

EXHIBIT G

SPRINGING PROVISIONS RELATED TO TIFIA LOAN

Section	Existing Language	New Language
6.02(b)(xiii)	(xiii) No Financing Assignment may secure Concessionaire Debt that prohibits prepayment or defeasance; <i>provided</i> , that the foregoing does not preclude imposition of Breakage Costs in order to prepay or defease; and	(xiii) No Financing Assignment may secure Concessionaire Debt <u>(other than any Financing Assignment that secures a TIFIA Loan)</u> that prohibits prepayment or defeasance; <i>provided</i> , that the foregoing does not preclude imposition of Breakage Costs in order to prepay or defease; and
7.12(e)(i)	(i) The Concessionaire may submit to the Department a request for Change Order if the Design Build Contractor incurs a material increase of its construction costs or incurs a material impact to the critical path which delays the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, due to a material breach or an inexcusable delay by the Department in performing any of its obligations described in <u>Article 7</u> of this Agreement. For the purposes of this Section, an “inexcusable delay” shall mean a delay that is attributable solely to error or omission of the Department, and an inexcusable delay or a material breach specifically excludes delay or breach attributable to: (a) the submission of incomplete documentation for the Department’s review, (b) required review or approvals from other Governmental Authorities necessary or appropriate to the Department’s review, (c) failure to obtain appropriation and allocation of public funds, (d) consumption of available float, (e) submittals or requests that are “deemed approved” if no response is provided within 21 days, or (f) force majeure events. A response pursuant to <u>Section 7.06(k)</u> shall not be considered “deemed approved”, and shall not be considered an “inexcusable delay” in the event that a delay is attributable	(i) The Concessionaire may submit to the Department a request for <u>a Change Order for a Department-Caused Delay</u> Change Order if the Design Build Contractor incurs a material increase of its construction costs or incurs a material impact to the critical path which delays the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, due to a material breach or an inexcusable delay by the Department in performing any of its obligations described in Article 7 of this Agreement. For the purposes of this Section, an “inexcusable delay” shall mean a delay that is attributable solely to error or omission of the Department, and an inexcusable delay or a material breach specifically excludes delay or breach attributable to: (a) the submission of incomplete documentation for the Department’s review, (b) required review or approvals from other Governmental Authorities necessary or appropriate to the Department’s review, (c) failure to obtain appropriation and allocation of public funds, (d) consumption of available float, (e) submittals or requests that are “deemed approved” if no response is provided within 21 days, or (f) force majeure events. A response pursuant to Section 7.06(k) shall not be considered “deemed approved”, and shall not be considered an “inexcusable delay” in the event that a delay is attributable to items (a) through (f) above or is not attributable solely to error or omission of the Department.

	to items (a) through (f) above or is not attributable solely to error or omission of the Department.	
7.12(e)(iii)	(iii) If the Department determines the Concessionaire is entitled to cost relief, the Concessionaire shall be entitled to recover only the direct costs reasonably and necessarily incurred by the Design Build Contractor as a direct result of the Department's delay. However, under no circumstances will such recoverable costs include home office overhead incurred by the Design Build Contractor's member companies or financing costs.	(iii) If the Department determines the Concessionaire is entitled to cost relief, the Concessionaire shall be entitled to <u>Concessionaire Damages</u> recover only the direct costs reasonably and necessarily incurred by the Design Build Contractor as a direct result of the Department's delay. However, under no circumstances will such recoverable costs include home office overhead incurred by the Design Build Contractor's member companies or financing costs.
7.12(e)(iv)	(iv) The Concessionaire's request for Change Order may include the price escalation for materials only if the Department's delay causes the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, to be delayed by at least one year and such delay is not attributable to the actions or negligence of the Concessionaire, a Concessionaire Party, or the Design-Build Contractor.	(iv) The Concessionaire's request for Change Order may include the price escalation for materials only if the Department's delay <u>Department-Caused Delay</u> causes the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, to be delayed by at least one year and such delay is not attributable to the actions or negligence of the Concessionaire, a Concessionaire Party, or the Design-Build Contractor.
7.12(e)(v)	(v) The Department may extend the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, only if the Department's delay results in a material impact to the critical path set forth in the applicable Baseline Schedule.	(v) The Department may extend the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date, as applicable, only if the Department's delay <u>Department-Caused Delay</u> results in a material impact to the critical path set forth in the applicable Baseline Schedule.
7.12(e)(vi)	(vi) If for any reason the Concessionaire fails to deliver the request for Change Order within the time period specified in <u>Section 7.12(e)(ii)</u> , the Concessionaire shall be deemed to have irrevocably and forever waived and released any Claim or right to cost or schedule relief attributable to any such alleged Department delay or breach.	(vi) If for any reason the Concessionaire fails to deliver the request for Change Order within the time period specified in <u>Section 7.12(e)(ii)</u> , the Concessionaire shall be deemed to have irrevocably and forever waived and released any Claim or right to cost or schedule relief attributable to any such alleged Department delay <u>Department-Caused Delay</u> .

