

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
I-77 SOUTH EXPRESS LANES - OTHER INDICATIVE KEY TERMS

The North Carolina Department of Transportation ("**NCDOT**") and North Carolina Turnpike Authority ("**NCTA**") intend to develop and deliver an express lanes facility along approximately 11 miles of the I-77 corridor from the vicinity of the South Carolina State Line to I-277/NC 16 (Brookshire Freeway) ("**I-77 South Express Lanes**"). NCDOT anticipates executing a design, build, finance, operate and maintain agreement for the I-77 South Express Lanes (the "**Agreement**").

NCDOT has released a Request for Qualifications dated August 15, 2025 ("**RFQ**") for the procurement of the I-77 South Express Lanes.

Appendix 3 (CRTPO Priority Terms) of the RFQ sets out certain indicative key terms for the Agreement which NCDOT has developed in consultation with the Charlotte Regional Transportation Planning Organization ("**CRTPO**").

Below are other indicative terms typical of a design, build, finance, operate and maintain ("**DBFOM**") agreement for an express lanes project, which NCDOT anticipates including in the Agreement.

These indicative key terms are subject to definitive drafting to be set forth in the Agreement and may be further developed or changed.

Capitalized terms are defined in Appendix 1 to these indicative terms.

I-77 SOUTH EXPRESS LANES - OTHER INDICATIVE KEY TERMS

#	Key Term	
1.	Parties	(a) North Carolina Department of Transportation (NCDOT); and (b) Private party developer (a special purpose vehicle) (" Developer ").
2.	Scope of Project	<p>The project consists of the design, construction, financing, operation and maintenance of an express lanes facility and other related improvements (the "Project"), to be more fully described in the Agreement.</p> <p>The Project is located in the Charlotte Metropolitan area and spans approximately 11 miles, from the vicinity of the South Carolina State Line to I-277/NC 16 (Brookshire Freeway). The Project scope will include the addition of two new express lanes in each direction, reconstruction of interchanges and non-interchange bridges, and the addition of new access points and direct connectors.</p>
3.	Grant of Concession	<p>In accordance with the terms of the Agreement, NCDOT will grant to Developer the:</p> <ul style="list-style-type: none">(a) exclusive right to design, construct, finance, operate and maintain the Project;(b) exclusive right to toll the Express Lanes (see <u>Item 5 (Rights and Obligation to Toll)</u>); and(c) the right to enter onto the Project right of way to undertake the Project.
4.	Term	50 years from Services Commencement (subject to early termination) (the " Term ").
5.	Rights and Obligation to Toll	<p>Developer will have the exclusive right to:</p> <ul style="list-style-type: none">(a) impose tolls on Users; and(b) establish, modify and adjust toll rates, <p>in accordance with law and the relevant provisions of the Agreement.</p> <p>Developer will have no right to charge for use of the Project other than the tolls for use of the Express Lanes specifically authorized under the Agreement.</p> <p>NCDOT/NCTA will retain collections risk with respect to all valid transactions transmitted to NCTA for processing.</p>
6.	Toll Collection – Electronic Toll Collection Services	<p>ETC Services</p> <p>The roles, rights and obligations of Developer and NCDOT/NCTA in respect of electronic toll collection services ("ETC Services") will be set out in an Exhibit to the Agreement.</p>

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	<p>There will not be a separate tolling services agreement.</p> <p>Developer Responsibilities</p> <p>Developer's ETC Services will include:</p> <ul style="list-style-type: none"> (a) providing an electronic toll collection system ("ETCS"); (b) detecting and classifying vehicles; (c) providing HOV data to law enforcement; (d) informing Users of real-time toll rates; and (e) generating transactions for each toll segment and calculating and assigning tolls. <p>Toll Payment to Developer</p> <p>For each valid transaction, NCDOT will pay Developer a Toll Payment based on the applicable toll rate. NCDOT will pay the Toll Payment to Developer regardless of NCDOT's ability to collect the toll from the User.</p> <p>NCDOT Responsibilities</p> <p>NCDOT's ETC Services, to be performed through NCTA, will include:</p> <ul style="list-style-type: none"> (a) administering the statewide "NC Quick Pass" program; (b) maintaining a plate type code table for billing purposes; (c) procuring and distributing transponders; and (d) operating a central clearing house (CCH) and customer service center system (CSC), call center and User self-service website and voice response phone system; <p>Transaction Fees to NCTA/NCDOT</p> <p>NCTA/NCDOT will be entitled to a transaction fee for each transaction it processes, paid out of the toll collected from Users. Such transaction fee will be subject to escalation.</p> <p>NCDOT Performance</p> <p>Subject to certain excused events, the Agreement will include KPIs and noncompliance points/payments for NCDOT's performance of its obligations.</p> <p>Sustained poor performance above a certain threshold of noncompliance points will entitle Developer to additional remedies to be specified in the Agreement.</p> <p>NCDOT Failure to Pay</p> <p>Subject to certain excused events, if NCDOT fails to make a Toll Payment, Developer will be entitled to terminate the Agreement.</p>
7.	<p>User Classifications</p>

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	and Exempt Vehicles	<p>The Agreement will include user classifications ranging from motorcycles up to FHWA Class 10.</p> <p>Exempt Vehicles</p> <p>Exempt vehicles will be entitled to a 100% discount of the applicable toll rate. Exempt vehicles will include:</p> <ul style="list-style-type: none"> (a) HOV 3+; (b) motorcycles; (c) Transit Vehicles; and (d) emergency vehicles when using the facility to perform their duties. <p><i>(See also Appendix 3 (CRTPO Priority Items) of the RFQ, Item 4 (HOV 3+), Item 5 (Large Commercial Vehicles), Item 8 (Corridor Access for Emergency Vehicles), and Item 9 (Transit Usage of Express Lanes for Free)).</i></p>
8.	Toll Rates	<i>(See Appendix 3 (CRTPO Priority Items) of the RFQ, Item 1 (Toll Rates)).</i>
9.	Discounts	<p>Developer will be permitted, at its discretion, to implement discount programs that are in addition to the toll discount program for low-income residents <i>(see Appendix 3 (CRTPO Priority Items) of the RFQ, Item 6 (Toll Discount for Low-Income Residents))</i>.</p>
10.	Other Toll Parameters	<p><u>Toll Parameters</u></p> <p>The Agreement will include toll parameters and operating requirements including:</p> <ul style="list-style-type: none"> (a) parameters for setting toll rates and discounts <i>(see <u>Item 8 (Toll Rates)</u> and <u>Item 9 (Discounts)</u>)</i>; (b) toll segments; (c) minimum operating speed and other performance standards; (d) requirements for displaying toll rates; and (e) regular reporting of tolling and performance data. <p><i>(See also Appendix 3 (CRTPO Priority Items), Item 10 (Performance Reporting) and Item 11 (Transparent Toll Rates)).</i></p>
11.	Suspension and Temporary Caps on Tolls	<p><i>(See Appendix 3 (CRTPO Priority Terms) of the RFQ, Item 12 (Toll Rates During Emergency Declarations))</i></p> <p>In addition, NCDOT may suspend tolls on the Express Lanes to use them as an alternate route to the General Purpose Lanes in</p>

