I of the RFP (Instructions to Proposers), which update shall (i) be co-addressed to NCDOT, (ii) expressly identify NCDOT as an entity entitled to rely thereon, (iii) take into account only the adjustments in the Interest Rate Buffer Amount pursuant to Section 4.1.3.5 and adjustments in the Public Funds Amount pursuant to Sections 4.1.3.6 through 4.1.3.8, and (iv) be delivered to NCDOT at Financial Close; and

(i) Developer has provided NCDOT with written notice of Developer's satisfaction of all the conditions of this Section 4.1.3.3.

4.1.3.4 Developer's obligation to achieve Financial Close by the Project Financing Deadline is excused and the Financial Close Security shall not be subject to forfeiture if Developer's failure to achieve Financial Close is directly attributable to the following:

(a) NCDOT's failure to obtain authority from FHWA to toll the HOT Lanes of the Project as required under applicable federal Law on or before the Project Financing Deadline;

(b) Developer is unable to reach agreement with the TIFIA Joint Program Office to close TIFIA financing or to provide TIFIA financing prior to the Project Financing Deadline as a direct result of inclusion in the TIFIA credit agreement by the TIFIA Joint Program Office of TIFIA terms and conditions that (i) materially increase the risk of a material reduction in the Equity IRR and (ii) are (1) materially and adversely different from those terms and conditions contained in the TIFIA Term Sheet (but excluding the TIFIA Term Sheet Assumptions) or (2) materially and adversely different from the terms and conditions of TIFIA loan agreements for the Comparable Toll Projects, despite commercially reasonable efforts by Developer to reach agreement with the TIFIA Joint Program Office on terms and conditions that are not materially and adversely different from those contained in the TIFIA Term Sheet or other

TIFIA loan agreements for the Comparable Toll Projects (including making reasonable financial and commercial concessions as necessary and appropriate under the circumstances); provided, however, that the following shall not be deemed a failure to reach agreement with the TIFIA Joint Program Office to close TIFIA financing by the Project Financing Deadline for purposes of this clause (b): (A) the lack of TIFIA contract and budget authority with respect to the Project for amounts in excess of the TIFIA Budget Authority Amount or (B) the failure of Developer, prior to the Project Financing Deadline or any earlier deadline specified by the TIFIA Joint Program Office, to satisfy any of the conditions precedent for the TIFIA financing set forth in the TIFIA Term Sheet and/or credit agreement;

(c) If PABs are part of the Project Plan of Finance, any unreasonable delay by or refusal of the PABs Issuer to issue bonds in the amount that Developer's underwriters are prepared to underwrite, provided that such refusal or delay is not due to any act, omission, fault or less than diligent efforts of Developer, including Developer's failure to satisfy all requirements that it is obligated to satisfy under the PABs Agreement, or Developer's failure to include in its financing schedule normal and customary time periods for carrying out the ordinary and necessary functions of a conduit issuer of tax-exempt bonds;

(d) If PABs are part of the Project Plan of Finance, (i) the refusal of PABs Issuer's counsel to allow closing of the PABs where the bond counsel is ready to give an unqualified opinion regarding the validity of the issuance of the PABs and the tax-exempt status of interest paid on the PABs, unless the basis of such refusal is that it would be unreasonable for bond counsel to deliver the opinion or (ii) the delay of PABs Issuer's counsel in authorizing closing of PABs. Delay by the PABs Issuer's counsel shall not be considered unreasonable where the financing schedule established by Developer does not provide PABs Issuer's counsel normal and customary time periods for carrying out the ordinary and necessary functions of such counsel to a conduit issuer of tax-exempt bonds.

(e) If PABs are part of the Project Plan of Finance, the failure of the PABs Issuer to comply with the terms of the PABs Agreement or the expiration, withdrawal, rescission or revocation of the PABS allocation by the USDOT Secretary in the amount approved by the USDOT Secretary where such failure directly causes inability to achieve Financial Close by the Financial Close Deadline;

(f) A court with jurisdiction issues a temporary restraining order or other form of injunction that prohibits prosecution of any material portion of the Work or prohibits the consummation of the transactions required for Financial Close, where the order or injunction remains pending on the Financial Close Deadline and such order is not due to any act, omission, or fault of any Developer-Related Entity; or

(g) If, but only if, a commitment of Developer's Lenders (and/or, if bonds (whether taxable or PABs) are part of the initial financing under the Project Plan of Finance, Developer's underwriters) identified in the Project Plan of Finance, is conditioned on, as of the date of Financial Close, the absence of any Environmental Litigation in respect of the Project arising after the Financial Proposal Due Date that would, as reasonably determined by the Lenders or the underwriters, as applicable, materially increase the likelihood that the plaintiffs/petitioners in such Environmental Litigation would obtain a final judgment in their favor resulting in an order halting work, or a substantially similar condition, such that the Lenders or the underwriters, as applicable, invoke such condition in relation to such Environmental Litigation in writing to NCDOT at least thirty (30) days' prior to the Financial Close Deadline (or, if the Environmental Litigation occurs within thirty (30) days of the Financial Close Deadline,

promptly upon obtaining actual knowledge of such event), and following the giving of said Notice, Developer and such Lender(s) (and/or, if applicable, Developer's underwriter(s)) meet and confer with NCDOT regarding the basis for their reasonable determination.

4.1.3.5 Subject to Section 19.14, NCDOT will assume the fluctuation risk on Benchmark Interest Rate(s) as follows:

(a) NCDOT will bear the risk, up to the Interest Rate Buffer Amount, and have the benefit of any decreases in Benchmark Interest Rate(s) during the Interest Rate Protection Period.

(b) The Benchmark Interest Rate(s) will be recorded by NCDOT, or its designee, at 10:00 a.m. eastern time on the last day of the Interest Rate Protection Period. The reading will be taken on the Bloomberg U.S.-based screen or another independently verifiable source acceptable to NCDOT, as appropriate, at 10:00 a.m. eastern time. The reading taken on the last day of the Interest Rate Protection Period will be sent to Developer immediately and Developer will have up to 5:00 pm. eastern time that day to dispute such reading. If no objection is made by 5:00 p.m. eastern time that day, the reading as taken by NCDOT shall be used for the purpose of determining the adjustment to the Benchmark Interest Rate(s) pursuant to this Section 4.1.3.5. In the event of a dispute regarding any readings recorded by NCDOT, such dispute shall be subject to the Dispute Resolution Procedures.

(c) Developer and NCDOT shall both adjust the Base Case Financial Model to reflect the impact of changes (if any) in the Benchmark Interest Rate(s) from the first day of the Interest Rate Protection Period until the last day of the Interest Rate Protection Period. The change, positive or negative, in the Interest Rate Buffer Amount, as a result of any changes in the Benchmark Interest Rates and any revisions approved by the Parties (but not any potential errors identified as part of the updated audit opinion provided pursuant to Section 4.1.3.3(h)) shall be calculated in accordance with Section 5.2.

4.1.3.6 Subject to Section 19.13, NCDOT will assume the risk on Credit Spread Fluctuation, if any, as follows:

(a) NCDOT will bear 100% of the risk and have 100% of the benefit of Credit Spread Fluctuation, if any, (either positive or negative) during the Credit Spread Protection Period.

(b) Pursuant to Volume I of the RFP (Instructions to Proposers), Benchmark Credit Spreads were provided by Developer for NCDOT's approval.

(c) Developer and NCDOT shall both adjust the Base Case Financial Model as of the last day of the Credit Spread Protection Period to reflect the impact of 100% of the Credit Spread Fluctuation, if any, during the Credit Spread Protection Period. The change, positive or negative, in the Public Funds Amount from NCDOT or Concession Payment to NCDOT, as applicable, as a result of any changes in the Credit Spreads and any revisions approved by the Parties (but not any potential errors identified as part of the updated audit opinion provided pursuant to Section 4.1.3.3(h)) shall be calculated in accordance with Section 5.2.

4.1.3.7 Subject to Section 19.13, NCDOT will assume a portion of the risk on changes to the TIFIA Term Sheet Assumptions, if any, as follows:

(a) NCDOT will bear 100% of the risk and have 50% of the benefit on quantitative changes to the TIFIA Term Sheet Assumptions (either positive or negative) assumed and indicated in the Base Case Financial Model and the financial terms of the Initial Project Debt and Initial Funding Agreements as obtained at Financial Close.

(b) Developer and NCDOT shall both adjust the Base Case Financial Model as of the last day of the Interest Rate Protection Period to reflect the impact of the quantitative changes to the TIFIA Term Sheet Assumptions, if any, in accordance with Section 4.1.3.7(a). The change, positive or negative, in the Public Funds Amount from NCDOT or Concession Payment to NCDOT, as applicable, as a result of any quantitative changes in the TIFIA Term Sheet Assumptions and any revisions approved by the Parties (but not any potential errors identified as part of the updated audit opinion provided pursuant to Section 4.1.3.3(h)) shall be calculated in accordance with Section 5.2.

4.1.3.8 Subject to Section 19.13, starting 210 days after the Financial Proposal Due Date until Financial Close (but excluding any period in which Financial Close is delayed as a result of the acts, omissions or fault of Developer or any other Developer-Related Entity), the following provisions shall apply:

(a) NCDOT shall compensate the Developer for adjustments to the Design-Build Contract Price as a result of inflation in materials and labor rates as set forth in this Section 4.1.3.8.

(b) The Public Funds Amount from NCDOT or Concession Payment to NCDOT, as applicable, shall be adjusted to reflect an amount equal to the Design-Build Contract Price multiplied by a percentage equal to the Construction Cost Index for the month of Financial Close and the Construction Cost Index for the month of the date that is 210 days after the Financial Proposal Due Date; provided that, if the month of Financial Close is the same or before the month of the date that is 210 days after the Financial Proposal Due Date, there shall be no adjustment to the Design-Build Contract Price under this Section 4.1.3.8.

(c) Developer and NCDOT shall both adjust the Base Case Financial Model as of the adjustment date to reflect the adjustment set forth in clause (b) above. The change, positive or negative, in the Public Funds Amount from NCDOT or Concession Payment to NCDOT, as applicable, as a result of any changes in the Design-Build Contract Price (but not any potential errors identified as part of the updated audit opinion provided pursuant to Section 4.1.3.3(h)) shall be calculated in accordance with Section 5.2.

4.1.3.9 Subject to the parties' right to terminate pursuant to Section 19.13, Section 19.14 and Section 19.15, if the scheduled date for Financial Close occurs after the date of expiration of any commitments of Lenders contained in the Proposal, then Developer, at NCDOT's request, shall conduct negotiations with the Lender(s) and Lead Underwriter(s), as applicable, including any other members of the lending group from whom Developer obtained commitments in connection with the submission of the Proposal, to renew or extend their commitments to the new scheduled date for Financial Close, which negotiations (i) shall be transparent and open to NCDOT and its advisors and (ii) shall have the key objective of achieving the most competitive financing terms for the Project, given this Agreement, CA Documents, Principal Project Documents and the risk allocation contained in each of them. Any major deviations from the original commitments may be accepted in the sole discretion of NCDOT. Notwithstanding the foregoing, Developer shall not have any obligation to obtain such renewal or extension if Developer, despite exercising good faith efforts, is unable to achieve

successful negotiations with such Lender(s) and Lead Underwriter(s), as applicable. Subject to the parties' right to terminate pursuant to Section 19.13, Section 19.14 and Section 19.15, if such negotiations are not successfully concluded to the satisfaction of the parties within 30 days after the date on which NCDOT requested such negotiations, then NCDOT shall have the right to issue a notice to Developer ("Funding Competition Notice") authorizing and directing Developer to commence a funding competition among eligible Lenders for providing the Initial Project Debt. Such funding competition shall be in accordance with the following:

(a) No later than 10 Business Days after issuance of the Funding Competition Notice, Developer and NCDOT shall jointly develop a Funding Competition Plan setting forth the process, framework and rights and obligations of each Party with respect to the funding competition, with the objective of producing a funding competition that is: (i) transparent and open to NCDOT and its advisors and (ii) achieves the most competitive financing terms for the Project consistent with the CA Documents.

(b) The Funding Competition Plan shall, at a minimum, provide the following: (i) a schedule to achieve milestones and activities consistent with the Milestone Schedule Deadlines; (ii) a description of the potential financing solutions, including bank and bond financing; (iii) NCDOT's rights to observe, monitor and audit the funding competion; and (iv) rights of NCDOT to review and approve financing term sheets and the proposed financing solution.

(c) NCDOT and Developer shall extend the Project Financing Deadline to accommodate the completion of the activities set forth in the Funding Competition Plan.

4.1.3.10 Developer shall have the option to extend the Project Financing Deadline for an additional 120-day period; provided that Developer exercises such option by delivering written notice to NCDOT no later than ten Business Days prior to the initial Project Financing Deadline and delivers to NCDOT an increased Financial Close Security in the total amount $50 million for a period that is at least ten Business Days beyond the extended Project Financing Deadline. If Developer exercises such option, the following terms shall apply:

(a) Developer shall bear all costs and expenses with respect to the increased Financial Close Security;

(b) Notwithstanding the provisions in Sections 4.1.3.5, 4.1.3.6, 4.1.3.7, and 4.1.3.8, Developer shall not be entitled to any positive adjustments (increases) to the Public Funds Amount or Interest Rate Buffer Amount, as applicable, during such 120-day extension period (or such earlier date of Financial Close) due to (i) fluctuations in the Benchmark Interest Rates or Credit Spread Fluctuation, (ii) changes to the TIFIA Term Sheet Assumptions, and/or (iii) adjustments in the Design-Build Contract Price or any other cost included in its Proposal, whether relating to escalation or inflation to material and labor rates or otherwise; and

(c) NCDOT shall be entitled to 50% of the benefit, including any reduction in the Public Funds Amount or Interest Rate Buffer Amount, as applicable, during such 120-day extension period (or such earlier date of Financial Close) arising out of, (i) fluctuations in the Benchmark Interest Rates or Credit Spread Fluctuation, (ii) changes to the TIFIA Term Sheet Assumptions, and/or (iii) adjustments in the Design-Build Contract Price or any other cost included in its Proposal.

4.1.4 Upon Financial Close, NCDOT shall return to Developer the original of the Financial Close Security.

4.1.5 Developer shall deliver copies of any ancillary supporting documents (e.g., UCC filing statements) to NCDOT within 30 days after the date of Financial Close.

4.1.6 Except as otherwise provided in Sections 4.1.3.5, 4.1.3.7 and 4.1.3.8, Developer exclusively bears the risk of any changes in the Benchmark Interest Rate(s), TIFIA Term Sheet Assumptions, Design-Build Contract Price, payment provisions and any other terms of its financing.

4.1.7 Notwithstanding the foreclosure or other enforcement of any security interest created by a Security Document, Developer shall remain liable to NCDOT for the payment of all sums owing to NCDOT under the CA Documents and the performance and observance of all of Developer's covenants and obligations under the CA Documents.

4.2 [RESERVED]

4.3 No NCDOT Liability

4.3.1 The State and NCDOT shall have no obligation to pay debt service on any debt issued or incurred in connection with the Project or this Agreement. The State and NCDOT shall have no obligation to join in, execute or guarantee any note or other evidence of indebtedness incurred in connection with the Project or this Agreement, any other Funding Agreement or any Security Document. The foregoing shall not diminish any rights or obligations with respect to NCDOT's role as the PABs Issuer.

4.3.2 None of the State, NCDOT or any other agency, instrumentality or political subdivision of the State, and no board member, director, officer, employee, agent or representative of any of them, has any liability whatsoever for payment of the principal sum of any Project Debt, any other obligations issued or incurred by any Person described in Section 4.4.2 in connection with the CA Documents or the Project, or any interest accrued thereon or any other sum secured by or accruing under any Funding Agreement or Security Document. Except for a violation by NCDOT of its express obligations to Lenders set forth in Article 20 and except as set forth in Section 3.6.2, no Lender is entitled to seek any damages or other amounts from NCDOT, whether for Project Debt or any other amount. NCDOT's review of any Funding Agreements or Security Documents or other Project financing documents (a) is not a guaranty or endorsement of the Project Debt, any other obligations issued or incurred by any Person described in Section 4.4.2 in connection with the CA Documents or the Project, or any traffic and revenue study, and (b) is not a representation, warranty or other assurance as to the ability of any such Person to perform its obligations with respect to the Project Debt or any other obligations issued or incurred by such Person in connection with the CA Documents or the Project, or as to the adequacy of the Toll Revenues to provide for payment of the Project Debt or any other obligations issued or incurred by such Person in connection with the CA Documents or the Project. For the avoidance of doubt, the foregoing does not affect NCDOT's liability to Developer under Article 19 and Exhibit 15 for Termination Compensation that is measured in whole or in part by outstanding Project Debt.

4.3.3 The State and NCDOT shall not have any obligation to any Lender pursuant to this Agreement, except, if the Collateral Agent has notified NCDOT of the existence of its Security Documents, for the express obligations to Lenders set forth in Section 3.6.2, Section

13.3.5, Article 20 or in the Lender's Direct Agreement delivered at Financial Close. The foregoing does not preclude Lender enforcement of this Agreement against NCDOT where the Lender has succeeded to the rights, title and interests of Developer under the CA Documents, whether by way of assignment or subrogation.

4.3.4 The provisions of this Section 4.3 shall not diminish or impair NCDOT's obligation to act as the PABs Issuer pursuant to the CA Documents.

4.4 Mandatory Terms of Project Debt, Funding Agreements and Security Documents

Project Debt, Funding Agreements and Security Documents, and any amendments or supplements thereto, shall comply with the following terms and conditions.

4.4.1 The Security Documents may only secure Project Debt, the proceeds of which are obligated to be used exclusively for the purposes of (a) acquiring, designing, permitting, building, constructing, improving, equipping, modifying, operating, maintaining, reconstructing, restoring, rehabilitating, renewing or replacing the Project, performing the Utility Adjustment Work or the Renewal Work to be performed by Developer, or performing other Work, (b) paying principal and interest on such Project Debt and principal and interest on other existing Project Debt, (c) paying premiums or costs for insurance, bonds and other performance security or paying reasonable development fees to Developer-Related Entities or to the Design-Build Contractor or its affiliates for services related to the Project, (d) paying fees and premiums to any Lender of the Project Debt or such Lender's agents in consideration for such Project Debt or the commitment thereof, (e) paying costs and fees in connection with the closing of any permitted Project Debt, (f) making payments due under the CA Documents to NCDOT or any other Person, (g) funding reserves required under this Agreement, Funding Agreements or Security Documents, applicable securities laws, or Environmental Laws, (h) making Distributions, but only from the proceeds of Refinancings permitted under this Agreement, (i) payment of interest on subordinated debt and other financing costs (such as fees on letters of credit to the extent used to secure deferred equity contributions), and (j) refinancing any Project Debt under clauses (a) through (i) above.

4.4.2 The Security Documents may only secure Project Debt and Funding Agreements issued and executed by (a) Developer, (b) its permitted successors and assigns, (c) a special purpose entity that owns Developer but no other assets and has purposes and powers limited to the Project and the Work, (d) any special purpose subsidiary wholly owned by Developer or such entity, or (e) the PABs Issuer.

4.4.3 Project Debt under a Funding Agreement and secured by a Security Document must be issued and held only by Institutional Lenders who qualify as such at the date the Security Document is executed and delivered (or, if later, at the date any such Institutional Lender becomes a party to the Security Document), except that (a) qualified investors other than Institutional Lenders may acquire and hold interests in Project Debt in connection with the securitization or syndication of Project Debt through a public or private offering, but only if an Institutional Lender acts as Collateral Agent for such Project Debt, (b) PABs may be issued, acquired and held by parties other than Institutional Lenders but only if an Institutional Lender acts as indenture trustee for the PABs, and (c) Subordinate Debt is not subject to this provision.

4.4.4 The Security Documents as a whole securing each separate issuance of debt shall encumber the entire Developer's Interest; provided, however, that the foregoing does not

preclude subordinate Security Documents (such subordination to be in accordance with the terms set forth in the Funding Agreements) or equipment lease financing.

4.4.5 No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against Developer's Interest shall extend to or affect the fee simple interest of NCDOT in the Project or the Project Right of Way or NCDOT's rights or interests under the CA Documents.

4.4.6 Each note, bond or other negotiable or non-negotiable instrument evidencing Project Debt, or evidencing any other obligations issued or incurred by any Person described in Section 4.4.2 in connection with the CA Documents or the Project, must include, or refer to a document controlling or relating to the foregoing that includes, a conspicuous recital to the effect that payment of the principal thereof and interest thereon is a valid claim only as against the obligor and the security pledged by Developer or the obligor therefor, is not an obligation, moral or otherwise, of the State, NCDOT, any other department, agency, authority, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them, and neither the full faith and credit nor the taxing power of the State, NCDOT or any other agency, instrumentality or political subdivision of the State is pledged to the payment of the principal thereof and interest thereon.

4.4.7 Each Funding Agreement and Security Document containing provisions regarding default by Developer shall require, or incorporate a requirement by reference to another Funding Agreement or Security Document that requires, that if Developer is in default thereunder and the Collateral Agent gives notice of such default to Developer, then the Collateral Agent shall also give concurrent notice of such default to NCDOT. Each Funding Agreement and Security Document that provides Lender remedies for default by Developer or other applicable Person shall require that the Collateral Agent deliver to NCDOT, concurrently with delivery to Developer or any other Person, every notice of election to sell, notice of sale or other notice required by Law or by the Security Document in connection with the exercise of remedies under the Funding Agreement or Security Document. Further, each Funding Agreement and Security Document shall contain provisions granting NCDOT the rights set forth in clauses (d) and (e) of Section 17.3.4.1.

4.4.8 No Funding Agreement or Security Document that may be in effect during any part of the period that the Handback Requirements apply shall grant to the Lender any right to apply funds in the Handback Requirements Reserve or to apply proceeds from any Handback Requirements Letter of Credit to the repayment of Project Debt, to any other obligation owing the Lender or to any other use except the uses set forth in Section 8.10.3, and any provision purporting to grant such right shall be null and void, provided, however, that (a) any Lender or Substituted Entity shall, following foreclosure or transfer in lieu of foreclosure, automatically succeed to all rights, claims and interests of Developer in and to the Handback Requirements Reserve, and (b) an exception may be made for excess funds described in Section 8.10.4.2.

4.4.9 Each relevant Funding Agreement and Security Document that may be in effect during any part of the period that the Handback Requirements apply shall expressly permit, without condition or qualification, or incorporate permission by reference to another Funding Agreement or Security Document that expressly permits, without condition or qualification, Developer to (a) use and apply funds in the Handback Requirements Reserve in the manner contemplated by the CA Documents and (b) issue additional Project Debt, secured by the Developer's Interest, for the added limited purposes of funding work pursuant to Handback Requirements and Safety Compliance as set forth in Section 12.3, and (c) otherwise comply

with its obligations in the CA Documents regarding Renewal Work to be performed by Developer, the Renewal Work Plan, the Handback Requirements and the Handback Requirements Reserve. Subject to the foregoing, any protocols, procedures, limitations and conditions concerning draws from the Handback Requirements Reserve set forth in any Funding Agreement or Security Document or the issuance of additional Project Debt as described in clause (b) above shall be consistent with the permitted uses of the Handback Requirements Reserve, and shall not constrain Developer's or NCDOT's access thereto for such permitted uses, even during the pendency of a default under the Funding Agreement or Security Document. For the avoidance of doubt, (i) the Lenders then holding Project Debt may reasonably limit additional Project Debt if other funds are then readily available to Developer for the purpose of funding the Work, (ii) no Lender then holding Project Debt is required hereby to grant *pari passu* lien or payment status to any such additional Project Debt, and (iii) the Lenders then holding Project Debt may impose reasonable, customary requirements as to performance and supervision of the Work that are no more onerous than those set forth in their respective existing Funding Agreements or Security Documents.

4.4.10 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender shall not name or join NCDOT, any other department, agency, authority, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them in any legal proceeding seeking collection of the Project Debt or other obligations secured thereby or the foreclosure or other enforcement of the Funding Agreement or Security Document, unless and except to the extent that (a) joinder of NCDOT as a necessary party is required by applicable Law in order to confer jurisdiction on the court over the dispute with Developer or to enforce Lender remedies against Developer and (b) the complaint against NCDOT states no claim or cause of action for a lien or security interest on, or to foreclose against, NCDOT's right, title and interest in and to the Project and Project Right of Way, or for any liability of NCDOT on the indebtedness represented by such Project Debt.

4.4.11 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender shall not seek any damages or other amounts from NCDOT, any other agency, instrumentality or political subdivision of the State, or any elected official, board member, director, officer, employee, agent or representative of any of them, whether for Project Debt or any other amount, except (a) damages from NCDOT for a violation by NCDOT of its express obligations to Lenders set forth in Section 3.6.2 and Article 20 or in the Lender's Direct Agreement delivered at Financial Close and (b) amounts due from NCDOT under this Agreement where the Lender has succeeded to the Developer's Interest, whether by way of assignment or subrogation. NCDOT shall be entitled to take reasonable steps to ensure Developer's compliance with this Section 4.4.11, including contacting the Lender prior to execution of the Funding Agreement and Security Document.

4.4.12 Each Funding Agreement and Security Document shall be consistent with Section 3.6.3.

4.4.13 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender and the Collateral Agent shall respond to any request from NCDOT or Developer for consent to a modification or amendment of this Agreement within a reasonable period of time.

4.4.14 Each Funding Agreement and Security Document shall expressly state, or incorporate a statement by reference to another Funding Agreement or Security Document that expressly states, that the Lender agrees to exclusive jurisdiction and venue in the General Court of Justice in Wake County, North Carolina in any action by or against NCDOT or its successors and assigns; provided, however, if an action must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the Eastern District of North Carolina.

4.5 Refinancing

4.5.1 Right of Refinancing

4.5.1.1 Subject to Section 4.5.1.2, Developer from time to time may consummate Refinancings under the Funding Agreements on terms and conditions acceptable to Developer. NCDOT shall have no obligations or liabilities in connection with any Refinancing except for the rights, benefits and protections set forth in Article 20 (but only if the Refinancing satisfies the conditions and limitations set forth in Section 20.1).

4.5.1.2 Except with respect to an Exempt Refinancing and Rescue Refinancing, no Refinancing shall be permitted prior to Substantial Completion of all Project Assets, unless Developer demonstrates to NCDOT's reasonable satisfaction that such Refinancing will not (a) increase NCDOT's liability to pay Termination Compensation or (b) decrease the level of Committed Investment.

4.5.2 Notice of Refinancing

4.5.2.1 In connection with any Refinancing except an Exempt Refinancing under clause (b), (c), (d) or (e) of the definition of Exempt Refinancing or a Rescue Refinancing, Developer shall deliver, not later than 30 days prior to the proposed date for closing of the Refinancing, either to NCDOT or to an Intellectual Property Escrow for access and review by NCDOT, the following:

(a) Draft proposed Funding Agreements and Security Documents (other than minor ancillary documents normally delivered after financial closing and containing no new material commercial terms);

(b) The Pre-Refinancing Data; and

(c) And any other matters required by Exhibit 5.

4.5.2.2 If Developer believes the Refinancing is an Exempt Refinancing or Rescue Refinancing, it shall concurrently provide written notice to NCDOT that Developer considers the Refinancing to be an Exempt Refinancing or Rescue Refinancing. Developer shall include in such notice facts to support the basis on which Developer believes the Refinancing is an Exempt Refinancing or Rescue Refinancing.

4.5.2.3 Within fifteen (15) days after receipt of the materials required under Section 4.5.2.1, NCDOT will review and determine whether the proposed Refinancing is (a) an Exempt Refinancing or Rescue Refinancing and (b) if neither an Exempt Refinancing nor Rescue Refinancing, whether to approve or disapprove the proposed Refinancing, and whether the proposed Refinancing will result in a Refinancing Gain. If applicable, NCDOT also will

select the means for payment by Developer of its portion of the Refinancing Gain. NCDOT's failure to deliver to Developer written notice of such determination and selection within such time period shall not prejudice NCDOT's right to disapprove the proposed Refinancing or to receive its portion of Refinancing Gain, if any, or its selection of the means for payment of such portion.

4.5.2.4 Developer shall submit to NCDOT final drafts of the proposed Funding Agreements and Security Documents, together with updated versions of the Pre-Refinancing Data, not later than seven (7) days prior to the proposed date for closing the Refinancing.

4.5.2.5 In connection with any Refinancing except an Exempt Refinancing under clause (b), (c), (d), or (e) of the definition of Exempt Refinancing, Developer shall deliver, not later than 30 days after close of the Refinancing, either to NCDOT or to an Intellectual Property Escrow for access and review by NCDOT the following:

(a) Copies of all signed Funding Agreements and Security Documents in connection with the Refinancing; and

(b) The Refinancing Data.

4.5.2.6 Developer shall include with each submission of Pre-Refinancing Data and Refinancing Data Developer's financial model showing how Developer has calculated the Refinancing Gain, if any, following the procedures set forth in Exhibit 5, and any other matters required by Exhibit 5.

4.5.2.7 Prior to the close of the Refinancing, NCDOT and Developer shall meet and confer to agree upon the final calculation of the Refinancing Gain, and Developer shall pay NCDOT its portion of the Refinancing Gain no later than 15 days after the close of the Refinancing if the selected means of payment is a lump sum payment.

4.5.3 Refinancing Limitations, Requirements and Conditions

4.5.3.1 If NCDOT renders any assistance or performs any requested activity in connection with a Refinancing apart from delivering customary consents and estoppel certificates or any Lender's Direct Agreement, then Developer shall reimburse NCDOT all NCDOT Recoverable Costs and other fees, costs and expenses NCDOT incurs in connection with rendering any such assistance or performing any such activity. Developer also shall reimburse NCDOT Recoverable Costs of assessing the Refinancing Gain and NCDOT's share thereof, if any. If NCDOT delivers to Developer a written invoice therefor at least two Business Days prior to the scheduled date of closing, then Developer shall reimburse such costs at closing. If NCDOT does not deliver a written invoice at least two Business Days prior to closing, then it may deliver such invoice within 30 days after receiving written notice of closing and Developer shall reimburse NCDOT for such costs within ten days after NCDOT delivers the invoice to Developer. If for any reason the Refinancing does not close, Developer shall reimburse such NCDOT Recoverable Costs and such other fees, costs and expenses within 30 days after NCDOT delivers to Developer a written invoice therefor.

4.5.3.2 The Refinancing Gain shall be calculated after deducting payment of such NCDOT Recoverable Costs and such other fees and expenses, as well as Developer's reasonable professional costs and expenses directly associated with the Refinancing.

4.5.3.3 Developer shall bear all risks for any Refinancing that negatively affects its Equity IRR, debt coverage ratios or financial performance.

ARTICLE 5. NCDOT COMPENSATION; FINANCIAL MODEL UPDATES; PAYMENT OF PUBLIC FUNDS; OTHER PAYMENTS

5.1 Concession Payment

The Concession Payment shall be in the amount and payable upon the terms set forth in Part A of Exhibit 5. ***[Note: Delete this Section and all references to Concession Payments in this Agreement if not applicable]***

5.2 Adjustments Due to Certain Financing Risks

NCDOT and the Developer will use the Base Case Financial Model to calculate the change, under Sections 4.1.3.5 through 4.1.3.8, positive or negative, in the Public Funds Amount or Concession Payment, as applicable, and the Interest Rate Buffer Amount. NCDOT and the Developer shall make such calculation and update the Base Case Financial Model and Equity IRR at Financial Close as follows:

5.2.1 The Base Case Financial Model as of the Effective Date shall be run to solve for the Public Funds Amount or Concession Payment, as applicable, and the Interest Rate Buffer Amount, inputting only the changes, if any, in financial terms recognizable under Sections 4.1.3.5 through 4.1.3.8, and holding the Equity IRR as of the Effective Date constant. The resulting calculations and the financial model after this first step are considered the "First Interim Financial Model" for purposes of Sections 5.2.1 through 5.2.2.

5.2.2 Second, the First Interim Financial Model shall be run to solve for the Equity IRR by inputting (a) the Public Funds Amount or Concession Payment, as applicable, and the Interest Rate Buffer Amount as determined in Section 5.2.1 and (b) all other changes, if any, in the terms of financing between those assumed in the Base Case Financial Model as of the Effective Date and those set forth in the Initial Project Debt and Initial Financing Documents as obtained at Financial Close. The resulting financial model shall constitute the Base Case Financial Model and the resulting internal rate of return for Developer and its Equity Members shall be the Equity IRR as of Financial Close.

5.3 Revenue Payments

NCDOT's rights to payment related to Toll Revenues for the Project are set forth in Part C of Exhibit 5. Developer agrees to pay NCDOT such amounts as compensation to NCDOT in exchange for NCDOT's grant to Developer of rights to impose and receive tolls pursuant to this Agreement. The Revenue Payment Amount shall be deposited, as and when received, pursuant to the Project Trust Agreement in accordance with the terms therein.

5.4 Financial Model and Model Audit Updates

5.4.1 Developer shall run new projections and calculations under the Financial Model Formulas to establish a Base Case Financial Model Update:

5.4.1.1 Whenever there occurs a Compensation Event;

5.4.1.2 Whenever there occurs a Refinancing with Refinancing Gain in which NCDOT participates;

5.4.1.3 Whenever there occurs a Revenue Payment Amount which NCDOT receives;

5.4.1.4 Whenever the CA Documents are amended and the Parties agree that the amendment has a material effect on future costs or Toll Revenues;

5.4.1.5 Whenever a Relief Event extends the Term, if and to the extent permitted by Law; and

5.4.1.6 Upon Financial Close.

5.4.2 The results of the Base Case Financial Model Updates pursuant to Section 5.4.1.6 require the mutual written approval of the Parties. Where the Base Case Financial Model Update is pursuant to Section 5.4.1.1, Section 5.4.1.2, Section 5.4.1.3 or 5.4.1.5, NCDOT shall have the right to challenge, according to the Dispute Resolution Procedures, the validity, accuracy or reasonableness of any Base Case Financial Model Update or the related updated and revised assumptions and data. In the event of a challenge, the immediately preceding Base Case Financial Model Update that has not been challenged (or, if there has been no unchallenged Base Case Financial Model Update, the Base Case Financial Model) shall remain in effect pending the outcome of the challenge or until a new Base Case Financial Model Update is issued and unchallenged. NCDOT shall have 60 days after receiving written notice from Developer that the Base Case Financial Model Update has been deposited in an Intellectual Property Escrow to commence action under the Dispute Resolution Procedures.

5.4.3 In no event shall the Financial Model Formulas be changed except with the prior written approval of both Parties, each in its sole discretion.

5.5 Refinancing Gain Share

NCDOT's rights to a portion of any Refinancing Gain Share are set forth in Part D of Exhibit 5. Developer agrees to pay NCDOT such amount as compensation to NCDOT in exchange for NCDOT's grant to Developer of rights to impose and receive tolls pursuant to this Agreement.

5.6 Payment of Public Funds; NTP1 Payments; and Annual O&M Payment

5.6.1 Developer's rights to receive payment of the Public Funds Amount are set forth in Part E of Exhibit 5. ***[Note: Delete this Section and all references to Public Funds Amount in this Agreement if not applicable]***

5.6.2 Developer's rights to receive payment for NTP1 Work are set forth in Part F of Exhibit 5. Any payments made for NTP1 Work prior to Financial Close shall not exceed $15 million and shall reduce the Public Funds Amount by amounts paid to Developer for NTP1 Work.

5.6.3 Developer's rights to receive payment of the Annual O&M Payment are set forth in Part G of Exhibit 5.

5.7 NCDOT Monetary Obligations

5.7.1 Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to NCDOT. If this Agreement is funded in whole or in part by federal funds, NCDOT's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the CA Documents. If the Term extends into fiscal years subsequent to that in which it is approved, such continuation of the CA Documents is expressly contingent upon the appropriation, allocation and availability of funds by the North Carolina Legislature for the purposes set forth in the CA Documents. If funds to effect payment are not available, NCDOT will provide written notification to Developer. This Section 5.7 applies to all monetary obligations of NCDOT set forth in the CA Documents, notwithstanding any contrary provisions of the CA Documents.

5.7.2 Pursuant to North Carolina General Statutes § 143C-6-11(i), the following provisions of North Carolina General Statutes § 143C-6-11(h) are incorporated verbatim in this Agreement as follows: "Amounts Encumbered – Transportation project appropriations may be encumbered in the amount of allotments made to the Department of Transportation by the Director for the estimated payments for transportation project contract work to be performed in the appropriation fiscal year. The allotments shall be multiyear allotments and shall be based on estimated revenues and shall be subject to the maximum contract authority contained in subsection (c) above. Payment for transportation project work performed pursuant to contract in any fiscal year other than the current fiscal year is subject to appropriations by the General Assembly. Transportation project contracts shall contain a schedule of estimated completion progress, and any acceleration of this progress shall be subject to the approval of the Department of Transportation provided funds are available. The State reserves the right to terminate or suspend any transportation project contract, and any transportation project contract shall be so terminated or suspended if funds will not be available for payment of the work to be performed during that fiscal year pursuant to the contract. In the event of termination of any contract, the contractor shall be given a written notice of termination at least 60 days before completion of scheduled work for which funds are available. In the event of termination, the contractor shall be paid for the work already performed in accordance with the contract specifications." For purposes of this Section 5.7.2, the term "schedule of estimated completion progress" means the Maximum Payment Curve and the term "contract specifications" means the CA Documents.

5.7.3 Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that the unavailability of funds for NCDOT to comply with its payment obligations shall in no event diminish, reduce or otherwise affect NCDOT's responsibility for moneys owed by NCDOT under the CA Documents or Developer's ability to exercise any rights or remedies under the CA Documents, including its rights to termination compensation pursuant to Exhibit 15.

ARTICLE 6. PROJECT PLANNING AND APPROVALS; REVIEW AND OVERSIGHT

6.1 Preliminary Planning and Engineering Activities; Site Conditions

6.1.1 Developer shall perform or cause to be performed all engineering activities appropriate for development of the Project in accordance with the CA Documents and Good Industry Practice, including (a) technical studies and analyses, (b) geotechnical investigations, (c) right-of-way mapping, surveying and appraisals, (d) Hazardous Materials investigations, and (e) design and construction surveys.

6.1.2 Except to the extent expressly provided otherwise under this Agreement, Developer shall bear the risk of any incorrect or incomplete review, examination and investigation by Developer of the Site and surrounding locations, and of any incorrect or incomplete information resulting from preliminary engineering activities conducted by Developer, NCDOT or any other Person. NCDOT makes no warranties or representations as to any surveys, data, reports or other information provided by NCDOT or other Persons concerning surface conditions and subsurface conditions, including the presence of Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site or surrounding locations. Developer acknowledges that such information is for Developer's reference only and has not been verified.

6.1.3 Except to the extent expressly provided otherwise under this Agreement, Developer shall bear the risk of all conditions occurring on, under or at the Site, including (a) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area, (b) changes in surface topography, (c) variations in subsurface moisture content, (d) Utility facilities, (e) the presence or discovery of Hazardous Materials, including contaminated groundwater, (f) the discovery at, near or on the Project Right of Way of any archeological, paleontological or cultural resources, and (g) the discovery at, near or on the Project Right of Way of any Threatened or Endangered Species.

6.2 Governmental Approvals

6.2.1 NCDOT is responsible for obtaining the NCDOT-Provided Approvals, at its sole cost and expense, based on the Project scope described in the Technical Provisions. Developer shall obtain all other Governmental Approvals in accordance with the CA Documents and Article 107-3 of the Standard Specifications and, except to the extent that the CA Documents expressly provide that NCDOT is responsible therefor, all third party approvals and agreements required in connection with the Project, the Project Right of Way or the Work, including any modifications, renewals and extensions of the NCDOT-Provided Approvals following the initial issuance and delivery thereof, including those required in connection with a Compensation Event. Developer shall deliver to NCDOT true and complete copies of all new or amended Governmental Approvals and third party approvals and agreements.

6.2.2 Developer shall comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals and third party approvals required by such Governmental Approvals, including performance of all environmental mitigation measures required by the CA Documents or Governmental Approvals, except to the extent that responsibility for performance of such measures is expressly assigned to NCDOT in the CA Documents.

6.2.3 In the event that any Governmental Approvals required to be obtained by Developer must formally be issued in NCDOT's name, Developer shall undertake necessary efforts to obtain such approvals subject to NCDOT's reasonable cooperation with Developer, at Developer's expense (except in connection with a Compensation Event), in accordance with Section 6.2.5, including execution and delivery of the necessary applications and other documentation in form approved by NCDOT.

6.2.4 In the event that NCDOT or FHWA must act as the lead agency and directly coordinate with a Governmental Entity in connection with obtaining Governmental Approvals which are the responsibility of Developer, Developer shall provide all necessary support to facilitate the approval, mitigation or compliance process. Such support shall include conducting

necessary field investigations, surveys, and preparation of any required reports, documents and applications, subject to applicable Law.

6.2.5 At Developer's request, NCDOT shall reasonably assist and cooperate with Developer in obtaining from Governmental Entities the Governmental Approvals (including any modifications, renewals and extensions of existing Governmental Approvals from Governmental Entities) required to be obtained by Developer under the CA Documents.

6.2.6 Subject to Developer's right to a Relief Event under clause (o) of the definition of Relief Event and Compensation Event under clause (n) of the definition of Compensation Event, in the event Developer's design differs from the Project scope described in the Technical Provisions, including differences due to any alternative technical concepts approved by NCDOT and described in Exhibit 2, as between NCDOT and Developer, Developer shall be fully responsible for all necessary actions, and shall bear all risk of delay and all risk of increased cost, resulting from or arising out of any associated change in the Project location or design, including (a) conducting all necessary environmental studies and preparing all necessary environmental documents in compliance with applicable Environmental Laws, subject to the limitations and restrictions set forth in 23 CFR Part 636, (b) obtaining and complying with all necessary new Governmental Approvals (including any modifications, renewals and extensions of the NCDOT-Provided Approvals, and other existing Governmental Approvals), and (c) bearing all risk, delay and cost of litigation or other challenges. NCDOT and FHWA will independently evaluate all environmental studies and documents and fulfill the other responsibilities assigned to them by 23 CFR Part 771.

6.3 Submittal, Review and Approval Terms and Procedures

6.3.1 General

This Section 6.3 sets forth the terms and procedures that govern all Submittals to NCDOT pursuant to the CA Documents or Developer Management Plan and component plans thereunder. Submittals shall be submitted in accordance with and within the time frames and sequence set forth in the approved Project Schedule.

6.3.2 Time Periods

Whenever NCDOT is entitled to review and comment on, or to affirmatively approve, a Submittal, NCDOT shall have a period of ten Business Days to act after the date it receives an accurate and complete Submittal, together with a completed transmittal form in form acceptable to NCDOT and all necessary information and documentation concerning the subject matter, except as otherwise provided below:

6.3.2.1 If any provision of the CA Documents expressly provides a longer or shorter period for NCDOT to act, such period shall control over the foregoing time periods.

6.3.2.2 If at any given time NCDOT is in receipt of Submittals not in accordance with the submittal guidelines set forth in Exhibit 2-09 of the Technical Provisions, NCDOT may extend the applicable period for it to act to that period in which NCDOT can reasonably accommodate the Submittals under the circumstances, or such other period of extension set forth in any other provision of the CA Documents, and no such extension shall constitute an NCDOT-Caused Delay, NCDOT Change, Relief Event, Compensation Event or other basis for any Claim.

6.3.2.3 The applicable time periods for NCDOT to act shall be extended by the period of: (a) any delay in NCDOT's ability to act caused by any act, omission, breach, fault or negligence of any Developer-Related Entity or (b) any delay in NCDOT's ability to act caused by a Relief Event (for this purpose modified where applicable to refer to acts or omissions caused by any Developer-Related Entity rather than NCDOT).

6.3.2.4 During any time that NCDOT is entitled under Section 18.5 to increase the level of its auditing, monitoring, inspection, sampling, measuring, testing and oversight of the Project, the applicable period for NCDOT to act on any Submittals received during such time and not related to curing the Developer Default(s) that instigated the Section 18.5 action shall automatically be extended by ten Business Days.

6.3.2.5 The time period to act on a Submittal shall not begin until NCDOT receives an accurate and complete Submittal, as reasonably determined by NCDOT. NCDOT reserves the right to return to Developer any inaccurate or incomplete Submittals for revision, and shall notify Developer if a Submittal is inaccurate or complete within ten Business Days of receipt of such Submittal.

6.3.3 NCDOT Discretionary Approvals

If the Submittal is one where the CA Documents indicate approval or consent, or acceptance is required from NCDOT in its sole discretion, absolute discretion, unfettered discretion or good faith discretion, then, except as provided otherwise in Section 3.3.3, NCDOT's lack of approval, determination, decision or other action within the applicable time period under Section 6.3.2 shall be deemed disapproval. If approval is subject to the sole, absolute or unfettered discretion of NCDOT, then its decision shall be final, binding and not subject to dispute resolution, and such decision shall not constitute an NCDOT-Caused Delay, NCDOT Change, Relief Event, Compensation Event or other basis for any Claim. If the approval is subject to the good faith discretion of NCDOT, then its decision shall be binding unless it is finally determined through the Dispute Resolution Procedures that such decision was arbitrary or capricious. For avoidance of doubt, if the decision is determined through the Dispute Resolution Procedures to be arbitrary and capricious and causes delay, it will constitute and be treated as an NCDOT-Caused Delay.

6.3.4 Other NCDOT Approvals

6.3.4.1 Whenever the CA Documents indicate that a Submittal or other matter is subject to NCDOT's approval or consent and no particular standard therefor is stated, then the standard shall be reasonableness.

6.3.4.2 If the reasonableness standard applies to NCDOT's right of approval of or consent to a Submittal, and NCDOT delivers no approval, consent, determination, decision or other action within the applicable time period under Section 6.3.2, then Developer may deliver to NCDOT a written notice stating the date within which NCDOT was to have decided or acted and that if NCDOT does not decide or act within five Business Days after receipt of the notice, delay from and after lapse of the applicable time period under Section 6.3.2 may constitute NCDOT-Caused Delay for which Developer may be entitled to issue a Relief Event Notice and Compensation Event Notice under Sections 13.1 and 13.2.

6.3.5 NCDOT Review and Comment

Whenever the CA Documents indicate that a Submittal or other matter is subject to NCDOT's review, comment, review and comment, disapproval or similar action not entailing a prior approval and NCDOT delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 6.3.2, then Developer may proceed thereafter at its election and risk, without prejudice to NCDOT's rights to later object or disapprove in accordance with Section 6.3.7.1. No such failure or delay by NCDOT in delivering comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 6.3.2 shall constitute a Relief Event, Compensation Event or other basis for any Claim. When used in the CA Documents, the phrase "completion of the review and comment process" or similar terminology means either (a) NCDOT has reviewed, provided comments, exceptions, objections, rejections or disapprovals, and all the same have been resolved, or (b) the applicable time period has passed without NCDOT providing any comments, exceptions, objections, rejections or disapprovals.

6.3.6 Submittals Not Subject to Prior Review, Comment or Approval

Whenever the CA Documents indicate that Developer is to deliver a Submittal to NCDOT but express no requirement for NCDOT review, comment, disapproval, prior approval or other NCDOT action, then Developer is under no obligation to provide NCDOT any period of time to review the Submittal or obtain approval of it before proceeding with further Work, and NCDOT shall have the right, but is not obligated, to at any time review, comment on, take exception to, object to, reject or disapprove the Submittal in accordance with Section 6.3.7.1. No failure or delay by NCDOT in delivering comments, exceptions, objections, rejections or disapprovals with respect to the Submittal shall constitute a Relief Event, Compensation Event or other basis for any Claim.

6.3.7 Resolution of NCDOT Comments and Objections

6.3.7.1 If the Submittal is one not governed by Section 6.3.3, NCDOT's exception, objection, rejection or disapproval shall be deemed reasonable, valid and binding if based on any of the following grounds:

(a) The Submittal or subject provision thereof fails to comply with any applicable covenant, condition, requirement, term or provision of the CA Documents or Developer Management Plan and component plans thereunder;

(b) The Submittal or subject provision thereof is not to a standard equal to or better than the requirements of Good Industry Practice;

(c) Developer has not provided all content or information required in respect of the Submittal or subject provisions thereof, provided that NCDOT assumes no duty, obligation or liability regarding completeness or correctness of any Submittal, including a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval;

(d) Adoption of the Submittal or subject provision thereof, or of any proposed course of action thereunder, would result in a conflict with or violation of any Law or Governmental Approval;

(e) In the case of a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, it proposes commitments, requirements, actions, terms or conditions that are not arrangements that NCDOT offers or accepts for addressing similar circumstances affecting its own projects; or

(f) Other grounds to be deemed reasonable, valid and binding as agreed to by the Parties or through the Dispute Resolution Procedures.

6.3.7.2 Developer shall respond to all of NCDOT's comments and objections to a Submittal and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments and objections, in accordance with the review processes set forth in this Section 6.3. Developer acknowledges that NCDOT may provide comments and objections which reflect concerns regarding interpretation or preferences of the commenter or which otherwise do not directly relate to grounds set forth in Section 6.3.7.1. Developer agrees to undertake reasonable efforts to accommodate or otherwise resolve any such comments or objections through the review processes described in this Section 6.3. However, if the Submittal is not governed by Section 6.3.3, this Section 6.3.7.2 shall in no way be deemed to obligate Developer to incorporate any comments or resolve objections that are not on any of the grounds set forth in Section 6.3.7.1 and would result in a delay to a Critical Path on the Project Schedule, or in an increase in Developer's costs or a decrease in Toll Revenues, except pursuant to an NCDOT Change. If, however, Developer does not accommodate or otherwise resolve any comment or objection, Developer shall deliver to NCDOT within a reasonable time period, not to exceed 21 days after receipt of NCDOT's comments or objections, a written explanation why modifications based on such comment or objection are not required. The explanation shall include the facts, analyses and reasons that support the conclusion.

6.3.7.3 The foregoing shall in no way be deemed to obligate Developer to incorporate any comments or resolve objections that would render the Submittal erroneous, defective or less than Good Industry Practice, except pursuant to an NCDOT Change.

6.3.7.4 If Developer fails to notify NCDOT within the time required under Section 6.3.7.2, NCDOT may deliver to Developer a written notice stating the date by which Developer was to have addressed NCDOT's comments and that if Developer does not address those comments within five Business Days after receipt of this notice, then that failure shall constitute Developer's agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes without right to a Relief Event, Compensation Event or other Claim, including any Claim that NCDOT assumes design or other liability.

6.3.7.5 After NCDOT receives Developer's explanation as to why the modifications are not required as provided in Sections 6.3.7.2, 6.3.7.3 and 6.3.7.4, the Parties shall attempt in good faith to resolve the dispute. If they are unable to resolve the dispute, it shall be resolved according to the Dispute Resolution Procedures except (a) as provided otherwise in Section 6.3.3, and (b) if NCDOT elects to issue a Directive Letter pursuant to Section 14.3 with respect to the disputed matter, Developer shall proceed in accordance with NCDOT's directive while retaining any Claim as to the disputed matter.

6.3.8 Limitations on Developer's Right to Rely

6.3.8.1 No review, comment, objection, rejection, approval, disapproval, acceptance, certification (including certificates of Substantial Completion, Final Acceptance and Final Completion), concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight by or on behalf of NCDOT, and no lack thereof by NCDOT, except as otherwise set forth in Section 7.10, shall constitute acceptance of materials or Work that is not in accordance with the CA Documents or waiver of any legal or equitable right under the CA Documents, at law or in equity. NCDOT shall be entitled to remedies for unapproved Deviations and Nonconforming Work and to identify additional Work which must be done to bring the Work and Project into compliance with requirements of the CA Documents, regardless of whether previous review, comment, objection, rejection, approval, disapproval, acceptance, certification, concurrence, monitoring, testing, inspection, spot checking, auditing or other oversight were conducted or given by NCDOT. Regardless of any such activity or failure to conduct any such activity by NCDOT, Developer at all times shall have an independent duty and obligation to fulfill the requirements of the CA Documents. Developer agrees and acknowledges that any such activity or failure to conduct any such activity by NCDOT:

(a) Is solely for the benefit and protection of NCDOT;

(b) Does not relieve Developer of its responsibility for the selection and the competent performance of all Developer-Related Entities;

(c) Does not create or impose upon NCDOT any duty or obligation toward Developer to cause it to fulfill the requirements of the CA Documents;

(d) Shall not be deemed or construed as any kind of warranty, express or implied, by NCDOT;

(e) May not be relied upon by Developer or used as evidence in determining whether Developer has fulfilled the requirements of the CA Documents; and

(f) May not be asserted by Developer against NCDOT as a defense, legal or equitable, to, or as a waiver of or relief from, Developer's obligation to fulfill the requirements of the CA Documents.

6.3.8.2 Developer shall not be relieved or entitled to reduction of its obligations to perform the Work in accordance with the CA Documents, or any of its other liabilities and obligations, including its indemnity obligations, as the result of any activity identified in Section 6.3.8.1 or failure to conduct any such activity by NCDOT. Such activity by NCDOT shall not relieve Developer from liability for, and responsibility to cure and correct, any unapproved Deviations, Nonconforming Work or Developer Defaults.

6.3.8.3 To the maximum extent permitted by Law, Developer hereby releases and discharges NCDOT from any and all duty and obligation to cause Developer's Work or the Project to satisfy the standards and requirements of the CA Documents.

6.3.8.4 Notwithstanding the provisions of Sections 6.3.8.1, 6.3.8.2 and 6.3.8.3:

(a) Developer shall be entitled to rely on written approvals and

acceptances from NCDOT for the limited purpose of establishing that the approval or acceptance occurred;

(b) Developer shall be entitled to rely on specific written Deviations NCDOT approves under Sections 7.2.2 or 8.2.2.8;

(c) Developer shall be entitled to rely on the certificates of Substantial Completion, Final Acceptance and Final Completion from NCDOT for the limited purpose of establishing that Substantial Completion, Final Acceptance and Final Completion, as applicable, have occurred, and the respective dates thereof;

(d) NCDOT is not relieved from any liability under applicable Law arising out of a material misrepresentation under any written statement NCDOT delivers to Developer; and

(e) NCDOT is not relieved from performance of its express responsibilities under the CA Documents in accordance with all standards applicable thereto.

ARTICLE 7. DEVELOPMENT OF THE PROJECT

7.1 General Obligations of Developer

Developer, in addition to performing all other requirements of the CA Documents, shall:

7.1.1 Furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts which the CA Documents expressly specify will be undertaken by NCDOT or other Persons) to construct the Project and operate and maintain it during construction, so as to achieve Substantial Completion of all Project Sections, Final Acceptance and Final Completion by the applicable Milestone Schedule Deadlines;

7.1.2 Comply with, and require that all Contractors comply with, all requirements of all applicable Laws;

7.1.3 Cooperate with NCDOT and Governmental Entities with jurisdiction in all matters relating to the Work, including Design Work, Construction Work and O&M Work, including their review, inspection and oversight of the design, construction, operations and maintenance of the Project and the design and construction of the Utility Adjustments, as contemplated herein and by applicable Law; and

7.1.4 Use commercially reasonable efforts to mitigate delay to design and construction of the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating, or redeploying Developer's and its Contractors' forces to other work, as appropriate.

7.2 Performance, Design and Construction Standards; Deviations

7.2.1 Developer shall furnish all aspects of the Design Work and all Design Documents, including design required in connection with the operation and maintenance of the Project, Renewal Work to be performed by Developer or Upgrades, and shall construct the Project and Utility Adjustments included in the Construction Work as designed, free from

Defects, and in accordance with (a) Good Industry Practice, (b) the requirements, terms and conditions set forth in the CA Documents, (c) the Milestone Schedule and Project Schedule, (d) all Laws, (e) the requirements, terms and conditions set forth in all Governmental Approvals, and (f) the approved Developer Management Plan and all component plans prepared or to be prepared thereunder, in each case, taking into account the Project Right of Way limits and other constraints affecting the Project. Developer also shall construct the Project and the Utility Adjustments included in the Construction Work in accordance with (i) the Final Design Documents and (ii) the Construction Documents, in each case, taking into account the Existing Right of Way and Proposed Right of Way limits and other constraints affecting the Project.

7.2.2 Developer may apply for NCDOT approval of Deviations from applicable Technical Provisions or Technical Documents regarding design or construction. All applications shall be in writing. Where Developer requests a Deviation as part of the submittal of a component plan of the Developer Management Plan, Developer shall specifically identify and label the proposed Deviation. NCDOT shall consider, in its sole discretion, but have no obligation to approve, any such application. Developer shall bear the burden of persuading NCDOT that the Deviation sought constitutes sound and safe engineering consistent with Good Industry Practice and achieves or substantially achieves NCDOT's applicable Safety Standards and criteria. No Deviation shall be deemed approved or be effective unless and until stated in writing signed by NCDOT's Authorized Representative. NCDOT's affirmative written approval of a component plan of the Developer Management Plan shall constitute (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless NCDOT takes exception to any such Deviation and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein, except to the extent such Deviations were previously approved. NCDOT's lack of issuance of a written Deviation within 14 days after Developer applies therefor in writing shall be deemed a disapproval of such application. NCDOT's denial or disapproval of a requested Deviation shall be final and not subject to the Dispute Resolution Procedures. NCDOT may elect to process the application as a Change Request under Section 14.2 rather than as an application for a Deviation.

7.2.3 Developer acknowledges that, prior to the Effective Date, it had the opportunity to identify any provisions of the Technical Provisions or Technical Documents that are erroneous or create a potentially unsafe condition, and the opportunity and duty to notify NCDOT in writing of such fact and of the changes to the provision that Developer believed were the minimum necessary to render it correct and safe. If it is reasonable or necessary to adopt changes to the Technical Provisions or Technical Documents after the Effective Date to make the provisions correct and safe, such changes shall not be grounds for a Relief Event, Compensation Event or other Claim, unless (a) Developer neither knew nor had reason to know prior to the Effective Date that the provision was erroneous or created a potentially unsafe condition or (b) Developer knew of, and reported to NCDOT, the erroneous or potentially unsafe provision prior to the Effective Date and NCDOT did not adopt reasonable and necessary changes. If Developer commences or continues any Design Work or Construction Work affected by such a change after the need for the change was discovered or suspected, or should have been discovered or suspected through the exercise of reasonable care, Developer shall bear any additional costs associated with redoing the Work already performed. Inconsistent or conflicting provisions of the CA Documents shall not be treated as erroneous provisions under this Section 7.2.3, but instead shall be governed by Section 1.2.

7.2.4 References in the Technical Provisions or Technical Documents to manuals or other publications governing the Design Work or Construction Work prior to the latest Substantial Completion Date shall mean the most recent editions in effect 60 days prior to the

Technical Proposal Due Date, unless expressly provided otherwise. Any changes to such Technical Provisions and Technical Documents, including Safety Standards, to be implemented prior to Substantial Completion of all Project Sections respecting Design Work or Construction Work shall be subject to the Change Order process for an NCDOT Change in accordance with Article 14. Safety Compliance changes shall be in accordance with Section 12.3.

7.2.5 The Parties anticipate that, from time to time**,** NCDOT will adopt, through revisions to existing manuals and publications or new manuals and publications, changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards and/or issuance of memoranda, relating to Design Work and Construction Work of general application to Comparable Controlled Access Highways that are or become tolled or the subject of concession or public-private partnership agreements. NCDOT shall have the right to add such changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, to Book 3 by notice to Developer, whereupon they shall constitute amendments, and become part, of the Technical Documents. If such changed, added or replacement Technical Documents or Safety Standards encompass matters that are addressed in the Technical Provisions or Technical Documents, they may, upon inclusion in Book 3, replace and supersede inconsistent provisions of the Technical Provisions and Technical Documents to the extent designated by NCDOT, in its sole discretion. NCDOT will identify the superseded provisions in its notice to Developer. Notwithstanding the foregoing, except as may be required by an NCDOT Change and except as provided otherwise in Section 7.2.6 with respect to a Change in Law and Section 7.4.3 with respect to Adjustment Standards, if NCDOT adopts the changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including changed, added or replacement Safety Standards, prior to Substantial Completion of a Project Section, Developer shall not be obligated to (but may) incorporate the same into its design and construction of such Project Section prior to Substantial Completion of such Project Section.

7.2.6 New or revised statutes or regulations adopted after 60 days prior to the Technical Proposal Due Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, related to the Design Work and Construction Work, as well as revisions to Technical Provisions and Technical Documents to conform to such new or revised statutes or regulations, shall be treated as Changes in Law (including, to the extent expressly provided under other sections of this Agreement, Discriminatory Change in Law) rather than an NCDOT Change; however, the foregoing shall not apply to new or revised statutes or regulations that also cause or constitute changes in Adjustment Standards.

7.3 Project Right of Way Acquisition

7.3.1 Developer shall undertake and complete the acquisition of Proposed Right of Way and Additional Properties in accordance with this Section 7.3 and Section 7 of the Technical Provisions. Subject to Section 7.3.3 of this Agreement and Section 7 of the Technical Provisions, NCDOT shall exercise its condemnation powers to acquire Proposed Right of Way and Additional Properties; provided, however, that Developer has demonstrated due diligence in efforts to acquire such properties prior to requesting NCDOT to exercise its condemnation powers and has complied with the requirements therefor set forth in the Technical Provisions (including Section 7 of the Technical Provisions). Subject to Section 7.3.3, as a condition precedent to NCDOT exercising its condemnation powers and the Office of the Attorney General initiating any condemnation proceedings with respect to a parcel, Developer shall pay

to NCDOT the estimated amount of the payment to be made to the property owner of such parcel for the acquisition thereof (including any relocation costs). Such costs with respect to the acquisition of Proposed Right of Way shall be eligible for treatment as ROW Acquisition Costs and subject to the provisions of Section 7.3.3.

7.3.2 All Proposed Right of Way and Additional Properties shall be acquired in the name of NCDOT. Developer shall undertake and complete the acquisition of Proposed Right of Way and Additional Properties in accordance with Section 7 of the Technical Provisions and all applicable Laws relating to such acquisition, including the Uniform Act.

7.3.3 Developer shall be responsible for all costs and expenses associated with acquiring all Proposed Right of Way required under the CA Documents, Additional Properties and Project Specific Locations, except that responsibility for ROW Acquisition Costs shall be allocated between the Parties as follows:

7.3.3.1 **ROW Acquisition Costs Overage**. To the extent that the ROW Acquisition Costs are in excess of the ROW Acquisition Baseline Costs, the overage shall be allocated between the Parties as follows:

(a) Developer and NCDOT each shall be responsible for 50% of the ROW Acquisition Costs in excess of 100% but less than or equal to 120% of the ROW Acquisition Baseline Costs; and

(b) NCDOT shall be responsible for 100% of the ROW Acquisition Costs in excess of 120% of the ROW Acquisition Baseline Costs.

7.3.3.2 **ROW Acquisition Costs Savings**. To the extent that the ROW Acquisition Costs are less than the ROW Acquisition Baseline Costs, the savings shall be allocated between the Parties as follows

(a) Developer shall pay NCDOT 50% of those savings that amount to greater than zero and up to 20% of the ROW Acquisition Baseline Costs; and

(b) Developer shall pay NCDOT 100% of the savings that exceeds 20% of the ROW Acquisition Baseline Costs.

The overage and savings of the ROW Acquisition Costs shall be paid in accordance with Part H of Exhibit 5.

7.3.4 All reports, studies, specifications, estimates and other documentation related to Project Right of Way acquired by Developer shall become and remain the sole property of NCDOT upon completion of the acquisition process.

7.3.5 NCDOT shall not be obligated to exercise its power of eminent domain in connection with Developer's acquisition of any temporary right or interest, including Project Specific Locations, and NCDOT shall have no obligations or responsibilities with respect to the acquisition, maintenance or disposition of such temporary rights or interests. Developer's Right of Way Acquisition Manager shall at all times follow the standard of care and conduct and be subject to the Laws applicable to a licensed real estate broker in the State, and shall at all times conform with applicable Law (including, to the extent applicable, the Uniform Act) in all

communications and interactions with the owners or occupants of the real property in which Developer seeks to obtain any right or interest.

7.4 Utility Adjustments

7.4.1 General

Developer shall coordinate, monitor, perform, and otherwise undertake the necessary efforts required under the CA Documents to enable Utility Owners performing Utility Adjustment Work to timely perform such work, in coordination with the Work, and in compliance with the standards of design and construction and other applicable requirements specified in the CA Documents. In coordinating, monitoring and performing its obligations with respect to the Utility Adjustment Work, Developer and the Project Schedule shall take into account the time required for any approvals that may be required from the North Carolina Board of Transportation related to a Utility Adjustment. Except as otherwise provided in this Section 7.4 and Article 13, Developer shall continue to be the responsible party to NCDOT for timely performance of all Utility Adjustment Work. Except for Utility Adjustments performed under a Developer Utility Adjustment Agreement, NCDOT is responsible for entering into Utility Agreements with Utility Owners affected by a Utility Adjustment.

7.4.2 Utility Agreements

7.4.2.1 Developer is responsible for preparing and negotiating Utility Agreements, for NCDOT's execution, using the applicable Utility Agreement forms specified in Section 6 of the Technical Provisions. Developer shall not have the authority to enter into and execute any Utility Agreement on NCDOT's behalf.

7.4.2.2 NCDOT agrees to cooperate as reasonably requested by Developer in preparing and negotiating Utility Agreements, including attendance at negotiation sessions, providing information reasonably requested by Developer that is within NCDOT's possession, and review of Utility Agreements; provided, however, that such cooperation shall not require NCDOT: (a) to take a position which it believes to be inconsistent with the CA Documents, the Developer Management Plan (and component plans thereunder), applicable Law or Governmental Approval(s), the requirements of Good Industry Practice, or NCDOT policy, or (b) to refrain from taking a position concurring with that of a Utility Owner, if NCDOT believes that position to be correct.

7.4.2.3 Developer shall comply with and timely perform all obligations imposed on Developer by any Utility Agreement and applicable Law, including compliance with Buy America requirements.

7.4.3 Requirements

Each Utility Adjustment shall comply with the Adjustment Standards in effect as of the 60 days prior to the Technical Proposal Due Date, together with any subsequent amendments and additions to those standards that (a) are necessary to conform to applicable Law or (b) are adopted by the Utility Owner and affect the Utility Adjustment pursuant to the applicable Utility Agreement(s) or Developer Utility Adjustment Agreement. In addition, all Utility Adjustment Work shall comply with all applicable Laws (including Buy America requirements), the applicable Utility Agreement(s) or Developer Utility Adjustment Agreement, and all other requirements specified in Section 6 of the Technical Provisions.

7.4.4 Utility Adjustment Costs

7.4.4.1 A Utility Owner without a Compensable Interest shall be responsible for all costs and expenses relating to a Utility Adjustment. For a Utility Owner with a Compensable Interest, the responsibility for costs and expenses relating to a Utility Adjustment shall be as set forth in Sections 7.4.4.2 and 7.4.4.3.

7.4.4.2 Any Utility Owner claiming the existence of a Compensable Interest with respect to a Utility Adjustment shall be responsible and have the burden of establishing such claim to NCDOT's satisfaction. Evidence of a Compensable Interest shall be documented by affidavits, recorded easements, NCDOT agreements or other documentation deemed acceptable by NCDOT. In the event that it is determined by NCDOT that a Utility Owner has a Compensable Interest with respect to a Utility Adjustment, the following provisions shall apply:

(a) Except with respect to a Utility Enhancement, if the Utility Owner agrees to have Developer perform the Utility Adjustment Work, NCDOT shall enter into the applicable Utility Agreement with such Utility Owner and NCDOT shall reimburse Developer for the documented and substantiated direct and indirect costs of performing the Utility Adjustment Work in compliance with this Section 7.4.4. Prior to performing the Utility Adjustment Work, Developer shall submit to NCDOT a detailed Utility Adjustment estimate pursuant to Section 6 of the Technical Provisions. If NCDOT does not agree that such estimate provides an accurate estimate of the costs of performing such Utility Adjustment Work, NCDOT may require the Utility Owner to obtain competitive bids to perform such Utility Adjustment Work in compliance with this Section 7.4.4. Payment for Utility Adjustment Work performed by Developer shall be made in accordance with Part J of Exhibit 5.

(b) Except with respect to a Utility Enhancement, if the Utility Owner elects to perform the Utility Adjustment Work itself or through a separate contractor, NCDOT shall enter into the applicable Utility Agreement with such Utility Owner, and NCDOT shall be responsible for reimbursing such Utility Owner for the documented and substantiated direct costs of performing the Utility Adjustment Work in compliance with this Section 7.4.4.

Notwithstanding anything to the contrary in this Section 7.4.4, Developer shall be solely responsible for all costs and expenses for Utility Adjustments to the extent that such Utility Adjustments are to accommodate Developer's means or methods of construction or operations.

7.4.4.3 For each Utility Adjustment, Developer shall compensate a Utility Owner with a Compensable Interest for the fair market value of each Existing Utility Property Interest relinquished, to the extent NCDOT would be required to do so by applicable Law and provided that NCDOT has approved the Utility Owner's claim. Developer is advised that, in some cases, reimbursement of such Utility Owner's acquisition costs for a Replacement Utility Property Interest will satisfy this requirement. Developer shall pay any compensation due to such Utility Owner and all costs and expenses associated therewith; provided that compensation due to such Utility Owner for a Replacement Utility Property Interest shall be allocated between the Parties in accordance with Section 7.3.3. Unless directed otherwise by NCDOT, Developer shall carry out the same duties for acquisition of an Existing Utility Property Interest, as are assigned to Developer in the Technical Provisions for the acquisition of any other necessary real property interests.

7.4.4.4 Developer is solely responsible for collecting directly from the Utility Owner any amounts owed to Developer by the Utility Owner for Utility Adjustments performed under a Developer Utility Adjustment Agreement or for a Utility Enhancement. If for any reason Developer is unable to collect any such amounts due to Developer from any Utility Owner, then (a) NCDOT shall have no liability for such amounts, (b) Developer shall have no right to collect such amounts from NCDOT or to offset such amounts against amounts otherwise owing from Developer to NCDOT, and (c) Developer shall have no right to stop Work or to exercise any other remedies against NCDOT on account of such failure to pay.

7.4.4.5 If any local Governmental Entity is participating in any portion of Utility Adjustment costs, Developer shall coordinate with NCDOT and such local Governmental Entity regarding accounting for and approval of those costs.

7.4.4.6 Developer shall maintain a complete set of records for the costs of each Utility Adjustment incurred by Developer, in a format compatible with the estimate attached to the applicable Utility Agreement and in sufficient detail for analysis. The totals for each cost category shall be shown in such manner as to permit comparison with the categories stated on the estimate. Developer also shall indicate in these records the source of funds used for each Utility Adjustment. All records with respect to Utility Adjustment Work shall comply with the record keeping and audit requirements of the CA Documents.

7.4.4.7 Unless NCDOT advises Developer otherwise, the Project will be subject to, and Developer shall comply with, 23 CFR Part 645 Subpart A (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and FHWA's associated policies.

7.4.4.8 Developer shall not be entitled to any additional compensation or time extension hereunder as the result of any Utility Adjustment, whether performed by Developer or by the Utility Owner, except as provided in this Section 7.4.4 and Article 13.

7.4.5 Utility Adjustments and Utility Enhancements Performed by Developer

7.4.5.1 If a Utility Owner agrees to have Developer design and/or construct a Utility Adjustment, Developer shall perform such work under a separate contract directly with the Utility Owner ("Developer Utility Adjustment Agreement") pursuant to this Section 7.4.5. Such Developer Utility Adjustment Agreement shall be submitted to NCDOT for its review and comment prior to performing the Utility Adjustment Work, and Developer shall perform such Utility Adjustment Work in accordance with the requirements of the CA Documents, including the following:

(a) All such Developer Utility Adjustment Agreements shall specify Developer's responsibility, if any, for maintenance of the Utility Work during construction, responsibility for inspection of the Utility Work by the CEI Firm and Utility Owner and procedures for acceptance of the Utility Work by the Utility Owner.

(b) Developer shall include the following warranty language in the Developer Utility Adjustment Agreements:

> "_____(Developer) guarantees materials and workmanship against latent and patent defects arising from defective design, faulty materials, faulty workmanship or negligence for a period of twelve months following the date NCDOT issues its written

certificate of Substantial Completion for the project section where the utility work governed by this agreement is located. _____(Developer) shall replace such defective materials and workmanship without cost to NCDOT and _____(Utility Owner). _____(Developer) will not be responsible for damage due to faulty design by non-Developer Related Entities, normal wear and tear, for negligence on the part of NCDOT, and/or for use in excess of the design. Where items of material carry a manufacturer's guarantee for any period in excess of twelve months, then the manufacturer's guarantee shall apply for that particular piece of material."

7.4.5.2 Developer shall be responsible for addressing any requests by Utility Owners that Developer design and/or construct a Betterment or Utility Owner Project (collectively, "Utility Enhancement"). However, Developer may, but is not obligated to, design and construct such Utility Enhancements. Any Betterment performed as part of a Utility Adjustment, whether by Developer or by the Utility Owner, shall be subject to the prior approval of NCDOT and subject to the same standards and requirements as if it were a necessary Utility Adjustment. Upon approval by NCDOT, such Betterment shall be addressed in the appropriate Utility Agreement. Developer shall perform any work on a Utility Owner Project only by separate contract outside of the Work, and such work shall be subject to Section 7.4.1. Under no circumstances shall Developer proceed with any Utility Enhancement that is incompatible with the Project or is not in compliance with applicable Law, the Governmental Approvals or the CA Documents, including the Milestone Schedule Deadlines and the Project Schedule.

7.4.5.3 If a conflict occurs between the terms of any agreement between Developer and a Utility Owner and those of the CA Documents, the terms that establish the higher quality, manner or method of performing Utility Adjustment Work or Utility Enhancement (as applicable), establish better Good Industry Practice, or use more stringent standards shall prevail between Developer and NCDOT. If the foregoing criteria are not relevant to the terms at issue, then the CA Documents shall prevail, unless expressly provided otherwise in the CA Documents. Under no circumstances will Developer be entitled to any additional compensation or time extension under the CA Documents as the result of any Utility Adjustment Work performed under a Developer Utility Adjustment Agreement or a Utility Enhancement.

7.4.6 Failure of Utility Owners to Cooperate

7.4.6.1 Developer shall use diligent efforts to obtain the cooperation of each Utility Owner as necessary for Utility Adjustments. Developer shall notify NCDOT immediately if (a) Developer reasonably believes for any other reason that any Utility Owner would not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the Project, (b) Developer becomes aware that any Utility Owner is not cooperating in a timely manner to provide agreed-upon work or approvals, or (c) any other dispute arises between Developer and a Utility Owner with respect to the Project, despite Developer's diligent efforts to obtain such Utility Owner's cooperation or otherwise resolve such dispute. Such notice may include a request that NCDOT assist in resolving the dispute or in otherwise obtaining the Utility Owner's timely cooperation. Developer shall provide NCDOT with such information as NCDOT requests regarding the Utility Owner's failure to cooperate and the effect of any resulting delay on the Project Schedule. After delivering to NCDOT any notice or request for assistance, Developer shall continue to use diligent efforts to pursue the Utility Owner's cooperation.

7.4.6.2 If Developer requests NCDOT's assistance pursuant to Section 7.4.6.1, Developer shall provide evidence reasonably satisfactory to NCDOT that (a) the subject Utility Adjustment is necessary, (b) Developer made a timely input in the Project Schedule reflecting, in its inception, a reasonable amount of time for completion of the Utility Adjustment, (c) Developer's position in the dispute is otherwise reasonable, (d) Developer made timely initial contact with the Utility Owner to obtain the Utility Owner's cooperation, (e) Developer met its commitments as set forth in the Project Schedule, and (f) the Utility Owner is not cooperating (the foregoing clauses (a) through (f) are referred to herein as the "conditions to assistance"). Following NCDOT's receipt of satisfactory evidence, NCDOT shall take such reasonable steps as may be requested by Developer to obtain the cooperation of the Utility Owner or resolve the dispute. Any assistance NCDOT provides shall not relieve Developer of its sole responsibility for satisfactory compliance with its obligations relating to Utility Adjustment Work, except as otherwise expressly set forth herein. In no event shall NCDOT's obligations pursuant to this Section 7.4.6.2 require NCDOT: (i) to take a position which it believes to be inconsistent with the CA Documents, the Developer Management Plan (and component plans thereunder), applicable Law or Governmental Approval(s), the requirements of Good Industry Practice, or NCDOT policy, or (ii) to refrain from taking a position concurring with that of a Utility Owner, if NCDOT believes that position to be correct.

7.4.6.3 If NCDOT objects in writing to a request for assistance pursuant to Section 7.4.6.1, based on Developer's failure to satisfy one or more of the conditions to assistance described in Sections 7.4.6.2(a), (b) and (c), then Developer shall take such action as is appropriate to satisfy the condition(s) and shall then have the right to submit another request for assistance on the same subject matter. If NCDOT objects in writing to a request for assistance pursuant to Section 7.4.6.1 based on Developer's failure to satisfy one or both of the conditions to assistance described in Sections 7.4.6.2(d), (e), and (f), then Developer shall take such action as Developer deems advisable during the next 10 days to obtain the Utility Owner's cooperation and shall then have the right to submit another request for assistance on the same subject matter. Notwithstanding the foregoing, no resubmittal will be accepted unless all NCDOT objections have been addressed in accordance with the preceding two sentences. This process shall be followed until Developer succeeds in obtaining the Utility Owner's cooperation or in otherwise resolving the dispute or until NCDOT determines, based on evidence Developer presents, that the conditions to assistance have been satisfied. Developer shall have the right to submit the question of the reasonableness of NCDOT's determination for resolution according to the Dispute Resolution Procedures.

7.4.7 Applications for Encroachment Agreements

7.4.7.1 It is anticipated that during the Term, from time to time Utility Owners will request NCDOT to enter into Encroachment Agreements to install new Utilities that would cross or longitudinally occupy the Project Right of Way, or to modify, upgrade, repair, relocate or expand existing Utilities within the Project Right of Way for reasons other than accommodation of the Project. The provisions of Sections 7.4.7.2 through 7.4.7.4 shall apply to all such permit applications, except as otherwise provided in Section 7.4.7.5. Except as otherwise provided in Section 7.4.7.5 and this Agreement, no accommodation of new Utilities or of modifications, upgrades, repairs, relocations or expansions of existing Utilities pursuant hereto shall entitle Developer to additional compensation or time extension hereunder.

7.4.7.2 For all such Encroachment Agreement requests pending as of or submitted after the Effective Date, Developer shall furnish the most recent Project design information and/or as-built plans, as applicable, to the applicants, and shall assist each

applicant with information regarding the location of other proposed and existing Utilities. Developer shall keep records of its costs related to new Utilities separate from other costs.

7.4.7.3 Developer shall assist NCDOT in deciding whether to execute an Encroachment Agreement described in Section 7.4.7.2. Within 14 days of receiving a request for an Encroachment Agreement from a Utility Owner, Developer shall analyze each request and provide to NCDOT a written recommendation (together with supporting analysis) as to whether the permit should be approved, denied, or approved subject to conditions. Developer's analysis shall include specific references to any of its obligations under the CA Documents that it believes may be impacted by the installation of new Utilities. Developer shall limit the grounds for its recommendation to the grounds (as NCDOT communicates to Developer from time to time) on which NCDOT is legally entitled to approve or deny the request or to impose conditions on its approval.

7.4.7.4 If Developer and NCDOT disagree on the response to a request for an Encroachment Agreement described in Section 7.4.7.2, such disagreement shall be resolved according to the Dispute Resolution Procedures; provided that if Developer recommends against issuance of the permit and NCDOT determines issuance is appropriate or required, then:

(a) NCDOT's determination shall control unless it is arbitrary and capricious; and

(b) If NCDOT elects to delay execution of an Encroachment Agreement pending final resolution of the Dispute, Developer's indemnities under Sections 16.5.1.2 and 16.5.1.4 shall be deemed to apply with respect to any applicant claim of wrongful delay or denial.

If it is determined through Dispute Resolution Procedures that NCDOT's determination was arbitrary and capricious, then such determination shall qualify as a NCDOT Change.

7.4.7.5 Where NCDOT is pursuing a Business Opportunity involving a Utility in the Project Right of Way, (a) NCDOT shall have the right to enter into an Encroachment Agreements, in its sole discretion, (b) any decision by NCDOT to enter into an Encroachment Agreement shall be final, binding and not subject to the Dispute Resolution Procedures (except that that any remedy provided under this Agreement with respect to such decision shall be subject to the Dispute Resolution Procedures), (c) Sections 7.4.7.2 through 7.4.7.4 shall not apply, and (d) instead, Section 11.2 shall apply.

7.5 Schedule, Notices to Proceed and Milestone Schedule Deadlines

7.5.1 As a material consideration for entering into this Agreement, Developer hereby commits, and NCDOT is relying upon Developer's commitment, to develop the Project in accordance with the milestones and time periods set forth in this Agreement, the Technical Provisions, and the Milestone Schedule, subject only to delays caused by Relief Events specifically provided hereunder. Except where this Agreement expressly provides for extension of time due to a Relief Event, the time limitations set forth in the CA Documents, including the Milestone Schedule, for Developer's performance of its covenants, conditions and obligations are of the essence.

7.5.2 Authorization allowing Developer to proceed with Work hereunder shall be provided through NCDOT's issuance of NTP1 and NTP2.

7.5.2.1 NCDOT anticipates issuing NTP1 upon satisfaction of the following conditions:

(a) Submittal by Developer to NCDOT and approval by NCDOT of the NTP1 Schedule of Values;

(b) The NTP1 Work Payment Bond meeting the requirements of Section 16.2.4 has been obtained and is in full force and effect, and Developer has delivered to NCDOT either the original of the NTP1 Work Payment Bond or, if the original has been delivered to the Collateral Agent, a certified and conformed copy of the original; and

(c) All Insurance Policies required under Section 16.1 for the Design Work have been obtained and are in full force and effect, and Developer has delivered to NCDOT evidence of coverage required under this Agreement from the relevant issuers of such Insurance Policies.

NCDOT shall not issue NTP1 prior to satisfaction of each condition set forth in this Section 7.5.2.1. Each such condition may be waived in writing by NCDOT, in its sole discretion. Issuance of NTP1 authorizes Developer to commence and perform the NTP1 Work, subject to Section 7.6.1. NTP1 authorizes Developer to enter the Project Right of Way that NCDOT owns, after coordinating with NCDOT, in order to perform NTP1 Work.

7.5.2.2 NCDOT anticipates issuing NTP2 upon satisfaction of the following conditions:

(a) Approval by NCDOT of the NTP1 Work (excluding approval of item 12 and item 13 of Section 1.5 of the Technical Provisions);

(b) Each Payment Bond and Performance Security meeting the requirements of Section 16.2.1 and relating to NTP2 has been obtained and is in full force and effect, and Developer has delivered to NCDOT either the original of each Payment Bond and Performance Security or, if the original has been delivered to the Collateral Agent, a certified and conformed copy of each original including the related documentation required under Section 16.2;

(c) Developer has delivered to NCDOT a duplicate original of the guarantees in favor of NCDOT, if any, required under Section 16.4;

(d) All Insurance Policies required under Section 16.1 for construction have been obtained and are in full force and effect, and Developer has delivered to NCDOT evidence of coverage required under this Agreement from the relevant issuers of such Insurance Policies;

(e) All Insurance Policies required under this Agreement for the performance of the O&M During Construction have been obtained and Developer has delivered to NCDOT verification thereof as required under Section 16.1.2.4;

(f) Approval by NCDOT of the DBE Performance Plan; and

(g) Occurrence of Financial Close

NCDOT shall not issue NTP2 prior to satisfaction of each condition set forth in this Section 7.5.2.2. Each such condition may be waived in writing by NCDOT, in its sole discretion. Issuance of NTP2 authorizes Developer to perform all other Work and activities pertaining to the Project. Developer shall satisfy all conditions to issuance of NTP2 under this Section 7.5.2.2 by the NTP2 Conditions Deadline.

7.5.3 Developer shall achieve Substantial Completion, Final Acceptance and Final Completion in accordance with the procedures, requirements and conditions set forth in Section 7.7, and shall achieve Substantial Completion of all Project Sections, Final Acceptance and Final Completion by the applicable Milestone Schedule Deadline.

7.5.4 Developer hereby represents and warrants that the Preliminary Project Baseline Schedule attached to this Agreement as Exhibit 8 meets the requirements set forth in the Technical Provisions and is consistent with the Milestone Schedule. Developer shall use the Preliminary Project Baseline Schedule as the basis for developing the Project Baseline Schedule. In no event shall Developer be entitled to a time extension for Relief Events, unless such Relief Event results in a delay in achieving a Milestone Schedule Deadline.

7.5.5 All Float contained in the Project Schedule, as shown in the initial Project Baseline Schedule or as generated thereafter, shall be considered a shared resource among NCDOT, Developer and the Design-Build Contractor available to any or all such parties as needed to absorb delay caused by Relief Events or other events, and achieve Milestone Schedule Deadlines. All Float shall be shown as such in the Project Schedule on each affected schedule path. NCDOT shall have the right to examine the identification of (or failure to identify) Float on the Project Schedule in determining whether to approve the Project Schedule. Once identified, Developer shall monitor and account for Float in accordance with critical path methodology.

7.6 Conditions to Commencement of Design Work and Construction Work

7.6.1 Conditions to Commencement of Design Work

Except to the extent expressly permitted in writing by NCDOT, Developer shall not commence or permit or suffer commencement of the Design Work identified in item 13 of Section 1.5 of the Technical Provisions of any portion of the Project until NCDOT issues NTP1 and all of the following conditions have been satisfied. Developer shall provide to NCDOT at least ten Business Days advance written notification of the date Developer determines that it will satisfy all of the conditions set forth in this Section 7.6.1.

7.6.1.1 Developer has developed and delivered to NCDOT and NCDOT has approved all component parts, plans and documentation of the Developer Management Plan respecting the Design Work, including, but not limited to, the Management & Staffing Plan, the Quality Management Plan, and the Document and Data Management Plan in accordance with Section 2.4 of the Technical Provisions;

7.6.1.2 Developer has developed and delivered to NCDOT and NCDOT has approved the Developer's Conceptual TMP in accordance with Section 22.1.1 and Section 22.1.5 of the Technical Provisions;

7.6.1.3 Developer has developed and delivered to NCDOT and NCDOT has approved the Project Baseline Schedule; and

7.6.1.4 Developer has satisfied any other requirements or conditions for commencing Design Work set forth in the Technical Provisions.

7.6.2 Conditions to Commencement of Construction Work

Except to the extent expressly permitted in writing by NCDOT, Developer shall not commence or permit or suffer commencement of the Construction Work of the applicable portion of the Project until NCDOT issues NTP2 and all of the following conditions have been satisfied. Developer shall provide to NCDOT at least 14 days advance written notification of the date Developer determines that it will satisfy all of the conditions set forth in this Section 7.6.2.

7.6.2.1 All Governmental Approvals necessary to begin Construction Work in the applicable portion of the Project have been obtained, and Developer has furnished to NCDOT fully executed copies of such Governmental Approvals required to be obtained by Developer under the CA Documents;

7.6.2.2 Good, marketable, unencumbered fee simple title or other property rights for the Proposed Right of Way or Additional Properties acquired by Developer and necessary for commencement of construction of the applicable portion of the Project and Utility Adjustments included in the Construction Work have been identified, conveyed to and recorded in favor of NCDOT, NCDOT has obtained possession thereof through eminent domain, or all necessary parties have validly executed and delivered a possession and use agreement therefor on terms reasonably acceptable to NCDOT;

7.6.2.3 Developer has satisfied for the applicable portion of the Project all applicable pre-construction requirements required to be performed by Developer under the CA Documents that are contained in the NEPA Approval and other Governmental Approvals;

7.6.2.4 Developer has delivered to NCDOT all Submittals relating to the Construction Work for the applicable portion of the Project required by the Developer Management Plan or CA Documents, in the form and content required by the Developer Management Plan or CA Documents;

7.6.2.5 Developer demonstrates to NCDOT's reasonable satisfaction that Developer has completed training of operations and maintenance personnel, which demonstration shall consist of (a) delivery to NCDOT of a written certificate, in a form reasonably acceptable to NCDOT, executed by Developer that it and its Contractors are fully staffed with such trained personnel and are ready, willing and able to operate and maintain the Project in accordance with the terms and conditions of the CA Documents and Developer Management Plan pertaining to the performance of the O&M During Construction, (b) delivery to NCDOT of training records and course completion certificates issued to each of the subject personnel and (c) NCDOT's verification that the training program and number of trained personnel meet the standards in the Hazardous Material Management Plan and the Technical Provisions;

7.6.2.6 All component parts, plans and documentation of the Developer Management Plan required to be prepared, submitted and approved prior to performing the O&M During Construction have been so prepared, submitted and approved, including all

operations and maintenance plans, procedures, rules, schedules and manuals, and including manuals and procedures respecting safety, security, Emergency response and Incident response, as identified in the Developer Management Plan;

7.6.2.7 Developer has submitted, and NCDOT has approved, a Traffic Management Plan for the applicable portion of the Project in compliance with Section 22 of the Technical Provisions;

7.6.2.8 All Submittals required by the Developer Management Plan or CA Documents to be submitted to and approved by NCDOT prior to performing the O&M During Construction have been submitted to and approved by NCDOT, in the form and content required by the Developer Management Plan or CA Documents;

7.6.2.9 Developer has received, and paid all associated fees for, all applicable Governmental Approvals and other applicable third party approvals that are required to be obtained by Developer for the Construction Work, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval or other third party approvals;

7.6.2.10 All representations and warranties of Developer set forth in Section 15.1 shall be and remain true and correct in all material respects, and Developer has delivered to NCDOT a certificate certifying the same;

7.6.2.11 Developer has adopted written policies establishing ethical standards of conduct for all Developer-Related Entities, including Developer's supervisory and management personnel in dealing with (a) NCDOT and (b) employment relations, in accordance with Section 10.7.1; and

7.6.2.12 There exists no uncured Developer Default for which Developer has received written notice from NCDOT, unless, (a) with respect to a monetary default that Developer has disputed in writing, Developer is current in its deposit of funds into the NCDOT Claims Account in accordance with the Project Trust Agreement regarding the amount in dispute or (b) with respect to a non-monetary default, Developer has a right to cure and is diligently pursuing cure within the applicable cure period.

7.7 Substantial Completion, Punch List, Final Acceptance, Final Completion and Early Openings

7.7.1 Substantial Completion

7.7.1.1 NCDOT shall issue a written certificate of Substantial Completion at such time as Substantial Completion occurs for the applicable Project Section.

7.7.1.2 Substantial Completion of a Project Section shall occur upon satisfaction of the following conditions for the applicable Project Section in accordance with the CA Documents:

(a) All major safety features are installed and functional, such major safety features to include shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections, crash attenuators and fire safety systems;

(b) All required sign and highway lighting is installed and functional;

(c) All required signs and signals are installed and functional;

(d) The need for temporary traffic controls or for Lane Closures at any time has ceased (except for any then required for routine maintenance, and except for temporary Lane Closures during hours of low traffic volume in accordance with and as permitted by the Traffic Management Plan solely in order to complete Punch List items);

(e) All lanes of traffic (including ramps, interchanges, overpasses, underpasses, other crossings and frontage roads) set forth in the Design Documents are in their final configuration and available for normal and safe use and operation;

(f) The Electronic Toll Collection System is completed, has passed all demonstration, factory acceptance testing and on-site system operational testing in accordance with the Developer Management Plan and in accordance with Sections 24.6.1 of the Technical Provisions, including demonstration of interoperability with the CCH as provided in the CA Documents, and is ready for normal operation. As part of fulfilling such condition, Developer shall deliver to NCDOT all reports, data and documentation relating to such demonstration testing, and such testing shall demonstrate that the Electronic Toll Collection System meets the minimum threshold performance standards and requirements set forth in the Developer Management Plan, and the minimum interoperability performance standards set forth in the Technical Documents, for commencing normal, live use and operation. NCDOT and Developer recognize that such threshold performance standards and requirements may be at lower levels, consistent with Good Industry Practice, than the performance standards and requirements set forth in the Technical Provisions because of normal need for ramp-up and optimization of performance at the beginning of regular operations;

(g) The ITS and safety features for ITS components are installed and functional, ready for normal operation, comply with applicable Laws, and have passed factory acceptance testing and on-site system operational testing in accordance with the Developer Management Plan and in accordance with Section 21.6 of the Technical Provisions;

(h) Developer has otherwise completed the Construction Work in accordance with the CA Documents, Final Design Documents and Construction Documents, such that the Project Section is in a condition that it can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit, with a fully operable Electronic Toll Collection System meeting the Technical Provisions, subject only to Punch List items and other items of work that do not affect the ability to safely open for such normal use by the traveling public and for normal tolling operation;

(i) All component parts, plans and documentation of the Developer Management Plan required to be prepared, submitted and approved prior to Substantial Completion of the applicable Project Section have been so prepared, submitted and approved, including all operations and maintenance plans, procedures, rules, schedules and manuals, and including manuals and procedures respecting safety, security, Emergency response and Incident response, as identified in the Developer Management Plan;

(j) All Submittals required by the Developer Management Plan or CA Documents to be submitted to and approved by NCDOT prior to Substantial Completion of the applicable Project Section have been submitted to and approved by NCDOT, in the form and

content required by the Developer Management Plan or CA Documents, except with respect to the LOMR as set forth in Section 2.4.9.1.10 of the Technical Provisions;

(k) The ETCS Configuration Management Program is fully activated;

(l) Developer has received, and paid all associated fees for, all applicable Governmental Approvals and other third party approvals required to be obtained by Developer (except with respect to the LOMR as set forth in Section 2.4.9.1.10 of the Technical Provisions), and there exists no uncured material violation of the terms and conditions of any such Governmental Approval or other third party approvals;

(m) Developer, and, if applicable, NCDOT, have completed preparation of the Punch List in accordance with Section 7.7.2;

(n) All Insurance Policies required under this Agreement during the Operating Period have been obtained and Developer has delivered to NCDOT verification thereof as required under Section 16.1.2.4;

(o) All warranties secured in favor of NCDOT under Section 7.9 has been obtained and Developer has delivered the same to NCDOT;

(p) Any payment and performance security in favor of NCDOT required under Section 16.2 during the Operating Period has been obtained and Developer has delivered the same to NCDOT;

(q) Any other guaranty of payment or performance required pursuant to Section 16.4 for the performance of O&M After Construction has been delivered to NCDOT;

(r) Developer has made all deposits to the Intellectual Property Escrow(s) required at or prior to Substantial Completion for the applicable Project Section pursuant to Section 22.5; and

(s) There exists no uncured Developer Default that is the subject of a Warning Notice, unless (i) Substantial Completion for the applicable Project Section will effect its cure, (ii) with respect to a monetary default that Developer has disputed in writing, Developer is current in its deposit of funds into the NCDOT Claims Account in accordance with the Project Trust Agreement and has delivered to NCDOT any letter of credit required pursuant to Section 17.3.5.3(b) regarding the amount in dispute, or (iii) with respect to a non-monetary default, Developer has a right to cure and is diligently pursuing cure within the applicable cure period.

7.7.1.3 The Parties shall disregard the status of the landscape planting (except for vegetative ground covering) and aesthetic features that are integral to the landscape planting included in the Design Documents in determining whether Substantial Completion has occurred, except to the extent that its later completion will affect public safety or satisfaction of the criterion in Section 7.7.1.2(d).

7.7.1.4 Developer shall provide NCDOT with not less than 15 Business Days' prior written notification of the date Developer determines it will achieve Substantial Completion for a Project Section. During such notice period, Developer, NCDOT shall meet and confer and exchange information on a regular cooperative basis with the goal being

NCDOT's orderly, timely inspection and review of the Project Section and the applicable Final Design Documents and Construction Documents, and NCDOT's issuance of a written certificate of Substantial Completion for the applicable Project Section.

7.7.1.5 During the period specified in Section 7.7.1.4, NCDOT shall conduct an inspection of the Project and its components, a review of the applicable Final Design Documents and Construction Documents and such other investigation as may be necessary to evaluate whether Substantial Completion for the Project Section is achieved.

7.7.1.6 Developer shall provide NCDOT a second written notification when Developer determines it has achieved Substantial Completion for a Project Section. Within five Business Days after expiration of the period specified in Section 7.7.1.4, NCDOT's receipt of the second notification, NCDOT shall either (a) issue the written certificate of Substantial Completion for the applicable Project Section or (b) notify Developer in writing setting forth, as applicable, why the Project has not reached Substantial Completion for the applicable Project Section. If NCDOT provides notice under clause (b) of this Section 7.7.1.6, and Developer does not dispute NCDOT's assessment, then the processes set forth in Section 7.7.1 shall be repeated until (i) NCDOT issues a certificate authorizing Substantial Completion or (ii) the Parties' disagreement as to whether one or more criteria for Substantial Completion have been met is referred to, and resolved according to, the Dispute Resolution Procedures.

7.7.2 Punch List

7.7.2.1 The Developer Management Plan shall establish procedures and schedules for preparing a Punch List for each Project Section and completing Punch List work. Such procedures and schedules shall conform to the provisions of this Section 7.7.2.

7.7.2.2 The schedule for preparation of the Punch List either shall be consistent and coordinated with the inspections regarding Substantial Completion, or shall follow such inspections.

7.7.2.3 Developer shall prepare and maintain the Punch List. Developer shall deliver to NCDOT not less than five Business Days' prior written notice stating the date when Developer will commence Punch List field inspections and Punch List preparation for a Project Section. NCDOT may, but is not obligated to, participate in the development of the Punch List. Each participant shall have the right to add items to the Punch List and none shall remove any item added by any other without such other's express permission. If Developer objects to the addition of an item by NCDOT, the item shall be noted as included under protest, and if the Parties thereafter are unable to reconcile the protest, the Dispute shall be resolved according to the Dispute Resolution Procedures. Developer shall deliver to NCDOT a true and complete copy of the Punch List, and each modification thereto, as soon as it is prepared.

7.7.2.4 Developer shall immediately commence work on the Punch List items and diligently prosecute such work to completion, consistent with the CA Documents, within the time period to be set forth in the Developer Management Plan and in any case by the applicable Final Acceptance Deadline for a Project Section.

7.7.3 [RESERVED]

7.7.4 Final Acceptance

7.7.4.1 Promptly after achieving Substantial Completion for a Project Section, Developer shall perform all remaining Construction Work for such Project Section, including completion of all Punch List items for the Project Section, all landscape planting, and aesthetic features that are integral to the landscape planting. Developer shall prepare and adhere to a timetable for landscape planting and aesthetic features that are integral to the landscape planting, taking into account weather conditions necessary for successful planting and growth, which timetable shall in any event provide for landscape planting to be planted within 12 months after Substantial Completion of the applicable Project Section. Further, Developer shall comply with the landscaping establishment requirements set forth in the Technical Provisions.

7.7.4.2 NCDOT shall issue a written certificate of Final Acceptance for a Project Section at such time as all of the following conditions have occurred for such Project Section:

(a) All requirements for Substantial Completion for the applicable Project Section have been satisfied;

(b) All Punch List items have been completed and delivered in accordance with the CA Documents;

(c) All aesthetic and landscaping features have been completed in accordance with Section 15 of the Technical Provisions and the plans and designs prepared in accordance therewith;

(d) NCDOT has approved Developer's as-built schedule as required by Section 2.2.2.5 of the Technical Provisions;

(e) All Utility Adjustment Work and other work that Developer is obligated to perform for or on behalf of third parties has been accepted by such third parties pursuant to the CA Documents, and Developer has paid for all work by third parties that Developer is obligated to pay for, other than disputed amounts;

(f) Developer has made all deposits to the Intellectual Property Escrow(s) required at or prior to Final Acceptance for the applicable Project Section pursuant to Section 22.5;

(g) Developer has paid in full all liquidated damages that are owing to NCDOT pursuant to this Agreement and are not in Dispute, and has provided to NCDOT reasonable security for the full amount of liquidated damages that may then be the subject of an unresolved Dispute to the extent required under Section 17.3.5.3(b) (on the condition that any previous security created to guarantee any payments for liquidated damages that have been paid is released);

(h) If any Governmental Entity with jurisdiction requires any form of certification of design, engineering or construction with respect to the applicable Project Section or any portion thereof, including any certifications from the engineer of record and architect of

record for the applicable Project Section, Developer has caused such certificates to be executed and delivered and has concurrently issued identical certificates to NCDOT;

(i) Developer demonstrates that Developer has acquired and properly stored, or arranged for immediate availability, a reasonable inventory of all spare parts, spare components, spare equipment, special tools, materials, expendables and consumables necessary for operation and maintenance of the applicable Project Section during the Operating Period identified in the O&M Plan and in accordance with the Technical Provisions;

(j) The ITS has passed all observation periods in accordance with Section 21.6.3 of the Technical Provisions; and

(k) There exist no uncured Developer Defaults that are the subject of a Warning Notice, or with the giving of notice or passage of time, or both, could become the subject of a Warning Notice (except any Developer Default for which Final Acceptance for the applicable Project Section will effect its cure).

7.7.4.3 Developer shall provide NCDOT with written notification when Developer determines it has achieved Final Acceptance for the applicable Project Section. During the 15-Business Day period following receipt of such notification, Developer and NCDOT shall meet and confer and exchange information on a regular cooperative basis with the goal being NCDOT's orderly, timely inspection and review of the Project and the Record Drawings, and NCDOT's issuance of a written certificate of Final Acceptance for the applicable Project Section.

7.7.4.4 During such 15-Business Day period, NCDOT shall conduct an inspection of the Punch List items, a review of the Record Drawings and such other investigation as may be necessary to evaluate whether the conditions to Final Acceptance for the applicable Project Section are satisfied.

7.7.4.5 Within five Business Days after expiration of such 15-Business Day period, NCDOT shall either (a) issue a certificate of Final Acceptance for the applicable Project Section or (b) notify Developer in writing setting forth, as applicable, why Final Acceptance for the applicable Project Section has not been achieved. If NCDOT provides notice under clause (b) of this Section 7.7.4.5, and Developer does not dispute NCDOT's assessment, then the processes set forth in Section 7.7.4 shall be repeated until (i) NCDOT issues a certificate authorizing Final Acceptance or (ii) the Parties' disagreement as to whether one or more criteria for Final Acceptance have been met is referred to, and resolved according to, the Dispute Resolution Procedures.

7.7.5 Final Completion

7.7.5.1 NCDOT shall issue a written certificate of Final Completion at such time as all of the following conditions have occurred:

(a) All Project Sections have achieved Final Acceptance;

(b) Developer has satisfied the requirements of the ETCS Demonstration Period in accordance with Section 24.6 of the Technical Provisions;

(c) All Work required by Off-Site Reclamation Procedures, including

the required closeout inspection, has been completed in in accordance with the CA Documents;

(d) NCDOT has received a complete set of the As-Built Record Plans in form and content required by Section 2.9.5.1 of the Technical Provisions; and

(e) There exist no uncured Developer Defaults that are the subject of a Warning Notice, or with the giving of notice or passage of time, or both, could become the subject of a Warning Notice (except any Developer Default for which Final Completion will effect its cure).

7.7.5.2 Developer shall provide NCDOT with written notification when Developer determines it has achieved Final Completion. During the 15-Business Day period following receipt of such notification, Developer and NCDOT shall meet and confer and exchange information on a regular cooperative basis with the goal being NCDOT's orderly, timely inspection and review of the Project, and NCDOT's issuance of a written certificate of Final Completion.

7.7.5.3 During such 15-Business Day period, NCDOT shall conduct an inspection of the Project and such other review of reports, data and documentation as may be necessary to evaluate whether the conditions to Final Completion are satisfied.

7.7.5.4 Within five Business Days after expiration of such 15-Business Day period, NCDOT shall either (a) issue a certificate of Final Completion or (b) notify Developer in writing setting forth, as applicable, why Final Completion has not been achieved. If NCDOT provides notice under clause (b) of this Section 7.7.5.4, and Developer does not dispute NCDOT's assessment, then the processes set forth in Section 7.7.5 shall be repeated until (i) NCDOT issues a certificate authorizing Final Completion or (ii) the Parties' disagreement as to whether one or more criteria for Final Completion have been met is referred to, and resolved according to, the Dispute Resolution Procedures.

7.7.6 Early Opening and Operation

7.7.6.1 Unless required by NCDOT under Article 107-16 of the Standard Specifications, Developer shall not open to traffic a Project Section, or portion thereof, prior to Substantial Completion of the applicable Project Section. Developer shall not undertake any early openings until all Insurance Policies required under the CA Documents in connection with operations and maintenance are in effect. Developer shall undertake early openings consistent with and in accordance with the NCDOT-approved Traffic Management Plan.

7.7.6.2 No early openings shall relieve Developer from satisfying the requirements for Substantial Completion, Final Acceptance or Final Completion, or determining whether Milestone Schedule Deadlines are satisfied. Further, Developer shall not be entitled to any Claim for additional compensation or time extension due to any early openings.

7.7.7 Aesthetics and Landscaping

7.7.7.1 Developer shall perform all Work related to the aesthetics and landscaping required for the Project in accordance with Section 15 of the Technical Provisions. Developer shall be solely responsible for all costs and expenses with respect to such Work, except that the costs of implementing the Aesthetics and Landscaping Allowance Scope shall be subject to the Aesthetics and Landscaping Allowance.

7.7.7.2 Payments related to costs less than or in excess of the Aesthetics and Landscaping Allowance shall be in accordance with Part I of Exhibit 5.

7.8 Hazardous Materials Management

7.8.1 Without limiting NCDOT's roles and responsibilities and except as provided otherwise in this Section 7.8, Developer shall investigate, oversee, manage, treat, handle, store, remediate, remove, transport (where applicable), deliver and dispose of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan and all applicable provisions of the CA Documents. If during the course of the Work, Developer encounters Hazardous Materials or a Recognized Environmental Condition in connection with the Project, Project Right of Way or Work, in an amount, type, quality or location that would require reporting or notification to any Governmental Entity or other Person or taking any preventive or remedial action, in each case under applicable Law, Governmental Approvals, the Hazardous Materials Management Plan or any applicable provision of the CA Documents, Developer shall (a) promptly notify NCDOT in writing and advise NCDOT of any obligation to notify State or federal Governmental Entities under applicable Law; (b) notify any such State or federal Governmental Entities; and (c) take reasonable steps, including design modifications and/or construction techniques, to avoid excavation or dewatering in areas with Hazardous Materials or Recognized Environmental Conditions. If, during the Term, NCDOT discovers Hazardous Materials or a Recognized Environmental Condition in connection with the Project, Project Right of Way or Work, NCDOT shall promptly notify Developer in writing of such fact. Where excavation or dewatering of Hazardous Materials or Recognized Environmental Conditions is unavoidable or is required by applicable Law, Developer shall utilize appropriately trained Contractors or personnel to conduct the Hazardous Materials Management activities.

7.8.2 With respect to Pre-existing Hazardous Materials or NCDOT Releases of Hazardous Materials, NCDOT may elect, at its sole cost and expense, to perform the remedial action itself or through a separate contractor retained by NCDOT by providing written notice to Developer. If NCDOT elects to perform such remedial action, Developer shall comply with all directives issued by NCDOT and coordinate performance of the affected portion of the Work with such remedial action.

7.8.3 The right of one entity to step in to carry out remedial action obligations of the other entity are as follows:

7.8.3.1 If, within a reasonable time after discovery of Hazardous Materials or a Recognized Environmental Condition, Developer has not undertaken remedial action required of it under Section 7.8.1, NCDOT may provide Developer with written notice that it will undertake the remedial action itself. NCDOT thereafter may undertake action to remediate in compliance with a remediation plan approved by applicable Governmental Entities and in compliance with applicable Laws. Except with respect to Pre-existing Hazardous Materials, Releases of Hazardous Materials by third parties other than a Developer-Related Entity and NCDOT Releases of Hazardous Materials, Developer shall reimburse to NCDOT on a current basis the reasonable costs, including NCDOT Recoverable Costs, NCDOT incurs in carrying out such remediation plan.

7.8.3.2 If there occurs any Release of Hazardous Materials in, on or under a Project Section during the course of NCDOT's operation and maintenance thereof pursuant to Section 8.1.1, then NCDOT, at its own expense, shall investigate, oversee,

manage, treat, handle, store, remediate, remove, transport (where applicable), deliver and dispose of such Hazardous Materials in accordance with applicable Law and Governmental Approvals. If, within a reasonable time after discovery of Hazardous Materials or a Recognized Environmental Condition, NCDOT has not undertaken remedial action required of it under this Section 7.8.3.2, Developer may provide NCDOT with written notice that it will undertake the remedial action itself. Developer thereafter may undertake action to remediate in compliance with a remediation plan approved by applicable Governmental Entities and in compliance with applicable Laws. NCDOT shall reimburse to Developer on a current basis the reasonable costs Developer incurs in carrying out such remediation plan in accordance with Section 7.8.5.

7.8.3.3 Notwithstanding the foregoing, if either Party notifies the other that it desires to preserve claims against other potentially responsible parties, then the Party undertaking the remedial act shall take all commercially reasonable efforts to preserve such claims consistently with applicable Law, including State regulations and standards; and a reasonable period of time for Developer or NCDOT, as the case may be, to perform the remedial work shall include a sufficient period for Developer or NCDOT, as the case may be, to comply with applicable Law, including State regulations and standards.

7.8.4 Except as set forth in Section 7.8.5 and without limiting NCDOT's role or responsibilities set forth in Section 7.8.6, Developer shall not be entitled to any compensation due to increased costs or delays associated with the discovery, investigation, oversight, management, handling, storage, removal, remediation, transport (where applicable), treatment or disposal of Hazardous Materials, including contaminated groundwater, encountered in construction of the Project or Utility Adjustments, except to the extent such event constitutes a Relief Event or Compensation Event.

7.8.5 NCDOT shall compensate Developer for Developer's reasonable, out-of-pocket costs and expenses directly attributable to the investigation, oversight, management, treatment, handling, storage, remediation, removal, transport (where applicable), delivery and disposal of Pre-existing Hazardous Materials encountered by Developer (the "total chargeable Hazardous Materials costs"). Notwithstanding the foregoing, none of the following costs and expenses shall be reimbursable by NCDOT:

7.8.5.1 Costs and expenses, to the extent attributable to Developer Releases of Hazardous Materials;

7.8.5.2 Delay and disruption costs and expenses;

7.8.5.3 Costs and expenses that could be avoided by the exercise of commercially reasonable efforts to mitigate and reduce cost; and

7.8.5.4 Developer's administrative and overhead expenses arising out of or relating to Pre-existing Hazardous Materials.

Within 90 days following any month in which Developer encounters any Pre-existing Hazardous Materials, Developer shall deliver to NCDOT a written reconciliation, including all invoices, receipts and supporting documentation reasonably required by NCDOT, setting forth with particularity the total chargeable Hazardous Materials costs.

7.8.6 Pre-existing Hazardous Materials and Hazardous Materials from NCDOT Release(s) of Hazardous Material is subject to the following provisions:

7.8.6.1 As among Developer, Design-Build Contractor and NCDOT, NCDOT shall be considered the generator and arranger solely for Pre-existing Hazardous Materials and NCDOT Release(s) of Hazardous Material. Such assumption of generator and arranger status does not relieve Developer from its scope of responsibilities under Section 7.8.1. Whenever NCDOT has such arranger liability, Developer's Investigative Work Plan, Site Investigative Report and remediation plans shall be subject to the prior written approval of NCDOT.

7.8.6.2 NCDOT has exclusive decision-making authority regarding selection of the destination facility to which the Pre-existing Hazardous Materials or Hazardous Materials from NCDOT Release(s) of Hazardous Material will be transported and delivered.

7.8.7 Notwithstanding anything to the contrary in this Agreement, NCDOT shall have the liability under applicable federal and state environmental Laws with respect to generator and arranger liability due to Pre-existing Hazardous Materials and NCDOT Releases of Hazardous Materials. Further, NCDOT will be responsible for, as among NCDOT, Developer and Design-Build Contractor, all liability and responsibility (including all claims related thereto) relating to Pre-existing Hazardous Materials and NCDOT Releases of Hazardous Materials, whether such liability and/or responsibility is based on the theory of strict liability, negligence or any other theory of liability. Notwithstanding the above, in the event that it is judicially determined that any Developer-Related Entity has contributed to any liability or responsibility in respect of such Pre-existing Hazardous Materials or NCDOT Releases of Hazardous Materials, NCDOT shall not be responsible for the portion of any liability or responsibility determined judicially to be caused by any Developer-Related Entity. In addition, nothing herein shall be construed as limiting NCDOT's rights to seek contribution or payment from (or otherwise take action against) any Person that may be responsible (in whole or in part) in respect of any such liability or responsibility.

7.8.8 As among Developer, Design-Build Contractor and NCDOT, Developer shall be considered the generator and arranger and assume generator and arranger responsibility solely for Developer Releases of Hazardous Materials. The foregoing shall not preclude or limit any rights or remedies that Developer may have against any Governmental Entity or any other third parties, including prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Project Right of Way, excluding, however, NCDOT and its respective agents.

7.8.9 As between Developer and NCDOT, Developer's liability with respect to Hazardous Materials on the Project shall terminate under the CA Documents as of the termination of this Agreement, except with respect to Developer Releases of Hazardous Materials or any liability or responsibility in respect of Pre-existing Hazardous Materials or NCDOT Releases of Hazardous Materials determined judicially to be caused by any Developer-Related Entity.

7.8.10 With respect to a Release of Hazardous Materials by third parties other than a Developer-Related Entity within the Project Right of Way, NCDOT, at its own expense, shall investigate, oversee, manage, treat, handle, store, remediate, remove, transport (where applicable), deliver and dispose of such Hazardous Materials in accordance with Section 23.1.10.1 of the Technical Provisions. Nothing herein shall be construed as limiting NCDOT's rights to seek contribution or payment from (or otherwise take action against) any Person that may be responsible (in whole or in part) in respect of any such Release of Hazardous Materials.

7.9 Contractor Warranties

7.9.1 If and to the extent Developer obtains general or limited warranties from any Contractor in favor of Developer with respect to design, materials, workmanship, equipment, tools, supplies, software or services, Developer also shall cause such warranty to be expressly extended to NCDOT and any third parties for whom Work is being performed or equipment, tools, supplies or software is being supplied by such Contractor; provided that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to NCDOT using commercially reasonable efforts. NCDOT agrees to forebear from exercising remedies under any such warranty so long as Developer or a Lender is diligently pursuing remedies thereunder. To the extent that any Contractor warranty would be voided by reason of negligence by any Developer-Related Entity in incorporating material or equipment into the Work, Developer shall be responsible for correcting such defect.

7.9.2 Contractor warranties (if any) are in addition to all rights and remedies available under the CA Documents or applicable Law or in equity, and shall not limit Developer's liability or responsibility imposed by the CA Documents or applicable Law or in equity with respect to the Work, including liability for design Defects, latent construction Defects, strict liability, breach, negligence, willful misconduct or fraud.

7.9.3 Developer agrees to assign to NCDOT all rights, title, and interest in and to all causes of action Developer may have under Section 4 of the Clayton Act (15 USC § 15) or under comparable State Law, arising from purchases of goods, services or materials pursuant to this Agreement. This assignment as to an applicable Project Section shall be made and become effective automatically upon Substantial Completion for such Project Section without further acknowledgment by the Parties.

7.10 Nonconforming Work

7.10.1 In the event NCDOT determines that the Work is not within reasonably close conformity with the requirements of the CA Documents, but that reasonably acceptable Work has been furnished, NCDOT shall make a determination if the Work is to be accepted and remain in place. If NCDOT determines, in its sole discretion, that the Work is to be accepted, NCDOT shall have the authority to deduct amounts from any payments that are due and owing to Developer or invoice Developer such amounts as NCDOT, after consultation with Developer and acting reasonably, deems warranted based upon NCDOT's engineering judgment. In the event Developer disputes the amount of such deduction or invoice, such Dispute shall be subject to the Dispute Resolution Procedures.

7.10.2 In the event NCDOT determines that the Work is not in reasonably close conformity with the requirements of the CA Documents and have resulted in an inferior or unsatisfactory product, NCDOT may direct that the Nonconforming Work be removed and replaced or otherwise corrected by Developer at Developer's sole cost and expense.

7.10.3 For any Nonconforming Work, Developer may submit a request for a Deviation for NCDOT to accept such Nonconforming Work pursuant to Section 7.10.1. Such request shall describe the Nonconforming Work and issues related to structural integrity, material quality, Element geometry, aesthetics, and maintenability. As part of the request for a Deviation, Developer's Engineer of Record shall perform a technical assessment of the Nonconforming Work.

7.10.4 Nothing in this Section 7.10 shall limit NCDOT's other rights and remedies provided under the CA Documents with respect to Nonconforming Work.

7.11 Existing Assets

7.11.1 NCDOT hereby provides to Developer a limited warranty of the Existing Assets on the following terms and conditions:

7.11.1.1 NCDOT warrants that the Existing Assets shall be free of latent defects in design, materials, equipment and workmanship, as measured from the requirements, criteria, standards and specifications in the relevant contracts under which the Existing Assets were constructed. A defect shall be considered latent only if it is not known or disclosed to Developer as of the Technical Proposal Due Date and would not normally be discovered upon reasonable inspection and investigation in accordance with Good Industry Practice. This limited warranty does not apply to Work of design and construction performed by any Utility Owner on its own Utilities.

7.11.1.2 This limited warranty for Existing Assets within a Project Section shall expire one year after the Substantial Completion of the applicable Project Section.

7.11.1.3 This limited warranty is the sole warranty from NCDOT of the Existing Assets, and all other warranties, express or implied, are hereby disclaimed, including any warranty of suitability or fitness for purpose.

7.11.1.4 NCDOT's liability under this limited warranty is limited to the direct cost (a) to correct latent defects covered by this warranty and (b) to correct physical loss or harm to the Project resulting from such latent defects, but only to the extent such loss or harm is not insured and not required to be insured under this Agreement (herein, "resulting uninsured physical loss"). Except as otherwise provided in this Agreement, NCDOT shall have no other obligation or liability to Developer arising out of or relating to latent defects in the Existing Assets, including for loss of Toll Revenues and for third party damage, harm, injury, loss, cost or expense.

7.11.1.5 NCDOT shall have no liability under this limited warranty unless it receives from Developer, prior to the expiration date of the warranty, written notice asserting a warranty claim and setting forth the nature and location of the latent defect in reasonable detail.

7.11.1.6 If NCDOT receives any such written notice prior to the expiration date of this limited warranty, then, within 30 days of receipt, NCDOT shall, in coordination and consultation with Developer, correct such latent defect and resulting uninsured physical loss; provided, however, that: (a) in case of an emergency or threat to safety requiring immediate corrective action, NCDOT shall implement such action as it deems necessary and shall notify Developer in writing of the urgency of such action or (b) if such latent defect is of such a nature that the defect cannot with diligence be corrected within 30 days and NCDOT has commenced meaningful steps to correct such defect immediately after receiving written notice from Developer, NCDOT shall have such additional period of time as is reasonably necessary to diligently correct such defect. NCDOT shall prepare and furnish to Developer, with its recommendation for corrective action, data and reports undertaken by NCDOT and applicable to any correction required, including revision and updating of all affected documentation. Where resulting uninsured physical loss consists only of the cost of corrective work under a deductible

or self-insured retention, NCDOT may elect to pay such cost to Developer in lieu of performing the corrective work itself.

7.11.1.7 All work, supplies and parts furnished to correct the latent defect and resulting uninsured physical loss, and any services performed, shall comply with all applicable NCDOT standards.

7.11.1.8 In correcting latent defects and resulting uninsured physical loss under this warranty, NCDOT shall take reasonable actions to coordinate and schedule activities to avoid material interference with operation of the Project.

7.11.2 During the Construction Period, Developer shall perform Design Work and Construction Work on Existing Assets so that the Existing Assets meet the requirements of the Technical Provisions, unless expressly stated otherwise in the Technical Provisions. Further, the requirements of the Technical Provisions shall apply to any Renewal Work performed by Developer on the Existing Assets, unless such requirements were not applicable to the Existing Assets during the Construction Period.

7.12 Developer Post-Construction Warranty for Certain Work

7.12.1 The provisions of this Section 7.12 shall only apply to those portions of the Work that are turned over to NCDOT or third parties prior to or upon Final Acceptance for operation and maintenance for the duration of the Term.

7.12.2 Developer shall guarantee materials and workmanship against latent and patent defects arising from defect design, faulty materials, faulty workmanship or negligence for a period of 12 months following the date of Final Acceptance of the Work and shall replace such defective materials and workmanship without cost to NCDOT or third parties who own such Work. Developer will not be responsible for damage due to normal wear and tear, for negligence on the part of NCDOT or such third parties, and/or for use in excess of the design.

7.12.3 Where items of equipment or material carry a manufacturer's guarantee for any period in excess of 12 months, then the manufacturer's guarantee shall apply for that particular piece of equipment or material. NCDOT's first remedy shall be through the manufacturer, although Developer shall be responsible for invoking the warranted repair work with the manufacturer. Developer's responsibility shall be limited to the term of the manufacturer's guarantee. NCDOT shall be afforded the same warranty as provided by the manufacturer.

7.12.4 Appropriate provisions of the Payment Bond and Performance Security shall cover this guarantee for the Project. In addition, failure on the part of the responsible Developer-Related Entity to perform guarantee work within the terms of this Section 7.12 shall be just cause to remove the responsible Developer-Related Entity from NCDOT's corresponding pre-qualified list. Such Developer-Related Entity will be removed for a minimum of 6 months and will be reinstated only after all work has been corrected and such Developer-Related Entity requests reinstatement in writing.

7.12.5 To ensure uniform application statewide, NCDOT's Division Engineer will forward details regarding the circumstances surrounding any proposed guarantee repairs to NCDOT's Chief Engineer for review prior to the corrective Work being performed.

ARTICLE 8. OPERATIONS AND MAINTENANCE

8.1 Transition of Operations and Maintenance Responsibilities; NCDOT Retained Elements

8.1.1 NCDOT shall be responsible for operation and maintenance of the NCDOT Retained Elements until March 31, 2015. Commencing on March 31, 2015, Developer shall assume responsibility for the O&M Work for the Project in accordance with the CA Documents, including responsibility for O&M Work of NCDOT Retained Elements as set forth in Section 23 of the Technical Provisions.

8.1.2 Developer shall be responsible for O&M Work as set forth in Section 23 of the Technical Provisions until the end of the Term; provided, however, that commencing on the fifth year anniversary of the Operating Period, NCDOT may, on an annual basis and at its sole discretion, elect to terminate Developer's O&M Work responsibilities related to the Annual O&M Payment Scope. If NCDOT elects to terminate Developer's O&M Work responsibilities related to the Annual O&M Payment Scope, NCDOT shall provide no less than 120 days advance written notice to Developer prior to the start of the next annual anniversary of the Operating Period and NCDOT shall perform the Annual O&M Payment Scope in accordance with the standards applicable to operations and maintenance work on Comparable Controlled Access Highways owned and operated by NCDOT. Upon termination, Developer shall not be entitled to receive any further Annual O&M Payments.

8.1.3 Subject to Section 8.1.4, NCDOT shall be responsible, at NCDOT's cost and expense, for Renewal Work of the NCDOT Retained Elements in accordance with the procedures and requirements set forth in Section 23.1.7 of the Technical Provisions, and NCDOT shall perform such Renewal Work in accordance with the standards applicable to operations and maintenance work on Comparable Controlled Access Highways owned and operated by NCDOT. If NCDOT does not commence performance of the NCDOT Retained Work within the three-year period specified in Section 23.1.7 of the Technical Provisions, Developer shall be entitled to seek a NCDOT Change to recover the increased cost for performing Routine Maintenance and Planned Maintenance on the NCDOT Retained Elements after such three-year period has expired. After such three-year period has expired, for each year of the three-year period, the Compensation Amount for such NCDOT Change shall be calculated as the difference between the actual monthly cost averaged over the previous five years prior to the scheduled start date for the Renewal Work on the NCDOT Retained Elements for Routine Maintenance and Planned Maintenance performed on the NCDOT Retained Elements and the actual monthly cost incurred by Developer for Routine Maintenance and Planned Maintenance performed on the NCDOT Retained Elements. Developer shall document such costs as part of the monthly O&M Report. The foregoing Compensation Amount shall be Developer's sole remedy for such failure by NCDOT.

8.1.4 If NCDOT has performed the Renewal Work for the General Purpose Lanes pavement in accordance with Section 23.1.7.2 of the Technical Provisions and additional Renewal Work cycles are required on the General Purpose Lanes pavement before the end of the Term to meet either the minimum Performance Requirements in Table 23.2 of the Technical Provisions or the Handback Requirements in Table 23.3 of the Technical Provisions, as identified in the independent inspections required under the Technical Provisions, Developer shall be responsible for the performance and cost of such Work.

8.1.5 NCDOT shall reasonably cooperate and exercise reasonable efforts to avoid material interference and impacts to the Project in connection with NCDOT's activities with respect to the performance of Renewal Work of the NCDOT Retained Elements.

8.1.6 NCDOT may, at its sole discretion, elect to issue a Change Order to Developer for Developer to perform Renewal Work on any portion of the NCDOT Retained Elements. Such Change Order shall address, among other things, the schedule, cost, financing and payment of such Renewal Work and the extent to which the Performance Requirements apply to such Renewal Work performed by Developer on NCDOT Retained Elements.

8.1.7 The Parties shall carry out transition of operation and maintenance responsibilities in accordance with the Developer Management Plan and CA Documents.

8.2 Developer Obligations

8.2.1 General

The O&M Work performed by Developer shall be in accordance with (a) Good Industry Practice, as it evolves from time to time, (b) the requirements, terms and conditions set forth in the CA Documents (including the Technical Provisions and Technical Documents), as the same may change from time to time in accordance with the terms hereof, (c) all Laws, (d) the requirements, terms and conditions set forth in all Governmental Approvals, (e) the approved Developer Management Plan and all component parts, plans and documentation prepared or to be prepared thereunder, and (f) all other applicable safety, environmental and other requirements, taking into account the Project Right of Way limits and other constraints affecting the Project. Developer is responsible for keeping itself informed of current Good Industry Practice. In addition to performing all other requirements of the CA Documents, Developer shall cooperate with NCDOT and Governmental Entities with jurisdiction in all matters relating to the O&M Work, including their review, inspection and oversight of the operation and maintenance of the Project.

8.2.2 Performance, Operation and Maintenance Standards

8.2.2.1 NCDOT shall have the right to adopt at any time, and Developer acknowledges it must comply with all, changes and additions to, and replacements of, Technical Documents and Safety Standards relating to the O&M Work performed by Developer, whether of general application or Discriminatory. Section 13.2 sets forth Developer's rights with respect to (a) compensation regarding Discriminatory changes, and (b) additions to, and replacements of, such Technical Documents or Safety Standards. NCDOT shall provide Developer with prompt written notice of changes and additions to, and replacements of, such Technical Documents or Safety Standards. Without limiting the foregoing, the Parties anticipate that, from time to time after the Technical Proposal Due Date, NCDOT will adopt, through revisions to existing manuals and publications or new manuals and publications; issuance of memoranda; changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, relating to O&M Work of general application to Comparable Controlled Access Highways. NCDOT shall have the right to add such changed, added or replacement standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, to Book 3 by notice to Developer, whereupon they shall constitute amendments, and become part, of the Technical Documents. If such changed, added or replacement Technical Documents or Safety Standards encompass matters that are addressed

in the Technical Provisions or Technical Documents as of the Technical Proposal Due Date, they may, upon inclusion in Book 3, replace and supersede inconsistent provisions of the Technical Provisions and Technical Documents to the extent designated by NCDOT, in its sole discretion. NCDOT will identify the superseded provisions in its notice to Developer.

8.2.2.2 Except as set forth in Section 12.3 with respect to Safety Compliance Orders, if compliance with a non-Discriminatory changed, added or replacement Technical Document or non-Discriminatory Safety Standard relating to the O&M Work requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element or other component of the Project, Developer shall commence performance of the major repair, reconstruction, rehabilitation, restoration, renewal or replacement not later than the first to occur of (a) any deadline recommended or prescribed in the changed or added Technical Document or Safety Standard, (b) the date when Developer first performs or (if earlier) is first obligated to perform Renewal Work on such Element or other component, (c) the date when Developer next performs Renewal Work on such Element, and (d) the date NCDOT first applies the change, addition or replacement to other Comparable Controlled Access Highways that NCDOT manages or operates, as determined pursuant to Section 8.2.2.6. If, however, NCDOT adopts the changed, added or replacement Technical Document or Safety Standard prior to Substantial Completion of a Project Section, in the absence of an NCDOT Change, clauses (a) and (d) above shall not apply in determining when Developer must implement the changed, added or replacement Technical Document or Safety Standard with respect to the Project Section. Following commencement of any Work pursuant to this Section 8.2.2.2, Developer shall diligently prosecute the Work until completion, and in any event by any deadline for completion reasonably required by NCDOT for such non-Discriminatory change.

8.2.2.3 Except as set forth in Section 12.3 with respect to Safety Compliance Orders, if compliance with a non-Discriminatory changed, added or replacement Technical Document or non-Discriminatory changed, added or replacement Safety Standard relating to the O&M Work performed by Developer requires construction or installation of new improvements at, for or on the Project, Developer shall complete construction and installation of the new improvements according to the implementation period recommended or prescribed by such changed, added or replacement Technical Document or Safety Standard. If no such implementation period is recommended or prescribed, Developer shall submit to NCDOT for NCDOT's approval, within 90 days after adoption of such changed, added or replacement Technical Document or Safety Standard, a proposed schedule for completing the new improvements. Such approval shall not be unreasonably withheld as long as such schedule complies with the requirements of the CA Documents. The proposed schedule shall be reasonable and conform to Good Industry Practice, taking into account the scope, complexity and financial impacts of the work required. Any Dispute regarding the proposed schedule shall be resolved according to the Dispute Resolution Procedures. Developer shall diligently prosecute the Work until completion in accordance with the approved Project Schedule.

8.2.2.4 Developer shall be obligated to implement a Discriminatory changed, added or replacement Technical Document or Discriminatory changed, added or replacement Safety Standard related to the O&M Work performed by Developer only after NCDOT issues a Change Order or Directive Letter therefor pursuant to Article 14. If such changed, added or replacement Technical Document or Safety Standard relating to the O&M Work performed by Developer requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element or other component of the Project, or requires construction or installation of new improvements, Developer shall perform the major repair, reconstruction, rehabilitation, restoration, renewal or replacement or the new improvement work

according to the schedule therefor adopted in the Change Order for such work. If such changed, added or replacement Technical Document or Safety Standard requires implementation not entailing such work, Developer shall implement it from and after the date NCDOT issues the Change Order.

8.2.2.5 In the case of any other changed, added or replacement Technical Document or Safety Standard, Developer shall be obligated to comply from and after the date it becomes effective and Developer is notified or otherwise obtains knowledge of the change or addition. For the avoidance of doubt, Developer shall comply with all changes or additions to such Technical Documents that are in effect and noticed or known to Developer on or prior to the date Developer commences maintenance, routine repair or routine replacement of damaged, worn or obsolete Project components or materials.

8.2.2.6 For purposes of Section 8.2.2.2(c), a change, addition or replacement shall be deemed to have been first applied by NCDOT if and when NCDOT commences implementing actions on other Comparable Controlled Access Highways that NCDOT manages or operates. Developer shall not be entitled to delay commencement or completion of its work on grounds that NCDOT is delayed in commencing or completing implementing actions on Comparable Controlled Access Highways where the changed, added or replacement Technical Document or Safety Standard applies only upon the occurrence of a condition or circumstance that has not yet occurred in respect of a Comparable Controlled Access Highway that NCDOT manages or operates.

8.2.2.7 New or revised statutes or regulations adopted after 60 days prior to the Technical Proposal Due Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures, specifications and other provisions, including Safety Standards, relating to the O&M Work performed by Developer, as well as revisions to Technical Provisions and Technical Documents to conform to such new or revised statutes or regulations, shall be treated as Changes in Law (including, to the extent expressly provided under other sections of this Agreement, Discriminatory Changes in Law) rather than an NCDOT Change; provided, however, the foregoing shall not apply to new or revised statutes or regulations that also cause or constitute changes in Adjustment Standards.

8.2.2.8 Developer may apply for NCDOT approval of Deviations from applicable Technical Provisions or Technical Documents regarding the O&M Work performed by Developer. All applications shall be in writing. Where Developer requests a Deviation as part of the submittal of a component plan of the Developer Management Plan, Developer shall specifically identify and label the Deviation. NCDOT shall consider in its sole discretion, but have no obligation to approve, any such application, and Developer shall bear the burden of persuading NCDOT that the Deviation sought constitutes sound and safe practices consistent with Good Industry Practice and achieves or substantially achieves NCDOT's applicable Safety Standards and criteria. No Deviation shall be deemed approved or be effective unless and until stated in writing signed by NCDOT's Authorized Representative. NCDOT's affirmative written approval of a component plan of the Developer Management Plan shall constitute (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless NCDOT takes exception to any such Deviation and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein. NCDOT's lack of issuance of a written Deviation within ten Business Days after Developer applies therefor in writing shall be deemed a disapproval of such application. NCDOT's denial or disapproval of a requested Deviation shall be final and not subject to the Dispute Resolution Procedures. NCDOT may elect to process the

application as a Change Request under Section 14.2 rather than as an application for a Deviation.

8.2.3 Hazardous Materials Management

During the Operating Period, Developer shall investigate, oversee, manage, treat, handle, store, remediate, remove, transport (where applicable), deliver and dispose of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, pursuant to Section 7.8, and the provisions of Section 7.8 shall apply throughout the Operating Period.

8.2.4 Utility Accommodation

8.2.4.1 It is anticipated that during the course of the Operating Period, from time to time Utility Owners will request to enter into additional Encroachment Agreements to install new Utilities that would cross or longitudinally occupy the Project Right of Way, or to modify, repair, upgrade, relocate or expand existing Utilities within the Project Right of Way. In such circumstances, the provisions of Section 7.4.7 shall apply, including the application of Section 11.2 to those circumstances where NCDOT is pursuing a Business Opportunity involving a Utility in the Project Right of Way.

8.2.4.2 Throughout the Operating Period, Developer shall monitor Utilities and Utility Owners within the Project Right of Way for compliance with the applicable requirements of the CA Documents, and shall use diligent efforts to obtain the cooperation of each Utility Owner having Utilities within the Project Right of Way. If (a) Developer reasonably believes that any Utility Owner is not complying with the applicable requirements of the CA Documents or (b) any other dispute arises between Developer and a Utility Owner with respect to a Utility within the Project Right of Way, despite Developer having exercised its diligent efforts to obtain the Utility Owner's cooperation, Developer shall promptly notify NCDOT, and NCDOT and Developer shall work together in the manner described in Section 7.4.6; provided, however, that the "conditions to assistance" (as that term is used in Section 7.4.6) are that Developer shall provide evidence reasonably satisfactory to NCDOT that (i) Developer's position in the dispute is reasonable, (ii) Developer has made diligent efforts to obtain the Utility Owner's cooperation, and (iii) the Utility Owner is not cooperating. With respect to the Parties' rights and obligations described in Section 7.4.6.3, for purposes of this Section 8.2.4.2 the conditions to assistance described in clause (i) of the preceding sentence shall be treated in the same manner as those described in Sections 7.4.6.2(a), (b) and (c), and the conditions to assistance described in clauses (ii) and (iii) of the preceding sentence shall be treated in the same manner as those described in Sections 7.4.6.2(d) and (e).

8.2.5 Cost of Utility Services

Developer shall be responsible for the cost of Utility services for Elements installed by Developer as part of the Work. NCDOT shall remain responsible for the cost of Utility Services for the Existing Assets.

8.3 O&M Contracts

8.3.1 If Developer elects not to self-perform any aspect of the operations and maintenance of the Project, it shall enter into an O&M Contract for such O&M Work. Each O&M Contract will be a Principal Project Document.

8.3.2 Each O&M Contractor, if any, shall have the expertise, qualifications, experience, competence and skills to perform the O&M Work required by Developer and related obligations of Developer in accordance with this Agreement.

8.4 Oversight, Inspection and Testing

NCDOT's rights of oversight, inspection, testing and auditing with respect to the O&M Work performed by Developer are as set forth in the CA Documents. Developer shall carry out inspections in accordance with the Technical Provisions and the Developer Management Plan. Developer shall use the results of General Inspections to develop and update the Renewal Work Plan, to maintain asset condition and service levels, and to develop programs of maintenance and Renewal Work to minimize the effect of the O&M Work performed by Developer on Users.

8.5 Renewal Work

8.5.1 Developer shall diligently perform Renewal Work as and when necessary to comply with the Performance Requirements and in accordance with the CA Documents, including, when applicable, the Handback Requirements. Within the times required in the Technical Provisions, Developer shall prepare and submit to NCDOT for their review and comment Renewal Work Plans and Renewal Work Reports.

8.5.2 Developer shall submit a Renewal Work Plan pursuant to Section 23 of the Technical Provisions. The Renewal Work Plan shall estimate the Useful Life of each Element based on (a) Developer's reasonable expectations respecting the manner of use, levels of traffic, and wear and tear and (b) the assumption that, when subject to routine maintenance of a type which is normally included as an annually recurring cost in highway maintenance and repair budgets, the Element will comply throughout its Useful Life with each applicable Performance Requirement. Developer shall estimate the Residual Life of each Element within the Renewal Work Plan based on its Age and whether (i) the Element has performed in service in the manner and with the levels of traffic and wear and tear originally expected by Developer, (ii) Developer has performed the type of routine maintenance of the Element which is normally included as an annually recurring cost in highway maintenance and repair budgets, and (iii) the Element has complied throughout its Age with each applicable Performance Requirement. Developer shall use the Renewal Work Plan, as updated from time to time, as the principal guide for scheduling and performing Renewal Work.