<p>16.03(b)</p>	<p>(b) If this Agreement is terminated at the election of the Concessionaire pursuant to this <u>Section 16.03</u>, no amount shall be payable by the Department to the Concessionaire as a result of such termination. If this Agreement is terminated at the election of the Department pursuant to this <u>Section 16.03</u>, subject to <u>Section 20.18</u> the Department must pay to the Concessionaire a sum equal to the lesser of (i) Project Value (as determined pursuant to <u>Section 17.05</u>) after such Force Majeure Event, or (ii) the lesser of (A) 80% of Senior Debt outstanding at the time of such event (including any PABs then outstanding), plus 80% of any TIFIA Loans then outstanding, or (B) 80% of Senior Debt (including PABs) plus 80% of the TIFIA Loans projected in the Base Case Financial Model Update (NEXT Final) to be then outstanding, in either such case (x) minus all cash and credit balances (if any) held under any Project Agreement, (y) minus the amount of all Distributions and all payments to Concessionaire Affiliates made on or after the relevant Force Majeure Event, and (z) minus the proceeds of any insurance (including casualty insurance and business interruption insurance) that is actually carried by or insuring any Concessionaire Party under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to <u>Section 14.02</u>, and that provides coverage to pay, reimburse or provide for any of the Losses resulting from the Force Majeure Event. If the Concessionaire fails to diligently and completely restore the HOT Lanes and such failure constitutes a Concessionaire Default, the provisions of <u>Section 17.01</u> shall apply. Subject to <u>Section 20.18</u>, the Department shall pay any sum due pursuant to this Section, together with interest, if any, as provided in this <u>Section 16.03</u>, within 60 days of the date of determination of Project Value; provided, that the Department may defer this payment for an additional 120 days if it reasonably</p>	<p>(b) If this Agreement is terminated at the election of the Concessionaire pursuant to this <u>Section 16.03</u>, no amount shall be payable by the Department to the Concessionaire as a result of such termination. If this Agreement is terminated at the election of the Department pursuant to this <u>Section 16.03</u>, subject to <u>Section 20.18</u>20.18, the Department must pay to the Concessionaire a sum equal to the lesser of (i) Project Value (as determined pursuant to <u>Section 17.05</u>) after such Force Majeure Event, or (ii) the lesser of (A) 80% of Senior 100% of Concessionaire Debt outstanding at the time of such event (including any PABs then outstanding), plus 80% of any TIFIA Loans then outstanding, or (B) 80% of Senior Debt (including PABs) plus 80% of the TIFIA Loans projected in the Base Case Financial Model Update (NEXT Final) to be then outstanding, in either such case (x) plus Demobilization Costs minus all cash and credit balances (if any) held under any <u>Project Agreement</u>, (y) minus the amount of all Distributions and all payments to Concessionaire Affiliates made on or after the relevant Force Majeure Event, and (z) bank account held by or on behalf of the Concessionaire that is pledged for the benefit of the Collateral Agent, and minus the proceeds of any insurance (including casualty insurance and business interruption insurance) that is actually carried received by or insuring any Concessionaire Party prior to the delivery of the Force Majeure Termination Notice, under policies solely with respect to the Project and the Work, regardless of whether such insurance is required to be carried pursuant to <u>Section 14.02</u>, and that pays, reimburses or provides coverage to pay, reimburse or provide for any of the Losses resulting from the Force Majeure Event. If the Concessionaire fails to diligently and completely restore the HOT Lanes and such failure constitutes a Concessionaire Default, the provisions of <u>Section 17.01</u> shall apply. Subject to <u>Section 20.18</u>, the Department shall pay any sum due pursuant to this Section, together with interest, if any, as provided in this <u>Section 16.03</u>, within 60 days of the date of determination of Project Value the delivery of the relevant Force Majeure Termination Notice; provided, that the Department may defer this payment for an additional 120 days if it reasonably determines that such additional period is necessary in order to obtain funds to make</p>
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	<p>determines that such additional period is necessary in order to obtain funds to make such payment; provided further, that any payment of any such sum shall be made together with interest thereon at the average earnings rate on the State's Transportation Trust Fund, or any successor thereto, during such period from the date of termination to the date of determination of the Project Value and thereafter at the Bank Rate to the payment date thereof; and provided further, that a termination as contemplated by this <u>Section 16.03</u> shall not be effective unless and until Project Value has been determined pursuant to <u>Section 17.05</u>.</p>	<p>such payment; provided further, that any payment of any such sum shall be made together with interest thereon at the average earnings rate on the State's Transportation Trust Fund, or any successor thereto, during such period from the date of termination to the date of determination of the Project Value and thereafter at the Bank Rate to the payment date thereof; and provided further, that a termination as contemplated by this <u>Section 16.03</u> shall not be effective unless and until Project Value has been determined pursuant to <u>Section 17.05</u>. <u>Following the Department's payment of any sum due pursuant to this Section, the Concessionaire shall either (i) reimburse the Department for any further proceeds of any insurance (including casualty insurance and business interruption insurance) that is actually received by any Concessionaire Party, after delivery of the Force Majeure Termination Notice, under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 14.02, and that pays, reimburses or provides for any of the Losses resulting from the Force Majeure Event, or (ii) assign such insurance policies with respect to the Project and the Work to the Department for its benefit, upon delivery of the Force Majeure Termination Notice. Any such reimbursement payments received by any Concessionaire Party with respect to such insurance policies shall be paid to the Department when such further insurance proceeds are received.</u></p>
