

EXHIBIT A

DEFINITIONS

Acronym	Definition
AASHTO	American Association of State Highway and Transportation Officials
AID	Automatic Incident Detection
AFC	Approved for Construction
AMRL	AASHTO Materials Reference Laboratory
ASTM	American Society for Testing Materials
ATMS	Advanced Traffic Management System
BCOM	Virginia Department of General Services' Bureau of Capital Outlay Management
CCCS	Central Control Computer System
CCTV	Closed-Circuit Television
CI	Critical Infrastructure
CPI	Consumer Price Index
CPT	Cone Penetration Test
CPTED	Crime Prevention Through Environmental Design
CTB	Commonwealth Transportation Board
DBE/SWaM	Disadvantaged Business Enterprise/Small, Women- and Minority-owned Business Enterprise
DEIS	Draft Environmental Impact Statement
DEM	Digital Elevation Model
DGS	Department of General Services
DMS	Dynamic Message Signs
DMT	Dilatometer Test
DMV	Department of Motor Vehicles
DTM	Digital Terrain Model
EDMS	Electronic Document Management System
EEO	Equal Employment Opportunity
EIR	Environmental Impact Review
ERC	Elizabeth River Crossings LLC
ESC	Erosion and Sediment Control
ESCCC	Erosion and Sediment Control Contractor Certification
ETC	Electronic Toll Collection
ETTM	Electronic Toll and Traffic Management
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FI/RW	Field Inspection and Right of Way

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Acronym	Definition
FOIA	Freedom of Information Act
GAAP	Generally Accepted Accounting Principles
GFCI	Ground Fault Circuit Interrupter
GFE	Good Faith Efforts
GUI	Graphical User-Interface
HOT/HOV	High Occupancy Toll/High Occupancy Vehicle
IAG	InterAgency Group
IDSP	Integrated Directional Sign Program
IE	Independent Engineer
IIM or I&IM	Instructional and Informational Memorandum
IJR	Interchange Justification Report
IMR	Interchange Modification Report
IP	Intellectual Property
IRP	Independent Review Board
ISA	In Service Availability
ISO	International Organization for Standardization
IT	Information Technology
ITS	Intelligent Transportation System
IVHS	Intelligent Vehicle Highway System
LED	Light Emitting Diode
MBE	Minority Business Enterprise
MMS	Maintenance Management System
MOI	Department Manual of Instructions for Material Division
MOT	Maintenance of Traffic
MPO	Metropolitan Planning Organization
MRP	Maintenance Rating Program
MTBF	Mean Time Between Failure
MTTR	Mean Time To Repair
MUTCD	Manual on Uniform Traffic Control Devices
NEPA	National Environmental Policy Act
NFPA	National Fire Protection Association
NS	Norfolk Southern
ORT	Open Road Tolling
OSHA	Occupational Health and Safety
PA	Programmatic Agreement
PABs	Private Activity Bonds
PCI	Payment Card Industry
PDP	Project Development Plan
PPTA	Public-Private Transportation Act
PTZ	Pan Tilt Zoom
QMSP	Quality Management System Plan
RFDP	Request for Detailed Proposals

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Acronym	Definition
RLD	Responsible Land Disturber Certification
ROD	Record of Decision
RUMS	Right of Way and Utilities Management System
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (Public Law 109-59)
SAT	Site Acceptance Testing
SFP	Solicitation for Conceptual Proposals
SPT	Standard Penetration Test
SRA	Safety Rest Area
STRAHNET	Strategic Highway Network
SWaM	Small Woman-Owned and Minority Business
SWM	Storm Water Management
SWPPP	Storm Water Pollution Prevention Plan
TIA	Time Impact Analysis
TIFIA	Transportation Infrastructure Finance and Innovation Act of 1998
TMS	Traffic Management System
UCC	Uniform Commercial Code
UPS	Uninterruptible Power Source
USDOT	United States Department of Transportation
VA SHPO	Virginia State Historic Preservation Officer
VCRI	Verification Cross Reference Index
VDOT	Virginia Department of Transportation
VES	Violation Enforcement System
VPPP	Value Pricing Pilot Program
VPS	Violations Processing System
VPSTF	Virginia Petroleum Storage Tank Fund
VSMP	Virginia Stormwater Management Program
VSP	Virginia State Police
WBE	Women’s Business Enterprise
WBS	Work Breakdown Structure

2030 Long-Range Transportation Plan means the “Transportation Conformity Analysis 2030 Long Range Transportation Plan and FY 09-12 Transportation Improvement Program, Final Report 2010”.

Act is defined in the first Recital to the Agreement.

Adjusted Initial Equity IRR is defined in Section 7.03(b)(v).

Administering Employees means employees of Concessionaire and the Key Members whose work related to the Project has not been completed that are involved in the administration of Federal or State funds.

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Affiliate means, when used to indicate a relationship with a specified Person, a Person that (a) directly or indirectly, through one or more intermediaries has a 10% or more voting or economic interest in such specified Person or (b) controls, is controlled by or is under common control with such specified Person, and a Person is deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

Affiliate Contract means a Contract with an Affiliate.

Agreement or **Comprehensive Agreement** means the Comprehensive Agreement Relating to the Downtown Tunnel/Midtown Tunnel/MLK Extension Project, dated as of the Agreement Date, and all exhibits and schedules thereto, as supplemented or further amended from time to time.

Agreement Date means the date written on the cover page of the Agreement, which date will be the date on which the parties have executed and delivered the Agreement.

Agreement Year means (a) the period beginning on the Financial Close Date and ending on the first December 31 (or, if the Concessionaire has a June 30 fiscal year and so elects, ending on the first June 30) following the Financial Close Date, (b) each succeeding full calendar year or full fiscal year, as relevant, during which the Agreement remains in effect, and (c) the period beginning on January 1 or July 1 of the calendar year or fiscal year, as relevant, in which the Agreement terminates and ending on the date of termination. For purposes of assessing the Net Cost Impact of a Compensation Event, the partial year commencing with the date of the Compensation Event and ending on the earlier of (i) following December 31 or June 30, as applicable, or (ii) the termination of the Agreement, shall be treated as an Agreement Year.

Airspace means any and all real property, including the surface of the ground, within the vertical column extending above and below the surface boundaries of the Project Right of Way and not necessary or required for the Project (including Project Enhancements) or developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, tolling, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the Project (including Project Enhancements) or the Concessionaire's timely fulfillment of its obligations under the Project Agreements.

Allocable Costs means:

- (a) for services performed using Department or Concessionaire personnel, materials and equipment, the sum of:
 - (i) an amount equal to the fully burdened hourly rate (including overhead and fringe benefits) of each employee providing such services multiplied by the actual number of hours such employee performs such services; plus

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- (ii) the cost of all materials used, including sales taxes, freight and delivery charges and any allowable discounts; plus
 - (iii) reasonable and documented out-of-pocket costs and expenses of each employee (including travel, meals and lodging costs), subject to any limitations and requirements on such costs and expenses set forth in the Department's travel guidelines; plus
 - (iv) the costs for the use, operating, maintenance, fuel, storage and other costs of all deployed tools (excluding small tools) and equipment, calculated at hourly rates determined from the most current volume of the Rental Rate Blue Book published by Nielsen/DATAQUEST, Inc. of Palo Alto, California, or its successors, or at any lesser hourly rate the Department may approve from time to time in its sole discretion, without area adjustment, but with equipment life adjustment made in accordance with the rate adjustment tables, *provided*, that if rates are not published for a specific type of tool or equipment, the Department will establish a rate for it that is consistent with its cost and use in the industry.
- (b) if the services are performed by a contractor under contract with the Department or the Concessionaire, the sum of:
- (i) the amount owing under such contract; *provided*, that if the contract is an Affiliate Contract, the lesser of the contract amount and the amount that would be reasonably obtained in an arm's length transaction for comparable services with a person that is not an Affiliate; plus
 - (ii) the amount to reimburse the Department or the Concessionaire for the actual and documented costs of administering the contract, but not to exceed 10% of the value of the contract; plus
 - (iii) all costs the Department or the Concessionaire reasonably incurs to enforce or pursue remedies for the contractor's failure to perform in accordance with the contract, except in the case of a contract that is an Affiliate Contract.

Alternative Facility means a facility identified in any of clauses (a) through (d) below that is built and opened to traffic during the Term as a result of:

- (a) the construction of the Patriots Crossing / Hampton Roads Third Crossing or the construction of any other crossing of the James River between the Hampton Roads Bridge Tunnel and the Monitor- Merrimac Memorial Bridge-Tunnel;
- (b) the construction of additional general purpose traffic lanes on Interstate 64, including on the High Rise Bridge, in the City of Chesapeake, Virginia between the junction of Interstate 64 and Interstate 464 and the junction of Interstate 64 and Interstate 664 at Bower's Hill;

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- (c) the expansion of the Hampton Roads Bridge Tunnel; or
- (d) the construction or capacity expansion of any other facility owned or operated by or on behalf of the Department which (i) enables the crossing of the Elizabeth River between the cities of Norfolk, Virginia and Portsmouth, Virginia, or (ii) enables the crossing of the Southern Branch Elizabeth River north of Interstate 64 in the City of Chesapeake, Virginia; *provided*, that such construction or capacity expansion under this clause (d) is not included as of the Agreement Date in the Department's Six Year Improvement Program for fiscal year 2011 or the 2030 Long Range Transportation Plan.

Notwithstanding the foregoing, the term Alternative Facility will not apply to any facilities developed, owned or operated by the City of Norfolk, Virginia or the City of Portsmouth, Virginia; *provided*, however, that such facilities do not receive funds from the Department that are specifically earmarked for the development or operation of such facilities.

Annual Budget is defined in Section 9.08(a).

Applicable IA Standards means those codes and standards listed in Exhibit F to the Interim Agreement.

Approved for Construction (AFC) Documents means all drawings, specifications, revisions thereto, and any other items necessary to construct the Work, sealed by a professional engineer licensed by the State.

As-Built Schedule means the last Project Schedule Update submitted to and approved by the Department.

Asset means an individual component, system or subsystem of the Project, as identified in the first column of the Performance Requirements Baseline Table.

Asset Group means a group of Assets as set forth in the Performance Requirements Baseline Table.

Asset Identification means the unique identification the Concessionaire will use for each Asset, as described in the Technical Requirements.

Assigned Gross Revenue and Refinancing Gain Share means the payments received by the Department as compensation for the Department's grant to the Concessionaire of the Permit.

Assigned Gross Revenue and Refinancing Gain Share Calculation means Exhibit H.

Assigned Gross Revenue Sharing Account means the account used for the payment of any Assigned Gross Revenue and Revenue Gain Share related to Gross Revenues.

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Bank Rate means the prime rate of interest announced publicly by *The Wall Street Journal* (or its successors) as the so-called “prime rate.”

Base Case Equity IRR means the Equity IRR in the Base Case Financial Model.

Base Case Financial Model means the Initial Base Case Financial Model updated pursuant to Section 6.01(b).

Base Case Financial Model Update means the Base Case Financial Model, as most recently updated pursuant to Section 6.02.

Base Case Structural Assets Major Maintenance Plan means Exhibit U.

Base Case Structural Assets Monitoring Plan means Exhibit V.

Base Case Traffic Model means the traffic and revenue model and the assumptions and information used by or incorporated in the model to provide the Downtown Tunnel/Midtown Tunnel/MLK Extension Project Investment Grade Traffic and Revenue Study, dated August 2011, the results of operation of which are incorporated into the Base Case Financial Model.

Baseline Asset Condition Report means the report prepared by the Concessionaire and agreed to by the Department detailing the condition of the Existing Project Assets as of the Agreement Date, attached as Exhibit O.

Baseline Schedule means (a) the Baseline Schedule approved by the Department pursuant to the Technical Requirements, and (b) the Baseline Schedule thereafter as updated according to the Technical Requirements.