8.5.3 In updating the Renewal Work Plan, Developer shall make revisions as reasonably indicated by experience and then-existing conditions respecting the Project, the factors described in Section 8.5.2, changes in estimated costs of Renewal Work to be performed by Developer, changes in technology, changes in Developer's planned means and methods of performing such Renewal Work, and other relevant factors. The updated Renewal Work Plan shall show the revisions, if any, to the prior Renewal Work Plan and include an explanation of reasons for revisions. If no revisions are proposed, Developer shall include an explanation of the reasons no revisions are necessary. During the period the Handback Requirements Reserve is in effect, the updated Renewal Work Plan also shall set forth, by Element, Developer's planned draws from the Handback Requirements Reserve during the forthcoming calendar year. At NCDOT's request, Developer and its O&M Contractor(s), if any, shall promptly meet and confer with NCDOT to review and discuss the original or updated Renewal Work Plan.

8.5.4 Within 30 days after receipt of the original and each updated or resubmitted Renewal Work Plan, NCDOT shall have the right to comment on, object to or disapprove the original or updated Renewal Work Plan or any elements thereof. In addition to the grounds for disapproval set forth in Section 6.3.7.1, objections and disapprovals NCDOT shall be based on whether the original or updated Renewal Work Plan and underlying assumptions are reasonable, realistic and consistent with Good Industry Practice, Project experience and condition, applicable Technical Provisions, Governmental Approvals and Laws.

8.5.5 Within 30 days after receiving written notice of comments, objections or disapprovals from NCDOT, Developer shall submit to NCDOT a revised original or updated Renewal Work Plan rectifying such matters and, for matters it disagrees with, a written notice setting forth those comments, objections or disapprovals that Developer disputes, which notice shall give details of Developer's grounds for dispute. If Developer fails to give such notice within such time period, it shall be deemed to have accepted the comments, objections and disapprovals and the original or updated Renewal Work Plan, as applicable, shall thereupon be revised to address such comments and rectify the basis of such objections or disapprovals. After timely delivery of any such notice, Developer and NCDOT shall endeavor in good faith to reach agreement as to the matters listed in the notice. If no agreement is reached as to any such matter within 30 days after Developer delivers its notice, either Party may refer the Dispute to the Disputes Resolution Procedures for determination.

8.5.6 Until resolution of any portion of the original or updated Renewal Work Plan that is in Dispute, the treatment of that portion in the immediately preceding Renewal Work Plan shall remain in effect and govern.

8.6 Electronic Toll Collection System

8.6.1 Commencing on the Substantial Completion Date of a Project Section and continuing throughout the Term, Developer shall provide an Electronic Toll Collection System and related services for the HOT Lanes for such Project Section in accordance with the requirements set forth in Section 24 of the Technical Provisions and Exhibit 18. Such Electronic Toll Collection System shall meet all applicable NCDOT interoperability and compatibility standards, requirements and protocols, including any pertaining to any clearinghouse system NCDOT participates in, implements or operates, to enable a customer to have a single transponder to pay for tolled travel on all State highways.

8.6.2 If NCDOT is a party to any agreement or memorandum of understanding with any other public agency or private party operating tolled highway facilities for interoperability with NCDOT's electronic toll collection system, then Developer's Electronic Toll Collection System also shall be interoperable with the electronic toll collection system and violation enforcement system and protocols utilized or to be utilized on such other highway facilities, to the extent such systems and protocols are in common with or substantially similar to NCDOT's. NCDOT will promptly provide to Developer a copy of any such agreement or memorandum of understanding. NCDOT shall keep Developer reasonably informed and seek Developer's comments regarding any changes to interoperability standards with respect to any such agreement or memorandum of understanding in accordance with this Section 8.6 and Exhibit 18.

8.6.3 If, prior to Substantial Completion of the applicable Project Section, NCDOT has in place interoperability and compatibility standards, requirements and protocols for electronic tolling, then Developer shall demonstrate or cause to be demonstrated that

compatibility standards, requirements and protocols for interoperability of its Electronic Toll Collection System are met prior to commencement of the toll operations in accordance with Exhibit 18 and Section 24 of the Technical Provisions.

8.7 User Privacy

8.7.1 Developer shall provide an Electronic Toll Collection System and procedures designed to maintain the toll account and travel records of Users as confidential information and in compliance with applicable Laws on notice of privacy practices; provided, however, that general consensus data may be required to be provided in order to comply with federal monitoring requirements.

8.7.2 Developer acknowledges that the data generated by, or accumulated or collected in connection with, operation of Developer's Electronic Toll Collection System or related toll collection and enforcement activities, including customer lists, customer identification numbers, customer contact information, customer account information and billing records and other customer specific information, including use and enforcement data, origin and destination information, system performance statistics, and real time traffic flow information may consist of or include information that identifies an individual who is a patron of the Project and that is exempt from disclosure to the public or other unauthorized persons under applicable Law ("Patron Confidential Information"). Patron Confidential Information includes names, addresses, social security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, vehicle registration information, medical data, law enforcement records, agency Source Code or object code, agency security data or other information that relates to any of these types of information.

8.7.3 Developer shall comply with all applicable Laws, Technical Provisions and NCDOT statewide interoperability and compatibility standards, requirements and protocols limiting, restricting or pertaining to collection, use, confidentiality, privacy, handling, retention, reporting, disclosure or dissemination of Patron Confidential Information, including the Statewide Information Security Manual.

8.7.4 Developer agrees to hold Patron Confidential Information in strictest confidence and not to make use of Patron Confidential Information for any purpose other than the performance of this Agreement, including toll violation processing and collection. Developer shall release Patron Confidential Information only to (a) NCDOT if requested, (b) authorized employees or Contractors requiring such information for the purpose of carrying out obligations under this Agreement, (c) authorized collection agencies as necessary to assist their collection of toll violations, (d) the North Carolina Department of Public Safety and any other public law enforcement agency with jurisdiction to provide traffic patrol, traffic law enforcement and the other police and public safety services as necessary to assist its enforcement of toll violation traffic infractions, (e) any Lender or Substituted Entity that succeeds to Developer's Interest, and (f) any Government Entity if requested and required pursuant to applicable Law. Except as provided above, Developer shall not release, divulge, publish, transfer, sell or disclose Patron Confidential Information, or otherwise make it known, to any other Person without NCDOT's express prior written consent in its sole discretion except as required by applicable Laws. Developer may provide such information and material only to employees of Developer-Related Entities who have signed a nondisclosure agreement, the terms of which have been previously approved by NCDOT. Developer agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to Patron Confidential Information and to implement destruction of records containing Patron Confidential Information in accordance with the records

retention provisions of the Technical Provisions, Technical Documents, and all applicable Law. Developer shall maintain all Patron Confidential Information solely in the State.

8.7.5 Immediately upon expiration or termination of this Agreement, Developer shall, at NCDOT's option but subject to applicable Law, (a) certify to NCDOT that Developer has destroyed all Patron Confidential Information, (b) return all Patron Confidential Information to NCDOT or (c) take whatever other steps NCDOT reasonably requires of Developer to protect Patron Confidential Information. This provision shall not apply to Patron Confidential Information needed to bill, invoice, enforce and collect a toll transaction occurring prior to expiration or termination of this Agreement until the payment of the applicable tolls and any related Incidental Charges.

8.7.6 Developer shall describe in the Operations Management Plan or operating manual or procedures prepared thereunder (a) the Patron Confidential Information received in the performance of this Agreement, (b) the purpose(s) for which the Patron Confidential Information is received, (c) who receives, maintains and uses the Patron Confidential Information, and (d) the final disposition of the Patron Confidential Information.

8.7.7 The rights of NCDOT to audit and inspect under this Agreement shall include the right to monitor, audit and investigate Developer's books and records and Developer's systems, practices and procedures concerning Patron Confidential Information.

8.7.8 Developer shall comply with the provisions of any applicable Law prescribing disclosure of Developer's privacy policies, including provisions on the content of disclosures and when disclosure must be given, as deemed compliance with the disclosure requirements of this Section 8.7.8. Such disclosures shall be maintained on the Project web site or other methods approved in advance by NCDOT.

8.7.9 In the event Developer retains any Governmental Entity to provide customer service and other toll collection and enforcement services, Developer shall have no obligation or liability regarding such Governmental Entity's handling of Patron Confidential Information. Developer shall, however, use commercially reasonable efforts to include in its Contract with such Governmental Entity covenants by the Governmental Entity comparable to those in this Section 8.7.

8.8 Policing, Security and Incident Response

8.8.1 Police Services

8.8.1.1 Developer, without expense to NCDOT, shall permit the North Carolina Department of Public Safety and any other public law enforcement agency with jurisdiction to provide traffic patrol, traffic law enforcement and the other police and public safety services in accordance with applicable Laws and agreements with State and local agencies, including permitting at least the type and level of service that the North Carolina Department of Public Safety provides on Comparable Controlled Access Highways owned and operated by NCDOT. NCDOT, at no cost to Developer, shall request that the North Carolina Department of Public Safety provide on the Project at least the type and level of service that the North Carolina Department Public Safety provides on Comparable Controlled Access Highways owned and operated by NCDOT. In addition, Developer may request that NCDOT, without expense to NCDOT, engage either the North Carolina Department of Public Safety or another qualified public law enforcement agency with jurisdiction to provide enhanced services

related to traffic patrol, HOT enforcement, traffic law enforcement services, special traffic operations services, and other police and Emergency services to the extent permitted under applicable Law. Developer shall reimburse NCDOT for all costs, including NCDOT Recoverable Costs, NCDOT incurs in connection with such enhanced services.

8.8.1.2 Developer shall not engage, or otherwise permit the engagement of, private security services to provide traffic patrol or traffic law enforcement services on the Project unless otherwise approved by NCDOT in its sole discretion.

8.8.1.3 Nothing in this Section 8.8.1 shall be construed as conferring upon NCDOT in any way responsibility for funding policing, HOV enforcement or other Emergency services.

8.8.1.4 Developer acknowledges that the North Carolina Department of Public Safety is empowered to enforce all applicable Laws and to enter the Project at any and all times to carry out its law enforcement duties. No provision of this Agreement is intended to surrender, waive or limit any police powers of the North Carolina Department of Public Safety or any other Governmental Entity, and all such police powers are hereby expressly reserved.

8.8.1.5 NCDOT shall not have any liability or obligation to Developer resulting from, arising out of or relating to the failure of the North Carolina Department of Public Safety or any other public law enforcement agency to provide services, or its negligence or misconduct in providing services.

8.8.1.6 NCDOT and third parties with responsibility for traffic regulation and enforcement, at their expense, shall have the right to install, operate, maintain and replace cameras or other equipment on the Project that relate to traffic regulation or enforcement. In exercising such rights, NCDOT shall exercise reasonable efforts to avoid material interference and impacts to the Project. Developer, at its expense, shall coordinate and cooperate, and require its Contractors to coordinate and cooperate, with any such installation, maintenance and replacement activities.

8.8.2 Security and Incident Response

8.8.2.1 Developer is responsible for the safety and security of the applicable portion of the Project that is under the control of any Developer-Related Entity and the workers and public thereon during the performance of the Work.

8.8.2.2 Developer shall comply with all rules, directives and guidance of the U.S. Department of Homeland Security and comparable State agency, and shall coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services. Without limiting the foregoing, whenever the National Terrorism Advisory System ("NTAS") or successor system issues an "elevated threat alert" or "imminent threat alert" or comparable level of threat or alert for any region in which the Project is located or which the Project serves, unless directed otherwise by NCDOT, Developer, at its expense, shall assign management personnel with decision-making authority to be personally present at the relevant emergency operations center serving the region. Developer shall provide such service 24 hours a day, seven days a week, until such level or threat or alert is canceled or the sunset provision takes effect, or until the lead agency at the operations center determines such staffing level is no longer necessary.

8.8.2.3 Developer shall perform and comply with the provisions of the Technical Provisions concerning Incident response, safety and security.

8.8.2.4 Developer shall implement all Incident response, safety and security procedures, protocols and requirements set forth in the Incident Management Plan.

8.9 Handback Requirements

8.9.1 Handback Condition

Subject to Section 8.9.3.2, on the Termination Date, Developer shall provide the Project and other Elements maintained by Developer under the CA Documents, including all Upgrades, to NCDOT, at no charge to NCDOT, in the condition and meeting all of the Handback Requirements, including the requirements for Residual Life at Handback specified in the Handback Requirements.

8.9.2 Handback Inspections

NCDOT and Developer shall conduct inspections of the Elements at the times and according to the terms and procedures specified in the Handback Requirements, for the purposes of (a) determining and verifying the condition of all Elements and their Residual Lives, (b) adjusting, to the extent necessary based on inspection and analysis, Element Useful Lives, Ages, Residual Lives, estimated costs of Renewal Work to be performed by Developer and timing of such Renewal Work, (c) revising and updating the Renewal Work Plan to incorporate such adjustments, (d) determining the Renewal Work required to be performed by Developer and completed prior to reversion of the Project to NCDOT, based on (i) the requirements for Residual Life at Handback specified in the Handback Requirements, (ii) the foregoing adjustments, and (iii) the foregoing changes to the Renewal Work Plan, (e) verifying that such Renewal Work has been properly performed and completed in accordance with the Handback Requirements, and (f) adjusting Developer's funding of the Handback Requirements Reserve so that it is funded according to the schedule and amounts required under Exhibit 11.

8.9.3 Renewal Work under Handback Requirements

Developer shall diligently perform and complete all Renewal Work required to be performed and completed prior to reversion of the Elements to NCDOT, based on the required adjustments and changes to the Renewal Work Plan resulting from the inspections and analysis under the Handback Requirements. Developer shall complete all such work:

8.9.3.1 Prior to the Termination Date, if transfer of the Project is to occur at the expiration of the full Term; or

8.9.3.2 As close as possible to the Early Termination Date.

If Developer, despite diligent efforts, is unable to complete such work prior to the Early Termination Date, then, in lieu of completion of such work, any applicable measure of Termination Compensation based on the Senior Debt Termination Amount shall take into consideration such non-completion as provided in Section B(3)(f) of Exhibit 15.

8.10 Handback Requirements Reserve

8.10.1 Establishment

8.10.1.1 On or before the last day of the first calendar quarter of the fifth full calendar year before the end of the Term, Developer shall establish and fund a reserve account (the "Handback Requirements Reserve") exclusively available for the uses set forth in Section 8.10.3. The Handback Requirements Reserve shall be established under the Project Trust Agreement or other similar arrangements that, to the maximum extent practicable, preclude it from being an asset of Developer or NCDOT, so that it will be available to NCDOT or Lenders (subject to Section 4.4.8) regardless of any bankruptcy event. Such other arrangements shall be subject to NCDOT's and Developer's prior written approval each in its good faith discretion. If such arrangements are not pursuant to the Project Trust Agreement, then such arrangements shall include the holding of the Handback Requirements Reserve in an account with a financial institution nominated by Developer and approved by NCDOT, which institution may include any Lender that is and continues to qualify as an Institutional Lender.

8.10.1.2 Developer shall provide to NCDOT the details regarding the account, including the name, address and contact information for the depository institution and the account number. Developer shall inform the depository institution of all NCDOT's rights and interests with respect to the Handback Requirements Reserve, including NCDOT's right to draw on the Handback Requirements Reserve as provided in Section 17.3.7. Developer shall deliver such notices to the depository institution and execute such documents as may be required to establish and perfect NCDOT's first priority security interest in the Handback Requirements Reserve under the Uniform Commercial Code as adopted in the State, including NCDOT's right to make direct draws against the Handback Requirements Reserve as provided in Section 17.3.7.

8.10.1.3 In lieu of establishing the Handback Requirements Reserve, Developer may deliver to NCDOT Handback Requirements Letters of Credit, on the terms and conditions set forth in Section 8.10.5.

8.10.2 Funding

8.10.2.1 Developer shall make deposits to the Handback Requirements Reserve at the times and in the amounts set forth in Exhibit 11.

8.10.2.2 Funds held in the Handback Requirements Reserve may be invested and reinvested only in Eligible Investments. Eligible Investments in the Handback Requirements Reserve must mature, or the principal of and accrued interest on such Eligible Investments must be available for withdrawal without penalty, not later than such times as shall be necessary to provide funds when needed for payment of draws to Developer, and in any event not later than the end of the Term. All interest earned or profits realized from the investment of funds in the Handback Requirements Reserve shall be retained therein.

8.10.2.3 If Developer fails to make any quarterly deposit into the Handback Requirements Reserve when due, including funding any increases or shortfalls required under Sections 3 and 5 of Exhibit 11, NCDOT shall be entitled to deduct the amount due from any amounts payable to Developer under this Agreement.

8.10.3 Use

8.10.3.1 Developer will have the right to payments from the Handback Requirements Reserve to be used only for the following purposes, provided the Handback Requirements Reserve is not at any time reduced below the amount of funds then required under Exhibit 11:

(a) Costs of Renewal Work for those Elements that have a number of years stated in Table 23.3 of the Technical Provisions, to the extent such Renewal Work is necessary in order to return the Element to NCDOT at the end of the Term with a Residual Life equal to or greater than such number of years; and

(b) Costs of Safety Compliance work.

8.10.3.2 Not later than five years before the end of the Term, NCDOT and Developer shall establish reasonable written protocols and procedures for requesting and funding draws from the Handback Requirements Reserve.

8.10.4 Disposition at End of Term

8.10.4.1 At the expiration or any earlier termination of the Term for any reason, including termination due to NCDOT Default, all funds in the Handback Requirements Reserve (except as provided in Section 8.10.4.2) shall automatically be and become the sole property of NCDOT, free and clear of all liens, pledges and encumbrances; provided, however, that such funds shall first be used to fund any sub-accounts of the Post-Termination Revenue Account established to reserve for costs of reconstruction, rehabilitation, renewal and replacement of the HOT Lanes pursuant to the Project Trust Agreement. Thereupon, Developer shall deliver such transfers, assignments and other documents, and take such other actions, as NCDOT or the depository institution for the Handback Requirements Reserve shall require, to effect and confirm transfer to NCDOT of the Handback Requirements Reserve and funds therein, free and clear of all liens, pledges, encumbrances, offsets and deductions.

8.10.4.2 In the event the Handback Requirements Reserve at such time is different from the amount then required pursuant to Exhibit 11, Developer shall be obligated to pay any shortfall to NCDOT upon demand, or NCDOT shall authorize release to Developer of any excess, as the case may be. NCDOT shall offset any amounts due and owing to Developer by the amount of the Handback Requirements Reserve owing to NCDOT under the CA Documents. NCDOT, at its election, also may offset any excess to be released to Developer by any amount Developer still owes NCDOT for the cost of the independent inspections conducted pursuant to the Handback Requirements. If, at the expiration of the Term, Developer has completed and paid in full all Handback Requirements and funds in the Handback Requirements Reserve exceed the total amount required under Exhibit 11, then NCDOT shall on demand authorize release of such excess to Developer or, at Developer's direction, the Collateral Agent, subject to the foregoing offset rights in favor of NCDOT.

8.10.5 Handback Requirements Letters of Credit

8.10.5.1 In lieu of establishing the Handback Requirements Reserve, Developer may deliver to NCDOT one or more letters of credit (each, a "Handback Requirements Letter of Credit"), on the terms and conditions set forth in this Section 8.10.5 and Section 16.3. If the Handback Requirements Reserve has been previously established,

Developer at any time thereafter may substitute one or more Handback Requirements Letters of Credit for all or any portion of the amounts required to be on deposit in the Handback Requirements Reserve, on the terms and conditions set forth in this Section 8.10.5 and Section 16.3. Upon receipt of the required substitute Handback Requirements Letter of Credit, NCDOT shall authorize the release to Developer of amounts in the Handback Requirements Reserve equal to the face amount of the substitute Handback Requirements Letter of Credit, such released funds to be subject to the limitations as set forth in Section 3.6.2. If the face amount of any Handback Requirements Letter of Credit falls below the total amount required to be funded to the Handback Requirements Reserve prior to expiry of the Handback Requirements Letter of Credit, Developer shall be obligated to pay, when due, the shortfall into the Handback Requirements Reserve. Alternately, Developer may deliver a Handback Requirements Letter of Credit with a face amount equal to at least the total amount required to be funded to the Handback Requirements Reserve during the period up to the expiry of the Handback Requirements Letter of Credit, or may deliver additional Handback Requirements Letters of Credit or cause the existing Handback Requirements Letter of Credit to be amended to cover the shortfall before deposits of the shortfall to the Handback Requirements Reserve are due. If Developer fails to satisfy such obligation, NCDOT shall be entitled to deduct the amount due from any amounts payable to Developer under this Agreement.

8.10.5.2 At the beginning of each year and subject to Section 8.10.5.1, Developer shall have the right and obligation (in lieu of funding the Handback Requirements Reserve) to adjust the amount of the Handback Requirements Letter of Credit to equal the maximum amount required to be funded in the Handback Requirements Reserve during the forthcoming year under Exhibit 11, taking into account the most recent Renewal Work Plan and Renewal Work performed to date under the Handback Requirements.

8.10.5.3 The Handback Requirements Letter(s) of Credit last issued before the end of the Term shall have an expiration date not earlier than 365 days after the end of the Term.

8.10.5.4 NCDOT shall have the right to draw on the Handback Requirements Letter of Credit (a) as provided in Section 16.3.1.2 or (b) upon expiration or earlier termination of the Term for any reason, including termination due to NCDOT Default, as necessary to obtain the Handback Requirements Reserve funds to which NCDOT is then entitled under Section 8.10.4.

8.10.5.5 If NCDOT draws on the Handback Requirements Letter of Credit due to Developer's failure for any reason to deliver to NCDOT a new or replacement Handback Requirements Letter of Credit, on the same terms, or at least a one year extension of the expiration date of the existing Handback Requirements Letter of Credit, not later than 45 days before such expiration date, NCDOT shall deposit the proceeds from drawing on the expiring Handback Requirements Letter of Credit into the Handback Requirements Reserve.

8.10.5.6 Developer may name the Collateral Agent as the beneficiary to the Handback Requirements Letter of Credit instead of NCDOT. However, the foregoing right is available to Developer only if (1) the Collateral Agent is restricted in making draws on such letter of credit solely for the purpose of causing Developer to perform its Renewal Work obligations to meet the Handback Requirements and (2) Developer delivers to NCDOT, concurrently with the issuance of the Handback Requirements Letter of Credit, documents reasonably satisfactory to NCDOT:

(a) Naming NCDOT as automatic and exclusive transferee beneficiary under the Handback Requirements Letter of Credit on the Early Termination Date and expiration of the full Term; and

(b) Prior thereto, permitting NCDOT to become the transferee beneficiary under such letter of credit and to make drawings thereunder if NCDOT determines that:

(i) (A) Developer has breached or failed to perform its Renewal Work obligations to meet the Handback Requirements, (B) the Handback Requirements Letter of Credit has become subject to NCDOT's right to draw thereon under Section 17.3.7 and (C) the Collateral Agent has failed to draw on the Handback Requirements Letter of Credit for the purpose of causing the performance of such obligations by or on behalf of Developer within ten days after NCDOT delivers written notice of such breach to Developer and the Collateral Agent; or

(ii) (A) The Handback Requirements Letter of Credit will expire within 30 days, (B) NCDOT has not received a certified copy of a replacement or extension of the Handback Requirements Letter of Credit with required transfer documents, and (C) NCDOT has no actual knowledge of a prior, full draw on the expiring letter of credit by the Collateral Agent.

At a minimum, such transfer documents shall include a certified copy of the letter of credit and a present, executed transfer and assignment of the beneficiary rights from the Collateral Agent to NCDOT; and the Handback Requirements Letter of Credit shall expressly authorize such transfer without condition and permit draw without presentation of the original letter of credit.

ARTICLE 9. MANAGEMENT SYSTEMS AND OVERSIGHT

9.1 Developer Management Plan

Developer is responsible for management of the Project in accordance with the approved Developer Management Plan and Good Industry Practice. Developer shall contractually require each of its Contractors at every level to comply with the applicable requirements of the approved Developer Management Plan. The Developer Management Plan shall contain all of the information, procedures and contents required of a Project Management Plan under Section 1904(a) of SAFETEA-LU and for projects receiving TIFIA financial assistance.

9.2 Traffic Management

9.2.1 During the performance of any NTP1 Work that requires lane or shoulder closures and upon issuance of NTP2, Developer shall be responsible for the general management of traffic on the applicable portion of the Project under the control of any Developer-Related Entity. Developer shall manage traffic so as to preserve and protect safety of traffic on such portions and Related Transportation Facilities and, to the maximum extent practicable, to avoid disruption, interruption or other adverse effects on traffic flow, throughput or level of service on such portions and Related Transportation Facilities. Developer shall conduct traffic management in accordance with the CA Documents.

9.2.2 Developer shall implement the Traffic Management Plan to promote safe and efficient operation of the Project and Related Transportation Facilities at all times during the course of any construction or operation of the Project and during the Utility Adjustment Work.

9.2.3 NCDOT shall have at all times, without obligation or liability to Developer, the right to:

9.2.3.1 Issue Directive Letters to Developer regarding traffic management and control (with which Developer shall comply), or directly assume traffic management and control, of the Project during any period that (a) tolling is suspended under Section 3.5 or (b) the North Carolina Secretary of Transportation determines such action will be in the public interest as a result of an emergency or natural disaster; and

9.2.3.2 Provide on the Project, via message signs or other means consistent with Good Industry Practice, non-Discriminatory traveler and driver information, and other public information (e.g., Amber Alerts), provided that the means to disseminate such information does not materially interfere with the functioning of the Electronic Toll Collection System.

9.3 Oversight, Inspection and Testing

9.3.1 Construction, Engineering and Inspection Services

9.3.1.1 Developer shall retain a CEI Firm to perform construction, engineering and inspection ("CEI") services for all of the Work required under the CA Documents from NTP2 to Final Completion. In addition, Developer shall retain a CEI Firm to perform CEI services for all of the Renewal Work performed by Developer for a period of 15 years after Final Completion. Any CEI services required 15 years after Final Completion shall be performed by NCDOT.

9.3.1.2 The CEI Firm shall be an independent firm and shall not be an Affiliate of any Developer-Related Entity. The CEI Firm must be pre-qualified under NCDOT's pre-qualification requirements. Before entering into a CEI Contract, Developer shall submit for NCDOT's review and comment a proposed CEI Contract and such proposed CEI Contract shall, at a minimum, include the requirements set forth in Section 2.3.3.2 and Exhibit 2-07 of the Technical Provisions .

9.3.2 Oversight by NCDOT, FHWA

9.3.2.1 The Project is subject to the FHWA Oversight Agreement. NCDOT and its Authorized Representative shall have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Project or the Work, to the extent necessary or advisable (a) to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements and (b) to verify on an audit basis Developer's compliance with the CA Documents. NCDOT shall conduct such activity in accordance with Developer's safety procedures and manuals, and in a manner that does not unreasonably interfere with normal construction activity or normal operation and maintenance of the Project.

9.3.2.2 Refer to Section 22.2 for NCDOT's rights to audit Developer and its Contractors.

9.3.2.3 NCDOT will not conduct formal prior reviews of Design Documents or Construction Documents except to the extent necessary or advisable to comply with FHWA, U.S. Army Corps of Engineers or other applicable federal agency requirements or unless NCDOT chooses to do so pursuant to Section 18.5. NCDOT does not intend to conduct "over-the-shoulder" reviews of Design Documents or other Submittals but reserves the right to do so pursuant to Section 18.5. NCDOT shall have no obligation to conduct "over-the-shoulder" reviews.

9.3.2.4 Nothing in the CA Documents shall preclude, and Developer shall not interfere with, any review or oversight of Submittals or of Work that the FHWA may desire to conduct.

9.3.3 Rights of Cooperation and Access; Increased Oversight

9.3.3.1 Developer, at all times, shall coordinate and cooperate, and require its Contractors to coordinate and cooperate, with NCDOT and its Authorized Representative to facilitate NCDOT's oversight activities. Developer shall cause its representatives to be available at all reasonable times for consultation with NCDOT.

9.3.3.2 Without limiting the foregoing, Developer shall afford NCDOT and its Authorized Representative (a) safe and unrestricted access to the Project at all times, (b) safe access during normal business hours to Developer's Project offices and operations buildings, and (c) unrestricted access to data respecting the Project design, construction, operations and maintenance, and the Utility Adjustment Work. NCDOT shall reasonably cooperate and exercise reasonable efforts to avoid material interference and impacts to the Project in exercising its oversight rights under the CA Documents.

9.3.3.3 Without limiting the foregoing, Developer shall deliver to NCDOT, upon request, accurate and complete books, records, data and information regarding Work, the Project and the Utility Adjustment Work, in the format required by the Technical Provisions.

9.3.3.4 NCDOT shall have the right to increase the type and level of their oversight as provided in Section 18.5.

9.3.4 Testing and Test Results

NCDOT shall have the right to attend and witness any tests and verifications to be conducted pursuant to the Technical Provisions and applicable components of the Developer Management Plan. Developer shall provide to NCDOT all test results and reports (which may be provided in electronic format in accordance with the Technical Provisions) within ten days after Developer receives them.

ARTICLE 10. CONTRACTING AND LABOR PRACTICES

10.1 Disclosure of Contracts and Contractors

10.1.1 Developer shall provide NCDOT a monthly report listing (a) all Key Contracts in effect, (b) all Contracts in effect to which Developer is a party, and (c) where Developer is a party to a Contract in effect with an Affiliate, all Contracts in effect to which such Affiliate is a party and under which all or a substantial portion of the Affiliate's responsibilities or obligations under its Contract with Developer are delegated to the Contractor. Developer also shall list in

the monthly report the Contractors under such Contracts, guarantees of Key Contracts in effect and the guarantors thereunder. Developer shall allow NCDOT ready access to all Contracts and records regarding Contracts, including amendments and supplements to Contracts and guarantees thereof; provided, however, that Developer may provide access thereto by depositing unredacted copies in an Intellectual Property Escrow as provided in Section 22.5.

10.1.2 In no event later than five days after Contract execution, Developer shall notify NCDOT in writing of the name, address, phone number and authorized representative of such Contractor.

10.2 Responsibility for Work, Contractors and Employees

10.2.1 Developer shall retain or cause to be retained only Contractors that are pre-qualified, experienced and capable in the performance of the portion of the Work assigned. Developer shall assure that each Contractor has at the time of execution of the Contract, and maintains at all times during performance of the assigned Work, all licenses required by applicable Laws.

10.2.2 The retention of Contractors by Developer will not relieve Developer of its responsibilities hereunder or for the quality of the Work or materials or services provided by it.

10.2.3 Each Contract shall include terms and conditions sufficient to ensure compliance by the Contractor with the requirements of the CA Documents, and shall include those terms that are specifically required by the CA Documents to be included therein, including, to the extent applicable, those set forth in Exhibit 6 and any other applicable federal requirements.

10.2.4 Developer shall supervise and be fully responsible under the CA Documents for the actions, omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity or by any member or employee of Developer or any Developer-Related Entity, in each case, related to the Project, as though Developer directly employed such Persons.

10.2.5 Developer shall cause the Design-Build Contractor to perform with its own organization at least 30% of the Secured Work in accordance with Section VI of Attachment 2 to Exhibit 6. For purposes of this Section 10.2.5, the term "to perform with its own organization" shall have the meaning set forth in Section VI.1.a. of Attachment 2 to Exhibit 6.

10.2.6 Nothing in this Agreement will create any contractual relationship between NCDOT and any Contractor. No Contract entered into by or under Developer shall impose any obligation or liability upon NCDOT to any Contractor or any of its employees.

10.3 Key Contracts; Contractor Qualifications

10.3.1 Use of and Change in Key Contractors

Developer shall retain, employ and utilize the firms and organizations specifically listed in the Proposal and the Developer Management Plan to fill the corresponding Key Contractor positions listed therein. Developer shall not terminate any Key Contract with a Key Contractor, or permit or suffer any substitution or replacement (by way of assignment of the Key Contract, transfer to another of any material portion of the scope of work, or otherwise) of such Key

Contractor, except: (a) in the case of subcontracting portions of the Work by such Key Contractor, (b) in the case of material default by the Key Contractor, or (c) with NCDOT's prior written approval in its reasonable discretion. For Key Contractors not known as of the Effective Date, Developer's selection thereof shall be subject to NCDOT's prior written approval in NCDOT's reasonable discretion.

10.3.2 Key Contract Provisions

Each Key Contract shall:

10.3.2.1 Require the Key Contractor to carry out its scope of work in accordance with the CA Documents, the Governmental Approvals, applicable Law, and plans, systems and manuals developed and used by Developer pursuant to the CA Documents that are applicable to the work being performed under the Key Contract;

10.3.2.2 Include a covenant to maintain all licenses required by applicable Law for the work being performed under the Key Contract;

10.3.2.3 Set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the CA Documents and in accordance with Good Industry Practice for work of similar scope and scale being performed under the Key Contract;

10.3.2.4 Expressly state that all remaining warranties and guarantees, express or implied, shall inure to the benefit of NCDOT and its successors and assigns upon expiration of the term or earlier termination of this Agreement;

10.3.2.5 Require the Key Contractor to procure the applicable Payment Bond and Performance Security (as applicable) required under Section 16.2, if any, prior to commencement of any work by or on behalf of the Key Contractor;

10.3.2.6 Expressly provide that the Key Contractor shall have no right to suspend or demobilize unless and until it delivers to NCDOT written notice of the other contracting party's breach or default;

10.3.2.7 Require the personal services of and not be assignable by the Key Contractor without Developer's and NCDOT's prior written consent, provided that this provision shall not prohibit the subcontracting of portions of the Work;

10.3.2.8 Expressly include the requirements and provisions set forth in this Agreement applicable to Contractors regarding Intellectual Property rights and licenses;

10.3.2.9 Expressly require the Key Contractor to participate, at Developer's request, in meetings between Developer and NCDOT concerning matters pertaining to such Key Contractor, its work or the coordination of its work with other Contractors; provided that all direction to such Key Contractor shall be provided by Developer, and provided further that nothing in this Section 10.3.2.10 shall limit the authority of NCDOT to give such direction or take such action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property;

10.3.2.10 Include an agreement by the Key Contractor to give evidence in

any dispute resolution proceeding pursuant to Section 17.8, if such participation is requested by either NCDOT or Developer;

10.3.2.11 Without cost to Developer or NCDOT, and subject to the rights of the Collateral Agent set forth in Article 20, expressly permit assignment to NCDOT or its successor, assignee or designee of all Developer's rights under the Key Contract, contingent only upon delivery of written request from NCDOT following termination or expiration of this Agreement, allowing NCDOT or its successor, assignee or designee to assume the benefit of Developer's rights with liability only for those remaining obligations of Developer accruing after the date of assumption, such assignment to include the benefit of all Key Contractor warranties, indemnities, guarantees and professional responsibility;

10.3.2.12 Expressly state that any acceptance of assignment of the Key Contract to NCDOT or its successor, assignee or designee shall not operate to make the assignee responsible or liable for any breach of the Key Contract by Developer or for any amounts due and owing under the Key Contract for work or services rendered prior to assumption (but without restriction on the Key Contractor's rights to suspend work, demobilize or terminate due to Developer's uncured breach);

10.3.2.13 Expressly include a covenant to recognize and attorn to NCDOT upon receipt of written notice from NCDOT that it has exercised step-in rights under this Agreement, without necessity for consent or approval from Developer or to determine whether NCDOT validly exercised its step-in rights, and Developer's covenant to waive and release any claim or cause of action against the Key Contractor arising out of or relating to its recognition and attornment in reliance on any such written notice;

10.3.2.14 Expressly include a covenant, expressly stated to survive termination of the Key Contract, to promptly execute and deliver to NCDOT a new contract between the Key Contractor and NCDOT on the same terms and conditions as the Key Contract, in the event (a) the Key Contract is rejected by Developer in bankruptcy or otherwise wrongfully terminated by Developer and (b) NCDOT delivers written request for such new contract following termination or expiration of this Agreement. The Key Contract also shall include a covenant, expressly stated to survive termination of the Key Contract, to the effect that if the Key Contractor was a party to an escrow agreement for an Intellectual Property Escrow and Developer terminates it, then the Key Contractor also shall execute and deliver to NCDOT, concurrently with such new contract, a new escrow agreement on the same terms and conditions as the terminated escrow agreement, and shall concurrently make the same deposits to the new Intellectual Property Escrow as made or provided under the terminated escrow agreement. This Section shall not apply to Key Contracts with NCDOT or Governmental Entities;

10.3.2.15 Expressly include requirements that: the Key Contractor (a) will 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 with respect to the Project or Work by each of Developer and NCDOT in accordance with Section 22.2, and (c) provide progress reports to Developer appropriate for the type of work it is performing sufficient to enable Developer to provide the reports it is required to furnish NCDOT under the CA Documents;

10.3.2.16 Include the right of Developer to terminate the Key Contract in whole or in part upon any Termination for Convenience of this Agreement or any termination of

this Agreement due to Force Majeure Event or NCDOT Default, in each case without liability of Developer or NCDOT for the Key Contractor's lost profits or business opportunity;

10.3.2.17 Expressly include the Indemnified Parties as indemnitees, with direct right of enforcement, in any indemnity given by the Key Contractor under the Key Contract;

10.3.2.18 Expressly include an acknowledgement that the Key Contractor has no right or claim to any lien or encumbrance upon the Project or Project Right of Way for failure of the other contracting party to pay amounts due the Key Contractor, and a waiver of any such right or claim that may exist at Law or in equity;

10.3.2.19 Not contain any terms that do not comply or are inconsistent with the terms of the CA Documents, including terms that do not comply or are inconsistent with this Article 10 or with the applicable requirements of Section 22.1 regarding maintenance of Books and Records, that fail to incorporate the applicable federal requirements set forth in Exhibit 6, or that are inconsistent with the requirements of the relevant scope of Work; and

10.3.2.20 Expressly provide that any purported amendment with respect to any of the foregoing matters without the prior written consent of NCDOT shall be null and void.

10.3.3 Additional Requirements for Design-Build and O&M Contracts

10.3.3.1 Before entering into a Design-Build Contract or O&M Contract (other than O&M Contracts for routine janitorial services and routine supply of materials) or any supplement or amendment thereto, Developer shall submit a true and complete copy of the proposed Design-Build Contract or O&M Contract(s) to NCDOT for review, comment and approval. NCDOT may disapprove only if the Design-Build Contract or O&M Contract(s) (a) does not comply, or is inconsistent, in any material respect with the applicable requirements of the CA Documents, including that it does not comply or is inconsistent with this Article 10 or with the applicable requirements of Section 22.1 regarding maintenance of books and records, does not incorporate the applicable federal requirements set forth in Exhibit 6, or is inconsistent with the requirements of the relevant scope of Work, (b) increases NCDOT's liability as contemplated herein, or (c) adversely affects NCDOT's step-in rights.

10.3.3.2 The Design-Build Contract and each O&M Contract also shall expressly require the personal services of the Design-Build Contractor or O&M Contractor, as applicable, and the Design-Build Contractor and the O&M Contractor shall not assign such Contract without Developer's and NCDOT's prior written consent, each in its sole discretion, provided that this provision shall not prohibit the subcontracting of portions of the Work. The provision included pursuant to Section 10.3.2.10 shall apply to such express provisions on personal services and non-assignment.

10.4 Key Personnel

10.4.1 Developer shall retain, employ and utilize the individuals specifically listed in Exhibit 2 to fill the corresponding Key Personnel positions listed therein. Developer shall not change or substitute any such individuals except due to retirement, death, disability, incapacity, or voluntary or involuntary termination of employment, or as otherwise approved by NCDOT pursuant to Section 10.4.2. In such circumstances, Developer shall promptly propose a replacement for such position.

10.4.2 Subject to compliance with any applicable employee or privacy Laws, Developer shall notify NCDOT in writing of any proposed replacement for any Key Personnel position. NCDOT shall have the right to review the qualifications and character of each individual to be appointed to a Key Personnel position (including personnel employed by Contractors to fill any such position) and to approve or disapprove use of such individual in such position prior to the commencement of any Work by such individual.

10.4.3 Developer shall cause each individual filling a Key Personnel position to dedicate the amount of time necessary for the proper prosecution and performance of the Work. Further, certain Key Personnel as identified in Section 2.14 of the Technical Provisions shall be full-time positions and shall not be employed in any other positions or on any other projects as more particularly described in the Technical Provisions.

10.4.4 Developer shall provide NCDOT phone and pager numbers and email addresses for all Key Personnel. NCDOT require the ability to contact Key Personnel 24 hours per day, seven days per week.

10.5 Contracts with Affiliates

10.5.1 Developer shall have the right to have Work and services performed by Affiliates only under the following terms and conditions:

10.5.1.1 Developer shall execute a written Contract with the Affiliate;

10.5.1.2 The Contract shall comply with all applicable provisions of this Article 10, be consistent with Good Industry Practice, and be in form and substance substantially similar to Contracts then being used by Developer or Affiliates for similar Work or services with unaffiliated Contractors;

10.5.1.3 The Contract shall set forth the scope of Work and services and all the pricing, terms and conditions respecting the scope of Work and services;

10.5.1.4 The pricing, scheduling and other terms and conditions of the Contract shall be no less favorable to Developer than those that Developer could reasonably obtain in an arms' length, competitive transaction with an unaffiliated contractor. Developer shall bear the burden of proving that the same are no less favorable to Developer; and

10.5.1.5 No Affiliate (other than the Design-Build Contractor if it is an Affiliate) shall be engaged to perform any Work or services which any CA Documents or the Developer Management Plan or any component part, plan or other documentation thereunder indicates are to be performed by an independent or unaffiliated party. No Affiliate shall be engaged to perform any Work or services which would be inconsistent with Good Industry Practice.

10.5.2 Before entering into a written Contract with an Affiliate or any supplement or amendment thereto, Developer shall submit a true and complete copy of the proposed Contract to NCDOT for review and comment to confirm compliance with the requirements of the CA Documents. NCDOT shall have 15 Business Days after receipt to deliver its comments to Developer. If the Contract with the Affiliate is a Key Contract, and such Affiliate's selection as a Key Contractor is not known as of the Effective Date, the Affiliate shall be subject to NCDOT's approval as provided in Section 10.3.1.

10.5.3 Developer shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope. Advance payments in violation of this provision shall be excluded from the calculation of Termination Compensation.

10.6 Labor Standards

10.6.1 In the performance of its obligations under the CA Documents, Developer at all times shall comply, and require by contract that all Contractors and vendors comply, with all applicable federal and State labor, occupational safety and health standards, rules, regulations and federal and State orders. Further, Developer shall keep informed of and comply with all Laws applicable to wages and conditions of employment pursuant to Section 107-22 of the Standard Specifications.

10.6.2 All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If any individual employed by Developer or any Contractor is not performing the Work in a proper, safe and skillful manner, then Developer shall, or shall cause such Contractor to, remove such individual and such individual shall not be re-employed on the Work. If, after notice and reasonable opportunity to cure, such individual is not removed or if Developer fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Work, then NCDOT may suspend the affected portion of the Work by delivering to Developer written notice of such suspension. Such suspension shall in no way relieve Developer of any obligation contained in the CA Documents or entitle Developer to any additional compensation or time extension hereunder.

10.7 Ethical Standards

10.7.1 Within 90 days after the Effective Date, Developer shall adopt written policies establishing ethical standards of conduct for all Developer-Related Entities, including Developer's supervisory and management personnel, in dealing with (a) NCDOT and (b) employment relations. Such policy shall be subject to review and comment by NCDOT and the State Ethics Commission for compliance with North Carolina General Statutes § 138A-1, et seq. ("State Government Ethics Act") prior to adoption. Such policy shall include standards of ethical conduct concerning the following:

10.7.1.1 Restrictions on gifts and contributions to, and lobbying of, NCDOT, the Board of Transportation, and any of their respective members, directors, officers and employees;

10.7.1.2 Protection of employees from unethical practices in selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;

10.7.1.3 Protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting of illegal (including the making of a false claim), unethical or unsafe actions or failures to act by any Developer-Related Entity;

10.7.1.4 Restrictions on directors, members, officers or supervisory or management personnel of any Developer-Related Entity engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Project or employees;

10.7.1.5 Restrictions on use of office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director, member, officer or supervisory or management person, rather than primarily for the benefit of Developer or the Project, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

10.7.1.6 Restrictions on directors, members, officers or employees of any Developer-Related Entity performing any of the Work if the performance of such services would be prohibited under NCDOT's published conflict of interest rules and policies applicable to NCDOT's public-private partnership program.

10.7.2 Employees employed by Developer or any Contractor to provide services for this Project shall comply with NCDOT's ethics policies. Failure to comply with the ethics policy will result in the employee's removal from the Project and may result in removal of the company from consideration on future NCDOT projects and/or in the recommendation to NCDOT that the company be removed from NCDOT's appropriate prequalified list. Developer shall establish reasonable systems and procedures to promote and monitor compliance with the policy.

10.7.3 In the event of engagement of a former employee of NCDOT, Developer and any of its Contractors shall restrict such person or persons from working on any of Developer's contracted projects in which the person or persons were "formerly involved" while employed by the State. The restriction period shall be for the duration of the contracted project with which the person was involved. For purposes of this Section 10.7.3, "formerly involved shall be defined as active participation in any of the following activities for the contracted project:

10.7.3.1 Drafting the contract;

10.7.3.2 Defining the contract scope of the contract;

10.7.3.3 Proposer selection;

10.7.3.4 Negotiation of the contract cost (including calculating man hours or fees); or

10.7.3.5 Contract administration.

10.7.4 By Executive Order 24, issued by Governor Perdue, and North Carolina General Statutes § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's cabinet agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who: (a) have a

contract with a governmental agency; or (b) have performed under such a contract within the past year; or (c) anticipate bidding on such a contract in the future. For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and North Carolina General Statutes § 133-32. Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State agencies to determine if those agencies have adopted Executive Order 24.

10.8 Non-Discrimination; Equal Employment Opportunity

10.8.1 Developer shall not, and shall cause the Contractors to not, discriminate on the basis of race, color, national origin, sex, age, religion or handicap in the performance of the Work under the CA Documents. Developer shall carry out, and shall cause the Contractors to carry out, applicable requirements of 49 CFR Part 26. Failure by Developer to carry out these requirements is a material breach of this Agreement, which may result in a Default Termination Event and the termination of this Agreement or such other remedy permitted hereunder as NCDOT deems appropriate (subject to Developer's and Lenders' rights to notice and opportunity to cure set forth in this Agreement).

10.8.2 Developer shall include the text of Section 10.8.1 in every Contract (including purchase orders and in every Contract of any Developer-Related Entity for Work), and shall require that it be included in all Contracts at lower tiers, so that such provisions will be binding upon each Contractor.

10.8.3 Developer confirms for itself and all Contractors that Developer and each Contractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that Developer and each Contractor maintains no employee facilities segregated on the basis of race, color, national origin, sex, age, religion or handicap. Developer shall comply with all applicable Equal Employment Opportunity and nondiscrimination provisions, including those set forth in Exhibit 6, and shall require its Contractors to comply with such provisions.

10.9 Disadvantaged Business Enterprise

10.9.1 General

10.9.1.1 NCDOT's Disadvantaged Business Enterprise (DBE) Provisions applicable to the Project are set forth in Attachment 6 to Exhibit 6. Developer shall comply with all applicable requirements set forth in the DBE Special Provisions. Developer shall include provisions to effectuate the DBE Special Provisions in every Contract to which it is a party (including purchase orders and task orders for Work), and shall require that they be included in all Contracts at lower tiers (including purchase orders and task orders for Work), so that such provisions will be binding upon each Contractor.

10.9.1.2 The goal for DBE participation in the Work required under this Agreement is set forth in the DBE Special Provisions. Developer shall exercise good faith efforts to achieve such DBE participation goal for the Project in accordance with the DBE Special Provisions. Developer shall not cancel or terminate any Contract with a DBE firm except in accordance with all requirements and provisions applicable to cancellation or termination of Contracts with DBE firms set forth in the DBE Special Provisions.

10.9.1.3 Developer agrees to use good faith efforts to encourage DBE participation in the O&M Work performed by Developer.

10.9.2 DBE Performance Plan

10.9.2.1 Developer shall submit the Preliminary DBE Performance Plan for NCDOT's review and and comment no later than 30 days after the Effective Date. Within 30 days after receiving NCDOT's comments to the Preliminary DBE Performance Plan, Developer shall submit a proposed final DBE Performance Plan to NCDOT for NCDOT's review and approval. Approval of the DBE Performance Plan shall be a condition to issuance of NTP2.

10.9.2.2 In preparing the final DBE Performance Plan, Developer shall include, to the extent known at the time of preparation, the following:

(a) The names of currently-certified DBE firms to which Developer or the Design-Build Contractor has made commitments, the percentage of each such entity's DBE participation and a description of the types of work each such DBE firm listed is to perform.

(b) The dates and manner in which each of the listed DBE firms were contacted for their respective interest in DBE subcontracting opportunities for the Project.

(c) An explanation of how Developer plans to recruit, solicit and evaluate potential DBEs to utilize on the Project.

(d) A breakdown of anticipated DBE commitments.

(e) Estimated time frames for achieving anticipated DBE participation on an annual basis.

(f) Strategies for monitoring DBE utilization and contract compliance, including proper DBE credit, performance of commercially useful function, and proper payment to DBEs.

(g) Procedures for communicating with and reporting to NCDOT on DBE participation and compliance efforts throughout the the Term.

10.9.3 DBE Reporting

10.9.3.1 Prior to a DBE firm performing the applicable portion of the Work, Developer shall submit for NCDOT's review and approval the documentation required for each committed DBE firm pursuant to the DBE Special Provisions.

10.9.3.2 At the end of each calendar month, Developer shall submit to NCDOT a monthly report of all approved and pending DBE firms in accordance with the DBE Special Provisions, including an accounting of payments made to all DBE firms in the preceding month.

10.9.4 Failure to Meet DBE Goal or Demonstrate Good Faith Efforts

10.9.4.1 If Developer anticipates that it may not achieve the DBE goal required under the DBE Special Provisions, Developer may, at its option, seek a determination

of good faith efforts from NCDOT by submitting the documentation required under the DBE Special Provisions no later than one year prior to the scheduled date of Substantial Completion of all Project Sections. If NCDOT notifies Developer pursuant to this Section 10.9.4.1 that Developer has not demonstrated good faith efforts to achieve the DBE goal, Developer shall prepare a DBE Performance Improvement Plan describing specific actions and measures that Developer will undertake to satisfy the DBE requirements for the Project. Developer shall submit the DBE Performance Improvement Plan for NCDOT's review and approval within 14 days after receiving notice from NCDOT that Developer has not demonstrated good faith efforts to achieve the DBE goal.

10.9.4.2 No later than 10 days after Final Completion, Developer shall submit documentation in accordance with the DBE Special Provision that Developer has either achieved the DBE goal or demonstrated good faith efforts to meet the DBE goal. Within 30 days of receiving such documentation, NCDOT shall notify Developer whether Developer has achieved the DBE goal or demonstrated good faith efforts to meet the DBE goal. If NCDOT notifies Developer pursuant to this Section 10.9.4.2 that Developer has neither achieved the DBE goal nor demonstrated good faith efforts to achieve the DBE goal, then Developer shall pay to NCDOT, and NCDOT shall be entitled to deduct from any payments due and owing under the CA Documents, an amount equal to the difference between the DBE Goal Amount and the DBE Actual Amount. Developer may appeal a determination by NCDOT under this Section 10.9.4.2 in accordance with the DBE Special Provisions.

10.9.4.3 NCDOT and Developer acknowledge and agree that the payments owed by Developer, if any, under Section 10.9.4.2 are in the nature of liquidated damages and are reasonable in order to compensate NCDOT for its increased costs of administering this Agreement, including, but not limited to the DBE requirements, and the harm suffered by NCDOT's DBE program. Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the harm suffered.

10.10 Prevailing Wages

10.10.1 Developer shall pay or cause to be paid to all applicable workers employed by it or its Contractors to perform the Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including the Davis-Bacon Act, and as provided in Exhibit 6. Developer shall comply and cause its Contractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project). The foregoing shall not apply to Contracts at any tier with NCDOT or Governmental Entities.

10.10.2 It is Developer's sole responsibility to determine the wage rates required to be paid. In the event rates of wages and benefits change while this Agreement is in effect, Developer shall bear the cost of such changes and shall have no Claim against NCDOT on account of such changes. Without limiting the foregoing, no Claim will be allowed which is based upon Developer's lack of knowledge or a misunderstanding of any such requirements or Developer's failure to include in the Base Case Financial Model or Base Case Financial Model Updates adequate increases in such wages over the duration of this Agreement.

10.10.3 Developer shall comply and cause its Contractors, other than NCDOT or Governmental Entities acting as Contractors, to comply with all Laws regarding notice and

posting of intent to pay prevailing wages, of prevailing wage requirements and of prevailing wage rates.

10.11 Prompt Payment to Contractors

Developer shall comply, and cause its Contractors to comply, with the North Carolina Prompt Payment Act, North Carolina General Statutes § 143-134.1.

ARTICLE 11. RELATED AND OTHER FACILITIES

11.1 Integration with Related Transportation Facilities

11.1.1 Developer shall locate, configure, design, operate and maintain the termini, interchanges, entrances and exits of the Project so that the Project will be compatible and integrated with the location, configuration, design, operation and maintenance of, and provide a smooth, safe transition of traffic to and from, Related Transportation Facilities. The design and Right of Way Acquisition Plan for the Project shall include and provide for such compatibility, integration and transition. The design, construction, operation and maintenance of the Project shall satisfy all provisions of the Technical Provisions and Developer Management Plan relating to compatibility, integration and transition with or at Related Transportation Facilities, including those concerning signage, signaling and communications with Users. Developer shall not block or restrict, partially or wholly, access to or from the Project from or to any Related Transportation Facility without the prior express written consent of, and on such terms and conditions as may be specified by, NCDOT and the applicable local agency or other party, as the case may be.

11.1.2 Without limiting the foregoing, Developer shall cooperate and coordinate with NCDOT and any third party that owns, constructs, manages, operates or maintains a Related Transportation Facility with regard to the construction, maintenance and repair programs and schedules for the Project and the Related Transportation Facilities, in order to minimize disruption to the operation of the Project and the Related Transportation Facilities.

11.1.3 To assist Developer, NCDOT shall provide to Developer during normal working hours, reasonable access to plans, surveys, drawings, as-built drawings, specifications, reports and other documents and information in the possession of NCDOT or its contractors and consultants pertaining to Related Transportation Facilities. Developer, at its expense, shall have the right to make copies of the same. Developer, at its expense, shall conduct such other inspections, investigations, document searches, surveys and other work as may be necessary to identify the Related Transportation Facilities and achieve such compatibility, integration and transition.

11.1.4 NCDOT shall provide reasonable assistance to Developer, upon its request and at its expense, in obtaining cooperation and coordination from third parties that own, manage, operate or maintain Related Transportation Facilities and in enforcing rights, remedies and warranties that Developer may have against any such third parties. Such assistance may include NCDOT's participation in meetings and discussions. In no event shall NCDOT be required to bring any legal action or proceeding against any such third party.

11.1.5 NCDOT shall have at all times, without obligation or liability to Developer, the right to conduct traffic management activities on NCDOT's Related Transportation Facilities and

all other facilities of the State transportation network in the area of the Project in accordance with its standard traffic management practices and procedures in effect from time to time.

11.1.6 NCDOT shall reasonably cooperate and exercise reasonable efforts to avoid material interference and impacts to the Project in connection with NCDOT's activities with respect to Related Transportation Facilities.

11.2 Reserved Airspace and Business Opportunities

11.2.1 Developer's rights and interests in the Project and Project Right of Way are and shall remain specifically limited only to such real and personal property rights and interests that are necessary for Developer to perform its obligations under the CA Documents. Developer's rights and interests specifically exclude any and all Airspace and any and all improvements and personal property above, on or below the surface of the Project Right of Way which are not necessary and required for such purposes.

11.2.2 Except as otherwise provided herein, NCDOT reserves to itself, and Developer hereby relinquishes, all right and opportunity to develop and pursue entrepreneurial, commercial and business activities that are ancillary or collateral to (a) the use, enjoyment and operation of the Project and Project Right of Way as provided in this Agreement and (b) the collection, use and enjoyment of Toll Revenues as provided in this Agreement ("Business Opportunities"). Unless expressly authorized by NCDOT in its sole discretion, Developer will not grant permission for any Person (other than NCDOT) to use or occupy the Project for any ancillary or collateral purpose, whether through a lease or otherwise. The foregoing reservation in no way precludes Developer or any Affiliate, Contractor or other Developer-Related Entity from (i) carrying out the Project Plan of Finance, (ii) arranging and consummating Refinancings, (iii) creating and using brochures and other promotional and marketing material, responses to requests for qualifications or proposals, and similar communications that include descriptions, presentations and images of the Project or the Work for the purpose of promoting its business of developing, financing and operating transportation projects, or (iv) proposing to NCDOT joint Business Opportunities, including expected financial and other terms, for NCDOT's consideration; provided, however, that NCDOT will not consider any proposal to permit outdoor advertising and has no obligation to pursue Business Opportunities jointly with Developer.

11.2.3 The Business Opportunities reserved to NCDOT include all the following:

11.2.3.1 All rights to finance, design, construct, operate and maintain any passenger or freight rail facility, roads, highways, ferry or other mode of transportation in or outside of the Airspace, including bridges, tunnels, flyovers, local roads, interchanges and fixed guide-ways, and to grant to others such rights, subject to the provisions of Sections 11.2.4 and 11.3.2;

11.2.3.2 All rights to install, use, lease, grant indefeasible rights of use, sell and derive revenues from electrical and fiber optic conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity, existing over, on, under or adjacent to any portion of the Project Right of Way installed by anyone, whether before or after the Effective Date, and all software which executes such equipment and hardware and related documentation, except for the capacity of any such improvement installed by Developer that is necessary for and devoted exclusively to the operation of the Project. For the avoidance of doubt, if Developer installs any such

improvements, all use and capacity thereof not necessary for operation of the Project is reserved to, and shall be the sole property of NCDOT;

11.2.3.3 All rights to use, sell and derive revenues from traffic data and other data generated from operation of the Project or any Electronic Toll Collection System, except use of such data as required solely for operation of the Project and enforcement and collection of tolls;

11.2.3.4 All ownership, possession and control of, and all rights to develop, use, operate, lease, sell and derive revenues from, the Airspace, including development and operation of service areas, rest areas and any other office, retail, commercial, industrial, residential, retail or mixed use real estate project within the Airspace;

11.2.3.5 All rights to install, use and derive information, services, capabilities and revenues from Intelligent Transportation Systems and applications, except installation and use of any such systems and applications by Developer as required solely for operation of the Project. For avoidance of doubt, if Developer installs any such systems or applications, all use and capacity thereof not necessary for operation of the Project is reserved to, and shall be the sole property of, NCDOT;

11.2.3.6 All rights to market, distribute, sell and derive revenues from any goods, products or merchandise depicting, utilizing or exploiting any name, image, logo, caricature or other representation, in any form or medium, of NCDOT or the Project, or that may be confused with those of NCDOT or the Project;

11.2.3.7 All rights and opportunities to grant to others sponsorship, advertising and naming rights with respect to the Project or any portion thereof; provided, however, that in any sponsorship or naming rights transaction NCDOT shall cause to be granted to Developer a non-exclusive license to use the name in connection with Project operations;

11.2.3.8 All rights to revenues and profits derived from the right or ability of electronic toll account customers to use their accounts or transponders to purchase services or goods other than payment of tolls;

11.2.3.9 Any other commercial or noncommercial development or use of the Airspace or electronic toll collection technology for other than operation of the Project; and

11.2.3.10 All ownership, possession and control of, and all rights to develop, use, lease, sell and derive revenues from, carbon credits or other environmental benefits generated by or arising out of development, use, operation or maintenance of the Project.

11.2.4 If the development or operation of a Business Opportunity in the Airspace by NCDOT or anyone claiming under or through NCDOT prevents Developer from performing its obligations under this Agreement or adversely affects its costs or Toll Revenues, such impacts will be treated as a Relief Event under Section 13.1 and a Compensation Event under Section 13.2; provided, however, that if the development or operation of a Business Opportunity in the Airspace involves an Unplanned Revenue Impacting Facility, Section 11.3 applies.

11.2.5 Prior to deciding whether to develop, use or operate the Airspace, NCDOT may call on Developer to provide analysis of the impacts thereof on Developer's costs, schedule and

revenues, as if it were a Request for Change Proposal, in which case NCDOT and Developer shall follow the procedures under Sections 14.1.2 through 14.1.8.

11.2.6 In the event a Developer Default concerns a breach of the provisions of this Section 11.2, in addition to any other remedies, NCDOT shall be entitled to Developer's disgorgement of all profits from the prohibited activity, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of collection until the date disgorged, and to sole title to and ownership of the prohibited assets and improvements and revenues derived therefrom.

11.2.7 Developer is prohibited by Law and this Section 11.2 from placing or permitting any outdoor advertising within the boundaries of the Project Right of Way.

11.3 Unplanned Revenue Impacting Facilities

11.3.1 NCDOT Rights

11.3.1.1 Except for the limited rights to compensation provided to Developer under Section 11.3.2, NCDOT will have the unfettered right in its sole discretion, at any time and without liability, regardless of impacts on Toll Revenues, to finance, develop, approve, expand, improve, modify, upgrade, add capacity to, reconstruct, rehabilitate, restore, renew and replace any existing and new transportation or other facilities (including, without limitation, free roads, connecting roads, service roads, turnpikes, managed lanes, HOT/HOV lanes, light rail, freight rail, bus lanes, bridges, tunnels, ferry service, etc.). Such right extends to facilities both within the Airspace and outside the Project Right of Way, whether identified or not identified in transportation plans, and whether adjacent to, nearby or otherwise located as to affect the Project, its operation and maintenance (including the costs and expenses thereof), its vehicular traffic and/or its revenues.

11.3.1.2 The foregoing facilities include those owned or operated by (a) NCDOT, including those owned or operated by a private entity pursuant to a contract with NCDOT, (b) a joint powers authority or similar entity to which NCDOT is a member, (c) a Governmental Entity pursuant to a contract with NCDOT, including regional authorities, joint powers authorities, counties and municipalities, and (d) a Governmental Entity (including regional authorities, joint powers authorities, counties and municipalities) with respect to which NCDOT has contributed funds, in-kind contributions or other financial or administrative support. The foregoing rights include the ability to institute, increase or decrease tolls on such facilities or modify, change or institute new or different operation and maintenance procedures.

11.3.1.3 NCDOT will have the right, without liability, to make discretionary and non-discretionary distributions of federal and other funds for any transportation projects, programs and planning, to analyze revenue impacts of potential transportation projects, and to exercise all its authority to advise and recommend on transportation planning, development and funding.

11.3.2 Exclusive Covenants and Remedies Regarding Unplanned Revenue Impacting Facilities

This Section 11.3.2 sets forth Developer's sole and exclusive rights and remedies with respect to Unplanned Revenue Impacting Facilities, and supersedes any provisions of the CA Documents to the contrary. Such rights and remedies are subject to Section 11.3.3.

11.3.2.1 The Compensation Amount, if any, owing from NCDOT to Developer on account of the Unplanned Revenue Impacting Facility shall be equal to the loss of Toll Revenues, if any, attributable to the Unplanned Revenue Impacting Facility less the increase in Toll Revenues, if any, attributable to (a) the Unplanned Revenue Impacting Facility and (b) future additions or expansions of access points to the HOT Lanes by NCDOT or a Governmental Entity that are not included as part of the Work, if they are in operation at the time Developer first delivers its Claim for compensation to NCDOT. The Compensation Amount also shall include (i) the loss of Toll Revenues due to traffic disruption during, and directly caused by, construction, reconstruction, renewal, replacement or expansion activities for the Unplanned Revenue Impacting Facility and (ii) the increase or decrease, as the case may be, in Developer's costs directly caused by construction or operating activities for the Unplanned Revenue Impacting Facility. The foregoing Compensation Amount, if any, shall be determined in the same manner, and subject to the same conditions and limitations, as for a Compensation Event under Section 13.2; as well as the procedures in this Section.

11.3.2.2 Each Party may, but is not obligated to, deliver to the other Party a notice of potential Unplanned Revenue Impacting Facility at any time and prior to opening of the potential Unplanned Revenue Impacting Facility to traffic. If NCDOT provides such notice, NCDOT shall include in such notice (a) a reasonable description of the Unplanned Revenue Impacting Facility, including any right of way alignments, number of lanes, location and other pertinent features, (b) a statement whether the potential Unplanned Revenue Impacting Facility will be tolled, and if so the intended tolling requirements, including, if applicable, toll rate schedule by User Classification, and (c) any traffic and revenue studies and analyses that constitutes public information available to NCDOT for the potential Unplanned Revenue Impacting Facility (to the extent such information constitutes public information under applicable Law). If Developer provides such notice, then, within 30 days after NCDOT receives the notice, it shall deliver to Developer either the foregoing documentation (to the extent available or known to NCDOT) or a notice that commencement of procedures under this Section 11.3.2.2 is premature because there is no reasonable expectation of commencing construction of the potential Unplanned Revenue Impacting Facility within the next two years. If NCDOT delivers notice that commencement of procedures is premature, Developer shall have the right to deliver a new notice of the potential Unplanned Revenue Impacting Facility no earlier than one year after its prior notice, in which case, the foregoing provisions shall again apply.

11.3.2.3 Within 180 days after NCDOT delivers to Developer the documentation described in Section 11.3.2.2, Developer shall deliver to NCDOT a written notice of Claim stating whether Developer believes the potential Unplanned Revenue Impacting Facility will have an adverse effect on the amount of Toll Revenues and, if so, a true and complete copy of a preliminary traffic and revenue study and analysis showing the projected effect and a reasonably detailed statement quantifying such effects. Such analysis and quantification shall include data on past Toll Revenues and projected future Toll Revenues with and without the potential Unplanned Revenue Impacting Facility.

11.3.2.4 If, for any reason, Developer fails to deliver such written notice of Claim and related information within the foregoing time period (as it may be extended), Developer shall be deemed to have irrevocably and forever waived and released any Claim or right to compensation for any adverse effect on Toll Revenues attributable to the construction, operation and use of the subject potential Unplanned Revenue Impacting Facility or any Unplanned Revenue Impacting Facility that is not substantially different from the potential Unplanned Revenue Impacting Facility. For this purpose, an Unplanned Revenue Impacting Facility ultimately constructed and operated shall be considered substantially different from the

subject potential Unplanned Revenue Impacting Facility if (a) the route is substantially different, (b) the number of lanes is different, (c) the number of HOV, HOT, truck or other special purpose or restricted use lanes is different or their length is substantially different, (d) the total length is substantially different, (e) NCDOT stated in its written notice that the potential Unplanned Revenue Impacting Facility would be tolled and the actual Unplanned Revenue Impacting Facility is not tolled or is tolled at materially lower toll rates for the predominant classifications of vehicles than the rates described in NCDOT's notice (if applicable), (f) the means for collecting tolls is substantially different (e.g. barrier only vs. barrier-free or open lane tolling), (g) the number of access points to the Unplanned Revenue Impacting Facility is different or the design capacity of access points to the Unplanned Revenue Impacting Facility is substantially different, or (h) there are other differences similar in scale or effect to the foregoing differences.

11.3.2.5 If Developer timely delivers its written notice of Claim and related information, then at NCDOT's request Developer shall engage in good faith, diligent negotiations with NCDOT to mutually determine and settle the Compensation Amount potentially owing from NCDOT to Developer on account of the potential Unplanned Revenue Impacting Facility. As part of such negotiations, the Parties shall continue to refine and exchange, on an Open Book Basis, plans, drawings, configurations and other information on the potential Unplanned Revenue Impacting Facility, traffic and revenue data, information, analyses and studies, and financial modeling and quantifications of projected Toll Revenue loss, if any. At the request of either Party, the Parties shall engage and share the cost of a neutral facilitator to assist with the negotiations.

11.3.2.6 If, despite such good faith, diligent negotiations (including exchange of information on an Open Book Basis), NCDOT and Developer are unable to agree upon the Compensation Amount within 90 days after commencement of such negotiations, then either Party may terminate the negotiations upon written notice to the other Party and Section 11.3.2.7 shall govern. If the Parties are successful in the negotiations, they shall execute and deliver written agreements and, if necessary, amendments to this Agreement, setting forth all the terms and conditions of settlement, which shall thereafter be final and binding and constitute a full settlement and release of any and all Claims, causes of action, suits, demands and Losses of Developer arising out of the Unplanned Revenue Impacting Facility or any similar substitute Unplanned Revenue Impacting Facility. Neither Party thereafter shall have the right to rescind or cancel the settlement for any reason, including differences between the amounts of actual future Toll Revenues and the amount that were previously projected.

11.3.2.7 If any Unplanned Revenue Impacting Facility is opened for traffic operations and is not the subject of compensation settlement under Section 11.3.2.6 or upon opening is substantially different from the Unplanned Revenue Impacting Facility that is the subject of compensation settlement (as described in Section 11.3.2.4), then Developer shall be entitled to pursue its Claim for the Compensation Amount on and subject to the following terms and conditions:

(a) Developer shall have a period of up to four years following the opening for traffic operations of the Unplanned Revenue Impacting Facility to make a Claim for the Compensation Amount (which may include both past and future adverse effects on the amount of Toll Revenues). Developer shall make a Claim by delivering to NCDOT written notice of the Claim together with the same related information and materials as described in Section 11.3.2.3. The written notice shall state the claimed Compensation Amount and Developer's proposed Base Case Financial Model Update. If, for any reason, Developer fails to deliver such written notice of Claim and related information within the foregoing time period,

Developer shall be deemed to have irrevocably and forever waived and released any Claim or other right to compensation for any adverse effect, past or future, on Toll Revenues attributable to the Unplanned Revenue Impacting Facility.

(b) If Developer timely delivers its written notice of Claim and related information, then, at NCDOT's request, Developer shall deliver to NCDOT, on an Open Book Basis, any other information, studies, analyses and documentation used by or available to Developer in support of its Claim or otherwise relevant to the determination of the Compensation Amount (if any), and the Parties shall seek to settle the Claim in good faith. Any unresolved Dispute regarding whether Developer is entitled to any compensation and the amount thereof shall be resolved according to the Dispute Resolution Procedures.

(c) Developer shall bear the burden of proving its Claim by a preponderance of evidence.

11.3.2.8 If any Unplanned Revenue Impacting Facility for which compensation is paid or payable pursuant to Section 11.3.2.6 or 11.3.2.7 is modified physically or operationally after opening for traffic operations so that it is substantially different from the original Unplanned Revenue Impacting Facility (as described in Section 11.3.2.4) and as a result thereof Developer experiences a further adverse effect on the amount of Toll Revenues, then Developer shall be entitled to further compensation for such impact, offset by any further gain in Toll Revenues, if any, attributable to other future additions or expansions of access points to the HOT Lanes by NCDOT or a Governmental Entity that are not included as part of the Work and that are in operation at the time Developer first delivers its Claim for further compensation to NCDOT. The foregoing right to further compensation shall be subject to the same terms and conditions as set forth in Section 11.3.2.7, with the deadline for making Claim running from the date the changes in the original Unplanned Revenue Impacting Facility are substantially completed.

11.3.3 Waiver of Rights and Remedies Regarding Unplanned Revenue Impacting Facilities

Developer acknowledges that NCDOT has a paramount public interest and duty to develop and operate whatever transportation facilities it deems to be in the best interests of the State, and that the compensation to which Developer is entitled on account of Unplanned Revenue Impacting Facilities is a fair and adequate remedy. Accordingly, Developer shall not have, and irrevocably waives and relinquishes, any and all rights to institute, seek or obtain any injunctive relief or pursue any action, order or decree to restrain, preclude, prohibit or interfere with NCDOT's rights to plan, finance, develop, operate, maintain, toll or not toll, repair, improve, modify, upgrade, reconstruct, rehabilitate, restore, renew or replace Unplanned Revenue Impacting Facilities; provided, however, that the foregoing shall not preclude Developer from enforcing its rights to compensation regarding Unplanned Revenue Impacting Facilities under Section 11.3.2 (or rights to compensation regarding other Compensation Events). The filing of any such action seeking to restrain preclude, prohibit or interfere with NCDOT's rights shall automatically entitle NCDOT to recover all costs and expenses, including attorneys' fees, of defending such action and any appeals.

11.3.4 Positive Impact of Unplanned Revenue Impacting Facilities

11.3.4.1 If it is determined that operation of an Unplanned Revenue Impacting Facility will have a net positive financial impact to Developer, whether through

increased Toll Revenues to Developer, decreased operating and maintenance costs, or an increase in Toll Revenues net of increased operating and maintenance costs, NCDOT shall be entitled to receive from Developer the full net positive financial impact attributable to such Unplanned Revenue Impacting Facility or any subsequent modifications (physically or operationally) thereto (if any). NCDOT shall have a period of up to four years following the opening for traffic operations of the Unplanned Revenue Impacting Facility to make a Claim under this Section 11.3.4. Any Dispute regarding such amount shall be resolved according to the Dispute Resolution Procedures, and NCDOT shall have the burden of proving its Claim by a preponderance of the evidence. For the purpose of any discounting, the provisions of Section 13.2.4.3 shall apply.

11.3.4.2 Following a determination of the net positive financial impact by mutual agreement or the Dispute Resolution Procedures, Developer shall pay such amount (a) through quarterly or other periodic payments in accordance with a written payment schedule determined by mutual agreement or through the Dispute Resolution Procedures corresponding to when the net positive financial impacts are anticipated to occur, (b) in a lump sum, payable as determined by mutual agreement or through the Dispute Resolution Procedures, (c) by adjustment to the revenue payment formula set forth in Part C of Exhibit 5 so as to make up all or any portion of the amount or (d) in such other manner as agreed upon by the Parties. Developer, in its sole discretion, shall be entitled to select one or any combination of the methods of compensation under clauses (a), (b) and (c); provided that if Developer elects to make quarterly or other periodic payments, at any later time, it may choose to complete payment through a lump sum payment of the present value of the remaining payment.

ARTICLE 12. TECHNOLOGY ENHANCEMENTS; DISCRETIONARY UPGRADES AND SAFETY COMPLIANCE

12.1 Conditions Requiring Technology Enhancements

12.1.1 Except as provided otherwise in Section 12.1, Developer at its expense shall be obligated to make Technology Enhancements on the systems it provides as and when necessary (a) to correct Defects, (b) under the Renewal Work Plan, or (c) to maintain interoperability in accordance with Section 24.3.2.5 of the Technical Provisions. Developer acknowledges and represents that the cost of such Technology Enhancements and future financing therefor are incorporated into the Base Case Financial Model. Accordingly, no such Technology Enhancements shall be treated as a Compensation Event or otherwise entitle Developer to any Claim against NCDOT.

12.1.2 Except pursuant to a NCDOT Change issued in accordance with this Section 12.1.2, Developer shall have no obligation to undertake Technology Enhancements for its ETCS until 365 days after Final Completion. Should NCDOT notify Developer that data formats, documentation, interface requirements and/or Quick Pass ETCS design will change prior to 365 days after Final Completion, the incremental cost of such changes shall be treated as a NCDOT Change in accordance with Section 14.1.

12.1.3 Except to correct Defects, Developer shall have no obligation to undertake Technology Enhancements during the last 6 years of the Term in the following circumstances:

12.1.3.1 The costs incurred to implement such Technology Enhancements cannot be reasonably recovered (including a reasonable rate of return on equity invested) over the remaining Term;

12.1.3.2 Developer submits to NCDOT a reasonable analysis demonstrating its position under Section 12.1.3.1, and setting forth reasonably detailed cost and financial information for such Technology Enhancements, including information on cost subsidies from NCDOT; and

12.1.3.3 Developer does not receive from NCDOT, within 60 days after NCDOT receives such analysis, written notice under which NCDOT commits to subsidize such cost, to the extent necessary to enable Developer to recover such costs (including a reasonable rate of return on equity invested). NCDOT's commitment to subsidize such cost may take the form of a commitment to pay as costs of such improvements are incurred or to pay an up front lump sum payment, in either case, to the extent necessary to enable Developer to realize a reasonable rate of return on its own additional equity invested.

12.1.4 Except to correct Defects, Developer shall have no obligation to undertake Technology Enhancements for its ETCS during the Term unless comparable Technology Enhancements are undertaken by NCDOT on all NCDOT in-State toll facilities.

12.2 Discretionary Upgrades

12.2.1 NCDOT and Developer shall have the right to propose Capacity Improvements and Project Extensions. Any Capacity Improvements or Project Extensions proposed by Developer shall be treated as a Change Request subject to Section 14.2. Any proposed Capacity Improvements or Project Extensions proposed by NCDOT shall be treated as a Request for Change Proposal pursuant to Section 14.1.2. To the extent proposed Capacity Improvements or Project Extensions require further environmental review under NEPA, NCDOT shall provide all needed studies and analyses with support and coordination from Developer consistent with applicable federal Law. If the Capacity Improvements or Project Extensions are proposed by Developer, Developer shall reimburse NCDOT for all costs, including NCDOT Recoverable Costs, NCDOT incurs in connection with the NEPA process and any litigation or challenges arising therefrom.

12.2.2 Developer shall have no right to, and shall not, construct any Capacity Improvement or Project Extension without NCDOT's prior written approval, in NCDOT's sole discretion.

12.3 Safety Compliance

12.3.1 Safety Compliance Orders

12.3.1.1 NCDOT shall use good faith efforts to inform Developer at the earliest practicable time of any circumstance or information relating to the Project which, in NCDOT's reasonable judgment, is likely to result in a Safety Compliance Order. Except in the case of Emergency, NCDOT shall consult with Developer prior to issuing a Safety Compliance Order concerning the risk to public or worker safety, alternative compliance measures, cost impacts, and the availability of Developer resources to fund the Safety Compliance work.

12.3.1.2 Subject to conducting such prior consultation as required, NCDOT may issue Safety Compliance Orders to Developer at any time from and after the Effective Date.

12.3.2 Duty to Comply

12.3.2.1 Subject to Section 12.3.1, Developer shall implement all Safety Compliance work as expeditiously as reasonably possible following issuance of the Safety Compliance Order. Developer shall diligently prosecute the work necessary to achieve such Safety Compliance until completion, subject to any remedies allowed from the occurrence of a Relief Event.

12.3.2.2 Developer shall perform all work required to achieve Safety Compliance at Developer's sole cost and expense. Without limiting the foregoing and for the avoidance of doubt, in no event shall Developer be entitled to (a) issue a Change Request or (b) except as provided in Section 12.3.3, claim that a Compensation Event or Relief Event has occurred or resulted from the existence of a Safety Compliance Order.

12.3.3 Contesting Safety Compliance Orders

Developer may contest a Safety Compliance Order no later than five days after receiving such Safety Compliance Order by delivering to NCDOT written notice setting forth (a) Developer's claim that no Safety Compliance conditions exist to justify the Safety Compliance Order, (b) Developer's explanation of its claim in reasonable detail and (c) Developer's estimate of impacts on costs, Toll Revenues and schedule attributable to the contested Safety Compliance Order. If NCDOT does not receive such written notice prior to issuance of a Safety Compliance Order, or within 5 days after NCDOT issues an emergency Safety Compliance Order, then Developer thereafter shall have no right to contest. If Developer timely contests a Safety Compliance Order, Developer nevertheless shall implement the Safety Compliance Order upon NCDOT's request, but if it is finally determined under the Dispute Resolution Procedures that Safety Compliance conditions did not exist, then the Safety Compliance Order shall be treated as a Directive Letter for an NCDOT Change.

ARTICLE 13. RELIEF EVENTS; COMPENSATION EVENTS

13.1 Relief Events

13.1.1 Relief Event Notice

13.1.1.1 If at any time Developer determines that a Relief Event has occurred or is imminent, Developer shall submit a written Relief Event Notice to NCDOT. NCDOT shall promptly acknowledge receipt of each Relief Event Notice.

13.1.1.2 The Relief Event Notice shall include (a) a statement of the Relief Event upon which the claim of delay or inability to perform is based, (b) to the extent then known, a reasonably detailed description of the circumstances from which the delay or inability to perform arises, and (c) an estimate of the delay in performance of any obligations under the CA Documents attributable to the Relief Event. If a single Relief Event is a continuing cause of delay, only one Relief Event Notice shall be necessary.

13.1.2 Relief Request

13.1.2.1 Developer shall, within a further 30 days after the date of the Relief Event Notice, submit to NCDOT a Relief Request containing such further information as is then available to Developer relating to the Relief Event, and any delay in performance or

failure to perform. NCDOT shall promptly acknowledge receipt of each Relief Request. Developer shall include in the Relief Request the following:

(a) Full details of the Relief Event, including its nature, the date of its occurrence and its duration;

(b) The effect of the Relief Event on Developer's ability to perform any of its obligations under the CA Documents, including details of the relevant obligations, the precise effect on each such obligation, a Time Impact Analysis under Section 2.2 of the Technical Provisions if an extension of a Milestone Schedule Deadline is requested by Developer indicating all affected activities on any Critical Path (with activity durations, predecessor and successor activities and resources, including Float available pursuant to Section 7.5.5), and the likely duration of that effect;

(c) An explanation of the measures that Developer proposes to undertake to mitigate the delay and other consequences of the Relief Event; and

(d) Identification of the particular provisions of the CA Documents that are claimed to entitle Developer to the relief sought, and a statement that sets forth the reasons why such provisions entitle Developer to such relief.

13.1.2.2 If, following issuance of any Relief Request, Developer receives or becomes aware of any further information relating to the Relief Event and/or any delay in performance or failure to perform, it shall submit such further information to NCDOT as soon as possible. NCDOT may request from Developer any further information that NCDOT may reasonably require, and Developer shall supply the same within a reasonable period after such request.

13.1.3 Waiver

Time is of the essence in Developer's delivery of its written Relief Event Notice and Relief Request. Accordingly:

13.1.3.1 If for any reason Developer fails to deliver such written Relief Event Notice:

(a) Within 30 days following the date (herein the "starting date") on which Developer first became aware (or should have been aware, using all reasonable due diligence) of the Relief Event, Developer shall be deemed to have irrevocably and forever waived and released the portion of any Claim or right to relief (including extension of the Term, if and to the extent permitted under applicable Law) for adverse effect attributable to the Relief Event accruing after such 30-day deadline and until the date Developer submits the written Relief Event Notice; and

(b) Within 180 days following the starting date, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to relief (including extension of the Term, if and to the extent permitted under applicable Law) for any adverse effect attributable to such Relief Event; and

13.1.3.2 If for any reason Developer fails to deliver such written Relief Request within 30 days after the date of the Relief Event Notice, Developer shall be deemed to

have irrevocably and forever waived and released any and all Claim or right to relief (including extension of the Term, if and to the extent permitted under applicable Law) for any adverse effect attributable to such Relief Event.

13.1.4 Extension of Term for Certain Relief Events

13.1.4.1 If and to the extent permitted under applicable Law, Developer shall be entitled to an extension of the Term of this Agreement in (and only in) the following circumstances:

(a) Developer submits its Relief Event Notice and Relief Request within the applicable time periods;

(b) (i) During the Construction Period, the Relief Event results in an extension of a Milestone Schedule Deadline of at least 90 days or (ii) during the Operating Period, the Relief Event causes delay in performance that continues for a consecutive period of at least 90 days, or there occurs a cumulative period of delay in performance of at least 90 days in any consecutive 24-month period due only to Relief Events causing delays in performance that continue for a consecutive period of at least 30 days each;

(c) The Relief Event is not also a Compensation Event; and

(d) The Relief Event adversely affects the collection of Toll Revenues (of the type described in clauses (a) through (c) of the definition of Toll Revenues) or increases Developer's costs that are not insured and not required to be insured under this Agreement.

13.1.4.2 If and to the extent permitted under applicable Law, any extension of the Term shall be limited to the extra period of time reasonably required to recover from the impact of the loss of Toll Revenues (of the type described in clauses (a) through (c) of the definition of Toll Revenues) and the impact of the increase in uninsurable and nonreimburseable costs attributable to such Relief Event, minus any cost-savings realized by Developer due to such Relief Event. For the purpose of determining impacts and the length of the extension of the Term, the Parties shall use the same present value methodology for calculating the weighted average cost of capital and the value of future Toll Revenues as incorporated into the Base Case Financial Model Update (or, if there has been no Base Case Financial Model Update, into the Base Case Financial Model).

13.1.4.3 In addition to providing information pursuant to Section 13.1.2.2, Developer shall deliver to NCDOT a written notice and analysis within 30 days after occurrence of cumulative periods of delay due to Relief Events that Developer determines entitle it to an extension of the Term under this Section 13.1.4 (a "Relief Request update"). The Relief Request update shall state such facts and the expected period that the Relief Event(s) will continue, include an update of the information described in Section 13.1.2.1, and include a financial analysis of the period of the extension necessary to recover the impacts set forth in Section 13.1.4.2. Developer shall provide further Relief Request updates monthly until the subject Relief Event(s) ceases.

13.1.5 Relief Event Determination

13.1.5.1 If Developer complies with the notice and information requirements in Sections 13.1 and 13.2, then within 30 days after receiving the Relief Event

Notice and Relief Request (and, if applicable a final Relief Request update), NCDOT, acting reasonably, shall issue a Relief Event Determination. NCDOT shall specify in the Relief Event Determination (a) the relevant obligations for which relief is given, (b) the period of time Milestone Schedule Deadlines will be extended based on the number of days of delay affecting a Critical Path, after consumption of Float available pursuant to Section 7.5.5, that is directly attributable to the Relief Event and that cannot be avoided through reasonable mitigation measures, and (c) if applicable, the period of time, if any, that the Term will be extended (if and to the extent permitted under applicable Law). Developer shall be relieved from the performance of obligations to the extent specified in the Relief Event Determination, and Noncompliance Points and liquidated damages (if applicable) shall not be assessed against Developer as a result of inability to perform its obligations due solely and directly to, and during, the Relief Event period.

13.1.5.2 Developer shall not be excused from timely payment of monetary obligations under this Agreement due to the occurrence of a Relief Event or from the performance of any other obligations under the CA Documents not directly impacted by such Relief Event. Developer shall not be excused from compliance with applicable Laws, Technical Provisions or Technical Documents due to the occurrence of a Relief Event, except temporary inability to comply as a direct result of a Relief Event.

13.1.5.3 If NCDOT is obligated to but does not provide a Relief Event Determination within such 30-day period, Developer shall have the right to assert a Claim against NCDOT for the relevant Relief Event and have such Claim determined according to the Dispute Resolution Procedures. Any Dispute regarding the occurrence of a Relief Event, the terms of the Relief Event Determination or waiver of Developer's Claim or right to relief shall be resolved according to the Dispute Resolution Procedures.

13.2 Compensation Events; Determination of Compensation Amount

13.2.1 Except as otherwise provided in this Agreement, if at any time Developer determines that a Compensation Event has occurred or is imminent, Developer shall submit a written Compensation Event Notice to NCDOT. The Compensation Event Notice shall: (a) identify the Compensation Event and its date of occurrence in reasonable detail, (b) describe Developer's current estimate of the anticipated adverse and beneficial effects of the Compensation Event, (c) include written analysis and calculation of Developer's current estimate of the estimated increase or decrease in costs and estimated loss of or increase in Toll Revenues, to the extent applicable to the Compensation Event, (d) the type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance, and (e) identification of the particular provisions of the CA Documents that are claimed to entitle Developer to the relief sought, and a statement that sets forth the reasons why such provisions entitle Developer to such relief.

13.2.2 Time is of the essence in Developer's delivery of its written Compensation Event Notice. Accordingly, if for any reason Developer fails to deliver such written Compensation Event Notice:

13.2.2.1 Within 60 days following the date (herein the "starting date") on which Developer first became aware (or should have been aware, using all reasonable due diligence) of the occurrence of such Compensation Event, Developer shall be deemed to have irrevocably and forever waived and released the portion of any Claim or right to compensation for adverse effect on Toll Revenues and costs attributable to such Compensation Event

accruing after such 60-day deadline and until the date Developer submits the written Compensation Event Notice; and

13.2.2.2 Within 180 days following the starting date, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to compensation for any adverse effect on Toll Revenues or costs attributable to such Compensation Event.

13.2.3 NCDOT shall promptly acknowledge receipt of each Compensation Event Notice and update. After receiving Developer's Compensation Event Notice, NCDOT shall be entitled to obtain (a) from a consultant retained by NCDOT, a comprehensive report as to Developer's estimate of the cost impacts attributable to the Compensation Event and (b) from a traffic and revenue consultant retained by NCDOT, a traffic and revenue study, prepared in accordance with Good Industry Practice, analyzing and calculating the estimated impact on Toll Revenues attributable to the Compensation Event. Within 90 days after receiving Developer's Compensation Event Notice, NCDOT shall provide to Developer a true and complete copy of the traffic and revenue study and the report prepared by the consultant retained by NCDOT. If Developer complies with the notice and information requirements in Sections 13.2.1 and 13.2.2, but NCDOT does not provide Developer copies of such study and report within such 90-day period, then Developer shall have the right to assert a Claim against NCDOT for the relevant Compensation Amount (if any) and have such Claim determined according to the Dispute Resolution Procedures.

13.2.4 If Developer complies with the notice and information requirements in Sections 13.2.1 and 13.2.2, then within 30 days after NCDOT and Developer receive the report and study from the consultant retained by NCDOT and traffic and revenue consultant, NCDOT and Developer shall commence good faith negotiations to determine the Compensation Amount, if any, to which Developer is entitled. If Developer stands ready to commence good faith negotiations to determine the Compensation Amount within the foregoing time period but for any reason NCDOT does not commence, or continue, to engage therein within the foregoing time period, then, subject to compliance with the notice and information requirements in Sections 13.2.1 and 13.2.2, Developer shall have the right to assert a Claim against NCDOT for the relevant Compensation Amount (if any) and have such Claim determined according to the Dispute Resolution Procedures. The Compensation Amount shall be determined by applying the following provisions.

13.2.4.1 Cost impacts shall:

(a) Exclude (i) entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs and costs of club memberships, in each case to the extent that such costs would not be reimbursed to an employee of NCDOT in the regular course of business, and (ii) unallowable costs under the following provisions of the federal Contract Cost Principles, 48 CFR 31.205: 31.205-8 (contributions or donations), 31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), 31.205-14 (entertainment costs), 31.205-15 (fines, penalties, and mischarging costs), 31.205-27 (organization costs), 31.205-34 (recruitment costs), 31.205-35 (relocation costs), 31.205-43 (trade, business, technical and professional activity costs), 31.205-44 (training and education costs) and 31.205-47 (costs related to legal and other proceedings);

(b) Exclude amounts paid or to be paid to Affiliates in excess of the pricing Developer could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor;

(c) Exclude those costs incurred in asserting, pursuing or enforcing any Claim or Dispute, including legal, accounting, financial advisory and technical advisory fees and expenses, and including such costs in connection with preparing Compensation Notices, Compensation Requests and final documentation of Claims in respect of Compensation Events; provided, however, that Developer may include 50% of the direct and actual out-of-pocket costs in preparing the preliminary traffic and revenue study and analysis required under Section 11.3.2.3 in the Compensation Amount that the Parties have agreed to in connection with an Unplanned Revenue Impacting Facility in accordance with Section 11.3.2 ;

(d) Take into account any savings in costs resulting from the Compensation Event; and

(e) Be subject to Developer's obligation to mitigate cost increases and augment cost decreases in accordance with Section 13.4.

13.2.4.2 Toll Revenue impacts shall:

(a) Take into account any increase in Toll Revenue attributable to the Compensation Event; and

(b) Be subject to Developer's obligation to mitigate loss of Toll Revenues in accordance with Section 13.4.

13.2.4.3 For the purpose of any discounting, the Parties shall use the same present value methodology for calculating the weighted average cost of capital as incorporated into the Base Case Financial Model Update (or, if there has been no Base Case Financial Model Update, into the Base Case Financial Model).

13.2.4.4 In all cases the Compensation Amount shall be net of all insurance available to Developer, or deemed to be self-insured by Developer under Section 16.1.4.3, with respect to cost or revenue impacts of the Compensation Event.

13.2.4.5 If the Compensation Amount includes amounts subject to federal income tax or State tax and NCDOT chooses under Section 13.2.9 to pay any portion of such taxable amounts in a lump sum, then the Compensation Amount shall also include, and NCDOT shall pay, the amount necessary to cover the incremental increase, if any, in the federal income tax liability of Developer (or, if it is a pass-through entity for income tax purposes, its members or partners) and State tax liability of Developer due to such lump sum payment over the Base Tax Liability. NCDOT shall pay such amount within 30 days after Developer delivers to NCDOT proof of the actual tax liability incurred and the amount by which it exceeds the Base Tax Liability. The Compensation Amount shall not include, and NCDOT shall have no liability for, any incremental increase in federal income tax or State tax liability where the Compensation Amount is paid in quarterly or other periodic payments.

13.2.4.6 If the Compensation Event results in a net savings to NCDOT, NCDOT shall be entitled to reduce the Public Funds Amount for such net savings or deduct such net savings from any amounts owed to Developer under this Agreement.

13.2.5 If, following issuance of any Compensation Event Notice, and during the period of analysis and negotiation under Sections 13.2.3 and 13.2.4, Developer receives or becomes aware of any further information relating to the Compensation Event and/or actual or anticipated adverse and beneficial effects thereof, it shall submit such further information to NCDOT as soon as possible. NCDOT may request from Developer any further information that NCDOT may reasonably require, and Developer shall supply the same within a reasonable period after such request.

13.2.6 If the Compensation Event is:

13.2.6.1 The development, use or operation of an Unplanned Revenue Impacting Facility, the Compensation Amount shall be as set forth in Section 11.3.2.1 and, if applicable, Section 11.3.2.8;

13.2.6.2 Under clause (f) of the definition of Compensation Event, then the Compensation Amount shall be limited as set forth in Section 11.2.4; or

13.2.6.3 Under clause (u) of the definition of Compensation Event, then the Compensation Amount shall be the amount actually received by NCDOT with respect to the Project from the federal government for the Force Majeure Event, less NCDOT's Recoverable Costs in responding to such Force Majeure Event and in securing and collecting such amounts.

13.2.7 Developer shall conduct all discussions and negotiations to determine any Compensation Amount, and shall share with NCDOT all data, documents and information pertaining thereto, on an Open Book Basis.

13.2.8 If NCDOT and Developer are unable to agree on the Compensation Amount within 30 days after commencing good faith negotiations, or if Developer asserts a Claim against NCDOT for the Compensation Amount pursuant to Sections 13.2.3 or 13.2.4, within 30 days thereafter, NCDOT shall prepare a good faith estimate of the Compensation Amount, and shall pay the full undisputed portion of the Compensation Amount to Developer in accordance with Section 13.2.9. Any Dispute regarding occurrence of a Compensation Event, determination of the Compensation Amount or waiver of Developer's Claim or right to compensation shall be resolved according to the Dispute Resolution Procedures. The dispute resolution body(ies) shall apply the provisions of Section 13.2.4 in determining the Compensation Amount.

13.2.9 Following a determination of the Compensation Amount by mutual agreement or the Dispute Resolution Procedures (or following a determination of the undisputed portion of the Compensation Amount in accordance with Section 13.2.8), NCDOT shall pay such Compensation Amount (less any portion already paid): (a) through quarterly or other periodic payments of such Compensation Amount in accordance with a written payment schedule determined by mutual agreement or through the Dispute Resolution Procedures corresponding to when the cost and Toll Revenue impacts that make up such Compensation Amount are anticipated to occur, (b) in a lump sum, payable as determined by mutual agreement or through the Dispute Resolution Procedures, (c) by adjustment to the revenue payment formula set forth in Part C of Exhibit 5 so as to make up all or any portion of such Compensation Amount, (d) through an extension of the Term (if and to the extent permitted under applicable Law); or (e) in such other manner as agreed upon by the Parties. NCDOT, in its sole discretion, shall be entitled to select one or any combination of the methods of compensation under clauses (a), (b), (c), and (d) above, subject to the following terms and conditions.

13.2.9.1 No method may be chosen if it will not yield the amount necessary to restore Developer to the same economic position it would have been in if the Compensation Event had not occurred, except as specifically provided otherwise in this Agreement.

13.2.9.2 If any portion of such Compensation Amount is to pay for prior capital expenditures, NCDOT shall pay such portion in a lump sum, unless otherwise approved in writing by Developer.

13.2.9.3 If any portion of such Compensation Amount is to pay for costs of design or construction to be performed, or for other future capital expenditures, then NCDOT shall have no obligation to make advance payments and shall pay such portion of the Compensation Amount in quarterly progress payments in arrears and otherwise according to NCDOT's standard practices and procedures for paying its contractors and applicable Laws.

13.2.9.4 If any portion of such Compensation Amount is to pay for future non-capital costs or future Toll Revenue impacts, any periodic payments NCDOT chooses shall in no event be made less often than quarterly.

13.2.9.5 If NCDOT elects to make quarterly or other periodic payments, at any later time, NCDOT may choose to complete compensation through a lump sum payment of the present value of such remaining Compensation Amount (plus any incremental federal or State income tax liability as provided in Section 13.2.4.5).

13.2.9.6 Any election by NCDOT to pay all or a portion of such Compensation Amount pursuant to Section 13.2.9(c) shall be subject to (a) determination that Developer will have the continuing ability to satisfy debt coverage ratios then binding on Developer under its Funding Agreements and Security Documents if such method is used and (b) the ability of Developer, using diligent efforts, to raise additional Project Debt or equity to the extent necessary to currently fund the cost impacts of the Compensation Event.

13.2.9.7 If NCDOT does not make any lump sum or periodic payment of the Compensation Amount when due, it shall thereafter bear interest, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, until the date the amount due is paid; provided, however, that if any portion of the Compensation Amount is to pay for costs of design or construction to be performed or for other future capital expenditures, such portion shall bear interest in accordance with the North Carolina Prompt Payment Act, North Carolina General Statutes § 143-134.1.

13.2.10 Without limiting Developer's rights with respect to non-monetary relief for Relief Events, the Compensation Amount shall represent the sole right to compensation and damages for the adverse financial effects of a Compensation Event. As a condition precedent to NCDOT's obligation to pay any portion of the Compensation Amount, Developer shall execute a full, unconditional, irrevocable release, in form reasonably acceptable to NCDOT, of any Claims, Losses or other rights to compensation or other monetary relief associated with such Compensation Event, except for the Claim and right to the subject Compensation Amount, Developer's right to non-monetary relief for a Relief Event, and the right to terminate this Agreement in accordance with Section 19.4 and to receive any applicable Termination Compensation.

13.2.11 Developer shall run new projections and calculations under the Financial Model Formulas to establish a Base Case Financial Model Update whenever there occurs a

Compensation Event. NCDOT shall have the right to challenge, according to the Dispute Resolution Procedures, the validity, accuracy or reasonableness of any Base Case Financial Model Update or the related updated and revised assumptions and data. NCDOT shall have 60 days after receiving written notice from Developer that the Base Case Financial Model Update has been deposited in an Intellectual Property Escrow to commence action under the Dispute Resolution Procedures. In the event of a challenge, the immediately preceding Base Case Financial Model Update that has not been challenged (or, if there has been no unchallenged Base Case Financial Model Update, the Base Case Financial Model) shall remain in effect pending the outcome of the challenge or until a new Base Case Financial Model Update is issued and unchallenged. In no event shall the Financial Model Formulas be changed except with the prior written approval of both Parties, each in its sole discretion.

13.3 Developer Ratio Adjustment Mechanism Provisions

13.3.1 General

The provisions of this Section 13.3 sets forth the conditions and requirements under which NCDOT will provide limited credit enhancement support for the Project and to facilitate the financing of the Project ("Developer Ratio Adjustment Mechanism"). The Parties acknowledge that the Developer Ratio Adjustment Mechanism is not intended to guarantee a minimum return on investment to the Equity Members. Payments under the Developer Ratio Adjustment Mechanism are subject to, and contingent upon satisfying, the conditions and requirements of this Section 13.3.

13.3.2 Period of Availablity and Limitation on Amounts

13.3.2.1 The Developer Ratio Adjustment Mechanism shall only be available to the Project commencing on the date on which all Project Sections have achieved Substantial Completion and ending on the twenty-first year anniversary of the date on which all Project Sections have achieved Substantial Completion ("DRAM Period").

13.3.2.2 The amounts payable under the Developer Ratio Adjustment Mechanism shall be limited as follows:

(a) In any given DRAM Operating Year during the DRAM Period, in no event shall annual payments exceed $12 million ("DRAM Annual Cap Amount"), including if a DRAM Trigger Event occurs and the amount necessary to return the forecasted annual Total Debt Service Coverage Ratio in such DRAM Operating Year to the DRAM Trigger Ratio exceeds the DRAM Annual Cap Amount; and

(b) During the DRAM Period, in no event shall payments in the aggregate exceed the DRAM Aggregate Cap Amount.

13.3.2.3 If a DRAM Trigger Event occurs in any given DRAM Operating Year and the amount necessary to return the forecasted annual Total Debt Service Coverage Ratio to the DRAM Trigger Ratio is less than the DRAM Annual Cap, the foregoing shall not be "rolled over" or increase the DRAM Annual Cap Amount for the succeeding or any other year.

13.3.3 Financial Records

13.3.3.1 During the DRAM Period, Developer shall simultaneously provide NCDOT with copies of all annual forecasts, budgets and audited financial statements that Developer is required to provide to the Lenders in accordance with the terms of the Funding Agreements. Such information shall be subject to review by NCDOT on an Open Book Basis and in no event shall NCDOT's review and audit rights be any less than those provided to Lenders in accordance with the terms of the Funding Agreements.

13.3.3.2 The provisions of this Section 13.3.3 are in addition to any other rights of NCDOT to review and audit books, records and documents under the CA Documents.

13.3.4 Eligibility for Payment and Notice

13.3.4.1 Developer may request that NCDOT make payments under the Developer Ratio Adjustment Mechanism only if the projected total annual Total Debt Service Coverage Ratio for the next forecasted debt service payment is forecasted to be below the DRAM Trigger Ratio ("DRAM Trigger Event").

13.3.4.2 If Developer seeks payments under Section 13.3.4.1, Developer shall provide to NCDOT written notice no later than 30 days after the occurrence of a DRAM Trigger Event. Such written notice shall include a written certification from the Collateral Agent indicating that a DRAM Trigger Event has occurred ("DRAM Trigger Certification"), as well as all supporting forecasts, budgets, data, financial statements and other documents substantiating such DRAM Trigger Event to the extent such documents (a) were not furnished pursuant to Section 13.3.3.1 or (b) contain information that differ from those previously furnished under Section 13.3.3.1. Subject to Section 13.3.5, the DRAM Trigger Certification shall be conclusive in the absence of manifest error.

13.3.5 Procedures for Payment and Reconciliation

13.3.5.1 If a DRAM Trigger Event occurs as evidenced and supported by the financial records submitted pursuant to Section 13.3.3 and the DRAM Trigger Certification, NCDOT shall pay to an account held or directed to be paid by the Collateral Agent pursuant to the Funding Agreements, subject to the limitations set forth in Section 13.3.2, an amount necessary to return the forecasted annual Total Debt Service Coverage Ratio to the DRAM Trigger Ratio. Such amount shall be paid no later than 30 days after receipt of the DRAM Trigger Certification.

13.3.5.2 After completion of the forecasted year that was the basis of the DRAM Trigger Event, the Parties shall calculate the actual annual Total Debt Service Coverage Ratio for such year on an Open Book Basis no later than 30 days after completion of such forecasted year. If the actual annual Total Debt Service Coverage Ratio remains below the DRAM Trigger Ratio, then NCDOT shall pay to an account held or directed to be paid by the Collateral Agent pursuant to the Funding Agreements, subject to the limitations set forth in Section 13.3.2, an additional amount to return the actual annual Total Debt Service Coverage Ratio to the DRAM Trigger Ratio. If the actual annual Total Debt Service Coverage Ratio is greater than the DRAM Trigger Ratio, then Developer shall reimburse NCDOT the amount paid by NCDOT to the account held by the Collateral Agent under Section 13.3.5.1; provided, however, that such reimbursement does not cause the actual annual Total Debt Service Coverage Ratio to be less than the DRAM Trigger Ratio. Amounts owed under this Section

13.3.5.2 shall be paid to NCDOT or Developer, as applicable, no later than 30 days after calculation of the actual annual Total Debt Service Coverage Ratio for the subject forecasted year.

13.3.6 Effect of Refinancing

Except with respect to a Rescue Refinancing or an Exempt Refinancing, any Refinancing shall irrevocably forfeit and waive any rights of Developer or the Collateral Agent to receive any payments under this Section 13.3 and the Developer Ratio Adjustment Mechanism shall be of no further force and effect.

13.4 Mitigation

Developer shall take all steps reasonably necessary to mitigate the consequences of any Relief Event or Compensation Event, including all steps that would generally be taken in accordance with Good Industry Practice.

ARTICLE 14. NCDOT CHANGES; DEVELOPER CHANGES; DIRECTIVE LETTERS

This Article 14 sets forth the requirements for obtaining all Change Orders under this Agreement. Developer hereby acknowledges and agrees that the assumptions contained in the Base Case Financial Model provide for full compensation for performance of all of the Work, subject only to those exceptions specified in this Article 14. Except as otherwise expressly set forth in this Agreement, Developer unconditionally and irrevocably waives the right to any claim for any monetary compensation or other relief against NCDOT relating to the performance of the Work, the Project or any other obligation under the CA Documents. The foregoing waiver encompasses all theories of liability, whether in contract, tort (including negligence), equity, quantum meruit or otherwise, and encompasses all theories to extinguish contractual obligations, including impracticability, mutual mistake and frustration of purpose. Nothing in the Technical Provisions or Technical Documents shall have the intent or effect or shall be construed to create any right of Developer to any Change Order or other Claim for additional monetary compensation or other relief, any provision in the Technical Provisions or Technical Documents to the contrary notwithstanding.

14.1 NCDOT Changes

14.1.1 NCDOT Right to Issue Change Order and Directive Letter

NCDOT may, at any time and from time to time, without notice to any Lender or Surety, authorize and/or require, pursuant to a Change Order or Directive Letter, changes in the Work, including additions or deletions, or in terms and conditions of the Technical Provisions or Technical Documents (including changes in the standards applicable to the Work) in accordance with this Article 14, except NCDOT has no right to require any change that:

14.1.1.1 Is not in compliance with applicable Laws;

14.1.1.2 Would contravene an existing Governmental Approval and such contravention could not be corrected by the issuance of a further or revised Governmental Approval;

14.1.1.3 Would cause a material insured risk to become uninsurable, unless NCDOT, in issuing the Change Order, agrees to self-insure the risk; or

14.1.1.4 Is not technically feasible to design or construct.

14.1.2 Request for Change Proposal

14.1.2.1 If NCDOT desires to initiate an NCDOT Change or to evaluate whether to initiate such a change, then NCDOT may, at its discretion, issue a Request for Change Proposal. The Request for Change Proposal shall set forth the nature, extent and details of the proposed NCDOT Change.

14.1.2.2 Within five Business Days after Developer receives a Request for Change Proposal, or such longer period to which the Parties may mutually agree, NCDOT and Developer shall consult to define the proposed scope of the change. Within five Business Days after the initial consultation, or such longer period to which the Parties may mutually agree, NCDOT and Developer shall consult concerning the estimated financial and schedule impacts.

14.1.3 Within 60 days following NCDOT's delivery to Developer of the Request for Change Proposal, Developer shall provide NCDOT with a written response as to whether, in Developer's opinion, the proposed change constitutes an NCDOT Change and will impact Developer's costs, Toll Revenues and schedule, and if so, a detailed assessment of the cost, Toll Revenue and schedule impact of the proposed NCDOT Change, including the following:

14.1.3.1 Developer's detailed estimate of the impacts on costs and Toll Revenues of carrying out the proposed NCDOT Change;

14.1.3.2 If the Change Notice is issued prior to Final Acceptance of a Project Section, the effect of the proposed NCDOT Change on the Project Schedule, including achievement of the applicable Milestone Schedule Deadlines, taking into consideration Developer's duty to mitigate any delay to the extent reasonably practicable;

14.1.3.3 The effect (if any) of the proposed NCDOT Change upon traffic flow and traffic volume on the Project during the Operating Period; and

14.1.3.4 Any other relevant information related to carrying out the proposed NCDOT Change.

14.1.4 NCDOT shall be entitled to obtain (a) from a consultant retained by NCDOT a comprehensive report as to the proposed NCDOT Change, including such consultant's comments concerning Developer's estimate of the cost impacts and projected impact on the Project Schedule and Milestone Schedule, and (b) from a traffic and revenue consultant that Developer retains and NCDOT reasonably approves a traffic and revenue study, prepared in accordance with Good Industry Practice, analyzing and calculating the estimated impacts on Toll Revenues. NCDOT shall pay for the work of the consultant and traffic and revenue consultant retained by NCDOT.

14.1.5 Following NCDOT's receipt of the consultant's report on the proposed NCDOT Change and the traffic and revenue consultant's study on the estimated impacts on Toll Revenues, NCDOT and Developer, giving due consideration to such report and study, shall exercise good faith efforts to negotiate a mutually acceptable Change Order, including any

adjustment of the Milestone Schedule Deadlines, any Compensation Amount to which Developer is entitled, the timing and method for payment of any Compensation Amount, in accordance with Section 13.2 and, if applicable, any net cost savings and schedule savings to which NCDOT is entitled and the timing and method for realizing such cost savings.

14.1.6 If NCDOT and Developer are unable to reach agreement on a Change Order, NCDOT may, in its sole discretion, deliver to Developer a Directive Letter pursuant to Section 14.3.1 directing Developer to proceed with the performance of the Work in question notwithstanding such disagreement. Upon receipt of such Directive Letter, pending final resolution of the relevant Change Order according to the Dispute Resolution Procedures, (a) Developer shall implement and perform the Work in question as directed by NCDOT and (b) NCDOT will make interim payment(s) to Developer on a monthly basis for the reasonable documented costs of the Work in question, subject to subsequent adjustment through the Dispute Resolution Procedures.

14.1.7 NCDOT shall be responsible for payment of the Compensation Amount agreed upon or determined through the Dispute Resolution Procedures, through one of the payment mechanisms set forth in Section 13.2.9, and the Project Schedule and Milestone Schedule shall be adjusted as agreed upon or determined through the Dispute Resolution Procedures, and in accordance with Section 13.1, to reflect the effects of the Change Order.

14.1.8 If NCDOT elects to apply to Developer during the period before any Substantial Completion Date changes in the Technical Documents or Safety Standards and such changes have a material adverse impact on the Milestone Schedule or Developer's costs or Toll Revenues, such changes shall be considered NCDOT Changes and handled pursuant to the Change Order procedures in this Section 14.1. Developer shall implement changes to the Technical Documents or Safety Standards on or after the Substantial Completion Date of all Project Sections (other than Discriminatory Actions) at its sole cost and expense.

14.2 Developer Changes

14.2.1 Developer may request NCDOT to approve modifications to the Technical Provisions or Technical Documents by submittal of a written Change Request using a form reasonably approved by NCDOT. The Change Request shall set forth Developer's detailed estimate of net impacts (positive and negative) on costs, Toll Revenues and schedule (including any adjustment of Milestone Schedule Deadlines) attributable to the requested change.

14.2.2 NCDOT, in its sole discretion (and, if it so elects, after receiving a comprehensive report from a consultant retained by NCDOT regarding the proposed Change Request), may accept or reject any Change Request proposed by Developer. NCDOT may condition its approval on new or a modification of compensation for NCDOT under this Agreement in order to share equally in the estimated net cost savings and revenue benefit, if any, attributable to the proposed change. If NCDOT accepts such change, Developer shall execute a Change Order and shall implement such change in accordance with the CA Documents. Notwithstanding the foregoing, NCDOT shall issue a Change Order or Directive Letter if Developer submits a Change Request to revise the Technical Provisions or Technical Documents to comply with applicable Law; provided, however, that NCDOT shall not be bound to follow the terms of Developer's Change Request or agree to the impacts on costs, Toll Revenues and schedule set forth therein.

14.2.3 Except as otherwise provided in this Agreement, Developer shall be solely responsible for payment of any increased costs, for any revenue losses and for any Project Schedule and Milestone Schedule delays or other impacts resulting from a Change Request accepted by NCDOT. If the Change Request results in a decrease in the costs of designing, constructing or operating the Project, the savings in costs shall be allocated between Developer and NCDOT as set forth in the Change Order.

14.2.4 No Change Request shall be required to implement any change to the Work that is not a Deviation and is not specifically regulated or addressed by the CA Documents or applicable Law.

14.2.5 Certain minor changes without significant cost savings or revenue benefits may be approved in writing by NCDOT as Deviations, as described in Sections 7.2.2 and 8.2.2.8, and in such event shall not require a Change Order. Any other change in the requirements of the CA Documents shall require a Change Order.

14.3 Directive Letters

14.3.1 NCDOT may, at any time, issue a Directive Letter to Developer regarding any matter for which a Change Order can be issued or, in the event of any Dispute, regarding the scope of the Work or whether Developer has performed in accordance with the requirements of the CA Documents. The Directive Letter will state that it is issued under this Section 14.3, will describe the Work in question and will state the basis for determining compensation, if any. Subject to Section 14.1.6, Developer shall proceed immediately as directed in the Directive Letter, pending the execution of a formal Change Order (or, if the letter states that the Work is within Developer's original scope of Work or is necessary to comply with the requirements of the CA Documents, Developer shall proceed with the Work as directed but shall have the right to assert a Claim that an NCDOT Change has occurred).

14.3.2 The fact that a Directive Letter was issued by NCDOT shall not be considered evidence that in fact an NCDOT Change occurred. The determination whether an NCDOT Change in fact occurred shall be based on an analysis of the original requirements of the CA Documents and a determination as to whether the Directive Letter in fact constituted a change in those requirements.

ARTICLE 15. REPRESENTATIONS AND WARRANTIES

15.1 Developer Representations and Warranties

Developer hereby represents and warrants to NCDOT as follows:

15.1.1 As of the Effective Date, the Financial Model Formulas (a) were prepared by or on behalf of Developer in good faith, (b) are the same financial formulas that Developer utilized and is utilizing in the Base Case Financial Model, in making its decision to enter into this Agreement, and (c) as of the Effective Date are mathematically correct and suitable for making reasonable projections. (For the avoidance of doubt, this Section 15.1.1 does not apply to assumptions used in the Base Case Financial Model, which are addressed in Section 15.1.2).

15.1.2 As of the Effective Date, the Base Case Financial Model (a) was prepared by or on behalf of Developer in good faith, (b) was audited and verified by an independent recognized model auditor prior to the Effective Date and will be audited and verified by an independent

recognized model auditor as of the date of Financial Close, (c) fully discloses all cost, revenue and other financial assumptions and projections that Developer has used or is using in making its decision to enter into this Agreement, and (d) as of the Effective Date represents the projections that Developer believes in good faith are reasonable for the Project; provided, however, that such projections (i) are based upon a number of estimates and assumptions, (ii) are subject to significant business, economic and competitive uncertainties and contingencies, and (iii) accordingly are not a representation or warranty that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results.

15.1.3 During all periods necessary for the performance of the Work, Developer and its design Contractor(s) will maintain all required authority, license status, professional ability, skills and capacity to perform the Work.

15.1.4 As of the Effective Date, based upon its Reasonable Investigation, Developer has evaluated the constraints affecting design and construction of the Project, including the Existing Project Right of Way limits, and has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints.

15.1.5 Except as to parcels that NCDOT lacked title or access to prior to the Technical Proposal Due Date, prior to the Technical Proposal Due Date, Developer conducted a Reasonable Investigation; and as a result of such Reasonable Investigation, Developer is familiar with and accepts the physical requirements of the Work, subject to NCDOT's obligations regarding Hazardous Materials under Section 7.8 and Developer's rights to seek relief under Article 13.

15.1.6 Developer has familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals prior to entering into this Agreement. Except as specifically permitted under Articles 13 or 14, Developer shall be responsible for complying with the foregoing at its sole cost and without any additional compensation or time extension on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the CA Documents. As of the Effective Date, Developer has no reason to believe that any Governmental Approval required to be obtained by Developer will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the CA Documents.

15.1.7 All Work furnished by Developer will be performed by or under the supervision of Persons who hold all necessary, valid licenses to practice in the State, by personnel who are skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the CA Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them.

15.1.8 As of the Effective Date, Developer is a _____ duly organized and validly existing under the laws of _____ ***[Note: Information to be provided with execution version]***, 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 the CA Documents and the Principal Project Documents entered into as of or in connection with the Effective Date to which Developer is a party and to perform each and all of the obligations of Developer provided for herein and therein. Developer is duly qualified to do

business, and is in good standing, in the State as of the Effective Date, and will remain duly qualified and in good standing throughout the Term and for as long thereafter as any obligations remain outstanding under the CA Documents.

15.1.9 The execution, delivery and performance of the CA Documents and the Principal Project Documents entered into as of or in connection with the Effective Date to which Developer is (or will be) a party have been (or will be) duly authorized by all necessary corporate action of Developer; each person executing the CA Documents and such Principal Project Documents on behalf of Developer has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of Developer; and the CA Documents and such Principal Project Documents have been (or will be) duly executed and delivered by Developer.

15.1.10 Neither the execution and delivery by Developer of the CA Documents and the Principal Project Documents entered into as of or in connection with the Effective Date to which Developer is (or will be) a party, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the governing instruments of Developer.

15.1.11 As of the Effective Date, each of the CA Documents and the Principal Project Documents entered into as of or in connection with the Effective Date to which Developer is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

15.1.12 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, the CA Documents and the Principal Project Documents entered into as of or in connection with the Effective Date to which Developer is a party, or which challenges the authority of the Developer official executing the CA Documents or such Principal Project Documents; and Developer has disclosed to NCDOT prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware.

15.1.13 As of the Technical Proposal Due Date, Developer disclosed to NCDOT in writing all organizational conflicts of interest of Developer and its Contractors of which Developer was actually aware; and between the Technical Proposal Due Date and the Effective Date, Developer has not obtained knowledge of any additional organizational conflict of interest, and there have been no organizational changes to Developer or its Contractors identified in its Proposal which have not been approved in writing by NCDOT. For this purpose, organizational conflict of interest has the meaning set forth in Volume I of the RFP (Instructions to Proposers).

15.1.14 To the extent the Design-Build Contractor is not Developer, Developer represents and warrants, as of the effective date of the Design-Build Contract, as follows: (a) the Design-Build Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization; (b) with respect to Persons that individually hold more that 10% of the capital stock of the Design-Build Contractor (including options, warrants and other rights to acquire capital stock), such stock is owned by the Persons whom Developer has set forth in a written certification delivered to NCDOT prior to the Effective Date; (c) the Design-Build Contractor has the power and authority to do all acts and things and execute and deliver

all other documents as are required to be done, observed or performed by it in connection with its engagement by Developer; (d) the Design-Build Contractor has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the design and construction of the Project in accordance with the CA Documents; and (e) the Design-Build Contractor is not in breach of any applicable Law that would have a material adverse effect on the design or construction of the Project.

15.1.15 To the extent any O&M Contractor is not Developer, Developer represents and warrants as to each such O&M Contractor, as of the effective date of its O&M Contract, as follows: (a) the O&M Contractor is duly organized, validly existing and in good standing under the laws of the state of its organization; (b) the capital stock of the O&M Contractor (including options, warrants and other rights to acquire capital stock) is owned by the Persons who Developer has or will set forth in a written certification delivered to NCDOT prior to the execution of the O&M Contract; (c) the O&M Contractor has the power and authority to do all acts and things and execute and deliver all other documents as are required to be done, observed or performed by it in connection with its engagement by Developer; (d) the O&M Contractor has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the operation and maintenance of the Project in accordance with the CA Documents; and (e) the O&M Contractor is not in breach of any applicable Law that would have a material adverse effect on the operations or maintenance of the Project.

15.1.16 The execution and delivery by Developer of this Agreement and the Principal Project Documents to which Developer is a party will not result, at the time of execution, in a default under any other agreement or instrument to which it is a party or by which it is bound.

15.1.17 The execution and delivery by Developer of the CA Documents and performance by Developer of its obligations thereunder will not conflict with any Laws applicable to Developer that are valid and in effect on the Effective Date.

15.1.18 As of the Effective Date, Developer has reviewed all applicable Laws relating to Taxes, and has taken into account all requirements imposed by such Laws in preparing the Base Case Financial Model.

15.2 NCDOT Representations and Warranties

NCDOT hereby represents and warrants to Developer as follows:

15.2.1 As of the Effective Date, NCDOT has full power, right and authority to execute, deliver and perform the CA Documents and the Principal Project Documents entered into as of or in connection with the Effective Date to which NCDOT is a party and to perform each and all of the obligations of NCDOT provided for herein and therein.

15.2.2 Each person executing the CA Documents and such Principal Project Documents entered into as of or in connection with the Effective Date on behalf of NCDOT has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of NCDOT; and the CA Documents and such Principal Project Documents have been (or will be) duly executed and delivered by NCDOT.

15.2.3 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on NCDOT which challenges NCDOT's authority to execute, deliver or perform, or the validity or enforceability of, the CA Documents and the Principal

Project Documents entered into as of or in connection with the Effective Date to which NCDOT is a party or which challenges the authority of the NCDOT official executing the CA Documents and such Principal Project Documents; and NCDOT has disclosed to Developer prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which NCDOT is aware.

15.2.4 As of the Effective Date, each of the CA Documents and the Principal Project Documents entered into as of or in connection with the Effective Date to which NCDOT is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of NCDOT, enforceable against NCDOT in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

15.2.5 The execution and delivery by NCDOT of this Agreement and the Principal Project Documents to which NCDOT is a party will not result, at the time of execution, in a default under any other agreement or instrument to which it is a party or by which it is bound.

15.2.6 The execution and delivery by NCDOT of the CA Document and performance by NCDOT of its obligations thereunder will not conflict with any Laws applicable to NCDOT that are valid and in effect on the Effective Date.

15.3 Survival of Representations and Warranties

The representations and warranties of Developer and NCDOT contained in this Agreement shall survive expiration or earlier termination of this Agreement.

15.4 Special Remedies for Mutual Breach of Warranty

Notwithstanding any other provision of this Agreement, if there exists or occurs any circumstance or event that constitutes or results in a concurrent breach of any of the warranties set forth in Article 4 or Article 15 by both Developer and NCDOT but does not also constitute or result in any other breach or default by either Party, then such breaches shall not form the basis for a Compensation Event by Developer against NCDOT or damage claim by NCDOT against Developer. Instead, the only remedies shall be for the Parties to take action to rectify or mitigate the effects of such circumstance or event, to pursue severance and reformation of the CA Documents and Principal Project Documents as set forth in Section 24.13 or Termination by Court Ruling as set forth in Section 19.11 and Exhibit 15.

ARTICLE 16. INSURANCE; PERFORMANCE SECURITY; INDEMNITY

16.1 Insurance

16.1.1 Insurance Policies and Coverage

At a minimum, Developer shall procure and keep in effect the Insurance Policies, or cause them to be procured and kept in effect, and in each case satisfy the requirements therefor set forth in this Section 16.1 and Exhibit 13. Developer shall also procure or cause to be procured and kept in effect the Contractors' insurance coverages as required in Section 16.1.2.5 and Exhibit 13.

16.1.2 General Insurance Requirements

16.1.2.1 Qualified Insurers

Each of the Insurance Policies required hereunder shall be procured from an insurance carrier or company or surplus line carriers that, at the time coverage under the applicable policy commences, and throughout the term that the coverage is required, is:

(a) Licensed or authorized to do business in the State and has a current policyholder's management and financial size category rating of not less that "A – VIII" according to A.M. Best's Insurance Reports Key Rating Guide; or

(b) Otherwise approved in writing by NCDOT.

Loss of rating of at least A-VIII shall require a replacement of insurance carrier complying with the same coverages, terms and conditions of this Section 16.1 and Exhibit 13 within 60 days, as approved by NCDOT.

16.1.2.2 Deductibles and Self-Insured Retentions

(a) NCDOT shall not have any liability for deductibles, self-insured retentions or amounts in excess of the coverage provided, unless part of a Compensation Amount or Termination Compensation.

(b) Developer may allocate responsibility and liability for the payment of the deductible, self-insured retention or amount in excess of the coverage provided to the Developer-Related Entity responsible for the matter giving rise to an insurable claim under the applicable Insurance Policy under which it is a named or additional insured. In the event that responsibility for the matter giving rise to the insurable claim is indeterminable, the first named insured under the applicable Insurance Policy shall be responsible and liable for the payment of the deductible, self-insured retention or amount in excess of the coverage provided. In no event will NCDOT be responsible for the failure of a Developer-Related Entity to pay a deductible, self-insured retention or amounts in excess of the coverage provided under this Section 16.1.2.2(b), unless such payment is part of a Compensation Amount or Termination Compensation.

16.1.2.3 Primary Coverage

Each Insurance Policy shall provide that the coverage thereof is primary and noncontributory coverage with respect to all named or additional insureds, except for coverage that by its nature cannot be written as primary. For each property Insurance Policy, such policy shall provide that coverage is primary and noncontributory with respect to all insureds, as their interest may appear. Any insurance or self-insurance beyond that specified in this Agreement that is maintained by an insured or any such additional insured shall be excess of such insurance and shall not contribute with it.

16.1.2.4 Verification of Coverage

(a) At each time Developer is required to initially obtain or cause to be obtained each Insurance Policy, including insurance coverage required of Contractors, and thereafter not later than ten Business Days prior to the expiration date of each Insurance Policy,

Developer shall deliver to NCDOT a certificate of insurance and a written evidence of insurance. The certificate and evidence must be consistent in all respects. The evidence of insurance shall be on the most recent ACORD form, without disclaimer. Each required certificate must be in standard form, state the identity of all carriers, named insureds and additional insureds required under this Agreement, state the type and limits of coverage, deductibles and termination provisions of the policy, include as attachments all applicable additional insured endorsements, include endorsements consistent with Section 16.1.2.8(a) and be signed by an authorized representative of the insurance company shown on the certificate or its agent or broker. The evidence must state the signer's company affiliation, title and phone number, state the identity of all carriers, named insureds and additional insureds, state the type and limits of coverage, deductibles, subrogation waiver, termination provisions of the policy and other essential policy terms, list and describe all endorsements, include as attachments all additional insured endorsements, including endorsements consistent with Section 16.1.2.8(a), and otherwise must be in a form reasonably satisfactory to NCDOT.

(b) If Developer has not provided NCDOT with the foregoing proof of coverage within five days after NCDOT delivers to Developer written request therefor or notice of a Developer Default under Section 17.1.1.8 and demand for the foregoing proof of coverage, NCDOT may, in addition to any other available remedy, without obligation or liability and without further inquiry as to whether such insurance is actually in force, (i) obtain such an Insurance Policy, and Developer shall reimburse NCDOT for the cost thereof upon demand, and (ii) suspend all or any portion of Work and close the Project until NCDOT receives from Developer such proofs of coverage in compliance with this Section 16.1 (or until NCDOT obtains an Insurance Policy, if it elects to do so).

16.1.2.5 Contractor Insurance Requirements

(a) Developer's obligations regarding Contractors' insurance are contained in Exhibit 13.

(b) If any Contractor fails to procure and keep in effect the insurance required of it under Exhibit 13 and NCDOT asserts the same as a Developer Default hereunder, Developer may, within the applicable cure period, cure such Developer Default by (i) causing such Contractor to obtain the requisite insurance and providing to NCDOT proof of insurance, (ii) procuring the requisite insurance for such Contractor and providing to NCDOT proof of insurance, or (iii) terminating the Contractor and removing its personnel from the Site.

16.1.2.6 Project-Specific Insurance

Except as expressly provided otherwise in Exhibit 13, all Insurance Policies required hereunder shall be purchased specifically and exclusively for the Project and extend to all aspects of the Work, with coverage limits devoted solely to the Project. Insurance coverages with dedicated Project-specific limits and identified premiums are acceptable, provided that they otherwise meet all requirements described in this Section 16.1 and Exhibit 13.

16.1.2.7 Policies with Insureds in Addition to Developer

All Insurance Policies that are required to insure Persons (whether as named or additional insureds) in addition to Developer shall comply or be endorsed to comply with the following provisions.

(a) The Insurance Policy shall be written or endorsed so that no acts or omissions of an insured shall vitiate coverage of the other insureds. Without limiting the foregoing, any failure on the part of a named insured to comply with reporting provisions or other conditions of the Insurance Policies, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the Project or Developer's Interest shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents and Project consultants, to the extent covered thereby).

(b) The insurance shall apply separately to each named insured and additional insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(c) All endorsements adding additional insureds to required Insurance Policies shall be on industry standard forms and shall contain no extraordinary limitations, conditions, restrictions or exceptions to coverage in addition to those that apply under that Insurance Policy generally. All endorsements adding additional insureds shall also state that the interests and protections of each additional insured shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the Insurance Policy which would otherwise result in forfeiture or reduction of coverage. Additional insured endorsements may exclude liability due to the sole negligence of the additional insured party.

16.1.2.8 Additional Terms and Conditions

(a) Each Insurance Policy shall be endorsed to state that coverage cannot be canceled, voided, suspended, adversely modified, or reduced in coverage or in limits (including for non-payment of premium) except after 30 days' prior written notice (or ten days in the case of cancellation for non-payment of premium) by registered or certified mail, return receipt requested, has been given to NCDOT and each other insured or additional insured party; provided, however, that Developer may obtain as comparable an endorsement as possible if it establishes unavailability of this endorsement as set forth in Section 16.1.2.13. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

(b) If Developer's or any Contractor's activities involve transportation of materials (including Hazardous Materials) that require endorsement MCS 90 (as described below), the automobile liability Insurance Policy for Developer or such Contractor shall be endorsed to include for private, non-commercial vehicles Motor Carrier Act Endorsement-Hazardous Materials Clean up (MCS-90) and shall be endorsed to provide coverage for liability arising from release of pollutants (CA 99 48 – Pollution Liability – Broadened Coverage for Covered Autos – Business Auto, Motor Carrier and Truckers Coverage Form).

(c) Each Insurance Policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of any professional liability and pollution liability Insurance Policies).

16.1.2.9 Waivers of Subrogation

Developer waives all rights against the Indemnified Parties, for any claims to the extent covered by insurance obtained pursuant to this Section 16.1, except such rights as they

may have to the proceeds of such insurance. If Developer is deemed to self-insure a claim or loss under Section 16.1.4.3, then Developer's waiver shall apply as if it carried the required insurance. Developer shall require all Contractors to provide similar waivers in writing each in favor of all other parties enumerated above. Subject to Section 16.1.2.13, each Insurance Policy, including workers' compensation if permitted under the applicable worker's compensation insurance Laws, shall include a waiver of any right of subrogation against the Indemnified Parties or a consent to the insured's waiver of recovery in advance of loss.

16.1.2.10 No Recourse

There shall be no recourse against NCDOT for payment of premiums or other amounts with respect to the Insurance Policies required hereunder, except to the extent of increased premium costs recoverable under Sections 13.2 or 14.1.

16.1.2.11 Support of Indemnifications

(a) The commercial general liability Insurance Policy shall provide standard ISO contractual liability or greater coverage of Developer's indemnity liability under the CA Documents.

(b) Developer's indemnification and defense obligations under the CA Documents are not limited to the type or amount of insurance coverage that Developer is required to provide hereunder.

16.1.2.12 Adjustments in Coverage Amounts

(a) At least once every five years during the Term, NCDOT and Developer shall review and increase, as appropriate, the per occurrence and aggregate limits or combined single limits for the Insurance Policies that have stated dollar amounts set forth in Exhibit 13 for per occurrence, aggregate or combined single limits. At the same frequency NCDOT and Developer shall review and adjust, as appropriate, the deductibles or self-insured retentions for the Insurance Policies.

(b) Developer shall retain a qualified and reputable insurance broker or independent, unaffiliated advisor not involved with the Project, experienced in insurance brokerage and underwriting practices for major infrastructure projects, to analyze and recommend increases, if any, in such limits and adjustments to deductibles or self-insured retentions. Developer shall deliver to NCDOT, not later than 120 days before each fifth year anniversary of the Effective Date, a written report including such analysis and recommendations for NCDOT's approval. NCDOT shall have 45 days after receiving such report to approve or disapprove the proposed increases in limits and adjustments to deductibles or self-insured retentions.

(c) Subject to the terms of this Agreement, in determining adjustments to limits and adjustments to deductibles or self-insured retentions, Developer and NCDOT shall take into account (i) claims and loss experience for the Project, provided that premium increases due to adverse claims experience shall not be a basis for justifying increased deductibles or self-insured retentions, (ii) the condition of the Project, (iii) the Safety Compliance and Noncompliance Points record for the Project, (iv) then-prevailing Good Industry Practice for insuring comparable transportation projects, and (v) the provisions regarding unavailability of increased coverage set forth in Section 16.1.2.13.

(d) Any Dispute regarding adjustments to limits or adjustments to deductibles or self-insured retentions shall be resolved according to the Dispute Resolution Procedures.

16.1.2.13 Inadequacy and Unavailability of Required Coverages

(a) NCDOT makes no representation that the scope of coverage and limits of liability specified for any Insurance Policy to be carried pursuant to this Agreement or approved variances therefrom are adequate to protect Developer against its undertakings under this Agreement to NCDOT or its liabilities to any third party. It is Developer's responsibility, and each Contractor's responsibility, to determine if any changes or additional coverages are required to protect adequately each of their respective interests. No such limits of liability or approved variances therefrom shall preclude NCDOT from taking any actions as are available to it under the CA Documents, or otherwise at Law.

(b) If Developer demonstrates to NCDOT's reasonable satisfaction that Developer has used diligent efforts in the global insurance and reinsurance markets to procure the Insurance Policies required hereunder, and if despite such diligent efforts and through no fault of Developer any Insurance Unavailability exists or occurs, NCDOT will grant Developer an interim written variance from such requirements under which Developer shall obtain and maintain or cause to be obtained and maintained alternative insurance packages and programs that provide risk coverage as comparable to that contemplated in this Section 16.1 as is commercially reasonable under then-existing insurance market conditions.

(c) Developer shall not be excused from satisfying the insurance requirements of this Section 16.1 merely because premiums for such insurance are higher than anticipated.

(d) If Developer demonstrates pursuant to Section 16.1.2.13(b) that Insurance Unavailability exists or has occurred, then at NCDOT's sole option: (i) NCDOT may , by written notice, assume the risk of loss caused by the occurrence of an event that would have been insured by Developer under this Agreement but for the Insurance Unavailability of the applicable insurance coverage, in which case NCDOT's assumption of risk of loss shall be limited to the extent of the insurance that was required but for the Insurance Unavailability and NCDOT will be entitled to payment of the insurance premiums that Developer avoids as a result of the modification or elimination of such insurance coverage in an amount equal to the greater of the amount set forth in the Base Case Financial Model for that period or the amount previously paid by Developer; or (ii) NCDOT may deliver written notice to Developer that it may proceed under this Agreement without such insurance. On or before 10 Business Days after receipt of NCDOT's notice described in clause (ii), Developer shall elect, by written notice to NCDOT, to terminate this Agreement pursuant to Section 19.2.2 or continue under this Agreement without such insurance, in which case, Developer shall bear the risks that would have been covered but for such Insurance Unavailability. Failure by Developer to provide its election within such 10 Business Day period shall be deemed its election to bear the risks that would have been covered but for such Insurance Unavailability.

(e) If the required Insurance Policies are available from insurers meeting the financial requirements set forth in Section 16.1.2.1 but not at Commercially Reasonable Insurance Rates, then NCDOT may elect, at its sole option, exercisable by delivering written notice to Developer, not to grant a waiver or not to approve modification or elimination of insurance requirements and instead to pay one hundred percent (100%) of the

premiums that exceed the Commercially Reasonable Insurance Rates. If the required insurance coverage is available in the market, NCDOT's decision to approve or disapprove a variance from the requirements of this Section 16.1 shall be final and not subject to the Dispute Resolution Procedures.

(f) In NCDOT's sole option exercisable by delivering to Developer a written notice of termination, in the event of Insurance Unavailability, NCDOT may elect not to proceed under either Section 16.1.2.13(d) or Section 16.1.2.13(e) and instead terminate this Agreement pursuant to Section 19.2.2.

(g) If Insurance Unavailability exists or occurs, Developer shall review the global insurance and reinsurance markets quarterly (prior to the Operating Period) and annually thereafter no later than one hundred twenty (120) days prior to insurance program renewal, to track changes in market conditions and adjust insurance coverages as soon as the coverages become available at Commercially Reasonable Insurance Rates. Developer shall keep NCDOT currently informed of insurance market conditions and deliver to NCDOT the information obtained from such quarterly reviews.

16.1.2.14 Defense Costs

No defense costs shall be included within or erode the limits of coverage of any of the Insurance Policies, except that litigation and mediation defense costs may be included within the limits of coverage of professional and pollution liability policies.

16.1.2.15 Contesting Denial of Coverage

If any insurance carrier under an Insurance Policy denies coverage with respect to any claims reported to such carrier, upon Developer's request, NCDOT and, to the extent necessary, the other Indemnified Parties shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided that if the reported claim is a matter covered by an indemnity from Developer under this Agreement in favor of an Indemnified Party, then Developer shall bear all costs of contesting the denial of coverage.

16.1.2.16 Bankrupt Insurer

If an Insurer providing any of the Insurance Policies becomes the subject of bankruptcy proceedings, becomes insolvent, or is the subject of an order or directive limiting its business activities given by any Governmental Entity or has its rating lowered by A.M. Best below A-; VIII, then Developer shall exercise commercially reasonable efforts to promptly and at its own cost and expense secure alternative coverage in compliance with the insurance requirements contained in this Section 16.1 so as to avoid any lapse in insurance coverage.

16.1.3 Lender Insurance Requirements; Additional Insurance Policies

16.1.3.1 If under the terms of any Funding Agreement or Security Document, Developer is obligated to, and does, carry insurance coverage with higher limits, lower deductibles or self-insured retentions, or broader coverage than required under this Agreement, Developer's provision of such insurance shall satisfy the applicable requirements of this Agreement provided such Insurance Policy meets all the other applicable requirements of this Section 16.1.

