LEASE AND FUNDING AGREEMENT

between

Pennsylvania Turnpike Commission,
Lessee

and

Pennsylvania Department of Transportation,
Lessor

Dated: October 14, 2007
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LEASE AND FUNDING AGREEMENT

This Lease and Funding Agreement (this “Agreement”) is entered into as of October 14, 2007 (the “Effective Date”), by and between PENNSYLVANIA TURNPIKE COMMISSION (the “Commission”), an independent agency of the Commonwealth of Pennsylvania (the “Commonwealth”), and PENNSYLVANIA DEPARTMENT OF TRANSPORTATION (the “Department”), an executive agency of the Commonwealth.

Recitals:

In Act of July 18, 2007, P.L. 169, No. 44 (as amended and supplemented from time to time, “Act 44”), the General Assembly of the Commonwealth (the “General Assembly”) in part amended Title 75 of the Pennsylvania Consolidated Statutes to provide for the conversion of that portion of the highway generally known as Interstate Route I-80 located in the Commonwealth into a toll road (the “Conversion”), subject, however, among other things, to the issuance of the requisite approval by the United States Federal Highway Administration (the “FHWA”).

Act 44 requires the Commission and the Department (sometimes, collectively, the “Parties”) to enter into a lease agreement relating to such portion of Interstate Route I-80 and further requires that such lease agreement contain provisions set forth in Act 44 (including, without limitation, provisions dealing with the terms and conditions of the conversion of Interstate Route I-80 into a toll road and the operation, maintenance, repair and improvement of Interstate Route I-80).

The Parties mutually intend this Agreement to be the lease agreement that they are obligated to enter into pursuant to Section 8915.3 of Title 75 of the Pennsylvania Consolidated Statutes.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I
INCORPORATION AND DEFINITIONS

1.1 Incorporation. The recitals set forth above, as well as the exhibits and schedules attached to this Agreement, are hereby incorporated into this Agreement in their entirety and made a part hereof. In the event of any conflict between any of the provisions of such exhibits and schedules, and any of the provisions of this Agreement, the provisions of this Agreement shall govern.

1.2 Definitions. Certain capitalized terms used in the body of this Agreement or in any of the exhibits hereto, but not specifically defined herein or therein, have the respective meanings set forth in Exhibit A hereto. Such terms shall be equally applicable to both the singular and plural forms.
ARTICLE II
GRANT OF CONVERSION OPTION; EFFECTS OF CONVERSION

2.1 Option Granted to the Commission. Pursuant to Act 44, the Department hereby grants to the Commission the unilateral option (the "Conversion Option") to cause the Conversion to occur. In the event that the Commission desires to exercise the Conversion Option, the Commission shall send written notice thereof (the "Conversion Notice") to the Secretary of the Department at any time during the Conversion Period. The Conversion Notice shall set forth a closing date for the Conversion to occur (the "Closing Date"), which date shall not be earlier than ninety (90) days after the day (the "Conversion Notice Date") upon which the Commission shall send the Conversion Notice to the Secretary of the Department. If both:

(a) the Commission sends the Conversion Notice to the Secretary of the Department before the expiration of the Conversion Period; and

(b) each of the conditions to the Conversion set forth in Article VII shall be satisfied or waived in writing by the appropriate Party on or prior to the Closing Date,

then, and in that event, the Conversion shall occur on, and be effective as of, the Closing Date, upon, and subject to, the applicable terms, covenants and conditions set forth in this Agreement. Conversely, if the Commission fails or neglects to send the Conversion Notice to the Secretary of the Department before the expiration of the Conversion Period, or if any of the aforesaid conditions remains unsatisfied and shall not be waived as of the Closing Date, then, and in that event, the Conversion Option shall lapse, and the Conversion shall not occur.

2.2 Lease of the Facility. The lease of all of the Department's right, title and interest in and to the Facility by the Department to the Commission shall become effective on, and as of, the Conversion Date, shall continue for the remaining balance of the Term and shall be upon, and subject to, the applicable terms, covenants and conditions set forth in this Agreement. For all purposes of this Agreement, the "Facility" shall mean and consist of the following real property assets:

(a) the right-of-way upon which is situated that segment of Interstate Route I-80 located in the Commonwealth (the "Right of Way"), as set forth in Schedule 2.2(a) hereto, to the fullest extent of the limited access with respect to Interstate Route I-80;

(b) all easements, real estate leases and other real estate agreements or arrangements, if any, exclusively related to the Right of Way, including, without limitation, those to be listed on Schedule 2.2(b) as provided in Section 6.10(c); and

(c) all buildings and other improvements located in, on, or over any of the foregoing real property interests (including, without limitation, the roadway
itself constituting the aforesaid segment of Interstate Route I-80), but excluding any Affected Property.

On the Conversion Date, the Department shall deliver possession of the Facility to the Commission free and clear of all Encumbrances, other than Permitted Encumbrances, but otherwise in its then "as is" condition and state of repair, and the Commission shall accept possession of the Facility on the Conversion Date in such condition and state of repair. Nothing contained in this Section 2.2, however, shall be deemed or construed to relieve the Department of any Liability, or as a waiver of any remedy that would otherwise be available to the Commission, in the event that the Department shall fail or neglect to comply with its obligations under Section 6.1, Section 6.2, or Section 6.3. The leasing of the Facility pursuant to this Agreement shall be and become effective automatically as of the Conversion Date, and no other document or instrument shall be required therefor. However, upon the written request of either Party, the Parties shall join in an agreement supplemental to this Agreement confirming that, as of the Conversion Date stated in such supplemental agreement, the Commission has taken possession of the Facility as the lessee thereof pursuant to this Agreement.

2.3 Transfer of the Transferred Assets. The Department shall convey, assign, pay, deliver, or otherwise transfer to the Commission on the Conversion Date, and the Commission shall accept from the Department, the following assets (collectively, the "Transferred Assets") upon, and subject to, the applicable terms, covenants and conditions set forth in this Agreement:

(a) **Contracts and Other Agreements Relating to the Facility.** All of the Department's rights, titles and interests as of the Conversion Date in and to those contracts, licenses, leases, purchase orders and other agreements or arrangements of the Department, if any, to be set forth on Schedule 2.3(a) as provided in Section 6.10(c) (collectively, the "Transferred Contracts"). The Transferred Contracts include all of the Department's right, title and interest in, to and under any warranty or any other provision that inures to the Department's benefit contained in any contract or other agreement entered into by the Department with respect to the Department's Capital Improvement Projects.

(b) **Operational Information and Other Data.** To the extent that the same are in the possession or under the control of the Department as of the Conversion Date and are legally deliverable by the Department:

(i) all as-built drawings for major assets such as roadways, administration buildings, bridges, interchanges, soundwalls, fiber optic cables, cell towers, operational information and data, ITS applications, colored detour routes, PSP weigh stations, in-line traffic counters and rest area systems relating exclusively to the Facility and/or the Transferred Assets, subject, however, to the execution of appropriate confidentiality agreements between the Commission and the Department as may be necessary to satisfy the requirements of the United States
Department of Homeland Security and/or any other Governmental Entity having jurisdiction; and

(ii) all records relating exclusively to the Facility, the Transferred Assets and Facility Operations (including, without limitation, the proprietary information related exclusively to the Transferred Contracts, to the extent assignable), copies of which will be made available to the Commission on or prior to the Conversion Date.

(c) **Equipment, Supplies and other Personal Property.** All equipment, machinery, supplies, furniture, leasehold improvements, office equipment, servers and other miscellaneous tangible personal and movable property of the Department, if any, to be set forth on Schedule 2.3(c) as provided in Section 6.10(c) (collectively, the “Transferred Equipment and Supplies”).

(d) **Intellectual Property.** To the extent legally assignable, all of the Department’s right, title and interest as of the Conversion Date in and to all Intellectual Property (including all plans and other work product related thereto), if any, relating exclusively to the Facility, to be set forth on Schedule 2.3(d) as provided in Section 6.10(c).

(e) **Permits, Licenses, Approvals and Exemptions.** To the extent legally assignable, all of the Department’s rights, titles and interests as of the Conversion Date in and to all permits, licenses, approvals, certificates, authorizations and exemptions issued or granted by a Governmental Entity, if any, that are exclusive to the Facility or to any part or parts thereof (or, if any permit, license, approval, certificate, authorization, or exemption shall apply or pertain both to the Facility and to one or more other assets of the Department, the Department shall assign to the Commission only that portion thereof that shall apply or pertain exclusively to the Facility, to the fullest extent that such permit, license, approval, certificate, authorization, or exemption may be bifurcated and/or otherwise so assignable in part), to be set forth on Schedule 2.3(e) as provided in Section 6.10(c) (collectively, the “Transferred Governmental Permits”), which Transferred Governmental Permits are intended to include, without limitation, all design approvals and exemptions heretofore issued or granted by the FHWA to the Department with respect to the Facility or any part or parts thereof, to the fullest extent that such approvals and exemptions are legally assignable by the Department.

All of the Transferred Assets shall be conveyed, assigned, paid, delivered, or otherwise transferred, as the case may be, to the Commission free and clear of all Encumbrances, except for Permitted Encumbrances.

2.4 **Excluded Assets.** Notwithstanding anything to the contrary in this Agreement, the Department shall retain all of its right, title and interest in and to, and there shall be excluded
from the conveyance, assignment, delivery, or transfer to the Commission hereunder, all assets of the Department other than the Transferred Assets (collectively, the “Excluded Assets”).

2.5 Assumed Liabilities. The Commission shall, effective as of the Conversion Date, assume the following Liabilities of the Department (collectively, the “Assumed Liabilities”) and undertake to pay, defend, discharge and perform the same in full when due, upon, and subject to, the terms, covenants and conditions set forth in this Agreement:

(a) Assumed Facility Liabilities. Those Assumed Facility Liabilities to be set forth on Schedule 2.5(a) as provided in Section 6.10(c), accruing from and after the Conversion Date, to the extent that the same would otherwise be payable by the Department.

(b) Assumed Contract and Governmental Permit Liabilities. All Liabilities accruing from and after the Conversion Date under the Transferred Contracts and Transferred Governmental Permits, to the extent that the same would otherwise be payable by the Department.

The amounts of the respective Assumed Liabilities are subject to confirmation by the Commission pursuant to Section 6.4.

2.6 Excluded Liabilities. Notwithstanding anything to the contrary provided for in this Agreement, the Commission will not assume or be liable for, and the Department will retain and remain responsible for to the extent permitted by applicable Requirements of Law, those Liabilities and other obligations of any nature whatsoever of the Department that are other than the Assumed Liabilities (collectively, the “Excluded Liabilities”), regardless of whether accrued, absolute, or contingent, regardless of whether known or unknown and regardless of whether due or to become due (including, without limitation, any actual or alleged Claims related to the design, construction, or operation of the Facility for the period prior to the Conversion Date). The Excluded Liabilities include, but are not limited to, those of the Liabilities and other obligations of the Department, regardless of when asserted, that are either:

(a) in whole or to any extent unrelated to the Facility, the Facility Operations and/or the Transferred Assets; or

(b) related to the Facility, the Facility Operations and/or the Transferred Assets, but which were incurred, accrued, or otherwise related to the period prior to the Conversion Date.

ARTICLE III
TERM OF AGREEMENT; THE CONVERSION PERIOD; THE CONVERSION DATE

3.1 Term of Agreement. The term of this Agreement (the “Term”) shall commence on the Effective Date and shall expire on the day preceding the date that is fifty (50) years after the Effective Date, unless the Term is extended by the mutual written agreement of the Parties with the approval of the General Assembly.
3.2 **The Conversion Period.** The period during which the Commission may give the Conversion Notice to the Department (the "**Conversion Period**") shall commence on the Effective Date and shall expire on the earlier to occur of:

(a) the Conversion Date; or

(b) unless such date is extended as hereinafter provided, the third (3rd) anniversary of the Effective Date (such anniversary date, as so extended, the **"Outside Conversion Date"**).

The Outside Conversion Date may be extended, at the sole option of the Commission after consultation with the Secretary of the Department, for up to three (3) one-year extension periods. In order to exercise its option to extend the Outside Conversion Date, the Commission shall notify the Secretary of the Department in writing thereof not less than ninety (90) days before the then applicable Outside Conversion Date.

3.3 **The Conversion Date.** If both of the conditions to the Conversion set forth in **Section 2.1(a)** and **Section 2.1(b)** shall be satisfied or waived by the appropriate Party or Parties, then the **"Conversion Date"** shall occur on the Closing Date. Conversely, if any of such conditions fails to be satisfied or waived by the appropriate Party, then the Conversion Date shall never occur.

3.4 **Progress Reports.** From time to time during the Conversion Period, within forty-five (45) days after the Commission's receipt of a written request from the Department therefor in each instance, the Commission shall give a reasonably detailed written progress report to the Department, setting forth the status of the Conversion Application, the status of all other activities with respect to this Agreement and/or the Facility undertaken by the Commission during the Conversion Period and a projection of the Conversion Date, which date remains subject to both of the conditions to the Conversion set forth in **Section 2.1(a)** and **Section 2.1(b)**. Each such report shall be prepared by the Commission in good faith, but the Commission shall have no liability to the Department in the event that any projection or estimate contained in such a report ultimately proves to be inaccurate, nor shall any such inaccuracy constitute a default by the Commission in any respect under this Agreement, either immediately or after the lapse of any notice and cure period. Such report shall be deemed to be made for the Department's information and convenience only. The Department may not request a progress report under this **Section 3.4** more frequently than once in any calendar quarter.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES OF THE DEPARTMENT**

4.1 **Representations and Warranties — The Effective Date.** The Department represents and warrants to the Commission that the statements contained in this **Section 4.1** are true, accurate and complete as of the Effective Date:
(a) **Due Organization.** The Department is an executive agency of the Commonwealth, and has the requisite power and all required licenses to carry on its present activities and those proposed under this Agreement.

(b) **Due Authorization.** Subject to any required approval of the FHWA, the Department has the full power and authority to execute, deliver and perform this Agreement, and to carry out the transactions contemplated hereby. The execution, delivery and performance of this Agreement, and the performance of the transactions contemplated hereby, have been duly and validly authorized by all necessary action of the Department. This Agreement has been duly and validly executed and delivered by the Department, and constitutes a valid and binding obligation of the Department, enforceable against the Department in accordance with its terms, subject only to:

(i) the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar Requirements of Law and judicial decisions now or hereafter in effect affecting, generally, the enforcement of creditor’s rights and remedies;

(ii) the effect of Requirements of Law governing equitable remedies and defenses, and the discretion of any court of competent jurisdiction in awarding equitable remedies, including, without limitation, the doctrine of sovereign immunity;

(iii) the effect of Requirements of Law governing enforcement and collection of damages against the Department, including, without limitation, the doctrine of sovereign immunity; and

(iv) the Requirements of Law concerning the review and approval of contracts, as to form and legality, by the Office of General Counsel and the Office of the Attorney General,

*provided, however, that the enforcement of any Claims presented in accordance with this Agreement shall be resolved as provided in Article XIV.*

(c) **Non-Contravention.** Subject to any required approval of the FHWA, to the Knowledge of the Department, the execution, delivery and performance of this Agreement by the Department do not:

(i) violate any Requirement of Law or any Court Order applicable to the Department or the Department’s ability to fully perform its obligations under this Agreement;
require any consent, approval, or authorization of, notice to, or declaration, filing, or registration with any Person not obtained or accomplished as of the Effective Date; or

(iii) conflict with, or result in a default under or a violation of, any other agreements or instruments to which the Department is a party or by which it is bound.

(d) Past and On-Going Operations of Facility. To the Knowledge of the Department, except as will otherwise be set forth in Schedule 4.1(d), which is to be incorporated into this Agreement as provided in Section 6.10(a), the Facility has been maintained and operated since its operational commencement date, and is being maintained and operated as of the Effective Date, solely and exclusively by and through the Department or its agents and contractors. Except as will be set forth on Schedule 4.1(d), the Department has not, directly or indirectly, given any Person any property interest in the Facility, and no Person has a right to claim through the Department any property interest in the same.

(e) Compliance with Requirements of Law and Court Orders. To the Knowledge of the Department, the Department has operated the Facility and conducted the Facility Operations in compliance, in all material respects, with all Requirements of Law and Court Orders applicable to the Facility and the Facility Operations (including, without limitation, with respect to the Department’s activities in connection with this Agreement). To the Knowledge of the Department, no Claim has been made by any Governmental Entity (and no such Claim is anticipated by the Department) to the effect that the Department, with respect to the Facility (including, without limitation, with respect to this Agreement or the activities in connection herewith), has failed to comply, in any material respect, with any Requirement of Law or Court Order. No representation or warranty is made in this Section 4.1(e) with respect to compliance with Environmental, Health and Safety Requirements.

(f) Claims and Proceedings. To the Knowledge of the Department, except as will otherwise be set forth in Schedule 4.1(f), there is no Material Claim pending and served upon the Department that challenges either the Department’s authority to execute, deliver, or perform this Agreement, the validity or enforceability of this Agreement, or the authority of the Department official executing this Agreement.

(g) Property Interests Constituting the Facility. To the Knowledge of the Department, the Facility is owned by the Department free and clear of all Encumbrances, except for Permitted Encumbrances, including, without limitation, those Permitted Encumbrances to be set forth on Schedule 4.1(g) as provided in Section 6.10(a). To the Knowledge of the Department:
the use, operation and occupancy of the Facility (including, without limitation, any building or other improvement constituting a portion of the same) as of the Effective Date do not violate any material easement, covenant, condition, restriction, or similar provision in any instrument of record or other agreement to which the Department is a party, which violation would materially interfere with the use, operation, or occupancy of the Facility;

(ii) none of the improvements comprising the Facility (including, without limitation, any building or other improvement constituting a portion of the same) encroaches on any land that is not included either in the Facility or on any easement benefiting the Facility, which encroachment would materially interfere with the use, operation, or occupancy of the Facility, and

(iii) there are no encroachments onto the Facility or onto any easement benefiting the Facility that would materially interfere with the use, operation, or occupancy of the Facility.

4.2 Representations and Warranties – The Conversion Date. On the Conversion Date, if the Conversion Date shall occur and provided that the Department shall deliver to the Commission the certification referred to in Section 7.1(h)(ii), the Department shall be deemed to have represented and warranted to the Commission that the statements contained in this Section 4.2 are true, accurate and complete as of the Conversion Date:

(a) Due Organization. The Department is an executive agency of the Commonwealth, and has the requisite power and all required licenses to carry on its present activities and those proposed under this Agreement.

(b) Due Authorization. The Department has the full power and authority to execute and deliver the Transfer Documents, as well as to carry out the transactions contemplated by the Transfer Documents from and after the Conversion Date. The execution, delivery and performance of the Transfer Documents, and the performance of the transactions contemplated thereby, have been duly and validly authorized by all necessary action of the Department. Each Transfer Document executed and delivered by the Department on or before the Conversion Date constitutes the valid and binding obligation of the Department, enforceable against the Department in accordance with its terms, subject only to:

(i) the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar Requirements of Law and judicial decisions now or hereafter in effect affecting, generally, the enforcement of creditor’s rights and remedies;

(ii) the effect of Requirements of Law governing equitable remedies and defenses, and the discretion of any court of
competent jurisdiction in awarding equitable remedies, including, without limitation, the doctrine of sovereign immunity;

(iii) the effect of Requirements of Law governing enforcement and collection of damages against the Department, including, without limitation, the doctrine of sovereign immunity; and

(iv) the Requirements of Law concerning the review and approval of contracts, as to form and legality, by the Office of General Counsel and the Office of the Attorney General,

provided, however, that the enforcement of any Claims presented in accordance with the Transfer Documents shall be resolved as provided in Article XIV.

(c) Non-Contravention. To the Knowledge of the Department, the execution, delivery and performance of the Transfer Documents by the Department do not:

(i) violate any Requirement of Law or any Court Order applicable to the Department or the Department's ability to fully perform its obligations under the Transfer Documents;

(ii) require any consent, approval, or authorization of, notice to, or declaration, filing, or registration with any Person not obtained or accomplished as of the Conversion Date; or

(iii) conflict with, or result in a default under or a violation of, any other agreements or instruments to which the Department is a party or by which it is bound.

(d) Past and On-Going Operations of Facility and Transferred Assets. To the Knowledge of the Department, except as otherwise set forth in Schedule 4.1(d), as the same may have been updated from time to time pursuant to Section 4.3, the Facility has been maintained and operated since its operational commencement date, and is being maintained and operated as of the Conversion Date, solely and exclusively by and through the Department or its agents and contractors. Except as set forth on Schedule 4.1(d), as so updated if applicable, the Department has not, directly or indirectly, given any Person any property interest in the Facility or the Transferred Assets, and no Person has a right to claim through the Department any property interest in either of the same.

(e) Compliance with Requirements of Law and Court Orders. To the Knowledge of the Department, the Department has operated the Facility and conducted the Facility Operations in compliance, in all material respects, with all Requirements of Law and Court Orders applicable to the Facility, the Facility
Operations and the Transferred Assets (including, without limitation, with respect to the Department’s activities in connection with the Transfer Documents). To the Knowledge of the Department, no Claim has been made by any Governmental Entity (and no such Claim is anticipated by the Department) to the effect that the Department, with respect to the Facility or any of the Transferred Assets (including, without limitation, with respect to the Transfer Documents or the activities in connection therewith), has failed to comply, in any material respect, with any Requirement of Law or Court Order. No representation or warranty is made in this Section 4.2(e) with respect to compliance with Environmental, Health and Safety Requirements.