16.04(a)	<p>(a) Subject to the provisions of the Direct Agreement and the NEXT Direct Agreement, the Department is entitled to terminate this Agreement (and the Permit granted to the Concessionaire hereunder) and/or any other Project Agreement to which the Department is a party as provided in <u>Section 17.02(a)</u>. In the case of any such termination pursuant to <u>Section 17.02(a)</u>, no compensation would be payable to the Concessionaire as a result of such termination.</p>	<p>(a) Subject to the provisions of the Direct Agreement and the NEXT Direct Agreement, the Department is entitled to terminate this Agreement (and the Permit granted to the Concessionaire hereunder) and/or any other Project Agreement to which the Department is a party as provided in <u>Section 17.02(a)</u>. In the case of any such termination pursuant to <u>Section 17.02(a)</u>, no compensation would be payable to the Concessionaire as a result of such termination.</p>
16.08	<p>If this Agreement is terminated by the Department or the State prior to the end of the Term, other than pursuant to</p>	<p>If this Agreement is terminated by the Department or the State prior to the end of the Term, other than pursuant to <u>Section 16.03, 16.04, 16.07</u></p>

<p><u>Section 16.03, 16.04, 16.07 or 17.02</u>, or is canceled, rescinded or voided during the Term, subject to <u>Section 20.18</u> the Department must pay to the Concessionaire the greater of (a) Project Value (determined, without regard to the effect of such termination, pursuant to <u>Section 17.05</u>) plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire, including its reasonable Allocable Costs, as a direct result of such termination and (b) the lesser of 100% of Concessionaire Debt then outstanding or 100% of Concessionaire Debt projected in the Base Case Financial Model Update (NEXT Final) to be then outstanding, and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department. The Department shall pay the foregoing sum, together with interest, if any as provided in this <u>Section 16.08</u>, within 60 days of the date of determination of Project Value pursuant to <u>Section 17.05</u>; <i>provided</i>, that the Department may defer this payment for an additional 120 days if it reasonably determines that such additional period is necessary in order to obtain funds to make such payment; and <i>provided further</i>, that any payment of the foregoing sum shall be made together with interest thereon at the average earnings rate on the State’s Transportation Trust Fund or any successor thereto during such period from the date of determination of Project Value pursuant to <u>Section 17.05</u> to the date that is 60 days after the date of determination of the Project Value and thereafter at the Bank Rate to the payment date thereof. A termination as contemplated by this <u>Section 16.08</u> shall not be effective unless and until Project Value has been determined pursuant to <u>Section 17.05</u>.</p>	<p>or <u>17.02</u>, or is canceled, rescinded or voided during the Term, subject to <u>Section 20.18</u> the Department must pay to the Concessionaire the greater of (a) Project Value (determined, without regard to the effect of such termination, pursuant to Section 17.05) plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire, including its reasonable Allocable Costs, as a direct result of such termination and (b) the lesser of 100% of Concessionaire Debt then outstanding or 100% of Concessionaire Debt projected in the Base Case Financial Model Update (NEXT Final) to be then outstanding, and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department <u>Termination Amount</u>. The Department shall pay the foregoing sum, together with interest, if any as provided in this <u>Section 16.08</u>, within 60 days of the date of determination of Project Value pursuant to <u>Section 17.05</u>; <i>provided</i>, that the Department may defer this payment for an additional 120 days if it reasonably determines that such additional period is necessary in order to obtain funds to make such payment; and <i>provided further</i>, that any payment of the foregoing sum shall be made together with interest thereon at the average earnings rate on the State’s Transportation Trust Fund or any successor thereto during such period from the date of determination of Project Value pursuant to <u>Section 17.05</u> to the date that is 60 days after the date of determination of the Project Value and thereafter at the Bank Rate to the payment date thereof. A termination as contemplated by this <u>Section 16.08</u> shall not be effective unless and until Project Value has been determined pursuant to <u>Section 17.05</u>.</p> <p>Each of the Department and Concessionaire hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof.</p>
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<p>17.02(a)</p>	<p>(a) As provided in Section 33.2-1813 of the Virginia Code, the Department may terminate this Agreement (and the permit granted hereunder), and any executory Project Agreements to which the Department is a party, by giving 60 days' prior written notice to the Concessionaire and the Collateral Agent upon the occurrence of a material Concessionaire Default; <i>provided</i>, that (i) the Concessionaire is entitled to cure a Concessionaire Default pursuant to this <u>Section 17.02(a)</u> if the Concessionaire Default is a failure to pay monies due the Department, by paying the full amount due together with interest at the Bank Rate within such 60-day period, and (ii) if the Concessionaire Default is other than a failure to pay monies due, by providing the Department with a written work plan within such 60-day period outlining the actions by which the Concessionaire will ensure future compliance with the obligation, covenant, agreement, term or condition in this Agreement that the Concessionaire failed to perform or observe, which work plan is approved by the Department, but any failure of the Concessionaire to comply in any material respect with such approved work plan following 60 days' notice of such failure from the Department to the Concessionaire shall be deemed to be a Concessionaire Default described in <u>Section 17.01(b)</u> and the entitlement of the Concessionaire to cure such Concessionaire Default by the delivery of an approved work plan shall not apply thereto. Such termination shall automatically extinguish the Concessionaire's Interest and all Liens and