16.1.3.2 If Developer carries insurance coverage in addition to that required under this Agreement, then Developer shall include the Indemnified Parties as additional insureds thereunder, if and to the extent they have an insurable interest. The additional insured endorsements shall be as described in Section 16.1.2.7(c); and Developer shall provide to NCDOT the proofs of coverage and copy of the policy described in Section 16.1.2.4. If, however, Developer demonstrates to NCDOT that inclusion of such Persons as additional insureds will increase the premium, NCDOT shall elect either to pay the increase in premium or forego additional insured coverage. The provisions of Sections 16.1.2.4, 16.1.2.7, 16.1.2.9, 16.1.2.10, 16.1.2.15 and 16.1.4 shall apply to all such policies of insurance coverage, as if they were within the definition of Insurance Policies.

16.1.4 Prosecution of Claims

16.1.4.1 Unless otherwise directed by NCDOT in writing with respect to NCDOT's (or any Indemnified Party's) insurance claims, Developer shall be responsible for reporting and processing all potential claims by NCDOT or Developer against the Insurance Policies required hereunder. Developer agrees to report timely to the insurer(s) under such Insurance Policies any and all matters which may give rise to an insurance claim by Developer, NCDOT or another Indemnified Party and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such Insurance Policies, whether for defense or indemnity or both. Developer shall enforce all legal rights against the insurer under the applicable Insurance Policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that Developer shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

16.1.4.2 NCDOT agrees to promptly notify Developer of NCDOT's incidents, potential claims against NCDOT, and matters which may give rise to an insurance claim against NCDOT, to tender to the insurer NCDOT's defense of the claim under such Insurance Policies, and to cooperate with Developer as necessary for Developer to fulfill its duties hereunder. If solely as a result of an NCDOT delay NCDOT loses coverage under a required insurance policy, then Developer shall be relieved of any obligation otherwise owing to NCDOT to the extent of the required coverage.

16.1.4.3 If Developer has not performed its obligations to obtain and maintain insurance coverage set forth in this Agreement or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to prosecute claims diligently, then, in connection with any damages incurred by or claims against an Indemnified Party that would have been covered by such insurance, for purposes of determining Developer's liability and the limits thereon or determining reductions in compensation due from NCDOT to Developer on account of available insurance, Developer shall be treated as if it has elected to self-insure up to the full amount of insurance coverage which would have been available had Developer performed such obligations and not committed such failure. Nothing in this Section 16.1.4 or elsewhere in this Section 16.1 shall be construed to treat Developer as electing to self-insure where Developer is unable to collect due to the bankruptcy or insolvency of any insurer which at the time the Insurance Policy is written meets the rating qualifications set forth in this Section 16.1.

16.1.4.4 If in any instance Developer has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by NCDOT or another Indemnified Party, then NCDOT or the other Indemnified Party may, but is

not obligated to, (a) notify Developer in writing of NCDOT's intent to report the claim directly with the insurer and thereafter process the claim, and (b) proceed with reporting and processing the claim if NCDOT or the other Indemnified Party does not receive from Developer, within ten days after so notifying Developer, written proof that Developer has reported the claim directly to the insurer. NCDOT or the other Indemnified Party may dispense with such notice to Developer if NCDOT or the other Indemnified Party has a good faith belief that more rapid reporting is needed to preserve the claim.

16.1.5 Application of Insurance Proceeds

All insurance proceeds received for physical property damage to the Project under any Insurance Policies, other than any business interruption insurance maintained as part of such Insurance Policies, shall be first applied to repair, reconstruct, rehabilitate, restore, renew, reinstate and replace each part or parts of the Project in respect of which such proceeds were received.

16.1.6 Umbrella and Excess Policies

Developer shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with all insurance requirements, terms and provisions set forth in this Agreement for the applicable type of coverage.

16.2 Payment Bond and Performance Security

16.2.1 Design and Construction Security Requirements

16.2.1.1 Developer shall obtain and deliver to NCDOT a Payment Bond in the amount of 100% of the value of the Design-Build Contract Price and a separate Performance Security in the amount of 50% of the Design-Build Contract Price. Developer shall provide the Payment Bond and Performance Security in accordance with the requirements of this Section 16.2.

16.2.1.2 Developer may elect to (a) procure the Payment Bond and Performance Security directly, so that they are security for Developer's payment obligations to Contractors and laborers performing the Secured Work and Developer's performance obligations under the CA Documents respecting the Secured Work, or (b) deliver multiple Payment Bonds and multiple Performance Security (i) from each Design-Build Contractor and (ii) from any other prime Contractor performing the original Secured Work, so that each such Payment Bond and Performance Security is security for payment to subcontractors and laborers and performance of the respective entity's obligations under its Contract. If Developer makes the election under clause (b) above, then Developer also may elect to provide Performance Security in the form of a bond from one such Contractor and Performance Security in the form of a letter of credit from another such Contractor.

16.2.1.3 The Payment Bond and, if chosen by Developer, a bond for the Performance Security shall be in the form set forth in Exhibit 20-A and Exhibit 20-B, respectively. Any bond furnished under this Section 16.2 must be issued by a Surety or an insurance company licensed in the State to issue bonds in the State, listed on the Department of the Treasury's Listing and Approved Sureties (http://fms.treas.gov/c570/c570.html) and rated in the top two categories by two of the three Rating Agencies or at least A-: VIII or better

according to A.M. Best's Financial Strength Rating and Financial Size Category, except as otherwise approved in writing by NCDOT in its good faith discretion.

16.2.1.4 If the Performance Security is in the form of a bond and Developer makes the election under Section 16.2.1.2(b), then:

(a) The amount of each bond shall be in the same ratio to the total amount of Performance Security required under Section 16.2.1.1 as the relevant contract price bears to the Design-Build Contract Price; provided that the aggregate face amount of such bonds must at least equal 50% of the Design-Build Contract Price; and

(b) Each bond must name NCDOT as an additional obligee and the riders shall be in the form set forth in Exhibit 20-C.

16.2.1.5 If the Performance Security is in the form of a letter of credit and Developer makes the election under Section 16.2.1.2(a), then:

(a) The letter of credit shall be in the form set forth in Exhibit 20-D; and

(b) The letter of credit shall be subject to draw as and when provided in Section 17.3.7 due to breach or failure to perform Developer's obligations to Contractors performing the original Secured Work or Developer's obligations under the CA Documents for the Secured Work.

16.2.1.6 If the Performance Security is in the form of a letter of credit and Developer makes the election under Section 16.2.1.2(b), then:

(a) The letter of credit shall be in the form set forth in Exhibit 20-D;

(b) The letter of credit shall be adjusted to reflect this fact, but only as necessary to identify each applicable Contractor as the applicant in place of Developer and to identify the Contract between Developer and the Contractor rather than this Agreement;

(c) The amount of each letter of credit shall be in the same ratio to the total amount of Performance Security required under Section 16.2.1.1 as the relevant contract price bears to the Design-Build Contract Price; provided that the aggregate face amount of such letters of credit must at least equal 50% of the Design-Build Contract Price; and

(d) Each letter of credit shall be subject to draw as and when provided in Section 17.3.7 due to breach or failure to perform the applicable Contractor's obligations under its Contract for the original Secured Work.

16.2.1.7 Regardless of which election Developer makes under Section 16.2.1.2, if the Performance Security is in the form of a letter of credit, then the provisions and requirements of Section 16.3.1 shall apply, except:

(a) The letter of credit shall expressly provide an original expiration date not earlier than six months after the scheduled date of Final Completion indicated in the Project Baseline Schedule;

(b) The letter of credit shall expressly provide for successive automatic renewals of at least six months each, taking effect no later than 30 days prior to the expiration date, until Final Completion;

(c) As permitted otherwise in Section 16.2.1.8.

16.2.1.8 If the Performance Security is in the form of a letter of credit, then notwithstanding Section 16.3.1.1(g), Developer may name the Collateral Agent as the beneficiary thereof instead of NCDOT, or may transfer the beneficiary's rights under the letter of credit from Developer to the Collateral Agent rather than NCDOT. However, the foregoing right is available to Developer only if (1) the Collateral Agent is restricted in making draws on such letter of credit solely for the purpose of causing Developer to perform its obligations to Contractors performing the original Secured Work or its obligations under the CA Documents respecting the original Secured Work (or, if Developer makes the election under Section 16.2.1.2(b), causing the Contractor to perform its performance obligations under its Contract respecting the original Secured Work) and (2) Developer delivers to NCDOT, concurrently with the issuance of such letter of credit, documents reasonably satisfactory to NCDOT:

(a) Naming NCDOT as automatic and exclusive transferee beneficiary under such letter of credit upon Final Completion; and

(b) Prior thereto, permitting NCDOT to become the transferee beneficiary under such letter of credit and to make drawings thereunder if NCDOT determines that:

(i) (A) Developer (or, if Developer makes the election under Section 16.2.1.2(b), the Contractor) has breached or failed to perform such obligations, (B) the letter of credit has become subject to NCDOT's right to draw thereon under Section 17.3.7 and (C) the Collateral Agent has failed to draw on such letter of credit for the purpose of causing the performance of such obligations by or on behalf of Developer (or, if Developer makes the election under Section 16.2.1.2(b), the Contractor) within ten days after NCDOT delivers written notice of such breach to Developer and the Collateral Agent; or

(ii) (A) The letter of credit will expire within 45 days, (B) NCDOT has not received a certified copy of a replacement or extension of the letter of credit with required transfer documents, and (C) NCDOT has no actual knowledge of a prior, full draw on the expiring letter of credit by the Collateral Agent.

At a minimum, such transfer documents shall include a certified copy of the letter of credit and a present, executed transfer and assignment of the beneficiary rights from the Collateral Agent to NCDOT; and the letter of credit shall expressly authorize such transfer without condition and permit draw without presentation of the original letter of credit.

16.2.1.9 Each Payment Bond and Performance Security shall be released upon Final Completion; provided, however, that in the event there is a Claim against a Payment Bond or Performance Security pending at Final Completion, such Payment Bond or Performance Security shall be released upon final resolution of such Claim.

16.2.2 Applicability to Subsequent Secured Work

16.2.2.1 The requirements of this Section 16.2 shall apply in connection with Upgrades, new improvements, and reconstruction or rehabilitation during the Term (i.e., subsequent Secured Work). Prior to commencing any such subsequent Secured Work, Developer shall obtain NCDOT's written approval of the form and amount of Payment Bond and Performance Security for such subsequent Secured Work.

16.2.2.2 Whenever Developer is performing subsequent Secured Work, Developer shall deliver to NCDOT, within 20 days after the end of each calendar month until final acceptance of the Construction Work related to such subsequent Secured Work, written certificates regarding payment and affidavits of wages paid in the form of certificate in Attachment 2 to Exhibit 5.

16.2.3 Security from O&M Contractors

In the event Developer obtains a Payment Bond or Performance Security from any O&M Contractor, Developer shall cause NCDOT to be named at issuance of such Payment Bond and Performance Security as an additional obligee or beneficiary (as applicable), and shall deliver a certified copy thereof, with the multiple obligee rider or other comparable documentation, to NCDOT within ten days after issuance.

16.2.4 NTP1 Work Payment Bond

16.2.4.1 Developer shall obtain and deliver to NCDOT an NTP1 Work Payment Bond in the amount of 100% of the aggregate amount identified in the NTP1 Schedule of Values. Developer shall provide the Payment Bond in accordance with the requirements of this Section 16.2.

16.2.4.2 Developer may elect to (a) procure the NTP1 Work Payment Bond directly, so it is security for Developer's payment obligations to Contractors and laborers performing the NTP1 Work, or (b) deliver multiple NTP1 Work Payment Bonds (i) from each Design-Build Contractor and (ii) from any other prime Contractor performing the NTP1 Work, so that each such NTP1 Work Payment Bond is security for payment to subcontractors and laborers of the respective entity's payment obligations for the NTP1 Work.

16.2.4.3 The NTP1 Work Payment Bond shall be in the form set forth in Exhibit 20-E. Any bond furnished under this Section 16.2.4 must be issued by a Surety or an insurance company licensed in the State to issue bonds in the State, listed on the Department of the Treasury's Listing and Approved Sureties (http://fms.treas.gov/c570/c570.html) and rated in the top two categories by two of the three Rating Agencies or at least A-: VIII or better according to A.M. Best's Financial Strength Rating and Financial Size Category, except as otherwise approved in writing by NCDOT in its good faith discretion.

16.3 Letters of Credit

16.3.1 General Provisions

Wherever in the CA Documents Developer has the option or obligation to deliver to NCDOT a letter of credit for the benefit of NCDOT, the following provisions shall apply except to the extent expressly provided otherwise in the CA Documents:

16.3.1.1 The letter of credit shall:

(a) Be a standby letter of credit;

(b) Be issued by a financial institution with a credit rating of "A-" or "A3" (as applicable) or better from one of the Rating Agencies and with an office in Raleigh, North Carolina at which the letter of credit can be presented for payment or with an office elsewhere in the United States if the letter of credit can be presented for payment by facsimile or by electronic means;

(c) Be in form approved by NCDOT in its good faith discretion;

(d) Be payable immediately, conditioned only on written presentment from NCDOT to the issuer of a sight draft drawn on the letter of credit and a certificate stating that NCDOT has the right to draw under the letter of credit in the amount of the sight draft, up to the amount due to NCDOT, without requirement to present the original letter of credit;

(e) Provide an expiration date not earlier than one year from date of issue;

(f) Allow for multiple draws; and

(g) Name NCDOT beneficiary.

16.3.1.2 NCDOT shall have the right to draw on the letter of credit as and when provided in Section 17.3.7 for draws under clause (a) below and without prior notice to Developer for draws under clause (b) below, unless otherwise expressly provided in the CA Documents with respect to the letter of credit, if (a) Developer has failed to pay or perform when due the duty, obligation or liability under the CA Documents for which the letter of credit is held or (b) Developer for any reason fails to deliver to NCDOT a new or replacement letter of credit, on the same terms, or at least a one year extension of the expiration date of the existing letter of credit, by not later than 45 days before such expiration date, unless the applicable terms of the CA Documents expressly require no further letter of credit with respect to the duty, obligation or liability in question. For all draws conditioned on prior written notice from NCDOT to Developer, no such notice shall be required if it would preclude draw before the expiration date of the letter of credit. Draw on the letter of credit shall not be conditioned on prior resort to any other security or Developer. If NCDOT draws on the letter of credit under clause (a) above, NCDOT shall use and apply the proceeds as provided in the CA Documents for such letter of credit. If NCDOT draws on the letter of credit under clause (b) above, NCDOT shall be entitled to draw on the full face amount of the letter of credit and shall retain such amount as cash security to secure the obligations under the letter of credit without payment of interest to Developer.

16.3.1.3 NCDOT shall use and apply draws on letters of credit toward satisfying the relevant obligation of Developer (or, if applicable, any other Person for which the letter of credit is performance security). If NCDOT receives proceeds of a draw in excess of the relevant obligation, NCDOT shall promptly refund the excess to Developer (or such other Person) after all relevant obligations are satisfied in full.

16.3.1.4 Developer's sole remedy in connection with the improper presentment or payment of sight drafts drawn under letters of credit shall be to obtain from

NCDOT a refund of the proceeds which are misapplied, interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of improper draw until repaid, and subject to Section 17.6.4, reimbursement of the reasonable costs Developer incurs as a result of such misapplication; provided, however, that at the time of such refund Developer increases the amount of the letter of credit to the amount (if any) then required under applicable provisions of this Agreement. Developer acknowledges that the presentment of sight drafts drawn upon a letter of credit could not under any circumstances cause Developer injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, Developer covenants (a) not to request or instruct the issuer of any letter of credit to refrain from paying any sight draft drawn under the letter of credit and (b) not to commence or pursue any legal proceeding seeking, and Developer irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any letter of credit.

16.3.1.5 Developer shall obtain and furnish all letters of credit and replacements thereof at its sole cost and expense, and shall pay all charges imposed in connection with NCDOT's presentment of sight drafts and drawing against letters of credit or replacements thereof, except as provided in Section 16.3.1.4.

16.3.1.6 In the event NCDOT makes a permitted assignment of its rights and interests under this Agreement, Developer shall cooperate so that concurrently with the effectiveness of such assignment, either replacement letters of credit for, or appropriate amendments to, the outstanding letters of credit shall be delivered to the assignee naming the assignee as beneficiary, at no cost to Developer.

16.3.1.7 NCDOT acknowledges that if the letter of credit is performance security for a Person other than Developer (e.g., a Key Contractor), NCDOT's draw may only be based on the underlying obligations of such Person.

16.3.2 Special Letter of Credit Provisions

Any terms and conditions applicable to a particular letter of credit which Developer or a Lender is required to or may provide under this Agreement are set forth in the provisions of this Agreement describing such letter of credit.

16.4 Guarantees

16.4.1 In the event Developer, any Affiliate or any Lender receives from any Person a guaranty of payment or performance of any obligation(s) of a Key Contractor, Developer shall cause such Person to (a) expressly include NCDOT as a guaranteed party under such guaranty, with the same protections and rights of notice, enforcement and collection as are available to any other guaranteed party and (b) deliver to NCDOT a duplicate original of such guaranty. Such guaranty shall provide that the rights and protections of NCDOT shall not be reduced, waived, released or adversely affected by the acts or omissions of any other guaranteed party, other than through the rendering of payment and performance to another guaranteed party.

16.4.2 NCDOT agrees to forebear from exercising remedies under any such guaranty so long as Developer or a Lender is diligently pursuing remedies thereunder.

16.5 Indemnity by Developer

16.5.1 Subject to Section 16.5.2, Developer shall release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands and Losses, including Third Party Claims and Third Party Losses, arising out of, relating to or resulting from:

16.5.1.1 The breach or alleged breach of the CA Documents by Developer;

16.5.1.2 The failure or alleged failure by any Developer-Related Entity to comply with the Governmental Approvals, any applicable Environmental Laws or other Laws (including Laws regarding Hazardous Materials Management) associated with the performance of the Work;

16.5.1.3 Any alleged patent or copyright infringement or other allegedly improper appropriation or use by any Developer-Related Entity of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated to NCDOT or another Indemnified Party pursuant to the CA Documents; provided, however, that this indemnity shall not apply to any infringement resulting from NCDOT's failure to comply with specific written instructions regarding use provided to NCDOT by Developer;

16.5.1.4 The negligence, recklessness or willful misconduct, bad faith or fraud, breach of applicable Law or contract, or other culpable act of any Developer-Related Entity in or associated with performance of the Work;

16.5.1.5 Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Developer-Related Entity with respect to any payment for the Work made to or earned by any Developer-Related Entity;

16.5.1.6 Any and all stop notices, liens and claims filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop notice, lien or claim, and any other liability to Contractors, laborers and Suppliers for failure to pay sums due for their work, services, materials, goods, equipment or supplies, provided that NCDOT is not in default in payments owing (if any) to Developer with respect to such Work;

16.5.1.7 Any actual or threatened Developer Release of Hazardous Materials;

16.5.1.8 The claim or assertion by any other developer or contractor that any Developer-Related Entity interfered with or hindered the progress or completion of work being performed by the other contractor or developer, or failed to cooperate reasonably with the other developer or contractor, so as to cause inconvenience, disruption, delay or loss, except where the Developer-Related Entity was not in any manner engaged in performance of the Work;

16.5.1.9 Any dispute or claim by a Utility Owner related to any Developer-Related Entity's performance of, or failure to perform, the obligations under any Developer Utility Adjustment Agreement;

16.5.1.10 (a) Any Developer-Related Entity's breach of or failure to perform an obligation that NCDOT owes to a third Person, including Governmental Entities, under Law or under any agreement between NCDOT and a third Person, where NCDOT has delegated performance of the obligation to Developer pursuant to the terms of the CA Documents or (b) the acts or omissions of any Developer-Related Entity related to the Project which render NCDOT unable to perform or abide by an obligation that NCDOT owes to a third Person, including Governmental Entities, under any agreement between NCDOT and a third Person, where the agreement is previously disclosed or known to Developer;

16.5.1.11 The fraud, bad faith, arbitrary or capricious acts, willful misconduct, negligence or violation of Law or contract by any Developer-Related Entity in connection with Developer's performance of real property acquisition services under the CA Documents;

16.5.1.12 Inverse condemnation, trespass, nuisance, interference with use and enjoyment of property or similar taking of or harm to real property by reason of (a) the failure of any Developer-Related Entity to comply with Good Industry Practice, requirements of the CA Documents, Developer Management Plan or Governmental Approvals, (b) the intentional misconduct or negligence of any Developer-Related Entity, or (c) the entry onto or encroachment upon another's property by any Developer-Related Entity;

16.5.1.13 If applicable, any violation of any federal or state securities or similar law by any Developer-Related Entity, or Developer's failure to comply with any requirement necessary to preserve the tax exempt status of interest paid on the PABs; or

16.5.1.14 Errors, inconsistencies or other Defects in the design or construction of the Project performed by any Developer-Related Entity and/or of Utility Adjustments included in the Design Work and/or Construction Work.

16.5.2 Subject to the releases and disclaimers herein, including all the provisions set forth in Section 6.3.8, Developer's indemnity obligation shall not extend to any Third Party Claims and Third Party Losses to the extent caused or contributed to by:

16.5.2.1 The negligence, recklessness or willful misconduct, bad faith or fraud of the Indemnified Party;

16.5.2.2 NCDOT's breach of any of its obligations under the CA Documents;

16.5.2.3 An Indemnified Party's violation of any Laws or Governmental Approvals;

16.5.2.4 Any material defect inherent in a prescriptive design, construction, operations or maintenance specification included in the Technical Provisions or Technical Documents that was not drafted or provided by a Developer-Related Entity, but only where prior to occurrence of the Third Party Loss Developer complied with such specification and did not actually know, or would not reasonably have known, while exercising reasonable diligence, that

it was deficient or, if Developer actually knew of the deficiency, unsuccessfully sought NCDOT's waiver or approval of a Deviation from such specification;

16.5.2.5 The negligence, recklessness, willful misconduct, bad faith or fraud of Developer's shareholders, partners, joint venture members and/or members in connection with matters unrelated to the Project or the Work; or

16.5.2.6 A Relief Event provided that Developer has fully complied with its obligations as set forth in the CA Documents.

16.5.3 In claims by an employee of Developer, a Contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 16.5 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Developer or a Contractor under workers' compensation, disability benefit or other employee benefits laws.

16.5.4 For purposes of this Section 16.5, "Third Party Claim" includes a claim, dispute, disagreement, cause of action, demand, suit, action, judgment, investigation, or legal or administrative proceeding which (a) is asserted, initiated or brought by any Indemnified Party's employee, agent or contractor against an Indemnified Party, (b) is within the scope of the indemnities and (c) is not covered by the Indemnified Party's worker's compensation program. For purposes of this Section 16.5, "Third Party Loss" includes any actual or alleged Loss sustained or incurred by such employee, agent or contractor.

16.5.5 NCDOT and the State shall have no obligation to indemnify Developer.

16.5.6 The requirement to provide an indemnity as specified in Article 16 is not intended to provide NCDOT with an alternative cause of action against Developer for damages incurred directly by NCDOT with respect to the event giving rise to the indemnification obligation.

16.6 Defense and Indemnification Procedures

16.6.1 If any of the Indemnified Parties receives notice of a claim that it believes is within the scope of the indemnities under Section 16.5, NCDOT shall by writing as soon as practicable after receipt of the claim from such Indemnified Party, (a) inform Developer of the claim, (b) send to Developer a copy of all written materials NCDOT has received asserting such claim and (c) notify Developer that should no insurer accept defense of the claim, the Indemnified Party will conduct its own defense unless Developer accepts the tender of the claim in accordance with Section 16.6.3. As soon as practicable after Developer receives notice of a claim or otherwise has actual knowledge of a claim, it shall tender the claim in writing to the insurers under all potentially applicable Insurance Policies and comply with all notice requirements contained in such Insurance Policies. NCDOT and other Indemnified Parties also shall have the right to tender such claims to such insurers.

16.6.2 Subject Section 16.6.4, if the insurer under any applicable Insurance Policy accepts the tender of defense, NCDOT and Developer shall cooperate in the defense as required by the Insurance Policy. If no insurer under potentially applicable Insurance Policies provides defense, then Section 16.6.3 shall apply.

16.6.3 If the defense is tendered to Developer, then within 30 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and

(if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a written notice stating that Developer:

16.6.3.1 Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any ”reservation of rights“ to deny or disclaim full indemnification thereafter;

16.6.3.2 Accepts the tender of defense but with a ”reservation of rights“ in whole or in part, with a detailed statement as to the reasons for the “reservation of rights”; or

16.6.3.3 Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Agreement, with a detailed statement as to the reasons for the denial.

16.6.4 If Developer accepts the tender of defense under Section 16.6.3.1, Developer shall have the right to select legal counsel for the Indemnified Party, subject to prior written approval by the Attorney General of the State, and Developer shall otherwise control the defense of such claim, including settlement. The foregoing shall not relieve Developer’s obligations to bear the fees and costs of defending and settling such claim. During such defense:

16.6.4.1 Developer shall fully and regularly inform the Indemnified Party and the Office of the Attorney General of the State of the progress of the defense and of any settlement discussions; and

16.6.4.2 The Indemnified Party shall fully cooperate in said defense, provide to Developer all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and Developer concerning such defense.

16.6.5 If Developer responds to the tender of defense as specified in Sections 16.6.3.2 or 16.6.3.3, the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement. The foregoing shall not relieve Developer’s obligations to bear the reasonable fees and costs of defending and settling such claim.

16.6.6 The Indemnified Party may retain separate legal counsel and assume its own defense by delivering to Developer written notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives notice of the claim or at any time thereafter, reasonably determines that:

16.6.6.1 A conflict exists between it and Developer which prevents or potentially prevents Developer from presenting a full and effective defense;

16.6.6.2 Developer is otherwise not providing an effective defense in connection with the claim; or

16.6.6.3 Developer lacks the financial capacity to satisfy potential liability or to provide an effective defense.

16.6.7 If the Indemnified Party is entitled to retain separate legal counsel and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, Developer shall reimburse on a current basis all reasonable costs and expenses, including attorney's fees, the Indemnified Party incurs in investigating and defending. In the event the Indemnified Party is entitled to retain separate legal counsel and elects to conduct its own defense, then:

16.6.7.1 In the case of a defense conducted under Section 16.6.3.1, it shall have the right to settle or compromise the claim with Developer's prior written consent, which shall not be unreasonably withheld or delayed;

16.6.7.2 In the case of a defense conducted under Section 16.6.3.2, it shall have the right to settle or compromise the claim with Developer's prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court following reasonable notice to Developer and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by Developer; and

16.6.7.3 In the case of a defense conducted under Section 16.6.3.3, it shall have the right to settle or compromise the claim without Developer's prior written consent and without prejudice to its rights to be indemnified by Developer.

16.6.8 A refusal of, or failure to accept, a tender of defense, as well as any Dispute over whether an Indemnified Party which has assumed control of defense is entitled to do so under Section 16.6.6, shall be submitted in accordance with the Dispute Resolution Procedures. Developer shall be entitled to contest an indemnification claim and pursue, through the Dispute Resolution Procedures, recovery of defense and indemnity payments it has made to or on behalf of the Indemnified Party.

16.6.9 The Parties acknowledge that while Section 16.5 contemplates that Developer will have responsibility for certain claims and liabilities arising out of its obligations to indemnify, circumstances may arise in which there may be shared liability of the Parties with respect to such claims and liabilities. In such case, where either Party believes a claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, it shall confer with the other Party on management of the claim or liability in question. If the Parties cannot agree on an approach to representation in the matter in question, each shall arrange to represent itself and to bear its own costs in connection therewith pending the outcome of such matter. Within 30 days subsequent to the final, non-appealable resolution of the matter in question, whether by arbitration or by judicial proceedings, the Parties shall adjust the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, in accordance with the indemnification arrangements of Section 16.5, and consistent with the outcome of such proceedings concerning the respective liabilities of the Parties on the third party claim.

16.6.10 In determining responsibilities and obligations for defending suits pursuant to this Section 16.6, specific consideration shall be given by the Parties to the following factors: (a) the party performing the activity in question, (b) the location of the activity and incident, (c) contractual arrangements then governing the performance of the activity, and (d) allegations of respective fault contained in the claim.

ARTICLE 17. DEFAULT; REMEDIES; DISPUTE RESOLUTION

17.1 Default by Developer; Cure Periods

17.1.1 Developer Default

Subject to relief from its performance obligations pursuant to Sections 13.1.5.1 and 13.1.5.2, Developer shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a "Developer Default"):

17.1.1.1 Developer (a) fails to begin the applicable Work within 30 days following the issuance of NTP2, or (b) fails to satisfy all conditions to issuance of NTP2 required to be satisfied by Developer under Section 7.5.2.2 by the NTP2 Conditions Deadline;

17.1.1.2 An Abandonment;

17.1.1.3 Developer fails to achieve Substantial Completion for all of the Project Sections by the Long Stop Date, as the same may be extended pursuant to this Agreement;

17.1.1.4 Developer fails to make any payment due NCDOT under the CA Documents when due, or fails to deposit funds to any reserve or account in the amount and within the time period required by this Agreement; provided that such payment or deposit is not the subject of a Claim pending resolution pursuant to the Dispute Resolution Procedures (and such payment or deposit is not otherwise required to be deposited into a reserve or action pending such resolution);

17.1.1.5 There occurs any use of the Project or Airspace or any portion thereof by any Developer-Related Entity in violation of this Agreement, the Technical Provisions, Technical Documents, Governmental Approvals or Laws;

17.1.1.6 There occurs any Closure of a material portion of the Project, including any Lane Closure or Road Closure, except to the extent such Closure is beyond the control of a Developer-Related Entity or except as expressly permitted otherwise in this Agreement, the Technical Provisions and the NCDOT-approved Traffic Management Plan;

17.1.1.7 Any representation or warranty in the CA Documents made by Developer, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Developer to NCDOT pursuant to the CA Documents is false or materially misleading or materially inaccurate when made or omits any required material information when made;

17.1.1.8 Developer fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other performance security as and when required under the CA Documents for the benefit of relevant parties, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same;

17.1.1.9 Developer makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of this Agreement, the Project or Developer's Interest, or there occurs an Equity Transfer or Change of Control in violation of Article 21;

17.1.1.10 Developer fails to timely observe or perform or cause to be observed or performed any other material covenant, agreement, obligation, term or condition required to be observed or performed by Developer under the CA Documents, including material failure to perform the Design Work, Construction Work, O&M Work or any material portion thereof in accordance with the CA Documents; provided, however, that this Section 17.1.1.10 shall not apply to Developer Defaults specifically addressed by other provisions of this Section 17.1.1;

17.1.1.11 After exhaustion of all rights of appeal, there occurs any suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, of Developer, any affiliate of Developer (as "affiliate" is defined in 29 CFR 98.905 or successor regulation of similar import), or any Key Contractor whose work is not completed, from bidding, proposing or contracting with any federal or State department or agency;

17.1.1.12 There occurs any Persistent Developer Default, NCDOT delivers to Developer written notice of the Persistent Developer Default, and either (a) Developer fails to deliver to NCDOT, within 30 days after such notice is delivered, a remedial plan meeting the requirements for approval set forth in Section 17.3.6 or (b) Developer fails to fully comply with the schedule or specific elements of, or actions required under, the approved remedial plan;

17.1.1.13 Developer commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;

17.1.1.14 An involuntary case is commenced against Developer seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Developer or Developer's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Developer or any substantial part of Developer's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Developer in good faith or shall remain undismissed and unstayed for a period of 60 days;

17.1.1.15 Any voluntary or involuntary case or other act or event described in Sections 17.1.1.13 and 17.1.1.14 shall occur (and in the case of an involuntary case shall not be contested in good faith or shall remain undismissed and unstayed for a period of 60 days) with respect to (a) any member of Developer with a material financial obligation owing to Developer for equity or shareholder loan contributions, (b) any member of Developer for whom transfer of ownership would constitute a Change of Control, or (c) any Guarantor of material Developer obligations to NCDOT under the CA Documents, unless another Guarantor of the same material Developer obligations then exists, is solvent, is not and has not been the debtor in any such voluntary or involuntary case, has not repudiated its guaranty and is not in breach of its guaranty;

17.1.1.16 Developer fails to achieve Financial Close by the Project Financial Close Deadline, as such deadline may be extended pursuant to Section 4.1.3.2, unless (a) the Agreement has been terminated pursuant to Section 19.13, 19.14 or 19.15 or (b) such failure is excused pursuant to Section 4.1.3.4;

17.1.1.17 Developer draws against or makes a false or materially misleading representation in connection with a draw against any custodial account, trust account or other reserve or account in violation of the terms and conditions of the CA Documents;

17.1.1.18 Developer fails to achieve Final Acceptance for a Project Section by the applicable Final Acceptance Deadline, as may be extended pursuant to this Agreement; or

17.1.1.19 Developer fails to achieve Final Completion by the Final Completion Deadline, as may be extended pursuant to this Agreement.

17.1.2 Cure Periods

Subject to Section 17.2.2, for each Noncompliance Event, the cure periods set forth in Section 23 of the Technical Provisions shall exclusively govern for the sole purpose of assessing Noncompliance Points. For the purpose of NCDOT's exercise of other remedies, subject to Section 17.2.2 and subject to remedies that this Article 17 expressly states may be exercised before lapse of a cure period, Developer shall have the following cure periods with respect to the following Developer Defaults:

17.1.2.1 Respecting a Developer Default under Section 17.1.1.12(a) or 17.1.1.16, a period of five days after NCDOT delivers to Developer written notice of the Developer Default;

17.1.2.2 Respecting a Developer Default under Section 17.1.1.1 (other than Section 17.1.1.1(b)), 17.1.1.6, 17.1.1.8, 17.1.1.9 or 17.1.1.17, a period of 15 days after NCDOT delivers to Developer written notice of the Developer Default; provided that (a) as to a Developer Default under Section 17.1.1.6 such cure period shall not preclude or delay NCDOT's immediate exercise, without notice or demand, of its remedy set forth in Section 17.3.2, and (b) NCDOT shall have the right, but not the obligation, to effect cure, at Developer's expense, if a Developer Default under Section 17.1.1.8 continues beyond five days after such notice is delivered;

17.1.2.3 Respecting a Developer Default under Section 17.1.1.1(b), 17.1.1.2, 17.1.1.4, 17.1.1.5 or 17.1.1.12(b), a period of 30 days after NCDOT delivers to Developer written notice of the Developer Default;

17.1.2.4 Respecting a Developer Default under Section 17.1.1.7, 17.1.1.10 or 17.1.1.11, a period of 30 days after NCDOT delivers to Developer written notice of the Developer Default; provided that (a) if the Developer Default is of such a nature that the cure cannot with diligence be completed within such time period and Developer has commenced meaningful steps to cure immediately after receiving the default notice, Developer shall have such additional period of time, up to a maximum cure period of 180 days, as is reasonably necessary to diligently effect cure, (b) as to Section 17.1.1.7, cure will be regarded as complete when the adverse effects of the breach are cured, and (c) as to Section 17.1.1.11, if the debarred, suspended or voluntarily excluded Person possesses such ownership or

management authority that the transfer thereof would constitute a Change of Control, cure will be regarded as complete when Developer proves it has removed such Person from any position or ability to manage, direct or control the decisions of Developer or to perform Work, and if the debarred or suspended Person is a Key Contractor cure will be regarded as complete when Developer replaces the Key Contractor with NCDOT's prior written approval in its good faith discretion as provided in Section 10.3.1;

17.1.2.5 Respecting a Developer Default under Section 17.1.1.3, Section 17.1.1.13 or 17.1.1.14, no cure period, and there shall be no right to notice of a Developer Default under Section 17.1.1.3, Section 17.1.1.13 or 17.1.1.14;

17.1.2.6 Respecting a Developer Default under Section 17.1.1.15, a period of ten days from the date of the Developer Default to commence diligent efforts to cure, and 30 days to effect cure of such default by providing a letter of credit or payment to NCDOT or the Collateral Agent for the benefit of the Project, in the amount of, as applicable, (a) the member's financial obligation for equity or shareholder loan contributions to or for the benefit of Developer or (b) the Guarantor's specified sum or specified maximum liability under its guaranty, or if none is specified, the reasonably estimated maximum liability of the Guarantor; and

17.1.2.7 Respecting a Developer Default under Section 17.1.1.18 and Section 17.1.1.19, a period of 120 days after NCDOT delivers Developer written notice of the Developer Default.

17.1.3 Certain Curative Actions; Status Report

17.1.3.1 If the Developer Default consists of imposing tolls in excess of that permitted under this Agreement, such Developer Default shall be curable only by (a) reinstating the tolls in effect immediately prior to the impermissible raise in tolls, unless waived by NCDOT, and (b) disgorging to NCDOT any and all increases in Toll Revenues that would not have been realized in the absence of such Developer Default, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of collection until the date disgorged.

17.1.3.2 If the Developer Default consists of failure to give NCDOT a required prior notice and opportunity to complete an applicable review and comment or approval procedure under Section 6.3 before action is taken by Developer, such Developer Default shall be curable only by (a) reversing or suspending the action until the notice and review and comment or approval procedures are followed and completed, unless Developer finished the action before receiving the notice of Developer Default or unless waived by NCDOT, and (b) disgorging to NCDOT any and all increases in Toll Revenues that would not have been realized in the absence of such Developer Default.

17.1.3.3 If the Developer Default consists of any Developer activity or failure to act which constitutes a change from Developer's activities immediately prior to the Developer Default, such Developer Default shall be curable only by (a) reinstating the activity as it was being performed immediately prior to the Developer Default and (b) disgorging to NCDOT any and all increases in Toll Revenues that would not have been realized in the absence of such Developer Default.

17.1.3.4 For any Developer Default for which a Warning Notice has been delivered by NCDOT to Developer, Developer may request from NCDOT a status report as to

Developer's progress in effecting a cure, by delivering to NCDOT a written request accompanied by Developer's own report as to its progress in effecting a cure. NCDOT shall provide its response within ten Business Days after receipt of Developer's written request and report. The response shall be provided solely for purposes of informing Developer as to NCDOT's view of the progress in effecting a cure for the Developer Default, shall not constitute an admission of any fact, shall not be admissible in evidence for any purpose, shall not form the basis for any Dispute or Claim, and shall not limit in any way NCDOT's right to terminate this Agreement in accordance with Section 19.3 should cure not be effected within the relevant period.

17.2 Warning Notices

17.2.1 Warning Notice Events

Without prejudice to any other right or remedy available to NCDOT, NCDOT may deliver a written notice (a "Warning Notice") to Developer, with a copy to the Collateral Agent for the senior and first tier subordinate Security Documents, stating explicitly that it is a "Warning Notice" and stating in reasonable detail the matter or matters giving rise to the notice and, if applicable, amounts due from Developer, and reminding Developer of the implications of such notice, whenever there occurs any of the following:

17.2.1.1 Any Developer Default under Section 17.1.1.1, 17.1.1.2, 17.1.1.4 (but only for a material failure to pay or deposit), 17.1.1.5 (but only if material), 17.1.1.6 (but only if it affects a material portion of the Project), 17.1.1.9, 17.1.1.10, 17.1.1.12 or 17.1.1.15; or

17.2.1.2 Any other material Developer Default.

17.2.2 Effect of Warning Notice on Developer Cure Period

17.2.2.1 Any notice of a Developer Default issued under Section 17.1 may, if it concerns a matter under Section 17.2.1, also be issued as a Warning Notice. In such case, the cure period available to Developer, if any, shall be as set forth in Section 17.1.2.

17.2.2.2 If NCDOT issues a Warning Notice under Section 17.2.1 for any Developer Default after it issues a notice of such Developer Default, then the cure period available to Developer, if any, for such Developer Default before NCDOT may seek to appoint a receiver for Developer, remove Developer or terminate this Agreement on account of such Developer Default shall be extended by the time period between the date the notice of such Developer Default was issued and the date the Warning Notice is issued. No later issuance of a Warning Notice shall extend the time when NCDOT may exercise any other remedy respecting such Developer Default.

17.2.2.3 The issuance of a Warning Notice may trigger a Default Termination Event as provided in Section 19.3.

17.3 NCDOT Remedies for Developer Default

17.3.1 Termination

In the event of any Developer Default that is or becomes a Default Termination Event, NCDOT may terminate this Agreement in accordance with the terms hereof and thereupon

enter and take possession and control of the Project by summary proceeding available to landlords under applicable Law, which termination shall, among other things, automatically terminate all of Developer's rights under Articles 2 and 3, whereupon Developer shall take all action required to be taken by Developer under Section 19.5.

17.3.2 Immediate NCDOT Entry and Cure of Wrongful Closure

Without awaiting lapse of the period to cure, in the event of any Developer Default under Section 17.1.1.6, NCDOT may enter and take control of the Project to the extent NCDOT finds it necessary to reopen and continue operations for the benefit of Developer and the public, until such time as such breach is cured, or NCDOT terminates this Agreement in accordance with the terms hereof. Except in the case of an Emergency, NCDOT will provide prior written notice to Developer before exercising its rights under this Section 17.3.2. Developer shall pay to NCDOT on demand NCDOT Recoverable Costs in connection with such action. So long as NCDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such a Developer Default, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose NCDOT to any liability to Developer and shall not entitle Developer to any other remedy, it being acknowledged that NCDOT has a high priority, paramount public interest in providing and maintaining continuous public access to the Project. The foregoing shall not, however, prevent Developer from taking its own actions to cure its breach.

17.3.3 Remedies for Failure to Meet Safety Standards or Perform Safety Compliance

17.3.3.1 Subject to Section 17.3.3.4, if at any time Developer fails to meet any Safety Standard or timely perform Safety Compliance or NCDOT and Developer cannot reach an agreement regarding the interpretation or application of a Safety Standard or the valid issuance of a Safety Compliance Order within a period of time acceptable to NCDOT, acting reasonably, NCDOT shall have the absolute right and entitlement to undertake or direct Developer to undertake any work required to ensure implementation of and compliance with Safety Standards as interpreted or applied by NCDOT or with the Safety Compliance Order. If at any time a condition or deficiency of the Project violates any Law respecting health, safety or right of use and access, including the Americans With Disabilities Act and regulations of the Occupational Safety and Health Administration, NCDOT may take any immediate corrective actions required.

17.3.3.2 To the extent that any work done pursuant to Section 17.3.3.1 is undertaken by NCDOT and is reasonably necessary to comply with Safety Standards or perform validly issued Safety Compliance Orders, Developer shall pay to NCDOT on demand NCDOT Recoverable Costs in connection with such work, and NCDOT (whether it undertakes the work or has directed Developer to undertake the work) shall have no obligation or liability to compensate Developer for any Losses Developer suffers or incurs as a result thereof.

17.3.3.3 To the extent that any work done pursuant to Section 17.3.3.1 is undertaken by NCDOT and is not reasonably necessary to comply with Safety Standards or perform validly issued Safety Compliance Orders, NCDOT shall compensate Developer only for Losses Developer suffers or incurs as a direct result thereof.

17.3.3.4 To the extent that any Safety Compliance Order work pursuant to Section 17.3.3.1 is undertaken by Developer under written protest delivered prior to starting the

work and it is finally determined that the Safety Compliance work was not necessary, the unnecessary work under the Safety Compliance Order shall be treated as an NCDOT Change.

17.3.3.5 Notwithstanding anything to the contrary contained in this Agreement, if in the good faith judgment of NCDOT, Developer has failed to meet any Safety Standards or perform Safety Compliance and the failure results in an Emergency or danger to persons or property, and if Developer is not then diligently taking all necessary steps to rectify or deal with such Emergency or danger, NCDOT may, without notice and without awaiting lapse of the period to cure any breach, and in addition and without prejudice to its other remedies (but is not obligated to), (a) immediately take such action as may be reasonably necessary to rectify the Emergency or danger, in which event Developer shall pay to NCDOT on demand the cost of such action, including NCDOT Recoverable Costs, or (b) suspend Construction Work and/or close or cause to be closed any and all portions of the Project affected by the Emergency or danger. So long as NCDOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an Emergency or danger as a result thereof, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose NCDOT to any liability to Developer and shall not entitle Developer to any other remedy, it being acknowledged that NCDOT has a high priority, paramount public interest in protecting public and worker safety at the Project and adjacent and connecting areas. NCDOT's good faith determination of the existence of such a failure, Emergency or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Immediately following rectification of such Emergency or danger, as determined by NCDOT, acting reasonably, NCDOT shall allow the Construction Work to continue or such portions of the Project to reopen, as the case may be.

17.3.4 NCDOT Step-in Rights

Upon the occurrence of a Developer Default and expiration, without full and complete cure, of the cure period, if any, available to Developer, without necessity for a Warning Notice, and without waiving or releasing Developer from any obligations, NCDOT shall have the right, but not the obligation, for so long as such Developer Default remains uncured by NCDOT or Developer, to pay and perform all or any portion of Developer's obligations and the Work that are the subject of such Developer Defaults, as well as any other then-existing breaches or failures to perform for which Developer received prior written notice from NCDOT but has not commenced diligent efforts to cure.

17.3.4.1 In connection with such action, NCDOT may, only to the extent reasonably required for or incident to curing the Developer Default or such other breaches or failures to perform for which Developer is required to receive and has received prior written notice from NCDOT but has not commenced and continued diligent efforts to cure:

(a) Perform or attempt to perform, or caused to be performed, such Work;

(b) Employ security guards and other safeguards to protect the Project;

(c) Spend such sums as are reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required, without obligation or liability to Developer or any Contractors for loss of opportunity to perform the same Work or supply the same materials and equipment;

(d) Draw on and use proceeds from any applicable payment and performance bonds, letters of credit and other performance security to the extent available under the terms thereof to pay the sums spent under clause (c) of this Section 17.3.4.1 or such other amounts as are payable by Developer hereunder;

(e) Access and use funds from any applicable reserve or deposit accounts, including funds deposited pursuant to the Project Trust Agreement, to the extent available under the terms thereof to pay the sums spent under clause (c) of this Section 17.3.4.1 or such other amounts as are payable by Developer hereunder,

(f) Execute all applications, certificates and other documents as may be required;

(g) Make decisions respecting, assume control over and continue Work as may be reasonably required;

(h) Subject to Section 19.5.5 with respect to termination of the Design-Build Contract and without prejudice to any claims or rights that the Design-Builder may have against Developer under the Design-Build Contract, modify or terminate any contractual arrangements in NCDOT's good faith discretion, without liability for termination fees, costs or other charges in accordance with the terms and conditions of those contractual arrangements, including the requirements of Section 10.3.2 of this Agreement;

(i) Meet with, coordinate with, direct and instruct contractors and suppliers, process invoices and applications for payment from contractors and suppliers, pay contractors and suppliers, and resolve claims of contractors, subcontractors and suppliers, and for this purpose Developer irrevocably appoints NCDOT as its attorney-in-fact with full power and authority to act for and bind Developer in its place and stead;

(j) Take any and all other actions as may be reasonably required or incident to curing; and

(k) Prosecute and defend any action or proceeding incident to the Work undertaken.

17.3.4.2 Developer shall reimburse NCDOT on demand NCDOT Recoverable Costs in connection with the performance of any act or Work authorized by this Section 17.3.4.

17.3.4.3 NCDOT shall have and is hereby granted a perpetual, non-rescindable right of entry by NCDOT and its Authorized Representatives, contractors, subcontractors, vendors and employees onto any construction, lay down, staging, borrow and similar areas owned or leased by Developer, exercisable at any time or times without notice, for the purpose of carrying out NCDOT's step-in rights under this Section 17.3.4. Neither NCDOT nor any of its Authorized Representatives, contractors, subcontractors, vendor and employees shall be liable to Developer in any manner for any inconvenience or disturbance arising out of its entry onto such locations in order to perform under this Section 17.3.4, unless caused by the gross negligence, recklessness, willful misconduct or bad faith of such Person. If any Person exercises any right to pay or perform under this Section 17.3.4, it nevertheless shall have no liability to Developer for the sufficiency or adequacy of any such payment or performance, or for

the manner or quality of design, construction, operation or maintenance, unless caused by the gross negligence, recklessness, willful misconduct or bad faith of such Person.

17.3.4.4 NCDOT's rights under this Section 17.3.4 are subject to the right of any Surety under payment and performance bonds to assume performance and completion of all bonded work.

17.3.4.5 In the case of a Developer Default which would either immediately or, following the applicable cure period or the giving of notice or both, constitute a Default Termination Event enabling NCDOT to terminate or suspend its obligations under the CA Documents, NCDOT's rights under this Section 17.3.4 are subject to Lender rights to cure under the Lender's Direct Agreement; provided, however, that NCDOT may continue exercise of its step-in rights until the Lender obtains possession and notifies NCDOT that it stands ready to commence good faith, diligent curative action. In the case of any other Developer Default, NCDOT's rights under this Section 17.3.4 are subject to the exercise of step-in rights by the Collateral Agent under the senior Security Documents; provided, however, that the Collateral Agent (a) delivers to NCDOT written notice of the Collateral Agent's decision to exercise step-in rights, and commences the good faith, diligent exercise of such step-in rights, within the cure period available to Developer with respect to the Developer Default in question, and (b) thereafter continues such good faith, diligent exercise of remedies until the Developer Default is fully and completely cured.

17.3.4.6 In the event NCDOT takes action described in this Section 17.3.4 and it is later finally determined that NCDOT lacked the right to do so because there did not occur a Developer Default and expiration, without full and complete cure, of the cure period, if any, available to Developer, then NCDOT's action shall be treated as a Directive Letter for an NCDOT Change.

17.3.5 Damages; Offset

17.3.5.1 Subject to Sections 17.3.10 and 17.3.11 and the provisions on liquidated damages set forth in Section 17.4, NCDOT shall be entitled to recover any and all damages available at Law (subject to the duty at Law to mitigate damages and without duplicative recovery) on account of the occurrence of a Developer Default, including, to the extent available at Law, (a) loss of any compensation due NCDOT under the CA Documents proximately caused by the Developer Default, (b) costs to remedy any defective part of the Work, (c) costs to rectify any breach or failure to perform by Developer and/or to bring the condition of the Project to the standard it would have been in if Developer had complied with its obligations to perform the Work in accordance with the CA Documents, (d) costs to NCDOT to terminate, take over the Project, re-procure and replace Developer, (e) delay costs; (f) increases in costs to NCDOT to complete the Project if not completed; and (g) increases in costs to NCDOT to operate and maintain the Project over the balance of the Term (as if termination had not occurred), together, in each case, with interest thereon from and after the date any amount becomes due to NCDOT until paid at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points or other rate specified therefor in this Agreement. Developer shall owe any such damages that accrue after the occurrence of the Developer Default and the delivery of notice thereof, if any, required by this Agreement regardless of whether the Developer Default is subsequently cured.

17.3.5.2 NCDOT may deduct and offset any Claim amount owing to it, from and against any amounts NCDOT may owe to Developer or any Affiliate, including any payment

of the Public Funds Amount and Annual O&M Payments; provided that if the Claim is subject to a good faith Dispute by Developer, such Claim amount shall not be deducted or offset until such Claim has been liquidated through the Dispute Resolution Procedures or otherwise agreed to by the Parties.

17.3.5.3 If the Claim amount is disputed in good faith by Developer or not liquidated through Dispute Resolution Procedures or otherwise agreed to by the Parties, NCDOT shall have the following rights.

(a) NCDOT may elect to exercise its rights pursuant to the Project Trust Agreement and direct the transfer of funds from the Toll Revenue Account to the NCDOT Claims Account up to the disputed portion of the Claim in accordance with the provisions of the Project Trust Agreement. Upon liquidation, the disputed portion of the Claim may be satisfied first from the amounts held in the NCDOT Claims Account, and then through NCDOT's right of offset with respect to the liquidated Claim amounts.

(b) For each Claim in excess of $1 million, NCDOT may elect, by written notice to Developer, to require from Developer a letter of credit in any amount NCDOT designates in its notice, up to the lesser of (i) 50 percent of the disputed portion of the Claim less the amount of funds, if any, held in the NCDOT Claims Account for such Claim or (ii) the letter of credit cap. For purposes of this clause (b), (A) the "letter of credit cap" shall initially be $10 million, (B) on January 1 of every year following the Effective Date, the letter of credit cap shall be adjusted by a percentage equal to the percentage increase in the CPI between the CPI for the second to last December before the date of the increase and the CPI for the last December before the date of the increase and (C) in addition to the adjustment in clause (B), on the date that is five years prior to the end of the Term, the "letter of credit cap" shall double from the amount immediately prior to such date. Developer shall deliver such letter of credit to NCDOT within 30 days after NCDOT delivers such notice to Developer. If a Developer Default occurs because Developer for any reason does not deliver such letter of credit as and when required and fails to cure such Developer Default within the cure period therefor, NCDOT shall have the right, without further notice or demand, and in addition to any other remedies, to deliver a certificate to Developer and the trustee under the Project Trust Agreement stating that Developer has failed to deliver the letter of credit on the terms and within the time required hereunder, in which case daily transfers of funds from the Toll Revenue Account to the NCDOT Claims Account shall be as provided in the Project Trust Agreement. NCDOT shall have the right to draw on such letter of credit as provided in Section 16.3.1.2, except that draw under Section 16.3.1.2(a) shall be conditioned upon liquidation of the disputed Claim through Dispute Resolution Procedures or otherwise and failure of Developer to pay the Claim, together with interest thereon, within 30 days after final determination of the Claim. In the event the amount of the disputed Claim as finally determined, through Dispute Resolution Procedures or otherwise, is less than the amount of the letter of credit, NCDOT shall reimburse Developer for a portion of the fees charged for the letter of credit in the same ratio that the face amount of the letter of credit in excess of the finally determined amount of the Claim bears to the full face amount of the letter of credit. Reimbursement shall be due 30 days after NCDOT receives from Developer documentation of the letter of credit fees Developer has paid. If NCDOT receives such documentation by not later than ten Business Days before it draws on the letter of credit, NCDOT shall reduce its draw on the letter of credit by the portion of the fees to be reimbursed, in satisfaction of its obligation to reimburse.

17.3.6 Remedial Plan Delivery and Implementation

17.3.6.1 Developer recognizes and acknowledges that a pattern or practice of continuing, repeated or numerous Noncompliance Events, whether such Noncompliance Events are cured or not, will undermine the confidence and trust essential to the success of the public-private arrangement under the CA Documents and will have a material, cumulative adverse impact on the value of the CA Documentsto NCDOT. Developer acknowledges and agrees that measures for determining the existence of such a pattern or practice described in the definition of Persistent Developer Default are a fair and appropriate objective basis to conclude that such a pattern or practice will continue.

17.3.6.2 Developer shall be required to prepare and submit a remedial plan for NCDOT approval (a) within 30 Days of written notice from NCDOT that NCDOT intends to exercise its rights pursuant to Section 18.5.1.1; (b) within 30 Days of written notice from NCDOT that NCDOT intends to exercise its rights pursuant to Section 18.5.2.1; or (c) within 30 days after written notice from NCDOT of a Persistent Developer Default. The remedial plan shall set forth a schedule and specific actions to be taken by Developer to improve its performance and reduce Developer's cumulative number of Noncompliance Points assessed under Section 18.3 and cumulative number of Noncompliance Event to perform to the point that the conditions giving rise to the remedial plan will not continue. Such actions may include improvements to Developer's quality management practices, plans and procedures, revising and restating components of the Developer Management Plan, changes in organizational and management structure, increased monitoring and inspections, increased staffing levels, changes in Key Personnel and other important personnel, replacement of Contractors, and delivery of security to NCDOT.

17.3.6.3 If (a) Developer complies in all material respects with the schedule and specific elements of, and actions required under, the approved remedial plan, (b) as a result thereof Developer achieves the requirements set forth in Section 17.3.6.1, and (c) as of the date it achieves such requirements there exist no other uncured Developer Defaults for which a Warning Notice was given, then NCDOT shall reduce the number of Noncompliance Points that would otherwise then be counted toward Persistent Developer Default by 50%. Such reduction shall be taken from the earliest assessed Noncompliance Points that would otherwise then be counted toward Persistent Developer Default.

17.3.6.4 Developer's failure to deliver to NCDOT the required remedial plan pursuant to Section 17.3.6.2(c) within such 45 day period shall constitute a material Developer Default, which may result in issuance of a Warning Notice triggering a five-day cure period. Failure to comply in any material respect with the schedule or specific elements of, or actions required under, the remedial plan shall constitute a material Developer Default which may result in issuance of a Warning Notice triggering a 30-day cure period. Developer's failure to cure the Developer Default within the applicable cure period after the Warning Notice may trigger a Default Termination Event under Article 19.

17.3.7 Performance Security

17.3.7.1 Subject to Sections 17.3.7.2 and 17.3.7.3, upon the occurrence of a Developer Default and Developer's failure to fully cure and correct within the applicable cure period, if any, under Section 17.1.2, without necessity for a Warning Notice, and without waiving or releasing Developer from any obligations, NCDOT shall be entitled to make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any

letter of credit, guaranty or other payment or performance security (including the Handback Requirements Reserve) available to NCDOT under the CA Documents with respect to the Developer Default in question in any order in NCDOT's sole discretion. NCDOT shall apply the proceeds of any such action to satisfy Developer's obligations under the CA Documents, including payment of amounts due to NCDOT.

17.3.7.2 If NCDOT is an additional obligee under a Payment Bond or bond for Performance Security, or is a transferee beneficiary under any letter of credit, then NCDOT shall forebear from exercising remedies as additional obligee or transferee beneficiary so long as (a) Developer or the Collateral Agent commences the good faith, diligent exercise of remedies thereunder within ten days after NCDOT delivers written notice to Developer and the Collateral Agent of its intent to make a claim thereunder, and (b) thereafter continues such good faith, diligent exercise of remedies until the default is cured. The foregoing obligation of NCDOT to forebear shall not apply, however, where access to a bond, letter of credit or other payment or performance security is to satisfy damages owing to NCDOT, in which case NCDOT shall, to the extent permitted pursuant to this Agreement, be entitled to make demand, draw, enforce and collect upon the occurrence of a Developer and Developer's failure to cure within the applicable cure period, if any.

17.3.7.3 No prior notice from NCDOT shall be required if it would preclude draw on the bond, letter of credit, guaranty or other payment or performance security before its expiration date; and in the case of an expiring letter of credit, the provisions of Section 16.3.1.2 shall apply.

17.3.8 Suspension of Work

17.3.8.1 Upon NCDOT's delivery of notice of Developer Default for any of the following breaches or failures to perform and Developer's failure to fully cure and correct, within the applicable cure period, if any, available to Developer under Section 17.1.2, NCDOT shall have the right and authority to suspend any affected portion of the Work by written order to Developer:

(a) Performance of Nonconforming Work;

(b) Failure to comply with any Law or Governmental Approval (including failure to handle, preserve and protect archeological, paleontological or historic resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals);

(c) Certain failures to remove and replace personnel as set forth in Section 10.6.2;

(d) Failure to provide proof of required insurance coverage as set forth in Section 16.1.2.4(c);

(e) Failure to deliver or maintain Payment Bonds and Performance Security as set forth in Section 16.2;

(e) Failure to carry out and comply with Directive Letters; and

(f) Failure to satisfy any condition to commencement of construction

set forth in Section 7.6.

NCDOT will lift the suspension order and direct Developer to resume the Work promptly after Developer fully cures and corrects the applicable breach or failure to perform.

17.3.8.2 In addition, subject to Developer's right to claim a Compensation Event or Relief Event to the extent provided under the CA Documents, NCDOT shall have the right and authority at any time to suspend any affected portion of the Work by written notice to Developer for the following reasons:

(a) To comply with any court order or judgment;

(b) NCDOT's performance of data recovery respecting archeological, paleontological or cultural resources; or

(c) The existence of conditions unsafe for workers, other Project personnel or the general public, including certain failures to comply with Safety Standards or perform Safety Compliance as set forth in Section 17.3.3.5.

17.3.8.3 Developer shall promptly comply with any such written suspension order, even if Developer disputes the grounds for suspension. Developer shall promptly recommence the Work upon receipt of written notice from NCDOT directing Developer to resume work, which NCDOT will promptly provide following the date on which the grounds for suspension has ceased or was cured, as applicable.

17.3.8.4 In addition to the protections from liability under Section 17.3.3.5, NCDOT shall have no liability to Developer, and Developer shall have no right to a Relief Event or Compensation Event, in connection with any suspension properly founded on any of the other grounds set forth in this Section 17.3.8 (except potential Relief Events or Compensation Events in the case of suspensions under Sections 17.3.8.2(a) and (b)). If NCDOT orders suspension of Work on one of the foregoing grounds but it is finally determined under the Dispute Resolution Procedures that such grounds did not exist, or if NCDOT orders suspension of Work for any other reason, it shall be treated as a Directive Letter for an NCDOT Change, except as provided in Section 17.3.3.5.

17.3.9 Other Rights and Remedies

Subject to Sections 17.3.11, 17.4.7.2 and 19.8, NCDOT shall also be entitled to exercise any other rights and remedies available under the CA Documents, or available at law or in equity.

17.3.10 Cumulative, Non-Exclusive Remedies

Subject to Sections 17.3.11, 17.4.7.2 and 19.8, and subject to the stipulated remedial measures for the breaches and failures to perform for which Noncompliance Points may be assessed, each right and remedy of NCDOT hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by NCDOT of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by NCDOT of any or all other such rights or remedies.

17.3.11 Limitation on Consequential Damages

17.3.11.1 Notwithstanding any other provision of the CA Documents and except as set forth in Section 17.3.11.2, to the extent permitted by applicable Law, Developer shall not be liable for punitive damages or special, indirect, incidental or consequential damages, including, without limitation, damages for loss of profit or opportunity, whether arising out of breach of the CA Documents, tort (including negligence) or any other theory of liability, and NCDOT releases Developer from any such liability.

17.3.11.2 The foregoing limitation on Developer's liability for consequential damages shall not apply to or limit any right of recovery NCDOT may have respecting the following:

(a) Losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried pursuant to Section 16.1, (ii) covered by the proceeds of insurance actually carried by or insuring Developer under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 16.1, or (iii) Developer is deemed to have self-insured the Loss pursuant to Section 16.1.4.3;

(b) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Developer Default), recklessness, bad faith or gross negligence on the part of any Developer-Related Entity;

(c) Developer's obligation to pay liquidated damages in accordance with Section 17.4 or any other provision of the CA Documents;

(d) Losses arising out of Developer Releases of Hazardous Materials;

(e) Developer's obligation to pay compensation to NCDOT as provided in Section 5.3 and Exhibit 5 (but excluding any payment on account of future Revenue Payment Amounts);

(f) Amounts Developer may owe or be obligated to reimburse to NCDOT under the express provisions of the CA Documents, including NCDOT Recoverable Costs;

(g) Interest, late charges, fees, transaction fees and charges, penalties and similar charges that the CA Documents expressly state are due from Developer to NCDOT;

(h) Any credits, deductions or offsets that the CA Documents expressly provide to NCDOT against amounts owing Developer; and

(i) Developer's indemnities set forth in Section 16.5 (only to the extent any such indemnities relate to claims, causes of action or Losses asserted by or awarded to third parties).

17.3.11.3 All insurance policies purchased shall not exclude coverage for consequential damages.

17.4 Liquidated Damages

17.4.1 Liquidated Damages for Delayed Final Acceptance and Final Completion

17.4.1.1 Developer shall be liable for and pay to NCDOT liquidated damages with respect to any failure to achieve Final Acceptance of a Project Section and Final Completion by the applicable deadlines set forth in the Milestone Schedule, as the same may be extended pursuant to this Agreement. Such liability shall apply even though (a) a cure period remains available to Developer or any Lender under the CA Documents or (b) cure occurs. The amounts of such liquidated damages are set forth in Exhibit 14. Such liquidated damages shall commence on the applicable Final Acceptance Deadline and Final Completion, as applicable, as the same may be extended pursuant to this Agreement, and shall continue to accrue until the date of Final Acceptance of the applicable Project Section or Final Completion (as applicable) or until termination of this Agreement. Such liquidated damages shall constitute NCDOT's sole right to damages for such delay, but excluding any termination damages incurred by NCDOT as a result of a termination for Developer Default that may result from such delay.

17.4.1.2 Developer and NCDOT acknowledge that such liquidated damages are reasonable in order to compensate NCDOT for damages it will incur as a result of late Final Acceptance and Final Completion. Such damages include injury to the credibility and reputation of NCDOT's transportation improvement program with policy makers and with the general public and additional costs of administering this Agreement (including engineering, legal, accounting, overhead and other administrative costs). Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for the Project.

17.4.2 Liquidated Damages Respecting Noncompliance Events

17.4.2.1 In addition to Noncompliance Points, certain Noncompliance Events shall result in liquidated damages as set forth in Tables 23.1 and 23.2 of the Technical Provisions, Developer shall be liable for and pay to NCDOT liquidated damages for each Noncompliance Event and Unavailability Event assessed against Developer in the amount set forth in Tables 23.1 and 23.2 of the Technical Provisions. Such liquidated damages shall constitute NCDOT's sole right to damages for such Noncompliance Event, but excluding any termination damages incurred by NCDOT due to a termination for Developer Default that may result from such Noncompliance Event.

17.4.2.2 Developer and NCDOT acknowledge that such liquidated damages are reasonable in order to compensate NCDOT (a) for its increased costs of administering this Agreement, for its potential loss of revenue payment, and for potential harm to the credibility and reputation of NCDOT's transportation improvement program, including the CA program, with policy makers and with the general public, and (b) for potential harm and detriment to the traveling public, by reason of the matters that result in accumulated Noncompliance Points. NCDOT's increased costs include the increased costs of monitoring and oversight under Section 18.5, and could also include obligations to pay or reimburse Governmental Entities with regulatory jurisdiction over the Project for their increased costs of monitoring and enforcing Developer compliance with applicable Governmental Approvals. Detriment to the public may include additional wear and tear on vehicles and increased costs of congestion, travel time and accidents. In addition, the events and circumstances that result in the trigger of these liquidated damages are likely to reduce the quality of the Project so as to adversely affect the experience of the traveling public and their desire to continue using the

Project and connecting NCDOT transportation facilities. This loss of patronage and demand in turn will cause loss of Toll Revenues or suppress the ability to increase Toll Revenues, to the detriment of NCDOT's potential revenue payment, and loss of toll revenues from connecting NCDOT transportation facilities. Developer further acknowledges that such increased costs and loss of revenue payment, and harm and detriment to the traveling public, would be difficult and impracticable to measure and prove, because, among other things, the costs of monitoring and oversight prior to increases in the level thereof will be variable and extremely difficult to quantify; the nature and level of increased monitoring and oversight will be variable depending on the circumstances; and the variety of factors that influence use of and demand for the Project make it difficult to sort out causation and quantify the precise Toll Revenue loss attributable to the matters that will trigger these liquidated damages.

17.4.2.3 For the avoidance of doubt, the liquidated damages provided for under this Section 17.4.2 are not intended to compensate NCDOT, or liquidate Developer's liabilities, for any other costs or damages, including costs of repair, renewal or replacement, costs to correct Nonconforming Work or failure to meet Safety Standards, costs of Safety Compliance work, damages related to failure to establish or fund the Handback Requirements Reserve or Third Party Claims otherwise contemplated herein. Further, such liquidated damages are not in lieu of any termination or other express rights of NCDOT set forth in this Agreement resulting from Developer's breaches that result in such liquidated damages.

17.4.3 Liquidated Damages for Failing to Comply with Lane and Road Closure Restrictions

17.4.3.1 Developer shall be liable for and pay to NCDOT liquidated damages assessed against Developer pursuant to Exhibit 14 for failing to comply with the applicable time restrictions related to Lane Closures and Road Closures set forth in Sections 22 and 23 of the Technical Provisions. Such liquidated damages shall constitute NCDOT's sole right to damages for such failure, but excluding any termination damages incurred by NCDOT as a result of a termination for Developer Default that may result from such failure.

17.4.3.2 Developer and NCDOT acknowledge that such liquidated damages are reasonable in order to compensate NCDOT for damages it will incur by reason of the matters that result in liquidated damages assessed under Exhibit 14 with respect to Lane Closures and Road Closures. Such damages include loss of use, enjoyment and benefit of the Project and connecting NCDOT transportation facilities by the general public, injury to the credibility and reputation of NCDOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service, which injury to credibility and reputation may directly result in loss of demand for and use of the Project and connecting NCDOT transportation facilities, and additional costs of administering this Agreement (including engineering, legal, accounting, overhead and other administrative costs). Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

17.4.4 Liquidated Damages for Failure to Achieve Financial Close

17.4.4.1 Developer shall be liable for and pay to NCDOT liquidated damages if (a) Developer for any reason fails to timely satisfy its financing obligations under Section 4.1.3, (b) Developer's failure is not excused in accordance with Section 4.1.3.2, and (c) as a result thereof NCDOT terminates this Agreement pursuant to Section 19.3.4. In such

event, NCDOT shall be entitled to draw on the Financial Close Security for the liquidated damages owing to NCDOT. The amount of such liquidated damages shall equal the amount of the Financial Close Security in place at the time of such termination under this Section 17.4.4.1. Such liquidated damages shall constitute NCDOT's sole right to damages on account of such failure.

17.4.4.2 Developer acknowledges that the time period NCDOT has provided to Developer to close the Initial Project Debt is ample and reasonable, and both Developer and NCDOT acknowledge that such liquidated damages are reasonable in order to compensate NCDOT for damages it will incur as a result of the lost opportunity to NCDOT represented by the CA Documents. Such damages include the harm from the difficulty, and substantial additional expense, to NCDOT, to procure and deliver, operate and maintain the Project through other means, loss of or substantial delay in use, enjoyment and benefit of the Project by the general public, and injury to the credibility and reputation of NCDOT's transportation improvement program, with policy makers and with the general public who depend on and expect availability of service. Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

17.4.5 Acknowledgements Regarding Liquidated Damages

Developer further agrees and acknowledges that:

17.4.5.1 In the event that Developer fails to comply with its obligations with respect to the DBE requirements, fails to achieve Final Acceptance of a Project Section by the applicable Final Acceptance Deadline, failure to achieve Final Completion by the Final Completion Deadline, commits breaches and failures resulting in certain Noncompliance Events, fails to comply with lane and road closure restrictions, or fails to satisfy its financing obligations under Section 4.1.3, NCDOT will incur substantial damages;

17.4.5.2 Such damages are incapable of accurate measurement and difficult to prove for the reasons stated in Sections 10.9.4.3, 17.4.1.2, 17.4.2.2, 17.4.3.2, and 17.4.4.2;

17.4.5.3 As of the Effective Date, the amounts of liquidated damages under Sections 10.9.4.3, 17.4.1, 17.4.2, 17.4.3, and 17.4.4 represent good faith estimates and evaluations by the Parties as to the actual potential damages that NCDOT would incur as a result of failure to comply with DBE requirements, late Final Acceptance of a Project Section, late Final Completion, certain Noncompliance Events, failure to comply with lane and road closure restrictions, or failure to finance, and do not constitute a penalty;

17.4.5.4 The Parties have agreed to such liquidated damages in order to fix and limit Developer's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Developer;

17.4.5.5 Such sums are reasonable in light of the anticipated or actual harm caused by failure to comply with DBE requirements, delayed Final Acceptance of a Project Section, late Final Completion, certain Noncompliance Events, violations of lane and road closure restrictions, or failure to finance, the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy; and

17.4.5.6 Such liquidated damages are not intended to, and do not, liquidate Developer's liability under the indemnification provisions of Section 16.5, even though third party claims against Indemnified Parties may arise out of the same event, breach or failure that gives rise to such liquidated damages.

17.4.6 Payment; Satisfaction; Waiver

17.4.6.1 Developer shall pay any liquidated damages owing under this Section 17.4 within 30 days after NCDOT delivers to Developer NCDOT's invoice or demand therefor, such invoice or demand to be issued not more often than monthly. Liquidated damages shall be due and payable to NCDOT without right of offset, deduction, reduction or other charge, except as provided in Section 17.6.3. Any Dispute raised by Developer concerning its obligation to pay liquidated damages or the amount thereof shall be resolved in accordance with the Dispute Resolution Procedures set forth in Section 17.8.

17.4.6.2 NCDOT shall return to Developer any amounts received as liquidated damages on account of the assessment of a Noncompliance Point if the Noncompliance Point is subsequently cancelled pursuant to Section 18.4.5.

17.4.6.3 NCDOT shall have the right to deduct and offset liquidated damages from any amounts owing Developer to the extent provided in Section 17.3.5. NCDOT also shall have the right to draw on any bond, certificate of deposit, letter of credit or other security provided by Developer pursuant to this Agreement, except any Handback Requirements Letter of Credit, to satisfy liquidated damages not paid when due.

17.4.6.4 Permitting or requiring Developer to continue and finish the Work or any part thereof after the Final Acceptance Deadline of a Project Section shall not act as a waiver of NCDOT's right to receive liquidated damages hereunder or any rights or remedies otherwise available to NCDOT.

17.4.7 Non-Exclusive Remedy

17.4.7.1 Each item of liquidated damages provided under this Section 17.4 is in addition to, and not in substitution for, any other item of liquidated damages assessed under this Section 17.4.

17.4.7.2 NCDOT's right to, and imposition of, liquidated damages are in addition, and without prejudice, to any other rights and remedies available to NCDOT under the CA Documents, at law or in equity respecting the breach, failure to perform or Developer Default that is the basis for the liquidated damages or any other breach, failure to perform or Developer Default, except for recovery of the monetary damage that the liquidated damages are intended to compensate.

17.5 Default by NCDOT; Cure Periods

17.5.1 NCDOT Default

NCDOT shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each an "NCDOT Default"):

17.5.1.1 Except with respect to payments due under Exhibit 18 of this Agreement, NCDOT fails to make any payment due Developer under the CA Documents when due; provided that such payment is not the subject of a Claim pending resolution pursuant to the Dispute Resolution Procedures;

17.5.1.2 Any representation or warranty made by NCDOT in this Agreement is false or materially misleading or inaccurate when made or omits material information when made;

17.5.1.3 NCDOT fails to observe or perform any covenant, agreement, term or condition required to be observed or performed by NCDOT under the CA Documents not otherwise addressed in this Section 17.5.1; or

17.5.1.4 NCDOT confiscates or appropriates all or any material part of the Developer's Interest or of the beneficial interests in Developer, excluding a Termination for Convenience or any other exercise of a right of termination set forth in this Agreement.

17.5.2 Cure Periods

NCDOT shall have the following cure periods with respect to the following NCDOT Defaults:

17.5.2.1 Respecting an NCDOT Default under Section 17.5.1.1 or 17.5.1.4, a period of 30 days after Developer delivers to NCDOT written notice of the NCDOT Default; and

17.5.2.2 Respecting an NCDOT Default under Section 17.5.1.2 or 17.5.1.3, a period of 60 days after Developer delivers to NCDOT written notice of the NCDOT Default; provided that (a) if the NCDOT Default is of such a nature that the cure cannot with diligence be completed within such time period and NCDOT has commenced meaningful steps to cure immediately after receiving the default notice, NCDOT shall have such additional period of time, up to a maximum cure period of 180 days, as is reasonably necessary to diligently effect cure, and (b) as to Section 17.5.1.2, cure will be regarded as complete when the adverse effects of the breach are cured.

17.6 Developer Remedies for NCDOT Default

17.6.1 Termination

Subject to Section 19.8, Developer will have the right to terminate this Agreement and recover termination damages as more particularly set forth in, and subject to the terms and conditions of, Section 19.4.

17.6.2 Damages and Other Remedies

Developer shall have and may exercise the following remedies upon the occurrence of an NCDOT Default and expiration, without cure, of the applicable cure period:

17.6.2.1 If Developer does not terminate this Agreement, then, subject to Section 17.6.4, Developer may treat the NCDOT Default as a Compensation Event on the terms

and conditions set forth in Section 13.2 and NCDOT shall pay the full Compensation Amount and interest in accordance with Sections 13.2.8 and 13.2.9;

17.6.2.2 If the NCDOT Default is a failure to pay when due any undisputed portion of a progress payment owing under a Change Order and NCDOT fails to cure such NCDOT Default within 30 days after receiving from Developer written notice thereof, Developer shall be entitled to suspend the Work under the Change Order, subject to the following terms and conditions:

(a) Developer shall be responsible for safely securing and monitoring the Site and all materials and equipment;

(b) Developer shall continue to provide traffic management in accordance with the Traffic Management Plan;

(c) The right to suspend Work does not include the right to suspend or cancel Insurance Policies or any Payment Bond and Performance Security; and

(d) The suspension of Work shall cease, and Developer shall resume performance of the Work, within ten (10) days after the default is cured; and

17.6.2.3 Subject to Sections 17.6.4 and 19.8, Developer also shall be entitled to exercise any other remedies available under the CA Documents or at Law or in equity, including offset rights to the extent and only to the extent available under Section 17.6.3. Subject to Sections 17.6.4 and 19.8, each right and remedy of Developer hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at Law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Developer of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Developer of any or all other such rights or remedies.

17.6.3 Offset Rights

Developer may deduct and offset any Claim amount owing to it from and against any amounts Developer may owe to NCDOT; provided that if the Claim is subject to a good faith Dispute by NCDOT, such Claim amount shall not be deducted or offset until such Claim has been liquidated through the Dispute Resolution Procedures or otherwise agreed to by the Parties. If the Claim amount is disputed in good faith by NCDOT or not liquidated through the Dispute Resolution Procedures or otherwise agreed to by the Parties, Developer may elect to exercise its rights pursuant to the Project Trust Agreement and direct the transfer of Revenue Payment Amounts from the Toll Revenue Account to the Developer Claims Account up to the amount of the disputed portion of the Claim, in accordance with the provisions of the Project Trust Agreement. Upon liquidation, the disputed portion of the Claim may be satisfied first from the amounts held in the Developer Claims Account, and then through Developer's offset right with respect to liquidated Claim amounts.

17.6.4 Limitations on Remedies

17.6.4.1 Notwithstanding any other provision of the CA Documents and except as forth in Section 17.6.4.2, to the extent permitted by applicable Law, NCDOT shall not be liable for punitive damages or special, indirect, incidental or consequential damages,

including, without limitation, damages for loss of profit or opportunity, whether arising out of breach of the CA Documents, tort (including negligence) or any other theory of liability, and Developer releases NCDOT from any such liability.

17.6.4.2 The foregoing limitation on NCDOT's liability for consequential damages shall not apply to or limit any right of recovery Developer may have respecting the following:

(a) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional NCDOT Default), recklessness, bad faith or gross negligence on the part of NCDOT;

(b) Losses arising out of Pre-existing Hazardous Materials or NCDOT Release(s) of Hazardous Materials caused by NCDOT;

(c) Any amounts NCDOT may owe or be obligated to reimburse under the express provisions of this Agreement for Compensation Events or events of termination;

(d) Any other specified amounts NCDOT may owe or be obligated to reimburse to Developer under the express provisions of the CA Documents;

(e) Interest and charges that the CA Documents expressly state are due from NCDOT to Developer; and

(f) Any credits, deductions or offsets that the CA Documents expressly provide to Developer against amounts owing NCDOT.

17.6.4.3 The measure of compensation available to Developer as set forth in this Agreement for a Compensation Event or an event of termination shall constitute the sole and exclusive monetary relief and damages available to Developer from the State or NCDOT arising out of or relating to such event; and Developer irrevocably waives and releases any right to any other or additional damages or compensation from the State or NCDOT. No award of compensation or damages shall be duplicative.

17.6.4.4 Developer shall have no right to seek, and irrevocably waives and relinquishes any right to, non-monetary relief against NCDOT, except (a) for any sustainable action for relief in the nature of that formerly available in *mandamus*, (b) for any sustainable action to stop, restrain or enjoin use, reproduction, duplication, modification, adaptation or disclosure of Proprietary Intellectual Property in violation of the licenses granted under Section 22.5, or to specifically enforce NCDOT's duty of confidentiality under Section 22.4.6, (c) for declaratory relief pursuant to the Dispute Resolution Procedures declaring the rights and obligations of the Parties under the CA Documents, or (d) declaratory relief pursuant to the Dispute Resolution Procedures declaring specific terms and conditions that shall bind the Parties, but only where this Agreement expressly calls for such a method of resolving a Dispute.

17.6.4.5 Without limiting the effect of Section 17.6.4.3, in the event NCDOT wrongfully withholds an approval or consent required under the CA Documents, or wrongfully issues an objection to or disapproval of a Submittal or other matter under the CA Documents, Developer's sole remedies against NCDOT shall be extensions of time to the extent provided in

Section 13.1 for a Relief Event and damages to the extent provided in Section 13.2 for a Compensation Event.

17.6.5 Procedure for Payment of Judgments

Promptly after any final, non-appealable order or judgment awarding compensation or damages to Developer, NCDOT shall institute payment procedures as set forth in applicable Law.

17.7 Partnering

17.7.1 NCDOT and Developer have developed and intend to continue fostering a cohesive relationship to carry out their respective responsibilities under the CA Documents through a voluntary, non-binding ”partnering“ process drawing upon the strengths of each organization to identify and achieve reciprocal goals.

17.7.2 The objectives of the partnering process are (a) to identify potential problem areas, issues and differences of opinion early, (b) to develop and implement procedures for resolving them in order to prevent them from becoming Claims and Disputes, (c) to achieve effective and efficient performance and completion of the Work in accordance with the CA Documents, and (d) to create mutual trust and respect for each Party's respective roles and interests in the Project while recognizing the respective risks inherent in those roles.

17.7.3 In continuance of their existing partnering process, within 90 days after the Effective Date, NCDOT and Developer shall attend a team building workshop and through such workshop negotiate and sign a mutually acceptable non-binding partnering charter to govern the process of partnering for the Project. The charter shall include non-binding rules and guidelines for engaging in free and open communications, discussions and partnering meetings between them, in order to further the goals of the partnering process. The charter shall call for the formation and meetings of a partnering panel, identify the Key Personnel of Developer and key representatives of NCDOT who shall serve on the partnering panel, and set the location for meetings. The charter also shall include non-binding rules and guidelines on whether and under what circumstances to select and use the services of a facilitator, where and when to conduct partnering panel meetings, who should attend such meetings, and, exchange of statements, materials and communications during partnering panel meetings. In any event, the partnering charter shall recognize and be consistent with the obligations of NCDOT and Developer contained in this Agreement with respect to communications, cooperation, coordination and procedures for resolving Claims and Disputes.

17.7.4 Under the non-binding procedures, rules and guidelines of the partnering charter, the Parties will address at partnering meetings specific interface issues, oversight interface issues, division of responsibilities, communication channels, application of alternative resolution principles and other matters.

17.7.5 If Developer and NCDOT succeed in resolving a Claim or Dispute through the partnering procedures, they shall memorialize the resolution in writing, including execution of Change Orders as appropriate, and promptly perform their respective obligations in accordance therewith.

17.8 Dispute Resolution Procedures

17.8.1 The Parties shall endeavor to resolve any Dispute that may arise between them through good faith negotiations.

17.8.2 Except as provided in Section 17.8.3, if any Dispute is not resolved to the mutual satisfaction of all Parties within 30 days after written notification of such Dispute, or such longer time as is mutually agreed, the Dispute shall next be submitted in accordance with the following.

17.8.2.1 If, despite good faith negotiations between the Parties, any Disputes are not resolved within 30 days after written notification of such Dispute, then the Dispute shall be submitted administratively to non-binding mediation as set forth below.

17.8.2.2 The Parties shall mutually select a private mediator to formally mediate the Disputes. If the Parties cannot mutually select a private mediator, the mediator shall be selected pursuant to the mediation rules established by the American Arbitration Association or other dispute resolution organization agreed to by the Parties. Non-binding mediation shall normally be scheduled within forty-five (45) calendar days of notification of the decision by either party to submit the Dispute to non-binding mediation. NCDOT and Developer shall each pay one-half of the fees and administrative costs charged by the selected mediator. Other parties, such as Contractors, may be invited to the non-binding mediation as may be appropriate for the non-binding mediation.

17.8.2.3 The Parties, to provide economies of scale, may mutually agree in writing to submit one or more Claims, whether or not factually related, to a single, non-binding mediation. In such event, time periods may be extended by mutual written agreement to facilitate preparation for the non-binding mediation.

17.8.2.4 If the Dispute has not been settled within forty-five (45) calendar days following written notification of the Dispute to non-binding mediation or within such other period that the Parties may agree in writing, such Dispute may be submitted to litigation by either party in accordance with Section 17.8.2.5; provided, however, that no litigation may be filed by either Party concerning any Claim or Dispute prior to using the procedure described in Section 17.8.2.1. This procedure is a condition precedent for any Party to commence a civil action for resolution of a Claim or Dispute.

17.8.2.5 Subject to Section 17.8.3, all litigation between the Parties arising out of or pertaining to a Dispute shall be filed, heard and decided in the General Court of Justice in Wake County, North Carolina, which shall have sole and exclusive jurisdiction and venue; provided, however, if an action must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the Eastern District of North Carolina. Each Party shall bear its own attorney's 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 attorney's fees or costs.

17.8.3 After the performance of all of Developer's obligations under the Contract Documents, if Developer has not received payments it claims are owed under the CA Documents, then the provisions of North Carolina General Statutes § 136-29 shall apply and such provisions shall be made a part of this Agreement and incorporated herein by reference.

ARTICLE 18. NONCOMPLIANCE POINTS

18.1 Noncompliance Points System

18.1.1 Section 23 of the Technical Provisions sets forth a table for the identification of Noncompliance Events and (if applicable) Fast Cure Periods, Cure Periods and Interval of Recurrence under the CA Documents for each Noncompliance Event. The occurrence of a Noncompliance Event can trigger the assessment of Noncompliance Points and, if applicable, liquidated damages, under the system set forth in the CA Documents. Noncompliance with the minimum Performance Requirements identified in Tables 23.1 and 23.2 of the Technical Provisions for O&M During Construction and O&M After Construction shall result in Noncompliance Points and trigger the remedies set forth in this Article 18.

18.1.2 Table 23.1 and Table 23.2 of the Technical Provisions contain a representative, but not exhaustive, list of minimum performance requirements under the CA Documents. Accordingly, subject to the provisions in Section 18.1.3, NCDOT, may from time to time, add or adjust an entry to such tables describing a minimum performance requirement under the existing CA Documents that was not previously included in the tables, establishing the Noncompliance Event Classification, establishing the amount of liquidated damages (if applicable), and setting a Cure Period, Fast Cure Period and Interval of Recurrence (as applicable). NCDOT's right to make additions or adjustments to Table 23.1 and Table 23.2 of the Technical Provisions is not intended to expand Developer's existing contractual obligations as set forth in the CA Documents, but rather to add existing contractual obligations to the list of Noncompliance Events for which Noncompliance Points may be assessed.

18.1.3 NCDOT's rights to add or adjust existing contractual obligations to Table 23.1 and Table 23.2 of the Technical Provisions shall be subject to the following limitations and requirements:

18.1.3.1 NCDOT will be limited to adding only those contractual obligations which Developer has previously failed to comply with at least three times within a three-year period beginning upon notice of the first failure to comply; provided that: (a) NCDOT has furnished Developer with prior written notice of such failures; (b) such failures were not challenged by Developer or if challenged, Developer was found to have failed to comply with such contractual obligations through the Dispute Resolution Procedures; and (c) Developer has subsequently violated such contractual obligations after receipt of such notice.

18.1.3.2 The establishment of the Noncompliance Event Classification, the establishment of the amount of liquidated damages (if applicable), and setting of the Cure Period, Fast Cure Period and Interval of Recurrence (as applicable) for such contractual obligations shall be reasonably comparable to those established and set for similar contractual obligations contained in Table 23.1 and Table 23.2 of the Technical Provisions.

18.1.3.3 NCDOT will have no right to assess Noncompliance Points or liquidated damages on account of a new Noncompliance Event that occurs prior to the date it is added to Table 23.1 and Table 23.2 of the Technical Provisions.

18.1.3.4 The total number of Noncompliance Points set forth in Table 23.1 and Table 23.2 as of the Effective Date shall not increase by more than 15% for the Term. NCDOT may elect to remove contractual obligations and/or reduce Noncompliance Points

allocated to listed contractual obligations through re-classification among Noncompliance Event Classification in order to comply with the foregoing growth limit.

18.1.4 NCDOT will notify Developer in writing 14 days in advance whenever NCDOT proposes to make such additions or adjustments to Table 23.1 and Table 23.2 of the Technical Provisions. Developer shall have 14 days after receipt of any proposed additions or adjustments to deliver written comments. Thereafter, NCDOT will render its decision regarding whether and on what terms to incorporate the proposed additions or adjustments to Table 23.1 and Table 23.2 of the Technical Provisions by written notice to Developer. Such additions and adjustments shall be effective upon Developer's receipt of the revised Tables 23.1 and Table 23.3 of the Technical Provisions.

18.2 Assessment Notification and Cure Process

18.2.1 Notification

18.2.1.1 Developer shall notify NCDOT in writing of the occurrence of any Noncompliance Event. Developer shall deliver such notice in writing as soon as reasonably practicable, and in any event within two Business Days, after Developer first obtains knowledge of or first reasonably suspects the Noncompliance Event. The notice shall describe Noncompliance Event in reasonable detail. Within ten days of receiving the notice, NCDOT shall deliver to Developer a written notice setting forth NCDOT's determination whether to assess Noncompliance Points (a "notice of determination"). This Section 18.2.1.1 shall not apply where Developer first obtains knowledge and reasonable suspicion through a notice from NCDOT under Section 18.2.1.2.

18.2.1.2 If NCDOT believes there has occurred any Noncompliance Event, NCDOT may deliver to Developer a written notice of determination thereof setting forth the Noncompliance Event, the applicable Cure Period and Fast Cure Period and the Noncompliance Points to be assessed with respect thereto.

18.2.2 Cure Periods

18.2.2.1 Developer shall have, if applicable, the Cure Period and Fast Cure Period for each Noncompliance Event set forth in Section 23 of the Technical Provisions.

18.2.2.2 Developer's Cure Period and Fast Cure Period (if applicable) with respect to a Noncompliance Event shall be deemed to start upon the date Developer first obtained knowledge of the Noncompliance Event. For purposes of this Article 18, if the notice of the Noncompliance Event is initiated by NCDOT, Developer shall be deemed to first obtain knowledge of the Noncompliance Event not later than the date of delivery of the notice to Developer.

18.2.2.3 Each of the Cure Period and Fast Cure Period shall be the only cure period for Developer applicable to the Noncompliance Event and supersedes any cure period otherwise applicable under Section 17.1.2.

18.2.3 Notification of Cure

When Developer determines that it has completed cure of any Noncompliance Event, Developer shall deliver written notice to NCDOT identifying the Noncompliance Event, stating

that Developer has completed cure and briefly describing the cure, including any modifications to the Developer Management Plan to protect against future similar Noncompliance Events. Thereafter, the NCDOT shall promptly inspect to verify completion of the cure and, if reasonably satisfied that the Noncompliance Event is fully cured, shall deliver to Developer a written certification of cure.

18.3 Assessment of Noncompliance Points and Liquidated Damages

18.3.1 If at any time NCDOT serves notice of determination under Section 18.2 or notice of Developer or NCDOT is notified or otherwise becomes aware of a Noncompliance Event, then, without prejudice to any other right or remedy available to NCDOT, NCDOT may assess Noncompliance Points and, if applicable, liquidated damages in accordance with Section 23 of the Technical Provisions, subject to the following terms and conditions.

18.3.1.1 The date of assessment shall be deemed to be the date of the initial notification under Section 18.2.

18.3.1.2 NCDOT shall not be entitled to assess Noncompliance Points or liquidated damages under more than one category for any particular event or circumstance that is a Noncompliance Event. Where a single act or omission gives rise to more than one Noncompliance Event, it shall be treated as a Noncompliance Event for the purpose of assessing Noncompliance Points and, if applicable, liquidated damages, and the highest amount of Noncompliance Points and liquidated damages under the relevant Noncompliance Event shall apply.

18.3.1.3 The number of points listed in Section 23 of the Technical Provisions for any particular Noncompliance Event is the maximum number of Noncompliance Points that may be assessed for each event or circumstance that is a breach or failure, and the amount of liquidated damages listed in Section 23 of the Technical Provisions for any particular Noncompliance Event is the maximum amount of liquidated damages that may be assessed for each event or circumstance that is a breach or failure. NCDOT may, but is not obligated to, assess less than the maximum.

18.3.1.4 The occurrence of a Noncompliance Event will result in assessment of Noncompliance Points, and, if applicable, liquidated damages, subject to the following provisions regarding cure.

(a) If Developer has delivered to NCDOT written notice under Section 18.2.1.1 of a Noncompliance Event, and that Noncompliance Event has a Cure Period set forth in Table 23.1 or Table 23.2 of the Technical Provisions, then (i) if Developer cures the relevant Noncompliance Event within the applicable Cure Period, NCDOT shall not assess any Noncompliance Points or liquidated damages for such Noncompliance Event; or (ii) if Developer has not achieved full and complete cure upon the expiration of the applicable Cure Period, NCDOT shall assess 100% of the Noncompliance Points and if applicable, the full amount of liquidated damages for such Noncompliance Event.

(b) If Developer has delivered to NCDOT written notice under Section 18.2.1.2 of a Noncompliance Event and that Noncompliance Event has no Cure Period set forth in Table 23.1 or Table 23.2 of the Technical Provisions, NCDOT shall assess 100% of the Noncompliance Points and, if applicable, the full amount of liquidated damages for such Noncompliance Event. Fast Cure Periods shall not apply when Developer delivers written

notice under Section 18.2.1.1 of a Noncompliance Event.

(c) If NCDOT has delivered to Developer written notice under Section 18.2.1.2 of a Noncompliance Event that has a Fast Cure Period assigned to it in Table 23.1 or Table 23.2 of the Technical Provisions, then (i) if Developer cures the relevant Noncompliance Event within the Fast Cure Period, NCDOT shall not assess Noncompliance Points or liquidated damages for such Noncompliance Event; or (ii) if Developer has not achieved full and complete cure upon the expiration of the applicable Fast Cure Period, NCDOT shall assess 100% of the Noncompliance Points for such Noncompliance Event.

(d) If NCDOT has delivered to Developer written notice under Section 18.2.1.2 for a Noncompliance Event that has no Fast Cure Period set forth in Table 23.1 or Table 23.2 of the Technical Provisions, NCDOT shall assess 100% of the Noncompliance Points and, if applicable, the full amount of liquidated damages for such Noncompliance Event.

18.3.1.5 For the purpose of applying the provisions of Section 18.3.1.4, if NCDOT, on the one hand, and Developer, on the other hand, deliver concurrent written notices under Section 18.2.1 of the same Noncompliance Event, Developer's notice shall prevail. Notices shall be deemed to be concurrent if each sends its written notice before actual receipt of the written notice from the other. Knowledge of the other's written notice obtained prior to actual receipt of the notice shall have no effect on determining whether concurrent notice has occurred.

18.3.1.6 If a Noncompliance Event for which a Cure Period is provided in Section 23 of the Technical Provisions is not fully and completely cured within the applicable Cure Period, then continuation of such Noncompliance Event beyond such Cure Period shall be treated as a new and separate Noncompliance Event, without necessity for further notice, for the purpose of assessing Noncompliance Points. The number of Noncompliance Points that the NCDOT may assess in such a case shall be determined by NCDOT based on (a) the total number of Noncompliance Points that NCDOT may assess for the particular type of Noncompliance Event and (b) the Interval of Recurrence for the particular type of Noncompliance Event. Therefore, until such Noncompliance Event is cured, NCDOT may reassess the total number of Noncompliance Points and, if applicable, the full amount of liquidated damages after each Interval of Recurrence

18.3.1.7 For the purpose of assessing additional Noncompliance Points under this Section 18.3.1, NCDOT is under no obligation to provide notice to Developer upon the expiration of any Interval of Recurrence beyond the initial Cure Period. Regardless of the continuing assessment of Noncompliance Points and, if applicable, the amount of liquidated damages under this Section 18.3.1, NCDOT shall be entitled to exercise its step-in rights under Section 17.3.4 and, if applicable, its suspension of work rights under Section 17.3.8, after expiration of the initial cure period available to Developer. However, if and when NCDOT commences to exercise its step-in rights (after any prior opportunity of Lenders to exercise their step-in rights has expired without exercise), assessment of Noncompliance Points and liquidated damages (if applicable) shall cease to continue with regard to the subject breach or failure.

18.3.1.8 The number of Noncompliance Points and, if applicable, the full amount of liquidated damages eligible to be assessed against Developer shall be adjusted under the following circumstances:

(a) After the Parties have agreed upon the necessity, scope and timing of the NCDOT Retained Work to be performed by NCDOT pursuant to Section 23.1.7 of the Technical Provisions, the number of Noncompliance Points and, if applicable, the amount of liquidated damages eligible to be assessed for Routine Maintenance and Planned Maintenance on NCDOT Retained Elements associated with such NCDOT Retained Work shall be reduced by 50%.

(b) Upon completion of NCDOT Retained Work, the number of Noncompliance Points and, if applicable, the amount of liquidated damages eligible to be assessed for Routine Maintenance and Planned Maintenance on NCDOT Retained Elements associated with such NCDOT Retained Work shall be the full amount as set forth in Exhibit 14 of this Agreement and Section 23 of the Technical Provisions.

18.4 Provisions Regarding Dispute Resolution

18.4.1 Developer may object to the assessment of Noncompliance Points or the starting point for the Cure Period respecting any Noncompliance Event, by delivering to NCDOT written notice of such objection not later than five days after NCDOT delivers its written notice of such Noncompliance Event.

18.4.2 Developer may object to NCDOT's rejection of any certification of completion of a cure given pursuant to Section 18.2.3 by delivering to NCDOT written notice of such objection not later than 15 days after NCDOT delivers its written notice of rejection.

18.4.3 If for any reason Developer fails to deliver its written notice of objection within the applicable time period, Developer shall be conclusively deemed to have accepted the matters set forth in the applicable NCDOT notice, and shall be forever barred from challenging them.

18.4.4 If Developer gives timely notice of objection and the Parties are unable to reach agreement on any matter in Dispute within ten days of such objection, either Party may refer the matter for resolution according to the Dispute Resolution Procedures.

18.4.5 Pending the resolution of any Dispute arising under this Section 18.4, the provisions of this Article shall take effect as if the matter were not in Dispute, provided that if the final decision regarding the Dispute is that (a) the Noncompliance Points should not have been assessed, (b) the number of Noncompliance Points must be adjusted, or (c) the starting point or duration of the Cure Period must be adjusted, then the number of Noncompliance Points assigned or assessed and the related liabilities of Developer shall be adjusted to reflect such decision.

18.4.6 Pending the resolution of any Dispute arising under this Section 18.4, the number of Noncompliance Points in Dispute shall not be counted for the purpose of determining whether NCDOT may declare a Persistent Developer Default.

18.5 NCDOT Remedies for Accumulated Noncompliance Points

18.5.1 Increased Oversight, Testing and Inspection

18.5.1.1 If at any time (a) Developer is assessed more than 215 Noncompliance Points in any consecutive 365-day period; or (b) Developer is assessed more

than 620 Noncompliance Points in any consecutive 1095-day period, then, in addition to other remedies available under the CA Documents, NCDOT shall be entitled, at Developer's expense, to increase the level of monitoring, inspection, sampling, measuring, testing, auditing and oversight of the Project and Developer's compliance with its obligations under the CA Documents, to such level as the NCDOT sees fit, until such time as Developer has demonstrated to the reasonable satisfaction of NCDOT that Developer:

(a) Has reduced the number of Noncompliance Points below the threshold triggering such heightened scrutiny;

(b) Is diligently pursuing cure of all other instances of Noncompliance that have resulted in assessment of Noncompliance Points;

(c) Has cured any then-existing Developer Defaults; and

(d) Has completed delivery and performance of an approved remedial plan, if at any time during which NCDOT is so entitled to increase the level of oversight NCDOT also requires Developer to prepare and implement a remedial plan pursuant to Section 17.3.6.

18.5.1.2 Notwithstanding anything to the contrary in this Agreement or any other CA Documents, in the event NCDOT elects to terminate Developer's O&M Work responsibilities related to the Annual O&M Payment Scope pursuant to Section 8.1.2 of this Agreement, the thresholds set forth in Section 18.5.1.1 shall be replaced by the following: "(a) Developer is assessed more than 165 Noncompliance Points in any consecutive 365-day period; or (b) Developer is assessed more than 465 Noncompliance Points in any consecutive 1095-day period."

18.5.1.3 If NCDOT provides written notice to Developer that NCDOT intends to exercise its rights under Section 18.5.1.1, then Developer shall prepare and submit a remedial plan in accordance with Section 17.3.6.

18.5.1.4 The foregoing does not preclude NCDOT, at its sole discretion and expense, from increasing its level of monitoring, inspection, sampling, measuring, testing, auditing and oversight at other times to the extent contemplated herein.

18.5.2 Change in Developer's O&M Contractor

18.5.2.1 If at any time (a) Developer is assessed more than 370 Noncompliance Points in any consecutive 365-day period; or (b) Developer is assessed more than 800 Noncompliance Points in any consecutive 1095-day period, then, in addition to other remedies available under the CA Documents, NCDOT shall be entitled to require Developer to replace its O&M Contractor. Upon receiving written notice from NCDOT that NCDOT intends to exercise its rights under this Section 18.5.2.1, Developer shall replace the O&M Contractor and the replacement O&M Contractor shall start Work within 180 days of such notice. NCDOT shall have the right to approve or disapprove use of any proposed O&M Contractor prior to the commencement of its Work.

18.5.2.2 If NCDOT provides written notice to Developer that NCDOT intends to exercise its rights under Section 18.5.2.1, then Developer shall prepare and submit a remedial plan in accordance with Section 17.3.6.

ARTICLE 19. TERMINATION

19.1 Termination for Convenience

19.1.1 NCDOT may terminate this Agreement in whole, but not in part, if NCDOT determines, in its sole discretion, that a termination is in NCDOT's best interest (a "Termination for Convenience"). Termination of this Agreement shall not relieve Developer or any Guarantor or Surety of its obligation for any claims arising prior to termination.

19.1.2 NCDOT may exercise Termination for Convenience by delivering to Developer a written Notice of Termination for Convenience specifying the election to terminate. Termination for Convenience shall be effective as and when provided in Exhibit 15.

19.1.3 In the event of a Termination for Convenience, Developer will be entitled to compensation determined in accordance with Exhibit 15. Payment will be due and payable as and when provided in Exhibit 15.

19.1.4 If NCDOT terminates this Agreement on grounds or in circumstances beyond NCDOT's termination rights specifically set forth in this Agreement, such termination shall be deemed a Termination for Convenience for the purpose of determining the Termination Compensation due.

19.2 Termination for Extended Relief Event or Insurance Unavailability

19.2.1 Notice of Conditional Election to Terminate – Extended Relief Event

Either Party may deliver to the other Party written notice of its conditional election to terminate this Agreement under the following circumstances:

19.2.1.1 A Relief Event has occurred;

19.2.1.2 Either:

(a) Such notice is delivered before the last Substantial Completion Date, the period of delay that is directly attributable to the Relief Event and affects a Critical Path for performance and completion of the Construction Work, after consumption of Float available pursuant to Section 7.5.5, is 180 consecutive days (or such fewer number of days as mutually agreed to by the parties) or more, and such delay is not attributable to another concurrent delay that is not a Relief Event; or

(b) Such notice is delivered on or after the last Substantial Completion Date, as a direct result of the Relief Event all or any material portion of the Project becomes and remains inoperable for a period of 180 consecutive days (or such fewer number of days as mutually agreed to by the parties) or more, and such suspension of operations is not attributable to another concurrent delay that is not a Relief Event; provided that either Party may elect to deliver such notice before such time period elapses if such Party establishes to a high degree of certainty that such a Relief Event will persist for a consecutive period of 180 days or more, provided such Relief Event has persisted for a consecutive period of 90 days;

19.2.1.3 Developer could not have mitigated or cured such result through the exercise of reasonably diligent efforts;

19.2.1.4 Such result is continuing at the time of delivery of the written notice;

19.2.1.5 An extension of the Term required to provide full recovery under Section 13.1.4 is not available; and

19.2.1.6 The written notice sets forth in reasonable detail the Relief Event, a description of the direct result and its duration, and the notifying Party's intent to terminate this Agreement. In the event that the notice comes from Developer, Developer shall also provide an estimate (with supporting documentation) of the compensation that would be paid or reimbursed to Developer under Section 19.2.4.1.

19.2.2 Notice of Election to Terminate – Insurance Unavailability

NCDOT may deliver to Developer written notice of its conditional election to terminate pursuant to Section 16.1.2.13(f) in the event of Insurance Unavailability. Developer may deliver to NCDOT written notice of its conditional election to terminate this Agreement pursuant to Section 16.1.2.13(d) in the event of Insurance Unavailability.

19.2.3 Developer Options Upon NCDOT Notice

If NCDOT gives written notice of conditional election to terminate, Developer shall have the option either to accept such notice or to continue this Agreement in effect by delivering to NCDOT written notice of Developer's choice not later than 30 days after NCDOT delivers its notice. If Developer does not deliver such written notice within such 30-day period, then it shall be conclusively deemed to have accepted NCDOT's election to terminate this Agreement.

19.2.3.1 In the case of a conditional election to terminate under Section 19.2.1, if Developer delivers timely written notice choosing to continue this Agreement in effect, then:

(a) NCDOT shall have no obligation to compensate Developer for any costs of restoration and repair, for any loss of Toll Revenues or for any other Losses arising out of the Relief Event;

(b) If the Relief Event occurred prior to any Substantial Completion Date, there shall be no further extension of the Long Stop Date or any other schedule milestone on account of the Relief Event, notwithstanding any contrary provision of Article 13, and NCDOT may require delivery and implementation of a logic-based critical path recovery schedule for avoiding further delay in the Design Work and Construction Work;

(c) This Agreement shall continue in full force and effect and NCDOT's election to terminate shall not take effect; and

(d) If the effects from the Relief Event described in Section 19.2.1.2 continues for 24 months or more from its inception, either Party may deliver to the other Party a new written notice of its unconditional election to terminate this Agreement, in which case neither Party shall have any further option to continue this Agreement in effect.

19.2.3.2 In the case of a conditional election to terminate under Section 19.2.2, if Developer delivers timely written notice choosing to continue this Agreement in effect,

then:

(a) NCDOT shall have no liability for harm or loss from the risks that are the subject of Insurance Unavailability, except to the extent caused by NCDOT's fraud, criminal conduct, intentional misconduct, recklessness, bad faith or breach of the CA Documents;

(b) Developer shall be irrevocably deemed to self-insure all such harm and loss, including harm or loss to NCDOT and third parties, as provided in Section 16.1.4.3, except to the extent caused by NCDOT's fraud, criminal conduct, intentional misconduct, recklessness, bad faith or breach of the CA Documents;

(c) Developer shall solely bear and pay all insurance premiums in excess of the Commercially Reasonable Insurance Rates during the period of Insurance Unavailability;

(d) Developer shall promptly and diligently repair and restore all damage and destruction to the Project arising out of occurrence at any time during Insurance Unavailability of the risks that are the subject of the Insurance Unavailability, in order to put the Project in a safe, good and sound condition in compliance with all applicable provisions of the CA Documents; and

(e) This Agreement shall continue in full force and effect and NCDOT's election to terminate shall not take effect.

19.2.4 NCDOT Options Upon Developer Notice

If Developer gives written notice of conditional election to terminate, NCDOT shall have the option either to accept such notice or to continue this Agreement in effect by delivering to Developer written notice of NCDOT's election not later than 30 days after Developer delivers its notice. If NCDOT does not deliver such written notice within such 30-day period, then it shall be conclusively deemed to have accepted Developer's election to terminate this Agreement. If NCDOT delivers timely written notice choosing to continue this Agreement, then:

19.2.4.1 In the case of a conditional election to terminate under Section 19.2.1, NCDOT shall be obligated to pay or reimburse Developer an amount equal to (without duplicative counting):

(a) The incremental increase in Developer's reasonable out-of-pocket costs and expenses to repair and restore any physical damage or destruction to the Project directly caused by the Relief Event, which shall include, if applicable, any incremental increase in amounts Developer may owe to the Design-Build Contractor under the terms of the Design-Build Contract for (i) costs of repair and restoration and (ii) delay and disruption damages for the period of delay directly caused by the Relief Event after the date Developer delivers its written notice of conditional election to terminate; plus

(b) Developer's reasonable extended overhead and administrative expenses for the period of any delay in achieving the last Substantial Completion Date from and after the date Developer delivers its written notice of conditional election to terminate; plus

(c) The greater of (i) loss of Toll Revenues from and after the date

Developer delivers its written notice of conditional election to terminate directly resulting from the Relief Event, determined in the same manner, and subject to the same conditions and limitations, as for a Compensation Event under Section 13.2, and (ii) an amount equal to (A) regularly scheduled debt service on Project Debt, other than Subordinate Debt, accrued during the period of delay due to the Relief Event after the date Developer delivers its written notice of conditional election to terminate, plus (B) Developer's unavoidable, reasonable operating and maintenance costs during such period, minus (C) Toll Revenues during such period; minus

(d) The sum of (i) the greater of (A) the proceeds of insurance (including casualty insurance and business interruption insurance) that is required to be carried pursuant to Section 16.1 and provides coverage to pay, reimburse or provide for any of the foregoing costs and losses, and (B) the proceeds of insurance (including casualty insurance and business interruption insurance) that is actually carried by or insuring Developer under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 16.1, and that provides coverage to pay, reimburse or provide for any of the foregoing costs and losses, plus (ii) the foregoing costs and losses that Developer is deemed to have self-insured pursuant to Section 16.1.4.3.

19.2.4.2 Further, in the case of a conditional election to terminate under Section 19.2.1, the following provisions shall apply:

(a) Developer's rights to delay and relief from performance obligations under Section 13.1 shall continue to apply to the Relief Event;

(b) This Agreement shall continue in full force and effect and Developer's election to terminate shall not take effect; and

(c) If the effects from the Relief Event described in Section 19.2.1.2 continues for 24 months or more from its inception, either Party may deliver to the other Party a new written notice of its unconditional election to terminate this Agreement, in which case neither Party shall have any further option to continue this Agreement in effect.

19.2.4.3 In the case of a conditional election to terminate under Section 19.2.2, NCDOT shall pay one hundred percent (100%) of the premiums that exceed the Commercially Reasonable Insurance Rates.

19.2.5 No Waiver

No election by NCDOT under Section 19.2.4 to continue this Agreement in effect shall prejudice or waive NCDOT's right to thereafter give a written notice of conditional election to terminate with respect to the same or any other Relief Event pursuant to Section 19.2.3.1(d) or any other Insurance Unavailability pursuant to Section 19.2.2.

19.2.6 Concurrent Notices

In the event NCDOT and Developer deliver concurrent written notices of conditional election to terminate, Developer's notice shall prevail. Notices shall be deemed to be concurrent if each Party sends its written notice before actually receiving the written notice from the other Party. Knowledge of the other Party's written notice obtained prior to actual receipt of the notice shall have no effect on determining whether concurrent notice has occurred.

19.2.7 Early Termination Date and Amount

If either Party accepts the other Party's conditional election to terminate, or if Developer delivers written notice of its unconditional election to terminate under Section 19.2.3.1(d) or Section 19.2.4.2(c), then this Agreement shall be deemed terminated on an Early Termination Date specified in Exhibit 15, and Developer will be entitled to compensation determined in accordance with Exhibit 15. Payment will be due and payable as and when provided in Exhibit 15.

19.3 Termination for Developer Default

19.3.1 Developer Defaults Triggering NCDOT Termination Rights

The following Developer Defaults (each a "Default Termination Event"), and no other Developer Defaults, shall entitle NCDOT, at its sole election, to terminate this Agreement, effective immediately upon delivery of written notice of termination to Developer and the Collateral Agent under the Security Documents other than the Subordinated Security Documents. Developer agrees and acknowledges and stipulates that any of the following Developer Defaults would result in material and substantial harm to NCDOT's rights and interests under the CA Documents and therefore constitute a material Developer Default justifying termination if not cured within the applicable cure period, if any, set forth in Section 17.2.2 or available to Lenders under the Lender's Direct Agreement.

19.3.1.1 Developer fails to achieve Substantial Completion for all Project Sections by the Long Stop Date, as the same may be extended pursuant to this Agreement;

19.3.1.2 There occurs any other Developer Default for which NCDOT issues a Warning Notice under Section 17.2; or

19.3.1.3 There occurs any Developer Default under Section 17.1.1.13 or 17.1.1.14.

19.3.2 Compensation to Developer

If NCDOT issues notice of termination of this Agreement due to a Default Termination Event, or if Developer terminates this Agreement on grounds or in circumstances beyond Developer's termination rights specifically set forth in this Agreement, Developer will be entitled to compensation to the extent, and only to the extent, provided in Section D of Exhibit 15; provided that in no event shall compensation be due under Section 19.3.4. Payment shall be due and payable as and when provided in Section G.4 of Exhibit 15.

19.3.3 Finality

If NCDOT issues notice of termination of this Agreement due to a Default Termination Event, termination shall be effective and final immediately upon delivery of written notice as provided in Section 19.3.1 regardless of whether NCDOT is correct in determining that it has the right to terminate for Developer Default. In the event it is determined that NCDOT lacked such right, then such termination shall be treated as a Termination for Convenience as provided in Section 19.1.4 for the purpose of determining the Termination Compensation due.

19.3.4 Special Provision Regarding Financing Default

As an additional Default Termination Event, NCDOT, at its sole election, shall be entitled to terminate this Agreement, if there occurs a Developer Default under Section 17.1.1.16 and such Developer Default is not fully and completely cured through completion of Financial Close within the cure period set forth in Section 17.1.2.1, without need for Warning Notice or any other notice and without any additional cure period. Upon such termination, NCDOT shall be entitled to draw on the Financial Close Security or forfeiture of the Financial Close Security, as applicable, for the liquidated damages owing to NCDOT under Section 17.4.4.1. For termination rights for failure to achieve Financial Close in the absence of a Developer Default under Section 17.1.1.16, refer to Sections 19.12, 19.13, 19.14 and 19.15.

19.4 Termination for NCDOT Default, Suspension of Work or Delayed Notice to Proceed

19.4.1 In the event of a material NCDOT Default under Section 17.5.1.1 (failure to pay money due) or Section 17.5.1.4 (confiscation or appropriation of Developer's Interests) that remains uncured following notice and expiration of the applicable cure period under Section 17.5.2, Developer may deliver to NCDOT a further written notice setting forth such NCDOT Default and warning NCDOT that Developer may elect to terminate this Agreement if NCDOT does not cure such NCDOT Default within 60 days after the delivery of such notice. NCDOT may avoid termination by effecting cure within such 60-day period. Failing such cure, Developer shall have the right to terminate this Agreement, effective immediately upon delivery of written notice of termination to NCDOT. In the event of such termination, Developer will be entitled to compensation determined in accordance with Section B of Exhibit 15. Payment shall be due and payable as and when provided in Section G of Exhibit 15. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

19.4.2 In the event NCDOT orders Developer to suspend Work on all or any material portion of the Project for a reason other than those set forth in Section 17.3.8.1 and such suspension of Work continues for a period of 180 days or more, Developer shall have the right to terminate this Agreement, effective immediately upon delivery of written notice of termination to NCDOT. In the event of such termination, Developer will be entitled to compensation determined in accordance with Section B.1 of Exhibit 15. Payment shall be due and payable as and when provided in Section G.3 of Exhibit 15. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

19.4.3 In the event NCDOT, due to no fault of a Developer Related-Entity or other than because the NEPA Finality Date has not occurred, does not issue NTP1 or NTP2 within 180 days after Developer satisfies the applicable conditions in Section 7.5, Developer shall have the right to terminate this Agreement, effective immediately upon delivery of written notice of termination to NCDOT. In the event of such termination, Developer will be entitled to compensation determined in accordance with Section B.1 or E.2, as applicable, of Exhibit 15. Payment shall be due and payable as and when provided in Section G, of Exhibit 15. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

19.4.4 If Developer issues notice of termination of this Agreement due to a material NCDOT Default under Section 17.5.1.1, termination shall be effective and final immediately upon delivery as provided in Section 19.4.1 regardless of whether Developer is correct in determining that it has the right to terminate for such NCDOT Default. In the event it is

determined that Developer lacked such right, then such termination shall be treated as a termination due to material Developer Default and Section 19.3.2 shall govern the measure of the Termination Compensation.

19.5 Termination Procedures and Duties

Upon expiration of the Term or any earlier termination of this Agreement for any reason, including due to NCDOT Default, the provisions of this Section 19.5 shall apply. Developer shall timely comply with such provisions independently of, and without regard to, the timing for determining, adjusting, settling and paying any amounts due Developer or NCDOT on account of termination. If Developer fails to timely comply with the provisions of this Section 19.5, as judged by NCDOT in its sole discretion, then upon written notice from NCDOT to Developer making reference to this Section 19.5, Developer hereby stipulates that, and shall be deemed to have, surrendered its rights to access the Project Right of Way under Section 2.1.2 and otherwise under the CA Documents.

19.5.1 In any case where notice of termination precedes the effective Early Termination Date:

19.5.1.1 Developer shall continue performing the Work in accordance with, and without excuse from, all the standards, requirements and provisions of the CA Documents, and without curtailment of services, quality and performance until the Early Termination Date;

19.5.1.2 Not later than 30 days after notice of termination is delivered, and annually thereafter within 30 days after the beginning of each Fiscal Year until the effective Early Termination Date (or rescission or expiration of the notice of termination), Developer shall deliver to an Intellectual Property Escrow for access and review by NCDOT an annual budget for the Project for the current Fiscal Year in at least as much detail as any budget required by Lenders and Good Industry Practice, together with its annual budgets for the immediately preceding three Fiscal Years and detailed itemization of all costs and expenses for the immediately preceding three Fiscal Years organized by the line items in the budgets; and

19.5.1.3 Each current budget shall provide for operating and maintenance expenditures at least sufficient to continue services and operations at the levels experienced in years prior to notice of termination, taking into account inflationary effects, and in any case consistent with continuing performance to the requirements of the CA Documents.

19.5.2 Within three days after receipt of a notice of termination, Developer shall meet and confer with NCDOT for the purpose of developing an interim transition plan for the orderly transition of Work, demobilization and transfer of the Project and Project Right of Way control to NCDOT. The Parties shall use diligent efforts to complete preparation of the interim transition plan within 15 days after the date Developer receives the notice of termination. The Parties shall use diligent efforts to complete a final transition plan within 30 days after such date. The transition plan shall be in form and substance reasonably acceptable to NCDOT and shall include and be consistent with the other provisions and procedures set forth in this Section 19.5, all of which procedures Developer shall immediately follow, regardless of any delay in preparation or acceptance of the transition plan.

19.5.3 From and after the Termination Date, even though Developer may be continuing services temporarily pursuant to a transition plan, Developer shall cease to own or have rights to Toll Revenues, except to the extent of any continuing pledge and security interest

pursuant to Section 19.9 or the Project Trust Agreement. On the Termination Date, or as soon thereafter as is possible, Developer shall relinquish and surrender full control and possession of the Project and Project Right of Way to NCDOT or NCDOT's Authorized Representative, and shall cause all persons and entities claiming under or through Developer to do likewise, in at least the condition required by the Handback Requirements or as otherwise set forth in Section 8.9.

19.5.4 On the later of the Termination Date or the date Developer relinquishes full control and possession, Developer shall relinquish and surrender all management, custody and control of the Project, including the Project Right of Way, to NCDOT, and shall cause all persons and entities claiming under or through Developer to do likewise, in at least the condition required by the Handback Requirements; provided that NCDOT shall allow Developer access to the Project Right of Way to the extent necessary to perform the activities required under Section 19.5.9, 19.5.10, or 19.5.18. At that time, NCDOT shall assume responsibility, at its expense, for the Project and the Project Right of Way, subject to any rights to damages against Developer where the termination is due to a Default Termination Event. On the Termination Date or as soon thereafter as is possible or as is provided in the approved transition plan, Developer shall execute, acknowledge and deliver to NCDOT a written notice, in form and substance acceptable to NCDOT, acting reasonably, acknowledging that Developer relinquishes, as of the Termination Date, Developer's rights given by NCDOT pursuant to Section 2.1.2 with respect to the Project and the Project Right of Way.

19.5.5 If as of the Termination Date Developer has not completed construction of all or part of the Project and Utility Adjustments that are part of the Construction Work, NCDOT may elect, by written notice to Developer and the Design-Build Contractor delivered within 90 days after the Termination Date, to continue in effect the Design-Build Contract or to require its termination. If NCDOT does not deliver written notice of election within such time period, NCDOT shall be deemed to elect to require termination of the Design-Build Contract. If NCDOT elects to continue the Design-Build Contract in effect, then Developer shall execute and deliver to NCDOT a written assignment, in form and substance acceptable to NCDOT, acting reasonably, of all Developer's right, title and interest in and to the Design-Build Contract, and NCDOT shall assume in writing Developer's obligations thereunder that arise from and after the later of the effective date of the assignment and the Termination Date. If NCDOT elects (or is deemed to elect) to require termination of the Design-Build Contract, then Developer shall:

19.5.5.1 Take such steps as are necessary to terminate the Design-Build Contract, including notifying the Design-Build Contractor that the Design-Build Contract is being terminated and that the Design-Build Contractor is to immediately stop work and stop and cancel orders for materials, services or facilities unless otherwise authorized in writing by NCDOT;

19.5.5.2 Immediately and safely demobilize and secure construction, staging, lay down and storage areas for the Project and Utility Adjustments included in the Construction Work in a manner satisfactory to NCDOT, and remove all debris and waste materials except as otherwise approved by NCDOT in writing;

19.5.5.3 Take such other actions as are necessary or appropriate to mitigate further cost;

19.5.5.4 Subject to the prior written approval of NCDOT, settle all outstanding liabilities and all claims arising out of the Design-Build Contract;

19.5.5.5 Cause the Design-Build Contractor to execute and deliver to NCDOT a written assignment, in form and substance acceptable to NCDOT, acting reasonably, of all the Design-Build Contractor's right, title and interest in and to (a) assignable agreements with railroads and other third party agreements and permits, except subcontracts for performance of the Design and Construction Work, provided NCDOT assumes in writing all of the Design-Build Contractor's obligations thereunder that arise after the Termination Date, and (b) all assignable warranties, claims and causes of action held by the Design-Build Contractor against subcontractors and other third parties in connection with the Project or the Work, to the extent the Project or the Work is adversely affected by any subcontractor or other third party breach of warranty, contract or other legal obligation; and

19.5.5.6 Carry out such other directions as NCDOT may reasonably give for termination of Design Work and Construction Work.

19.5.6 If, as of the Termination Date, Developer has entered into any other contract for the design, construction, permitting, installation and equipping of the Project, NCDOT shall elect, by written notice to Developer, to continue in effect such contract or to require its termination. If NCDOT elects to continue such contract in effect, then Developer shall execute and deliver to NCDOT a written assignment, in form and substance acceptable to NCDOT, acting reasonably, of all Developer's right, title and interest in and to the contract, and NCDOT shall assume in writing Developer's obligations thereunder that arise from and after the Termination Date. If NCDOT elects to require termination of any such contract, then Developer shall take actions comparable to those set forth in Section 19.5.5 with respect to the contract(s).

19.5.7 If, as of the Termination Date, Developer has entered into any O&M Contract, NCDOT shall elect, by written notice to Developer, to continue it in effect or require its termination. If NCDOT elects to continue any such Contract in effect, then on or about the Termination Date (or promptly after any later election to terminate as contemplated herein) Developer shall execute and deliver to NCDOT a written assignment, in form and substance acceptable to NCDOT, acting reasonably, of all Developer's right, title and interest in and to the Contract, and NCDOT shall assume in writing Developer's obligations thereunder that arise from and after the Termination Date. If NCDOT elects to require termination of any such contract, then Developer shall take actions comparable to those set forth in Section 19.5.5 with respect to such contract(s).

19.5.8 Within 30 days after notice of termination is delivered, Developer shall provide NCDOT with true and complete list of all materials, goods, machinery, equipment, parts, supplies and other property in inventory or storage (whether held by Developer or any person or entity on behalf of or for the account of Developer) for use in or respecting the Work or the Project, or on order or previously completed but not yet delivered from Suppliers for use in or respecting the Work or the Project. In addition, on or about the Termination Date, Developer shall transfer title and deliver to NCDOT or NCDOT's Authorized Representative, through bills of sale or other documents of title, as directed by NCDOT, all such materials, goods, machinery, equipment, parts, supplies and other property, provided NCDOT assumes in writing all of Developer's obligations under any contracts relating to the foregoing that arise after the later of the effective date of the transfer and the Termination Date.

19.5.9 Developer shall take all action that may be necessary, or that NCDOT may direct, for the protection and preservation of the Project, the Work and such materials, goods, machinery, equipment, parts, supplies and other property.

19.5.10 At NCDOT's request, Developer shall assist NCDOT, for a reasonable period, with its hiring and training of personnel for operation of the Electronic Toll Collection System and with training of personnel in the use and operation of any other software or computer programs Developer uses in connection with the Project. Such assistance, if requested, shall include training and instruction on system features and operations, explanation and instruction regarding operating plans, rules, manuals and procedures, on-the-job training and other reasonable measures to enable the personnel being trained to properly and efficiently operate such system.

19.5.11 If applicable, on the Termination Date, Developer shall assign, transfer and set over to NCDOT the Handback Requirements Reserve and funds therein in accordance with Section 8.10.4.1.

19.5.12 On or about the Termination Date, Developer shall execute and deliver to NCDOT the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to NCDOT, acting reasonably, assigning and transferring to NCDOT all of Developer's right, title and interest in and to the following:

19.5.12.1 All completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, design documents, as-built and record plans, surveys, and other documents and information pertaining to the design or construction of the Project or the Utility Adjustments;

19.5.12.2 All samples, borings, boring logs, geotechnical data and similar data and information relating to the Project or Project Right of Way;

19.5.12.3 All books, records, reports, test reports, studies and other documents of a similar nature relating to the Work, the Project or the Project Right of Way;

19.5.12.4 All data and information relating to the use of the Project by the traveling public or Toll Revenues, including (a) all data compiled or maintained by the Electronic Toll Collection System, whether then maintained on the system or in archives or storage, (b) all customer account information and (c) all studies, reports, projections, estimates and other market research or analysis relating to use of the Project by the traveling public provided that the transfer of any Intellectual Property shall be subject to Sections 22.4 and 22.5; and

19.5.12.5 All other work product and Intellectual Property used or owned by Developer or any Affiliate relating to the Work, the Project or the Project Right of Way, provided that the transfer of any Intellectual Property shall be subject to Sections 22.4 and 22.5.

19.5.13 Effective as of the Termination Date, Developer shall assign and transfer to NCDOT all of Developer's right, title and interest in and to customer accounts relating to the Project and funds credited thereto; provided, however, that:

19.5.13.1 As soon as reasonably practicable after the Termination Date, the Parties shall adjust and prorate the funds in such accounts, and any other funds collected from Project customers, as follows:

(a) There shall be credited to Developer any debits to an account for customer use of the Project prior to the Termination Date, to the extent there were sufficient funds in the account as of the Termination Date to cover the debited amount;

(b) There shall be credited to Developer any sums collected by or on behalf of NCDOT after the Termination Date from a customer respecting a toll violation that occurred prior to the Termination Date, but only net of the application of any sums collected to tolls or toll violations owing for use of the Project from and after the Termination Date; and

(c) Any debits to an account for customer use of the Project from and after the Termination Date, if collected by Developer, shall be immediately remitted to NCDOT; and

19.5.13.2 NCDOT, by written notice to Developer, may elect not to take over customer accounts of Developer (if any) if NCDOT intends to cease tolls on the Project following expiration or earlier termination of this Agreement. In such case, Developer shall promptly inform its account customers of the cessation of tolls and of the customer's choice either to cancel the account and receive refund of all unexpended funds or to transfer the account to the custody and control of another operator of any toll Project that has account interoperability with the Project. The notice shall identify each such other Project and provide contact information for the operators thereof. The notice shall give customers a reasonable period to respond, and shall state that the account will be closed and funds returned unless the customer timely responds with a request to transfer the account. Developer shall thereafter conclude disposition of accounts and account funds in accordance with customer directions.

19.5.14 Within 90 days after the Termination Date, the Parties shall adjust and prorate costs of operation and maintenance of the Project, including utility costs and deposits, as of the Termination Date. If the Parties do not have complete or accurate information by such date, they shall make the adjustment and proration using a good faith estimate, and thereafter promptly readjust when the complete and accurate information is obtained. The Parties acknowledge that certain adjustments or readjustments may depend on receipt of bills, invoices or other information from a third party, and that the third party may delay in providing such information. Any readjustment necessary only because of error in calculation and not due to lack of complete and accurate information shall be irrevocably waived unless the Party seeking readjustment delivers written request therefor to the other Party not later than 180 days following the Termination Date.

19.5.15 On or about the Termination Date, Developer shall execute and deliver to NCDOT a written assignment, in form and substance acceptable to NCDOT, acting reasonably, all of Developer's right, title and interest in and to any Intellectual Property Escrows or similar arrangements for the protection of Intellectual Property, Source Code or Source Code Documentation of others used for or relating to the Project or the Work.

19.5.16 If Developer holds any lease or rental agreement for any customer service center or customer service outlet serving customers of the Project, at NCDOT's request, Developer shall execute and deliver to NCDOT on or about the Termination Date a written assignment, in form and substance acceptable to NCDOT, acting reasonably, of such lease or rental agreement and Developer's right, title and interest thereunder, and NCDOT shall assume Developer's obligations thereunder arising from and after the date of assignment. Developer shall assist and cooperate with NCDOT in connection with its investigation and decision regarding any such lease or rental agreement, including providing NCDOT access to the premises for inspection and seeking any consent to assignment required by the landlord.

19.5.17 On or about the Termination Date, Developer shall execute and deliver to NCDOT a written assignment, in form and substance acceptable to NCDOT, acting reasonably,

of all Developer's right, title and interest in and to all warranties, claims and causes of action held by Developer against third parties in connection with the Project or the Work to the extent assignable, including claims under casualty and business interruption insurance, but excluding any such Insurance Policy claims to the extent made prior to the Valuation Date and taken into account as a reduction in the appraisal and determination of Fair Market Value.

19.5.18 Developer shall otherwise assist NCDOT in such manner as NCDOT may reasonably require prior to and for a reasonable period following the Termination Date to ensure the orderly transition of the Project and its management to NCDOT, and shall, if appropriate and if requested by NCDOT, take all steps as may be necessary to enforce the provisions of the Key Contracts pertaining to the surrender of the Project.

19.5.19 For a period of four (4) years following the Termination Date, Developer shall maintain a secure archive copy of all electronic data transferred to NCDOT .

19.5.20 All documents, records, programs, data, film, tape, articles, memoranda, and other materials specifically developed under this Agreement after the Effective Date shall be considered "work for hire" and Developer transfers any ownership claim to NCDOT and all such materials will be the property of NCDOT. Use of these materials, other than related to contract performance by Developer, without the prior written consent of NCDOT, is prohibited.

19.6 Effect of Termination

19.6.1 Cessation of Developer's Interest and Liens and Encumbrances

Except as provided in Section 19.9 and the Project Trust Agreement, termination of this Agreement under any provision of this Article 19 shall automatically cause, as of the Termination Date, the cessation of any and all property interest of Developer, real and personal, tangible and intangible, in or with respect to the Project, the Project Right of Way, the Toll Revenues and the Handback Requirements Reserve, which thereupon shall be and remain free and clear of any lien or encumbrance created, permitted or suffered by Developer or anyone claiming by, through or under Developer, including the liens, pledges, assignments, collateral assignments, security interests and encumbrances of any and all Funding Agreements and Security Documents. In order to confirm the foregoing, at NCDOT's request, Developer shall promptly obtain and deliver to NCDOT recordable reconveyances, releases and discharges of all Security Documents, executed by the Lenders, but no such reconveyances, releases and discharges shall be necessary to the effectiveness of the foregoing.

19.6.2 Project Trust Agreement

Except as provided otherwise in Section 19.9 and the Project Trust Agreement, the Project Trust Fund and Developer's security interests in the Revenue Payment Amount, the Developer Claims Account and the Post-Termination Revenue Account shall cease and terminate at the end of the Term, at which time the trustee under the Project Trust Agreement shall distribute to the Party entitled thereto all funds remaining in each account.

19.6.3 Contracts and Agreements

Regardless of NCDOT's prior actual or constructive knowledge thereof, and except for the Project Trust Agreement and any joinder agreement entered into pursuant to Section 19.9.4 should they survive the Termination Date, no contract or agreement to which Developer is a

party (unless NCDOT is also a party thereto) as of the Termination Date shall bind NCDOT, unless NCDOT elects to assume such contract or agreement in writing. Except in the case of NCDOT's express written assumption, no such contract or agreement shall entitle the contracting party to continue performance of work or services respecting the Project following Developer's relinquishment to NCDOT of possession and control of the Project, or to any claim, legal or equitable, against NCDOT.

19.7 Liability After Termination; Final Release

19.7.1 No termination of this Agreement shall excuse either Party from any liability arising out of any default as provided in this Agreement that occurred prior to termination. Except with respect to any Termination Compensation due to Developer, any termination of this Agreement shall automatically extinguish any Claim of Developer to payment of Compensation Amounts for adverse cost and revenue impacts accruing after the Early Termination Date from Compensation Events that occurred prior to termination.

19.7.2 Subject to Sections 19.5.14 and 19.5.15, if this Agreement is terminated under Section 19.1, 19.2, 19.3, 19.4, 19.11, 19.12, 19.13, 19.14 or 19.15, then NCDOT's payment to Developer of the amounts required thereunder (if any) shall constitute full and final satisfaction of, and upon payment NCDOT shall be forever released and discharged from, any and all Claims, causes of action, suits, demands and Losses, known or unknown, suspected or unsuspected, that Developer may have against NCDOT arising out of or relating to this Agreement or termination thereof, or the Project, except for specific Claims and Disputes that are asserted by Developer in accordance with Section 17.8 not later than 30 days after the effective date of termination, are unresolved at the time of such payment and are not related to termination or Termination Compensation. Upon such payment, Developer shall execute and deliver to NCDOT all such releases and discharges as NCDOT may reasonably require to confirm the foregoing, but no such written release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

19.8 Exclusive Termination Rights

This Article 19 contain the entire and exclusive provisions and rights of NCDOT and Developer 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.

19.9 Covenant to Continue Tolling Project

In the event there exists as of the expiration of the Term or an Early Termination Date any outstanding and undisputed amount owing from NCDOT to Developer, including any outstanding and undisputed Termination Compensation, the terms and conditions of this Section 19.9 shall apply, and shall survive termination.

19.9.1 NCDOT shall continue to operate and maintain the HOT Lanes, or cause it to be operated and maintained, as a tolled facility to the same or substantially equivalent standards as required of Developer under this Agreement. NCDOT shall also operate and maintain the other Elements of the Project.

19.9.2 NCDOT shall set, adjust, impose and collect tolls and charges for the HOT Lanes in accordance with Exhibit 4.

19.9.3 NCDOT shall cause all tolls (but not Incidental Charges) to be transferred into the Post-Termination Revenue Account under the Project Trust Agreement; and Developer shall have and retain a continuing perfected lien on, pledge of and security interest in the Post-Termination Revenue Account and the funds therein pursuant to the Project Trust Agreement, until all amounts due are paid in full.

19.9.4 NCDOT shall maintain account holder funds separate and apart from State funds and shall cause all debits to the ETC Prepaid Accounts to be automatically transferred via the custodial accounts to the Project Trust Fund for deposit into the Toll Revenue Account; provided, however, that if NCDOT's customary non-Discriminatory rules and procedures for its toll processing or clearinghouse functions include deducting its transaction fee for such functions, then NCDOT may reduce the amount of each such transfer to the Project Trust Fund by the ETC Prepaid Account transaction fee amount.

19.9.5 NCDOT's billing statements to Video Postpaid Accounts shall instruct the User to make payments in the name of and to the address of either the trustee of the Project Trust Fund. NCDOT may invoice the trustee for the Video Postpaid Account Transaction Fee amount payable to NCDOT pursuant to Exhibit 18.

19.9.6 If for any reason NCDOT receives any payment other than a Transaction Fee payable to NCDOT pursuant to Exhibit 18 or Incidental Charge for a Transaction that is payable to Developer, all Toll Revenues that are part of such payment shall be deemed received by NCDOT merely as a bailee or agent and shall not constitute funds of NCDOT or the State; and NCDOT shall forthwith remit such payments to the trustee under the Project Trust Agreement for deposit into the Project Trust Fund.

19.9.7 Pursuant to the terms of the Project Trust Agreement, NCDOT shall have the right to (a) draw from the revenues deposited under the Project Trust Agreement to pay as and when incurred NCDOT's reasonable and documented operating and maintenance costs and expenses respecting the Project, (b) fund subaccounts of the Project Trust Fund for reasonable reserves for costs of reconstruction, rehabilitation, renewal and replacement of the Project, and (c) draw from the revenues deposited into such subaccounts NCDOT's reasonable documented costs of reconstruction, rehabilitation, renewal and replacement of the Project. The amounts transferred to and from subaccounts under the Project Trust Agreement for purposes of Sections 19.9.7(b) and 19.9.7(c) shall be subject to the review and approval of a third party mutually selected by Developer and NCDOT.

19.9.8 Pursuant to the terms of the Project Trust Agreement, for undisputed amounts due Developer, Developer shall be entitled to monthly distributions of all revenues held under the Project Trust Agreement net of NCDOT's permitted draws for such costs and expenses and net of such permitted reasonable reserves, until the undisputed amounts are paid in full.

