

VDOT FUNDING AGREEMENT

This VDOT Funding Agreement (this "Agreement"), dated as of December 19, 2007, is entered into by and among the VIRGINIA DEPARTMENT OF TRANSPORTATION, an agency of the Commonwealth of Virginia (the "Department"); FLUOR-LANE LLC, a Delaware limited liability company (the "Design Build Contractor"); CAPITAL BELTWAY EXPRESS, LLC, a Delaware limited liability company (the "Concessionaire"); and WELLS FARGO BANK, N.A., a national banking association (the "Trustee").

WITNESSETH:

WHEREAS, the Concessionaire and the Department have entered into an Amended and Restated Comprehensive Agreement dated as of December 19, 2007 (the "ARCA"), which sets out the parties' respective rights and obligations with respect to the Route 495 HOT Lanes in Virginia Project (as defined in the ARCA and referred to as the "Project" in this Agreement);

WHEREAS, the Concessionaire and the Design Build Contractor have entered into a Turnkey Lump-Sum Design-Build Contract for the Route 495 Hot Lanes in Virginia Project dated as of December 18, 2007 (the "Design-Build Contract") providing for the design, turnkey engineering, procurement, construction, testing and related services for the Project on a lump sum, fixed price basis in accordance with the terms and conditions specified therein;

WHEREAS, pursuant to and subject to the conditions set forth in Section 7.02 of the ARCA, the Department has agreed to provide to the Design Build Contractor payments aggregating \$408,895,554, as financial support for the development, design, construction and start-up of certain portions of the Project as specified by Section 7.02 (a) and (b) of the ARCA (the "VDOT Work");

WHEREAS, it is the sole purpose of this Agreement to provide the mechanism by which the Department shall provide such payments, specifically by way of: (i) the deposit of the applicable funds to the VDOT Funding Account (as hereafter defined), by the Department, and (ii) the disbursement of funds from such Account to make progress payments to the Design Build Contractor for the VDOT Work; and

WHEREAS, the Trustee and Capital Beltway Funding Corporation of Virginia, LLC, a Virginia nonstock, nonprofit corporation (the "Issuer"), have entered into a Master Indenture of Trust dated as of December 1, 2007 (the "Indenture") to, among other things, authorize the issuance and sale of bonds by the Issuer from time to time for the purpose of making loans to the Concessionaire to finance a portion of the cost of development, design, construction and start-up of the Project.

For and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the

Department, the Design Build Contractor, the Concessionaire, and the Trustee agree as follows:

1. **Definitions.**

All capitalized terms used but not otherwise defined herein shall have the respective meanings given to such terms in the ARCA or, if not defined therein, in the Indenture. As used herein, the following terms have the following meanings:

(a) “VDOT Funding” means the payments made by the Department, in the amounts and on the dates set forth to Section 7.02 (c) of the ARCA, which payments shall be made to the Trustee in accordance with this Agreement.

(b) “VDOT Funding Account” means the VDOT Funding Account maintained by the Trustee in the name of the Department pursuant to the Indenture.

(c) “VDOT Work” means the Work described in Section 7.02 (a) and (b) of the ARCA that is performed by the Design Build Contractor.

2. **VDOT Deposits.**

2.1 Subject to the terms and conditions of the ARCA, the Department agrees to pay the VDOT Funding to the Trustee for deposit in the VDOT Funding Account (collectively, the “VDOT Deposits”) in the amounts and on the dates set forth in Section 7.02 (c) of the ARCA. For the payments in Section 7.02(c), such amounts are due and payable subject to Virginia General Assembly appropriation pursuant to Section 20.18 of the ARCA, but not subject to federal appropriation.

2.2 Funds on deposit (including earnings thereon) in the VDOT Funding Account shall constitute property of the Department until disbursed to the Design Build Contractor in accordance with this Agreement or returned to the Department in accordance with this Section or Section 3.4 of this Agreement. In the event that the ARCA is terminated prior to disbursement, the funds remaining in the VDOT Funding Account shall be paid to the Department by the Trustee. The VDOT Funding Account shall not constitute part of the Trust Estate (as defined in the Indenture).

2.3 Any interest, gain or other amount of income earned on the VDOT Deposits shall become part of, and be held as an additional portion of, the VDOT Funding Account, but shall remain the exclusive property of the Department, subject to disbursement to the Design Build Contractor under this Agreement. The parties hereto agree that VDOT shall be treated as the owner of the VDOT Funding Account for tax purposes unless and until disbursed to the Design Build Contractor in accordance with this Agreement, and that all interest on or other taxable income, if any, earned from the investment of the VDOT Deposits shall be treated for tax purposes as income of VDOT. To effectuate this agreement, the Trustee shall file with the Internal Revenue Service and issue to VDOT appropriate Treasury Forms

1099 reflecting such earnings for each calendar year from the investment of the VDOT Deposit.

3. **Disbursements from VDOT Funding Account.**

3.1 The VDOT Deposits (including earnings thereon) shall be available for disbursement by the Trustee to the Design Build Contractor to pay for reasonable and auditable costs of the VDOT Work, based on percentage completion of the VDOT Work, subject to the terms and provisions of the Design-Build Contract and this Agreement. All such funds shall be disbursed solely upon a requisition signed and presented by a Concessionaire Representative and the Independent Engineer to pay for costs that are eligible for reimbursement.