(f) Assumed Contracts. Each Transferred Contract is valid and enforceable against the Department, and, to the Knowledge of the Department, is in full force and effect in accordance with its terms. To the Knowledge of the Department, the Department is not in default, and the Department has not declared a default (and no event has occurred which, with the passage of time, the giving of notice, or both, would constitute a default by the Department), under any of the Transferred Contracts, except where the default would not have a Material Adverse Effect.

(g) Claims and Proceedings. To the Knowledge of the Department, there is no Material Claim pending and served upon the Department that challenges either the Department’s authority to execute, deliver, or perform the Transfer Documents, the validity or enforceability of the Transfer Documents, or the authority of the Department official executing the Transfer Documents. Schedule 4.1(f), as the same may have been updated from time to time pursuant to Section 4.3, sets forth any pending or threatened Material Claim with respect to such matters of which the Department has Knowledge.

(h) Transferred Equipment and Supplies. The Transferred Equipment and Supplies are owned by the Department free and clear of all Encumbrances, except for Permitted Encumbrances. To the Knowledge of the Department, all of the Transferred Equipment and Supplies are in good operating condition and repair, normal wear and tear excepted, and free from any defects of a material nature.

(i) Property Interests Constituting the Facility. To the Knowledge of the Department, the Facility is owned by the Department free and clear of all Encumbrances, except for Permitted Encumbrances, including, without limitation, those Permitted Encumbrances set forth on Schedule 4.1(g), as the same may have been updated from time to time pursuant to Section 4.3. To the Knowledge of the Department:

(i) the current use, operation and occupancy of the Facility (including, without limitation, any building or other improvement constituting a portion of the same) do not violate any
material easement, covenant, condition; restriction, or similar provision in any instrument of record or other agreement to which the Department is a party, which violation would materially interfere with the use, operation, or occupancy of the Facility;

(ii) none of the improvements comprising the Facility (including, without limitation, any building or other improvement constituting a portion of the same) encroaches on any land that is not included either in the Facility or on any easement benefiting the Facility, which encroachment would materially interfere with the use, operation, or occupancy of the Facility, and

(iii) there are no encroachments onto the Facility or onto any easement benefiting the Facility that would materially interfere with the use, operation, or occupancy of the Facility.

(j) **Environmental, Health and Safety Matters.** The Department has made available to the Commission all environmental audits, reports and other material environmental documents relating to the Facility (including, without limitation, any building or other improvement constituting a portion of the same) or Facility Operations that are in its possession or under its control. If any senior management personnel have Knowledge of the existence of any such audits, reports and/or other documents that exist but are not in the possession or under the control of the Department, the Department shall notify the Commission of the existence of such audits, reports, or other documents and identify the Person having possession thereof, but shall have no further responsibility with respect thereto.

4.3 **Update of Disclosure Schedules.** The Department shall have the right to update any of the Disclosure Schedules referenced in Section 4.1 from time to time, as circumstances require, by written notice given to the Commission at any time prior to the earlier to occur of the Conversion Notice Date and the date that is thirty (30) days before the Outside Conversion Date.

4.4 **Survival.** All of the representations and warranties of the Department set forth in this Agreement (including, without limitation, those made in Section 4.1 and Section 4.2), other than the representations and warranties set forth in Section 4.2(j), shall survive the Conversion Date and continue in full force and effect for a period of eighteen (18) months thereafter. The representations and warranties of the Department set forth in Section 4.2(j) shall survive the Conversion Date and continue in full force and effect for a period of three (3) years thereafter.

**ARTICLE V**

**REPRESENTATIONS AND WARRANTIES OF THE COMMISSION**

5.1 **Representations and Warranties – The Effective Date.** The Commission represents and warrants to the Department that the statements contained in this Section 5.1 are true, accurate and complete as of the Effective Date:
(a) **Due Organization.** The Commission is a body corporate and politic created pursuant to Act of May 21, 1937, P.L. 774, No. 211 (as amended and supplemented from time to time), and has the requisite power and all required licenses to carry on its present activities and those proposed under this Agreement.

(b) **Due Authorization.** Subject to any required approval of the FHWA, the Commission has the full power and authority to execute and deliver this Agreement and to carry out the transactions contemplated hereby. The execution, delivery and performance of this Agreement, and the performance of the transactions contemplated hereby, have been duly and validly authorized by all necessary action of the Commission. This Agreement has been duly and validly executed and delivered by the Commission, and constitutes a valid and binding obligation of the Commission, enforceable against the Commission in accordance with its terms, subject only to:

(i) the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar Requirements of Law and judicial decisions now or hereafter in effect affecting, generally, the enforcement of creditor’s rights and remedies;

(ii) the effect of Requirements of Law governing equitable remedies and defenses, and the discretion of any court of competent jurisdiction in awarding equitable remedies, including, without limitation, the doctrine of sovereign immunity;

(iii) the effect of Requirements of Law governing enforcement and collection of damages against the Commission, including, without limitation, the doctrine of sovereign immunity; and

(iv) the Requirements of Law concerning the review and approval of contracts, as to form and legality, by the Office of the Attorney General,

*provided, however,* that the enforcement of any Claims presented in accordance with this Agreement shall be resolved as provided in Article XIV.

(c) **Non-Contravention.** Subject to any required approval of the FHWA, to the Knowledge of the Commission, the execution, delivery and performance of this Agreement by the Commission do not:

(i) violate any Requirement of Law or Court Order applicable to the Commission or the Commission’s ability to fully perform its obligations under this Agreement;
(ii) require any consent, approval, or authorization of, notice to, or declaration, filing, or registration with any Person not obtained or accomplished as of the Effective Date; or

(iii) conflict with, or result in a default under or a violation of, any other agreements or instruments to which the Commission is a party or by which it is bound.

(d) **Claims and Proceedings.** To the Knowledge of the Commission, except as will otherwise be set forth in Schedule 5.1(d), there is no Material Claim pending and served upon the Commission that challenges either the Commission’s authority to execute, deliver, or perform this Agreement, the validity or enforceability of this Agreement, or the authority of the Commission official executing this Agreement.

(e) **Compliance with Requirements of Law and Court Orders.** To the Knowledge of the Commission, the Commission is in compliance in all material respects with all Requirements of Law and all Court Orders applicable to the Commission and its activities in connection with this Agreement. No Claim has been made by any Governmental Entity (and no such Claim is anticipated by the Commission) to the effect that the Commission, with respect to this Agreement or the activities in connection therewith, has failed to comply, in any material respect, with any Requirement of Law or Court Order.

5.2 **Representations and Warranties – The Conversion Date.** On the Conversion Date, if the Conversion Date shall occur and provided that the Commission shall deliver to the Department the certification referred to in Section 7.2(i)(ii), the Commission shall be deemed to have represented and warranted to the Department that the statements contained in this Section 5.2 are true, accurate and complete as of the Conversion Date:

(a) **Due Organization.** The Commission is a body corporate and politic created pursuant to Act of May 21, 1937, P.L. 774, No. 211 (as amended and supplemented from time to time), and has the requisite power and all required licenses to carry on its present activities and those proposed under this Agreement.

(b) **Due Authorization.** The Commission has the full power and authority to execute and deliver the Transfer Documents, as well as to carry out the transactions contemplated by the Transfer Documents from and after the Conversion Date. The execution, delivery and performance of the Transfer Documents, and the performance of the transactions contemplated thereby, have been duly and validly authorized by all necessary action of the Commission. Each Transfer Document executed and delivered by the Commission on or before the Conversion Date constitutes the valid and binding obligation of the Commission, enforceable against the Commission in accordance with its terms, subject only to:
(i) the effect of bankruptcy, insolvency, reorganization, moratorium, or other similar Requirements of Law and judicial decisions now or hereafter in effect affecting, generally, the enforcement of creditor’s rights and remedies;

(ii) the effect of Requirements of Law governing equitable remedies and defenses, and the discretion of any court of competent jurisdiction in awarding equitable remedies, including, without limitation, the doctrine of sovereign immunity;

(iii) the effect of Requirements of Law governing enforcement and collection of damages against the Commission, including, without limitation, the doctrine of sovereign immunity; and

(iv) the Requirements of Law concerning the review and approval of contracts, as to form and legality, by the Office of the Attorney General,

provided, however, that the enforcement of any Claims presented in accordance with the Transfer Documents shall be resolved as provided in Article XIV.

(c) Non-Contravention. To the Knowledge of the Commission, the execution, delivery and performance of the Transfer Documents by the Commission do not:

(i) violate any Requirement of Law or Court Order applicable to the Commission or the Commission’s ability to fully perform its obligations under the Transfer Documents;

(ii) require any consent, approval, or authorization of, notice to, or declaration, filing, or registration with any Person not already obtained or accomplished as of the Conversion Date; or

(iii) conflict with, or result in a default under or a violation of, any other agreements or instruments to which the Commission is a party or by which it is bound.

(d) Investigation by Commission. The Commission has conducted its own independent review and analysis of the Facility, the Transferred Assets and the Assumed Liabilities, and, to the Knowledge of the Commission, has been provided reasonable access to the personnel, properties, premises and records of the Department relating to the Facility, the Transferred Assets and the Assumed Liabilities for such purpose. In consummating the Conversion, the Commission has relied upon the representations, warranties and covenants of the Department
specifically set forth in this Agreement, as well as the Commission's own investigation and analysis. Except as specifically set forth in this Agreement:

(i) neither the Department nor any of its elected or appointed officers, employees, agents, advisors, or representatives has made any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided, or made available, to the Commission or any of its directors, officers, employees, agents, advisors, or representatives; and

(ii) there are no representations or warranties by the Department of any kind, express or implied, with respect to the Facility, the Transferred Assets, or the Assumed Liabilities.

Without limiting the generality of the foregoing, there are no express or implied warranties of merchantability or fitness for a particular purpose with respect to the Facility, the Transferred Assets, or the Assumed Liabilities.

(e) **Claims and Proceedings.** To the Knowledge of the Commission, except as will otherwise be set forth in Schedule 5.1(d), there is no Material Claim pending and served upon the Commission that challenges either the Commission's authority to execute, deliver, or perform the Transfer Documents or the authority of the Commission official executing this Agreement.

(f) **Compliance with Requirements of Law and Court Orders.** To the Knowledge of the Commission, the Commission is in compliance in all material respects with all Requirements of Law and all Court Orders applicable to the Commission and its activities in connection with the Transfer Documents. To the knowledge of the Commission, no Claim has been made by any Governmental Entity (and no such Claim is anticipated by the Commission) to the effect that the Commission, with respect to the Transfer Documents or the activities in connection therewith, has failed to comply, in any material respect, with any Requirement of Law or Court Order.

5.3 **Update of Disclosure Schedule.** The Commission shall have the right to update Schedule 5.1(d) from time to time, as circumstances require, by written notice given to the Department at any time prior to the earlier to occur of the Conversion Notice Date and the date that is thirty (30) days before the Outside Conversion Date.

5.4 **Survival.** All of the representations and warranties of the Commission set forth in this Agreement shall survive the Conversion Date and continue in full force and effect for a period of eighteen (18) months thereafter.
ARTICLE VI
PRE-CONVERSION COVENANTS OF THE PARTIES

6.1 Operation of the Facility Prior to the Conversion Date. Prior to the Conversion Date, the Department shall have all legal, financial and operational responsibility for the operation, maintenance and improvement of the Facility, and the Commission shall have no operation, maintenance, or improvement rights or responsibilities with respect thereto, except as otherwise specifically set forth in this Agreement. Any Facility Revenues relating to a period prior to the Conversion Date shall be paid to, and retained by, the Department. Without intention to limit the generality of the foregoing in any respect, during the Conversion Period:

(a) the Department shall operate and maintain the Facility, as well as use, operate and maintain the Transferred Assets, in the same general manner as during the two (2) year period prior to the Effective Date (other than with respect to any extraordinary circumstances that may arise during the Conversion Period beyond the reasonable control of the Department, as to which the Department shall consult with the Commission to the extent practicable under the circumstances), and the Department shall at all times pay, or cause to be paid, all costs and expenses relating to the operation and maintenance of the Facility as and when the same become due and payable;

(b) all operations of the Facility shall be maintained at levels no less favorable than those set forth in the Department's twelve-year plan in effect at the time of execution of this Agreement, with such modifications as are approved in writing by the Chairman of the Commission, which consent shall not be unreasonably withheld, delayed, or conditioned (such twelve-year plan, as so modified from time to time, the "Twelve-Year Plan");

(c) the Department shall give written notice to the Commission as soon as reasonably practicable under the circumstances of:

(i) any notice of material default received by the Department, subsequent to the Effective Date, under any Transferred Contract or Transferred Governmental Permit, or with respect to any other Transferred Asset or Assumed Liability;

(ii) the occurrence of any event or omission that has, or results directly or indirectly in, a Material Adverse Effect to any portion of the Facility, or in the operation of the Facility or any of the Transferred Assets;

(iii) any Claim of which the Department or the Office of Chief Counsel of the Department has Knowledge that involves or affects the Facility or any of the Transferred Assets and, if decided in a manner adverse to the Department, either:
(x) would have a Material Adverse Effect on Facility Operations or Facility Revenues; or

(y) would have a material negative effect on the ability of the Department to consummate the transactions contemplated by this Agreement; or

(iv) any action or occurrence that would result in the breach of any of the representations and warranties of the Department set forth in Article IV, if such breach would reasonably be expected to have a Material Adverse Effect.

6.2 The Department’s Capital Improvement Obligations.

(a) Prior to the Conversion Date, the Department shall commence (or has commenced) and shall pursue with reasonable diligence, and at its own cost and expense, those capital improvement projects set forth in the Twelve-Year Plan as of the date of this Agreement as reflected in Schedule 6.2 (collectively, as such list of projects may be updated from time to time as hereinafter provided, the “Department’s Capital Improvement Projects”), subject to, and in accordance with, this Section 6.2. Schedule 6.2 is a preliminary list of the Department’s Capital Improvement Projects. As indicated on Schedule 6.2, all of the projects listed thereon are scheduled to be commenced prior to September 30, 2010 (the “DCIP Target Date”). Certain of such listed projects are scheduled to be completed through construction before the DCIP Target Date, yet others are scheduled to be completed through one or more phases of development by such date short of the final construction phase.

(b) Promptly after the Effective Date, senior representatives designated by the Chairman of the Commission and the Secretary of the Department shall meet, review the preliminary list of Department’s Capital Improvement Projects set forth on Schedule 6.2 and jointly adjust such list so as to arrive at an agreed initial list of Department’s Capital Improvement Projects on or before December 31, 2007, such representatives acting reasonably, with a view toward establishing a list that maintains a level of work no less favorable than those set forth on the Twelve Year Plan. Thereafter, such list shall be subject to revision as the Department shall elect from time to time with the prior written consent of the Chairman of the Commission.

(c) At any point during the Conversion Period, the then current list of Department’s Capital Improvement Projects shall be pursued in a good and workmanlike manner, as well as in a manner that shall:

(i) not unduly interfere with Facility Operations following the Conversion Date, or the ability of the Commission to generate Facility Revenues from and after the Conversion Date, all as set forth in a written notice from the Commission to the Department; and
Prior to the Conversion Date, the Department shall have complete control of the Department’s Capital Improvement Projects, shall effectively direct and supervise the Department’s Capital Improvement Projects and shall diligently enforce all contracts with respect thereto in accordance with their respective terms. The Department shall be responsible for coordinating the various parts of the Department’s Capital Improvement Projects, and the Commission shall use its reasonable efforts to cooperate with the Department in connection therewith.

(d) Prior to the commencement of each of the Department’s Capital Improvement Projects, the Department shall give written notice thereof to the Commission together with a copy of the Department’s project schedule for such project, which schedule shall be prepared by the Department’s engineering staff in good faith. Regardless of whether such schedule shows that the project is anticipated to be completed prior to the DCIP Target Date (or, if then known, the Conversion Date), the Chairman of the Commission shall have right to give written notice to the Secretary of the Department within thirty (30) days after receipt of such project schedule, directing the Department not to put such project out for bid or otherwise to commence the same. Should the Chairman of the Commission give such notice, then the Department shall not commence such project and such project shall be deemed to be removed from the list of the Department’s Capital Improvement Projects. Promptly thereafter, senior representatives of the Parties shall meet and consider whether alternative projects should be pursued by the Department which are anticipated to be completed prior to the DCIP Target Date (or, if then known, the Conversion Date). The Chairman of the Commission and the Secretary shall agree whether the Department shall pursue an alternative project(s). When such an alternate project is so designated, it shall be and become part of the Department’s Capital Improvement Projects.

(e) If the Conversion Date occurs prior to the DCIP Target Date, then the Department shall be responsible for causing all remaining Department’s Capital Improvement Projects to be pursued until the day before the Conversion Date in accordance with the provisions of Section 6.2(c) above and at the sole cost and expense of the Department. From and after the Conversion Date, all uncompleted Department’s Capital Improvement Projects shall be and become the responsibility of the Commission to complete at the Commission’s sole cost and expense. If the Commission shall so request, the Department shall assign to the Commission at the Closing, without recourse, all of the Department’s right, title and interest in all construction contracts relating to some or all of the uncompleted projects, as well as the Department’s right, title and interest in and to all plans and specifications relating thereto.

(f) If the Conversion Date occurs on or after the DCIP Target Date, then the Department shall be responsible for completing all of the Department’s Capital Improvement Projects (or, if the schedule calls for the completion of particular phases thereof, rather than completion of construction, the Department shall be responsible for completing the designated phases). If such project is not completed on or before the Conversion Date, the Department shall be and remain obligated to continue to perform such project at the Department’s sole cost and
expense from and after the Conversion Date pursuant to the provisions of Section 9.21 and Section 9.22, or, at the option of the Commission, the Commission may take over the performance of such project and complete the same at the expense of the Department. If the Commission takes over the performance of such project, the Commission shall implement and utilize Commission Cost Management Procedures with regard to completing the same, except if, and to the extent that, one or more construction contracts theretofore agreed to, or entered into by, the Department shall be retained by the Commission. The Department shall reimburse the Commission for the out of pocket cost and expense actually incurred by the Commission from time to time in completing such project within forty-five (45) days after the Commission’s written demand therefor, which demand may be made at any time and from time to time.

6.3 The Department’s Remediation Obligations. Prior to the Conversion Date, the Department shall implement and diligently pursue all Hazardous Substance remediation work to be set forth on Schedule 6.3 as provided in Section 6.10(b), discharge all Liabilities (including, without limitation, remedial measures related thereto) described in Section 9.4(e) in connection therewith and pay when due all amounts related thereto. The Department shall, in its performance and completion of such work, comply with all relevant Environmental, Health and Safety Requirements. If the Department fails to implement or complete any of the remediation work contemplated herein prior to the Conversion Date, the Commission, at its sole discretion, shall have the right either:

(a) to perform such work at the cost and expense of the Department, in which event:

(i) in connection with the performance or completion of such work, the Commission shall implement and utilize Commission Cost Management Procedures; and

(ii) the Department shall reimburse the Commission, from time to time during the progress of the work, as well as at the completion thereof, for the cost and expense thereof within forty-five (45) days after the Department’s receipt of reasonably detailed invoices therefor; or

(b) to cause the Department to continue to perform such work after the Conversion Date, subject to the provisions of Section 9.21 and Section 9.22, at the sole cost and expense of the Department.

In addition, regardless of which option shall be selected by the Commission, the Department shall pay to the Commission, within forty-five (45) days after the Commission’s written demand therefor accompanied by a reasonably detailed invoice, any Commission Compensation in respect of the Department’s failure to implement or complete such remediation work.

6.4 The Commission’s Access Rights – Documents, Data and Personnel. Upon the prior written request of the Commission, the Department shall:
(a) make available to the Commission during normal business hours at the offices of the Department, for examination and reproduction at the reasonable expense of the Commission, all documents and data of every kind and character relating in whole or in part to the Facility and/or the Facility Operations that are in the possession or control of, or subject to reasonable access by, the Department (including, without limitation, all files, books, records, data and information relating thereto (whether stored in paper, magnetic, or other storage media) and all agreements, instruments, contracts, assignments, certificates, orders and amendments thereto); and

(b) permit the Commission and its authorized representatives to have access to the employees, counsel, accountants, engineers and other representatives of the Department, at the times during normal business hours reasonably requested by the Commission and agreed upon by the Department in writing (such agreement not to be unreasonably withheld, delayed, or conditioned), in either case for the purpose of confirming any of the information disclosed to the Commission pursuant to this Agreement, to provide whatever additional information may reasonably be required by the Commission relating to the Facility and the Facility Operations and for planning and executing transitional activities and tasks. The Commission shall make any request for information pursuant to this Section 6.4 in a manner that minimizes material disruption to the Department and its employees, it being acknowledged by the Commission that the Department continues to be responsible for operating and maintaining the Facility during the Conversion Period, as well as other roads, bridges and transportation assets in the Commonwealth. This Section 6.4 shall not require the Department to disclose to the Commission any information that the Department may not disclose to the Commission pursuant to any applicable Requirement of Law. Subject to the provisions of Section 15.2, the Commission shall keep confidential any information that is provided by the Department pursuant to this Section 6.4 and is marked "confidential".