19.9.9 For disputed amounts due Developer, such net revenues shall continue to be held in trust under the Project Trust Agreement until final, non-appealable decisions are rendered on all disputed amounts. NCDOT may seek, through the Dispute Resolution Procedures, for limitations on the amount so held in trust to the extent the applicable decision making body decides that any disputed portion of the Claim has no reasonable likelihood of award. The amounts of any final, non-appealable awards shall be funded in the same manner as undisputed amounts under Section 19.9.8 until paid in full.

19.9.10 At such time as all amounts due Developer are paid in full, or at any earlier date that the funds held in trust, net of such costs, expenses and reserves, are sufficient to pay disputed and undisputed amounts that are outstanding, (a) NCDOT's obligation to operate the HOT Lanes as a tolled facility shall cease, (b) pursuant to the terms of the Project Trust Agreement NCDOT's right to make withdrawals from the Post-Termination Revenue Account shall be restricted (subject to Section 19.9.8) to preserve the disputed or undisputed amounts that are outstanding, and (c) tolls or additional charges to Users thereafter collected by NCDOT shall not be subject to the provisions of this Section 19.9 nor subject to any pledge, lien, security interest or encumbrance in favor of Developer or any Lender.

19.9.11 At such time as all amounts payable to Developer are paid in full to Developer, the balance held under the Project Trust Agreement, if any, shall be immediately distributed to NCDOT and the Project Trust Agreement, Project Trust Fund and Developer's security interests in the Post-Termination Revenue Account, together with any joinder agreement entered into pursuant to Section 19.9.4, shall cease and terminate.

19.10 Access to Information

Developer shall conduct all discussions and negotiations to determine any Termination Compensation, and shall share with NCDOT all data, documents and information pertaining thereto, on an Open Book Basis.

19.11 Termination by Court Ruling

19.11.1 Except in the circumstances described in Section E.4 or E.6 of Exhibit 15, Termination by Court Ruling means, and becomes effective upon, (a) issuance of a final order by a court of competent jurisdiction to the effect that this Agreement is void and/or unenforceable or impossible to perform in its entirety, (b) issuance of a final order by a court of competent jurisdiction upholding the binding effect on Developer or NCDOT of a Change in Law that causes impossibility of performance of a fundamental obligation by Developer or NCDOT under the CA Documents or impossibility of exercising a fundamental right of Developer or NCDOT under the CA Documents, or (c) occurrence of the circumstances described in Section 24.13.2. The final court order shall be treated as the notice of termination.

19.11.2 Once Termination by Court Ruling becomes effective, NCDOT and Developer shall cooperate to implement Sections 19.5, 19.6, 19.7, 19.8 and 19.9.

19.11.3 Notwithstanding Section 19.11.2, if a Termination by Court Ruling occurs, Developer shall be entitled to compensation to the extent, and only to the extent, provided in Section E.1 of Exhibit 15. Subject to Sections E.4 and E.5 of Exhibit 15, payment shall be due and payable as and when provided in Section G.5 of Exhibit 15. Any Dispute arising out of the determination of such compensation shall be resolved according to the Dispute Resolution Procedures.

19.12 Termination for Environmental Litigation

19.12.1 In the event that Environmental Litigation is filed that excuses Developer's obligation to achieve Financial Close as set forth in Section 4.1.3.4(f), NCDOT shall have the right to: (a) terminate this Agreement effective immediately upon delivery of written notice of termination to Developer or (b) delay Financial Close until such excuse is no longer valid, permissible or exists; provided, however, that if NCDOT delays Financial Close under this

Section 19.12.1(b) by more than 180 days from the Project Financial Close Deadline, then Developer may thereafter terminate this Agreement, effective immediately upon delivery of written notice of termination to NCDOT. However, if such excuse is no longer valid, permissible or exists before written notice of termination is delivered, then no such notice shall be effective and Developer shall have a right to terminate under this Section 19.12.

19.12.2 If NCDOT or Developer elects to terminate under this Section 19.12, Developer will be entitled to compensation to the extent, and only to the extent, provided in Section H of Exhibit 15.

19.12.3 Once termination pursuant to this Section 19.12 becomes effective, NCDOT and Developer shall cooperate to implement Sections 19.5, 19.6, 19.7, 19.8, and 19.9.

19.13 Termination Related to Maximum Available Funds

19.13.1 NCDOT Election to Terminate

19.13.1.1 Upon receiving written notice from Developer pursuant to Section 19.13.2.1 requesting NCDOT to exercise its rights under this Section 19.13.1.1, NCDOT shall provide written notice to Developer that: (a) this Agreement is terminated, which shall be effective on the date of receipt of such notice or (b) this Agreement shall remain in full force and effect, in which case NCDOT shall be liable to Developer for the full amount of the Public Funds Amount, including the portion in excess of the Maximum Public Funds resulting from the adjustments under Section 4.1.3.6, 4.1.3.7, and/or Section 4.1.3.8, and Developer shall be responsible to timely achieve Financial Close as set forth in the CA Documents.

19.13.1.2 In the event of a termination under this Section 19.13.1, Developer will be entitled to compensation to the extent, and only to the extent, provided in Section H of Exhibit 15.

19.13.1.3 Once such termination becomes effective, NCDOT and Developer shall cooperate to implement Sections 19.5, 19.6, 19.7, 19.8, and 19.9.

19.13.2 Developer Election to Proceed with Financial Close

19.13.2.1 If the adjustments under Section 4.1.3.6, 4.1.3.7, and/or Section 4.1.3.8 on the date of Financial Close result in a Public Funds Amount that exceeds the Maximum Available Funds, Developer shall provide written notice to NCDOT that: (a) Developer will assume the cost and expense of the portion of the Public Funds Amount in excess of the Maximum Available Funds, and in such case NCDOT shall not be liable to Developer for the portion of the Public Funds Amount in excess of the Maximum Available Funds resulting from such adjustments and Developer shall be responsible to timely achieve Financial Close as set forth in the CA Documents or (b) Developer will not assume such excess amount and requests NCDOT to exercise NCDOT's rights under Section 19.13.1.

19.13.2.2 If Developer provides written notice pursuant to Section 19.13.2.1(b) requesting NCDOT to exercise NCDOT's rights under Section 19.13.1, Developer shall not be liable to NCDOT for the portion of the Public Funds Amount in excess of the Maximum Available Funds resulting from the adjustments under Section 4.1.3.6, 4.1.3.7, and/or Section 4.1.3.8.

19.14 Termination Related to Interest Rate Buffer Amount

19.14.1 NCDOT Election to Terminate

19.14.1.1 Upon receiving written notice from Developer pursuant to Section 19.14.2.1 requesting NCDOT to exercise its rights under this Section 19.14.1.1, NCDOT shall provide written notice to Developer that: (a) this Agreement is terminated, which shall be effective on the date of receipt of such notice or (b) this Agreement shall remain in full force and effect, in which case NCDOT shall be liable to Developer for the the full amount of the Interest Rate Buffer Amount, including the portion resulting from the increase in Benchmark Interest Rate(s), and Developer shall be responsible to timely achieve Financial Close as set forth in the CA Documents.

19.14.1.2 In the event of a termination under this Section 19.14.1, Developer will be entitled to compensation to the extent, and only to the extent, provided in Section H of Exhibit 15.

19.14.1.3 Once such termination becomes effective, NCDOT and Developer shall cooperate to implement Sections 19.5, 19.6, 19.7, 19.8, and 19.9.

19.14.2 Developer Election to Proceed with Financial Close

19.14.2.1 If the increase in Benchmark Interest Rate(s) on the last day of the Interest Rate Protection Period pursuant to Section 4.1.3.5 exceeds the Interest Rate Buffer Amount, Developer shall provide written notice to NCDOT that: (a) Developer will assume the cost and expense of the portion in excess of the Interest Rate Buffer Amount resulting from the increase in Benchmark Interest Rate(s), and in such case NCDOT shall not be liable to Developer for such excess portion and Developer shall be responsible to timely achieve Financial Close as set forth in the CA Documents or (b) Developer will not assume such excess portion and requests NCDOT to exercise NCDOT's rights under Section 19.14.1.

19.14.2.2 If Developer provides written notice pursuant to Section 19.14.2.1(b) requesting NCDOT to exercise NCDOT's rights under Section 19.13.1, Developer shall not be liable to NCDOT for the portion in excess of the Interest Rate Buffer Amount resulting from the increase in Benchmark Interest Rate(s).

19.15 Termination for Certain Delays in Financial Close

19.15.1 Developer or NCDOT may terminate this Agreement without fault, Claim or penalty (except for Termination Compensation owed under this Section 19.15) if Financial Close does not occur by the Project Financing Deadline, as the same may be extended pursuant to Section 4.1.3.10, and such failure is directly attributable to any of the circumstances set forth in Section 4.1.3.4; provided, however, that notice of termination under this Section 19.15 shall obligate NCDOT and Developer to engage in good faith negotiations for a period of 30 days (or such longer period as the Parties may mutually agree) after receipt of such notice before such termination is effective.

19.15.2 The Parties' right to terminate this Agreement pursuant to this Section 19.15 shall continue during any extension of the Project Financing Deadline (with respect to such extended Project Financing Deadline) until Developer achieves Financial Close.

19.15.3 In the event of a termination under this Section 19.15, Developer will be entitled to compensation to the extent, and only to the extent, provided in Section H of Exhibit 15.

19.15.4 Once such termination becomes effective, NCDOT and Developer shall cooperate to implement Sections 19.5, 19.6, 19.7, 19.8 and 19.9.

ARTICLE 20. LENDERS' RIGHTS

20.1 Conditions and Limitations Respecting Lenders' Rights

20.1.1 No Security Document (including those respecting a Refinancing) shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Article 20, unless the Security Document, other related Security Documents and related Funding Agreements strictly comply with Section 4.4.

20.1.2 No Security Document relating to any Refinancing (except Exempt Refinancings under clause (b), (c) or (d) of the definition of Exempt Refinancing) shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Article 20 or the Lender's Direct Agreement, unless the Refinancing is in compliance with Section 4.5.

20.1.3 No Funding Agreement or Security Document shall be binding upon NCDOT in the enforcement of its rights and remedies as provided herein and by Law, and no Lender shall be entitled to the rights, benefits and protections of this Article 20 or the Lender's Direct Agreement, unless and until (i) a copy (certified as true and correct by the Collateral Agent) of the original thereof bearing, if applicable, the date and instrument number or book and page of recordation or filing thereof, including a copy of a specimen bond, note or other obligation (certified as true and correct by the Collateral Agent) secured by such Security Document, has been delivered to NCDOT and (ii) NCDOT has received written notice of the address of the Collateral Agent to which notices may be sent. In the event of an assignment of any such Funding Agreement or Security Document, such assignment shall not be binding upon NCDOT, unless and until NCDOT has received a certified copy thereof, which copy shall, if required to be recorded, bear the date and instrument number or book and page of recordation thereof, and NCDOT has received written notice of the assignee thereof to which notices may be sent. In the event of any change in the identity of the Collateral Agent, such assignment shall not be binding upon NCDOT, unless and until NCDOT has received a written notice thereof signed by the replaced and substitute Collateral Agent and setting forth the address of the substitute Collateral Agent to which notices may be sent.

20.1.4 No Lender shall be entitled to the rights, benefits and protections of this Article 20 unless the Funding Agreements in favor of the Lender are secured by senior or first tier subordinate Security Documents (including the Security Documents relating to any TIFIA Loan). For avoidance of doubt, no Lender holding Project Debt secured by a Subordinated Security Document shall have any rights, benefits or protections under this Article 20.

20.1.5 A Lender shall not, by virtue of its Funding Agreement or Security Document, acquire any greater rights to or interest in the Project or Toll Revenues than Developer has at any applicable time under this Agreement, other than the provisions in this Article 20 for the specific protection of Lenders.

20.1.6 All rights acquired by Lenders under any Funding Agreement or Security Document shall be subject to the provisions of the CA Documents and to the rights of NCDOT hereunder and thereunder.

20.1.7 The following provisions of this Article 20 shall apply only to Security Documents, and the Lenders thereunder, that comply with Sections 20.1.1, 20.1.2, 20.1.3 and 20.1.4. None of the following provisions of this Article 20 shall be construed inconsistently with the provisions of this Section 20.1.

20.2 Direct Agreement

The Lenders' rights are as set forth in the Lender's Direct Agreement.

ARTICLE 21. ASSIGNMENT AND TRANSFER

21.1 Restrictions on Assignment and Other Transfers of Developer's Interest

21.1.1 Developer shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber the Developer's Interest or any portion thereof without NCDOT's prior written approval in accordance with Section 21.3, except:

21.1.1.1 To Lenders for security as permitted by this Agreement; provided that Developer retains responsibility for the performance of Developer's obligations under the CA Documents;

21.1.1.2 To a Substituted Entity in accordance with the Lender's Direct Agreement;

21.1.1.3 To any Person in which, at the time of the sale, assignment, conveyance, transfer, pledge, mortgage or encumbrance, an Equity Member signing this Agreement for Developer (a) exercises management control over such Person and (b) holds at least 50% of the equity interest in such Person; or

21.1.1.4 To any Person in which, at the time of such sale, assignment, conveyance, transfer, pledge, mortgage or encumbrance, any shareholder(s), general partner(s) or member(s) of an Equity Member signing this Agreement for Developer exercising management control over Developer: (a) exercise(s) management control over such Person and (b) hold(s) more than 50% of the equity interest in such Person.

21.1.2 Developer shall not grant any special right of entry onto, use of, or right to manage and control the Project to any other Person that is not in the ordinary course of Developer performing the Work, without NCDOT's prior written approval in accordance with Section 21.3.

21.1.3 In accordance with North Carolina General Statutes § 136-18(39a)b, in no event shall any voluntary or involuntary sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control of the Project create additional debt or debt-like obligations of the State.

21.1.4 Any purported voluntary or involuntary sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use,

management or control of the Project in violation of this Section 21.1 shall be null and void *ab initio* and NCDOT may declare any such attempted action to be a Developer Default.

21.2 Restrictions on Equity Transfers and Change of Control

21.2.1 Except as provided in Sections 21.2.2, no voluntary or involuntary Equity Transfers by or among Equity Members, and no voluntary or involuntary Change of Control, are allowed from the Effective Date to the second annual anniversary of Substantial Completion of all Project Sections without NCDOT's prior written approval in accordance with Section 21.3.

21.2.2 Transfers and transactions within any of the exceptions described in clauses (a) through (f) of the definition of Change of Control are allowed at any time without necessity for NCDOT's approval; provided, however, that in the case of exceptions described in clauses (a) through (d) and as a condition to such transfers and transactions, Developer shall deliver to NCDOT, within ten days prior to the effectiveness of the transfer or transaction, written notice describing the transfer or transaction and (if applicable) the names of the transferor and transferee, together with documentation demonstrating that the transfer or transaction is within such an exception.

21.2.3 From and after the second annual anniversary of Substantial Completion of all Project Sections, Equity Transfers that do not result in a Change of Control are allowed, subject to NCDOT's prior written approval. The purpose of NCDOT's prior written approval shall be limited to verifying that the proposed Equity Transfer will not result in a Change of Control.

21.2.4 From and after the second annual anniversary of Substantial Completion of all Project Sections, Equity Transfers that do result in a Change of Control are allowed, subject to NCDOT's prior written approval in accordance with Section 21.3.

21.2.5 Any purported voluntary or involuntary Equity Transfer or Change of Control in violation of this Section 21.2 shall be null and void *ab initio*, and NCDOT may declare any such attempted action to be a Developer Default.

21.3 Standards and Procedures for NCDOT Approval

21.3.1 Except as provided in Section 21.2.2, where NCDOT's prior approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, or grant of other special use, management or control, or for any proposed Equity Transfer or Change of Control (each a "transaction"), and such transaction is proposed at any time during the period ending two years after Substantial Completion of all Project Sections, NCDOT may withhold or condition its approval in its sole discretion. Any such decision of NCDOT to withhold consent shall be final, binding and not subject to the Dispute Resolution Procedures.

21.3.2 Thereafter, NCDOT shall not unreasonably withhold its approval of such a transaction. Among other reasonable factors and considerations, it shall be reasonable for NCDOT to withhold its approval if:

21.3.2.1 Developer fails to demonstrate to NCDOT's reasonable satisfaction that the proposed assignee, grantee or transferee, or the proposed transferee of rights and/or equity interests that would amount to a Change of Control (collectively the "transferee"), and its proposed contractors (a) have the financial resources, qualifications and

experience to timely perform Developer's obligations under the CA Documents and Principal Project Documents and (b) are in compliance with NCDOT's rules, regulations and adopted written policies regarding organizational conflicts of interest;

21.3.2.2 Less than all of Developer's Interest is proposed to be assigned, conveyed, transferred, pledged, mortgaged, encumbered or granted; or

21.3.2.3 At the time of the proposed transaction, there exists any uncured Developer Default or any event or circumstance that with the lapse of time, the giving of notice or both would constitute a Developer Default, unless NCDOT receives from the proposed transferee assurances of cure and performance acceptable to NCDOT in its good faith discretion.

21.3.3 Except as otherwise provided in Section 21.3.6, for transactions subject to NCDOT's prior reasonable approval, NCDOT will approve or disapprove within 30 days after it receives from Developer:

21.3.3.1 A request for approval;

21.3.3.2 A reasonably detailed description of the proposed transaction;

21.3.3.3 Such information, evidence and supporting documentation as NCDOT may request concerning the identity, financial resources, qualifications, experience and potential conflicts of interest of the proposed transferee and its proposed contractors; and

21.3.3.4 Such evidence of organization and authority, and such incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations and warranties as NCDOT may reasonably request.

21.3.4 Except as otherwise provided in Section 21.3.6, for transactions subject to NCDOT's prior reasonable approval, NCDOT will evaluate the identity, financial resources, qualifications, experience and potential conflicts of interest using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards and criteria it most recently applied, to the evaluation of Persons responding to NCDOT requests for qualifications for concession or similar agreements for comparable projects and facilities.

21.3.5 If for any reason NCDOT does not act within such 30-day period, or any extension thereof by mutual agreement of the Parties, then the proposed assignment shall not be permitted, subject to Developer's right, in the case of a proposed assignment governed by Section 21.3.2, to submit a Dispute for resolution according to the Dispute Resolution Procedures.

21.3.6 For Equity Transfers subject to NCDOT's prior reasonable approval under Section 21.2.3, NCDOT will approve or disapprove within 30 days after it receives from Developer a request for approval, the names of each transferor and transferee, and documentation establishing to NCDOT's satisfaction that the proposed Equity Transfer will not result in a Change of Control.

21.3.7 Notwithstanding the provisions of this Section 21.3, Initial Equity Members whose role is restricted solely to financial matters and who have no role in the performance of

the Work may assign, sell or transfer their interest in Developer in accordance with this Section 21.3.7.

21.3.7.1 Any assignment, sale or transfer under this Section 21.3.7 prior to the period ending two years after Substantial Completion of all Project Sections shall be subject to NCDOT's reasonable approval, unless such assignment, sale or transfer constitutes a Change in Control (in which case it shall be subject to NCDOT's approval in its good faith discretion).

21.3.7.2 If any assignment, sale or transfer under this Section 21.3.7 prior to the period ending two years after after Substantial Completion of all Project Sections is to an infrastructure fund that is affiliated with or under common ownership, management or control with an Initial Equity Member shall not be subject to NCDOT's prior written approval, subject to the condition that Developer deliver to NCDOT, within 10 days prior to the effectiveness of such assignment, sale or transfer, written notice describing such assignment, sale or transfer, together with documentation demonstrating that such assignment, sale or transfer is to such an infrastructure fund.

21.4 Assignment by NCDOT

NCDOT may assign all or any portion of its rights, title and interests granted, held or reserved to NCDOT under the CA Documents in and to the Project, Project Right of Way, Toll Revenues, appropriations, CA Documents, Payment Bonds and Performance Security, guarantees, letters of credit and other security for payment or performance, (a) without Developer's consent, to any other Person that succeeds to the governmental powers and authority of NCDOT, and (b) to others with the prior written consent of Developer. NCDOT also may assign, without Developer's consent, all or any portion of its rights, title and interests in and to revenue streams from Developer under the CA Documents, together with Payment Bonds, Performance Securities, guarantees, letters of credit and other security for payment of such revenue streams and NCDOT's rights to enforce payment of such revenue streams other than rights to terminate this Agreement, to any trustee, credit enhancer or swap counterparty with respect to bonds or other indebtedness issued by NCDOT or a related entity or instrumentality as security for repayment of the bonds or other indebtedness. No assignment by NCDOT shall create or alter any obligations under the CA Documents without the consent of the Parties.

21.5 Notice and Assumption

21.5.1 Assignments and transfers of the Developer's Interest permitted under this Article 21 (other than pursuant to Section 21.1.1.1) or otherwise approved in writing by NCDOT shall be effective only upon NCDOT's receipt of written notice of the assignment or transfer and a written recordable instrument executed by the transferee, in form and substance acceptable to NCDOT, in which the transferee, without condition or reservation, assumes all of Developer's obligations, duties and liabilities under the CA Documents then in effect and agrees to perform and observe all provisions thereof applicable to Developer.

21.5.2 Each transferee, including any Person who acquires the Developer's Interest pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, shall take the Developer's Interest subject to, and shall be bound by, the Developer Management Plan, the Key Contracts, the Developer Utility Adjustment Agreements, all agreements between the transferor and railroads, the Governmental Approvals, and all agreements between the

transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise approved by NCDOT in writing in its good faith discretion.

21.5.3 Except with respect to assignments and transfers pursuant to foreclosure, transfer in lieu of foreclosure or similar proceeding, the transferor and transferee shall give NCDOT written notice of the assignment not less than 30 days prior to the effective date thereof.

21.6 Change of Organization or Name

21.6.1 Developer shall not change the legal form of its organization in a manner that adversely affects NCDOT's rights, protections and remedies under the CA Documents without the prior written approval of NCDOT, which consent may be granted or withheld in NCDOT's sole discretion.

21.6.2 In the event either Party changes its name, such Party agrees to promptly furnish the other Party with written notice of change of name and appropriate supporting documentation.

ARTICLE 22. RECORDS AND AUDITS; INTELLECTUAL PROPERTY

22.1 Maintenance and Inspection of Records

22.1.1 Developer shall keep and maintain in Mecklenburg or Wake County, North Carolina, or in another location NCDOT approves in writing in its sole discretion, all books, records and documents relating to the Project, Project Right of Way, Utility Adjustments or Work, including copies of all original documents delivered to NCDOT. Developer shall keep and maintain such books, records and documents in accordance with applicable provisions of the CA Documents, the Developer Management Plan, and in accordance with Good Industry Practice. Developer shall notify NCDOT where such records and documents are kept.

22.1.2 Developer shall make all its books, records and documents available for inspection by NCDOT, the State Auditor and FHWA and their Authorized Representatives and legal counsel at Developer's principal offices in North Carolina, or pursuant to each Intellectual Property Escrow, at all times during normal business hours, without charge. Developer shall provide, or make available for review pursuant to each Intellectual Property Escrow, to NCDOT, the State Auditor and FHWA copies thereof (a) as and when expressly required by the CA Documents or (b) for those not expressly required, upon request and at no expense to Developer. NCDOT, the State Auditor and FHWA may conduct any such inspection upon 48 hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. The provisions of this Section 22.1.2 are subject to the following:

22.1.2.1 Developer reserves the right to assert exemptions from disclosure for information that would be exempt under applicable State Law from discovery or introduction into evidence in legal actions, provided that in no event shall Developer be entitled to assert any such exemption to withhold traffic and revenue data; and

22.1.2.2 Unless otherwise lawfully required by the FHWA, federal Law, the Public Records Law or applicable Law, Developer may make available copies of books, records and documents containing trade secrets and confidential proprietary information with such

information redacted, provided Developer deposits unredacted copies thereof in an Intellectual Property Escrow within five Business Days after receiving NCDOT's, the State Auditor's and FHWA's notice, and without restriction on NCDOT's, the State Auditor's and FHWA's right of access to such Intellectual Property Escrow for inspection. Unless otherwise lawfully required by the FHWA, NCDOT or the State Auditor shall have no right to make extracts of such trade secrets and confidential proprietary information except in connection with resolution of Claims and Disputes. In no event shall Developer be entitled to apply this Section 22.1.2.2 to traffic and revenue data.

22.1.3 Developer shall retain records and documents for a minimum of five years after the date the record or document is generated; provided that if the CA Documents or applicable Law specify any longer time period for retention of particular records, such time period shall control. With respect to records and documents generated prior to Final Acceptance of a Project Section, the time period for retention shall commence upon Final Acceptance of such Project Section. Notwithstanding the foregoing, all records which relate to Claims and Disputes being processed or actions brought under the Dispute Resolution Procedures shall be retained and made available until any later date that such Claims, Disputes and actions are finally resolved. Refer to Attachment 1 to Exhibit 6 regarding applicable federal requirements and to Section 8.7.4 regarding the time period for retention of Patron Confidential Information.

22.2 Audits and Budgets

22.2.1 NCDOT, the State Auditor and FHWA shall have such rights to review and audit Developer, its Contractors and their respective books and records as and when they deem necessary for purposes of verifying compliance with the CA Documents and applicable Law. Without limiting the foregoing, NCDOT, the State Auditor and FHWA shall have the right to audit Developer's Developer Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Developer Management Plan and its component parts, plans and other documentation. NCDOT and FHWA may conduct any such audit of books and records upon 48 hours' prior written notice, or unannounced and without prior notice where there is good faith suspicion of fraud. Further, pursuant to North Carolina General Statutes § 147-64.7, the State Auditor shall have ready access to persons, records, papers, reports, vouchers, correspondence, books, and any other documentation which is in the possession of any Developer and any of its Contractors.

22.2.2 All Claims filed against NCDOT shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of NCDOT, the State Auditor and FHWA or by an auditor under contract with NCDOT. No notice is required before commencing any audit before 60 days after the expiration of the term of this Agreement. Thereafter, NCDOT shall provide 20 days notice to Developer, any Contractors or their respective agents before commencing an audit. Developer, Contractors or their agents shall provide adequate facilities, acceptable to NCDOT, for the audit during normal business hours. Developer, Contractors or their agents shall cooperate with the auditors. Failure of Developer, Contractors or their agents to maintain and retain sufficient books and records to allow the auditors to verify all or a portion of the Claim or to permit the auditor access to such books and records shall constitute a waiver of the Claim and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents relating to the Claim:

22.2.2.1 Daily time sheets and supervisor's daily reports;

22.2.2.2 Union agreements;

22.2.2.3 Insurance, welfare, and benefits records;

22.2.2.4 Payroll registers;

22.2.2.5 Earnings records;

22.2.2.6 Payroll tax forms;

22.2.2.7 Material invoices and requisitions;

22.2.2.8 Material cost distribution work sheet;

22.2.2.9 Equipment records (list of company equipment, rates, etc.);

22.2.2.10 Contractors' (including Suppliers') invoices;

22.2.2.11 Contractors' and agents' payment certificates;

22.2.2.12 Canceled checks (payroll and Suppliers);

22.2.2.13 Job cost report;

22.2.2.14 Job payroll ledger;

22.2.2.15 General ledger;

22.2.2.16 Cash disbursements journal;

22.2.2.17 Daily records of Toll Revenues;

22.2.2.18 All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim; and

22.2.2.19 Work sheets used to prepare the Claim establishing (a) the cost components of the Claim, including labor, benefits and insurance, materials, equipment, Contractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals, and (b) the lost revenue components of the Claim.

Full compliance by Developer with the provisions of this Section 22.2.2 is a contractual condition precedent to Developer's right to seek relief on a Claim under Section 17.8.

22.2.3 Not later than 30 days after Financial Close and annually thereafter, Developer shall deliver to NCDOT an annual budget for the Project for the current Fiscal Year in at least as much detail as any budget required by Lenders and Good Industry Practice, together with its annual budgets for the immediately preceding three Fiscal Years and detailed itemization of all costs and expenses for the immediately preceding three Fiscal Years organized by the line items in the budgets.

22.2.4 Any rights of the FHWA to review and audit Developer, its Contractors and their respective books and records are set forth in Exhibit 6.

22.2.5 NCDOT's rights of audit include the right to observe the business operations of Developer and its Contractors to confirm the accuracy of books and records.

22.2.6 Developer shall include in the Developer Management Plan internal procedures to facilitate review and audit by NCDOT and, if applicable, FHWA.

22.2.7 Developer represents and warrants the completeness and accuracy in all material respects of all information it or its agents provides in connection with NCDOT audits, and shall cause all Contractors other than NCDOT and Governmental Entities acting as Contractors to warrant the completeness and accuracy in all material respects of all information such Contractors provide in connection with NCDOT audits.

22.2.8 Developer's internal and third party quality and compliance auditing responsibilities shall be set forth in the Developer Management Plan.

22.2.9 Nothing in the CA Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State Auditor, in carrying out his or her legal authority. Developer understands and acknowledges that (a) the State Auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this Agreement or indirectly through a Contract, (b) acceptance of funds directly under this Agreement or indirectly through a Contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds, and (c) an entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

22.3 Public Records Law

22.3.1 Developer acknowledges and agrees that, except as provided by North Carolina General Statutes § 132-1 et seq. ("Public Records Law") or applicable Law, all Submittals, records, documents, drawings, plans, specifications and other materials in NCDOT's possession, including materials submitted by Developer to NCDOT, are subject to the provisions of the Public Records Law. If Developer believes information or materials submitted to NCDOT constitute trade secrets, proprietary information or other information that is not subject to the Public Records Law or is excepted from disclosure under the Public Records Law or applicable Law, Developer shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such document or page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim, including the applicable Law which supports the claim. Nothing contained in this Section 22.3 shall modify or amend requirements and obligations imposed on NCDOT by the Public Records Law or other applicable Law, and the provisions of the Public Records Law or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. Developer is advised to contact legal counsel concerning such Law and its application to Developer.

22.3.2 If NCDOT receives a request for public disclosure of materials marked "CONFIDENTIAL," NCDOT will use reasonable efforts to notify Developer of the request and give Developer an opportunity to assert, in writing and at its sole expense, a claimed exception under the Public Records Law or other applicable Law within the time period specified in the

notice issued by NCDOT and allowed under the Public Records Law. Under no circumstances, however, will NCDOT be responsible or liable to Developer or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of NCDOT or its officers, employees, contractors or consultants.

22.3.3 In the event of any proceeding or litigation concerning the disclosure of any material submitted by Developer to NCDOT, NCDOT's sole involvement will be as a custodian retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and Developer shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that NCDOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Except in the case of NCDOT's voluntary intervention or participation in litigation, Developer shall pay and reimburse NCDOT within 30 days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, NCDOT incurs in connection with any litigation, proceeding or request for disclosure.

22.3.4 Notwithstanding the foregoing, Developer consents to all other disclosures required by Law. Developer further expressly waives any right to contest, impede, prevent or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing or delaying such disclosure, under the P3 Policy, the Public Records Law or any other Law relating to the confidentiality or disclosure of information.

22.4 Intellectual Property

22.4.1 All Proprietary Intellectual Property, including with respect to Technology Enhancements, Source Code and Source Code Documentation, shall remain exclusively the property of Developer or its Affiliates or Contractors that supply the same, notwithstanding any delivery of copies thereof to NCDOT. Unless otherwise specifically stated in the CA Documents, Developer is responsible for assuring that all software it uses for any aspect of the Project is compatible with software used by NCDOT. Prior to using any software or version of software not then in use by NCDOT, Developer must obtain written approval from NCDOT. In addition, Developer shall provide to NCDOT staff, at Developer's cost, any software, licenses and training reasonably necessary to assure that NCDOT is able to implement compatible usage of all software utilized by Developer. For purposes of this Section 22.4.1, compatible usage shall mean that the Developer-provided electronic file(s) may be loaded or imported and manipulated by NCDOT using its software with no modifications, preparation or adjustments. All electronic information submitted to NCDOT shall be in native format or, if not available, legible.

22.4.2 NCDOT shall have and is hereby granted a nonexclusive, transferable, irrevocable, fully paid up right and license to use, reproduce, modify, adapt and disclose, and sublicense others to use, reproduce, modify, adapt and disclose, the Proprietary Intellectual Property of Developer, including with respect to Technology Enhancements, Source Code and Source Code Documentation, solely in connection with the Project and any Highway, tolled or not tolled, owned and operated by NCDOT or a State or regional Governmental Entity; provided that NCDOT shall have the right to exercise such license only at the following times:

22.4.2.1 From and after the expiration or earlier termination of the Term for any reason whatsoever by NCDOT and only in connection for maintaining interoperability with the Project by a State or regional Governmental Entity;

22.4.2.2 During any time that NCDOT is exercising its step-in rights pursuant to Section 17.3.4, in which case NCDOT may exercise such license only in connection with the Project; and

22.4.2.3 During any time that a receiver is appointed for Developer, or during any time that there is pending a voluntarily or involuntary proceeding in bankruptcy in which Developer is the debtor, in which case NCDOT may exercise such license only in connection with the Project.

22.4.3 Subject to the license and rights granted to NCDOT pursuant to Section 22.4.2, NCDOT shall not at any time sell any Proprietary Intellectual Property of Developer or use, reproduce, modify, adapt and disclose, or allow any party to use, reproduce, modify, adapt and disclose, any such Proprietary Intellectual Property for any other purpose.

22.4.4 The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of NCDOT generally or with respect to the Project.

22.4.5 The right to sublicense is limited to State or regional Governmental Entities that own or operate a Highway or other road, tolled or not tolled, and to the concessionaires, contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of NCDOT or any such State or regional Governmental Entity in connection with the Project or another Highway or other road, tolled or untolled. All such sublicenses shall be subject to Section 22.4.6.

22.4.6 Subject to Section 22.3, NCDOT shall:

22.4.6.1 Not disclose any Proprietary Intellectual Property of Developer to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of NCDOT relating thereto;

22.4.6.2 Enter into a commercially reasonable confidentiality agreement if requested by Developer with respect to the licensed Proprietary Intellectual Property; and

22.4.6.3 Include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Proprietary Intellectual Property of Developer and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

22.4.7 Notwithstanding any contrary provision of this Agreement, in no event shall NCDOT or any of its directors, officers, employees, consultants or agents be liable to Developer, any Affiliate or any Contractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Section 22.4.6 if such breach is not the result of gross negligence or intentional misconduct or required under the provisions of the Public Records Law, court order or other legal requirement.

22.4.8 Developer 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.

22.4.9 With respect to any Proprietary Intellectual Property, including with respect to Technology Enhancements, Source Code and Source Code Documentation, owned by a Person other than Developer, including any Affiliate, and other than NCDOT or a Governmental Entity acting as a Contractor, Developer shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner or with the first use or adaptation of the Proprietary Intellectual Property in connection with the Project, both for Developer and NCDOT, nonexclusive, transferable, irrevocable, fully paid up licenses to use, reproduce, modify, adapt and disclose such Proprietary Intellectual Property solely in connection with the Project and any Highway, tolled or not tolled, owned and operated by NCDOT or a State or regional Governmental Entity, of at least identical scope, purpose, duration and applicability as the license granted under Section 22.4.2. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to NCDOT using commercially reasonable efforts. The limitations on sale, transfer, sublicensing and disclosure by NCDOT set forth in Sections 22.4.3 through 22.4.6 shall also apply to NCDOT's licenses in such Proprietary Intellectual Property.

22.5 Intellectual Property Escrows

22.5.1 NCDOT and Developer acknowledge that Developer and/or Contractors that supply software, Source Code, Financial Modeling Data or other Proprietary Intellectual Property may not wish to deliver the Proprietary Intellectual Property directly to NCDOT, and that Developer and/or Contractors desire to implement measures to protect such information from public disclosure to the extent permitted under Law. Developer further acknowledges that NCDOT nevertheless must be ensured access to such Proprietary Intellectual Property at any time, and must be assured that the Proprietary Intellectual Property is released and delivered to NCDOT in either of the following circumstances:

22.5.1.1 In the case of Proprietary Intellectual Property owned by Developer or any Affiliate, (a) this Agreement is terminated for Developer Default, (b) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of Developer occurs, (c) Developer is dissolved or liquidated, or (d) Developer fails or ceases to provide services as necessary to permit continued use of the Proprietary Intellectual Property pursuant to the license or any sublicense thereof.

22.5.1.2 In the case of Proprietary Intellectual Property owned by a Contractor (other than a Contractor that is an Affiliate), this Agreement is terminated for any reason (including NCDOT Default) and either (a) a business failure (including voluntary or involuntary bankruptcy, and insolvency) of the Contractor occurs or (b) the Contractor is dissolved or liquidated or otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining and servicing the software, product, part or other item containing the Proprietary Intellectual Property that is the subject of a license under Section 22.4.

22.5.2 In lieu of delivering the Proprietary Intellectual Property directly to NCDOT, Developer may elect to deposit it with a neutral custodian. In such event, Developer shall (a) select, subject to NCDOT's prior approval, one or more escrow companies or other neutral custodian (each an "Escrow Agent") engaged in the business of receiving and maintaining

escrows in Mecklenburg or Wake County, or in another location NCDOT approves in writing in its sole discretion, of Source Code or other Intellectual Property, and (b) establish one or more escrows (each an "Intellectual Property Escrow") with the Escrow Agent in such location on terms and conditions reasonably acceptable to NCDOT and Developer for the deposit, retention and upkeep of Source Code, Source Code Documentation and/or other Proprietary Intellectual Property and related documentation. The location of such escrows is limited to Mecklenburg or Wake County, or another location NCDOT and Developer mutually approves in writing. Intellectual Property Escrows also may include Affiliates and Contractors as parties and may include deposit of their Proprietary Intellectual Property. NCDOT shall not be responsible for the fees and costs of the Escrow Agent.

22.5.3 If Developer elects to deliver Proprietary Intellectual Property to an Intellectual Property Escrow, Developer shall make such delivery to the Escrow Agent not later than the following times:

22.5.3.1 For pre-existing Source Code and Source Code Documentation, immediately upon execution of this Agreement or, if provided by a Contractor, execution of the relevant Contract;

22.5.3.2 For Source Code and Source Code Documentation incorporated into or used on or for a Project Section, prior to the Substantial Completion Date of such Project Section;

22.5.3.3 For any Technology Enhancement, update, upgrade or correction of Source Code and Source Code Documentation incorporated into or used on or for the Project or any portion thereof, not later than 15 days after the end of the calendar quarter in which it is first incorporated or used;

22.5.3.4 For the Financial Model Formulas, Base Case Financial Model, Base Case Financial Model Update, Financial Modeling Data and related materials, the times set forth in Section 22.5.6;

22.5.3.5 For Initial Funding Agreements and Initial Security Documents, on the Effective Date, and for amendments and supplements thereto, within 30 days after they are executed and delivered;

22.5.3.6 For other Funding Agreements and Security Documents and amendments and supplements thereto, within 30 days after they are executed and delivered; and

22.5.3.7 For any other Proprietary Intellectual Property, on the Effective Date if it exists as of such date, and otherwise within 15 days after the end of the calendar quarter in which it is first created, reduced to practice, incorporated or used in connection with the Project or the Work.

22.5.4 NCDOT shall be a named, intended third party beneficiary of each escrow agreement and each Intellectual Property Escrow with direct rights of enforcement against Developer and the Escrow Agent. Each escrow agreement shall provide that neither Developer nor the Escrow Agent shall have any right to amend or supplement it, or waive any provision thereof, without NCDOT's prior written approval in its sole discretion.

22.5.5 Intellectual Property Escrows shall provide rights of access and inspection to NCDOT at any time, subject to terms and conditions reasonably necessary to protect the confidentiality and proprietary nature of the contents of the Intellectual Property Escrows.

22.5.6 If Developer elects to deposit the Financial Model Formulas and Base Case Financial Model into an Intellectual Property Escrow rather than deliver them directly to NCDOT, Developer shall:

22.5.6.1 Deposit the Financial Model Formulas and the Base Case Financial Model, on or prior to the Effective Date, deposit updated Financial Model Formulas and Base Case Financial Model approved by both Parties within five days of the Effective Date, and include with each deposit of the Financial Model Formulas, Base Case Financial Model and Base Case Financial Model Update, a complete set of the then-current Financial Modeling Data and related materials;

22.5.6.2 Also deposit, as and when prepared, each Base Case Financial Model Update and a complete set of the updated and revised Financial Modeling Data and related materials; and

22.5.6.3 Deposit them in a form or forms that are acceptable to NCDOT, that fully reveal their content on an Open Book Basis, and that will conveniently enable NCDOT at any time upon request to gain access thereto and to electronically operate and manipulate the same in order to run projections and scenarios respecting the Project and to print out and examine such projections and scenarios.

22.5.7 The Intellectual Property Escrows shall survive expiration or earlier termination of this Agreement regardless of the reason, until such time as both Parties mutually agree, in their respective sole discretion, that the Intellectual Property contained therein is of no further use or benefit to the Project.

22.5.8 In accordance with Sections 22.5.2 through 22.5.6, Developer has elected to enter into an Intellectual Property Escrow agreement, dated as of the Effective Date, for escrowing Developer's Proprietary Intellectual Property, in the form required by NCDOT in the RFP, or such modified form as has been approved in writing by NCDOT.

ARTICLE 23. FEDERAL REQUIREMENTS

23.1 Compliance with Federal Requirements

Developer shall comply and require its Contractors to comply with all federal requirements applicable to transportation projects that receive federal credit or funds, including those set forth in Exhibit 6. If Developer uses TIFIA credit or loans to finance the Project or any portion thereof, Developer shall provide any compliance certifications and milestone payment schedules required in connection with TIFIA, as specified in the TIFIA Funding Agreements and TIFIA Security Documents. In the event of any conflict between any applicable federal requirements and the other requirements of the CA Documents, the federal requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

23.2 Role of and Cooperation with FHWA

Developer acknowledges and agrees that FHWA will have certain approval rights with respect to the Project, including the right to provide certain oversight and technical services with respect to the Work. Developer shall cooperate with FHWA in the reasonable exercise of FHWA's duties and responsibilities in connection with the Project.

ARTICLE 24. MISCELLANEOUS

24.1 Taxes

Developer shall pay, prior to delinquency, all applicable Taxes, other than those being contested in good faith and for which reserves or bonding have been established in the amount of at least 150% of the contested amount. Developer shall have no right to a Compensation Event or to any other Claim due to its misinterpretation of Laws respecting Taxes or incorrect assumptions regarding applicability of Taxes, other than those being contested in good faith and for which required reserves have been established.

24.2 Amendments

The CA Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this Agreement.

24.3 Waiver

24.3.1 No waiver of any term, covenant or condition of this Agreement or the other CA Documents shall be valid unless in writing and signed by the obligee Party.

24.3.2 The exercise by a Party of any right or remedy provided under this Agreement or the other CA Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under this Agreement or the other CA Documents shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or the other CA Documents. 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.

24.3.3 Except as provided otherwise in the CA Documents, 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 hereunder, or to relieve the other Party from the full performance of its obligations under this Agreement or the other CA Documents.

24.3.4 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the CA Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the CA Documents without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes.

24.3.5 Subject to Section 13.2.10, the acceptance of any payment or reimbursement by a Party shall not waive any preceding or then-existing breach or default by the other Party of any term, covenant or condition of this Agreement or the other CA Documents, 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 or default at the time of acceptance of such payment or reimbursement. Nor shall such acceptance continue, extend or affect: (a) the service of any notice, any Dispute Resolution Procedures or final judgment, (b) any time within which the other Party is required to perform any obligation, or (c) any other notice or demand.

24.4 Independent Contractor

24.4.1 Developer is an independent contractor, and nothing contained in the CA Documents shall be construed as constituting any relationship with NCDOT other than that of Project developer and independent contractor.

24.4.2 Nothing in the CA Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between NCDOT and Developer; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term "public-private partnership" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a *de jure* or *de facto* partnership, joint venture or similar relationship, to share net profits or net losses, or to give NCDOT control or joint control over Developer's financial decisions or discretionary actions concerning the Project and Work.

24.4.3 In no event shall the relationship between NCDOT and Developer be construed as creating any relationship whatsoever between NCDOT and Developer's employees. Neither Developer nor any of its employees is or shall be deemed to be an employee of NCDOT. Except as otherwise specified in the CA Documents, Developer has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Contractors and for all other Persons that Developer or any Contractor hires to perform or assist in performing the Work.

24.5 Successors and Assigns

The CA Documents shall be binding upon and inure to the benefit of NCDOT and Developer and their permitted successors, assigns and legal representatives.

24.6 Designation of Representatives; Cooperation with Representatives

24.6.1 NCDOT and Developer shall each designate an individual or individuals who shall be authorized to make decisions and bind the Parties on matters relating to the CA Documents ("Authorized Representative"). The initial Authorized Representative designations are as follows:

For NCDOT:

Between the Effective Date until NTP2:

Rodger Rochelle

NCDOT, Director of Transportation Program Management
1595 Mail Service Center
Raleigh, NC 27699
Telephone: (919) 707-6601
E-mail: rdrochelle@ncdot.gov

After NTP2:

Louis Mitchell
NCDOT, Division Engineer, Division 10
716 W. Main Street
Albermarle, NC 28001
Telephone: (707) 983-440
E-mail: lmitchell@ncdot.gov

For Developer:

_____
_____
Attn: _____
Telephone: _____
E-mail: _____

A Party may change such designations by a subsequent writing delivered to the other Party in accordance with Section 24.12.

24.6.2 Developer shall cooperate with NCDOT and all representatives of NCDOT designated as described above.

24.7 Survival

Developer's and NCDOT's representations and warranties, the dispute resolution provisions contained in Section 17.8, the indemnifications, limitations and releases contained in Sections 7.8.6 and 16.5, the express obligations of the Parties following termination, and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Work shall survive the expiration or earlier termination of this Agreement and/or the completion of the Work. The provisions of Section 17.8 shall continue to apply after expiration or earlier termination of this Agreement to all Claims and Disputes between the Parties arising out of the CA Documents.

24.8 Limitation on Third Party Beneficiaries

It is not intended by any of the provisions of the CA Documents to create any third party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the warranty and indemnity provisions, and the provisions for the protection of certain Lenders under Article 20) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 24.8, the duties, obligations and responsibilities of the Parties to the CA Documents with respect to third parties shall remain as imposed by Law. The CA Documents shall not be construed to create a contractual relationship of any kind between NCDOT and a Contractor or any Person other than Developer.

24.9 No Personal Liability of NCDOT Employees; No Tort Liability

24.9.1 NCDOT's Authorized Representatives are acting solely as agents and representatives of NCDOT when carrying out the provisions of or exercising the power or authority granted to them under this Agreement. They shall not be liable either personally or as employees of NCDOT for actions in their ordinary course of employment.

24.9.2 The Parties agree to provide to each other's Authorized Representative written notice of any claim which such Party may receive from any third party relating in any way to the matters addressed in this Agreement, and shall otherwise provide notice in such form and within such period as is required by Law.

24.10 Governing Law

The CA Documents shall be governed by and construed in accordance with the laws of the State of North Carolina.

24.11 Notices and Communications

24.11.1 Notices under the CA Documents shall be in writing and: (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

24.11.2 All notices, correspondence and other communications to Developer shall be delivered to the following address or as otherwise directed by Developer's Authorized Representative:

_____
_____
_____
Attn: _____
Telephone: _____
Facsimile: _____
E-mail: _____

24.11.3 All notices, correspondence and other communications to NCDOT shall be marked as regarding the I-77 HOT Lanes Project and shall be delivered to the following address or as otherwise directed by NCDOT's Authorized Representative:

Between the Effective Date until NTP2:

Rodger Rochelle
NCDOT, Director of Transportation Program Management
1595 Mail Service Center
Raleigh, NC 27699
Telephone: (919) 707-6601
E-mail: rdrochelle@ncdot.gov

After NTP2:

Louis Mitchell
NCDOT, Division Engineer, Division 10
716 W. Main Street
Albermarle, NC 28001
Telephone: (707) 983-440
E-mail: lmitchell@ncdot.gov

24.11.4 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. eastern time (as applicable) and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by Developer's Authorized Representative and technical representatives designated by NCDOT.

24.12 Integration of CA Documents

NCDOT and Developer agree and expressly intend that, subject to Section 24.13, the CA Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

24.13 Severability

24.13.1 If any clause, provision, section or part of the CA Documents or any other Principal Project Document (other than the Design-Build Contract or any O&M Contract) is ruled invalid (including invalid due to Change in Law) by a court having proper jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Base Case Financial Model Update (or, if there has been no Base Case Financial Model Update, the Base Case Financial Model); and (b) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the CA Documents or such other Principal Project Documents, which shall be construed and enforced as if the CA Documents or such other Principal Project Documents did not contain such invalid or unenforceable clause, provision, section or part.

24.13.2 If after the efforts required by Section 24.13.1, the Parties mutually agree that without the section or part of the CA Documents or such other Principal Project Documents that the court ruled to be invalid, there is no interpretation or reformation of the CA Documents or such other Principal Project Documents that can reasonably be adopted which will return the Parties to the benefits of their original bargain, the Parties can mutually agree to treat the court order as a Termination by Court Ruling pursuant to Section 19.11.

24.14 Headings

The captions of the sections of this Agreement are for convenience only and shall not be deemed part of this Agreement or considered in construing this Agreement.

24.15 Construction and Interpretation of Agreement

24.15.1 The language in all parts of the CA Documents 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 the CA Documents are the product of an extensive and thorough, arm's length exchange of ideas, questions, answers, information and drafts during the Proposal preparation process, that each Party has been given the opportunity to independently review the CA Documents with legal counsel, and that each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of the CA Documents. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the CA Documents, the CA Documents shall not be interpreted or construed against the Party preparing it, and instead other rules of interpretation and construction shall be utilized. NCDOT's final answers to the questions posed during the Proposal preparation process for this Agreement shall in no event be deemed part of the CA Documents and shall not be relevant in interpreting the CA Documents except as they may clarify provisions otherwise considered ambiguous.

24.15.2 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.

24.15.3 References in this instrument to this "Agreement" mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other 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 instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument 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 instrument unless the context thereof clearly requires the contrary. Unless expressly provided otherwise, all references to Exhibits, Articles and Sections refer to the Exhibits, Articles and Sections set forth in this Agreement. Where a specific Section is referenced, such reference shall include all subsections thereunder. Unless otherwise stated in this Agreement or the other CA Documents, words that have well-known technical or construction industry meanings are used in this Agreement or the other CA Documents in accordance with such recognized meaning. All references to a subsection or clause "above" or "below" refer to the denoted subsection or clause within the Section in which the reference appears. Wherever the word "including," "includes" or "include" is used in the CA Documents, it shall be deemed to be followed by the words "without limitation." Wherever reference is made in the CA Documents to a particular Governmental Entity, it includes any public agency succeeding to the powers and authority of such Governmental Entity.

24.15.4 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.

24.16 Interest and Usury Savings

24.16.1 Except as otherwise provided in the CA Documents, payments due to NCDOT or Developer, as applicable, will be due and payable within 30 days of receipt by NCDOT or Developer, as applicable, of an invoice for such payment, together with any supporting documentation, and shall thereafter bear interest at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, until the date the amount due is paid.

24.16.2 The CA Documents are subject to the express condition that at no time shall either Party be obligated or required to pay interest on any amount due the other Party at a rate which could subject the other Party to either civil or criminal liability as a result of being in excess of the maximum non-usurious interest rate permitted by North Carolina Law (the "maximum legal rate"), if any. If, by the terms of the CA Documents either Party at any time is obligated to pay interest on any amount due in excess of the maximum legal rate, then such interest shall be deemed to be immediately reduced to the maximum legal rate and all previous payments in excess of the maximum legal rate shall be deemed to have been payments in reduction of the principal amount due and not on account of the interest due. All sums paid or agreed to be paid to a Party for the use, forbearance, or detention of the sums due that Party under the CA Documents shall, to the extent permitted by applicable North Carolina Law, be amortized, prorated, allocated, and spread throughout the full period over which the interest accrues until payment in full so that the rate or amount of interest on account of the amount due does not exceed the maximum legal rate in effect from time to time during such period. If after the foregoing adjustments a Party still holds interest payments in excess of the maximum legal rate, it shall promptly refund the excess to the other Party.

24.17 Approvals under CA Documents

24.17.1 Refer to Sections 6.3.3 and 6.3.4.1 regarding the standards for NCDOT approval or consent.

24.17.2 In all cases where approvals or consents are required to be provided under the CA Documents by Developer and no particular standard for such approvals or consents is expressly provided, such approvals or consents shall not be unreasonably withheld or delayed. In cases where sole discretion is specified, Developer's decision shall be final, binding and not subject to dispute resolution hereunder.

24.18 Entire Agreement

The CA Documents contain the entire understanding of the Parties with respect to the subject matter thereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to their subject matter.

24.19 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.

[Signature Page Immediately Follows]

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

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Developer

_____,
a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

NCDOT

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

Unless otherwise specified, wherever the following abbreviations or terms are used in this Agreement and the Technical Provisions, they have the meanings set forth below:

AADT	Average Annual Daily Traffic
AASHTO	American Association of State Highway and Transportation Officials
ADA	Americans with Disabilities Act
AGC	Associated General Contractors of America
AISC	American Institute of Steel Construction, Inc.
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
AREMA	American Railway Engineering and Maintenance of Way Association
ASTM	American Society of Testing and Materials
AVI	Automatic Vehicle Identification
C&D	Cease and Desist
CCH	Central Clearing House
CCI	Construction Cost Index
CCTV	Closed Circuit Television
CEI	Construction Engineering and Inspection
CEPP	Comprehensive Environmental Protection Program
CFR	Code of Federal Regulations
CICA	Continuing Immediate Corrective Action
CM	Cultural Resources Compliance Manager
CMP	Construction Monitoring Plan
CMS	Changeable Message Signs
CPI	Consumer Price Index
CSC	Customer Service Center
CSLB	Contractor State License Board
CSJ	Control Section Job
CWA	Clean Water Act
DBE	Disadvantaged Business Enterprise
DMP	Developer Management Plan
DSS	Decent, Safe and Sanitary
DMV	Department of Motor Vehicles
DWQ	Division of Water Quality
EB	East Bound Direction of Travel
ECI	Environmental Compliance Inspector
ECMP	Environmental Compliance and Mitigation Plan
EOR	Engineer of Record

EP	Extraction Procedure (toxicity)
EPIC	Environmental Permits Issues and Commitments
EPTP	Environmental Protection Training Program
ESA	Endangered Species Act of 1973, 16 U.S.C. §§ 1531 *et seq.*, as amended and as it may be amended from time to time
ET	Environmental Team
ETC	Electronic Toll Collection
ETCS	Electronic Toll Collection System
FAA	Federal Aviation Administration
FAPG	Federal-Aid Policy Guide
FEMA	Federal Emergency Management Agency
FHWA	U.S. Federal Highway Administration
FTP	File Transfer Protocol
FWCA	Fish and Wildlife Coordination Act, 16 U.S.C. §§661 *et seq.*, as amended and as it may be amended from time to time
GIS	Geographical Information System
HEC	Hydraulic Engineering Circular
HCR	Highway Conditions Report
HMMP	Hazardous Materials Management Plan
HOT	High Occupancy Toll
HOV	High Occupancy Vehicle
ICA	Immediate Corrective Action
ICD	Interface Control Document
ID	Identification
IH	Interstate Highway
IRI	International Roughness Index
IRR	Internal Rate of Return
ISO	International Organization for Standardization
IT	Information Technology
ITS	Intelligent Transportation Systems
IVR	Interactive Voice Response
IWP	Investigative Work Plan
LFRD	Load and Resistance Factor Design
MOA	Memorandum of Agreement
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
MPH	Miles Per Hour
MPO	Metropolitan Planning Organization
MS4	Municipal Separate Storm Sewer System
MSDS	Materials Safety Data Sheets
MSE	Mechanically Stabilized Earth

MTBF	Mean Time Between Failures
MTTR	Mean Time To Repair
NAD83	North American Datum 83
NAVD	North American Vertical Datum
NB	North Bound Direction of Travel
NBIS	National Bridge Inspection Standards
NCAC	North Carolina Administrative Code
NCDENR, PWSS	North Carolina Department of Economic and Natural Resources, Public Water Supply Section
NCDOT	North Carolina Department of Transportation
NCLBGC	North Carolina Licensing Board of General Contractors
NCHRP	National Cooperative Highway Research Program
NCTA	North Carolina Turnpike Authority
NEC	National Electrical Code
NEPA	National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, as amended and as it may be amended from time to time
NFIP	National Flood Insurance Program
NFPA	National Fire Protection Association
NOI	Notice of Intent
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
NRCS	Natural Resource Conservation Service
NRHP	National Register of Historic Places
O&M	Operations and Maintenance
OCR	Optical Character Recognition
ORT	Open Road Tolling
OSHA	Occupational Safety and Health Administration
OSPS	Operating Speed Performance Standard
PA	Programmatic Agreement
PABs	Private Activity Bonds
PICP	Public Information and Communications Plan
PMIS	Pavement Management Information System
PCI	Precast/Prestressed Concrete Institute
PUA	Possession and Use Agreement
PUE	Permanent Utilities Easement
QMP	Quality Management Plan
RID	Reference Information Documents
RLM	Residual Life Methodology
ROW	Right of Way
ROW AM	Right of Way Acquisition Manager
ROWIS	Right of Way Information System

RPLS	Registered Professional Land Surveyor
RTF	Related Transportation Facilities
SIR	Site Investigative Report
SB	South Bound
SDPP	Special Deposit and Possession Procedure
SH	State Highway
SOV	Single Occupancy Vehicle
SPCC	Spill Prevention and Control Plan
SSTR	Single Slope Traffic Railing
STA	Station
SUE	Subsurface Utility Engineering
SW3P	Storm Water Pollution Prevention Plan
TCLP	Toxicity Characteristic Leaching Procedure
TIFIA	Transportation Infrastructure Finance and Innovation Act, 23 U.S.C. § 601 *et seq.*, as amended and as it may be amended from time to time
TIP	Transportation Improvement Plan
UAO	Utility Agency Owner
UDC	Utility Design Coordinator
UM	Utility Manager
US	United States Highway
USACE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
USFWS	United States Fish and Wildlife Service
U.S. GAAP	United States Generally Accepted Accounting Principles
USPAP	Uniform Standard of Professional Appraisal Practices
UTM	Universal Transverse Mercator
WBS	Work Breakdown Structure
WPCP	Water Pollution Control Program

Abandonment means that Developer abandons all or a material part of the Project, which abandonment shall have occurred if (a) Developer clearly demonstrates through acts or omissions an intent not to continue, for any reason other than a Relief Event that materially interferes with ability to continue, to construct or operate all or a material part of the Project and (b) no significant Work (taking into account the Project Schedule, if applicable, and any Relief Event) on the Project or a material part thereof is performed for a continuous period of more than 45 days.

Account means the record maintained and established by NCDOT through the North Carolina Turnpike Authority in accordance with Exhibit 18 of the Agreement for the registered owner of at least one motor vehicle who uses any toll facility in the State of North Carolina.

Additional Properties means real property added to the Existing Right of Way and acquired by Developer in the name of NCDOT as a result of an ATC approved by NCDOT, Capacity Improvement proposed by Developer and approved by NCDOT or Project Extension proposed by Developer and approved by NCDOT.

Adjust means to perform a Utility Adjustment.

Adjustment means a Utility Adjustment.

Adjustment Standards means the standard specifications, standards of practice, and construction methods that a Utility Owner customarily applies to facilities (comparable to those being Adjusted on account of the Project) constructed by the Utility Owner (or for the Utility Owner by its contractors), at its own expense. Unless the context requires otherwise, references in the CA Documents to a Utility Owner's "applicable Adjustment Standards" refer to those that are applicable pursuant to Section 7.4.3 of the Agreement.

Aesthetics and Landscaping Allowance means $2 million, which is included in the Public Funds Amount.

Aesthetics and Landscaping Allowance Scope means the Work required to implement the Corridor Landscaping and Aesthetics Plan within the Aesthetics and Landscaping Allowance as directed by NCDOT pursuant to Section 15.5 of the Technical Provisions. The term shall exclude: (a) any Work for developing and preparing the Corridor Landscaping and Aesthetics Plan; (b) aesthetic treatment of sound barrier walls and privacy walls as required by Section 10.2.4 of the Technical Provisions; and (c) the Voluntary Aesthetic Elements.

Affiliate means:

(a) any Equity Member;

(b) any Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Developer or any Equity Member; and

(c) any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Developer, (ii) any Equity Member or (iii) any Affiliate of Developer under clause (b) of this definition.

For purposes of this definition the term "control" means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise.

Age means the elapsed time since an Element was first constructed or installed or, if applicable, last reconstructed, rehabilitated, restored, renewed or replaced.

Agreement means that certain Comprehensive Agreement executed by NCDOT and Developer, including any and all exhibits and amendments thereto.

Airspace means any and all real property, including the surface of the ground, within the vertical column extending above and below the surface boundaries of the Project Right of Way and not necessary or required for the Project (including Upgrades) or developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, tolling, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the Project (including Upgrades) or Developer's timely fulfillment of its obligations under the CA Documents.

Alternative Technical Concept ("ATC") means an alternative technical concept proposed by Developer pursuant to the terms set forth in the RFP.

AM Peak Period means 6:30 a.m. to 9:00 a.m. on Business Days or any other period as designated by NCDOT in NCDOT's sole discretion.

Annual O&M Payment means the payment to Developer for the performance of the Annual O&M Payment Scope, as described in more detail in Part G of Exhibit 5.

Annual O&M Payment Scope means the following operation and maintenance activities within the Project Right of Way:

(a) line striping for the General Purpose Lanes;

(b) reflector replacement for the General Purpose Lanes;

(c) crack and joint sealing for the General Purpose Lanes pavement;

(d) patching General Purpose Lanes pavement;

(e) guardrail repair and replacement adjacent to the General Purpose Lanes;

(f) barrier repair and replacement adjacent to the General Purpose Lanes;

(g) attenuator repair and replacement adjacent to the General Purpose Lanes;

(h) fence repair and replacement;

(i) static signs repair and replacement, including supporting structures (excluding lighting);

(j) cleaning, maintenance, repair and/or replacement of all drainage Elements, including compliance with any permit requirements;

(k) hazardous material spill cleaning;

(l) roadway sweeping;

(m) litter removal;

(n) graffiti removal; and

(o) landscaping, vegetation control, and mowing.

As-Built Record Plans means construction drawings, specifications, and related documentation furnished by Developer that reflect the actual conditions and location in detail of the Work as constructed and installed, usually generated initially as marked-up Release for Construction Documents and finally as finished revised drawings and documents, also known as as-built plans.

Authorized Representative has the meaning set forth in Section 24.6 of the Agreement.

Average Speed has the meaning set forth in Part VII.A(2) of Exhibit 4 to the Agreement.

Band has the meaning set forth in Exhibit 5 to the Agreement.

Band Ceiling has the meaning set forth in Exhibit 5 to the Agreement.

Band Floor has the meaning set forth in Exhibit 5 to the Agreement.

Base Case Equity IRR means the Equity IRR projected in the Base Case Financial Model, which is equal to ___%. ***[Note: insert percentage from Base Case Financial Model as of Effective Date]***

Base Case Financial Model means the financial computer model, including the Financial Model Formulas and the related output, assumptions and information used by or incorporated in the Financial Model Formulas approved by the Parties as of the Effective Date for the Project, as subsequently adjusted solely in accordance with Sections 5.2 of the Agreement:

(a) On the basis of which Developer and NCDOT entered into this Agreement;

(b) Which include certain financial forecasts, projections and calculations with respect to revenues, expenses, the repayment of Project Debt and Distributions to initial Equity Members that result in achievement of the Equity IRR; and

(c) Which is prepared on the basis of the Base Case Traffic Model.

Base Case Financial Model Update means the Base Case Financial Model as most recently updated pursuant to Section 5.4.1 of the Agreement prior to any event identified therein or prior to termination of the Agreement.

Base Case Traffic Model means the traffic and revenue model and the assumptions and information used by or incorporated in the traffic and revenue model, the results of operation of which are incorporated into the Base Case Financial Model.

Base Tax Liability means at any given point in time the present value of the cumulative federal and State income tax liabilities of Developer (or, if it is a pass-through entity for income tax purposes, its members or partners) that would be incurred over the remainder of the original Term absent termination, determined by:

(a) Calculating the anticipated income tax liability for each year of the remaining Term (as if no early termination occurred) based on the Base Case Financial Model Update (or, if there has been no undisputed Base Case Financial Model Update, the Base Case Financial Model) as updated for the performance of the Project so as to be current immediately prior to the point that this calculation is performed; and

(b) Applying to the anticipated income tax liability for each year a discount rate equal to the weighted average cost of capital for that respective year, as calculated in the Base Case Financial Model Update (or, if there has been no undisputed Base Case Financial Model Update, the Base Case Financial Model).

Benchmark Credit Spreads means those benchmark credit spreads associated with a bond financing solution, provided by Developer and approved by NCDOT pursuant to Section 6.1.4 of Volume I of the RFP (Instructions to Proposers).

Benchmark Interest Rate(s) means those benchmark bond (both PABs and taxable bonds), bank and TIFIA base rates provided by Developer pursuant to Section 6.1.3 of Volume I of the RFP (Instructions to Proposers).

Best Management Practices (BMP) has the meaning set forth in *Storm Water Management For Construction Activities: Developing Pollution Prevention Plans and Best Management Practices* (EPA Document 832 R 92-005).

Betterment has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the Utility Agreement(s) applicable to the Utility; in all other cases, "Betterment" means any upgrading of the Utility in the course of such Utility Adjustment that is not attributable to the construction of the Project and is made solely for the benefit of and at the election of the Utility Owner, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility. Notwithstanding the foregoing, the following are not considered Betterments unless otherwise provided in the applicable Utility Agreement(s):

(a) any upgrading which is required for accommodation of the Project;

(b) replacement devices or materials that are of equivalent standards although not identical;

(c) replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;

(d) any upgrading required by applicable Law;

(e) replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase); and

(f) any upgrading required by the Utility Owner's applicable Adjustment Standards.

With respect to any Replacement Utility Property Interest, "**Betterment**" has the meaning (if any) set forth in the applicable Utility Agreement(s). In all other cases, a Replacement Utility Property Interest shall be considered a Betterment, except to the extent that reinstallation of a Utility in the Replacement Utility Property Interest (i) is necessary in order to meet the requirements of the CA Documents, or (ii) is called for by Developer in the interest of overall economy for the Project.

Book 1 means the Agreement, all exhibits thereto, and the executed originals of exhibits that are contracts.

Book 2 means the Technical Provisions, including all attachments and exhibits thereto.

Book 3 means the CA Document setting forth or incorporating by reference the Technical Documents, as the same is revised from time to time pursuant to the Agreement.

Breakage Costs means any commercially reasonable prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of interest rate hedging arrangements, that Developer must pay, or that may be payable or credited to Developer, under any Funding Agreement or Security Document as a result of the payment, redemption or acceleration of all or any portion of the principal amount of Project Debt prior to its scheduled payment date, excluding, however, any such amounts included in the principal amount of any Refinancing.

Bridge means a Structure, including appurtenances and supports, erected over a depression or an obstruction such as water, highway or railway, and having a track or passage way for carrying traffic or other moving loads and having a length measured along the center of the roadway of more than 20 ft between undercopings of end supports, spring lines of arches or between extreme ends of openings for multiple reinforced concrete box Structures.

Business Day means any day on which NCDOT is officially open for business.

Business Opportunities has the meaning set forth in Section 11.2.2 of the Agreement.

CA means the Comprehensive Agreement between NCDOT and Developer for the Project, as it may be amended from time to time.

CA Documents has the meaning set forth in Section 1.2 of the Agreement.

Capacity Improvement means any Project expansion, improvement, measure or procedure that both (a) maintains or increases the throughput capacity of the Project or any portion thereof and (b) improves the level of service of the Project. Capacity Improvements could include building of additional lanes, adding or expanding interchanges, constructing Bridges or other Structures, new or improved intelligent transportation systems and applications, and making other improvements that achieve the foregoing conditions. Capacity Improvements exclude Project Extensions and ramp metering.

Cease and Desist means an order issued by the United States Army Corps of Engineers (USACOE) that prohibits performance of all or portions of Work on the Project pending resolution of the violation of the procedures agreed upon by the USACOE and NCDOT.

CEI Contract means the Contract between Developer and the CEI Firm.

CEI Firm means the firm retained by Developer to furnish construction, engineering and inspection services for the Project.

Central Section means that portion of the Project described in Section 1.1.1 of the Technical Provisions.

Central Section Final Acceptance Deadline means the deadline for achieving Final Acceptance of the Central Section, as set forth in the Milestone Schedule, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

Certificate of Compliance means a NCDOT document in which a company certifies that the material listed complies with all material and workmanship requirements. Furthermore, the document also certifies that the individual signing it is an official representative for the manufacturer of the material listed and that the manufacturer has performed the necessary quality control to substantiate the certification where North Carolina Test methods, physical, or chemical test requirements are part of the specifications.

Certified Erosion Control Manager has the meaning given in Section 2.14.2.12 of the Technical Provisions.

Change in Law means (a) the adoption of any Law after 60 days prior to the Technical Proposal Due Date or (b) any change, amendment to, repeal or revocation of any Law or any change in the interpretation or application thereof by any Governmental Entity after 60 days prior to the Technical Proposal Due Date, in each case that is materially inconsistent with Laws in effect 60 days prior to the Technical Proposal Due Date; excluding, however, any such Change in or new Law that also constitutes or causes a change in or new Adjustment Standards, as well as any change in or new Law passed or adopted but not yet effective 60 days prior to the Technical Proposal Due Date.

Change of Control means any Equity Transfer, transfer of an interest, direct or indirect, in an Equity Member, or other assignment, sale, financing, grant of security interest, hypothecation, conveyance, transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation, bankruptcy or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of Developer or a material aspect of its business. A change in possession of the power to direct or control or cause the direction or control of the management of an Equity Member may constitute a Change of Control of Developer if such Equity Member possesses, immediately prior to the Change of Control, the power to direct or control or cause the direction or control of the management of Developer. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

(a) A change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of an Equity Member, (but not if the Equity Member is the ultimate parent organization); provided, however, that this exception shall not apply if the transferee in such transaction is, at the time of the transaction, suspended or debarred, subject to an agreement for voluntary exclusion, or subject to a

proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;

(b) An upstream reorganization or transfer of direct or indirect interests in Developer so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of Developer;

(c) An Equity Transfer where the transferring Equity Member and the transferee are under the same ultimate parent organization ownership, management and control before and after the transfer;

(d) A transfer of interests between managed funds that are under common ownership or control, except a change in the management or control of a fund that manages or controls Developer;

(e) A change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, including such transactions involving an initial public offering;

(f) The exercise of minority veto or voting rights (whether provided by applicable Law, by Developer's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Developer, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, NCDOT has received copies of such agreements; or

(g) The grant of Security Documents, in strict compliance with Section 4.4 of the Agreement, or the exercise of Lender remedies thereunder, including foreclosure.

Change Order means a written order issued by NCDOT to Developer under Section 14 of the Agreement.

Change Request means a written request from Developer seeking to change the character, quantity, quality, description, scope or location of any part of the Work, to modify or deviate from the CA Documents, or to develop non-mandatory Upgrades..

Chief Executive Officer means the chief executive officer, president or other senior officer of Developer, or the governing body of Developer, in each case having authority to negotiate and resolve a Dispute with the NCDOT Chief Operating Officer and bind Developer by his or her decision in regard to such Dispute.

Claim means (a) a demand by Developer, which is or potentially could be disputed by NCDOT, for a time extension under the CA Documents, payment of money or damages from NCDOT to Developer, or for payment from NCDOT of a Compensation Amount or Termination Compensation, or (b) a demand by NCDOT, which is or potentially could be disputed by Developer, for payment of money or damages from Developer to NCDOT.

Client Account means an ETCS account created and maintained by Developer.

Closure means that all or part of any traffic lanes, ramps, direct connectors or cross roads or Shoulders are closed or blocked, or that the use thereof is otherwise restricted for any reason, during the Term.

Collateral Agent means the Institutional Lender listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the other Lenders in the Security Documents, or the Institutional Lender designated to act as trustee or agent on behalf of or at the direction of the other Lenders in an intercreditor agreement or other document executed by all Lenders to whom Security Documents are outstanding at the time of execution of such document, a copy of which shall be delivered by Developer to NCDOT. In the event of any Project Debt issued and held by a single Lender, Collateral Agent means such Lender.

Commercially Reasonable Insurance Rates means insurance premiums that are less than or equal to the greater of (a) rates that a reasonable and prudent risk manager for a Person seeking to insure comparable risks would conclude are justified by the risk protection afforded, and (b) 200% of the rates indicated for the period in question in the Base Case Financial Model and related Financial Modeling Data.

Commissioning Agent has the meaning given in Section 2.14.2.8 of the Technical Provisions.

Committed Investment means (a) any form of direct investment by Equity Members, including the purchase of equity shares in and/or the provision of Subordinate Debt to Developer; or (b) an irrevocable written commitment to make the direct investment referenced in clause (a) of this definition, coupled with an on-demand letter of credit issued by or for the account of an Equity Member naming Developer as beneficiary and guaranteeing the provision of the direct investment.

Communication, Public Outreach and Community Education Plan has the meaning given in Section 3.3 of the Technical Provisions.

Comparable Controlled Access Highways means (a) Highways that have full control of access, are divided, have grade separations at intersections and are in other respects substantially similar to the Project and (b) associated facilities including frontage roads, as applicable. For purposes of this definition, determination of the aspects in which a Limited Access Highway system is substantially similar to the Project shall be based on, but not limited to, any one or more of age, design, engineering, construction, operating systems and features, other features or situations or a geographical area in which Highways have been or are susceptible to being affected by a common event (such as but not limited to hurricane or tornado). The presence or absence of tolling and tolling facilities shall not be a factor in determining whether a Highway is substantially similar to the Project.

Comparable Toll Projects means the following projects involving TIFIA financing:

(a) I-495 Capital Beltway HOT Lanes;

(b) I-95 HOV/HOT Lanes;

(c) North Tarrant Express (Segments 1 and 2A);

(d) North Tarrant Express (Segments 3A and 3B); and

(e) IH 635 Managed Lanes.

Compensable Interest means a Utility Owner having the following real property interest entitling the Utility Owner to compensation for relocation of an existing Utility:

(a) Existing or prior easement rights within the Project Right of Way, either by recorded right of way or adverse possession .

(b) Entities covered under North Carolina General Statutes §§ 136-27.1 and 136-27.2. Statute requires the NCDOT to pay the non-betterment cost for certain water, sewer and gas relocations.

(c) Utilities, except cable television, that have a joint-use agreement with entities that have existing or prior easements rights within the Project Right of Way.

Compensation Amount means the amount of compensation to be paid to Developer for a Compensation Event in accordance with and as set forth in the Agreement.

Compensation Event means any of the following events, provided that such events are beyond Developer's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law or violation of a Governmental Approval by any of the Developer-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer (and subject to any limitations, claims submission requirements and other conditions set forth in the Agreement):

(a) Discriminatory Change in Law;

(b) Discriminatory Action;

(c) Material breach by NCDOT of its material obligations under the Agreement or other CA Documents, including unreasonable failure to issue a certificate of Substantial Completion or certificate of satisfaction of conditions precedent to Final Acceptance or Final Completion after Developer satisfies all applicable conditions and requirements for obtaining such a certificate;

(d) NCDOT-Caused Delay;

(e) NCDOT Change;

(f) Development or operation of a Business Opportunity in the Airspace by NCDOT or anyone (other than a Developer-Related Entity) claiming under or through NCDOT, to the extent set forth in Section 11.2.4 of the Agreement;

(g) Latent defects in Existing Assets, but only to the extent provided under, and subject to the conditions and limitations of, Section 7.11 of the Agreement;

(h) NCDOT's suspension of tolling, but only to the extent provided under, and subject to the conditions and limitations of, Section 3.5.1 of the Agreement;

(i) NCDOT Release of Hazardous Material;

(j) Material adverse effect of the operation of an Unplanned Revenue Impacting Facility;

(k) A Change in Law consisting of the imposition of new or added federal, State or local taxes on tolls or gross toll receipts;

(l) (i) NCDOT's lack of good and sufficient title to or right to enter and occupy any parcel in the Project Right of Way after conclusion of NCDOT's purported acquisition of the parcel or right of entry or occupancy through negotiation, settlement or condemnation proceeding, to the extent it interferes with or adversely affects performance of Work or imposition of tolls, or (ii) the existence at any time following issuance of NTP2 of any title reservation, condition, easement or encumbrance on any parcel in the Project Right of Way owned by NCDOT, of record or not of record, to the extent it interferes with or adversely affects performance of Work or imposition of tolls, except any title reservations, conditions, easements or encumbrances (A) concerning Utilities; (B) caused, permitted or suffered by a Developer-Related Entity; or (C) concerning rights of access for Governmental Entities and Utility Owners as provided by Law;

(m) Performance of work by NCDOT or a Utility Owner within the Project Right of Way, provided that such work is (i) performed during the Construction Period and (ii) does not relate to the Project;

(n) Any change in the design concept of the Project or any portion thereof resulting from judicial or administrative action taken with respect to a legal challenge to any NEPA Approval or Major Permit as compared to the design concept indicated in the alternative that was the subject of the NEPA Approval, except to the extent the change in design concept had already been incorporated into Developer's design schematics assumed in connection with the Base Case Financial Model;

(o) Discovery of subsurface or latent physical conditions at the actual boring holes identified in the geotechnical reports included in the Reference Information Documents that differ materially from the subsurface conditions indicated in the geotechnical reports at such boring holes, excluding any such conditions known to Developer prior to the Technical Proposal Due Date or that would have become known to Developer undertaking Reasonable Investigation;

(p) Discovery of Pre-existing Hazardous Materials, but only to the extent provided under, and subject to the conditions and limitations of, Section 7.8.5 of the Agreement;

(q) Discovery at, near or on the Project Right of Way of archeological, paleontological or cultural resources (including historic properties), excluding any such resources known to Developer prior to the Technical Proposal Due Date or that would have become known to Developer by undertaking Reasonable Investigation;

(r) Discovery at, near or on the Project Right of Way of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Technical Proposal Due Date), excluding any such

presence of species known to Developer prior to the Technical Proposal Due Date or that would become known to Developer by undertaking Reasonable Investigation;

(s) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of any portion of the Work between NTP2 and Final Completion;

(t) A failure to obtain, or delay in obtaining, a Major Permit from the applicable Governmental Entity by the deadline set forth in Exhibit 12 of the Agreement, except to the extent that such failure or delay results from failure by any Developer-Related Entity to (i) meet the conditions and requirements set forth in Section 4.2.3.2 of the Technical Provisions with respect to such Major Permit or (ii) locate or design the Project or carry out the work in accordance with the NEPA Approval or other Governmental Approval (which Developer-Related Entity's failure may include (A) modification by or on behalf of Developer of the design concept included in the NEPA Approval, (B) means or methods used by any Developer-Related Entity for carrying out the Work, or (C) decision or action by or on behalf of Developer to use or acquire Additional Property);

(u) Force Majeure Event; provided and to the extent that NCDOT has actually received compensation with respect to the Project for such Force Majeure Event from the federal government and such compensation is in excess of NCDOT's Recoverable Costs associated with responding to such Force Majeure Event and in securing and collecting such amounts; or

(v) The occurrence of a DRAM Trigger Event, but only to the extent provided under, and subject to the conditions and limitations of, Section 13.3.

Compensation Event Notice means the written notice submitted by Developer in accordance with Section 13.2 of the Agreement.

Completed Payment Activity means a Payment Activity that Developer has certified as 100% complete, acceptable and ready for the following activity to begin.

Comprehensive Environmental Protection Program has the meaning set forth in Section 2.4.9 of the Technical Provisions.

Conceptual Design Submittal has the meaning given in Section 2.9.2.1 of the Technical Provisions.

Conceptual TMP has the meaning given in Section 22.1.1 of the Technical Provisions.

Concession Payment means the amount, if any, to be paid to NCDOT as set forth in Part A of Exhibit 5 to the Agreement.

Construction Commencement Date means the date on which Developer commences Construction Work on any portion of the Project pursuant to Section 7.6.2 of the Agreement.

Construction Cost Index (CCI) means the Construction Cost Index for the 20-city average as published by Engineering News-Record, for which the base year is 1913 United

States Department of Labor, Bureau of Labor Statistics, for which the base year is 1913 = 100, or if such publication ceases to be in existence, a comparable index selected by NCDOT and approved by Developer, acting reasonably. For example, the CCI for March 2012 was 9267.57.

Construction Documents means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project and/or the Utility Adjustments included in the Construction Work, in accordance with the CA Documents.

Construction Manager has the meaning given in Section 2.14.1.10 of the Technical Provisions.

Construction Noncompliance Event means the failure to meet one of the minimum performance requirements as set forth in Table 23.1 of Section 23 of the Technical Provisions.

Construction Period means the period starting on the date of issuance of NTP2 and ending at Substantial Completion of all Project Sections. References to "Design-Build Phase" or "DB Phase" in the CA Documents shall mean Construction Period.

Construction Work means all Work to build or construct, make, form, manufacture, furnish, install, supply, deliver or equip the Project and/or the Utility Adjustments. Construction Work includes landscaping, demolition, grading, clearing, grubbing and staking.

Consumer Price Index means the Consumer Price Index for All Urban Consumers (CPI-U), All City Average, All Items, as published by the United States Department of Labor, Bureau of Labor Statistics, for which the base year is 1982-84 = 100, or if such publication ceases to be in existence, a comparable index selected by NCDOT and approved by Developer, acting reasonably. If such index is revised so that the base year differs from that set forth above, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics otherwise alters its method of calculating such index, the Parties shall mutually determine appropriate adjustments in the affected index.

Continuing Immediate Corrective Action means a notice issued by NCDOT when erosion control inspection following an Immediate Corrective Action reveals that adequate progress has been made towards the completion of necessary corrective actions or additional corrective actions are required for the Work to be in compliance with the Sedimentation Pollution Control Act and/or the NPDES permit.

Contract means any agreement, and any supplement or amendment thereto, by Developer with any other Person, Contractor or Supplier to perform any part of the Work or provide any materials, equipment or supplies for any part of the Work, or any such agreement, supplement or amendment at a lower tier, between a Contractor and its lower tier Contractor or a Supplier and its lower tier Supplier, at all tiers. The term "Contract" excludes Developer Utility Adjustment Agreements and any agreement with NCDOT or NCTA.

Contractor means any Person with whom Developer has entered into any Contract to perform any part of the Work or provide any materials, equipment or supplies for the Project and/or the Utility Adjustments included in the Construction Work, on behalf of Developer, and

any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers; provided, however, that "Contractor" excludes NCDOT and NCTA.

Contributed Unreturned Equity means (a) the outstanding contributed and unreturned equity investment or other any form of direct investment by Equity Members, (b) any outstanding balance of Subordinate Debt; or (c) any draws against an irrevocable on-demand letter of credit issued by or for the account of an Equity Member naming Developer as beneficiary and guaranteeing the provision of the direct investment or loan referenced in clause (a) or (b) of this definition, excluding any portion of proceeds from clauses (a), (b), or (c) above used or expended, or committed or available to be used or expended, for anything other than the purposes listed in Section 4.4.1 of the Agreement.

Corridor Landscaping and Aesthetics Plan means the plan for aesthetics and landscaping Work developed and finalized pursuant to Section 15.4 of the Technical Provisions.

Credit Spreads means those credit spreads for a bond financing solution provided by the Developer at 10:00 a.m. eastern time on the last day of the Credit Spread Protection Period.

Credit Spread Fluctuation means the difference (either positive or negative), if any, between the Benchmark Credit Spreads and the Credit Spreads, between 10:00 a.m. eastern time on the first day of the Credit Spread Protection Period and 10:00 a.m. eastern time on the last day of the Credit Spread Protection Period.

Credit Spread Protection Period means the period beginning at 10:00 a.m. eastern time 10 days prior to the Financial Proposal Due Date and ending on the earliest of (a) 10:00 a.m. eastern time on the date of Financial Close or (b) 10:00 a.m. eastern time on the Project Financing Deadline.

Critical Path means the sequence of activities that must be completed on schedule for the entire project to be completed on schedule. This is the longest duration path through the work plan in terms of time, of logically connected activities on the Project Schedule ending with Final Completion.

Customer means a registered owner of any motor vehicle who uses any toll facility in the State of North Carolina.

Customer Service Center or **CSC** means a customer service center meeting the requirements of North Carolina General Statutes §136-89.213(b) that will issue and provide services relating to the ETC system administration, account maintenance, and distribution of transponders.

Cure Period means the period to cure (if any) a Noncompliance Event in the column labeled "Cure Period" as set forth in Table 23.1 and Table 23.2 of Section 23 of the Technical Provisions.

Day or **day** means calendar day unless otherwise expressly specified.

DBE Actual Amount means the total amount paid to committed DBE firms for the performance of DBE Eligible Work.

DBE Eligible Work means the Design Work and the Construction Work performed from the Effective Date until Final Completion.

DBE Goal Amount means $_____. ***[Note: insert the total cost of the items of the Work described in item 13 of Section I, item 5 of Section II(A), item 6 of Section II(B) and items 2, 6, 23, 30, 40, 45, 50, 53, and 55 of Section III of the Proposal's Form N of Volume I of the RFP (Instructions to Proposers) multiplied by 12 percent]***

DBE Performance Improvement Plan means the plan submitted by Developer for NCDOT approval in accordance with Section 10.9.4.1 of the Agreement.

DBE Performance Plan means the performance plan to meet the DBE requirements set forth in the CA Documents that is approved by NCDOT in accordance with Section 10.9.2 of the Agreement.

DBE Special Provisions means NCDOT's provisions for the NCDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26, which special provisions are set forth in Attachment 6 to Exhibit 6 to the Agreement.

Default Termination Event means each of the Developer Defaults listed in Sections 19.3.1 and 19.3.4 of the Agreement.

Degraded, Degraded Facility, or Degradation means the failure of the HOT Lanes to comply with the Federal Minimum Average Speed Standard or Operating Speed Performance Standard as set forth in Part VII of Exhibit 4 to the Agreement.

Defect means a defect, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any Element of the Project, which would cause or have the potential to cause one or more of the following:

(a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of Users;

(b) a structural deterioration of the affected Element or any other part of the Project;

(c) damage to a third party's property or equipment;

(d) damage to the Environment; or

(e) failure of the affected Element or any other part of the Project to meet a Performance Requirement.

Design-Build Contract means the certain agreement between Developer and the Design-Build Contractor of even date herewith for the design and construction of the Project.

Design-Build Contract Price means the price for performing the design and construction of the Project, as set forth in the Design-Build Contract.

Design-Build Contractor means _____.

Design Documents means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), specifications, reports, studies, working

drawings, shop drawings, calculations, electronic files, records and Submittals necessary for, or related to, the design of the Project and/or the Utility Adjustments included in the Design Work, Construction Work or O&M Work performed by Developer. Design Documents include the Final Design Documents.

Design Exception means a Deviation requiring approval by NCDOT and FHWA in regards to those design criteria identified in the NCDOT Design Exceptions Preparation Guidelines and which deviate from the minimum values in the 2011 AASHTO A Policy on Geometric Design of Highways and Streets for those criteria.

Design Speed means the speed used to determine the various geometric design features of the roadway.

Design Work means all Work of design, engineering or architecture for the Project, Project Right of Way acquisition, Renewal Work performed by Developer or Utility Adjustments.

Developer means _____, together with its permitted successors and assigns.

Developer Claims Account means the trust account of that name established and maintained under the Project Trust Agreement.

Developer Default has the meaning set forth in Section 17.1.1 of the Agreement.

Developer Management Plan means the document complying with ISO standards relating to quality systems, plans and audits, including BS ENO ISO 9001 and BS EN ISO 14001, as appropriate, and approved by NCDOT, describing quality assurance and quality control activities necessary to manage the development, design, construction, operation and maintenance of the Project, containing the NCDOT-approved component parts, plans and documentation described in Section 2.4 of the Technical Provisions.

Developer Ratio Adjustment Mechanism (DRAM) has the meaning given in Section 13.3.1 of the Agreement.

Developer-Related Entities means (a) Developer, (b) Developer's shareholders, partners, joint venture members and/or members, (c) Contractors (including Suppliers and Design-Build Contractor), (d) any other Persons performing any of the Work on behalf of Developer, (e) any other Persons for whom Developer may be legally or contractually responsible, and (f) the employees, agents, officers, directors, shareholders, representatives, consultants, successors and assign of any of the foregoing; provided, however, that "Developer-Related Entities" excludes NCDOT and NCTA.

Developer Release(s) of Hazardous Material means (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the culpable actions, culpable omissions, negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity; (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Developer-Related Entity; regardless of cause, or (c) use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Developer-Related Entity in violation of the requirements of the CA Documents or any applicable Law or Governmental Approval.

Developer Utility Adjustment Agreement has the meaning set forth in Section 7.4.5.1 of the Agreement.

Developer's Interest means all right and interest of Developer in, to, under or derived from the CA Documents, which shall constitute solely intangible contract rights.

Deviation means any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions or Technical Documents.

Directive Letter means the letter described in Section 14.3 of the Agreement.

Disadvantaged Business Enterprise or **DBE** has the meaning set forth in 49 CFR 23 and further described in Attachment 6 to Exhibit 6 to the Agreement.

Discriminatory or **Discriminatory Action** means (a) materially more onerous application to Developer or the Project of changes or additions to Technical Provisions or Technical Documents than the application thereof to other Comparable Controlled Access Highways, or (b) selective application of changes or additions to Technical Provisions or Technical Documents to Developer or the Project and not to other Comparable Controlled Access Highways. Notwithstanding the foregoing, the following actions are not Discriminatory or Discriminatory Actions: (i) any such application in response, in whole or in part, to any failure to perform or breach of the CA Documents, violation of applicable Law or Governmental Approval, culpable act or culpable omission on the part of any Developer-Related Entity,; (ii) Safety Compliance; (iii) any such application in response to a directive by the U.S. Department of Homeland Security or comparable State agency, unless such directive is directed solely at or solely affects the Project and such application requires specific changes in Developer's normal design, construction, operation or maintenance procedures in order to comply; (iv) planning, design, construction, operation and maintenance of Unplanned Revenue Impacting Facilities; and (v) any other actions necessary to address potential safety concerns arising from a specific condition or feature peculiar to the Project.

Discriminatory Change in Law means any Change in Law during the Term which is principally directed at and the effect of which is principally borne by Developer or private toll road operators in the State, except where such change (a) is in response, in whole or in part, to any failure to perform or breach of the CA Documents, violation of applicable Law or Governmental Approval, culpable act or culpable omission on the part of any Developer-Related Entity, (b) is a directive by the U.S. Department of Homeland Security or comparable State agency, unless such directive is directed solely at or solely affects the Project and requires specific changes in Developer's normal design, construction, operation or maintenance procedures in order to comply, or (c) is otherwise expressly permitted under the CA Documents.

Dispute means any Claim, dispute, disagreement or controversy between NCDOT and Developer concerning their respective rights and obligations under the CA Documents, including concerning any alleged breach or failure to perform and remedies.

Dispute Resolution Procedures means the procedures for resolving Disputes set forth in Section 17.8 of the Agreement.

Distribution means, whether in cash or in kind, both made and projected to be made:

(a) Any:

(i) Dividend or other distribution in respect to share or other capital;

(ii) Payment or other distributions in reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital;

(iii) Payments (whether of principal, interest, Breakage Costs or otherwise) on Subordinate Debt;

(iv) Payment, loan, contractual arrangement or transfer of assets or rights by Developer to any Equity Member or Affiliate to the extent (in each case) it is neither in the ordinary course of business nor on reasonable commercial terms; and

(v) Receipt of any other benefit by any Equity Member or Affiliate which is not received in the ordinary course of business and not on reasonable commercial terms, or

(b) The early release of any contingent funding liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain.

Such dividends, distributions payments or other benefits include proceeds of any Refinancing. Further, used in the context of Refinancing Gain and when the same is realized or distributed by Developer, in the context of any Equity IRR described in the CA Documents or in the context of a Compensation Amount or Termination Compensation, "Distribution" also means and includes (A) fees and surcharges of all kinds, however denominated or characterized, paid or projected to be paid from Toll Revenues or proceeds of equity or debt financing to Equity Members or Affiliates, and (B) interest and principal paid or projected to be paid from Toll Revenues on debt, other than senior lien Project Debt, held by Equity Members or Affiliates, including Subordinate Debt.

Document and Data Management Plan has the meaning given in Section 2.4.3 of the Technical Provisions.

Document Management System has the meaning given in Section 2.4.3 of the Technical Provisions.

DRAM Aggregate Cap Amount means $ _____ ***[Note: Insert amount from Box 5 of Form J of the Proposal]***

DRAM Annual Cap Amount has the meaning given in Section 13.3.2.2(a) of the Agreement.

DRAM Operating Year means each 365-day period commencing on the date on which all Project Sections have achieved Substantial Completion.

DRAM Period has the meaning given in Section 13.3.2.1 of the Agreement.

DRAM Trigger Certification has the meaning given in Section 13.3.4.2 of the Agreement.

DRAM Trigger Event has the meaning given in Section 13.3.4.1 of the Agreement.

DRAM Trigger Ratio means an annual Total Debt Service Coverage Ratio equal to 1.0 times.

Dynamic Mode means a toll pricing methodology commencing after 180 days after the applicable Substantial Completion Date whereby the Toll Rate may change no more frequently than once every five minutes and that follows all the other requirements pertaining to Dynamic Mode set forth in this Exhibit 4 of the Agreement.

Early Termination Date means the effective date of termination of the Agreement for any reason prior to the stated expiration of the Term, as specified in the relevant provisions of Article 19 of the Agreement and Exhibit 15 to the Agreement.

Effective Date means the date of execution, by both Parties, of the Agreement.

Electronic Toll Collection System (ETCS) means the electronic toll collection system, including its components, systems and subsystems, the hardware and physical infrastructure, the software and human resources provided by Developer for the Project. The ETCS is an Element of the Project.

Element means an individual component, system or subsystem of the Project.

Eligible Investments means any one or more of the following securities:

(a) Direct obligations of, and obligations fully and unconditionally guaranteed by, (i) the United States of America or (ii) any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America;

(b) Demand or time deposits, federal funds or bankers' acceptances issued by any depository institution or trust company, provided that (i) any demand or time deposit or certificate of deposit is fully insured by the Federal Deposit Insurance Corporation or (ii) any commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such depository institution or trust company at the time of such investment or contractual commitment providing for such investment have been rated "A" or higher by a Rating Agency;

(c) Commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) which has been rated "A" or higher by a Rating Agency at the time of such investment;

(d) Any money market funds, the investments of which consist of cash and obligations fully and unconditionally guaranteed by (i) the United States of America or (ii) any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America and which have been rated "A" or higher by a Rating Agency; and

(e) Other investments then customarily accepted by the State in similar circumstances;

provided, however, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

Emergency means (a) an Incident or (b) any unplanned event within the Project Right of Way that (i) presents an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, to property adjacent to the Project or to the safety of Users or the traveling public, (ii) has jeopardized the safety of Users or the traveling public; (iii) is recognized by the North Carolina Department of Public Safety as an emergency; or (iv) is recognized or declared by the Governor of the State, the Federal Emergency Management Administration (FEMA), the U.S. Department of Homeland Security or other Governmental Entity with authority to declare an emergency.

Emergency Response means the action taken by Developer, as described in the O&M Plan, to respond to an Emergency within the Project Right of Way.

Emergency Response Plan means the plans and procedures prepared under Section 23 of the Technical Provisions by Developer that are to be implemented to protect the Project Right of Way from governor declared Emergencies and other Emergencies.

Emergency Response Time means the travel time that begins when units are en route to an Emergency Incident from their assigned facility, (e.g., fire station) and ends when units arrive at the scene.

Emergency Services means law enforcement, fire service, ambulance service and other similar services from agencies with which Developer establishes protocols for Incident or Emergency response, safety and security procedures, as set forth in the Traffic Incident Management Plan in Section 23.3.2.2 of the Technical Provisions.

Emergency Supervisor has the meaning given in Section 2.14.2.9 of the Technical Provisions.

Encroachment Agreement means an agreement between a Utility Owner and NCDOT related to a Utility Adjustment or Betterment, in the form attached as Exhibit 6-02 of the Technical Provisions.

Engineer of Record (EOR) has the meaning given in Section 2.14.1.7 of the Technical Provisions.

Environment means air, soils, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, biological resources, including endangered, threatened and sensitive species, natural systems, including ecosystems, and historic, archeological and paleontological resources.

Environmental Approvals means all Governmental Approvals arising from or required by any Environmental Law in connection with development of the Project.

Environmental Commitment (also **Environmental Permits, Issues and Commitments**) means an environmental requirement that must be fulfilled before, during or after construction. Environmental Commitments include commitments to avoid impacts in

specified areas, complete environmental investigations before construction impacts, or to perform specified actions after completion of construction.

Environmental Compliance Manager has the meaning given in Section 2.14.1.8 of the Technical Provisions.

Environmental Compliance and Mitigation Plan (ECMP) means Developer's plan, to be prepared under the CEPP described in the Developer Management Plan, for performing all environmental mitigation measures set forth in the Environmental Approvals, including the NEPA Approval and similar Governmental Approvals for the Project or the Work, or set forth in the CA Documents, and for complying with all other conditions and requirements of the Environmental Approvals.

Environmental Law means any Law applicable to the Project or the Work regulating or imposing liability or standards of conduct that pertains to the Environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the Environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Work, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those relating to:

(a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;

(b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;

(c) Releases of Hazardous Materials;

(d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;

(e) The operation and closure of underground storage tanks;

(f) and safety of employees and other persons; and

(g) Notification, documentation, and record keeping requirements relating to the foregoing.

Without limiting the above, the term "Environmental Laws" shall also include the following:

(i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;

(ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;

(iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);

(iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;

(v) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;

(vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);

(vii) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), as amended;

(viii) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;

(ix) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;

(x) The Oil Pollution Act (33 U.S.C. §§ 2701, *et. seq.*), as amended;

(xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;

(xii) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;

(xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;

(xiv) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*);

(xv) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;

(xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;

(xvii) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;

(xviii) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended; and

(xix) similar State Environmental Laws.

Environmental Litigation means any lawsuit that is filed in a court of competent jurisdiction and seeks to overturn, set aside, enjoin, or otherwise inhibit the implementation of a federal, state, or local agency's approval of the Project based on the agency's alleged non-compliance with applicable Laws (including Environmental Laws), including the National Environmental Policy Act, 42 U.S.C. § 4231 *et seq.*; Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303(c); the National Historic Preservation Act, 16 U.S.C. § 470; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; and the Endangered Species Act, 16 U.S.C. § 1531 *et seq.;* and other federal, state, or local Laws.

Environmental Protection Training Program (EPTP) means the program to be initiated by Developer to ensure the Work is conducted in compliance with all Environmental Laws and Environmental Approvals applicable to the Project as more particularly described in Section 2.4.9.2 of the Technical Provisions.

Equity IRR means the nominal and blended post-tax internal rate of return to the Committed Investment described in clause (a) of the definition of Committed Investment, over the full Term calculated using the Base Case Financial Model as the discount rate that, when applied to Committed Investment cash flows, gives a zero net present value. For purposes of this definition,

(a) The phrase "post-tax" refers only to U.S. federal and State income tax liability of Developer or its Equity Members and specifically excludes (i) any foreign income tax and other tax of any kind and (ii) any withholding tax, including any tax that Developer or an Equity Member is obligated to withhold on Distributions (whether actual or constructive) or other payments or allocations to Equity Members or holders of debt or equity interests in Developer or an Equity Member under 26 U.S.C. §§ 1441 – 1446, notwithstanding 26 U.S.C. § 1461; and

(b) The phrase "cash flows" refers to Distributions described in clause (a) of the definition of Distributions, minus Committed Investment described in clause (a) of the definition of Committed Investment.

Equity Member(s) means any Person with a direct equity interest in Developer.

Equity Transfer means any assignment, mortgage, encumbrance, conveyance, sale, or other transfer of equity interest in Developer.

Erosion and Sedimentation Control Plan has the meaning given in Section 13 of the Technical Provisions.

Escrow Agent has the meaning set forth in Section 22.5.2 of the Agreement.

ETC Prepaid Account means a pre-paid account linked to a Transponder or equivalent technology allowing the automatic deduction of tolls related to the HOT Lanes.

ETC Services has the meaning set forth in Exhibit 18 of the Agreement.

ETCS Activity Monthly Reports means the monthly report Developer submits to NCDOT as set forth in Section 24 of the Technical Provisions.

ETCS Demonstration Period means the demonstration period with respect to the ETCS as set forth in Section 24.6.3 of the Technical Provisions.

ETCS Substantial Completion means that Developer has provided documentation of successful completion of ETCS factory acceptance testing and on-site acceptance testing, as set forth in Section 24.6.3 of the Technical Provisions.

ETCS Testing Plan has the meaning set forth in Section 24.6 of the Technical Provisions.

Exempt Refinancing means:

(a) Any Refinancing that was fully and specifically identified and taken into account in the Base Case Financial Model;

(b) Amendments, modifications, supplements or consents to Funding Agreements and Security Documents, and the exercise by a Lender of rights, waivers, consents and similar actions, in the ordinary course of day-to-day loan administration and supervision that do not, individually or in the aggregate, provide a financial benefit to Developer;

(c) Movement of monies between the Project accounts in accordance with the terms of Funding Agreements and Security Documents or the Project Trust Agreement;

(d) Any of the following acts by a Lender of senior lien priority Project Debt: (i) The syndication of any of such Lender's rights and interests in the senior Funding Agreements; (ii) the grant by such Lender of any rights of participation, or the disposition by such Lender of any of its rights or interests, in respect of the senior Funding Agreements in favor of any other Lender of senior lien Project Debt or any other investor; or (iii) the grant by such Lender of any other form of benefit or interest in either the senior Funding Agreements or the revenues or assets of Developer, whether by way of security or otherwise, in favor of any other Lender of senior lien Project Debt or any investor; and

(e) Periodic resetting and remarketing of tax-exempt or taxable bonds that bear interest at a variable or floating rate and are money market eligible under SEC Rule 2a-7.

Exempt Vehicle(s) has the meaning set forth in Part I of Exhibit 4 to the Agreement.

Existing Assets means all NCDOT-owned assets in the Existing Right of Way in existence as of the Effective Date.

Existing General Purpose Lanes means the Limited Access Highway lanes existing as of the Technical Proposal Due Date within the Existing Right of Way (excluding the Existing HOV Lanes) that are open for free use to all motor vehicles allowed on Limited Access Highway Lanes. Unless expressly specified otherwise in the CA Documents, the Existing General Purpose Lanes include existing auxiliary lanes, ramps, tapers and Shoulders adjacent thereto.

Existing HOV Lanes means the existing HOV lanes within the Existing Right of Way as of the Technical Proposal Due Date.

Existing Right of Way or **Existing ROW** means the real property within the lines identified in Exhibit 9 to the Agreement in which NCDOT has rights through fee simple title, easement or other agreements as of the Effective Date of the Agreement, as such lines may be further delineated and adjusted by Developer in accordance with Section 7 of the Technical Provisions. The term specifically includes all air space, surface rights and subsurface rights within the limits of the Existing Right of Way.

Existing Utility Property Interest means any right, title or interest in real property (e.g., a fee or an easement) claimed by a Utility Owner as the source of its right to maintain an existing Utility in such real property, which is compensable in eminent domain.

E-ZPass means the trademark for the regional ETC system operated by an Interagency Group (IAG) of Developers.

E-ZPass ETC System means the overall system of hardware, software and networks that are used for processing E-ZPass transactions and managing E-ZPass accounts.

E-ZPass Reciprocity Agreement means the agreement requiring reciprocity among Other Developers in the E-ZPass ETC System.

Fair Market Value means with respect to the Developer's Interest the following, determined according to the procedures set forth in Exhibit 15 to the Agreement:

(a) The amount that a willing and able buyer would offer, and a willing and able seller would accept, for the purchase and sale of the Developer's Interest, in an arm's length transaction, assuming:

(i) Neither party is under economic compulsion or has special bargaining power;

(ii) Subject to clause (e) below, the buyer possesses all information in the possession of Developer relating to the Project, its condition, the Work, the CA Documents, and the revenues and expenses of Developer;

(iii) The event or circumstance that requires determination of fair market value had not occurred and accordingly the Developer's Interest would remain in effect and Developer would remain a going concern for the balance of the original Term and would not receive or be entitled to receive any compensation for fair market value from NCDOT under the Agreement;

(iv) Subject to clause (e) below, there exists no prior, known or reasonably foreseeable unusual temporary event or circumstance specific to the Project (e.g. damage or destruction) or to the toll road project financing market (as distinguished from general market, economic and environmental conditions), positive or negative, except to the extent such an event or circumstance is not yet rectified and affects the existing or future condition or continued viability of the Project or the cost to rectify and recover, in which case Fair Market Value will reflect the cost of such event or circumstance, positive or negative (if such event or circumstance consists of damage or destruction, Fair Market Value will reflect (A) the estimated cost to repair and replace the damage or destruction and (B) the loss of Toll Revenues during the estimated time to repair and replace the damage or destruction, and Developer will retain the right to insurance coverage for loss occasioned thereby);

(v) There would occur no future unusual temporary event or circumstance specific to the Project (e.g. damage or destruction) or the toll road project financing market (as distinguished from general market, economic and environmental conditions), positive or negative, not known or reasonably foreseeable at the time of appraisal;

(vi) There would occur no future Change in Law not known or reasonably foreseeable at the time of appraisal; and

(vii) There exists no adverse effect from a NCDOT Default, and both Parties would generally continue to perform their respective obligations (including Developer's Renewal Work and Upgrade obligations) under the CA Documents for the remainder of the Term absent early termination.

(b) If the event triggering Fair Market Value determination occurs prior to the last Project Section to achieve Substantial Completion, then it also shall be assumed that Substantial Completion for such Project Section will occur or has occurred by the applicable scheduled Substantial Completion Date and that the Term will continue thereafter for the full originally stated Term; and valuation shall take into account the capital costs previously expended and expected capital costs to achieve Substantial Completion, Final Acceptance and Final Completion, expected dates of Substantial Completion, Final Acceptance, and Final Completion under the then Project Schedule, and existing and expected circumstances affecting cost and the schedule for performance, including existing and expected delay both due to Relief Events and to other circumstances that are not Relief Events. The foregoing amount shall be subject to reduction as provided in clause (c) below.

(c) If Fair Market Value is being determined where the Termination Date precedes Substantial Completion of all Project Sections, then there shall be subtracted from the amount under clause (b) above the amount of capital costs and investment (including capitalized interest) that Developer would be reasonably expected to incur from and after the Termination Date to achieve Substantial Completion, Final Acceptance and Final Completion.

(d) Fair Market Value excludes the value of cash in accounts held by or on behalf of Developer, including in Lender accounts and reserve accounts. Fair Market Value also excludes the value of cash held in the Handback Requirements Reserve, if any.

(e) The effect of any Compensation Event occurring prior to determination of Fair Market Value shall be addressed as follows:

(i) To the extent Developer previously received payment of a Compensation Amount for adverse cost and revenue impacts accruing from and after the Early Termination Date from such Compensation Event, Fair Market Value shall not further compensate Developer for such impacts, and accordingly Fair Market Value shall be determined by taking into account the adverse cost and revenue impacts accruing from and after the Early Termination Date;

(ii) To the extent a Compensation Amount has previously been determined by mutual agreement or pursuant to the Dispute Resolution Procedures and would be payable to Developer after the Early Termination Date for adverse cost and revenue impacts accruing from and after the Early Termination Date from such Compensation Event, Fair Market Value shall include the present value of the right to such future payments (and, as provided in Section 19.7.1 of the Agreement, Developer shall have no other Claim for such future adverse cost and revenue impacts); and

(iii) To the extent no Compensation Amount has previously been determined for such Compensation Event, then Fair Market Value shall be determined as if the Compensation Event had not occurred and therefore is unaffected by any adverse cost and revenue impacts of the

Compensation Event accruing from and after the Early Termination Date (and, as provided in Section 19.7.1 of the Agreement, Developer shall have no other Claim for such future adverse cost and revenue impacts).

Fast Cure Period means the period to cure (if any) a Noncompliance Event in the column labeled "Fast Cure Period" as set forth in Table 23.1 and Table 23.2 of Section 23 of the Technical Provisions.

Federal Minimum Average Speed Standard has the meaning set forth in Part VII.C(1) of Exhibit 4 to the Agreement.

Federal Requirements means the provisions required to be part of federal-aid construction contracts, including the provisions set forth in Exhibit 6 to the Agreement.

FHWA Oversight Agreement means the Stewardship and Oversight Agreement between FHWA and NCDOT dated August 2009, and any successor agreements.

Final Acceptance means, for each Project Section, the occurrence of all the events and satisfaction of all the conditions for the Project Section set forth in Section 7.7.4 of the Agreement, as and when confirmed by NCDOT's issuance of a certificate in accordance with the procedures and within the time frame established in Section 7.7.4 of the Agreement.

Final Acceptance Deadline means, as applicable, the following: (a) North Section Final Acceptance Deadline; (b) Central Section Final Acceptance Deadline; or (c) South Section Final Acceptance Deadline.

Final Completion means the occurrence of all the events and satisfaction of all the conditions set forth in Section 7.7.5 of the Agreement, as and when confirmed by NCDOT's issuance of a certificate in accordance with the procedures and within the time frame established in Section 7.7.5 of the Agreement

Final Completion Deadline means the deadline for achieving Final Completion as set forth in the Milestone Schedule, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

Final Design means, depending on the context: (a) the Final Design Documents, (b) the design concepts set forth in the Final Design Documents or (c) the process of development of the Final Design Documents.

Final Design Documents means the Design Documents which provide the complete and final documents necessary or related to construction, operations and maintenance of the Project or any portion thereof and any Utility Adjustments included in the Design Work, Construction Work or O&M Work performed by Developer.

Final Design Submittal has the meaning given in Section 2.9.2.3 and 24.9 of the Technical Provisions.

Financial Close means satisfaction of all of the conditions set forth in Section 4.1.3.3 of the Agreement.

Financial Close Security means the bond or letter of credit in the amount provided by Developer to NCDOT under Section 6.7 of Volume I of the RFP (Instructions to Proposers).

Financial Model Formulas means the mathematical formulas that Developer submitted with its Project Plan of Finance, as the same may be changed pursuant to Section 5.4.3 of the Agreement, for projecting Equity IRR, which mathematical formulas are used as part of the Base Case Financial Model and each Base Case Financial Model Update, but without the data and information used by or incorporated in the Base Case Financial Model or Base Case Financial Model Update.

Financial Modeling Data means all back-up information regarding the basis for Developer's estimates, projections and calculations in its Proposal, in the Base Case Financial Model and in Base Case Financial Model Updates of revenues, pricing, costs, expenses, repayment of Project Debt, Distributions and Equity IRR, including:

(a) Form N of the Proposal (Detailed Costing Form);

(b) The data book submitted with the Proposal, fully describing all assumptions underlying the estimates, projections and calculations in the Base Case Financial Model, revisions thereto pursuant to Section 5.4.1 of the Agreement, and updates to such data book related to Base Case Financial Model Updates;

(c) The step by step instructions on the procedure to run and to optimize the Financial Model Formulas and Base Case Financial Model submitted with the Proposal, and updates thereto related to Base Case Financial Model Updates;

(d) The Base Case Traffic Model and any future updates thereto or new traffic models and traffic data prepared by or on behalf of Developer related to Base Case Financial Model Updates;

(e) Copies of all offers, and all data and information within this definition, received from all Contractors (at all tiers) identified in the Proposal and any other potential Contractors that provided data and information used as the basis for Form N of the Proposal;

(f) Copies of all offers, and all data and information within this definition, received from all Contractors (at all tiers) related to any Compensation Event; and

(g) All other supporting data, technical memoranda, calculations, formulas, unit and materials prices (if applicable) and such other cost, charge, fee and revenue information used by Developer in the creation and derivation of its Proposal or of any Base Case Financial Model Update, or related to any Compensation Event.

Financial Proposal Due Date means March 13, 2014.

Fiscal Year means the calendar year or any other consecutive 12-month period selected by Developer and approved by NCDOT.

Float means the amount of time that any given activity or logically connected sequence of activities shown on the Project Schedule may be delayed before it will affect Final

Completion. Such Float is generally identified as the difference between the early completion date and late completion date for activities as shown on the Project Schedule.

Force Majeure Event means the occurrence of any of the following events that materially and adversely affects performance of Developer's obligations, provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project, in each case occurring within the State; (b) any act of terrorism or sabotage that causes direct physical damage to the Project; (c) nuclear explosion or contamination, in each case occurring within the State; (d) riot and civil commotion on or in the immediate vicinity of the Project; (e) fire, explosion, flood, earthquake, hurricane, or tornado, in each case that causes direct physical damage to the Project; or (f) national or State-wide (i.e. State of North Carolina) strike not specific to Developer that has a direct adverse impact on Developer's ability to obtain materials, equipment or labor for the Project.

Foundation Design Report has the meaning given in Section 8.3.2 of the Technical Provisions.

Funding Agreement means:

(a) Any loan agreement, funding agreement, account maintenance or control agreement, premium letter, insurance or reimbursement agreement, intercreditor agreement, participation agreement, subordination agreement, trust indenture, agreement from any shareholder, member, partner or joint venture member in favor of any Lender, hedging agreement, interest rate swap agreement, guaranty, indemnity agreement, agreement between any Contractor and any Lender, or other agreement by, with or in favor of any Lender pertaining to Project Debt (including any Refinancing), other than Security Documents;

(b) Any note, bond or other negotiable or non-negotiable instrument evidencing the indebtedness of Developer for Project Debt (including any Refinancing); and

(c) Any amendment, supplement, variation or waiver of any of the foregoing agreements or instruments.

Funding Competition Notice means the notice issued to Developer by NCDOT in accordance with Section 4.1.3.9 of the Agreement.

Funding Competition Plan means the plan developed by Developer and NCDOT in accordance with Section 4.1.3.9 of the Agreement.

General Purpose Lanes or **GP Lanes** means the Existing General Purpose Lanes, as may be modified by Developer's Final Design in accordance with the CA Documents.

Geotechnical Design Report means the reports which include the results of any investigations, sampling, testing, analysis, interpretation, monitoring results and developed design or construction recommendations including assumptions prepared by Developer to support the design of the Work.

Geotechnical Engineer has the meaning given in Section 2.14.2.4 of the Technical Provisions.

Geotechnical Reports means the reports which meet the requirements described in Section 8.2.2 of the Technical Provisions.

Good Industry Practice means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor, operator or maintenance provider seeking in good faith to comply with its contractual obligations, complying with the CA Documents and all applicable Laws and Governmental Approvals, and engaged in the same type of undertaking in the United States under similar circumstances and conditions.

Governmental Approval means any permit, license, consent, concession, grant, franchise, authorization, waiver, variance or other approval, guidance, protocol, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them provided by Governmental Entities including State, local, or federal regulatory agencies, agents, or employees, which authorize or pertain to the Project or the Work.

Governmental Entity means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than NCDOT and NCTA.

Governor Declared Emergencies means emergencies officially declared by the Governor of North Carolina.

Guarantor means any Person that is the obligor under any guaranty in favor of NCDOT required under the Agreement, including any guaranty of the Design-Build Contract or any O&M Contract.

Handback Evaluation Criteria means the minimum physical conditions described in Table 23.3 in Section 23 of the Technical Provisions that the Project assets, Structures, systems and equipment shall conform to in order to meet the minimum Handback Requirements pursuant to Section 23 of the Technical Provisions.

Handback Renewal Work Plan means the plan prepared in accordance with Section 23 of the Technical Provisions.

Handback Requirements means the terms, conditions, requirements and procedures governing the condition in which Developer is to deliver the Project and the Elements within the Project Right of Way to NCDOT upon expiration of the Term or Early Termination Date, as set forth in Section 23 of the Technical Provisions.

Handback Requirements Letter of Credit means a letter of credit delivered to NCDOT in lieu of the Handback Requirements Reserve, in accordance with Sections 8.10.5 and 16.3 of the Agreement.

Handback Requirements Reserve has the meaning set forth in Section 8.10.1.1 of the Agreement.

Hazardous Materials means any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. "Hazardous Materials" includes the following:

(a) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of "hazardous substance", "hazardous waste", "hazardous material", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", "toxic waste", "toxic material", or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws);

(b) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;

(c) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;

(d) Any flammable substances or explosives;

(e) Any radioactive materials;

(f) Any asbestos or asbestos-containing materials;

(g) Any lead and lead-based paint;

(h) Any radon or radon gas;

(i) Any methane gas or similar gaseous materials;

(j) Any urea formaldehyde foam insulation;

(k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;

(l) Pesticides;

(m) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a

hazard to the health and safety of the owners, operators, Users or any Persons in the vicinity of the Project or to the indoor or outdoor Environment; and

(n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

Hazardous Materials Management means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Project, Project Right of Way or the Work, as well as investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever approach is effective, most cost-efficient and authorized under applicable Law.

Hazardous Materials Management Plan means Developer's plan for Hazardous Materials Management originating from within the Project Right of Way , as more particularly set forth in Section 2.4.9.3 of the Technical Provisions.

Hazardous Materials Manager has the meaning given in Section 2.14.2.11 of the Technical Provisions.

Hazardous Materials Report means the report developed for TIP I-3311C, I-5405, and I-4750 based on a field reconnaissance conducted on February 18, 2013 by the GeoTechnical Section of NCDOT's Geotechnical Engineering Unit.

High Occupancy Vehicle(s) has the meaning set forth in Part I of Exhibit 4 to the Agreement.

Highway means a travel way for vehicular traffic that is included in the State highway system.

Highway Service Systems means NCDOT's or a Governmental Entity's lighting and electrical systems, traffic control systems, communications systems and irrigation systems serving street or highway purposes (including ITS and Intelligent Vehicle Highway System facilities).

HOT Lanes means the Limited Access Highway lanes described in Section 10.2.1 of the Technical Provisions.

Identified Contractor means any Contractor listed in the Proposal to perform any portion of the Work.

Immediate Corrective Action means a notice issued by NCDOT Roadside Environmental Unit that an erosion control inspection reveals that the Work is not in compliance with the Sedimentation Pollution Control Act and/or the NPDES permit and the overall erosion control grade is 6 or below.

Incident means any unplanned event within the Project Right of Way that causes potential or actual disruption to the free flow of traffic.

Incident Management Plan means Developer's plan for detection and response to Incidents or Emergencies, as part of the PMP.

Incident Response means the actions taken by Developer, as described in the O&M Plan, to respond to an Incident within the Project Right of Way.

Incidental Charges means:

(a) Reasonable administrative fees for account maintenance and account statements;

(b) Reasonable fees and interest for toll violations, including costs of collection, in accordance with applicable Law; and

(c) Other reasonable fees and charges for customary incidental services to Users, in accordance with applicable Law.

Indemnified Parties means NCDOT, the State, and their respective successors, assigns, officeholders, officers, directors, members, agents, representatives, consultants and employees.

Ineligible Vehicles has the meaning set forth in Section 24.4.1 of the Technical Provisions.

Initial Base Case Senior Project Debt means: (a) the senior lien debt financing for Developer and (b) the first tier subordinate debt financing for Developer that meets the parameters set forth in clause (a)(iii)(B) of the definition of Senior Debt Termination Amount and is not Subordinate Debt, all in the face amount set forth in the Base Case Financial Model (without regard to the actual Initial Project Debt).

Initial Equity Members means those Equity Members as of the Effective Date.

Initial Funding Agreements means the Funding Agreements establishing the rights and obligations pertaining to the Initial Project Debt as executed and delivered by Developer and specifically identified in Exhibit 3 to the Agreement.

Initial Project Debt means the Project Debt to originally finance the Project and Work, in the total face amount at each lien priority, and with the particular Lenders, set forth Exhibit 3 to the Agreement, which Project Debt is evidenced by the Initial Funding Agreements and secured by the Initial Security Documents.

Initial Security Documents means the Security Documents securing the Initial Project Debt as executed and delivered by Developer and specifically identified in Exhibit 3 to the Agreement.

Initial Senior Debt Termination Amount means the Senior Debt Termination Amount as determined for the amount of the Initial Base Case Senior Project Debt that would be outstanding at the Early Termination Date assuming that the Initial Project Debt were the Initial Base Case Senior Project Debt and amortized according to the amortization of the Initial Base Case Senior Project Debt set forth in the Base Case Financial Model; provided that if the Early

Termination Date occurs before Financial Close, then Initial Senior Debt Termination Amount means zero.

Institutional Lender means:

(a) The United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;

(b) Any (i) bank, savings and loan organization, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or bank qualified to do business as such, as applicable under the laws of the United States or any state thereof, (iii) pension fund, foundation or university or college endowment fund, (iv) real estate investment fund, infrastructure investment fund, investment bank, pension advisory firm, mutual fund, investment company or money management firm, (v) entity which is formed for the purpose of securitizing mortgages, whose securities are sold by public offering or to qualified investors under the U.S. Securities Act of 1933, as amended, (vi) Person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the U.S. Securities Act of 1933, as amended, within two years of its making;

(c) Any "qualified institutional buyer" under Rule 144(a) under the U.S. Securities Act of 1933 or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms; or

(d) Any other financial institution or entity designated by Developer and approved by NCDOT (provided that such institution or entity, in its activity under this Agreement, is acceptable under then current guidelines and practices of NCDOT);

provided, however, that each such entity (other than entities described in clause (b)(v), clause (c) and clause (d) of this definition), or combination of such entities if the Institutional Lender is a combination of such entities, shall have individual or combined assets, as the case may be, of not less than $1 billion; provided, further, that an entity described in clause (b)(v) of this definition must have assets of not less than $100 million. The foregoing dollar minimums shall automatically increase at the beginning of each calendar year by the percentage increase, if any, in the CPI during the immediately preceding calendar year, determined by comparing the CPI most recently published for the immediately preceding year with the CPI most recently published for the second preceding year.

Insurance Policies means all of the insurance policies Developer is required to carry pursuant to Section 16.1 of the Agreement and Exhibit 13 to the Agreement.

Insurance Unavailability means either:

(a) Any Insurance Policy coverage required under Section 16.1 of the Agreement and Exhibit 13 to the Agreement is completely unavailable from insurers meeting the requirements set forth in Section 16.1.2.1; or

(b) Provision of all such Insurance Policy coverages has become unavailable at Commercially Reasonable Insurance Rates from insurers meeting the requirements set forth in Section 16.1.2.1.

For the purpose of clause (b), the only increases in premiums that may be considered are those caused by changes in general market conditions in the insurance industry affecting insurance for project-financed highway facilities, and Developer shall bear the burden of proving that premium increases are the result of such changes in general market conditions. For the avoidance of doubt, no increase in insurance premiums attributable to particular conditions of the Project or Project Right of Way, or to claims or loss experience of any Developer-Related Entity or Affiliate, whether under an Insurance Policy required by this Section 16.1 or in connection with any unrelated work or activity of Developer-Related Entities or Affiliates, shall be considered in determining whether Insurance Unavailability exists or has occurred.

Intellectual Property means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trade marks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, plant varieties, business and domain names, inventions, solutions embodied in technology, and other intellectual activity, and applications of or for any of the foregoing, subsisting in or relating to the Project, Project design data or Project traffic data. Intellectual Property includes toll-setting and traffic management algorithms, and software used in connection with the Project (including but not limited to software used for management of traffic on the Project), and Source Code. Intellectual Property also includes the Financial Model Formulas, Base Case Financial Model, Financial Modeling Data and trade secret information contained in the Project Plan of Finance. Intellectual Property is distinguished from physical construction and equipment itself and from drawings, plans, specifications, layouts, depictions, manuals and other documentation that disclose Intellectual Property.

Intellectual Property Escrow has the meaning set forth in Section 22.5.2 of the Agreement.

Intelligent Transportation System has the meaning set forth in Section 21 of the Technical Provisions.

Intelligent Vehicle Highway System means smart vehicle and smart highway technologies to improve the safety, efficiency and environmental impact of highway facilities.

Interactive Voice Response or **IVR** means a technology that allows a computer to interact with humans through the use of voice and dual-tone multi-frequency signaling (touch-tone) to automatically access information without human assistance.

Interest Rate Buffer Amount means the sum of the following: (a) the Maximum Available Funds Differential and (b) the amount of funding required from NCDOT to reflect the impact of the changes to Benchmark Interest Rate(s) in the Base Case Financial Model up to 125 basis points as determined on a weighted interest rate basis across all Benchmark Interest

Rate(s) based on the applicable debt facility size, pursuant to and subject to the limitations of Sections 4.1.3.5 and 5.2 of the Agreement.

Interest Rate Protection Period means the period beginning on the Financial Proposal Due Date and ending on the earliest of (a) 10:00 a.m. eastern time on the date of Financial Close (b) 10:00 a.m. eastern time on the Project Financing Deadline, or (c) 10:00 a.m. eastern time on the date of execution of any interest rate hedging instrument by Developer.

Interface Control Document means the document setting forth interface standards including the manner in which data shall be transmitted and received between the CSC Host and the ETCS.

Intermediate Design Submittal has the meaning given in Sections 2.9.2.2 and 24.7.2 of the Technical Provisions.

Interoperability means the ability of diverse toll collection systems to work together through interface and systems controls.

Interval of Recurrence means for each Noncompliance, whether a Construction Noncompliance Event or O&M Noncompliance Event, the period of time after which, unless already cured, such Noncompliance will be deemed to have occurred anew and therefore assessed another Construction Noncompliance Event Adjustment or O&M Noncompliance Event Adjustment, as applicable; provided, however, that there shall be no Cure Period or Fast Cure Period for such new Noncompliance. The Intervals of Recurrence are set forth in Table 23.1 and Table 23.2 of Section 23 of the Technical Provisions.

Investigative Work Plan means the plan of investigative and remedial action required by applicable Law, Environmental Approvals or the Hazardous Materials Management Plan to be prepared if Hazardous Materials are encountered or spilled, dumped, discharged or released at any time on, under, within or about the Project Right of Way.

Irregular Transaction means any Transaction, which does not generate a proper transponder read and/or video image and for which the vehicle license plate information cannot be identified.

Key Contract means any one of the following Contracts for Work Developer causes to be performed:

(a) All prime Contracts for the Construction Work, including the Design-Build Contract;

(b) All prime Contracts for design or construction of the Electronic Toll Collection System, unless with NCDOT;

(c) The CEI Contract;

(d) All prime O&M Contracts, including any to operate the Electronic Toll Collection System or collect tolls, unless with NCDOT;

(e) All prime project or program management services Contracts;

(f) All Contracts at any tier with an Identified Contractor; and

(g) All other prime Contracts with a single Contractor which individually or in the aggregate total in excess of $25 million.

The term "**Key Contracts**" shall mean all such Contracts in the aggregate or more than one of such Contracts. For purposes of this definition, the term "prime" means a direct contractual relationship between Developer and a Contractor.

Key Contractor means the Contractor under any Key Contract.

Key Personnel means those individuals appointed by Developer and approved by NCDOT from time to time to fill the "Key Personnel" positions. The specific individuals appointed by Developer and approved by NCDOT to initially fill certain of the Key Personnel positions are identified in Exhibit 2 to the Agreement and Section 2.14 of the Technical Provisions.

Lane Closure means (whether capitalized or not) a Closure of one or more Traffic Lanes on the Travelway that does not result in a Road Closure.

Law or **Laws** means (a) any statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding a Claim or Dispute), (c) any binding judicial or administrative order or decree (other than regarding a Claim or Dispute), (d) any written directive, guideline, policy requirement or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by NCDOT within the scope of its administration of the CA Documents) or (e) any similar form of decision of or determination by, or any written interpretation or administration of any of the foregoing by, any Governmental Entity, in each case which is applicable to or has an impact on the Project or the Work, whether taking effect before or after the Effective Date, including Environmental Laws. "Laws", however, excludes Governmental Approvals.

Lead Design Firm means _____.

Lead Underwriter(s) means those underwriters approved by NCDOT under Volume I of the RFP (Instructions to Proposers) and identified in the Proposal.

Lender means each of the holders and beneficiaries of Security Documents and their respective successors, assigns, participating parties, trustees and agents, including the Collateral Agent.

Lender's Direct Agreement means the agreement by and among NCDOT, Developer and the Collateral Agent, in the form attached as Exhibit 10 to the Agreement.

Level Two Customer Service has the meaning set forth in Section 24.3.2.10 of the Technical Provisions.

LIBOR means the offered rate per annum (rounded up to the next highest one one-thousandth of one percent (0.001%)) for deposits in U.S. dollars for a one-month period which appears on the Reuters Screen LIBOR01 Page available at approximately 11:00 A.M., London time, on the date of determination, or if such date is not a date on which dealings in U.S. dollars are transacted in the London interbank market, then on the next preceding day on

which such dealings were transacted in such market. All interest based on LIBOR shall be calculated on the basis of a 360-day year for the actual days elapsed.

Limited Access Highway means any Highway to or from which access is denied or controlled, in whole or in part, from or to abutting land or intersecting streets, roads, Highways, alleys or other public or private ways.

Line or line means, in the context of Utilities or Highway Service Systems, a line, pipeline, conduit or cable used for utility purposes, including underground, surface or overhead facilities.

Long Stop Date means the outside deadline for achieving Substantial Completion for all Project Sections, as set forth in the Milestone Schedule, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

Loss or **Losses** means any loss, damage, injury, liability, obligation, cost, response cost, expense (including attorneys', accountants' and expert witnesses' fees and expenses (including those incurred in connection with the enforcement of any indemnity or other provision of the Agreement)), fee, charge, judgment, penalty, fine or Third Party Claims. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

Low Occupancy Vehicle(s) has the meaning set forth in Part I of Exhibit 4 to the Agreement.

Maintenance Manual means the manual prepared by Developer in accordance with Section 23 of the Technical Provisions describing the maintenance procedures for the facilities and roadways within the Project Right of Way.

Major Permits means the Governmental Approvals identified in Exhibit 12 of the Agreement.

Management & Staffing Plan means has the meaning given in Section 2.4.1 of the Technical Provisions.

Manuals and Guidelines means the manuals, guidelines and other documents referenced in Book 3 and incorporated into the Technical Requirements by such reference.

Maximum Available Funds means $170 million.

Maximum Available Funds Differential means the Maximum Available Funds minus the lesser of (a) the Public Funds Amount, as may be adjusted at Financial Close pursuant to Sections 4.1.3.6, 4.1.3.7 and 4.1.3.8 of the Agreement, or (b) the Maximum Available Funds.

Maximum Payment Curve means the cap on the aggregate amount of payment of the Public Funds Amount which may be made at any specified time under the Agreement set forth in Attachment 3 to Exhibit 5 to the Agreement.

Mean Time Between Failure(s) means the average time between failures of an Element or an individual component, system or subsystem of an Element.

Mean Time Between Repair means the average time between failure of an Element or an individual component, system or subsystem of an Element and such Element or individual component, system or subsystem of an Element being returned to full service.

Milestone Schedule means the schedule of deadlines set forth in Exhibit 7 to the Agreement.

Milestone Schedule Deadline means one or more of the deadlines identified in Exhibit 7 to the Agreement.

Motorcyle(s) has the meaning set forth in Part I of Exhibit 4 to the Agreement.

NCDOT means the North Carolina Department of Transportation, and any entity succeeding to the powers, authorities and responsibilities of NCDOT invoked by or under the CA Documents.

NCDOT-Caused Delays means any of the following events, to the extent they result in a material delay or interruption in performance of any obligation under the Agreement, and provided such events are beyond Developer's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law of any of the Developer-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer:

(a) Failure of NCDOT to issue NTP1 or NTP2 within 30 days after the conditions set forth in Section 7.5 of the Agreement are satisfied;

(b) NCDOT Changes;

(c) Failure or inability of NCDOT to file for condemnation within 60 Days after NCDOT's receipt of a complete condemnation packet approved by NCDOT staff for the Proposed Right of Way;

(d) Failure of NCDOT to relocate a grave located within the Proposed Right of Way within 180 Days after NCDOT's receipt of the information required from Developer pursuant to the CA Documents;

(e) Failure of NCDOT to perform asbestos services as set forth in Section 7.3 of the Technical Provisions, including inspection of the improvements for the presence of asbestos and, when asbestos is present, asbestos abatement on the improvements to the extent NCDOT elects to perform such asbestos abatement, within 60 days after receipt by NCDOT of notification from Developer of the Proposed Right of Way acquisition and that the improvement is vacant; or

(f) Failure of NCDOT to provide responses to proposed schedules, plans, Design Documents, condemnation and acquisition packages, and other Submittals and matters submitted to NCDOT after the Effective Date for which response is required under the CA Documents as an express prerequisite to Developer's right to proceed or act, within the time periods (if any) indicated in the CA Documents, or if no time period is indicated, within a reasonable time, taking into consideration (i) the nature, importance and complexity of the submittal or matter;

(ii) the number of submittals or such other items which are then pending for NCDOT's response, (iii) the completeness and accuracy of the submittal or such other item, and (iv) Developer's performance and history of Nonconforming Work under the CA Documents, following delivery of written notice from Developer requesting such action in accordance with the terms and requirements of the CA Documents.

Any proper suspension of Work pursuant to Section 17.3.8 of the Agreement shall not be considered a NCDOT-Caused Delay.

NCDOT Change means any of the following events that increases Developer's costs or adversely impacts Toll Revenues or both, by more than $10,000:

(a) Any change that NCDOT has directed Developer to perform through a Change Order as described in Section 14.1 of the Agreement or a Directive Letter pursuant to Section 14.3 of the Agreement; and

(b) Any other event that the CA Documents expressly state shall be treated as a NCDOT Change.

NCDOT Claims Account means the trust account of that name established and maintained under the Project Trust Agreement.

NCDOT Default has the meaning set forth in Section 17.5.1 of the Agreement.

NCDOT-Provided Approvals means the NEPA Approvals required for the initial design and construction of the Central Section, North Section and South Section.

NCDOT Recoverable Costs means:

(a) The costs of any assistance, action, activity or Work undertaken by NCDOT which Developer is liable for or is to reimburse under the terms of the CA Documents, including the charges of third party contractors and reasonably allocated wages, salaries, compensation and overhead of NCDOT staff and employees, performing such action, activity or Work; plus

(b) Third-party costs NCDOT incurs to publicly procure any such third party contractors; plus

(c) Reasonable fees and costs of attorneys (including the reasonably allocated fees and costs of the North Carolina Attorney General's Office), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with defending claims by and resolving disputes with third party contractors; plus

(d) Interest on all the foregoing sums at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due under the applicable terms of the CA Documents and continuing until paid.

NCDOT Release(s) of Hazardous Material means, except as provided below, the introduction in, on or under the Project Right of Way of Hazardous Material directly by NCDOT, and their respective agents and contractors (excluding Developer). NCDOT Release(s) of Hazardous Material excludes, however, (i) any Hazardous Materials so introduced that are in or part of construction materials and equipment incorporated into the Facility and (ii) any Hazardous Materials identified in the "Known and Potential Hazardous Material Sites" identified in the Hazardous Materials Report described in clause (2) of the definition of Pre-Existing Hazardous Materials.

NCDOT Retained Elements means the following:

(a) General Purpose Lane pavement, including existing ramp pavement connecting the General Purpose Lanes to non-Limited Access Highways, outside Shoulder pavement, and inside Shoulder pavement at locations where the HOT Lane(s) and General Purpose Lanes are separated by an unpaved area;

(b) Bridges and roadways carrying I-85 and I-485 traffic, including ramps, loops, and collectors, beginning at the back of gore at I-77;

(c) Bridges and roadways carrying non-freeway traffic over the HOT Lanes;

(d) Bridges and roadways carrying NC 16 traffic north of I-77, including ramps, loops, and collectors, beginning at the back of gore at I-77;

(e) The following Bridges on I-277:

(i) Bridge #590332 – NC Music Factory / Railroads;

(ii) Bridge #590330 – N. Graham St.;

(iii) Bridge #590328 – N. Church St.;

(iv) Bridge #590327 – N. Tryon St.;

(v) Bridge #590326 – N. College St.;

(vi) Bridge #590322 – Undesignated Road / Old Railroad; and

(vii) Bridge #590320 – N. Brevard St.;

(f) The box culvert Structure (Structure #590288) over Irwin Creek located 0.55 miles north of I-277 junction with I-77;

(g) The outside causeway slopes at Lake Norman; and

(h) Elements within the areas marked as "Areas within the Existing Right of Way Delineating NCDOT O&M Work Responsibilities during the Operating Period" in Exhibit 9 to the Agreement.

For purposes of this definition, the limit of the General Purpose Lane pavement shall be: (1) the edge of the General Purpose Lanes nearest to the HOT Lane(s) at locations where the HOT Lane(s) and General Purpose Lanes are not separated by an unpaved area and shall exclude

the buffer or Shoulder between the General Purpose Lanes and the HOT Lanes or (2) the edge of the median Shoulder of the General Purpose Lanes nearest to the HOT Lane(s) where the HOT Lane(s) and General Purpose are separated by an unpaved area. For the purpose of clauses (b), (c), (d) and (e) of this definition, the Bridges and roadways include drainage systems, sidewalks, rails, barriers, signs, delineators, and other traffic devices immediately adjacent to and for use by travelers on such Bridges and roadways. For the purposes of clause (g) above, the outside causeway slopes at Lake Norman are limited to outside the outside guardrails on the causeway and NCDOT will be responsible for all maintenance and remedial work necessary to maintain the stability of the earthen causeway embankment slopes, including rock plating thereof. Developer shall be responsible for all other O&M Work on the outside causeway slopes throughout the Term.

NCDOT Retained Work means all Renewal Work of the NCDOT Retained Elements.

NC Quick Pass means the electronic toll collection system utilized by the North Carolina Turnpike Authority.

NCTA means the North Carolina Turnpike Authority, and any entity succeeding to the powers, authorities and responsibilities of NCTA invoked by or under the CA Documents.

NCTA Board means the North Carolina Turnpike Authority Board, and any entity succeeding to the powers, authorities and responsibilities of the NCTA Board invoked by or under the CA Documents.