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	<p>circumstances where all General Purpose Lanes are closed due to an incident.</p> <p>NCDOT will have no liability to compensate Developer for the suspension of tolls in such circumstances, provided that NCDOT lifts such order as soon as the need ends.</p>
12.	<p>Interoperability Enhancements</p> <p>Obligation to make Interoperability Enhancements</p> <p>Developer will be required to make improvement modifications to any technology used for operations, including the ITS and ETCS, in order to maintain interoperability with NCTA systems, subject to reasonable limitations.</p> <p><i>(See also Appendix 3 (CRTPO Priority Terms) of the RFQ, Item 3 (Operations Review and Amendment)).</i></p>
13.	<p>Financing</p> <p>Developer Responsibility for Financing</p> <p>Developer will be solely responsible for financing the Project at its own cost and risk, without recourse to NCDOT.</p> <p>Deadline to Achieve Financial Close</p> <p>Developer will be obliged to achieve Financial Close and execute the initial funding documents by a specified deadline ("Project Financing Deadline").</p> <p>Developer will be required to satisfy typical conditions precedent to achieve Financial Close.</p> <p>If Developer fails to achieve Financial Close by the Project Financing Deadline, NCDOT will be entitled to terminate and draw on the Financial Close Security.</p> <p>However, if the failure is due to certain conditions beyond Developer's control (e.g. the PABs issuer unreasonably refusing to issue bonds; Developer is unable to close the TIFIA financing with the Build America Bureau, despite commercially reasonable efforts by Developer etc.), the Financial Close Security will not be forfeited, and Developer will have a right to terminate.</p> <p>The Project Financing Deadline may be extended by notice from either party if due to those conditions beyond Developer's control mentioned above, or due to a Relief Event.</p> <p>Financial Risk Sharing</p> <p>NCDOT will assume the risk and benefit, within specified parameters, of fluctuations in benchmarked interest rates and credit spreads, and changes to the TIFIA term sheet assumptions and investment accounts (if any).</p>

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14.	Refinancing	<p>Refinancing Approval</p> <p>A refinancing will require NCDOT's prior approval, subject to certain standard exclusions ("Exempt Refinancings"), including:</p> <ul style="list-style-type: none"> (a) a refinancing specifically identified and taken into account in the base case financial model; (b) amendments to the funding agreements and security documents and exercise of lenders' rights in the ordinary course of day-to-day loan administration, that do not provide a financial benefit to Developer; (c) movement of money between project accounts; (d) certain standard lenders actions; or (e) periodic resetting and remarketing of bonds. <p>Refinancing Gain</p> <p>NCDOT will have the right to receive fifty percent (50%) of any refinancing gain resulting from an approved refinancing in accordance with the terms of the Agreement.</p>
15.	Public Funds Payments / Concession Payment	<p>The Agreement will include, depending on the proposal and in each case adjusted in accordance with the Agreement:</p> <ul style="list-style-type: none"> (a) a "Concession Fee" payable by Developer to NCDOT on Financial Close; OR (b) "Public Funds Payments" payable by NCDOT to Developer, invoiced monthly by the Developer in respect of completed payment activities, subject to a maximum payment curve and total aggregate maximum.
16.	Revenue Share	<p>Developer will pay NCDOT a percentage of revenue received above certain thresholds (bands). The percentage share to NCDOT will range from [band 1 (0%) to band 5 (75%)].</p> <p>The revenue floor/ceiling of each band will be set at specified levels of cumulative revenue received by Developer, based on the revenue projections from Developer's bid.</p> <p>Revenue share will be in addition to any amounts shared with NCDOT above the RST. Amounts shared to NCDOT above the RST will not be counted in cumulative revenue for the purpose of the revenue share calculation.</p> <p><i>(See also Appendix 3 (CRTPO Priority Items) of the RFQ, Item 1 (Toll Rates)).</i></p>
17.	Geotechnical Conditions	<p>Developer will have a fixed period after execution ("Geotechnical Conditions Verification Period") to conduct due diligence and site investigations.</p>

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		<p>Developer will be entitled to claim a Relief Event and a Compensation Event for impacts of the discovery of Unknown Geotechnical Conditions, subject to the following risk-sharing principles:</p> <ul style="list-style-type: none"> (a) Developer will bear the cost impacts up to \$[X]; (b) NCDOT and Developer will share the cost impacts in excess of \$[X] up to \$[Y]; and (c) NCDOT will bear the cost impacts in excess of \$[Y].
18.	Government Approvals	<p>Responsibility for Obtaining Governmental Approvals</p> <p>NCDOT is responsible for obtaining, at its cost ("NCDOT Provided Approvals") (i) the NEPA approval for the original base design; and (ii) the USACE Section 404 Clean Water Act Permit and the Section 401 Clean Water Act Permit.</p> <p>Developer is responsible for obtaining and will bear the risk of delay and increased costs associated with obtaining and complying with:</p> <ul style="list-style-type: none"> (a) all governmental approvals required for the Project (except for NCDOT Provided Approvals), including modifications or renewals; and (b) any modifications or renewals required to the NCDOT Provided Approvals as a result of changes made by Developer to the design used to obtain the NCDOT Provided Approvals (including due to alternative technical concepts). <p>However, Developer may claim a Relief Event and a Compensation Event in certain circumstances (<u>see Item 48 (Relief Events)</u> and <u>Item 50 (Compensation Events)</u>).</p> <p>Alternative Technical Concepts</p> <p>The Agreement will include a risk-sharing mechanism relating to NEPA approval of certain alternative technical concepts that have been accepted by NCDOT (such acceptance to include an assessment of anticipated changes in environmental impacts arising from the alternative technical concept). In the event that NCDOT has accepted Developer's alternative technical concept and related preliminary environmental analysis and FHWA subsequently does not approve a NEPA re-evaluation, Developer will have the right to claim a Relief Event and Compensation Event (up to a specified cap) (<u>see Item 48 (Relief Events)</u> and <u>Item 50 (Compensation Events)</u>).</p>
19.	Submittals Procedure	<p>NCDOT will have the right to review and comment on, reject, or approve, as applicable, each Submittal within specified timeframes. Developer will be required to coordinate the submission of Submittals to NCDOT to ensure an efficient review process. NCDOT</p>

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	<p>will undertake concurrent reviews up to a set cap on the total number of Submittals, before NCDOT's timeframe for review is extended. The Agreement will specify the required Submittals and corresponding NCDOT review process.</p> <p>Developer will be entitled to claim a Relief Event and Compensation Event in certain circumstances if NCDOT does not respond to specified Submittals within the required timeframe (see <u>Item 48 (Relief Events)</u> and <u>Item 50 (Compensation Events)</u>).</p>
20.	<p>Right of Way (ROW)</p> <p>Right of Way</p> <p>The right of way for the Project will comprise the following separate categories:</p> <ul style="list-style-type: none"> • "Existing Right of Way": right of way required for the Project in the NEPA basic design in which NCDOT has an existing property right as of the Effective Date. This right of way will be identified in an Exhibit to the Agreement. • "Proposed Right of Way": right of way that is required for the Project as proposed by NCDOT based on the base NEPA basic design. This right of way will be identified in an Exhibit to the Agreement. • "Additional Right of Way": right of way that is required for the Project as a result of an ATC, or Developer Change. • "Temporary Interests": temporary property interests acquired by Developer for temporary works. <p>Acquisition of Proposed Right of Way</p> <p>NCDOT will be responsible for the risk and cost of acquiring Proposed Right of Way. NCDOT will commit to acquiring and handing over the Right of Way to Developer by a specified date, to be set out in the Agreement. If NCDOT fails to acquire and handover the Proposed Right of Way, Developer will have the right to claim a Relief Event and a Compensation Event (see <u>Item 48 (Relief Events)</u> and <u>Item 50 (Compensation Events)</u>).</p> <p>Acquisition of Additional Right of Way and Temporary Interests</p> <p>Developer will be responsible for the risk and cost of acquiring Additional Right of Way and Temporary Interests. Developer may request that NCDOT exercise its condemnation powers to acquire Additional Right of Way, provided that Developer has demonstrated due diligence in its effort to acquire the property.</p>
21.	<p>Utilities</p> <p>NCDOT Responsibilities</p> <p>NCDOT will assemble and make available, as Reference Information Documents, the available utility location data, utility</p>