Benchmark Interest Rates means (a) the long-term interest rate on the 30-year TIFIA State and Local Government Series (SLGS) underlying the financing contained in the Initial Base Case Financial Model and updated for the Base Case Financial Model and/or (b) the all in cost of borrowing based on the coupon and the net issuer premium or discount for any Private Activity Bonds issued by and proceeds received by the Concessionaire at Financial Close underlying the financing contained in the Initial Base Case Financial Model and updated for the Base Case Financial Model.

Benchmark TIFIA Credit Assistance Amount means the amount of TIFIA credit assistance reflected in the Initial Base Case Financial Model, which is \$422 million.

Breakage Costs means any prepayment premiums or penalties, make-whole payments or other prepayment amounts (including premiums) that the Concessionaire must pay under any Project Financing Agreement as a result of the early repayment of Concessionaire Debt prior to its scheduled maturity date.

Business Day means any day on which the Department is officially open for business.

Casualty Cost is defined in Section 17.07(a).

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Change in Control means (a) the Transfer of 50% or more of the equity interests in the Concessionaire by the Equity Members as of the Agreement Date, or (b) any Transfer of interest or other transaction of any type or description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in possession of the power to direct or control or cause the direction or control of the management of the Concessionaire or a material aspect of its business. A change in the power to direct or control or cause the direction or control of the management of a shareholder, member, partner or joint venture member of the Concessionaire may constitute a Change in Control of the Concessionaire if such shareholder, member, partner or joint venture member possesses the power to direct or control or cause the direction or control of the management of the Concessionaire; *provided*, that the following will not constitute a Change in Control:

- (1) a change in possession of the power to direct or control the management of the Concessionaire or a material aspect of its business due solely to bona fide open market transactions in securities effected on a recognized public stock exchange, excluding such transactions involving an initial public offering;
- (2) a change in possession of the power to direct or control the management of the Concessionaire or a material aspect of its business due solely to a bona fide transaction involving securities or beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of the Concessionaire, unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any Federal department or agency or State Party;
- (3) an upstream reorganization or transfer of direct or indirect interests in the Concessionaire so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of such person, whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise;
- (4) the exercise of preferred or minority equity holder veto or voting rights (whether provided by Law or by the Concessionaire's organizational documents) over major business decisions of the Concessionaire;
- (5) the grant of Financing Assignments in accordance with the Agreement, or the exercise of Lender remedies thereunder, including foreclosure; or
- (6) transfers of direct or indirect ownership interests in the Concessionaire (as applicable) between or among (i) Persons that are under common "control" (within the meaning of control contemplated by the definition clause (b) of Affiliate) or (ii) any fund or entity managed directly or indirectly by a shareholder, member or partner of the Concessionaire or any Affiliate;

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- (7) Transfers from either Equity Member as of the Agreement Date to the other Equity Member as of the Agreement Date or its Affiliate; or
- (8) a pledge or grant of a security interest, lien or other encumbrance of an Equity Member's Distributions or its parent entities indirect right to receive such Distributions from the Concessionaire for the purpose of securing or serving as collateral for a debt instrument.

Change in Law means (a) the enactment of any Law after the Agreement Date, or (b) any change, amendment to, repeal or revocation of any Law or in the interpretation or application thereof by any Governmental Authority after the Agreement Date; excluding, however, any change in or new Law enacted but not yet effective as of the Agreement Date.

Change Order means a written order issued by the Department to the Concessionaire delineating changes in the Work or in the terms or conditions of the Technical Requirements, as applicable, in accordance with Section 14.02.

Change Proposal is defined in Section 14.02(b)(ii).

Chief Engineer means the Department's Chief Engineer.

Chief of Administration means the Department's Chief of Administration.

Claim means any and all claims, disputes, disagreements, causes of action, demands, suits, proceedings, damages, injuries, liabilities, obligations, losses, costs and expenses.

Claim Threshold is defined in Section 14.01(f)(iii)(A).

Code of Virginia means the Code of Virginia of 1950, as amended from time to time.

Collateral Agent means the Institutional Lender acting on behalf of or at the direction of the other Lenders or the Person or Persons so designated in an intercreditor agreement or other document executed by all Lenders to whom Financing Assignments are outstanding at the time of execution of such document, a copy of which will be delivered by the Concessionaire to the Department.

Commissioner of Highways (Commissioner) means the appointed chief executive officer of the Department or any successor in function.

Committed Investment means (a) any form of direct investment by Equity Members, including the purchase of equity shares in the Concessionaire; (b) any bona fide indebtedness of the Concessionaire for funds borrowed that: (i) is held by any Equity Member and (ii) is subordinated in priority of payment and security to all Concessionaire Debt held by Persons who are not Equity Members; or (c) an irrevocable on-demand letter of credit issued by or for the account of an Equity Member naming the Concessionaire as beneficiary and guaranteeing the provision of the direct investment or loan referenced in clause (a) or (b) of this definition.

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Commonwealth Transportation Board (CTB) means a board of the State affiliated with the Department.

Compensation Event means any of the following events, in each case to the extent the Agreement entitles the Concessionaire to Concessionaire Damages:

- (a) Department-Caused Delays;
- (b) the construction or expansion of an Alternative Facility;
- (c) the development or implementation of any Department Change or Department Project Enhancement pursuant to the Agreement;
- (d) any Discriminatory Change in Law;
- (e) one or more injunctions or other legal proceedings enjoining or estopping the Concessionaire from the performance of its obligations pursuant to the Agreement, in any case for more than 30 days in the aggregate;
- (f) a Tax Imposition;
- (g) a Change in Law that expands the vehicles exempted pursuant to Section 33.1-252 of the Code of Virginia;
- (h) discovery of archeological, paleontological or cultural resources on the Project Right of Way, excluding any such resources known to the Concessionaire on the Agreement Date;
- (i) a failure to relocate, or a delay in relocating, Utilities by a Qualifying Utility, to the extent provided under Section 14.01(f)(i);
- (j) a failure to obtain, or a delay in obtaining, any Major Permit, to the extent provided under Section 14.01(f)(i);
- (k) a failure to obtain, or delay in obtaining, the acquisition of parcels identified in the ROW Cost and Acquisition Baseline Schedule, to the extent provided under Section 14.01(f)(i);
- (l) a failure to obtain, or delay in obtaining, Governmental Approvals from FHWA, to the extent provided under Section 14.01(f)(i);
- (m) changes in the Joint Permit Application that imposes conditions that directly and materially adversely impact the Design-Build Work, to the extent provided under Section 14.01(f)(ii);
- (n) discovery of man-made, subsurface structures within the New Midtown Tunnel alignment, excluding any such structures known to the Concessionaire on the Agreement Date and to the extent provided under Section 14.01(f)(iii); or

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- (o) an exercise by the Department of its Reserved Rights within the Project Right of Way, unless the Agreement expressly provides that such exercise will not entitle the Concessionaire to Concessionaire Damages.

provided, that each of the above events does not arise by reason of:

- (1) the negligence or misconduct of a Concessionaire Party; or
- (2) any act or omission by a Concessionaire Party in breach of the provisions of the Agreement or any other Project Agreement.

Compensation Event Notice is defined in Section 14.01(a)(i).

Completed Work Value means the greater of zero and an amount equal to $(A - [B + C + D + E])$, where:

A = \$1,470,351,745, as may be adjusted to take into account the direct construction costs for performance of Change Orders;

B = the estimated cost to complete all of the Work required to be undertaken in order to achieve Substantial Completion for all Project Assets;

C = the Department's estimate of all those costs (internal and external) that it is reasonably likely to incur in retendering the Agreement;

D = the aggregate of all amounts paid to the Concessionaire by the Department with respect to the Public Funds Amount in accordance with the Public Funds Amount Payment Terms and Change Orders on or prior to the date of termination of the Agreement; and

E = the amount of Toll Revenues received by the Concessionaire prior to the date of termination of the Agreement less any operating and maintenance costs (excluding Rehabilitation Work) incurred during the same period.

Conceptual Proposal is defined in the seventh Recital to the Agreement.

Concessionaire has the meaning assigned to such term in Section 56-557 of the Code of Virginia and, for purposes of the Agreement, means Elizabeth River Crossings Opco LLC, a Delaware limited liability company, and its permitted successors and assigns.

Concessionaire Damages means the amount calculated pursuant to Section 14.01(b).

Concessionaire Debt means (without duplication) any bona fide indebtedness (including, but not limited to, PABs, State or TIFIA loans, guaranties and credit support, subordinated indebtedness and all such obligations arising under such indebtedness) related to the Project for or in respect of funds borrowed (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received. Concessionaire Debt includes principal, capitalized interest, accrued interest, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with

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respect thereto, payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto, lease financing obligations, and Breakage Costs. Concessionaire Debt excludes any increase in indebtedness to the extent resulting from an agreement or other arrangement the Concessionaire enters into or first becomes obligated to repay after the occurrence of an event of termination giving rise to an obligation of the Department to pay termination compensation, including the Concessionaire's receipt of a notice of termination by the Department or the Concessionaire's declaration of a Department Default of the type entitling the Concessionaire to terminate the Agreement, as applicable; *provided*, that Concessionaire Debt will include any increase in indebtedness resulting from a Refinancing. In addition, no indebtedness will constitute Concessionaire Debt unless and until the Department is provided with notice thereof and any related funding agreements and security documents in accordance with the Agreement. For the purposes of termination compensation under the Agreement, the term Concessionaire Debt will not include Shareholder Loans.

Concessionaire Default is defined in Section 19.01.

Concessionaire Default Termination Amount means:

(a) with respect to termination prior to the Substantial Completion Date for the Project Asset which is last to achieve Substantial Completion, the lesser of (i) the Completed Work Value and (ii) 80% of the Concessionaire Debt; and

(b) with respect to termination following the Substantial Completion Date for the Project Asset which is last to achieve Substantial Completion, the lesser of (i) the Project Value and (ii) 100% of the Concessionaire Debt;

in each case with respect to clause (a) and (b), less:

(1) Credit Balances; *provided*, however, that Credit Balances will not be deducted from the Project Value unless the Project Value is increased on account of such Credit Balances;

(2) unpaid and/or accrued default interest;

(3) Breakage Costs;

(4) any other amounts referred to in the definition of Concessionaire Debt that arise as a consequence of the termination of the Agreement or the acceleration of or requirement to mandatorily prepay the Concessionaire Debt;

(5) Non-Reimbursable Concessionaire Damages; *provided*, however, that Non-Reimbursable Concessionaire Damages will only be deducted from Concessionaire Debt and only to the extent the Non-Reimbursable Concessionaire Damages were used to make Distributions; and

(6) Allocable Costs incurred by the Department in terminating the Agreement for Concessionaire Default.

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Concessionaire's Equity Value means the net present value of the anticipated future nominal Distributions (post-tax on the part of the Concessionaire but pre-tax on the part of the Equity Members) in respect of drawn equity contributions and Shareholder Loans as of the termination date determined by an independent nationally recognized third party expert appraiser, pursuant to the process set forth in Section 20.11.

Concessionaire Financial Party means any guarantor, if any, of the Concessionaire's material and executory obligations under the Agreement or any Equity Member of the Concessionaire with material financial obligations to the Concessionaire, unless such obligations have been satisfied or are fully secured by one or more letters of credit.

Concessionaire's Interest means the rights and obligations of the Concessionaire pursuant to the Agreement, which will constitute solely intangible contract rights.

Concessionaire Management Plan means the plan developed by the Concessionaire that describes the Concessionaire's managerial approach, strategy, and quality procedures to design, build, operate and maintain the Project and achieve all requirements of the Agreement, as described in more detail in the Technical Requirements.

Concessionaire Marks means the Concessionaire's name and/or other trademarks, service marks and trade names owned or licensed by the Concessionaire.

Concessionaire Party means the Concessionaire and any Affiliate and any agents, Representatives, officers, directors, employees, Contractors, suppliers and materialmen of the Concessionaire or any Affiliate, and will include the Design-Build Contractor and the O&M Contractor.

