

Development Framework
395 Project in Northern Virginia

Background

In 2012, the Virginia Department of Transportation (the “**Department**”) and 95 Express Lanes LLC (“**95 Express**”) (collectively the “**Parties**”) entered into a Comprehensive Agreement (the “**I-95 Comprehensive Agreement**”) for the development of the 95 Express Lanes.

The I-95 Comprehensive Agreement contemplates the potential future development of the Northern HOT Lanes along the I-395 corridor (the “**395 Project**”). The Department has expressed an interest in pursuing the 395 Project at this time and has had preliminary discussions with 95 Express with regard to the 395 Project.

This development framework agreement is intended to outline the Parties shared understanding of 95 Express and the Department’s initial roles and responsibilities in connection with development of the 395 Project. The Parties agree that the intent of this Development Framework is to advance the 395 Project as a Concessionaire Project Enhancement under the structure of Section 12.06(a) of the I-95 Comprehensive Agreement.

Any terms not defined herein will have the same meaning as in the I-95 Comprehensive Agreement.

Scope of the 395 Project

The 395 Project would expand the two (2) existing HOV lanes to three (3) HOT Lanes along the I-395 corridor for approximately eight (8) miles from Turkeycock Run near Duke Street to the vicinity of Eads Street near the Pentagon. The 395 Project would pass through the City of Alexandria as well as Arlington and Fairfax Counties and would connect to the 95 Express Lanes.

Subject to the 395 Project satisfying parent-company investment criteria and the Department’s approval, 95 Express would commit to design, build, finance, operate, and maintain the currently contemplated scope of the 395 Project (the “**Project Cost**”). Final funding of the Project Cost would be subject to 95 Express parent-company Board and lender approval.

The Parties agree that the scope of the 395 Project would include the following:

- Rehabilitation of two existing HOV travel lanes and construction of one additional HOV travel lane;
- Installation of a Tolling and Traffic Management System to enable active traffic management and dynamic tolling;
- Installation of directional, regulatory and dynamic messaging signs;
- Construction of soundwalls consistent with minimum Federal and State requirements; and
- Construction of an improved connection to the 395 Project at Eads Street.

All existing HOV ramps along I-395 would be converted to HOT ramps, with the exception of the south-facing bus/HOV ramp at Seminary Road.

Exclusions

The Parties agree that the scope of the 395 Project would not include the following:

- Construction of additional entrance/exit ramps in the Shirlington area;
- Construction of additional pedestrian/bike facilities along the I-395 corridor; and
- Surrounding network or community enhancements along the I-395 corridor, such as soundwall improvements that exceed the existing minimum Federal or State requirements, reforestation or landscaping enhancements or other amenities, or upgrades to adjacent or arterial roadways (collectively, the “**Surrounding Enhancements**”), unless planned and funded by the Department (including use of funds in the Community Enhancement Fund, below).

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The Concept of Operations, Technical Requirements and Joint Operating and Maintenance Protocols for the 395 Project would be consistent with the practices, principles and procedures already agreed for the 95 Express Lanes, as may be updated by the Parties for lessons learned from the 95 Express Lanes project.

Long-Term Transit Investment

95 Express will fund an annual transit payment amount as agreed by the Parties (adjusted each year based on an escalation methodology to be agreed by the Parties) until contract termination (the “**Annual Transit Investment**”). The Annual Transit Investment will be administered solely by the Department.

Notwithstanding Section 12.06(a) of the I-95 Comprehensive Agreement, the parties agree to update any applicable project documentation to permit the use of public funds or other financial support or credit as deemed necessary by the Department to advance its interests related to the transit investment or Surrounding Enhancements by the Department.

95 Express Responsibilities

95 Express would be responsible, as part of the overall Project Cost, for the following initial actions (collectively the “**95 Express Development Activities**”) and deliverables to support development of the 395 Project:

- Preparation of engineering designs and associated bid documents necessary to support a competitive design-build procurement process for the 395 Project, including project performance requirements, preliminary design plans and/or contract drawings and specifications and special provisions (the “**Preliminary Engineering and Design Work**”);
- Development of estimates for design-build, operations, routine maintenance, major maintenance, and special purpose vehicle costs (the “**Cost Estimating Efforts**”);
- Development of a financing plan to support the 395 Project, with full flexibility in the composition of equity and debt financing, including development of draft and final applications and agreements for TIFIA, PABs, and/or other equity and debt financing facilities (the “**Financing Plan Efforts**”);
- Management of bid process and public procurement efforts for the 395 Project, while collaborating with the Department as necessary (the “**Procurement Efforts**”);
- Completion of traffic and revenue studies to support the financial and operational modeling of the 395 Project (the “**Modeling Work**”);
- Community outreach and public information efforts in consultation with the Department (the “**Community Outreach Efforts**”);
- Support the Department through the preparation of the materials, designs, data and other supporting documentation required for the Environmental Approvals and the Stormwater Approvals (both as defined below);
- Per the I-95 Comprehensive Agreement, seek all Approvals as described below ;
- Prepare the draft version of the 95 Express proposal (the “**Draft Proposal**”); and
- Prepare the final 95 Express proposal (the “**Final Proposal**”) as required under Section 12.06 (a)(ii) of the I-95 Comprehensive Agreement.