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	<p>design and construction standards, known betterment requests and lead times for relocation processes.</p> <p>Developer Responsibilities</p> <p>Subject to the provisions of the Agreement, Developer will perform all activities necessary for the Utility Adjustments to accommodate the construction, operation, and maintenance of the Project. Utility owners may elect to self-perform Utility Adjustment design and construction.</p> <p>Utility Agreements</p> <p>Template Utility Agreements will be included within the Agreement addressing, among other things, design, construction, and inspection responsibilities for Utility Adjustments.</p> <p>Betterments</p> <p>Developer will be responsible for responding to any requests by Utility owners that Developer design and/or construct a Betterment. If a Betterment request is accepted by Developer, Developer will be responsible for negotiating and agreeing to the Betterment request (including costs) directly with the owner of the relevant Utility.</p> <p>Utility Coordination</p> <p>Developer will use diligent efforts to obtain the cooperation of each Utility owner as necessary for the Utility Adjustments to be performed. Should specific conditions be met, Developer may request NCDOT assistance in facilitating Utility cooperation. Subject to the provisions of the Agreement, Developer will be entitled to make a Compensation Event claim with respect to a Utility owner's failure to cooperate in accordance with <u>Item 50 (Compensation Events)</u>.</p>
22.	<p>Railroads</p> <p>NCDOT will assemble, and make part of the Agreement, railroad design and construction standards, railroad adjustment design and construction responsibilities and lead times for railroad adjustment processes.</p> <p>Railroad Agreements</p> <p>NCDOT intends to negotiate construction agreements with NS and CSX in coordination with the Developer. Developer will be responsible for adhering to the construction agreements between NCDOT and the railroads.</p> <p>Developer Responsibilities</p>

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	<p>Developer will be responsible for managing, designing, and constructing CSX and NS railroad adjustments necessary to accommodate the construction, operation, and maintenance of the Project. CSX and NS may elect to self-perform certain aspects of the railroad adjustment work.</p> <p>Railroad Coordination</p> <p>Developer will use diligent efforts to obtain the cooperation of NS and CSX as necessary for the Work. Should specific conditions be met, Developer may request NCDOT assistance in facilitating railroad cooperation. Subject to the provisions of the Agreement, should the railroads fail to comply with conditions within the construction agreements, Developer will be entitled to make a Compensation Event claim in accordance with <u>Item 50 (Compensation Events)</u>.</p>
23.	<p>Hazardous Materials</p> <p>The Agreement will include the following categories of Hazardous Materials:</p> <ul style="list-style-type: none"> (a) "Known Pre-Existing Hazardous Materials": means Hazardous Materials existing in/on the Existing Right of Way or Proposed Right of Way, that were known or could reasonably have been discovered prior to bid. (b) "Unknown Pre-Existing Hazardous Materials": means Hazardous Materials existing in/on the Existing Right of Way or Proposed Right of Way, that were not known and could not reasonably have been discovered prior to bid. (c) "Developer Released Hazardous Materials": means Hazardous Materials released by, or attributable to, Developer or a Developer-related party. (d) "NCDOT Released Hazardous Materials": means Hazardous Materials released by, or attributable to, NCDOT or an NCDOT-related party. (e) "Third Party Released Hazardous Materials": means Hazardous Materials released by, or attributable to, any third party that is not NCDOT or a NCDOT-related party, Developer or a Developer-related party. <p>Developer Obligation to Manage</p> <p>Developer will be required to manage and, if necessary, remediate or dispose of all Hazardous Materials on the Project site during the Term.</p> <p>Developer will bear all costs of Hazardous Materials management, subject to the right to claim a Relief Event and Compensation Event, for Unknown Pre-Existing Hazardous Materials, Third Party</p>

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	<p>Released Hazardous Materials and NCDOT Released Hazardous Materials (<i>see Item 48 (Relief Events) and Item 50 (Compensation Events)</i>).</p> <p>NCDOT Step-In</p> <p>If, within a reasonable time, Developer has not taken steps to manage any Hazardous Materials following discovery or a spill, and NCDOT reasonably believes the situation is an emergency, NCDOT may step-in and perform Hazardous Materials management.</p> <p>Developer will be required to reimburse NCDOT for reasonable costs incurred in performing such Hazardous Materials management, unless Developer has a right to claim a Compensation Event in respect of the Hazardous Materials type (<i>see Item 50 (Compensation Events)</i>).</p> <p>Relief Events and Compensation Events</p> <p>Developer will have a right to claim a Relief Event and Compensation Event in the event of the discovery of Unknown Pre-Existing Hazardous Materials, or in the event of a release of NCDOT Released Hazardous Materials and Third Party Released Hazardous Materials, subject to certain conditions (<i>see Item 50 (Compensation Events)</i>).</p>
24.	<p>Design and Construction</p> <p>Developer will be responsible for performing the D&C Work.</p> <p>Developer will be required to design and construct the Project in accordance with:</p> <ul style="list-style-type: none"> (a) good industry practice; (b) the Agreement (including the Technical Provisions and Technical Standards and Specifications); (c) the Project schedule; (d) its approved Developer Management Plan and other design and construction plans and submittals; and (e) all laws, governmental approvals, and all other applicable safety and environmental requirements.
25.	<p>Notices to Proceed</p> <p>Conditions to NTP1</p> <p>NCDOT will issue the first notice to proceed ("NTP1"), following satisfaction of certain conditions, including:</p> <ul style="list-style-type: none"> (a) submission and approval of Developer's NTP1 schedule of values; (b) submission and approval of Design Work elements of Developer's management plan; (c) submission and approval of the conceptual traffic management plan;

