

SCHEDULE 5

TOLL REGULATION

Section 1. Right to Collect Tolls.

(a) *Concessionaire's Right to Toll and Collect Tolls.* Subject to the provisions of this Schedule 5 under which the Authority establishes maximum toll levels on the Parkway (subject to the exceptions provided herein and in the Agreement), the Concessionaire shall, at all times during the Term, have the right to set, collect and enforce payment of tolls with respect to the operation of any vehicle or class of vehicles on the Parkway in accordance with the provisions of this Agreement without the authorization, consent or approval of the Authority in the setting, tolling, collecting and enforcement of payment of such tolls.

(b) *Vehicles Not Subject to Concessionaire's Right to Toll and Collect Tolls.* The Concessionaire shall not have the right to collect or enforce payment of tolls with respect to:

- (i) emergency services vehicles of Governmental Authorities designated by the Authority that are used to provide emergency services on the Parkway, including law enforcement vehicles, fire protection vehicles and vehicles transporting injured or sick persons;
- (ii) buses used by the Regional Transportation District for public transportation purposes;
- (iii) vehicles owned or operated by the Authority; and
- (iv) vehicles owned or operated by the E-470 Public Highway Authority,

provided that such vehicles are equipped with an EXpressToll™ transponder (or such other transponder permitted under the terms of this Agreement) or the owner of the vehicles has entered into an agreement with the Authority regarding the terms of Parkway use and the owner has registered the license plates of such vehicles with the Authority and the Authority has provided prior written notice with respect to such vehicles to the Concessionaire. For the avoidance of doubt, the Concessionaire shall have the right to collect and enforce payment of tolls with respect to private ambulance companies.

Section 2. Notices.

(a) *Notice of Pending Toll Changes.* If the Concessionaire desires to change any toll (including increases or decreases in any toll or different methods of charging tolls) within the limits established by the Authority pursuant to this Schedule 5, it shall give notice of such change (a "Pending Toll Change") (i) to the Authority no later than 90 days prior to the implementation of such change and (ii) to the public in accordance with Section 2(b) of this Schedule 5 beginning, but not earlier than, 60 days prior to the implementation of such change.

(b) *Notice to Public.* The Concessionaire shall use commercially reasonable efforts to (i) provide notice to the public of all tolls for the use of the Parkway and (ii) inform the public of a Pending Toll Change during the 60-day period prior to the implementation of such change. The Concessionaire shall maintain a website on the Internet that states all tolls, temporary discounts and Pending Toll Changes. The Concessionaire shall make known to the public and maintain a telephone number to enable any person to request a printed description of all tolls, temporary discounts and Pending Toll Changes. The Concessionaire may modify any of the aforesaid means of communication with the public consistent with any developments in common practice relating to means of comparable communication.

(c) *Notice of Temporary Discounts.* Notwithstanding Section 2(a) of this Schedule 5, if the Concessionaire desires to establish or terminate a temporary discount with respect to any toll, within the limits set by the Authority pursuant to this Schedule 5, it shall give notice of the establishment or termination of such temporary discount to the Authority at least one Business Day prior to the implementation of termination of such temporary discount.

Section 3. Maximum Toll Levels.

(a) *Maximum Toll Level Until December 31, 2009.* The maximum toll level applicable to use of the Parkway in each direction by two-axle vehicles, for the period from the Closing Date through and including December 31, 2009, shall be \$3.00. Maximum toll levels for such period applicable to use of the Parkway in each direction by vehicles with more than two axles shall be \$3.00 for the first two axles and \$3.00 for each additional axle.

(b) *Maximum Toll Level Adjustments Beginning January 1, 2010.* Using as the base the maximum toll levels established by Section 3(a) of this Schedule 5 for vehicles with two axles and vehicles with more than two axles, the maximum toll levels applicable to use of the Parkway in each direction for vehicles with two axles and vehicles with more than two axles shall increase each one-year anniversary of January 1, 2009 until the End Date, by the greater of the following: (i) the applicable maximum toll level applicable to the immediately preceding one-year period being Adjusted for Inflation for the one-year period; (ii) the applicable maximum toll level applicable to the immediately preceding one-year period being Adjusted for Per Capita GDP Increase for the one-year period; and (iii) the applicable maximum toll level applicable to the immediately preceding one-year period being increased at a rate of 2% for the one-year period. Notwithstanding anything set forth in this Section 3 of this Schedule 5, such maximum toll levels shall not apply in connection with the implementation of any Compensation Remedy. For the avoidance of doubt, the maximum toll levels that can be charged by the Concessionaire during a calendar year will increase each calendar year on a cumulative basis based on the methodology set forth in the preceding sentences of this paragraph as applied to the applicable maximum toll levels for the preceding year regardless of whether or not the Concessionaire charged or collected tolls at the applicable maximum toll levels during the preceding year.