Concessionaire Project Enhancement means any extensions of, additions to, or major modifications to the Project undertaken by the Concessionaire pursuant to Section 12.01.

Concessionaire Representative means an individual designated in accordance with Section 25.04.

Construction Documentation means all Design Documentation, AFC Documents, and all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary for construction of the Project and/or the Utility Relocations included in the Work, in accordance with the Agreement and the other Project Agreements.

Construction Quality Management Plan means the plan developed by the Concessionaire that provides the organization, relationship and procedures that define clear lines of responsibility and well defined approach for meeting Project requirements and innovation in construction approach, as described in more detail in the Technical Requirements.

Construction Segment means any segment or portion of the Project Assets which the Design-Build Contractor and the Concessionaire have designated pursuant to the Design-Build

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Contract for the purpose of scheduling rehabilitation or construction of the Project Assets, subject to the approval of the Department.

Construction Segment Notice to Proceed is defined in Section 8.03(b).

Consultant means any Person at the time retained by or on behalf of the Department or the Concessionaire, which Person is experienced and has a national and favorable reputation in the matters for which such Person is so employed.

Consumer Price Index (CPI) means the “Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items” (not seasonally adjusted), or its successor, as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor; *provided*, that if the CPI is changed so that the base year of the CPI changes, the CPI will be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor. If the CPI is discontinued or substantially altered, the applicable substitute index will be that chosen by the Secretary of the Treasury for the Department of Treasury’s Inflation-Linked Treasuries as described at 62 Fed. Reg. 846-847 (Jan. 6, 1997), or if no such securities are outstanding, will be determined by the parties in accordance with general market practice at that time.

Contract means any contract, subcontract, or other form of agreement to perform any part of the Work or provide any materials, equipment or supplies for the Project and/or the Utility Relocations included in the Work, on behalf of the Concessionaire or any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers.

Contractor means any Person with whom the Concessionaire has entered into any contract to perform any part of the Work or provide any materials, equipment or supplies for the Project and/or the Utility Relocations included in the Work, on behalf of the Concessionaire, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers. The term “Contractor” will include the Design-Build Contractor and the O&M Contractor.

Cooperative Agreement means the Cooperative Agreement by and between the Department and FHWA, dated September 4, 2009, related to establishing, maintaining, monitoring and tolling the Project under the Value Pricing Pilot Program which will be used as the tolling agreement for the Project, attached as Exhibit L.

Cost is defined in Section 3.03(b).

Credit Balances means the aggregate of any amounts standing to the credit of any bank account held by or on behalf of the Concessionaire, but excluding the Handback Reserve Fund.

Critical Infrastructure (CI) means systems and assets, whether physical or virtual, so vital to the State that the incapacity or destruction of such systems and assets would have debilitating impact on security, economic security, public health or safety, or any combination thereof. CI includes but is not limited to: tunnel and bridge facilities, ferries, Smart Traffic

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Centers, Department Central and District Offices, data systems, security systems, and Information Technology Infrastructure.

Critical Path means the longest chain(s), in terms of time, of logically connected activities on a Project Schedule ending with Final Acceptance.

Day or **day** means a calendar day.

D-B Escrow Documents is defined in Section 18.05(a)(i).

DBE/SWaM Plan means the plan developed by the Concessionaire that defines the Concessionaire's approach to meet the DBE/SWaM participation goal, as described in more detail in the Technical Requirements.

DBE/SWaM Design-Build Contract Value means \$880 million.

Defect means a deterioration in the condition or performance of an Asset, whether by design, construction, installation, damage or wear, affecting the condition, use, functionality or operation of any Asset of the Project, which would cause or have the potential to cause one or more of the following:

- (a) a hazard, nuisance or other risk to public or worker health or safety, including the health and safety of road users;
- (b) a structural deterioration of the affected Asset or any other part of the Project;
- (c) damage to a third party's property or equipment;
- (d) damage to the Environment; or
- (e) failure of the affected Asset or any other part of the Project to meet a Performance Requirement.

Definitions means this Exhibit A.

Delay Event means:

- (a) with respect to the Design-Build Work, one or more of the following events occurring prior to the Final Completion Date:
 - (i) the implementation of a Department Change;
 - (ii) a Force Majeure Event;
 - (iii) discovery of a Differing Site Condition;
 - (iv) a failure to obtain, or a delay in obtaining, any Major Permit by the deadlines specified in the Permit Baseline Schedule;

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- (v) a Change in Law that imposes additional requirements that directly and materially adversely impact performance of the Design-Build Work;
 - (vi) issuance by a Governmental Authority of competent jurisdiction of an injunction or other order enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement;
 - (vii) a failure to obtain, or a delay in obtaining, the Railroad Easements within the deadlines specified in the Railroad Easement Baseline Schedule;
 - (viii) a failure to obtain, or delay in obtaining, the acquisition of parcels by the deadlines specified in the ROW Cost and Acquisition Baseline Schedule;
 - (ix) a failure to relocate, or delay in relocating, utilities by a Qualifying Utility by the deadlines specified in the Utility Baseline Schedule;
 - (x) a Department-Caused Delay; or
 - (xi) a failure to obtain, or delay in obtaining, Governmental Approvals from FHWA.
- (b) with respect to the O&M Work, one or more of the following events:
- (i) a Force Majeure Event;
 - (ii) an injunction or other legal proceeding enjoining or estopping either the Department or the Concessionaire from the performance of its obligations pursuant to the Agreement;
 - (iii) implementation of a Department Change or Department Project Enhancement; or
 - (iv) a Department-Caused Delay; and

which in either case under clause (a) or (b) above results in a delay or interruption in the performance by the Concessionaire of any obligation under the Agreement, *provided*, however, that such delay or the cause thereof is not specifically dealt with in the Agreement, and excluding any delay that:

- (1) could have been reasonably avoided by a Concessionaire Party;
- (2) is caused by the negligence or misconduct of a Concessionaire Party; or
- (3) is caused by any act or omission by a Concessionaire Party in breach of the provisions of the Agreement or any other Project Agreement.

Delay Event Notice is defined in Section 13.01(a).

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Demobilization Costs means the amount necessary to reimburse the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire, including its reasonable Allocable Costs, to demobilize and terminate Contracts between the Concessionaire and third parties or Affiliates for performance of Work, excluding the Concessionaire's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates.

Department means the Virginia Department of Transportation, an agency of the State, and any other state agency succeeding to the powers, authorities and responsibilities of the Department invoked by or pursuant to the Agreement.

Department-Caused Delay means:

- (a) a delay by the Department in performing any of its obligations pursuant to the Agreement; or
- (b) performance of work by the Department or its contractors (other than Concessionaire) within the Project Right of Way that delays Concessionaire's Work;

provided, however, that a Department-Caused Delay specifically excludes a delay attributable to:

- (1) the submission of incomplete documentation for the Department's review;
- (2) required review of Governmental Approvals from other Governmental Authorities necessary or appropriate to the Department's review;
- (3) failure to obtain appropriation and allocation of public funds;
- (4) consumption of available Float;
- (5) submittals or requests that are "deemed approved" if no response is provided within the applicable timeframe; or
- (6) Force Majeure Events.

Department Change means (a) a change to the Work pursuant to a Change Order or a Directive Letter issued pursuant to Section 14.02(d)(i) except to the extent that such change constitutes a Department Project Enhancement and (b) any other event that the Agreement expressly states will be treated as a Department Change.

Department Convenience Termination Amount means:

- (a) prior to the Financial Close Date, the Non-Financial Close Termination Amount;
- (b) during the period commencing after the Financial Close Date to the end of the Lock-Up Period, the aggregate of (i) the Concessionaire Debt, (ii) all reasonable Demobilization

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Costs, and (iii) the greater of (A) the Concessionaire's Equity Value as of the date of payment of the applicable termination compensation amount, and (B) an amount that, when added to the Distributions actually received by the Equity Members up until the date of payment of the applicable termination compensation amount, are sufficient to yield the Initial Refinancing Case Equity IRR on aggregate amounts paid by the Equity Members to the Concessionaire in the form of capital contributions or Shareholder Loans up until the date of payment of the applicable termination compensation amount; and

(c) following the Lock-Up Period, the greater of (i) the Concessionaire Debt, and (ii) the Project Value;

in each case of clauses (b) and (c) of this definition, less any Credit Balances; *provided*, however, that Credit Balances will not be deducted from the Project Value unless the Project Value is increased on account of such Credit Balances.

Department Default is defined in Section 19.04.

Department Default Termination Amount means an amount equal to the Department Convenience Termination Amount.

Department Projects is defined in Section 12.04(a).

Department Project Enhancements means any extensions of, additions to, or major modifications of the Project within the Project Right of Way undertaken by the Department pursuant to Section 12.02, except as part of maintenance, repair, reconstruction, rehabilitation, restoration or replacement of any improvements and assets.

Department Representative means the individual designated in accordance with Section 25.04.

Depository means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by the Concessionaire and approved by the Department, to serve as depository pursuant to the Agreement; *provided*, that so long as Concessionaire Debt is outstanding, the Depository will be the Collateral Agent.

Design-Build Contract means the contract, dated as of December 5, 2011, between the Concessionaire and the Design-Build Contractor for the Project, attached as Exhibit E, as it may be amended or supplemented.

Design-Build Contract Price means the fixed-price for the Design-Build Work as set forth in the Design-Build Contract.

Design-Build Contractor means SKW Constructors, a joint venture of Skanska USA Civil Southeast Inc., Kiewit Construction Company, and Weeks Marine, Inc.

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Design-Build Letter of Credit means the letter of credit furnished by the Design-Build Contractor as performance security for the Design-Build Work, a form of which is attached as Exhibit G.

Design-Build Performance Security is defined in Section 17.08(b).

Design-Build Work means the services provided by the Design-Build Contractor for rehabilitation of the Existing Project Assets and the construction of the New Project Assets.

Design-Build Work Deadlines means the Scheduled Substantial Completion Dates, the Guaranteed Substantial Completion Date, the Scheduled Final Acceptance Dates and the Long Stop Date.

Design-Build Work Guarantee means Exhibit F.

Design Documentation means such plans, drawings, specifications and other design documentation (including design standards, design or durability reports, models, samples and calculations) in computer readable and written formats prepared by or on behalf of the Concessionaire for the purposes of the performance of the Work or any component thereof in accordance with the Agreement.

Design Quality Management Plan means the plan developed by the Concessionaire that provides the organization, relationship and procedures that define clear lines of responsibility and well defined approach for meeting Project requirements and innovation in design approach, as described in more detail in the Technical Requirements.

Design Public Hearing Documentation means documents approved by the Department's Chief Engineer following a required public hearing relative to design of the Project.

Design Work Notice to Proceed is defined in Section 8.03(a).

Development Contract means any agreement that is entered into by the Department and the Concessionaire from time to time that sets forth the parties' rights and obligations with respect to the design and construction of a Project Enhancement, which will include such terms as may be mutually agreed by the Concessionaire and the Department.

Deviation means any material proposed or actual change, deviation, modification, alteration or exception from any of the Technical Requirements.

Differing Site Conditions means any:

- (a) Unknown Geotechnical Conditions;
- (b) threatened or endangered species whose habitat is protected by Law on the Project Right of Way;

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- (c) archaeological, paleontological or cultural resources on the Project Right of Way;
- (d) Unknown Pre-Existing Hazardous Substances;
- (e) Hazardous Substances spilled or otherwise placed on the Project Right of Way subsequent to the Agreement Date other than by a Concessionaire Party in the course of performing the Work; or
- (f) Utilities in the Project Right of Way, excluding any such Utilities known to the Concessionaire on the Agreement Date;

provided, however, that to qualify as a Differing Site Condition, such condition:

- (1) was not known or discovered by the Concessionaire prior to the Agreement Date, and could not reasonably be expected to have been known or discovered by the Concessionaire prior to the Agreement Date; and
- (2) has a material impact on the Concessionaire's performance of the Work pursuant to the terms of the Agreement.