6.5 The Commission’s Access Rights – The Facility. Prior to the Conversion Date, the Department shall allow the Commission and its agents, contractors and representatives, at their own or the Commission’s sole cost and expense, to enter the Facility and each and every part thereof, at all reasonable times during normal business hours and upon reasonable prior written notice to the Department:

(a) to inspect the Facility in order to determine whether the Department is in compliance with its obligations under this Agreement and under the applicable Requirements of Law with respect to the Facility Operations;

(b) if the Commission shall so elect in its sole discretion, to commence to perform some or all of the Commission’s Capital Improvement Program, at the Commission’s own cost and expense, in and to the Facility in accordance with the provisions of this Agreement; and
(c) solely in accordance with the terms of this Agreement, to do any other act or thing that the Commission may be obligated to do pursuant to the terms of this Agreement, or shall have a right to do under this Agreement;

provided, however, that the Commission shall coordinate its activities in advance with the Department so as to minimize interference with the maintenance and operation of the Facility in connection with any entry on the Facility pursuant to this Section 6.5. In connection with any access to the Facility for purposes of conducting any of the activities described in Section 6.5(b) or, if applicable thereto, Section 6.5(c):

(i) the Commission shall submit to the Department, for its written approval (not to be unreasonably delayed, withheld, or conditioned) prior to granting such access, a work plan setting forth the location of the proposed activities, the schedule for such activities, any estimates as to possible disruption of traffic and such other matters as the Department may reasonably request;

(ii) all of such activities shall be diligently performed in a good and workmanlike manner, consistent with the obligation of the Department to operate and maintain the Facility in compliance with the provisions of Section 6.1(a), in accordance with any applicable Requirements of Law and, to the greatest extent reasonably possible without incurring any material additional cost, in such a manner as will not unreasonably interfere with the maintenance and operation of the Facility; and

(iii) the Department shall have the right to accompany, or to cause a representative to accompany, the Commission or its representative whenever there shall be an entry on the Facility.

6.6 The Commission’s Access Rights – Storage of Materials. The Commission and its agents, contractors and representatives shall have the right, during the progress of any work referred to Section 6.5, to keep and store at the Facility, at no cost or expense to the Commission and/or such agents, contractors, or representatives and at their own risk, all necessary materials, tools, supplies, stockpiles, equipment, sheds, mobile trailers and other vehicles, in a reasonably neat, safe and orderly fashion, as well as in material compliance with all Requirements of Law (including, without limitation, all Environmental, Health and Safety Requirements), and so as to not unreasonably interfere with the Department’s conduct of Facility Operations and of its other operations. The Commission shall submit to the Department, for its written approval (not to be unreasonably delayed, withheld, or conditioned) prior to commencing such storage activities, a plan demonstrating that:

(a) there is adequate space at the proposed site on the Facility for the storage proposed by the Commission; and

(b) the proposed activities will not unreasonably interfere with the Department’s obligations and responsibilities (including, without limitation, its obligation to maintain and operate the Facility prior to the Conversion Date).
Subject to the immediately preceding sentence, the Department shall use reasonable efforts to accommodate the Commission's request for storage at those locations at the Facility used for such purposes as of the Effective Date. Subject to the applicable conditions and limitations set forth in Section 6.5, the Department shall afford to the Commission such access and ingress and egress over and across the Facility as is reasonable to permit the Commission access to such storage areas, provided, however, that the Commission shall coordinate its activities in advance with the Department so as to minimize interference with the Facility Operations in connection with any entry on the Facility pursuant to this Section 6.6.

6.7 Application to the FHWA. Act 44 authorizes the Commission, in consultation with the Department and at its own expense, to prepare and submit an application (the "Conversion Application") to the FHWA for the conversion of the Facility to a toll road. The Secretary of the Department shall ensure that all information required for the Conversion Application is made available to the Commission as soon as practicable.

6.8 Efforts to Cause Conversion to Occur. Subject to the terms and conditions of this Agreement, each Party shall use its reasonable efforts to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things, in order to consummate the transactions contemplated hereby, including, without limitation:

(a) satisfying all of the conditions precedent set forth in Article VII with regard to the consummation of the Conversion; and

(b) executing and delivering all agreements and documents required by the terms hereof to be executed and delivered by such Party on or prior to the Conversion Date.

6.9 Creation of Operating Standards. On or before October 15, 2009, the Commission shall develop, and submit to the Department for comment, draft Operating Standards that the Commission is prepared to implement from and after the Conversion Date. The Operating Standards developed, submitted and adopted hereunder shall require the Commission to operate and maintain the Facility in such a manner, and in so doing utilize such standards, policies, processes and procedures, that shall:

(a) be consistent and compatible generally with the standards, policies, processes and procedures from time to time generally utilized by the Commission in connection with the operation and maintenance of the Turnpike System;

(b) reasonably be anticipated to result in maintaining the physical characteristics of the Facility at a general level of quality that is comparable to, or better than, the greater of:

(i) the general level of quality of such characteristics with regard to the Facility as of the Conversion Date;
(ii) the general level of quality of such characteristics with regard to the Turnpike System as of the Conversion Date; and

(iii) the general level of quality at which divided four or more lane limited access interstate highways with interchanges, and interstate quality bridges, are being operated as of the Conversion Date; and

(c) in all events be in compliance with all applicable Requirements of Law (including, without limitation, all then applicable Environmental Health and Safety Requirements) then in force and effect with respect to the Facility.

The Commission shall give due consideration to any comments received from the Department, and shall explain in writing to the Department its reasons for not incorporating into the Operating Standards any of such comments that shall not be so incorporated. If, as and when the Operating Standards are acceptable to the Parties, the Parties shall each execute and deliver an amendment to this Agreement incorporating such Operating Standards into this Agreement as Schedule 9.2.

6.10 Preparation of Certain Schedules. The Parties acknowledge that all of the Schedules called for in this Agreement and intended to be attached hereto and incorporated herein are not susceptible of being prepared, reviewed and approved as of the Effective Date. With respect thereto, the Parties agree as follows:

(a) The Department shall prepare Schedules 4.1(d), 4.1(f) and 4.1(g) and deliver them to the Commission on or before October 15, 2009. Promptly after such delivery, the Parties shall each execute and deliver an amendment to this Agreement incorporating such Schedules herein.

(b) The Commission shall prepare Schedule 6.3 and submit such Schedule to the Department, for its approval, on or before October 15, 2009. If, as and when such Schedule shall be acceptable to the Parties, the Parties shall each execute and deliver an amendment to this Agreement incorporating such approved Schedule herein.

(c) The Department shall prepare Schedules 2.2(b), 2.3(a), 2.3(c), 2.3(d), 2.3(e) and 2.5(a) and submit them to the Commission, for its approval, not later than sixty (60) days prior to the expiration of the Conversion Period. If, as and when such Schedules shall be acceptable to the Parties, the Parties shall each execute and deliver an amendment to this Agreement incorporating such approved Schedules herein.

(d) The Commission shall prepare Schedule 9.16 and submit such Schedule to the Department, for its approval, not later than sixty (60) days prior to the expiration of the Conversion Period. Such Schedule shall include only those capital improvement projects required by the FHWA to be performed with respect to the Facility as a condition to their approval of the Conversion. If, as and when
such Schedule shall be acceptable to the Parties, the Parties shall each execute and deliver an amendment to this Agreement incorporating such approved Schedule herein.

(e) The Commission shall prepare Schedule 5.1(d) and deliver it to the Department on or before October 15, 2009. Promptly after such delivery, the Parties shall each execute and deliver an amendment to this Agreement incorporating such Schedule herein.

6.11 Lapse of Conversion Option. In the event that the Conversion Option shall lapse pursuant to Section 2.1, the Commission shall, at its own cost and expense, remove promptly after receipt of the Department's written demand therefor any and all installations, stored materials and/or improvements theretofore made by the Commission to the Facility pursuant to Section 6.5 and/or Section 6.6, and repair or restore any damage to the Facility caused by such removal. The Commission shall coordinate its activities in advance with the Department so as to minimize interference with the maintenance and operation of the Facility in connection with any entry on the Facility pursuant to this Section 6.11. In connection with any access to the Facility for purposes of conducting any of the activities described in this Section 6.11:

(a) the Commission shall submit to the Department, for its written approval (not to be unreasonably delayed, withheld, or conditioned) prior to granting such access, a work plan setting forth the location of the proposed activities, the schedule for such activities, any estimates as to possible disruption of traffic and such other matters as the Department may reasonably request;

(b) all of such activities shall be diligently performed in a good and workmanlike manner, in conformity with the obligation of the Department to operate and maintain the Facility in compliance with the provisions of Section 6.1(a), in accordance with any applicable Requirements of Law and, to the greatest extent reasonably possible without incurring any material additional cost, in such a manner as will not unreasonably interfere with the maintenance and operation of the Facility; and

(c) the Department shall have the right to accompany, or to cause a representative to accompany, the Commission or its representative whenever there shall be an entry on the Facility.

ARTICLE VII
CONDITIONS PRECEDENT TO CONVERSION

7.1 Conditions to the Obligations of the Commission. The obligation of the Commission to consummate the Conversion is subject to the satisfaction, or the written waiver by the Commission, of each of the following conditions in accordance with the provisions hereof:

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(a) **Exercise of the Conversion Option.** The Commission shall have exercised the Conversion Option in a timely fashion in accordance with the provisions of Section 2.1.

(b) **Approval by the FHWA.** The FHWA shall have approved the Conversion Application and entered into a tolling agreement with respect to the Facility.

(c) **Preparation and Approval of Schedules.** Each of the Schedules to be prepared by a Party after the Effective Date, approved by the other Party and incorporated into this Agreement by amendment hereto shall have been so prepared, approved and incorporated.

(d) **Covenants of the Department.** The Department shall have performed and complied with, in all material respects, all of its obligations, agreements and covenants contained in this Agreement that are to be performed or complied with by the Department on or prior to the Conversion Date.

(e) **Consents and Approvals.** All of the consents, approvals and authorizations from Governmental Entities and others that shall be necessary in connection with the consummation of the Conversion shall have been obtained, which consents, approvals and authorizations shall be in form and substance reasonably satisfactory to the Commission.

(f) **Release of Encumbrances.** All Encumbrances on the Facility and the Transferred Assets, other than Permitted Encumbrances, shall have been fully released and terminated, or provision therefor, reasonably satisfactory to the Commission, shall have been made.

(g) **No Claims or Court Orders.** On the Conversion Date, no Claims or Court Orders shall be pending or threatened that would:

(i) prevent the consummation of any of the transactions contemplated by this Agreement;

(ii) cause any of the transactions contemplated by this Agreement to be rescinded following consummation; or

(iii) adversely affect the right or ability of the Commission to operate the Facility in accordance with the applicable terms, covenants and conditions of this Agreement, except to the extent that the reasonably anticipated result thereof would not constitute a Material Adverse Effect.
(h) **Deliveries by the Department.** The Department shall have delivered the following to the Commission:

(i) the Transfer Documents to be executed and delivered by the Department, each duly executed thereby; and

(ii) a written statement of the Department certifying that all of the representations and warranties set forth in Section 4.2 are true, accurate and complete as of the Conversion Date.

**7.2 Conditions to the Obligation of the Department.** The obligation of the Department to consummate the Conversion is subject to the satisfaction, or the written waiver by the Department, of each of the following conditions in accordance with the provisions hereof:

(a) **Exercise of the Conversion Option.** The Commission shall have exercised the Conversion Option in a timely fashion in accordance with the provisions of Section 2.1.

(b) **Delivery of Baseline Asset Condition Report.** The Commission shall have delivered to the Department the most recently prepared baseline asset condition report, with respect to which the Department concurs (such concurrence not to be unreasonably withheld, delayed, or conditioned), regarding the Facility.

(c) **Preparation and Approval of Schedules.** Each of the schedules to be prepared by a Party after the Effective Date, approved by the other Party and incorporated into this Agreement by amendment hereto shall have been so prepared, approved and incorporated.

(d) **Covenants of the Commission.** The Commission shall have performed and complied with, in all material respects, all of its obligations, agreements and covenants contained in this Agreement that are to be performed or complied with by the Commission on or prior to the Conversion Date.

(e) **Consents and Approvals.** All of the consents, approvals and authorizations from Governmental Entities and others that shall be necessary in connection with the consummation of the Conversion shall have been obtained, which consents, approvals and authorizations shall be in form and substance reasonably satisfactory to the Department.

(f) **No Claims or Court Orders.** No Claims or Court Orders shall be pending or threatened that would:

(i) prevent the consummation of any of the transactions contemplated by this Agreement;
(ii) cause any of the transactions contemplated by this Agreement to be rescinded following consummation; or

(iii) adversely affect the right or ability of the Commission to operate the Facility in accordance with the applicable terms, covenants and conditions of this Agreement, except to the extent that the reasonably anticipated result thereof would not constitute a Material Adverse Effect.

(g) **Deliveries by the Commission.** The Commission shall have delivered the following to the Department:

(i) the Transfer Documents to be executed and delivered by the Commission, each duly executed thereby;

(ii) a written statement of the Commission certifying that all of the representations and warranties set forth in **Section 5.2** are true, accurate and complete as of the Conversion Date; and

(iii) certified copies of resolutions of the Commission, authorizing the execution and delivery of the Transfer Documents and the consummation of the Conversion.

**ARTICLE VIII**

**CONVERSION**

8.1 **Notice of Conversion.** Within five (5) Business Days after the Conversion Notice Date, the Secretary of the Department shall forward notice of the Closing Date to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

8.2 **Closing.** The closing of the conveyance, assignment, payment and/or other transfer of the Transferred Assets to the Commission, as well as the assumption of the Assumed Liabilities by the Commission, shall take place on or about the Conversion Date at a location in the Commonwealth to be mutually agreed upon by the Parties (the “Closing”).

8.3 **Documents of Transfer.** The conveyance, assignment and/or other transfer of the Transferred Assets to the Commission, as well as the assumption of the Assumed Liabilities by the Commission, shall be effectuated and/or memorialized by the execution and delivery by the Parties, at the Closing, of documents in the forms proposed by the Commission and approved in writing by the Department, which approval shall not be unreasonably withheld, delayed, or conditioned (collectively, the “Transfer Documents”). The Transfer Documents may include, without limitation, bills of sale and assignments to the extent applicable. The Transfer Documents shall be dated as of the Conversion Date and shall be effective as of such date.
8.4 **Closing Apportionments.** Any Assumed Liabilities and Facility Revenues relating to a period or periods that shall include the Conversion Date shall be apportioned between the Parties as follows:

(a) At the Closing, the Parties shall prepare and each certify a closing statement that reflects the apportionment of such Assumed Liabilities and/or Facilities Revenues in accordance with the provisions of this Section 8.4. Each Party shall make the payments or transfers to the other Party indicated on such statement.

(b) Any moneys on deposit, reserves, prepaid items and other applicable items with respect to the Transferred Contracts, the Assumed Liabilities and/or the Facility Revenues that are on deposit with the Department on the Conversion Date shall be apportioned on the basis of when the Conversion Date occurs as related to the Transferred Contract, Assumed Liability and/or Facility Revenue, which apportionment shall take into account any continuing obligations of the Department with respect to the Department’s Capital Improvement Obligations and the obligations set forth in Section 6.3.

(c) Any amount received by the Commission from and after the Conversion Date:

(i) in respect of any Claims asserted by the Department against third parties prior to the Conversion Date; or

(ii) in any way related to the period preceding the Conversion Date with respect to any Transferred Contract, Assumed Liabilities and/or Facility Revenues,

shall be remitted to the Department within forty-five (45) days after the Commission’s receipt thereof.

(d) Any amount received by the Department from and after the Conversion Date:

(i) in respect to any Claims asserted by the Commission against third parties after the Conversion Date; or

(ii) in any way related to the period from and after the Conversion Date with respect to any Transferred Contract, Assumed Liabilities and/or Facility Revenues,

shall be remitted to the Commission within forty-five (45) days after the Department’s receipt thereof.
(e) If either Party shall discover after the Conversion Date that there were amounts related to, or derived from, any Transferred Contracts, Assumed Liabilities, or Facility Revenues that either:

(i) should have been apportioned as aforesaid as of the Conversion Date, but were not; or

(ii) were apportioned as aforesaid as of the Conversion Date, but were so apportioned incorrectly,

then, and in either such event:

(x) the Party making the discovery shall provide written notice thereof to the other Party with a detailed account of the discovery; and

(y) thereafter, the Parties shall negotiate in good faith to apportion or reapportion (as the case may be) such charges and make the appropriate payments between them.

ARTICLE IX
POST-CONVERSION COVENANTS OF THE PARTIES

9.1 Operation of the Facility From and after the Conversion Date. Except as otherwise specifically provided herein, the Commission shall, at all times from and after the Conversion Date, be responsible for all aspects of Facility Operations, and shall cause the Facility to be operated, managed, maintained, constructed, rehabilitated, improved and tolled in all material respects in accordance with the provisions of this Agreement and all applicable Requirements of Law. Beginning on the Conversion Date, all legal, financial and operational responsibility for the Facility, as well as all toll revenues subsequently collected with respect to its use, shall automatically transfer to the Commission. Consistent with the foregoing, the Commission shall, at all times from and after the Conversion Date, cause the Facility to be open and operational for use by all toll paying members of the public, twenty-four (24) hours per day, every day, except only for closures that are either:

(a) specifically permitted under this Agreement;

(b) required by applicable Requirements of Law;

(c) necessary to comply with any other requirement of this Agreement (including, without limitation, the Commission’s obligation to maintain, repair, rehabilitate, restore and/or improve the Facility from time to time during the Term); or

(d) temporary in nature and required to address emergencies.
In connection therewith, the Commission shall obtain, comply with, promptly renew and maintain in good standing all authorizations required for the Facility Operations, provided, however, that, if the Commission is, at any time from and after the Conversion Date, required to obtain any authorization from a Governmental Entity that the Department was not required to obtain in connection with its operation of the Facility prior to the Conversion Date, the Department shall use its reasonable efforts to assist the Commission in obtaining such authorization. The Commission shall reimburse the Department for its reasonable out of pocket costs and expenses in connection with such assistance within forty-five (45) days after the Commission’s receipt of the Department’s reasonably detailed invoice therefor. Additionally, the Commission shall, at all times from and after the Conversion Date, maintain in full force and effect its existence and all qualifications necessary to carry on its business pertaining to the Facility Operations, including, without limitation, all material rights, franchises, licenses, permits, privileges and qualifications required in connection with the Facility Operations. Any Facility Revenues generated from and after the Conversion Date shall be paid to, and retained by, the Commission. Except as otherwise specifically provided herein, the Commission shall, at all times from and after the Conversion Date, pay or cause to be paid all costs and expenses relating to the Facility Operations as and when the same are due and payable.

9.2 Compliance with the Operating Standards. The Commission shall, at all times from and after the Conversion Date, cause the Facility Operations to comply in all material respects with the standards, specifications, policies, procedures and processes to be set forth on Schedule 9.2 as provided in Section 6.9 (including, without limitation, any plans submitted by the Commission to the Department pursuant thereto), as such standards, policies, procedures and processes may be modified from time to time pursuant to the provisions of Section 9.3 or any other applicable provisions of this Agreement (as the same shall be in effect from time to time, the “Operating Standards”). The Commission shall use reasonable efforts to implement the then current Operating Standards in all material respects, and shall have in place procedures that are reasonably designed to achieve compliance with such Operating Standards. The Operating Standards shall be construed flexibly in light of their objectives, and shall not be considered to be violated by any occasional or incidental acts or omissions (including, without limitation, any occasional or incidental failure to comply with one or more specific requirements set forth in the Operating Standards). Without limiting the generality of the foregoing, any failure to meet specific time limits, durations, or frequencies set forth in the Operating Standards shall not constitute a default hereunder on the part of the Commission, provided that such failure was the result of an action or a failure to act that was nonetheless consistent with procedures that are reasonably designed to achieve compliance with the requirements of the then current Operating Standards. Except as otherwise specifically set forth in this Agreement, the Commission shall perform all work required to comply with and implement the Operating Standards in all material respects as part of the Facility Operations and at the Commission’s own cost and expense.