(c) *Toll Level Requirements as Maximum Tolls.* Subject to Sections 3(d) and 3(h) of this Schedule 5, the toll levels authorized pursuant to Sections 3(a) and 3(b) of this Schedule 5 shall constitute maximum toll levels. The Concessionaire shall have the right to implement:

- (i) tolls lower than the applicable maximum toll levels, including discount programs;
- (ii) time-of-day variable rate tolling;
- (iii) congestion-related tolling, including high-occupancy-toll lanes; or
- (iv) any other method of charging tolls;

provided, however, that, subject to Sections 3(d) and 3(h) of this Schedule 5, the Concessionaire shall not collect tolls that exceed the applicable maximum toll levels set forth in Sections 3(a) and 3(b) of this Schedule 5. Notwithstanding anything to the contrary in this Agreement, except with respect to the State Highway 128 Extension to the extent provided in this Agreement, the Concessionaire shall not collect tolls with respect to vehicles using the Parkway at any location other than those locations at which tolls are collected with respect to vehicles using the Parkway as of the date of this Agreement, unless the Concessionaire receives the Authority's Approval.

(d) *Rounding of Certain Maximum Toll Levels.* Notwithstanding anything to the contrary herein, to the extent a maximum toll level authorized pursuant to Sections 3(a) or 3(b) of this Schedule 5 is not an amount equal to a tenth of a dollar denomination, such maximum toll level shall be increased to an amount equal to the next greatest tenth of a dollar denomination; *provided, however*, that any calculation made pursuant to Sections 3(a) and 3(b) of this Schedule 5 shall be made as if any such increase had not occurred.

(e) *Timing of Certain Calculations.* Any calculation to be made pursuant to this Section 3 of this Schedule 5 may be made at any time after the data necessary to make such calculation has been released to the public, and any change in tolls that is dependent upon such calculation shall be subject to notice being given under Section 2 of this Schedule 5 following such calculation.

(f) *Enforcement of Tolls.* The Authority shall take all reasonable actions to assist the Concessionaire in the enforcement of tolls and the collection of Toll Revenues in relation to the Parkway Operations to the maximum extent permitted by Law and shall use its best efforts to assist in the establishment of fines and similar remedies at the state and local level for toll violations.

(g) *Ramp Tolls.* For the avoidance of doubt, the maximum toll levels established by this Section 3 of this Schedule 5 shall be the maximum toll levels that shall apply to use of the Parkway in each direction, whether the use of the Parkway consists of a through trip with payment of the toll at the mainline toll plaza or a partial trip with payment of the toll at a ramp plaza.

(h) *Maximum Toll Calculation.* At the election of the Concessionaire at any time during the Term (which election the Concessionaire may change at any time during the Term), the maximum toll levels established by this Section 3 of this Schedule 5 for each class of vehicles shall constitute (i) annual average maximum tolls, *provided* that the maximum absolute toll level at which tolls may be collected by the Concessionaire on the Parkway at any time shall be 1.5 times the applicable maximum toll level or (ii) weighted average maximum tolls.

Annual average maximum toll levels shall be calculated for each class of vehicles as follows:

Average maximum toll level = Sum (each toll level at which tolls are collected during a Reporting Year multiplied by the number of hours the toll level is applied during the Reporting Year) divided by the total number of hours in the Reporting Year.

Weighted average maximum toll levels shall be calculated for each class of vehicles as follows:

Weighted average maximum toll level = Sum (each toll level at which tolls are collected during a Reporting Year multiplied by the number of vehicles from which the toll is collected at that toll level during the Reporting Year) divided by the total number of vehicles from which tolls are collected at all applicable toll levels during the Reporting Year.

For the avoidance of doubt, the Concessionaire may collect tolls at levels that exceed each applicable maximum toll level established by Sections 3(b) and 3(c) of this Schedule 5 so long as the annual average maximum toll level or the weighted average maximum toll level (each measured on a Reporting Year basis) does not exceed the applicable maximum toll level established by Sections 3(b) and 3(c) of this Schedule 5. Notwithstanding the foregoing, if the Concessionaire, having elected a weighted average maximum toll level, exercises good faith efforts to comply with the preceding sentence and the weighted average maximum toll level nevertheless exceeds the applicable maximum toll level in a Reporting Year, the applicable maximum toll level for the following Reporting Year shall be reduced by such excess amount.