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	<ul style="list-style-type: none"> (d) approval of the baseline schedule; (e) receipt of satisfactory payment and performance bonds to secure the NTP1 Work; (f) evidence that the design-build contractor has obtained all required licenses; and (g) receipt of evidence that all insurance policies required for Design Work have been put in place. <p>NTP1 Work and Payments</p> <p>Upon issuance of NTP1, Developer will be permitted to perform certain preconstruction activities, including the advancement of project plans, site investigations, Design Work, and other non-permanent work (the "NTP1 Work").</p> <p>Developer will have the right to request payments ("NTP1 Payments") in respect of completed NTP1 Work, provided that the aggregate NTP1 Payments prior to the Financial Closing Date will not exceed a specified capped amount ("NTP1 Payments Cap"), and such payments reduce any public funds paid after the Financial Closing Date.</p> <p>Conditions to NTP2</p> <p>NCDOT will issue the second notice to proceed ("NTP2"), following satisfaction of certain conditions, including:</p> <ul style="list-style-type: none"> (a) completion by Developer and approval by NCDOT of certain NTP1 Work required before construction (such as approval of Developer Management Plan, the Project baseline schedule, the schedule of values etc.); (b) receipt of the required construction payment and performance security; (c) receipt of evidence of all required insurance policies for construction and O&M During Construction; (d) all necessary government approvals have been obtained; (e) Developer has satisfied any pre-construction requirements on it under NEPA or any other government approval; (f) all required plans and submittals in respect of construction and O&M During Construction have been submitted by Developer and approved by NCDOT; (g) Developer has provided evidence of certifications and appropriate training for O&M personnel to commence O&M During Construction; (h) Developer personnel have completed hazardous materials management training to NCDOT's satisfaction; and

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		<p>(i) the occurrence of Financial Close.</p> <p>NTP2 Work</p> <p>Upon issuance of NTP2, Developer will be authorized to commence all Work and activities pertaining to the Project.</p>
26.	Materials Indexation Adjustment	<p>The Agreement will set forth a mechanism to provide for indexation adjustments for specified costs during performance of the D&C Work including in respect of liquid asphalt, steel, and fuel.</p>
27.	Services Commencement, Final Acceptance, and Early Openings	<p>Services Commencement</p> <p>NCDOT will certify Services Commencement on satisfaction of certain conditions, including:</p> <ul style="list-style-type: none"> (a) completion of the D&C Work; (b) all submittals and plans required for the operating period have been submitted and approved; (c) all required insurance for the operating period, and the operating period payment and performance security, are in place; and (d) completion of other activities required for the commencement of tolling and other operations, <p>subject only to punch list items, which are items that do not affect the ability to safely open for normal use and tolling operations.</p> <p>Final Acceptance</p> <p>NCDOT will be required to certify Final Acceptance on satisfaction of certain conditions, including:</p> <ul style="list-style-type: none"> (i) completion of all punch list items and any other remaining D&C Work; (ii) approval of the as-built schedule; and (iii) Developer has paid any liquidated damages in full. <p>If Developer fails to achieve Final Acceptance by the specified deadline, then it will pay liquidated damages to NCDOT.</p>
28.	Nonconforming Work	<p>If the Work does not conform to the requirements of the Agreement, Developer will be obligated to repair such nonconforming Work; provided that:</p> <ul style="list-style-type: none"> (a) for elements that Developer will continue to maintain, Developer may request that Work is accepted as-is by NCDOT, but remain responsible for the asset meeting performance requirements under the Agreement; and (b) for elements that will be transferred to NCDOT, Developer may request that Work is accepted as-is, and NCDOT may invoice Developer for its reasonable costs incurred.

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29.	<p>Post-Construction Warranty for Certain Work</p> <p>Developer will give a 12 month warranty for defects following Final Acceptance, for any portion of the Work that is turned over to NCDOT or third parties upon Final Acceptance.</p> <p>If equipment or material carry a manufacturer's guarantee in excess of this 12 month period, NCDOT will be afforded the same warranty as provided by the manufacturer.</p>
30.	<p>Operations and Maintenance - Scope</p> <p>O&M Work During Construction</p> <p>During the D&C period, Developer will assume responsibility for all O&M Work (including existing assets) from NTP2.</p> <p>O&M Work After Construction - NCDOT Scope</p> <p>Upon Services Commencement, NCDOT will resume responsibility for the following operations and maintenance work:</p> <ul style="list-style-type: none"> (i) operations and maintenance work (including renewal work) on the "NCDOT Retained Elements" (to be specified in the Agreement, including for example specified pre-existing bridges, and bridges/roads carrying non-freeway traffic over the Express Lanes); (ii) renewal work on the GP Lane pavement (but not operations and routine preventative maintenance); and (iii) winter maintenance on both the GP Lanes and Express Lanes (e.g., snow and ice removal). <p>O&M Work After Construction – Developer Scope</p> <p>Upon Services Commencement and through the end of the Term, Developer will be responsible for all other O&M Work on the Project that is not the responsibility of NCDOT as set out in (i) – (iii) above.</p> <p>As part of Developer's base scope, Developer will be responsible for the following operation and maintenance activities (the "Annual O&M Payment Scope"): </p> <ul style="list-style-type: none"> (a) operations and routine preventative maintenance on the GP Lanes; (b) Hazardous Materials management; and (c) landscaping, signage maintenance, street cleaning, and litter removal. <p>NCDOT will make an annual payment to Developer to perform the Annual O&M Payment Scope; provided that beginning 5 years after Service Commencement, NCDOT will have the right, in it's sole discretion, to terminate Developer's performance of the Annual O&M Payment Scope. Upon exercising its right to terminate, Developer will not be entitled to receive any further payment for the Annual</p>

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		O&M Payment Scope and NCDOT will assume responsibility for the work in (a) – (c) above.
31.	Operations and Maintenance – General Requirements	<p>General Developer Obligations</p> <p>The O&M Work will be performed by Developer in accordance with:</p> <ul style="list-style-type: none"> (a) good industry practice; (b) the Agreement (including the Technical Requirements and Technical Standards and Specifications); (c) its approved Developer Management Plan and other operations and maintenance plans and submittals; and (d) all laws, governmental approvals, and all other applicable safety and environmental requirements.
32.	ETCS	<p>Developer ETCS</p> <p>From Services Commencement, Developer will be responsible for providing an electronic toll collection system (ETCS).</p> <p>Interoperability Requirements</p> <p>The ETCS will be required to meet all NCDOT interoperability and compatibility standards, including for any clearinghouse system NCDOT participates in (<i>see also Item 12 (Interoperability Enhancements)</i>). If NCDOT is party to any interoperability agreement with another public agency or private party operating another tolled highway facility, Developer will be required to ensure interoperability of its ETCS with the system and protocols of such facility, provided these are common or substantially similar to NCDOTs. NCDOT will promptly provide copies of such agreements and seek Developer's comments regarding any changes.</p>
33.	User Privacy	<p>Developer will be required to protect User's confidential identifying information (e.g., names, addresses, numbers, payment information, passwords) by implementing physical, electronic, and managerial safeguards in accordance with the Agreement and applicable law.</p> <p>Developer may not use User's identifying confidential information for any purpose other than performance of the agreement.</p>