claims on or against the Concessionaire's Interest; <i>provided further</i>, that the Department shall not exercise the remedy provided in this <u>Section 17.02(a)</u> if the Concessionaire Default consists solely of a violation of</p>	<p>(a) As provided in Section 33.2-1813 of the Virginia Code, the Department may terminate this Agreement (and the permit granted hereunder), and any executory Project Agreements to which the Department is a party, by giving 60 days' prior written notice to the Concessionaire and the Collateral Agent upon the occurrence of a material Concessionaire Default; <i>provided</i>, that (i) the Concessionaire is entitled to cure a Concessionaire Default pursuant to this <u>Section 17.02(a)</u> if the Concessionaire Default is a failure to pay monies due the Department, by paying the full amount due together with interest at the Bank Rate within such 60-day period, and (ii) if the Concessionaire Default is other than a failure to pay monies due, by providing the Department with a written work plan within such 60-day period outlining the actions by which the Concessionaire will ensure future compliance with the obligation, covenant, agreement, term or condition in this Agreement that the Concessionaire failed to perform or observe, which work plan is approved by the Department, but any failure of the Concessionaire to comply in any material respect with such approved work plan following 60 days' notice of such failure from the Department to the Concessionaire shall be deemed to be a Concessionaire Default described in <u>Section 17.01(b)</u> and the entitlement of the Concessionaire to cure such Concessionaire Default by the delivery of an approved work plan shall not apply thereto; <u>and upon such termination, subject to the limitations of Section 20.18, the Department shall be obligated to pay to the Concessionaire the Concessionaire Default Termination Amount.</u> Such termination shall automatically extinguish the Concessionaire's Interest and all Liens and claims on or against the Concessionaire's Interest; <i>provided further</i>, that the Department shall not exercise the remedy provided in this <u>Section 17.02(a)</u> if the Concessionaire Default consists solely of a violation of <u>Section 11.01, 11.02(a), (b) and (d)-(f), or 11.03</u>, but any such violation shall nonetheless subject the Concessionaire to such fines and penalties otherwise applicable to such violation as may be</p>

	<p><u>Section 11.01, 11.02(a), (b) and (d)-(f), or 11.03</u>, but any such violation shall nonetheless subject the Concessionaire to such fines and penalties otherwise applicable to such violation as may be imposed by the appropriate Governmental Authority; and <i>provided further</i>, that the sole termination remedy upon the occurrence of events described in <u>Section 16.07(a)(i) or (ii)</u> shall be as set forth in <u>Section 16.07</u>;</p>	<p>imposed by the appropriate Governmental Authority; and <i>provided further</i>, that the sole termination remedy upon the occurrence of events described in <u>Section 16.07(a)(i) or (ii)</u> shall be as set forth in <u>Section 16.07</u>;</p>
<p>17.04(a)</p>	<p>(a) Subject to <u>Section 16.04(b)</u>, the Concessionaire may terminate this Agreement (and the permit granted hereunder), and any executory Project Agreements to which the Concessionaire is a party, by giving 90 days' prior written notice to the Department; <i>provided</i>, that the Department shall be entitled to cure a Department Default pursuant to <u>Section 17.03(b)</u> by providing the Concessionaire with a written work plan within such 90-day period outlining the actions by which the Department will ensure future compliance with the obligation, covenant, agreement, term or condition in this Agreement that the Department failed to perform or observe, which work plan is approved by the Concessionaire (which approval shall not be unreasonably withheld, delayed or conditioned), but any failure of the Department to comply in any material respect with such approved work plan following 90 days' notice of such failure from the Concessionaire to the Department shall be deemed to be a Department Default described in <u>Section 17.03(b)</u> and the entitlement of the Department to cure such Department Default by the delivery of an approved work plan shall not apply thereto; and upon such termination, subject to the limitations of <u>Section 20.18</u>, the Department shall be obligated to pay to the Concessionaire the greater of (i) Project Value determined without regard to the effect of the relevant Department Default (with fair market value determined pursuant to <u>Section 17.05</u>) plus, without</p>	<p>(a) Subject to <u>Section 16.04(b)</u>, the Concessionaire may terminate this Agreement (and the permit granted hereunder), and any executory Project Agreements to which the Concessionaire is a party, by giving 90 days' prior written notice to the Department; <i>provided</i>, that the Department shall be entitled to cure a Department Default pursuant to <u>Section 17.03(b)</u> by providing the Concessionaire with a written work plan within such 90-day period outlining the actions by which the Department will ensure future compliance with the obligation, covenant, agreement, term or condition in this Agreement that the Department failed to perform or observe, which work plan is approved by the Concessionaire (which approval shall not be unreasonably withheld, delayed or conditioned), but any failure of the Department to comply in any material respect with such approved work plan following 90 days' notice of such failure from the Concessionaire to the Department shall be deemed to be a Department Default described in <u>Section 17.03(b)</u> and the entitlement of the Department to cure such Department Default by the delivery of an approved work plan shall not apply thereto; and upon such termination, subject to the limitations of <u>Section 20.18</u>, the Department shall be obligated to pay to the Concessionaire the greater of (i) Project Value determined without regard to the effect of the relevant Department Default (with fair market value determined pursuant to Section 17.05) plus, without duplication, the reasonable out of pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination, including its reasonable Allocable Costs and (ii) the lesser of 100% of Concessionaire debt then outstanding or 100% of Concessionaire Debt projected in the Base Case Financial Model Update (NEXT Final) to be</p>