Direct Agreement means the agreement executed among the Department, the Concessionaire and the Collateral Agent, in the form attached as Exhibit N.

Directive Letter means an order issued by the Department in accordance with Section 14.02 directing the Concessionaire to perform Work.

Disadvantaged Business Enterprise Program (DBE) means the Federal program designed to support socially and economically disadvantaged firms working with transportation agencies.

Discriminatory Change in Law means the adoption of any State Law or any change in any State Law or in the interpretation or application thereof during the Term that has the effect of discriminating solely against the Project, the Concessionaire, or private operators of toll roads in the State, except where such State Law or change in State Law or in interpretation or application is (a) in response, in whole or in part, to any failure to perform or breach of the Agreement or other Project Agreement, violation of Law or Governmental Approval, culpable act, omission or negligence on the part of any Concessionaire Party, or (b) otherwise permitted under the Agreement.

Dispute means any Claim, dispute, disagreement or controversy between the Department and the Concessionaire concerning their respective rights and obligations under the Project Agreements, including concerning any alleged breach or failure to perform and remedies.

Dispute Resolution Provisions means Exhibit Z.

Distribution means:

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- (a) any distribution, dividend or other payment, monetary or in-kind, made by the Concessionaire to any Equity Members, including from the proceeds of any Refinancing, on account of equity investment in the Concessionaire;
- (b) principal, interest, or other payment made by the Concessionaire to any Equity Members, including the proceeds of any Refinancing, on account of Shareholder Loans made to the Concessionaire.
- (c) any payment by the Concessionaire to an Affiliate other than pursuant to an Affiliate Contract to which the Department has consented in accordance with Section 24.02(k) or which does not require the Department's consent in accordance with Section 24.02(k); or
- (d) the early release of any contingent funding liabilities to any Equity Member.

Document Management Plan means the plan developed by the Concessionaire to define the document management approach for all Work Product, as described in more detail in the Technical Requirements.

Early Work means the work identified in Exhibit B-6.

Electronic Toll Collection Agreement means the agreement between the Concessionaire and the Department executed in accordance with Section 5.01(e), a form of which is attached as Exhibit I.

Emergency means any unplanned event within the Project Right of Way that:

- (a) presents an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, to property adjacent to the Project or to the safety of road users or the traveling public;
- (b) has jeopardized the safety of road users or the traveling public; or
- (c) is a declared state of emergency pursuant to State or Federal Law.

Environment means soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air.

Environmental Laws means any Laws applicable to the Project regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health, the Environment or Hazardous Substances, including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 USC Section 6901 *et seq.*, the Federal Clean Water Act, 33 USC Section 1351 *et seq.*, the Occupational Safety and Health Act, 29 USC Section 651 *et seq.*, as currently in force or as hereafter amended.

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Environmental Management Plan means the plan developed by the Concessionaire that sets forth the Concessionaire's approach to environmental management, as described in more detail in the Technical Requirements.

Equity IRR means the nominal post-Tax Internal Rate of Return on Committed Investment over the full Term projected in the Base Case Financial Model or the Base Case Financial Model Update, as applicable.

Equity Funding Agreement means the agreement setting forth the terms and conditions under which each Equity Member will furnish its capital contribution for the Project.

Equity Letter of Credit means the letter of credit furnished to secure each Equity Member's performance of its obligations under the Project Financing Agreements.

Equity Member means any Person with a direct equity interest in the Concessionaire.

ERC means Elizabeth River Crossings LLC, a Delaware limited liability company.

Escrow Agent means SunTrust Bank, and its successors and assigns, or such other entity serving as escrow agent pursuant to the Escrow Agreement.

Escrow Agreement means the Escrow Agreement dated as of December 5, 2011 among the Concessionaire, the Department and the Escrow Agent attached as Exhibit D, as it may be amended or supplemented from time to time.

Escrow Documents is defined in Section 18.05(a) and includes any documents submitted after the Agreement Date pursuant to Section 18.05(d).

ETTM means electronic toll and traffic management.

ETTM Data means all data generated by or accumulated in connection with the operation of the ETTM System, including but not limited to customer lists, customer identification numbers, customer account information and billing records and other customer specific information.

ETTM Equipment means the automatic vehicle identification equipment, video monitoring equipment, vehicle occupancy detection equipment, toll violator systems, and electronic toll collection equipment, including its components, systems and subsystems; the traffic management system equipment; communications equipment, and all associated hardware and physical infrastructure and other computer hardware and software necessary to meet the performance specifications for ETTM.

ETTM Facilities means the administration/operations building, toll gantries and technical cabinets, utility connections, lighting facilities and other facilities associated with electronic toll and traffic management.

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ETTM System means the ETTM Facilities, ETTM Equipment and the Software which monitors, controls or executes the ETTM Equipment, all of which will meet the minimum performance criteria established by the Technical Requirements.

eVA means the State’s electronic vendor registration and purchasing system, available at www.eva.state.va.us.

Exempt Vehicles is defined in [Section 5.01\(b\)\(i\)](#).

Excess Rehabilitation Work is defined in [Section 8.11\(c\)\(ii\)](#).

Excess Rehabilitation Work Deductible is defined in [Section 8.11\(c\)\(ii\)\(A\)](#).

Excess Rehabilitation Work Outer Band is defined in [Section 8.11\(c\)\(iii\)](#).

Existing Downtown Tunnels means the two, two-lane tunnels under the Elizabeth River along I-264 connecting Portsmouth, Virginia and Norfolk, Virginia operated and maintained by Department as of the Agreement Date.

Existing Downtown Tunnels Scheduled Substantial Completion Date means the date that is 1576 Days following the Financial Close Date, as such date may be extended for Delay Events from time to time pursuant to the Agreement.

Existing Midtown Tunnel means the two lane tunnel under the Elizabeth River connecting U.S. Route 58 in Portsmouth, Virginia to Brambleton Avenue/Hampton Boulevard in Norfolk, Virginia operated and maintained by the Department as of the Agreement Date.

Existing Midtown Tunnel Scheduled Substantial Completion Date means the date that is 2219 Days following the Financial Close Date, as such date may be extended for Delay Events from time to time pursuant to the Agreement.

Existing Project Assets means the Existing Midtown Tunnel and the Existing Downtown Tunnels.

Existing Project Assets Tolling and O&M Work Commencement Date means the date that the Department issues the notice to proceed pursuant to [Section 9.02\(a\)](#).

E-ZPass means an electronic toll collection system used in the Commonwealth of Virginia and as part of the “E-ZPass Interagency Group”.

Federal means of or relating to the central government of the United States of America.

Federal Requirements means the provisions required to be part of federal aid construction contracts, including the provisions set forth in [Exhibit BB](#).

Final Acceptance means the occurrence of all the events and satisfaction of all the conditions with respect to final acceptance of each Project Asset as set forth in [Section 8.09\(b\)](#).

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Final Acceptance Certificate means the certificate issued by the Department pursuant to Section 8.09(c).

Final Acceptance Date means the date on which the applicable Project Asset achieves Final Acceptance, as indicated on the Final Acceptance Certificate.

Final Completion means when all Project Assets have achieved Final Acceptance.

Final Completion Date means the date upon which all Project Assets have achieved Final Acceptance.

Financial Close means satisfaction of all of the conditions set forth in Section 7.03(a).

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

Financial Close Deadline means the date by which Financial Close must occur, which will be no later than the later of (a) 180 Days from the Agreement Date or (b) such later date that is 90 Days from the date of approval of a loan pursuant to TIFIA, but not more than 210 Days from the Agreement Date; *provided*, that such deadline may also be extended by mutual agreement by the Parties.

Financial Model Auditor means any independent, recognized auditor engaged by the Concessionaire, acceptable to the Department, who will audit the Base Case Financial Model and modifications to the Financial Model Formulas, and perform such other services as are required in the Agreement.

Financial Model Formulas means the financial formulas that the Concessionaire and the Department have agreed upon as of the Agreement Date as a basis for the Initial Base Case Financial Model and any updates pursuant to the Agreement but without the data and the information used by or incorporated in the Initial Base Case Financial Model, Base Case Financial Model or Base Case Financial Model Update.

Financing Assignment is defined in Section 7.04(a).

Financing Escrow Documents is defined in Section 18.05(a)(ii).

Fitch Ratings mean Fitch Ratings, and any successor thereto which is a nationally recognized rating agency.

Float means the amount of time that any given activity or logically connected sequence of activities shown on a Project Schedule may be delayed before it will affect the Design-Build Work Deadline. Such Float is generally identified as the difference between the early completion date and late completion date for all activities as shown on a Project Schedule.

Force Account Provisions means Exhibit X.

Force Majeure Event means the occurrence of an event, act, omission, condition, or circumstance beyond either parties' reasonable control and due to no fault of either party, or

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those for whom either party is responsible, that materially prevents or delays the Concessionaire from performing any of its obligations pursuant to the Agreement. An event is not a Force Majeure Event if such event is otherwise specifically dealt with in the Agreement or arises by reason of:

- (a) the negligence or misconduct of a Concessionaire Party;
- (b) any act or omission by a Concessionaire Party in breach of the provisions of the Agreement;
- (c) Delay Events, other than Force Majeure Events;
- (d) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of a Concessionaire Party;
- (e) any strike, labor dispute or labor protest directed solely at a Concessionaire Party or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of a Concessionaire Party;
- (f) an earthquake after Substantial Completion of a New Project Asset that causes ground accelerations below the AASHTO bridge design standards for the site of the Project that affects such New Project Asset or, in the case of the New Midtown Tunnel, the minimum design standards for the New Midtown Tunnel required by the Technical Requirements;
- (g) floods after Substantial Completion of the applicable Project Asset below the base flood levels specified in the Technical Requirements that affects such Project Asset;
- (h) fire that affects the New Midtown Tunnel after Substantial Completion of the New Midtown Tunnel below the minimum design standards specified in the Technical Requirements;
- (i) market conditions and economic conditions affecting the availability, supply, or cost of labor, equipment and materials, construction equipment and supplies, or commodities;
- (j) market conditions and economic conditions affecting traffic volumes, traffic revenue or the Concessionaire's ability to meet its financial obligations for the Project; or
- (k) weather conditions, other than hurricane force winds, tornadoes and floods to the extent not excluded by the above.

Fuel Adjustment Provisions means Exhibit S.

General Assembly means the General Assembly of the State.

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Generally Accepted Accounting Principles (GAAP) means such accepted accounting practice as conforms at the time to generally accepted accounting principles in the United States of America, consistently applied.

Geotechnical Conditions means any geotechnical, subsurface or latent physical conditions within the Project Right of Way (including natural foundations, infrastructures or manmade obstructions within the Project Right of Way).

Good Faith Efforts means the adequate demonstrated effort required by the Concessionaire and its Contractors to achieve the DBE and SWaM goals or other requirements in Section 24.03, as set forth in the Labor, Employment and DBE/SWaM Related Matters.

Good Industry Practice means the industry practices and standards that would be exercised by a prudent and experienced concessionaire, designer, engineer, contractor, operator or maintenance provider engaged in the same kinds of undertakings and under similar circumstances as those applying to the Work.

Governmental Approvals means all local, regional, state and Federal agreements, studies, findings, permits, approvals, authorizations, certifications, consents, decisions, exemptions, filings, leases, licenses, registrations, rulings and other governmental authorizations required to be obtained or completed under Law prior to undertaking any particular activity contemplated by the Agreement or a Development Contract.

Governmental Authority means any court, Federal, state, or local government, department, commission, board, bureau, agency or other regulatory or governmental authority, but will not include the Department.

Gross Revenues means the amount calculated as follows:

- (a) Toll Revenues; plus
- (b) proceeds of business interruption or similar insurance, excluding amounts already included in the calculation of Toll Revenues; plus
- (c) all other amounts derived from or in respect of the operation of the Project which constitute revenues in accordance with GAAP, including any interest income the Concessionaire earns on any funds on deposit in any bank account or securities account; plus
- (d) all amounts related to Net Cost Saving and positive Net Revenue Impact not used to offset Concessionaire Damages, pursuant to the Agreement; plus
- (e) all amounts received or retained by the Concessionaire pursuant to Section 22.05.