Department Responsibilities

The Department would be responsible for the following initial actions and deliverables required to support the development of the 395 Project, and which are not included in the overall Project Cost:

- Completing all necessary environmental studies and approvals, including the inclusion of the 395 Project in the Transportation Planning Board’s Financially Constrained Long-Range Transportation Plan and Transportation Improvement Plan (the “**Environmental Approvals**”);

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- Obtaining written determinations from the Department of Environmental Quality and/or any other applicable Federal, state or local agencies that the 395 Project would be subject to the Part II-C stormwater management requirements contemplated by the grandfathering provisions of Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870 et seq.), or funding or providing for alternative arrangements (the “**Stormwater Approvals**”);
- Managing formal soundwall public engagement and approval processes (the “**Preliminary Soundwall Work**”);
- Setting up the process and administering any available transit investment monies (the “**Transit Funding Efforts**”);
- Providing assistance in good faith to 95 Express in their obtaining of approvals from local jurisdictions, the District of Columbia, and all Federal agencies and departments (other than the Environmental Approvals and the Stormwater Approvals described above) (the “**Approvals**”);
- Making available any current Department rights-of-way necessary for the 395 Project (the “**ROW Work**”);
- Supporting any efforts on 95 Express’ part to obtain TIFIA funding and/or PABs treatment for any bond issuances related to the 395 Project; and
- Drafting any required amendments to the I-95 Comprehensive Agreement associated with the 395 Project.

The Department would be responsible, at its sole cost, for any Surrounding Enhancements not already included in the scope of the Project, while collaborating with 95 Express as necessary to the extent any such Surrounding Enhancements have an impact upon the 395 Project.

95 Express and Department Coordination

95 Express will share all available data requested by the Department on the 95 Express Lanes and 395 Project. Consistent with the I-95 Comprehensive Agreement, the Department will safeguard 95 Express’ proprietary and confidential information

The Department and its advisors will be entitled to review requested material associated with the 395 Project in an “open book” manner, including, but not limited to, the following 95 Express Responsibilities:

- The financial model developed by 95 Express to support the plan to design, build, finance, operate and maintain the 395 Project (the “**Financial Model**”);
- Development costs;
- Traffic and revenue assumptions and forecast
- Preliminary engineering and design work;
- Financing plan efforts;
- The design-build procurement efforts;
- Modeling work; and
- Community outreach efforts.

Key Milestones

Within 30 days of signing this agreement, the Parties will agree on a more detailed development schedule for implementation of the development work. 95 Express and the Department recognize that improvements are needed to the I-395 corridor and will make a good-faith effort to reach the following milestones to ensure the success of the 395 Project:

- Provision of traffic and revenue data and assumptions as soon as they become available;
- Provision of a preliminary cost estimate as soon as it becomes available;

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- Preliminary Engineering and Design Work to be commenced by November 30, 2015;
- Community Outreach Efforts to be commenced by November 30, 2015;
- Approvals to be commenced by November 30, 2015;
- Modeling Work to be commenced by November 30, 2015;
- EA Approvals to be commenced by November 30, 2015;
- Preliminary Soundwall Work to be commenced by December 31, 2015;
- ROW Work to be commenced by December 31, 2015;
- Agreement on the technical requirements, construction scope, and design-build summary of key terms by March 31, 2016;
- Submission of the Draft Proposal by 95 Express to the Department by April 30, 2016 (the Department will provide 95 Express the Draft Proposal submission requirements 60 days prior to the due date);
- Procurement Efforts to be commenced by April 30, 2016;
- Selection of Design Build Contractor(s) by December 31, 2016; and
- Submission of the Final Proposal 30 days following selection of Design Build Contractor(s); and
- Final Financial Model, Execution of Concessionaire Project Enhancement and Financial Close by March 31, 2017.

These milestones are based on the timely completion of the Environmental Approvals.

Financing Considerations

Notwithstanding Section 4(g) of Exhibit J to the I-95 Comprehensive Agreement, the Parties agree that the Committed Investment required to support the 395 Project shall be included in the calculation of the Actual Equity IRR.

Exclusivity

After the Parties reach agreement on this framework and before the earlier of (i) the Parties enter into an agreement for the Concessionaire Project Enhancement pursuant to the terms of the I-95 Comprehensive Agreement, (ii) the Parties mutually agree to not continue development work for the 395 Project, (iii) 95 Express fails to submit the Final Proposal pursuant to the terms of Section 12.06(a)(ii) of the I-95 Comprehensive Agreement, or (iv) the Department reviews and doesn't approve the Final Proposal, the Department agrees to negotiate exclusively with 95 Express with respect to the 395 Project. If the 395 Project does not proceed due to circumstances unrelated to deficiencies in the Final Proposal, the exclusivity rights afforded to 95 Express pursuant to Article 12 of the I-95 Comprehensive Agreement shall be retained.

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Existing Development Rights for the Northern HOT Lanes

Prior to undertaking the initial actions and deliverables described in this document, 95 Express and the Department agree that this framework and the scope of work and deliverables described herein and contemplated in connection therewith does not constitute an offer or proposal by 95 Express to develop the Northern HOT Lanes within the meaning of Section 12.06 of the I-95 Comprehensive Agreement, nor does it constitute a waiver or relinquishment of any rights afforded to 95 Express (or the Department) pursuant to Article 12 of the I-95 Comprehensive Agreement.

Work Product


Treatment of any Work Product is to be consistent with existing treatment and protection of Work Product under the I-95 Comprehensive Agreement. However, if the Department determines not to proceed with the 395 Project, any Work Product prepared and paid for by 95 Express (on its behalf or at its request) shall belong to and remain with 95 Express.

Other Items

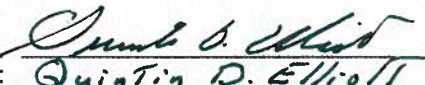
The Parties agree to address any issues not addressed in this framework relating to the preliminary development work for the 395 Project in good faith and in an expeditious manner.

Agreed and Confirmed:

95 Express Lanes LLC

By: 
Name: Jennifer Aument
Title: President
Date: November 21, 2015

Virginia Department of Transportation

By: 
Name: Quintin D. Elliott
Title: Chief Deputy Commissioner
Date: 11/24/15