	<p>duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination, including its reasonable Allocable Costs and (ii) the lesser of 100% of Concessionaire debt then outstanding or 100% of Concessionaire Debt projected in the Base Case Financial Model Update (NEXT Final) to be then outstanding and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department;</p>	<p>then outstanding and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department <u>Termination Amount</u>;</p>
17.04	<p>Notwithstanding any provision to the contrary in this Agreement, neither a Department Default nor, except as provided in clause (g) of the definition of Compensation Event, a Compensation Event will be deemed to have occurred if an injunction or other legal proceeding has enjoined or estopped the Department from the performance of its obligations under this Agreement.</p>	<p>Notwithstanding any provision to the contrary in this Agreement, neither a Department Default nor, except as provided in clause (g) of the definition of Compensation Event, a Compensation Event will be deemed to have occurred if an injunction or other legal proceeding has enjoined or estopped the Department from the performance of its obligations under this Agreement.</p>
17.05(e)	<p>(e) Once appointed, the independent appraiser shall conduct an appraisal of the fair market value and deliver to both parties a draft appraisal report and draft valuation. The appraiser shall appraise fair market value by taking into account projected cash flows and projected costs of the Project for the remainder of the Term had this Agreement not been terminated, as determined by the appraiser. 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. The parties shall have 15 days after receipt of the draft appraisal report to comment thereon. After the opportunity to comment has expired, the independent appraiser shall consider and evaluate all comments, prepare a final appraisal report stating the fair</p>	<p>(e) Once appointed, the independent appraiser shall conduct an appraisal of the fair market value and deliver to both parties a draft appraisal report and draft valuation. <u>The appraisal shall determine Project Value as of the effective date of termination of this Agreement, based on the then condition of the Project (determined without regard to the effect of such termination).</u> The appraiser shall appraise fair market value by taking into account projected cash flows and projected costs of the Project for the remainder of the Term had this Agreement not been terminated, as determined by the appraiser. <u>For the avoidance of doubt, the calculation of Project Value is the sum of (i) the fair market value of the projected Distributions for the remainder of the Term without taking into consideration any terminations pursuant to Article 16 and (ii) the fair market value of any Concessionaire Debt outstanding as of the date of the calculation, and will include Concessionaire Damages for adverse Net Cost Impacts and Net Revenue Impacts accruing after the effective date of termination from Compensation Events</u></p>

	<p>market value, and deliver the final appraisal report to both parties.</p>	<p><u>that occurred prior to termination.</u> 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. The parties shall have 15 days after receipt of the draft appraisal report to comment thereon. 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, and deliver the final appraisal report to both parties.</p>
<p>Definitions</p>	<p>Compensation Event means any of the following events, in each case to the extent the Agreement entitles the Concessionaire to Concessionaire Damages:</p> <p>(a) any delay beyond the applicable time period in the issuance by the Department of a Substantial Completion Certificate pursuant to Section 7.14(a) or a NEXT Final Completion Certificate pursuant to Section 7.15(b);</p> <p>(b) the development or implementation of any Department Change pursuant to Section 7.12 or any Department Project Enhancement pursuant to Section 9.02;</p> <p>(c) the performance by the Department of certain ITS activities pursuant to Section 12.03 that results in Concessionaire Damages;</p> <p>(d) any Discriminatory Change in Law pursuant to Section 13.04;</p> <p>(e) any Reimbursable Tax Imposition pursuant to Section 13.06;</p> <p>(f) an event related to toll exemptions described in Section 13.05(a); or</p> <p>(g) an injunction or other legal proceeding enjoining or estopping the Concessionaire from the performance of its</p>	<p>Compensation Event means any of the following events, in each case to the extent the Agreement entitles the Concessionaire to Concessionaire Damages:</p> <p>(a) any delay beyond the applicable time period in the issuance by the Department of a Substantial Completion Certificate pursuant to Section 7.14(a) or a NEXT Final Completion Certificate pursuant to Section 7.15(b);</p> <p>(b) the development or implementation of any Department Change pursuant to Section 7.12 or any Department Project Enhancement pursuant to Section 9.02;</p> <p>(c) the performance by the Department of certain ITS activities pursuant to Section 12.03 that results in Concessionaire Damages;</p> <p>(d) any Discriminatory Change in Law pursuant to Section 13.04;</p> <p>(e) any Reimbursable Tax Imposition pursuant to Section 13.06;</p> <p>(f) an event related to toll exemptions described in Section 13.05(a); or</p> <p>(g) an injunction or other legal proceeding enjoining or estopping the Concessionaire from the performance of its obligations under this Agreement, in any case for more than 30 days in the aggregate, based solely on claims that were not time barred because the re-evaluation dated May 9, 2007 of the federal environmental impact study was not published in the Federal Register;</p>