Guaranteed Substantial Completion Date means the date of the last Scheduled Substantial Completion Date to occur, as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

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Handback Amount is defined in Section 20.02(d).

Handback Performance Security is defined in Section 20.02(e)(ii).

Handback Requirements means the terms, conditions, requirements and procedures governing the condition in which the Concessionaire is to deliver the Project to the Department upon expiration or termination of the Agreement, as set forth in the Technical Requirements.

Handback Reserve Fund means the deposit account or letter of credit described in Section 20.02(d).

Hazardous Environmental Condition means the presence of any Hazardous Substances on, in, under or emanating from the Project Right of Way that is present at concentrations or in quantities that: (a) may present an imminent or substantial safety or health hazard for the Department, the Concessionaire or their respective employees, agents, representatives or independent contractors, the general public or the surrounding environment; or (b) are required to be removed or remediated as a matter of Law or in accordance with the requirements of any Governmental Authority.

Hazardous Substance means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is or could be considered a contaminant, pollutant, dangerous substance, toxic substance, Hazardous Waste, solid waste, or hazardous material which is or becomes regulated by Laws or which is classified as hazardous or toxic under Laws.

Hazardous Waste means a waste that is (a) listed as a hazardous waste in 40 CFR Section 261.31 to 261.33, and (b) exhibits one of the following characteristics: ignitability, corrosivity, reactivity or toxicity, or is otherwise defined as a hazardous waste by Law.

Health, Safety and Security Plan means the plan developed by the Concessionaire that defines the health, safety and security activities required during the design and construction of the Project, as described in more detail in the Technical Requirements.

Implementation Guidelines is defined in the third Recital to the Agreement.

Incident means any unplanned event within the Project Right of Way that causes potential or actual disruption to the free flow of traffic.

Initial Base Case Financial Model means the Financial Model Formulas and the assumptions and information, including, but not limited to, projections and calculations with respect to revenues, expenses, the repayment of Concessionaire Debt, applied to the Financial Model Formulas and which is prepared on the basis of the Base Case Traffic Model as of the Agreement Date, but without Projected Refinancings assumed in the Initial Refinancing Case Financial Model.

Initial Baseline Schedule means the initial construction schedule proposed by the Concessionaire and approved by the Department, attached as Exhibit B-1.

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Initial Equity IRR means the Equity IRR in the Initial Base Case Financial Model.

Initial Project Financing Agreements means the Project Financing Agreements entered into by the Concessionaire on or about the Financial Close Date.

Initial Refinancing Case Financial Model means the Initial Base Case Financial Model including Projected Refinancings as of the Agreement Date.

Initial Refinancing Case Equity IRR means the cash on cash Internal Rate of Return calculated in the Initial Refinancing Case Financial Model.

Institutional Lender means:

- (a) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;
- (b) any (i) savings bank, commercial bank, investment bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States of America or any state thereof, (iii) pension fund, hedge fund, foundation or university or college endowment fund, (iv) entity which is formed for the purpose of securitizing mortgages, whose securities are sold by public offering or to qualified investors under the U.S. Securities Act of 1933, as amended, (v) Person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the U.S. Securities Act of 1933, as amended, within one year of its making (*provided*, that an entity described in this clause (b) only qualifies as an Institutional Lender if it is subject to the jurisdiction of state and Federal courts in the State in any actions);
- (c) any “qualified institutional buyer” under Rule 144(a) of the U.S. Securities Act of 1933 or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms; or
- (d) any other financial institution or entity designated by the Concessionaire and approved by the Department (*provided*, that such institution or entity, in its activity under the Agreement, is acceptable under then current guidelines and practices of the State);

provided, that each such entity (other than entities described in clause (b)(iv) and clause (c) of this definition) or combination of such entities if the Institutional Lender is a combination of such entities will have individual or combined assets, as the case may be, of not less than \$1

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billion; and *provided further*, that an entity described in clause (b)(iv) of this definition must have assets of not less than \$100 million.

Insurance Requirements means Exhibit Y.

Integration Acceptance Test means the testing of the components of the ETTM System as set forth in the Technical Requirements.

Intellectual Property means the ETTM books and records, Escrow Documents, copyrights (including moral rights), trade marks (registered and unregistered), designs (registered, including applications, and unregistered), patents (including applications), circuit layouts, Source Code and Source Code Documentation, plant varieties, business and domain names, inventions, trade secrets, proposals, copyrightable works, customer and supplier lists and information, and other results of intellectual activity, copies and tangible embodiments of all of the foregoing (in whatever form or medium) and licenses granting any rights with respect to any of the foregoing (to the extent assignable), in each case, relating to the Project.

Intelligent Vehicle Highway System (IVHS) means “smart vehicle” and “smart highway” technologies to improve safety, efficiency and environmental impact of highway facilities.

Interim Agreement means the agreement entered into by the Department and ERC related to the Project dated January 7, 2010, as amended.

Internal Rate of Return means the discount rate that makes the net present value of all cash flows from an investment equal to zero.

Joint Permit Application means those permits identified as “Joint Permit Applications” in Exhibit B-4.

Key Member means (a) Skanska ID ERC Holdings LLC; (b) Skanska Infrastructure Development Inc. (but only for the purposes of Section 24.03(e)(iii) and Section 24.03(f)(iii)); (c) Macquarie Midtown Holdings, Inc.; (d) Skanska USA Civil Southeast, Inc.; (e) Kiewit Construction Co.; (f) Weeks Marine, Inc.; (g) PB Americas, Inc.; or (h) O&M Contractor.

Known Geotechnical Conditions means Geotechnical Conditions:

- (a) identified in the Known Site Conditions Baseline Report;
- (b) which the Concessionaire should have known were present within the Project Right of Way based on the Geotechnical Conditions identified in the Known Site Conditions Baseline Report as of the Agreement Date; and
- (c) which were actually known by the Concessionaire to be present within the Project Right of Way as of the Agreement Date.

Known Pre-Existing Hazardous Substances means Hazardous Substances:

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- (a) identified in the Known Pre-Existing Hazardous Substances Report;
- (b) which the Concessionaire should have known were present within the Project Right of Way based on the contents of Known Pre-Existing Hazardous Substances Report as of the Agreement Date; and
- (c) which were actually known by the Concessionaire to be present within the Project Right of Way as of the Agreement Date.

Known Pre-Existing Hazardous Substances Report means Exhibit Q.

Known Site Conditions Baseline Report means Exhibit P.

Labor, Employment and DBE/SWaM Related Matters means Exhibit DD.

Law means all laws, treaties, ordinances, judgments, Federal Requirements, decrees, injunctions, writs and orders of any Governmental Authority, and all rules, regulations, orders, formal interpretations and permits of any Governmental Authority having jurisdiction over construction of the Project on the Project Right of Way, performance of the Work, or operation of the Project, or the health, safety or environmental condition of the Project or the Project Right of Way, as the same may be in effect from time to time. Laws include the Code of Virginia and the Uniform Act.

Lenders means each of the Institutional Lenders that are parties to the Project Financing Agreements, including the Collateral Agent, and their respective successors and assigns who also qualify as Institutional Lenders, subject to Section 7.04(a)(i) of the Agreement.

Lien means any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Virginia Uniform Commercial Code).

Life Cycle Maintenance Plan means the plan produced annually by the Concessionaire identifying Major Maintenance and Handback Requirements needs, the estimated costs and timing of those needs and such other information as may be reasonably requested by the Department, as described in Section 9.04(c) and the Technical Requirements.

Limited Notice to Proceed (LNTP) means the applicable limited notice to proceed issued pursuant to Section 8.02(a).

Lock-up Period means the period commencing on the Agreement Date and ending on the second anniversary of the date on which all of the Project Assets have achieved Substantial Completion.

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Long Stop Date means the date that is 545 Days after the Guaranteed Substantial Completion Date, as such date may be extended for Delay Events from time to time pursuant to the Agreement.

Losses means, with respect to any Person, any losses, liabilities, judgments, damages, fees, penalties, fines, sanctions, charges or out-of-pocket and documented costs or expenses actually suffered or incurred by such Person, including as a result of any injury to or death of persons or damage to or loss of property.

Major Maintenance means maintenance, repair, renewal, reconstruction or replacement of any portion or component of the Project, as applicable, of a type which is not normally included as Ordinary Maintenance.

Major Maintenance Reserve Fund means a deposit account established by the Concessionaire at a financial institution which qualifies as an Institutional Lender under clause (b) of the definition thereof for the exclusive purpose of holding funds to pay for Tasks of Major Maintenance as described in Section 9.04, together with all amounts from time to time contained therein.

Major Permits means those permits identified in Exhibit B-4.

Maintenance Management System (MMS) means the system required under the Technical Requirements to record inventory, failures, repairs, maintenance activities, inspections performed, communications, and notifications of Incidents and Defects.

Maintenance of Traffic (MOT) Plan means the plan developed by the Concessionaire that sets forth the Concessionaire's approach to maintenance of traffic, as described in more detail in the Technical Requirements.

Maintenance Rating Program (MRP) means the Department's Maintenance Rating Program.

Maximum Adjusted Public Funds Amount means \$412 million.

Minimum Adjusted Public Funds Amount means \$312 million.

Monitoring Period is defined in Section 11.06.

Monthly Progress Reports means those reports prepared by the Concessionaire or its contractors that are required pursuant to the Agreement for monthly delivery to the Department Representative that reflect the status of and information related to the development and operation of the Project.

Moody's means Moody's Investor Service, Inc. and any successor thereto which is a nationally recognized rating agency.

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NEPA means the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*, as amended and as it may be amended from time to time.

NEPA Documents means the following:

Downtown Tunnels National Fire Protection Association work	Programmatic Categorical Exclusion (5/13/09)
Midtown Tunnel National Fire Protection Association work	Programmatic Categorical Exclusion (5/13/09)
Rt. 58/Midtown Tunnel (Pinner's Point)	Final Environmental Impact Statement (11/8/96) and Record of Decision (3/17/97) Revised Record of Decision (7/9/07)
Martin Luther King Freeway Extension	Environmental Assessment (4/7/08) Revised Environmental Assessment/Finding of No Significant Impact (2/26/09)
Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project	Environmental Assessment (Reevaluation) (3/24/11) /Finding of No Significant Impact (8/1/11)
Brambleton Interchange ITS	Programmatic Categorical Exclusion (5/22/09)

Net Cost Impact means the aggregate value of any net increase in the Concessionaire's costs (including the Concessionaire's Allocable Costs, to the extent applicable) reflected on an annual basis directly attributable to a Compensation Event, as compared with what the Concessionaire's costs (including the Concessionaire's Allocable Costs, to the extent applicable) would have been absent the occurrence of the Compensation Event, less the increased costs that can reasonably be mitigated by the Concessionaire. Net Cost Impact will exclude:

- (a) third-party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships, in each case to the extent that such costs would not be reimbursed to an employee of the Department in the regular course of business;
- (b) unallowable costs under the following provisions of the Federal Contract Cost Principles, 48 CFR Section 31.205: Section 31.205-8 (contributions or donations), Section 31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), Section 31.205-14 (entertainment costs), Section 31.205-15 (fines, penalties, and mischarging costs), Section 31.205-27 (organization costs), Section 31.205-34 (recruitment costs), Section 31.205-35 (relocation costs), Section 31.205-43 (trade, business, technical and professional activity costs), Section 31.205-44 (training and education costs), and Section 31.205-47 (costs related to legal and other proceedings); and

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- (c) amounts paid or to be paid to Affiliates that have not been approved by the Department pursuant to Section 24.03(k) that are in excess of the pricing the Concessionaire could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor.

