

EXHIBIT A
DEFINITIONS

Acronym	
AASHTO	American Association of State Highway and Transportation Officials
AID	Automatic Incident Detection
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
CII	Critical Infrastructure Information
CII/SSI	Critical Infrastructure Information/Sensitive Security Information
CLRP	Constrained Long-Range Transportation Plan
CPI	Consumer Price Index
CPM	Critical Path Method
CPT	Cone Penetration Test
CPTED	Crime Prevention Through Environmental Design
CTB	Commonwealth Transportation Board
DAAR	DTR/Dulles Airport Access Road
DBE	Disadvantaged Business Enterprise
DBE/SWaM	Disadvantaged Business Enterprise/Small, Women- and Minority-owned Business Enterprise
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
DTR	Dulles Toll Road
EDMS	Electronic Document Management System
EIR	Environmental Impact Review
EPD	Escrow Proposal Documents
ESC	Erosion and Sediment Control
ESCCC	Erosion and Sediment Control Contractor Certification
ETC	Electronic Toll Collection
ETTM	Electronic Toll and Traffic Management
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FI/RW	Field Inspection and Right of Way
FOIA	Freedom of Information Act
FTP	File Transfer Protocol
GAAP	Generally Accepted Accounting Principles
GFCI	Ground Fault Circuit Interrupter
GFE	Good Faith Effort
GUI	Graphical User-Interface

Acronym	
HOT/HOV	High Occupancy Toll/High Occupancy Vehicle
HOV	High Occupancy Vehicle
IAG	InterAgency Group
IDSP	Integrated Directional Sign Program
IIM or I&IM	Instructional and Informational Memorandum
IJR	Interchange Justification Report
IMR	Interchange Modification Report
IP	Intellectual Property
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
LRTP	Long Range Transportation Plan
MWCOG	Metropolitan Washington Council of Governments'
MMS	Maintenance Management System
MOI	Department Manual of Instructions for Material Division
MOT	Maintenance of Traffic
MPO	Metropolitan Planning Organization
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
RLD	Responsible Land Disturber Certification
ROD	Record of Decision
ROW	Right of Way
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
SEC	U.S. Securities and Exchange Commission
SPI	Schedule Performance Index
SPT	Standard Penetration Test
SPV	Special Purpose Vehicle
SRA	Safety Rest Area
STIP	State Transportation Improvement Plan

Acronym	
STRAHNET	Strategic Highway Network
SWaM	Small Woman-Owned and Minority Business
SYIP	Six-Year Improvement Program
SWM	Storm Water Management
SWPPP	Storm Water Pollution Prevention Plan
TIA	Time Impact Analysis
TIFIA	Transportation Infrastructure Finance and Innovation Act
TMP	Transportation Management Plan
TMS	Traffic Management System
TRI	Total Return on Investment
TTMS	Toll and 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
VPDES	Virginia Department of Environmental Quality's Virginia Pollutant Discharge Elimination System
VPS	Violation Processing System
VPSTF	Virginia Petroleum Underground Storage Tank Fund
VSMP	Virginia Stormwater Management Program
VSP	Virginia State Police
VTIB	Virginia Transportation Infrastructure Bank

495 Ultimate Scope at DTR Interchange means the configuration for the interchange of the Capital Beltway and Dulles Toll Road/Dulles Airport Access Road as described on Exhibit B-6.

Actual Gross Revenue is defined in Section 4.09(e)(ii).

Additional Traffic Lanes means traffic lanes within the Capital Beltway Corridor beyond the improvements included within the Project.

Affiliate, when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries has a 10% or more voting or economic interest in such specified Person or 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 is defined in Section 11.02(f).

Agreement or **ARCA** means the Second ARCA, as subsequently amended, restated, supplemented and otherwise modified from time to time, and all exhibits and schedules thereto, in each case, as amended, restated, supplemented, and otherwise modified from time to time.

Agreement Date means December 19, 2007.

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

(ii) the cost of all materials used, including sales taxes, freight and delivery charges and any allowable discounts; plus

(iii) 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 shall establish a rate for it that is consistent with its cost and use in the industry; or

(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 or 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) 10% of such amount to reimburse the Department or the Concessionaire for costs of administering 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.

Available Revenues is defined in Section 4.08(b).