3.2 The Concessionaire and the Design Build Contractor shall maintain, and shall allow the Department, FHWA and its representatives to audit and inspect, upon the Department's request, all books and records relevant to the verification and audit of such costs, in accordance with Section 18.07 of the ARCA. All such costs must be eligible for reimbursement from federal-aid funds from FHWA.

3.3 In the event that, at any given time, the amount in the VDOT Funding Account exceeds the then remaining cost of VDOT Work as verified by the Independent Engineer, then the Concessionaire may direct the Trustee, upon submission of written notice to the Trustee and the Department, to transfer from the VDOT Funding Account to the Construction Fund the lesser of: (i) the sum of the prior, unreimbursed payments by the Concessionaire for VDOT Work (which payments shall be deemed to have been made by the Concessionaire to the Design Build Contractor on the Department's behalf); or (ii) the amount of such excess then in the VDOT Funding Account. The Concessionaire may thereafter obtain disbursements from the Construction Fund for reimbursement of such payment in accordance with the terms of the Indenture.

3.4 Upon the Department's direction to the Trustee, the Trustee shall transfer any balance remaining in VDOT Funding Account (other than any portion then determined to be transferred to the Construction Fund in accordance with Section 3.3), following VDOT's Final Acceptance of the VDOT Work, to the Department or the Project Enhancement Account.

3.5 The Design Build Contractor certifies that the amounts received from the VDOT Funding Account as payments for construction services will be included as taxable income under the Design Build Contractor's method of accounting.

4. **VDOT Default.**

4.1 In the event that the Department fails to make a deposit to the VDOT Funding Account as required by Section 2.1 (a "VDOT Default"), and the Trustee notifies the Concessionaire that amounts available in the VDOT Funding Account are insufficient to pay a requisition pursuant to Section 3.1 of this Agreement, as a direct and

sole consequence of a VDOT Default, then the following terms and conditions shall apply:

4.1.1. Concessionaire shall deliver notice to the Department of the VDOT Default, within 5 days following the Trustee's notice that the funds in the VDOT Funding Account are insufficient to pay such requisition;

4.1.2. The Department shall be entitled to cure such VDOT Default, by depositing the lesser of the amount needed to pay the authorized disbursement from the VDOT Funding Account or the deficiency in the cumulative amount of the VDOT Funding Deposits then required by Section 7.02(c), within 30 days of its receipt of notice from the Concessionaire pursuant to Section 4.1.1; and

4.1.3. If the Department fails to timely cure such VDOT Default pursuant to Section 4.1.2, then the Design Build Contractor shall be entitled: (A) to initiate legal proceedings against the Department for enforcement of the Department's obligations pursuant to Section 2.1 of this Agreement; and (B) to recover interest on the delinquent VDOT Deposit in accordance with Section 20.20 of the ARCA, which interest shall be deposited in satisfaction of, and in lieu of any payment otherwise due to the Concessionaire in connection with, such interest claim, by the Department in the VDOT Funding Account.

4.2 The remedies set forth in Section 4.1 constitute the sole and exclusive remedies available to the Concessionaire or the Design Build Contractor due to a VDOT Default. The Department shall not otherwise be liable under this Agreement or the ARCA for indirect, direct, incidental or consequential damages of any nature, whether arising in contract, tort (including negligence) or other legal theory.

5. **Miscellaneous.**

5.1. All notices, certificates or other communications hereunder shall be in writing and shall be deemed sufficiently given when mailed by certified or registered mail, postage prepaid, addressed as follows:

If to the Department:

Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Engineer
Facsimile: (804) 786-2940

With copies to:

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

If to the Design-Build Contractor:

Fluor-Lane LLC
c/o Fluor Corporation
100 Fluor Daniel Drive
Greenville, SC 29607
Attention: Mr. Herb Morgan, Vice President of Operations
Telephone: 803-330-5215
Fax: 803-560-9381

With copies to:

Fluor Corporation
100 Fluor Daniel Drive
Greenville, SC 29607
Attention: Richard A. Fierce, Managing General Counsel
Telephone: 864-281-8096
Fax: 864-281-6868

and

The President
Capital Beltway Express LLC
565 5th Avenue, 18th Floor
New York, NY, 10017
Phone: 646-278-0870
Facsimile: 646-278-0839

5.2. Nothing contained in this Agreement shall be deemed to modify, increase or enlarge the obligations of the Department beyond those set forth in the ARCA. In the event of any inconsistency between the ARCA and this Agreement, the provisions of the ARCA shall prevail. This Agreement shall inure to the benefit of and shall be binding upon the Department, the Design Build Contractor, the Concessionaire and the Trustee and their respective successors and assigns; provided, however, that notwithstanding any other provision hereof, the Design Build Contractor shall have no more rights hereunder than the Concessionaire has with respect to the matters addressed herein, including without limitation VDOT Funds and amounts in the VDOT Funding Account, under the ARCA.

- 5.3. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- 5.4. This Agreement shall be governed by and construed and interpreted in accordance with the law of the Commonwealth of Virginia.
- 5.5. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Department, the Design Build Contractor; the Concessionaire and the Trustee have executed this Agreement as of the date first above written.

**VIRGINIA DEPARTMENT OF
TRANSPORTATION**

By: _____
Title:

FLUOR-LANE LLC

By: _____
Title:

CAPITAL BELTWAY EXPRESS, LLC

By: _____
Title:

WELLS FARGO BANK, N.A., as Trustee

By: _____
Title:

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