Net Cost Savings means the aggregate value of any decrease in the Concessionaire's costs reflected on an annual basis directly attributable to a Compensation Event, a Deviation, whether proposed, approved or unauthorized, a change in the Technical Requirements, whether or not such change constitutes a Department Change, or Non-Conforming Work waived by the Department, as compared with what the costs would have been absent occurrence of a Compensation Event, Deviation or Non-Conforming Work but excluding any savings in costs taken into account to reduce the Net Cost Impact attributable to such Compensation Event.

Net Revenue Impact means the aggregate value of any net increase or decrease in Gross Revenues reflected on an annual basis directly attributable to a Compensation Event, less any lost Gross Revenues that can reasonably be mitigated by the Concessionaire (excluding any mitigation of costs subtracted from Net Cost Impact for the same Compensation Event).

New Midtown Tunnel means the two lane tunnel adjacent to the Existing Midtown Tunnel.

New Midtown Tunnel Scheduled Substantial Completion Date means the date that is 1716 Days following the Financial Close Date, as such date may be extended for Delay Events from time to time pursuant to the Agreement.

New Midtown Tunnel Tolling and O&M Work Commencement Date means the date that the Department issues a notice to proceed for the New Midtown Tunnel pursuant to Section 9.02(a).

New MLK Extension means the extension of the four lane limited-access Martin Luther King Freeway in Portsmouth, Virginia south from London Boulevard to a new interchange at I-264.

New MLK Extension Scheduled Substantial Completion Date means the date that is 1715 Days following the Financial Close Date, as such date may be extended for Delay Events from time to time pursuant to the Agreement.

New MLK Extension Tolling and O&M Work Commencement Date means the date that the Department issues a notice to proceed for the New MLK Extension pursuant to Section 9.02(a).

New Project Assets means the New Midtown Tunnel and the New MLK Extension.

Non-Compliance Points means the points that may be assessed for Performance Shortfalls by the Concessionaire, as set forth in the Non-Compliance Points Table.

Non-Compliance Points Start Date is defined in Section 11.02(a).

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Non-Compliance Points Table means Exhibit W.

Non-Conforming Work means Work that does not conform to the requirements of the Agreement, relevant Governmental Approvals, Law or the Design Documentation, including but not limited to Deviations not approved in writing by the Department.

Non-Financial Close Termination Amount means the sum of the following: (a) Phase 2 External Costs for completed and uncompleted Phase 2 Project Deliverables (including any Work Packages, Work Product and any partially-completed portions thereof which would have been developed or incorporated into a Phase 2 Project Deliverable) not reimbursed by the Department pursuant to the Interim Agreement and similar costs incurred by the Concessionaire after the Agreement Date that would have constituted work for a Phase 2 Project Deliverable if the work had been carried out by or on behalf of ERC under the Interim Agreement, not to exceed \$10 million, and (b) amounts due and owing for Early Work performed up to the effective date of termination of the Agreement.

Non-Reimbursable Concessionaire Damages means that portion of any Concessionaire Damages previously paid to the Concessionaire that compensated the Concessionaire for Net Cost Impacts and/or Net Revenue Impacts attributable to the period after the effective date of termination of the Agreement.

O&M Performance Security is defined in Section 17.08(c).

Open Book Basis means allowing the Department to review all underlying assumptions and data associated with each Base Case Financial Model, Base Case Financial Model Update, Net Revenue Impact, Net Cost Saving, pricing or compensation (whether of the Concessionaire or the Department) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, inflation and deflation rates, traffic volumes and related data including vehicle categories, Gross Revenues, changes in toll rates, and other items reasonably required by the Department to satisfy itself as to the reasonableness and accuracy of the amount.

Open Road Tolling (ORT) means an electronic toll collection system without toll plazas, where drivers will be charged the toll without having to stop, slow down, or stay in a given lane.

Operations and Maintenance Agreement (O&M Agreement) means the Contract between the Concessionaire and the O&M Contractor, pursuant to which the O&M Contractor will operate and maintain the Project, as it may be amended or supplemented.

Operations and Maintenance Boundaries (O&M Boundaries) means the boundaries identified in the Turnover Plan.

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Operations and Maintenance Contractor (O&M Contractor) means Elizabeth River Crossings Opco LLC or any Person entering into a Contract with the Concessionaire to perform the O&M Work.

Operations and Maintenance Plan (O&M Plan) means the plan developed by the Concessionaire that identifies the methods, systems and procedures for performing the O&M Work, as described in more detail in the Technical Requirements.

Operations and Maintenance Records (O&M Records) means all data in connection with maintenance, operation, renewals and expansion of the Project including (a) all inspection and inventory records, whether generated by the Concessionaire or a third party, (b) any communication to and/or from the Department, any Consultant retained by the Department, or other third party, and (c) any information system (as may be introduced or amended by the Department from time to time) in connection with operation, maintenance, renewal or hand back of the Project that the Department requires the Concessionaire to use or operate.

Operations and Maintenance Work (O&M Work) means any and all operation, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Project, including Major Maintenance and potential Project Enhancements, except to the extent such Work is furnished pursuant to the Design-Build Contract.

Ordinary Maintenance means maintenance actions taken place to preserve the current condition of assets that are routine in nature and may be performed and funded annually. The actions may include pot hole repair, mowing, shoulder repair, guardrail repair, removal of roadside hazards, etc.

Oversight Services means those services and functions the Department has the right or obligation to perform or to cause to be performed under Law or any Project Agreement in order to monitor, review, approve, administer or audit the Work.

PABs means private activity bonds allocated and issued pursuant to Section 11143 of Title XI of SAFETEA-LU, which amended Section 142 of the Internal Revenue Code to add highway and freight transfer facilities to the types of privately developed and operated projects for which private activity bonds may be issued.

PABs Issuer means any public entity or corporation eligible under State Law to issue the PABs.

Performance Improvement Plan is the plan submitted and approved by the Department pursuant to Section 11.07 with respect to improving the Concessionaire's performance.

Performance Requirement means a performance requirement with respect to the O&M Work, as set forth in the Performance Requirements Baseline Table for each Asset.

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Performance Requirements Baseline Table means the table included in the Technical Requirements, as may be updated pursuant to the Agreement, which sets forth the Performance Requirements for each Asset.

Performance Security means the Equity Letter of Credit, Design-Build Performance Security and the O&M Performance Security.

Performance Shortfalls is defined in Section 11.01(a).

Permit is defined in Section 4.01.

Permit Baseline Schedule means the schedule for obtaining the permits for the Project, attached as Exhibit B-4.

Permitted Closure means:

(a) Closures for performance of properly scheduled maintenance as provided in the Technical Requirements;

(b) A closure due to an Emergency that is not the result of the gross negligence, willful misconduct, or breach of applicable Law or contract by the Concessionaire or any Concessionaire Party;

(c) A closure due to utility installation work in accordance with the Technical Requirements;

(d) A closure specified, caused or ordered by, and continuing only for so long as required by, the Department or any Governmental Entity, except to the extent such closure is the result of the gross negligence, willful misconduct, or breach of applicable Law or contract by the Concessionaire or any Concessionaire Party;

(e) A closure as a result of a Compensation Event or a Force Majeure Event; and

(f) Any closure authorized by the Agreement.

Permitted Encumbrance means, with respect to the Project:

(a) the rights and interests of the Concessionaire under the Agreement;

(b) any Lien that is being contested by the Department (but only for so long as such contestation effectively postpones enforcement of any such Lien);

(c) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's or other similar Liens arising in the ordinary course of business of the Project or the Department's performance of its obligations hereunder, and either (A) not delinquent or (B) which are being contested by the Department (but only for so long as such contestation effectively postpones enforcement of any such Lien);

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(d) any recorded or unrecorded easement, right, claim, license, privilege, covenant, condition, right-of-way or servitude, or other similar reservation, right, limitation or restriction, relating to, affecting or encumbering the Project or the development, use or operation of the Project (including, but not limited to, easements and rights-of-way for utilities and utility facilities), or any defect or irregularity in the title to the Project, including, but not limited to those discoverable by a physical inspection or survey of the Project, that does not materially interfere with the operations of the Projects or the right and benefits of the Concessionaire and the Department under the Agreement; and

(e) any zoning, building, environmental, health or safety Law now or hereafter in effect relating to, affecting or governing the Project or the development, use or operation of the Project, together with all amendments, modifications, supplements or substitutions thereto or therefore.

Person means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

Phase 2 External Costs means costs that are incurred by subcontractors or subconsultants retained by ERC for the development of Phase 2 Project Deliverables.

Phase 2 Project Deliverables means the deliverables required to be submitted to Department pursuant to the Interim Agreement during Phase 2 of the Interim Agreement.

Planned Refinancing means a Refinancing which is planned by the Concessionaire and included in the Base Case Financial Model.

Pre-Existing Hazardous Substances means Known Pre-Existing Hazardous Substances and Unknown Pre-Existing Hazardous Substances.

Pond 16 Issue means the request of CSX Corporation to remove from its property in Portsmouth, Virginia a storm water management pond shown on the Design Public Hearing Documentation as part of the design for the New MLK Extension.

Project means the development, design, construction, operation, maintenance and tolling of the New Midtown Tunnel and the New MLK Extension; and the rehabilitation, operation, maintenance and tolling of the Existing Midtown Tunnel and Existing Downtown Tunnels, all as more particularly described in the Technical Requirements.

Project Agreements means the Agreement, including all exhibits of the Agreement, the Direct Agreement and all other agreements identified in Section 3.02, as those agreements may be amended, superseded or replaced during the Term.

Project Asset(s) means, collectively (a) the Existing Downtown Tunnels; (b) the Existing Midtown Tunnel; (c) the New Midtown Tunnel; and (d) the New MLK Extension.

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Project Deliverables means any deliverables required to be submitted to the Department during Phases 1 and 2 of the Interim Agreement.

Project Development Plans means the project development plans developed by the Concessionaire pursuant to the Technical Requirements.

Project Documentation means Construction Documentation and Design Public Hearing Documentation.

Project Enhancements means, collectively, Concessionaire Project Enhancements and Department Project Enhancements.

Project Financing Agreements means the Initial Project Financing Agreements, the Financing Assignments and any other documents evidencing Concessionaire Debt (including Refinancings) obtained in compliance with the terms of the Agreement, together with any and all amendments and supplements thereto.

Project Purposes means the development, permitting, design, financing, acquisition, construction, rehabilitation, installation, equipping, management, operation, maintenance, tolling and administration of the Project, in each case in accordance with the Agreement.

Project Reference Documents means the collection of information, data, documents and other materials that the Department has provided to the Concessionaire for general or reference information only.

Project Right of Way or Right of Way (ROW) means any real property (which term is inclusive of all estates and interests in real property, including slope easements), which is:

- (a) necessary for performance of the Work, including temporary and permanent easements, and ownership and operation of the Project;
- (b) shown on the approved ROW Acquisition and Relocation Plan; and
- (c) within the lines established by the NEPA Documents, as such limits may be adjusted pursuant to the Agreement.

Project Schedule means the Initial Baseline Schedule, Baseline Schedule, Project Schedule Updates or the As-Built Schedule, as applicable.

Project Schedule Update means the schedule attached to the Monthly Progress Report submitted to the Department, as described in more detail in the Technical Requirements.

Project Value means fair market value of the Concessionaire's Interest, determined according to the appraisal procedures set forth in Section 20.11.

Projected Refinancings means Refinancing which is planned by the Concessionaire and included in the Initial Refinancing Case Financial Model.

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Proprietary Intellectual Property means any Intellectual Property that is patented or copyrighted by the Concessionaire, the Department or any other Person, as applicable, or any of its respective contractors or subcontractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential proprietary information by the Concessionaire, the Department or any other Person, as applicable, or any of its respective contractors or subcontractors, but excludes any item of Intellectual Property that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Project.

Proprietary Software means all Software and associated documentation patented or copyrighted by the Concessionaire, the Department or any other Person, as applicable, or any of its respective contractors or subcontractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential information by the Concessionaire, the Department or any such other Person, as applicable, or any of its respective contractors or subcontractors, but excludes any item of software that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Projects (*e.g.* “shrink-wrap” software).