Average Toll means for a given time period in which (a) the total volume exceeds 3,200 vehicles per hour in the same direction for any Toll Section and (b) the number of High Occupancy Vehicles exceeds 30% of all Permitted Vehicles going in such direction then using such Toll Section, (1) the total revenue for all toll paying vehicles going in such direction for such Toll Section in such period, divided by (2) the number of toll paying vehicles going in such direction using such Toll Section in such time period.

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 Financial Model means the Financial Model and the assumptions and information used by or incorporated in the Financial Model: (a) as of the Agreement Date on the basis of which the Concessionaire and the Department entered into this Agreement; (b) which include certain projections and

calculations with respect to revenues, expenses, the repayment of Concessionaire Debt; and (c) which is prepared on the basis of the Base Case Traffic Model, as such Financial Model shall be updated pursuant to Section 5.04.

Base Case Financial Model Update means the Base Case Financial Model, as most recently updated pursuant to Section 5.04.

Base Case Financial Model Update (NEXT Draft) means the iterative financial model submitted by the Concessionaire initially with its written proposal to develop and construct the NEXT Project, and updated at various times by the Concessionaire before NEXT Financial Close, as set forth in Section 5.04.

Base Case Financial Model Update (NEXT Final) is defined in Section 5.04(g).

Base Case First Level Targeted Rate of Return means 7.800%.

Base Case Second Level Targeted Rate of Return means 8.347%.

Base Case Third Level Targeted Rate of Return means 8.808%.

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 Capital Beltway HOT Lanes Investment Grade Traffic and Revenue Study dated February 2007, the results of operation of which are incorporated into the Base Case Financial Model.

Baseline Report is defined in Section 8.06(a).

Baseline Schedule means (a) with respect to the Original Project, the Original Project Baseline Schedule, and (b) with respect to the NEXT Project, the NEXT Baseline Schedule.

BCWP is defined in Section 7.06(f)(i).

BCWS is defined in Section 7.06(f)(i).

Bi-State Project means the project to be delivered in accordance with the cooperative agreement to be entered into between the State and the State of Maryland to provide: a new American Legion Bridge and new bicycle and pedestrian access to connect trails on both sides of the Potomac River; and to provide a seamless regional dynamic toll lane network with each state operating its system with independence.

Breakage Costs means any commercially reasonable breakage costs, 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 such debt prior to its scheduled maturity date.

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

Capital Beltway means that portion of the 64-mile long Interstate freeway (I-495) encircling Washington D.C. situated within the State, as it may be expanded or improved after the Agreement Date.

Capital Beltway Corridor means the Original Corridor and the NEXT Corridor.

Change in Control, as to the Concessionaire, means the transfer of 50% or more of the membership interests in the Concessionaire by the members of the Concessionaire as of the Second Amended and Restated Agreement Date and any assignment, sale, 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 significant aspect of its business; *provided*, that the following shall not constitute a Change in Control:

(a) 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;

(b) 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 or State department or agency;

(c) 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;

(d) The exercise of preferred or minority equity holder veto or voting rights (whether provided by applicable Law or by the Concessionaire's organizational documents) over major business decisions of the Concessionaire; or

(e) The grant of Financing Assignments in accordance with Section 6.02(b), or the exercise of Lender remedies thereunder, including foreclosure; or

(f) Transfers of direct or indirect ownership interests in the Concessionaire (as applicable) between or among Persons that are under common "control" (within the meaning of control contemplated by the definition of Affiliate).

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 7.12.

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

Closing Date means the date on which each of the following has occurred: (i) the Concessionaire enters into the Design-Build Contract for the Original Project and issues the notice to proceed thereunder, (ii) the Concessionaire enters into a binding loan agreement for the TIFIA Loan for the completion of the design and construction of the Original Project, and (iii) the members of the Concessionaire pay the initial installment of the equity commitments under each Guaranty of Investment Obligations, which Closing Date shall be December 20, 2007, unless another date is mutually agreed upon in writing by the Department and the Concessionaire.

CLRP or Constrained Long-Range Transportation Plan means the constrained long-range transportation plan that is adopted by the applicable metropolitan planning organization (which in the metropolitan Washington, D.C. region is the Transportation Planning Board) and approved by the FHWA

and the Federal Transit Administration as a prerequisite to receiving Federal transportation funds and/or approvals.

Code means the Internal Revenue Code of 1986, as amended.

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 shall be delivered by the Concessionaire to the Department. Initially, the Collateral Agent means Wells Fargo Bank, National Association, a national banking association, in its capacity as trustee under the Master Indenture of Trust with the PABs Issuer, dated as of December 1, 2007, or any successor trustee thereunder.

