WEST VIRGINIA CODE: §17-27-9

§17-27-9. Comprehensive agreement.

(a) Prior to acquiring, constructing, or improving the qualifying transportation facility, the developer shall enter into a comprehensive agreement with the division. The comprehensive agreement shall provide for:

(1) Delivery of performance or payment bonds in connection with the construction of or improvements to the qualifying transportation facility, in the forms and amounts satisfactory to the division;

(2) Review and approval of the final plans and specifications for the qualifying transportation facility by the division;

(3) Inspection of the construction of or improvements to the qualifying transportation facility to ensure that they conform to the engineering standards acceptable to the division;

(4) Maintenance of a policy or policies of public liability insurance or self insurance, in a form and amount satisfactory to the division and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility: Provided, That in no event may the insurance impose any pecuniary liability on the state, its agencies, or any political subdivision of the state. Copies of the policies shall be filed with the division accompanied by proofs of coverage;

(5) Monitoring of the maintenance and operating practices of the developer by the division and the taking of any actions the division finds appropriate to ensure that the qualifying transportation facility is properly maintained and operated;

(6) Itemization and reimbursement to be paid to the division for the review and any services provided by the division;

(7) Filing of appropriate financial statements on a periodic basis;

(8) A reasonable maximum rate of return on investment for the developer;

(9) The date of termination of the developer’s duties under this article and dedication to the division; and

(10) That a transportation facility shall accommodate all public utilities on a reasonable, nondiscriminatory, and completely neutral basis and in compliance with §17-4-17b of this code.

(b) The comprehensive agreement may require user fees established by agreement of the parties. Any user fees shall be set at a level that, taking into account any service payments,

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allows the developer the rate of return on its investment specified in the comprehensive agreement: *Provided*, That the schedule and amount of the initial user fees to be imposed and any increase of the user fees shall be approved by the Commissioner of the Division of Highways. A copy of any service contract shall be filed with the division. A schedule of the current user fees shall be made available by the developer to any member of the public upon request. In negotiating user fees under this section, the parties shall establish fees that are the same for persons using the facility under like conditions and that will not unreasonably discourage use of the qualifying transportation facility. The execution of the comprehensive agreement or any amendment to the comprehensive agreement constitutes conclusive evidence that the user fees provided in the comprehensive agreement comply with this article. User fees established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

(c) In the comprehensive agreement, the division may agree to accept grants or loans from the developer, from time to time, from amounts received from the state or federal government or any agency or instrumentality of the state or federal government.

(d) The comprehensive agreement shall incorporate the duties of the developer under this article and may contain any other terms and conditions that the division determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the division agrees to provide notice of default and cure rights for the benefit of the developer and the persons specified in the comprehensive agreement as providing financing for the qualifying transportation facility. The comprehensive agreement may contain any other lawful terms and conditions to which the developer and the division mutually agree, including, without limitation, provisions regarding unavoidable delays.

(e) The comprehensive agreement shall require the deposit of any earnings in excess of the maximum rate of return as negotiated in the comprehensive agreement in the State Road Fund established pursuant to §17-3-1 of this code.

(f) Any changes in the terms of the comprehensive agreement, agreed upon by the parties, shall be added to the comprehensive agreement by written amendment.

(g) Notwithstanding any provision of this article to the contrary, at least 60 days prior to execution, the commissioner shall provide a copy of a comprehensive agreement, with any findings required by this article, to the Joint Committee on Government and Finance and the Joint Legislative Oversight Commission on Department of Transportation Accountability and the commissioner shall provide notice to the public.

(h) If a developer and the division cannot agree to the terms of a comprehensive agreement, neither party shall have any further obligation or liability to the other. In the event a developer and the division fail to enter into a comprehensive agreement, the commissioner may authorize the division to negotiate and enter into a comprehensive agreement with any next-highest-ranked developer identified pursuant to §17-27-5 of this code.

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(i) Before entering into any comprehensive agreement related to or resulting from an unsolicited proposal, the commissioner shall make a written finding that entry into the comprehensive agreement serves the public purpose of this article and is in the best interest of the state.

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