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34.	Policing, Security Incident Response and	<p>Police Services</p> <p>NCDOT will request that state highway patrol provide services equivalent to those it provides on comparable highways.</p> <p>Developer will be required to permit state highway patrol to access the Project to provide such services.</p> <p>NCDOT will have no liability for the failure of state highway patrol to provide such services, or its negligence or misconduct in providing such services.</p> <p>Security and Incident Response</p> <p>Developer will be responsible for:</p> <ul style="list-style-type: none"> (a) ensuring the safety and security of any portion of the Project under its control (and the workers and the public on the Project); (b) complying with all applicable law, safety and security provisions in the Agreement and Technical Provisions; and (c) implementing appropriate incident response protocols.
35.	Suspension of Work	<p>NCDOT will have the right to suspend work on the Project at any time, in its sole discretion, by written order that includes NCDOT's reasons for the required suspension.</p> <p>Such suspension will constitute a Relief Event and Compensation Event, subject to customary exceptions (such as where suspension is required due to Developer's failure to comply with law or safety standards, or Developer's failure to provide proof of insurance).</p>
36.	Handback	<p>Handback Requirements</p> <p>Upon expiration of the term or early termination Developer will hand back the Project to NCDOT, at no charge to NCDOT and in accordance with handback requirements to be specified in the Agreement.</p> <p>Handback Reserve</p> <p>From the 5th year before the end of the Term, Developer will be required to fund a handback reserve account to fund the cost of renewal work required to meet the specified handback requirements.</p> <p>Developer will be permitted to provide a letter of credit in lieu of funding the reserve account.</p>
37.	Construction Quality	<p>Quality Management</p> <p>Developer will be responsible for managing quality control and quality assurance for the Project. Developer will ensure that the Work is carried out on-time and in accordance with the terms of the</p>

#	Key Term
	<p>Agreement (including technical requirements) and Developer's accepted quality management plans.</p> <p>Owner Verification</p> <p>NCDOT, or a consultant engaged by NCDOT, will provide oversight of the Work performed by Developer to verify compliance with the terms of the Agreement and Developer's quality management plans.</p>
38.	<p>Oversight and Testing</p> <p>Oversight by NCDOT</p> <p>NCDOT and its authorized representatives will have the right to monitor and conduct tests and investigations, and engage in any other form of oversight to ensure compliance with FHWA and other agency requirements and the Agreement.</p> <p>NCDOT will conduct such activities in a manner that does not unreasonably interfere with normal construction or operation of the Project.</p> <p>Cooperation</p> <p>Developer will cooperate and coordinate with NCDOT's oversight activities.</p> <p>Testing and Test Results</p> <p>NCDOT will have the right to attend and witness any tests and verifications pursuant to the Technical Provisions and Developer Management Plan. Developer will provide results and reports to NCDOT following its own receipt of such results.</p>
39.	<p>Contractors</p> <p>Responsibility for Work</p> <p>Developer may engage contractors to perform the Work; however, Developer remains responsible for the Work under the Agreement.</p> <p>Change in Key Contractors</p> <p>Developer must use the firms named in the Proposal and Developer Management Plan to perform the corresponding Key Contractor roles.</p> <p>Developer will be prohibited from terminating or materially amending a Key Contract or substituting a Key Contractor without NCDOT's approval (in its reasonable discretion).</p> <p>Key Contract Provisions</p> <p>Developer will ensure that each Key Contract contains mandatory provisions specified in the Agreement.</p> <p>Additional Requirements for Design-Build and O&M Contracts</p> <p>Developer must submit any Key Contract for the D&C Work or the O&M Work for NCDOT review and approval prior to signing. NCDOT may disapprove only if the contract:</p> <p>(a) does not comply with any requirements of the Agreement;</p>

#	Key Term	
		(b) increases NCDOT's liability; or adversely affects NCDOT's step-in rights.
40.	Key Personnel	<p>Developer will be required to utilize the individuals specified in the Proposal ("Key Personnel") to fill the Key Personnel roles.</p> <p>Developer will not be permitted to change any Key Personnel except:</p> <ul style="list-style-type: none"> (a) due to retirement, death, disability, incapacity, voluntary or involuntary termination; or (b) as otherwise approved by NCDOT. <p>NCDOT will have the right to review and approve the qualifications of any proposed replacement of a Key Personnel. NCDOT will not unreasonably withhold its approval, provided that the replacement meets or exceeds the minimum qualifications for the Key Personnel position as specified in the Agreement.</p>
41.	Labor Standards and Prevailing Wage Requirements	<p>Developer will be required to comply, and require its contractors comply, with all applicable labor and occupational health and safety law and standards, and all applicable wages and employment law, including federal prevailing wage requirements.</p> <p>Developer will be required to ensure that any person performing Work has requisite, skill, experience, and licensing, and may request removal of a person who is not performing the Work in a proper, safe and skillful manner.</p>
42.	Ethical Standards	<p>Developer will be required to adopt an ethical standards policy for itself and Developer-related entities in dealing with: (a) NCDOT; and (b) employment relations.</p> <p>The policy will include standards regarding restrictions on gifts and lobbying to NCDOT employees, protection from unethical employment practices, and restrictions on conflicts of interest.</p> <p>The agreement will include certain restrictions around the engagement of former NCDOT employees on the Project.</p>
43.	Non-Discrimination; EEO	Developer will be required to comply with, and will cause each contractor to comply with, all federal and State non-discrimination and equal opportunity employment requirements.
44.	Disadvantaged Business Enterprises	<i>(See Appendix 3 (CRTPO Priority Items) of the RFQ, Item 15 (DBE Outreach))</i>
45.	Prompt Payment	Developer will be required to comply with, and cause its contractors to comply with the North Carolina Prompt Payment Act, North Carolina General Statutes § 143-134.1.

#	Key Term	
46.	Adjoining Projects	NCDOT will include provisions in the Agreement requiring Developer to coordinate with any adjoining developers and/or adjoining projects. Such coordination will be intended to ensure compatibility of design, construction, operations, and maintenance activities across projects. The specific requirements and mechanisms for such coordination will be further defined in the Agreement.
47.	Reserved Rights: Airspace and Business Opportunities	<p>Developer's rights and interests in the Project will not include the Airspace or any improvements and personal property above, on, or below the surface of the Project right of way which are not necessary or required for the Project.</p> <p>Developer's rights and interests in the Project will be limited to (a) use, enjoyment and operation of the Project; and (b) collection, use and enjoyment of toll revenue. NCDOT reserves the right to pursue all other commercial or business activities ancillary to the Project.</p> <p>Developer may claim a Relief Event and Compensation Event if the pursuit of a business opportunity in the Airspace by NCDOT prevents Developer from performing its obligations under the Agreement or adversely affects its costs or toll revenues.</p>
48.	Relief Events	<p>The Agreement will include typical Relief Events in line with recent market precedent, such as:</p> <ul style="list-style-type: none"> (a) Compensation Events; (b) change in law that is not a qualifying change in law; and (c) force majeure (including pandemic events, extreme weather events, riots and civil unrest, and national or State-wide strikes). <p>Certain Relief Events may be subject to thresholds or other conditions to be set out in the Agreement.</p>
49.	Relief Extension Term and of	<p>Grant of Relief</p> <p>Developer will be required to give timely notice if a Relief Event occurs.</p> <p>If it is determined that a Relief Event has occurred, Developer's relief will be:</p> <ul style="list-style-type: none"> (a) relief from performance; (b) noncompliance points and liquidated damages due directly to the Relief Event will not be assessed; and (c) extension to schedule deadlines based on delay to the critical path attributable to the Relief Event.
50.	Compensation Events	The Agreement will include typical Compensation Events in line with recent market precedent, such as:

#	Key Term	
		<ul style="list-style-type: none"> (a) NCDOT material breach, violation of applicable law; (b) suspension of tolls (<u>Item 11</u>), suspension of work (<u>Item 35</u>) (except as contemplated in the Agreement); (c) permit related events (such as failure to provide NCDOT Provided Approvals, withdrawal of a design exception, failure to obtain a NEPA re-evaluation for covered ATCs (<u>Item 18</u>), delay in obtaining other specified government approvals etc.); (d) discovery of specified site condition issues (such as error in NCDOT boring data, discovery of Unknown Geotechnical Conditions (<u>Item 17</u>), Pre-Existing Hazardous Materials (<u>Item 23</u>), or unknown archaeological items / endangered species); (e) Third Party Released Hazardous Materials, NCDOT Released Hazardous Materials (<u>Item 23</u>); (f) NCDOT failure to respond to specified Submittals within the required time (<u>Item 19</u>); (g) Right of way issues (NCDOT failure to grant access to Existing Right of Way/Proposed Right of Way by specified date(s), unknown title restrictions) (<u>Item 20</u>); (h) NCDOT development in the Airspace of a business opportunity (<u>Item 47</u>) or a Competing Facility (<u>Item 52</u>); (i) issuance of a Directive Letter (<u>Item 55</u>); (j) damage or interruption to the Work by NCDOT/ NCDOT-related entity performing works on the Project right of way, other than as contemplated in the Agreement; (k) failure to coordinate by a Utility or Railroad in accordance with the procedure set out in the Agreement; (l) qualifying change in law; and (m) injunction. <p>Certain Compensation Events may be subject to <i>de minimis</i> thresholds, deductibles or other conditions to be set out in the Agreement.</p>
51.	Compensation	<p>Compensation</p> <p>Developer will be required to give timely notice to NCDOT of the occurrence of a Compensation Event.</p> <p>If it is determined that a Compensation Event has occurred, Developer's compensation ("Compensation Amount") will be calculated based on:</p> <ul style="list-style-type: none"> (a) the cost impacts attributable to the Compensation Event; and

#	Key Term	
		(b) the impact on toll revenues attributable to the Compensation Event, subject to the calculation parameters set out in the Agreement.
52.	Competing Facilities	<p><i>(See also Appendix 3 (CRTPO Priority Items) of the RFQ, Item 12 (Capacity Expansions))</i></p> <p>NCDOT will have the unfettered right to finance, develop, expand, improve, modify, and replace any new or existing facilities notwithstanding the impact on Developer's toll revenues.</p> <p>However, Developer will have a right to claim compensation for loss of revenue due to a Competing Facility.</p> <p>A "Competing Facility" means any limited access main lane of a highway that did not exist prior to the Effective Date, which NCDOT, or an entity on NCDOT's behalf, builds within the Airspace and opens to traffic during the Term, excluding:</p> <ul style="list-style-type: none"> (a) Express Lanes and General Purpose Lanes that are within the Project scope of Work; (b) a Capacity Expansion delivered in accordance with the Agreement <i>(See Appendix 3 (CRTPO Priority Items) of the RFQ, Item 12 (Capacity Expansions))</i>; (c) work on highway facilities required for safety, maintenance, or operational purposes (excluding building a limited access main line); (d) improvements on an existing highway through technological enhancements or improvement to frontage roads/intersections/cross-streets/restriping; (e) ramp to ramp lanes less than a specified length; (f) transportation facilities other than a newly constructed highway mainline (e.g. rail); (g) specifically contemplated interchange projects; and (h) projects contemplated in specified State transportation plans as of the Effective Date.
53.	NCDOT Changes	<p>The Agreement will include a mechanism for NCDOT to initiate a change in the Work ("NCDOT Change"), by issuing a request to Developer.</p> <p>Developer will be obliged to respond to the request with its assessment of certain impacts of the NCDOT Change, including cost, revenue and schedule impacts. The Agreement will include parameters for assessing such impacts based on those used to determine Relief Event and Compensation Event impacts, to ensure transparency.</p>

#	Key Term	
		<p>The Parties will then negotiate in good faith to agree the terms and conditions to implement the NCDOT Change.</p> <p>If NCDOT and Developer are unable to mutually agree, NCDOT will be permitted to issue a Directive Letter (see <u>Item 55 (Directive Letters)</u>).</p>
54.	Developer Changes	<p>Developer Change</p> <p>The Agreement will include a mechanism for Developer to request a change in the Work ("Developer Change"), by issuing a request to NCDOT.</p> <p>The request must include Developer's assessment of the cost, revenue and schedule impacts of the change, based on the same parameters used for responding to an NCDOT Change.</p> <p>NCDOT may accept or reject the request in its sole discretion.</p>
55.	Directive Letters	<p>Directive Letter for Change in the Work</p> <p>NCDOT may issue a Directive Letter:</p> <ul style="list-style-type: none"> (a) to immediately direct a change in the Work, without having first initiated an NCDOT Change; or (b) if NCDOT has initiated an NCDOT Change and the parties cannot mutually agree a Change Order under <u>Item 53 (NCDOT Changes)</u>, <p>and Developer will be permitted to claim a Relief Event and Compensation Event.</p> <p>NCDOT will make interim payments to Developer for performing the Directive Letter work until compensation is resolved.</p> <p>Directive Letter for Disputed Work</p> <p>NCDOT may issue a Directive Letter in the event of a dispute, to direct performance of work that NCDOT asserts is within the original scope of Work or is necessary to comply with the requirements of the Agreement.</p> <p>If it is determined that the Directive Letter constitutes a change to the original requirements of the Agreement, Developer will be permitted to claim a Relief Event and Compensation Event.</p>
56.	Insurance	<p>Developer will provide and maintain, or cause to be provided and maintained, the required insurance coverages specified in the Agreement, which will be typical for a project of this type.</p> <p>Insurance Unavailability</p> <p>An insurance policy will be "unavailable" if it becomes:</p> <ul style="list-style-type: none"> (a) completely unavailable from eligible insurers; or

#	Key Term	
		<p>(b) unavailable at commercially reasonable rates from eligible insurers.</p> <p>Consequences of Insurance Unavailability</p> <p>If a required insurance policy becomes unavailable NCDOT may elect to:</p> <ul style="list-style-type: none"> (i) assume 100% of the premium above the commercially reasonable rates (if the insurance is available, per (b); (ii) terminate the Agreement and pay the applicable termination payment; (iii) itself assume the risk of loss previously covered by the insurance policy; or (iv) not assume the risk and notify Developer that it may proceed with the Agreement without such insurance. <p>If NCDOT does not assume the risk and asks Developer to continue without the insurance per (iv), Developer may respond by electing to:</p> <ul style="list-style-type: none"> (A) terminate the Agreement and receive the applicable termination payment; or (B) continue with the Agreement and assume the uninsured risk.
57.	Performance Security	<p>As a condition to NTP1, Developer will be required to provide, or cause the D&C contractors to provide, payment and performance security to secure the NTP1 Work.</p> <p>As a condition to NTP2, Developer will be required to provide, or cause the D&C contractors to provide:</p> <ul style="list-style-type: none"> (a) performance security for 30% of the design-build contract price; and (b) payment security for 30% of the design-build contract price. <p>Security must be in the form(s) prescribed in the Agreement and from an eligible security issuer.</p>
58.	Indemnity	<p>The Agreement will include customary defense and indemnity obligations on Developer, including an obligation to defend, indemnify and hold harmless NCDOT and certain related entities/persons against any and all claims, demands and losses, including third party claims and losses, arising out of, among other things:</p> <ul style="list-style-type: none"> (a) breach or alleged breach of the Agreement by Developer; and (b) negligence, recklessness, willful misconduct, bad faith or fraud, breach of applicable law or contract, or any other