Commissioner means the Commissioner of Highways or any successor in function.

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

(a) any delay beyond the applicable time period in the issuance by the Department of a Substantial Completion Certificate pursuant to Section 7.14(a) or a NEXT Final Completion Certificate pursuant to Section 7.15(b);

(b) the development or implementation of any Department Change pursuant to Section 7.12 or any Department Project Enhancement pursuant to Section 9.02;

(c) the performance by the Department of certain ITS activities pursuant to Section 12.03 that results in Concessionaire Damages;

(d) any Discriminatory Change in Law pursuant to Section 13.04;

(e) any Reimbursable Tax Imposition pursuant to Section 13.06;

(f) an event related to toll exemptions described in Section 13.05(a); or

(g) an injunction or other legal proceeding enjoining or estopping the Concessionaire from the performance of its obligations under this Agreement, in any case for more than 30 days in the aggregate, based solely on claims that were not time barred because the re-evaluation dated May 9, 2007 of the federal environmental impact study was not published in the Federal Register;

provided, that under no circumstances will any of the following events (including associated construction activities) result in a Compensation Event (although, for the avoidance of doubt, such exclusion from Compensation Events does not exclude such events from otherwise being considered Department Changes or Delay Events, in each case, pursuant to, and in accordance with, the terms of the Agreement):

(i) the development or implementation of any projects listed in the MWCOG CLRP dated as of October 17, 2018 within the NEXT Corridor;

(ii) the development or implementation of the Bi-State Project; and

(iii) the development or implementation of any NEXT Project (Phase 2) Asset, other than the development or implementation of the new southbound auxiliary lane between Route 193 and Dulles Toll Road to the extent it commences prior to the

earlier of: (1) service commencement of the Bi-State Project and (2) December 31, 2030.

Compensation Event Notice is defined in Section 13.02.

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

A = the total contract price of the Original Design-Build Contract and the NEXT Design-Build Contract, as applicable, plus the value of all change orders to each of the Original Design-Build Contract and the NEXT Design-Build Contract approved by the Department;

B = the estimated cost to complete all of the Work required to be undertaken in order to achieve Service Commencement for the Original HOT Lanes or the NEXT HOT Lanes, as applicable;

C = the Department's estimate of all those costs (internal and external) that it is reasonably likely to incur in retendering: (i) this Agreement and/or (ii) a replacement agreement to complete the NEXT Project, as applicable; and

D = the aggregate of all amounts paid to the Concessionaire by the Department in respect of (i) the Original Project, (ii) the NEXT Project and (iii) any other amounts paid by the Department to the Concessionaire as compensation for the Work, as applicable, on or prior to the date of termination of this Agreement or the NEXT Project, as applicable.

Completion Guaranty means (a) for the Original Project, the Original Completion Guaranty and (b) for the NEXT Project, the NEXT Completion Guaranty.

Concession Payments Account is defined in Section 5.03.

Concessionaire has the meaning assigned to such term in Section 56-557 of the Virginia Code and, for purposes of this Agreement, means Capital Beltway Express LLC and its permitted successors and assigns.

Concessionaire Damages means, with respect to any Compensation Event, the sum of (a) any Net Cost Impact relating thereto and (b) any Net Revenue Impact relating thereto. Concessionaire Damages shall not include, with respect to any Compensation Event, an aggregate amount that is *de minimis*.

Concessionaire Debt means any bona fide debt (including principal, accrued interest, and customary and reasonable lender or financial insurer, agent and trustee fees, costs, premiums, expenses and reimbursement obligations with respect thereto, and including all payment obligations under interest rate hedging agreements and reimbursement obligations to any financial insurer with respect thereto) relating to the Project and granted by a Person (other than an Affiliate of the Concessionaire except if the terms of such debt are comparable to the terms that could have been obtained, on an arms-length basis, from a Person that is not an Affiliate of the Concessionaire) pursuant to an agreement entered into prior to the declaration of a Department Default or Force Majeure Event giving rise to the payment of amounts for or with respect to termination under this Agreement. No debt shall constitute Concessionaire Debt unless the Collateral Agent provided the Department with a Notice of Concessionaire Debt in accordance with the notice requirements of Section 20.04. Except with respect to the incurrence of debt under the Initial Project Financing Agreements or the NEXT Project Financing Agreements, Concessionaire Debt shall not include any debt that would cause the Concessionaire Debt to increase unless such debt is approved by the Department pursuant to Section 6.06(b) or otherwise meets the requirements of subclause (A), (B) or (C)

of Section 6.06(b). For the avoidance of doubt, the NEXT Equity Commitment Amount shall not be considered Concessionaire Debt.