9.3 Modification of the Operating Standards.

(a) In the event that, at any time or from time to time during the Term, the parties shall mutually determine, each acting in good faith, that the then Operating Standards are not in compliance with all applicable federal Requirements of Law, the Commission shall, within
ninety (90) days thereafter (or within such shorter period as the circumstances shall require) and at the Commission’s own cost, propose one or more specific modifications of the Operating Standards so as to cause the same to come back into compliance with all applicable federal Requirements of Law. In addition, the Commission shall have the right, at any time and from time to time during the Term at the Commission’s own expense, to propose one or more specific modifications of the then Operating Standards that are elective on the part of the Commission. Finally, the Parties shall cause their senior technical personnel to meet at ten (10) year intervals during the Term to review the then Operating Standards and jointly consider, each acting in good faith, modifications thereof and updating of the same, the first of which reviews shall be performed on or about the eighth (8th) anniversary of the Effective Date. If any such review and consideration shall result in a recommendation that the Operating Standards be modified or updated in whole or in part, the Commission shall, within ninety (90) days thereafter and at the Commission’s own cost, propose one or more specific modifications of the Operating Standards that are consistent with result of such review. In each event, the proposed specific modifications shall be reasonably designed to achieve an operating standard of a quality no less than the general objectives for the Operating Standards set forth in Section 6.9, which objectives, for purposes of this Section 9.3, shall be considered to have been brought current rather than speaking as of the Conversion Date.

(b) After the Commission shall complete, in good faith, specific proposed modifications to the then Operating Standards, the Commission shall provide written notice of such proposed modifications to the Department for the Department’s prior written approval, which approval shall not be unreasonably withheld, delayed, or conditioned. The Commission’s proposed modifications shall be accompanied by an explanation of the Commission’s rationale for proposing them and all relevant supporting information, certificates, reports, studies, investigations and other materials as are necessary to demonstrate that such proposed modifications have been reasonably designed to achieve the objectives of the applicable Operating Standards, as more fully set forth in Section 6.9 and Section 9.3(a). The Department may request such additional supporting information, certificates, reports, studies, investigations and other materials as are reasonably required by the Department to determine if the Commission’s proposed modifications are reasonably designed to achieve the objectives of the applicable Operating Standards.

(c) Until the Department provides its written approval for the implementation of the Commission’s proposed modifications, the Commission shall not implement the proposed modifications and shall instead continue to comply with the then current Operating Standards. Notwithstanding the foregoing, however, with respect to any such modification(s) that shall be necessary in order to cause the Operating Standards to comply with all applicable federal Requirements of Law, such modifications shall be considered to be implemented on an interim basis upon delivery thereof to the Department, pending the completion of the review process with respect to the same. Except with respect to any interim implementation thereof as aforesaid, the Commission’s proposed modifications shall be deemed to be incorporated into the Operating Standards upon written approval by the Department in accordance with the terms hereof.
9.4 Costs and Expenses of the Facility Operations. Except as otherwise specifically provided in this Agreement, the Commission shall pay, discharge, or perform when due, or cause to be paid, discharged, or performed, all costs, expenses, debts, liabilities and obligations whatsoever relating to the Facility and/or the Facility Operations (including, without limitation, the Assumed Liabilities) that accrue, occur, arise out of, or relate to, or are based on facts or actions occurring, on or after the Conversion Date (collectively, the “Post Conversion Financial Obligations”), but only to the extent that such costs, expenses, debts, liabilities, or obligations do not arise from, or relate to, any breach by the Department of any covenant, representation, or warranty set forth in this Agreement, provided, however, that the Post Conversion Financial Obligations shall not include any costs, expenses, debts, liabilities, or obligations:

(a) arising out of the Department’s obligations under this Agreement;

(b) arising out of Facility Operations prior to the Conversion Date, except to the extent of any apportionment made as of the Conversion Date pursuant to Section 8.4;

(c) relating to any debt or obligation related to the Facility and incurred by the Department or the Commonwealth prior to the Conversion Date, except to the extent of any apportionment made as of the Conversion Date pursuant to Section 8.4;

(d) with respect to any contract, license, agreement, purchase order, or other agreement or arrangement of the Department that is related, in whole or in part, to the Facility and/or the Facility Operations and that is not a Transferred Contract; and

(e) with respect to any Environmental, Health and Safety Requirement arising out of, or relating to, the ownership, operation, or condition of the Facility at any time prior to the Conversion Date, or any Hazardous Substance or other contaminant that was released or threatened to be released in, on, or above, migrated to, or escaped from the Facility at any time prior to the Conversion Date, to the extent not negligently or wrongfully exacerbated by the Commission or its agents or contractors (including, but not limited to, any costs, expenses, debts, liabilities and obligations related to the remediation of those certain specified environmental conditions set forth on Schedule 6.3 and any other condition that existed prior to the Conversion Date, the manifestation of which occurred thereafter), provided, however, that nothing set forth in this Section 9.4(e) shall be deemed or construed to grant to the Commission a right of contribution against the Department in the event that the Commission shall be found by any Governmental Entity having jurisdiction, or in a Claim brought by such a Governmental Entity, to have any remediation duties or any financial exposure with regard to any such Environmental, Health and Safety Requirement.
For purposes of this Agreement, the Post Conversion Financial Obligations shall include, without limitation, the share of any income or revenues derived from the Facility that shall be due and payable to the Federal Government pursuant to any Federal Requirement of Law mandating such remittance. Except to the extent expressly provided to the contrary in this Agreement, those Post Conversion Financial Obligations that shall arise at any time during the Term shall survive the expiration of this Agreement.

9.5 **The Collection of Tolls.** In its capacity as the owner of the Facility and the lessor under this Agreement, the Department hereby unconditionally and irrevocably consents to the tolling of Interstate Route I-80 for the use of the Turnpike System (including, without limitation, for the use of the Facility from and after the Conversion Date and for the discharge of certain of the payment obligations of the Commission pursuant to this Agreement subject to the limitations hereinbefore and hereinafter set forth), provided, however, that the Commission shall not collect tolls for the use of the Facility or any portion thereof unless and until approval therefor is received by the Commission from the FHWA. Tolls may be imposed at one time or in one or more stages, as determined by the Commission. Tolls shall be fixed and adjusted with regard to the Facility so as to provide funds at least sufficient, with the other revenues of the Commission (if any and subject to the provisions of Section 10.4 in all respects), to pay all of the following:

1. the cost of constructing, reconstructing, widening, expanding, extending, maintaining, repairing and operating the Turnpike System and the different parts and sections of such system (including, without limitation, the Facility);

2. those amounts due under, or pursuant to, the Commission’s bonds, notes, or other obligations (including, without limitation, the interest on them), all sinking fund requirements of the Commission with respect thereto and all other requirements provided for by any resolution authorizing the issuance of bonds, notes, or other obligations by the Commission, or by any trust indenture to which the Commission is a party, as they become due;

3. those amounts due to the Department under, or pursuant to, this Agreement and pursuant to Act 44; and

4. any other amounts payable to the Commonwealth or to the Department pursuant to Act 44 or otherwise.

Tolls with regard to the Turnpike System (including, without limitation, the Facility) shall not be subject to supervision or regulation by the Department. Subject to the terms of any presently existing trust indenture entered into by the Commission and any presently existing resolution authorizing the issuance of any bonds, notes, or other obligations of the Commission, the tolls and all other revenue derived from the Turnpike System (including, without limitation, the Facility) shall be set aside and pledged as may be provided in any resolutions, trust indentures, or any other agreements that the Commission may hereafter adopt or hereafter enter into with respect to the issuance of bonds, notes, or other obligations of the Commission. Notwithstanding
the foregoing, however, as specifically provided in Act 44, the toll collection system on the Facility shall consist of what is commonly referred to as an open system, with no more than ten (10) toll collection points. The Commission shall fix and revise tolls at levels that will generate revenues (together with other available moneys) sufficient to pay, among other things, amounts payable to the Department pursuant to this Agreement when due and in a manner that permits the Department to allocate such funds in accordance with the provisions of Act 44.

9.6 **Operator of the Facility.** The Facility Operations shall, at all times from and after the Conversion Date, be under the direction and supervision of the Commission.

9.7 **Utility and Affected Property Coordination.** From and after the Conversion Date, the Commission shall be responsible for coordinating, or causing the coordination of, all Facility Operations with:

(a) utilities and other Persons having service lines, pipelines, transmission lines and other equipment, cables, systems and apparatus in, on, under, over, or adjacent to the Facility, in each case at the sole cost and expense of such utilities or other Persons to the fullest extent permitted by any applicable Requirements of Law; and

(b) all Affected Property.

In connection therewith, the Commission shall cause:

(i) the removal, or temporary or permanent relocation, and restoration of utilities, other services and/or any lines, equipment, cables, systems and other apparatus that intersect, interfere with, interface with, or otherwise affect the Facility Operations, and shall arrange for temporary or permanent rights of entry and access to utilities and other services to be made available that are reasonably necessary in connection with the Facility Operations or as may exist under this Agreement or under any Requirement of Law, in each case at the cost and expense of such utilities or other Persons, to the fullest extent permitted by any applicable Requirements of Law; and

(ii) provision to be made for the temporary or permanent relocation or closure of roadways that intersect, interfere with, interface with, or otherwise affect the Facility Operations, and shall arrange for temporary right-of-entry and access to the property of all relevant Governmental Entities or other Persons as may be necessary in connection with the Facility Operations or as may exist under this Agreement or any Requirement of Law.

Without intention to limit the generality of the foregoing in any respect, the Commission shall have the right to grant licenses, permits and the like with respect to such installations, either for no compensation or other consideration or at such compensation or other consideration as the Commission shall determine in its sole discretion, **provided, however**, that the same does not adversely affect the use, operation, or value of the Facility and does not create any obligation on
the part of the Department. To the extent that any such license, permit, or other right or privilege is permanent or for a term that extends beyond the Term, such Encumbrance shall require the prior written approval of the Department (not to be unreasonably withheld, delayed, or conditioned) and shall, following such approval, be deemed to be a Permitted Encumbrance for purposes of Section 9.33(a). The Department shall cooperate with the Commission in all reasonable respects in regard to its obligations under this Section 9.7. In addition, nothing contained herein is in any way intended to interfere with the normal operation of the Facility by the Commission, and the Department shall cooperate with the Commission in all reasonable respects in minimizing any effect that the obligations of the Commission under this Section 9.7 may have on the Facility, the Facility Operations and the Facility Revenues.

9.8 The Commission's Environmental Obligations. In addition to its other obligations under this Agreement, the Commission shall, at all times after the Conversion Date:

(a) refrain from bringing onto the Facility any Hazardous Substances, except in the normal course of business and in compliance with Environmental, Health and Safety Requirements;

(b) refrain from installing any underground or aboveground tank storing Hazardous Substances, except with the written approval of the Department;

(c) take all reasonable measures to avoid releasing any Hazardous Substances on or from the Facility;

(d) exercise reasonable due care with respect to any identified releases of Hazardous Substances on or emanating from the Facility, including the following:

(i) preventing or limiting the dispersion of any such releases;

(ii) preventing or limiting exposure to any such releases;

(iii) avoiding exacerbating any such releases;

(iv) providing expeditious written notice to the Department of the identified release; and

(v) to the extent the Commission is not responsible for remediating the release, cooperate with the party or parties authorized to conduct any remediation activity, including further investigation and characterization;
(e) diligently undertake remediation of any releases on, or emanations from, the Facility to the extent arising from a release after the Conversion Date and required to conform to applicable criteria established under Environmental, Health and Safety Requirements; and

(f) provide the Department with a copy of any written notice, order or Claim received from any third party (including any Governmental Entity) regarding any release on, or emanations from, the Facility, and of any material correspondence related thereto, or to any investigation by a Governmental Entity of such a release or condition.

9.9 Enhanced Traffic Patrol and Traffic Law Enforcement Services. The Commission shall have the right, at its discretion, to contract with the State Police for enhanced levels of State Police service for the control of traffic for special events, construction, or maintenance activities, predicted peak traffic patterns, or as otherwise needed (and, in each case, at the Commission’s expense) or, if the Department and any other required authority shall consent thereto (which consent shall not be unreasonably withheld, delayed, or conditioned), may obtain such services from another entity. In addition, the Commission acknowledges that the Department or Commonwealth, at its own expense, may provide additional patrol and law enforcement services on the Facility at such times and for as long as the Department or Commonwealth (as the case may be) determines in its sole discretion.

9.10 Other Enforcement Activities. Except as permitted herein, the Commission shall not engage, or otherwise permit the engagement of, private security services to provide traffic patrol or traffic law enforcement services on the Facility, provided, however, that the Commission may utilize private security forces or passive devices to identify toll violators and to protect Facility Revenues collected, accumulated and transferred for deposit. From and after the Conversion Date:

(a) the Commission shall have the right to contract with the State Police for the apprehension of toll violators (at the Commission’s expense) and/or the enforcement of all other private rights and/or civil remedies of the Commission or, if the Department shall consent thereto (which consent shall not be unreasonably withheld, delayed, or conditioned), the Commission may obtain toll and/or other enforcement services from another entity; and

(b) the Department shall use its reasonable efforts (at the Commission’s reasonable expense) to assist in the establishment of fines and similar remedies at the state and local level for toll violations, trespass upon the Facility and other infringements upon the Commission’s rights or benefits, which fines and similar remedies shall be designed to constitute an effective disincentive against toll violations and trespass.

Notwithstanding the foregoing, however, the Commission acknowledges that the State Police are empowered to enforce all applicable Requirements of Law on the Facility, that all officers authorized by law to make arrests for violations of law in the Commonwealth and each affected
jurisdiction shall have the same powers, duties and jurisdiction within the limits of the Facility as they have in their respective areas of jurisdiction and that law enforcement officers shall have access to the Facility at any time for the purpose of exercising their law enforcement powers and jurisdiction. No provision of this Agreement is intended to surrender or waive any police powers of the Commonwealth or any Governmental Entity (including, without limitation, the State Police). All such police powers are hereby expressly reserved.

9.11 Utilities. From and after the Conversion Date, the Commission shall pay when due all charges (including, without limitation, all applicable Taxes and fees) for gas, electricity, light, heat, power, telephone, water and other utilities and services that are both used in the Facility Operations and supplied to the Facility, excluding, however, those charges for utilities and/or services that, by agreement, custom, or otherwise, are to be supplied to the Facility at the expense of a third party. The Department shall offer to furnish to the Commission, for purposes of the Facility Operations, any utilities that the Department or the Commonwealth is voluntarily and directly furnishing to other commercial users in the immediate vicinity of the Facility at such time, on rates and other terms as are applicable to other similarly situated commercial users of such utilities, as may be amended from time to time, provided, however, that the Department shall have no obligation or responsibility to furnish the Commission with any other utilities and makes no representations or warranties as to the availability of any utilities. The Department does not make any representation or warranty regarding any utility services. Any interruption of utility services shall never be deemed an eviction or disturbance of the Commission’s use and possession of the Facility or any part thereof, render the Department liable to the Commission for damages, or relieve the Commission from performance of the Commission’s obligations under this Agreement.

9.12 Encumbrances by the Commission. From and after the Effective Date, the Commission shall not do any act or thing that will create any Encumbrance (other than a Permitted Encumbrance) against any portion of the Department’s remaining right, title and interest in and to the Facility. The Commission shall promptly remove any Encumbrance (other than a Permitted Encumbrance) created against the Facility and not expressly permitted by the terms of this Agreement, unless the Encumbrance came into existence as a result of an act of or omission by the Department, the Commonwealth, or any Person claiming through either of them which in turn was not caused by an act or omission of the Commission. The Commission shall not be deemed to be in default hereunder if the Commission contests any such Encumbrance diligently and in good faith, or the validity thereof, by appropriate legal proceedings that shall operate to prevent the foreclosure or other enforcement of any such Encumbrance. The Commission shall endeavor in good faith to give advance notification to the Department that it intends to contest the amount or validity of an Encumbrance. The Department, if requested by the Commission and at the Commission’s own cost and expense, shall use its reasonable efforts to assist the Commission in contesting or attempting to remove any Encumbrance that has come into existence and that is the obligation of the Commission to remove pursuant to the provisions of this Section 9.12. Notwithstanding anything to the contrary contained in this Agreement or otherwise, the Commission has no right to mortgage, pledge, lien, assign or otherwise encumber the Department’s remaining right, title, or interest in the Facility or any portion thereof, and any attempt to do so shall be null and void.
9.13 **Encumbrances by the Department.** From and after the Conversion Date, the Department shall not do any act or thing that will create any Encumbrance against the Facility (other than a Permitted Encumbrance or an encumbrance that shall solely and exclusively affect any portion of the Department's remaining right, title and interest in and to the Facility). At the written request of the Commission, the Department shall promptly remove any Encumbrance created against the Facility from and after the Conversion Date that is not a Permitted Encumbrance or an encumbrance that shall solely and exclusively affect the Department's reversionary interest in the Facility and that came into existence as a result of an act of omission by the Department, the Commonwealth, any municipality therein, or any Person claiming through any of them which in turn was not caused by an act or omission of the Commission. The Department shall not be deemed to be in default hereunder if the Department contests any such Encumbrance diligently and in good faith, or the validity thereof, by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance, provided that:

(a) the Department has given advance notification to the Commission that it is the intent of the Department to contest the validity or collection thereof; and

(b) such contest is not inconsistent with, or in violation of, the Commission's covenants with any of its bondholders, insurers, lenders, or debt holders.

The Commission, if requested by the Department and at the Department's own cost and expense, shall use its reasonable efforts to assist the Department in contesting or attempting to remove any Encumbrance that has come into existence and that is the obligation of the Department to remove pursuant to the provisions of this Section 9.13. Notwithstanding anything to the contrary contained in this Agreement or otherwise, the Department has no right to mortgage, pledge, lien, assign or otherwise encumber the Facility or any portion thereof, and any attempt to do so shall be null and void.

9.14 **Negotiations with Governmental Entities.** Prior to entering into any agreement with any Governmental Entity in connection with the Facility Operations (a "Government Agreement") that extends, or could extend, beyond the Term, or pursuant to which the Department or the Commonwealth may incur any liability whatsoever thereunder, the Commission shall submit such Government Agreement for approval by the Department (which approval shall not be unreasonably withheld, delayed, or conditioned) prior to the execution and delivery thereof (except with respect to Government Agreements, the absence of which would cause the Commission or Facility Operations to fail to be in compliance with any applicable Requirement of Law and for which no compliant alternatives are reasonably available, in which case the Commission may enter into such Government Agreement upon written notice to the Department). If the Commission wishes the Department to be a party to a Government Agreement, in the place and stead of, or in addition to, the Commission, then the Commission shall provide written notice of the proposed terms of such Government Agreement to the Department for the Department's approval (which approval may be granted or withheld in the
Department’s sole discretion), and all costs and expenses reasonably incurred by the Department in connection with, or related to, such Government Agreement shall be borne by the Commission.

9.15 **No Entry on Department or Commonwealth Property.** Except in the case of an emergency (and then only to the extent necessary to avoid injury or death to individuals or damage to property), and except for access reasonable and necessary for the Commission’s performance of its obligations hereunder or its compliance with applicable Requirements of Law that do not interfere with the Department’s use or operation of such other properties in any material respect, the Commission shall not enter upon any property of the Department or the Commonwealth adjacent to, above, or under the Facility in connection with the Facility Operations without the prior written approval of the Department or the Commonwealth, as the case may be, which approval shall not be unreasonably withheld, delayed, or conditioned.

9.16 **The Commission’s Capital Improvement Program.** The Commission shall perform those capital improvements to be set forth on Schedule 9.16 as provided in Section 410(d) (collectively, the “Commission’s Capital Improvement Program”) in and to the Facility, and shall complete such improvements during the Term. The Commission’s obligation to perform the Commission’s Capital Improvement Program shall be subject to the issuance by the Department and the Commonwealth of any and all permits, licenses, approvals, certificates and authorizations required by the Department or the Commonwealth with respect thereto. The Department shall not unreasonably withhold, delay, or condition the issuance of any such permits, licenses, approvals, certificates and/or authorizations (collectively, “Permits”) that are within its authority to issue. Nothing in the preceding sentence shall be construed as relieving the Commission from complying with the Requirements of Law applicable to the Commission’s Capital Improvement Program, and a failure by the Commission to obtain a Permit that results from the negligence or misconduct of the Commission, from any wrongful act or wrongful omission by the Commission, or from the Commission’s breach of any of the provisions of this Agreement will not excuse the Commission from its obligation to perform the Commission’s Capital Improvement Program. Upon the completion of each such capital improvement, the improvement shall become the property of the Department, subject to the leasehold estate of the Commission in and to the same for the balance of the Term.

9.17 **Additional Capital Improvements During the Term.** In addition to the Commission’s Capital Improvement Program, the Commission shall have the right, but not the obligation (other than with respect to any additional capital improvement work that shall be mandated by an applicable Requirement of Law), to perform additional capital improvements in and to the Facility. Prior to commencing any capital improvement work pursuant to this Section 9.17, the Commission shall submit to the Department for its comment a set of plans and specifications showing all or substantially all of such capital improvement work, but the consent or approval of the Department shall not be required with respect to any such submission except as may be required by an applicable Requirement of Law. The Commission shall further make its technical personnel reasonably available to discuss such plans and specifications with their counterparts at the Department prior to commencing such work. Such capital improvement work shall be pursued and completed in a good and workmanlike manner, and the entire cost and
expense thereof shall be borne exclusively by the Commission. The Commission's right to perform such capital improvement work shall be subject to the issuance by the Department and the Commonwealth of any and all permits, licenses, approvals, certificates and authorizations required by the Department or the Commonwealth with respect thereto. The Department shall not unreasonably withhold, delay, or condition the issuance of any such permits, licenses, approvals, certificates and/or authorizations that are within its authority to issue. Upon the completion of each such capital improvement, the improvement shall become the property of the Department, subject to the leasehold estate of the Commission in and to the same for the balance of the Term.