Proprietary Work Product means any Work Product that is created, held and managed as a trade secret or confidential proprietary information by the Concessionaire or any of its Contractors.

Public Funds Amount is defined in the Public Funds Amount Payment Terms.

Public Funds Amount Payment Terms means Exhibit M.

Public Information and Communications Plan means the plan developed by the Concessionaire setting forth the Concessionaire’s approach to communicating with road users and other stakeholders affected by the development and operation of the Project, as described in more detail in the Technical Requirements.

Punch List means an itemized list of Design-Build Work which remains to be completed with respect to a Project Asset after Substantial Completion of such Project Asset has been achieved and before Final Acceptance of such Project Asset, the existence, correction and completion of which will have no material or adverse effect on the normal, uninterrupted and safe use and operation of such Project Asset.

Qualifying Utility means a Utility that will perform a Utility Relocation with its own forces or through separate contractors that are not Concessionaire Parties.

Quality Management System Plan (QMSP) means the plan developed by the Concessionaire that defines the quality management systems during the design, construction and operations and maintenance phases of the Project, as described in more detail in the Technical Requirements.

Railroad Easements is defined at Section 8.05(f).

Railroad Easement Baseline Schedule means Exhibit B-2.

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Rating Agency means any nationally recognized statistical rating organization, such as Moody's, Fitch Ratings, or S&P or any similar entity or any of their respective successors.

Refinancing means at any time after the Financial Close Date:

- (a) any amendment, variation, novation or supplement of any Concessionaire Debt, Project Financing Agreement or Financing Assignment;
- (b) the issuance by the Concessionaire of any Concessionaire Debt other than the Concessionaire Debt incurred pursuant to the Initial Project Financing Agreements, secured or unsecured, including issuance of any reimbursement agreement respecting a letter of credit;
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Concessionaire Debt, Project Financing Agreement or Financing Assignment or the creation or granting of any other form of benefit or interest in any Concessionaire Debt, Project Financing Agreement or Financing Assignment, or the revenues, assets or other contracts of the Concessionaire whether by way of security or otherwise; or
- (d) any other arrangement put in place by the Concessionaire or another person which has an effect similar to clause (a), (b) or (c) of this definition.

Refinancing Gain means the calculation as set forth in Section 3(b) of the Assigned Gross Revenue and Refinancing Gain Share Calculation.

Rehabilitation Plan means the plan for rehabilitation of the Existing Midtown Tunnel and Existing Downtown Tunnels as described in the Technical Requirements and attached as Exhibit R.

Rehabilitation Work means the Work to be performed on the Existing Project Assets as described in the Rehabilitation Plan.

Remedial Actions means the management, treatment, handling, storage, monitoring, removal, transport or disposal measures carried out by the Concessionaire with respect to Hazardous Substances in accordance with Section 16.01(b).

Remedial Action Plan means the plan developed by the Concessionaire with respect to Hazardous Substances encountered by the Concessionaire within the Project Right of Way, as described in more detail in the Technical Requirements.

Replacement Agreements has the meaning ascribed thereto in the Direct Agreement.

Representative means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, other Person

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for whom such Person is, under Law responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

Request for Change Proposal means a written notice issued by the Department to the Concessionaire pursuant to Section 14.02(b).

Rescue Refinancing means a Refinancing which (a) occurs due to the failure or imminent failure of the Concessionaire to comply with any material financial obligation under the Project Financing Agreements or (b) is undertaken expressly to facilitate the cure of any other material default or event of default by the Concessionaire pursuant to the Agreement or the Project Financing Agreements and does not result in an increase of the Equity IRR beyond the Initial Refinancing Case Equity IRR. Notwithstanding the foregoing, no Rescue Refinancing will result in an actual or potential increase of the Concessionaire Default Termination Amount by more than ten percent.

Reserved Rights means the Department’s right and opportunity to develop and pursue, anywhere in the world, entrepreneurial, commercial and business activities that are ancillary or collateral to the use, enjoyment and operation of the Project and Project Right of Way as provided in the Agreement and the collection, use and enjoyment of Toll Revenues as provided in the Agreement. The Reserved Rights reserved to the Department include but are not limited to all the following:

- (a) all rights to finance, design, construct, use, possess, operate and maintain any passenger or freight rail facility, roads and highways (State and local) or other mode of transportation in the Airspace, including tunnels, flyovers, frontage roads, crossings, interchanges and fixed guide-ways, and to grant to others such rights;
- (b) all rights to install, use, lease, grant indefeasible rights of use, sell and derive revenues from electrical and fiber optic conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity, existing over, on, under or adjacent to any portion of the Project Right of Way installed by anyone, whether before or after the Agreement Date, and all software which executes such equipment and hardware and related documentation, except for the capacity of any such improvement installed by the Concessionaire that is necessary for and devoted exclusively to the operation of the Project;
- (c) all rights to use, sell and derive revenues from ETTM Data and other data generated from operation of the Project or any ETTM System, except use of such data as required solely for operation of the Project and enforcement and collection of tolls and incidental charges;
- (d) all ownership, possession and control of, and all rights to develop, use, operate, lease, sell and derive revenues from, the Airspace, including development and operation of service areas, rest areas and any other office, retail, commercial, industrial, residential, retail or mixed use real estate project within the Airspace;

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- (e) all rights to install, use and derive information, services, capabilities and revenues from ITS, except installation and use of any such systems and applications by the Concessionaire as required solely for operation of the Project. For avoidance of doubt, if the Concessionaire installs any such systems or applications, all use and capacity thereof not necessary for operation of the Project is reserved to, and will be the sole property of, the Department;
- (f) all rights to use, install, maintain, repair, or authorize the use, installation, maintenance or repair, of Utilities;
- (g) all rights to market, distribute, sell and derive revenues from any goods, products or merchandise depicting, utilizing or exploiting any name, image, logo, caricature or other representation, in any form or medium, of the Department or the Project, or that may be confused with those of the Department or the Project;
- (h) all rights and opportunities to grant to others sponsorship and advertising rights with respect to the Project or any portion thereof, except for a non-exclusive license for the Concessionaire to use the name in connection with Project operations;
- (i) all rights to revenues and profits derived from the right or ability of electronic toll account customers to use their accounts or transponders to purchase services or goods other than payment of tolls;
- (j) any other commercial or noncommercial development or use of the Airspace or electronic toll collection technology for other than operation of the Project; and
- (k) all ownership, possession and control of, and all rights to develop, use, lease, sell and derive revenues from, carbon credits or other environmental benefits generated by or resulting from the development, use, operation or maintenance of the Project.

Residual Life means the calculated duration that any Asset of the Project, subject to the type of routine maintenance of the Asset which is normally included as an annually recurring cost in highway maintenance and repair budgets, will continue to comply with any applicable Performance Requirement or standard after the end of the Term, before Major Maintenance is required, determined through the application of the Residual Life Methodology and Residual Life inspections.

Residual Life Methodology means the evaluation methodology by which the Residual Life of any Asset of the Project will be calculated. It contains the method by which any necessary Major Maintenance will be identified to ensure that Residual Life Requirements will be met at the end of the Term.

Residual Life Requirements means the requirements set forth in the Technical Requirements with respect to the condition of an Asset at the end of the Term.

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Responsible Public Entity has the meaning assigned to such term in Section 56-557 of the Code of Virginia and, for purposes hereof, means the Department.

Restoration Funds is defined in Section 17.07(a)(iii).

ROW Acquisition and Relocation Plan means the plan developed by the Concessionaire that defines the approach to acquisition of the Project ROW, as described in more detail in the Technical Requirements.

ROW Acquisition Costs means all costs required for the acquisition of the Project ROW including closing costs, relocation expenses, environmental and other site assessments and acquisition service expenses incurred by the Design-Build Contractor and condemnation expenses, but excluding any and all expenses incurred in connection with the following (all of which will be included within the fixed price of the Design-Build Contract): (a) the remediation of Hazardous Substances or Geotechnical Conditions found on property acquired by the Design-Build Contractor or the Concessionaire, (b) the acquisition of right of way or other property interests outside of the Project ROW or (c) acquisition and property management services.

ROW Baseline Cost means \$11,590,894.

ROW Cost and Acquisition Baseline Schedule means Exhibit B-3.

Rules Governing Prequalification Privileges has the meaning set forth in the Technical Requirements.

S&P means Standard & Poor's Rating Service, a division of The McGraw-Hill Companies, Inc. or any successor thereto.

Safety Compliance Order means any written order or directive of the Department issued after Substantial Completion for a Project Asset which directs the Concessionaire to undertake certain improvements to such Project Asset (a) to correct a specific safety condition affecting such Project Asset, which the Department has determined to exist by investigation or analysis or (b) to conform to changes in safety standards or methodologies agreed to or adopted by the Department for similar portions of comparable State Highways.

Scheduled Final Acceptance Date means, with respect to each Project Asset, 90 Days after Substantial Completion of such Project Asset (as each such date may be extended for Delay Events from time to time pursuant to the Agreement).

Scheduled Substantial Completion Date means, as applicable, the following:

- (a) Existing Downtown Tunnels Scheduled Substantial Completion Date;
- (b) Existing Midtown Tunnel Scheduled Substantial Completion Date;
- (c) New Midtown Tunnel Scheduled Substantial Completion Date; or
- (d) New MLK Extension Scheduled Substantial Completion Date.

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Scheduled Tolling and O&M Commencement Date of the Existing Project Assets means September 30, 2012.

Schedules and Early Work means Exhibit B.

Security Plan means the document (or part of another document) prepared by the Concessionaire which sets out how the security of the ETTM System, including the sub systems, communication links, roadside equipment and ETTM Facility will meet the relevant requirements for enforcement evidence and that data are held securely and only accessible to authorized personnel.

Sensitive Security Information (SSI) is the designation used to identify information related to maritime critical infrastructure that is not appropriate for public release without a need-to-know and as further defined in 49 CFR Part 1520.

Shareholder Loan means any subordinated loans made by any Equity Members to the Concessionaire.

Significant Force Majeure Event means one or more Force Majeure Events occurring after the Financial Close Date that (a) has the effect of causing physical damage or destruction to the Project Assets or surrounding infrastructure within the Project Right of Way, and (b) results in the Project Assets being substantially unavailable for public use or the suspension or substantial reduction of toll collections for a period in excess of (i) 180 consecutive Days; (ii) 360 Days in the aggregate over a period of two consecutive calendar years, or (iii) a period otherwise agreed to by the parties; *provided*, that such Force Majeure Event will not become a Significant Force Majeure Event by reason of a Concessionaire's failure to mitigate or cure the result of such Force Majeure Event through the exercise of reasonably diligent efforts.

Significant Force Majeure Termination Amount means the aggregate of (a) the Concessionaire Debt, (b) all amounts at par paid by the Equity Members in the form of capital contributions or Shareholder Loans up until the termination date, less any amounts actually received by the Equity Members from the Concessionaire as Distributions or payment of principal and interest for such Shareholder Loans, and (c) all Demobilization Costs; (d) less Credit Balances; and (e) less proceeds of insurance that is required to be carried pursuant to Section 17.01.

Significant Force Majeure Termination Notice is defined in Section 20.03(a).

Six-Year Improvement Program (SYIP) means the CTB's approved allocation of funding in accordance with Article 1.1, Chapter 1, Title 33.1 of the Code of Virginia.

Small, Women-Owned, and Minority Business (SWaM) means the State program to support small, women-owned and minority groups in doing business with the State.

Software means (a) computer instructions, including programs, routines and databases and applications supplied, procured or developed by the Concessionaire or the Department in connection with the operation of the Project or in connection with Reserved Rights, including but

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not limited to that which monitors, controls or executes on ETTM Equipment or ITS equipment or hardware, and (b) all modifications, updates and revisions made to the matter described in clause (a) above, including those made to correct errors or to support new models of computer equipment and/or new releases of operating systems.