NEPA Approval means each decision document issued by FHWA for the Project or a portion of the Project.

Noise Control has the meaning given in Section 2.8.1 of the Technical Provisions.

Noncompliance or Noncompliance Event means each failure to perform the Performance Requirements set forth in Table 23.1 and Table 23.2 of Section 23 of the Technical Provisions.

Noncompliance Event Classification means the relative classification from letter "A" through letter "E" set forth in Section 23.1.2.1 of the Technical Provision and assigned to Noncompliance Events as set forth in Table 23.1 and Table 23.2 of Section 23 of the Technical Provisions.

Noncompliance Points means the points that may be assessed for certain breaches or failures to perform by Developer, as set forth in Table 23.4 of Section 23 of the Technical Provisions.

Nonconforming Work Report means the report of Nonconforming Work furnished by Developer in accordance with Section 2.3.1 of the Technical Provisions.

Nonconforming Work Resolution Report means the report related to the resolution of the Nonconforming Work furnished by Developer in accordance with Section 2.3.1 of the Technical Provisions.

Nonconforming Work means Work that does not conform to the requirements of the CA Documents, the Governmental Approvals, applicable Law, the Design Documents or the Construction Documents.

North Section means that portion of the Project described in Section 1.1.2 of the Technical Provisions.

North Section Final Acceptance Deadline means the deadline for achieving Final Acceptance of the North Section, as set forth in the Milestone Schedule, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

Notice of Termination for Convenience means written notice issued by NCDOT to Developer terminating the Agreement in whole or in part for convenience.

Notice of Violation means a notice issued by the North Carolina Department of Environment and Natural Resources (NCDENR) of permit infractions and requests the violation be corrected immediately and may include fine or civil penalties.

NTP1 means a written notice issued by NCDOT to Developer authorizing Developer to proceed with NTP1 Work.

NTP1 Schedule of Values means a listing of all Payment Activities for the NTP1 Work in the format and to the detail as described in Section 2.2.2.3 of the Technical Provisions. Such detail shall include at a minimum the list of Submittals Developer intends to deliver as part of NTP1 Work and the associated production cost for such Submittals.

NTP1 Work means the portion of the Work that Developer is authorized to perform after issuance of NTP1, as described in Section 1.5 of the Technical Provisions.

NTP1 Work Payment Bond means the Payment Bond meeting the requirements set forth in Section 16.2.4 of the Agreement.

NTP2 means a written notice issued by NCDOT to Developer pursuant to Section 7.5.2.2 of the Agreement.

NTP2 Conditions Deadline means the outside date set forth in the Milestone Schedule by which Developer is obligated under the Agreement to satisfy all conditions to issuance of NTP2, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

O&M After Construction means the O&M Work that is the responsibility of Developer as described in Section 23.1.1.2 of the Technical Provisions.

O&M Annual Report means the annual report Developer submits to NCDOT for the O&M Work performed by Developer as set forth in Section 23 of Book 2.

O&M Contract means any direct Contract between Developer or an Affiliate and a third party for management, direction, supervision or performance of the O&M Work or any significant portion thereof. O&M Contract includes any direct Contract between Developer or an Affiliate and a third party for operation or maintenance of all or any significant portion of the tolling system for the Project. There may be more than one O&M Contract concurrently in effect. For

the purpose hereof, "significant portion" means that the third party's annual contract price equals or is reasonably expected to equal at least 15% of Developer's annual budget for O&M Work (excluding budgeted costs for Renewal Work to be performed by Developer).

O&M Contractor means the Contractor under any O&M Contract. There may be more than one O&M Contractor concurrently performing the O&M Work for Developer.

O&M During Construction means the O&M Work that is the responsibility of Developer as described in Section 23.1.1.1 of the Technical Provisions.

O&M Manager has the meaning set forth in Section 2.14.1.9 of the Technical Provisions.

O&M Monthly Report means the monthly report Developer submits to NCDOT for the O&M Work performed by Developer as set forth in Section 23 of the Technical Provisions.

O&M Noncompliance Event means the failure to meet one of the minimum performance requirements during the Operating Period in Table 23.2 of Section 23 of the Technical Provisions.

O&M Plan means the plan prepared by Developer describing the plan, systems, approach, staffing and schedule to operate and maintain the facilities and roadways within the Project Right of Way, as well as the Operations Manual and Maintenance Manual that describe all of the activities, procedures and information necessary to operate and maintain the facilities and roadways within the Project Right of Way, as further described in Section 23 of the Technical Provisions.

O&M Records means all data in connection with maintenance, operation, renewals and expansion of the Project including (a) all inspection and inventory records, whether generated by Developer or a third party, (b) any communication to and/or from NCDOT or a third party, and (c) any information system (as may be introduced or amended by NCDOT from time to time) in connection with operation, maintenance, renewal or handback of the Project that NCDOT requires Developer to use or operate.

O&M Work means any and all operation, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Project, including Renewal Work.

Off-Site Reclamation Procedures means the Off-Site Reclamation Procedures in Volume II, Book 3.

Open Book Basis means allowing the relevant Party to review all underlying assumptions and data associated with the issue in question, including, but not limited to, assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, traffic volumes by User Classification, Toll Revenues, changes in toll rates, and other items reasonably required by the relevant Party to satisfy itself as to reasonableness.

Open Road Tolling (ORT) means that toll collection is conducted (a) exclusively via vehicle identification with transponders and/or video capture of the license plate and (b) in an open multilane free-flow highway environment in accordance with the CA Documents.

Operating Period means the period starting on the date of Substantial Completion of all Project Sections and ending at the end of the Term.

Operating Speed Performance Standard (OSPS) has the meaning set forth in Part VII.C(2) of Exhibit 4 of the Agreement.

Optical Character Recognition (OCR) means the process of converting an image to text.

Operations Manual means the manual prepared by Developer in accordance with Section 23 of Technical Provisions describing the operations procedures for the facilities and roadways within the Project Right of Way.

PABs means bonds, notes or other evidence of indebtedness issued by the PABs Issuer pursuant to the provisions of Internal Revenue Code Sections 142(a)(15) and (m) (which acronym stands for "private activity bonds").

PABs Agreement means that certain agreement to be entered into by NCDOT, Developer and the PABs Issuer relating to the responsibilities of the parties with respect to the issuance of the PABs

PABs Issuer means NCDOT.

Participating Agency means a public, quasi-public, or private agency that has agreed to cooperate with and assist Developer during an Emergency.

Party means Developer or NCDOT, as the context may require, and "**Parties**" means Developer and NCDOT, collectively.

Patron Confidential Information has the meaning set forth in Section 8.7.2 of the Agreement.

Pavement Design Report has the meaning given in Section 11.2.5 of the Technical Provisions.

Payment Activity means a Schedule Activity at WBS Level VI that represents all of the Work that is eligible for reimbursement under Federal Law and has been cost-loaded in accordance with Section 2.2.1 of the Technical Provisions, as well as mobilization costs (as defined in Section 2.2.1 of the Technical Provisions).

Payment Bond means one or more payment bonds to secure payment for labor and materials, as required under the Agreement.

Payment for Work Product means $1,000,000.

Payment Request means the request described in Part F of Exhibit 5 to the Agreement.

Peak Periods mean 6:30 a.m. to 9:00 a.m. and 3:00 p.m. to 6:30 p.m. on Business Days, or any other six-hour or four-hour period as NCDOT, in its sole discretion, may designate by providing Developer with written notice in accordance with Part VII of Exhibit 4 to the Agreement.

Percentage of Degradation in Average Speeds has the meaning set forth in Part VII.B of Exhibit 4 to the Agreement.

Performance Requirements means, for each Element of the Project during the Operating Period, the requirements set forth in the tables included in Section 23 to the Technical Provisions.

Performance Security means one or more performance bonds or letters of credit to secure performance of the Work, as required under the Agreement.

Permitted Closure means a Closure resulting from any of the following:

(a) a Closure necessary for the Construction Work pursuant to the requirements of Section 22.1.2 and Section 22.1.3 of the Technical Provisions during the period from NTP2 to the date for which Substantial Completion has occurred for all Project Sections;

(b) a Closure for Planned Maintenance, where traffic analysis performed by Developer indicates that a Traffic Backup will not occur pursuant to Section 23.2.1.2 of the Technical Provisions and a Traffic Backup has not occurred for more than 30 minutes;

(c) a Closure resulting from an Emergency beyond Developer's control and not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law or violation of a Governmental Approval by any of the Developer-Related Entities;

(d) a Closure of a GP Lane resulting from an Incident and during such times as Developer is responding and clearing such Incident and reopening of closed travel lanes within the applicable time periods specified in Table 23.1 or Table 23.2 of the Technical Provisions; or

(e) a Closure of a HOT Lane during the Operating Period resulting from an Incident.

Persistent Developer Default means:

(a) The cumulative number of Noncompliance Points assessed during any consecutive 365-day period equals or exceeds 505; or

(b) The cumulative number of Noncompliance Points assessed during any consecutive 1095-day period equals or exceeds 1120.

In the event NCDOT elects to terminate Developer's O&M Work responsibilities related to the Annual O&M Payment Scope pursuant to Section 8.1.2 of the Agreement, the term "Persistent Developer Default" means:

(i) The cumulative number of Noncompliance Points assessed during any consecutive 365-day period equals or exceeds 240; or

(ii) The cumulative number of Noncompliance Points assessed during any consecutive 1095-day period equals or exceeds 605.

Person means any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization, Governmental Entity or NCDOT.

Phase 1 Hazardous Materials Investigation means an environmental assessment conducted in accordance with ASTM E-1527-05, or any future revision or replacement thereof, to identify Recognized Environmental Conditions and potential Recognized Environmental Conditions.

Planned Maintenance means O&M Work performed by Developer that has been properly scheduled and executed in accordance with Section 23 of the Technical Provisions.

Planned Maintenance Schedule means a schedule, prepared annually and updated by Developer and approved by NCDOT, showing the times during which Planned Maintenance will be performed and the Traffic Lanes in which such Planned Maintenance will be performed.

PM Peak Period means 3:00 p.m. to 6:30 p.m. on Business Days or any other period as designated by NCDOT in NCDOT's sole discretion.

Post-Tax means payment of or provision for the federal and State income tax liability of Developer (or, if it is a pass-through entity for federal and State income tax purposes, its members or partners), and not any foreign income tax or other tax of any kind, calculated by applying a reasonable assumption regarding the combined marginal federal and State income tax rate of Developer (or, if it is a pass-through entity for federal and State income tax purposes, its members or partners).

Post-Termination Revenue Account means the trust account of that name established under the Project Trust Agreement.

Pre-existing Hazardous Materials means Hazardous Materials that either:

(i) Meet all the following criteria:

(a) The Hazardous Materials are in, on or under the Existing Right of Way, Proposed Right of Way or Additional Properties as of the date NCDOT makes available to Developer the affected parcel; and

(b) The Hazardous Materials are not located in, on or under any Project Specific Locations; or

(ii) Meet all the following criteria:

(a) The Hazardous Materials migrated into, onto or under the Project Right of Way from a location outside the Project Right of Way; and

(b) The Hazardous Materials existed on such location outside of the Project Right of Way as of the date NCDOT makes available to Developer the affected Project Right of Way parcel;

For purposes of determining whether Hazardous Materials were in, on or under the Existing Right of Way, the Proposed Right of Way, Additional Properties, or any additional parcels required by NCDOT to be included in the Project Right of Way as a result of NCDOT Changes, as of the date on which NCDOT makes available to Developer the affected parcel, Developer shall have the burden of proof as to any Hazardous Materials alleged to be present as of such date, except as follows:

(1) If the Hazardous Materials are encountered on the "Known and Potential Hazardous Material Sites" identified in the Hazardous Materials Report, which has been provided as a Reference Information Document; or

(2) If the Hazardous Materials are identified through an investigation performed by NCDOT prior to the acquisition of Additional Properties or any additional parcels required by NCDOT to be included in the Project Right of Way as a result of NCDOT Changes.

For the purpose of this definition, "makes available" means:

(A) The Effective Date, except for parcels not yet acquired as of the Effective Date; and

(B) As to parcels not yet acquired as of the Effective Date, as to Additional Properties, and as to parcels required by NCDOT to be included in the Project Right of Way as a result of NCDOT Changes, the date Developer first receives the right to take and maintain possession of the parcel for all purposes for the remainder of the Term in accordance with the CA Documents, including commencement of construction, as the result of NCDOT's having secured title or right of possession by contract or title instrument, through the eminent domain process or otherwise.

Preliminary DBE Performance Plan means the plan submitted as part of the Proposal with respect to Developer's plan to meet the DBE requirements set forth in the CA Documents.

Preliminary Project Baseline Schedule means the preliminary schedule submitted with the Proposal, as set forth in Exhibit 8 to the Agreement.

Pre-Refinancing Data means all relevant data in relation to a proposed Refinancing other than a proposed Exempt Refinancing under clause (b) (c) or (d) of the definition of Exempt Refinancing and calculation of the estimated Refinancing Gain, including:

(a) Details of actual and projected timing and amounts of the investment of equity and Subordinate Debt from the Effective Date to the anticipated date of Refinancing, and of projected timing and amounts of the investment of equity and Subordinate Debt, if any, from the anticipated date of Refinancing to the end of the Term;

(b) Information on the actual and projected cash flows of Developer from the Effective Date to the anticipated date of Refinancing, and of projected cash flows of Developer from the anticipated date of Refinancing to the end of the Term;

(c) Details of the actual and projected timing and amounts of Distributions from the Effective Date to the anticipated date of Refinancing and of projected timing and amounts of Distributions from the anticipated date of Refinancing to the end of the Term;

(d) A copy of the pre-Refinancing Base Case Financial Model as updated by Developer, which shall be identical to any presented to the proposed Refinancing Lender(s);

(e) A copy of all term sheets or all other relevant documentation and information in relation to the terms of the proposed Refinancing;

(f) A copy of the proposed post-Refinancing Base Case Financial Model as updated by Developer, which shall be identical to any presented to the proposed Refinancing Lender(s);

(g) Information on all relevant assumptions, including tax assumptions taking into account any Revenue Payment Amount to be paid to NCDOT, and where appropriate back up data and tax letters, assumptions and other documentation, for the projections in the pre-Refinancing and post-Refinancing Base Case Financial Models as updated by Developer;

(h) A detailed calculation of the estimated Refinancing Gain and NCDOT's share thereof (if any) following the procedures set forth in Exhibit 5 to the Agreement; and

(i) All other information NCDOT may reasonably request in relation to the proposed Refinancing and related calculations and assumptions.

Presidential Disaster Declaration means a declaration of a major disaster by the President of the United States triggering assistance from FEMA pursuant to the Disaster Relief Act of 1974 (Pub.L. No. 93-288, as amended).

Principal Project Document(s) means the Project Trust Agreement, Design-Build Contract, O&M Contracts (if applicable) and Intellectual Property Escrows.

Progress Report means the report described in Section 2.2.2.4 of the Technical Provisions.

Project means the transportation facilities and all related structures and improvements, including an Electronic Toll Collection System, Intelligent Transportation System and communications systems used in connection with operation of such transportation facilities, to be financed, developed, designed, constructed, operated and maintained pursuant to the terms of the CA Documents, as more particularly described in the Technical Provisions. "Project" includes the HOT Lanes, General Purpose Lanes, Existing Assets, and Upgrades. The Project is divided into the South Section, Central Section, and North Section, as more particularly described in the Technical Provisions.

Project Baseline Schedule means the logic-based critical path schedule for all Work leading up to and including Final Completion, as described in Section 2 of the Technical Provisions.

Project Debt means bona fide indebtedness (including subordinated indebtedness) for or in respect of funds borrowed (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received, the repayment of which has specified payment dates and is secured by one or more Security Documents. Project Debt includes principal, capitalized interest, accrued interest, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses, premiums and indemnities with respect thereto, payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto, lease financing obligations, and Breakage Costs. Project Debt excludes any indebtedness of Developer or any shareholder, member, partner or joint venture member of Developer that is secured by anything less than the entire Developer's Interest, such as indebtedness secured only by an assignment of economic interest in Developer or of rights to cash flow or dividends from Developer. Project Debt also excludes any increase in indebtedness to the extent resulting from an agreement or other arrangement Developer enters into or first becomes obligated to repay after it was aware (or should have been aware, using reasonable due diligence) of the occurrence or prospective occurrence of an event of termination giving rise to an obligation of NCDOT to pay Termination Compensation, including Developer's receipt of a Notice of Termination for Convenience and Developer's declaration of a NCDOT Default of the type entitling Developer to terminate the Agreement. In addition, no debt shall constitute Project Debt unless and until the Collateral Agent provides NCDOT with notice thereof and the related Funding Agreements and Security Documents in accordance with Section 20.1.3 of the Agreement. Subject to the foregoing exclusions, Project Debt includes the PABs and obligations arising thereunder and TIFIA Loans, guaranties and credit support, and obligations arising thereunder.

Project Executive has the meaning given in Section 2.14.1.1 of the Technical Provisions.

Project Extension means a linear addition to the original Project by Developer, including any at either terminus of the original Project and any linear improvement that interconnects with the original Project at a Project interchange.

Project Financing Deadline means 210 days after the Effective Date, as such deadline may be extended pursuant to Section 4.1.3.2, Section 4.1.3.9 or Section 4.1.3.10 of the Agreement.

Project Manager has the meaning set forth in Section 2.14.1.2 of the Technical Provisions.

Project Plan of Finance means Developer's plan for financing the Project, which is attached to Exhibit 2 to the Agreement.

Project Right of Way or **Project ROW** means the Existing Right of Way and real property acquired in the name of NCDOT for construction, operation and maintenance of the Project. The term specifically includes all air space, surface rights and subsurface rights within the limits of the Project Right of Way.

Project Schedule means one or more, as applicable, of the logic-based critical path schedules for the Work, as the same may be revised and updated from time to time in accordance with Section 2.2 of the Technical Provisions.

Project Section means, as applicable, the following: (a) North Section; (b) Central Section; or (c) South Section.

Project Specific Locations means areas in which Developer proposes temporary property interests for Project-specific activities in connection with the Construction Work or the O&M Work performed by Developer not within the Project Right of Way, such as detours, construction work sites, temporary work areas, staging areas, storage areas, and earth work material borrow sites.

Project Status Schedule Update means the logic-based critical path schedule submitted monthly containing progress status and enabling comparison to the Project Baseline Schedule.

Project Trust Agreement means the agreement by that name dated as of the Effective Date among NCDOT, Developer and _____, as trustee.

Project Trust Fund means the trust fund by that name established under the Project Trust Agreement.

Project Water Quality Specialist has the meaning given in Section 2.14.2.10 of the Technical Provisions.

Proposal has the meaning set forth in Recital F of the Agreement.

Proposed Right of Way or **Proposed ROW** means any real property outside of the Existing Right of Way that is acquired by Developer in the name of NCDOT and is either (a) required to construct the Project in accordance with the Final Design or (b) required to construct the Project as a result of an NCDOT Change. The term specifically includes all air space, surface rights and subsurface rights within the limits of the Proposed Right of Way and specifically excludes Additional Properties.

Proprietary Intellectual Property means Intellectual Property created, used, applied or reduced to practice in connection with the Project or the Work that derives commercial value from its protection as a trade secret under applicable Law or from its protection under patent law.

Protection in Place means any action taken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, exposing the Utility, avoidance of a Utility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

Public Communication Manager means the person appointed by Developer to lead and manage the work of the Project Communication Team as set out in Section 3 of the Technical Provisions.

Public Communication Team means the team provided by Developer to prepare and implement communications strategies and activities as set out in Section 3 of the Technical Provisions.

Public Education and Awareness Program has the meaning given in Section 3.3.2 of the Technical Provisions.

Public Funds Amount means $_____ ***[Note: to be inserted from Proposal]***, as may be adjusted pursuant to the Agreement.

Public Records Law means North Carolina General Statutes § 132-1 *et seq.*, as amended from time to time.

Punch List means an itemized list of Construction Work which remains to be completed after Substantial Completion for a Project Section has been achieved and before Final Acceptance for such Project Section, the existence, correction and completion of which will have no material or adverse effect on the normal and safe use and operation of such Project Section.

Quality Management Plan (QMP) means the set of NCDOT-approved plans for quality management and control of the Project and Work, as set forth in Section 2.4.2 of the Technical Provisions. The QMP forms part of Developer's Quality System

Quality Manager has the meaning set forth in Section 2.14.1.6 of the Technical Provisions.

Quality System means the set of NCDOT-approved plans, procedures, processes and systems for quality assurance, management and control of the Project and Work prepared, implemented, operated and maintained by Developer. The Quality System shall comply with the requirements of ISO 9001 and ISO 14001. There shall only be one Quality System for Developer and its Contractors.

Rating Agency(ies) means a credit rating agency that is a Nationally Recognized Statistical Rating Organization.

Reasonable Investigation means the following activities by appropriate, qualified professionals prior to the Technical Proposal Due Date:

(a) Visit and visual, non-intrusive inspection of the Site and adjacent locations, except areas to which access rights have not been made available by the Technical Proposal Due Date;

(b) Review and analysis of all Reference Information Documents;

(c) Review and analysis of NCDOT-Provided Approvals available 60 days prior to the Technical Proposal Due Date;

(d) Reasonable inquiry with Utility Owners, including request for and review of Utility plans provided by Utility Owners;

(e) Review and analysis of Laws applicable to the Project or the Work as of the Technical Proposal Due Date;

(f) Actual site investigations performed by or on behalf of Developer prior to the Technical Proposal Due Date; and

(g) Other activities sufficient to familiarize Developer with surface and subsurface conditions, including the presence of Utilities, Hazardous Materials, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site or surrounding locations.

except that none of the foregoing activities includes conducting field studies, geotechnical investigations, or original research of private records not contained or referenced in the Reference Information Documents or Technical Provisions.

Recognized Environmental Condition has the meaning set forth in ASTM E-1527-00.

Record Drawings means construction drawings and related documentation revised to show significant changes to the Project made during the construction process or during the Operating Period, usually based on marked-up Final Design Documents furnished by Developer; also known as as-built plans.

Reference Information Documents or **Reference Documents** means the collection of information, data, documents and other materials that NCDOT has provided to Developer for general or reference information only.

Refinancing means:

(a) Any amendment, variation, novation, supplement, refunding, defeasance or replacement of any Project Debt, Funding Agreement or Security Document (other than any Subordinated Security Documents);

(b) The issuance by Developer of any Project Debt other than the Initial Project Debt, secured or unsecured;

(c) The disposition by Developer of any rights or interests in, or the creation by Developer of any rights of participation in respect of, Project Debt, Funding Agreements and Security Documents or the creation or granting by Developer of any other form of benefit or interest in either Project Debt, Funding Agreements and Security Documents or the Developer's Interest whether by way of security or otherwise; or

(d) Any other arrangement put in place by Developer or another Person which has an effect similar to any of clauses (a) through (c) above.

Refinancing Data means all relevant data in relation to a Refinancing other than an Exempt Refinancing and calculation of the Refinancing Gain, including:

(a) Details of actual timing and amounts of the investment of equity and Subordinate Debt from the Effective Date to the date of Refinancing, and of projected timing

and amounts of the investment of equity and Subordinate Debt, if any, from the date of Refinancing to the end of the Term;

(b) Information on the actual cash flows of Developer from the Effective Date to the date of Refinancing, and of projected cash flows of Developer from the date of Refinancing to the end of the Term;

(c) Details of the actual timing and amounts of Distributions from the Effective Date to the date of Refinancing and of projected timing and amounts of Distributions from the date of Refinancing to the end of the Term;

(d) A copy of the final pre-Refinancing Base Case Financial Model as updated by Developer, which shall be identical to any presented to the Refinancing Lender(s);

(e) A copy of the final post-Refinancing Base Case Financial Model as updated by Developer, which shall be identical to any presented to the Refinancing Lender(s);

(f) Information on all relevant assumptions, including tax assumptions taking into account any Revenue Payment Amount to be paid to NCDOT, and where appropriate back up data and tax letters, assumptions and other documentation (if any), for the projections in the pre-Refinancing and post-Refinancing Base Case Financial Models as updated by Developer;

(g) A detailed calculation of the Refinancing Gain and NCDOT's share thereof (if any) following the procedures set forth in Exhibit 5 to the Agreement; and

(h) All other information NCDOT may reasonably request in relation to the Refinancing and related calculations and assumptions.

Refinancing Gain has the meaning set forth in Part D.3.1 of Exhibit 5 to the Agreement.

Refinancing Gain Share has the meaning set forth in Part D.1 of Exhibit 5 to the Agreement.

Registered Professional Engineer means a person who is duly licensed and registered by the North Carolina Board of Examiners for Engineers and Surveyors to engage in the practice of engineering in the State of North Carolina.

Registered Professional Land Surveyor means a person registered by the North Carolina Board of Examiners for Engineers and Surveyors to practice the profession of land, boundary, or property surveying or other similar professional practices.

Related Transportation Facility(ies) means all existing and future highways, streets and roads, including upgrades and expansions thereof, that are or will be adjacent to, connecting with or crossing under or over the Project. Such future highways, streets, and roads, including upgrades and expansions therefore, are those included in any transportation plan or program adopted by any Governmental Entity as of the Effective Date.

Release of Hazardous Materials means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.

Released for Construction Documents or **released for construction documents** means any of the Final Design Documents for any part of the Project that are required to be signed and sealed by the engineer of record for the Project.

Release for Construction Submittals has the meaning set forth in Section 2.9.2.4 of the Technical Provisions.

Relief Event means any of the following events, to the extent they result in a delay or interruption in performance of any obligation under the Agreement, and provided such events are beyond Developer's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law or violation of a Governmental Approval by any of the Developer-Related Entities, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Developer (and subject to any limitations, claims submission requirements and other conditions set forth in the Agreement):

(a) Force Majeure Event;

(b) Latent defects in Existing Assets, to the extent provided in Section 7.11 of the Agreement;

(c) Change in Law;

(d) Discriminatory Action;

(e) NCDOT failure to perform or observe any of its covenants or obligations under the Agreement or other CA Documents, including failure to issue a certificate of Substantial Completion or certificate of satisfaction of conditions precedent to Final Acceptance or Final Completion after Developer satisfies all applicable conditions and requirements for obtaining such a certificate;

(f) NCDOT Change;

(g) NCDOT-Caused Delay;

(h) Performance of works in the vicinity of the Project Right of Way carried out by NCDOT, Utility Owner or a Governmental Entity that disrupts Developer's onsite Work;

(i) Development or operation of a Business Opportunity in the Airspace by NCDOT or anyone (other than a Developer-Related Entity) claiming under or through NCDOT, to the extent set forth in Section 11.2.4 of the Agreement;

(j) Discovery at, near or on the Project Right of Way of any Hazardous Materials (including NCDOT Release(s) of Hazardous Material) or archeological, paleontological or cultural resources (including historic properties), excluding any

such substances or resources known to Developer prior to the Technical Proposal Due Date or that would have become known to Developer by undertaking Reasonable Investigation (provided that the records described in clause (i) of the definition of Pre-existing Hazardous Materials is deemed to be a Reasonable Investigation of Hazardous Materials prior to the Technical Proposal Due Date);

(k) Discovery at, near or on the Project Right of Way of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Technical Proposal Due Date), excluding any such presence of species known to Developer prior to the Technical Proposal Due Date or that would become known to Developer by undertaking Reasonable Investigation;

(l) Any spill of Hazardous Material by a third party who is not acting in the capacity of a Developer-Related Entity which (i) occurs after the Technical Proposal Due Date, (ii) is required to be reported to a Governmental Entity and (iii) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment and/or remediation;

(m) Issuance of a temporary restraining order or other form of injunction by a court that prohibits prosecution of any portion of the Work;

(n) Suspension, termination or interruption of a NEPA Approval, except to the extent that such suspension, termination or interruption results from failure by any Developer-Related Entity to locate or design the Project or carry out the work in accordance with the NEPA Approval or other Governmental Approval (which failure may include (i) modification by or on behalf of Developer of the design concept included in the NEPA Approval, (ii) means or methods used by any Developer-Related Entity for carrying out the Work, or (iii) decision or action by or on behalf of Developer to use or acquire Additional Property);

(o) Any change in the design concept of the Project or any portion thereof resulting from judicial or administrative action taken with respect to a legal challenge to any NEPA Approval or Major Permit as compared to the design concept indicated in the alternative that was the subject of the NEPA Approval, except to the extent the change in design concept had already been incorporated into Developer's design schematics assumed in connection with the Base Case Financial Model;

(p) A failure to obtain, or delay in obtaining, a Major Permit from the applicable Governmental Entity by the deadline set forth in Exhibit 12 of the Agreement, except to the extent that such failure or delay results from failure by any Developer-Related Entity to (i) meet the conditions and requirements set forth in Section 4.2.3.2 of the Technical Provisions with respect to such Major Permit or (ii) locate or design the Project or carry out the work in accordance with the NEPA Approval or other Governmental Approval (which Developer-Related Entity's failure may include (A) modification by or on behalf of Developer of the design concept included in the NEPA Approval, (B) means or methods used by any Developer-Related Entity for carrying out the Work, or (C) decision or action by or on behalf of Developer to use or acquire Additional Property);

(q) (i) NCDOT's lack of good and sufficient title to any parcel in the Project Right of Way after conclusion of NCDOT's purported acquisition of the parcel through negotiation or condemnation proceeding, to the extent it interferes with or adversely affects performance of Work or imposition of tolls, or (ii) the existence at any time following issuance of NTP2 of any title reservation, condition, easement or encumbrance on any parcel in the Project Right of Way owned by NCDOT, of record or not of record, to the extent it interferes with or adversely affects performance of Work or imposition of tolls, except any title reservations, conditions, easements or encumbrances (A) concerning Utilities or (B) caused, permitted or suffered by a Developer-Related Entity;

(r) Delay by a Utility Owner in connection with a Utility Adjustment, provided that all of the "conditions to assistance" described in Section 7.4.6.2 of the Agreement have been satisfied; or

(s) Discovery of subsurface or latent physical conditions at the actual boring holes identified in the geotechnical reports included in the Reference Information Documents that differ materially from the subsurface conditions indicated in the geotechnical reports at such boring holes, excluding any such conditions known to Developer prior to the Technical Proposal Due Date or that would have become known to Developer undertaking Reasonable Investigation.

Relief Event Determination has the meaning set forth in Section 13.1.5 of the Agreement.

Relief Event Notice means the written notice required to be provided by Developer under Section 13.1.1 of the Agreement.

Relief Request has the meaning set forth in Section 13.1.2 of the Agreement.

Renewal Work means maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element of a type that is not normally included as an annually recurring cost in highway maintenance and repair budgets.

Renewal Work Plan means the plan prepared by Developer describing the plan, systems, approach, staffing and schedule to perform all Renewal Work as further described in Section 23 of the Technical Provisions. The Renewal Work Schedule is part of the Renewal Work Plan.

Renewal Work Report means the annual report Developer submits to the NCDOT for the Renewal Work as set forth in Section 23 of the Technical Provisions.

Renewal Work Schedule means the schedule for Renewal Work to be prepared and updated by Developer pursuant to Section 23 of the Technical Provisions. The Renewal Work Schedule is part of the Renewal Work Plan.

Replacement Utility Property Interest means any permanent right, title or interest in real property outside of the Project Right of Way (e.g., a fee or an easement) which is acquired for a Utility being reinstalled in a new location as a part of the Utility Adjustment Work. The term specifically excludes any statutory right of occupancy or permit granted by a Governmental Entity for occupancy of its real property by a Utility.

Request for Change Proposal means a written notice issued by NCDOT to Developer setting forth a proposed NCDOT Change and requesting Developer's assessment of cost, Toll Revenue and schedule impacts thereof, as set forth in Section 14.1.2 of the Agreement.

Rescue Refinancing means any Refinancing that:

(a) Occurs due to the failure, or a reasonably expected failure occurring within 6 months, of Developer to comply with any material financial obligation under any Funding Agreement or Security Document;

(b) Results in the cure of such failure or imminent failure;

(c) Does not result in an increase in the Equity IRR beyond the Base Case Equity IRR; and

(d) Does not result in an actual or potential increase of the Senior Debt Termination Amount by more than 10%.

Residual Life means, for an Element, the period remaining until the Element will next require reconstruction, rehabilitation, restoration, renewal or replacement. The Residual Life of an Element would be equal to its originally calculated Useful Life less its Age if (a) the Element has performed in service in the manner and with the levels of traffic and wear and tear originally expected by Developer and (b) Developer has performed the type of routine maintenance of the Element which is normally included as an annually recurring cost in highway maintenance and repair budgets, and as a result thereof the Element complies throughout its originally calculated Useful Life with each applicable Performance Requirement. The Residual Life of an Element would be different from its originally calculated Useful Life minus its Age if any of the foregoing conditions is not true.

Residual Life at Handback means the calculated duration that any Element of the Project, subject to the type of routine maintenance of the Element which is normally included as an annually recurring cost in highway maintenance and repair budgets, will continue to comply with any applicable Performance Requirement or standard after expiration or earlier termination of the Agreement, before Renewal Work is required, determined through the application of the Residual Life Methodology and Residual Life Inspections.

Revenue Payment Amount has the meaning set forth in Part C of Exhibit 5 to the Agreement.

Revised Project Baseline Schedule means the Project Baseline Schedule revised from time to time with any changes to any schedule components (e.g., activity titles, durations, ties, dates, resources, costs) accepted by NCDOT as revisions to the Project Baseline Schedule and earlier Revised Project Baseline Schedules.

RFP has the meaning set forth in Recital E of the Agreement.

Right of Way Acquisition Services means the Developer's responsibilities set forth in Section 7 of the Technical Provisions.

Road Closure means (whether capitalized or not) a Closure of a Travelway in any given direction of travel.

Routine Maintenance means maintenance activities that are schedule in advance and occur on a regular basis, such as weekly, monthly, quarterly, semi-annually or annually which are normally included as an annually recurring cost in highway (and associated equipment) maintenance and repair budgets.

ROW Acquisition Baseline Costs means $5,400,000.

ROW Acquisition Costs means the aggregate total of all payments made to property owners and Utilities with a Compensable Interest for the acquisition of Proposed Right of Way and Replacement Utility Property Interests in accordance with applicable Law (including the Uniform Act), excluding payments made for (a) Proposed Right of Way and Replacement Utility Interests required due to an NCDOT Change or (b) Additional Properties. The term excludes any other costs for performing Right of Way Acquisition Services.

ROW Acquisition Manager or **ROW AM** means Developer's representative responsible for the preparation and quality review of all documents required for the acquisition of the Project Right of Way.

ROW Appraiser has the meaning given in Section 7.1 of the Technical Provisions.

Safety Compliance means any and all improvements, repair, reconstruction, rehabilitation, restoration, renewal, replacement and changes in configuration or procedures respecting the Project to correct a specific safety condition or risk of the Project that NCDOT has reasonably determined to exist by investigation or analysis (excluding a safety condition that exists despite compliance with the Technical Documents and Safety Standards).

Safety Compliance Order means a written order or directive from NCDOT to Developer to implement Safety Compliance.

Safety Plan means the plans and procedures prepared by Developer and included in the O&M Plan that are to be implemented to protect the safety of the public and Developer's employees when performing its O&M Work, as detailed in Section 23 of the Technical Provisions.

Safety Standards means those provisions of the Technical Provisions or Technical Documents that NCDOT indicates that it, FHWA or AASHTO considers to be important measures to protect public safety or worker safety. As a matter of clarification, provisions of Technical Provisions or Technical Documents primarily directed at durability of materials or equipment, where the durability is primarily a matter of life cycle cost rather than protecting public or worker safety, are not Safety Standards.

Schedule Activity means the smallest division of the Work at each WBS Level to be tracked in the Project Schedule. Schedule activities are activities critical in ensuring the timely achievement of Substantial Completion of each Project Section, Renewal Work performed by Developer and the Handback Requirements. Schedule Activities include quality assurance tasks, environmental tasks, fabrication of structural steel and precast and prestressed concrete structures, material and equipment procurement, Utility Adjustment Work and delivery to the site or storage locations and maintenance of traffic tasks, as well as the O&M Work performed by Developer.

Schedule Mode means a toll pricing methodology commencing on the Substantial Completion Date for the applicable Project Section whereby the Toll Rate may change no more frequently than once per 24 hours and that follows all other requirements pertaining to Schedule Mode set forth in Exhibit 4 of the Agreement.

Schedule of Values means a listing of all Payment Activities in the format and to the detail as described in Section 2.2.2.3 of the Technical Provisions.

Secured Work means (a) all Design Work and Construction Work starting at the issuance of NTP2 through Final Completion, but excluding all routine O&M Work performed by Developer and NCDOT Retained Work during that period and all financing obligations (referred to as "original Secured Work"), and (b) all Design Work and Construction Work, including Upgrades, new improvements and major reconstruction or rehabilitation, at any time during the balance of the Term, and all other obligations of Developer associated with performance, completion and acceptance of any of the same but excluding all financing obligations and NCDOT Retained Work (referred to as "subsequent Secured Work"). Secured Work specifically includes acquisition of property rights, agreements with third parties (e.g. Utility Owners, Governmental Entities, railroads), making payments to third parties, obtaining and administering insurance required hereunder, and all related activities.

Security Document means any pledge, lien, indenture, trust agreement, hypothecation, assignment, collateral assignment, financing statement under the Uniform Commercial Code of any jurisdiction, notice to perfect interests in accounts, security instrument or other charge or encumbrance of any kind, given to any Lender as security for Project Debt or Developer's obligations pertaining to Project Debt and encumbering the Developer's Interest.

Senior Debt Termination Amount means:

(a) All amounts outstanding at the Early Termination Date, including accrued unpaid interest as of such date, on Project Debt that: (i) is secured by Funding Agreements and Security Documents satisfying the terms and conditions set forth in Section 4.4 of the Agreement, (ii) is not equity bridge loans, (iii) in the absence of termination and in the absence of any bankruptcy, insolvency or liquidation of Developer, would constitute (A) the senior lien on and pledge of the Developer's Interest and (B) a first subordinate lien on and pledge of the Developer's Interest, but only where: (1) none of the Lenders (including participating Lenders) of such subordinate Project Debt is an Affiliate or an Equity Member in Developer and none directly or indirectly controls an Equity Member in Developer, and (2) such subordinate Project Debt does not constitute consideration paid for the sale of the economic rights in Developer or Developer's shareholders, partners, joint venture members or members; and (iv) is not Subordinate Debt. For the avoidance of doubt, TIFIA financing that satisfies the terms and conditions set forth in Section 4.4 of the Agreement is expressly included and deemed to meet the terms set forth in clause (iii)(B) above. For purposes of this clause (a), an equity bridge loan is a loan provided to Developer during the construction period of the Project for an amount of equity to be contributed by Affiliates or other Equity Members; plus

(b) Without double counting in relation to such Project Debt, all Breakage Costs payable by Developer as a result of prepayment of the outstanding amounts of

such Project Debt described in clause (a) above, subject to Developer and the Lenders mitigating all such costs to the extent reasonably possible; minus

(c) To the extent it is a positive amount, the aggregate of:

(i) So much of the amounts under clauses (a) and (b) above that constitute or accumulate by reason of (A) accrued interest that Developer failed to pay when due, including any such interest that has been added to principal, or (B) default rates of interest, late charges and penalties, including any such items added to principal;

(ii) All amounts, refunds and reimbursements, including costs of early termination of interest rate and inflation rate hedging, swap, collar or cap arrangements and other Breakage Costs, payable by the Lenders to Developer as a result of prepayment of outstanding amounts of such Project Debt described in clause (a) above; and

(iii) All other amounts received by the Lenders of such Project Debt described in clause (a) above on or after the Early Termination Date and before the date on which any compensation is payable by NCDOT to Developer as a result of insurance or enforcing any other rights they may have, to the extent such amounts reduce principal or accrued interest (or would have done so if not applied to default rates of interest, late charges or penalties).

The foregoing amount shall be determined without regard to any Refinancing that is excluded from Project Debt or that may occur between the date notice of termination is delivered and the Early Termination Date.

Service Line means a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system. However, unless noted otherwise in the Technical Provisions, the term "Service Line" excludes any line that supplies an active feed from a Utility Owner's facilities to supply, activate or energize NCDOT's or a Governmental Entity's Highway Service Systems. Such line, including its actual connection to the Utility facility, shall instead be considered to be part of the applicable Highway Service System.

Shoulder means that portion of the roadway contiguous with the Travelway for accommodation of stopped vehicles, for Emergency use, and for lateral support of base and surface courses.

Site means Project Right of Way and any temporary rights or interests that Developer may acquire in connection with the Project or the Utility Adjustments included in the Construction Work, including Project Specific Locations.

Site Investigative Report means the report summarizing Developer's Hazardous Materials investigative work.

Source Code and **Source Code Documentation** mean software written in programming languages, such as C and Fortran, including all comments and procedural code,

such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the software without undue experimentation. Source Code and Source Code Documentation also include all modifications, additions, substitutions, updates, upgrades and corrections made to the foregoing items.

South Section means that portion of the Project described in Section 1.1.3 of the Technical Provisions.

South Section Final Acceptance Deadline means the deadline for achieving Final Acceptance of the South Section, as set forth in the Milestone Schedule, as such deadline may be extended for Relief Events from time to time pursuant to the Agreement.

Standard Specifications means the 2012 NCDOT Standard Specifications for Roads and Structures, as may be amended from time to time.

State means the State of North Carolina.

State Government Ethics Act means North Carolina General Statutes § 138A-1 *et seq.*, as amended from time to time.

State Highway means a highway designated as part of the state transportation system under North Carolina General Statutes § 136-5.1.

Statewide Information Security Manual means the manual setting forth the standards for information technology security applicable to agencies within the executive branch of the State.

Statewide Transactions means the aggregate of electronic tolled transactions and video toll transactions in the State of North Carolina.

Stormwater Management Plan has the meaning given in Section 12.2 of Book 2 of the Technical Provisions.

Structures means any permanent load-bearing constructions including substructures, superstructures, Bridges, bulkheads, retaining walls, footings, foundations, piles, columns, culverts, gantries, appurtenances, and overhead signs supports. The minimum design and construction requirements of the Structures are outlined in Section 14 of the Technical Provisions.

Submittal means any document, work product or other written or electronic end product or item required under the CA Documents to be delivered or submitted to NCDOT.

Subordinate Debt means the bona fide indebtedness for funds borrowed that: (a) is held by any Equity Member or an Affiliate, or by a purchaser or assignee of such indebtedness held at any previous time by any Equity Member or Affiliate, and (b) is inferior in priority of

payment and security to all Project Debt held by Persons who are not Equity Members or Affiliates.

Subordinated Security Documents means any Security Documents inferior in priority to the most senior Security Documents and to first tier subordinate Security Documents securing mezzanine financing, and generally includes any sub-debt held by Affiliates or other Equity Members in Developer.

Substantial Completion means, for each Project Section, satisfaction of the criteria for completion of construction of the Project Section set forth in Section 7.7.1 of the Agreement, as and when confirmed by NCDOT's issuance of a certificate in accordance with the procedures and within the time frame established in Section 7.7.1 of the Agreement.

Substantial Completion Date means, for each Project Section, the date on which Substantial Completion occurs.

Substituted Entity has the meaning set forth in the Lender's Direct Agreement.

Subsurface Utility Engineering means an engineering process for accurately identifying the quality of subsurface utility information needed for highway plans, and for acquiring and managing that level of information during the development of a highway project, as more particularly described at the FHWA website http://www.fhwa.dot.gov/programadmin/sueindex.htm.

Supplier means any Person not performing Work at or on the Site which supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to Developer or to any Contractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.

Surety means each properly licensed surety company, insurance company or other Person approved by NCDOT, which has issued any of the Payment and Performance Bonds.

Survey Manager has the meaning given in Section 2.14.2.5 of the Technical Provisions.

System Architecture (with respect to the ETCS or ITS) means a description and if applicable, visual representation of a system, organized in a way that provides an understanding about the structure of system, which comprises system components, the externally visible properties of those components, the relationships (e.g. the behavior) between them, and provides a plan from which products can be procured, and subsystems developed to work together and implement the overall system.

Taxes means federal, State, local or foreign income, margin, gross receipts, sales, use, excise, transfer, consumer, license, payroll, employment, severance, stamp, business, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs, permit, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, registration, value added, alternative or add-on minimum, estimated or other taxes, levies, imposts, duties, fees or charges imposed, levied, collected, withheld or assessed at any time, whether direct or indirect, relating to, or incurred in connection with, the Project, the

performance of the Work, Toll Revenues or act, business, status or transaction of Developer, including any interest, penalty or addition thereto, and including utility rates or rents, in all cases whether disputed or undisputed.

Technical Documents means all the standards, criteria, requirements, conditions, procedures, specifications and other provisions set forth in the manuals and documents identified in Book 2 or Book 3, to the extent described or referenced in any corresponding errata sheets of Book 2 or Book 3, as such provisions may (a) have been generally revised from time to time up to the Technical Proposal Due Date (or, where applicable, other date specifically set forth in the Agreement) or (b) be changed, added to or replaced pursuant to the Agreement.

Financial Proposal Due Date means February 20, 2014.

Technical Provisions means Book 2, the document describing the scope of the Work and related standards, criteria requirements, conditions, procedures, specifications and other provisions for the Project and/or the Utility Adjustments, as such provisions may be changed, added to or replaced pursuant to the Agreement.

Technology Enhancements means modifications, additions, refinements, substitutions, revisions, replacements and upgrades made to any computer systems or other technology, including ITS, used for the operation of the Project, the ETCS or to any related documentation, that accomplish incidental, performance, structural, or functional improvements. The term specifically includes modifications, updates, revisions, replacements and upgrades made to or in place of software or any related documentation that correct errors or safety hazards or support new models of computer hardware with which the software is designed to operate. Technology Enhancements also include such new models of computer hardware, including computers, monitors, cameras, antenna, loops, lasers and lighting.

Temporary Works means (whether capitalized or not) any temporary works and structures necessary for the construction of the Permanent Works. This includes Falsework, Formwork, Scaffolding, Shoring, temporary earthworks, sheeting, cofferdams, special erection equipment and the like (see Exhibit 2-08 of the Technical Provisions).

Term has the meaning set forth in Section 2.2.1 of the Agreement.

Termination by Court Ruling has the meaning set forth in Section 19.11 of the Agreement.

Termination Compensation means each of the measure of compensation owing from NCDOT to Developer upon termination of the Agreement prior to the stated expiration of the Term, as set forth in Exhibit 15 to the Agreement.

Termination Date means (a) the date of expiration of the Term or (b) if applicable, the Early Termination Date.

Termination for Convenience has the meaning set forth in Section 19.1.1 of the Agreement.

Third Party Claim(s) means, subject to Section 16.5.4 of the Agreement, any and all claims, disputes, disagreements, causes of action, demands, suits, actions, investigations, or

legal or administrative proceedings related to the Project that is asserted, initiated or brought by a Person that is not an Indemnified Party or Developer with respect to any Third Party Loss.

Third Party Loss means, subject to Section 16.5.4 of the Agreement, any actual or alleged Loss sustained or incurred by a Person that is not an Indemnified Party or Developer.

Threatened or Endangered Species means any species listed by the USFWS as threatened or endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531, *et seq.* or any species listed as threatened or endangered pursuant to the State endangered species act.

TIFIA Budget Authority Amount means 33% of those costs defined as eligible for federal participation pursuant to the Transportation Infrastructure Finance and Innovation Act of 1998, § 1501 *et. seq*. of Public Law 105-178, as amended by the TEA 21 Restoration Act, Public Law 105-206 and the Safe, Accountable, Flexible, Effective Transportation Equity Act, A Legacy for Users, Public Law 109-59, codified as 23 U.S.C. §§ 601 *et seq.*, as further amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141.

TIFIA Loan means a loan from the United States Department of Transportation pursuant to the Transportation Infrastructure Finance and Innovation Act of 1998, § 1501 *et. seq*. of Public Law 105-178, as amended by the TEA 21 Restoration Act, Public Law 105-206 and the Safe, Accountable, Flexible, Effective Transportation Equity Act, A Legacy for Users, Public Law 109-59, codified as 23 U.S.C. §§ 601 *et seq.*, as further amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141.

TIFIA Term Sheet means the term sheet of TIFIA credit assistance assumptions described in Attachment A of Exhibit C to Volume I of the RFP (Instructions to Proposers).

TIFIA Term Sheet Assumptions means the following quantitative assumptions, as defined in the TIFIA Term Sheet, with respect to TIFIA credit assistance:

Term	Assumption
Percentage of Eligible Project Costs for Initial Principal Amount of the TIFIA Loan	33 percent
Eligible Project Costs incurred by NCDOT	$15 million
TIFIA Debt Service Profile	The following shall be in accordance with the TIFIA Term Sheet: (a) Capitalized Interest Period; (b) Interest Only Period; (c) Principal and Interest Period; and (d) Average TIFIA Loan Life.
Project Equity	The Equity Sponsors shall make equity contributions in an amount to ensure a maximum debt to equity ratio within the range of 65%/35% - 70%/30%.
Reserves	The TIFIA Lender will require a 12-month debt

	service reserve account.
Fees and Expenses	FFY [•] base amount of $12,500

Time Impact Analysis has the meaning set forth in Section 2.2.2.6 of the Technical Provisions.

Toll Rate has the meaning set forth in Part VI of Exhibit 4 to the Agreement.

Toll Rate Sign has the meaning set forth in Section 18.3.5 of the Technical Provisions.

Toll Rate Schedule has the meaning set forth in Part IV of Exhibit 4 to the Agreement.

Toll Regulation means the regulations, procedures and methodology governing Toll Rates, which is attached as Exhibit 4 to the Agreement.

Toll Revenue Account means the trust account of that name established under the Project Trust Agreement.

Toll Revenues means all revenues actually received by or on behalf of Developer, either directly or when deposited into the Toll Revenue Account, in connection with the HOT Lanes or the tolling thereof, including:

(a) Gross toll revenues received (for the avoidance of doubt, clause (a) includes any gross toll revenues received on behalf of Developer, before any reductions thereto including reductions for Transaction Fees and other pass-through costs by NCDOT);

(b) Other revenues received by Developer from the Project or the Users thereof the disposition of which is not specifically addressed by an agreement regarding Business Opportunities;

(c) Incidental Charges, if any, imposed by (or on behalf of) and received by Developer;

(d) Proceeds of business interruption or similar insurance against loss of revenues from operation of the Project;

(e) Payments from NCDOT or any Contractor retained to provide toll collection and enforcement services of any of the foregoing revenues it collects or of any toll revenues or other amounts it owes in respect of User trips on the Project;

(f) Payments from NCDOT of Compensation Amounts in replacement of or substitution for any of the foregoing revenues;

(g) Amounts received pursuant to any collection or enforcement action, judgment or settlement with respect to any of the foregoing revenues; and

(h) Amounts received as liquidated or other damages under contracts to which Developer is a party with respect to any of the foregoing revenues.

Toll Revenues exclude (i) capital contributions to Developer, (ii) proceeds of Project Debt, (iii) proceeds of capital asset dispositions, (iv) interest earned by Developer on Toll Revenues, and (v) insurance proceeds, judgments, awards, and payments from NCDOT, to the extent they do not replace, reimburse, compensate or substitute for any of the foregoing revenues.

Toll Segment means any given entry and exit pair to and from the HOT Lanes whereby a User passes through a toll zone, where a Transaction is initiated. The entry and exit pair shall begin and end so that the User (whether traveling on the HOT Lanes or the General Purpose Lanes) can view a Toll Rate Sign prior to the User's entry into the next Toll Segment. Toll Segments are described in Part II.A of Exhibit 4 to the Agreement.

Total Debt Service Coverage Ratio has the meaning given to it in the TIFIA Loan agreement.

Traffic and Revenue Monthly Report means the monthly report Developer submits to NCDOT as set forth in Section 24 of the Technical Provisions.

Traffic Backup means an average vehicle speed in any lane open to traffic during any 15 minute period that is less than 50% of the posted speed limit, averaged over any period of 15 minutes, at any vehicle detection system (VDS) device required by Section 21.2.1 of the Technical Provisions that is located between one mile in advance of the Closure to the end of the Closure.

Traffic Incident Management Plan has the meaning given in Section 23 of the Technical Provisions.

Traffic Lane means (whether capitalized or not) that portion of a Travelway for the movement of a single line of vehicles.

Traffic Management Center is a center for the management and distribution of information to Users on a regional or statewide basis.

Traffic Management Plan means Developer's plan for traffic management throughout the Term, as more particularly described in Section 9.2 of the Agreement and Section 23 of the Technical Provisions.

Traffic Monitoring Station has the meaning set forth in Part VII.A(1) of Exhibit 4 to the Agreement.

Training and Transition Plan means Developer's plan transferring Developer's O&M Work responsibilities back to NCDOT at the end of the Term, prepared in accordance with Section 23 of the Technical Provisions.

Transaction means a Transaction as more particularly described in Section 24.3.2.3 of the Technical Provisions.

Transaction Fee has the meaning set forth in Exhibit 18 to the Agreement.

Transit Vehicle(s) has the meaning set forth in Part I of Exhibit 4 to the Agreement.

Transition and Coordination Plan has the meaning given in Section 23 of the Technical Provisions.

Transponder means a small electronic device (or equivalent means for electronic detection and identification of the vehicle) which mounts to the vehicle and transmits a signal using radio frequency to a roadside reader.

Transponder Issuer means any Person who or which (a) issues Transponders that may be used to conduct a Transaction on any toll facility in North Carolina, (b) participates with NCDOT in interoperability protocols, agreements and arrangements, and (c) under such interoperability protocols, agreements and arrangements, covenants to remit payments to the other participants no less frequently than monthly of all Transactions that meet the terms for transmission, debiting and payment, and are required to be included in the current payment cycle, as set forth in such protocols, agreements and arrangements.

Travelway means that portion of the roadway for the movement of vehicles exclusive of the Shoulders.

Trip means a contiguous, directional vehicular journey on the HOT Lanes between an entry to and exit from the HOT Lanes and may include travel across one or more Toll Segments.

Unavailability Event means a Closure that is not a Permitted Closure during the period from NTP1 to the end of the Term.

Undertaking means a project, activity or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, or requiring a federal permit, license or approval.

Uniform Act means the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, P.L. 91-646, as amended.

Unplanned Revenue Impacting Facilities means any limited access main lane of a highway that did not exist prior to the Effective Date, which NCDOT, or an entity pursuant to a contract with NCDOT and on NCDOT's behalf, builds within the Airspace and opens to traffic during the Term, excluding, however, the following:

(a) The HOT Lanes and General Purpose Lanes that are part of the Developer's scope of Work;

(b) The General Purpose Lanes within the Airspace constructed as of the Technical Proposal Due Date;

(c) A Capacity Improvement that Developer builds;

(d) A Capacity Improvement for which NCDOT grants to Developer the exclusive right to operate, toll and maintain during the balance of the Term under the terms and conditions of the CA Documents;

(e) All work and improvements on highway projects necessary for improved safety, maintenance or operational purposes, excluding limited access main lanes of a

highway that did not exist prior to the Effective Date, which NCDOT, or an entity pursuant to a contract with NCDOT and on NCDOT's behalf, builds within the Airspace and opens to traffic during the Term;

(f) All high occupancy vehicle exclusive lane additions, or other work, on any highway project required by environmental regulatory agencies;

(g) Any work and improvements undertaken to increase traffic capacity by modifying already-constituted highway projects through the installation of traffic sensors, metering devices, Intelligent Vehicle Highway System equipment or other intelligent transportation systems, through reconstructing existing lanes including localized operational improvements that add lanes, through new or improved frontage roads, crossing streets or crossing street by-pass lanes, through intersection grade separations, or localized operational improvements through the restriping of traffic lanes, medians and Shoulders, including restriping that adds lanes;

(h) All transportation projects and facilities that are not specifically newly constructed, limited access main lanes of a highway, including passenger and freight rail facilities and other modes of transportation not included in the Project; and

(i) All transportation projects (whether funded or unfunded) included in the approved Long-Range Transportation Plan, State of North Carolina Transportation Improvement Plan, and any other capital improvement plan (including amendments) or similar document that has been adopted by any Governmental Entity in the State as of the Technical Proposal Due Date.

Upgrades means alterations, improvements, modifications or changes that Developer makes to any Project Section and the corresponding portions of the General Purpose Lanes, as originally designed and constructed by Developer, at any time after the Substantial Completion Date for such Project Section, except as part of ordinary maintenance or Renewal Work to be performed by Developer. Upgrades include Capacity Improvements and Project Extensions (if any). Upgrades may include alterations, improvements, modifications or changes that require an amendment or supplement to the final environmental impact documents for the Project or that are to be located outside the boundaries of the original Project Right of Way. Upgrades exclude Technology Enhancements and any alterations, improvements, modifications or changes undertaken in the use or development of a Business Opportunity.

Useful Life means, for an Element, the period following its first installation, or following its last reconstruction, rehabilitation, restoration, renewal or replacement, until the Element will next require reconstruction, rehabilitation, restoration, renewal or replacement.

User(s) means the registered owner of, or any other Person responsible under North Carolina General Statutes § 136-89.212 for payment of a toll for, a motor vehicle traveling on the HOT Lanes.

User Classification(s) means each established category of vehicles or persons using the Project under like conditions. For this purpose "like conditions" may take into consideration type, weight, size and occupancy of the vehicle (e.g. overweight, oversize or obstructing vehicles), number of axles, time-of-day and/or day-of-week travel, traffic congestion, and other

traffic conditions. The User Classifications are set forth in Exhibit 4 to the Agreement. User Classifications are subject to change only as provided in Section 3.3 of the 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, hydrocarbons, telecommunications, sewage, storm water not connected with the drainage of the Project, and similar substances that directly or indirectly serve the public. The term "Utility" or "utility" also includes radio towers and/or transmission towers (including cellular), but when used in the context of Utility Adjustments, the term excludes (a) storm water facilities providing drainage for the Project Right of Way and (b) NCDOT's or a Governmental Entity's Highway Service Systems. The necessary appurtenances to each Utility facility shall be considered part of such Utility. Any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line.

Utility Adjustment means each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project; provided, however, that the term "Utility Adjustment" shall not refer to any of the work associated with facilities owned by any railroad. For any Utility crossing the Project Right of Way, the Utility Adjustment Work for each crossing of the Project Right of Way by that Utility shall be considered a separate Utility Adjustment. For any Utility installed longitudinally within the Project Right of Way, the Utility Adjustment Work for each continuous segment of that Utility located within the Project Right of Way shall be considered a separate Utility Adjustment.

Utility Adjustment Plans means the plans, specifications, and cost estimates furnished for a particular Utility Adjustment, as more particularly described in Section 6.3 of the Technical Provisions.

Utility Adjustment Work means the design and construction necessary for a Utility Adjustment. Any Utility Adjustment Work furnished or performed by Developer is part of the Work; any Utility Adjustment Work furnished or performed by a Utility Owner is not part of the Work.

Utility Agreement means an agreement between a Utility Owner and NCDOT related to a Utility Adjustment or Betterment, which may be in the form of an Encroachment Agreement or Utility Relocation Agreement.

Utility Assembly means the collection of agreements, plans and other information and materials which Developer is required to submit to NCDOT in connection with each Utility Adjustment (or group of Utility Adjustments subject to the same original Master Utility Adjustment Agreement), as more particularly described in Section 6.3 of the Technical Provisions.

Utility Coordination Manager has the meaning given in Section 2.14.2.6 of the Technical Provisions.

Utility Design Coordinator (UDC) means the Registered Professional Engineer designated by Developer to be responsible to coordinate the Utility Adjustment design with the

overall highway design features during the planning, design, and construction phases of the Work, as more particularly described in Section 6.2 of the Technical Provisions.

Utility Enhancement means a Betterment or a Utility Owner Project, as referenced in Section 7.4.5.2 of the Agreement.

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 Owner Project means the design and construction by or at the direction of a Utility Owner (or by Developer) of a new Utility other than (a) as part of a Utility Adjustment or (b) to provide service to the Project. Betterments are not Utility Owner Projects. Utility Owner Projects are entirely the financial obligation of the Utility Owner.

Utility Relocation Agreement means an agreement between a Utility Owner and NCDOT related to a Utility Adjustment or Betterment, in the form attached as Exhibit 6-01 of the Technical Provisions.

Utility Work Plan has the meaning given in Section 2.5.3 of the Technical Provisions.

Valuation Date means the date notice of election to terminate is delivered by one or the other Party.

Video Account means a Video Prepaid Account or Video Postpaid Account.

Video Postpaid Account has the meaning given in Paragraph VII of Exhibit 18 to the Agreement.

Video Prepaid Account has the meaning given in Paragraph VII of Exhibit 18 to the Agreement.

Video Transaction means each electronic record of a toll and set of contemporaneous video images that are properly transmitted to the back office respecting a vehicle, including an Exempt Vehicle, that passes through a toll zone on the Project and (a) is not equipped with a Transponder issued by a Transponder Issuer, or (b) is equipped with such a Transponder but the Account associated with the Transponder is closed at the time of transmission. A Video Transaction must meet the requirements of a Transaction.

Video Transaction User means a User who makes a Video Transaction.

Voluntary Aesthetic Elements means the hardscape aesthetic Elements identified as Voluntary Aesthetic Elements in the Proposal and set forth in Exhibit 2 to the Agreement, which may include the following:

(a) materials, finish, color, and texture of Bridge Elements on new Structures;

(b) materials, finish, color, and placement of traffic barriers, railings, and lighting;

(c) finish, color, texture, alignment, and height of retaining walls; and

(d) placement and materials of Signage and sign supports (overhead, attached, and ground mounted).

Warning Notice means a written notice that NCDOT delivers to Developer pursuant to Section 17.2.1 of the Agreement.

Winter Maintenance means any and all maintenance related to snow and ice removal from the roadway within the Project Right of Way.

Work means all of the work required to be furnished and provided by Developer under the CA Documents, including all administrative, design, engineering, real property acquisition and occupant relocation, construction, Utility Adjustment, utility accommodation, Renewal Work, support services, operations, maintenance and management services, except for those efforts which such CA Documents expressly specify will be performed by Persons other than Developer-Related Entities.

Work Breakdown Structure means a deliverable-oriented hierarchical structure that breaks the Work into elements that have distinct identification and that contain specific scope characteristics. Each descending WBS level represents an increasingly detailed delineation of elements of the total Project scope. The WBS will contain elements of Design Work, Construction Work and O&M Work performed by Developer. There shall be clearly identifiable linkage between the WBS and Schedule Activities. The WBS numbering convention shall be compatible with Project Schedule coding and may be compatible with document control coding.

WBS Level means a level of detail of the Work Breakdown Structure as set forth in Section 2 of the Technical Provisions.

EXHIBIT 2

DEVELOPER'S PROPOSAL COMMITMENTS

Proposal Commitments

[To be provided with execution version based on Developer's Proposal]

Identified Key Personnel

[To be provided with execution version based on Developer's Proposal]

Plan of Finance

[To be provided with execution version based on Developer's Proposal]

EXHIBIT 3

LIST OF INITIAL FUNDING AGREEMENTS AND SECURITY DOCUMENTS

[To be provided with execution version]

EXHIBIT 4

TOLL REGULATION

I. User Classifications

For the purpose of defining User Classifications, the following definitions shall apply.

- "Low Occupancy Vehicles" or LOV means 2-axle motor vehicles, other than Motorcycles, without trailers, not larger than 20 feet in length, eight and a half feet in width and twelve feet in height, which do not have occupancy declaration information or that do not meet the occupancy requirement to declare HOV as defined in this Exhibit 4.

- "High Occupancy Vehicles" or HOV means motor vehicles without trailers, not larger than 20 feet in length, eight and a half feet in width and seven feet in height, with three persons or more as occupants that also have a Transponder or equivalent technology that provides occupancy declaration information.

- "Motorcycles" means motor vehicles with two or three wheels not larger than a Low Occupancy Vehicles.

- "Transit Vehicles" means recognized, non-profit transit agency buses, rubber-wheeled trolleys, and vans used for mass transportation under applicable Laws. The current recognized transit agency in the Charlotte Area is Charlotte Area Transit System (CATS).

- "Exempt Vehicles" means a) High Occupancy Vehicles that identify themselves as High Occupancy Vehicles through a transponder or equivalent technology; b) Transit Vehicles; c) Motorcycles; and d) law enforcement vehicles, emergency fire and rescue vehicles and emergency medical service vehicles, and as set forth in North Carolina General Statutes §136-89.211(2).

II. Toll Segments

A. The HOT Lanes are divided into Toll Segments measured between defined points. Toll Segment lengths are calculated along the centerline of the HOT Lanes and do not incorporate dedicated ramp lengths that may be used for entrance and exit. The Toll Segments are identified under Table 4-1, and include Toll Segment Identification Number, Description of Segment, Initial Point / Mile Station, Ending Point / Mile Station, Length (Miles), and Direction.

Table 4-1

[Note: Insert information from Form U of the Proposal]

Toll Segment	Description	Initial Point (Station)	Ending Point (Station)	Length (mile)	Direction (NB / SB)

III. Toll Operations

A. Users of the HOT Lanes shall be tolled according to the User Classification defined in Section I. Exempt Vehicles shall receive a discount of 100% of the applicable toll rate. However, Developer may charge a toll at the applicable toll rate without discount for an HOV if the vehicle is not equipped with a Transponder (or equivalent mean for electronic identification of the vehicle), regardless of occupancy, except if the vehicle is (a) a Transit Vehicle; (b) a Motorcycle; or (c) a law enforcement vehicle, emergency fire and rescue vehicle or emergency medical service vehicle, and as set forth in North Carolina General Statutes §136-89.211(2). Users may be charged Incidental Charges for the issuance of Transponders to such Exempt Vehicles.

B. During the initial 180 days after the Substantial Completion Date for the Project Section which is first to achieve Substantial Completion, Developer shall operate the HOT Lanes in Schedule Mode. After the initial 180 days after the Substantial Completion Date, Developer may operate the HOT Lanes in Dynamic Mode.

C. Notwithstanding anything herein to the contrary, under no circumstances shall a User be charged a toll more than any of the following:

(1) A toll based on the latest published Toll Rate Schedule (when in Schedule Mode) for the prevailing day of the week, time of day and direction of travel;

(2) A toll based on the latest published toll discounts (if any); and

(3) A toll no more than the last toll displayed to the User on the Toll Rate Sign prior to the User's entry into a Toll Segment of the HOT Lanes.

D. If Developer desires to establish or cancel a discount with respect to any toll, it shall give written notice of the establishment or cancellation to NCDOT at least 60 days prior to implementation or withdrawal thereof. Developer shall also notify the public at least 30 days prior to the change, taking all necessary measures to communicate it to the public, including through the use of a public Internet website, by phone, or in person at the Customer Service Center during reasonable business hours, or by any other reasonable means of communication.

E. Developer shall, at its own cost, take all necessary measures to communicate to the public the then-current Toll Rate Schedule (when in Schedule Mode) for non-Exempt Vehicles, toll discounts (if any), schedule of toll discounts, and schedule of Incidental Charges, including through the use of a public Internet website, by phone, or in person at the Customer Service Center during reasonable business hours, or by any other reasonable means of communication.

F. If a vehicle that is not an Exempt Vehicle travels on the HOT Lanes and a toll is not paid prior to travel or at the time of travel, NCDOT shall send a bill to the registered owner of the motor vehicle for the amount of the unpaid toll and any Incidental Charges in accordance with Exhibit 18 of the Agreement.

G. Developer shall not levy a toll on vehicles traveling on the GP Lanes, whether equipped with a transponder or not.

IV. Schedule Mode

The requirements set forth in this Section IV shall apply only while in Schedule Mode.

A. The Toll Rate Schedule when in Schedule Mode may change no more frequently than once every 24 hours, subject to all other requirements set forth in this Exhibit 4.

B. No later than 90 days before the applicable Substantial Completion Date, Developer shall prepare and submit to NCDOT, for review and comment, a schedule showing the toll rates for each Toll Segment and direction for every half hour of the day, every day of the week in the format set forth in Table 4-2 below (the "Toll Rate Schedule"), any toll discounts in accordance with Section III.C, a schedule of toll discounts in accordance with Section VIII.

Table 4-2 Sample Toll Segment Toll Rate Schedule

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
6:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
6:30 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
7:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
7:30 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
8:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
8:30 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
9:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
9:30 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
10:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
10:30 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
11:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
11:30 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX

12:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
12:30 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
1:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
1:30 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
2:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
2:30 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
3:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
3:30 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
4:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
4:30 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
5:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
5:30 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
6:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
6:30 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
7:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
7:30 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
8:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
8:30 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
9:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
9:30 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
10:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
11:00 PM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
12:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
1:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
2:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
3:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
4:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX
5:00 AM	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX	$X.XX

C. Not later than 30 days before the applicable Substantial Completion Date, Developer shall publish the initial Toll Rate Schedule, toll discounts (if any), and schedule of Incidental Charges in accordance with Section III.E.

D. Developer may implement a change to the Toll Rate Schedule, so as to maintain performance requirements as established in Section VII. At least one Business Day prior to the effective date of any change, Developer shall provide NCDOT

with a written revised Toll Rate Schedule for review and comment and shall publish such schedule in the same manner as set forth in Section III.E.

V. Dynamic Mode

The requirements set forth in this Section V shall apply while in Dynamic Mode.

A. Developer shall monitor, document, and report the volume and speed of traffic in the HOT Lanes and alter the Dynamic Mode toll rate to maintain performance requirements as described in Section VII.

B. Developer shall increase or decrease the Toll Rate in Dynamic Mode as often as needed, but not more frequently than every five minutes, to maintain the Average Speed for each Toll Segment, in order to manage the demand on the HOT Lanes.

C. Developer shall display the prevailing Dynamic Mode toll rate for each Toll Segment and direction using the Toll Rate Sign system. A schedule of toll discounts (if any) and a schedule of Incidental Charges shall be communicated pursuant to Sections III.D and III.E.

D. Developer shall maintain indicative averages of Toll Rates and maximum Toll Rates, traffic volume, and Average Speed for a minimum of the previous 180 days (or such lesser period if less than 180 days of Dynamic Mode have elapsed), broken out by Toll Segment and direction to at least every hour during non-Peak Periods and every fifteen (15) minutes during Peak Periods, of Toll Rates on the HOT Lanes. Developer shall make such indicative averages of Toll Rates and maximum Toll Rates available, to any member of the public, on a public Internet website, through a telephonic request, upon request at Developer's Customer Service Center during reasonable business hours, by facsimile copy without charge or by mailing a copy if the written request is accompanied by a self-addressed stamped envelope, or by any other reasonable means of communication.

VI. Toll Calculation

A. The "Toll Rate" with respect to a Toll Segment means the toll applied to that Toll Segment. The Toll Rate shall be rounded to the nearest five cents ($0.05).

B. Developer may elect to charge a User who travels less than the complete length of a Toll Segment a reduced toll based on the actual portion of the Toll Segment traveled or a toll based on the complete length of the Toll Segment.

C. During Dynamic Mode, Developer shall set the Toll Rates for each Toll Segment and direction in order to manage the demand on the HOT Lanes while maintaining Average Speed at or above a level that is no less than 80% of the posted speed limit on that Toll Segment of the HOT Lanes, but at no time less than 45 miles per hour.

D. During Dynamic Mode, Developer shall design the Project and set the Toll Rates for each Toll Segment and direction to prevent queuing into the HOT Lanes that

may be caused by vehicles exiting the HOT Lanes. Developer shall be excused from its obligation to meet the Operating Speed Performance Standard (OSPS) if such failure is directly caused by events that are beyond Developer's control and are not due to any culpable act, omission, negligence, recklessness, willful misconduct, breach of contract or Law or violation of a Governmental Approval by any Developer-Related Entity.

VII. HOT Lanes Performance Standards and Degradation Assessment

A. Developer shall maintain Average Speed records for all Traffic Monitoring Stations at all times after the Substantial Completion Date in order to assess the OSPS, the Federal Minimum Average Speed Standard, and any Degradation of these standards, for the HOT Lanes.

(1) Developer shall measure the instant speed of every vehicle for each HOT Lane of each Toll Segment, at least once every half mile (the "Traffic Monitoring Station"). The locations of the Traffic Monitoring Stations shall be proposed by Developer as part of the ETCS Design Documents Submittal and are subject to NCDOT's prior written approval, which shall not be unreasonably withheld.

(2) Average Speed shall be calculated as the median speed for each Traffic Monitoring Station each 15 minute period.

B. Developer shall calculate the Percentage of Degradation in Average Speed for Degradation assessment as described below:

(1) Developer shall utilize useable, non-corrupt traffic volume and speed data for each mainline Traffic Monitoring Station.

(2) For each Traffic Monitoring Station, the Average Speed shall be calculated for each 15 minute period. If the calculated Average Speed in any 15 minute period during a Peak Period (AM Peak Period or PM Peak Period, as applicable) falls below the OSPS or the Federal Minimum Average Speed, as applicable, then the Traffic Monitoring Station shall be considered Degraded for that Peak Period and direction.

(3) For a consecutive 180 day period, for each Toll Segment of the HOT Lanes, Developer shall calculate the Percentage of Degradation in Average Speed for the measurement on weekdays only as shown in the formula below:

$$Percentage\ of\ Degradation\ in\ Average\ Speed = \left[\frac{\sum_{1}^{180} Number\ of\ Degraded\ Traffic\ Monitoring\ Stations}{(Number\ of\ Traffic\ Monitoring\ Stations \times Number\ of\ Weekdays\ within\ the\ 180\ Day\ Period)}\right] \times 100$$

(a) The numerator equals the summation of all Degraded Traffic Monitoring Stations within the 180 day period for weekdays only.

(b) The denominator equals the number of Traffic Monitoring Stations multiplied by the number of weekdays within the 180 day period.

(c) For the purpose of the calculation of the Percentage of Degradation in Average Speed, the Traffic Monitoring Stations located two miles upstream of a traffic shift and one-half mile downstream of the end of a traffic shift as described in Section 23.2.1.3 of the Technical Provisions shall be excluded. The average speed measures at these locations shall be collected and reported separately but concurrently with the Percentage of Degradation in Average Speed in accordance with Section VII.E.

(d) For the purpose of the calculation of the Percentage of Degradation in Average Speed, the Traffic Monitoring Stations located within the vicinity of the I-277 direct connection, if any, shall be excluded. The average speed measures at these locations shall be collected and reported separately but concurrently with the Percentage of Degradation in Average Speed in accordance with Section VII.E.

(4) Developer shall calculate the Percentage of Degradation in Average Speed separately for AM Peak Period and PM Peak Period and for northbound and southbound directions, respectively. For the avoidance of doubt, the Degradation assessment shall result in eight (8) different values being calculated for each reporting cycle for the entire HOT Lanes. This is made up of four (4) different values for the Federal Degradation Standard (i.e. AM NB, AM SB, PM NB, and PM SB) and four (4) different values for OSPS (i.e. AM NB, AM SB, PM NB, and PM SB).

(5) Should NCDOT, at its sole discretion, decide to change the AM Peak Period and PM Peak Period, NCDOT will provide Developer with 90 days advance written notice and consider any written comments provided by Developer prior to implementing such change.

C. **Degradation Assessment Standards**

(1) Federal Minimum Average Speed Standard

(a) Per Title 23, United States Code (USC) Section 166. (d) (2), a “Degraded facility” for the purpose of determining which classes of vehicles are permitted to use the HOV lanes, is defined below. Developer shall comply with the provisions of any amendment or supplement to, or replacement or substitution of, the provisions governing "Degraded facility" as defined by federal law.

(b) The HOT Lanes is in compliance for purposes of assessing the Federal Minimum Average Speed Standard if the Percentage of

Degradation in Average Speed is below or equal to 10 percent and is considered Degraded for the purpose of assessing the Federal Minimum Average Speed Standard if the Percentage of Degradation in Average Speed is greater than 10 percent, where:

i) Degraded Traffic Monitoring Stations means: Traffic Monitoring Stations with Average Speed less than 45MPH.

ii) Percentage of Degradation in Average Speed will be calculated for the Peak Periods per direction for the mainline HOT Lanes.

(2) <u>Operating Speed Performance Standard</u>

(a) Developer shall meet or exceed the OSPS starting 180 days after the Substantial Completion Date of the applicable Project Section. The OSPS is in addition to the Federal Minimum Average Speed Standard as per <u>Section VII.C(1)</u>.

(b) The HOT Lanes is in compliance for purposes of assessing the OSPS if the Percentage of Degradation in Average Speed is less than or equal to 10 percent and is considered Degraded for the purpose of assessing the OSPS if the Percentage of Degradation in Average Speed is greater than 10 percent, where:

i) Degraded Traffic Monitoring Stations means: Average Speed less than 80% of the posted speed limit or less than 45 MPH, whichever is higher.

ii) Percentage of Degradation in Average Speed will be calculated for the Peak Periods per direction for the HOT Lanes.

(c) The impact of Developer's failure to meet the OSPS in any calendar month shall be governed by the Agreement.

D. For the purpose of determining whether or not the HOT Lanes is Degraded, data from time periods corresponding to events that (i) are beyond Developer's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law or violation of a Governmental Approval of any of the Developer-Related Entities, and (ii) could not have been avoided by the exercise of caution, due diligence or reasonable efforts by Developer , shall be excluded upon providing to written evidence thereof that is satisfactory to NCDOT. Examples of events that may be beyond Developer's control include:

(1) An Incident within the HOT Lanes or General Purpose Lanes that is timely responded to by Developer as required by the CA Documents and reasonable consequential actions by Developer to clear the Incident and return lane availability as required under the Comprehensive Agreement and the Incident Management Plan.

Documentation of corrective action includes still photos and video with time stamps, operations records, and auditable data records provided from automated dispatch records.

(2) An Incident within the HOT Lanes or General Purpose Lanes that is responded to by authorized emergency vehicles. Documentation of corrective action include Official Police Reports showing dates and times dispatched, time arrived, time cleared.

(3) Severe or inclement weather or other unsafe travel conditions. Documentation of corrective action include still photos and video with time/date stamps, weather radar snapshots with time/date stamps, vehicle volumes, etc.

(4) NCDOT suspends tolling under Section 3.5 of the Agreement.

(5) The occurrence of a Permitted Closure where the decrease in Average Speed of traffic passing through a Planned Maintenance activity measured from a point 200 feet in advance of the first full Lane Closure to the midpoint of the Planned Maintenance activity not in excess of 50% of the posted speed limit, averaged over any 15 minute period.

E. Monitoring and Reporting

(1) Developer shall collect and archive all collected speed and traffic volume data and Average Speed calculations for each Traffic Monitoring Station, and make the data available for the generation of reports and for audits of data by any persons permitted by the NCDOT for this purpose, in accordance with the Agreement.

(2) Developer shall commence delivery of the report to the NCDOT after the second full month following the Substantial Completion Date for the first Project Section. Thereafter, reporting shall occur on a calendar monthly basis, unless as otherwise specified in Section VII.E(7).

(3) Data shall be compiled between the northern and southern termini of each Project Section until such time that all Project Sections have reached Substantial Completion, and between the northern and southern termini of the Project thereafter,

(4) Data compilation shall include 180 days of Peak Periods traffic volumes and Average Speed on the HOT Lanes at each Traffic Monitoring Station by lane and for every fifteen (15) minutes.

(5) The report shall include, at a minimum:

(a) Degradation report indicating Percentage of Degradation in Average Speed in order to assess the HOT Lanes Operating Speed Performance Standard and the Federal Minimum Average Speed Standard, as defined in this Exhibit.

(b) Speed exception report showing Traffic Monitoring Stations, days, and time periods where the Percentage of Degradation in Average Speed fell below the defined threshold for the respective standards.

(c) Documentation of any periods that were impacted by incidents or activities outside of the control of Developer where the Percentage of Degradation in Average Speed fell below the defined threshold for the respective standards.

(6) If the monthly report identifies Degradation, Developer shall submit concurrently a rectification plan to the NCDOT for approval.

(7) If two consecutive monthly reports identify Degradation, then the frequency of reporting shall be increased to every seven days. This increased frequency of reporting shall continue until such time when no Degradation is identified for 12 consecutive reports.

VIII. Toll Discount

A. Developer may, at its own discretion, offer toll discounts, subject to the following limitations:

(1) Developer may not set Toll Rates that vary for the same User class (as defined in the User Classification) depending on the method by which Developer identifies a vehicle that drives on the Project. This does not preclude Developer from allowing a discount for Users equipped with a transponder (or equivalent technology) or a User that has prepaid its toll.

(2) Developer may not exempt a User that is not an Exempt Vehicle from paying toll.

B. If Developer desires to implement a change in the toll discount, at least 15 days prior to the effective date of any change, Developer shall provide NCDOT with a written revised schedule of toll discounts and shall publish such schedule in the same manner as set forth in Section III.D.

C. Developer shall not charge any toll premium to Users for any reason.

EXHIBIT 5

COMPENSATION TERMS

Part A Concession Payment

Within two Business Days following the Financial Close, Developer shall pay $[_____] ***[Insert amount from Proposal]*** in good and immediately available funds to NCDOT or the trustee under the Project Trust Agreement for deposit as provided therein. Failure to pay when due shall constitute a Developer Default. ***[Note: Delete this provision if not applicable]***

Part B [RESERVED]

Part C Revenue Payments

1. General.

Subject to Section 17.6.3 of the Agreement, Developer shall pay to NCDOT the amounts determined in accordance with this Part C of Exhibit 5 (the "Revenue Payment Amount") and interest earned on such amounts prior to distribution at the same rate as the blended average rate earned on the Toll Revenue Account. Such payments shall never be negative (except for purposes of the calculation of any credit in Part C, Section 3.4) and NCDOT shall never have any obligation to the Developer for any such payments.

Developer hereby agrees to collect and remit to NCDOT the Toll Revenues generated by the Project that are specified in Part C, Section 2 (the Revenue Payment Amount), which shall be paid to NCDOT as provided herein.

2. Calculation of the Revenue Payment Amount.

2.1. Subject to Part C, Sections 2.2 and 3, the Revenue Payment Amount shall be calculated at the end of each calendar year, commencing at the end of the calendar year in which the Substantial Completion Date occurs and continuing for each calendar year until the end of the Term. The Revenue Payment Amount shall equal the sum of the following amounts (calculated based on the Bands and Revenue Payment Percentages reflected in Attachment 1):

2.1.1. The portion of the cumulative Toll Revenues to date above the Band 1 Band Floor and up to the Band 1 Band Ceiling as reflected in Attachment 1 for the current year multiplied by the Band 1 Revenue Percentage; plus

2.1.2. The portion of the cumulative Toll Revenues to date above the Band 2 Band Floor and up to the Band 2 Band Ceiling as reflected in Attachment 1 for the current year multiplied by the Band 2 Revenue Percentage; plus

2.1.3. The portion of the cumulative Toll Revenues to date above the Band 3 Band Floor and up to the Band 3 Band Ceiling as reflected in Attachment 1 for the current year multiplied by the Band 3 Revenue Percentage; plus

2.1.4. The portion of the cumulative Toll Revenues to date above the Band 4 Band Floor and up to the Band 4 Band Ceiling as reflected in Attachment 1 for the current year multiplied by the Band 4 Revenue Percentage; plus

2.1.5. The portion of the cumulative Toll Revenues to date above the Band 5 Band Floor as reflected in Attachment 1 for the current year multiplied by the Band 5 Revenue Percentage; less

2.1.6. Any amounts paid by Developer to NCDOT in previous calendar years; less

2.1.7. Any deferred amounts available in the Revenue Payment Account, pursuant to Part C, Section 3.

2.2. The Band values are stated on a calendar year basis, starting with the calendar year in which the first Substantial Completion Date occurs. In the calculation of each Revenue Payment Amount, if the current year is less than a full calendar year, the applicable amounts of each Band Floor and Band Ceiling will be adjusted pro rata based on the number of operating days in the last calendar year of the Term. For the last calendar year of the Term, Toll Revenues shall include those revenues that are accrued or earned but not yet received in such calendar year.

3. Payment Procedures.

3.1. The Revenue Payment Amount shall be payable to NCDOT according to the following procedures.

3.1.1. Within 120 days after the end of each calendar year or partial calendar year during the Term, Developer shall deliver to NCDOT (a) a written calculation of the Revenue Payment Amount in accordance with Part C, Section 2.1, (b) an audited financial statement prepared by a reputable independent certified public accountant according to U.S. GAAP, consistently applied, setting forth the total Toll Revenues for the subject calendar year, (c) subject to Part C, Section 3.3 below and Section 17.6.3 of the Agreement, either payment of any additional Revenue Payment Amount as so calculated or a written request for any refund of any prior overpayment of the Revenue Payment Amount for the subject calendar year, as so calculated, and (d) the amount of Revenue Payment Amounts previously paid, deposited into, or released from the Revenue Payment Account.

3.1.2. If the calculation performed pursuant to Part C, Section 2.1 results in a Revenue Payment Amount greater than zero, Developer shall submit to the Lender's Agent or other Person designated by the parties a deposit for such amount into the Revenue Payment Account not later than 120 days following the end of the calendar year to which such Revenue Payment Amount relates.

3.2. All Toll Revenues received by Developer constituting the Revenue Payment Amount shall be received and held in trust by Developer for the benefit of NCDOT and shall be deemed to be trust funds until the final calculation of the amount of the Revenue Payment Amount payable to NCDOT, and any payments to Developer of costs or expenses or other application of funds shall be deemed, to the maximum extent possible, to be an application of Toll Revenues other than Revenue Payment Amounts.

3.3. Developer's payment obligations under this Part C shall survive expiration or any earlier termination of the Term.

3.4. Notwithstanding anything to the contrary in this Part C, Developer shall have the option, in accordance with this Part C, Section 3.4, to instruct the Lender's Agent to defer releasing the balance of the Revenue Payment Account owed to NCDOT pursuant to this Part C up to the date of the payment of the first Distribution. For each period up to the end of any such deferral period that the amount of the Revenue Payment Amount is calculated, any Revenue Payment Amount will be deposited to the Revenue Payment Account. For any calculation of the Revenue Payment Amount up to the end of any such deferral period that the Revenue Payment Amount is less than zero, there will be a release from the Revenue Payment Account to the Project Account of the balance as may be permitted pursuant to the Project Financing Agreements and subject to availability of such funds in the Revenue Payment Amount Account. Any excess amount that was not released to Developer due to unavailability of such funds in the Revenue Payment Account will be a credit to be applied to the amount of Revenue Payment Amount owed by Developer to NCDOT in future years. Any amounts for which payment has been deferred pursuant to this Part C, Section 3.4 shall be payable by Developer to NCDOT upon payment of the first Distribution; provided, that upon termination of the Agreement for any reason, any such deferred amounts plus interest earning on such amounts shall be due on the date of termination.

3.5. No later than 5 days after deposit of the Revenue Payment Amount by Developer pursuant to Part C, Section 3.1.2, the Lender's Agent shall release to NCDOT the balance of the Revenue Payment Account, unless Developer has elected to defer releasing the balance of the Revenue Payment Account pursuant to Part C, Section 3.4.

3.6. Following the agreement by each of Developer and NCDOT to the calculation pursuant to Part C, Section 2.1, Developer will incorporate such calculation into the proposed Base Case Financial Model Update to be provided pursuant to Article 5 of the Agreement.

Part D Refinancing Gain Share

1. Developer agrees to share any Refinancing Gain resulting from a Refinancing except an Exempt Refinancing (the "Refinancing Gain Share") in accordance with this Part D with NCDOT. The Refinancing Gain Share will be a percentage of any such Refinancing Gain as sert forth in Part D, Section 3.1.4.

2. Developer shall provide NCDOT with the items set forth in and in accordance with Section 4.5 of the Agreement.

3. Developer shall calculate the Refinancing Gain Share in accordance with this Part D, Section 3:

3.1. Refinancing Gain shall be an amount equal to the greater of zero or [(A – B) – C], where:

3.1.1. Factor A equals the sum of the net present value of each of the projected Distributions to be made over the Remaining Term following the Refinancing, in each case calculated as of the estimate date of the Refinancing and discounted using the Base Case Equity IRR, as projected immediately prior to the Refinancing, taking into account the effect of the Refinancing. For purposes of calculating Factor A, the Base Case Financial Model Update (or, if there has been no undisputed Base Case Financial Model Update, the Base Case Financial Model) shall be used, as updated for the performance of the Project so as to be current immediately prior to the Refinancing;

3.1.2. Factor B equals the sum of the net present value of each of the projected Distributions to be made over the Remaining Term following the Refinancing, in each case calculated as of the estimated date of the Refinancing and discounted using the Base Case Equity IRR, as projected immediately prior to the Refinancing, without taking into account the effect of the Refinancing. For purposes of Calculating Factor B, the Base Case Financial Model Update (or, if there has been no undisputed Base Case Financial Model Update, the Base Case Financial Model) shall be used, as updated for the performance of the Project so as to be current immediately prior to the Refinancing;

3.1.3. Factor C equals the lesser of (i) Maximum Refinancing Credit and (ii) Maximum Credit Use, where:

3.1.3.1. Maximum Refinancing Credit equals the greater of (i) (a) the sum of the future value of each of the projected Distributions in the Base Case Financial Model for the period beginning at Financial Close and up to the time of Refinancing, less (b) the sum of the future value of each Distribution in the Base Case Financial Model Update (or, if there has been no undisputed Base Case Financial Model Update, the Base Case Financial Model) for the period beginning at Financial Close and up to the estimated Refinancing Date, as updated for the performance of the Project so as to be current immediately prior to the Refinancing, and (ii) zero. Future values shall be calculated by applying the Base Case Equity IRR to the respective cash flow from the date the cash flow occurred up to the time of the Refinancing. For the avoidance of doubt and for purposes of this Part D, Section 3.1.3.1, the projected Distributions used in the calculation in (i)(a) and the actual Distributions used in the

calculation in (i)(b) shall not include any Distributions that are a result of the Refinancing.

3.1.3.2. Maximum Credit Use equals the greater of (i) Factor A less Factor B and (ii) zero.

3.1.4. If Refinancing Gain is greater than zero, Developer shall pay to NCDOT an amount equal to 50% of any such Refinancing Gain.

3.1.5. If Developer receives a lump sum net amount of money (net of any debt repayment, breakage costs or expenses associated with the Refinancing) at the time of Refinancing as a result of a Refinancing Gain, Developer shall pay to NCDOT a lump sum payment in an amount equal to 50% of such amount no later than 10 days following the receipt by Developer of the initial lump sum amount.

3.1.6. Developer shall pay any other portion of the Refinancing Gain Share not paid to NCDOT under Part D, Section 3.1.5 (i) no later than 10 days following the receipt by Developer of the benefit it projects to receive from the Refinancing Gain following the Refinancing Gain calculation, (ii) in any other manner as agreed by the parties in writing, or (iii) as may be determined through the dispute resolution procedures set forth in Section 17.8 of the Agreement. With respect to payments made by Developer under this Part D, Section 3.1.6, NCDOT's portion of the Refinancing Gain shall accrue interest at a nominal annual interest rate equal to the Equity IRR from the date of the Refinancing until each payment date.

3.2. Pursuant to Section 5.4.1.2 of the Agreement, Developer shall incorporate the anticipated Refinancing Gain less the Refinancing Gain Share paid to NCDOT into the Base Case Financial Model Update.

Part E Payment of Public Funds Amount and Interest Rate Buffer Amount

1. Pursuant to Section 5.6.1 of the Agreement, NCDOT shall pay to Developer the Public Funds Amount. Except with respect to the NTP1 Work Payments, the Public Funds Amount shall be paid to the Developer in monthly payments on a pro rata basis with debt and equity in amounts not to exceed the cumulative amounts set forth in Attachment 3 to Exhibit 5 (each payment defined as a "Maximum Public Funds Payment"). Developer shall submit monthly Payment Requests in accordance with the procedures set forth in Attachment 2 to Exhibit 5 and shall include all supporting documentation detailing the services provided. NCDOT shall make payments on a monthly basis subject to Developer submitting a Payment Request.

2. Subject to Section 19.13 of the Agreement, the Public Funds Amount shall be adjusted (and the Maximum Public Funds Payments shall be adjusted accordingly on a pro-rata basis) to reflect: (i) a reduction by the total amount of NTP1 Work Payments; and (ii) adjustments pursuant to Section 5.2 of the Agreement for (A) fluctuations in Credit Spreads as set forth in Section 4.1.3.6 of the Agreement, (B) changes to the TIFIA Term Sheet Assumptions as set forth in Section 4.1.3.7 of the Agreement, and (C) inflation in materials and labor rates as set forth in Section 4.1.3.8 of the Agreement.

3. Subject to Section 4.1.3.5 of the Agreement, NCDOT shall pay to Developer the Interest Rate Buffer Amount, on a pro-rata basis with the Public Funds Amount, if the Benchmark Interest Rate(s) increase during the Interest Rate Protection Period, or the Public Funds Amount will be reduced by the Interest Rate Buffer Amount if the Benchmark Interest Rate(s) decrease during the Interest Rate Protection Period.

4. Except as provided in Part F, Developer's achievement of Financial Close shall be a condition precedent to Developer receiving compensation under this Part E. If the Public Funds Amount is to be increased as a result of the events described in Part E, Section 2, then NCDOT shall increase the Public Funds Amount at Financial Close, subject to Section 19.13 of the Agreement. If the Public Funds Amount is to be decreased as a result of the events described in this Part E, then NCDOT shall decrease the Public Funds Amount at Financial Close accordingly. In the event that the Public Funds Amount is adjusted in accordance with this Part E, then the Parties shall amend the Maximum Payment Curve to reflect the adjusted Public Funds Amount. Such amendment shall reflect a proportional change that maintains the proportional ratios with debt and equity and the adjustment in the Public Funds Amount shall be distributed proportionately across the payment periods consistent with the original Maximum Payment Curve.

Part F NTP1 Payments

Developer and NCDOT agree to the following regarding payment for the NTP1 Work:

i. Pursuant to Section 5.6.2 of the Agreement, Developer shall receive payments from NCDOT for the NTP1 Work. Developer shall submit monthly Payment Requests in accordance with the procedures set forth in Attachment 2 to Exhibit 5 and shall include all supporting documentation detailing the services provided. NCDOT shall make payments on a monthly basis subject to Developer submitting a Payment Request.

ii. To the extent any elements of the NTP1 Work have not been completed prior to Financial Close, then these elements shall be completed after Financial Close and payment for these elements shall be made through the Public Funds Amount. The Public Funds Amount shall be reduced for payments made to Developer for NTP1 Work prior to Financial Close.

iii. Prior to Financial Close, the total amount of payments made by NCDOT to Developer for NTP1 Work shall not exceed $15 million.

Part G Annual O&M Payments

Pursuant to Section 5.6.3 of the Agreement, NCDOT shall make periodic payments to the Developer for performing the Annual O&M Payment Scope ("Annual O&M Payment"). Subject to Section 8.1.2 of the Agreement, the Annual O&M Payments shall commence on Substantial Completion of all Project Sections.

Developer and NCDOT agree to the following regarding payment for the O&M Work on the General Purpose Lanes:

i. Pursuant to Section 5.6.3 of the Agreement, Developer shall receive payments from NCDOT for the Annual O&M Payment Scope. Developer shall submit monthly Payment Requests in a form mutually acceptable to Developer and NCDOT, and Developer, and

shall include all supporting documentation detailing the services provided. NCDOT shall make payments on a monthly basis equal to 1/12 of the Annual O&M Payment, subject to Developer submitting a Payment Request.

ii. The Annual O&M Payment shall be $1 million per year. The Annual O&M Payment shall be increased annually on January 1 of each year after the first Substantial Completion Date by a percentage equal to the percentage increase in the CPI between the CPI for October of the second immediately preceding year and the CPI for October of the immediately preceding year; provided that in no event shall the amount be less than the amount in effect during the immediately preceding year.

Part H Payment Related to ROW Acquisition Costs

1. Developer shall be responsible for paying the ROW Acquisition Costs to property owners.

2. Within 30 days after Final Completion, Developer shall submit documentation as may be reasonably requested by NCDOT to substantiate the ROW Acquisition Costs paid by Developer that are consistent with applicable Law (including the Uniform Act). No later than 60 days of receipt of such documentation, NCDOT shall notify Developer of the amount, if any, to be reimbursed to Developer by NCDOT calculated pursuant to Section 7.3.3.1 of the Agreement or the amount of savings, if any, to be paid by Developer to NCDOT calculated pursuant to Section 7.3.3.2 of the Agreement If moneys are owed to Developer, NCDOT shall make such payment to Developer with such notice. If moneys are owed to NCDOT, Developer shall make such payment to NCDOT within 30 days of receipt of such notice.

Part I Payment Related to Aesthetics and Landscaping

The Schedule of Values includes an Aesthetics and Landscaping Allowance for performing the Aesthetics and Landscaping Allowance Scope. Developer shall request payment for performing the Aesthetics and Landscaping Allowance Scope in its monthly Payment Request, and shall submit documentation as may be reasonably requested by NCDOT to substantiate the costs incurred in performing the Aesthetics and Landscaping Allowance Scope.

Part J Payment Related to Certain Utility Adjustments

For all Utility Adjustment work to be performed by Developer pursuant to Section 7.4.4.2(a) of the Agreement, Developer shall submit monthly Payment Requests using the form provided as Attachment 2 to this Exhibit 5. The entries for the table entitled "Listing of Completed Payment Activities" shall be made using the information provided in the detailed Utility Adjustment estimate submitted by Developer for such Utility Adjustment Work pursuant to Section 6 of the Technical Provisions, as accepted or negotiated with NCDOT pursuant to the provisions of Section 7.4.4.2(a) of the Agreement. Any increases to the costs of such Utility Adjustment Work must be addressed through submittal of a Developer Change Request. NCDOT may withhold final payment for such Utility Adjustment Work until such time as NCDOT receives confirmation from the Utility Owner that such Utility Adjustment Work has been completed in accordance with the CA Documents and applicable Utility Agreement.

Part K Other Reimbursable Payments Owed By NCDOT

Except as otherwise provided in the CA Documents, amounts reimbursable by NCDOT to Developer under the CA Documents shall be paid no later than 60 days after receipt by NCDOT from Developer of an invoice and supporting documentation acceptable to NCDOT.

Part L Definitions

Capitalized terms used but not otherwise defined in this Exhibit have the respective meanings set forth in Exhibit 1 to the Agreement. In addition, the following terms have the meanings specified below:

Band means the difference between a Band Floor and the next highest Band Ceiling (inclusive) or, where there is no higher Band Ceiling, any amount in excess of the highest Band Floor as set out in Attachment 1 of this Exhibit 5.

Band Ceiling means, in respect of each Band Floor, the next highest Band Floor less one cent, if such a Band Floor exists.

Band Floor means each amount specified as the minimum amount for a Band as set out in Attachment 1 to this Exhibit 5.

Disbursement Request means the request of the disbursement of payments related to Section 5.6.1 of the Agreement referencing the Developer's rights to receive payment of the Public Funds Amount.

Lender's Agent means the Person responsible for administering the Project Account pursuant to the Project Financing Agreements.

Maximum Public Funds Payment means the maximum cumulative Public Funds Amount for a given period that can be paid to the Developer in accordance with Attachment 3 to Exhibit 5.

NTP1 Work Payments means payments made prior to NTP2 related to NTP1 Work.

Project Account means the account established pursuant to the Funding Agreements.

Refinancing Date means the date of Refinancing.

Refinancing Gain Share has the meaning set forth in Part D of this Exhibit 5.

Remaining Term means the period between the Refinancing Date and the expiration of the Term.

Revenue Payment Amount has the meaning set forth in Part C of this Exhibit 5.

Revenue Payment Percentage means the applicable percentages for each of the Bands as shown in Attachment 1 to this Exhibit 5 used to determine the Revenue Payment Amount.

ATTACHMENT 1 TO EXHIBIT 5

Band	Revenue Payment Percentage
1	0%
2	12.5%
3	25.0%
4	50.0%
5	75.0%

Year of Operations	Band 1 Floor: Cumulative Toll Revenues from:	Band 1 Ceiling: Cumulative Toll Revenues up to but less than:	Band 2 Floor: Cumulative Toll Revenues from:	Band 2 Ceiling: Cumulative Toll Revenues up to but less than:	Band 3 Floor: Cumulative Toll Revenues from:	Band 3 Ceiling: Cumulative Toll Revenues up to but less than:	Band 4 Floor: Cumulative Toll Revenues from:	Band 4 Ceiling: Cumulative Toll Revenues up to but less than:	Band 5 Floor: Cumulative Toll Revenues from:
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Year of Operations	Band 1 Floor: Cumulative Toll Revenues from:	Band 1 Ceiling: Cumulative Toll Revenues up to but less than:	Band 2 Floor: Cumulative Toll Revenues from:	Band 2 Ceiling: Cumulative Toll Revenues up to but less than:	Band 3 Floor: Cumulative Toll Revenues from:	Band 3 Ceiling: Cumulative Toll Revenues up to but less than:	Band 4 Floor: Cumulative Toll Revenues from:	Band 4 Ceiling: Cumulative Toll Revenues up to but less than:	Band 5 Floor: Cumulative Toll Revenues from:
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Year of Operations	Band 1 Floor: Cumulative Toll Revenues from:	Band 1 Ceiling: Cumulative Toll Revenues up to but less than:	Band 2 Floor: Cumulative Toll Revenues from:	Band 2 Ceiling: Cumulative Toll Revenues up to but less than:	Band 3 Floor: Cumulative Toll Revenues from:	Band 3 Ceiling: Cumulative Toll Revenues up to but less than:	Band 4 Floor: Cumulative Toll Revenues from:	Band 4 Ceiling: Cumulative Toll Revenues up to but less than:	Band 5 Floor: Cumulative Toll Revenues from:
49+									

ATTACHMENT 2 TO EXHIBIT 5

I-77 HOT Lanes Project
NCDOT Contract No. xx-xxxPxxxx
Invoice No: xx
Invoice Period: _____, 20__ through _____, 20__

Payment Request Cover Sheet

Total Project Construction Costs	$XXXXXXX	
Public Funds Amount		$XXXXXX
NTP1 Work Paid	$XXXXXX	
Sum of Schedule of Values of Completed Payment Activities		$xxx,xxx,xxx.00
Total amount of Public Funds Amount Paid		$xx,xxx,xxx.00
Payment Request Amount		$xx,xxx,xxx.00
Maximum amount payable based on Maximum Payment Curve		$xxx,xxx,xxx.00
Remaining Project Construction Costs	$xxx,xxx,xxx.00	
Remaining amount of Public Funds Amount not paid		$xxx,xxx,xxx.00

I-77 HOT Lanes Project
NCDOT Contract No. xx-xxxPxxxx
Invoice No: xx
Invoice Period: _____, 20__ through _____, 20__

Listing of Completed Payment Activities

Activity ID No.	Activity Description	Payment Activity value set forth on Schedule of Values
TOTAL EARNED _____, 20__ – _____, 20__		**$xx,xxx,xxx.xx**
TOTAL EARNED TO DATE		**$xxx,xxx,xxx.00**

CERTIFICATE

In order to induce the North Carolina Department of Transportation ("NCDOT") to make payment as requested by this Payment Request, Developer hereby certifies, represents and warrants to NCDOT as follows:

1. Unless otherwise indicated, capitalized terms used herein shall have the meanings set forth in that certain Comprehensive Agreement between NCDOT and Developer.

2. The Work associated with each Payment Activity described in the exhibits and documents attached hereto is 100% complete and has been fully performed in a prudent manner and in compliance with the requirements of the CA Documents; all necessary materials to perform such Work have been provided in accordance with the provisions of the CA Documents; and the information contained in such exhibits and documents is true, complete and correct in all material respects.

3. The amount specified in the Payment Request has been computed in accordance with, and is due and payable under, the terms and conditions of the Agreement, has not been the subject of any previous Payment Request (unless disputed or rejected for payment) and is not the subject of any pending Payment Request from Developer.

4. No Developer Default has occurred and is continuing that has not been reported to NCDOT.

5. The representations and warranties of Developer set forth in the Agreement are true and correct in all material respects as of the date of this Payment Request.

6. No event of default or event under the Design-Build Contract which with the giving of notice or the lapse of time would result in an event of default under the Design-Build Contract has occurred and is continuing as of the date hereof. [*After the Collateral Agent exercises any step-in rights and assumes control of design and construction of the Project, and until transfer of the Developer's Interest from the Collateral Agent to an approved Substituted Entity, this representation from the Collateral Agent may be revised to read as follows, if necessary:* No event of default or event under the Design-Build Contract which with the giving of notice or the lapse of time would result in an event of default under the Design-Build Contract has occurred and is continuing as of the date hereof, except as may be specifically disclosed in writing with this Payment Request, and for each such exception either the Design-Build Contractor is diligently and in good faith pursuing cure thereof or the undersigned is diligently pursuing its lawful remedies relating to such event, as more particularly described in writing with this Payment Request.]

7. All Governmental Approvals necessary for the Work that are Developer's obligation to obtain pursuant to the CA Documents and to which this Payment Request relates have been secured, except to the extent NCDOT and the issuing Governmental Entity have granted a written exception, and there exists no reason to believe that any future Governmental Approvals that are Developer's obligation to obtain pursuant to the CA Documents for the Work cannot be secured.

8. Neither Developer nor the Design-Build Contractor is barred or suspended from providing goods or services to any local, State or federal agency. Except for any specific subcontractor or Supplier listed as barred or suspended in an attachment hereto, each subcontractor and Supplier for the Work has certified in its respective invoice to the Design-Build Contractor that it is not barred or suspended from providing goods or services to any local, state or federal agency, and to Developer's knowledge no subcontractor or Supplier has been so barred or suspended.

9. As of the date hereof, the Design-Build Contractor, each other prime Contractor for Secured Work, and all subcontractors, Suppliers, and other third parties engaged or retained for performance of Secured Work or supply of related services materials or equipment have been paid all amounts due under their respective contracts or purchase agreements (in each case, other than amounts to be paid pursuant to this Payment Request, and in each case other than retainage and amounts in dispute of which Developer has previously given NCDOT written notice setting forth in detail the amounts in dispute).

10. Prevailing wages have been paid to all employees of Developer, the Design-Build Contractor and all subcontractors in accordance with the rates set forth in the Agreement.

11. Also attached hereto are:

(a) A certificate and release signed by the Design-Build Contractor, each other prime Contractor for Secured Work and each subcontractor or Supplier, or other third party engaged or retained for performance of Secured Work or supply of related services, materials or equipment included in any preceding Payment Request for which Developer received payment, certifying that it has received payment in full for such services, materials or equipment, except only for retainage and amounts in dispute, stating any amounts in dispute and waiving and releasing any and all claims, liens or security interests, known or unknown, suspected or unsuspected, arising out of such services, materials or equipment against any person or property whatsoever, including NCDOT, the State, the Project, any Payment Bond, and any letters of credit, except potential claims against retainage, or letters of credit or certificates of deposit for retainage.

(b) A current Maximum Payment Curve inclusive of all approved adjustments.

(c) An “Affidavit of Wages Paid” submitted by the Design-Build Contractor, each other prime Contractor for Secured Work, and each subcontractor, certifying wages paid and compliance with applicable prevailing wage requirements.

(d) Other support documentation as required by the Agreement or as appropriate to support this Payment Request.

"Developer"

_____

By:_____
Its:_____
Date:_____

By:_____
Its:_____
Date:_____

ATTACHMENT 3 TO EXHIBIT 5

MAXIMUM PAYMENT CURVE

[To be provided with executed version from Developer's Proposal]

EXHIBIT 6

FEDERAL REQUIREMENTS

Exhibit Description	No. of Pages
Attachment 1 – Federal Provisions	2
Attachment 2 – FHWA Form 1273	24
Attachment 3 – Federal Prevailing Wage Rate	9
Attachment 4 – Equal Employment Opportunity	5
Attachment 5 – Minority and Female Employment Requirements	3
Attachment 6 – Disadvantaged Business Enterprise	5
Attachment 7 – U.S. Department of Transportation Hotline	1
Attachment 8 – [RESERVED]	1
Attachment 9 – On-the-Job Training	3

ATTACHMENT 1 TO EXHIBIT 6

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL. — The work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Exhibit 6. Whenever in said required contract provisions references are made to:

(a) "contracting officer" or "authorized representative", such references shall be construed to mean NCDOT or its Authorized Representative;

(b) “contractor,” “prime contractor,” “bidder,” “proposer,” “Federal-aid construction contractor,” or “prospective first tier participant,” or “First Tier Participant,” such references shall be construed to mean Developer or its authorized representative and/or the Design-Build Contractor or its authorized representative, as may be appropriate under the circumstances;

(c) “contract,” “prime contract,” “Federal-aid construction contract” or “design-build contract,” such references shall be construed to mean the Design-Build Contract;

(d) “subcontractor,” “supplier,” “vendor,” “prospective lower tier participant,” “lower tier prospective participant,” “Lower Tier participant,” or “lower tier subcontractor,” such references shall be construed to mean, as appropriate, Contractors other than the Design-Build Contractor; and

(e) “department,” “agency,” “department or agency with which this transaction originated,” or “department or agency entering into this transaction,” such references shall be construed to mean NCDOT, except where a different department or agency is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, "Nondiscrimination," and Section VI, "Subletting or Assigning the Contract," of the Form 1273 required contract provisions, Developer shall cause the contractor to comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of $10,000 will be considered under the provisions of Section VII of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by,

or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING. — Part 26, Title 49, Code of Federal Regulations applies to this Project. Pertinent sections of said Code are incorporated within other sections of the Contract and the NCDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

CONVICT PRODUCED MATERIALS

a. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.

b. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)(10), Developer and its Contractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of Developer and Contractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), Developer and its Contractors shall retain all such books, documents, papers, and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.

b. Developer agrees to include this section in each Contract at each tier, without modification except as appropriate to identify the Contractor who will be subject to its provisions.

ATTACHMENT 2 TO EXHIBIT 6

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA Form 1273

FHWA - 1273 Electronic Version - May 1, 2012 Z-8

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

   The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

   Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

   Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).
2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with

the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
   a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
   b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
   a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
   b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
   c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
   d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
   e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.
   a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.
   b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.
   c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
   a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
   b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
   c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
   d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.
6. **Training and Promotion:**
   a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
   b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
   c The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
   d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:
   a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
   b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
   c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the

contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
9. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.
   a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
   b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.
10. **Assurance Required by 49 CFR 26.13(b):**
   a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
   b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.
11. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.
   a. The records kept by the contractor shall document the following:
      (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
      (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
      (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
   b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data

should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 “Contract provisions and related matters” with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. **Minimum wages**
   a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

      Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
   (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
   (ii) The classification is utilized in the area by the construction industry; and
   (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
   (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
   (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
   (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor,

that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. **Withholding.** The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
3. **Payrolls and basic records**
   a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
   b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide

addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. **Apprentices and trainees**

a. Apprentices (programs of the USDOL). Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio

permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL). Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

   The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

   Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

   In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT). Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight

time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. **Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
7. **Contract termination:** debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. **Certification of eligibility.**
    a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
    b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
    c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated

damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. **Withholding for unpaid wages and liquidated damages.** The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
   a. The term “perform work with its own organization” refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
      (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
      (2) the prime contractor remains responsible for the quality of the work of the leased employees;
      (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
      (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
   b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting

organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. **Instructions for Certification – First Tier Participants:**
   a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
   b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
   c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
   d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
   e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
   f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
   g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.
   h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.
   i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause.

The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**
   a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
      (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
      (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
      (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
      (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
   b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
2. **Instructions for Certification - Lower Tier Participants:**
   (Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)
   a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
   b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
   c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
   d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a

participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.
g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.
h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI.CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
   a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
   b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT 3 TO EXHIBIT 6

FEDERAL PREVAILING WAGE RATE

STANDARD SPECIAL PROVISION

MINIMUM WAGES
GENERAL DECISION NC130090 01/04/2013 NC90

Z-90

Date: January 4, 2013

General Decision Number: NC130090 01/04/2013 NC90

Superseded General Decision Numbers: NC20120090

State: North Carolina

Construction Type: HIGHWAY

COUNTIES:

Anson
Cabarrus
Gaston
Mecklenburg
Union

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects, railroad construction, bascule, suspension and spandrel arch bridges designed for commercial navigation, bridges involving marine construction, and other major bridges).

Modification Number	Publication Date
0	01/04/2013

SUNC2011-071 09/16/2011

	Rates	Fringes
CARPENTER (Form Work Only)	14.70	
CEMENT MASON/CONCRETE FINISHER		
Anson, Cabarrus, and Gaston Counties	12.87	
Mecklenburg County	12.62	
Union County	12.75	
INSTALLER (Guardrail) (includes Guardrail/Post Driver Work)	11.16	
IRONWORKER (Reinforcing)	14.88	
LABORER		
Asphalt, Asphalt Distributor, Raker, and Spreader	11.78	
Common or General		
Anson and Cabarrus Counties	11.14	
Gaston County	10.63	
Mecklenburg County	11.55	
Union County	10.32	
Concrete Saw	14.26	
Landscape	10.35	
Luteman	12.88	
Mason Tender (Cement/Concrete)	11.25	
Pipelayer	12.93	
Traffic Control (Cone Setter)	12.53	

	Rates	Fringes
Traffic Control (Flagger)	9.99	
	Rates	Fringes
POWER EQUIPMENT OPERATORS		
Backhoe/Excavator/Trackhoe		
Anson, Cabarrus, and Gaston Counties	14.21	
Mecklenburg County	13.79	
Union County	14.53	
Broom/Sweeper	13.97	
Bulldozer		
Anson, Cabarrus, and Gaston Counties	15.46	
Mecklenburg County	15.90	
Union County	14.96	
Crane	19.11	
Curb Machine	14.43	
Distributor	14.99	
Drill	16.68	
Grader/Blade		
Anson, Cabarrus, Gaston, and Union Counties	17.99	
Mecklenburg County	18.65	
Loader		
Anson, Cabarrus, Gaston, and Union Counties	14.46	
Mecklenburg County	14.43	
Mechanic	17.13	
Milling Machine	15.80	
Oiler	14.36	
Paver	16.65	
Roller		
Anson, Cabarrus, Gaston, and Union Counties	13.22	
Mecklenburg County	13.29	
Scraper	15.85	
Screed	15.23	
Tractor	14.47	
TRUCK DRIVER		
4 Axle Truck	11.90	
Distributor	16.75	
Dump Truck		
Anson, Cabarrus, and Gaston Counties	13.46	
Mecklenburg County	13.79	
Union County	13.49	
Flatbed Truck	15.02	
Lowboy Truck		
Anson, Cabarrus, Gaston, and Mecklenburg Counties	15.26	
Union County	15.23	
Off the Road Truck	15.00	
Single Axle Truck	12.13	
Tack Truck	16.52	
Water Truck	13.16	

Welders – Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was

conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U. S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

STANDARD SPECIAL PROVISION

MINIMUM WAGES
GENERAL DECISION NC130096 01/04/2013 NC96

Z-96

Date: January 4, 2013

General Decision Number: NC130096 01/04/13 NC96

Superseded General Decision Numbers: NC20120096

State: North Carolina

Construction Type: HIGHWAY

COUNTIES:

Bladen	Lee	Robeson
Cleveland	Lenoir	Rowan
Columbus	Lincoln	Sampson
Davidson	Montgomery	Scotland
Duplin	Moore	Stanly
Harnett	Richmond	Wilson
Iredell		

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects, railroad construction, bascule, suspension and spandrel arch bridges designed for commercial navigation, bridges involving marine construction, and other major bridges).

Modification Number	Publication Date
0	01/04/2013

SUNC2011-077 09/16/2011

	Rates	Fringes
CARPENTER (Form Work Only)	13.30	
CEMENT MASON/CONCRETE FINISHER	14.18	
INSTALLER (Guardrail) (includes Guiderail/Post Driver Work)	11.76	
IRONWORKER (Reinforcing)	13.90	
LABORER		
Asphalt, Asphalt Distributor, Raker, and Spreader	12.81	
Common or General		
Davidson County	10.64	
Harnett County	10.41	
Iredell County	10.38	
Lenoir County	9.98	
Remaining Counties	10.27	
Richmond County	10.46	
Robeson County	10.07	
Rowan County	10.25	
Stanly County	9.03	
Concrete Saw	11.56	

	Rates	Fringes
Landscape	9.90	
Luteman	12.68	
Mason Tender (Cement/Concrete)	10.53	
Pipelayer		
Remaining Counties	11.79	
Stanly County	12.25	
Traffic Control (Flagger)	10.31	
POWER EQUIPMENT OPERATORS		
Backhoe/Excavator/Trackhoe	14.64	
Broom/Sweeper	12.29	
Bulldozer	15.32	
Crane	19.10	
Grader/Blade	19.29	
Loader	13.93	
Mechanic	15.92	
Milling Machine		
Columbus, Davidson, Duplin, Lenoir, Lincoln, Moore, Richmond, and Stanly Counties	14.09	
Remaining Counties	13.80	
Oiler	14.19	
Paver	14.10	
Roller	12.83	
Scraper	12.29	
Screed	14.75	
Tractor	13.92	
TRUCK DRIVER		
Dump Truck		
Davidson County	12.61	
Remaining Counties	11.80	
Lowboy Truck	15.99	
Single Axle Truck	12.07	
Water Truck	13.82	

Welders – Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The

next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U. S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.

Washington, D.C. 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

ATTACHMENT 4 TO EXHIBIT 6

EQUAL EMPLOYMENT OPPORTUNITY

SPECIAL PROVISION
000---001
Standard Federal Equal Employment Opportunity
Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Hometown Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Hometown Plan. Contractors must be able to

demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Hometown Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Hometown Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Hometown Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Hometown Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to

community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral Process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the contractor’s EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to

minority and female community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the contractor's EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both

minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. In addition to the reporting requirements set forth elsewhere in this contract, the contractor and the subcontractors holding subcontracts, not including material suppliers, of $10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

ATTACHMENT 5 TO EXHIBIT 6

MINORITY AND FEMALE EMPLOYMENT REQUIREMENTS

Z-7

NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (*EXECUTIVE NUMBER 11246*)

1. The goals and timetables for minority and female participation, expressed in percentage terms for Developer's aggregate workforce in each trade on all construction work in the covered area, see as shown on the attached sheet entitled "Employment Goals for Minority and Female participation".

These goals are applicable to all Developer's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If Developer performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, Developer also is subject to the goals for both its federally involved and nonfederally involved construction.

Developer's compliance with the Executive Order and the regulations in *41 CFR Part 60-4* shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in *41 CFR 60-4.3(a)*, and its effort to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade and Developer shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project or the sole purpose of meeting Developer's goals shall be a violation of the contract, the Executive Order and the regulations in *41 CFR Part 60-4*. Compliance with the goals will be measured against the total work hours performed.

2. As used in this Notice and in the contract resulting from this solicitation, the "covered area" is the county or counties shown on the cover sheet of the proposal form and contract.

EMPLOYMENT GOALS FOR MINORITY AND FEMALE PARTICIPATION

Economic Areas

Area 023 29.7%
Bertie County
Camden County
Chowan County
Gates County
Hertford County
Pasquotank County
Perquimans County

Area 024 31.7%
Beaufort County
Carteret County
Craven County
Dare County
Edgecombe County
Green County
Halifax County
Hyde County
Jones County
Lenoir County
Martin County
Nash County
Northampton County
Pamlico County
Pitt County
Tyrrell County
Washington County
Wayne County
Wilson County

Area 025 23.5%
Columbus County
Duplin County
Onslow County
Pender County

Area 026 33.5%
Bladen County
Hoke County
Richmond County
Robeson County
Sampson County
Scotland County

Area 027 24.7%
Chatham County
Franklin County
Granville County
Harnett County
Johnston County
Lee County
Person County
Vance County
Warren County

Area 028 15.5%
Alleghany County
Ashe County
Caswell County
Davie County
Montgomery County
Moore County
Rockingham County
Surry County
Watauga County
Wilkes County

Area 029 15.7%
Alexander County
Anson County
Burke County
Cabarrus County
Caldwell County
Catawba County
Cleveland County
Iredell County
Lincoln County
Polk County
Rowan County
Rutherford County
Stanly County

Area 0480 8.5%
Buncombe County
Madison County

Area 030 6.3%
Avery County
Cherokee County
Clay County
Graham County
Haywood County
Henderson County
Jackson County
McDowell County
Macon County
Mitchell County
Swain County
Transylvania County
Yancey County

SMSA Areas

Area 5720 26.6%
Currituck County

Area 9200 20.7%
Brunswick County
New Hanover County

Area 2560 24.2%
Cumberland County

Area 6640 22.8%
Durham County
Orange County
Wake County

Area 1300 16.2%
Alamance County

Area 3120 16.4%
Davidson County
Forsyth County
Guilford County
Randolph County
Stokes County
Yadkin County

Area 1520 18.3%
Gaston County
Mecklenburg County
Union County

Goals for Female
Participation in Each Trade

(Statewide) 6.9%

ATTACHMENT 6 TO EXHIBIT 6

DISADVANTAGED BUSINESS ENTERPRISE

(3/2613) DB1 G061

Description

The purpose of this Special Provision is to carry out the U.S. Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with Federal funds. This provision is guided by 49 CFR Part 26.

Definitions

Committed DBE Subcontractor - Any DBE submitted during the performance of the Work that is being used to meet the DBE goal by submission of a Letter of Intent. Or any DBE used as a replacement for a previously committed DBE firm.

Contract Goal Requirement - The approved DBE participation at time of award, but not greater than the advertised contract goal.

Contractor – Developer or Design-Builder Contractor, as applicable.

DBE Goal - A portion of the total contract, expressed as a percentage, that is to be performed by committed DBE subcontractor(s).

Disadvantaged Business Enterprise (DBE) - A firm certified as a Disadvantaged Business Enterprise through the North Carolina Unified Certification Program.

Goal Confirmation Letter - Written documentation from the Department to the Contractor confirming the Contractor's approved, committed DBE participation.

Manufacturer - A firm that operates or maintains a factory or establishment that produces on the premises, the materials or supplies obtained by the Contractor.

Regular Dealer - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns and operates distribution equipment for the products. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

North Carolina Unified Certification Program (NCUCP) - A program that provides comprehensive services and information to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients of USDOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with 49 CFR Part 26.

United States Department of Transportation (USDOT) - Federal agency responsible for issuing regulations (49 CFR Part 26) and official guidance for the DBE program.

Forms and Websites Referenced in this Provision

DBE Payment Tracking System - On-line system in which the Contractor enters the payments made to DBE subcontractors who have performed work on the project. https://apps.dot.state.nc.us/Vendor/PaymentTracking/

RF-1 *DBE Replacement Request Form* - Form for replacing a committed DBE.

http://connect.ncdot.gov/projects/construction/Construction%20Forms/DBE%20MBE%20WBE%20Replacement%20Request%20Form.pdf

SAF *Subcontract Approval Form* - Form required for approval to sublet the contract.

http://connect.ncdot.gov/projects/construction/Construction%20Forms/Subcontract%20Approval%20Form%20Rev.%202012.zip

JC-1 *Joint Check Notification Form* - Form and procedures for joint check notification. The form acts as a written joint check agreement among the parties providing full and prompt disclosure of the expected use of joint checks.

Letter of Intent - Form signed by the Contractor and the DBE subcontractor, manufacturer or regular dealer that affirms that a portion of said contract is going to be performed by the signed DBE for the amount listed in the Letter of Intent. The form of the Letter of Intent is attached as Form 1 to this Special Provision.

Listing of DBE Subcontractors – Form listing each committed DBE subcontractor, which is attached as Form 2 to this Special Provision.

Contract Goal

The following goal for participation by Disadvantaged Business Enterprises is established for this contract:

Disadvantaged Business Enterprises 12%

The Contractor shall exercise all necessary and reasonable steps to attain the participation with certified DBEs to achieve the above percentage goal.

This goal is to be met through utilization of certified DBE firms performing DBE Eligible Work.

Directory of Transportation Firms (Directory)

Real-time information is available about firms doing business with the Department and firms that are certified through NCUCP in the Directory of Transportation Firms. Only firms identified in the Directory as DBE certified shall be used to meet the DBE goal. The Directory can be found at the following link. https://partner.ncdot.gov/VendorDirectory/default.html

The listing of an individual firm in the directory shall not be construed as an endorsement of the firm's capability to perform certain work.

DBE Prime Contractor

When a certified DBE firm proposes on a contract that contains a DBE goal, the DBE firm is responsible for meeting the goal or making good faith efforts to meet the goal, just like any other proposer. In most cases, a DBE proposer on a contract will meet the DBE goal by virtue of the work it performs on the contract with its own forces. However, all the work that is performed by the DBE proposer and any other DBE subcontractors will count toward the DBE goal. The DBE proposer shall list itself along with any DBE subcontractors, if any, in order to receive credit toward the DBE goal.

For example, if the DBE goal is 45% and the DBE proposer will only perform 40% of the contract work, the prime will list itself at 40%, and the additional 5% shall be obtained through additional DBE participation with DBE subcontractors or documented through a good faith effort.

DBE prime contractors shall also follow this Special Provision just as a non-DBE proposer would.

Written Documentation – Letter of Intent

After award of the contract and during the performance of the Work, the Contractor shall submit written documentation for each DBE that will be used to meet the DBE goal of the contract, indicating the Contractors's commitment to use the DBE in the contract.

This documentation shall be submitted on Form 1 to this Special Provision titled *Letter of Intent* for approval by the Department before the DBE can start the applicable portion of the Work.

If the Contractor fails to submit the Letter of Intent from each committed DBE to be used toward the DBE goal, or if the form is incomplete (i.e. both signatures are not present), the DBE participation will not count toward meeting the DBE goal and the DBE goal must be met through another committed DBE for which a Letter of Intent was properly submitted to the Department.

Submission of Good Faith Effort

If the Contractor fails to meet or exceed the DBE goal during the performance of the Work, the Contractor shall submit to the Department documentation of adequate good faith efforts made to reach the DBE goal.

Consideration of Good Faith Effort for Projects with DBE Goals More Than Zero

Adequate good faith efforts mean that the Contractor took all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient DBE participation. Adequate good faith efforts also mean that the Contractor actively and aggressively sought DBE participation. Mere *pro forma* efforts are not considered good faith efforts.

The Department will consider the quality, quantity, and intensity of the different kinds of efforts a Contractor has made. Listed below are examples of the types of actions a Contractor will take in making a good faith effort to meet the goal and are not intended to be exclusive or exhaustive, nor is it intended to be a mandatory checklist.

(A) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices , use of verifiable electronic means through the use of the NCDOT Directory of Transportation Firms) the interest of all certified DBEs who have the capability to perform the work of the contract. Solicitation shall provide the opportunity to DBEs within the Division and surrounding Divisions where the project is located. The Contractor must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

(B) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform these

work items with its own forces. Negotiate with subcontractors to assume part of the responsibility to meet the contract DBE goal when the work to be sublet includes potential for DBE participation (2nd and 3rd tier subcontractors).

(C) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

(D) (1) Negotiating in good faith with interested DBEs. It is the Contractor's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A Contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Contractor's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a Contractor to perform the work of a contract with its own organization does not relieve the Contractor of the responsibility to make good faith efforts. A Contractor is not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

(E) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associates and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the project goal.

(F) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or the Contractor.

(G) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

(H) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; Federal, State, and local minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

(I) Any other evidence that the Contractor submits which shows that the Contractor has made reasonable good faith efforts to meet the DBE goal.

In addition, the Department may take into account the following:

(1) Whether the Contractor's documentation reflects a clear and realistic plan for achieving the DBE goal.

(2) The Contractor's past performance in meeting the DBE goals.

Non-Good Faith Appeal

The State Contractor Utilization Engineer will notify the Contractor verbally and in writing of non-good faith. A Contractor may appeal a determination of non-good faith made by the Goal Compliance Committee. If a Contractor wishes to appeal the determination made by the Committee, they shall provide written notification to the State Contractual Services Engineer or at DBE@ncdot.gov. The appeal shall be made within 2 business days of notification of the determination of non-good faith.

Counting DBE Participation Toward Meeting DBE Goal

(A) Participation

The total dollar value of the participation by a committed DBE will be counted toward the contract goal requirement. The total dollar value of participation by a committed DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the Contractor.

(B) Joint Checks

Prior notification of joint check use shall be required when counting DBE participation for services or purchases that involves the use of a joint check. Notification shall be through submission of Form JC-1 *(Joint Check Notification Form)* and the use of joint checks shall be in accordance with the Department's Joint Check Procedures.

(C) Subcontracts (Non-Trucking)

A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract goal requirement. Work that a DBE subcontracts to a non-DBE firm does <u>not</u> count toward the contract goal requirement. If a DBE contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of standard industry practices, it shall be presumed that the DBE is not performing a commercially useful function. The DBE may present evidence to rebut this presumption to the Department. The Department's decision on the rebuttal of this presumption is subject to review by the Federal Highway Administration but is not administratively appealable to USDOT.

(D) Joint Venture

When a DBE performs as a participant in a joint venture, the Contractor may count toward its contract goal requirement a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its forces.

(E) Suppliers

A Contractor may count toward its DBE requirement 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from a DBE regular dealer and 100 percent of such expenditures from a DBE manufacturer.

(F) Manufacturers and Regular Dealers

A Contractor may count toward its DBE requirement the following expenditures to DBE firms that are not manufacturers or regular dealers:

(1) The fees or commissions charged by a DBE firm for providing a *bona fide* service, such as providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.

(2) With respect to materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Commercially Useful Function

(A) DBE Utilization

The Contractor may count toward its contract goal requirement only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE shall also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and any other relevant factors.

(B) DBE Utilization in Trucking

The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function.

(1) The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may subcontract the work to another DBE firm, including an owner-operator who is certified as a DBE. The DBE who subcontracts work to another DBE receives credit for the total value of the transportation services the subcontracted DBE provides on the contract.

(5) The DBE may also subcontract the work to a non-DBE firm, including from an owner-operator. The DBE who subcontracts the work to a non-DBE is entitled to credit for the total value of transportation services provided by the non-DBE subcontractor not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE subcontractors receives credit only for the fee or commission it receives as a result of the subcontract arrangement. The value of services performed under subcontract agreements between the DBE and the Contractor will not count towards the DBE contract requirement.

(6) A DBE may lease truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the DBE has exclusive use of and control over the truck. This requirement does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. This type of lease may count toward the DBE's credit as long as the driver is under the DBE's payroll.

(7) Subcontracted/leased trucks shall display clearly on the dashboard the name of the DBE that they are subcontracted/leased to and their own company name if it is not identified on the truck itself. Magnetic door signs are not permitted

DBE Replacement

When the Contractor has relied on a commitment to a DBE firm (or an approved substitute DBE firm) to meet all or part of a contract goal requirement, the Contractor shall not terminate the DBE for convenience. This includes, but is not limited to, instances in which the Contractor seeks to perform the work of the terminated subcontractor with another DBE subcontractor, a non-DBE subcontractor, or with the Contractor's own forces or those of an affiliate. A DBE may only be terminated after receiving NCDOT's written approval based upon a finding of good cause for the termination.

All requests for replacement of a committed DBE firm shall be submitted to NCDOT for approval on Form RF-1 (DBE Replacement Request). If the Contractor fails to follow this procedure, the Contractor or other affiliated companies within the Contractor may be disqualified from further bidding for a period of up to 6 months.

The Contractor shall comply with the following for replacement of a committed DBE:

(A) Performance Related Replacement

When a committed DBE is terminated for good cause as stated above, the Contractor shall take all necessary and reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work as the DBE that was terminated. The Contractor is encourage to first attempt to find another DBE firm to do the same work as the DBE that was being terminated.

If a replacement DBE is not found that can perform at least the same amount of work as the terminated DBE, the Contractor shall submit a good faith effort documenting the steps taken. Such documentation shall include, but not be limited to, the following:

(1) Copies of written notification to DBEs that their interest is solicited in contracting the work defaulted by the previous DBE or in subcontracting other items of work in the contract.

(2) Efforts to negotiate with DBEs for specific subbids including, at a minimum:

(a) The names, addresses, and telephone numbers of DBEs who were contacted.

(b) A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed.

(3) A list of reasons why DBE quotes were not accepted.

(4) Efforts made to assist the DBEs contacted, if needed, in obtaining bonding or insurance required by the Contractor.

(B) Decertification Replacement

(1) When a committed DBE is decertified by the Department after the SAF (Subcontract Approval Form) has been received by the Department, the Department will not require the Contractor to solicit replacement DBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the contract goal requirement.

(2) When a committed DBE is decertified prior to the Department receiving the SAF (Subcontract Approval Form) for the named DBE firm, Develper shall take all necessary and reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work to meet the DBE goal requirement. If a DBE firm is not found to do the same amount of work, a good faith effort must be submitted to NCDOT (see paragraph A above of this section for required documentation).

Changes in the Work

When the Department makes changes that result in the reduction or elimination of work to be performed by a committed DBE, the Contractor will not be required to seek additional participation. When the Contractor makes changes that result in additional work to be performed

by a DBE based upon the Contractor's commitment, the DBE shall participate in additional work to the same extent as the DBE participated in the original contract work.

When the Department makes changes that result in extra work, which has more than a minimal impact on the contract amount, the Contractor shall seek additional participation by DBEs unless otherwise approved by the Department.

When the Department makes changes that result in an alteration of plans or details of construction and a portion or all of work had been expected to be performed by a committed DBE, the Contractor shall seek participation by DBEs unless otherwise approved by the Department.

When the Department requests changes in the work that result in the reduction or elimination of work that the Design-Build Team committed to be performed by a DBE, the Contractor shall seek additional participation by DBEs equal to the reduced DBE participation caused by the changes.

Reports and Documentation

A SAF (Subcontract Approval Form) shall be submitted for all work which is to be performed by a DBE subcontractor. The Department reserves the right to require copies of actual subcontract agreements involving DBE subcontractors.

When using transportation services to meet the contract commitment, the Contractor shall submit a proposed trucking plan in addition to the SAF. The plan shall be submitted prior to beginning construction on the project. The plan shall include the names of all trucking firms proposed for use, their certification type(s), the number of trucks owned by the firm, as well as the individual truck identification numbers, and the line item(s) being performed.

Within 30 calendar days of entering into an agreement with a DBE for materials, supplies or services, not otherwise documented by the SAF as specified above, the Contractor shall furnish the Department a copy of the agreement. The documentation shall also indicate the percentage (60% or 100%) of expenditures claimed for DBE credit.

Reporting Disadvantaged Business Enterprise Participation

The Contractor shall provide the Department with an accounting of payments made to all DBE firms, including material suppliers and contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the Department for any given month by the end of the following month. The submittal will also include the running list of approved or pending DBE subcontractors on the Listing of DBE Subcontractors (Form 2). Failure to submit this information accordingly may result in the following action:

(A) Withholding of money due under the contract; or

(B) Removal of the Contractor or other affiliated companies of the Contractor from the prequalified bidders' list or the removal of other entities from the approved subcontractors list.

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to DBEs, it shall be the Contractor's responsibility to report all monthly and final payment information in the correct reporting manner.

Failure on the part of the Contractor to submit the required information in the time frame specified may result in the disqualification of the Contractor and any affiliate companies of the Contractor from further bidding until the required information is submitted.

Failure on the part of any subcontractor to submit the required information in the time frame specified may result in the disqualification of the Contractor or any affiliate companies of the Contractor from being approved for work on future Department projects until the required information is submitted.

Contractors reporting transportation services provided by non-DBE lessees shall evaluate the value of services provided during the month of the reporting period only.

At any time, the Department can request written verification of subcontractor payments. The Contractor shall report the accounting of payments through the Department' DBE Payment Tracking System.

Failure to Meet Contract Requirements

In addition to any other rights and remedies of the Department under the contract, failure to satisfy the DBE requirements of the contract may be cause to disqualify the Contractor or any affiliated companies of the Contractor from further bidding for a specified length of time.

FORM 1

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

CONTRACT:	NAME OF CONTRACTOR:

The undersigned intends to perform work in connection with the above contract as:

Name of DBE Subcontractor_____

Address_____

City_____State_____Zip_____

The DBE status of the above named subcontractor is certified by the North Carolina Department of Transportation. The above named subcontractor is prepared to perform following work in connection with the above contract:

_____
_____
_____
_____

The above named subcontractor is prepared to perform the described work at the amount indicated below:

Amount $ _____

The above named contractor and subcontractor mutually accepts the commitment total above. This commitment total is based on estimated quantities only and most likely will vary up or down as the project is completed. Final compensation will be based on actual quantities of work performed and accepted during the pursuance of work. The above listed amount represents the entire dollar amount quoted based on these estimated quantities. No conversations, verbal agreements, and/or other forms of non-written representations shall serve to add, delete, or modify the terms as stated.

This document shall not serve in any manner as an actual subcontract between the two parties. A separate subcontractor agreement will describe in detail the contractual obligations of the Contractor and the DBE subcontractor.

Affirmation

The above named DBE subcontractor affirms that it will perform the portion(s) of the contract for the estimated dollar value as stated above.

_____	_____
Name of DBE Subcontractor	**Name of Contractor**
_____	_____
Signature / Title	**Signature / Title**
_____	_____
Date	**Date**

.

FORM 2

LISTING OF DBE SUBCONTRACTORS

LISTING OF DBE SUBCONTRACTORS Sheet _____ of _____			
Firm Name and Address	Work Description	Commitment Dollar Value	Actual Amount Paid
Name Address			
Name Address			
Name Address			
Name Address			
Name Address			
Name Address			

LISTING OF DBE SUBCONTRACTORS

Sheet _____ of _____

Firm Name and Address	Work Description	Committed Dollar Value	Actual Amount Paid
Name Address			
Name Address			
Name Address			
Name Address			
Name Address			
Name Address			

LISTING OF DBE SUBCONTRACTORS			Sheet _____ of _____
Firm Name and Address	Work Description	Commitment Dollar Value	Actual Amount Paid
Name Address			
Name Address			
Name Address			
	TOTAL		

ATTACHMENT 7 TO EXHIBIT 6

U.S. DEPARTMENT OF TRANSPORTATION HOTLINE

(11-22-94) DB1 G100

To report bid rigging activities call: **1-800-424-9071**

The U.S. Department of Transportation (DOT) operates the above toll-free *hotline* Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the *hotline* to report such activities.