9.18 Additional Capital Improvements Requested by the Department. The Department may request that the Commission perform additional capital improvements in and to the Facility. Any such request shall be made by the Department in writing, and shall be accompanied by reasonably detailed plans and specifications of the proposed capital improvement, prepared by the Department at its own cost and expense, for the Commission's written approval (which may be granted or withheld in the Commission's sole discretion). If and when such plans and specifications shall be approved by the Commission, the Commission shall either (as it may elect in its sole discretion) permit the Department to perform the capital improvement work or itself agree to perform such work for the account of the Department. The cost and expense of all such capital improvement work shall be borne exclusively by the Department, and (if the Commission shall elect to perform the same) shall be reimbursed to the Commission from time to time during the progress of the work within forty-five (45) days after the submission of a reasonably detailed requisition therefor to the Department. If the Commission elects to perform such work, the Commission shall implement and utilize Commission Cost Management Procedures with regard thereto. The performance of such capital improvement work, whether by the Commission or by the Department, shall be subject to the issuance by the Department and the Commonwealth of any and all permits, licenses, approvals, certificates and authorizations required by the Department or the Commonwealth with respect thereto. Upon the completion of each such capital improvement, the improvement shall become the property of the Department, subject to the leasehold estate of the Commission in and to the same for the balance of the Term.

9.19 Eminent Domain. The Commission shall, at the Commission's sole cost and expense, acquire by gift, purchase, condemnation, or otherwise fee simple title to one or more parcels of land, or such lesser estate(s) or interest(s) in and to the same as shall be determined by the Commission, if and to the extent that such land shall be required for transportation purposes in connection with the Facility, as determined by the Commission. All such titles, estates and/or interests shall be acquired in the name of the Commission, provided, however, that:

(a) with respect to all land so acquired and either incorporated into the Right of Way or otherwise used for a purpose that is part of Facility Operations, all such titles, estates and/or interests shall be conveyed, assigned and/or otherwise transferred by the Commission to the Department on the Reversion Date for no or nominal consideration; and

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(b) with respect to all land so acquired and neither incorporated into the Right of Way nor otherwise used for a purpose that is part of Facility Operation, the Commission, if so required by the Department, shall convey, assign and/or otherwise transfer its right, title, or interest in such land to the Department on the Reversion Date provided that the Department pays to the Commission, on the Reversion Date, an amount equal to the then fair market value of such right, title, or interest in such surplus land.

The Department shall notify the Commission in writing, not later than one (1) year prior to the Reversion Date, as to which parcels of land it wishes to acquire pursuant to Section 9.19(b). Within forty-five (45) days after receipt of the Department’s written request made not more than two (2) years prior to the Reversion Date, the Commission shall identify to the Department all parcels of land falling within the criteria set forth in Section 9.19(b).

9.20 Contracting with the Department From and after the Conversion Date. From and after the Conversion Date, the Commission may contract with the Department for all or any portion of the maintenance of the Facility at cost levels agreed to by the Department and the Commission.

9.21 The Department’s Access Rights – The Facility. From and after the Conversion Date, the Commission shall allow to the Department and its agents, contractors and representatives to enter the Facility and each and every part thereof, at all reasonable times during normal business hours and, except for access of the nature described in Section 9.21(a), upon reasonable prior written notice to the Commission under the circumstances:

(a) to inspect the Facility in order to determine whether the Commission is in compliance with its obligations under this Agreement and under the applicable Requirements of Law with respect to the Facility Operations, or otherwise to use or travel the Facility with the same rights as are afforded to the general public;

(b) if a Commission Default then exists, to make any necessary repairs to the Facility and perform any work therein;

(c) to design, construct, operate, manage, maintain, repair and rehabilitate any existing or future roads, streets, or highways (other than the Facility) adjacent to, above, or under the Facility in accordance with the terms set forth in this Agreement;

(d) to use the Facility for all purposes not inconsistent with the rights granted to the Commission in this Agreement (including, without limitation, any purpose not reasonably related to the generation of Facility Revenues);

(e) to perform any actions to address releases of Hazardous Substances to the environment occurring prior to the Conversion Date;
(f) to perform any activities related to the completion of the remediation projects listed on Schedule 6.3;

(g) to perform any remediation of Hazardous Substance releases at or emanating from the Facility, occurring from and after the Conversion Date, to the extent required to conform to applicable criteria established under the Environmental, Health and Safety Requirements at the sole cost and expense of the Commission, but only if the Commission has failed to undertake diligent action in connection therewith within thirty (30) days after receiving written notice of such failure from the Department;

(h) to perform, or to permit the FHWA to perform, those tests, studies and/or investigations that they shall have the right to perform pursuant to Section 9.29; and

(i) solely in accordance with the terms of this Agreement, to do any other act or thing that the Department or the Commonwealth may be obligated to do pursuant to the terms of this Agreement, or have a right to do under this Agreement,

provided, however, that the Department shall coordinate its activities in advance with the Commission so as to minimize interference with the Facility Operations (including, without limitation, the generation of Facility Revenues) in connection with any entry on the Facility pursuant to this Section 9.21. In connection with any access to the Facility for purposes of conducting any of the activities described in Section 9.21(b), Section 9.21(c), Section 9.21(d), Section 9.21(e), Section 9.21(f), Section 9.21(g), Section 9.21(h), or Section 9.21(i):

(i) the Department shall submit to the Commission, for its approval (not to be unreasonably delayed, withheld, or conditioned) prior to granting such access, a work plan setting forth the location of the proposed activities, the schedule for such activities, any estimates as to possible disruption of traffic and such other matters as the Commission may reasonably request;

(ii) all of such activities shall be diligently performed in a good and workmanlike manner, in accordance with the applicable Operating Standards, in accordance with any applicable Requirements of Law and, to the greatest extent reasonably possible without incurring any material additional cost, in such a manner as will not unreasonably interfere with the maintenance and operation of the Facility (including, without limitation, the generation of Facility Revenues); and

(iii) the Commission shall have the right to accompany, or to cause a representative to accompany, the Department or its representative whenever there shall be an entry on the Facility.
Notwithstanding anything to the contrary hereinbefore set forth, however, in the event of any actual or reported emergency, danger, circumstance, event, or action that is reasonably believed by the Department to have caused, or to present the imminent potential to cause, either material injury to individuals or material damage to property or a material impairment to the continued operation of the Facility as a public highway, and if the Department, in its reasonable judgment, determines that the Commission is not then taking all necessary steps to rectify or deal therewith, then the Department shall be authorized to immediately take such actions as it reasonably determines shall be necessary in order to rectify such emergency, danger, circumstance, or event, or to restore the operation of the Facility.

9.22 The Department's Access Rights – Storage of Materials. The Department, the Commonwealth and their respective agents, contractors and representatives shall have the right to keep and store at those locations at the Facility used for such purposes as of the Conversion Date, at no cost or expense to the Department, the Commonwealth and/or such agents, contractors, or representatives and at their own risk, reasonable quantities of all materials, tools, supplies, stockpiles, equipment, sheds, mobile trailers and other vehicles as the Department may reasonably determine in connection with its operations and activities throughout the Commonwealth, in a reasonably neat, safe and orderly fashion, as well as in material compliance with all Requirements of Law (including, without limitation, all Environmental, Health and Safety Requirements), and so as to not unreasonably interfere with the Commission’s conduct of Facility Operations (including, without limitation, the generation of Facility Revenues) and of its other operations. The Department shall submit to the Commission, for its approval (not to be unreasonably delayed, withheld; or conditioned) prior to commencing such storage activities, a plan demonstrating that:

(a) there is adequate space at those locations at the Facility used for such purposes as of the Effective Date for the storage proposed by the Department; and

(b) the proposed activities will not unreasonably interfere with the Commission’s rights (including its right to seek to maximize the amount of Facility Revenues generated from the Facility) or the Commission’s obligations and responsibilities (including, without limitation, its obligation to maintain and operate the Facility from and after the Conversion Date).

Subject to the immediately preceding sentence, the Commission shall use reasonable efforts to accommodate the Department’s request for storage at those locations at the Facility used for such purposes as of the Conversion Date. Subject to the applicable conditions and limitations set forth in Section 9.21, the Commission shall afford to the Department such access and ingress and egress over and across the Facility as is reasonable to permit the Department access to such storage areas and the Excluded Assets, provided, however, that the Department shall coordinate its activities in advance with the Commission so as to minimize interference with the Facility Operations (including, without limitation, the generation of Facility Revenues) in connection with any entry on the Facility pursuant to this Section 9.22.
9.23 **Effect of Reservation.** Any reservation or grant of a right by or to the Department to enter upon the Facility from and after the Conversion Date and to make or perform any repairs, alterations, restoration, or other work in, to, or about the Facility that is the Commission's obligation pursuant to this Agreement, shall not be deemed to:

(a) impose any obligation on the Department to do so; or

(b) render the Department liable to the Commission or any other Person for the failure to do so.

Nothing in this Agreement shall impose any duty upon the part of the Department to do any work required to be performed by the Commission hereunder, and the performance of any such work by the Department shall not constitute a waiver of the Commission's default in failing to perform the same.

9.24 **Mutual Cooperation With Respect to FHWA.** Each of the Parties shall promptly notify the other after receiving any notice, demand, or other communication from the FHWA relating directly or indirectly to the Facility, any part or parts of the Facility and/or the Facility Operation, which notice shall be accompanied by a true and complete copy of the notice, demand, or other communication so received. Whenever either Party shall have any discussion, meeting, correspondence, or other contact with the FHWA and/or its personnel that shall concern, involve, or relate to the Facility or the Facility Operation, in whole or in part, such Party shall use its good faith efforts to afford the other Party with the opportunity to participate in such discussion, meeting, correspondence, or other contact in all reasonable respects under the circumstances. In the event that the Department is notified by the FHWA that there is a violation of any Federal Requirement of Law that, if not remedied, may adversely affect the Department, the Commission shall, upon being notified of said violation, provide full cooperation to the Department, and promptly take any and all action necessary to cure such violation. From and after the Conversion Date, the Commission, at its sole expense, shall conduct any studies and prepare any reports about the Facility required by the FHWA or pursuant to any Federal Requirements of Law. Such studies and reports shall be prepared and submitted in a timely manner, and a true and complete copy of each such study and report shall be sent to the Department. The Department shall cooperate with the Commission in all reasonable respects in the preparation of any such reports, and the Commission shall reimburse the Department for its reasonable costs of cooperation.

9.25 **Service Plazas Not Permitted.** The Commission shall not contract for the construction, establishment, acquisition, or expansion of service plazas in the Right of Way.

9.26 **Reports.** From and after the Conversion Date, the Commission shall provide the following reports to the Department from time to time, as and when set forth below:

(a) **Traffic Characteristics Reports.** The Commission shall provide the Department with an annual traffic characteristics report, providing actual traffic counts for the Reporting Year then ended and traffic volume forecasts for the succeeding Reporting Year. The Commission shall provide such report to the
Department within one hundred eighty (180) days following the end of each Reporting Year during the Term.

(b) **Financial Reports.** The Commission shall deliver to the Department:

(i) within ninety (90) days following the end of each six-month period following the first day of each Reporting Year, a copy of the unaudited balance sheets of the Commission as at the end of the first six (6) months of such Reporting Year and the related unaudited statements of income, changes in fund balances and cash flows for such six (6) month period, in a manner and containing information consistent with the Commission’s current practices; and

(ii) within one hundred eighty (180) days after the end of each Reporting Year, a copy of the audited balance sheets of the Commission as at the end of the preceding Reporting Year, a copy of the audited balance sheets of the Commission as at the end of each such Reporting Year, and the related audited statements of income, changes in fund balances and cash flows for such Reporting Year, including, in each case, the notes thereto, together with the report thereon of the independent certified public accountants of the Commission, in each case in a manner and containing information consistent with the Commission’s current practices and certified by the Commission’s chief financial officer that such financial statements fairly present in all material respects the financial condition and the results of operations, changes in fund balances and cash flows of the Commission as at the respective dates of and for the periods referred to in such financial statements, all in accordance with generally accepted accounting principles in the United States consistently applied. Such financial statements shall reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements.

(c) **Environmental Incident Report.** The Commission shall report to the Department, on a per occurrence basis, the discharge, dumping, or spilling (accidental or otherwise) of a Hazardous Substance, but only to the extent that is required to be reported to any Government Entity under applicable Environmental, Health and Safety Requirements, including the location at which the incident has occurred, the time, the agencies involved, the damage that has occurred and, if applicable, the remedial action taken. The Commission shall provide such report to the Department within seven (7) days following the occurrence of each incident or such longer time period as may be allowed for the
reporting of such incident to the applicable Governmental Entity pursuant to the Environmental, Health and Safety Requirements.

9.27 **Information.** At the request of the Department, the Commission shall, at the Commission’s own cost and expense and at any and all reasonable times during the Term:

(a) make available, or cause to be made available (and, if requested by the Department, furnish or cause to be furnished), to the Department all information relating to the Facility Operations or the Facility as may reasonably be specified in such request and as shall be in the possession or control of the Commission or its representatives; and

(b) permit the Department, after giving ten (10) Business Days’ prior written notice to the Commission (which notice shall identify the persons the Department requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview), to discuss the obligations of the Commission under this Agreement with any of the directors, chief executive officer and chief financial officer of the Commission or its representatives for the purpose of enabling the Department to determine whether the Commission is in compliance with this Agreement, the Operating Standards and all applicable Requirements of Law.

9.28 **Audit Right.** In addition to the rights set out in Section 9.27, the Department may, at all reasonable times upon forty-eight (48) hours prior written notice, carry out an audit of the information required to be maintained or delivered by the Commission under this Agreement in connection with the performance of the Facility Operations, or cause such an audit to be carried out by its representatives, for the purpose of verifying the information contained therein. The Department or such representatives (as the case may be) shall be entitled to make copies of such information and to take extracts therefrom, at the Department’s expense, but in any event subject to Section 9.31. The Commission, at the cost and expense of the Commission, shall, at reasonable times, make available, or cause to be made available, to the Department or its designated representative such information and materials as may reasonably be required by the Department or its designated representative for purposes of conducting such audit, and otherwise provide such cooperation as may be reasonably required by the Department in connection with the same.

9.29 **Tests.** The Department, the FHWA and their respective representatives shall have the right, subject to obtaining the prior written consent of the Commission in each instance (which consent shall not be unreasonably withheld, delayed, or conditioned), to perform or cause to be performed, at any time and from time to time, any test, study, or investigation, not otherwise addressed by another section of this Agreement, in connection with the Facility or the Facility Operations that the Department or the FHWA shall determine to be reasonably necessary in the circumstances. Without intention to limit the generality of the foregoing in any respect, the Department, the FHWA and their respective representatives shall have the right, subject to obtaining the prior written consent of the Commission (which consent shall not be unreasonably withheld, delayed, or conditioned), to install machines, equipment, systems, monitors, counters.
and other devices in, on, under, over, or adjacent to the Facility in order to permit and facilitate any test, study, monitor, review, or investigation of, or relating to, the Facility Operations. Any physical access to the Facilities that shall be required in order to perform such tests, studies, or investigations shall be afforded to the Department, the FHWA, or their respective representatives pursuant to, and subject to the conditions contained in, Sections 9.21 and 9.22. The Commission, at the reasonable cost and expense of the Department, shall, and shall cause its representatives to, furnish the Department, the FHWA, or their respective representatives with every reasonable assistance in connection with the carrying out of such tests, procedures, studies and investigations.

9.30 **No Waiver.** Failure by the Department or its representatives to inspect, review, test, or audit the Commission's responsibilities under this Agreement or any part thereof or the information, shall not constitute a waiver of any of the rights of the Department hereunder or any of the obligations or liabilities of the Commission hereunder. Inspection, review, testing, or audit not followed by a written notice of Commission Default shall not constitute a waiver of any Commission Default, or constitute an acknowledgement that there has been, or will be, compliance with this Agreement and any applicable Requirement of Law.

9.31 **Confidentiality.** Unless disclosure is required by applicable Requirements of Law, the Department shall keep confidential any information obtained from the Commission or its representatives, whether pursuant to this Article IX or otherwise, that:

(a) constitutes trade secrets, or commercial or financial information, where either:

(i) the trade secrets, or commercial or financial information, are proprietary, privileged, or confidential; or

(ii) disclosure of the trade secrets, or commercial or financial information, may cause competitive harm; and

(b) is designated as such by the Commission in writing to the Department in accordance with the Pennsylvania Trade Secrets Act.

In the event that the Commission requests that the Department defend an action seeking the disclosure of information that the Department determines to be confidential pursuant to this Section 9.31, the Commission shall reimburse the Department for the reasonable costs and expenses incurred by the Department in defending any such action.

9.32 **Quiet Enjoyment.** Provided that the Commission performs all of its obligations under this Agreement (including, without limitation, making all of the payments required to be made by the Commission pursuant hereto), the Commission shall, at all times during the Term, be entitled to, and shall have, the quiet possession and enjoyment of the Facility and the rights and privileges granted to the Commission hereunder, subject to the provisions contained in this Agreement. Notwithstanding the foregoing, however, any entry by the Department onto the Facility in compliance with, or as provided in, any provision of this Agreement (including,
without limitation, Section 9.21, Section 9.22 and Section 9.29) shall not constitute a reentry, trespass, or a breach of the covenant for quiet enjoyment contained in this Agreement. The Department shall, at all times during the Term and at the Department’s sole cost and expense, defend its title to the Facility, the Commission’s leasehold interest in and to the Facility and the rights granted to the Commission hereunder, or any portion thereof, against any Person claiming any interest adverse to the Department or the Commission in the Facility, or any portion thereof, except where such adverse interest arises as a result of the act, omission, negligence, misconduct, or violation of Requirement of Law by the Commission or its representatives.

9.33 Expiration of Agreement. Upon the expiration of the Term, the Parties shall perform the following:

(a) on the Reversion Date, the Commission shall deliver possession of the Facility to the Department free and clear of all Encumbrances, other than Permitted Encumbrances (except for any Permitted Encumbrances created by the Commission and not otherwise expressly permitted hereunder or otherwise consented to in writing by the Department), and otherwise in its then “as is” condition and state of repair, which condition and state of repair shall generally be equivalent to, or better than, the general condition and state of repair of the Facility as of the Conversion Date, as shown on the baseline asset condition report delivered by the Commission to the Department pursuant to Section 7.2(b);

(b) the Commission shall convey, assign, pay, or otherwise transfer to the Department on the Reversion Date, and the Department shall accept from the Commission, the following assets (collectively, the “Reverted Assets”):

(i) all of the Commission’s rights, titles and interests as of the Reversion Date in and to those contracts, licenses, agreements, purchase orders and other agreements or arrangements of the Commission, to the extent assignable, to the extent related exclusively to the Facility and/or the Facility Operations (collectively, the “Reverted Contracts”);

(ii) to the extent that the same are in the possession or under the control of the Commission as of the Reversion Date:

(x) all as-built drawings for major assets such as roadways, toll plazas, administration buildings, bridges, interchanges, soundwalls, fiber, and operational information and data relating to the Facility and/or the Reverted Assets pursuant hereto, subject, however, to the execution of appropriate confidentiality agreements between the Commission and the Department as may be necessary to satisfy the requirements of the United States Department of
Homeland Security and/or any other Governmental Entity having jurisdiction; and

(y) all records relating to the Facility, the Reverted Assets and the Facility Operations, including, without limitation, the proprietary information related to the Reverted Contracts, to the extent assignable, copies of which will be made available to the Commission.

(iii) all equipment, machinery, supplies, furniture, leasehold improvements, office equipment, servers and other miscellaneous tangible personal and movable property of the Commission located upon and/or used exclusively in connection with the Facility or the Facility Operations as of the Reversion Date (including, without limitation, all trucks, fork-lifts, supplies, computer equipment, office furniture, toll collection system spare parts and miscellaneous equipment), provided, however, that the Commission shall have the right, in its sole discretion, to remove from the Facility some or all of such equipment, machinery, supplies, furniture, moveable leasehold improvements, office equipment, servers and other miscellaneous tangible personal and movable property, and retain and/or dispose thereof as the Commission shall see fit, without any obligation to account to the Department for any such property or for the value thereof (however, if the Department shall so request in writing not earlier than the date that is six (6) months prior to the Reversion Date, the Commission shall, at its option, identify to the Department either those items that the Commission intends to remove or those items that the Commission intends to leave, which identification may, as appropriate, be made by category of item rather than on an item by item basis);

(iv) to the extent legally assignable, all of the Commission's rights, titles and interests as of the Reversion Date in and to all Intellectual Property (including, without limitation, all plans and other work product related thereto) to the extent relating exclusively to the Facility, the Reverted Assets and/or the Facility Operations (including, without limitation, the Commission's tradename(s) relating to the Facility);

(v) to the extent legally assignable, all of the Commission's rights, titles and interests as of the Reversion Date in and to all Claims of any kind (including, without limitation, rights to insurance proceeds and rights under, and pursuant to, all
warranties, representations and guarantees made by suppliers of products, materials, equipment, or components thereof pertaining to, arising out of and/or inuring to the benefit of the Commission, to the extent related exclusively to the Facility, the Facility Operations and/or the Reverted Assets; and (vi) to the extent legally assignable, all of the Commission's rights, titles and interests as of the Reversion Date in and to all permits, licenses, approvals, certificates and authorizations granted by a Governmental Entity that relate exclusively to the Facility, the Facility Operations and/or the Reverted Assets (collectively, the "Reverted Governmental Permits"),

all of which assets shall be conveyed, assigned, paid, or otherwise transferred, as the case may be, to the Department free and clear of all Encumbrances, except for Permitted Encumbrances;

(c) the Department shall, effective as of the Reversion Date, assume all Liabilities accruing from and after the Reversion Date, to the extent that the same relate exclusively to the Facility and/or the Facility Operations and would otherwise be payable by the Commission (collectively, the "Reverted Liabilities") and pay, defend, discharge and perform the same in full when due, upon, and subject to, the terms, covenants and conditions set forth in this Agreement; and

(d) the Parties shall apportion the Reverted Liabilities between them as of the Reversion Date, in a similar manner to the apportionments provided for in Section 8.4.