Source Code and Source Code Documentation mean Software written in programming languages, such as C and Fortran, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object or machine readable code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, architectural standards, and commentary, explanations and instructions for compiling, describing the data flows, data structures, and control logic of the software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the Software without undue experimentation. Source Code and Source Code Documentation also include all modifications, additions, substitutions, updates, upgrades and corrections made to the foregoing items.

Source Code Escrows is defined in Section 18.06(b).

Standard Documents means the set of standard documents and specifications set forth in the Technical Requirements.

State means the Commonwealth of Virginia.

State Highway means any highway designated a State Highway pursuant to Title 33.1, Chapter 1, Sections 25, 48 and 67, Code of Virginia.

State Indemnitee means any of the State Parties and their respective Representatives.

State Party means the State, the CTB, the Department or any other agency, instrumentality or political subdivision of the State.

Steering Committee means the executive-level committee establish by the Concessionaire and the Department to provide executive-level business guidance on issues relating to the Project.

Structural Assets means the following immersed tube tunnel components of the Existing Project Assets:

- (a) the outer structural steel shell;
- (b) joints between precast units;
- (c) the inner structural concrete shell;
- (d) the waterproofing membrane; and

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(e) the suspended structural slab beneath the roadway in the Existing Midtown Tunnel and that tube built in 1952 of the Existing Downtown Tunnels that carries traffic westbound.

provided, however, that the following immersed tube tunnel components of the Existing Project Assets will not be considered Structural Assets:

- (1) the roadway;
- (2) the ceiling (including ceiling hangers and fixings);
- (3) ceramic tiles;
- (4) ventilation and support buildings; and
- (5) the equipment, plant, facility or system used to produce, convey, control, monitor, consume or discharge electrical, thermal, mechanical, and/or chemical energy.

Structural Assets Deductible means \$7,500,000 in the aggregate.

Structural Assets Excess Costs is defined in Section 9.04(e)(i).

Structural Assets Major Maintenance Plan means the plan developed by the Concessionaire pursuant to Section 9.04(b)(ii) and approved by the Department relating to the Major Maintenance of the Structural Assets for the Existing Project Assets.

Structural Assets Major Maintenance Cost means the aggregate budgeted costs of performing Major Maintenance on the Structural Assets of the Existing Project Assets, as set forth in the Structural Assets Major Maintenance Plan.

Structural Assets Monitoring Plan means the plan developed by the Concessionaire pursuant to Section 9.04(b)(ii) and approved by the Department relating to monitoring and inspection of the Structural Assets for the Existing Project Assets.

Substantial Completion means the satisfaction of the criteria for completion of the Design-Build Work for the applicable Project Asset as set forth in Section 8.08(c), as and when confirmed by the Department's issuance of the applicable Substantial Completion Certificate.

Substantial Completion Certificate means a letter or certificate issued by the Department in accordance with Section 8.08(e) evidencing the Department's determination that Substantial Completion has occurred for the applicable Project Asset.

Substantial Completion Date means the date on which Substantial Completion is achieved for the applicable Project Asset, as indicated in the Substantial Completion Certificate.

Substituted Concessionaire means any person or entity selected by the Lenders (acting through the Collateral Agent) and approved by the Department in accordance with the Direct Agreement to perform the Concessionaire's obligations and succeed to the Concessionaire's

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Interests after any such Lender, or any such Person, acquires the Concessionaire's Interests by foreclosure or transfer in lieu of foreclosure, or after the Collateral Agent takes possession and control of the Project in accordance with the Direct Agreement.

Task is defined in Section 9.04(c).

Tax means any Federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended), customs duties, permit fees, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind whatsoever payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not including in each case utility rates or rents.

Tax Imposition means:

(a) any State or local property tax or similar ad valorem tax or charge (including property taxes under Section 58.1-3203 of the Code of Virginia, as amended from time to time) or recordation tax on a deed, release or other document recorded in connection with the Agreement, unless recorded by or at the behest of the Concessionaire; and

(b) any license fee or sales, use, receipts or similar tax on or measured by receipts or revenues levied, rated, charged, imposed or assessed by the State or any county, city or town of the State with respect to Toll Revenues paid to or collected by the Concessionaire for travel on the Project.

but excluding (i) any taxes of general application on overall net income or (ii) any taxes levied, rated, charged, imposed or assessed in connection with any Transfer during the Term of all or any portion of the Concessionaire's Interest or of any interest in the Concessionaire.

Technical Requirements means the Technical Requirements included as Exhibit D, as the same may be revised in accordance with the Agreement.

Technical Requirement Revisions is defined in Section 14.02(e).

Term is defined in Section 4.02.

Termination Compensation Payment Date is defined in Section 25.19(c).

Third-Party Claim means any Claim asserted against a State Indemnitee by any Person who is not a party to the Agreement.

TIFIA means The Transportation Infrastructure Finance and Innovation Act of 1998.

TIFIA Shortfall Amount is defined in Section 7.03(b)(iv).

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Time Impact Analysis (TIA) means a time impact analysis, (a) establishing the influence of an event on the most recent Project Schedule Update, and will include a fragmentary network, and for events that have not yet occurred (such as proposed changes or Project Enhancements), the fragmentary network will demonstrate how the Concessionaire proposes to incorporate such event in the most recent Project Schedule Update, and (b) demonstrating: (i) the time impact based on the date the event occurred or notice of a proposed change is given to the Concessionaire, (ii) the status of the Work at such point of time; and (iii) the time computation of all affected activities.

Toll Rate Schedule means Exhibit J.

Toll Revenues means:

- (a) all amounts received by or on behalf of the Concessionaire applicable to vehicles for the privilege of traveling on the Project imposed pursuant to the Agreement and from any other permitted use or operation of the Project, including without limitation fees, tolls, rates, incidental charges and other charges (including administrative charges such as late fees, insufficient funds fees, etc.); plus
- (b) proceeds of business interruption or similar insurance against loss of Toll Revenues from operation of the Project; plus
- (c) payments from the Department of Concessionaire Damages in replacement of or substitution for any of the foregoing revenues; plus
- (d) amounts received pursuant to any collection or enforcement action, judgment or settlement with respect to any of the foregoing revenues; plus
- (e) amounts the Concessionaire receives as contractual liquidated or other contract damages with respect to any of the foregoing revenues; less
- (f) total credits and refunds of Toll Revenues made by the Concessionaire to customers and users on account of Toll Revenue previously collected.

Tolling and O&M Work Commencement Date means the applicable date on which the right to toll, and the obligation to operate and maintain, commences for each of the Project Assets.

Tolling and O&M Work Notice to Proceed is defined in Section 9.02(a).

Tolling Strategy and Marketing Plan means the plan developed by the Concessionaire pursuant to the Technical Requirements that describes the process by which the Concessionaire will perform public outreach activities with respect to tolling the Project Assets.

TR Dispute is defined in Section 21.02(a).

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TR Dispute Decision means the decision issued by the TR Dispute Panel in accordance with the Dispute Resolution Provisions.

TR Dispute Panel is defined in Section 21.02(b).

Traffic Management System (TMS) means any application of computer, electronics and/or telecommunications equipment and software and supporting fixtures and equipment whose function is to provide information, data and/or services to the traveling public or the Department or to manage and control traffic, and any future systems or services conceived or developed for the same or similar purposes.

Transfer means to sell, convey, assign, sublease, mortgage, encumber, transfer or otherwise dispose of.

Transferee is defined in Section 25.01(a).

Transition Plan is defined in Section 20.01.

Transportation Improvement Program (TIP) means the transportation improvement program that schedules the detailed funding for projects, project phases and programs that will be implemented in the next six fiscal years. The TIP is adopted by the metropolitan planning organization and approved by the FHWA and the Federal Transit Administration as a prerequisite to receiving Federal transportation funds and/or approvals.

Transportation Management Plan (TMP) means a plan setting forth a program for traffic management and related activities to be implemented by the Concessionaire in connection with the construction of the Project or any Project Enhancement, or any work undertaken pursuant to any Department Change or approved Concessionaire requests for Deviations.

Turnover Plan means the plan developed by the Concessionaire pursuant to the Technical Requirements that describes the process by which the Concessionaire will take over operations and maintenance responsibilities from the Department for the Existing Project Assets on the Existing Tolling and O&M Work Commencement Date, attached as Exhibit T.

Uniform Act is defined in Section 8.05(a)(ii).

Unknown Geotechnical Conditions means any Geotechnical Conditions which are not Known Geotechnical Conditions.

Unknown Pre-Existing Hazardous Substances means any Hazardous Substances present on the Project Right of Way or portion thereof as of the date that the Concessionaire assumes responsibility of such Project Right of Way or portion pursuant to Section 16.01(a) and which are not Known Pre-Existing Hazardous Substances.

User Classification means any classification, distinction or categorization set forth on the Toll Rate Schedule which forms the basis of the toll rates charged to users of the Project.

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Utilities Plan means the plan developed by the Concessionaire that defines the Utility coordination activities during the design and construction of the Project, as described in more detail in the Technical Requirements.

Utility means a public, private, cooperative, municipal and/or government 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. The term “Utility” specifically excludes (a) storm water lines connected with the highway drainage, and (b) traffic signals, street lights, and electrical systems for Project roadways.

Utility Baseline Schedule means the schedule for relocating the Utilities for the Project, attached as Exhibit B-5.

Utility Owner means the owner or franchisee of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

Utility Relocation means the removal, relocation and/or protection in place (including provision of temporary services as necessary) of any and all Utility facilities that have to be removed, relocated and/or protected in place in order to permit construction of the Project.

Value Pricing Pilot Program is defined in Section 5.08(a).

Violation Enforcement System (VES) means the collective equipment and procedures that capture a violation transaction, image and the citation process.

Violations Processing Services Agreement means an agreement the Concessionaire and the Department may enter into to govern utilization of the Department’s violation processing system in accordance with Section 5.01(f)(i), a form of which is attached as Exhibit K.

Virginia Petroleum Storage Tank Fund (VPSTF) is defined in Section 16.01(e).

Virginia Port Authority Lease means the lease that will be entered into between and among the Design-Build Contractor and the Virginia Port Authority related to the Project.

Warranty Period is defined in Section 8.11(a).

Work means collectively, the finance, development, planning, design, construction, rehabilitation, operations, repair and maintenance and any other services identified in the Agreement to be performed by the Concessionaire, including any Early Work performed prior to the Agreement Date.

Work Breakdown Structure (WBS) means a deliverable-oriented hierarchical structure that breaks the total scope of the Design-Build Work into activities, products or services that have distinct identification and that contain specific scope characteristics measured in terms of

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cost and effort. Each descending WBS level represents an increasingly detailed delineation of activities, products or services.

Work Package means a subcomponent of a Phase 2 Project Deliverable identified in the work plan delivered pursuant to the Interim Agreement.

Work Product means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Concessionaire or the Department, as applicable, for the Project or the Project Right of Way, including but not limited to designs, drawings, plans and specifications, record and as-built plans and specifications, engineering documents, geotechnical soils and soil boring data, analyses, reports and records, property acquisition files, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all construction documents relating to the Work or Project Enhancements), engineers' and inspectors' diaries and reports, Utility Relocation plans and agreements, right of way record maps and surveys, traffic and revenue studies, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, air quality monitoring data, environmental reviews, studies and reports, mitigation studies and reports, data, assessments, studies and reports regarding Hazardous Substance investigations, testings, borings, monitoring and analyses, manifests regarding handling, storage or transportation of Hazardous Substances, correspondence and agreements relating to Governmental Approvals, change orders, final quantities, pile driving records, records of accidents and traffic management, field test records and reports, concrete pour records, surfacing depth check records, grade and alignment books, cross-section notes, drainage notes, photographs, false work and form plans, records of construction materials, ETTM Equipment and ETTM Facilities records and reports, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which the Concessionaire and the Department mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure under Section 18.02 and which is not conceived or first reduced to practice for the Project Purposes, such as proprietary financial and pricing information of the Concessionaire.