The *hotline* is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse. It is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

ATTACHMENT 8 TO EXHIBIT 6

[RESERVED]

ATTACHMENT 9 TO EXHIBIT 6

ON-THE-JOB TRAINING

(3-27-13) Z-10

Description

The North Carolina Department of Transportation will administer a custom version of the Federal On-the-Job Training (OJT) Program, commonly referred to as the Alternate OJT Program. All contractors (existing and newcomers) will be automatically placed in the Alternate Program. Standard OJT requirements typically associated with individual projects will no longer be applied at the project level. Instead, these requirements will be applicable on an annual basis for each contractor administered by the OJT Program Manager.

On the Job Training shall meet the requirements of 23 CFR 230.107 (b), 23 USC – Section 140, this provision and the On-the-Job Training Program Manual.

The Alternate OJT Program will allow a contractor to train employees on Federal, State and privately funded projects located in North Carolina. However, priority shall be given to training employees on NCDOT Federal-Aid funded projects.

Minorities and Women

Developing, training and upgrading of minorities and women toward journeyman level status is a primary objective of this special training provision. Accordingly, the Contractor shall make every effort to enroll minority and women as trainees to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

Assigning Training Goals

The Department, through the OJT Program Manager, will assign training goals for a calendar year based on the contractors' past three years' activity and the contractors' anticipated upcoming year's activity with the Department. At the beginning of each year, all contractors eligible will be contacted by the Department to determine the number of trainees that will be assigned for the upcoming calendar year. At that time the Contractor shall enter into an agreement with the Department to provide a self-imposed on-the-job training program for the calendar year. This agreement will include a specific number of annual training goals agreed to by both parties. The number of training assignments may range from 1 to 15 per contractor per calendar year. The Contractor shall sign an agreement to fulfill their annual goal for the year. A sample agreement is available at:

www.ncbowd.com/section/on-the-job-training

Training Classifications

The Contractor shall provide on-the-job training aimed at developing full journeyman level workers in the construction craft/operator positions. Preference shall be given to providing training in the following skilled work classifications:

Equipment Operators	Office Engineers
Truck Drivers	Estimators
Carpenters	Iron / Reinforcing Steel Workers
Concrete Finishers	Mechanics
Pipe Layers	Welders

The Department has established common training classifications and their respective training requirements that may be used by the contractors. However, the classifications established are not all-inclusive. Where the training is oriented toward construction applications, training will be allowed in lower-level management positions such as office engineers and estimators. Contractors shall submit new classifications for specific job functions that their employees are performing. The Department will review and recommend for acceptance to FHWA the new classifications proposed by contractors, if applicable. New classifications shall meet the following requirements:

Proposed training classifications are reasonable and realistic based on the job skill classification needs, and

The number of training hours specified in the training classification is consistent with common practices and provides enough time for the trainee to obtain journeyman level status.

The Contractor may allow trainees to be trained by a subcontractor provided that the Contractor retains primary responsibility for meeting the training and this provision is made applicable to the subcontract. However, only the Contractor will receive credit towards the annual goal for the trainee.

Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment.

No employee shall be employed as a trainee in any classification in which they have successfully completed a training course leading to journeyman level status or in which they have been employed as a journeyman.

Records and Reports

The Contractor shall maintain enrollment, monthly and completion reports documenting company compliance under these contract documents. These documents and any other information as requested shall be submitted to the OJT Program Manager.

Upon completion and graduation of the program, the Contractor shall provide each trainee with a certification Certificate showing the type and length of training satisfactorily completed.

Trainee Interviews

All trainees enrolled in the program will receive an initial and Trainee/Post graduate interview conducted by the OJT program staff.

Trainee Wages

Contractors shall compensate trainees on a graduating pay scale based upon a percentage of the prevailing minimum journeyman wages (Davis-Bacon Act). Minimum pay shall be as follows:

60 percent	of the journeyman wage for the first half of the training period
75 percent	of the journeyman wage for the third quarter of the training period
90 percent	of the journeyman wage for the last quarter of the training period

In no instance shall a trainee be paid less than the local minimum wage. The Contractor shall adhere to the minimum hourly wage rate that will satisfy both the NC Department of Labor (NCDOL) and the Department.

Achieving or Failing to Meet Training Goals

The Contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and who receives training for at least 50 percent of the specific program requirement. Trainees will be allowed to be transferred between projects if required by the Contractor's scheduled workload to meet training goals.

If a contractor fails to attain their training assignments for the calendar year, they may be taken off the NCDOT's Bidders List.

Measurement and Payment

No compensation will be made for providing required training in accordance with these contract documents.

EXHIBIT 7

MILESTONE SCHEDULE

Milestone	Deadline
NTP2 Conditions Deadline	NTP1 + 180 days
Central Section Final Acceptance Deadline	NTP2 + 1,320 days
North Section Final Acceptance Deadline	NTP2 + 1,320 days
South Section Final Acceptance Deadline	NTP2 + 1,320 days
Final Completion Deadline	180 days from the date that the last Project Section achieves Final Acceptance
Long Stop Date	NTP2 + 1,920 days

EXHIBIT 8

PRELIMINARY PROJECT BASELINE SCHEDULE

[To be provided with execution version from Developer's Proposal]

EXHIBIT 9

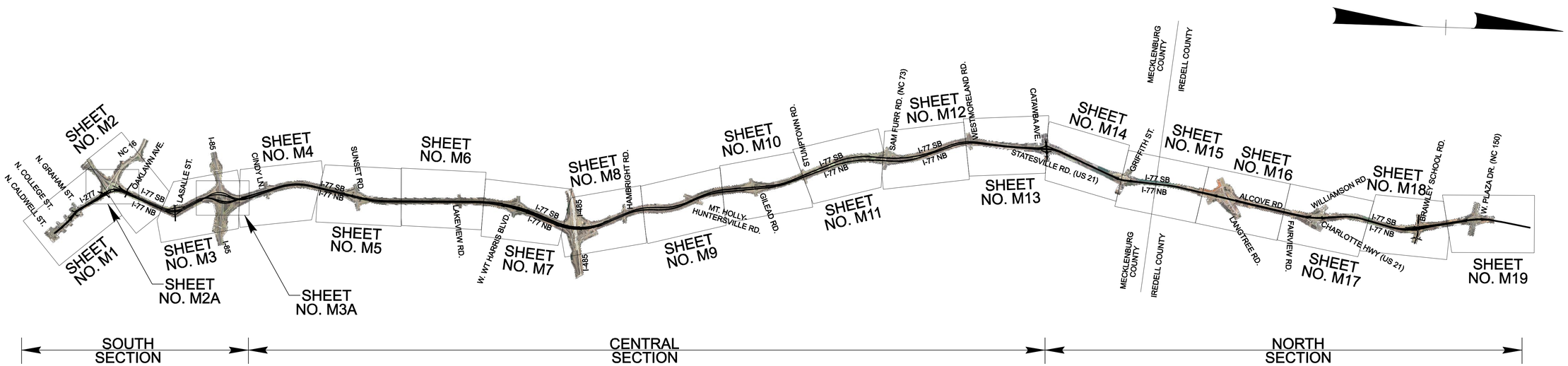
EXISTING RIGHT OF WAY

[see attached]

I–77 HOT Lanes Project

EXHIBIT 9 – Existing Right of Way

Mecklenburg and Iredell Counties



GRAPHIC SCALE
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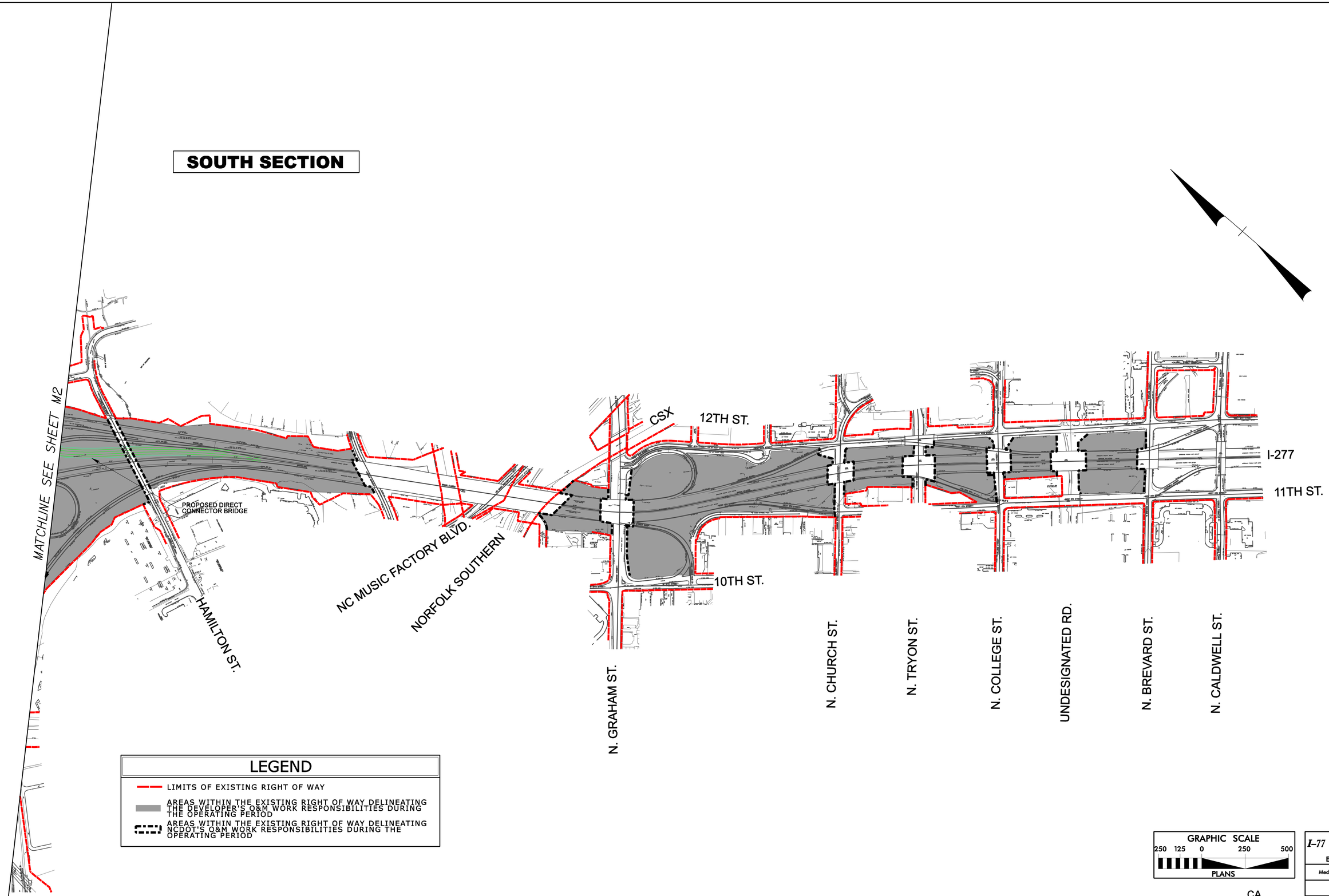
October 2013	SHEET NO. M1A

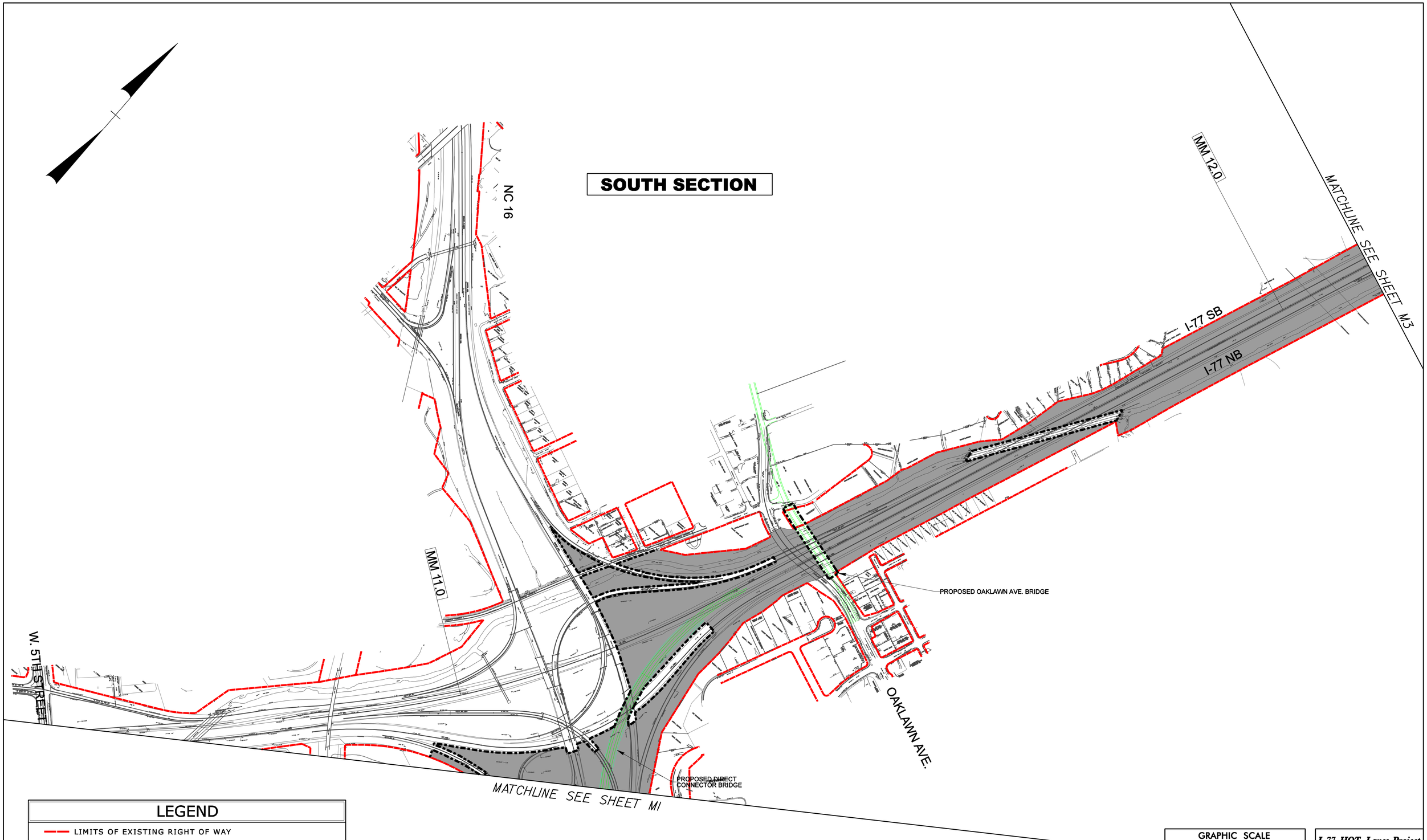
CA
Ex. 9 - Existing Right of Way
Volume II - Request for Proposals
Addendum No. 2

SOUTH SECTION



I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO. M1

CA
Ex. 9 - Existing Right of Way
Volume II - Request for Proposals
Addendum No. 2



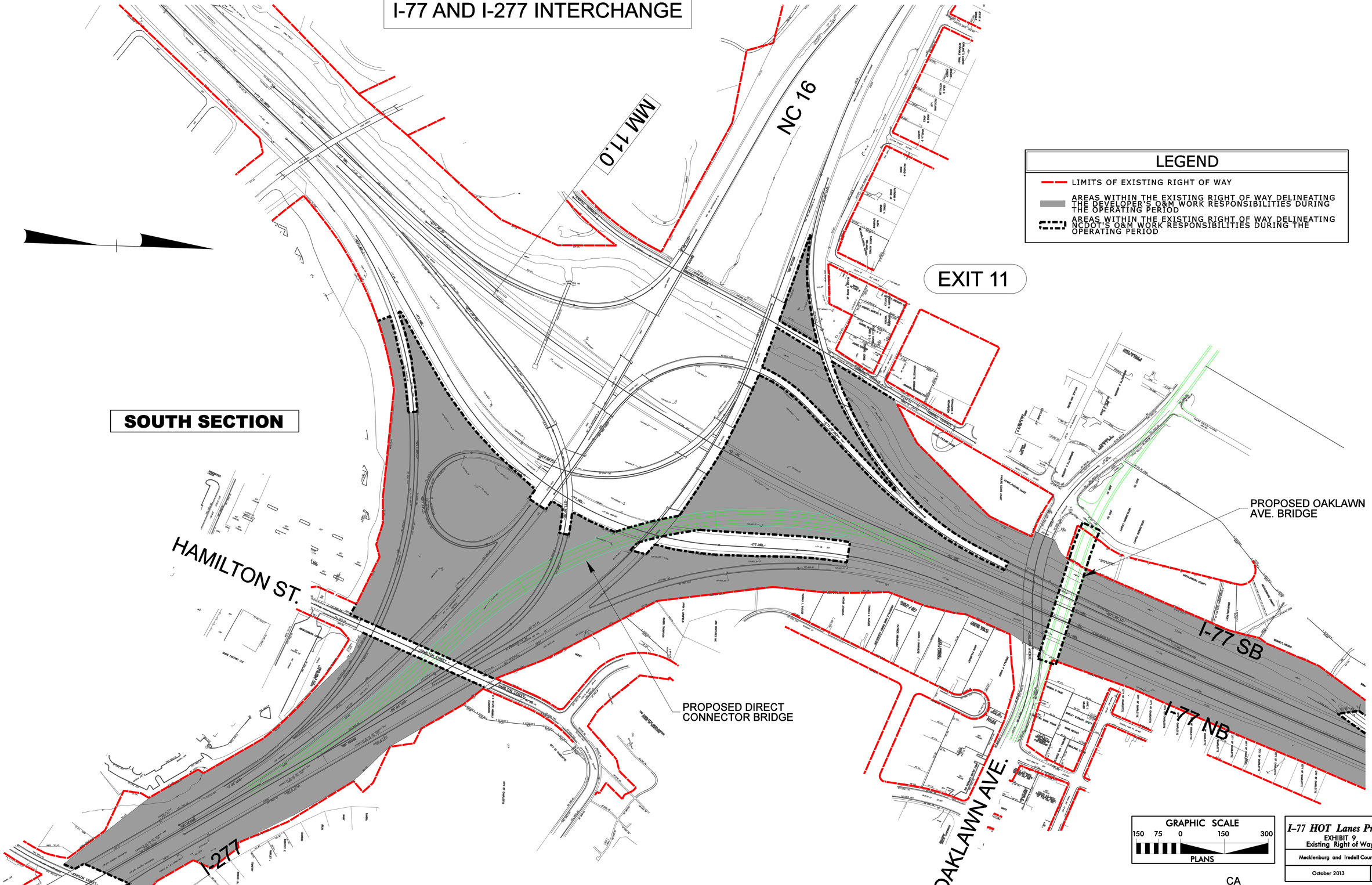
LEGEND

- LIMITS OF EXISTING RIGHT OF WAY
- AREAS WITHIN THE EXISTING RIGHT OF WAY DELINEATING THE DEVELOPER'S O&M WORK RESPONSIBILITIES DURING THE OPERATING PERIOD
- AREAS WITHIN THE EXISTING RIGHT OF WAY DELINEATING NCDOT'S O&M WORK RESPONSIBILITIES DURING THE OPERATING PERIOD

GRAPHIC SCALE
250 125 0 250 500
PLANS

I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO. M2

I-77 AND I-277 INTERCHANGE



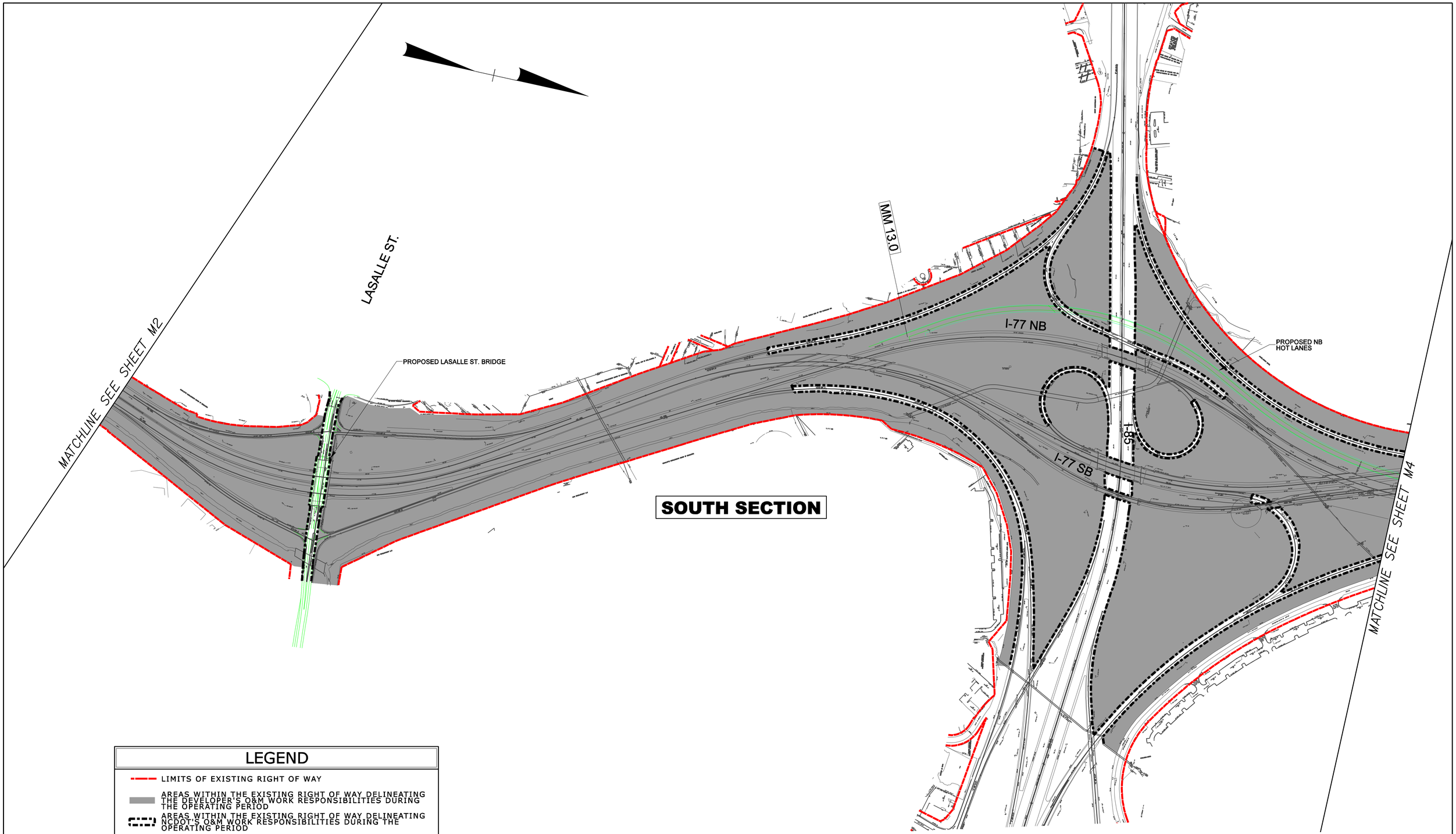
I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way

Mecklenburg and Iredell Counties

October 2013

SHEET NO. M2A

CA
Ex. 9 - Existing Right of Way
Volume II - Request for Proposals
Addendum No. 2



SOUTH SECTION

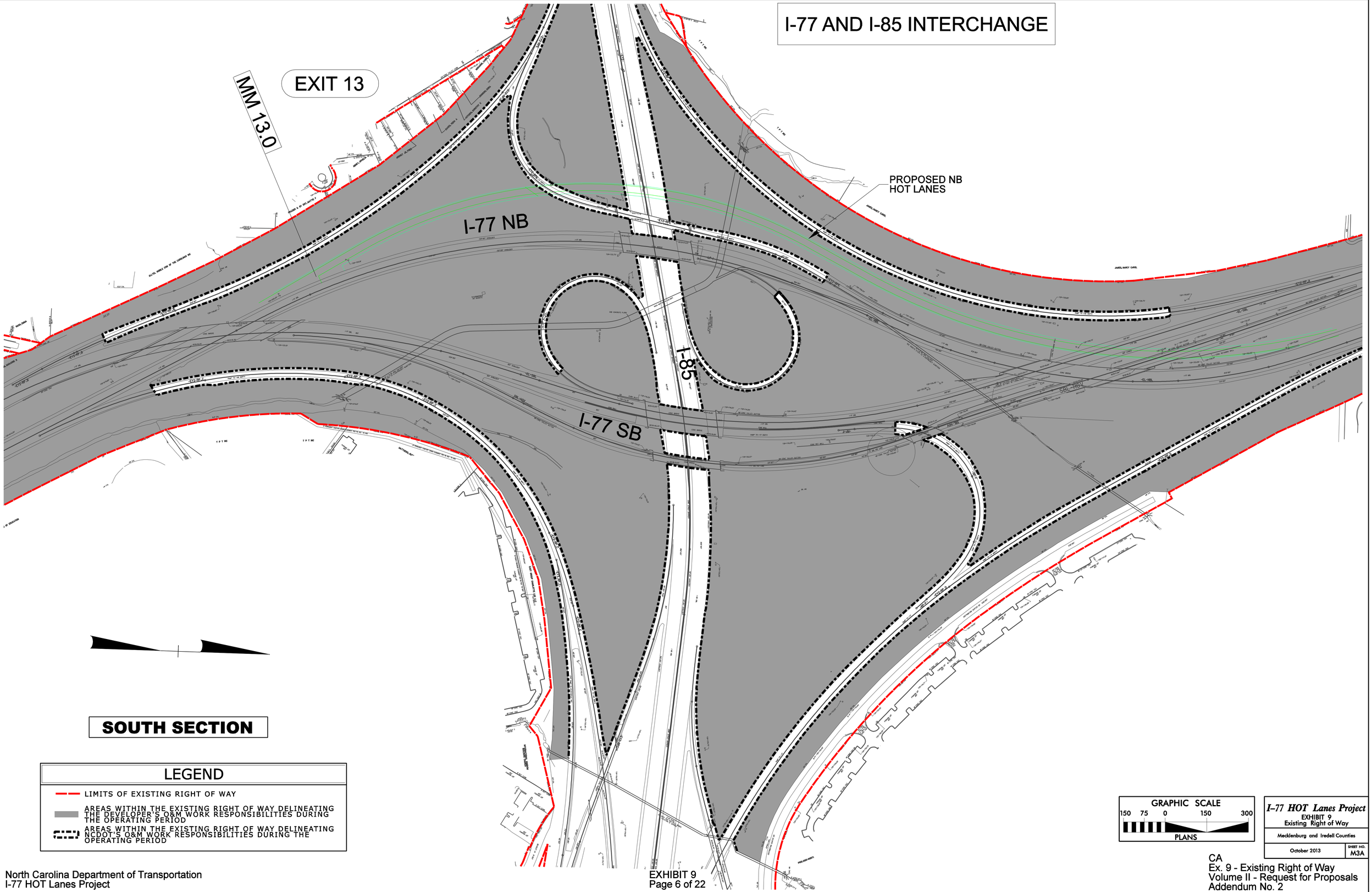
LEGEND

- LIMITS OF EXISTING RIGHT OF WAY
- AREAS WITHIN THE EXISTING RIGHT OF WAY DELINEATING THE DEVELOPER'S O&M WORK RESPONSIBILITIES DURING THE OPERATING PERIOD
- AREAS WITHIN THE EXISTING RIGHT OF WAY DELINEATING NCDOT'S O&M WORK RESPONSIBILITIES DURING THE OPERATING PERIOD

GRAPHIC SCALE
250 125 0 250 500
PLANS

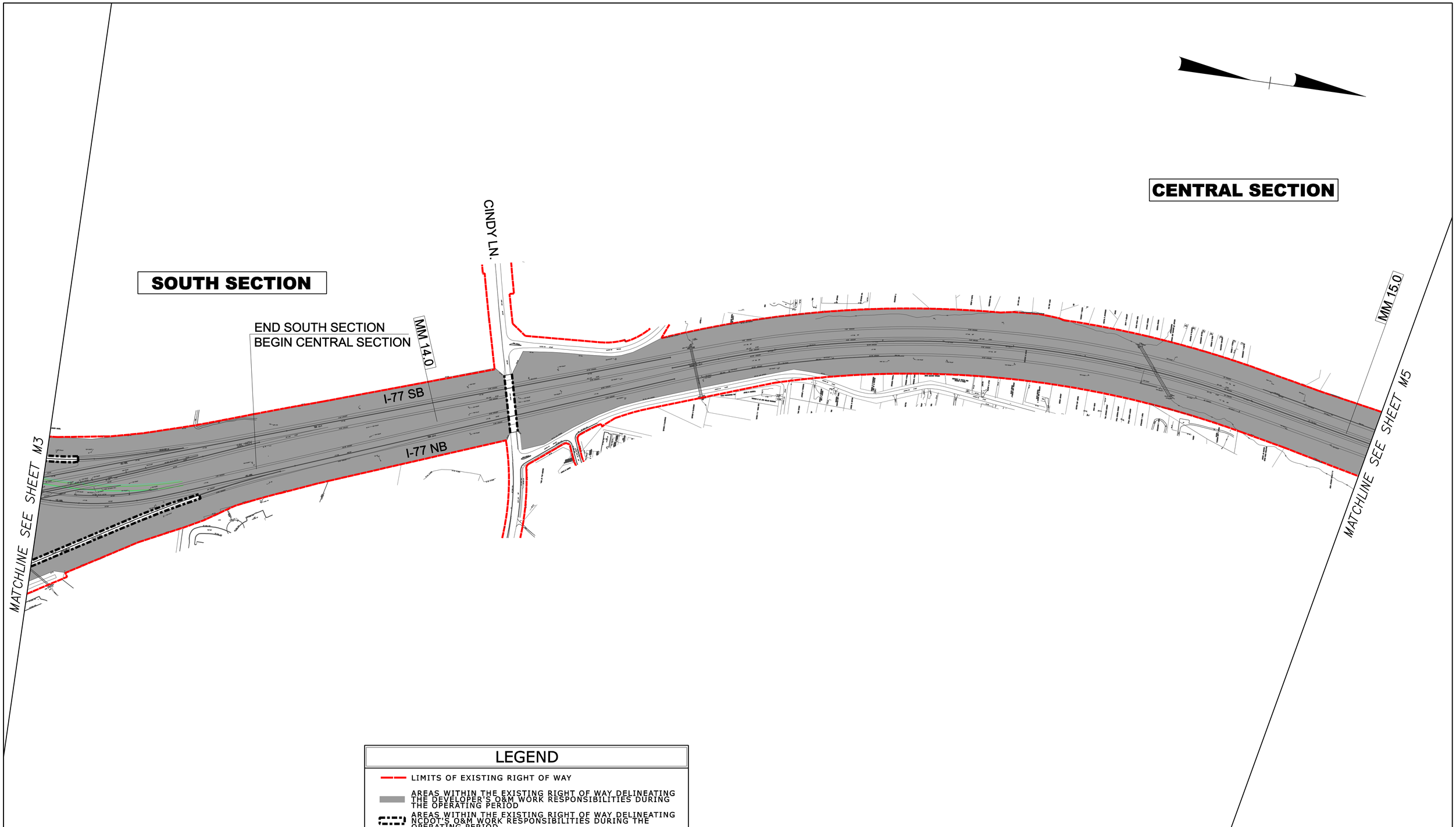
I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO. M3

I-77 AND I-85 INTERCHANGE



North Carolina Department of Transportation
I-77 HOT Lanes Project

CA
Ex. 9 - Existing Right of Way
Volume II - Request for Proposals
Addendum No. 2



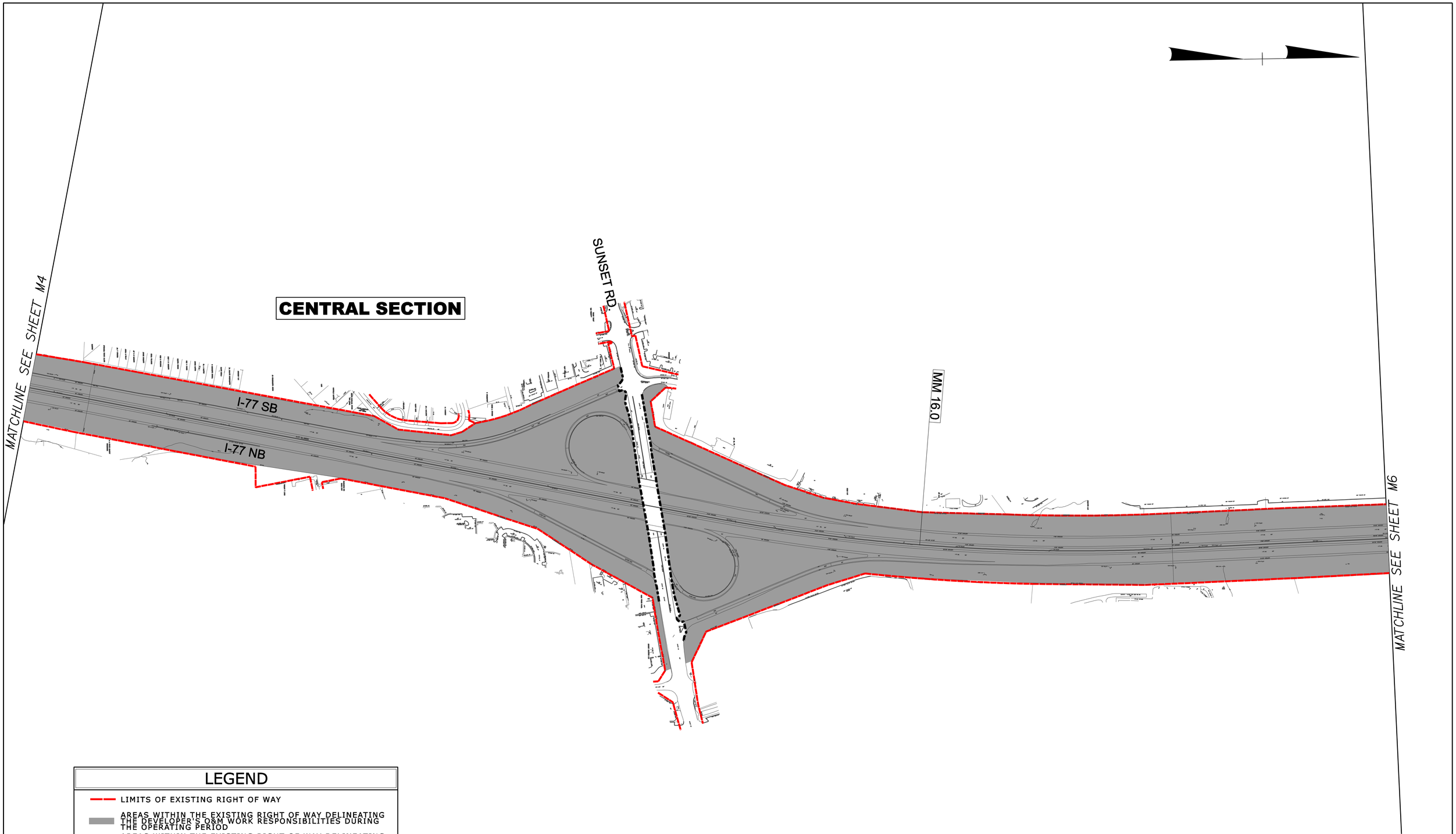
LEGEND

- LIMITS OF EXISTING RIGHT OF WAY
- AREAS WITHIN THE EXISTING RIGHT OF WAY DELINEATING THE DEVELOPER'S O&M WORK RESPONSIBILITIES DURING THE OPERATING PERIOD
- AREAS WITHIN THE EXISTING RIGHT OF WAY DELINEATING NCDOT'S O&M WORK RESPONSIBILITIES DURING THE OPERATING PERIOD

GRAPHIC SCALE
250 125 0 250 500
PLANS

I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO. M4

CA
Ex. 9 - Existing Right of Way
Volume II - Request for Proposals
Addendum No. 2

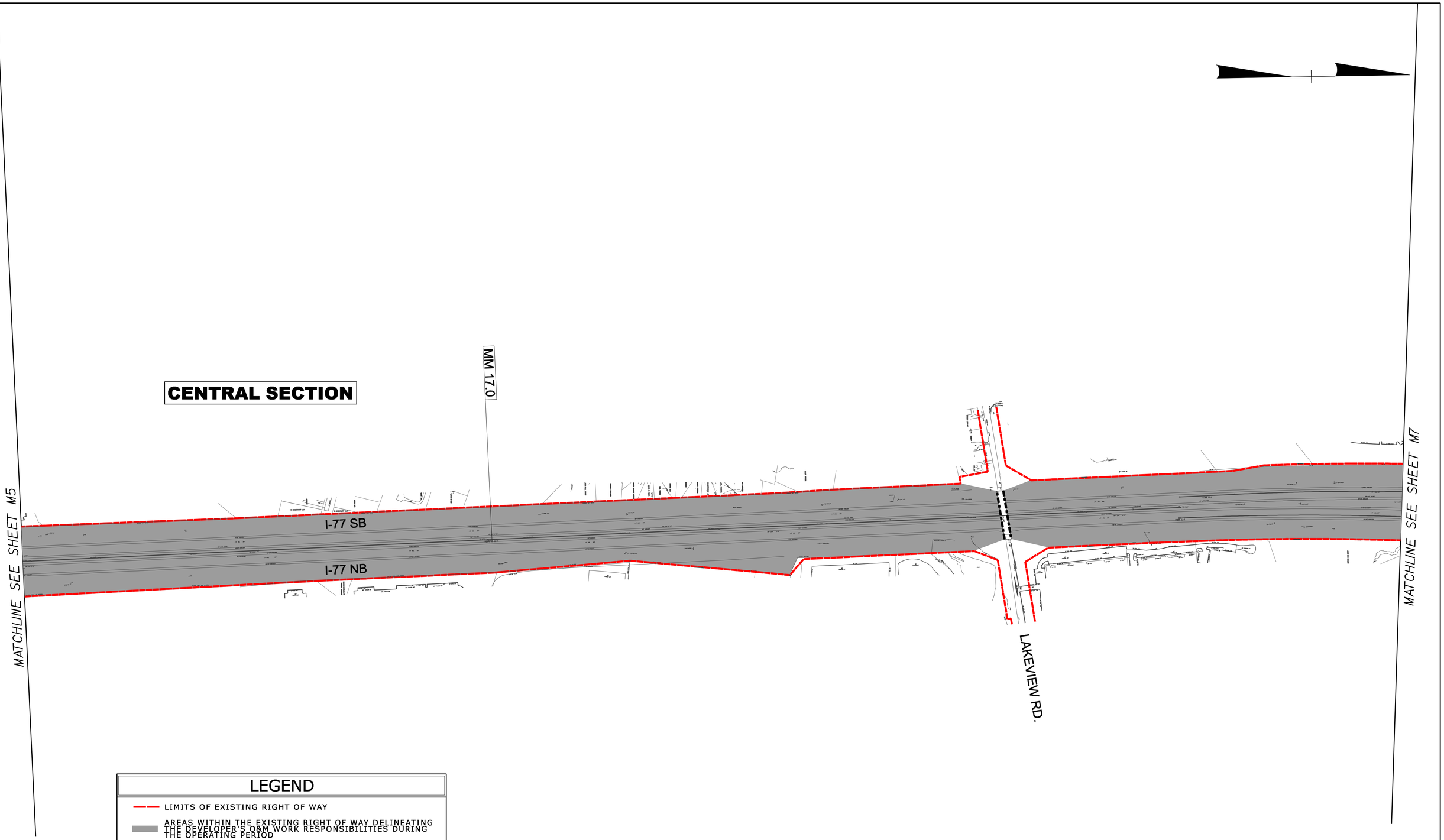


LEGEND

- LIMITS OF EXISTING RIGHT OF WAY
- AREAS WITHIN THE EXISTING RIGHT OF WAY DELINEATING THE DEVELOPER'S O&M WORK RESPONSIBILITIES DURING THE OPERATING PERIOD
- AREAS WITHIN THE EXISTING RIGHT OF WAY DELINEATING NCDOT'S O&M WORK RESPONSIBILITIES DURING THE OPERATING PERIOD

GRAPHIC SCALE
250 125 0 250 500
PLANS

I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO. M5



LEGEND

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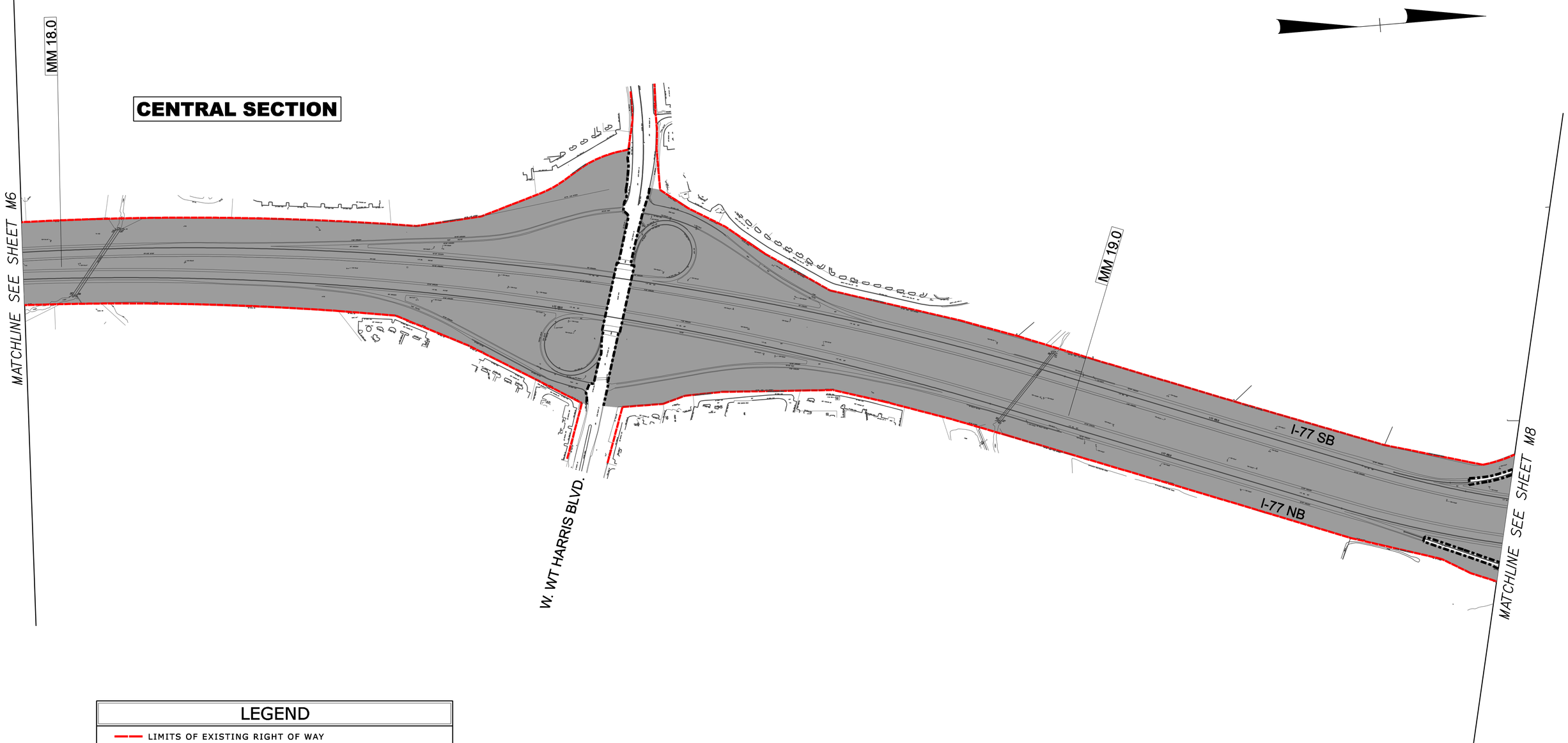
GRAPHIC SCALE
250 125 0 250 500
PLANS

I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO. M6

CA
Ex. 9 - Existing Right of Way
Volume II - Request for Proposals
Addendum No. 2



LEGEND

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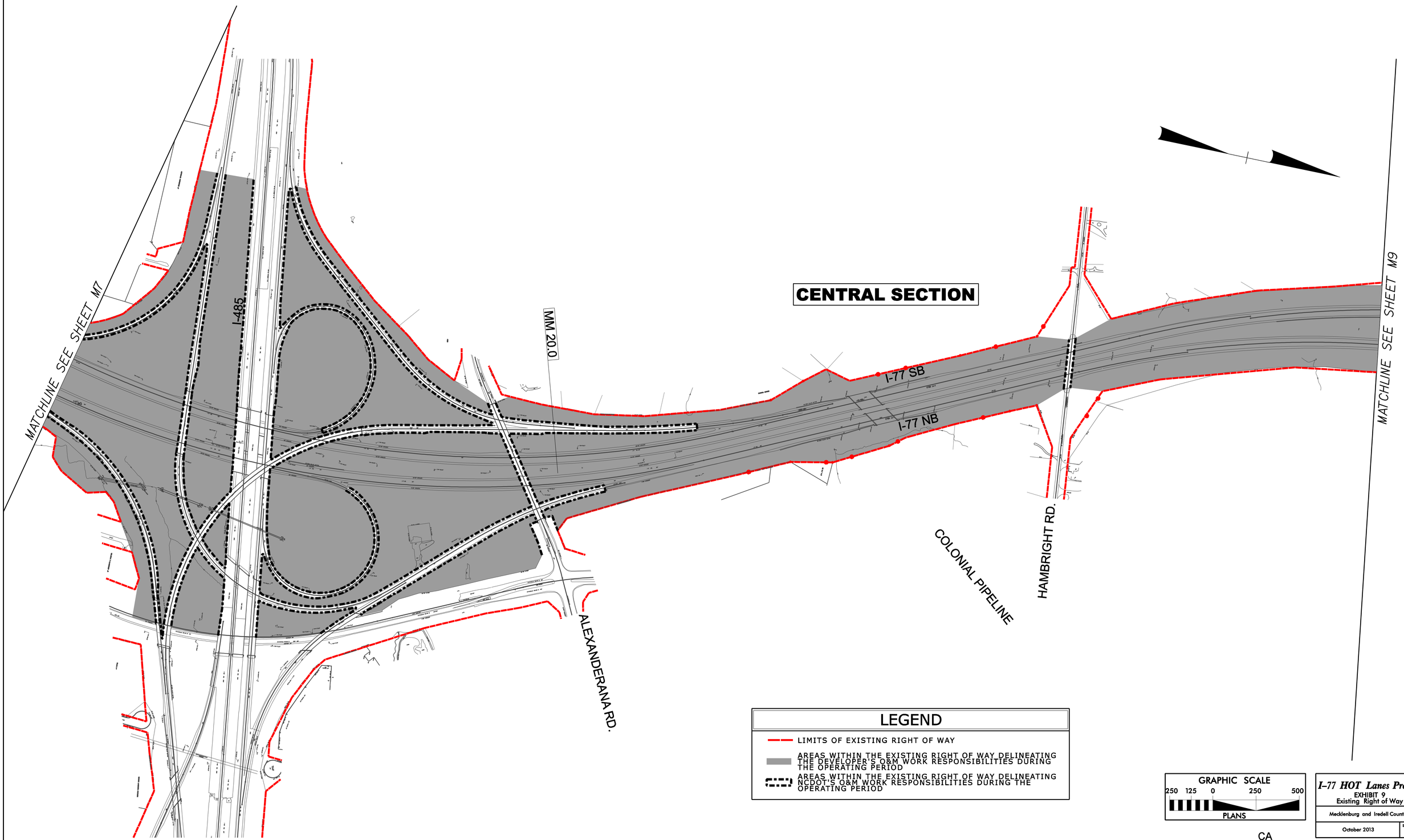
GRAPHIC SCALE
250 125 0 250 500
PLANS

I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO. M7


CENTRAL SECTION
MATCHLINE SEE SHEET M7
MATCHLINE SEE SHEET M9
I-485
MM 20.0
I-77 SB
I-77 NB
COLONIAL PIPELINE
HAMBRIGHT RD.
ALEXANDERIANA RD.
LEGEND
LIMITS OF EXISTING RIGHT OF WAY
AREAS WITHIN THE EXISTING RIGHT OF WAY DELINEATING THE DEVELOPER'S O&M WORK RESPONSIBILITIES DURING THE OPERATING PERIOD
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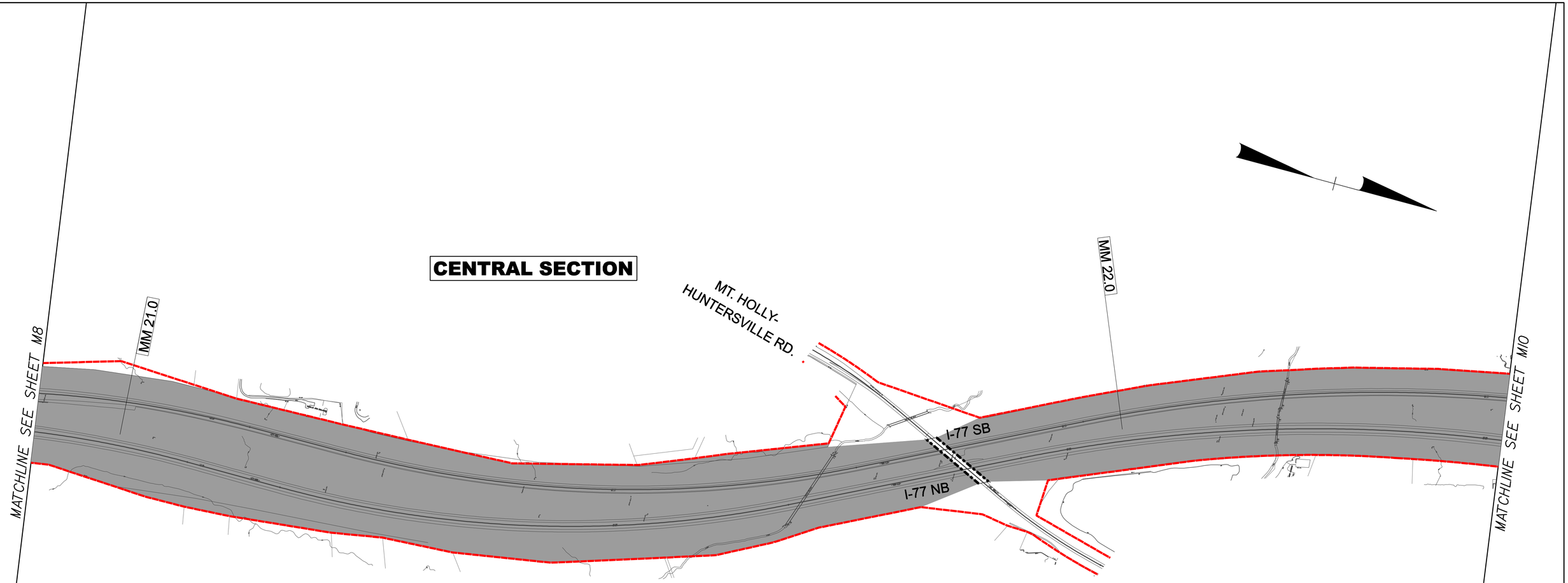
GRAPHIC SCALE
250 125 0 250 500
PLANS
I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO.
M8



LEGEND

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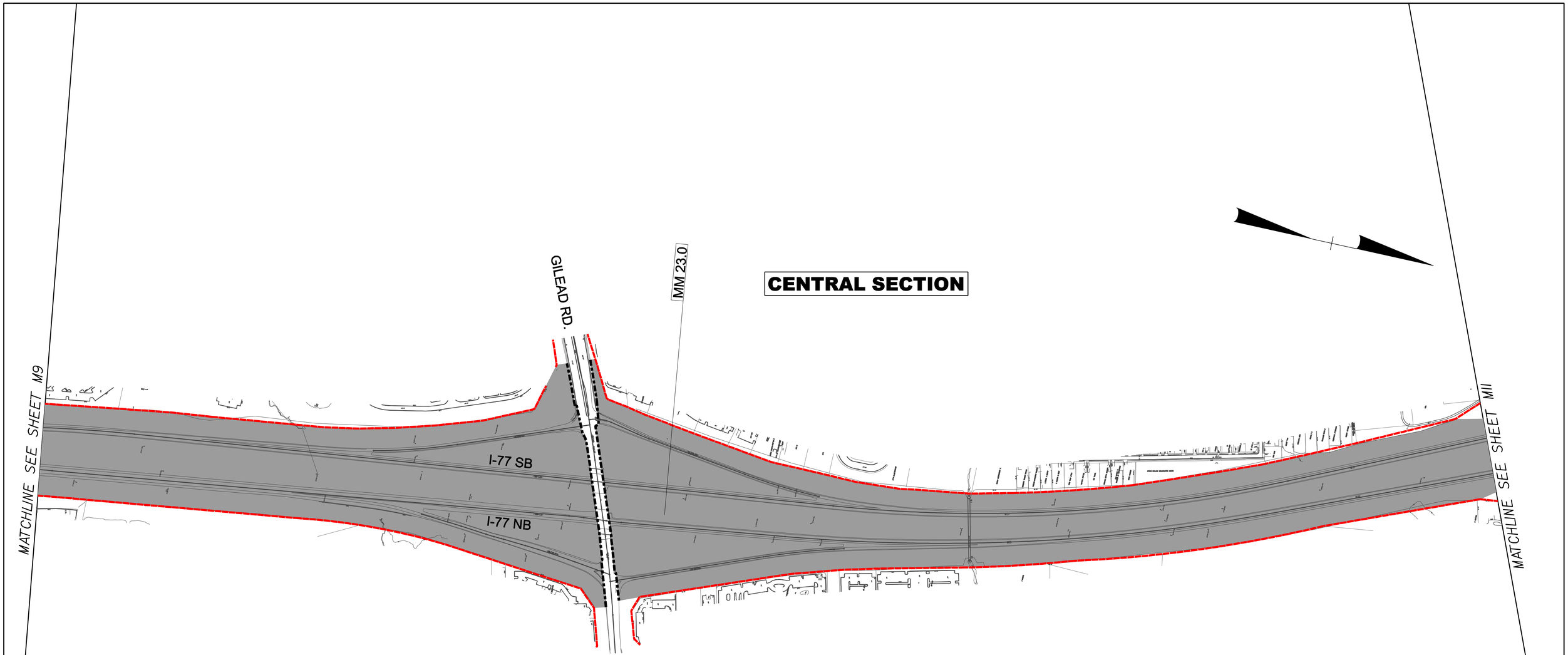
GRAPHIC SCALE
250 125 0 250 500
PLANS

I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO. M9



LEGEND

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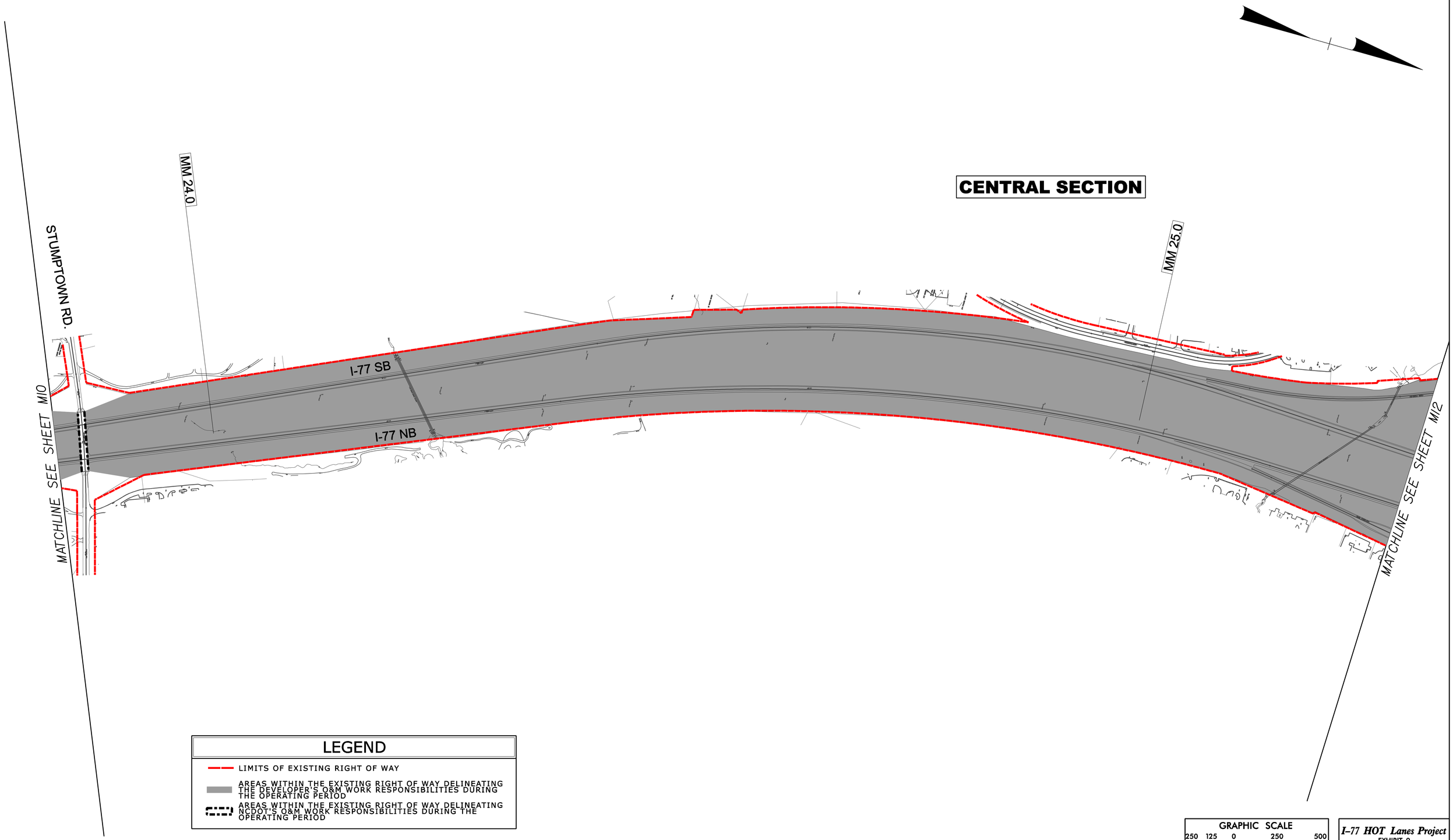
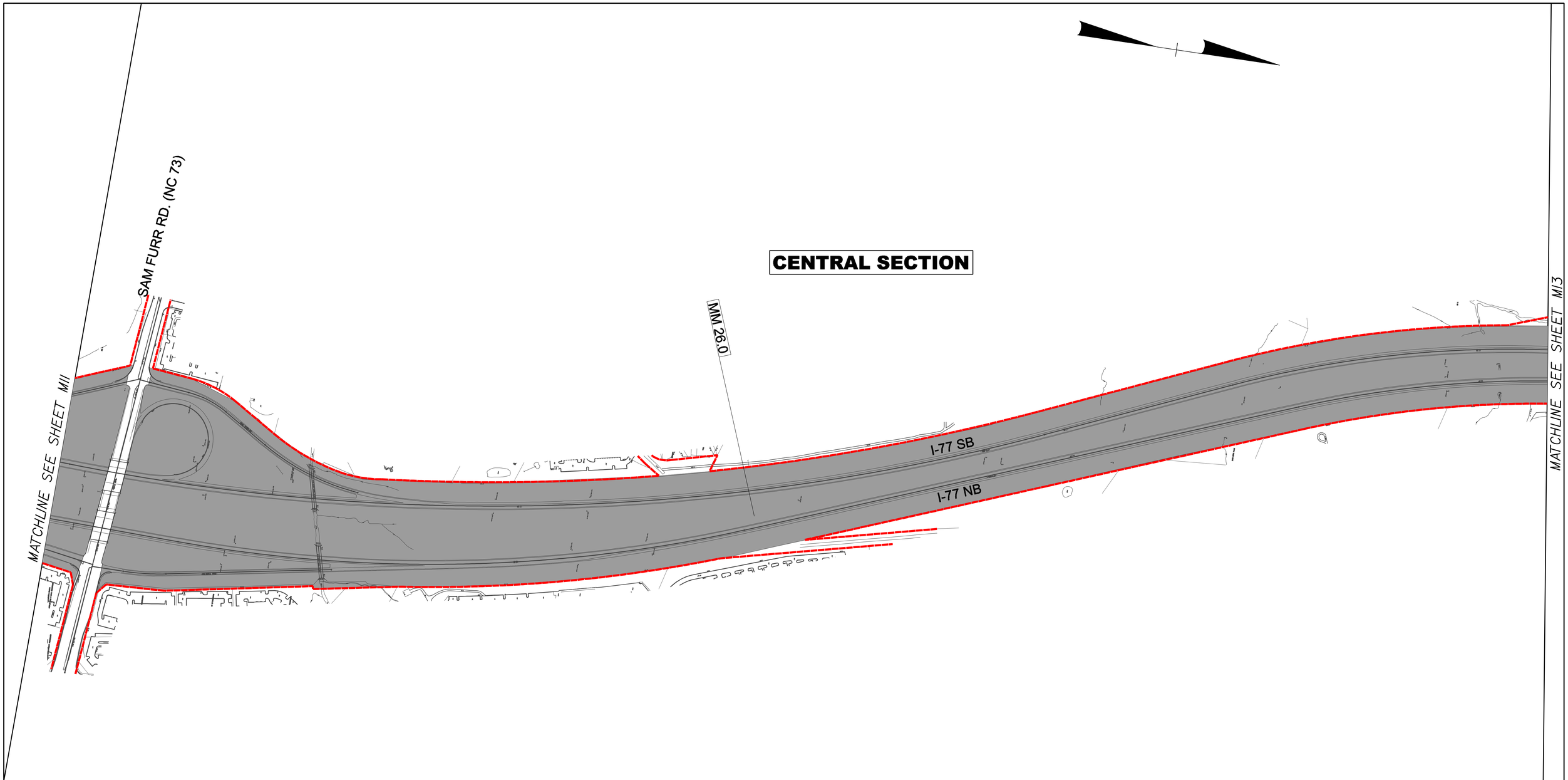
GRAPHIC SCALE
250 125 0 250 500
PLANS

I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO. M10

CA
Ex. 9 - Existing Right of Way
Volume II - Request for Proposals
Addendum No. 2



CA
Ex. 9 - Existing Right of Way
Volume II - Request for Proposals
Addendum No. 2



LEGEND

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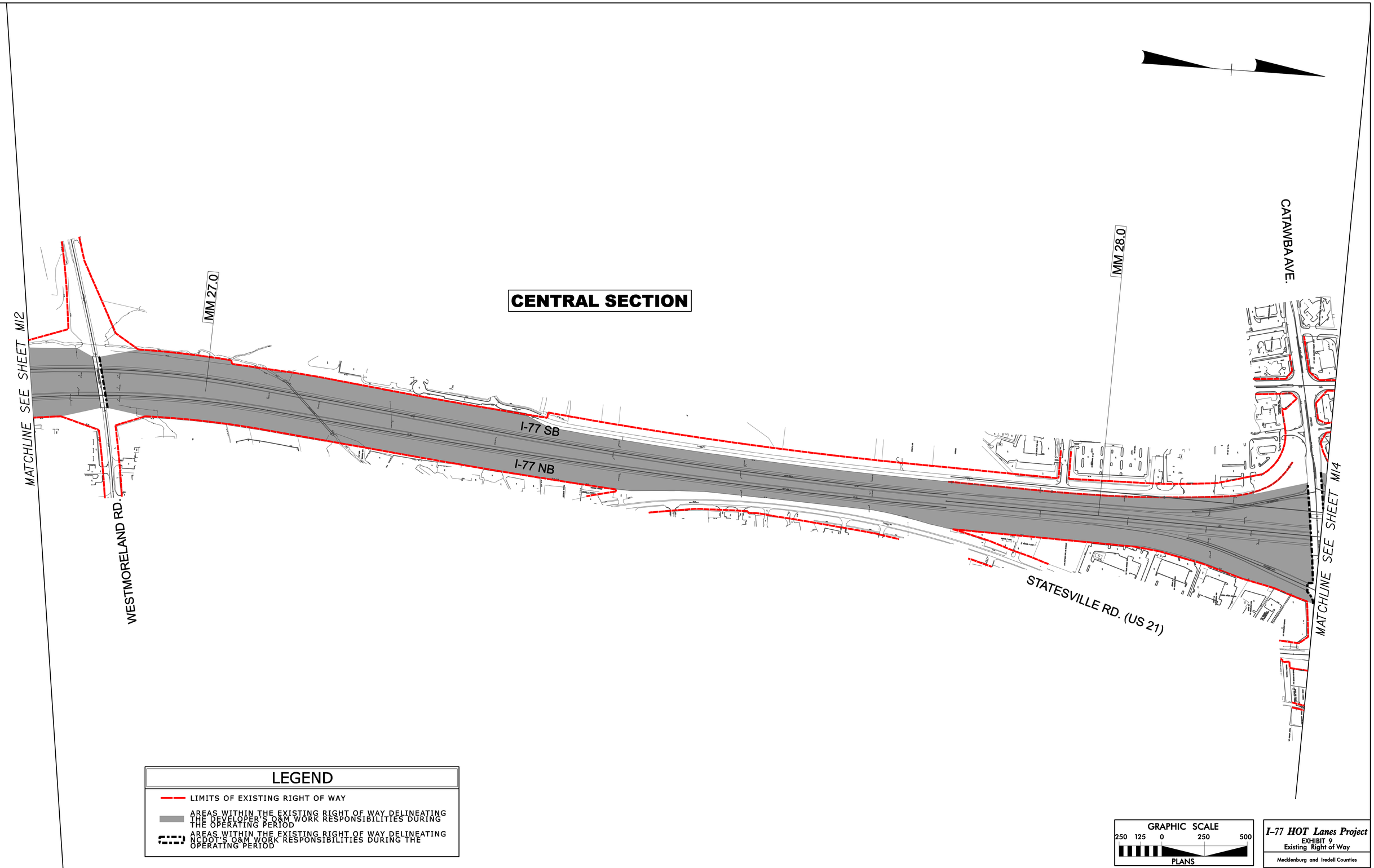
GRAPHIC SCALE
250 125 0 250 500
PLANS

I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO. M12

CA
Ex. 9 - Existing Right of Way
Volume II - Request for Proposals
Addendum No. 2


CENTRAL SECTION
MM 27.0
MM 28.0
I-77 SB
I-77 NB
WESTMORELAND RD.
STATESVILLE RD. (US 21)
CATAWBA AVE.
MATCHLINE SEE SHEET M12
MATCHLINE SEE SHEET M14
LEGEND
LIMITS OF EXISTING RIGHT OF WAY
AREAS WITHIN THE EXISTING RIGHT OF WAY DELINEATING THE DEVELOPER'S O&M WORK RESPONSIBILITIES DURING THE OPERATING PERIOD
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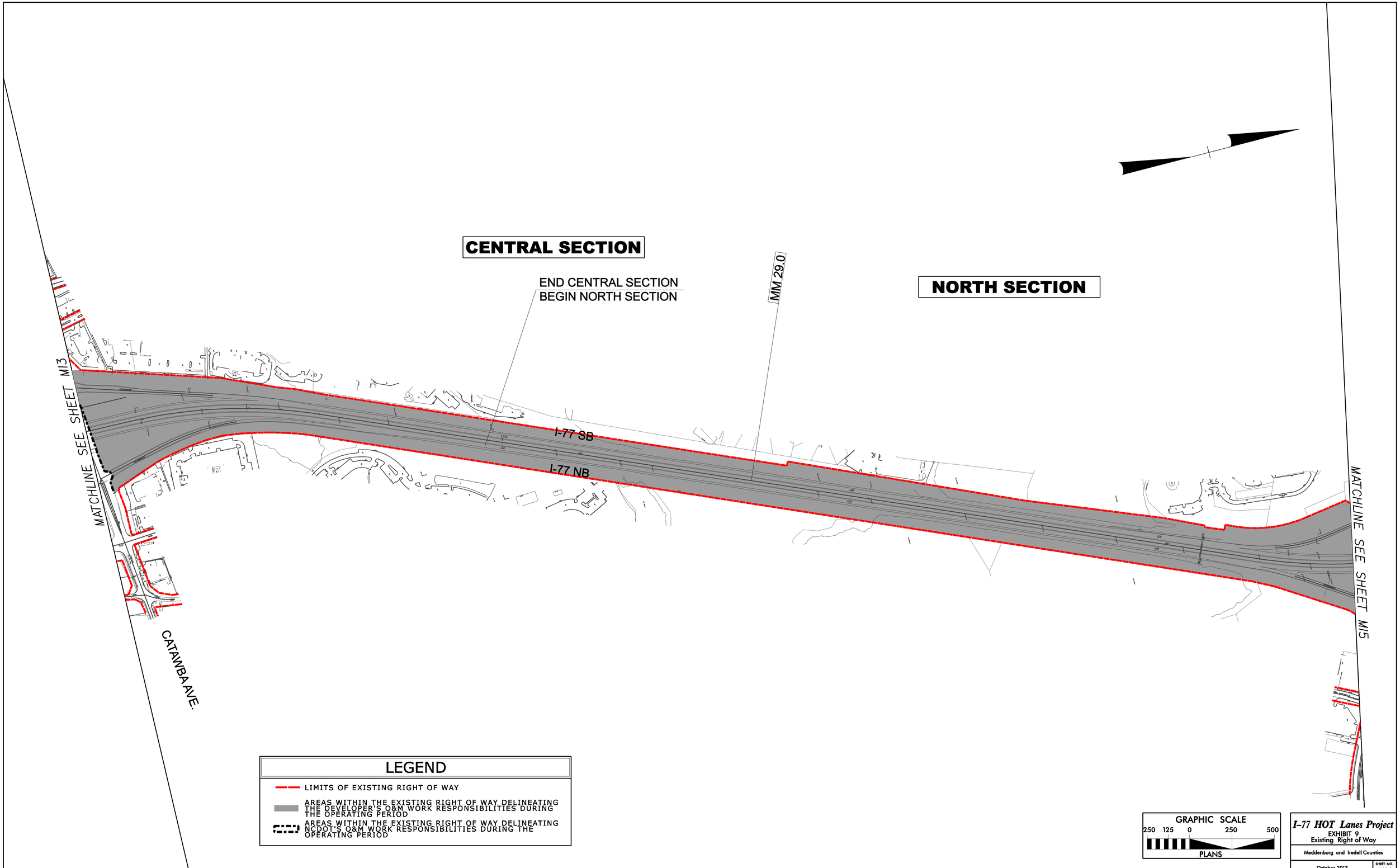
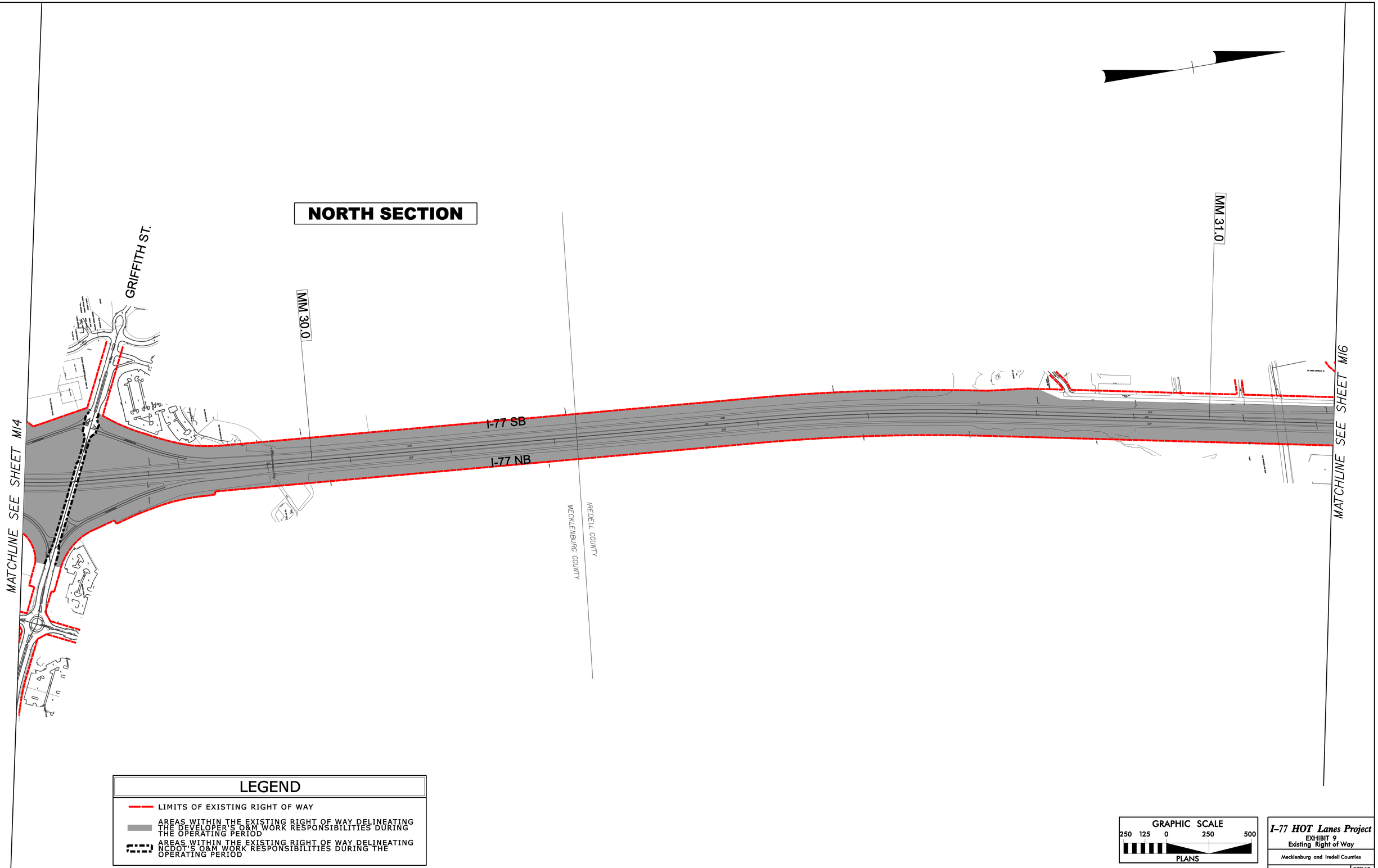
GRAPHIC SCALE
250 125 0 250 500
PLANS
I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO.
M13



CA
Ex. 9 - Existing Right of Way
Volume II - Request for Proposals
Addendum No. 2


NORTH SECTION
GRIFFITH ST.
MM 30.0
MM 31.0
I-77 SB
I-77 NB
IREDELL COUNTY
MECKLENBURG COUNTY
MATCHLINE SEE SHEET M14
MATCHLINE SEE SHEET M16
LEGEND
LIMITS OF EXISTING RIGHT OF WAY
AREAS WITHIN THE EXISTING RIGHT OF WAY DELINEATING THE DEVELOPER'S O&M WORK RESPONSIBILITIES DURING THE OPERATING PERIOD
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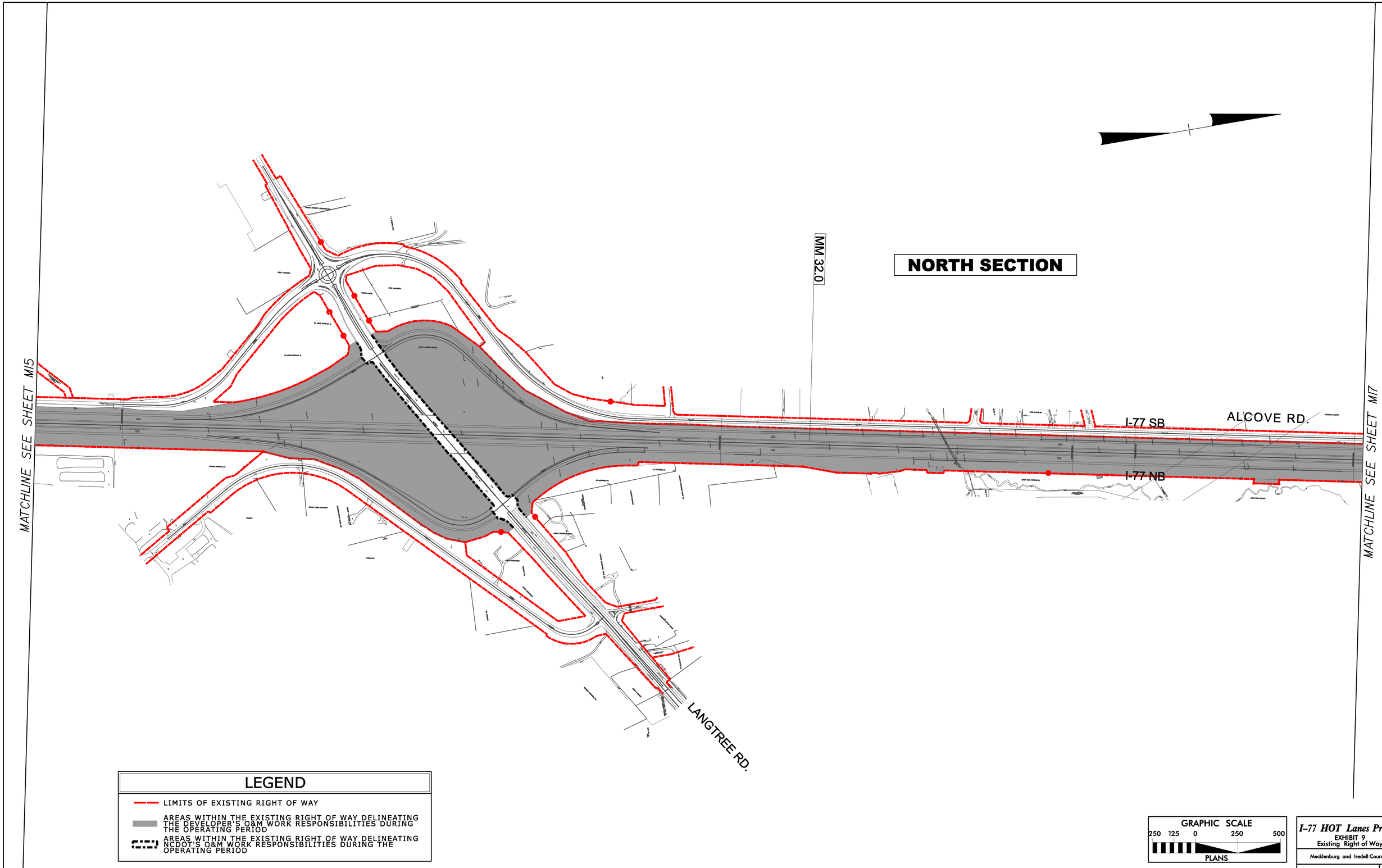
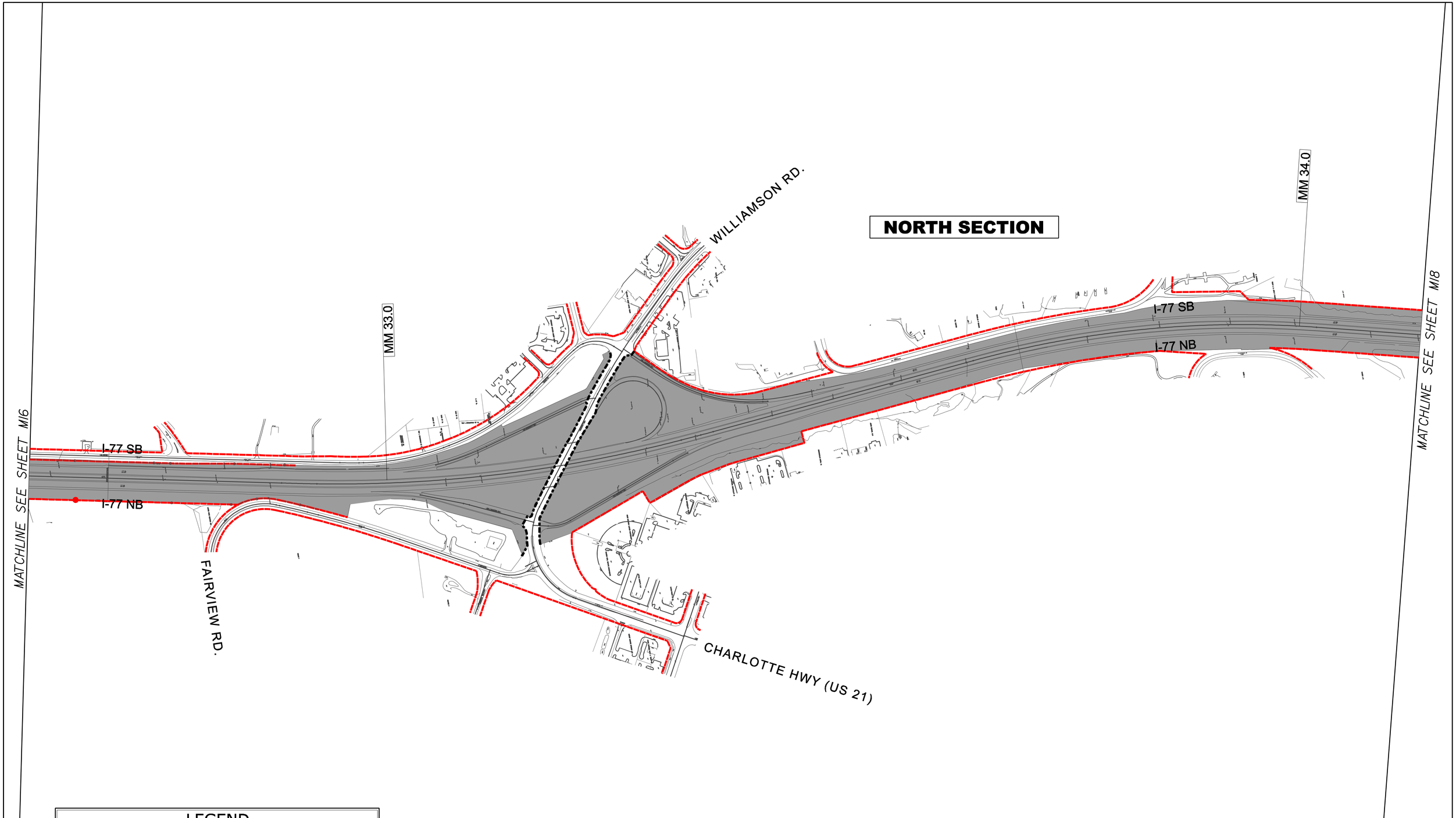
GRAPHIC SCALE
250 125 0 250 500
PLANS
I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO.
M15



CA
Ex. 9 - Existing Right of Way
Volume II - Request for Proposals
Addendum No. 2



LEGEND

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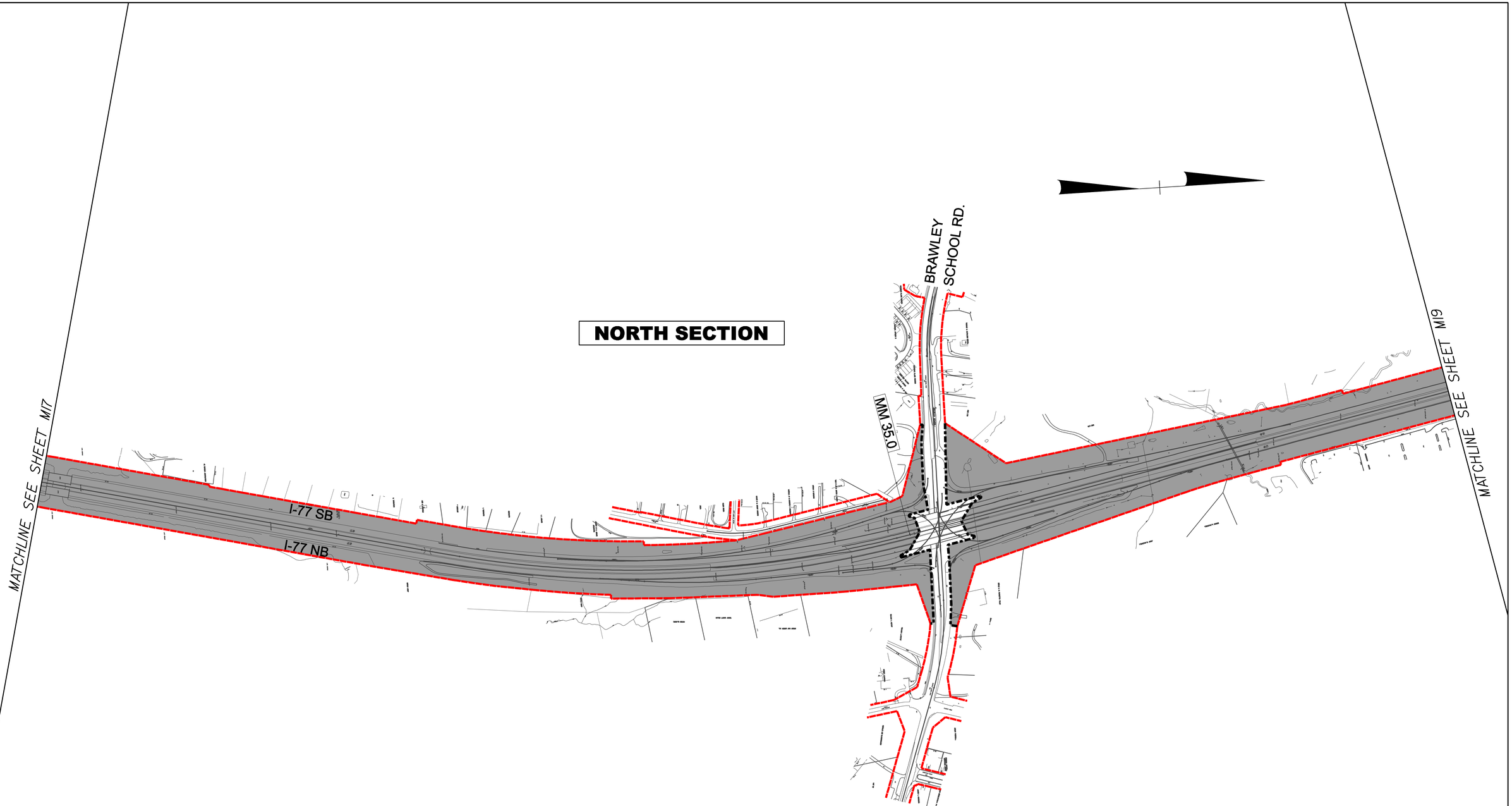
GRAPHIC SCALE
250 125 0 250 500
PLANS

I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO. M17



LEGEND

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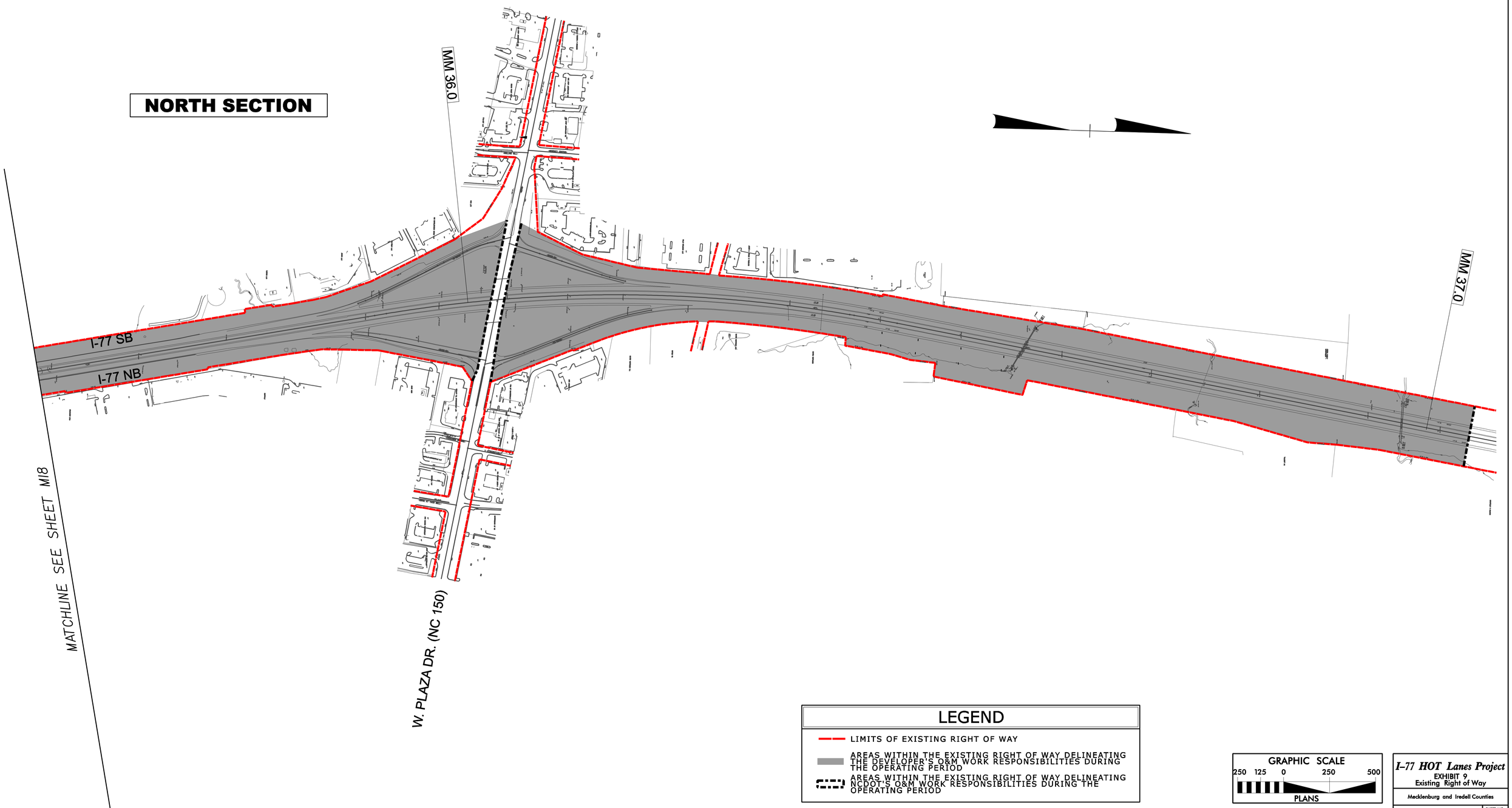
GRAPHIC SCALE
250 125 0 250 500
PLANS

I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO. M18

CA
Ex. 9 - Existing Right of Way
Volume II - Request for Proposals
Addendum No. 2



LEGEND

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GRAPHIC SCALE
250 125 0 250 500
PLANS

I-77 HOT Lanes Project
EXHIBIT 9
Existing Right of Way
Mecklenburg and Iredell Counties
October 2013
SHEET NO. M19

EXHIBIT 10

FORM OF LENDER'S DIRECT AGREEMENT

This **AGREEMENT RELATING TO THE I-77 HOT LANES PROJECT** (this "Agreement") is made and entered into as of [●], 201__ by and among the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION ("NCDOT"), an agency of the State of North Carolina (the "State"), the address of which is [●], North Carolina [●]; [●] (the "Developer") whose address is [●]; and [●] as agent for the Lenders in accordance with the terms of the Initial Funding Agreements (the "Collateral Agent"), whose address is [●].

RECITALS

WHEREAS, NCDOT and the Developer have entered into a Comprehensive Agreement (the "Comprehensive Agreement") dated [●] for the I-77 HOT Lanes Project (the "Project"); and

WHEREAS, the provision of Project Debt to the Developer is conditioned upon NCDOT providing the Lenders with certain assurances (as more particularly set forth in this Agreement) regarding the Lenders' rights in the event of a default by the Developer under the Comprehensive Agreement or the Initial Funding Agreements.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows.

ARTICLE I.

DEFINITIONS, CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

Section 1.01 Definitions

Capitalized terms used but not otherwise defined in this Agreement have the respective meanings set forth in Exhibit 1 to the Comprehensive Agreement. In addition, the following terms have the meanings specified below:

Bankruptcy Related Default means a Developer Default that arises pursuant to Sections 17.1.1.13, 17.1.1.14, or 17.1.1.15 of the Comprehensive Agreement.

Collateral Agent Notice has the meaning given to it in Section 2.02(d)(i).

Cure Period means the period commencing on the date that the Collateral Agent receives an NCDOT Notice pursuant to Section 2.02(a) and ending on the earliest of:

(a) the relevant Cure Period Completion Date;

(b) any Step-out Date or Substitution Effective Date; or

(c) the last day of the Term.

Cure Period Completion Date means, subject to Section 8.02:

(a) with respect to any Payment Default, the date falling 60 Days after the date that the Collateral Agent receives the relevant NCDOT Notice;

(b) with respect to any Bankruptcy Related Default, the date falling 90 Days after the date that the Collateral Agent receives the relevant NCDOT Notice;

(c) with respect to any Non-Completion Default, the date falling 90 Days after the date that the Collateral Agent receives the relevant NCDOT Notice; provided, however, that such period shall be extended by such reasonable period of time as may be required to achieve Substantial Completion of the applicable Project Section (subject to a maximum extension of an additional 90 days), but only to the extent that:

(i) in the reasonable opinion of NCDOT, there is a reasonable prospect of achieving Substantial Completion for all Project Sections within 180 days of the relevant NCDOT Notice; and

(ii) within the 90 Day period, the Collateral Agent and NCDOT (each acting reasonably) agree to a plan for achieving Substantial Completion for all Project Sections; and

(d) with respect to any Developer Default not referred to in clauses (a) through (c) above, the date falling 90 Days after the date that the relevant NCDOT Notice is received by the Collateral Agent; provided, however, that such period shall, at the request of the Collateral Agent, be extended up to a maximum of 60 additional Days, but only to the extent that:

(i) within the 90 Day period, the Collateral Agent and NCDOT (each acting reasonably) agree to a plan specifying the remedial action to be taken in respect of the relevant Developer Default; and

(ii) the extension requested by the Collateral Agent represents (in the reasonable opinion of NCDOT) a reasonable period of time to remedy the relevant Developer Default.

Discharge Date means the date on which all of the obligations of the Developer under the Funding Agreements have been irrevocably discharged in full to the satisfaction of the Collateral Agent.

Event of Default has the meaning given to such term in the Funding Agreements.

Initial Equity Members means the Equity Members as of the date of this Agreement.

Initial Period means:

(a) with respect to any Payment Default, the date falling 30 Days after the date that the Collateral Agent received the relevant NCDOT Notice;

(b) with respect to any Bankruptcy Related Default, the date falling 90 Days after the date that the Collateral Agent receives the relevant NCDOT Notice; and

(c) with respect to any Developer Default not referred to in clause (a) or (b) above, the date falling 90 Days after the date that the Collateral Agent receives the relevant NCDOT Notice;

in each case, as may be extended pursuant to Section 8.02.

NCDOT Notice has the meaning given to it in Section 2.02(a).

Non-Completion Default means a Developer Default that arises pursuant to Section 17.1.1.3 of the Comprehensive Agreement.

Payment Default means a Developer Default that arises pursuant to Section 17.1.1.4 of the Comprehensive Agreement.

Property means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

Qualified Substitute Developer means a Person who:

(a) has the legal capacity, power and authority to become a party to, and perform the obligations of the Developer under the Comprehensive Agreement;

(b) has the resources available to it (including committed financial resources) to perform the obligations of the Developer under the Comprehensive Agreement;

(c) employs or subcontracts with Persons having the appropriate qualifications, experience and technical competence available to it that are sufficient to enable it to perform the obligations of the Developer under the Comprehensive Agreement; and

(d) has not been:

(i) debarred or prohibited from participating in State or federally-funded projects;

(ii) 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 show a similar lack of moral or ethical integrity; or

(iii) barred or prohibited from owning or operating the Project under law, including the Foreign Investment and National Security Act of 2007, 50 USC App. 2170 (HR 556).

Step-in Date has the meaning given to it in Section 4.01(c).

Step-in Entity has the meaning given to it in Section 4.01(b).

Step-in Entity Accession Agreement means the agreement to be entered into by a Step-in Entity pursuant to Section 4.01(c).

Step-in Notice has the meaning given to it in Section 4.01(a).

Step-in Period in relation to a Step-in Entity means the period from and including the Step-in Date until the earliest of:

(a) the last day of the Cure Period;

(b) the Substitution Effective Date;

(c) the Step-out Date;

(d) the date of termination of the Comprehensive Agreement by NCDOT in accordance with this Agreement and the Comprehensive Agreement; and

(e) the last day of the Term.

Step-out Date in relation to a Step-in Entity means the date upon which any Step-out Notice is served by such Step-in Entity pursuant to Section 4.03.

Step-out Notice has the meaning given to it in Section 4.03(a).

Substituted Entity has the meaning given to it in Section 5.01.

Substitute Accession Agreement means the agreement to be entered into by a Substituted Entity pursuant to Section 6.01.

Substitution Effective Date has the meaning given to it in Section 6.01.

Substitution Notice has the meaning given to it in Section 5.01.

Section 1.02 Order of Precedence

In the event of any conflict, ambiguity or inconsistency between the provisions of the Comprehensive Agreement and the provisions of this Agreement, the provisions of this Agreement shall prevail.

Section 1.03 No Effect on Comprehensive Agreement

Nothing in this Agreement amends or modifies any of the Developer's obligations to NCDOT under the Comprehensive Agreement.

ARTICLE II.

CONSENT TO SECURITY AND NOTICES

Section 2.01 Consent to Security

Notwithstanding anything to the contrary in the Comprehensive Agreement:

(a) NCDOT acknowledges notice and receipt of and consents to:

(i) the assignment by Developer to the Collateral Agent of all of the Developer's Interest pursuant to the Initial Funding Agreements; and

(ii) the grant by each of the Initial Equity Members to the Collateral Agent of a security interest in their respective equity interests in Developer, in each case pursuant to the Initial Funding Agreements;

(b) none of the assignments or security interests referred to in Section 2.01(a):

(i) constitute (or with the giving of notice or lapse of time, or both, could constitute) either a breach of the Comprehensive Agreement or a Developer Default; or

(ii) require any consent of NCDOT that is either additional or supplemental to those granted pursuant to this Section 2.01;

(c) for the avoidance of doubt, the Collateral Agent shall not, by virtue of the assignments and security interests referred to in Section 2.01(a), acquire any greater rights to Developer's Interest than Developer itself has at any particular time pursuant to the Comprehensive Agreement; and

(d) for so long as any amount under the Initial Funding Agreements is outstanding, NCDOT shall not, without the prior written consent of the Collateral Agent, consent to any assignment, transfer, pledge or hypothecation of the Comprehensive Agreement or any interest therein by Developer, other than as specified in this Agreement.

Section 2.02 Notice Requirements

(a) NCDOT shall give the Collateral Agent written notice (an "NCDOT Notice"), with a copy of such NCDOT Notice provided to Developer, promptly upon becoming aware of any Developer Default which would immediately or following the applicable cure period constitute a Default Termination Event, and shall specify in NCDOT Notice:

(i) the unperformed obligations of Developer under the Comprehensive Agreement of which NCDOT is aware (having made reasonable inquiry) and grounds for termination of the Comprehensive Agreement in sufficient detail to enable the Collateral Agent to assess the scope and amount of any liability of Developer resulting therefrom;

(ii) all amounts of which NCDOT is aware (having made reasonable inquiry) that are due and payable by Developer to NCDOT under the Comprehensive Agreement, if any, on or before the date of NCDOT Notice and which remain unpaid at such date and, by cross-reference to the applicable provision(s) of the Comprehensive Agreement, the nature of the Developer's obligation to pay such amounts; and

(iii) the amount of any payments that NCDOT reasonably foresees will become due from the Developer during the applicable Cure Period.

(b) NCDOT shall update any NCDOT Notice issued pursuant to Section 2.02(a) as and when it becomes aware of any unperformed obligations of the Developer (including non-payment of amounts that have become due) under the Comprehensive Agreement that were not specified in the relevant NCDOT Notice.

(c) For the avoidance of doubt, nothing in this Agreement shall prevent multiple NCDOT Notices running concurrently.

(d) The Collateral Agent shall:

(i) promptly upon becoming aware of any Event of Default (whether or not an NCDOT Notice has been served in connection with the same event) give NCDOT written notice (a "Collateral Agent Notice");

(ii) specify in any Collateral Agent Notice the circumstances and nature of the Event of Default to which the Collateral Agent Notice relates; and

(iii) notify NCDOT of any decision to accelerate amounts outstanding under the Funding Agreements or to exercise any enforcement remedies under the Funding Agreements.

Section 2.03 NCDOT Payments under the Comprehensive Agreement

(a) NCDOT shall deposit all toll revenues payable to Developer under the CA Documents into the Project Trust Agreement, and Developer agrees that any payment made in accordance with this Section 2.03 shall constitute a complete discharge of NCDOT's relevant payment obligations under the Comprehensive Agreement.

(b) The Collateral Agent acknowledges that all of NCDOT's payment obligations to Developer pursuant to the Comprehensive Agreement are subject to Section 5.7 of the Comprehensive Agreement.

ARTICLE III.

RIGHTS AND OBLIGATIONS DURING THE CURE PERIOD

Section 3.01 No Termination during the Cure Period

At any time during a Cure Period, NCDOT shall not, subject to the terms of this Agreement:

(a) terminate or give notice terminating the Comprehensive Agreement for Developer Default under Section 17.3.1 of the Comprehensive Agreement; or

(b) take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of the Developer or for the composition or readjustment of Developer's debts, or any similar insolvency procedure in relation to Developer, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Developer or for any part of Developer's Property.

Section 3.02 Collateral Agent Rights

(a) Subject to the terms of the Funding Agreements, at any time during an Event of Default (but, in the case of a Developer Default, only for so long as the Initial Period has not expired), without giving a Step-in Notice, the Collateral Agent may (but shall have no obligation), at its sole option and discretion, perform or arrange for the performance of any act, duty, or obligation required of Developer under the Comprehensive Agreement, or remedy any breach of Developer thereunder at any time, which performance or remedy by or on behalf of the Collateral Agent shall be accepted by NCDOT in lieu of performance by Developer and in satisfaction of Developer's obligations under the Comprehensive Agreement. To the extent that any breach of Developer under the Comprehensive Agreement is remedied and/or any payment liabilities or obligations of Developer are performed by the Collateral Agent under this Section 3.02(a), such action shall discharge the relevant liabilities or obligations of Developer to NCDOT. No such performance by or on behalf of the Collateral Agent under this Section 3.02(a) shall be construed as an assumption by the Collateral Agent, or any person acting on the Collateral Agent's behalf, of any of the covenants, agreements or other obligations of Developer under the Comprehensive Agreement.

(b) At any time during a Cure Period or an Event of Default, the Collateral Agent may:

(i) issue a Step-in Notice in accordance with the requirements of Section 4.01; or

(ii) issue a Substitution Notice in accordance with the requirements of Section 5.01.

ARTICLE IV.

STEP-IN ARRANGEMENTS

Section 4.01 Step-in Notice

(a) Provided that all unperformed payment obligations of the Developer identified in an NCDOT Notice shall have been remedied in full by the Collateral Agent or waived by NCDOT on or before the Step-in Date, the Collateral Agent may provide NCDOT with a written notice ("Step-in Notice"), with a copy of such Step-in Notice provided to Developer, under this Section 4.01 at any time during any Cure Period or Event of Default.

(b) The Collateral Agent shall nominate, in any Step-in Notice, any one of:

(i) the Collateral Agent, a Lender or any of their respective Affiliates; or

(ii) any Person approved by NCDOT in its discretion, such approval not to be unreasonably withheld or delayed if such Person meets all the criteria to be a Qualified Substitute Developer and NCDOT has been provided with the relevant information required under Section 5.03 with respect to such Person (it being understood that if NCDOT has failed to respond to the Collateral Agent within 60 days of the date on which NCDOT has received the information specified in Section 5.03 in respect of any such nominated Person, the approval of NCDOT shall be deemed to have been given),(each a "Step-in Entity"), stating that the Step-in Entity is to become a joint and several obligor with the Developer under the Comprehensive Agreement and this Agreement in accordance with the terms hereof.

(c) The Step-in Entity named in the Step-in Notice shall be deemed to become a party to the Comprehensive Agreement and this Agreement on and from the date it executes a duly completed Step-in Entity Accession Agreement, substantially in the form attached hereto as Annex 1 (Form of Step-in Entity Accession Agreement), and submits it to NCDOT (the "Step-in Date").

Section 4.02 Rights and Obligations on Step-in

(a) On and from the Step-in Date and during the Step-in Period, the Step-in Entity shall be:

(i) jointly and severally entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to Developer under the Comprehensive Agreement and this Agreement;

(ii) entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Entity under this Agreement; and

(iii) jointly and severally liable with Developer for the payment of all sums due from Developer under or arising out of the Comprehensive Agreement at the Step-in Date and for the performance of all of Developer's obligations under or arising out of the Comprehensive Agreement on or after the Step-in Date.

(b) Without prejudice to Article 7 (*Reinstatement of Remedies*), during the Step-in Period:

(i) NCDOT undertakes:

(A) not to terminate or give notice terminating the Comprehensive Agreement for Developer Default under Section 17.3.1 of the Comprehensive Agreement, unless:

(1) the grounds for termination or giving notice of termination or exercise of any of its rights under Section 17.3.1 of the Comprehensive Agreement arose during the Step-in Period; or

(2) the Step-in Entity fails to comply with the requirements of any plan agreed between NCDOT and the Collateral Agent in connection with the extension of the relevant Cure Period Completion Date; and

B) not to take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of Developer or for the composition or readjustment of Developer's debts, or any similar insolvency procedure in relation to Developer, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Developer or for any part of Developer's Property;

C) not to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Developer) under the Comprehensive Agreement, unless the grounds for suspension of performance arose during the Step-in Period; and

D) to continue to make payments required to be made to Developer pursuant to the Comprehensive Agreement.

(ii) NCDOT shall owe its obligations under the Comprehensive Agreement and this Agreement to the Developer and such Step-in Entity jointly; provided, however, that:

A) subject to Section 4.02(b)(ii)(B), the performance of such obligations by NCDOT in favor of either such Step-in Entity or Developer shall be a good and effective discharge of such obligations under this Agreement and the Comprehensive Agreement; and

B) the Collateral Agent shall be entitled at any time by notice in writing to NCDOT to direct (such direction being binding on the Collateral Agent, NCDOT and Developer) that, at all times thereafter while such Step-in Entity is deemed to be a party to the Comprehensive Agreement and this Agreement and subject to any further notice from the Collateral Agent, such Step-in Entity shall be solely entitled to make any decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with NCDOT under the Comprehensive Agreement and this Agreement.

(c) Developer shall not be relieved from any of its obligations under the Comprehensive Agreement, whether arising before or after the Step-in Date, by reason of the Step-in Entity becoming a party to the Comprehensive Agreement pursuant to a Step-in Entity Accession Agreement, except to the extent provided in Section 3.02(a) and Section 6.02(a).

Section 4.03 Step Out

(a) A Step-in Entity may, at any time, by giving not less than 30 Days' prior written notice ("Step-out Notice") to NCDOT, with a copy of such Step-out Notice provided to Developer, terminate its obligations to NCDOT under the Comprehensive Agreement and this Agreement, whereupon the Step-in Entity shall, upon the expiry of such notice, no longer be deemed to be a party to the Comprehensive Agreement and this Agreement and shall be released from all obligations under the Comprehensive Agreement and this Agreement. The obligations of NCDOT to the Step-in Entity in such capacity under the Comprehensive Agreement and this Agreement shall also terminate upon the expiry of such notice.

(b) Nothing in this Section 4.03 shall have the effect of releasing the Step-in Entity from any liability that relates to the performance or non-performance of the Comprehensive Agreement or this Agreement by the Developer or the Step-in Entity during the Step-in Period.

ARTICLE V.

SUBSTITUTION PROPOSALS

Section 5.01 Notice of Proposed Substituted Entity

To the extent that the Collateral Agent or the Lenders at any time propose to require Developer to assign its rights and obligations under the Comprehensive Agreement and/or this Agreement to a Person (a "Substituted Entity") designated by the Collateral Agent or the Lenders (whether by mutual agreement or enforcement of rights under the Funding Agreements), the effectiveness of such assignment shall be conditional upon:

(a) the Collateral Agent issuing a notice (a "Substitution Notice") to NCDOT requesting the prior approval of the proposed Substituted Entity;

(b) NCDOT approving the identity of the proposed Substituted Entity pursuant to Sections 5.02 or 5.04; and

(c) the proposed Substituted Entity executing a Substitute Accession Agreement in accordance with Section 6.01.

Section 5.02 Grounds for Refusing Approval

NCDOT shall only be entitled to withhold its approval to any proposed Substituted Entity that is the subject of a Substitution Notice if:

(a) the proposed Substituted Entity is not a Qualified Substitute Developer; or

(b) subject to Section 6.04, there are outstanding breaches of the Comprehensive Agreement that have been previously notified by NCDOT to the Collateral Agent and have not, to the reasonable satisfaction of NCDOT, been remedied or waived prior to the date of the Substitution Notice; unless NCDOT has approved (such approval not to be unreasonably withheld or delayed) a plan specifying the remedial action that the Substituted Entity will be required to take after the Substitution Effective Date in order to remedy each such breach.

Section 5.03 Provision of Information

The Collateral Agent shall, as soon as practicable, provide to NCDOT such information in relation to the proposed Substituted Entity and any Person who, it is proposed, will enter into a material subcontract with the proposed Substituted Entity in relation to the Project, as NCDOT shall reasonably require to enable it to reasonably determine whether the proposed Substituted Entity is a Qualified Substitute Developer, including:

(a) the name and address of the proposed Substituted Entity;

(b) unless such proposed Substituted Entity is a publicly-traded entity, the names of the proposed Substituted Entity's shareholders or members and the share capital or partnership or membership interests, as the case may be, held by each of them;

(c) the manner in which it is proposed to finance the proposed Substituted Entity and the extent to which such financing is committed (to the extent relevant);

(d) copies of the proposed Substituted Entity's most recent financial statements (and if available, such financial statements shall be for the last three financial years and audited), or in the case of a special purpose company, its opening balance sheet;

(e) a copy of the proposed Substituted Entity's organizational documents;

(f) details of the resources available to the proposed Substituted Entity and the proposed Substituted Entity's appropriate qualifications, experience and technical competence available to the proposed Substituted Entity to enable it to perform the obligations of the Developer under the Comprehensive Agreement; and

(g) the names of the proposed Substituted Entity's directors and any key personnel who will have responsibility for the day-to-day management of its participation in the Project.

Section 5.04 Deemed Approval

If (i) NCDOT has failed to respond to the Collateral Agent within 60 days of the date on which NCDOT has confirmed it has received the information specified in Section 5.03 in respect of any proposed Substituted Entity, and (ii) the Collateral Agent sends a written notice to NCDOT indicating that it has not responded within such 60 day period and an additional 10 days have elapsed without response from NCDOT, the approval of NCDOT shall be deemed to have been given.

ARTICLE VI.

SUBSTITUTION

Section 6.01 Substitution Effective Date

If NCDOT approves (or is deemed to have approved) the identity of a proposed Substituted Entity pursuant to Article 5, the Substituted Entity shall execute a duly completed Substitute Accession Agreement substantially in the form set out in Annex 2 to this Agreement and submit it to NCDOT (with a copy of it to the other parties to this Agreement). Such assignment shall become effective on and from the date on which NCDOT countersigns the Substitute Accession Agreement or the date that is 10 days after the date NCDOT receives the completed Substitute Accession Agreement if NCDOT fails to countersign the Substitute Accession Agreement (the "Substitution Effective Date").

Section 6.02 Effectiveness of Substitution

On and from the Substitution Effective Date:

(a) such Substituted Entity shall become a party to the Comprehensive Agreement and this Agreement in place of Developer who shall be immediately released from its obligations arising under, and cease to be a party to, the Comprehensive Agreement and this Agreement from that Substitution Effective Date; and

(b) such Substituted Entity shall exercise and enjoy the rights and perform the obligations of Developer (including, without limitation, any undischarged liability in respect of any Losses suffered or incurred by NCDOT prior to the Substitution Effective Date) under the Comprehensive Agreement and this Agreement, and

(c) NCDOT shall owe its obligations (including, without limitation, any undischarged liability in respect of any loss or damage suffered or incurred by the Developer prior to the Substitution Effective Date) under the Comprehensive Agreement and this Agreement to such Substituted Entity in place of the Developer and any Step-in Entity.

Section 6.03 Facilitation of Transfer

NCDOT shall use its reasonable efforts to facilitate the transfer to the Substituted Entity of the Developer's obligations under the Comprehensive Agreement and this Agreement.

Section 6.04 Settlement of Outstanding Financial Liabilities

(a) The Substituted Entity shall pay to NCDOT within 30 Days after the Substitution Effective Date any amount due from the Developer to NCDOT under the Comprehensive Agreement and this Agreement as of the Substitution Effective Date (as notified by NCDOT to the Substituted Entity reasonably in advance of such Substitution Effective Date).

(b) If the Substituted Entity fails to satisfy its obligations pursuant to Section 6.04(a), NCDOT shall be entitled to exercise its rights under the Comprehensive Agreement in respect of the amount so due and unpaid.

Section 6.05 Consequences of Substitution

On and from the Substitution Effective Date:

(a) subject to Section 6.04, any right of termination or any other right suspended by virtue of Section 3.01 shall be of no further effect and NCDOT shall not be entitled to terminate the Comprehensive Agreement and this Agreement by virtue of any act, omission or circumstance that occurred prior to such Substitution Effective Date;

(b) if any Step-in Entity is a party to or has any obligations under the Comprehensive Agreement and this Agreement on the Substitution Effective Date, such Step-in Entity shall cease to be a party thereto and hereto and shall be discharged from all obligations thereunder and hereunder; and

(c) NCDOT shall enter into an equivalent direct agreement on substantially the same terms as this Agreement, save that Developer shall be replaced as a party by the Substituted Entity.

ARTICLE VII.

REINSTATEMENT OF REMEDIES

If an NCDOT Notice has been given, the grounds for that notice are continuing and have not been remedied or waived by NCDOT and:

(a) no Step-in Entity or Substituted Entity becomes a party to the Comprehensive Agreement and this Agreement before the Cure Period Completion Date relating thereto; or

(b) a Step-in Entity becomes a party to the Comprehensive Agreement and this Agreement, but the Step-in Period relating to such Step-in Entity ends without a Substituted Entity becoming a party thereto and hereto,

then, on and from the Cure Period Completion Date or the date such Step-in Period expires, NCDOT shall be entitled to:

(i) act upon any and all grounds for termination available to it in relation to

the Comprehensive Agreement in respect of Developer Defaults under the Comprehensive Agreement that have not been remedied or waived by NCDOT;

(ii) pursue any and all claims and exercise any and all rights and remedies against Developer; and

(iii) if and to the extent that it is then entitled to do so under the Comprehensive Agreement, take or support any action of the type referred to in Section 3.01(b).

ARTICLE VIII.

IMPACT OF BANKRUPTCY OR INSOLVENCY PROCEEDINGS

Section 8.01 Rejection of the Comprehensive Agreement

(a) If the Comprehensive Agreement is rejected by a trustee or debtor-in-possession in, or terminated as a result of, any bankruptcy or insolvency proceeding involving Developer and, within 150 days after such rejection or termination, the Collateral Agent shall so request and shall certify in writing to NCDOT that the Collateral Agent or the Collateral Agent's permitted designee or assignee, including a Qualified Substitute Developer, intends to perform the obligations of the Developer as and to the extent required under the Comprehensive Agreement, NCDOT will execute and deliver to the Collateral Agent (or any Substituted Entity satisfying the requirements of this Agreement if directed to do so by the Collateral Agent) a new comprehensive agreement. The new comprehensive agreement shall contain conditions, agreements, terms, provisions and limitations which are the same as those of the Comprehensive Agreement, except for any obligations that have been fulfilled by Developer, any party acting on behalf of or stepping-in for Developer or the Collateral Agent prior to such rejection or termination. References in this Agreement to the “Comprehensive Agreement” shall be deemed also to refer to any such new comprehensive agreement.

(b) The effectiveness of any new comprehensive agreement referred to in Section 8.01(a) above will be conditional upon the Collateral Agent first reimbursing NCDOT Recoverable Costs incurred in connection with the execution and delivery of such new comprehensive agreement.

Section 8.02 Extension of Cure Period Completion Date and Initial Period

If the Collateral Agent is prohibited by any court order, bankruptcy or insolvency proceedings from:

(a) remedying the Developer Default that is the subject of an NCDOT Notice; or

(b) from commencing or prosecuting foreclosure proceedings,

each of the relevant Cure Period Completion Date and Initial Period shall be extended by a period of time equal to the shorter of the period of such prohibition or 150 Days.

ARTICLE IX.

TERMINATION OF THIS AGREEMENT

This Agreement shall remain in effect until the earliest to occur of:

(a) the Discharge Date;

(b) the time at which all of the parties' respective obligations and liabilities under the Comprehensive Agreement and this Agreement have expired or have been satisfied in accordance with the terms of the Comprehensive Agreement and this Agreement; and

(c) any assignment to a Substituted Entity has occurred under Article 6 and NCDOT shall have entered into an equivalent direct agreement on substantially the same terms as this Agreement, save that the Developer has been replaced as a party by the Substituted Entity.

ARTICLE X.

EXTENSION OF LONG STOP DATE

The Collateral Agent shall have the option of extending the Long Stop Date by two additional 90-day periods; provided that such option to extend is provided under the Funding Agreements and all the following terms and conditions have been satisfied by not later than 15 days before the Long Stop Date has expired:

(a) the Collateral Agent has delivered to NCDOT (a) written notice identifying the Long Stop Date that is the subject of the notice and stating the election to exercise the option to extend and (b) concurrently with such written notice a payment in good funds in the amount set forth in Exhibit 16 of the Comprehensive Agreement. Such payment is due for each 90-day extension of each Long Stop Date. Such payment shall be fully earned and non-refundable when paid, as consideration for the option to extend; and

(b) the Collateral Agent or the Substituted Entity has obtained the rights to the Developer's Interest and full possession, custody and control of the Project to the exclusion of the Developer.

ARTICLE XI.

GENERAL PROVISIONS

Section 11.01 Representations and Warranties

(a) The undersigned signatory for the Collateral Agent hereby represents and warrants that he or she is an officer of the Collateral Agent and that he or she has full and complete authority to enter into this Agreement on behalf of the Collateral Agent.

(b) The Collateral Agent hereby represents and warrants that the Collateral Agent has full power, right and authority to execute and perform each and all of its obligations under this Agreement. These representations and warranties are made for the purpose of inducing NCDOT and Developer to enter into this Agreement.

(c) The Collateral Agent represents and warrants that this Agreement has been duly authorized, executed and delivered by the Collateral Agent and constitutes a valid and legally

binding obligation of the Collateral Agent, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) The undersigned signatory for Developer hereby represents and warrants that he or she is an officer of Developer and that he or she has full and complete authority to enter into this Agreement on behalf of Developer.

(e) Developer hereby represents and warrants that Developer has full power, right and authority to execute and perform each and all of its obligations under this Agreement and the Comprehensive Agreement. These representations and warranties are made for the purpose of inducing NCDOT and the Collateral Agent to enter into this Agreement.

(f) Developer represents and warrants that each of this Agreement and the Comprehensive Agreement has been duly authorized, executed and delivered by Developer and constitutes a valid and legally binding obligation of Developer, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(g) Developer represents and warrants that there is no Developer Default or, to the best of its knowledge, no NCDOT Default, there exists no event or condition that would, with the giving of notice or passage of time or both, constitute such a Developer Default or, to the best of its knowledge, an NCDOT Default, and no such Developer Default or, to the best of its knowledge, NCDOT Default has occurred prior to the date hereof.

(h) The undersigned signatory for NCDOT hereby represents and warrants that he or she is an officer of NCDOT and has full and complete authority to enter into this Agreement on behalf of NCDOT.

(i) NCDOT has full power, right and authority to execute and perform each and all of its obligations under this Agreement and the Comprehensive Agreement. These representations and warranties are made for the purpose of inducing the Collateral Agent to enter into this Agreement.

(j) NCDOT represents and warrants that each of this Agreement and the Comprehensive Agreement has been duly authorized, executed and delivered by NCDOT and constitutes a valid and legally binding obligation of NCDOT, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(k) NCDOT represents and warrants that there is no NCDOT Default or, to the best of its knowledge, no Developer Default, there exists no event or condition that would, with the giving of notice or passage of time or both, constitute such an NCDOT Default or, to the best of its knowledge, a Developer Default, and no such NCDOT Default or, to the best of its knowledge, Developer Default has occurred prior to the date hereof.

Section 11.02 Public Information and Confidentiality

NCDOT and the Collateral Agent will, for each other's benefit, comply with the requirements of Section 22.1 of the Comprehensive Agreement as if any reference to Developer therein was a reference to the Collateral Agent.

Section 11.03 Amendments and Waivers

(a) No amendment of this Agreement, and no waiver of any term, covenant or condition of this Agreement, shall be effective unless in writing and signed by the parties to this Agreement.

(b) The exercise by a party of any right or remedy provided under this Agreement or law shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any party of any right or remedy under this Agreement or law shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or law. 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.

Section 11.04 Non-collusion

(a) The Collateral Agent warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Collateral Agent, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from making of this Agreement.

(b) For breach or violation of this warranty, NCDOT shall have the right to terminate this Agreement without liability.

Section 11.05 Disputes

(a) In the event of any dispute between NCDOT and the Collateral Agent under this Agreement, the parties shall resolve the dispute according to the dispute resolution procedures set forth in the Comprehensive Agreement, with the Collateral Agent having the same rights and obligations of Developer under the disputes resolution procedures set forth in Section 17.8 of the Comprehensive Agreement.

(b) Nothing in Section 11.05(a) affects the Collateral Agent's rights and remedies against Developer and Developer's Interest under the Funding Agreements and Security Documents or the procedures available to the Collateral Agent under law to exercise its security interests thereunder.

Section 11.06 Successors and Assigns

(a) No party to this Agreement may assign or transfer any part of its rights or obligations hereunder without the prior written consent of the other parties; provided, however, that the Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Funding Agreements and NCDOT may transfer its rights or obligations hereunder in accordance with and subject to the terms and conditions set forth in Section 21.4 of the Comprehensive Agreement. In connection with any

such assignment or transfer, NCDOT agrees to enter into a new direct agreement with the successor Collateral Agent on terms that are substantially the same as those of this Agreement.

(b) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 11.07 Severability

In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Section 11.08 Prior Contracts Superseded

This Agreement constitutes the sole agreement of the parties hereto with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the parties respecting such subject matter.

Section 11.09 Notices and Communications

(a) Whenever under the provisions of this Agreement it will be necessary or desirable for one party to serve any approval, notice, request, demand, report or other communication on another party, the same will be in writing and will 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, where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission is immediately followed by service of the original of the subject item in another manner permitted herein or (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 NCDOT:

North Carolina Department of Transportation

_____

Attention: _____
Facsimile: _____

With copies to:

_____

Attention: _____
Facsimile: _____

If to the Developer:

_____
Attention: _____
Facsimile: _____

With copies to:

_____
Attn: _____
Facsimile: _____

If to the Collateral Agent:

[●]

Attention: [ ]
Facsimile: [ ]

(b) Any party may, from time to time, by notice in writing served upon the other parties as aforesaid, designate an additional and/or a different mailing address 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 will be deemed delivered upon receipt, if served by mail or independent courier will 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 United States Postal Service or independent courier, and if served by facsimile transmission will be deemed delivered on the date of receipt as shown on the received facsimile (*provided*, that the original is thereafter delivered as aforesaid).

Section 11.10 Effect of Breach

Without prejudice to any rights a party may otherwise have, a breach of this Agreement shall not of itself give rise to a right to terminate the Comprehensive Agreement.

Section 11.11 Counterparts

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

Section 11.12 No Third-Party Beneficiaries

Nothing contained in this Agreement is intended or will 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.

Section 11.13 No Partnership

Nothing contained in this Agreement shall be deemed to constitute a partnership between the parties hereto. None of the parties shall hold itself out contrary to the terms of this Section 11.13.

Section 11.14 No Interference

The Developer joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not to knowingly do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

Section 11.15 Collateral Agent

(a) Notwithstanding anything to the contrary in this Agreement, but subject to Article 4 (solely to the extent the Collateral Agent or any of its Affiliates is the Step-In Entity), Section 11.01 and Section 11.15(b), the Collateral Agent shall not have any liability to NCDOT under this Agreement, unless the Collateral Agent expressly assumes such liability in writing.

(b) NCDOT acknowledges and agrees that the Collateral Agent shall not be obligated or required to perform any of Developer's obligations under the Comprehensive Agreement, except during any Step-in Period (solely to the extent the Collateral Agent or any of its Affiliates is the Step-In Entity).

Section 11.16 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina applicable to contracts executed and to be performed within the State. All litigation between the parties arising out of or pertaining to this Agreement or its breach shall be filed, heard and decided in the General Court of Justice in Wake County, North Carolina, which shall have sole and exclusive jurisdiction and venue; provided, however, if an action must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the Eastern District of North Carolina. Each party shall bear its own attorney's 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 attorney's fees or costs.

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

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

By:_____
Name: _____
Title: _____

[DEVELOPER],
a _____

By:_____

Name:_____

Title:_____

By:_____

Name:_____

Title:_____

[COLLATERAL AGENT]

By:_____

Name:_____

Title:_____

ANNEX 1

FORM OF STEP-IN ENTITY ACCESSION AGREEMENT

[*Date*]

To: [*Name of NCDOT's Representative*]

North Carolina Department of Transportation

_____
Facsimile: _____
Email: [●]

Copied to: _____

_____

Attention: _____
Facsimile: _____

[*Lenders and other parties to Finance Documents to be listed*]
[*insert address*]
For the attention of: [•]

From: [*Step-in Entity*]

I-77 HOT LANES PROJECT

STEP-IN ENTITY ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Comprehensive Agreement, dated as of [●] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Comprehensive Agreement"), between the North Carolina Department of Transportation ("NCDOT") and _____ (the "Developer") and the Direct Agreement, dated as of [●] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Direct Agreement"), among NCDOT, Developer and [●], as Collateral Agent.

Terms not otherwise defined herein shall have the same meaning given to them in the Direct Agreement.

1. We hereby confirm that we are a Step-in Entity pursuant to Article 4 of the Direct Agreement.

2. We acknowledge and agree that, upon and by reason of our execution of this Step-in Entity Accession Agreement, we will become a party to the Comprehensive Agreement and the Direct Agreement jointly and severally with Developer as a Step-in Entity and,

accordingly, shall have the rights and powers and assume the obligations of the Developer under the Comprehensive Agreement and the Direct Agreement in accordance with the terms of the Direct Agreement.

3. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

   [*contact details of Step-in Entity*]

4. This Step-in Entity Accession Agreement shall be governed by, and construed in accordance with, the law of the State of North Carolina. All litigation between the parties arising out of or pertaining to this Step-In Accession Agreement or its breach shall be filed, heard and decided in the General Court of Justice in Wake County, North Carolina, which shall have sole and exclusive jurisdiction and venue; provided, however, if an action must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the Eastern District of North Carolina. Each party shall bear its own attorney's fees and costs in any dispute or litigation arising out of or pertaining to this Step-In Accession Agreement, and no party shall seek or accept an award of attorney's fees or costs.

The terms set forth herein are hereby agreed to:

[*Step-in Entity***]**

By _____
Name:
Title:

Agreed for and on behalf of:
North Carolina Department of Transportation

By: _____
Name:
Title:

ANNEX 2

FORM OF SUBSTITUTE ACCESSION AGREEMENT

[*Date*]

To: [*Name of NCDOT's Representative*]

North Carolina Department of Transportation

_____
Facsimile: _____
Email: [●]

Copied to: _____

_____

Attention: _____
Facsimile: _____

From: [*Substituted Entity*]

I-77 HOT LANES PROJECT

SUBSTITUTE ACCESSION AGREEMENT

Ladies and Gentlemen:

Reference is made to the Comprehensive Agreement, dated as of [●] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Comprehensive Agreement"), between the North Carolina Department of Transportation (the "Department") and _____ (the "Developer") and the Direct Agreement, dated as of [●] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Direct Agreement"), among NCDOT, Developer and [●], as Collateral Agent.

Terms defined not otherwise defined herein shall have the same meaning given to them in the Direct Agreement.

1. We hereby confirm that we are a Substituted Entity pursuant to Article 6 of the Direct Agreement.

2. We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement, we will become a party to the Comprehensive Agreement and the Direct Agreement as a Substituted Entity and, accordingly, shall have the rights and powers and assume the obligations of Developer under the Comprehensive Agreement and the Direct Agreement in accordance with the terms of the Direct Agreement.

3. Our address, fax and telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[*contact details of Substituted Entity*]

4. This Substitute Accession Agreement shall be governed by, and construed in accordance with, the law of the State of North Carolina. All litigation between the parties arising out of or pertaining to this Substitute Accession Agreement or its breach shall be filed, heard and decided in the General Court of Justice in Wake County, North Carolina, which shall have sole and exclusive jurisdiction and venue; provided, however, if an action must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the Eastern District of North Carolina. Each party shall bear its own attorney's fees and costs in any dispute or litigation arising out of or pertaining to this Substitute Accession Agreement, and no party shall seek or accept an award of attorney's fees or costs.

The terms set forth herein are hereby agreed to:

[*Substituted Entity***]**

By: _____
Name:
Title:

Agreed for and on behalf of:
North Carolina Department of Transportation

By: _____
Name:
Title:

EXHIBIT 11

HANDBACK REQUIREMENTS RESERVE ELEMENTS AND RESERVE FUNDING MECHANISM

1. Developer shall make deposits to the Handback Requirements Reserve by the last day of each calendar quarter, commencing with the first calendar quarter of the fifth full calendar year before the end of the Term, and continuing thereafter.

2. Developer shall make quarterly deposits into the Handback Requirements Reserve so that by the *beginning* of each of the last four years during the Term the Handback Requirements Reserve will contain an amount equal to:

   (a) The summation across all Elements (i.e. those Elements that have a number of years stated in the "Residual Life at Handback" column in Table 23.3 of the Technical Provisions) of the estimated cost to perform the Renewal Work on each other Element that is to be performed prior to expiration of the Term in accordance with the Handback Requirements multiplied by a fraction the numerator of which is four minus the number of full calendar years until the year in which the Renewal Work is scheduled to be performed pursuant to the Renewal Work Schedule (as it may be revised pursuant to the Handback Requirements) and the denominator of which is four; plus

   (b) 10% of the amounts under clause (a) above as a contingency.

3. Developer's quarterly deposits in a year shall equal one-fourth of the amount required to be deposited in such year as described in Section 2 above, provided that if Developer's aggregate actual draws during the current calendar year exceed the planned draws by more than 10% (including draws to fund Safety Compliance work allowed under Section 8.10.3.1 of the Agreement), Developer shall adjust its quarterly deposits for the remainder of the calendar year in order to make up the excess draws.

4. In determining the amount of Developer's deposits to be made in the current calendar year, the Parties shall take into account the total amount in the Handback Requirements Reserve at the end of the immediately preceding calendar year and Developer's planned draws from the Handback Requirements Reserve during the current calendar year.

5. If at any time during the course of Renewal Work on an Element the actual incurred costs thereof are such that the balance in the Handback Requirements Reserve for such Element is less than the total amount required to be funded to the Handback Requirements Reserve for such Element, Developer shall promptly increase its deposits in order to fully make up the difference.

6. If after completion of and payment in full for Renewal Work on an Element there remains an unused balance in the Handback Requirements Reserve for such Element during the Term, the unused balance shall be reallocated and credited toward required balances in the Handback Requirements Reserve for other Elements.

EXHIBIT 12

MAJOR PERMITS

Major Permit	Issuing Agency	Major Permit Deadline
USACE Section 404 Clean Water Act Permit	U.S. Army Corps of Engineers	120 days from receipt of Developer's submittal of a complete permit application in compliance with Section 4.2.3.2 of the Technical Provisions.
Section 401 Clean Water Act Permit	North Carolina Department of Natural Resources Division of Water Quality	120 days from receipt of Developer's submittal of a complete permit application in compliance with Section 4.2.3.2 of the Technical Provisions.

EXHIBIT 13

INSURANCE COVERAGE REQUIREMENTS

1. Builder's Risk Insurance During Construction

At all times during the period from the commencement of Construction Work until the date that the last Project Section achieves Substantial Completion, Developer shall, or shall require the Design-Build Contractor, to procure and keep in force a policy of builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction, with no exclusions or restrictions for terrorism, earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, tornado, subsidence or loss of materials while waterborne or under the water. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project; and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall cover (i) all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions or elements of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site, and (ii) unless covered by property insurance pursuant to Section 2 of this Exhibit 13, all existing property and improvements that are within the construction work zone or are or will be affected by the Construction Work.

(c) The policy shall provide coverage per occurrence for a sum not less than the probable maximum loss, based upon a probable maximum loss analysis of the covered property loss. The policy shall include reasonable sublimits for certain specified perils including, but not limited to: Offsite Storage, Property in Transit, Expediting Expenses, Demolition and Increased Cost of Construction, Debris Removal, Mobile Equipment and Professional Fees/Loss adjustment expenses, in each case without risk of co-insurance; provided, however, that in no event shall the amount of such coverage be less than $100 million. Developer and its insurance consultant shall perform the probable maximum loss analysis using industry standard underwriting practices. The probable maximum loss analysis and recommended policy limit based thereon, as well as any exclusions, shall be subject to the review and written approval by NCDOT to verify, among other things, reasonableness under industry standard underwriting practices, prior to issuance of the policy or renewal of any policy.

(d) Developer, NCDOT and the Design-Build Contractor shall be the named insureds on the policy as their respective interests appear. Developer also may, but is not obligated to, include other Contractors and interested parties as additional insureds as their respective interests appear. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other named insureds. Developer may name itself, NCDOT or the Collateral Agent as loss payee, as their respective interests may appear, under the policy.

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) demolition and debris removal coverage, (vii) the increased replacement cost due to any change in applicable codes or other Laws, (viii) expense to reduce loss, (ix) building ordinance compliance, with the building ordinance exclusion deleted, and (x) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

(f) The policy shall provide a deductible or self-insured retention not exceeding $1,000,000 per occurrence.

2. Property Insurance

Commencing on the issuance of NTP2, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of property insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the Project, with no restrictions or exclusions (except certain sublimits as noted below) for terrorism, earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, tornado, subsidence, or loss of property while waterborne or under the water. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project; and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the Project.

(c) The policy shall provide coverage per occurrence sufficient to reinstate the insured property and for a limit not less than the probable maximum loss, and shall include reasonable sublimits for Expediting Expenses, Professional Fees/Loss adjustment expenses, Demolition, Debris Removal and Mobile Equipment, in each case without risk of co-insurance. Developer and its insurance consultant shall perform the maximum probable loss analysis using industry standard underwriting practices. The probable maximum loss analysis and recommended policy limit based thereon, as well as any exclusions, shall be subject to the review and approval by NCDOT to verify, among other things, reasonableness under industry standard underwriting practices, prior to issuance of the policy or renewal of any policy. Developer and its insurance consultant shall review every three years the probable maximum loss values for the covered property and shall adjust the coverage limit accordingly for the period during which the property Insurance Policy is required hereunder.

(d) Developer and NCDOT shall be the named insured on the policy. Developer also may, but is not obligated to, include Contractors and other interested parties as additional insureds as their respective interests appear. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds. Developer may name itself, NCDOT or the Collateral Agent as loss payee under the policy, as their respective interests may appear; provided that during all portions of the last five years of the

Term that there are no outstanding Security Documents, NCDOT shall be named as the loss payee. If NCDOT receives proceeds of such insurance for insured loss or damage, NCDOT shall hold such proceeds available to pay and reimburse Developer for reasonable costs it incurs to repair and replace the loss or damage. However, at Developer's request, NCDOT will negotiate an amendment to the Project Trust Agreement for the purpose of establishing a property insurance proceeds account under the Project Trust Agreement, on commercially reasonable terms that shall include joint control of funds therein, into which such proceeds during the last five years of the Term will be deposited and held available for use to pay for restoration and repair of the damage or loss (with unspent proceeds, if any, to be disposed of in the same manner as proceeds in the Handback Requirements Reserve).

(e) To the extent available, the policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) physical damage resulting from mechanical breakdown or electrical apparatus breakdown, (vii) demolition and debris removal coverage, (viii) the increased replacement cost due to any change in applicable codes or other Laws, (ix) expense to reduce loss, (x) building ordinance compliance, with the building ordinance exclusion deleted, and (xi) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

(f) The policy shall provide a deductible or self-insured retention not exceeding $1,000,000 per occurrence.

3. Delayed Opening and Business Interruption Insurance

Developer shall procure, or cause to be procured, either as part of the builder's risk and property policies or as a separate business interruption policy procured concurrently with the builder's risk and property insurance policies, and shall keep in effect, or cause to be kept in effect, delayed opening insurance coverage (until the date of the last Project Section to achieve Substantial Completion) and business interruption insurance (from and after the date of the last Project Section to achieve Substantial Completion through the remainder of the Term) that satisfies the following requirements.

(a) Such Insurance Policy(ies) shall insure against interruption or loss of Toll Revenues resulting from physical loss or damage to any portion of the Project caused by occurrence of any risk which is required to be insured under the builder's risk or property insurance policies insurance specified in Sections 1 or 2 above.

(b) The policy shall cover interruption or loss of Toll Revenues for up to one full year for the coverage after the deductible period from the following: (i) for coverage against occurrences that take place prior to the date of the last Project Section to achieve Substantial Completion, the date such Substantial Completion would have occurred absent occurrence of the insured risk; or (ii) for the coverage against occurrences that take place on or after the date of the last Project Section to achieve Substantial Completion, the date of the interruption. For policies issued after the date of the last Project Section to achieve Substantial Completion, the

amount of coverage shall be adjusted annually to reflect the projected Toll Revenues for the next 12-month period.