The conveyance, assignment and/or other transfer of the Reverted Assets to the Department, as well as the assumption of the Reverted Liabilities by the Department, shall be effectuated and memorialized by the execution and delivery by the Parties, on or as of the Reversion Date, of documents in the forms proposed by the Commission and approved by the Department, which approval shall not be unreasonably withheld, delayed, or conditioned. The provisions of this Section 9.33 shall survive the Reversion Date and remain binding on the Parties thereafter.

9.34 FHWA Incentive/Disincentive Programs. In the event that, at any time from and after the Conversion Date, the FHWA shall promulgate or enforce a rule, regulation, requirement, standard, or recommendation that shall not have the force of law, and so shall not constitute a Requirement of Law, but shall instead induce compliance through a program of financial incentives for compliance and/or financial disincentives for non-compliance (as the case may be, a "Quasi-Requirement"), such Quasi-Requirement shall not be considered to be a Requirement of Law for purposes of this Agreement. However, if the Commission shall elect not to comply with any Quasi-Requirement applicable to the Facility, and if the Department suffers any financial disincentive as a result thereof with regard to any program, road, or highway other than the Facility, then, and in such event, the Commission shall reimburse the
Department, within forty-five (45) days after the Commission's receipt of a detailed invoice therefor (which may be sent to the Commission from time to time, if applicable), for the out of pocket amount actually so lost or suffered by the Department directly as a result of such non-compliance. Conversely, in the event that the Commission shall elect to comply with a Quasi-Requirement applicable to the Facility, and if the Department receives any financial incentive as a result thereof, then, and in such event, the Department shall pay to the Commission, within forty five (45) days thereafter, an amount equal to such incentive (or, if applicable, the Commission's fair share of such incentive, if any program, road, or highway other than the Facility and other than any other portion of the Turnpike System is involved), to the fullest extent permitted by federal Requirements of Law.

ARTICLE X
OTHER COVENANTS OF THE PARTIES

10.1 Litigation Support. If, and for so long as, either Party is actively contesting or defending against any Claim by or against an unrelated third party in connection with:

(a) any transaction contemplated under this Agreement; or

(b) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction involving the Facility, the Facility Operations and/or the Facility Revenues,

the other Party shall reasonably cooperate with such Party's counsel in the contest or defense, make available its personnel and provide such testimony and access to its books and records as shall be necessary or reasonably desirable in connection with the contest or defense, all at the cost and expense of the contesting or defending Party, except as otherwise provided in this Agreement.

10.2 Access to Books and Records. For a period of five (5) years after the Conversion Date, the Commission and the Department shall each:

(a) keep and maintain, at its own expense, those of its contracts, books, records, files and documents (but excluding attorney work product or other privileged communications, or personnel and other records that must be protected pursuant to applicable Requirements of Law) as relate solely to the operation of the Facility by the Commission or by the Department, as the case may be; and

(b) give, or cause to be given, to the other Party, its successors and representatives, during normal business hours and at the requesting Party's expense, such reasonable access to the contracts, books, records, files and documents kept and maintained pursuant to Section 10.2(a), as is reasonably necessary to allow the requesting Party to obtain information in the other Party's possession with respect to any Claims made by or against the requesting Party as the previous or new operator of the Facility, as the case may be, and to make copies of such information to the extent reasonably necessary.
10.3 **Other Actions.** If, at any time during the Term, any action that is not otherwise provided for in this Agreement is legally necessary or reasonably desirable (as determined by either the Commission or the Department) in order to carry out the purposes of this Agreement, each of the Parties shall take such further action (including, without limitation, the execution and delivery of such further instruments and documents) as the other Party reasonably may request, all at the cost and expense of the requesting Party, *provided, however*, that the taking of such action shall be consistent with, and shall in no event violate or vitiate, the provisions and/or intent of this Agreement.

10.4 **Consistency with Obligations to Bondholders.** Nothing contained in this *Article X* or elsewhere in this Agreement shall be construed to require the Commission to take any action, or apply any funds, in a manner that is in violation of its covenants with any Commission bondholders, insurers, lenders, or debt holders.

10.5 **Enforcement of Warranties.** The Parties shall cooperate with each other in connection with the enforcement of all warranties and other provisions that inure to the benefit of the Department related to the contracts described in Schedule 2.3(a), as well as for the contracts entered into from time to time by the Department for the performance of work in connection with the Department's Capital Improvements Projects and/or the remediation of environmental conditions pursuant to the provisions of *Section 6.3*.

**ARTICLE XI**

**TRANSFER PAYMENTS**

11.1 **Annual Base Payments.** During each Fiscal Year or portion thereof during the Term, the Commission shall pay an Annual Base Payment in installments, as follows:

(a) that portion of such Annual Base Payment required to be deposited into the Public Transportation Trust Fund shall be due and payable in four equal installments of $50,000,000 each, due the last Business Days of July, October, January and April (except that, for the Fiscal Year ending on May 31, 2008, the first such quarterly installment was paid on August 6, 2007, the receipt of which is hereby acknowledged by the Department), each of which shall be paid to the Department and/or to an account designated by the Department; and

(b) that portion of such Annual Base Payment required to pay the Annual Debt Service on a timely basis on any outstanding Special Revenue Bonds shall be due and payable as, when and to the payee required pursuant to such bonds and any corresponding indenture or resolution of the Commission.

No payment of the nature described in *Section 11.1(a)* shall be funded from Facility Revenues, and no Annual Base Payment (other than capitalized interest on any Special Revenue Bonds) shall be funded from the proceeds of any Special Revenue Bonds.

11.2 **Annual Additional Payments.** During each Fiscal Year or portion thereof during the Term, the Commission shall pay the Annual Additional Payment for such Fiscal Year,
to the Department and/or to an account designated by the Department. From and after the Effective Date, the Commission may pay any portion of the Annual Additional Payment that becomes payable in any Fiscal Year, other than that portion of such Annual Additional Payment constituting the Annual Additional Payment for Transit for such Fiscal Year, with the proceeds of any Special Revenue Bonds issued in such Fiscal Year, which proceeds shall be available to the Department before the close of such Fiscal Year. Notwithstanding the foregoing, or anything else to the contrary provided in this Agreement:

(a) the Annual Additional Payments shall be limited to $250,000,000 if the Secretary of the Budget and the Secretary of the Department receive written notice from the Commission that the Conversion Option has lapsed pursuant to Section 2.1;

(b) no part of the Annual Additional Payments for Transit shall be paid either from the proceeds of any Special Revenue Bonds or from the Facilities Revenues.

c) with respect to the Fiscal Year ending May 31, 2008, the entire Annual Additional Payment shall be due and payable in three equal installments of $179,166,667 each, due the last Business Days of October, January and April, which installment amount includes an Annual Additional Payment for Transit of $29,166,667;

d) with respect to each Fiscal Year during the Term subsequent to the Fiscal Year ending on May 31, 2008, the Annual Additional Payment shall be due and payable in four equal installments, due the last Business Days of July, October, January and April; and

e) if the Governor fails to execute the Special Revenue Bonds as set forth in Section 9511.4(F) of Title 75 of the Pennsylvania Consolidated Statutes, inserted therein pursuant to Section 7 of Act 44, the Commission shall receive a credit against the amount of Annual Additional Payments due under this Agreement in an amount equal to the proceeds of such bonds that would have been applied to make Annual Additional Payments under this Agreement had the bonds proposed to be issued actually been issued.

11.3 Annual Surplus Payments. With respect to each Fiscal Year occurring during the Term, the Commission shall pay an Annual Surplus Payment to the Department and/or to an account designated by the Department within one hundred eighty (180) days after the Commission’s receipt of an Auditor General’s Certificate setting forth the amount of the General Reserve Fund Surplus (if any) existing as of the last day of such Fiscal Year. If either Party gives written notice to the Auditor General and to the other Party disputing an Auditor General’s Certificate, the amount of the Annual Surplus Payment in question shall be determined in the manner provided for in Article XIV for the resolution of disputes under this Agreement.
11.4 **Subordination of Funding Obligations.** The obligations of the Commission to pay the Transfer Payments shall be subordinate obligations of the Commission, payable from amounts in the General Reserve Fund of the Commission only as permitted by any financing documents, financial covenants, liquidity policies, or agreements in effect of the Commission.

11.5 **Certain Annual Additional Payments Deemed Rent.** With respect to each Fiscal Year occurring in whole or in part from and after the Conversion Date, the Annual Surplus Payment and that portion of the Annual Additional Payment paid by the Commission hereunder for such Fiscal Year in addition to the Annual Additional Payment for Transit for such Fiscal Year shall be considered to be the rent paid by the Commission to the Department for the use and occupancy of the Facility during such Fiscal Year. Such rent may be paid from the proceeds of Special Revenue Bonds, from the Facilities Revenues and/or from other revenue sources of the Commission. No portion of such rent may be deposited in the Public Transportation Trust Fund.

11.6 **Compliance with Requirements of Law.** The Department shall apply the funds derived pursuant to this Agreement in a manner consistent with all applicable Requirements of Law (including, without limitation, Act 44 and Article VIII, Section 11 of the Pennsylvania Constitution).

11.7 **Nature of Commission’s Obligation.** Subject to the provisions of Section 11.4, the Commission’s obligation to pay all Annual Base Payments, Annual Additional Payments and Annual Surplus Payments (collectively, “Payments”) hereunder, and the right of the Department in and to such Payments, shall be absolute, unconditional and irrevocable, shall be without abatement, suspension, or other reduction and otherwise shall not be released, discharged, or affected by any circumstance of any character, including, without limitation:

(a) any set-off, abatements, counterclaims, suspension, recoupment, reduction, compromise, settlement, release, modification, amendment (whether material or otherwise), waiver, release or discharge (by act or operation of law), rescission, defense or other right or claim that the Commission may have against the Department, any contractor, any vendor or manufacturer of any equipment or assets included in the Facility or any part thereof, or any other Person for any reason whatsoever;

(b) the assignment or pledging, or the purported assignment or pledging, of all or any part of interest of the Department or the Commission in the Facility or any part thereof, or any defect in, or failure of, the title, merchantability, condition, design, compliance with specifications, operation, or fitness for use of all or any part of the Facility;

(c) any damage to, or removal, abandonment, dismantling, decommissioning, shutdown, salvage, scrapping, requisition, taking, condemnation, loss, theft, or destruction of, all or any part of the Facility, or any interference, interruption, or cessation in the use or possession of the Facility for any reason whatsoever or of whatever duration;
(d) any restriction, prevention, or curtailment of, or interference with, any use of all or any part of the Facility or any right, title or interest in or to the Facility;

(e) any insolvency, bankruptcy, reorganization, liquidation, sale, or other disposition of all or substantially all the assets of, marshalling of assets or similar proceeding by or against the Commission, any vendor or contractor, or any other Person;

(f) the invalidity, illegality, disaffirmance, or unenforceability (or the allegation of invalidity, illegality, or unenforceability) of this Agreement, or any other instrument referred to herein, or any other infirmity herein or therein or any lack of right, power of authority of the Department or the Commission to enter into this Agreement, or to perform the obligations hereunder or consummate the transactions contemplated hereby or any doctrine of force majeure, impossibility, frustration or failure of consideration;

(g) the breach of, or failure to comply with, any warranty, representation, covenant or other agreement made in this Agreement; or

(h) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing and whether or not the Commission has notice or knowledge of any such circumstance or happening.

If, for any reason whatsoever, this Agreement shall be terminated or suspended in whole or in part by operation of law or otherwise, then, except as expressly provided herein, the Commission shall pay, to the maximum extent permitted by applicable law, to the Department, an amount equal to each Payment at the time such Payment would have become due and payable in accordance with the terms hereof had this Agreement not been terminated or suspended in whole or in part, provided, however, that the Commission’s obligation to make Annual Surplus Payments shall terminate if the Conversion does not occur. Each Payment made by the Commission hereunder (absent manifest error) shall be final, and the Commission shall not seek, or have any right to recover, all or any part of such payment from the Department or any Person for any reason whatsoever.

ARTICLE XII.
SPECIAL REVENUE BONDS OF THE COMMISSION

12.1 Amount Authorized. Act 44 provides that, from and after the Conversion Date, the Commission is authorized to provide, by resolution, for the issuance of Special Revenue Bonds up to an aggregate principal amount not exceeding $5,000,000,000, exclusive of original issue discount, for the purpose of paying the Cost of the Department and bond-related expenses. The resolution must recite an estimate of the Cost of the Department and bond-related expenses. No more than $600,000,000 in aggregate principal amount of Special Revenue Bonds, exclusive of original issue discount, may be issued in any calendar year. No Special Revenue Bond may be issued and outstanding unless this Agreement is in effect as of the date of issuance. No Special
Revenue Bond may be outstanding beyond the Term. Special Revenue Refunding Bonds as set forth in Section 9511.9 of Title 75 of the Pennsylvania Consolidated Statutes; inserted therein pursuant to Section 7 of Act 44, shall not be deemed to count against the total or annual maximum issuance volume with regard to Special Revenue Bonds.

12.2 **Commission Obligated to Pay Debt Service.** The Commission shall pay Annual Debt Service on the Special Revenue Bonds when due as part of the Annual Base Payment that the Commission is required to make pursuant to Section 11.1 of this Agreement. Any payment of Annual Base Rent designated by the Commission to be a portion of Annual Base Payment required to make Annual Debt Service payments when due on the Special Revenue Bonds shall be designated for payment directly to the trustee for the holders of the Special Revenue Bonds. The Commission shall notify the Department as soon as practicable in the event it reasonably believes that it will be unable to make a payment to the Department corresponding to Annual Debt Service requirements on the Special Revenue Bonds. Regardless of whether it receives the notice described in the preceding sentence, the Department shall notify the State Treasurer of the Commonwealth in the event that the Department receives a notice from the trustee for the Special Revenue Bonds which indicates that a default in the payment by the Commission of its regularly scheduled payments with respect to Annual Debt Service on the Special Revenue Bonds has occurred and that indicates the amount required to remedy the default. Upon receipt of such notice, the Department shall cooperate with the Treasurer of the Commonwealth in the performance of his or her duties pursuant to Section 9511.11 of Title 75 of the Pennsylvania Consolidated Statutes, inserted therein pursuant to Section 7 of Act 44.

12.3 **Design – Build Arrangements for PennDOT Authorized.** To facilitate the timely completion of projects be financed by the Department with bond proceeds, the Department may utilize design-build arrangements for each project to be financed with bond proceeds.

12.4 **Tax Matter Costs are Obligation of the Department.** Tax Matter Costs incurred by the Commission in connection with any proceeding of or filing with the Internal Revenue Service concerning the use of proceeds of bonds issued under Section 9511.4 of Title 75 of the Pennsylvania Consolidated Statutes, inserted pursuant to Section 7 of Act 44, shall be paid or reimbursed from available funds in the Motor License Fund. The Commission shall notify the Department promptly upon its receipt of any communication from the Internal Revenue Service or other taxing authority that could reasonably result in Tax Matter Costs payments. The Commission shall permit the Department, at its own expense, to participate in any proceeding with the relevant taxing authority in connection with any matter that could reasonably result in the payment of Tax Matter Costs.

12.5 **Capital Projects Submitted to the Legislature.** All projects financed by the Department with bond proceeds shall be included in any submission the Department is already required to make to the General Assembly with respect to the expenditure of funds for highway projects.

12.6 **Commission’s Obligation to Reimburse Motor License Fund.** The Commission shall reimburse the Treasurer for any amounts withdrawn from the Motor License
Fund in order to cure a default in the payment by the Commission of its regularly scheduled deposits with respect to Annual Debt Service payable on the Special Revenue Bonds, with interest accruing from the date of the failure to make such deposit to the date of such payment, at the Default Rate. The parties acknowledge that the Commission's obligation to reimburse the Motor License Fund is a component of its obligation to make Annual Base Payments and is a subordinate obligation of the Commission, payable from amounts in the General Reserve Fund of the Commission only as permitted by any financing documents, liquidity policies, or agreements in effect at the Commission.

12.7 Use of Tax-Exempt Bonds to Fund Payments.

(a) The Parties shall use their mutual best efforts to permit the Commission to pay as much of the Transfer Payments as is prudently possible from the proceeds of obligations, the interest on which is exempt from Federal income tax ("Tax-Exempt Bonds").

(b) The Department shall establish and maintain (or make arrangements with other Commonwealth agencies and departments to establish and maintain) accounts recording the investment and expenditure of Tax-Exempt Bond proceeds transferred to it in accord with this Agreement. Accounting for expenditures may be by general cost categories in accord with accounting methods used generally by the Governor's Office of the Budget for expenditures of proceeds of general obligation bonds of the Commonwealth. The Department shall give the Commission copies of its accounts on reasonable request in time to permit the calculation and payment of arbitrage rebate by the Commission under the Internal Revenue Code not later than five (5) years and sixty (60) days after the date of issuance of the Tax-Exempt Bonds. Arbitrage earned by the Department from investment of proceeds of Tax-Exempt Bonds issued by the Commission shall be transferred to the Commission at least thirty (30) days prior to the date upon which the funds are needed to make rebate payments to the Internal Revenue Service.

(c) In connection with each issuance of Tax-Exempt Bonds by the Commission, the Department shall execute a certificate prepared by the Commission stating the reasonably expected use and expenditure of the proceeds of the Tax-Exempt Bonds is in a manner consistent with its accounting system. If the Department proposes to use proceeds of Tax-Exempt Bonds to make a grant to a third party, it shall review the terms and accounting for the grant with the Commission in connection with the issuance of such bonds.

ARTICLE XIII
STATUTORY REPORTING REQUIREMENTS OF THE COMMISSION

13.1 Financial Plan for Each Fiscal Year of the Commission. The Commission shall comply with, and observe, the following provisions concerning the Financial Plan for each Fiscal Year:

(a) Submission. No later than June 1 of each year during the Term, commencing June 1, 2008, the Commission shall prepare, and provide to the Secretary of the Budget, a financial plan for the ensuing Fiscal Year (each, a "Financial Plan") that describes the Commission's proposed: 

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The Financial Plan shall demonstrate that the operation of the Commission in accordance therewith can reasonably be anticipated to result in the Commission having unencumbered funds during the ensuing and future Fiscal Years sufficient to make the payments due to the Department under this Agreement for such Fiscal Years, after all other obligations of the Commission have been met. Financial Plans prepared after June 1, 2008 shall also describe any deviations that occurred from the Financial Plan for the prior Fiscal Year and the reasons for the deviations.

(b) Implementation and Amendment. If the Secretary of the Budget receives the Financial Plan for a Fiscal Year by the date required in Section 13.1(a), the Commission shall be authorized to conduct its operations during such Fiscal Year. The Financial Plan may not be amended by the Commission unless the Commission notifies the Secretary of the Budget of the amendment in writing.

(c) Cooperation. The Commission shall provide to the Secretary of the Budget all information requested in connection with the Secretary’s review of each Financial Plan, including materials used to prepare the Financial Plan. The information shall be provided as soon as practicable after the Secretary’s request.

(d) Effect of Provisions. Nothing contained in this Section 13.1 shall be deemed to prevent the Commission from conducting its normal course of business or to prevent the Commission from complying with any covenants made to bondholders, debt holders, or creditors having such status as of the Effective Date.

(e) Failure to Perform. The Secretary of the Budget shall send written notice to the Commission and to the Governor of the failure of the Commission to do any of the following:

(i) make a payment to the Department under this Agreement; or

(ii) deliver a Financial Plan to the Secretary of the Budget within the time prescribed hereunder.
(f) **Unanimous Vote Required.** Upon the receipt by the Commission of a written notice under Section 13.1(e), and notwithstanding any other Requirement of Law, any action of the Commission taken by vote of the Commissioners shall require a unanimous vote of all Commissioners, **provided however,** that a unanimous vote shall not be required if it would prevent the Commission from complying with any covenants made to bondholders, debt holders, or creditors having such status as of the Effective Date. Such unanimous vote requirement shall continue until:

(i) the required payment has been made to the Department or the required Financial Plan has been delivered (as the case may be); and

(ii) the Secretary of the Budget has notified the Commission and the Governor of that fact.