#	Key Term	
		culpable act of any Developer-related entity associated with performance of the Work.
59.	Developer Default	<p>The Agreement will include typical events of "Developer Default" in line with recent market precedent, such as:</p> <ul style="list-style-type: none"> (a) Developer abandons the Project; (b) Developer fails to achieve Financial Close by the deadline; (c) Developer fails to achieve Services Commencement by the deadline; (d) Developer fails to make any undisputed payment to NCDOT, or fund any reserve, when due under the Agreement; (e) Developer or a Developer-related entity uses the Project or Airspace in violation of the Agreement, governmental approvals or law; (f) termination of D&C contract or O&M contract (without approved replacement); (g) assessed noncompliance points reach a specified threshold in a specified period; (h) any representation or warranty made by, or report, certificate or document deliver by, Developer is false or misleading in a material respect; (i) Developer fails to obtain and maintain required insurance or security; (j) a prohibited change in ownership or control occurs; (k) Developer purports to assign its rights in violation of the Agreement; (l) suspension or debarment of Developer, affiliates and Key Contractors; (m) Developer insolvency or bankruptcy; (n) D&C contractor or O&M contractor insolvency or bankruptcy (without an approved replacement); (o) persistent breach; (p) any other Developer material breach under the Agreement not otherwise specified above. <p>Certain Developer Defaults will have cure periods specified in the Agreement</p> <p>NCDOT Remedies for Developer Default</p> <p>If a Developer Default is not cured within the required cure period, (if any) or following implementation of a remedial plan (if any), NCDOT may terminate.</p>

#	Key Term	
60.	NCDOT Default	<p>The Agreement will include typical events of "NCDOT Default" in line with recent market precedent, such as:</p> <ul style="list-style-type: none"> (a) NCDOT fails to make any undisputed payment to Developer (including failure to pay the Toll Payment); (b) any representation or warranty made by NCDOT is false or misleading in a material respect; (c) NCDOT confiscates or appropriates all or a material part of Developer's interest in and under the Agreement; and (d) NCDOT fails to perform under the Agreement, which renders it impossible for Developer to perform or exercise its rights for a specified period. <p>Certain NCDOT Defaults will have cure periods specified in the Agreement</p> <p>Developer Remedies for NCDOT Defaults</p> <p>Developer's remedy for NCDOT Default will be a right to terminate.</p>
61.	Other Grounds for Termination after Financial Close	<p>The Agreement will also include the following grounds for termination:</p> <ul style="list-style-type: none"> (a) Termination for Convenience: NCDOT may terminate at any time for convenience. (b) Termination for Extended Force Majeure: either Party may terminate if force majeure affects the critical path (D&C period) or renders the whole or a portion of the Project inoperable, for a specified extended period of time. (c) Insurance Unavailability: NCDOT and Developer may terminate if a required insurance becomes unavailable as contemplated in <u>Item 56 (Insurance)</u>. (d) Termination by Court Ruling: a final court ruling will terminate the Agreement, if the ruling renders the Agreement void, unenforceable, or impossible to perform (in whole or in respect of a fundamental part). <p><i>(See also <u>Item 13 (Financing)</u> for termination circumstances prior to achieving Financial Close)</i></p>
62.	Compensation on Termination	<p>The compensation paid to Developer on termination will be calculated in accordance with the principles set out below (subject to other typical adjustments depending on the cause of termination, such as for account balances, insurance proceeds, outstanding amounts, demobilization costs, subcontractor breakage costs and others).</p>

#	Key Term
	<ul style="list-style-type: none"> • Termination for Convenience, NCDOT Default, Termination for Court Ruling after SC: the greater of: (a) fair market value of the Project; and (b) lenders' liabilities. • Termination for Court Ruling prior to SC: lenders liabilities; plus equity investment in the Project (including base case Equity IRR) • Termination for Extended Force Majeure or Insurance Unavailability: lenders' liabilities; plus contributed unreturned equity. • Termination for Developer Default prior to SC: the lower of: (a) D&C work value; and (b) 80% of lenders' liabilities. • Termination for Developer Default after Services Commencement: the lower of: (a) fair market value, minus NCDOT's costs to take over the Project; and (b) 80% of lenders' liabilities; or • Termination prior to achieving Financial Close: if not due to Developer Default, NCDOT will pay Developer: (a) \$[●] [Note: a fixed payment for work product]; plus (b) outstanding NTP1 Payments for NTP1 Work performed up to the NTP1 Payments Cap. if due to Developer Default, no payment to Developer (NCDOT may draw on the Financial Close Security as liquidated damages).
63.	<p>Noncompliance Events</p> <p>The Agreement will include tables identifying specific failures to achieve the performance requirements ("Noncompliance Events"), together with cure periods, intervals of recurrence, applicable noncompliance points and associated noncompliance liquidated damages.</p> <p>If the number of Noncompliance Events assessed within a defined time period exceeds specified thresholds, NCDOT will be entitled to take certain actions, which may include increased monitoring, requiring Developer to submit a remedial plan, requiring replacement of the O&M contractor, and ultimately may lead to a Developer Default.</p>

#	Key Term	
64.	Lane Closures	Developer will be liable for liquidated damages for any lane or road closure, other than in certain circumstances expressly set out in the Agreement. Such exceptions include permitted times of day for closures.
65.	Ownership and Control - Transfer Restrictions	The Agreement will include restrictions on transfer of ownership and control in Developer, including restrictions on change in ownership or control without NCDOT consent until the 2nd anniversary of Services Commencement, subject to standard exceptions.
66.	Dispute Resolution	Disputes between the Parties will be resolved through a dispute resolution procedure, including: <ul style="list-style-type: none"> (a) good faith negotiations; (b) dispute review board; (c) mediation; and (d) litigation.
67.	Exhibits	It is anticipated that the Exhibits to the Agreement will include (without limitation): <ul style="list-style-type: none"> (1) Abbreviations and Definitions (2) Developer's Proposal Commitments (3) List of Initial Funding Agreements and Security Documents (4) Toll Parameters (5) Payment Terms (6) Federal Requirements (7) Right of Way (8) Handback Requirements and Handback Reserve (9) Insurance Requirements (10) Termination Compensation (11) Electronic Toll Collection Services (12) Forms of Agreement (including, e.g., Lender's Direct Agreement, Payment and Performance Security)

APPENDIX 1 – DEFINED TERMS

"Airspace" means the Project right of way, above and below the surface, other than as needed for the Project.

"Additional Right of Way" is defined in Item 20 (Right of Way (ROW)).

"Annual O&M Payment Scope" is defined in Item 30 (Operations and Maintenance – Scope).

"Capacity Expansion" is defined in Appendix 3 (CRTPO Priority Items) of the RFQ, Item 2 (*Capacity Expansions*).

"CCH" is defined in Item 6 (Toll Collection – Electronic Toll Collection Services).

"Change Order" means an order recording the change in the Work as contemplated in Item 53 (NCDOT Changes).

"Compensation Event" is defined in Item 50 (Compensation Events).

"Competing Facility" is defined in Appendix 3 (CRTPO Priority Items) of the RFQ, Item 2 (*Capacity Expansions*).

"Concession Fee" is defined in Item 15 (Public Funds Payments / Concession Payment).