(c) NCDOT and Developer shall be named insureds with respect to such coverage. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds.

(d) The policy shall provide a deductible or self-insured retention per occurrence not exceeding the first 90 days of loss following the date of interruption.

(e) The policy shall be in form and substance as is then standard in the State for policies of like coverage.

4. Commercial General Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, commercial general liability insurance as specified below.

(a) The policy shall be provide the latest form of ISO standard wording, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.

(b) The policy shall insure against the legal liability of the insureds named in Section 4(d) arising out of the acts or omissions of Developer's employees engaged in the Work and employees of Contracts and relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall provide coverage to address the following:

(i) Contractual liability;

(ii) Premises/operations;

(iii) Independent contractors;

(iv) Products and completed operations (with acknowledgement that the Project constitutes the premises and not a product);

(v) Broad form property damage;

(vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;

(vii) Fellow employee coverage for supervisory personnel;

(viii) Incidental medical malpractice;

(ix) No exclusion for work performed within 50 feet of a railroad;

(x) No professional services exclusion except the latest ISO form CG 22 79;

(xi) Broad named insured endorsement; and

(xii) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 6 of this Exhibit 13.

(c) The policy shall have limits of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate, applicable on a per project and/or per location basis. Should a master policy or Owner/Contractor-Controlled Insurance policy (OCIP/CCIP) be utilized, such limits may be shared by all insured and additional insured parties and shall reinstate annually.

(d) Developer, NCDOT, the Collateral Agent and the Indemnified Parties shall be the named insureds with respect to the acts, omissions and activities of Developer and its Contractors. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other named insured.

(e) The policy shall not have a deductible or self-insured retention exceeding $250,000 per occurrence, unless otherwise approved by NCDOT.

(f) Commercial general liablity insurance, included completed operations, shall remain in place for the entire Operating Period.

5. Umbrella/Excess Liability Insurance

At all times during the Term, Developer shall procure and maintain umbrella/excess liability insurance in an amount of at least $75 million per occurrence and in the aggregate. This policy shall be written on a following-form, occurrence basis, and will provide excess coverage over the Commercial General Liability, Automobile Liability and Employer's Liability coverages required under this Exhibit 13.

6. Automobile Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, comprehensive, business, or commercial automobile liability insurance as specified below.

(a) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) Business Automobile policy shall have a limit per policy period of not less than $1,000,000 for any one claim and in the aggregate (or combined single limit).

(c) Each policy shall provide a deductible or self-insured retention not exceeding $100,000 per occurrence.

7. Pollution Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, pollution liability insurance as specified below.

(a) The policy shall cover sums that the insured becomes liable to pay to a third party or that are incurred by the order of a regulatory body consequent upon a pollution incident, subject to the policy terms and conditions. Such policy shall cover claims related to pollution conditions to the extent such are caused by the performance of Work or by other activities that occur on the Project.

(b) Developer shall be the named insured under such policy. The Indemnified Parties shall be identified as additional insureds as their respective interests appear. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds. The insured vs. insured exclusion shall be deleted, so that the policy will insure Developer against, and respond to, pollution liability claims and actions of NCDOT against Developer.

(c) The policy shall have a limit of not less than $2,000,000 per occurrence and in the aggregate per policy period, unless applicable regulatory standards impose more stringent coverage requirements.

(d) The policy shall provide a deductible or self-insured retention not exceeding $250,000 per occurrence.

(e) The policy shall contan no exclusions that will restrict coverage for loss on, about or under the water.

8. Professional Liability Insurance

At all times during the Term that professional services are rendered respecting design and construction of the Project until the first to occur of (1) five years after the professional services have concluded for the Project or (2) expiration of all applicable statutes of limitation and repose applicable to professional services performed for the Project, Developer shall cause the Design-Build Contractor and the Lead Design Firm (in the case of the Design Work) and each Contractor that is under direct contract with Developer that provides professional services to procure and keep in force professional liability insurance as specified below. Unless specified otherwise by NCDOT, such insurance requirements also shall apply in like manner to professional services for any Renewal Work or Upgrades having an estimated construction cost in excess of $20 million. Developer may satisfy such insurance via a Project policy covering all the foregoing providers of professional services, provided no insured v. insured or similar exclusion precludes coverage of professionals for claims made by Developer or NCDOT or their respective successors or assigns. Further, such insurance may be satisfied through a project-specific policy or standard practice policy.

(a) Each policy shall provide coverage of liability of the party performing the professional services arising out of or relating to any negligent act, error or omission in the performance of professional services or activities for the Project.

(b) Each policy shall have a limit of not less than $10,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually.

(c) Each policy shall provide a deductible or self-insured retention not exceeding $250,0000 per occurrence.

9. Workers' Compensation and Employer's Liability Insurance

At all times when work is being performed by any employee of Developer or a Contractor, Developer and/or Contractor shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation and employer's liability insurance for the employee in conformance with applicable Law. Developer and/or the Contractor, whichever is the applicable employer, shall be the named insured on these policies. The workers' compensation Insurance Policy shall contain the following endorsements:

(a) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act;

(b) A voluntary compensation endorsement;

(c) An alternative employer endorsement; and

(d) An endorsement extending coverage to all states operations on an "if any" basis.

With regard to Employer's Liability, the policy shalll have a limit of not less than $1,000,000 per accident and in the aggregate per policy period.

10. Contractors' Insurance

(a) Developer shall cause the applicable Contractor to furnish the insurance coverages required above. For all other Contractors performing work on the Site (or professional services related to the Project), such Contractors shall carry the following insurance coverages:

(i) Workers' Compensation and Employer's Liability Insurance with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of $500,000 bodily injury by accident, each accident, and $500,000 bodily injury by disease, each employee.

(ii) Commercial General Liability Insurance with coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and contractual liability, the limits must be no less than $1,000,000 per occurrence and $1,000,000 in the aggregate annually.

(iii) Automobile Liability Insurance with a limit of at least $500,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on-Site or off.

(iv) Umbrella/Excess Liability Insurance in excess of the underlying limits noted above for employer's liability, commercial general liability and automobile liability in the amount of: (1) $1,000,000 per occurrence and in the aggregate for contracts greater than $500,000 and less than $1,000,000; (2) $2,000,000 per occurrence and in the aggregate for contracts equal to or greater than $1,000,000 and less than $5,000,000; and (3) $4,000,000 per occurrence and in the aggregate for

contracts equal to or greater than $5,000,000. No Umbrella/Excess Liability Insurance is required for contracts equal to or less than $500,000.

(v) Professional Liability Insurance (applicable only to Contractors rendering professional services, including, but not limited to, architects, engineers, traffic consultants, accountants, attorneys, etc.) with limits of at least $1,000,000 per claim and in the aggregate. Such insurance will remain in full force and effect during the performance of such professional services and with an extended reporting period for three years after completion of such professional services.

In the alternative, any such Contractors may be covered under the Developer-furnished insurance required under this Exhibit 13.

(b) Developer shall cause each Contractor that provides the insurance set forth in this Section 10 to include each of the Indemnified Parties as additional insureds under such insurance. Such insurance need not be Project-specific. NCDOT shall have the right to contact the Contractors directly in order to verify coverage.

11. Railroad Insurance

(a) Developer shall verify with the applicable railroad owner the insurance required to be obtained by Developer. Such insurance shall be in accordance with the Insurance Special Provisions in Book 3 of the Technical Provisions.

(b) At a minimum, Developer shall procure and keep in force, or cause to be procured and kept in force, Railroad Protective Liability Insurance for bodily injury liability, property damage liability, and physical damage to property in the amount of $5,000,000 per occurrence and $10,000,000 in the aggregate per annum. Such policy shall provide coverage for all loss, damage, or expense arising from bodily injury and property damage liability, and physical damage to property attributed to acts or omissions at the Site. Developer shall provide other insurance as may be required by the railroad owner.

EXHIBIT 14

MEASURES OF LIQUIDATED DAMAGES, FINES AND INCENTIVES

1 Liquidated Damages for Late Final Acceptance

Liquidated damages for late Final Acceptance of a Project Section shall equal $10,000 per day for each day (including partial days) that the date of Final Acceptance for a Project Section is later than the applicable Final Acceptance Deadline, as the Final Acceptance Deadline may be extended pursuant to this Agreement.

2. Liquidated Damages for Late Final Completion

Liquidated damages for late Final Completion shall equal $10,000 per day for each day (including partial days) that the date of Final Completion is later than the Final Completion Deadline, as the Final Completion Deadline may be extended pursuant to this Agreement.

3. Liquidated Damages for Noncompliance Events

Liquidated damages for Noncompliance Events shall be in accordance with Table 23.2 of the Technical Provisions. Such amounts of liquidated damages listed in Table 23.2 of the Technical Provisions shall be increased annually on January 1 of each year after the Effective Date by a percentage equal to the percentage increase in the CPI between the CPI for October of the second immediately preceding year and the CPI for October of the immediately preceding year; provided that in no event shall the amount be less than the amount in effect during the immediately preceding year.

4. Liquidated Damages for Unavailability Events

(a) From NTP1 until Substantial Completion of all Project Sections has occurred, liquidated damages for Unavailability Events resulting in Lane Closures shall be in accordance with Tables 1-01 of Attachment 1 to this Exhibit 14 and liquidated damages for Unavailability Events resulting in Road Closures shall be in accordance with Table 1-02 of Attachment 1 to this Exhibit 14.

(b) During the Operating Period, liquidated damages for Unavailability Events resulting in Lane Closures shall be in accordance with Table 2-01 of Attachment 2 to this Exhibit 14 and liquidated damages for Unavailability Events resulting in Road Closures shall be in accordance with Table 2-02 of Attachment 2 to this Exhibit 14.

(c) For the avoidance of doubt, in no event shall Liquidated Damages for Unavailabilty Events resulting in Lane Closures and Liquidated Damages for Unavailability Events resulting in Road Closures be imposed for the same 15-minute increment.

5. Incentives Payment Related to Erosion and Sedimentation Control

(a) Developer shall be eligible for an incentive payment in the maximum amount of $100,000.00 (“Incentive Payment”) upon Final Completion if Developer: (a) performs all Work required for Final Completion in accordance with all Environmental Laws and the CA

Documents, and (b) does not receive a Notice of Violation ("NOV"), Cease and Desist ("C&D"), Immediate Corrective Actions ("ICA") or Continuing Immediate Correction Action with Stop Work Order ("CICA/SWO") orders at any time from NTP 2 until Final Completion.

(b) If Developer receives a NOV or C&D prior to Final Completion, Developer shall not be eligible to receive the Incentive Payment.

(c) If Developer receives an ICA or CICA/SWO prior to Final Completion, the Incentive Payment that Developer is eligible to receive shall be reduced by $20,000.00 for each ICA or CICA received until the Incentive Payment reaches zero.

(d) If Developer is eligible to receive an Incentive Payment, NCDOT shall pay Developer the Incentive Payment, as adjusted pursuant to Section 5(c) within 30 days of receipt of an invoice thereof, certifying that Developer is eligible to receive the incentive in accordance with this Section 5.

6. Developer Erosion and Sediment Control Violations

(a) Any fines, remediation required or charges levied against NCDOT for violating applicable Laws concerning erosion and sediment control caused by Developer's negligence, culpable acts or omissions, failure to implement the Erosion and Sedimentation Control Plans and Specifications, or failure to maintain an approved Storm Water Pollution Prevention Plan ("SWPPP") (collectively, "Developer Erosion and Sediment Control Violations") shall be deducted from monies owed to Developer, subject to Section 17.3.5 of the Agreement.

(b) In addition, NCDOT shall be entitled to recover NCDOT Recoverable Costs for corrective actions taken by NCDOT to comply with such applicable Laws caused by Developer Erosion and Sediment Control Violations.

ATTACHMENT 1 TO EXHIBIT 14

Table 1-01

Liquidated Damages for Unavailability Events Resulting in Lane Closures Prior to Substantial Completion of All Project Sections

Segment	Number of Lanes Closed or Reduced In Width Below 11 feet	Liquidated Damages (per 15 minute increment or portions thereof, per direction)*						
		Monday Through Friday 5AM-8PM	Monday Through Friday 8PM-11PM	Monday Through Thursday 11PM-5AM and Friday 11PM to Saturday 9AM	Saturday and Sunday 9AM-8PM	Saturday and Sunday 8PM-11PM	Saturday 11PM to Sunday 9AM and Sunday 11PM to Monday 5AM	Holiday or Events
I-77 from South Project Terminus to MM 20	1	$5,000	$1,250	$0	$5,000	$0	$0	$5,000
	2	$10,000	$2,500	$0	$10,000	$1,250	$0	$10,000
I-77 from MM 20 to North Project Terminus	1	$12,500	$2,500	$0	$12,500	$2,500	$0	$12,500
Other Interstate Routes and Brookshire Frwy	1	$5,000	$1,250	$0	$5,000	$0	$0	$5,000
	2	$10,000	$2,500	$0	$10,000	$1,250	$0	$10,000
All other Routes	1	$3,750	$0	$0	$1,000	$1,000	$0	$3,750

***See Table 22.2 and Table 22.3 of the Technical Provisions**

Table 1-02

Liquidated Damages for Unavailability Events Resulting in Road Closures Prior to Substantial Completion of All Project Sections

Segment	Liquidated Damages (per 15 minute increment or portion thereof, per direction)							
	Monday Through Friday 5AM-9AM & 3PM-8PM	Monday Through Friday 9AM-3PM	Monday Through Friday 8PM-11PM	Monday Through Thursday 11PM – 5AM and Friday 11PM to Saturday 9AM	Saturday and Sunday 9AM-8PM	Saturday and Sunday 8PM-11PM	Saturday 11PM to Sunday 9AM and Sunday 11PM to Monday 5AM	Holiday or Events***
Interstate Route	$100,000*	$100,000*	$50,000*	$5,000**	$100,000*	$50,000*	$10,000*	$100,000*
Ramps & Loops @ I-277, I-85, I-485, US-21, NC-73, NC-150, Harris Blvd, Gilead Rd	$10,000*	$5,000*	$2,500*	$1,000**	$10,000*	$2,500*	$1,000*	$10,000*
All other I-77 ramps & loops	$5,000*	$2,500*	$1,250**	$500**	$5,000*	$1,250*	$500**	$5,000*
W. 5th St, Langtree Rd (SR 1102), Lakeview Rd (SR 2112), Alexanderena Rd (SR 2116), Hambright Rd (SR 2117), Mt Holly - Huntersville Rd (SR 2004), Stumptown Rd (SR 2140), Westmoreland Rd (SR 2147), Brawley School Rd (SR 1100)	$2,500*	$1,250*	$500**	$250**	$2,500*	$500*	$250**	$2,500*
Griffith St, Sunset Rd/US 21 (SR 2108), WWT Harris Blvd, Gilead Rd (SR 2136), Sam Furr Rd/NC 73 (SR 2145), Catawba Av/ US 21 (SR 5544), Williamson Rd/US 21 (SR 1109), W. Plaza Dr/NC 150	$1,250*	$500*	$250**	$100**	$1,250*	$250*	$100**	$1,250*

*** All Road Closures prohibited by Section 22.1.2 of the Technical Provisions**
**** Road Closures permitted for duration specified in Section 22.1.2 of the Technical Provisions**
*****See Table 22.3 of the Technical Provisions**

ATTACHMENT 2 TO EXHIBIT 14

Liquidated Damages for Unavailability Events Resulting in Lane Closures During the Operating Period

During the Operating Period, liquidated damages for an Unavailability Event Resulting in a Lane Closure of any HOT Lane or GP Lane shall be as follows:

- prior to the third January 1 following Substantial Completion of all Project Sections, liquidated damages shall be the amount specified in Table 2-01; and
- beginning on the third January 1 following Substantial Completion of all Project Sections, liquidated damages shall be the amount specified in Table 2-01. Such liquidated damages shall be adjusted annually on January 1 of each year after the the third January 1 following Substantial Completion of all Project Sections by the percentage increase resulting from the compounded percent increase in (a) and (b) below.
    - (a) a percentage increase equal to the percentage increase in the CPI between the CPI for October of the second immediately preceding year and the CPI for October of the immediately preceding year; provided that in no event shall the percentage be less than zero, and
    - (b) a percentage increase equal to the percentage increase in the AADT for the Project reported by Developer between the AADT for the second immediately preceding year and the AADT for the immediately preceding year; provided that in no event shall the percentage be less than zero
- After the third January 1 following Substantial Completion of all Project Sections, Developer shall include in the Annual O&M Report a revised Table 2-01 reflecting the adjusted liquidated amounts rounded to the nearest dollar in accordance with this Attachment 2 to this Exhibit 14.

During the Operating Period, liquidated damages for an Unavailability Event resulting in a Road Closure shall be as follows:

- prior to the third January 1 following Substantial Completion of all Project Sections, liquidated damages shall be the amount specified in Table 2-02; and
- beginning on the third January 1 following Substantial Completion of all Project Sections, liquidated damages shall be the amount specified in Table 2-02. Such liquidated damages shall be adjusted annually on January 1 of each year after the the third January 1 following Substantial Completion of all Project Sections by the percentage increase resulting from the compounded percent increase in (a) and (b) below.
    - (a) a percentage increase equal to the percentage increase in the CPI between the CPI for October of the second immediately preceding year and the CPI for October of the immediately preceding year; provided that in no event shall the percentage be less than zero, and

(b) a percentage increase equal to the percentage increase in the AADT for the Project reported by Developer between the AADT for the second immediately preceding year and the AADT for the immediately preceding year; provided that in no event shall the percentage be less than zero

After the third January 1 following Substantial Completion of all Project Sections, Developer shall include in the Annual O&M Report a revised Table 2-02 reflecting the adjusted liquidated amounts rounded to the nearest dollar in accordance with this Attachment 2 to this Exhibit 14.

Table 2-01

Liquidated Damages for Unavailability Events Resulting from Lane Closures During Operating Period

Segment	Number of GP Lanes Closed	Liquidated Damages (per 15 minute increment or portions thereof, per direction)*						
		Monday Through Friday 5AM-8PM	Monday Through Friday 8PM-11PM	Monday Through Friday 11PM-5AM	Saturday and Sunday 9AM-8PM	Saturday and Sunday 8PM-11PM	Saturday and Sunday 11PM-9AM	Holiday or Events
Tolling of HOT Lanes SUSPENDED								
I-277	1	$2,500	$1,250	$0	$2,500	$0	$0	$2,500
	2	$10,000	$2,500	$0	$10,000	$1,250	$0	$12,500
I-77 from South Project Terminus to MM 20	1	$0	$0	$0	$0	$0	$0	$2,500
	2	$10,000	$2,500	$0	$10,000	$1,250	$0	$12,500
I-77 from MM 20 to MM 28	1	$2,500	$0	$0	$2,500	$0	$0	$2,500
	2	$12,500	$2,500	$0	$12,500	$2,500	$0	$12,500
I-77 from MM 28 to North Project Terminus	1	$5,000	$1,250	$0	$5,000	$1,250	$0	$5,000
Multi-Lane Ramps	1	$5,000	$2,500	$0	$5,000	$2,500	$0	$5,000
Tolling of HOT Lanes NOT SUSPENDED								
I-277 and I-77 from South Project Terminus to MM 20	1	$2,500	$1,250	$0	$2,500	$0	$0	$5,000
	2	$10,000	$2,500	$0	$10,000	$1,250	$0	$10,000
I-77 from MM 20 to MM 28	1	$12,500	$2,500	$0	$12,500	$2,500	$0	$12,500
I-77 from MM 28 to North Project Terminus	1	$12,500	$2,500	$0	$12,500	$2,500	$0	$12,500
Multi-Lane Ramps	1	$5,000	$2,500	$0	$5,000	$2,500	$0	$5,000

***See Section 23.2.1.2 of the Technical Provisions**

Table 2-02

Liquidated Damages for Unavailability Events Resulting in Road Closures During Operating Period

Segment	(Liquidated Damages (per 15 minute increment or portion thereof, per direction)*							
	Monday Through Friday 5AM-9AM & 3PM-8PM	Monday Through Friday 9AM-3PM	Monday Through Friday 8PM-11PM	Monday Through Thursday 11PM-5AM and Friday 11PM to Saturday 9AM	Saturday and Sunday 9AM-8PM	Saturday and Sunday 8PM-11PM	Saturday 11PM to Sunday 9AM and and Sunday 11PM to Monday5AM	Holiday or Event
Interstate Route	$100,000	$100,000	$50,000	$5,000	$100,000	$50,000	$10,000	$100,000
Ramps & Loops @ I-277, I-85, I-485, US-21, NC-73, NC-150, Harris Blvd, Gilead Rd	$10,000	$5,000	$2,500	$1,000	$10,000	$2,500	$1,000	$10,000
All other I-77 ramps & loops	$5,000	$2,500	$1,250	$500	$5,000	$1,250	$500	$5,000

***See Section 23.2.1.2 of the Technical Provisions**

EXHIBIT 15

TERMS FOR TERMINATION COMPENSATION

A. Definitions

For the purpose of this Exhibit 15, the following terms have the following meanings:

1. "Borrowed Cash and Credit Balances" means proceeds of Project Debt included in the Senior Debt Termination Amount that are held on the Early Termination Date as cash and credit balances in accounts held by or on behalf of Developer, including in Lender accounts and reserve accounts, but excluding the Handback Requirements Reserve (if any).

2. "Cash and Credit Balances" means proceeds of Project Debt and Contributed Unreturned Equity, as well as Toll Revenues and interest earnings, that are held on the Early Termination Date as cash and credit balances in accounts held by or on behalf of Developer, including in Lender accounts and reserve accounts, but excluding the Handback Requirements Reserve (if any).

B. Compensation on Termination for Convenience, for NCDOT Default, for NCDOT Suspension of Work or for Delayed Notices to Proceed

1. Termination Compensation Prior to Financial Close and After Financial Close.

(a) In the event of termination of the Agreement under Section 19.1 (Termination for Convenience) or Section 19.4 (Termination for NCDOT Default, Suspension of Work or Delayed Notice to Proceed) prior to Financial Close, the Termination Compensation shall be as set forth in Section H.

(b) In the event of termination of the Agreement under Section 19.1 (Termination for Convenience) or Section 19.4 (Termination for NCDOT Default, Suspension of Work or Delayed Notice to Proceed) of the Agreement after Financial Close, the Termination Compensation shall equal the amounts determined as set forth in Sections B.3 below, and shall be payable by NCDOT as and when set forth in Section G.1(a) or G.3(a), as applicable, below.

2. In the event of termination of the Agreement under Section 19.4.3 (delay in issuing NTP1 or NTP2), if, as of the date notice of termination is delivered, there does not exist any event or circumstance which entitles either Party to terminate, or with the giving of notice or passage of time, or both, would entitle either Party to terminate, for a Relief Event under Section 19.2 of the Agreement, or by reason of Termination by Court Ruling under Section 19.11 of the Agreement, then the Termination Compensation shall equal the amounts determined as set forth in Sections B.3 below if the Agreement is terminated after Financial Close, and shall be payable by NCDOT as and when set forth in Section G.3(a) below.

3. The amount of the Termination Compensation under this Section B.3 shall equal the following:

(a) The greater of (i) the Fair Market Value, if any, of the Developer's Interest as of the Valuation Date determined according to the procedures set forth in Section B.5 below, or (ii) the Senior Debt Termination Amount; plus

(b) The amount necessary to reimburse reasonable and documented out-of-pocket costs of third party and Affiliate Contractors to demobilize and terminate under Contracts between Developer and third parties or Affiliates for performance of Work, excluding Developer's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates; plus

(c) If termination occurs prior to Substantial Completion of all Project Sections, Developer's own reasonable and documented out-of-pocket costs to demobilize; plus

(d) The incremental increase, if any, in the costs Developer incurs under Section 19.5.10 of the Agreement over the present value of such costs under the Base Case Financial Model, but without double counting of the amounts under clauses (a), (b) and (c) above; minus

(e) Only where the Senior Debt Termination Amount is applicable, all Borrowed Cash and Credit Balances, except to the extent such balances are already deducted in determining the Senior Debt Termination Amount; minus

(f) Only where the Senior Debt Termination Amount is applicable, the cost of Renewal Work that Developer was required to but did not perform prior to the Early Termination Date; minus

(g) Only where the Senior Debt Termination Amount is applicable, the portion of any Compensation Amounts previously paid to Developer that (i) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (ii) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount; minus

(h) Only where Fair Market Value is applicable, the amount of all Distributions, and all payments to Affiliates in excess of reasonable compensation for necessary services or that are advance payments in violation of Section 10.5.3 of the Agreement, between the Valuation Date and the Early Termination Date; minus

(i) Only where Fair Market Value is applicable, all amounts received by the Lenders in relation to the Project Debt (including all interest, capital and Breakage Costs) between the Valuation Date and the Early Termination Date; plus

(j) Only where Fair Market Value is applicable, (i) in the case of Termination for Convenience, a return on the outstanding balance of the Fair Market Value amount between the Valuation Date and the Early Termination Date equal to Developer's weighted average cost of capital as of the Valuation Date (determined according to the procedures set forth in Section B.5 below) or (ii) in the case of termination for NCDOT Default or NCDOT suspension of Work, a return on the outstanding balance of the Fair Market Value amount between the Valuation Date and the date the Fair Market Value is paid in full equal to Developer's weighted average cost of capital as of the Valuation Date (determined according to the procedures set forth in Section B.5 below); plus

(k) Only where Fair Market Value is applicable, the incremental tax liability, if any, described in Section B.6 below.

4. Reserved.

5. Fair Market Value of the Developer's Interest as of the Valuation Date shall be determined according to the following procedures:

(a) Within 30 Days after a Party requests the appointment thereof, NCDOT and Developer shall confer in good faith to mutually appoint an independent third-party appraiser to determine the Fair Market Value by written appraisal. This appraiser must be nationally recognized and experienced in appraising similar assets.

(b) If for any reason the Parties are unable or fail to agree upon such a single appraiser within such 30-Day period, then within ten Days thereafter NCDOT and Developer shall each appoint an independent third-party appraiser and both such appraisers shall be instructed jointly to select, within 15 Days after they are appointed, a third independent third-party appraiser who is nationally recognized and experienced in appraising similar assets to make the appraisal referred to above.

(c) If for any reason the Parties are unable or fail to appoint an independent third party appraiser under subsection (b) above within 30 Days after the time period under subsection (a) above expires, then either Party may petition the Wake County District Court to appoint an independent third party appraiser having such reputation and experience to make the appraisal referred to above.

(d) Each Party shall pay the costs of its own appraiser. NCDOT and Developer shall pay in equal shares the reasonable costs and expenses of the independent appraiser.

(e) Once appointed, the independent appraiser shall conduct an appraisal of the Fair Market Value of the Developer's Interest as of the Valuation Date, as well as determine Developer's weighted average cost of capital as of the Valuation Date, and deliver to both Parties a draft appraisal report and draft valuation. The appraiser shall appraise Fair Market Value on the basis of the assumptions contained in the definition of Fair Market Value and by taking into account (i) the terms of the CA Documents, including the terms of Exhibit 4 to the Agreement, (ii) the condition of the Elements of the Project, (iii) prior financial performance of the Project, (iv) Developer's record regarding the Targets in the Performance and Measurement Table and of compliance with the CA Documents, including record of compliance with Renewal Work requirements, but only for the purpose of evaluating and taking into account the effect of such record on the condition and viability of the Project, (v) projected revenues and costs of the Project (excluding costs that reduce the Fair Market Value pursuant to clause (c) of the definition of Fair Market Value, which shall be determined separately by the appraiser) for the remainder of the Term had the Agreement not be terminated, as determined by the appraiser, and (vi) such other factors as the appraiser considers relevant. In determining Developer's weighted average cost of capital as of the Valuation Date, no consideration shall be given to any default rate of interest on Project Debt.

(f) For the purpose of the appraiser's valuation using a projected net cash flow methodology, the appraiser shall use the Financial Model Formulas most recently approved by NCDOT and Developer; provided that if there are known mathematical errors in the Financial Model Formulas the Parties shall provide corrected Financial Model Formulas to the appraiser. The appraiser will determine the data inputs and data values.

(g) The appraiser also shall evaluate and include in the appraisal a calculation of the Base Tax Liability that would be incurred over the remaining Term absent early termination. The appraiser shall make such evaluation in accordance with the definition of Base Tax Liability.

(h) Developer shall promptly deliver to NCDOT and the appraiser all information, documents and data that either may reasonably request relevant to the determination of Developer's weighted average cost of capital as of the Valuation Date, and the Base Tax Liability. In conducting the appraisal, and before issuing a draft appraisal report, the independent appraiser shall afford reasonable and comparable opportunity to each Party to provide the appraiser with information, data, analysis and reasons supporting each Party's view on the Fair Market Value, Developer's weighted average cost of capital as of the Valuation Date, and the Base Tax Liability. The Parties shall have 15 days after receipt of the draft appraisal report to comment thereon.

(i) Not later than 15 days after the opportunity to comment has expired, the independent appraiser shall consider and evaluate all comments, prepare a final appraisal report stating the Fair Market Value, Developer's weighted average cost of capital as of the Valuation Date, and the Base Tax Liability, and deliver the final appraisal report to both Parties.

(j) The independent appraiser's determination of Fair Market Value, Developer's weighted average cost of capital as of the Valuation Date and the Base Tax Liability shall be subject to challenge by either Party by initiating a Dispute within 30 days after receipt of such determination and such Dispute shall be resolved according to the Dispute Resolution Procedures. Failure of a Party to initiate such a challenge by delivering written notice thereof to the other Party within such 30-day period shall be deemed to be an acceptance of the appraiser's determinations for all purposes by the Party who failed to timely challenge such determinations. In any dispute resolution the independent appraiser's determination shall be given substantial weight in the evidence, absent failure to properly apply the terms of the CA Documents or applicable Laws.

6. If the Termination Compensation is based on Fair Market Value, NCDOT also shall be liable for the amount necessary to cover the incremental increase, if any, in the federal income tax liability of Developer (or, if it is a pass-through entity for federal income tax purposes, its members or partners) and in the State margin tax liability of Developer due to payment of the Termination Compensation (other than this element of the Termination Compensation) over the Base Tax Liability. NCDOT shall pay such amount within 30 days after Developer delivers to NCDOT proof of the actual tax liability incurred and the amount by which it exceeds the Base Tax Liability.

C. Compensation on Termination for Extended Relief Event or Insurance Unavailability

1. Termination Compensation Prior to Financial Close and After Financial Close.

(a) In the event of termination of the Agreement under Section 19.2 of the Agreement (Termination for Extended Relief Event or Insurance Unavailability) prior to Financial Close, the Termination Compensation shall be as set forth in Section H.

(b) In the event of termination of the Agreement under Section 19.2 of the Agreement (Termination for Extended Relief Event or Insurance Unavailability) after Financial Close, the Termination Compensation, determined as set forth in Section C.2 or C.3 below, shall be payable by NCDOT as and when set forth in Section G.2 below.

2. If Developer elected to terminate under Section 19.2 of the Agreement, the Termination Compensation for Extended Relief Event or Insurance Unavailability shall be an amount equal to the following:

(a) The Senior Debt Termination Amount; plus

(b) The amount necessary to reimburse reasonable and documented out-of-pocket costs of third party and Affiliate Contractors to demobilize and terminate under Contracts between Developer and third parties or Affiliates for performance of Work, excluding Developer's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates; plus

(c) The incremental increase, if any, in the costs Developer incurs under Section 19.5.11 of the Agreement over the present value of such costs under the Base Case Financial Model, but without double counting of the amounts under clauses (a) and (b) above; minus

(d) All Borrowed Cash and Credit Balances (if any); minus

(e) The amount of all Distributions, and all payments to Affiliates that are not in accordance with Section 10.5.1.4 of the Agreement or that are advance payments in violation of Section 10.5.3 of the Agreement, between the date notice of conditional election to terminate is delivered and the Early Termination Date; minus

(f) The portion of any Compensation Amounts previously paid to Developer that (i) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (ii) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount.

3. If NCDOT elected to terminate under Section 19.2 of the Agreement, the Termination Compensation for the Relief Event or Insurance Unavailability shall be the amount determined under clause 2 above plus the Contributed Unreturned Equity.

D. Compensation on Termination for Developer Default

1. Developer shall not be entitled to receive any compensation in each of the following circumstances:

(a) Developer's termination of the Agreement on grounds or in circumstances beyond Developer's termination rights specifically set forth in the Agreement;

(b) A Default Termination Event where the Developer Default that is the basis thereof is under Section 17.1.1.13 or 17.1.1.14 of the Agreement;

(c) A Default Termination Event under Section 19.3.4 of the Agreement; or

(d) The Collateral Agent has requested and entered into a new comprehensive agreement pursuant to Section 8.01 of the Lender's Direct Agreement.

2. Upon a Default Termination Event other than one described in Section D.1 above where the Developer Default that is the basis thereof occurs, and is the subject of a Warning Notice delivered, prior to the last Substantial Completion Date, subject to Section D.5 below, Developer shall be entitled to receive Termination Compensation in an amount equal to the lowest of:

(a) 80% of the Senior Debt Termination Amount minus (i) 80% of all Borrowed Cash and Credit Balances (if any), minus (ii) 80% of the portion of any Compensation Amounts previously paid to Developer that (A) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (B) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount; or

(b) 80% of the Initial Senior Debt Termination Amount, plus (i) 80% of any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the Initial Base Case Senior Project Debt that (A) was fully and specifically identified and taken into account in the Base Case Financial Model and calculation of the Concession Payment or Public Funds Amount, as applicable, and (B) occurs prior to the date notice of termination is delivered, minus (ii) 80% of all Borrowed Cash and Credit Balances (if any), minus (iii) 80% of the portion of any Compensation Amounts previously paid to Developer that (A) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (B) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount.

3. Upon a Default Termination Event other than one described in Sections D.1 and D.2 above, subject to Sections D.4, D.5 and D.6 below, Developer shall be entitled to receive Termination Compensation in an amount equal to the lowest of:

(a) 80% of the Senior Debt Termination Amount minus (i) 80% of all Borrowed Cash and Credit Balances (if any), minus (ii) 80% of the portion of any Compensation Amounts previously paid to Developer that (A) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (B) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount;

(b) 80% of the Initial Senior Debt Termination Amount, plus (i) 80% of any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the Initial Base Case Senior Project Debt that (A) was fully and specifically identified and taken into account in the Base Case Financial Model and calculation of the Concession Payment and (B) occurs prior to the date notice of termination is delivered, minus (ii) 80% of all Borrowed Cash and Credit Balances (if any), minus (iii) 80% of the portion of any Compensation Amounts previously paid to Developer that (A) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (B) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount; or

(c) The Fair Market Value, if any, of the Developer's Interest as of the Valuation Date; minus (i) the amount of any damages due to NCDOT resulting from the Developer Default, including NCDOT's reasonable costs to terminate and take over the Project, but without double counting where such costs are part of the determination of Fair Market Value (if applicable), minus (ii) the amount of all Distributions, and all payments to Affiliates in excess of reasonable compensation for necessary services or that are advance payments in violation of Section 10.5.3 of the Agreement, between the Valuation Date and the Early Termination Date, minus (iii) all amounts received by the Lenders in relation to the Project Debt (including all interest, capital and Breakage Costs) between the Valuation Date and the Early Termination Date, plus (iv) a return on the outstanding balance of the Fair Market Value amount between the Valuation Date and the Early Termination Date equal to Developer's weighted average cost of capital as of the Valuation Date (determined according to the procedures set forth in Section B.5 above).

4. The amounts set forth in Sections D.3(a) and (b) above are subject to the condition that each Funding Agreement for senior Project Debt, and any intercreditor agreement between the Lenders of senior Project Debt and the Lenders of any first tier subordinate Project Debt within the definition of Senior Debt Termination Amount, shall expressly provide that upon termination of this Agreement for Developer Default the senior Lenders shall have no right to claim, receive or retain from the Termination Compensation (whether determined based on Fair Market Value, the Initial Senior Debt Termination Amount or the Senior Debt Termination Amount) an amount in excess of 80% of the Senior Debt Termination Amount minus 80% of all Borrowed Cash and Credit Balances (if any), such result multiplied by a fraction the numerator of which is the then outstanding principal balance of the senior Project Debt (including Breakage Costs) and the denominator of which is the then outstanding principal balance of the senior Project Debt (including Breakage Costs) plus first tier subordinate Project Debt (including Breakage Costs).

If the foregoing condition is not satisfied, then the amounts under Sections D.3(a) and (b) above shall not include any amounts for first tier subordinate Project Debt described in clause (a)(iii)(B) of the definition of Senior Debt Termination Amount or any Breakage Costs related to such first tier subordinate Project Debt, and shall not be reduced by amounts described in clause (c) of such definitions related to such first tier subordinate Project Debt.

5. The amount of the Termination Compensation determined under this Section D is subject to damages and offset in accordance with Section 17.3.5 of the Agreement.

6. Fair Market Value of the Developer's Interest as of the Valuation Date shall be determined as set forth in Section B.5 above, except those provisions pertaining to Base Tax Liability.

7. NCDOT shall pay the Termination Compensation as and when set forth in Section G.4 below.

E. Compensation Upon Termination by Court Ruling, or Due to Concurrent Extended Relief Event, Termination by Court Ruling and Delayed Notices to Proceed

1. Termination Compensation Prior to Financial Close and After Financial Close.

(a) Subject to Sections E.5 and E.6 below, in the event of Termination by Court Ruling prior to Financial Close, the Termination Compensation shall be as set forth in Section H.

(b) Subject to Sections E.5 and E.6 below, in the event of Termination by Court Ruling after Financial Close, the Termination Compensation shall be an amount equal to the following:

(a) The lesser of (i) the sum of (A) Initial Senior Debt Termination Amount plus (B) any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the Initial Base Case Senior Project Debt that (I) was fully and specifically identified and taken into account in the Base Case Financial Model and calculation of the Concession Payment and (II) occurs prior to the date notice of termination is delivered, plus (C) the portion of all Refinancing Gain previously paid to NCDOT, if any, or (ii) the Senior Debt Termination Amount; plus

(b) An amount which, when taken together with interest payments on Subordinate Debt, Distributions made prior to the Early Termination Date, and the cash and

credit balances derived from Toll Revenues or interest earnings in accounts held by or on behalf of Developer on the Early Termination Date, including in Lender accounts and reserve accounts, will yield a nominal Post-Tax blended internal rate of return, on Subordinate Debt and Contributed Unreturned Equity equal to that projected in the Base Case Financial Model, which rate of return is [XX]% ***[Note: Insert percentage from Base Case Financial Model as of the Effective Date]***, between the date of funding of such Subordinate Debt and Contributed Unreturned Equity and the Early Termination; plus

(c) The incremental increase, if any, in the costs Developer incurs under Section 19.5.10 of the Agreement over the present value of such costs under the Base Case Financial Model, but without double counting of the foregoing debt and equity amounts; minus

(d) All payments to Affiliates in excess of reasonable compensation for necessary services prior to the Early Termination Date or that are advance payments in violation of Section 10.5.3 of the Agreement; minus

(e) All Cash and Credit Balances, except to the extent such balances are already deducted in determining amounts under clauses (a) and (b) above; minus

(f) The portion of any Compensation Amounts previously paid to Developer that (i) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (ii) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount.

2. Termination Compensation Prior to Financial Close and After Financial Close.

(a) In the event of termination due to NCDOT's delay in issuing NTP1 or NTP2 as provided in Section 19.4.3 of the Agreement, if as of the date notice of termination is delivered there exists any event or circumstance which entitles either Party to terminate, or with the giving of notice or passage of time, or both, would entitle either Party to terminate, for Relief Event under Section 19.2 of the Agreement, or by reason of Termination by Court Ruling under Section 19.11 of the Agreement prior to Financial Close, the Termination Compensation shall be as set forth in Section H.

(b) In the event of termination due to NCDOT's delay in issuing NTP1 or NTP2 as provided in Section 19.4.3 of the Agreement, if as of the date notice of termination is delivered there exists any event or circumstance which entitles either Party to terminate, or with the giving of notice or passage of time, or both, would entitle either Party to terminate, for Relief Event under Section 19.2 of the Agreement, or by reason of Termination by Court Ruling under Section 19.11 of the Agreement, then the Termination Compensation shall be an amount equal to the following:

(1) The lesser of (i) the sum of (A) the Initial Senior Debt Termination Amount plus (B) any increase in the Initial Senior Debt Termination Amount directly attributable to a Refinancing of the Initial Base Case Senior Project Debt that (I) was fully and specifically identified and taken into account in the Base Case Financial Model and calculation of the Concession Payment and (II) occurs prior to the date notice of termination is delivered, plus (C) the portion of all Refinancing Gain previously paid to NCDOT, if any, or (ii) the Senior Debt Termination Amount; plus

(2) An amount which, when taken together with interest payments on Subordinate Debt, Distributions made prior to the Early Termination Date, and the cash and credit balances derived from Toll Revenues or interest earnings in accounts held by or on behalf of Developer on the Early Termination Date, including in Lender accounts and reserve accounts, will yield a nominal Post-Tax blended internal rate of return on Subordinate Debt and Contributed Unreturned Equity equal to that projected in the Base Case Financial Model, which rate of return is [XX]% ***[Note: Insert percentage from Base Case Financial Model as of the Effective Date]*** between the date of funding of such Subordinate Debt and Contributed Unreturned Equity and the Early Termination; plus

(3) The incremental increase, if any, in the costs Developer incurs under Section 19.5.10 of the Agreement over the present value of such costs under the Base Case Financial Model, but without double counting of the foregoing debt and equity amounts; minus

(4) All payments to Affiliates in excess of reasonable compensation for necessary services prior to the Early Termination Date or that are advance payments in violation of Section 10.5.3 of the Agreement; minus

(5) All Cash and Credit Balances, except to the extent such balances are already deducted in determining amounts under clauses (1) and (2) above; minus

(f) The portion of any Compensation Amounts previously paid to Developer that (i) compensated Developer for cost and revenue impacts attributable to the period after the Early Termination Date and (ii) were not previously used to reduce Project Debt within the definition of Senior Debt Termination Amount.

3. There shall not be included any increase in the Senior Debt Termination Amount, Subordinate Debt or Contributed Unreturned Equity as a consequence of any Refinancing:

(a) With respect to Termination by Court Ruling, that occurs on or after the date Developer knows, or reasonably should know, about the filing of any legal action seeking a remedy that would be a Termination by Court Ruling; or

(b) With respect to termination due to NCDOT delay in issuing NTP1 or NTP2, that occurs at any time.

4. If (a) it is established pursuant to the Dispute Resolution Procedures that NCDOT requested or caused the filing, or by collusion with any other Person caused or abetted the filing, of the action that resulted in the issuance of the final court order that led to Termination by Court Ruling, or (b) a Termination by Court Ruling results from or entails a breach by NCDOT of its warranties under Section 15.2 of the Agreement but not a corresponding breach by Developer of its warranties under Section 15.1 of the Agreement, then Developer shall be compensated in the same manner as if NCDOT had effected a Termination for Convenience and Sections B and G.1 of this Exhibit 15 shall apply instead of Sections E.1 and G.5. This provision shall not apply to legal proceedings initiated by NCDOT challenging applicability of a Change in Law where the final outcome applies the Change in Law to NCDOT or Developer and leads to Termination by Court Ruling.

5. If (a) it is established pursuant to the Dispute Resolution Procedures that Developer requested or caused the filing, or by collusion with any other Person, caused or abetted the filing of the action that resulted in the issuance of the final court order that led to Termination by

Court Ruling, or (b) a Termination by Court Ruling results from or entails a breach by Developer of its warranties under Section 15.1 but not a corresponding breach by NCDOT of its warranties under Section 15.2, then the compensation shall be addressed in the same manner as if a Termination for Developer Default had occurred and Sections D and G.4 of this Exhibit 15 shall apply instead of Sections E.1 and G.5. This provision shall not apply to legal proceedings initiated by Developer challenging applicability of a Change in Law where the final outcome applies the Change in Law to NCDOT or Developer and leads to Termination by Court Ruling.

6. Subject to Sections E.5 and E.6 above, NCDOT shall pay the Termination Compensation as and when set forth in Section G.5 below.

F. Claims; Handback Requirements Reserve

1. Subject to Section 19.7.1 of the Agreement and clause (e) of the definition of Fair Market Value, if any outstanding Claim that is independent of the event of termination and determination of Termination Compensation is resolved prior to payment of the Termination Compensation, the Parties shall adjust the Termination Compensation by the amount of the unpaid award, if any, on the Claim.

2. At NCDOT's sole election, it may hold back from payment of the Termination Compensation and transfer to the trustee under the Project Trust Agreement for deposit into the NCDOT Claims Account the amount of any Claim of NCDOT against Developer not resolved prior to payment. NCDOT shall provide written notice to Developer of any such election, the subject Claim and the amount deposited or to be deposited, prior to or concurrently with tendering payment of the Termination Compensation.

3. Refer to Section 8.10.4 of the Agreement for disposition of any funds actually in or required to be added to the Handback Requirements Reserve on the Early Termination Date.

G. Timing of Payment

1. For Termination for Convenience After Financial Close

(a) For Termination for Convenience to be valid and effective, NCDOT must first pay, in immediately available funds, the full amount of the Termination Compensation set forth in Section B.1 above; provided that NCDOT may withhold an amount equal to NCDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement by depositing such amount with the trustee under the Project Trust Agreement for disbursement pursuant to Section G.1(b) below. In order for the Termination for Convenience to take effect, NCDOT must make such payment within one year after NCDOT receives the information required to calculate the amount owing. Such information shall consist of the written report from the independent appraiser of Fair Market Value as determined pursuant to Section B.5 above, the Collateral Agent's written statement of the Senior Debt Termination Amount, and Developer's written documentation and other evidence of the amounts of all Cash and Credit Balances, Borrowed Cash and Credit Balances and all other amounts that are part of the calculation of the Termination Compensation, together with Developer's written certification that the amounts shown are true, correct and complete. Developer shall provide its information and the Collateral Agent's written statement as expeditiously as possible and in any event within 90 days after NCDOT delivers the Notice of Termination for Convenience. If for any reason NCDOT does not receive any portion of such information within such 90-day period, then NCDOT shall have the right to make

payment based on the appraiser's determination of Fair Market Value and NCDOT's good faith estimate of the other amounts that are components of the Termination Compensation. Upon such payment within such time period, termination shall automatically take effect, notwithstanding, and without prejudice to, any Claim or Dispute regarding whether the Termination Compensation as determined using such appraisal is correct.

(b) NCDOT shall instruct the trustee under the Project Trust Agreement to pay the withheld amount to Developer within ten days after Developer completes all its post-termination obligations under Section 19.5 of the Agreement.

(c) If NCDOT for any reason does not pay the amount under clause (a) above within such one-year period, NCDOT's Notice of Termination for Convenience shall automatically expire; and the Parties' respective rights and obligations under the CA Documents shall continue without alteration, as if no Notice of Termination for Convenience had been given.

(d) If Developer timely challenges the independent appraiser's determination of Fair Market Value pursuant to Section B.5(i) above, then until the disputed portion of the Termination Compensation is finally determined and paid, the provisions of Section 19.9 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Project Trust Agreement.

(e) If it is determined by settlement or final judgment that the Termination Compensation due from NCDOT is less than the payment previously made by NCDOT, then within 30 Days after the date of settlement or final judgment Developer shall reimburse the excess payment, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of overpayment until the date of reimbursement.

(f) If it is determined by settlement or final judgment that the Termination Compensation due from NCDOT is more than the payment previously made by NCDOT, then within 30 Days after the date of settlement or final judgment NCDOT shall pay Developer the additional amount, together with interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of underpayment until the date of payment of the additional amount.

2. For Termination Due to Extended Relief Event or Insurance Unavailability After Financial Close

(a) If the Agreement is terminated due to Developer's or NCDOT's valid exercise of its right to terminate under Section 19.2 of the Agreement and the other Party does not timely elect to continue the Agreement in effect pursuant to Section 19.2, then NCDOT shall pay the Termination Compensation within 60 days after all the following occur: (i) if applicable, the other Party's period of time to elect expires; (ii) NCDOT receives from the Collateral Agent a written statement of the Senior Debt Termination Amount; and (iii) NCDOT receives from Developer written documentation and other evidence of all Borrowed Cash and Credit Balances, together with Developer's written certification that the amount shown is true, correct and complete. NCDOT may withhold, however, an amount equal to NCDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement by depositing such amount with the trustee under the Project Trust Agreement for disbursement pursuant to Section G.2(b) below. If for any reason NCDOT does not receive such statement from the Collateral Agent or such written documentation,

evidence and certification of all Borrowed Cash and Credit Balances within 30 days after the other Party's period of time to elect expires, then NCDOT shall have the right to pay Termination Compensation based on its own good faith calculation of the Termination Compensation.

(b) NCDOT shall instruct the trustee under the Project Trust Agreement to pay the withheld amount to Developer within ten days after Developer completes all its post-termination obligations under Section 19.5 of the Agreement.

(c) If NCDOT exercises the right to terminate, then termination shall be valid and effective on the date NCDOT pays, in immediately available funds, the full amount determined pursuant to Section G.2(a) above. If Developer exercises the right to terminate, then termination shall be valid and effective on the date Developer delivers its notice of termination to NCDOT.

(d) If as of the date termination is valid and effective any portion of the Termination Compensation is not yet paid, then such portion shall bear interest from such date until paid at the blended non-default rate for the Project Debt that is the basis for the calculation of the Termination Compensation.

(e) In the event of any dispute over the Termination Compensation, NCDOT shall pay the disputed portion to Developer in immediately available funds within 30 Days after it is determined by settlement, final order or final judgment, together with interest thereon as stated above.

(f) From and after the Early Termination Date until the Termination Compensation is finally determined and paid, the provisions of Section 19.9 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Project Trust and Security Instruments.

3. For Termination Due to NCDOT Default, NCDOT Suspension of Work or Delayed Notices to Proceed After Financial Close

(a) If the Agreement is terminated due to NCDOT Default or NCDOT suspension of work as provided in Section 19.4 of the Agreement, termination shall be valid and effective on the date notice of termination is delivered. If the Agreement is terminated due to NCDOT's delay in issuing NTP1 or NTP2 as provided in Section 19.4.3 of the Agreement and the measure of the Termination Compensation is under Section B above, termination shall be valid and effective on the date notice of termination is delivered. Subject to Sections 19.3.2 and 19.4.4, NCDOT shall deliver to Developer, in immediately available funds, within 60 Days after the Early Termination Date, the Termination Compensation that NCDOT determines in good faith is due, less a holdback amount equal to NCDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement by depositing such amount with the trustee under the Project Trust Agreement for disbursement pursuant to Section G.3(b) below.

(b) NCDOT shall instruct the trustee under the Project Trust Agreement to pay the holdback amount to Developer within ten days after Developer completes all its post-termination obligations under Section 19.5 of the Agreement.

(c) If as of the date NCDOT tenders payment under clause (a) above the Parties have not agreed upon the amount of Termination Compensation due, then:

(i) NCDOT shall proceed with such payment to Developer;

(ii) Within 30 days after receiving such payment Developer shall deliver to NCDOT written notice of the additional amount of Termination Compensation that Developer in good faith determines is still owing (the "disputed portion");

(iii) NCDOT shall pay the disputed portion of the Termination Compensation to Developer in immediately available funds within 30 Days after the disputed portion is determined by settlement, final order or final judgment, and also shall pay interest thereon, at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing 30 Days after the Early Termination Date until paid; and

(iv) Failure by NCDOT to effect payment by such date shall not entitle Developer to reinstatement of the Developer's Interest or to rescission of the termination.

(d) From and after the Early Termination Date until the Termination Compensation is finally determined and paid, the provisions of Section 19.9 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Project Trust and Security Instruments.

(e) If it is determined by settlement or final judgment that the Termination Compensation due from NCDOT is less than the payment previously made by NCDOT, then within 30 Days after the date of settlement or final judgment Developer shall reimburse the excess payment, together with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of overpayment until the date of reimbursement.

4. For Developer Default

(a) If the Agreement is terminated due to NCDOT's exercise of its right to terminate due to Developer Default, termination shall be valid and effective as and when set forth in Section 19.3.1 of the Agreement; and, subject to Sections 19.1.4 and 19.3.3, NCDOT shall deliver to Developer, within the later of (i) 30 Days after Developer completes its post-termination obligations under Section 19.5 of the Agreement or (ii) 60 Days after the Early Termination Date, immediately available funds equal to the Termination Compensation that NCDOT determines in good faith is due. If NCDOT does not pay such amount by the later of such dates, such amount shall bear interest at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the later of such dates until paid.

(b) If as of the date NCDOT tenders payment under clause (a) above the Parties have not agreed upon the amount of Termination Compensation due, then:

(i) NCDOT shall proceed with such payment to Developer;

(ii) Within 30 days after receiving such payment Developer shall deliver to NCDOT written notice of the additional amount of Termination Compensation that Developer in good faith determines is still owing (the "disputed portion");

(iii) NCDOT shall pay the disputed portion of the Termination Compensation to Developer in immediately available funds within 30 Days after the disputed portion is determined by settlement, final order or final judgment, together with interest thereon

at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the later of the two dates set forth in clause (a) above until paid; and

(iv) Failure by NCDOT to effect payment by such date shall not entitle Developer to reinstatement of the Developer's Interest or to rescission of the termination.

(c) From and after the Early Termination Date until the Termination Compensation is finally determined and paid, the provisions of Section 19.9 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Project Trust Agreement.

(d) If it is determined by settlement or final judgment that the Termination Compensation due from NCDOT is less than the payment previously made by NCDOT, then within 30 Days after the date of settlement or final judgment Developer shall reimburse the excess payment, together with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of overpayment until the date of reimbursement.

5. For Termination by Court Ruling and Certain Delayed Notices to Proceed Finality After Financial Close

(a) In the event of Termination by Court Ruling, termination shall be valid and effective on the entry of final judgment. If the Agreement is terminated due to NCDOT's delay in issuing NTP1 or NTP2 as provided in Section 19.4.3 of the Agreement and the measure of the Termination Compensation is under Section E above, termination shall be valid and effective on the date notice of termination is delivered. NCDOT shall deliver to Developer, within 60 days after the later of (i) the Early Termination Date or (ii) the date NCDOT receives from the Collateral Agent a written statement of the Initial Senior Debt Termination Amount, increases in the Initial Senior Debt Termination Amount due to each Refinancing described in Section E.1(a) above, and the Senior Debt Termination Amount and from Developer written documentation and other evidence of the amounts of the Subordinate Debt, Contributed Unreturned Equity, and all Borrowed Cash and Credit Balances, together with Developer's written certification that the amounts shown are true, correct and complete, immediately available funds equal to the Termination Compensation that NCDOT determines in good faith is due, less a holdback amount equal to NCDOT's reasonable estimate of the costs Developer will thereafter incur to perform and complete its post-termination obligations under Section 19.5 of the Agreement. NCDOT shall deposit such holdback amount with the trustee under the Project Trust Agreement for disbursement pursuant to Section G.5(b) below. If NCDOT does not pay such amount of Termination Compensation by the later of such dates, such amount shall bear interest at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the later of such dates until paid.

(b) NCDOT shall instruct the trustee under the Project Trust Agreement to pay the holdback amount to Developer within ten days after Developer completes all its post-termination obligations under Section 19.5 of the Agreement.

(c) If as of the date NCDOT tenders payment under clause (a) above the Parties have not agreed upon the amount of Termination Compensation due, then:

(i) NCDOT shall proceed with such payment to Developer;

(ii) Within 30 days after receiving such payment Developer shall deliver to NCDOT written notice of the additional amount of Termination Compensation that Developer in good faith determines is still owing (the "disputed portion");

(iii) NCDOT shall pay the disputed portion of the Termination Compensation to Developer in immediately available funds within 30 Days after the disputed portion is determined by settlement, final order or final judgment, together with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the later of the two dates set forth in clause (a) above until paid; and

(iv) Failure by NCDOT to effect payment by such date shall not entitle Developer to reinstatement of the Developer's Interest or to rescission of the termination.

(d) From and after the Early Termination Date until the Termination Compensation is finally determined and paid, the provisions of Section 19.9 of the Agreement shall apply and Developer shall continue to have a pledge of and security interest in and to the Post-Termination Revenue Account under the Project Trust and Security Instruments.

(e) If it is determined by settlement or final judgment that the Termination Compensation due from NCDOT is less than the payment previously made by NCDOT, then within 30 Days after the date of settlement or final judgment Developer shall reimburse the excess payment, together with interest thereon at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, from the date of overpayment until the date of reimbursement.

H. Termination Prior to Financial Close

1. Termination Compensation

If, prior to Financial Close, this Agreement is terminated for any reason other than termination for Developer Default, NCDOT shall pay compensation to Developer in an amount equal to the following:

(a) Payment for Work Product; plus

(b) the value of NTP1 Work performed in compliance with the CA Documents and unpaid, provided that the total amount paid for NTP1 Work shall not exceed $15 million; plus

(c) fifty percent (50%) of Developer's documented, actual, reasonable external costs incurred for the work necessary to achieve Financial Close, provided that the total amount paid under this clause (c) shall not exceed $1 million. For purposes of this clause (c), "external costs" means only those costs that are payable for work or services performed between the Effective Date and the Termination Date by rating agencies, financial advisors, technical advisors, insurance advisors and legal counsel that are not Equity Members. "External costs" expressly excludes costs of the work and services performed by, and the overhead costs of, Developer and Equity Members.

2. Documentation and Timing of Payment

Payment of the Termination Compensation required under this Section H is condition upon: (a) with respect to payment for NTP1 Work, receipt by NCDOT of an invoice in accordance with Exhibit 5 and (b) with respect to payment under clause (c) of Section H.1, receipt by NCDOT of a written statement from Developer as to the amounts owed and payable, with documentation reasonably required by NCDOT to support such statement and a written certification by Developer that such amounts are true and correct. Termination Compensation under this Section H shall be due and payable no later than 60 days following NCDOT's receipt of the documentation required under this Section H.2.

EXHIBIT 16

OPTION CONSIDERATION FOR EXTENSION OF LONG STOP DATE

The consideration for each of the Collateral Agent's options to extend the Long Stop Date as set forth in the Lender's Direct Agreement shall equal $4,000,000.

EXHIBIT 17

FORM OF PROJECT TRUST AGREEMENT

[see attached]

PROJECT TRUST AGREEMENT
RELATING TO THE
NCDOT I-77 HIGH OCCUPANCY TOLL LANES PROJECT

Dated as of _____, 201__

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PROJECT TRUST AGREEMENT

This PROJECT TRUST AGREEMENT, dated as of _____, 201__, by and between [TRUSTEE], a national banking association, duly organized and existing under and by virtue of the laws of the United States (the "Trustee"), and _____, a _____ (the "Developer"), with reference to the following facts:

RECITALS

A. The North Carolina Department of Transportation ("NCDOT") and Developer have entered into that certain Comprehensive Agreement, I-77 HOT Lanes Project dated as of _____, 2014 (as it may be amended from time to time in accordance with its terms, the "CA") regarding the design, construction, financing, operation and maintenance of the Project described therein; and

B. This Project Trust Agreement is being executed by the parties hereto in order to provide for (i) the establishment of a Project Trust Fund and various trust accounts within the Project Trust Fund, (ii) the deposit into the Project Trust Fund of funds that may be remitted to the Trustee in respect of the use of the Project as described herein, and (iii) the Trustee to hold, administer and distribute the Project Trust Fund as provided herein.

AGREEMENT

Now therefore, in consideration of the foregoing premises and of the mutual agreements and covenants contained herein, the receipt and adequacy of which are hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE I.

DEFINITIONS

Section 1.01 Definitions.

Capitalized terms used but not otherwise defined in this Project Trust Agreement have the respective meanings set forth in Exhibit 1 to the CA. In addition, the following terms have the meanings specified below:

"Certificate of Developer" means an instrument in writing signed by an officer of Developer duly authorized by the Board of Directors of Developer for that purpose.

"Certificate of NCDOT" means an instrument in writing signed by an officer of NCDOT duly authorized by the North Carolina Board of Transportation or State law for that purpose.

"Daily Disbursement Date" means any Business Day that there are funds on deposit in the Toll Revenue Account as of the opening of business of the Trustee on such day.

"Daily Revenue Payment Amount" means a daily amount that shall be calculated in the same manner as calculations of the NCDOT Revenue Payment Amount are made pursuant to Exhibit 5 to the CA.

"Developer Claims Account" has the meaning set forth in Section 2.02(b).

"Developer Claim Certificate" has the meaning set forth in Section 2.02(b).

"Developer Claim Final Decision Amount" has the meaning set forth in the definition of Developer Claim Final Decision Certificate.

"Developer Claim Final Decision Certificate" means a Certificate of Developer or a Certificate of NCDOT delivered to the Trustee in which either Developer or NCDOT, as applicable, (a) certifies to the Trustee that a Final Decision has been entered with respect to a disputed Claim of Developer described in a Developer Claim Certificate previously received by the Trustee, along with a copy of such Final Decision, certified as true and correct, and (b) certifies to the Trustee the amount, if any, payable to Developer pursuant to any such Final Decision (the "Developer Claim Final Decision Amount").

"Event of Default" has the meaning set forth in Section 4.01.

"Final Decision" means a final judgment has been entered on a Claim or Dispute by a court having proper jurisdiction over the Claim or Dispute and such order or judgment in each case is not subject to appeal.

"Final Decision Certificate" means a Certificate of Developer or Certificate of NCDOT delivered to the Trustee in which Developer or NCDOT, as applicable, (a) certifies to the Trustee that a Final Decision has been entered with respect to the final amounts payable to each of Developer and NCDOT under the CA following the Termination Date, along with a copy of such Final Decision, certified as true and correct, and (b) certifies to the Trustee the amount, if any, payable to Developer or NCDOT pursuant to any such Final Decision (the "Final Decision Amounts").

"Final Termination Certificate" means a Certificate of Developer or Certificate of NCDOT delivered to the Trustee in which Developer or NCDOT, as applicable, (a) certifies to the Trustee that the "Termination Date" (as defined in the CA) occurred under the CA, and (b) certifies to the Trustee the actual Termination Date under the CA.

"Financing Documents" means the agreements and documents evidencing or securing any Project Debt, including any Funding Agreements or Security Documents described in the CA.

"Handback Requirements Reserve Account" has the meaning set forth in Section 2.02(h).

"Joint Instructions" means written instructions to the Trustee which are executed by both Developer and NCDOT, provided that such instructions are also approved by the Collateral Agent during any Project Debt Default Period solely to the extent such approval is required pursuant to the Funding Agreements or Security Documents.

"Monthly Disbursement Date" means the last Business Day of each calendar month.

"NCDOT Claim Certificate" has the meaning set forth in Section 2.02(c).

"NCDOT Claim Final Decision Amount" has the meaning set forth in the definition of NCDOT Claim Final Decision Certificate.

"NCDOT Claim Final Decision Certificate" means a Certificate of Developer or a Certificate of NCDOT delivered to the Trustee in which either Developer or NCDOT, as applicable, (a) certifies to the Trustee that a Final Decision has been entered with respect to a disputed Claim of NCDOT described in a NCDOT Claim Certificate previously received by the Trustee, along with a copy of such Final Decision, certified as true and correct, and (b) certifies to the Trustee the amount, if any, payable to NCDOT pursuant to any such Final Decision (the "NCDOT Claim Final Decision Amount").

"NCDOT Account" means each of the NCDOT Claims Account, the NCDOT Revenue Payment Account, the Post-Termination Revenue Account and the Post-Termination Work Account.

"NCDOT Claims Account" has the meaning set forth in Section 2.02(c).

"NCDOT Revenue Payment Account" has the meaning set forth in Section 2.02(f).

"NCDOT Revenue Payment Amount" means the amount payable to NCDOT pursuant to Part C of Exhibit 5 to the CA.

"North Carolina UCC" means the Uniform Commercial Code in effect from time to time in the State of North Carolina.

"Post-Termination Developer Claims Account" has the meaning set forth in Section 2.02(g).

"Post-Termination Developer Claim Certificate" has the meaning set forth in Section 2.02(g).

"Post-Termination Developer Claim Final Decision Amount" has the meaning specified in the definition of Post-Termination Developer Claim Final Decision Certificate.

"Post-Termination Developer Claim Final Decision Certificate" means a Certificate of Developer or a Certificate of NCDOT delivered to the Trustee in which either Developer or NCDOT, as applicable, (a) certifies to the Trustee that a Final Decision has been entered with respect to a disputed Claim of Developer described in a Post-Termination Developer Claim Certificate, along with a copy of such Final Decision, certified as true and correct, and (b) certifies to the Trustee the amount, if any, payable to Developer pursuant to any such Final Decision (the "Post-Termination Developer Claim Final Decision Amount").

"Post-Termination Revenue Account" has the meaning set forth in Section 2.02(d).

"Post-Termination Work Account" has the meaning set forth in Section 2.02(e).

"Project Debt Default Notice" means a written notice delivered by the Collateral Agent to the Trustee, Developer and NCDOT stating that (a) a default has occurred and

is continuing with respect to the Project Debt and (b) pursuant to the terms of the Financing Documents, the Collateral Agent is entitled to be paid any funds that would otherwise be payable by the Trustee to Developer from any Project Trust Account on any date hereunder, and to give any related payment instructions to the Trustee in connection therewith.

"Project Debt Default Period" means the period commencing on the date a Project Debt Default Notice is received by the Trustee and ending on the date the relevant default in respect of the Project Debt shall have been cured or otherwise waived.

"Project Trust Accounts" has the meaning set forth in Section 2.02.

"Project Trust Agreement" means this Project Trust Agreement by and between the Trustee and Developer, dated as of _____, 201__, as it may from time to time be amended or supplemented in accordance herewith.

"Project Trust Fund" means the fund by the name "I-77 HOT Lanes Project Trust Fund" established in Section 2.01 hereof, including all of the Project Trust Accounts described herein that are established to hold funds received by the Trustee for deposits into the Project Trust Fund.

"Termination Date" means, for all purposes of this Project Trust Agreement, the earlier of the date the Trustee receives Joint Instructions or the date the Trustee receives a Final Termination Certificate, in either case, to the effect that the "Termination Date" (as defined in the CA) has occurred.

"Toll Revenue Account" has the meaning set forth in Section 2.02(a).

"Trustee" means [TRUSTEE], a national banking association, duly organized and existing under and by virtue of the laws of the United States, or its successor or any other bank or trust company which may at any time be substituted in its place as provided in Section 5.01.

ARTICLE II.

PROJECT TRUST FUND AND ACCOUNTS

Section 2.01 Establishment of Project Trust Fund.

The Trustee hereby establishes a fund to be known as the "I-77 HOT Lanes Project Trust Fund". The Trustee covenants and agrees that all funds, when and as received by the Trustee and designated or otherwise directed for deposit into the I-77 HOT Lanes Project Trust Fund, whether pursuant to a transfer from NCDOT, Developer or any other Person, will be received and held by the Trustee in trust hereunder and will be deposited by the Trustee in the Project Trust Fund and will be accounted for through and held in trust in the Project Trust Fund. All funds delivered to the Trustee for deposit into the Project Trust Fund shall be (a) held by the Trustee in trust for the benefit of Developer and, to the extent provided herein, NCDOT in accordance with the terms of

this Project Trust Agreement, (b) disbursed, allocated and applied by the Trustee solely for the uses and purposes set forth in this Article II, and (c) accounted for separately and apart from all other money, funds, accounts or other resources of the Trustee. The Trustee acknowledges and agrees that it does not have any interest in the Project Trust Fund but is serving as trust holder of the same for the benefit of Developer and, to the extent provided herein, NCDOT.

Section 2.02 Establishment and Maintenance of Accounts.

The following trust accounts (each, a "Project Trust Account") shall be established by the Trustee within the Project Trust Fund and all funds received by the Trustee for deposit into the Project Trust Fund shall be allocated to such Project Trust Accounts as set forth herein:

(a) Toll Revenue Account.

(i) There is hereby established within the Project Trust Fund a trust account designated the "Toll Revenue Account." Except as otherwise set forth in Section 2.02(d), until the Termination Date the Trustee shall deposit the following into the Toll Revenue Account:

(A) all funds received by the Trustee for deposit into the Project Trust Fund and designated or otherwise identified as "Toll Revenues" (from whomever received); and

(B) any other funds received by the Trustee from NCDOT or Developer which the Trustee is directed or otherwise instructed to deposit to the Toll Revenue Account by the Person delivering such funds to the Trustee.

(ii) If after the Termination Date the Trustee continues to receive funds in respect of revenues from the operation of the HOT Lanes for deposit into the Project Trust Fund but has not received a Certificate of Developer or Certificate of NCDOT pursuant to which the Post-Termination Revenue Account is to be established under Section 2.02(d), then the Trustee shall deposit such funds received after the Termination Date into the Toll Revenue Account to be held for distribution pursuant to Section 2.03(a)(ii).

(b) Developer Claims Account. Upon Trustee's receipt of a written request from Developer, together with (i) a copy, certified by Developer to be true and complete, of a notice from Developer to NCDOT stating that Developer has asserted a Claim against NCDOT under the CA and (ii) a Certificate of Developer that NCDOT disputes the Claim in whole or in part and setting forth specifically the amount of the Claim in dispute (with respect to each such disputed Claim, a "Developer Claim Certificate"), the Trustee shall establish within the Project Trust Fund a Project Trust Account designated the "Developer Claims Account" and thereafter the Trustee shall make deposits (A) from the Toll Revenue Account to the Developer Claims Account as

provided in Section 2.03(a)(i) or (B) if applicable, from the NCDOT Revenue Payment Account to Developer Claims Account as provided in Section 2.03(g)(iii). For all funds on deposit in the Developer Claims Account, Developer shall be entitled to a credit in such amount against the amounts payable to NCDOT as the NCDOT Revenue Payment Amount while such funds are on deposit in the Developer Claims Account.

(c) NCDOT Claims Account. Upon Trustee's receipt of a written request from NCDOT together with (i) a copy, certified by NCDOT to be true and complete, of a notice from NCDOT to Developer stating that NCDOT has asserted a Claim against Developer under the CA and (ii) a Certificate of NCDOT that Developer disputes the Claim in whole or in part and setting forth specifically the amount of the Claim in dispute (with respect to each such disputed Claim, a "NCDOT Claim Certificate"), the Trustee shall establish within the Project Trust Fund a Project Trust Account designated the "NCDOT Claims Account" and thereafter the Trustee shall make deposits (A) from the Toll Revenue Account to the NCDOT Claims Account as provided in Section 2.03(a)(i), (B) if applicable, from the NCDOT Revenue Payment Account to the NCDOT Claims Account as provided in Section 2.03(g)(iii) or (C) to the NCDOT Claims Account of amounts NCDOT delivers to the Trustee for deposit therein pursuant to Part F.2 of Exhibit 15 to the CA.

(d) Post-Termination Revenue Account. If the Termination Date has occurred and the Trustee receives a Certificate of Developer or Certificate of NCDOT that there is an outstanding unpaid amount owing from NCDOT to Developer (other than that set forth in Section 2.02(e)), or an outstanding unsatisfied Claim for sums owing from NCDOT to Developer (other than that set forth in Section 2.02(g)), then the Trustee shall establish within the Project Trust Fund a Project Trust Account designated as the "Post-Termination Revenue Account". In such event, the Trustee shall also establish, at NCDOT's request, sub-accounts of the Post-Termination Revenue Account for allocation of reasonable reserves for costs of reconstruction, rehabilitation, renewal and replacement of the HOT Lanes as set forth in a Certificate of NCDOT delivered to Trustee and Developer. After the Termination Date and receipt of such Certificate of Developer or Certificate of NCDOT, the Trustee shall deposit in the Post-Termination Revenue Account all funds received by the Trustee in respect of Toll Revenues from the operation of the HOT Lanes, until such account is terminated pursuant to Section 2.03(h). Notwithstanding the foregoing, if the Trustee receives (i) Joint Instructions stating that funds received after the Termination Date are on account of Transactions occurring prior to the Termination Date, and stating the amount of such funds, or (ii) a Certificate of Developer or Certificate of NCDOT stating that a Final Decision has been rendered that funds received after the Termination Date are on account of Transactions occurring prior to the Termination Date, and stating the amount of such funds as set forth in the Final Decision, then the Trustee shall deposit such funds into the Toll Revenue Account (or, if such funds were previously received and deposited into the Post-Termination Revenue Account, transfer such funds from the Post-Termination Revenue Account to the Toll Revenue Account) for disbursement pursuant to Section 2.03(a)(i).

(e) Post-Termination Work Account. On the Termination Date, the Trustee shall establish within the Project Trust Fund a Project Trust Account designated the "Post-Termination Work Account" and thereafter the Trustee shall deposit all funds delivered to the Trustee by NCDOT for deposit into the Post-Termination Work Account. Pursuant to Section G of Exhibit 15 to the CA, NCDOT is required to deposit with the Trustee an amount equal to NCDOT's reasonable estimate of the costs Developer will incur to perform and complete its post-termination obligations under Section 19.5 of the CA.

(f) NCDOT Revenue Payment Account. Commencing on the first Substantial Completion Date, the Trustee shall establish within the Project Trust Fund a Project Trust Account designated the "NCDOT Revenue Payment Account" and thereafter the Trustee shall deposit in the NCDOT Revenue Payment Account all transfers of the calculated daily accrued NCDOT Revenue Payment Amount from the Toll Revenue Account on each Daily Disbursement Date pursuant to Section 2.05.

(g) Post-Termination Developer Claims Account. Upon the Trustee's receipt of a written request from Developer, together with (i) a copy, certified by Developer to be true and complete, of a notice from Developer to NCDOT stating that Developer has asserted a Claim against NCDOT payable out of the Post-Termination Revenue Account and (ii) a Certificate of Developer that NCDOT disputes the Claim in whole or in part and setting forth specifically the amount of the Claim in dispute (with respect to each such disputed Claim, a "Post-Termination Developer Claim Certificate"), the Trustee shall establish within the Project Trust Fund a Project Trust Account designated the "Post-Termination Developer Claims Account" and thereafter the Trustee shall make deposits from the Post-Termination Revenue Account to the Post-Termination Developer Claims Account as provided in Section 2.03(d)(v).

(h) Handback Requirements Reserve Account. Upon the Trustee's receipt of a written request from Developer, the Trustee shall establish within the Project Trust Fund a Project Trust Account designated the "Handback Requirements Reserve Account" pursuant to Section 8.10.1 of the CA.

Section 2.03 Withdrawal of Funds from the Accounts.

(a) Withdrawal of Funds in the Toll Revenue Account.

(i) On each Daily Disbursement Date until the Termination Date, the Trustee shall withdraw all funds on deposit in the Toll Revenue Account and make the following payments or transfers in the following order of priority:

(A) if on or before such date the Trustee has received the documentation required under Section 2.02(b) from Developer with respect to any disputed Claim by Developer against NCDOT under the CA, for transfer to the Developer Claims Account an amount not to exceed NCDOT's Daily Revenue Payment Amount certified to the Trustee in a Certificate of Developer

and calculated as set forth in Section 2.05 hereof, until the amount so accumulated in the Developer Claims Account equals the amount of the disputed portion of the Claim specified in the Developer Claim Certificate. The Trustee acknowledges, however, that NCDOT may apply, through the Dispute Resolution Procedures, for limitations on the cumulative amount to be transferred pursuant to this clause (A) into the Developer Claims Account, and the Trustee agrees to adhere to any Final Decision regarding any such limit following receipt of a Certificate of NCDOT that such Final Decision has been entered, together with a copy of such Final Decision;

(B) if on or before such date the Trustee has received the documentation required under Section 2.02(c) from NCDOT with respect to any disputed Claim by NCDOT against Developer, for transfer to the NCDOT Claims Account an amount not to exceed NCDOT's Daily Revenue Payment Amount certified to the Trustee in a Certificate of Developer and calculated as set forth in Section 2.05; until the amount so accumulated in the NCDOT Claims Account equals the amount of the disputed portion of the NCDOT Claim, or any lesser amount, specified in the NCDOT Claims Certificate. The Trustee acknowledges, however, that Developer may apply, through the Dispute Resolution Procedures, for limitations on the cumulative amount to be transferred pursuant to this clause (B) into the NCDOT Claims Account, and the Trustee shall adhere to any Final Decision regarding any such limit following receipt of a Certificate of Developer that such Final Decision has been entered, together with a copy of such Final Decision; and provided, further that Developer acknowledges that no such transfer of funds to the NCDOT Claims Account from the Toll Revenue Account shall affect or reduce Developer's continuing obligation to pay NCDOT its NCDOT Revenue Payment Amount under Exhibit 5 to the CA;

(C) if such Daily Disbursement Date is a Business Day, for transfer to the NCDOT Revenue Payment Account an amount equal to NCDOT's Daily Revenue Payment Amount certified in a Certificate of Developer and calculated as set forth in Section 2.05; and

(D) for payment to Developer (to such account as Developer designates from time to time in writing to the Trustee) or as otherwise required by the Collateral Agent during a Project Debt Default Period.

(ii) If after the Termination Date the Trustee continues to receive funds in respect of Toll Revenues from the operation of the HOT Lanes for deposit into the Project Trust Fund but has not received a Certificate of Developer or Certificate of NCDOT pursuant to which the Post-Termination Revenue Account is to be established under Section 2.02(d), then the Trustee shall not thereafter make any payment under Section 2.03(a)(i) from funds received into the Toll Revenue Account after such Termination Date. Instead, the Trustee shall transfer or disburse such funds only in accordance with (A) Joint Instructions or (B) a Final Decision Certificate. If the Trustee thereafter establishes the Post-Termination Revenue Account pursuant to Section 2.02(d), the Trustee shall

transfer such funds, other than those previously transferred or disbursed pursuant to the previous sentence, to the Post-Termination Revenue Account.

(iii) With respect to funds subject to Section 2.03(a)(i), on the first Daily Disbursement Date after the Termination Date, the Trustee shall make a final disbursement of such funds from the Toll Revenue Account pursuant to Section 2.03(a)(i) (subject to any subsequent disbursements pursuant to Section 2.03(a)(i) as provided in Sections 2.02(d) and 2.03(a)(ii)). With respect to funds subject to Section 2.03(a)(ii), the Trustee shall make a final disbursement of such funds from the Toll Revenue Account pursuant to Joint Instructions or a Final Decision Certificate. Thereupon, the Trustee shall close the Toll Revenue Account.

(b) Use and Withdrawal of Amounts in Developer Claims Account. Upon the Trustee's receipt of a Developer Claim Final Decision Certificate, the Trustee shall (i) first, withdraw funds in the Developer Claims Account in an amount up to the Developer Claim Final Decision Amount, plus all earnings received on such amount prior to such date, and pay such funds to Developer (or as otherwise required by the Collateral Agent during a Project Debt Default Period), and (ii) second, provided at such time there remains no other disputed Claim of Developer for which funds have been deposited into the Developer Claims Account, withdraw the balance of funds remaining in the Developer Claims Account and pay such funds to NCDOT for credit toward the NCDOT Revenue Payment Amount, unless at such time the Trustee is in receipt of a Certificate of NCDOT or Certificate of Developer stating that no Revenue Payment Amount is then due and payable to NCDOT, in which case the Trustee shall transfer such funds to the Toll Revenue Account. Upon the Trustee's receipt of Joint Instructions regarding final settlement of a disputed Claim of Developer for which funds have been deposited in Developer Claims Account, the Trustee shall (A) first, withdraw funds in the Developer Claims Account in an amount up to the settlement amount payable to Developer specified in such Joint Instructions, plus all earnings received on such amount prior to such date, and pay such funds to Developer (or as otherwise required by the Collateral Agent during a Project Debt Default Period), and (B) second, provided at such time there remains no other disputed Claim of Developer for which funds have been deposited into the Developer Claims Account, withdraw the balance of funds remaining in the Developer Claims Account and pay such funds to NCDOT for credit toward the NCDOT Revenue Payment Amount, unless at such time the Trustee is in receipt of a Certificate of NCDOT or Certificate of Developer stating that no Revenue Payment Amount is then due and payable to NCDOT, in which case the Trustee shall transfer such funds to the Toll Revenue Account. All funds so paid to Developer (or as otherwise required by the Collateral Agent during a Project Debt Default Period) or to NCDOT in accordance with the preceding two sentences shall be a credit toward any amounts payable by Developer to NCDOT under the CA as the NCDOT Revenue Payment Amount. To the extent any funds are on deposit in the Developer Claims Account, Developer waives any other right of offset it may have with respect to the Claim for which such funds were transferred into the Developer Claims Account; provided however, that the foregoing does not limit or reduce any credits that

Developer is entitled to against amounts payable by Developer to NCDOT as the NCDOT Revenue Payment Amount as provided in Section 2.02(b) or this Section 2.03(b). In lieu of any transfer of funds from the Toll Revenue Account to the Developer Claims Account as contemplated by Section 2.03(a)(i), or at any time thereafter while funds remain in the Developer Claims Account, Developer may elect at any time after it asserts its Claim, by written notice to NCDOT and the Trustee, to waive any right to offset such Claim with NCDOT Revenue Payment Amounts accruing in favor of NCDOT. In such event, the Trustee shall transfer to Developer (or as otherwise required by the Collateral Agent during a Project Debt Default Period) any funds accumulated in the Developer Claims Account by reason of such Claim in accordance with Developer's (or if applicable the Collateral Agent's) written instructions, but in such event Developer shall no longer be entitled to offset the NCDOT Revenue Payment Amounts by such Claim. The Trustee shall give written notice to NCDOT, Developer and the Collateral Agent once the amount deposited in the Developer Claims Account equals the disputed portion of the Claim.

(c) Use and Withdrawal of Amounts in NCDOT Claims Account. Upon the Trustee's receipt of a NCDOT Claim Final Decision Certificate, the Trustee shall (i) first, withdraw funds in the NCDOT Claims Account in an amount up to the NCDOT Claim Final Decision Amount, plus all earnings received on such amount prior to such date, and pay such funds to NCDOT, and (ii) second, provided at such time there remains no other disputed Claim of NCDOT for which funds have been deposited into the NCDOT Claims Account, withdraw the balance of funds remaining in the NCDOT Claims Account and transfer such funds to the Toll Revenue Account. Upon the Trustee's receipt of Joint Instructions regarding final settlement of a disputed Claim of NCDOT for which funds have been deposited in the NCDOT Claims Account, the Trustee shall (A) first, withdraw funds in the NCDOT Claims Account in an amount up to the settlement amount payable to NCDOT specified in such Joint Instructions, plus all earnings received on such amount prior to such date, and pay such funds to NCDOT, and (B) second, provided at such time there remains no other disputed Claim of NCDOT for which funds have been deposited into the NCDOT Claims Account, withdraw the balance of funds remaining in the NCDOT Claims Account and pay such funds to the Toll Revenue Account.

(d) Use and Withdrawal of Amounts in the Post-Termination Revenue Account. Not more frequently than once each calendar week, NCDOT may deliver to the Trustee a Certificate of NCDOT setting forth the amount of NCDOT's reasonable and documented operating and maintenance costs and expenses incurred respecting the HOT Lanes since the last Certificate of NCDOT delivered under this Section 2.03(d). Within one Business Day after receipt of each such Certificate of NCDOT, the Trustee shall withdraw funds from the Post-Termination Revenue Account and make payment to NCDOT of the amount set forth in such Certificate of NCDOT. In addition, on each Monthly Disbursement Date, the Trustee shall withdraw funds from the Post-Termination Revenue Account and make the following payments in the following order of priority:

(i) to NCDOT an amount equal to NCDOT's reasonable and documented operating and maintenance costs and expenses respecting the HOT Lanes for such month, as set forth in a Certificate of NCDOT delivered to the Trustee and Developer not less than one Business Day prior to such date, to the extent not previously paid from the Post-Termination Revenue Account;

(ii) for deposit in the sub-accounts of the Post-Termination Revenue Account established under Section 2.02(d) until the reasonable reserves established for costs of reconstruction, rehabilitation, renewal and replacement of the HOT Lanes have been funded in the amounts set forth in a Certificate of NCDOT delivered to the Trustee and Developer requesting the establishment of such reserves;

(iii) to NCDOT, if amounts have previously been reserved in sub-accounts of such Post-Termination Revenue Account for such purpose, the amounts in such sub-accounts necessary to pay the reasonable documented costs of reconstruction, rehabilitation, renewal and replacement of the HOT Lanes actually incurred by NCDOT, as set forth in a Certificate of NCDOT delivered to the Trustee and Developer;

(iv) to Developer (or as otherwise required by the Collateral Agent during a Project Debt Default Period) an amount equal to the undisputed amounts due to Developer under the terms of the CA, as set forth in a Certificate of NCDOT delivered to the Trustee and Developer not less than one Business Day prior to such date, until such undisputed amounts have been paid in full to Developer (or as otherwise required by the Collateral Agent during a Project Debt Default Period); and

(v) if on or before such date the Trustee has received the documentation required under Section 2.02(g) from Developer with respect to any disputed Claim by Developer against NCDOT, for transfer to the Post-Termination Developer Claims Account the amounts remaining in the Post-Termination Revenue Account, to the extent (A) necessary to cause the aggregate amounts on deposit in the Post-Termination Developer Claims Account to equal the aggregate amount of disputed Claims described in any previously delivered Post-Termination Developer Claim Certificate and (B) such Claims have not previously been paid as contemplated by Section 2.03(e) hereof. The Trustee acknowledges, however, that NCDOT may apply, through application to a court of competent jurisdiction for limitations on the cumulative amount to be transferred pursuant to this clause (v) into the Post-Termination Developer Claims Account, and the Trustee agrees to adhere to any Final Decision upon receipt of a NCDOT Certificate with respect to such Final Decision together with a copy of such Final Decision.

(e) Use and Withdrawal of Amounts in Post-Termination Developer Claims Account. Upon the Trustee's receipt of a Post-Termination Developer Claim Final Decision Certificate, the Trustee shall (i) first, withdraw funds in the Post-Termination

Developer Claims Account in an amount up to the Post-Termination Developer Claim Final Decision Amount, plus all earnings received on such amount prior to such date, and pay such funds to Developer (or as otherwise required by the Collateral Agent during a Project Debt Default Period), and (ii) second, provided at such time there remains no other disputed Claim of Developer for which funds have been deposited into the Post-Termination Developer Claims Account, withdraw the balance of such funds in the Post-Termination Developer Claims Account and transfer such funds to NCDOT. Upon the Trustee's receipt of Joint Instructions concerning any disputed Claim of Developer for which funds have been deposited into the Post-Termination Developer Claims Account, the Trustee shall (A) first, withdraw funds in the Post-Termination Developer Claims Account in an amount up to the settlement amount payable to Developer specified in such Joint Instructions, plus all earnings received on such amount prior to such date, and pay such funds to Developer (or as otherwise required by the Collateral Agent during a Project Debt Default Period), and (B) second, provided at such time there remains no other disputed Claim of Developer for which funds have been deposited into the Post-Termination Developer Claims Account, withdraw the balance of such funds in the Post-Termination Developer Claims Account and transfer such funds to NCDOT. The Trustee shall give written notice to NCDOT and Developer and the Collateral Agent once the amount deposited in the Post-Termination Developer Claims Account equals the disputed portion of the Claim.

(f) Use and Withdrawal of Amounts in the Post-Termination Work Account. Upon the Trustee's receipt of written notice from NCDOT that Developer has completed all its post-termination obligations under Section 19.5 of the CA, the Trustee shall withdraw all funds on deposit in the Post-Termination Work Account and pay such funds to Developer (or as otherwise required by the Collateral Agent during a Project Debt Default Period).

(g) Use and Withdrawal of Amounts in the NCDOT Revenue Payment Account.

(i) Within 15 days after the end of each calendar year, Developer shall deliver to the Trustee a Certificate of Developer setting forth Developer's preliminary calculation of the NCDOT Revenue Payment Amount for the prior calendar year. Within 15 days after the scheduled expiration of the Term, Developer shall deliver to the Trustee a Certificate of Developer setting forth Developer's preliminary calculation of the NCDOT Revenue Payment Amount for the period from the immediately preceding January 1 to the scheduled expiration date. Within one Business Day after receipt of each such Certificate of Developer, the Trustee shall withdraw from the NCDOT Revenue Payment Account and pay to NCDOT the amount shown in the Certificate of Developer together with any interest earnings thereon.

(ii) Within 90 days after the end of each calendar year, Developer shall deliver to the Trustee a Certificate of Developer setting forth Developer's final calculation of the NCDOT Revenue Payment Amount for the prior calendar year

and the additional NCDOT Revenue Payment Amount to be paid, if any. Within 90 days after the end of the scheduled expiration of the Term, Developer shall deliver to the Trustee a Certificate of Developer setting forth Developer's final calculation of the NCDOT Revenue Payment Amount for the period from the immediately preceding January 1 to the scheduled expiration date, and the additional Revenue Payment Amount to be paid, if any. Within one Business Day after receipt of each such Certificate of Developer, the Trustee shall withdraw from the NCDOT Revenue Payment Account and pay to NCDOT the amount, if any, shown in the Certificate of Developer together with any interest earnings thereon.

(iii) If at any time after either 90-day period set forth in clause (ii) above the Trustee receives a NCDOT Claim Certificate setting forth a Claim that Developer has not paid the full amount due for the NCDOT Revenue Payment Amount and the amount of the Claim, then the Trustee shall transfer from the NCDOT Revenue Payment Account into the NCDOT Claims Account available funds up to the amount of the Claim. If at any time prior to withdrawal of funds as set forth in clause (i) or (ii) above the Trustee receives a Developer Claim Certificate setting forth a Claim and the amount of the Claim, then the Trustee shall transfer from the NCDOT Revenue Payment Account into Developer Claims Account available funds in the NCDOT Revenue Payment Account up to the amount of the Claim.

(iv) Upon the Trustee's receipt of a Final Decision Certificate or Joint Instructions setting forth the final calculation of the NCDOT Revenue Payment Amount, the Trustee shall withdraw all funds on deposit in the NCDOT Revenue Payment Account, including any interest earnings thereon, and make the following payments in the following order of priority:

(A) to NCDOT, an amount equal to the NCDOT Revenue Payment Amount set forth in such Final Decision Certificate or Joint Instructions; and

(B) to Developer (or as otherwise required by the Collateral Agent during a Project Debt Default Period), the remaining balance in the NCDOT Revenue Payment Account.

(v) All payments to NCDOT of the Revenue Payment Amount from the NCDOT Revenue Payment Account as provided in this Section 2.03(g) shall be a credit against Developer's obligation to pay the Revenue Payment Amount as required under the CA.

(h) Use and Withdrawal of Remaining Funds in Project Trust Accounts. Upon the Trustee's receipt of a Certificate of Developer (which must be approved in writing by the Collateral Agent unless the Project Debt has been repaid in full and the Trustee has received prior notice of such repayment from the Collateral Agent) stating that all amounts payable to Developer and NCDOT under the CA following the Termination Date have been paid in full to Developer and NCDOT, respectively, or a

Certificate of NCDOT stating that all amounts payable to Developer and NCDOT under the CA following the Termination Date have been paid in full to Developer and NCDOT, respectively, then in such event (i) the Trustee shall deliver a copy of any such Certificate of Developer to NCDOT, and a copy of any such Certificate of NCDOT to Developer, and (ii) except as provided below, on the date which is 30 days after the date on which the Trustee has delivered any such copy of such Certificate to Developer or NCDOT, as applicable (the "Scheduled Final Distribution Date"), the Trustee shall withdraw all remaining funds on deposit in the Project Trust Accounts and shall pay such funds to NCDOT, whereupon any interests of Developer or the Collateral Agent in such funds shall terminate. If, however, the Trustee receives a Certificate of Developer or a Certificate of NCDOT prior to the Scheduled Final Distribution Date stating that all amounts payable to Developer or NCDOT, as the case may be, under the CA following the Termination Date have not been paid in full to Developer or NCDOT, as the case may be, then in such event funds shall remain on deposit in the Project Trust Accounts, subject to all of the terms of this Project Trust Agreement, until such time as the Trustee receives a Final Decision Certificate or Joint Instructions, in either case regarding final settlement of the amounts payable to Developer and to NCDOT, respectively. Upon receipt thereof, the Trustee shall withdraw all remaining funds on deposit in the Project Trust Accounts and (A) first pay the amounts payable to Developer and NCDOT respectively, in accordance with the terms of such Final Decision Certificate or Joint Instructions, and (B) second remit the balance of such funds to NCDOT, whereupon any interests of Developer or the Collateral Agent in such funds shall terminate.

(i) Use and Withdrawal of Amounts in Handback Requirements Reserve Account. The Trustee shall deposit and disburse amounts in the Handback Requirements Reserve Account in accordance with Section 8.10 of the CA.

Section 2.04 Security Interests.

(a) Security Interest of Collateral Agent. The Trustee acknowledges that pursuant to the terms of the Financing Documents, Developer will grant to the Collateral Agent for the benefit of the holders of the Project Debt a first priority security interest in the right, title and interest of Developer in and to all funds held in the Project Trust Accounts within the Project Trust Fund as provided in this Project Trust Agreement, but in each case always subject to the terms and conditions of this Project Trust Agreement and the rights of NCDOT, including the rights described herein of NCDOT to deliver Certificates of NCDOT. The Trustee agrees that for purposes of perfecting any such security interest of the Collateral Agent as it relates to the Project Trust Accounts and funds or investments held therein, the Trustee has confirmed the matters set forth in Section 2.04(d) below. The Trustee further agrees that it shall execute such other documents as may reasonably be requested by the Collateral Agent in order to give the Collateral Agent control in accordance with the North Carolina UCC over any rights of Developer hereunder and in connection with the Project Trust Accounts, subject only to the express rights of NCDOT, including the rights described herein of NCDOT to deliver Certificates of NCDOT; provided,

however, that each of Developer and the Trustee expressly agrees and understands that no rights of control shall be given to the Collateral Agent that would provide to the Collateral Agent any greater rights than Developer itself would have to direct any disposition of funds held by the Trustee hereunder or that would otherwise conflict with the express terms and conditions of deposits into, and disbursements from, the Project Trust Accounts or otherwise in connection with the Project Trust Fund. NCDOT shall be entitled to receive a copy of any such other document.

(b) Security Interests of Developer. The Trustee agrees that for purposes of perfecting any security interest of Developer in the Post-Termination Revenue Account under the North Carolina UCC, the Trustee has confirmed the matters set forth in Section 2.04(d) below.

(c) No Other Security Interests. The Trustee hereby confirms that it has no knowledge that either Developer or NCDOT has created or suffered to exist any pledge or assignment of, lien on, or security interest in funds held by the Trustee at any time under this Project Trust Agreement (other than the security interests contemplated by Sections 2.04(a) and (b) in favor of the Collateral Agent or Developer) and that if the Trustee at any time receives any notice from any Person regarding any claim to the funds held by the Trustee under this Project Trust Agreement, the Trustee will promptly notify Developer and NCDOT and the Collateral Agent of such claim.

(d) Perfection of Security Interests by Control. The Trustee hereby represents and warrants and covenants the following in respect of the Project Trust Accounts, and each of Developer and NCDOT consents thereto:

(i) Role as Securities Intermediary. The Trustee is acting as securities intermediary (as defined in Section 25-8-102(a)(14) of the North Carolina UCC) in connection with the Project Trust Accounts.

(ii) Establishment and Maintenance of Securities Accounts. Each Project Trust Account has been, or will be when required, established in the manner contemplated by this Project Trust Agreement and will be a “securities account” as defined in Section 25-8-501(a) of the North Carolina UCC.

(iii) Financial Assets. Each item of property (whether investment property, financial asset, security, instrument, cash or other property) credited to any Project Trust Account shall be treated as a “financial asset” within the meaning of Section 25-8-102(a)(9) of the North Carolina UCC, and all such financial assets (except cash) credited to any Project Trust Account will be registered in the name of the Trustee, indorsed to the Trustee or in blank or credited to another securities account maintained in the name of the Trustee and in no case will any financial asset credited to any Project Trust Account be registered in the name of Developer or NCDOT, payable to the order of Developer or NCDOT, or specially indorsed to Developer or NCDOT unless such financial asset has been further indorsed to the Trustee or in blank.

(iv) Jurisdiction of Trustee as Securities Intermediary. For purposes of Section 25-8-110(e) of the North Carolina UCC, the jurisdiction of the Trustee, in its capacity as securities intermediary in respect of the Project Trust Accounts, is the State of North Carolina.

(v) Entitlement Holders. The sole entitlement holder for each Project Trust Account shall be Developer, provided that in exercising any rights as entitlement holder, Developer (and the Collateral Agent, at any time during a Project Debt Default Period) shall be limited by the rights specifically granted to NCDOT, including the rights described herein of NCDOT to deliver Certificates of NCDOT.

(vi) Entitlement Orders Generally. The Trustee shall promptly make the deposits, withdrawals, and payments contemplated to be made into or from the Project Trust Accounts. For purposes of this Project Trust Agreement, the Trustee shall treat each Certificate of Developer and Certificate of NCDOT contemplated hereby as an entitlement order relative to the Project Trust Accounts so long as such Certificate of Developer and Certificate of NCDOT is expressly contemplated by this Project Trust Agreement, and shall be entitled to rely on such entitlement orders in order to effect the payments to be made respectively, to NCDOT and Developer (or the Collateral Agent while any Project Debt Default Period is in effect).

(vii) Collateral Agent Instructions. Prior to the Trustee's receipt of a Project Debt Default Notice from the Collateral Agent, the Trustee shall be entitled to make any payments contemplated to be made to Developer in accordance with the instructions received by the Trustee from Developer. At any time after the Trustee's receipt of a Project Debt Default Notice and during a Project Debt Default Period, the Trustee shall (A) make any payments otherwise to be made to Developer as instructed by the Collateral Agent, and (B) any Certificate of Developer contemplated hereby shall be approved in writing by the Collateral Agent prior to its delivery to the Trustee, or may be delivered by the Collateral Agent to the Trustee on behalf of Developer. During any Project Debt Default Period, the Trustee agrees to comply with any “entitlement order” (as defined in Section 25-8-102(a)(8) of the North Carolina UCC) originated hereunder by the Collateral Agent in respect of any Project Trust Account to the extent Developer would otherwise be entitled to give such entitlement order in the manner specified above or any financial asset credited thereto without further consent by Developer, NCDOT or any other person or entity.

Section 2.05 Calculation of Daily Revenue Payment Amount.

For purposes of the certifications Developer is to deliver to the Trustee pursuant to Section 2.03(a)(i), Developer agrees that it shall calculate NCDOT’s “Daily Revenue Payment Amount” in the same manner as calculations of the NCDOT Revenue Payment Amount are made pursuant to Exhibit 5 to the CA, except that such

compensation shall be calculated for each applicable day on the basis of the balance in the Toll Revenue Account as of the opening of business on the Business Day of such calculation based on the Trustee's confirmation thereof on such day, less (i) the aggregate amount of funds, if any, transferred from Developer Claims Account and the NCDOT Claims Account and deposited into the Toll Revenue Account on or after the immediately preceding Daily Distribution Date, and (ii) any credits provided for under Section 2.02(b).

ARTICLE III.

COVENANTS

Section 3.01 Accounting Records and Statements.

The Trustee will keep proper accounting records in which complete and correct entries shall be made of all transactions made by it relating to the receipt, deposit and disbursement of funds into the Project Trust Fund, and any other funds received by Trustee hereunder and such accounting records shall be available for inspection by NCDOT, Developer or the Collateral Agent or their respective agents duly authorized in writing in accordance with NCDOT's inspection, access and audit rights under Article 22 of the CA. Not later than the fifteenth day of each month commencing on the first Substantial Completion Date, the Trustee will furnish to NCDOT, Developer and the Collateral Agent a statement covering all receipts of the Trustee for deposit into the Project Trust Fund and all transfers from and into the Project Trust Accounts and disbursements from the Project Trust Accounts for the preceding month.

ARTICLE IV.

DEFAULT AND LIMITATIONS OF LIABILITY

Section 4.01 Events of Default.

Each of the following events by Developer or NCDOT shall constitute Events of Default by such party for purposes of this Project Trust Agreement:

(a) Such party delivers a false or incorrect notice or certificate to the Trustee; or

(b) Such party defaults in the performance of any of the other agreements or covenants contained in this Project Trust Agreement required to be performed by it, and such default shall have continued for a period of 30 days after such party shall have been given notice in writing of such default by NCDOT, Developer, the Trustee or the Collateral Agent.

Section 4.02 Remedies.

Upon the occurrence of an Event of Default, the Trustee may (following notice given in writing to NCDOT, Developer and the Collateral Agent), and NCDOT may (following notice given in writing to the Trustee, Developer and the Collateral Agent), and Developer may (following notice given in writing to the Trustee, NCDOT and the Collateral Agent), and the Collateral Agent may (following notice given in writing to the Trustee, NCDOT and Developer) enforce its rights under this Project Trust Agreement as provided under applicable law. Notwithstanding the foregoing, each of NCDOT's and Developer's legal remedies hereunder are subject to the Dispute Resolution Procedures of the CA.

Section 4.03 Non-Waiver.

A waiver of any default or breach of duty or contract by the Trustee or NCDOT or Developer shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Trustee or NCDOT to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Trustee or NCDOT or Developer by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee or NCDOT. If any action, proceeding or suit to enforce any right or to exercise any remedy is abandoned or determined adversely to the Trustee or NCDOT, then the Trustee, the Collateral Agent, NCDOT and Developer shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Section 4.04 Remedies Not Exclusive.

No remedy conferred upon or reserved to the Trustee, NCDOT or Developer under this Project Trust Agreement is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by any law.

Section 4.05 No Liability by the Trustee.

The Trustee will have no obligation or liability to any Person with respect to the performance by Developer or NCDOT of any agreements and covenants required to be performed by Developer or NCDOT contained in the CA or by Developer of any agreements and covenants required to be performed by Developer.

ARTICLE V.

THE TRUSTEE

Section 5.01 Trustee; Duties, Removal and Resignation.

(a) By executing and delivering this Project Trust Agreement, the Trustee accepts the duties and obligations of the Trustee provided in this Project Trust Agreement, but only upon the terms and conditions set forth in this Project Trust Agreement.

(b) Developer (except during the continuance of an Event of Default by Developer) or, during any Project Debt Default Period, the Collateral Agent, may, by 30 days prior written request and subject to giving notice thereof to NCDOT and receiving the consent of NCDOT (which shall not be unreasonably withheld), remove the Trustee initially a party hereto, and any successor thereto, and in such event, or in the event the Trustee resigns, Developer shall appoint a successor Trustee approved by NCDOT, such approval not to be unreasonably withheld, delayed or conditioned, but any such successor shall be a bank or trust company in good standing doing business and having an office in Charlotte, North Carolina, having a combined capital (exclusive of borrowed capital) and surplus of at least Seventy-five Million Dollars ($75,000,000) and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of conditions so published.

(c) The Trustee may at any time resign by giving written notice to NCDOT, Developer and the Collateral Agent not less than 30 days prior to the date of resignation. Upon receiving any such notice of resignation Developer shall promptly appoint a successor Trustee by an instrument in writing; provided, however, that in the event that Developer does not appoint a successor Trustee within 30 days following receipt of such notice of resignation, the resigning Trustee may petition an appropriate court having jurisdiction to appoint a successor Trustee. Any resignation or removal of the Trustee shall not become effective until written acceptance of appointment by the successor Trustee under this Project Trust Agreement and written consent thereof given by NCDOT, such consent not to be unreasonably withheld.

(d) Any Trustee which shall resign or be removed pursuant to this Section shall be entitled to compensation due and payable in accordance with Section 5.02 and to reimbursement for all reasonable and proper expenses and advances incurred and not previously reimbursed for its activities in connection with this Project Trust Agreement and for any indemnification due pursuant to this Project Trust Agreement and not previously paid. Any Trustee which resigns or is removed, upon payment of its unpaid compensation and expenses hereunder, shall fully discharge all the right, title and interest of the retiring Trustee and the accounts and funds hereunder shall

vest in said successor Trustee, and such retiring Trustee shall promptly pay over, assign and deliver to the successor Trustee any money or other property constituting part of the Project Trust Fund and any other funds and accounts then held by such Trustee, and deliver any and all records, or copies thereof, in respect of the funds and accounts held hereunder which it may have.

Section 5.02 Compensation of the Trustee.

(a) In accordance with the terms of a separate agreement between Developer and Trustee, Developer shall pay from time to time, upon receipt of a statement, to the Trustee reasonable compensation for the Trustee's services and shall reimburse the Trustee for all its reasonable advances and expenditures, including but not limited to advances to and fees and expenses of independent accountants and attorneys-at-law or other experts employed by it in the exercise and performance of its powers and duties under this Project Trust Agreement, all as set forth in such separate agreement. Developer shall promptly pay such compensation and reimbursement in accordance with the terms of the separate agreement between Developer and the Trustee. Developer and Trustee expressly acknowledge and agree that NCDOT shall not be responsible to pay any fees or expenses of the Trustee in connection with this Project Trust Agreement.

(b) Developer shall indemnify, defend, protect and hold harmless the Trustee for all costs, claims, expenses and liabilities incurred by or asserted against the Trustee in the performance of its duties under this Project Trust Agreement or any related document, including any such reasonable costs, claims, expenses and liabilities incurred in the course of defending itself against any claims or actions or enforcing any remedies under this Project Trust Agreement or any related document. Any such indemnity shall not extend to any costs, claims, expenses or liabilities adjudicated to have been caused by the negligence or willful misconduct of the Trustee or NCDOT or the breach of the terms of this Project Trust Agreement by Trustee. The indemnification of the Trustee under this Project Trust Agreement shall extend to its directors, officers, employees and agents. The obligations of Developer under this Section shall survive the discharge of this Project Trust Agreement and the removal or resignation of the Trustee.

Section 5.03 Protection to the Trustee.

(a) Developer shall indemnify, defend, protect and hold harmless the Trustee and the Trustee shall incur no liability for acting upon any notice, resolution, consent, order, certificate, report or other paper or document contemplated hereunder and reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties. Any such indemnity shall not extend to any costs, claims, expenses or liabilities adjudicated to have been caused by the negligence or willful misconduct of the Trustee or NCDOT or the breach of the terms of this Project Trust Agreement by Trustee. The Trustee, in its discretion, may consult with counsel, who may be counsel to Developer, and the opinion or advice of such counsel, shall be full

and complete authorization and protection in respect of any action taken or suffered by it under this Project Trust Agreement in good faith in accordance therewith.

(b) The Trustee, either as principal or agent, may also engage in or be interested in any financial or other transaction with NCDOT or Developer or the Collateral Agent, and may act as depository, trustee, or agent for any committee or body of NCDOT or Developer or the Collateral Agent or with respect to other obligations of NCDOT or Developer as freely as if it were not the Trustee under this Project Trust Agreement.

(c) The recitals at the beginning of this Project Trust Agreement shall be taken and construed as made by and on the part of Developer, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of such recitals. The Trustee shall not be deemed to make any representations with respect to the security afforded by this Project Trust Agreement.

(d) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it under this Project Trust Agreement by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty under this Project Trust Agreement.

(e) The Trustee, undertakes to perform only such duties as are specifically set forth in this Project Trust Agreement.

(f) Every provision of this Project Trust Agreement relating to the conduct or liability of the Trustee shall be subject to the provisions of this Project Trust Agreement, including without limitation, this Article.

(g) Whenever in the administration of the duties of the Trustee under this Project Trust Agreement the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or not taking any action, the Trustee may request a signed Certificate of NCDOT or Certificate of Developer as to such matter, and such Certificate shall be full protection to the Trustee for any action taken or not taken in good faith reliance thereon.

Section 5.04 Merger or Consolidation.

Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company shall be eligible under Section 5.01 hereof, shall be the successor to the Trustee without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

Section 5.05 Waiver of Trustee Lien; Waiver of Trustee Set-off.

The Trustee waives any security interest, lien or right to make deductions or setoffs that it may now have or hereafter acquire in or with respect to the Project Trust Accounts, any financial asset credited thereto or any security entitlement in respect thereof (except as expressly set forth in the parenthetical phrase in the immediately succeeding sentence). Neither the financial assets credited to the Project Trust Accounts nor the security entitlements in respect thereof will be subject to deduction, set-off, banker's lien, or any other right in favor of any person (except that the Trustee may set-off funds in any Project Trust Account other than a NCDOT Account, the NCDOT Claims Account and the NCDOT Revenue Payment Account to pay (a) amounts due to the Trustee pursuant to the terms of a separate agreement between the Trustee and Developer, and (b) the face amount of any checks or ACH transactions that have been credited to any of the Project Trust Accounts but are subsequently returned unpaid or reversed because of uncollected or insufficient funds).

ARTICLE VI.

AMENDMENT OF OR SUPPLEMENT TO PROJECT TRUST AGREEMENT

Section 6.01 Amendment or Supplement by Consent.

No amendment of this Project Trust Agreement shall be valid or effective unless in writing signed by Developer, NCDOT and the Collateral Agent. Notwithstanding the foregoing, this Project Trust Agreement and the rights and obligations provided thereby may also be modified or amended at any time without the consent of the Collateral Agent, but only (a) for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Project Trust Agreement, or (b) in regard to questions arising under this Project Trust Agreement which the Trustee or Developer may deem necessary or desirable and not inconsistent with this Project Trust Agreement and which shall not materially adversely affect the interests of the Collateral Agent. Developer shall provide NCDOT with a written copy of any proposed amendment 30 days prior to its proposed effective date.

ARTICLE VII.

NCDOT'S RIGHTS UNDER PROJECT TRUST AGREEMENT

Section 7.01 Rights of NCDOT

(a) Developer or the Trustee, as appropriate, shall concurrently furnish to NCDOT a copy of any notice to be given to Developer, the Trustee and the Collateral Agent under this Project Trust Agreement.

(b) The Trustee, to the extent of its actual knowledge, shall notify NCDOT of any failure of Developer to provide relevant notices, certificates, or filings under this Project Trust Agreement.

(c) Developer agrees, upon the direction of NCDOT, to exercise Developer's rights hereunder to remove the Trustee for any breach of trust contained in this Project Trust Agreement. Developer shall also give prior written notice to NCDOT of any removal, resignation or termination of the Trustee, and no removal, resignation or termination shall become effective until a successor Trustee is appointed in accordance with the terms hereof and accepts the trusts created under this Project Trust Agreement.

(d) Without NCDOT's prior written approval in its sole discretion, Developer shall not (i) terminate or permit a termination of this Project Trust Agreement, (ii) agree to any amendment of any provisions of this Project Trust Agreement, or (iii) in any material respect waive, or fail to enforce, any provision of this Project Trust Agreement.

Section 7.02 No Responsibility for Fees and Expenses.

Notwithstanding the benefits afforded to NCDOT hereunder, each of Developer, the Trustee and NCDOT agree and confirm that the services of the Trustee hereunder are procured exclusively by Developer and NCDOT has no responsibility to pay any fees or expenses of the Trustee in connection with this Project Trust Agreement.

ARTICLE VIII.

MISCELLANEOUS

Section 8.01 Benefits of Project Trust Agreement.

Nothing in this Project Trust Agreement expressed or implied is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than Developer, NCDOT, the Trustee and the Collateral Agent, any right, remedy or claim under or by reason of this Project Trust Agreement or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Project Trust Agreement contained by and on behalf of Developer shall be for the sole and exclusive benefit of NCDOT, Developer, the Trustee and the Collateral Agent. Developer, the Trustee and NCDOT expressly recognize the Collateral Agent as a third party beneficiary of this Project Trust Agreement.

Section 8.02 Successor Deemed Included in all References to Predecessor.

Whenever Developer, NCDOT, the Trustee or any officer thereof is named or referred to herein, such reference shall be deemed to include the successor to the

powers, duties and functions that are presently vested in Developer, NCDOT, the Trustee or such officer, and all agreements, conditions, covenants and terms required hereby to be observed or performed by or on behalf of Developer, NCDOT, the Trustee or any officer thereof shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 8.03 Content of Certificates.

(a) Every Certificate of Developer or Certificate of NCDOT with respect to compliance with any agreement, condition, covenant or term contained herein shall include (i) a statement that the person or persons making or giving such Certificate have the authority to do so and have read such agreement, condition, covenant or term and the definitions herein relating thereto; (ii) a statement that, in the opinion of the signers they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such agreement, condition, covenant or term has been complied with; and (iii) a statement as to whether, in the opinion of the signers, such agreement, condition, covenant or term has been complied with.

(b) Any Certificate of Developer or Certificate of NCDOT may be based, insofar as it relates to legal matters, upon an opinion of counsel unless the person making or giving such certificate knows that the opinion of counsel with respect to the matters upon which such certificate may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous. Any opinion of counsel may be based, insofar as it relates to factual matters or information in the possession of Developer or NCDOT, upon a representation by an officer or officers of Developer or NCDOT unless the counsel executing such opinion of counsel knows that the representation with respect to the matters or upon which his opinion may be based, as aforesaid, is erroneous, or in the exercise of reasonable care should have known that the same was erroneous.

Section 8.04 Notices.

All notices, demands, requests, consents, approvals and other communications required or permitted hereunder shall be in writing and mailed via registered mail (return receipt requested), telecopied (and promptly confirmed by mail or delivery) or delivered (via courier service), if to Developer at its address at _____, facsimile number _____; if to NCDOT at its address at _____, Raleigh, North Carolina, 27610 Attention: _____; if to the Trustee at its address at [_____], North Carolina Attention: _____; or as to each party, at such other address as shall be designated by such party in a written notice to the other parties.

Section 8.05 Tax Reporting.

All items of income, gain, expense and loss recognized in the Project Trust Accounts (other than the NCDOT Accounts) or in respect of any financial assets credited thereto shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of Developer.

Section 8.06 Investments.

(a) Amounts on deposit in each Project Trust Account pursuant to this Project Trust Agreement shall be invested in Eligible Investments that will, as nearly as practicable, mature on or before the dates when such money is anticipated to be needed for disbursement hereunder. All investments of amounts in deposit in each Project Trust Account pursuant to this Project Trust Agreement shall be made in accordance with written directions that NCDOT gives from time to time with respect to the NCDOT Accounts, and in accordance with written directions that Developer gives from time to time with respect to all other Project Trust Accounts. The Trustee may act as principal or agent in the acquisition or disposition of any such investment. The Trustee shall not be liable or responsible for any loss suffered in connection with any such investment made by it under the terms of and in accordance with this Section 8.06. The Trustee may sell or present for prepayment any obligations so purchased whenever it shall be necessary in order to provide moneys to meet any payment of the funds so invested, and the Trustee shall not be liable or responsible for any losses resulting from any such investment sold or presented for prepayment. Interest or profit received on such investments shall be retained in the account that generated the interest or profit.

(b) The Trustee may exclusively rely that any investment directed by NCDOT or Developer, as the case may be, is an Eligible Investment as required by this Project Trust Agreement. The Trustee may act as depository, manager, advisor or sponsor with regard to any Eligible Investment.

(c) If Developer or NCDOT receive brokerage confirmations of security transactions as they occur, Developer or NCDOT, as the case may be, will forward such confirmations to the Trustee. The Trustee will furnish Developer and NCDOT monthly cash transaction statements as provided herein which include detail for all investment transactions made by the Trustee hereunder.

(d) In computing the amount in any fund or account, investments shall be valued at market value, exclusive of accrued interest. The Trustee shall perform determine, and shall notify NCDOT and Developer of, the value of each Project Trust Account pursuant to this Project Trust Agreement no more frequently than monthly.

(e) If at any time after investment therein an Eligible Investment ceases to meet the criteria set forth in the definition of Eligible Investments and such obligation, aggregated with other non-conforming investments, exceeds ten percent (10%) of invested funds, such Eligible Investment shall be sold or liquidated.

(f) Investment earnings on amounts held in the Project Trust Accounts shall be credited and applied as follows:

(i) Toll Revenue Account shall be for the benefit of Developer and may be withdrawn at any frequency Developer decides.

(ii) Investment earnings on amounts in the Developer Claims Account and the NCDOT Claims Account shall be retained therein and credited toward the balances required to be deposited therein, and shall be withdrawn and distributed only as provided in Section 2.03(b) and 2.03(c), respectively.

(iii) Investment earnings on amounts in the Post-Termination Revenue Account shall be retained therein and applied in accordance with Section 2.03(d).

(iv) Investment earnings on amounts in the Post-Termination Developer Claims Account shall be retained therein and credited toward the balances required to be deposited therein and shall be withdrawn and distributed only as provided in Section 2.03(e).

(v) Investment earnings on amounts in the Post-Termination Work Account shall be retained therein and applied in accordance with Section 2.03(f).

(vi) Investment earnings on amounts in the NCDOT Revenue Payment Account described in Section 2.03(g) shall be for the benefit of Developer and may not be withdrawn until annual payment of the NCDOT Revenue Payment Amount as provided in Part C, Section 3 of Exhibit 5 to the CA.

(g) To the extent relevant to any Project Trust Account other than the NCDOT Accounts, Developer shall be entitled to direct the Trustee with respect to the voting of any financial assets credited to such Project Trust Accounts, unless during a Project Debt Default Period in which case the Collateral Agent shall be entitled to direct the Trustee with respect to the voting of any financial assets credited to such Project Trust Accounts. To the extent relevant to any financial assets credited to the NCDOT Accounts, NCDOT shall be entitled to direct the Trustee with respect to the voting of any financial assets credited to such Project Trust Accounts.

Section 8.07 Article and Section Headings, Gender and References.

The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to “Articles,” “Sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words “hereby,” “herein,” “hereof,” “hereto,” “herewith,” “hereunder” and other words of similar import refer to this Project Trust Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

Section 8.08 Partial Invalidity.

If any one or more of the agreements, conditions, covenants or terms contained herein required to be observed or performed by or on the part of NCDOT, Developer or the Trustee shall be contrary to law, then such agreement or agreements, such condition or conditions such covenant or covenants or such term or terms shall be null and void and shall be deemed separable from the remaining agreements, conditions, covenants and terms hereof.

Section 8.09 North Carolina Law.

This Project Trust Agreement shall be construed and governed in accordance with the laws of the State of North Carolina. All litigation arising out of or pertaining to this Project Trust Agreement or its breach shall be filed, heard and decided in the General Court of Justice in Wake County, North Carolina, which shall have sole and exclusive jurisdiction and venue; provided, however, if an action must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the Eastern District of North Carolina

Section 8.10 Effective Date.

This Project Trust Agreement shall become effective upon its execution and delivery.

Section 8.11 Execution in Counterparts.

This Project Trust Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Project Trust Agreement by their officers thereunto duly authorized as of the day and year first written above.

[TRUSTEE], as Trustee

By: _____

Name: _____

Title: _____

[DEVELOPER], as Developer

By: _____

Name: _____

Title: _____

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

EXHIBIT 18

ELECTRONIC TOLL COLLECTION SERVICES FOR I-77 HOT LANES

[see attached]

EXHIBIT 18

ALL ELECTRONIC TOLL COLLECTION SERVICES FOR I-77 HOT LANES

I. GENERAL

A. The I-77 High Occupancy Toll (HOT) Lanes will be an Open Road Tolling operation ("ORT"). North Carolina Department of Transportation ("NCDOT") and Developer shall provide the required ETC Services for the HOT Lanes in accordance with this Exhibit 18 and the CA Documents. NCDOT shall perform all of its ETC Services through the North Carolina Turnpike Authority ("NCTA"). NCDOT operates toll collection services through a single, statewide system commonly referred to as NC Quick Pass. NC Quick Pass includes a (1) Central Clearing House ("CCH") serving as the account management system and (2) Customer Service Center ("CSC") back office system for all NCTA toll facilities within the State. The CCH is designed to be interoperable with all in-state toll facilities and all out-of-State toll facilities with which NCDOT has established or will establish Reciprocity Agreements, including E-ZPass® Group ("EZG"), Florida's Turnpike Enterprise or their respective successors. The CCH and CSC interface with all such toll facilities to distribute the status of active Transponders and Accounts and to receive and process Transactions carried out by any user of the toll facilities.

B. Developer and NCDOT may perform all or part of their respective ETC Services through one or more ETC Servicer in accordance with this Exhibit 18 and the CA Documents.

C. Developer shall give NCDOT at least 12 months prior written notice of the anticipated date of Substantial Completion of the first Project Section and provide a workplan for implementation of ETC Services so that NCDOT may plan for any required interface work and testing in accordance with Section 24.6.2 of the Technical Provisions. NCDOT shall cooperate with Developer to conduct and satisfy all testing required pursuant to Section 24.6.1 of the Technical Provisions.

II. NCDOT AND DEVELOPER BUSINESS POLICIES AND PROCEDURES

A. NCDOT standard operating procedures for CCH and CSC services as of the Effective Date are attached hereto as Appendix B of this Exhibit 18 ("NCTA Business Policies"). NCDOT may modify the NCTA Business Policies at any time during the Term; and Developer is subject to those modifications in accordance with this Exhibit 18 and the CA Documents. All modifications to the NCTA Business Policies or other future NCDOT CCH and CSC policies and procedures that affect Developer's ETC Services after the Effective Date are subject to review by Developer.

B. No later than 12 months prior to the anticipated date of Substantial Completion of the first Project Section, Developer shall submit to NCDOT proposed modifications to the NCTA Business Policies. After receipt by NCDOT of such proposed modifications, the Parties shall engage in discussions on the NCTA Business Policies to mutually agree on any Developer proposed modifications to such policies and procedures for the HOT Lanes.

C. No later than 12 months prior to the anticipated date of Substantial Completion of the first Project Section, NCDOT shall submit to Developer a proposed plan for Developer's monitoring of the CCH and CSC services provided by NCDOT under Paragraph IV. After receipt by Developer of such plan, the Parties will engage in discussions on the proposed plan to reach mutual agreement on the plan no later than 90 days prior to Substantial Completion of the first Project Section.

D. All Developer policies and procedures that affect NCDOT CCH and CSC operations are subject to review and approval by NCDOT (such approval not to be unreasonably withheld or delayed).

III. ETC SERVICES FURNISHED BY DEVELOPER

A. Developer shall be responsible for the performance of the following ETC Services for the HOT Lanes:

(1) provide ORT service to Users which allow the collection of the toll without the vehicle stopping or slowing down;

(2) detect vehicles;

(3) enforcement of the HOT lanes in accordance with Section 24.3.2.6 of the Technical Provisions;

(4) inform Users in real-time of the applicable toll rates using Toll Rate Signs in accordance with Section 18.3.5 of the Technical Provisions;

(5) classify each vehicle per the User Classification pursuant to Exhibit 4 of the Agreement;

(6) create a proof of passage by Toll Segment, including by video image review, in accordance with the CA Documents and applicable Law;

(7) create a proof of passage for each Trip, including by video image review, in accordance with the CA Documents and applicable Law;

(8) generate accurate Trip Transactions for all Trips and maintain proper records of such Transactions with the proper records for all Trips sent to the CSC for customer service purposes;

(9) maintain a database of all the displayed toll rates by Toll Segment, direction, and time of day;

(10) accurately calculate and assign the toll for the use of the HOT Lanes, in accordance with Exhibit 4 of the Agreement and Section 24 of the Technical Provisions;

(11) check proof of passage records, including Transponder reads and video images, against the most recent valid Transponder status list provided each business day by NCDOT;

(12) transmit each day all accurate and certified Trip Transactions and video records from the roadside host/computer/router/server for a User to the CCH;

(13) maintain records of Toll Segments and Trip Transaction records by vehicle;

(14) procure certain Transponders in accordance with Paragraph V.A ;

(15) establish, administer, and operate the necessary ETCS data and communication lines, software, hardware, and equipment to send Transaction information to the CCH; and

(16) other ETC Services set forth in Section 24 of the Technical Provisions.

B. In performing all of its ETC Services, Developer shall be responsible for meeting the requirements set forth in the CA Documents, including those for an ETCS as required in Section 24 of the Technical Provisions and Exhibit 4 of the Agreement.

C. The Developer's performance of its ETC Services shall comply with the requirements set forth in Table 23.2 and Table 23.3 of the Technical Provisions. Failure to comply with such requirements may result in Noncompliance Points and/or trigger the remedies set forth in the CA Documents.

D. Developer shall take no actions that violate or affect any of the terms of any Reciprocity Agreement that is incorporated as part of the CA Documents and that a copy has been provided to the Developer by NCDOT at least 60 days prior to its incorporation as part of the CA Documents; provided, however, that Developer shall not be required to comply with the terms of any Reciprocity Agreement that is in violation of applicable Law.

E. In addition, pursuant to Section 24 of the Technical Provisions, Developer shall provide Level Two Customer Service to Users of the HOT Lanes. The Level Two Customer Service may be provided by Developer, its Affiliates or an ETC Servicer. Developer may enter into an agreement with NCDOT to perform such services on behalf of Developer from time to time under separate agreement from the CA Documents. Furthermore, Developer shall provide on-site personnel and information to NCDOT from time to time for purposes of training NC Quick Pass personnel to respond to customer inquiries concerning Developer's toll regulation set forth in Exhibit 4 of the Agreement.

IV. ETC SERVICES FURNISHED BY NCDOT

A. NCDOT shall be responsible for the performance of the following ETC Services for the HOT Lanes:

(1) establish, administer, and operate the CCH, including but not limited to the necessary data and communication lines, facilities, office supplies, software, hardware, and equipment, and necessary personnel. Following receipt of a properly formatted and certified Transaction provided by Developer, the CCH will provide the following services:

For each Transaction:

(a) accurately process Transactions received from the Developer by the CCH for the HOT Lanes by Account;

(b) charge each Transaction and apply each payment received to the corresponding Account;

(c) apply applicable Incidental Charges to each Account; and

(d) transmit Transponder status lists and Video Prepaid status lists (if applicable) at least once every 24 hours pursuant to the NCTA Business Policies.

For each Transaction for a Video Postpaid Account, also:

(e) provide secure interface with the DMV to exchange User information;

(f) look up DMV records with the current states, including North Carolina that NCDOT has agreements with to identify the registered vehicle owner corresponding to the Transaction's video image including the license plate information;

(g) create a Video Postpaid Account on behalf of a first time User;

(h) store and manage Video Postpaid Account information;

(i) generate an initial bill for the Video Postpaid Account; and

(j) generate any required subsequent bill or notice for unpaid Video Postpaid Accounts for all Transactions as required in Paragraph VII.D.

For each Account:

(k) reconcile financial transactions and payments among toll facilities, including the pro-rata share of Toll Revenues owed to the HOT

Lanes from all Toll Revenues collected on behalf of NCDOT toll facilities through any reciprocity and collection actions taken in accordance with the NCTA Business Policies;

(l) conduct Financial Clearing pursuant to this Exhibit 18;

(m) provide accurate accounting and financial reporting in U.S. dollars and according to U.S. GAAP; and

(n) provide reciprocity with all other organizations with which NCDOT has entered into a Reciprocity Agreement.

(2) establish, administer, and operate the CSC, including, but not limited to, the necessary data and communication lines, office supplies, software, hardware and equipment and providing the necessary personnel as set forth in Section 24 of the Technical Provisions. CSC operations include:

(a) the establishment of a walk-in customer service center in the Charlotte area only as required by North Carolina General Statutes § 136-89.213 as of the Effective Date;

(b) the activities described in Paragraph V;

(c) except for Level Two Customer Service, provide customer relationship management including the following services for the HOT Lanes:

- open, set up, and close accounts to receive ETC Services;
- accurately manage Accounts, including invoicing and billing, research, mailing or posting of statements, and receipt of payment and posting of such payment;
- generate requests for payment including bill by mail escalation in accordance with the NCTA Business Policies;
- determine and impose Incidental Charges (except those determined and imposed directly by Developer if any);
- monitor and manage the payment of outstanding tolls and any Incidental Charges (except those Incidental Charges determined and imposed directly by Developer if any), including adjudication of the outstanding amount in accordance with applicable Law;
- manage and respond to customer correspondence and inquires;

- provide courteous customer dispute resolution services including the appropriate transfer to Developer for Level Two Customer Service for those User inquiries related to a User disputing a toll that may require an adjustment to the toll previously charged to a User; and

- accept cash payment of the toll and Incidental Charges (except those Incidental Charges determined and imposed directly by Developer if any) in accordance with applicable Law.

(3) establish, administer, operate and maintain a call center in which employees will perform all customer relationship management activities except enrollment of Customer to receive ETC Services;

(4) establish, operate and maintain a self-service website which, at a minimum, will allow the User to:

(a) make a service request;

(b) enroll for ETC Services;

(c) maintain an Account;

(d) make a payment, including a one-time payment;

(e) view and print financial and Transaction history;

(f) view and print statements;

(g) report lost/ stolen Transponders;

(h) request additional Transponders;

(i) request an Account closure; and

(j) make Video Postpaid Account payments.

(5) establish, operate and maintain an Interactive Voice Response ("IVR") phone system which, at a minimum, will allow the Customer to:

(a) obtain NC Quick Pass information;

(b) make a payment, including a one-time payment;

(c) maintain an Account;

(d) query Account balance;

(e) receive most recent payment information; and

(f) obtain Transponder status.

B. NCDOT shall perform its ETC Services in accordance with the NCTA Business Policies (as may change from time to time), applicable Law, and the performance requirements set forth in Appendix C of this Exhibit 18.

C. NCDOT's performance of its CCH and CSC Services shall comply with the minimum performance requirements set forth in Appendix C of this Exhibit 18. Noncompliance with the minimum performance requirements identified in Table C-1 of Appendix C shall result in CCH/CSC Noncompliance Points and trigger the remedies set forth in Appendix C.

D. NCDOT will provide a minimum of 60 days advance notice to Developer of any planned changes to any CSC operations that may materially affect Developer and will, with good faith cooperation, seek Developer's comments on any such changes and incorporate any mutually agreeable proposals to the changes. Further, NCDOT will provide written notice to Developer prior to the renewal/exercising of an option for any ETC Servicer contracts in effect as of the Effective Date and seek comments from Developer prior to the preparation of any solicitations for an ETC Servicer during the Term.

V. PROCUREMENT AND DISTRIBUTION OF TRANSPONDERS

A. Developer shall procure only those Transponders (or equivalent technology) for the HOT Lanes that are required to correctly identify and classify the vehicle as HOV or LOV per the User Classification in Exhibit 4 of this Agreement and in accordance with Section 24 of the Technical Provisions. Such Transponders procured by Developer shall be interoperable with all in-State toll facilities and all out-of-State toll facilities with which NCDOT has established Reciprocity Agreements. Developer may enter into an agreement with NCDOT to perform such services on behalf of Developer from time to time under separate agreement from the CA Documents. Developer shall establish the User purchase price for such Transponders so that its reasonable out-of-pocket and documented costs and expenses directly incurred with respect to such Transponders may be recovered.

B. Developer may determine that the Transponders described in Paragraph V.A may be provided to a User at a cost lower than the purchase for a certain period of time. Such period of time shall be determined solely by Developer.

C. NCDOT shall procure those Transponders for each User of the HOT Lanes, except those described in Paragraph V.A in accordance with NCTA Business Policies.

D. The NCDOT CSC shall manage and distribute Transponder inventory, including those Transponders (or equivalent technology) purchased by Developer that are required to correctly identify and classify the vehicle as HOV or LOV per the User Classification in Exhibit 4 of this Agreement.

(1) Developer shall have no liability for the storage and risk of loss of Transponder inventory purchased by Developer once such inventory is accepted by and transferred to NCDOT CSC for storage. If such Transponder inventory is damaged or destroyed on NCDOT's storage site, NCDOT shall reimburse Developer the purchase price of such damaged or destroyed Transponders that require replacement.

(2) NCDOT shall ensure that a minimum of 60 business days of Transponder inventory (as measured by the average daily distribution for the previous 180 business days by Transponder type), including those described in Paragraph V.A, are available for distribution. Such minimum daily inventory shall be no less than 100 of each Transponder type distributed by the NCDOT CSC from 90 Business Days prior to the first Substantial Completion Date to 90 Business Days after Final Acceptance of the Project.

E. The CSC shall also perform the following duties:

(1) obtain the appropriate payment for the purchase of the Transponder from the Customer, including applicable sales tax and from Developer as described in Paragraph V.B;

(2) establish or modify an Account for such Transponders;

(3) conduct Financial Clearing of the Customer payment and make subsequent payment each Business Day to the Developer for any purchase of those Transponders procured by the Developer by wire transfer to the trustee under the Project Trust Agreement pursuant to this Exhibit 18; and

(4) provide information each Business Day as part of a disbursement report on the number of Transponders purchased by the Developer that have been purchased by a Customer and the payment collected for such Transponders and credited to the Developer.

VI. SYSTEMS

A. General

(1) Developer and NCDOT acknowledge that each shall operate independent but compatible systems for the electronic tolling of Users. NCDOT and Developer will each continue to be responsible for the operation, maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of all equipment, including any communications links, for their respective systems. Specifically, Developer will be responsible for the operation, maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of all necessary roadside, in-lane and computer equipment for its ETCS through and including any equipment required to transmit and deposit Transaction files to the CCH host server. NCDOT will be responsible for the operation, maintenance, repair, reconstruction, rehabilitation, restoration, renewal or replacement of its NC Quick Pass system commencing from the CCH host server and extending through and including NCDOT telephone lines, routers, black boxes and the CSC as well as to all out-of-State toll facilities with which NCDOT has established Reciprocity Agreements.

(2) Developer shall design, fabricate, construct, operate and maintain the HOT Lanes ETCS in accordance with the CA Documents, including Section 24 of the Technical Provisions and all applicable NCDOT Standards. Specifically, Developer will maintain its ETCS to perform and transmit accurate Transaction information to NCDOT.

(3) Developer and NCDOT acknowledge and agree that the parameters and requirements for the exchange of the Transaction file at the CCH host server shall be compatible with the parameters and requirements used by NCDOT. NCDOT will provide data formats, documentation, interface requirements and any other necessary design information to Developer at no additional cost to Developer. Such information shall include, but not be limited to, the standard protocol for daily Transaction reports as well as transmission, adjustment, reconciliation, and post Financial Clearing files and records. NCDOT shall provide such information so that the Developer can incorporate it into the ETCS Testing Plan pursuant to Section 24.5 of the Technical Provisions.

(4) If NCDOT notifies Developer that Developer's ETCS is not operating in accordance with Section 24 of the Technical Provisions, NCTA Business Policies (as may change from time to time), applicable Law, and the performance requirements set forth in Table 23.2 of the Technical Provisions, Developer will promptly initiate appropriate corrective action in accordance with the CA Documents.

(5) If Developer notifies NCDOT that NCDOT's ETCS is not operating in accordance with Section 24 of the Technical Provisions, NCTA Business Policies (as may change from time to time), applicable Law, and the performance requirements set forth in Table C.1 of Appendix C of this Exhibit 18, NCDOT will promptly initiate appropriate action in accordance with the CA Documents.

B. Notification of Modifications to Systems

(1) Each Party will notify the other in writing at least 120 days in advance of any change or modification to such Party's system that may affect the other Party's system in any material respect. Except as provided in the CA Documents, each Party shall be responsible for its own cost associated with the installation and testing of any system modification. At NCDOT's request, Developer may participate in the installation of upgrades or other modifications to NC Quick Pass. In any such event, each Party will provide proposed test schedules and scripts for such upgrades or other modifications to the other party at least 60 days in advance of testing.

(2) Should NCDOT notify Developer that data formats, documentation, interface requirements and/or NC Quick Pass design will change prior to 365 days after Final Completion, Developer shall have the rights and remedies set forth in Section 12.1.2 of the Agreement.

C. Developer Modifications to ETCS

As tolling technology changes, Developer may modify or upgrade the ETCS in keeping with Good Industry Practice and as set forth in Section 12.1.1 of the Agreement. In such cases, Developer will cause the ETCS to be compatible with NC Quick Pass system. Any agreed upon modifications necessary to the NC Quick Pass due to a request by or modification made by Developer shall be at the expense of Developer.

D. NCDOT Modifications to NC Quick Pass

(1) As toll technology changes, NCDOT may modify or upgrade the statewide NC Quick Pass system. In such cases, Developer will cause the ETCS to be compatible with the statewide NCDOT Quick Pass system pursuant to Section 12.1.1 of the Agreement and in accordance with applicable Law.

(2) NCDOT will exercise due care and diligence in planning and implementing modifications, upgrades and associated testing of its statewide system at levels which are reasonable given the schedule, scope and budget for the system and will not exceed what is considered customary and reasonable for hardware and software processing systems.

(3) NCDOT does not guarantee against adverse impacts to the performance of the hardware or software in Developer's or others' systems due to modifications, upgrades and associated testing of its statewide system. While precautions will be taken by NCDOT to help mitigate the risk of occurrence of such adverse impacts, NCDOT will not, except as otherwise provided in the CA Documents, be financially responsible for the occurrence of adverse impact to Developer or other third parties affected during such modifications, upgrades and associated testing.

E. System Performance Failures and Delayed Transactions

(1) Except as otherwise provided in this Exhibit 18 and Section 24 and Table 23.2 of the Technical Provisions, both Developer and NCDOT will report as promptly as possible and no later than 18 hours from when the Parties received notice thereof, of any system failure or degradation that may affect ETC operations.

(2) In the event that Developer is unable to send Transactions for the HOT Lanes for periods in excess of 24 hours, Developer shall notify NCDOT prior to sending any backlogged Transactions for the HOT Lanes. Such backlogged Transactions shall be included in performance measurements of Developer in accordance with Table 23.2 of the Technical Provisions, but shall not be considered in performance measurements of NCDOT in accordance with Appendix C of this Exhibit 18.

(3) Any Transactions not sent by Developer within 45 days of occurrence shall not be assigned to the User's Account, unless the delay is due to failure by NCDOT.

(4) If NCDOT is unable to process Transactions for the HOT Lanes for any period in excess of 24 hours, NCDOT will notify Developer as promptly as possible and no later than 48 hours of such fact. If Transactions are not assigned to the User's Account within 90 days of occurrence because NCDOT is unable to process Transactions and such delay is due to failure by NCDOT, the outstanding toll amount due will promptly be transferred to Developer by NCDOT in accordance with Paragraph VII.B(3) and shall be included in performance measurement of NCDOT in accordance with Appendix C of this Exhibit 18.