The notice provided for in Section 13.1(f)(ii) shall be deemed to have been received by the Commission and the Governor upon delivery by the Commission of the required payment or the required Financial Plan (as the case may be).

13.2 **Periodic Reports to Legislative Leaders.** The Commission shall provide quarterly reports and periodic updates regarding significant developments with respect to the conversion process for the Facility to the Chairman and Minority Chairman of the Transportation Committee of the Senate and the Chairman and Minority Chairman of the Transportation Committee of the House of Representatives. These reports shall include, at a minimum, the status of outstanding discussions with the FHWA regarding the Facility, the location and construction of tolling-related equipment for the Facility, planned capital improvements for the Facility and other information important to implementation of Section 4 of Act 44.

13.3 **Traffic Studies Related to Diversion.** Prior to the Conversion Date and within one (1) year following the Conversion Date, the Commission, in collaboration with the Department, shall conduct traffic studies to determine the average daily traffic on associated roads and highways. The purpose of these studies will be to quantify any diversion of traffic from the Facility to other roadways as a result of the conversion process. This Section 13.3 shall not require duplication of traffic studies undertaken by the Commission as a part of the conversion process or undertaken by the Department in the normal course of the Department's operations.

13.4 **Audit by Auditor General Every Four Years.** At least once every four (4) years, the Department of the Auditor General of the Commonwealth shall review the performance, procedures, operating budget, capital budget and debt of the Commission, and shall audit the accounts of the Commission. The Auditor General shall be entitled to go beyond mere financial statements, and shall be entitled to examine original source documents at such time as is believed necessary, or may otherwise examine original documents on a random basis designed to ensure the integrity of the audit. The provisions of Section 706(d) of the Act of April 9, 1929,
P.L. 177, No. 175, known as the Administrative Code of 1929, shall apply to any audit conducted under this Section 13.4.

ARTICLE XIV
DISPUTE RESOLUTION

14.1 Scope. Any dispute arising out of, relating to, or in connection with this Agreement shall be resolved as set forth in this Article XIV.

14.2 Informal Dispute Resolution Procedures. The Parties shall attempt in good faith to resolve within fifteen (15) days all disputes that may arise under this Agreement. If the Parties are unable to resolve any dispute within fifteen (15) days, the dispute shall be referred to the Designated Senior Person of each Party upon written notice by either Party to the other. The Designated Senior Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary, and shall gather and furnish to each other all information pertinent to the dispute. Statements made by representatives of the Parties during the Dispute Resolution mechanisms set forth in this Section 14.2, and documents specifically prepared for such Dispute Resolution mechanisms, shall be considered part of settlement negotiations and shall not be admissible in evidence in any proceeding without the mutual consent of the Parties.

14.3 Adjudication. Unless the Parties otherwise agree, if the informal dispute resolution procedure set forth in Section 14.2 does not resolve the dispute within thirty (30) Business Days after the date upon which such procedure is commenced, or within such longer period as the Parties may mutually agree, the parties shall be free to seek such remedies, in such tribunals, as shall be permitted under applicable Requirements of Law.

14.4 Provisional Remedies. No Party shall be precluded from initiating a proceeding in a forum of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy that is not otherwise available under this Agreement and that is necessary or desirable in order to protect its rights (including, without limitation, temporary and preliminary injunctive relief, restraining orders and the appointment of a receiver or receiver and manager in connection with the collection and retention of Facility Revenues).

14.5 Equitable Remedies. Each of the Parties acknowledges and agrees that the breach or other non-performance of any provision of this Agreement would result in irreparable harm to the other Party for which money damages would not be an adequate remedy. Accordingly, each of the Parties agrees that the other Party shall be entitled, in addition to any other remedy to which they may be entitled at law or in equity, to an injunction or injunctions to prevent breaches of the provisions of this Agreement, and to enforce specifically this Agreement and the terms and provisions hereof (or, if such remedy is held to be unavailable as against either Party due to issues concerning sovereign immunity, the other Party shall be entitled to seek any other equitable relief, if any shall exist, that shall be appropriate in the circumstances and that is not similarly unavailable), in any action instituted in the Commonwealth Court of Pennsylvania. Except as otherwise set forth in Section 14.6, the remedies of the Parties under this Agreement are cumulative, and shall not exclude any other remedies to which any Party may lawfully be entitled.
14.6 Monetary Default by the Commission. In the event that the Commission shall default in making timely payment of any Transfer Payment due to the Department pursuant to this Agreement, and the Commission shall fail to cure such default within forty-five (45) days after the Department shall give the Commission written notice of such default, the Department shall be entitled to seek and receive, as the Department's sole and exclusive remedy, the remedy provided for in Section 8918 of Title 75 of the Pennsylvania Consolidated Statutes, inserted therein pursuant to Section 7 of Act 44.

14.7 Commission Compensation. The Commission shall notify the Department, reasonably promptly after the occurrence of any event that the Commission believes requires the payment of Commission Compensation, that such event has occurred. Any such notice shall include a written description of the event, an estimate of the expected Losses and an estimate of any other elements of the Commission Compensation. Upon request, the Commission shall provide the Department with invoices, estimates, reports and other materials supporting the Losses and the other elements of the Commission Compensation being sought. Losses may include only adjustments or amounts:

(a) that are not duplicative of other amounts to be paid to the Commission;

(b) that were proximately caused by the event triggering the request for Commission Compensation, as established by the Commission; and

(c) that the Commission used reasonable efforts to mitigate.

14.8 Deferral of Cure Periods. If a Party receiving a written notice of default under this Agreement contests, disputes, or challenges the propriety of such notice by making application to the dispute resolution procedure in this Article XIV, any cure period that applies to such default, other than any obligation to make a payment hereunder, shall be deferred for the time period between such application and the issuance of a final award.

ARTICLE XV
MISCELLANEOUS

15.1 Press Releases and Public Announcements. The Parties shall cooperate to the extent practicable with respect to making public announcements relating to the execution and implementation of this Agreement.

15.2 No Expectation of Confidentiality. Each of the Parties recognizes that the other Party is subject to compliance with the provisions of the Pennsylvania Right to Know Law, any successor thereto and any other Requirement of Law related thereto.

15.3 Sovereign Immunity. Each of the Parties recognizes that the other is an agency or body corporate and politic of the Commonwealth of Pennsylvania, and, as such, is entitled to all of the rights and privileges appertaining thereto. Nothing contained in this Agreement shall
be deemed or construed to constitute a contractual waiver of the sovereign immunity of either Party.

15.4 No Third-Party Beneficiaries. Except as specifically set forth or referred to herein, nothing expressed or implied in this Agreement is intended, or shall be construed, to confer any rights or remedies upon any Person other than the Parties hereto, the Secretary of the Budget (with respect to the matters in Section 13.1), the Chairman and Minority Chairman of the Transportation Committees of the Senate and of the House of Representatives (with respect to the matters in Section 13.2), the Auditor General of the Commonwealth (with respect to the matters set forth in Section 13.4) and their respective successors and permitted assigns.

15.5 Entire Agreement. This Agreement and the Transfer Documents, and such other documents as are contemplated by this Agreement (including, without limitation, the exhibits, schedules and other documents referred to herein and therein), constitute the entire agreement among the Parties hereto and supersede any prior understandings, agreements, or representations by or among the Parties, written or oral, that may have related in any way to the subject matter hereof.

15.6 Succession and Assignment. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Neither Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party hereto, and any purported assignment without such approval shall be void.

15.7 Amendments, Modifications and Waivers. No amendment, modification, or waiver of any provision of this Agreement shall be valid unless the same shall be in writing and signed by both of the Parties. No waiver by either Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder, or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. The parties shall use their reasonable, good faith and diligent efforts to agree upon and effectuate the appropriate amendments to, or modifications of, this Agreement at the earliest practicable time if:

(a) as a condition to its approval of the Conversion Application, its review of any part or phase thereof, or otherwise, the FHWA determines that this Agreement is inconsistent with federal Requirements of Law and, if either Party shall challenge or appeal such determination, there shall be a final decision in such challenge or appeal upholding the FHWA's determination; or

(b) Act 44 shall be amended or modified in such a manner or respect as to render this Agreement inconsistent, in any one or more material respects, with the requirements of Act 44 as so amended or modified.

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15.8 **Severability.** Any term or provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions hereof.

15.9 **Notices.** All notices, requests, demands, Claims and other communications hereunder shall be in writing and sent by a nationally recognized overnight express courier service, addressed to the intended recipient as set forth below:

If to the Commission:

Chief Executive Officer  
Pennsylvania Turnpike Commission  
700 South Eisenhower Boulevard  
Middletown, PA 17057  
(717) 986-9604 phone  
(717) 986-9653 fax

with a copy (which shall not constitute notice) to:

Chief Counsel  
Pennsylvania Turnpike Commission  
700 South Eisenhower Boulevard  
Middletown, PA 17057  
(717) 939-9551 phone  
(717) 986-9654 fax

If to the Department:

Secretary of Transportation  
Pennsylvania Department of Transportation  
Keystone Building  
400 North Street  
Harrisburg, PA 17120  
(717) 787-5574 phone

with a copy (which shall not constitute notice) to:

Chief Counsel  
Pennsylvania Department of Transportation  
Keystone Building  
400 North Street  
Harrisburg, PA 17120  
(717) 787-5473 phone
Any notice, request, demand, Claim, or other communication sent to a Party as hereinbefore set forth shall be deemed to have been duly given for all purposes of this Agreement when the same has been received by the addressee thereof or when delivery thereof has been refused, in either case as shown on the business records of the applicable courier service. Any Party may change the address to which notices, requests, demands, Claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth herein.

15.10 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.

15.11 **Construction.** This Agreement has been drafted jointly by the Parties. As a result, the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

15.12 **Headings.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

15.13 **Counterparts; Facsimile Transmission.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement may be executed and delivered by facsimile or electronic transmission, and such execution and delivery shall be considered valid, binding and effective for all purposes.

[remainder of this page intentionally left blank; signature pages follow]
IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be duly executed as of the Effective Date.

PENNSYLVANIA TURNPIKE COMMISSION

By: ____________________________
    Chairman
    Date

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

By: ____________________________
    Secretary of Transportation
    Date 10/13/07

APPROVED AS TO FORM AND LEGALITY

By: ____________________________
    PennDOT Agency Counsel
    Date 10/15/07

By: ____________________________
    Commission Agency Counsel
    Date

By: ____________________________
    Deputy General Counsel
    Office of General Counsel
    Date 10/16/07

By: ____________________________
    Deputy Attorney General
    Office of Attorney General
    Date 10/23/07

CERTIFIED FUNDS AVAILABLE UNDER
SAP NO. __________________________
SAP COST CENTER ___________________
GL. ACCOUNT _______________________
AMOUNT __________________________

By: ____________________________
    Comptroller
    Date
IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be duly executed as of the Effective Date.

ATTEST

PENNSYLVANIA TURNPIKE COMMISSION

By:
Chairman
Date 10/3/07

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

By: __________________________
Secretary of Transportation
Date

APPROVED AS TO FORM AND LEGALITY

By: __________________________
PennDOT Agency Counsel
Date

By: __________________________
Deputy General Counsel
Office of General Counsel
Date

By: __________________________
Commission Agency Counsel
Date 10/3/07

By: __________________________
Deputy Attorney General
Office of Attorney General
Date

CERTIFIED FUNDS AVAILABLE UNDER
SAP NO. __________________________
SAP COST CENTER __________________________
GL. ACCOUNT __________________________
AMOUNT __________________________

By: __________________________
Comptroller
Date
EXHIBIT A

DEFINITIONS*

“Act 44” has the meaning set forth in the Recitals to this Agreement.

“Affected Property” means any public or private property (including, without limitation, a highway, street, road, roadway, bridge, railroad, railway, other transit way, bicycle path, or hiking path and any ancillary facilities related to any of the foregoing, including, without limitation, any parking facility associated with a bicycle or hiking path) that is under the jurisdiction and control of the Commonwealth, any other Governmental Entity, or any other Person (including, without limitation, any private road) that intersects, crosses over or under, or is adjacent to the Right of Way or any part thereof, but shall exclude any such property that shall be part of the extent of limited access with respect to Interstate Route I-80 or any such property that shall be used, in whole or in part, in connection with the Facility Operations as of the Effective Date.

“Agreement” has the meaning set forth in the Preamble to this Agreement.

“Annual Additional Payment” means an amount, with respect to each Fiscal Year occurring in whole or in part during the Term, equal to the Scheduled Annual Commission Contribution for such Fiscal Year, minus the sum of:

(a) $200,000,000, which is to be paid as the Annual Base Payment or portion thereof (as the case may be) with respect to such Fiscal Year; and

(b) any Interstate 80 Savings for that Fiscal Year,

provided, however, that, if the Conversion Option lapses pursuant to Section 2.1, the Annual Additional Payment with respect to each subsequent Fiscal Year or portion thereof during the Term shall be $250,000,000. If the Effective Date shall be other than the first day of a Fiscal Year, or if the Reversion Date shall be other than the last day of a Fiscal Year, the Annual Additional Payment for the first or last Fiscal Year of the Term (as the case may be) shall be duly prorated using the number of days of such Fiscal Year included within the Term, divided by three hundred sixty-five (365) days.

“Annual Additional Payment for Transit” means an amount, with respect to each Fiscal Year occurring in whole or in part during the Term, equal to the following:

(a) $100,000,000 in Fiscal Year 2007-2008;

* All references to “Sections” and “Articles” of the “Agreement” in this Exhibit A, unless the context requires otherwise, shall be references to sections and articles of the Lease and Funding Agreement dated as of October 14, 2007, by and between Pennsylvania Turnpike Commission and Pennsylvania Department of Transportation, a Department of the Commonwealth of Pennsylvania, to which this Exhibit A is attached and incorporated therein.

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(b) $150,000,000 in Fiscal Year 2008-2009;

(c) $200,000,000 in Fiscal Year 2009-2010; and

(d) for Fiscal Year 2010-2011, and each Fiscal Year thereafter, the amount shall be the amount calculated for the previous year increased by 2.5%.

If the Effective Date shall be other than the first day of a Fiscal Year, or if the Reversion Date shall be other than the last day of a Fiscal Year, the Annual Additional Payment for Transit for the first or last Fiscal Year of the Term (as the case may be) shall be duly prorated using the number of days of such Fiscal Year included within the Term, divided by three hundred sixty-five (365) days.

"Annual Base Payment" means an amount, with respect to each Fiscal Year occurring in whole or in part during the Term, equal to the sum of the following:

(a) the annual debt service becoming due and payable during such Fiscal Year on all outstanding Special Revenue Bonds; and

(b) $200,000,000.

If the Effective Date shall be other than the first day of a Fiscal Year, or if the Reversion Date shall be other than the last day of a Fiscal Year, the amount set forth in paragraph (b) above for the first or last Fiscal Year of the Term (as the case may be) shall be duly prorated using the number of days of such Fiscal Year included within the Term, divided by three hundred sixty-five (365) days.

"Annual Debt Service" means, in any year, the amount of principal or scheduled redemption price of and interest on the Special Revenue Bonds coming due during such year.

"Annual Surplus Payment" means an amount, with respect to each Fiscal Year occurring in whole or in part during the Term, equal to the General Reserve Fund Surplus for such Fiscal Year. If the Effective Date shall be other than the first day of a Fiscal Year, or if the Reversion Date shall be other than the last day of a Fiscal Year, the Annual Surplus Payment for the first or last Fiscal Year of the Term (as the case may be) shall be duly prorated using the number of days of such Fiscal Year included within the Term, divided by three hundred sixty-five (365) days.

"Assumed Liabilities" has the meaning set forth in Section 2.5.

"Assumed Facility Liabilities" means:

(a) all Liabilities of the Department relating to, and arising out of, the Facility that have arisen from and after the Conversion Date (other than any Liability resulting from, arising out of, relating to, in the nature of, or caused by any breach of contract, breach of warranty, tort, infringement, violation of any
Requirement of Law, or environmental matter, including without limitation those arising under Environmental, Health and Safety Requirements); and

(b) all obligations of the Department under the agreements, contracts, leases, licenses, and other arrangements referred to in the definition of Transferred Assets either:

(i) to furnish goods, services, and other non-Cash benefits to another Party from and after the Conversion Date; or

(ii) to pay for goods, services, and other non-Cash benefits that another Party will furnish to it from and after the Conversion Date; and

(c) all other Liabilities and obligations of the Department set forth in the Schedules,

provided, however, that, notwithstanding the above, the Assumed Liabilities shall not include:

(x) any Liability of the Department for costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby; or

(y) any Liability or obligation of the Department under this Agreement (or under any side agreement between the Department on the one hand and the Commission on the other hand entered into on or after the Effective Date).

"Auditor General's Certificate" means the certificate issued by the Auditor General within one hundred eighty (180) days after the end of each Fiscal Year, certifying all of the following:

(a) the amount of the General Reserve Fund Surplus for such Fiscal Year;

(b) after review of the Commission's current ten (10) year capital plan, that the payment of the Annual Surplus Payment under Section 11.3 shall not impair the ability of the Commission to meet its obligations hereunder or under the Commission's ten (10) year capital plan.

"Business Day" means any day other than a Saturday, a Sunday, a day that is designated as a Federal holiday, a day that is designated in the Commonwealth as a State holiday, or a day on which commercial banks in the Commonwealth are authorized or required by law to close.

"Claim" means any claim, demand, action, cause of action, chose in action, right of recovery, right of set-off, suit, arbitration, inquiry, audit, proceeding, or investigation.

"Closing" has the meaning set forth in Section 8.2.

"Closing Date" has the meaning set forth in Section 2.1.
“Commission” has the meaning set forth in the Preamble to this Agreement.

“Commission Compensation” means, with respect to a Compensation Event, that compensation payable by the Department to the Commission in order to restore the Commission to the same economic position that the Commission would have enjoyed if such Compensation Event had not occurred, which compensation shall equal to the sum of:

(a) all Losses that are reasonably attributable to such Compensation Event; adjusted to account for

(b) the net gains and net losses of the Commission’s present and future Facility Revenues that are directly attributable to such Compensation Event.

Any Commission Compensation payable with respect to Losses or lost Facility Revenues that will not occur until the future shall not be payable until actually suffered or incurred.

“Commission Cost Management Procedures” means, with respect to a construction project or other work to be performed by the Commission at the expense of the Department, those cost management and procurement procedures and policies that would routinely be implemented and utilized by the Commission at the time in question in connection with work of a similar nature and having a similar general cost being performed by the Commission for its own account, provided, however, that, if such procedures and policies are in violation of the requirements of the FHWA imposed upon the Department, the Commission Cost Management Procedures shall be adjusted to conform to the applicable FHWA requirements (unless the Commission can obtain a waiver of such variances from the FHWA) if the project to which such procedures and policies are to apply includes the use of federal funds.

“Commission Default” means:

(a) if any representation or warranty by the Commission in this Agreement proves to have been false or incorrect in any material respect as of the date made or deemed made, provided, however, that, if:

(i) the Commission was not aware (after due inquiry) that such representation or warranty was false or incorrect at the time such representation or warranty was made;

(ii) the fact, event, or circumstance resulting in such false or incorrect representation or warranty is capable of being cured, corrected, or otherwise remedied; and

(iii) such fact, event, or circumstance resulting in such false or incorrect representation or warranty shall have been cured, corrected, or otherwise remedied within thirty (30) days from the date on which the Commission first obtains knowledge thereof after due inquiry, provided, however, that such thirty (30) day
period may be extended to ninety (90) days if the Commission has demonstrated to the satisfaction of the Department, acting reasonably, that:

(x) it is proceeding, and will proceed, with all due diligence to cure, correct or otherwise remedy such misstatement;

(y) its actions can reasonably be expected to cure or cause to be cured such false or incorrect representation or warranty within ninety (90) days; and

(z) such failure in fact is cured within ninety (90) days),

such that such incorrect or false representation or warranty (as cured, corrected or remedied) could not reasonably be expected to result in a Material Adverse Effect,

then such incorrect or false representation or warranty shall not constitute a Commission Default;

(b) except as provided below in clause (c), if the Commission fails to comply with, perform, or observe any material obligation, covenant, agreement, term, or condition in this Agreement, and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Department to the Commission or for such longer period as may be reasonably necessary to cure such failure, provided, however, that, in the latter case, the Commission has demonstrated to the satisfaction of the Department, acting reasonably, that:

(i) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure;

(ii) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Department, acting reasonably; and

(iii) such failure is in fact cured within such period of time; or

(c) subject to the provisions of Section 11.4 hereof, the refusal or failure of the Commission to pay:

(i) any Transfer Payment when due under this Agreement; or
(ii) any other amount becoming due under this Agreement for more than thirty (30) days following the date on which a final determination is obtained pursuant to the provisions of Article XIV hereof that the Commission is obligated to pay such amount.

“Commission’s Capital Improvement Program” has the meaning set forth in Section 9.16.

“Commonwealth” has the meaning set forth in the Preamble to this Agreement.

“Compensation Event” means a Department Default, or any other event the occurrence of which under the terms of this Agreement requires the payment of the Commission Compensation.

“Conversion” has the meaning set forth in the Recitals to this Agreement.