	<p>obligations under this Agreement, in any case for more than 30 days in the aggregate, based solely on claims that were not time barred because the re-evaluation dated May 9, 2007 of the federal environmental impact study was not published in the Federal Register;</p> <p>provided, that under no circumstances will any of the following events (including associated construction activities) result in a Compensation Event (although, for the avoidance of doubt, such exclusion from Compensation Events does not exclude such events from otherwise being considered Department Changes or Delay Events, in each case, pursuant to, and in accordance with, the terms of the Agreement):</p> <p>(i) the development or implementation of any projects listed in the MWCOG CLRP dated as of October 17, 2018 within the NEXT Corridor;</p> <p>(ii) the development or implementation of the Bi-State Project; and</p> <p>(iii) the development or implementation of any NEXT Project (Phase 2) Asset, other than the development or implementation of the new southbound auxiliary lane between Route 193 and Dulles Toll Road to the extent it commences prior to the earlier of: (1) service commencement of the Bi-State Project and (2) December 31, 2030.</p>	<p><u>(h) a Department-Caused Delay; or</u></p> <p><u>(i) any change in applicable Laws taking effect prior to the Guaranteed Substantial Completion Date or the NEXT Guaranteed Final Completion Date that specifically affects the physical construction of the Project in such a way as to increase the costs of the Work;</u></p> <p>provided, that under no circumstances will any of the following events (including associated construction activities) result in a Compensation Event (although, for the avoidance of doubt, such exclusion from Compensation Events does not exclude such events from otherwise being considered Department Changes or Delay Events, in each case, pursuant to, and in accordance with, the terms of the Agreement):</p> <p>(i) the development or implementation of any projects listed in the MWCOG CLRP dated as of October 17, 2018 within the NEXT Corridor;</p> <p>(ii) the development or implementation of the Bi-State Project; and</p> <p>(iii) the development or implementation of any NEXT Project (Phase 2) Asset, other than the development or implementation of the new southbound auxiliary lane between Route 193 and Dulles Toll Road to the extent it commences prior to the earlier of: (1) service commencement of the Bi-State Project and (2) December 31, 2030.</p>
Definitions	No existing defined term.	<p>New defined term:</p> <p>Concessionaire Default Termination Amount means:</p> <p>(a) with respect to termination prior to the Substantial Completion Date for the Original HOT Lanes, the lesser of A or B;</p> <p>(b) with respect to termination following the Substantial Completion Date for the Original HOT Lanes but prior to the NEXT</p>

		<p>Final Completion Date, (i) the lesser of C or D, plus (ii) the lesser of E or F;</p> <p>(c) with respect to termination following all of (i) the Substantial Completion Date for the Original HOT Lanes and (ii) the NEXT Final Completion Date, the lesser of G or H;</p> <p>where:</p> <p>A = the Completed Work Value (for the Original HOT Lanes only);</p> <p>B = 80% of Concessionaire Debt (for the Original HOT Lanes only) then outstanding;</p> <p>C = the Project Value (for the Original HOT Lanes only);</p> <p>D = 100% of Concessionaire Debt (for the Original HOT Lanes only) then outstanding;</p> <p>E = the Completed Work Value (for the NEXT HOT Lanes, but not the Original HOT Lanes);</p> <p>F = 80% of Concessionaire Debt (for the NEXT Project, but not the Original HOT Lanes) then outstanding;</p> <p>G = the Project Value (for the Original HOT Lanes and the NEXT HOT Lanes); and,</p> <p>H = 100% of Concessionaire Debt then outstanding;</p> <p>in each case, less:</p> <p>(i) Credit Balances held under any bank account held by or on behalf of the Concessionaire that is pledged for the benefit of the Collateral Agent under any Project Financing Agreement; provided, however, that such Credit Balances will not be deducted from the Project Value unless the Project Value is increased on account of such Credit Balances;</p> <p>(ii) unpaid and/or accrued default interest;</p> <p>(iii) Breakage Costs;</p>
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		<p>(iv) any other amounts referred to in the definition of Concessionaire Debt that arise as a consequence of the termination of the Agreement or the acceleration of or requirement to mandatorily prepay the Concessionaire Debt;</p> <p>(v) Non-Reimbursable Concessionaire Damages; provided, however, that Non-Reimbursable Concessionaire Damages will only be deducted from Concessionaire Debt and only to the extent the Non-Reimbursable Concessionaire Damages were used to make Distributions; and</p> <p>(vi) Allocable Costs incurred by the Department in terminating the Agreement for Concessionaire Default.</p>
<p>Definitions</p>	<p>Delay Event means:</p> <p>(a) with respect to the Work Period, “Delay Event” means the occurrence of one or more of the following during the Work Period:</p> <p>(i) a Work Period Force Majeure Event;</p> <p>(ii) discovery of any of the following conditions: (A) subsurface conditions on the Project Right of Way that (1) vary materially from the conditions described in the data available to Concessionaire or the Design-Build Contractor (x) as of the Agreement Date with respect to the Original Project or (y) as of the Second Amended and Restated Agreement Date with respect to the NEXT Project, or (2) are unusual and could not be reasonably anticipated based on conditions ordinarily encountered in the general area of the Project Right of Way; (B) threatened or endangered species; (C) archaeological, paleontological or cultural resources; (D) Hazardous Substances present on the Project Right of Way (1) as of the Agreement Date with respect to the Original Project or (2) as of the Second Amended and Restated Agreement Date with respect to the NEXT Project; (E) Hazardous Substances spilled or otherwise placed other than by a</p>	<p>Delay Event means:</p> <p>(a) with respect to the Work Period, “Delay Event” means the occurrence of one or more of the following during the Work Period:</p> <p>(i) a Work Period Force Majeure Event;</p> <p>(ii) discovery of any of the following conditions: (A) subsurface conditions on the Project Right of Way that (1) vary materially from the conditions described in the data available to Concessionaire or the Design-Build Contractor (x) as of the Agreement Date with respect to the Original Project or (y) as of the Second Amended and Restated Agreement Date with respect to the NEXT Project, or (2) are unusual and could not be reasonably anticipated based on conditions ordinarily encountered in the general area of the Project Right of Way; (B) threatened or endangered species; (C) archaeological, paleontological or cultural resources; (D) Hazardous Substances present on the Project Right of Way (1) as of the Agreement Date with respect to the Original Project or (2) as of the Second Amended and Restated Agreement Date with respect to the NEXT Project; (E) Hazardous Substances spilled or otherwise placed other than by a Concessionaire Party in the course of performing the Work (1) subsequent to the Agreement Date with respect to the Original Project or (2) subsequent to the Second Amended and Restated Agreement Date with respect to the NEXT Project; or (E) unknown Utilities;</p>