VII. PAYMENT TERMS

A. Account Types

NCDOT and Developer acknowledge and agree that User Accounts shall be classified and identified as one of the following Account types as of the Effective Date:

(1) ETC Prepaid Account for Users with Transponders (or equivalent technology); or

(2) Video Postpaid Account for Users using the Developer's video identification system but not already registered with NCDOT.

No later than one year prior to the scheduled date of Substantial Completion of the first Project Section, NCDOT and Developer may further agree to establish the following additional type of account for certain or all Users:

(3) Video Prepaid Account for Users using the Developer's video identification system but preregistered and prepaid with NCDOT.

Such Accounts shall be established and maintained in accordance with the CA Documents and applicable Law. NCDOT shall take all actions necessary to collect the amounts owed from each Account and User of the HOT Lanes in accordance with this Exhibit 18, the NCTA Business Policies, as may be amended from time to time, and applicable Law. However, except as specifically provided in the CA Documents, NCDOT shall have no liability to Developer for any amounts owed by the User for use of the HOT Lanes if such amount owed has not been received by NCDOT.

B. Account Payments

(1) Developer agrees to send complete and accurate Transactions to the CCH at least once every 24 hours by an agreed upon time and to certify the accuracy of such Transactions and in any case to meet the performance requirements set forth in Section 24 and Table 23.2 of the Technical Provisions.

(2) Upon Substantial Completion of the first Project Section, NCDOT agrees to begin processing complete, accurate and certified Transactions transmitted by Developer for Financial Clearing. NCDOT shall initiate the first wire transfer to the trustee under the Project Trust Agreement on the sixth Business Day after the first complete, accurate and certified Transaction is transmitted and after a payment for such a Transaction has been received and Financial Clearing completed on payment for such Transaction.

(3) Upon Substantial Completion of the first Project Section, NCDOT agrees to begin processing payments owed to Developer by the Users, including those from Video Postpaid Transactions, other toll facilities, and Incidental Charges.

(4) Beginning on the sixth Business Day after Substantial Completion of the first Project Section, NCDOT agrees to initiate payment by wire transfer or other method agreed upon between NCDOT and Developer to the trustee under the Project Trust Agreement on or before the close of business of each Business Day, an amount equal to the daily aggregate tolls received plus any payment of any Incidental Charges, Pass Through Fees, or Transaction Fees owed the Developer, less payment of the applicable Transaction Fee and any Pass Through Fees owed by the Developer to NCDOT pursuant to this Exhibit 18. NCDOT shall not be obligated to initiate such payment prior to Financial Clearing or in cases of system failure that prevents Developer from sending Transactions or NCDOT from processing Transactions from Developer. Payments which were not made due to system failure in accordance with this Paragraph VII.B(3) will be made by NCDOT to Developer the next Business Day after Financial Clearing following the correction of the system failure.

Notwithstanding the foregoing, such system failure may result in CCH/CSC Noncompliance Points and trigger remedies in accordance with Appendix C.

(5) In accordance with NCTA Business Policies, NCDOT agrees to process and send Video Postpaid Transactions as a Bill by Mail invoice on the 30th day after receipt by the CCH of the first Video Postpaid Transaction for the initial invoice to the User, and at 35 days billing cycles for any subsequent invoices.

(6) In addition to Developer's rights under Section 3.6.1 of the Agreement, NCDOT disclaims any interests in tolls owing or remitted to NCDOT by or on behalf of a User for a Transaction to the extent such tolls are owed to Developer pursuant to this Exhibit 18. Nothing in this Paragraph VII.C.(6) shall adversely affect, prejudice or diminish NCDOT's rights to deduct payments owed by Developer to NCDOT under the CA Documents, NCDOT's rights to any Revenue Payment Amounts, NCDOT's rights to its portion of any Incidental Fees under this Exhibit 18, or NCDOT's rights under the Project Trust Agreement.

C. ETC Prepaid Account and Video Prepaid Account

(1) NCDOT and Developer acknowledge and agree that:

(a) NCDOT has established or will establish an ETC Prepaid Account (and a Video Prepaid Account to the extent agreed upon by the Parties);

(b) Any Customer who is classified as a HOV User shall have an ETC Prepaid Account;

(c) Any Exempt Vehicle shall have a Transponder and be considered an ETC Prepaid Account;

(d) NCDOT is the sole owner of the ETC Prepaid Account and the Video Prepaid Account and has the exclusive right, power and authority, at the exclusion of Developer and all other Persons, to exercise sole dominion and control of the ETC Prepaid Account and the Video Prepaid Account; and

(e) Developer will have no right, title or interest in and to the ETC Prepaid Account and the Video Prepaid Account.

(2) If the ETC Prepaid Account or Video Prepaid Account does not have sufficient funds, the Account shall be converted to a Video Postpaid Account and the corresponding Transactions owned by the ETC Prepaid Account or Video Prepaid Account with insufficient funds shall be treated as Video Postpaid Transactions. In such cases, all Transactions charged to an ETC Prepaid Account or Video Prepaid Account that has been

converted to a Video Postpaid Account shall be treated as Video Postpaid Transactions until such time the Account is converted back to an ETC Prepaid Account or Video Prepaid Account, as the case may be, in accordance with the NCTA Business Policies.

D. Video Postpaid Account

NCDOT and Developer acknowledge and agree that:

(1) A User, other than an Exempt Vehicle, may chose not to have a pre-paid Account, whether it is a Video Prepaid Account or an ETC Prepaid Account, in accordance with applicable Law;

(2) NCDOT will in accordance with the NCTA Business Policies identify and invoice the Video Postpaid Account on the 30th day after receipt by the CCH of the certified Transaction for the initial invoice to the User, and at 35-day billing cycles for any subsequent invoices; and

(3) A Video Postpaid Account shall be considered delinquent in accordance with the NCTA Business Policies and applicable Law.

E. Reciprocity Agency Accounts

NCDOT and Developer acknowledge and agree that:

(1) NCDOT may enter into Reciprocity Agreements with out-of-State toll facilities regarding the exchange of customer payments from ETC Prepaid Accounts at least once every month ("Reciprocity Agency Accounts") and will negotiate any associated fees at the time of agreement that are in line with other toll facilities;

(2) NCDOT agrees to initiate payment by wire transfer or other method agreed upon between NCDOT and Developer to the trustee under the Project Trust Agreement on or before the close of business of each Business Day after Financial Clearing, an amount equal to the aggregate tolls plus any applicable Transaction Fees and/or Pass Through Fees received by NCDOT from Reciprocity Agency payments received, less payment of any applicable Transaction Fees and any Pass Through Fees made to the Reciprocity Agency on behalf of Developer by NCDOT.

F. Transaction Accounting and Disputes

(1) Each Business Day, Developer shall communicate by e-mail or other agreed upon manner to NCDOT a report listing Transactions from the previous Business day, holiday, or weekend days, as applicable. Each Business Day, NCDOT will communicate to Developer by e-mail or other agreed upon manner a disbursement report reflecting Toll Revenues credited to Developer as set forth in the Project Trust Agreement the prior Business Day. Such report will provide sufficient detail of the Toll

Revenues to distinguish by Account as applicable, gross toll revenues received, the Transaction Fees, Incidental Charges, and Pass Through Fees.

(2) If at any time Transaction toll revenue reflected in the disbursement report is out of balance with the associated reported Transactions by $50.00 or more for any 3 consecutive Business Days, Developer shall notify NCDOT. NCDOT shall provide a detailed disbursement file within five Business Days of Developer's notification. Developer shall compare the detailed disbursement report to its detailed records (including any audit) and provide details regarding the disputed Transactions sufficient to update the Accounts. If Developer cannot provide detail sufficient to update the Accounts within 45 days of the occurrence of the Transactions, those Transactions will not be charged to the Accounts and will not result in Toll Revenue to the Developer. Developer shall send the detailed data to NCDOT with comparisons of Transactions to include the Transaction sequence number(s) and the acknowledgement verification by the CCH.

(3) Transaction disputes shall be resolved on a no less than bi-weekly basis in accordance with Paragraph II of this Exhibit 18, Developer and NCDOT shall jointly establish procedures for reconciliation and dispute resolution of Transactions including for payment of the associated Transaction toll revenue and any Incidental Charges. The CSC shall resolve disputes that are recognized and/or identified as valid by adjusting the funds that are owed to Developer in the next subsequent payment. Any Transactions rejected by an out-of-State toll facility will be identified in a report, which will be communicated to Developer on a no less than monthly basis. Such rejected Transactions will be handled according to documented or generally accepted reconciliation procedures.

G. Transaction Fees and Pass Through Fees

(1) NCDOT and Developer acknowledge and agree that because of the Account types allowed under applicable Law as of the Effective Date, a different Transaction Fee may apply to each type of Account. The Transaction Fee applicable to each type of Account is set forth in Appendix A of this Exhibit 18. Developer agrees to pay the required Transaction Fee based upon the number and type of Transactions processed. Each Transaction Fee shall be for one Trip.

(2) The Transaction Fees do not include the Pass Through Fees and Developer agrees to pay the Pass Through Fees (if any) assessed with respect to a Transaction.

(3) NCDOT will manage all Financial Clearing responsibilities associated with collection and transmission of Toll Revenue received from Transactions to Developer in accordance with the Project Trust Agreement and the

assessment of Transaction Fees and Pass Through Fees in accordance with this Exhibit 18.

(4) NCDOT shall deduct the required Transaction Fee and any Pass Through Fees from the payment by wire transfer to the trustee under the Project Trust Agreement each Business Day in accordance with this Exhibit 18. NCDOT shall cause the amount owed, if any, to other entities, including but not limited to financial institutions and other interoperable toll facilities, from the required Transaction Fee and Pass Through Fees to be promptly deposited into the accounts of such entities as agreed to with those entities.

H. ETC Services Change Orders

(1) The Transaction Fees, Pass Through Fees and NCDOT's share of the Incidental Charges (if any) are for the ETC Services furnished by NCDOT under this Exhibit 18 as of the Effective Date.

(2) During the Term, Developer and NCDOT may agree on changes to the ETC Services furnished by NCDOT. Such changes shall be by an ETC Services Change Order executed by both Parties, setting forth the changes to the ETC Services furnished by NCDOT, the compensation and payment terms for such changes, and any other matters applicable to such changes.

I. Incidental Charges

(1) In accordance with applicable Law, the following Incidental Charges in effect as of the Effective Date shall be shared with Developer in accordance with this Exhibit 18 and as shown below:

Incidental Charges				
Fee	**Fee Implementation**	**Fee Amount**	**NCTA Allocation**	**Developer Allocation**
Processing Fee [1]	Invoices unpaid within 30 days.	$ 6.00 [2,3]	Processing Fees will be allocated based on percentage of Processing Fees collected in each payment that are related to all other North	Processing Fees will be allocated based on percentage of Processing Fees collected in each payment that are related to a Transaction on the HOT Lanes

			Carolina toll facilities other than the HOT Lanes	
I-Toll Fee	Sixty (60) days after opening an account, any account with I-Tolls in excess of 15% on a monthly basis	$5.00 per month	I-Toll Fees will be allocated based on percentage of I-Toll Fees collected in each payment that are related to all other North Carolina toll facilities other than the HOT Lanes	I-Toll Fees will be allocated based on percentage of I-Toll Fees collected in each payment that are related to a Transaction on the HOT Lanes
Non-Sufficient Fund Fees		$ 25.00	Non-Sufficient Fund Fees will be allocated based on NCTA revenue percentage collected in each payment related to all North Carolina toll facilities other than the HOT Lanes	Non-Sufficient Fund Fees will be allocated based on Developer revenue percentage collected in each payment related to the HOT Lanes

[1] Fee amount is subject to applicable Law.
[2] Pursuant to applicable Law as of the Effective Date, $48.00 is the maximum processing fee for a 12-month period.
[3] Under applicable Law, a collection agency shall be used to collect delinquent tolls and associated Incidental Charges.

(2) For each Incidental Charge, the pro-rata share shall be reviewed upon the mutual agreement of NCDOT and Developer or upon any change in Law. Should such change in Law revise the fee amount, NCDOT and Developer shall notify the public using all necessary measures to communicate to the public the schedule of NCDOT imposed Incidental Charges, including through the use of a public Internet website, by phone, or in person at the Customer Service Center during reasonable business hours, or by any other reasonable means of communication. NCDOT shall deduct its share of the Incidental Charges received, if any, from the payment by wire transfer to the trustee under the Project Trust Agreement each Business Day in accordance with this Exhibit 18.

(3) As of the Effective Date, no additional Incidental Charges are authorized to be charged by Developer. However, should changes in Law allow, Developer will have the right to charge reasonable Incidental Charges to Users of the HOT Lanes to recover its reasonable out-of-pocket and documented costs and expenses directly incurred with respect to the items, services and work for which they are levied, subject to applicable Law. In addition, Developer shall bear the cost of any changes to Incidental Charges that require changes to the CCH and CSC if such changes only inure to the benefit of the HOT Lanes. If such required changes benefit all toll facilities in North Carolina, such costs shall be proportionally borne by all facilities pursuant to an agreed upon modification to NCTA Business Policies as set forth in Paragraph II.C.

(4) If Developer desires to implement any change to any authorized Incidental Charges and such change requires a modification to NC Quick Pass, the requirements of Paragraph VI.B shall be met.

(5) If Developer desires to implement any change to any authorized Incidental Charges, at least thirty days prior to the effective date of any change, Developer shall provide NCDOT with a written revised schedule of Incidental Charges and shall publish such schedule in the same manner as set forth in Paragraph VII.I(1). Any such Incidental Charges shall be incorporated into the NCTA Business Policies.

(6) Developer shall have the right to treat as Video Postpaid Account Transactions, and except as provided otherwise below, to charge and collect (or cause to charge and collect), in addition to the toll, any associated Incidental Charges for Video Postpaid Account Transactions that normally would constitute ETC Prepaid Account Transactions in the following circumstances and subject to all of the following terms and conditions:

(a) The Transponder Issuer for the ETC Prepaid Account Transactions must be a Person other than Developer or its Affiliates or NCDOT, NCTA or the ETC Servicer.

(b) The Transponder Issuer and Developer must not have a legally enforceable agreement in effect (whether direct or via designated third party beneficiary rights) providing rights, obligations and remedies regarding financial interoperability and funds transfer.

(c) If the Transponder Issuer fails to rectify payments owed to Developer and provide reasonable assurance of continued payments within 50 days, Developer must post notice on the HOT Lanes website and in a newspaper of broad, general circulation in the HOT Lanes area announcing to the public that transponders issued by the Transponder Issuer will cease to be recognized on the HOT Lanes and Users holding such Transponders will be considered a Video Postpaid Account from and after a date stated

in the notice. Such date shall be no earlier than seven days after the date the notice is posted. Furthermore, Developer shall refer such User to the CSC so an ETC Prepaid Account may be established by the User.

(d) If the conditions outlined in (a) through (c) above are satisfied, then with respect to prior ETC Prepaid Account Transactions remaining unpaid by the Transponder Issuer after lapse of such time period, Developer may elect to seek recovery from the Transponder Issuer to the extent available under applicable Law. Developer shall not seek to collect directly from the subject Users the ETC Prepaid Account Transaction tolls and any associated fees. Developer shall treat such Users the same as any other User with a Video Postpaid Account.

VIII. MARKETING

Developer will develop and coordinate marketing for the HOT Lanes with NCDOT in accordance with Section 3 of the Technical Provisions. Developer will be responsible for all costs incurred by Developer for the marketing of the HOT Lanes as included in the most recent annual update of the Communication, Public Outreach and Community Education Plan pursuant to Section 3.3 of the Technical Provisions. The most recent annual update will be the Communication, Public Outreach and Community Education Plan approved by NCDOT on the date closest to the first Substantial Completion Date. If Developer requests NCDOT's assistance to implement the Communication, Public Outreach and Community Education Plan, Developer shall reimburse NCDOT for the NCDOT Recoverable Costs incurred for such assistance. NCDOT will, in good faith cooperation, include Developer in its marketing efforts for NC Quick Pass and ETC Services. However, either Party may implement, at its own cost, supplemental marketing efforts which are in addition to those provided by the mutually agreed upon Communication, Public Outreach and Community Education Plan after informing the other Party in writing of such supplemental efforts. Developer will be provided usage of, and is hereby granted, a license to use the term "NC Quick Pass" or any such successor. Developer may also use the NC Quick Pass logos and logos of the Reciprocity Agencies to the extent allowed by such Reciprocity Agencies at no charge for operational and marketing purposes and NCDOT represents and covenants that it has lawful authority to grant such license; provided that NCDOT will retain the right of prior approval of any such use, such approval not to be unreasonably withheld, conditioned or delayed.

IX. LIAISON; MEETINGS

A. Each Authorized Representative of NCDOT and Developer will designate a person and an alternate whose responsibility will be to meet periodically with each other.

B. From time to time and at the request of either NCDOT or the Developer, a meeting may include any ETC Servicer in order to coordinate areas of mutual

concern and interest to both Developer and NCDOT, including the CCH and CSC operations.

C. The primary purpose of meetings will be to discuss issues related to the provision of ETC Services, the cost of ETC Services, other issues of mutual interest and, if applicable, the selection and performance of the ETC Servicer. NCDOT will be responsible for coordinating the meetings, which will be held not less than quarterly.

X. RECORDS AND AUDITS

A. NCDOT and Developer will have access to Transaction records maintained by the Developer, NCDOT, and any ETC Servicer upon reasonable notice to the other Party and in accordance with applicable Law. Such access shall not be unreasonably withheld. For the avoidance of doubt, the provisions of Article 22 of the Agreement shall apply to all records related to the ETC Services along with applicable Law.

B. NCDOT shall have the right, but not the obligation, to conduct statistically valid sample auditing of certified Transactions sent to the CCH by the Developer each Business Day. Developer and NCDOT shall agree and establish a procedure to conduct such auditing as of the first Substantial Completion Date as set forth in Paragraph II.B.

C. Developer shall have the right, but not the obligation, in accordance with applicable Law to inspect all information related to certified Transactions sent to the CCH by the Developer and processed by NCDOT by the CCH and CSC. Developer and NCDOT shall agree and establish a procedure for such inspection as of the first Substantial Completion Date as set forth in Paragraph II.B.

D. All records created and maintained by the Developer shall meet the requirements of Chapters 121 and 132 of the General Statutes of North Carolina. NCDOT shall provide assistance to the Developer upon request to assure adherence to all records management requirements.

XI. REMEDIES FOR NCDOT'S NONPAYMENT AND FAILURE TO PERFORM ETC SERVICES

A. Failure to Pay Amounts Due Under this Exhibit 18

If NCDOT fails to make a payment to Developer under this Exhibit 18 when due, Developer shall have the following rights and remedies:

(1) Developer shall be entitled to interest in accordance with Section 24.16 of the Agreement;

(2) If NCDOT fails to make such payment to Developer when due, and such failure continues for 20 consecutive Business Days, Developer shall have the right to terminate NCDOT's responsibility to perform the ETC Services

required under this Exhibit 18 and assume performance of such services on Developer's own behalf. If Developer elects to exercise its rights under this Paragraph XI.A.(2), Developer shall provide no less than 30 days advance written notice to NCDOT during which NCDOT shall continue to perform ETC Services required under this Exhibit 18.

(3) NCDOT shall continue to provide any Toll Revenue payments owed to Developer pursuant to Paragraph VII for three years after the termination has occurred.

B. Failure to Perform ETC Services

Developer shall have the rights and remedies set forth in Appendix C of this Exhibit 18 for failure by NCDOT to perform certain ETC Services in accordance with Appendix C of this Exhibit 18.

C. Transition Plan for ETC Services in the Event of Termination

(1) No more than 180 days after the successful completion of the ETCS Demonstration Period for the first Project Section to achieve Substantial Completion, NCDOT shall submit a transition plan to Developer that sets forth the protocols and procedures in the event the ETC Services to be furnished by NCDOT are terminated under this Exhibit 18. Such transition plan shall set forth protocols and procedures for (i) the switchover involving the cessation of CCH account management system services for the HOT Lanes as described in this Exhibit 18 and the commencement of such services to Developer (or its ETC Servicer), including access to NCDOT NC Quick Pass account information in accordance with applicable Law; (ii) the transition of CSC back office system services for the HOT Lanes as described in this Exhibit 18; (iii) the payment and transfer of any moneys owed to Developer under this Exhibit 18; (iv) the transfer of any Transponder inventory in the possession of NCDOT pursuant to this Exhibit 18; (v) the transfer of any and all information, including Account information, for any Transaction for which all Incidental Charges, if any, have not be paid to the Developer; (vi) ensuring that transaction fees with any in-state toll facility shall not exceed the fees established in Appendix A of this Exhibit 18; and (vii) facilitating and arranging, to the extent available, Developer's acceptance and integration into in-state and out-of-state interoperability arrangements. NCDOT shall prepare such transition plan at its sole cost and expense.

(2) Developer shall review the transition plan and provide any comments to NCDOT within 60 days of its receipt. After the receipt of Developer's comments, the Parties shall cooperate with each other to develop a mutually acceptable transition plan no later than 180 days after Final Completion. Such transition plan shall be approved by Developer in its sole discretion. However, until such time that a transition plan is

approved by Developer, Developer shall not have the right to terminate the ETC Services furnished by NCDOT pursuant to this Exhibit 18.

XII. DEFINITIONS

Capitalized terms used but not otherwise defined in this Exhibit 18 (including as defined in Appendix B) have the respective meanings set forth in Exhibit 1 to the Agreement. In addition, the following terms have the meanings specified below:

CCH/CSC Noncompliance Event means each failure by NCDOT to perform the performance requirements set forth in Table C-1 of Attachment C of this Exhibit 18.

CCH/CSC Noncompliance Points means the points that may be assessed for certain breaches or failure to perform by NCDOT, as set forth in Table C-1 of Attachment C of this Exhibit 18.

ETC Services means the services furnished by Developer or NCDOT, as applicable, pursuant to this Exhibit 18.

ETC Services Change Order means a written document executed by the Parties with respect to a change in the ETC Services furnished by NCDOT.

ETC Servicer means a contractor performing the ETC Services for Developer or NCDOT, as applicable.

Financial Clearing means the daily fiscal processes that are used to send an instruction to the payee that a Transaction has occurred that requires payment of a fixed or determinate amount of money, to obtain the payment from the payee (or an authorized third party such as a bank or credit card issuer), to post any and all accounting entries, to conduct any and all settlements, and to disburse the payment in accordance with the CA Documents.

Pass Through Fees means any fees: (a) charged by a financial institution for electronic payments (such as credit card fees) with respect to a Transaction on the HOT Lanes; (b) charged by Reciprocity Agencies with respect to a Transaction on the HOT Lanes; (c) charged for wire transfers with respect to a Transaction on the HOT Lanes; (d) charged by the DMV with respect to a Transaction on the HOT Lanes; or (e) charged by a collection agency with respect to a Transaction on the HOT Lanes.

Reciprocity Agency means any agency, authority or other Governmental Agency operating an out-of-State toll facility that has entered into a Reciprocity Agreement.

Reciprocity Agreement means a contract between NCDOT and any agency, authority or other Governmental Agency operating an out of State toll facility to ensure that the procedures involved in the payment of tolls and other fees and charges through an electronic means are standardized and fully compatible (commonly referred to as interoperable).

Appendix A

Transaction Fees

Account Type	Amount
ETC Prepaid Account	$0.15
Video Prepaid Account	$0.15
Video Postpaid Account	$0.36

The Transaction Fees shall be applied to the Account for each Transaction sent to the CCH by the Developer. Such Transaction shall comprise a Trip that is a contiguous, directional vehicular journey on the HOT Lanes between an entry to and exit from the HOT Lanes and may include travel across one or more Toll Segments.

The Transaction Fees identified in this Appendix A shall remain in effect for 5 years after Final Completion. The Transaction Fees identified in this Appendix A shall be increased annually on January 1 of each year after such 5-year period only by a percentage equal to the percentage increase in the CPI between the CPI for October of the second immediately preceding year and the CPI for October of the immediately preceding year; provided that in no event shall the amount be less than the amount in effect during the immediately preceding year.

Appendix B

NCTA Business Policies for ETC Services

[see attached]

North Carolina Turnpike Authority

Customer Service Center Business Policies

December 12, 2013

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INTRODUCTION – NCTA BUSINESS POLICIES

This document is the compilation and record of the North Carolina Turnpike Authority (NCTA) Business Policies. These policies serve as guidelines for standard operation of the NCTA's NC Quick Pass Customer Service Center (CSC) and remote storefronts, Bill by Mail invoicing, and interoperability with other agencies in accordance with North Carolina's toll legislation. Refer to **Appendix A** for definitions, acronyms and abbreviations used within this document. **Appendix B** provided the NC toll legislation upon which these policies are based on.

Policies 1 and 2 address NC Quick Pass electronic toll collection (transponder) and registered video (license plate) accounts that directly impact all current and future customers, respectively. **Policy 3** addresses the conversion of customers with Bill by Mail invoices to NC Quick Pass accounts. Bill by Mail invoicing, based on the North Carolina Law, is presented as **Policy 4**. Interoperability with out-of-state, SunPass and E-ZPass, agencies is defined in **Policy 5**.

All Electronic Tolling

The NCTA toll system is a comprehensive, all electronic tolling (AET) system that enables motorists to drive through toll zones and pay their tolls without stopping. As customers drive through the toll zones, tolls will be deducted from customer accounts using a transponder mounted in the owner's vehicle or through the registered license plate number of the vehicle.

The toll system will automatically detect users that do not have viable toll payment accounts with NCTA or any NCTA interoperable toll agency, and will capture digital images of vehicles and their license plate numbers. The NCTA system will store the data and transfer the images and information to the NCTA Video Processing Center (VPC) for review and further action including Bill by Mail invoicing and escalation if unpaid. Transaction classification policies are defined below in **Table 1** as they pertain to the Back Office System (BOS):

TABLE 1
Transaction Classification Policies

Category	Description
NC Quick Pass Transaction	Transaction processed from a valid pre-paid electronic toll collection (ETC) account.
NC Quick Pass Delinquent	Account converted to Bill by Mail invoice due to insufficient funds.
Invalid transponder	Transactions from an invalid transponder (lost, stolen, or damaged etc.) at the time of usage at the toll facility will be invoiced through the Bill by Mail process.
Registered Video Transaction	Transaction processed as a pre-paid registered video account using license plates.
Bill by Mail Transaction	Transaction processed as a post-paid unregistered customer through license plate image processing.

The NCTA may obtain and exchange vehicle owner registration information from the North Carolina Division of Motor Vehicles (DMV), another state, another toll operator, or a toll

collection-related organization. The information obtained is not a public record and is subject to the disclosure limitation in 18 U.S.C. 2721 (Federal Driver's Privacy Protection Act).

NCTA currently has DMV agreements with Arizona, California, Florida, Illinois, Indiana, Michigan, New York, Ohio, Tennessee, Texas, Vermont, and Virginia, and continues to pursue additional states.

Payment Methods

Customers are permitted to make payments via the methods shown in **Table 2** below. Payments are made when opening accounts, account replenishments, invoice payments, and payments for escalated invoices on delinquent accounts.

TABLE 2
Payment Methods

Method	NC QUICK PASS			Bill by Mail
	Open Account (Transponder)	**Open Account** (Registered Video)	**Account Replenishment**	**Invoice Payment**
Web	➽		➽	➽
Phone - Interactive Voice Response (IVR)			➽	➽
Phone- Customer Service Representative (CSR)			➽	➽
Walk-in (Main CSC and remote storefronts	➽	➽	➽	➽
Mail	➽		➽	➽
Fax	➽		➽	➽

Fees

NCTA will apply fees for various reasons. The amounts of these fees may be changed at the discretion of the NC legislation and/or NCTA. **Table 3** summarizes the fees that will be collected by the NCTA.

TABLE 3
Fee Collection Matrix

Fee	Fee Amount	Reason For Fee
Inactive Account	$1/Month	Cost to maintain an inactive account

Statement Fee	$5.00	Request for statement to be generated and mailed
Non-sufficient Funds (NSF) Fee	$25.00	Returned checks
Invoice Processing Fee	$6.00 ($48 12-month max)	Invoices unpaid after 30 days.
Civil Penalty	$25 ($25 6-month max)	Invoices unpaid after 60 days.

POLICY 1. NC QUICK PASS ACCOUNT POLICIES

NC Quick Pass accounts are pre-paid toll transaction accounts collected through electronic toll collection (ETC). These accounts require the purchase and installation of a transponder that is detectable when a vehicle travels through a toll zone. The appropriate toll amount due for the transaction is automatically deducted from the customer's account.

Policy 1.1: Account Types and Plans

NCTA will offer the following NC Quick Pass account types and plans:

Account Types

- Personal (pre-paid tolls)
- Business (pre-paid tolls)

Within these account types there are account plans:

Account Plans

- Standard (pre-paid tolls)
- Government (post-paid tolls)
- Non-Revenue (transit)

Policy 1.2: Agreement & Registration

Customers can open an NC Quick Pass account through the following venues:

- Online (via the NC Quick Pass website)
- Walk-In (in person at the CSC or remote store front)
- Mail-In (to the CSC)
- Fax (to the CSC)

To open an NC Quick Pass account, a customer agreement must be completed. When signing up for this account online, the customer agreement must be accepted by the NC Quick Pass website through proper acknowledgement and acceptance of the terms and conditions and payment. When signing up in person at the CSC or remote store front, through the mail or fax, the customer agreement will be signed and transmitted to the CSC with payment.

Customers will provide all the information required, per the customer agreement, for opening an account. Information will include at a minimum name, address, contact information, license plate number(s), vehicle information (year, model, number of axles), payment type (cash, check, money order, or credit and debit cards), and payment information (automatic or manual replenishment).

Once an account is opened, the CSC will mail an Account Profile (Welcome Letter) to the customer. If signing up on the website, a confirmation page will be sent by email. The profile will welcome the customer to the NC Quick Pass program and will request that the customer review pertinent account information provided in the letter for its accuracy. If the customer determines that any information is incorrect they are asked to update the account information

immediately through the NC Quick Pass website, e-mail, in person at the CSC or through the IVR.

Policy 1.3: Standard Plan

NC Quick Pass standard plan accounts can be established using cash, check, money order, credit or debit cards. The same credit card can be used for multiple accounts. Personal accounts are limited to five (5) transponders and five (5) vehicles on the account at any given time. A customer can have more transponders than vehicles on an account, however the number of vehicles (license plates) should never exceed number of transponders (limit 5). Business accounts may have any number of transponders, but like the personal account they cannot have more vehicles on the account than transponders.

Policy 1.4: Government Plan

Some governmental agencies are not allowed to prepay certain costs. These agencies may establish a post-paid NC Quick Pass account where the toll rate reflects the NC Quick Pass rate. The NCTA will automatically invoice these agencies on a monthly basis for the toll transactions incurred. The agencies will have 30 days to pay NCTA from the date of the invoice. The BOS will reconcile agency payments to amounts invoiced. Unpaid invoices will not follow the Bill by Mail escalation process. Government invoices will be escalated operationally through NCTA if necessary.

These agencies shall purchase a transponder for each vehicle that will be included in the account at the time the account is opened. There are no limitations as to the number of transponders/vehicles assigned to the account. However, the number of vehicles cannot exceed the number of transponders. Agencies shall designate at least two points of contact and shall update contact information annually or as account information changes.

The NCTA Director of Customer Service and Financial Controls or the NCTA CSC Liaison Specialist must approve the Government application by signing the application. Applications must be reviewed and signed within one (1) business day of receipt. Upon signature the signed application will be submitted to the CSC Manager for account establishment.

Government account plans will not be subject to Policy 1.11 pertaining to I-Toll charges. The CSC will run a Report that identifies I-Tolls on Government and Non-Revenue accounts and will handle accounts with I-Tolls operationally by contacting the account holder to determine if transponder is defective. Government and Non-Revenue plan transactions will only be valid on NCTA facilities.

Policy 1.5: Account Maintenance

It is the customers' responsibility to notify the CSC of any changes in their account information. The BOS will provide account access security and allow customers to update their information, make replenishment payments, order new transponders, obtain a statement, review the status of their account and contact a customer service representative (CSR) with questions or comments.

Customers may change/update their account information either online through the NC Quick Pass website using an established password, by calling the Interactive Voice Response (IVR) with their Personal Identification Number (PIN), or in person at the CSC or store front location.

If a customer forgets their IVR PIN, web password or web challenge answer they can request it be mailed or e-mailed to them through the IVR forgot PIN function or the web.

NCTA will not charge monthly account maintenance fees on accounts that are in good financial standing. However, a monthly maintenance fee will be charged directly to accounts that are classified as inactive by NCTA. Refer to Policy 1.12 for further details on inactive accounts.

When available, the BOS will automatically update credit card expiration dates on a monthly basis for all cards due to expire the following month. The BOS shall generate a report on the first business day of the month for all credit cards that were not able to be updated. The CSC will notify these customers through their choice of communication method (e-mail or mail) that their credit card will be expiring and request updated information on a new credit card. CSR's will encourage customers to utilize electronic communication for account maintenance. If the customer does not provide the updated information transactions will continue to be charged to the account until the account reaches a negative balance and then Policy 1.13 will be applied.

Administrative fees and toll charges will be billed directly to the customer's account. The customer may contest the imposition of charges or fees by phone, in writing or via e-mail from the e-mail address on their account to the NC Quick Pass CSC. If the charge or fee is rescinded, their account will be credited the proper amount.

Policy 1.6: Opening Account Balance Requirement

The customer is required to deposit a specified amount in pre-paid tolls in order to open an NC Quick Pass account. This amount varies depending on the type of account and number of transponders included on the account. Please refer to **Table 4** for opening account balance requirements for NC Quick Pass accounts.

TABLE 4
Opening Account Balance
NC Quick Pass Account

Account Type	Payment Type	Opening Balance Per Transponder	Threshold Amount
Personal	Cash/Check/ Money Order	$20.00 total for first 2 transponders $10 for each additional transponder *(up to 5 transponders in total)*	50%*
	Credit & Debit Cards	$20.00 total for first 2 transponders $10 for each additional transponder *(up to 5 transponders in total)*	25%*
Business	Cash/Check/ Money Order	$20.00 for each transponder	50%*
	Credit & Debit Cards	$20.00 for each transponder	25%*
* or a minimum of $10			

The amounts listed in Table 4 may change at the discretion of the NCTA.

Policy 1.7: Account Replenishment and Threshold

Policy 1.7.1: Auto-Replenishment Payment Requirements

The auto replenishment feature allows the customer to provide a credit or debit card number to the NCTA and authorizes the NCTA to automatically replenish the account periodically by charging the credit or debit card at the applicable auto-replenishment threshold. Customers selecting this feature will be encouraged to provide a secondary credit/debit card number to the NCTA to be used in the event the preferred card expires or is denied. The CSC will notify customers if the credit/debit card has expired or was denied on two consecutive days, and will require the customer to provide a new card number immediately upon notification from the CSC to avoid possible fees and/or service disruptions. Customers will be notified based on the communication option (e-mail or mail) they select at the time of opening the account.

Policy 1.7.2: Threshold Amount

For auto-replenishment accounts the threshold amount is the account balance at which the BOS will automatically re-bill the credit or debit card in order to restore the account balance to the original balance or a proper operating level. For cash/check/money order customers the threshold is the amount at which the BOS will send a Low Balance Notification to those customers that have selected e-mail as their delivery method. Customers that select mail as their delivery method will be required to monitor their accounts for low balance. The initial threshold amounts are shown in Table 4 above and vary depending on the type of account (personal or business), the number of transponders (business accounts only), and replenishment method on the account. When the account balance reaches the threshold amount, the BOS will automatically charge the calculated replenishment amount to the customer's credit or debit card. The BOS will automatically adjust the threshold amount quarterly based on the adjustments to the replenishment amount. The minimum threshold amount for any account is $10. The threshold amount will continue to be the same percentage of the replenishment amount as outlined in Table 4 above.

Policy 1.7.3: Auto-Replenishment Amount –Credit Card or Debit Card

The auto-replenishment amount is the amount the BOS will automatically charge to the credit or debit card in order to restore account balance to the original balance or to a proper operating level depending on the type of account (personal or business) and the number of transponders (business accounts only) on the account, as shown in Table 4 above. After the first 30 days from the date of the account opening, the BOS will evaluate the toll usage on the account and adjust the replenishment amount based on the customer's initial usage. Thereafter, every 90 days the BOS will automatically calculate the average monthly toll usage and adjust the replenishment amount to correspond with the average usage rate so a customer's credit or debit card. Replenishment is charged approximately once a month. If requested by the customer, replenishment amounts can only be lowered manually by a CSR. When an auto-replenishment amount is increased or decreased, the customer will be notified via the communication method (e-mail or mail) they selected at account opening.

Policy 1.8: Manual Replenishment Amounts – Cash/Check/Money Order

Replenishment will also apply to accounts replenished through cash, check, or money order transactions as defined in Table 4. When the account balance reaches the threshold amount, the BOS will automatically notify customers that fund their accounts using cash, check or money orders via the customers preferred notification method (mail or e-mail). The account holder must replenish the account prior to the account reaching a zero balance. If the account reaches a

negative balance, Policy 1.14 will be applied. The recommended replenishment amount will be adjusted as with credit or debit card customers. After the first 30 days from the date of the account opening, the BOS will evaluate the toll usage on the account and adjust the replenishment amount based on the customer's initial usage. Thereafter, every 90 days the BOS will automatically calculate the average monthly toll usage and adjust the replenishment amount based on average toll usage. When a replenishment amount is increased or decreased, the customer will be notified via the communication method (e-mail or mail) they selected. This will assure that the cash/check/money order customers will continue to receive sufficient notice to replenish their accounts.

Policy 1.9: Transponders

Policy 1.9.1: Transponder Options

1. **Transponder Options -** NCTA will provide the transponder options listed in **Table 5** to its NC Quick Pass customers.

Table 5
Transponder Options

Vendor Name	NC Quick Pass Name
Interior Transponders	
eGo Plus (sticker transponder)	Sticker
eZGo Anywhere IAG Std OBU	Hard Case
Exterior Transponders	
eZGo Anywhere Exterior	Exterior

2. **Transponder Costs -** NC Quick Pass customers will be required to purchase transponders at the cost of the transponder plus the applicable sales tax. Sales tax will be calculated based on the location of the main CSC located in Morrisville, NC. Upon completion of the sale, the transponder becomes the property of the customer.

3. **Government Plans** will be required to purchase transponders at cost. Sales tax will be waived upon presentation of a sales tax exemption certificate. This certificate should be included with the application.

4. **Discounts -** The purchase of multiple transponders does not qualify a customer for a discount.

5. **Warranty -** All transponders will be warranted for two (2) years from the date of the sale.

6. **Promotions** - NCTA reserves the right to waive or discount the transponder purchase cost for promotional purposes, but not on an individual basis.

Policy 1.9.2: Transponder - Lost or Stolen

NC Quick Pass customers may report lost or stolen transponder(s) via the NC Quick Pass website, by notifying NC Quick Pass via e-mail, mail or fax, by calling or visiting the NC Quick Pass CSC. The NCTA will deactivate the transponder immediately following notification. The

customer is liable for all toll transactions that occurred prior to notifying the CSC. The replacement cost for a lost or stolen transponder shall be the cost of the transponder plus sales tax at the time of replacement. During the interim time, when the NC Quick Pass customer does not have a transponder, toll transactions will be processed as I-Tolls and follow I-Toll policies defined in Policy 1.12.

Policy 1.9.3: Transponder - Malfunctioning

New transponders will have a two (2) year warranty from the date of customer purchase. If for any reason the transponder malfunctions within the two (2) year warranty period, customers may return the malfunctioning transponder to the CSC. NCTA will test the transponder and if it is determined that the transponder is malfunctioning and has not been abused by the customer, the customer will receive a replacement transponder at no charge. If the transponder malfunctions beyond the warranty period, the replacement cost for a malfunctioning transponder shall be the cost of the transponder plus sales tax at the time of replacement.

If the transponder test reveals that transponder is malfunctioning the following actions will be taken by the CSC:

- If the transponder (other than the eGo Plus sticker transponder) is under manufacturer's warranty, the transponder will be returned to the manufacturer for replacement.
- eGo Plus sticker transponders are not warranted by the manufacturer. The manufacturer provides a two percent (2%) over shipment of transponders in lieu of a yearly warranty.
- If the transponder is beyond the manufacturer's warranty the transponder will be disposed of properly.

Policy 1.9.4: Transponder - Damaged

Damaged transponders are not covered under the NCTA warranty. Damage is defined as the rendering of the transponder defective or inoperable due to tampering, abuse, improper use, defacement, or accidental destruction. The replacement cost for a damaged transponder is the cost of the transponder plus sales tax at the time of replacement.

Policy 1.9.5: Transponder – Return/Exchange

Any transponder may be returned to the CSC (in person or via mail) with a written request including the account number within three (3) business days of purchase for a full refund. For transponders purchased on the web, the customer has three (3) business days from the post mark of the received tag kit to return the transponder. If returning a transponder via mail, the post mark date must be within the three (3) business day requirement. Proof of purchase (receipt) with a written request (including the account number) must be included with the return of the transponder. Transponder must be in same condition as when purchased. All refunds will be in the form of a credit to the account. If the account is closed the refund will be issued as part of the normal refund process as outlined in Policy 1.17 Refunds.

Transponders may be exchanged at the CSC (in person) for another type of transponder within five (5) business days of purchase. The difference in transponder cost will be determined at the time of the exchange. Credits or additional payment must take place at the time of the exchange.

Sticker transponders may be returned or exchanged if the transponder has not been adhered to the vehicle. Once the sticker has been adhered to the vehicle, it is not returnable or exchangeable.

Policy 1.9.6: Transponder Testing Upon Delivery from Manufacturer

Refer to **Appendix C**.

Policy 1.10: Statement Options

1. **Monthly Statements** - Statements are available at any time for free on the NC Quick Pass website. If any special processing is involved such as requesting archived statements the customer must contact the CSC. A fee will be charged to the customer's account for this service. Customers may activate within their account the option to receive automatic e-mail statements on a monthly basis at no cost. A future fee may be assessed at the discretion of the NCTA for e-mailed statements.

2. **Quarterly Mailed Statements –** Customers can sign up for quarterly mailed statements at a charge established by NCTA. The fee will be a charge of $5.00 per statement which will be applied directly to the account.

3. **Special Run Statements** – Special run statements may be requested by a customer through mail or e-mail, by stopping in or by calling the CSC. A fee of $5.00 per statement will be applied directly to the account or paid directly by the customer at the time of the request. Customers can obtain special run statements for free by utilizing the NC Quick Pass website. Special runs cannot exceed one year from the date of the run. Non-revenue account holders may request special run statements at the CSC store front and must pay the $5.00 charge upon receipt of the statement.

Policy 1.11: I-Toll Postings

Video image transactions that can be linked to an NC Quick Pass account via license plate identification will be posted to the valid account upon processing the video image data. These transactions will be posted as I-Tolls at the NC Quick Pass toll rate. For accounts with at least ten (10) monthly transactions, the BOS will review NC Quick Pass accounts for I-Tolls posted and flag those accounts that have I-Toll transactions in excess of 15% on a monthly basis. Customers will be contacted via mail or e-mail requesting they bring their potentially defective transponder in for inspection or to ensure the customer has mounted the transponder properly according to the mounting instructions.

Sixty (60) days after opening an account, all accounts with at least ten (10) monthly transactions and I-Tolls in excess of 15% on a monthly basis will be charged a fee of $5.00 applicable to that month. This fee may be waived by the NCTA if the transponder is defective under warranty or if the toll zone malfunctioned.

- If the transponder tests as malfunctioning the customer will be provided with a new transponder based on the NCTA transponder warranty policy (see Policy 1.9).

- If the transponder is functioning when tested at the CSC the customer will be instructed to properly mount the transponder.

Government accounts, including non-revenue accounts, are not subject to I-Toll fees. These accounts shall be reviewed by the CSC on a regular basis. Any I-Toll issues will be handled operationally by contacting the account holder.

The amount of the fee and the percentage threshold may decrease or increase at the discretion of the NCTA.

Policy 1.12: Inactive Accounts

Customers whose accounts are inactive for a period of twelve (12) consecutive months will receive a notification via mail or e-mail advising them of their account status and advising the customer that they need to close the account or it will be subject to a monthly maintenance fee. The term "inactive" shall be defined as no toll transactions on any toll roads. An account is identified as inactive 365 days from the last toll transaction, which is not tied to the account open date/statement cycle.

If no response is received from the customer or no toll transactions are posted within thirty (30) days of the date of the notification, the account will be charged a monthly account maintenance fee of $1.00. The monthly fee will be charged every 30 days after the initial charge assuming the account stays inactive. The account will remain in an inactive status until a toll transaction is posted to the account. Customers will be able to utilize auto replenishment or send in payments while account is in inactive status. Accounts will remain open as long as a positive balance is maintained.

If a non-revenue account hits inactive status, the account will be closed by the CSC immediately. Since the $1.00 maintenance fee cannot be charged, the only action is to close the account.

Accounts that have a zero balance at the time of reaching inactivity status will be sent a notification. If the customer does not take any action within thirty (30) days the account will be closed. If the account reaches a zero balance ($0) due to payment of the monthly maintenance fee the account will be processed per Policy 1.14 which pertains to account closures. If the account has a positive balance in an amount between $0.01 and $0.99 will have the balance deducted from their account using FEE INACTPVWOFF and their account will be closed under Policy 1.14. The following types of accounts "skip" the inactive fee process: Postpaid status Private/Business accounts, CLOSED PENDING and CLOSED accounts.

Policy 1.13: Negative Account Balance

When a customer's account reaches a negative balance of -$10 or more the CSC will designate the account as suspended, deactivate the transponder and convert the account to Bill by Mail and follow Policy 4. A notification via letter or e-mail will be sent to the customer at the time the account reaches a negative balance. The letter or e-mail will notify the customer that:

- Their account has been suspended;
- Their transponder(s) have been deactivated. However, license plate(s) will not be removed from the account; and
- They will receive Bill by Mail invoices charged at the applicable Bill by Mail toll rate.

All transactions that are processed while an account is in negative balance shall be posted at the higher Bill by Mail toll rate and considered non-payment of toll transactions. The first invoice sent will include any unpaid toll transactions or fees from the converted NC Quick Pass account in the beginning balance. The associated transponders will be sent as "invalid" in the transponder files to interoperable agencies.

Policy 1.14: Closing an Account

A customer desiring to close their account may make the request via the website or an e-mail, provided the customer's e-mail address used in the notification is the same as the address provided on the account, or by sending a letter to the CSC;. The letter or e-mail must be sent from the account holder and shall contain their account information and clearly state their intention to close the account. A CSR will process the request within one (1) business day. The account closure process will be initiated upon receipt of the request and the transponder(s) on the account will be deactivated within one (1) business day. The associated transponders will be sent as "invalid" in the transponder files to interoperable agencies.

There will be a waiting period of thirty (30) calendar days before a refund is issued to ensure that all transactions are processed through the account before closing. All account closures will be documented by a CSR with a closure reason selected from a configurable list through a drop down menu. Any remaining balance on the account shall be processed according to Policy 1.17 pertaining to refunds and included in the account closure letter for cash/check/money order customers. Credit or debit card customers will not receive an account closure letter. Refunds will be shown on the customer's final statement submitted to the customer after account closure is completed by the CSC.

In the case of account closure due to inactive accounts reaching a balance below $1.00, the account will be closed within one (1) business day of the account reaching this balance. The CSC will run a report daily to identify which accounts will need to be closed based on this status. The customer will be sent a letter notifying them of the account closure.

Policy 1.14.1: Close Pending Period

The Close Pending period begins when a customer requests that their account be closed. This is a 30 day period that allows for transactions that occurred prior to the account being designated as "close pending" to post to the account. The Close Pending period shall be a configurable parameter in the system to allow for future modifications to NCTA business policies. Note that IAG allows for 60 days.

Unprocessed tolls (queued in the system) will post to the account while in Close Pending status. New toll transactions for customers in Close Pending status will post to a newly created unregistered video account (Bill by Mail), they will not be associated to the pre-existing ETC account as there are no plates or transponders on the account. Toll transactions that were eligible to post by an away agency but were delayed (IAG has up to 60 days to post) will be rejected by the system as NPST but will be the responsibility of the NCTA to pay the away agency.

Policy 1.14.2: Automatic Account Closure Process (Positive Balance)

Credit card accounts are credited the final balance to the last card that was charged on the account. For cash/check accounts or accounts where the credit card is no longer valid, letters

need to be manually matched with the checks generated by DOT for mailing operationally. A letter is generated through an internal scheduled batch job when an account meets the conditions for automatic closure for all types of replenishment payments (credit card, debit card, cash, and check).

Policy 1.14.3: Automatic Account Closure Process (Negative Balance)

If a customer has a negative balance after 30 days, the account will be closed.

The system will go through unlimited attempts (30 day cycles) to attempt to close systematically, if the condition is met. If a customer continues to have a negative balance after multiple cycles with attempt to close, the account will stay in Close Pending until it is closed manually. During the Negative Balance nightly batch job, if a Closed Pending account reaches -$10.00 or below, it will be converted to postpaid and become a Bill by Mail account that receives invoices. When the Account Closure job finds that the Closed Pending account has a balance below $0, it will skip it and not update it to CLOSED.

A report will be generated to assist operations in the manual account closure process. It will show any accounts that had requested to be closed through the process and have exceeded the original 30 day cycle as well as subsequent attempts. This will indicate that the process started, but the account could not be closed automatically due to outstanding balance.

Policy 1.15: Account Reinstatement

Accounts that are suspended due to negative balance may be reinstated upon payment of any unpaid tolls and associated outstanding delinquency fees, other fees applicable to the suspended account and the appropriate pre-paid toll deposit required (refer to Table 4). Note: A customer will not be able to open a new account if there are outstanding amounts owed on another account (NC Quick Pass or registered video) with the same license plate(s) or identical address.

Policy 1.16: Return Check Fee

NCTA is authorized to charge a returned check fee not to exceed $25. This fee will be charged when payment by check has been refused by the bank. This fee will be deducted from the customer's account. If deduction of the fee results in a negative account balance, Policy 1.14 will be imposed. The customer will be notified of the fee for nonsufficient funds (NSF) through their choice of communication method (e-mail or mail) they selected. The BOS system will flag the account after two (2) NSFs for one year at which time the NCTA will not accept check payments on the account.

Policy 1.17: Refunds

This policy applies to the following refund situations.

- Closure Request-NC Quick Pass only
- Overpayment-NC Quick Pass and Bill by Mail

All account closures will receive a full refund less any toll transactions that have been applied to the account since the refund request was received. Upon receipt of the account closure request there will be a thirty (30) day grace period before processing to assure all applicable tolls have posted to the account.

If the account was an automatic replenishment account the refund will be issued to the primary credit/debit card on the account. Should that attempt fail the refund shall be issued to any secondary cards listed on the account. If there is no secondary card and all credit/debit card attempts fail the refund shall be processed as if the account were a cash/check/money order customer described below.

NCDOT Process for Processing Checks

For all cash/check accounts the refund amounts will be entered into the account payable (AP) system. A check run report shall be run and forwarded to the NCTA for review and approval which will include account number, name, address and amount of refund with a grand total at the end. Upon approval, the operations contractor will request a check from NCDOT for each individual customer refund. NCDOT shall then print the check and give to the operations contractor.

Upon receipt of the checks (received by US mail from NCDOT), the Operations Business Manager reviews the check log and compares the count and amounts. Checks are forwarded to Operations Supervisor for processing. Checks are photo copied for filing. The Operations Supervisor or Work Lead will then process the refund to the customer's account (refund transaction) and generate a manual refund letter for mailing with the check to the appropriate account holder. A copy of the check is filed and account notes are added to the account "Refund sent to customer" including the amount and check number.

There are occasions where NCDOT will review the refund and notify operations that the refund amount does not match the account balance (balance is less). Once that notification is received the operations team will re-generate a refund request for the new amount.

Policy 1.18: Bankruptcies

To be developed.

Policy 1.19: Returned Mail

Policy 1.19.1: Forwarding Address Available

For any notification from the Post Office (PO) of a forwarding address, whether the letter was forwarded by the PO with notification of forwarding address sent to CSC or the letter is returned with the new address on it, the accounts will be updated with the correct address within one (1) business day. Any returned correspondence with the new address will be forwarded manually to the corrected address once the BOS has been updated. The returned mailing shall be placed into another envelope and resent to the corrected address.

Policy 1.19.2: Forwarding Address Not Available

Any returned correspondence where there is no forwarding address available will be flagged as a bad address on the applicable account. The BOS shall suppress any future mailings from being sent until a new address can be obtained and the bad address flag removed. However, all BOS processes shall continue as if the mailings were being sent within the BOS such as notice escalations and account management.

If there is an e-mail address on the account the BOS shall send a notice to the e-mail account that the mailing address on record is no longer valid and must be updated to avoid any possible fees

or penalties. Once a new address has been established all correspondence shall continue from the point where it was disrupted. There will be no processing of retroactive material to avoid possible conflicts within the escalation process.

Policy 1.19.3: Undeliverable Electronic Correspondence

Accounts selecting e-mail as their preferred correspondence delivery method may also get returned messages due to their address becoming invalid. Any returned electronic correspondence shall also be flagged as a bad address in the BOS with a letter sent to the mailing address on record informing the account holder that they must update their electronic address to avoid any possible fees or penalties. The BOS shall suppress any future correspondence from being sent via e-mail until a new e-mail address can be obtained and the bad address flag removed. Correspondence will be changed to U.S. mail until the new e-mail address is obtained by the CSC, so that all BOS processes may continue such as notice escalations and account management.

POLICY 2. NCTA REGISTERED VIDEO ACCOUNT POLICIES

Registered video accounts are defined as pre-paid toll transaction accounts used for video toll collection. Registered video accounts will not be promoted by NCTA although the BOS has been developed to allow for Personal and Business registered video accounts. At this time, any registered video account type will be on an exception basis as approved by NCTA.

The NCTA Director of Customer Service and Financial Controls or the NCTA CSC Liaison Specialist must approve the Registered Video application by signing the applications. Applications must be reviewed and signed within one (1) business day of receipt. Upon signature the signed application will be submitted to the CSC Manager for account establishment.

These accounts do not require the customer to purchase a transponder. Registered video account customers are required to register all license plates and other vehicle information that will be approved for usage of funds for the account. When a registered license plate is captured in a toll zone, and it is matched to an account, the toll amount due for the transaction is automatically deducted from the customer's account. The toll from a video account will be assessed at the Bill by Mail toll rate. **Table 6** summarizes the rules for opening a registered video account.

TABLE 6
Registered Video Account Opening Policies

License plate Registered with Active NC Quick Pass Account	License Plate Registered with Active Registered Video Account	Active Outstanding Delinquent Invoice Exists Against the License Plate	Account Opening Policy
➽			Account cannot be opened due to existing active NC Quick Pass account.
	➽		Account cannot be opened due to existing active registered video account.
		➽	Account cannot be opened due to existing active delinquent account status. All delinquency fees must be paid before the account can be opened. Customer must call CSC or pay on line to resolve the issue.

Policy 2.1: Account Types and Plans

NCTA will offer the following registered video account types:

Account Types

- Personal (pre-paid tolls)
- Business (pre-paid tolls)

Within the business account type there are three (3) account plans:

Account Plans

- Standard (pre-paid tolls)
- Fleet (pre-paid tolls)
- Non-Revenue (no toll charges on NC toll facilities)

Policy 2.2: Standard Plan

Policy 2.2.1 Agreement & Registration

Customers can only open a registered video account in person at a CSC with prior NCTA approval. The customer agreement must be signed at the CSC walk-in counter if an exception is granted.

Registered video accounts can be established using cash, check, money order, credit card or debit card. The same credit card can be used on multiple accounts. Personal accounts are limited to five (5) license plates (vehicles) on the account at any given time. Business accounts do not have a license plate limit.

Registered video account customers are required to provide the same information and payment types as an NC Quick Pass account customer (refer to Policy 1.). It is the customer's responsibility to keep account information up to date, especially license plate information. As with the NC Quick Pass account, one credit or debit card is required to establish an auto-replenishment registered video account. Customers will be encouraged to provide a secondary credit/debit card number to the NCTA to be used in the event the preferred card expires or is denied.

Once an account is opened, the CSC will mail an Account Profile (Welcome Letter) to the customer. The profile will welcome the customer to the registered video program and will request that the customer review pertinent account information provided in the letter for its accuracy. If the customer determines that any information is incorrect they are asked to update the account information immediately through the NC Quick Pass website, e-mail, in person at the CSC or through the IVR.

Policy 2.2.2: Account Balances & Replenishment

The opening balance and threshold amount for registered video accounts are presented in **Table 7**. These amounts are based on account type and on the number of license plates assigned to the account. The policies associated with these balances and thresholds are the same as those outlined under NC Quick Pass account Policies 1.6, 1.7 and 1.8.

TABLE 7 Opening Account Balance Registered Video Account			
Account Type	**Payment Type**	**Opening Balance Per License Plate**	**Threshold Amount**
Personal	Cash/Check/ Money Order	$30.00 total for first 2 license plates $15 for each additional license plates *(up to 5 license plates in total)*	50%*
	Credit Card or Debit Card	$30.00 total for first 2 license plates $15 for each additional license plates *(up to 5 license plates in total)*	25%*
Business	Cash/Check/ Money Order	$30.00 for each license plate	50%*
	Credit Card or Debit Card	$30.00 for each license plate	25%*
* or a minimum of $10			

The amounts listed in Table 7 may increase at the discretion of the NCTA.

Policy 2.3: Non-Revenue Plan

NCTA Non-Revenue policy allows the exemption of tolls for certain service vehicles per N.C.G.S. § 136-89.211(2). Those service organizations include law enforcement, emergency fire or rescue, or emergency medical services within the jurisdictional boundaries of the toll road. (Example: for Triangle Expressway eligible organizations must service Durham, Wake, and Harnett Counties). Vehicles that fit into this category and wish to utilize the toll road for responding to official situations are required to submit a Non-Revenue application for review and approval by the NCTA. NCTA reserves the right to approve or reject any non-revenue application. Emergency response vehicles stationed outside the jurisdiction of the project that are responding to a call within the project boundaries may submit a Toll Dispute form for review by NCTA to dispute the incurred toll.

Policy 2.3.1: Application

The Non-Revenue account is a form of a registered video account. There are no limitations as to the number of vehicles assigned to a Non-Revenue account. All vehicles listed on the account must be officially registered to the service organization applying for the account. NCTA may request a copy of the vehicle registration for any vehicles listed on the Non-Revenue account. Any vehicles not officially registered to the service organization will be subject to immediate removal from the Non-Revenue Account and the authority may charge the organization for any tolls incurred by these unauthorized vehicles. Unauthorized use of a Non-Revenue account may also subject the account to suspension or permanent closure by NCTA.

Non-Revenue plans are required to sign up for the e-mail option for statements and correspondence delivery methods. However, a non-revenue account holder may request special run statements at the CSC store front and must pay the $5.00 charge at the time of the statement request. Agencies shall designate at least two points of contact and shall update contact information annually or as account information changes. All account information must be kept current at all times and the account holder contact must send in an updated vehicle list on an

annual basis. When vehicles need to be added, deleted, updated on the account, the appropriate vehicle information must be submitted via email to the CSC Liaison Specialist. Non-Revenue account holders will not have access to make changes to their account via the website.

The NCTA Director of Customer Service and Financial Controls or the NCTA CSC Liaison Specialist must approve the Non-Revenue application by signing the application. Applications must be reviewed and signed within one (1) business day of receipt. Upon signature the signed application will be submitted to the CSC Manager for account establishment. NCTA may deny any application if the organization is not within the parameters outlined in N.C.G.S. § 136-89.211(2). NCTA may terminate an account at any time as a result of non-compliance.

Policy 2.3.2: Toll Rate and Fees

All transactions will be documented but the toll rate posted to the account will be set at $0.00. If a non-revenue account hits the inactive account status, it will be closed by the CSC immediately since the $1.00 maintenance fee cannot be charged.

Policy 2.4 Fleet Plan

Policy 2.4.1: Application

NCTA utilizes the Registered Video Business account type for fleet companies at the Bill by Mail rate. Eligibility for a Fleet account requires a minimum of 300 vehicles and a maximum of 30,000. Vehicle lists should be submitted via email or CD/USB in the proper format indicated on the application. Fleet account holders will be required to assign two contacts on the account. Email is the required statement and correspondence delivery method. Fleet account holders are required to select the automatic replenishment method with two forms of credit/debit card as a method of payment. The Fleet account holder must maintain a current file of all vehicles listed on the account and send an updated vehicle list on an annual basis.

Customers will utilize the website to fetch transactions that are limited to 50,000 transactions per fetch. Each account is limited to one fetch per account at a time. Downloads are by demand and recommended daily or weekly to keep at a manageable size. Customers will receive monthly statements.

All vehicles listed on the account must be officially registered to the company. NCTA may request a copy of the vehicle registration for any vehicles listed on the Fleet account. Any vehicles not officially registered to the applicant will be subject to immediate removal from the Fleet account. Unauthorized use of a Fleet account may also subject the account to suspension or permanent closure by NCTA. Additionally, NCTA may terminate an account at any time as a result of non-compliance or misuse of the account.

Policy 2.4.2: Account Balance, Threshold and Replenishment

The prepaid account balance for all Fleet account holders is $10,500. When the account balance reaches a 25% threshold, the BOS will automatically charge the calculated replenishment amount to the account holder's credit or debit card. The initial replenishment amount is set at $2,500.00. The BOS will automatically adjust the threshold amount quarterly based on the adjustments to the replenishment amount.

Policy 2.5: General Policies

The following General Policies are applicable to NC Quick Pass and registered video accounts and the operations of the CSC and VPC. The Policy is stated within Policy 1: NC Quick Pass Accounts.

Policy 1.5:	Account Maintenance
Policy 1.10:	Statement Options
Policy 1.12:	Inactive Accounts
Policy 1.13:	Negative Account Balance
Policy 1.14:	Closing an Account
Policy 1.15:	Account Reinstatement
Policy 1.16:	Returned Check Fee
Policy 1.17:	Refunds
Policy 1.18:	Bankruptcies
Policy 1.19:	Returned Mail

POLICY 3. ACCOUNT CONVERSION

Policy 3.1 Account Conversion Requested by Customer

Policy 3.1.1 Registered Video Converted to NC Quick Pass

A registered video account customer may convert to an NC Quick Pass account at any time through the CSC. The customer will be required to purchase a transponder for each vehicle registered to the customer's video account. When converting the registered video account to an NC Quick Pass account, all currently listed license plates under the registered video account will be added to the converted NC Quick Pass account. Customer must comply with all policies relative to NC Quick Pass accounts listed in Policy 1. Tolls posting to the account with a transaction date prior to the conversion date will be posted at the Bill by Mail toll rate.

Policy 3.1.2 Bill by Mail Converted to NC Quick Pass

A Bill by Mail customer may establish an NC Quick Pass account through the CSC. The customer will be required to pay all unpaid tolls and fees, complete an application, pay the appropriate pre-paid toll balance, purchase a transponder, provide all required information, and signing the terms and conditions agreement. When converting from Bill by Mail to an NC Quick Pass account, all currently listed license plates under the Bill by Mail invoices will be added to the converted NC Quick Pass account. This conversion can be completed through the web using the Account Conversion button.

Note: There is no way to stop a customer from opening an account with outstanding invoices if the license plates do not match. The only time the customer is restricted is if they try and use the same license plate that is on the outstanding Bill by Mail invoice.

Policy 3.1.3 Bill by Mail Converted to Registered Video

A Bill by Mail customer may establish a registered video account through the CSC by receiving authorization from NCTA. The customer will be required to pay all unpaid tolls and fees, complete an application, pay the appropriate pre-paid toll balance, provide all required information, and sign the terms and conditions agreement. When converting Bill by Mail to a registered video account, all currently listed license plates under the Bill by Mail invoices will be added to the converted registered video account. Registered video accounts must be approved by NCTA and can only be established at a CSC.

Note: There is no way to stop a customer from opening an account with outstanding invoices if the license plates do not match. The only time the customer is restricted is if they try and use the same license plate that is on the outstanding Bill by Mail invoice.

Policy 3.2 Delinquent Account Conversion by BOS

NC Quick Pass and registered video accounts will be converted to a delinquent status when an account balance is below -$10.00. At this time the customer will be notified that the account has been suspended. If replenishment is not received the CSC will proceed with the invoice process defined under Policy 4.

Policy 3.3 Account Conversion Summary

TABLE 8 Account Conversions			
From Account	**To Account**	**Option**	**Description**
Bill by Mail	Registered Video	Walk in	Customer initiated. All outstanding invoices are paid at the time of account conversion. NCTA approval required
Bill by Mail	NC Quick Pass	Web Phone in Walk in	Customer initiated. All outstanding invoices are paid at the time of account conversion. Transponder purchase required for each vehicle on account.
Bill by Mail	Delinquent Status	BOS	System initiated if an invoice is not paid within 30 days from the date on the invoice.
Registered Video	NC Quick Pass	Web Phone in Walk in	Customer initiated. Positive account balance and account information is rolled over to NC Quick Pass Account. Transponder purchase required for each vehicle on account.
Registered Video	Delinquent Status	BOS	System initiated if tolls cannot be posted due to account suspension.
NC Quick Pass	Registered Video	Walk in	Customer initiated. Positive account balance and account information is rolled over to registered video account. Transponders deactivated. NCTA approval required
NC Quick Pass	Delinquent Status	BOS	System initiated if tolls cannot be posted due to account suspension. Transponders deactivated.

POLICY 4. NCTA BILL BY MAIL POLICIES

The NCTA Bill by Mail policies are established in accordance with the NC General Statutes. These statutes provide that the registered owner (OWNER) of the motor vehicle is liable for payment of tolls unless the OWNER establishes that the motor vehicle was in the care, custody, and control of another person when the vehicle traveled on a North Carolina toll facility. (G.S. 136-89.212) These policies are applicable to the specific motor vehicle identified for non-payment at an NCTA toll facility. NCTA may invoice all unpaid toll transactions through Bill by Mail. In cases where a policy differs for an out-of-state violator, it will be identified as such. Refer to **Appendix D** for VEMS Process Flow Diagram.

Policy 4.1: Image Review

The focus of this policy is image review business policies and requirements. Video transactions may be subject to manual image review. **Table 9** below details specific conditions for image capture and the resulting action.

TABLE 9
Image Capture

Transponder Status	Image Capture	OCR Image Review	Manual Image Review (if needed)	Transaction Type	Account Type	Account Status	Result
N/A	Yes	Yes	Yes	Bill by Mail			Invoice
Active	Yes	Yes	No	NC Quick Pass	Personal / Business / Non Rev	Autopay / Good / Low	IToll
Active	Yes	Yes	No	NC Quick Pass	Government	Good	Invoice
Lost / Stolen / Invalid	Yes	Yes	Yes	Bill by Mail	Personal / Business / Non Rev	Autopay / Good / Low	Invoice
Lost / Stolen / Invalid	Yes	Yes	Yes	Bill by Mail	Personal / Business / Non Rev	Zero	Invoice
N/A	Yes	Yes	Yes	Bill by Mail	Registered	Active	Invoice
N/A	Yes	Yes	Yes	Bill by Mail	Registered	Negative Balance	Invoice
N/A	Yes	Yes	Yes	Bill by Mail	Unregistered	Active	Invoice
N/A	Yes	Yes	Yes	Bill by Mail	Unregistered	Negative Balance	Invoice

Policy 4.2: Unpaid Toll – 30 Days Pre Bill Payment Option

A Bill by Mail customer will have thirty (30 days after traveling on an NCTA toll facility to notify the NCTA of their use of the facility and to provide the necessary payment associated with the unpaid toll. This is an opportunity for the driver to stop into the CSC or storefront location to make a payment of a toll before the transaction has been fully processed by the BOS, especially when the information needs to be obtained through any state DMV. The CSC will be able to accommodate these invoice pre-payments by creating a Bill by Mail account with the appropriate license plate. The toll charges would then be applied to this account when they are fully processed. The Bill by Mail customers will be provided the opportunity to open an NC Quick Pass account at the time of payment. Future tolls will be charged at the rate based on the type of account the customer selects.

Policy 4.3: Bill by Mail Invoice (G.S. 136-89.214)

If the OWNER fails to contact the CSC and pay the toll(s) due within thirty (30) days from the date of the first transaction, the NCTA will send a first Bill by Mail invoice to the OWNER of the motor vehicle by first-class mail to the address provided by the NC DMV, provided by an out-of-state DMV, or as provided by some other recognized source, on the motor vehicle registration for the unpaid toll(s). The first Bill by Mail invoice will include any toll transactions that occurred during this initial thirty (30) day period.

Policy 4.3.1: Limitations

The NCTA must send the first Bill by Mail invoice to the OWNER within ninety (90) days of the date the toll transaction occurred. If the NCTA fails to send the first Bill by Mail invoice to the OWNER within the ninety (90) days, the NCTA waives the right to collect the toll.

Policy 4.3.2: Invoicing Period

By statute the NCTA's billing period cannot be shorter than fifteen (15) days. The billing period for the first Bill by Mail invoice will be set at thirty (30) days from the date of the first transaction to reduce the number of small invoices being mailed out. All subsequent billing periods will be set at thirty (30) days. The first Bill by Mail invoice for each billing period will include <u>all</u> unpaid tolls incurred by the same registered OWNER of the vehicle during the billing period. This could include multiple vehicles (license plates).

Policy 4.3.3: Vehicle Registration Information

NCTA will submit a request for OWNER information (name and mailing address) to the NC DMV, out-of-state DMV or other recognized source, as needed. Once the registration information is received, NCTA may begin generating the first Bill by Mail invoice.

Policy 4.3.4: Invoice Requirements

The first Bill by Mail invoice for a billing period will include at a minimum the following items:

1. Name and address of the OWNER of the motor vehicle that traveled on the NCTA toll facility or of the person identified in the OWNER's affidavit as having care, custody and control of the vehicle when it was driven on the NCTA toll facility.

2. The date and time the travel occurred.

3. Gantry description for each toll zone of the NCTA toll facility on which vehicle passage occurred.

4. An image of the license plate of the vehicle. All images related to an invoice will be available to the customer through the NC Quick Pass website or upon request from the CSC.

5. The amount of the toll due at the Bill by Mail toll rate and an explanation of how payment may be made.

6. The date by which the toll must be paid to avoid the imposition of a processing fee and the amount of the fee.

7. A statement that an OWNER who has unpaid tolls may be subject to a possible civil penalty, processing fee and may have vehicle registration blocked or be submitted to a collection agency until all amounts owed to NCTA are paid.

8. A clear and concise explanation of how to contest liability for the toll.

9. If applicable, a copy of the affidavit submitted by the OWNER identifying the person with care, custody and control of the motor vehicle when the travel occurred.

Policy 4.3.5: Bill by Mail Invoice Mailing

Within one (1) business day upon the end of the thirty (30) day period, NCTA will generate and mail the first Bill by Mail invoice to the OWNER by first-class mail to the address provided under Policy 4.3.3 on the motor vehicle registration. NCTA will allow thirty (30) days for the customer to pay the invoice from the date of the invoice.

Policy 4.3.6: Owner's Actions (G.S. 136-89.215(a))

An OWNER who receives a first Bill by Mail invoice for an unpaid toll must take one of the following actions within thirty (30) days of the date on the Bill by Mail invoice.

1. Pay the first Bill by Mail invoice.

2. Complete and submit an Informal Review form with the required information and signatures.

Policy 4.3.7: Waiving Right to a Review

The OWNER waives the right to dispute the first Bill by Mail invoice for unpaid tolls if a request for review is not submitted to the CSC within thirty (30) days from the date of the first Bill by Mail invoice. Any toll disputes received beyond the thirty (30) day period will be sent a "Informal Review Determination-Reject" letter and no future action will be taken by the CSC.

Policy 4.4: Bill by Mail Invoice Escalation

If payment is not received within thirty (30) days from the date of the first Bill by Mail invoice, the Bill by Mail status will be changed to "delinquent" resulting in the initiation of the escalation process. The unpaid transactions on the first Bill by Mail invoice(s) will escalate on a

subsequent invoice and will be subject to processing fees/civil penalties through the issuance of the subsequent invoices. The subsequent invoices shall be forwarded by first class mail to the address on the first Bill by Mail invoice. See invoice escalation process below.

1st invoice – Toll amount due at the Bill by Mail toll rate

2nd invoice – Processing fee (not to exceed $6.00 per subsequent invoice or $48.00 per 12-month period)
Example: new toll transaction charge (if applicable) + unpaid amount from 1st Invoice + $6 processing fee for unpaid 1st Invoice

3rd invoice – Civil penalty fee of twenty-five dollars ($25.00) after sixty (60) days from the first Bill by Mail invoice. Only one civil penalty can be assessed in a 6-month period.
Example: new toll transaction charge (if applicable) + previous invoice (toll charges + $6 processing fee) + $6.00 processing fee (for unpaid 2nd invoice) + $25.00 civil penalty

Subsequent invoices will provide a total of all unpaid transactions and/or fees from the prior invoice(s) and all detailed transactions which occurred during the current billing period. The processing fee will be established by the NCTA. The amount of the processing fee will not exceed six dollars ($6.00) per billing period.

Policy 4.4.1: Processing Fees (G.S. 136-89.215(b)

The NCTA cannot charge an OWNER more than forty-eight dollars ($48.00) in processing fees in a 12-month period. A processing fee is added to the customer's next billing cycle if the prior invoice had a financial transaction (the $6.00 fee or new toll transactions) and the OWNER has not requested an informal review of the toll nor paid the outstanding balance in full. Each invoice includes all unpaid tolls incurred by the OWNER during the billing period. Therefore the processing fee is to be assessed for each invoice not paid within 30 days (not to exceed $48.00 in a 12 month period). Each invoice also includes a failure to pay statement explaining invoice escalation and the consequences of non-payment.

Policy regarding the waiver of the first processing fee ($6.00) is applied to a customer's invoice if disputed by the customer in a timely manner as provided in **Appendix E**. This is a **onetime** waiver per account.

Policy 4.4.2: Civil Penalty (G.S. 136-89.216)

An OWNER with unpaid tolls and fees greater than sixty (60) days from the date of the first Bill by Mail invoice may be subject to a twenty-five dollar ($25.00) civil penalty. Only one civil penalty can be applied in a 6-month period. A civil penalty can only be assessed one time for each unpaid invoice (or unpaid toll transactions from one invoice) within a 6-month period. Six months from the date of the last civil penalty the BOS will apply the next civil penalty to the oldest eligible invoice on the account.

The invoice assessing the Civil Penalty shall clearly state the total amount due as identified above and the manner in which it may be paid. It shall be forwarded by first class mail to the address provided by the NC DMV on the motor vehicle registration. The total amount due must be paid to NC Quick Pass within thirty (30) days of the invoice date.

Generally Civil Penalties are not waived. Any waivers must be approved by NCTA.

When NCTA collects a civil penalty imposed for unpaid tolls it will credit the clear proceeds of the civil penalty to the civil penalty and Forfeiture Fund established in G.S. 115C-457.1. The guidelines used by the Office of State Budget and Management to determine an agency's actual costs of collecting a civil penalty and the clear proceeds of the civil penalty apply to the determination of the clear proceeds of a civil penalty imposed.

Policy 4.5: NC Vehicle Registration Blocked (G.S. 136-89.217)

An OWNER with unpaid tolls/fees/penalties previously billed through a Bill by Mail invoice will have their NC vehicle registration renewal blocked. Refer to **Appendix F** for detailed policy and procedures.

Policy 4.5.1: Removal of Registration Renewal Block

The NC vehicle registration renewal block shall remain in effect until all tolls, fees, and civil penalties assessed are paid in full to the NCTA. NCTA will remove the registration renewal block within two (2) business day of receipt of the payment. Customers can pay at any NCTA CSC storefront, by phone, or mail in their payment. The CSR will verify the payment and proceed with appropriate removal of the registration renewal block.

Policy 4.6: Collection Agency

An OWNER with unpaid tolls/fees/penalties greater than ninety (90) days from the date of the first Bill by Mail invoice may have their debt submitted to a collection agency, if the amount due is greater than the threshold set by NCTA. Transfer of payment due to a collection agency may be noted on any subsequent invoices sent to the customer with unpaid tolls/fees/penalties greater than ninety (90) days. NCTA may utilize more than one collection agency. The distribution to collection agencies will be made through alphabet separation by last name. The collection agency shall collect the amount due (tolls, fees, and penalties); submit the amount to the NCDOT/NCT; and bill NCDOT/NCTA 16% of the amount collected. NCDOT/NCTA will then pay the collection agency invoice. Refer to **Appendix G** for details on the collection process and payment policies.

Invoices in collections will not be accessible on the web. CSRs may apply payments to invoices that have not been sent to collections. CSRs cannot apply payments to invoices that have been submitted to a collection agency. Customer will be required to settle with the collection agency.

Policy 4.7: Request for Informal Review- (G.S. 136-89.218(a))

The OWNER of a vehicle is responsible for an unpaid toll; however, the OWNER may contest liability for the toll by requesting an Informal Review with the NCTA. The OWNER shall have thirty (30) days from the date of the first invoice to submit a request for an Informal Review with the NCTA for toll transactions within the current billing period using the form provided in **Appendix H**. This form can be obtained on the web or at a CSC store front. An OWNER that fails to submit the request within thirty (30) days of the date of the first bill waives the right for review. The CSC will generate a Determination-Rejected letter to the customer stating that the time to request a review has expired.

Policy 4.7.1: Sworn Affidavit (G.S. 136-89.212)

An OWNER may establish that a motor vehicle was in the care, custody and control of another person when it was driven on a toll facility by submitting one of the following:

1. A sworn affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information.

2. A sworn affidavit stating that prior to the time the vehicle was driven on the toll facility, it, had been sold, transferred, or leased/rented by the registered owner to another person prior to the date of the alleged unpaid toll. The affidavit must be supported by insurance information, a copy of the certificate of title, a copy of the lease/rental agreement, or other evidence of the transfer.

3. A sworn affidavit providing the name and address of the person or company to transfer the liability to that had the care, custody, and control of the vehicle when it was driven on the toll facility. The toll dispute form requires signature of the transferee in order for CSC management to review the disputed toll.

Policy 4.7.2: NCTA's Receipt of Informal Review Request

CSC management will review written disputes and make a decision based on the information provided by the OWNER within two (2) business days of receipt of the request. In cases where circumstances require additional research time, the CSC will have up to five (5) business days from the date of the request receipt to make a determination. Once the NCTA receives a request for informal review, they cannot collect the disputed toll amount until a decision is made through the review process. The escalation process will be suspended for the disputed toll transaction(s) by crediting the disputed toll amount until a Final Decision is rendered, NCTA may not collect the disputed toll and any processing fees until the conclusion of the Informal Review process, an Administrative Hearing in OAH or a Judicial Review processing in Superior Court. NCDOT's Attorney General's Office will inform NCTA of the outcome of the various levels of appeal. The adjustment code "Toll Dispute" shall be used to issue the credit. The BOS will keep a record of this action which shall include the identity of the person making the adjustment.

Policy 4.7.3: Informal Review Determination

If CSC management conducts an informal review and determines that the OWNER is liable for the disputed toll(s), the determination will be recorded in the BOS which shall include the identity of the person making the determination. For Bill by Mail customers, the adjustment will be added to the next invoice and escalated accordingly after sixty (60) days if the OWNER does not file with the OAH. Once the decision is recorded in the BOS, a "denied" notification will be sent to the OWNER informing them of the determination.

If CSC management determines that the OWNER is not liable for the disputed toll(s), the determination will be documented in the BOS and a "waived" notification will be sent to the OWNER informing them of the decision through a letter clarifying that the toll transactions have been waived and no payment will be required from the OWNER. The BOS will keep a record of this action which shall include the identity of the person making the adjustment. If a transfer of liability is required, the correct license plate/OWNER/responsible party (driver) will be

resubmitted for invoice processing. SL 2013-183 gives NCTA the explicit authority to send a bill to the person with care, custody control of the car (driver). The driver has the right to contest the toll. The invoice sent to the Driver must include a copy of the Affidavit submitted by the OWNER stating that the Driver incurred the toll.

At any time, NCTA may request to audit the toll dispute process at which time CSC management will provide a log of toll disputes and their resolution based on the time period requested by NCTA. NCTA has the authority to reverse the decision of CSC management.

Policy 4.8: Administrative Hearing & Judicial Review

Policy 4.8.1: Administrative Hearing (G.S. 136-89.218(b))

The OWNER may contest the Informal Review determination by filing a petition for a contested case hearing with the Office of Administrative Hearing. To file a Petition with the Office of Administrative Hearings, the following steps must be followed:

STEP 1 — REQUESTING THE FORM:
Contact the Office of Administrative Hearings (OAH) at 919-431-3000 to request a copy of the Petition form to mailed or faxed. It can also be obtained online www.ncoah.com/. The certificate of service is included on the bottom of the Petition form. OAH will also include a page titled, instructions for Form H-06, "Petition for a Contested Case" and "Certificate of Service."

STEP 2— FILLING OUT THE FORM:
Once you receive the Petition and instruction sheet, read the instructions carefully and complete the top and bottom portions of the form.

STEP 3— SUBMITTING THE COPIES:
The ORIGINAL PLUS ONE COPY of the Petition and certificate of service must be received by the Office of Administrative Hearings within sixty (60) days after this informal review determination. (REFER TO OAH INSTRUCTION SHEET FOR MAILING AND PHYSICAL ADDRESSES) If a petition is not filed within this timeframe, the right to appeal may be lost. A copy of the completed Petition and certificate of service must also be mailed, delivered, or faxed to the DOT Process Agent for the N.C. Department of Transportation, address noted below. FAILURE TO DO SO MAY RESULT IN THE DISMISSAL OF THE APPEAL.

STEP 4— FILING FEE:
The Office of Administrative Hearings charges a $20.00 filing fee for each petition filed. Please contact their office at 919-431-3000 to obtain information regarding the accepted forms of payment.

As stated above, you must also serve a copy of the petition for a contested case hearing on the North Carolina Department of Transportation by personal delivery or by certified or registered mail, return receipt requested to: DOT Process Agent, N.C. Department of Transportation, 1 South Wilmington Street, 1501 Mail Service Center, Raleigh, North Carolina 27699-1501.

The customer has sixty (60) days after the informal review determination letter to file a petition with OAH. The escalation process will be suspended for the disputed toll transaction(s) in the

same manner as Policy 4.5.1 NCTA's Receipt of Review Request and 4.5.2 Review Determination until the OAH decision is rendered. Once the outcome of OAH decision is entered into the BOS, the escalation process will begin following the appropriate business rules associated with the decision.

Policy 4.8.2: Judicial Review (G.S. 136-89.218(c))

An OWNER aggrieved by the final decision, and who has exhausted all administrative remedies, may file a petition for judicial review in Superior Court. The petition must be filed within 30 days after the OWNER is served with the OAH Final Decision in accordance with Article 4 of Chapter 150B of the General Statutes. The escalation process will be suspended for the disputed toll transaction(s) in the same manner as Policy 4.5.1 NCTA's Receipt of Review Request and Policy 4.5.2 Review Determination until the court judgment is rendered. Once the outcome of the court proceeding is entered into the BOS the escalation process will begin following the appropriate business rules associated with the decision.

Policy 4.9: Rental Car Policy

NCTA will utilize third party vendors to the greatest extent possible. NCTA will contract with the leading rental car management companies and require that they establish either an NC Quick Pass or registered video account. All license plates in their databases will be uploaded onto the account and the customer must maintain the database through the website on a weekly basis moving forward. All accounts must be backed by an automated replenishment method and must remain in good standing. These accounts will follow all applicable policies as described in this document.

Policy 4.10: Bill by Mail Invoice Payments

NCTA shall accept cash, check, money orders, and credit or debit cards for payment, and provides four convenient ways for customers to submit their payment:

1. **Website -** Access the NC Quick Pass website at www.ncquickpass.com. (Invoice Number is required)

2. **By Phone -** Call the NC Quick Pass CSC at 1-877-7MY-PASS and select from the menu options provided. (Invoice Number is required)

3. **Store Front Location(s) -** Customer may obtain NC Quick Pass store front hours and location(s) by visiting the NC Quick Pass website or calling the CSC.

4. **Mail -** Customer can complete the payment form included with the Invoice and mail it with their payment to the NC Quick Pass CSC. Customers cannot send cash.

NCTA shall accept overpayment; however, the money will be on the account for future use by the customer. In this situation, a refund will not be generated unless the customer specifically requests it. The customer will also no longer receive invoices if there are not transactions posted to the account, even if there is a positive balance. If the customer requests a refund, but continues to drive on the road, the refund amount will be less the outstanding transactions.

NCTA shall accept partial payments, however full payment is required to eliminate invoice escalation. Partial payments will be applied to the foremost past due invoice balance, whether it applies to satisfying:

- Unpaid outstanding tolls,
- Unpaid outstanding processing fees, and / or
- Unpaid outstanding civil penalties.

POLICY 5. INTEROPERABILITY POLICIES-OUT OF STATE

Policy 5.1 NC Quick Pass Interoperability Toll Program

This policy outlines the responsibilities and obligations of the NCTA and NC Quick Pass customers when an NC Quick Pass customer travels on an out-of-state toll facility that is interoperable with NC Quick Pass. In response to the demand for interoperability, NCTA procured toll collection and back office systems for North Carolina toll projects capable of reading and processing NC Quick Pass transponders, as well as E-ZPass® and SunPass® transponders.

Policy 5.1.1 Transponder Usage

Table 10 below summarizes the NC Quick Pass transponders and the correlated interoperability program:

Table 10
Transponder Summary

Vendor Name (Part Number)	NC Quick Pass Name	Interoperable Program
Non-Feedback Interior Transponders		
eGo ® Plus (13-1715-001)	Sticker	SunPass®
eZGo Anywhere ™ IAG Std OBU (13-8011-100)	Hard Case	E-ZPass® and SunPass®
Exterior Transponders		
eZGo Anywhere Exterior ™ (13-9711-600)	Exterior	E-ZPass® and SunPass®

Policy 5.1.2 Enrollment

Upon purchasing an NC Quick Pass, customers will automatically be enrolled in the NCTA's interoperable program, which will allow customers to pay tolls on facilities accepting E-ZPass® and SunPass®, based on transponder selection as outlined in Table 10. Dependent upon which transponder is purchased, NCTA will take all necessary steps to ensure the customer is aware of the transponder capabilities in regard to valid interoperable regions, associated costs and fees, and additional uses such as parking, ferries, etc. as these programs become available to NC Quick Pass customers.

By establishing an NC Quick Pass account and agreeing to the Terms and Conditions, the Customer agrees to the release of their transponder ID and license plate number to be shared with states participating in the NCTA interoperability program.

Customers name and address shall not be provided to any agency with whom NCTA has established interoperability agreements. Requests for this data shall follow the disclosure limitation in 18 U.S.C. 2721 (Federal Driver's Privacy Protection Act) and shall only be provided to agencies in which NCTA has agreed to reciprocal toll transactions. Driver/customer information will not be made available for any reason other than to support payment of toll transactions or comply with a valid order of a court of jurisdiction.

Policy 5.1.3 Transponders/License Plate Files

NCTA will forward the transponder status file, which will include transponder ID and a license file which contains plate information, on a daily basis with the interoperable agencies. The determination of the daily transponder and license plate status exchange will be based on the following criteria:

1. **Auto-Replenishment Accounts** - All NC Quick Pass transponders associated with accounts in good financial standing with auto-replenishment will be sent as "valid" in the transponder status file.

2. **Manual Replenishment Accounts -** All transponders associated with accounts in good financial standing will be sent as "valid" in the transponder status file.

3. **Negative Balance Accounts -** Transponders associated with accounts that are in a negative status, as established in Policy 2.12, will be sent as "invalid" in the transponder status file and therefore, will not be considered interoperable. The NC Quick Pass customer will be required to pay the interoperable agencies directly until the account is adequately replenished. NC Quick Pass customers shall be aware of this stipulation, and may be subject to potential violation charges and/or video invoicing for unpaid tolls according to the out-of-state agencies business policies and procedures.

4. **Closed Accounts** - Upon closing an NC Quick Pass account, NCTA shall send the customer's transponder as "invalid" in the transponder status file and follow Policy 1.15.

5. **Lost/Stolen Transponders** - NC Quick Pass transponders reported lost or stolen will be sent as "lost" in the transponder status file. The vehicle carrying a transponder with a "lost" status shall be considered a Video Account and/or Violator on out-of-state toll roads. The transponder will be changed back to "valid" in the transponder status file upon notification of the transponder being recovered assuming the account is still in good status.

Policy 5.1.4 Non-Revenue and Government Accounts

NC Quick Pass customers which are enrolled as Non-Revenue and/or Government Accounts will not be considered interoperable accounts.

Policy 5.1.5 Disputes and Refunds (Out of State Transactions)

NC Quick Pass customers wishing to dispute a toll or request a refund for tolls charged to their account by an out-of-state agency, shall notify the NC Quick Pass CSC of any disputed toll with proper justification for the dispute. NCTA shall seek verification from the out-of-state toll operator of the toll(s) in question. If the toll is verified, the charges shall remain on the customer account. If the toll is waived by the out-of-state agency, the charges shall be reversed and the customer's account credited.

Policy 5.1.6 Out-of-State Customer Disputes and Refunds (NC Transactions)

Out of state customers will dispute NC tolls through their home agency's service center. The service center will contact the NCTA reciprocity contact who will research the toll in dispute and resolve according to our toll dispute policy.

The dispute process shall follow Policy 4.7.2. All other disputes shall include the claim(s) as to why the toll should not have been assigned to the out-of-state customer.

Upon verification by NC Quick Pass that the dispute is valid, the away agency shall properly credit the customer's account for the appropriate amount. Should NC Quick Pass find that the dispute is not valid, all contested charges will remain and the customer shall have the option to adhere to the dispute policies in Policies 4.7 and 4.8. Any toll adjustments will be sent in a correction file and settled accordingly.

Policy 5.2 Interoperability with the E-ZPass® Toll Program

The interoperability Agreement between NCTA and the E-ZPass Group (EZG) is located in **Appendix I** entitled Amendment No. 8 to E-ZPass® Operations Interagency Agreement (Appendix E of the agreement). Not included in Appendix I are the following IAG documents that also comprise the interoperability agreement. These documents are available on the EZG website (http://e-zpassiag.com/interoperability)

- Operating Agreement;
- Reciprocity Agreement dated as of July 30, 1998 ("Reciprocity Agreement");
- License Agreement;
- Mark IV Irrevocable Offer and any successor contract approved by the IAG Executive Management Committee for procurement of equipment and services for IAG purposes;
- All confidentiality agreements in connection with IAG activities;
- Inter-Customer Service Center Interface File Specifications and Vehicle Classification Table, Operating Guidelines; and
- Any other agreement or amendment approved by the IAG Executive Management Committee in accordance with the Operating Agreement.

Policy 5.2.1 Fees

Refer to Appendix I for details. Key elements are summarized below:

Transaction Fees

A customer's Home Agency shall be reimbursed by the Away Agency a fee of $0.06 per transaction. Reimbursement shall be made no less than monthly or may as otherwise be agreed in writing between two or more affected IAG member or National Affiliate members.

Credit Card Fees

A Home Agency transferring toll revenues to an Away Agency shall be reimbursed by that Away Agency for the proportionate share of credit card fees incurred in the replenishment of customer accounts. The Home Agency shall be responsible for determining amounts due from the Away Agency for credit card fees associated with account reimbursements, and shall include

a statement which sets forth reasonable details of the calculation. All credit card reimbursement fees shall be computed using the then current credit card formula provided by the IAG EMC.

Policy 5.2.2 Reciprocity

Appendix J provides the IAG reciprocity document for detailed information. Key requirements are as follows:

1. Valid Tag Transactions
   a. Upon receipt of transaction records, the Home Agency will post transactions to the proper accounts.
   b. Settlement of a Valid Tag Transaction shall not be dependent on transaction posting; i.e., the Home Agency's obligation to pay the Away Agency is not contingent upon the Home Agency posting the transactions to the customer's account.
   c. So long as the Away Agency transfers Valid Tag Transactions to the Home Agency within 60 days, the Home Agency will honor same if the account is open.
   d. The Home Agency is not responsible to honor the Valid Tag Transaction if the transaction is received more than 10 days after the transaction occurred and the account is closed.

2. Customer Disputed Transactions
   a. Each Agency will inform the other Agencies of its guidelines for handling customer disputed transactions. When, due to cost/benefit or other considerations, customer accounts are credited for the disputed amount without further research, such credits will not affect Settlement or Reconciliation between Agencies.
   b. When a customer disputes a transaction that occurred on an Away Agency's facility, and such transactions are researched, acknowledged and agreed to be an error of the Away Agency, the resulting adjustment will become part of the Reconciliation and Settlement between the two agencies and no payments will be made for such transactions.
   c. In order to enable proper researching of customer complaints, all agencies will maintain records related to toll transactions for a minimum period of 120 days.

3. Settlement & Revenue Reconciliation
   a. The Home Agency will transfer the gross toll amount due for Valid Tag Transactions as reported by an Away Agency in United States dollars. All transfers will be calculated on a gross basis.
   b. The Home Agency will settle in a manner and frequency as determined by agreement between the Home and Away Agency, but at least monthly. Final settlement will be based on Valid Tag Transactions as reported by the Away Agency regardless of account status at time of Posting.
   c. Actual or estimated revenue as reported by the Away Agency may be used as a basis for Conditional Settlement as agreed between the Home and Away Agencies.
   d. Valid Tag Transactions obligate the Home Agency to remit the correct toll to the Away Agency at the time of Settlement regardless of the status of the Home Agency account at the time of Posting. In the case of lost or stolen tags, the Home Agency is no longer obligated for transactions that occur after notification to the Away Agency.

e. An Agency which does not act as a Home Agency may notify the other Agencies that all transactions relating to such Agency's facilities shall be transmitted to and settled with a Home Agency designated by such Agency.

4. Violations
   a. Processing of E-ZPass® customer violations at the Away Agency when the tag is reported as lost/stolen by the Home Agency will be pursuant to the rules and regulations of the Away Agency.
   b. The Agencies agree to facilitate the identification of violators by the sharing of appropriate information or files to the extent permitted by law.
   c. The Agencies will share customer account information only for the purpose of collecting tolls, the enforcement of toll policies or as otherwise required by law.
   d. The Agencies will process toll evasion violation images in such a manner as to identify customers' accounts in good standing and thereby create a Valid Transaction.
   e. Non-customer toll evasion violators will be processed pursuant to the rules and regulations of the Agency where the violation occurred.

Policy 5.2.3 Tag Validation File

01 Valid
02 Low Balance
03 Invalid
04 Lost/Stolen

Policy 5.3 Interoperability with the SunPass Toll Program

The interoperability Agreement between NCTA and the Florida Turnpike Enterprise (FTE) SunPass® program is located in **Appendix K**. This program is designed to follow the IAG interoperability process as defined within Policies 5.2 with the exception of the following:

Transaction Fees
There are no transaction fees.

Credit Card Fees
Credit card fees will be reconciled on a monthly basis rather than quarterly as per the IAG.

Appendix C

Performance Requirements for ETC Services Performed by NCDOT

Table C-1 of this Appendix C identifies minimum performance requirements for certain ETC Services performed by or on behalf of NCDOT pursuant to Exhibit 18, which shall result in CCH/CSC Noncompliance Points and trigger the remedies set forth in this Attachment C. The occurrence of a CCH/CSC Noncompliance Event ("NCE") shall trigger the assessment of CCH/CSC Noncompliance Points and, if applicable, liquidated damages, under the system set forth in this Appendix C.

A. Notification

(1) If NCDOT believes there has occurred any CCH/CSC Noncompliance Event, NCDOT may deliver to Developer a written notice of determination thereof setting forth the CCH/CSC Noncompliance Event and the CCH/CSC Noncompliance Points and, if applicable, the liquidated damages to be assessed with respect thereto. Such written notice shall be provided within 3 Business Days after NCDOT obtains knowledge of such CCH/CSC Noncompliance Event.

(2) If Developer believes there has occurred any CCH/CSC Noncompliance Event, Developer may deliver to NCDOT a written notice of determination thereof setting forth the CCH/CSC Noncompliance.

B. Assessment of CCH/CSC Noncompliance Points and Liquidated Damages

If at any time Developer serves notice of determination under Section A, then, Developer may assess CCH/CSC Noncompliance Points and, if applicable, liquidated damages in accordance with this Appendix C, subject to the following terms and conditions.

(1) Developer shall not be entitled to assess CCH/CSC Noncompliance Points or liquidated damages under more than one category for any particular event or circumstance that is a CCH/CSC Noncompliance Event. Where a single act or omission gives rise to more than one CCH/CSC Noncompliance Event, it shall be treated as a CCH/CSC Noncompliance Event for the purpose of assessing CCH/CSC Noncompliance Points and, if applicable, liquidated damages, and the highest amount of CCH/CSC Noncompliance Points and liquidated damages under the relevant CCH/CSC Noncompliance Event shall apply.

(2) The number of points listed in Table C-2 of this Appendix C for any particular CCH/CSC Noncompliance Event is the maximum number of CCH/CSC Noncompliance Points that may be assessed for each event or circumstance that is a breach or failure, and the amount of liquidated damages listed in Table C-1 of this Appendix C for any particular

Noncompliance Event is the maximum amount of liquidated damages that may be assessed for each event or circumstance that is a breach or failure. Developer may, but is not obligated to, assess less than the maximum.

C. Provisions Regarding Dispute Resolution

(1) NCDOT may object to the assessment of CCH/CSC Noncompliance Points respecting any CCH/CSC Noncompliance Event, by delivering to Developer written notice of such objection not later than five days after Developer delivers its written notice of such CCH/CSC Noncompliance Event.

(2) If for any reason NCDOT fails to deliver its written notice of objection within the applicable time period, NCDOT shall be conclusively deemed to have accepted the matters set forth in the applicable notice, and shall be forever barred from challenging them.

(1) If NCDOT gives timely notice of objection and the Parties are unable to reach agreement on any matter in Dispute within ten days of such objection, either Party may refer the matter for resolution according to the Dispute Resolution Procedures in Section 17.8 of the Agreement.

(2) Pending the resolution of any Dispute arising under this Section C, the provisions of this Section C shall take effect as if the matter were not in Dispute, provided that if the final decision regarding the Dispute is that (a) the CCH/CSC Noncompliance Points should not have been assessed or, (b) the number of CCH/CSC Noncompliance Points must be adjusted, then the number of CCH/CSC Noncompliance Points assigned or assessed and the related liabilities of NCDOT shall be adjusted to reflect such decision.

D. Developer Remedies for Accumulated CCH/CSC Noncompliance Points

(1) If at any time NCDOT is assessed more than 223 CCH/CSC Noncompliance Points in any consecutive 365-day period, Developer shall be entitled, at NCDOT's expense, to increase the level of monitoring of the ETC Services provided by NCDOT under Paragraph IV of Exhibit 18 beyond the level agreed upon pursuant to Paragraph II.C of Exhibit 18, to such increased level as Developer sees fit, until such time as NCDOT has demonstrated to Developer's reasonable satisfaction that:

(a) Has reduced the number of CCH/CSC Noncompliance Points below the threshold triggering such heightened scrutiny, and

(b) Is diligently pursuing cure of all other instances of CCH/CSC Noncompliance Events that have resulted in assessment of CCH/CSC Noncompliance Points.

Developer may require as part of such increased monitoring that NCDOT prepare a remedial plan for Developer's review and approval.

(2) If at any time NCDOT is assessed more than 245 CCH/CSC Noncompliance Points in any consecutive 365-day period, then, Developer shall be entitled to require NCDOT to replace the applicable ETC Servicer. Upon receiving written notice from Developer that Developer intends to exercise its rights under this Section D(2), NCDOT shall elect either to: (a) replace the ETC Servicer and the replacement ETC Servicer shall start providing CCH and/or CSC services within 120 days of such notice at no additional cost to Developer or (b) terminate NCDOT's responsibility to perform ETC Services as described in Exhibit 18 and allow Developer to perform such services on Developer's own behalf.

(3) If NCDOT elects to terminate its responsibility to perform the CCH and CSC services pursuant to Section D(1)(b), NCDOT shall provide 120 days advance written notice to Developer. After providing such written notice to Developer, NCDOT shall continue to provide CCH and/or CSC services as described in Exhibit 18 until such time as Developer assumes performance of such services; provided, however, that NCDOT's obligation to continue to provide CCH and/or CSC services as described in Exhibit 18 shall not exceed a period of 365 days after providing such written notice

(4) If at any time NCDOT is assessed more than 265 Noncompliance Points in any consecutive 365-day period, then Developer shall be entitled to terminate NCDOT's responsibility to perform CCH and/or CSC services as described in Exhibit 18 and assume performance of such services on Developer's own behalf within 120 days of providing written notice to NCDOT of such decision.

(5) If termination of NCDOT's responsibility to perform CCH and/or CSC services occurs pursuant to this Appendix C, NCDOT shall have no obligation to provide ETC Services-related facilities, equipment, software, hardware, communication lines, or office supplies, unless such items are owned or leased by Developer prior to termination.

E. Liquidated Damages Respecting CCH/CSC Noncompliance Events

(1) In addition to CCH/CSC Noncompliance Points, certain CCH/CSC Noncompliance Events shall result in liquidated damages as set forth in Table C-1 below. NCDOT shall be liable for and pay to Developer liquidated damages for each CCH/CSC Noncompliance Event assessed against NCDOT in the amount set forth in Table C-1.

(2) Developer and NCDOT acknowledge that such liquidated damages shall constitute Developer's sole right to damages for such individual CCH/CSC Noncompliance Event and are reasonable in order to compensate Developer (a) for its increased costs in performing its obligations under Exhibit 18 and (b) for its potential loss of Toll Revenue. Developer and NCDOT further acknowledge that such increased costs and loss of revenue payment would be difficult and impracticable to

measure and prove, because, among other things, the variety of factors that influence use of and demand for the Project make it difficult to sort out causation and quantify the precise Toll Revenue loss attributable to the matters that will trigger these liquidated damages.

Table C-1. Performance Requirements for ETC Services Performed by NCDOT

TABLE C-1. PERFORMANCE REQUIREMENTS FOR ETC SERVICES PERFORMED BY NCDOT*					
Element Category	**Required Task**	**ID**	**Minimum Performance Requirements**	**NCE Category**	**Liquidated Damages**
CCH Host	CCH Host Availability	1	Maintain 99.99% availability of the CCH host server, measured monthly.	C	
	No Loss of Transactions	2	No accurate and certified Transactions sent by Developer shall be lost at any time, including during periods when communications with the CCH Host is not available. Success rate shall be 100% measured per day, reported upon occurrence and monthly.	E	100% of lost Toll Revenue calculated pursuant to Section 13.2.4.2(b) of the Comprehensive Agreement
	Transaction Processing	3	Process Transactions for posting in near real-time. Success rate shall be 100% measured per day, report delays upon occurrence and monthly.	C	
	Account Status File Update	4	File updates for all Accounts, Transponders (including assignment to a client, retrieval, black list and others), including DMV lookup, shall be made the same day (24 hours). Success rate shall be 100%, measured per day and reported monthly.	D	
Video Postpaid Account	First Invoice Time for Video Postpaid Account	5	100% of Video Postpaid Account bills to be invoiced within 30 days of receipt of accurate and Certified Transaction information. Success rate shall be 100% measured per day, reported monthly.	E	100% of lost Toll Revenue per every day after day 30 calculated pursuant to Section 13.2.4.2(b) of the Comprehensive Agreement
	Subsequent Invoice Time for Video Postpaid Account	5a	100% of subsequent Video Postpaid Account bills to be invoiced within 35 days of the first Video Postpaid Account bill and each 35 days thereafter. Success rate shall be 100% measured per day, reported monthly.	E	100% of lost Toll Revenue per every day after day 65 calculated pursuant to Section 13.2.4.2(b) of the Comprehensive Agreement

	Accuracy	6	Video Account bills and subsequent notices sent to the wrong recipient, or to a recipient who already has paid the toll, shall not occur more than once per 10,000 bills/notices sent, measured and reported monthly.	C	
Call Response Time	Call efficiency	7	90% of telephone calls to be answered within 20 seconds (90/20 service level), calculated daily and reported monthly.	B	
		8	98% of telephone calls to be answered within 60 seconds, calculated daily and reported monthly.	B	
	IVR automatic response time	9	The IVR must provide the requested information within 10 seconds of the customer entering their account information 100% of the time, measured daily and reported monthly.	B	
	Customer phone call blockage rate (busy signal)	10	The phone call blockage rate shall be less than 0.05% of total incoming calls, calculated monthly.	D	
Customer Service Availability	Telephone system availability	11	Telephone system (including trunk line, switch, instruments, IVR and call distribution systems) shall be 99.95% available on a 24x7 basis excluding pre-scheduled manufacturers' recommended preventive maintenance, measured monthly.	D	
	Web Site availability	12	Interactive web site, including all requisite interactive links to external sites shall be 99.95% available on a 24x7 basis excluding pre-scheduled manufacturers' recommended preventive maintenance, measured monthly.	D	$500 for each 1 percent below 99.5%
	Web Site account maintenance availability	13	Secure customer access through website for account maintenance purposes (including opening an account, changing information on an account, viewing account status and statements, and replenishing an account balance.) shall be 95% available on a 24x7 basis excluding pre-scheduled manufacturers' recommended preventive maintenance (Data shall be	D	$500 for each 1 percent below 95%

			secured by SSL certificate or similar certified technology), measured monthly.		
	Walk-in center availability	14	The walk-in center shall be available for not less than 8 hours per day weekdays and 4 hours weekends (or otherwise agreed to by the NCDOT), reported per instance if not met.	D	$500 for every instance
	Call center staffing	15	Hours of staffed telephone coverage in the call center shall be not less than 8 hours per day weekdays and 4 hours weekend (or otherwise agreed to). Federal holidays shall not be included.	D	$500 for every instance
	Call abandon rate	16	The call abandon rate shall be less than 2.5% of all incoming calls, calculated daily and reported monthly.	D	$500 for each 1 percent above 2.5%
Customer Response Time	Issue written response	17	Written responses shall be issued with 3 business days 98% of the time, and within 5 business days 100% of the time, measured monthly.	B	
	Walk-in service time	18	The walk-in center maximum wait time for service shall be within 10 minutes 98% of the time, and within 30 minutes 100% of the time, calculated daily and reported monthly.	D	$500 for each 1 percent below 98% and $1,000 for each 1 percent below 100%
	Issue email response	19	Incoming email queries or complaints (which may include escalation to Level 2 Customer Service) shall be acknowledged in return within 30 minutes 100% of the time, and responded to within 2 business days 100% of the time, measured monthly.	C	
	Telephone response	20	90% of telephone queries shall be responded to within one (1) Business Day and 100% within two (2) Business Days. Telephone live queries and/or complaints related to standard products, services and policies should be addressed while the customer is on the telephone	C	

			without a call-back required 99% of the time and 100% within one (1) Business Day, measured monthly.		
	Complaint resolution	21	100% of complaints will be resolved or escalated for dispute resolution within 30 days, measured monthly.	C	
	Process Transponder requests	22	Time to process complete Transponder requests/orders shall be within one (1) Business Day 95% of the time and 100% within two (2) Business Days of receipt, measured daily, reported month.	E	$500 for each 1 percent below 95% and $1,000 for each 1 percent below 100%
Customer Service Quality	Customer service interactions	23	99% of customer interactions will be perceived as polite, caring and professional as measured by QMS, measured in annual customer survey.	B	
	Customer satisfaction rating	24	90% of customers must rank the service as satisfactory or better, measured in annual customer survey.	A	
Customer Account Maintenance	Mail or email statements	25	The time to mail or email statements and billings shall be within five Business Days of end of statement period, 100% of the time, measured monthly.	E	100% of lost Toll Revenue per every day after day 35 calculated pursuant to Section 13.2.4.2 (b) of the Comprehensive Agreement
	Errors under $50	26	The number of errors reported by customers under $50 shall not exceed 1 per 1,000 Transactions, measured daily and reported monthly.	C	
	Errors over $50	27	The number of errors reported by customersover $50 shall not exceed 1 per 1,000,000 Transactions, measured and reported monthly.	D	
	Privacy conformance	28	Privacy legislation shall be conformed with 100% of the time, report upon occurrence and monthly whether there have been any instances of non-conformance.	E	

	Process account updates	29	Process 100% of account updates within one Business Day of receipt of application by any means, provided necessary information to update the Account is provided, measured monthly. Time to process correspondence, which may include general inquires or other activities not related to Account maintenance, is to be distinguished from time to process account updates. This standard is intended to cover both account openings and updates.	D	
	Assign Transponders to accounts	30	99.95% of Transponder assignments to accounts shall be correctly assigned, measured monthly.	D	$500 for each 1 percent below 99.5% each month
	Time to process Transponder reports	31	The time to process Transponder reports shall be 95% within one (1) Business Day of receipt of report, except for lost/stolen reports, for which 100% will be processed within one (1) Business Day, measured monthly.	B	
	Transaction Posting	33	Customers must be able to view (at a minimum via the Internet) ETCS-created Transactions charged to their ETC Prepaid Account within 3 business days. The success rate shall mean that the time elapsed between the time a Transaction is successfully created and the time the Transaction is posted on the Customer Account and can be viewed by the Customer is less than 3 Business Days. Success rate shall be 100%, measured monthly.	D	
	Invoicing	34	The system must be able to generate a detailed and accurate invoice or statement at the end of each billing period, showing the list of all Transactions, tolls and Incidental Charges due, and debits and credits to prepaid accounts for all Client Accounts. The success rate shall mean that accurate invoices shall be issued for all Customers Accounts within five Business	E	100% of lost Toll Revenue per every day after day 5 calculated pursuant to Section 13.2.4.2 (b) of the Comprehensive Agreement

			Days after the end of each billing period. Success rate shall be 100%, measured monthly.		

*Scheduled system maintenance is excluded from downtime calculations. Metrics and format of reports for reporting on performance requirements will be mutually agreed upon between NCDOT and Developer.

Table C-2. CCH/CSC NONCOMPLIANCE POINTS	
CCH/CSC Noncompliance Event Classification	Points
A	1
B	2
C	3
D	4
E	5

EXHIBIT 19

FORM OF FINANCIAL CLOSE OPINION AND CERTIFICATE

19-A Form of Opinion of Counsel

19-B Form of Financial Close Certificate

EXHIBIT 19-A

FORM OF OPINION OF COUNSEL

Rodger Rochelle
North Carolina Department of Transportation
Transportation Program Management
Century Center, Building B, Door B2
1020 Birch Ridge Drive
Raleigh, NC 27610

Re: Comprehensive Agreement for I-77 HOT Lanes Project dated as of _____, 2014, by and between North Carolina Department of Transportation, and _____ (the "Developer")

Gentlemen:

This letter is provided with regard to the Comprehensive Agreement ("CA") dated as of _____, 20__, by and between the North Carolina Department of Transportation ("NCDOT") and _____ ("Developer") for I-77 HOT Lanes Project ("Project").

[Describe relationship to Developer and its joint venture members, general partners, members, as applicable, and any other entities whose approval is required in order to authorize delivery and execution of the CA.]

This letter is provided to you pursuant to Section 4.1.3.3(f) of the CA.

In giving this opinion, we have examined _____. We have also considered such questions of law and we have examined such documents and instruments and certificates of public officials and individuals who participated in the procurement process as we have deemed necessary or advisable. *[if certificate used/obtained from Developer or Guarantor, such certificate should also run in favor of NCDOT and should be attached to opinion]*

In giving this opinion, we have assumed that all items submitted to us or reviewed by us are genuine, accurate and complete, and if not originals, are true and correct copies of originals, and that all signatures on such items are genuine.

Subject to the foregoing, we are of the opinion that:

1. [opinion that the Initial Funding Agreements and PABs Agreement (if applicable) have been duly authorized by all necessary corporate action on the part of Developer and such documents have been duly executed and delivered by Developer] *[if Developer is a partnership/joint venture, add: and its joint venture members/general partners after the second and third "Developer"]*

2. [opinion that the Initial Funding Agreements and PABs Agreement (if applicable) constitute legal, valid and binding obligations of Developer enforceable against

Developer in accordance with its terms] *[if Developer is a partnership/joint venture, add: "and its joint venture members/general partners" after the second "Developer"]*

3. [opinion that there is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, the Initial Funding Agreements and PABs Agreement, or which challenges the authority of Developer's representative executing the Initial Funding Agreements and PABs Agreement; and Developer has disclosed to NCDOT any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware] *[if any such action, suit, investigation or litigation is pending or served, disclose the nature and circumstances of such action, suit, investigation or litigation]*

4. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the the Initial Funding Agreements and PABs Agreement conflict with any agreements to which Developer is a party] *[if Developer is a partnership/joint venture, add: and "its joint venture members/general partners are a party"]* or with any orders, judgments or decrees by which Developer is bound *[if Developer is a partnership/joint venture, add: "and its joint venture members/general partners are bound"]*

5. [opinion that execution, delivery and performance of all obligations by Developer under the Initial Funding Agreements and PABs Agreement do not conflict with, and are authorized by, the articles of incorporation and bylaws of Developer *[if Developer is a partnership, replace "articles of incorporation and bylaws" with "partnership agreement and (if applicable) certificate of limited partnership"); if Developer is a joint venture, replace "articles of incorporation and bylaws" with "joint venture agreement"; if Developer is a limited liability company, replace "articles of incorporation and bylaws" with "operating agreement and certificate of formation"]*

6. [opinion that execution and delivery by the the Initial Funding Agreements and PABs Agreement do not, and Developer's performance of its obligations under such documents will not, violate any current statute, rule or regulation applicable to Developer or to transactions of the type contemplated by the the Initial Funding Agreements and PABs Agreement]

Capitalized terms used, but not defined, have the meanings ascribed in the CA.

EXHIBIT 19-B

FORM OF FINANCIAL CLOSE CERTIFICATE

[Note: Delete references to PABs Agreement to the extent PABs is not part of the financing]

[DATE]

Pursuant to Section 4.1.3.3(g) of the Comprehensive Agreement (the "Agreement"), by and between the North Carolina Department of Transportation ("NCDOT") and _____ ("Developer"), Developer hereby represents, certifies and warrants to NCDOT as of the date of Financial Close (except where a specific date is referred to below, in which case the truth and accuracy of the representation, certification and warranty shall be as at such specific date) as follows:

1. The Financial Model Formulas (a) were prepared by or on behalf of Developer in good faith, (b) are the same financial formulas that Developer utilized and is utilizing in the Financial Model in making disclosures to potential equity investors and Lenders under the Initial Funding Agreements, and (c) as of the effective date of the Initial Funding Agreements are mathematically correct and suitable for making reasonable projections.

2. The Base Case Financial Model (a) was prepared by or on behalf of Developer in good faith, (b) was audited and verified by an independent recognized model auditor as Financial Close, (c) fully discloses all cost, revenue and other financial assumptions and projections that Developer has used or is using in making its decision to enter into this Agreement, and (d) represents the projections that Developer believes in good faith are reasonable for the Project; provided, however, that such projections (i) are based upon a number of estimates and assumptions, (ii) are subject to significant business, economic and competitive uncertainties and contingencies, and (iii) accordingly are not a representation or warranty that any of the assumptions are correct, that such projections will be achieved or that the forward-looking statements expressed in such projections will correspond to actual results.

3. Developer is a _____ duly organized and validly existing under the laws of _____, 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 the Initial Funding Agreements and PABs Agreement and to perform each and all of the obligations of Developer provided for therein. Developer is duly qualified to do business, and is in good standing in the State.

4. The execution, delivery and performance of the Initial Funding Agreements and PABs Agreement have been duly authorized by all necessary corporate action of Developer; each person executing the Initial Funding Agreements and PABs Agreement on behalf of Developer has been duly authorized to execute and deliver each such document on behalf of Developer; and the Initial Funding Agreements and PABs Agreement have been duly executed and delivered by Developer.

5. Neither the execution and delivery by Developer of the Initial Funding Agreements and PABs Agreement, nor the consummation of the transactions contemplated thereby, is in conflict with or has resulted or will result in a default under or a violation of the governing

instruments of Developer or any agreement, judgment or decree to which Developer is a party or is bound, including this Certificate.

6. The execution and delivery by Developer of the Initial Funding Agreements and PABs Agreement, and the performance by Developer of its obligations thereunder, will not conflict with any Laws applicable to Developer that are valid and in effect on the date of execution and delivery. Developer is not in breach of any applicable Law that would have a material adverse effect on the Work or the performance of any of its obligations under the Initial Funding Agreements and PABs Agreement.

7. Each of the Initial Funding Agreements and PABs Agreement constitutes the legal, valid and binding obligation of Developer, enforceable against Developer and, if applicable, each Equity Member of Developer, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

9. There is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, the CA Documents, the Initial Funding Agreements and PABs Agreement, or which challenges the authority of the Developer official executing the CA Documents, Initial Funding Agreements or PABs Agreement; and Developer has disclosed to NCDOT any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware. *[Note: If any such action, suit, investigation or litigation is pending or served, disclose the nature and circumstances of such action, suit, investigation or litigation]*

10. Between the Effective Date and the effective date of the Initial Funding Agreements, Developer has not obtained knowledge of any additional organizational conflict of interest not disclosed as of the Effective Date of the Agreement, and there have been no organizational changes to Developer or its Contractors identified in its Proposal, which have not been approved in writing by NCDOT. For this purpose, organizational conflict of interest has the meaning set forth in Volume I of the Request for Proposals.

11. The execution and delivery by Developer of this Certificate, the Initial Funding Agreements and PABs Agreement will not result, at the time of execution, in a default under any other agreement or instrument to which it is a party or by which it is bound.

12. The execution and delivery by Developer of the Initial Funding Agreement and PABs Agreement will not conflict with any Laws applicable to Developer that are valid and in effect as of Financial Close.

13. The individual signing the Agreement on behalf of Developer, subject to the penalties for perjury, that he/she is the properly authorized representative, agent, member or officer of Developer.

Capitalized terms used, but not defined, have the meanings ascribed in the Agreement.

IN WITNESS WHEREOF, the undersigned, the duly elected and qualified _____ of Developer, has been authorized by all necessary organizational action to make this certification on behalf of Developer (and without personal liability) and further certifies that [he]/[she] has caused this Certificate to be executed as of the date first written above.

Signature: _____

Name: _____

Title: _____

EXHIBIT 20

FORMS OF PAYMENT BOND AND PERFORMANCE SECURITY

20-A Form of Payment Bond

20-B Form of Performance Bond

20-C Form of Multiple Obligee Rider for Performance Bond

20-D Form of Performance Letter of Credit

20-E Form of NTP1 Work Payment Bond

EXHIBIT 20-A

FORM OF PAYMENT BOND

Bond No. _____

CONTRACT PAYMENT BOND FOR I-77 HOT LANES PROJECT

Date of Payment Bond _____

Execution _____

Name of Principal Contractor _____

Name of Surety: _____

_____

Amount of _____

Bond: Contract _____

ID No.: County _____

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL CONTRACTOR (hereafter, PRINCIPAL) and SURETY above named, are held and firmly bound unto the above named Obligee, hereinafter called the Obligee, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the Obligee, numbered as shown above and hereto attached:

NOW THEREFORE, if the principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate

party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

CONTRACT PAYMENT BOND

Affix Seal of Surety Company

_____
Print or type Surety Company Name

By _____
Print, stamp or type name of Attorney-in-Fact

_____
Signature of Attorney-in-Fact

_____
Signature of Witness

_____
Print or type Signer's name

_____

Address of Attorney-in-Fact

CONTRACT PAYMENT BOND

CORPORATION

SIGNATURE OF CONTRACTOR (Principal)

_____

Full name of Corporation

_____

Address as prequalified

By _____

Signature of President, V ice President, Assistant Vice President *Select appropriate title*

_____

Print or type Signer's name

Affix Corporate Seal

Attest _____

Signature of Secretary, Assistant Secretary
Select appropriate title

_____

Print or type Signer's name

Contract No. County _____

Rev 5-17-11

CONTRACT PAYMENT BOND
JOINT VENTURE (2) **or** (3)
SIGNATURE OF CONTRACTORS (Principal)

Instructions to Bidders: 2 Joint Ventures, Fill in lines (I), (2) and (3) and execute. 3 Joint Venturers Fill in lines (1), (2), (3), (4) and execute. On Line (1), print or type the name of Joint Venture. On line (2), print or type the name of one of the joint venturers and execute below in the appropriate manner required by Article 102-8 of the *Specifications.* Os Line (3), print or type the name of second joint venturer and execute below in the appropriate manner required by said article of the Specifications. On Line (4), print or type the name of the third joint venturer, if applicable and execute below in the appropriate manner required by said article of the Specifications. This form of execution must be strictly followed.

(I) _____ _____

Name of Joint Venture

(2)

Name of Contractor

_____

Address as prequalified

_____		_____
Signature of Witness or Attest	By	Signature of Contractor
_____		_____
Print or type Signer's name		Print or type Signer's name

If Corporation, affix Corporate Seal

and

(3)

Name of Contractor

_____

Address as prequalified

_____		_____
Signature of Witness or Attest	By	Signature of Contractor
_____		_____
Print or type Signer's name		Print or type Signer's name

If Corporation, affix Corporate Seal

and

(4)

Name of Contractor *(for 3 Joint Venture only)*

_____

Address as prequalified

Signature of Witness or Attest	By	Signature of Contractor
Print or type Signer's name		Print or type Signer's name

If Corporation, affix Corporate Seal

CONTRACT PAYMENT BOND

LIMITED LIABILITY COMPANY

SIGNATURE OF CONTRACTOR (Principal)

Name of Contractor _____

Full name of Firm

_____

Address as prequalified

By: _____

Signature of Member, Manager, Authorized Agent *Select appropriate title*

_____

Print or type Signer's name

CONTRACT PAYMENT BOND

PARTNERSHIP

SIGNATURE OF CONTRACTOR (Principal)

_____

Full name of Partnership

_____

Address as prequalified

By _____

Signature of Partner

_____

Print or type Signer's name

_____

Signature of Witness

Print or type Signer's name

CONTRACT PAYMENT BOND

Attach certified copy of Power of Attorney to this sheet

EXHIBIT 20-B

FORM OF PERFORMANCE BOND

Bond No. _____

CONTRACT PERFORMANCE BOND FOR I-77 HOT LANES PROJECT

Date of Payment Bond _____

Execution Name of Principal _____

Contractor Name of Surety: _____

Name of Obligee: _____

_____

Amount of _____

Bond: Contract _____

ID No.: County _____

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL CONTRACTOR (hereafter, PRINCIPAL) and SURETY above named, are held and firmly bound unto the above named Obligee, hereinafter called the Obligee, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the Obligee, numbered as shown above and hereto attached:

NOW THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Obligee, with or without notice to the Surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly

authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

CONTRACT PERFORMANCE BOND

Affix Seal of Surety Company

_____
Print or type Surety Company Name

By _____
Print, stamp or type name of Attorney-in-Fact

_____
Signature of Attorney-in-Fact

_____
Signature of Witness

_____
Print or type Signer's name

_____

Address of Attorney-in-Fact

CONTRACT PERFORMANCE BOND

CORPORATION

SIGNATURE OF CONTRACTOR (Principal)

_____

Full name of Corporation

_____

Address as prequalified

By _____

Signature of President, V ice President, Assistant Vice President *Select appropriate title*

_____

Print or type Signer's name

Affix Corporate Seal

Attest _____

Signature of Secretary, Assistant Secretary
Select appropriate title

_____

Print or type Signer's name

Contract No. County _____

Rev 5-17-11

CONTRACT PERFORMANCE BOND
JOINT VENTURE (2) **or** (3)
SIGNATURE OF CONTRACTORS (Principal)

Instructions to Bidders: 2 Joint Ventures, Fill in lines (I), (2) and (3) and execute. 3 Joint Venturers Fill in lines (1), (2), (3), (4) and execute. On Line (1), print or type the name of Joint Venture. On line (2), print or type the name of one of the joint venturers and execute below in the appropriate manner required by Article 102-8 of the *Specifications.* On Line (3), print or type the name of second joint venturer and execute below in the appropriate manner required by said article of the Specifications. On Line (4), print or type the name of the third joint venturer, if applicable and execute below in the appropriate manner required by said article of the Specifications. This form of execution must be strictly followed.

(I) _____ _____

Name of Joint Venture

(5)

Name of Contractor

_____

Address as prequalified

_____		_____
Signature of Witness or Attest	By	Signature of Contractor
_____		_____
Print or type Signer's name		Print or type Signer's name

If Corporation, affix Corporate Seal

and

(6)

Name of Contractor

_____

Address as prequalified

_____		_____
Signature of Witness or Attest	By	Signature of Contractor
_____		_____
Print or type Signer's name		Print or type Signer's name

If Corporation, affix Corporate Seal

and

(7)

Name of Contractor *(for 3 Joint Venture only)*

_____

Address as prequalified

Signature of Witness or Attest	By	Signature of Contractor
Print or type Signer's name		Print or type Signer's name

If Corporation, affix Corporate Seal

CONTRACT PERFORMANCE BOND

LIMITED LIABILITY COMPANY

SIGNATURE OF CONTRACTOR (Principal)

Name of Contractor _____

Full name of Firm

_____

Address as prequalified

By: _____

Signature of Member, Manager, Authorized Agent *Select appropriate title*

_____

Print or type Signer's name

CONTRACT PERFORMANCE BOND

PARTNERSHIP

SIGNATURE OF CONTRACTOR (Principal)

_____

Full name of Partnership

_____

Address as prequalified

By _____

Signature of Partner

_____

Print or type Signer's name

_____

Signature of Witness

_____

Print or type Signer's name

CONTRACT PERFORMANCE BOND

Attach certified copy of Power

EXHIBIT 20-C

FORM OF MULTIPLE OBLIGEE RIDER

CONTRACT PERFORMANCE BOND RIDER FOR I-77 HOT LANES PROJECT

MULTIPLE OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Contract Performance Bond No. _____.

WHEREAS, on or about the _____ day of _____, 20__, _____, (hereinafter called the "Principal"), entered into a written agreement bearing the date of _____, 20__, (hereinafter called the "Contract") with _____, (hereinafter called the "Primary Obligee") for the performance of design and construction work for the I-77 HOT Lanes Project; and

WHEREAS, the Primary Obligee requires that Principal provide a performance bond and the North Carolina Department of Transportation ("NCDOT"), _____, and_____ be named as additional obligees under the performance bond; and

WHEREAS, Principal and the Surety have agreed to execute and deliver this Rider concurrently with the execution of Contract Performance Bond No._____ (hereinafter referred to as "Performance Bond") upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

NCDOT, _____, and _____ _____ are hereby added to the Performance Bond as named obligees (hereinafter referred to as "Additional Obligees").

The Surety shall not be liable under the Performance Bond to the Primary Obligee, the Additional Obligees, or any of them, unless the Primary Obligee, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) in accordance with the terms of the Contract as to payments and shall perform all other obligations to be performed under the Contract in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee shall have occurred and be continuing under the Contract.

The aggregate liability of the Surety under this Performance Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of the Performance Bond. The Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, provided that the Additional Obligees have received notice and 30 days prior opportunity to cure breach or default by the Primary Obligee under the Contract. The total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract.

The Surety may, at its option, make any payments under the Performance Bond by check issued jointly to all of the obligees.

In the event of a conflict between the Performance Bond and this Rider, this Rider shall govern and control. All references to the Performance Bond, either in the Performance Bond or in this Rider, shall include and refer to the Performance Bond as supplemented and amended by this Rider. Except as herein modified, the Performance Bond shall be and remains in full force and effect.

Signed, sealed and dated this _____ day of _____, 20__.

Contract No. County _____

CONTRACT PERFORMANCE BOND RIDER

Affix Seal of Surety Company

_____
Print or type Surety Company Name

By _____
Print, stamp or type name of Attorney-in-Fact

_____
Signature of Attorney-in-Fact

_____
Signature of Witness

_____
Print or type Signer's name

_____
Address of Attorney-in-Fact

Contract
No. County _____

CONTRACT PERFORMANCE BOND RIDER

CORPORATION

SIGNATURE OF CONTRACTOR (Principal)

_____
Full name of Corporation

_____
Address as prequalified

By _____
Signature of President, V ice President, Assistant Vice President *Select appropriate title*

_____
Print or type Signer's name

Affix Corporate Seal

Attest _____
Signature of Secretary, Assistant Secretary *Select appropriate title*

_____
Print or type Signer's name

CONTRACT PERFORMANCE BOND RIDER
JOINT VENTURE (2) **or** (3)
SIGNATURE OF CONTRACTORS (Principal)

Instructions to Bidders: 2 Joint Ventures, Fill in lines (I), (2) and (3) and execute. 3 Joint Venturers Fill in lines (1), (2), (3), (4) and execute. On Line (1), print or type the name of Joint Venture. On line (2), print or type the name of one of the joint venturers and execute below in the appropriate manner required by Article 102-8 of the *Specifications.* Os Line (3), print or type the name of second joint venturer and execute below in the appropriate manner required by said article of the Specifications. On Line (4), print or type the name of the third joint venturer, if applicable and execute below in the appropriate manner required by said article of the Specifications. This form of execution must be strictly followed.

(I) _____ _____
Name of Joint Venture

(8)
Name of Contractor

_____
Address as prequalified

_____ By _____
Signature of Witness or Attest — Signature of Contractor

_____ _____
Print or type Signer's name — Print or type Signer's name

If Corporation, affix Corporate Seal

and

(9)
Name of Contractor

_____
Address as prequalified

_____ By _____
Signature of Witness or Attest — Signature of Contractor

_____ _____
Print or type Signer's name — Print or type Signer's name

If Corporation, affix Corporate Seal

and

(10)
Name of Contractor *(for 3 Joint Venture only)*

_____
Address as prequalified

_____ By _____
Signature of Witness or Attest — Signature of Contractor

_____ _____
Print or type Signer's name — Print or type Signer's name

If Corporation, affix Corporate Seal

Contract
No, County _____
_____

CONTRACT PERFORMANCE BOND RIDER

LIMITED LIABILITY COMPANY

SIGNATURE OF CONTRACTOR (Principal)

Name of Contractor _____

Full name of Firm

_____

Address as prequalified

By: _____

Signature of Member, Manager, Authorized Agent *Select appropriate title*

_____

Print or type Signer's name

Contract No. County _____

CONTRACT PERFORMANCE BOND RIDER

PARTNERSHIP

SIGNATURE OF CONTRACTOR (Principal)

_____

Full name of Partnership

_____

Address as prequalified

By _____

Signature of Partner

_____

Print or type Signer's name

_____

Signature of Witness

_____

Print or type Signer's name

Contract
No. County _____
_____

CONTRACT PERFORMANCE BOND RIDER

Attach certified copy of Power of Attorney to this sheet

EXHIBIT 20-D

FORM OF PERFORMANCE LETTER OF CREDIT

* If the letter of credit is to secure the performance obligations of the Design-Build Contractor or other prime Contractor rather than Developer, then:

(1) Developer or the Collateral Agent shall be named as the beneficiary;

(2) The letter of credit shall include provisions, in form and substance acceptable to NCDOT, expressly authorizing assignment and transfer of the beneficiary rights to NCDOT without condition or limitation and expressly permitting NCDOT to draw without presentation of the original letter of credit;

(3) The letter of credit shall include provisions, in form and substance acceptable to NCDOT, naming NCDOT as automatic and exclusive transferee beneficiary upon Final Completion; and

(4) The draw conditions in paragraph 2 of the form of letter of credit shall be revised to reflect a failure of the Contractor to perform its contract obligations under the Contract between Developer and such Contractor.

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER: _____

PLACE FOR PRESENTATION OF DRAFT: _____

_____

(Name and Address of Bank/Branch -- MUST be a United States Bank/Branch)

APPLICANT: [Name of Developer]

BENEFICIARY: NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

Address: _____

_____

Contact Person: _____

Phone No. _____

LETTER OF CREDIT NUMBER: _____

PLACE AND DATE OF ISSUE: _____

AMOUNT: _____ United States Dollars (US$_____)

EXPIRATION DATE: _____, 20__

The Issuer hereby issues this Irrevocable Standby Letter of Credit in favor of the North Carolina Department of Transportation ("NCDOT"), for any sum or sums up to the aggregate amount of _____ United States Dollars (US$_____), available by draft at sight drawn on the Issuer. Any draft under this Letter of Credit shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue; and

2. State one of the following:

   "This drawing is due to the failure of _____(Developer's name)_____ ("Developer") to perform certain obligations under the certain Comprehensive Agreement for the I-77 HOT Lanes Project between NCDOT and Developer dated _____, 2014 (the "Agreement")."

   or

   "This drawing is due to the failure of _____(Developer's name)_____ ("Developer") to deliver to NCDOT a new or replacement letter of credit, on the same terms, by the deadline set forth in the certain Comprehensive Agreement for the I-77 HOT Lanes Project between NCDOT and Developer dated _____, 2014 (the "Agreement")."

or

"This drawing is due to the fact that the Issuer does not meet the requirements set forth in the certain Comprehensive Agreement for the I-77 HOT Lanes Project between NCDOT and _____(Developer's name)_____ ("Developer") dated _____, 2014 (the "Agreement") and Developer has failed to provide a substitute letter of credit issued by a qualified institution within the deadline set forth in the Agreement."

or

[Include another withdrawal condition if established under agreement or applicable law]."

All drafts will be honored if the original sight draft is physically presented to (United States Bank/Branch - Name & Address) on or before (Expiration Date) or any extended expiration date.

This Letter of Credit shall be automatically extended for successive periods of one year, without amendment, from the stated expiration date and each extended expiration date unless we send NCDOT written notice of our intent not to extend the credit; which notice must be sent at least 30 days prior to the expiration date of the original term hereof or any extended one year term, by registered or certified mail or overnight courier, to NCDOT at the address for NCDOT stated above or any other address specified in writing from an executive officer of NCDOT to the Issuer at the Issuer's address stated above.

This Letter of Credit is subject to the rules of the "International Standby Practices" ISP98. For matters not addressed by ISP98, this Letter of Credit shall be governed by New York law.

Issuer:

By:_____
(Authorized Signature of Issuer)

EXHIBIT 20-E

FORM OF NTP1 WORK PAYMENT BOND

Bond No. _____

CONTRACT PAYMENT BOND FOR I-77 HOT LANES PROJECT

Date of Payment Bond _____

Execution _____

Name of Principal Contractor _____

Name of Surety: _____

_____

Amount of _____

Bond: Contract _____

ID No.: County _____

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL CONTRACTOR (hereafter, PRINCIPAL) and SURETY above named, are held and firmly bound unto the above named Obligee, hereinafter called the Obligee, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the Obligee, numbered as shown above and hereto attached:

NOW THEREFORE, if the principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

CONTRACT PAYMENT BOND

Affix Seal of Surety Company

_____
Print or type Surety Company Name

By _____
Print, stamp or type name of Attorney-in-Fact

_____
Signature of Attorney-in-Fact

_____
Signature of Witness

_____
Print or type Signer's name

_____
Address of Attorney-in-Fact

CONTRACT PAYMENT BOND

CORPORATION

SIGNATURE OF CONTRACTOR (Principal)

_____

Full name of Corporation

_____

Address as prequalified

By _____

Signature of President, V ice President, Assistant Vice President
Select appropriate title

_____

Print or type Signer's name

Affix Corporate Seal

Attest _____

Signature of Secretary, Assistant Secretary
Select appropriate title

_____

Print or type Signer's name

Contract No. County _____ _____

Rev 5-17-11

CONTRACT PAYMENT BOND
JOINT VENTURE (2) **or** (3)
SIGNATURE OF CONTRACTORS (Principal)

Instructions to Bidders: 2 Joint Ventures, Fill in lines (l), (2) and (3) and execute. 3 Joint Venturers Fill in lines (1), (2), (3), (4) and execute. On Line (1), print or type the name of Joint Venture. On line (2), print or type the name of one of the joint venturers and execute below in the appropriate manner required by Article 102-8 of the *Specifications*. Os Line (3), print or type the name of second joint venturer and execute below in the appropriate manner required by said article of the Specifications. On Line (4), print or type the name of the third joint venturer, if applicable and execute below in the appropriate manner required by said article of the Specifications. This form of execution must be strictly followed.

(l) _____ _____

Name of Joint Venture

(11)

Name of Contractor

_____

Address as prequalified

_____	By	_____
Signature of Witness or Attest		Signature of Contractor
_____		_____
Print or type Signer's name		Print or type Signer's name

If Corporation, affix Corporate Seal

and

(12)

Name of Contractor

_____

Address as prequalified

_____	By	_____
Signature of Witness or Attest		Signature of Contractor
_____		_____
Print or type Signer's name		Print or type Signer's name

If Corporation, affix Corporate Seal

and

(13)

Name of Contractor *(for 3 Joint Venture only)*

_____

Address as prequalified

_____	By	
Signature of Witness or Attest		Signature of Contractor
_____		_____
Print or type Signer's name		Print or type Signer's name

If Corporation, affix Corporate Seal

CONTRACT PAYMENT BOND

LIMITED LIABILITY COMPANY

SIGNATURE OF CONTRACTOR (Principal)

Name of Contractor _____

Full name of Firm

_____

Address as prequalified

By: _____

Signature of Member, Manager, Authorized Agent
Select appropriate title

_____

Print or type Signer's name

Contract No. County _____

Rev 5-17-11

CONTRACT PAYMENT BOND

PARTNERSHIP

SIGNATURE OF CONTRACTOR (Principal)

_____

Full name of Partnership

_____

Address as prequalified

By _____

Signature of Partner

_____

Print or type Signer's name

_____

Signature of Witness

_____

Print or type Signer's name

CONTRACT PAYMENT BOND

Attach certified copy of Power of Attorney to this sheet