Concessionaire Default is defined in Section 17.01.

Concessionaire Default Triggering Event is defined in Section 17.01.

Concessionaire Loan means the aggregate principal amount of Concessionaire Debt outstanding from time to time under the Project Financing Agreements and secured by the Financing Assignments, excluding any indebtedness owed to the Concessionaire's Affiliates.

Concessionaire Marks is defined in Section 18.04(d).

Concessionaire Party means the Concessionaire and any Affiliate and any agents, officers, directors, employees, contractors (other than the Department), subcontractors, suppliers and materialmen of the Concessionaire or any Affiliate.

Concessionaire Project Enhancements means any extensions of, additions to, or major modifications undertaken by the Concessionaire after the Initial Service Commencement Date pursuant to Section 9.01 or 9.02(c) (including the NEXT Project (Phase 2)), except those required as part of maintenance or repair of assets.

Concessionaire Representative means an individual designated in accordance with Section 20.03(b).

Concessionaire Recovery Plan is defined in Section 7.16(b).

Concessionaire-Supplied SPV Contingency Amount is defined in Section 7.20(d)(i).

Concessionaire's Interest means the interest of the Concessionaire in and to (a) the Project and (b) this Agreement and the other Project Agreements.

Construction Costs means all capital expenditure payments, as funded by Total Invested Project Funds, made for the construction, development and completion of the Project excluding amounts paid for Operating Costs and Major Maintenance.

Construction Documentation means all Design Documentation 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 this Agreement and the other Project Agreements.

Construction Reserves means reserves funded by the Concessionaire to meet future Construction Costs.

Construction Segment means any segment or portion of the Project which the Design-Build Contractor and the Concessionaire have designated pursuant to the Design-Build Contract for the purpose of scheduling construction, as approved by the Department.

Construction Segment Approval is defined in Section 7.03(b).

Contingency Notice is defined in Section 7.20(e)(ii).

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” shall include the Design-Build Contractor and the O&M Contractor.

Contractor Guarantor means (a) for the Original Project, the Original Contractor Guarantor and (b) for the NEXT Project, the NEXT Contractor Guarantor.

Contractor Recovery Plan is defined in Section 7.16(a).

CPI means the “Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items” (not seasonally adjusted), or its successor, of 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 shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor.

Credit Balances means the aggregate of any amounts standing to the credit of any bank account held by or on behalf of the Concessionaire.

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

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

Delay Event means:

(a) with respect to the Work Period, “Delay Event” means the occurrence of one or more of the following during the Work Period:

(i) a Work Period Force Majeure Event;

(ii) discovery of any of the following conditions: (A) subsurface conditions on the Project Right of Way that (1) vary materially from the conditions described in the data available to Concessionaire or the Design-Build Contractor (x) as of the Agreement Date with respect to the Original Project or (y) as of the Second Amended and Restated Agreement Date with respect to the NEXT Project, or (2) are unusual and could not be reasonably anticipated based on conditions ordinarily encountered in the general area of the Project Right of Way; (B) threatened or endangered species; (C) archaeological, paleontological or cultural resources; (D) Hazardous Substances present on the Project Right of Way (1) as of the Agreement Date with respect to the Original Project or (2) as of the Second Amended and Restated Agreement Date with respect to the NEXT Project; (E) Hazardous Substances spilled or otherwise placed other than by a Concessionaire Party in the course of performing the Work (1) subsequent to the Agreement Date with respect to the Original Project or (2) subsequent to the Second Amended and Restated Agreement Date with respect to the NEXT Project; or (E) unknown Utilities;

(iii) a failure to obtain, or delay in obtaining, any Regulatory Approval or other authorization from a Governmental Authority (*provided* that such failure or delay could not have been reasonably prevented by the Concessionaire);

(iv) an injunction or other legal proceeding enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement; or

(v) a change in applicable Laws occurring (A) after the Agreement Date with respect to the Original Project or (B) after the Second Amended and Restated Agreement Date with respect to the NEXT Project, that imposes additional requirements that directly and materially adversely impacts performance of the Work and that could not have reasonably been anticipated by a reasonable contractor.