“Conversion Application” has the meaning set forth in Section 6.7.

“Conversion Date” has the meaning set forth in Section 3.3.

“Conversion Notice” has the meaning set forth in Section 2.1.

“Conversion Notice Date” has the meaning set forth in Section 2.1.

“Conversion Option” has the meaning set forth in Section 2.1.

“Conversion Period” has the meaning set forth in Section 3.2.

“Cost of the Department” means the costs of all of the following:

(a) constructing, reconstructing, widening, expanding, or extending the State highway and the rural State highway system of the Commonwealth and connecting roads, tunnels and bridges;

(b) systems of public passenger transportation or portions of the system, the placing of the systems in operation and the condemnation of property necessary for construction and operation of the systems;

(c) lands, property rights, rights-of-way, easements and franchises acquired, that are deemed necessary or convenient for the construction, reconstruction, widening, expanding, or extending under paragraph (a) or (b) above;

(d) machinery and equipment, financing charges, interest prior to and during construction, and for one (1) year after completion of construction;
(e) any of the following:

(i) traffic estimates, engineering and legal expenses, plans, specifications, surveys and estimates of cost and of revenues;

(ii) other expenses necessary or incident to determining the feasibility or practicality of the enterprise (including, without limitation, administrative and legal expenses); and

(iii) other expenses as may be necessary or incident to the financing authorized under Act 44, the construction, reconstruction, widening, expanding, or extending of the State highway and the rural State highway system of the Commonwealth and connecting roads, tunnels and bridges;

(f) any obligation or expense contracted for by the Department or with the United States or an agency of the United States, for traffic surveys, preparation of plans and specifications, supervision of construction and other engineering, administrative and legal services and expenses in connection with the construction, reconstruction, widening, expanding, or extending of the State highway and the rural State highway system of the Commonwealth or any of the connecting roads, tunnels and bridges, or the costs of the systems of public passenger transportation or portions of the systems; and

(g) payment of any notes or other obligations if the notes or other obligations were issued for the payment of a cost of the Department.

"Court Order" means any judgment, directive, ordinance, injunction, order, award, decree, or final decision of any federal, state, local, or other court, tribunal, or other body exercising adjudicative, regulatory, judicial, or quasi-judicial powers, and any award in any arbitration proceeding.

"Default Rate" means the statutory rate of interest set forth in 41 Pa.C.S. §202, from time to time in effect in the Commonwealth of Pennsylvania, applicable to judgments.

"Department" has the meaning set forth in the Preamble to this Agreement.

"Department Cost Management Procedures" means, with respect to a construction project or other work to be performed by the Department at the expense of the Commission, those cost management and procurement procedures and policies that would routinely be implemented and utilized by the Department at the time in question in connection with work of a similar nature and having a similar general cost being performed by the Department for its own account.

"Department Default" means:
(a) if any representation or warranty by the Department in this Agreement proves to have been false or incorrect in any material respect as of the date made or deemed made, provided, however, that, if:

(i) the Department was not aware (after due inquiry) that such representation or warranty was false or incorrect at the time such representation or warranty was made;

(ii) the fact, event, or circumstance resulting in such false or incorrect representation or warranty is capable of being cured, corrected, or otherwise remedied; and

(iii) such fact, event, or circumstance resulting in such false or incorrect representation or warranty shall have been cured, corrected, or otherwise remedied within thirty (30) days from the date on which the Department first obtains knowledge thereof after due inquiry, provided, however, that such thirty (30) day period may be extended to ninety (90) days if the Department has demonstrated to the satisfaction of the Commission, acting reasonably, that:

(x) it is proceeding, and will proceed, with all due diligence to cure, correct or otherwise remedy such misstatement;

(y) its actions can reasonably be expected to cure or cause to be cured such false or incorrect representation or warranty within ninety (90) days; and

— (z) such failure in fact is cured within ninety (90) days,

such that such incorrect or false representation or warranty (as cured, corrected or remedied) could not reasonably be expected to result in a Material Adverse Effect,

then such incorrect or false representation or warranty shall not constitute a Department Default;

(b) except as provided below in clause (f), if the Department fails to comply with, perform, or observe any material obligation, covenant, agreement, term, or condition in this Agreement, and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Commission to the Department or for such longer period as may be reasonably necessary to cure such failure, provided,
however, that, in the latter case, the Department has demonstrated to the satisfaction of the Commission, acting reasonably, that:

(i) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure;

(ii) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Commission, acting reasonably; and

(iii) such failure is in fact cured within such period of time; or

(c) the refusal or failure of the Department to pay any amount becoming due under this Agreement for more than thirty (30) days following the date on which a final determination is obtained pursuant to the provisions of Article XIV hereof that the Department is obligated to pay such amount.

"Department's Capital Improvement Projects" has the meaning set forth in Section 6.2.

"Designated Senior Person" means such senior executive within each Party's respective organization who is designated from time to time by each Party for the purposes of Article XIV.

"Disclosure Schedules" means those schedules to this Agreement that are labeled in a manner corresponding to the lettered and numbered sections contained in this Agreement. The disclosure of a particular item in the Disclosure Schedules as an exception to a specific representation and warranty made either in Article IV or in Article V will not constitute disclosure of that item for purposes of any other representation and warranty herein unless it would be reasonably apparent, in the mind of a reasonable person, from the disclosure made in response to a specific representation and warranty, that the particular disclosure item applies to the other representation and warranty.

"Effective Date" has the meaning set forth in the preamble to this Agreement.

"Encumbrance" means any lien, Claim, charge, hypothecation, security interest, mortgage, pledge, easement, conditional sale or other title retention agreement, defect in title, restrictive covenant, or other restrictions of any kind.

"Environmental, Health, and Safety Requirements" shall mean all federal, state and local statutes, regulations, ordinances and other provisions having the force or effect of law, all judicial and administrative orders and determinations and all common law concerning public health and safety, worker health and safety, pollution, or protection of the environment (including, without limitation, all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any Hazardous Substances).
“Excluded Assets” has the meaning set forth in Section 2.4.

“Excluded Liabilities” has the meaning set forth in Section 2.6.

“Facility” has the meaning set forth in Section 2.2.

“Facility Operations” means the operation, management, maintenance, construction, rehabilitation and tolling of the Facility, together with all other actions, relating to the Facility or otherwise, that are to be performed by, or on behalf of, the Commission pursuant to this Agreement or the Operating Standards (including, without limitation, all action relating to vendors).

“Facility Revenues” means all revenues generated by or on behalf of the Commission in respect of vehicles using the Facility (including, without limitation, revenues collected through an electronic tolling system), together with all other revenues lawfully generated by or on behalf of the Commission from, or in connection with, the Facility and/or the Facility Operations.

“FHWA” has the meaning set forth in the Recitals to this Agreement.

“Financial Plan” has the meaning set forth in Section 13.1(a).

“Fiscal Year” means the fiscal year of the Commission.

“General Assembly” has the meaning set forth in the Recitals of this Agreement.

“General Reserve Fund Surplus” means, with respect to any Fiscal Year occurring in whole or in part during the Term, the amount that both:

(a) is certified by the Auditor General in the Auditor General’s Certificate as existing in the Commission’s General Reserve Fund on the last day of such Fiscal Year; and

(b) is not required to be retained in the General Reserve Fund pursuant to any financial documents, financial covenants, insurance policies, liquidity policies or agreements in effect at the Commission.

“Government Agreement” has the meaning set forth in Section 9.14.

“Governmental Entity” means any federal, state, local, territorial, municipal, or other governmental authority, department, court, commission, bureau, board, agency, tribunal, department, or other instrumentality exercising legislative, judicial, regulatory, or administrative functions of, or pertaining to, government (including, without limitation, the FHWA, but excluding the Department).

“Hazardous Substance” means any solid, liquid, gas, radiation, other substance, or emission (including, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation) that:
(a) is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, subject waste, hazardous material, or hazardous substance; and

(b) is or becomes regulated by, or is or becomes classified as hazardous or toxic under, applicable Environmental, Health and Safety Requirements.

"Intellectual Property" means all of the following in any jurisdiction throughout the world:

(a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto and all patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions and reexaminations thereof;

(b) all trademarks, service marks, trade dress, logos, slogans, trade names, corporate names, internet domain names and rights in telephone numbers, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith;

(c) all copyrightable works; all copyrights and all applications, registrations and renewals in connection therewith;

(d) all mask works and all applications, registrations and renewals in connection therewith;

(e) all trade secrets and confidential business information (including, without limitation, ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals);

(f) all computer software (including, without limitation, source code, executable code, data, databases and related documentation);

(h) all advertising and promotional materials;

(i) all other proprietary rights; and

(j) all copies and tangible embodiments thereof (in whatever form or medium).

"Interstate 80 Savings" means an amount equal to the following:

(a) prior to the Conversion Date, the amount shall be zero;
(b) in the first Fiscal Year including the Conversion Date, the amount shall be a pro rata share of $116,985,856, calculated using the number of calendar days in the year from and after the Conversion Date, divided by three hundred sixty-five (365) days;

(c) in the Fiscal Year succeeding the year including the Conversion Date, the amount shall be $121,665,290; and

(d) in subsequent Fiscal Years, the amount shall be the amount calculated for the previous year increased by 4%.

“Knowledge” (whether or not capitalized) means:

(a) with respect to the Department, the actual knowledge, after reasonable inquiry, of those individuals in the Department with senior management control or authority with respect to Facility Operations, and

(b) with respect to the Commission, the actual knowledge, after reasonable inquiry, of any Board Member of the Commission and those individuals employed by the Commission with senior management control or authority with respect to the business of the Commission.

“Liability” means any liability for payment, debt, payment obligation, or any other amount or sum due (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated, and whether due or to become due), including any liability for taxes.

“Loss” means, with respect to any Person, any loss, liability, damage, penalty, charge, or reasonable out-of-pocket and documented direct cost or expense actually suffered or incurred by such Person, but excluding:

(a) any loss, liability, damage, penalty, charge, or other cost or expense caused by the failure of the Person claiming such Loss to perform its obligations under this Agreement or arising from the negligence or misconduct of the Person claiming such Loss;

(b) any special, indirect or consequential damages, as well as any contingent liability until such liability becomes actual; and

(c) in the case of the Commission, any increased capital or other costs resulting from a change in the credit ratings assigned to the debt of the Commission by any nationally recognized credit rating agency.

“Material” (whether or not capitalized) means, where appropriate in context of its use in making the representations and warranties set forth in Article IV and Article V, involving or potentially involving an amount of money greater than Ten Million ($10,000,000) Dollars. The foregoing amount shall increase by two and one half (2.5%) percent per annum, compounding annually, beginning on September 30, 2008.

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"Material Adverse Effect" means, in the context of the use of such terms in the Department's representations and warranties set forth in Article IV, or the Commission's representations and warranties set forth in Article V, the occurrence of any single event, or any series of related events or set of related circumstances, that results in, or may reasonably be expected to result in, actual uninsured Losses to the recipient of the representation and warranty in excess of Ten Million ($10,000,000) Dollars. The foregoing amount shall increase by two and one half (2.5%) percent per annum, compounding annually, beginning on September 30, 2008.


"Office of the General Counsel" means the Office of the General Counsel of the Commonwealth.

"Operating Standards" has the meaning set forth in Section 9.2.

"Outside Conversion Date" has the meaning set forth in Section 3.2(b).

"Parties" has the meaning set forth in the Recitals to this Agreement.

"Payments" has the meaning set forth in Section 11.7.

"Permits" has the meaning set forth in Section 9.16.

"Permitted Encumbrances" means any Encumbrance existing as of the Effective Date or, subject to Section 9.13, as of the Conversion Date, as well as those Encumbrances set forth on Schedule 4.1(g).

"Person" means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, sole proprietorship, partnership, joint venture, association, joint-stock company, limited liability company, trust, unincorporated organization, or Governmental Entity.

"Post Conversion Financial Obligations" has the meaning set forth in Section 9.4.

"Public Transportation Trust Fund" means that special fund established within the State Treasury of the Commonwealth pursuant to Section 1506(a) of the Pennsylvania Consolidated Statutes, inserted therein pursuant to Section 3 of Act 44.

"Reporting Year" means each Fiscal Year occurring in whole or in part during the Term.

"Requirements of Law" means any federal, state, or local laws, statutes, regulations, directives, policies, guidelines, rules, codes, guidelines, or ordinances enacted, adopted, issued, or promulgated by any Governmental Entity (including, without limitation, any common law), in each case having the force of law, but excluding, however, all regulations, directives, policies, guidelines, rules, codes and guidelines promulgated by the Department.
"Reversion Date" shall mean the expiration date of the Term.

"Reverted Assets" has the meaning set forth in Section 9.33(b).

"Reverted Contracts" has the meaning set forth in Section 9.33(b)(i).

"Reverted Governmental Permits" has the meaning set forth in Section 9.33(b)(vi).

"Reverted Liabilities" has the meaning set forth in Section 9.33(c).

"Right of Way" has the meaning set forth in Section 2.2(a).

"Scheduled Annual Commission Contribution" means an amount, with respect to each Fiscal Year occurring in whole or in part during the Term, equal to:

(a) $750,000,000 in Fiscal Year 2007-2008;
(b) $850,000,000 in Fiscal Year 2008-2009;
(c) $900,000,000 in Fiscal Year 2009-2010; and
(d) for Fiscal Year 2010-2011, and each Fiscal Year thereafter, the amount shall be the amount calculated for the previous year increased by 2.5%, provided, however, that, if the Conversion Option lapses pursuant to Section 2.1, the Scheduled Annual Commission Contribution with respect to each subsequent Fiscal Year or portion thereof during the Term shall be equal to the Annual Base Payment for such Fiscal Year, plus $250,000,000.

"Secretary of the Budget" means the Secretary of the Budget of the Commonwealth.

"Secretary of the Department" means the Secretary of the Department of Transportation of the Commonwealth.

"Special Revenue Bonds" means those bonds described in Section 9511.2 of Title 75 of the Pennsylvania Consolidated Statutes (inserted therein pursuant to Section 7 of Act 44) and authorized in Section 9511.4 of Title 75 of the Pennsylvania Consolidated Statutes (also inserted therein pursuant to Section 7 of Act 44).

"Tax-Exempt Bonds" has the meaning set forth in Section 12.7.

"Tax Matter Costs" shall include all of the following:

(a) fees of tax counsel or arbitrage rebate calculation providers;
(b) arbitrage rebate payments to the extent not properly payable from funds held under the bond indenture;
(d) settlement payments to the Internal Revenue Service, either in relation to an examination initiated by the Internal Revenue Service or a closing agreement requested by the Commission;

(e) payments to bondholders as a result of Claims based on pending, threatened or actual assessments of tax, interest or penalties by the Internal Revenue Service; and

(F) any other cost reasonably related to a proceeding by or filing with the Internal Revenue Service concerning the use of proceeds of the bonds.

“Term” has the meaning set forth in Section 3.1.

“Transfer Documents” has the meaning set forth in Section 8.3.

“Transfer Payments” means, collectively, the Annual Base Payments; the Annual Additional Payments and the Annual Surplus Payments

“Transferred Assets” has the meaning set forth in Section 2.3.

“Transferred Contracts” has the meaning set forth in Section 2.3(a).

“Transferred Equipment and Supplies” has the meaning set forth in Section 2.3(d).

“Transferred Governmental Permits” has the meaning set forth in Section 2.3(e).

“Transferred Intellectual Property” means the intellectual property transferred pursuant to Section 2.3(d).

“Turnpike System” shall mean the Pennsylvania Turnpike System, including, without limitation, the so-called mainline, the extensions thereto and all other improvements comprising such system.

“Twelve-Year Plan” has the meaning set forth in Section 6.1.
SCHEDULE 2.2(a)
DESCRIPTION OF INTERSTATE ROUTE I-80

Those pieces, plots and parcels of land comprising the limited access area through or within which Interstate Route I-80 is located, including, without limitation, the road beds, the shoulders thereof (if any) and any landscaped or other areas located in between such road beds and on either side thereof, as well as all interchanges, ramps, curbs, guiderails, signs, traffic systems, fences, sound barriers, lighting stanchions, buildings, other improvements, lots, storage areas and other facilities related in whole or in part thereto, to the fullest extent that the same is owned by the Department and/or the Commonwealth and/or that the Department and/or the Commonwealth have leasehold, easement, license, franchise, or other rights therein.
Schedule 2.2(b) is not available as of the Effective Date. Pursuant to the provisions of Section 6.10(c) of the Agreement, Schedule 2.2(b) is to be prepared by the Department and approved by the Commission after the Effective Date, and incorporated into this Agreement by an amendment signed by both of the Parties. Such Schedule is to include easement rights for the Commission's non-exclusive access to, and use of, storage and maintenance facilities located outside of the Right of Way and used by the Department on the Effective Date in connection with the maintenance, repair and operation of the Facility among other roads.
Schedule 2.3(a) is not available as of the Effective Date. Pursuant to the provisions of Section 6.10(c) of the Agreement, Schedule 2.3(a) is to be prepared by the Department and approved by the Commission after the Effective Date, and incorporated into this Agreement by an amendment signed by both of the Parties.
Schedule 2.3(c) is not available as of the Effective Date. Pursuant to the provisions of Section 6.10(c) of the Agreement, Schedule 2.3(c) is to be prepared by the Department and approved by the Commission after the Effective Date, and incorporated into this Agreement by an amendment signed by both of the Parties.
Schedule 2.3(d)

Intellectual Property

Schedule 2.3(d) is not available as of the Effective Date. Pursuant to the provisions of Section 6.10(c) of the Agreement, Schedule 2.3(d) is to be prepared by the Department and approved by the Commission after the Effective Date, and incorporated into this Agreement by an amendment signed by both of the Parties.
Schedule 2.3(e) is not available as of the Effective Date. Pursuant to the provisions of Section 6.10(c) of the Agreement, Schedule 2.3(e) is to be prepared by the Department and approved by the Commission after the Effective Date, and incorporated into this Agreement by an amendment signed by both of the Parties.
Schedule 2.5(a) is not available as of the Effective Date. Pursuant to the provisions of Section 6.10(c) of the Agreement, Schedule 2.5(a) is to be prepared by the Department and approved by the Commission after the Effective Date, and incorporated into this Agreement by an amendment signed by both of the Parties.
Schedule 4.1(d) is not available as of the Effective Date. Pursuant to the provisions of Section 6.10(a) of the Agreement, Schedule 4.1(d) is to be prepared by the Department and approved by the Commission after the Effective Date, and incorporated into this Agreement by an amendment signed by both of the Parties.
Schedule 4.1(f) is not available as of the Effective Date. Pursuant to the provisions of Section 6.10(a) of the Agreement, Schedule 4.1(f) is to be prepared by the Department and approved by the Commission after the Effective Date, and incorporated into this Agreement by an amendment signed by both of the Parties.
Schedule 4.1(g) is not available as of the Effective Date. Pursuant to the provisions of Section 6.10(a) of the Agreement, Schedule 4.1(g) is to be prepared by the Department and approved by the Commission after the Effective Date and incorporated into this Agreement by an amendment signed by both of the Parties, except that Schedule 4.1(g) shall include the following entry as a Permitted Encumbrance: "Legally-enforceable restrictions on future use of the Facility that are imposed as part of the remediation of Hazardous Substances on, or emanating from, the Facility, which comport with applicable remediation criteria for continuing the present use of the Facility, and which are approved in writing by the Department."
Schedule 5.1(d) is not available as of the Effective Date. Pursuant to the provisions of Section 6.10(e) of the Agreement, Schedule 5.1(d) is to be prepared by the Department and approved by the Commission after the Effective Date, and incorporated into this Agreement by an amendment signed by both of the Parties.
# SCHEDULE 6.2
THE DEPARTMENT'S CAPITAL IMPROVEMENT PROJECTS

Twelve Year Transportation Program Adopted by the State Transportation Commission - August 2, 2007


Period 1 - October 2006 - September 2010

Period 2 - October 2010 - September 2014

## SR 80 Projects on 2007 TIP

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<th>District</th>
<th>County</th>
<th>Township</th>
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<th>Project Title</th>
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**SCHEDULE 6.3**

**PRE-EXISTING ENVIRONMENTAL CONDITIONS**

*Schedule 6.3 is not available as of the Effective Date. Pursuant to the provisions of Section 6.10(b) of the Agreement, Schedule 6.3 is to be prepared by the Commission and approved by the Department after the Effective Date, and incorporated into this Agreement by an amendment signed by both of the Parties.*
**Schedule 9.2**  
**Operating Standards**

*Schedule 9.2* is not available as of the Effective Date. Pursuant to the provisions of *Section 6.9* of the Agreement, *Schedule 9.2* is to be prepared by the Commission and approved by the Department after the Effective Date, and incorporated into this Agreement by an amendment signed by both of the Parties.
SCHEDULE 9.16
THE COMMISSION'S CAPITAL IMPROVEMENT PROGRAM

Schedule 9.16 is not available as of the Effective Date. Pursuant to the provisions of Section 6.10(d) of the Agreement, Schedule 9.16 is to be prepared by the Commission and approved by the Department after the Effective Date, and incorporated into this Agreement by an amendment signed by both of the Parties.