<p>Concessionaire Party in the course of performing the Work (1) subsequent to the Agreement Date with respect to the Original Project or (2) subsequent to the Second Amended and Restated Agreement Date with respect to the NEXT Project; or (E) unknown Utilities;</p> <p>(iii) a failure to obtain, or delay in obtaining, any Regulatory Approval or other authorization from a Governmental Authority (provided that such failure or delay could not have been reasonably prevented by the Concessionaire);</p> <p>(iv) an injunction or other legal proceeding enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement; or</p> <p>(v) a change in applicable Laws occurring (A) after the Agreement Date with respect to the Original Project or (B) after the Second Amended and Restated Agreement Date with respect to the NEXT Project, that imposes additional requirements that directly and materially adversely impacts performance of the Work and that could not have reasonably been anticipated by a reasonable contractor.</p> <p>(b) with respect to the Operating Period, “Delay Event” means the occurrence of one or more of the following during the Operating Period:</p> <p>(i) a Force Majeure Event; or</p> <p>(ii) an injunction or other legal proceeding enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement; or</p> <p>(c) which in each case of either (a) or (b) above results in a delay or interruption in the performance by the Concessionaire of any obligation under this Agreement;</p>	<p>(iii) a failure to obtain, or delay in obtaining, any Regulatory Approval or other authorization from a Governmental Authority (provided that such failure or delay could not have been reasonably prevented by the Concessionaire);</p> <p><u>(iv) a Department-Caused Delay;</u></p> <p><u>(v) an injunction or other legal proceeding enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement; or</u></p> <p><u>(vi) a change in applicable Laws occurring (A) after the Agreement Date with respect to the Original Project or (B) after the Second Amended and Restated Agreement Date with respect to the NEXT Project, that imposes additional requirements that directly and materially adversely impacts performance of the Work and that could not have reasonably been anticipated by a reasonable contractor.</u></p> <p>(b) with respect to the Operating Period, “Delay Event” means the occurrence of one or more of the following during the Operating Period:</p> <p>(i) a Force Majeure Event; or</p> <p><u>(ii) a Department-Caused Delay;</u></p> <p><u>(iii) an injunction or other legal proceeding enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement; or</u></p> <p><u>(iv) a change in applicable Laws occurring after the applicable Service Commencement Date that imposes one or more changed or additional requirements that directly and materially adversely impact the performance of the Work and that could not have been reasonably anticipated by a reasonable concessionaire;</u></p> <p>(c) which in each case of either (a) or (b) above results in a delay or interruption in the performance by the Concessionaire of any obligation under this Agreement; provided, that such delay or the cause thereof is neither specifically dealt with in this Agreement nor arises by reason of:</p>
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<p>provided, that such delay or the cause thereof is neither specifically dealt with in this Agreement nor arises by reason of:</p> <p>(i) the negligence or misconduct of the Concessionaire, a Concessionaire Party or their Representatives;</p> <p>(ii) any act or omission by the Concessionaire, a Concessionaire Party or their Representatives in breach of the provisions of this Agreement;</p> <p>(iii) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire;</p> <p>(iv) except to the extent the same constitutes a Force Majeure Event, any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Concessionaire, a Concessionaire Party or their Representatives to supply materials or services for or in connection with the Project's operation or any strike, labor dispute or labor protest caused by or attributable to any act (including any pricing or other price or method of operation) or omission of the Concessionaire, a Concessionaire Party or their Representatives;</p> <p>(v) except to the extent the same constitutes a Force Majeure Event, any weather condition (including any flooding) whether or not such weather conditions or the severity of such weather conditions are not or have not ordinarily or customarily been encountered or experienced; or</p> <p>(vi) the development, redevelopment, construction, modification, maintenance or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of User Fees or in the number of vehicles using the HOT Lanes Project.</p>	<p>(i) the negligence or misconduct of the Concessionaire, a Concessionaire Party or their Representatives;</p> <p>(ii) any act or omission by the Concessionaire, a Concessionaire Party or their Representatives in breach of the provisions of this Agreement;</p> <p>(iii) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire;</p> <p>(iv) except to the extent the same constitutes a Force Majeure Event, any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Concessionaire, a Concessionaire Party or their Representatives to supply materials or services for or in connection with the Project's operation or any strike, labor dispute or labor protest caused by or attributable to any act (including any pricing or other price or method of operation) or omission of the Concessionaire, a Concessionaire Party or their Representatives;</p> <p>(v) except to the extent the same constitutes a Force Majeure Event, any weather condition (including any flooding) whether or not such weather conditions or the severity of such weather conditions are not or have not ordinarily or customarily been encountered or experienced; or</p> <p>(vi) the development, redevelopment, construction, modification, maintenance or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of User Fees or in the number of vehicles using the HOT Lanes Project.</p>