"Agreement" is defined in the preamble of these indicative terms. The Agreement will include the Technical Provisions, Technical Standards and Specifications and Proposer's commitments attached as Exhibits thereto.

"CRTPO" is defined in the preamble to these indicative terms.

"CSC" is defined in Item 6 (Toll Collection – Electronic Toll Collection Services)

"D&C Work" means the design and construction work for the Project to be performed by Developer.

"DBE" means a disadvantaged business enterprise, to be identified in accordance with federal and state law.

"DBFOM" is defined in the preamble to these indicative terms.

"Design Work" means the design work to be undertaken by Developer for the Project.

"Developer" is defined Item 1 (Parties).

"Developer Change" is defined in Item 54 (Developer Changes).

"Developer Default" is defined in Item 59 (Developer Default).

"Developer Management Plan" means Developer's approved project management plan.

"Developer Released Hazardous Materials" has the meaning given in Item 23 (Hazardous Materials).

"Directive Letter" is defined in Item 55 (Directive Letters).

"Dispute Resolution Procedures" is defined in Item 66 (Dispute Resolution).

"Effective Date" means the date the Agreement is executed and all conditions to commercial close are satisfied.

"ETCS" is defined in Item 6 (Toll Collection – Electronic Toll Collection Services).

"ETC Services" is defined in Item 6 (Toll Collection – Electronic Toll Collection Services).

"Exempt Refinancings" is defined in Item 14 (Refinancing).

"Exhibit" means the exhibits to the Agreement.

"Existing Right of Way" is defined in Item 20 (Right of Way (ROW)).

"Express Lanes" means approximately eleven (11) miles of new express lanes along I-77 from the vicinity of the South Carolina State Line to at or about I-277/NC 16 (Brookshire Freeway).

"Final Acceptance" means satisfaction, confirmed by NCDOT, of all D&C work and other specified conditions

"Financial Close" means financial close.

"Financial Close Security" means the bond or letter of credit to be provided by Developer in the form and amount to be specified, which NCDOT will be entitled to draw upon if Developer fails to reach Financial Close by the Project Financing Deadline (see Item 13 (Financing)).

"Financial Closing Date" means the date on which Financial Close occurs.

"General Purpose Lanes" or **"GP Lanes"** means lanes adjacent to the Express Lanes for through traffic available to Users without vehicle or occupancy restrictions or charge for use.

"Geotechnical Conditions Verification Period" is defined in Item 17 (Geotechnical Conditions).

"Hazardous Materials" means any substance which is regulated under environmental laws, or which may create any unsafe or hazardous condition or pose any threat to human health and safety

"High Occupancy Vehicles" or **"HOV"** means high-occupancy vehicle.

"HOV 3+" means a minimum of three occupants while using the Express Lanes.

"I-77 South Express Lanes" is defined in the preamble to these indicative terms.

"Key Contract" means specified subcontracts of Developer and any related guarantee, performance or payment security or other support.

"Key Contractor" means the contractor under any Key Contract.

"Key Personnel" is defined in Item 40 (Key Personnel).

"Known Pre-Existing Hazardous Materials" has the meaning given in Item 23 (Hazardous Materials).

"NCDOT" is defined in the preamble to these indicative terms.

"NCDOT Change" is defined in Item 53 (NCDOT Changes).

"NCDOT Default" is defined in Item 60 (NCDOT Default).

"NCDOT Released Hazardous Materials" has the meaning given in Item 23 (Hazardous Materials).

"NCDOT Retained Elements" is defined in Item 30 (Operations and Maintenance – Scope).

"NCDOT Provided Approvals" is defined in Item 18 (Governmental Approvals).

"NCTA" is defined in the preamble to these indicative terms .

"NC Quick Pass" is defined in Item 6 (Toll Collection – Electronic Toll Collection Services).

"Noncompliance Events" is defined in Item 63 (Noncompliance Events).

"NTP1" is defined in Item 25 (Notices to Proceed).

"NTP1 Payments" is defined in Item 25 (Notices to Proceed).

"NTP1 Payments Cap" is defined in Item 25 (Notices to Proceed).

"NTP1 Work" is defined in Item 25 (Notices to Proceed).

"NTP2" is defined in Item 25 (Notices to Proceed).

"O&M During Construction" means the operations and maintenance work to be performed by Developer for the Project from NTP2 until Services Commencement.

"O&M Work" means the operations and maintenance work to be performed by Developer for the Project.

"Parties" is defined in Item 1 (*Parties*).

"Project" is defined in Item 2 (*Scope of Project*).

"Project Financing Deadline" is defined in Item 13 (*Financing*).

"Proposal" means the Proposer's response to the RFP for the Project.

"Proposed Right of Way" is defined in Item 20 (*Right of Way (ROW)*).

"Proposer" means the bidder or bidding consortium that submits a response to the RFP, and which will incorporate Developer special purpose vehicle.

"Public Funds Payments" is defined in Item 15 (*Public Funds Payments / Concession Payment*).

"Railroad" means Norfolk Southern and CSX.

"Related Third Party" means certain third parties, to be specified in the Agreement, that have a interface with the Project, such as utility owners, railroads, or other such related entities.

"Relief Event" is defined in Item 48 (*Relief Events*).

"RFQ" is defined in the preamble of these indicative terms.

"RST" is defined in Appendix 3 (CRTPO Priority Items) of the RFQ, Item 1 (*Toll Rates*).

"Services Commencement" means satisfaction of all the conditions to completion of construction and commencement of operations (see Item 27 (*Services Commencement, Final Acceptance, and Early Openings*)).

"Submittal" means any document, work product or other written or electronic end product or item required under the Agreement to be delivered or submitted to NCDOT.

"State" means the state of North Carolina.

"Technical Standards and Specifications" means the standards, criteria and specifications set forth in manuals and documents to be identified in an exhibit to the Agreement.

"Technical Provisions" means the technical requirements for the Project, such as the scope of Work procedures and specifications, to be incorporated as an exhibit to the Agreement.

"Temporary Interests" is defined in Item 20 (*Right of Way (ROW)*).

"Term" is defined in Item 4 (*Term*).

"Third Party Released Hazardous Materials" has the meaning given in Item 23 (*Hazardous Materials*).

"Toll Payment" means a payment due from NCDOT to Developer in respect of a toll rate attributable to a transaction calculated in accordance with the tolling provisions of the Agreement (see Item 6 (*Toll Collection – Electronic Toll Collection Services*)).

"Transit Vehicles" is defined in Appendix 3 (CRTPO Priority Items) of the RFQ, Item 9 (Transit Usage of Express Lanes for Free).

"Unknown Geotechnical Conditions" means an actual condition discovered in the Existing Right of Way or Proposed Right of Way that was not known or could not reasonably have been discovered prior to bid.

"Unknown Pre-Existing Hazardous Materials" has the meaning given in Item 23 (Hazardous Materials).

"Users" means the registered owner of, or person responsible under North Carolina law for payment of a toll for, a motor vehicle traveling on the Express Lanes.

"Utility" means a line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, data or other telecommunications, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water not connected with the highway drainage and similar systems that directly or indirectly serve the public.

"Utility Adjustment" means the relocation, abandonment, protection in place, removal, replacement, and/or modification of existing Utilities necessary to accommodate construction, operation, maintenance and/or use of the Project.

"Work" means all work to be performed by Developer for the Project.