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Definitions	No existing defined term.	<p>New defined term:</p> <p>Demobilization Costs means the amount necessary to reimburse the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire, including its reasonable Allocable Costs, to demobilize and terminate contracts between the Concessionaire and third parties or Affiliates for performance of Work, excluding the Concessionaire’s non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates.</p>
Definitions	No existing defined term.	<p>New defined term:</p> <p>Department-Caused Delay means:</p> <p>(a) a delay or failure by the Department in performing any of its material obligations pursuant to the Agreement; or</p> <p>(b) performance of work by the Department or its contractors (other than the Concessionaire and its Contractors performing the Work) within or immediately adjacent to the HOT Lanes or the HOT Lanes Right of Way that causes physical damage to the HOT Lanes or the Work or limits access to the HOT Lanes Right of Way and such physical damage or limited access delays the Concessionaire’s Work;</p> <p>provided, however, that a Department-Caused Delay specifically excludes a delay attributable to:</p> <p>(i) the submission of incomplete documentation for the Department’s review;</p> <p>(ii) required review of any Regulatory Approval or other authorization from a Governmental Authority necessary or appropriate to the Department’s review;</p> <p>(iii) failure to obtain appropriation and allocation of public funds;</p> <p>(iv) consumption of available float;</p> <p>(v) submittals or requests that are “deemed approved” if no response is provided within the applicable timeframe;</p>

		<p>(vi) Force Majeure Events; or</p> <p>(vii) the resolution of disputed payment amounts in connection with Service Commencement pursuant to Section 8.01 or Section 8.02.</p>
Definitions	No existing defined term.	<p>New defined term:</p> <p>Department Termination Amount means the greater of (i) Project Value determined without regard to the effect of the relevant Department Default (with fair market value determined pursuant to Section 17.05) plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of the termination, cancelation, rescission or voiding (as applicable) of this Agreement, including its reasonable Allocable Costs and (ii) 100% of Concessionaire Debt then outstanding and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department, minus, in each case of clauses (i) and (ii), all cash and Credit Balances (if any) held under any bank account held by or on behalf of the Concessionaire that is pledged for the benefit of the Collateral Agent under any Project Financing Agreement that are available to be used to repay Concessionaire Debt in connection with a termination of this Agreement; <i>provided</i> that such cash and Credit Balances will not be deducted from the amount calculated in clause (i) of this definition unless the calculation of Project Value includes such cash and Credit Balances, and minus, in clause (i) only, the amount of all Distributions and all payments to Concessionaire Affiliates on or after the termination date; <i>provided</i> that such amount of Distributions will not be deducted from the amount calculated in clause (i) unless the calculation of Project Value includes such Distributions.</p>
Definitions	Discriminatory Change in Law means the adoption of any State Law or any change in any State Law or in the interpretation or application thereof during the Term that has the effect of discriminating against the HOT Lanes Project or the Concessionaire (but as to the Concessionaire only with respect to the HOT Lanes Project), except where	Discriminatory Change in Law means the adoption of any State Law or any change in any State Law or in the interpretation or application thereof during the Term that <u>(a)</u> has the effect of discriminating against the HOT Lanes Project or the Concessionaire (but as to the Concessionaire only with respect to the HOT Lanes Project) <u>or operators of toll roads in the State</u> , except where such Law or change

	<p>such Law or change in Law or in interpretation or application is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law) or such Law or change in Law or in interpretation or application is otherwise permitted under this Agreement.</p>	<p>in Law or in interpretation or application <u>(i)</u> is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law) or such Law or change in Law or <u>(ii)</u> in interpretation or application is otherwise permitted under this Agreement; <u>or (b) limits the Concessionaire’s right to impose, charge, collect and enforce tolls and incidental charges in accordance with Section 4.04.</u></p>
<p>Definitions</p>	<p>Significant Force Majeure Event means a Force Majeure Event occurring after the Service Commencement Date for which insurance is not obtainable at commercially reasonable rates that (a) has the effect of causing physical damage or destruction to the HOT Lanes, or any ramp, feeder road or bridge within 3 miles of the HOT Lanes constituting a direct traffic route to or from the HOT Lanes, and (b) results in the HOT Lanes being substantially unavailable for public use for a period in excess of 120 consecutive days or the suspension or substantial reduction toll collections on the HOT Lanes for a period in excess of 120 consecutive days; <i>provided</i>, that such Force Majeure Event shall not become a Significant Force Majeure Event by reason of a Concessionaire Party’s failure to mitigate or cure the result of such Force Majeure Event through the exercise of reasonably diligent efforts.</p>	<p>Significant Force Majeure Event means a Force Majeure Event occurring after the Service Commencement Date for which insurance is not obtainable at commercially reasonable rates that (a) <u>(i)</u> has the effect of causing physical damage or destruction to the HOT Lanes, or any ramp, feeder road or bridge within 3 miles of the HOT Lanes constituting a direct traffic route to or from the HOT Lanes, and (b)(i) results in the HOT Lanes being substantially unavailable for public use for a period in excess of 120<u>180</u> consecutive days or the suspension or substantial reduction of toll collections on the HOT Lanes for a period in excess of 120<u>180 consecutive days or (b) halts the performance of the Work on the NEXT Project by the NEXT Design-Build Contractor during the NEXT Work Period for a period in excess of 180</u> consecutive days; <i>provided</i>, that such Force Majeure Event shall not become a Significant Force Majeure Event by reason of a Concessionaire Party’s failure to mitigate or cure the result of such Force Majeure Event through the exercise of reasonably diligent efforts.</p>