(b) with respect to the Operating Period, "Delay Event" means the occurrence of one or more of the following during the Operating Period:

(i) a Force Majeure Event; or

(ii) an injunction or other legal proceeding enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Agreement; or

(c) which in each case of either (a) or (b) above results in a delay or interruption in the performance by the Concessionaire of any obligation under this Agreement; *provided*, that such delay or the cause thereof is neither specifically dealt with in this Agreement nor arises by reason of:

(i) the negligence or misconduct of the Concessionaire, a Concessionaire Party or their Representatives;

(ii) any act or omission by the Concessionaire, a Concessionaire Party or their Representatives in breach of the provisions of this Agreement;

(iii) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire;

(iv) except to the extent the same constitutes a Force Majeure Event, any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Concessionaire, a Concessionaire Party or their Representatives to supply materials or services for or in connection with the Project's operation or any strike, labor dispute or labor protest caused by or attributable to any act (including any pricing or other price or method of operation) or omission of the Concessionaire, a Concessionaire Party or their Representatives;

(v) except to the extent the same constitutes a Force Majeure Event, any weather condition (including any flooding) whether or not such weather conditions or the severity of such weather conditions are not or have not ordinarily or customarily been encountered or experienced; or

(vi) the development, redevelopment, construction, modification, maintenance or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of User Fees or in the number of vehicles using the HOT Lanes Project.

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 under this Agreement.

Department Change means any change in the scope of the Work or terms and conditions of the Technical Requirements (including changes in the standards applicable to the Work) that the Department has directed the Concessionaire to perform through a Change Order or a Directive Letter or that the Department performs pursuant to Section 7.12(c).

Department Default is defined in Section 17.03.

Department Project Enhancements means any extensions of, additions to, or major modifications of the HOT Lanes or the Additional Traffic Lanes, except as part of maintenance, repair, reconstruction, rehabilitation, restoration or replacement of any improvements and assets, within the Capital Beltway Corridor undertaken by the Department after the Initial Service Commencement Date pursuant to Section 9.02.

Department Regulatory Approvals mean (a) with respect to the Original Project, (i) SEP-14 approval from the FHWA for the Original Project, (ii) any approvals necessary to obtain the Record of Decision or finding of no significant impact from the FHWA, as part of the environmental review process, (iii) adoption of the Project within the CLRP, the TIP and Air Quality Conformity Analysis from the Transportation Planning Board, (iv) FHWA approval of the STIP, (v) the Toll Agreement, and (vi) approval by the CTB of the funding for the Project included in the SYIP; and (b) with respect to the NEXT Project, such regulatory approvals as described in Exhibit M.

Department Representative means an individual designated in accordance with Section 20.03(a).

Design-Build Contract means (a) for the Original Project, Original Design-Build Contract and (b) for the NEXT Project, the NEXT Design-Build Contract, each for the Work, as it may be amended or supplemented.

Design-Build Contractor means (a) for the Original Project, Original Design-Build Contractor and (b) for the NEXT Project, the NEXT Design-Build Contractor.

Design-Build EPDs means the Original Design-Build EPDs and the NEXT Design-Build EPDs.

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 construction of the Work or any component thereof.

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

Development Contract means any agreement that is entered into by the Department and the Concessionaire from time to time after the Agreement Date that sets forth the parties' rights and obligations with respect to the design and construction of a Project Enhancement, which shall 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.

Direct Agreement means the Direct Agreement executed among the Department, the Concessionaire, and the Collateral Agent related to the Project, substantially in the form attached as Exhibit U-1.

Directive Letter means an order issued by the Department in accordance with Section 7.12(b)(vi) directing the Concessionaire to perform Work.

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 against the HOT Lanes Project or the Concessionaire (but as to the Concessionaire only with respect to the HOT Lanes Project), except where such Law or change in Law or in interpretation or application is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law) or such Law or change in Law or in interpretation or application is otherwise permitted under this Agreement.

Distribution means (a) any distribution, dividend or other payment, monetary or in-kind, made by the Concessionaire to the shareholders, members, partners, joint venturers or other holders of an equity interest in the Concessionaire, including from the proceeds of any Refinancing, on account of equity investment in the Concessionaire, or (b) 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 11.02(f).

DTR Ramp means a new ramp from the southbound high-occupancy toll lanes to eastbound Dulles Toll Road (ramp E2) (including necessary adjustments to the existing ramp G1).

EIS means that certain signed final environmental impact statement, record of decision and re-evaluation for the Original Project approved by FHWA in May 2007.

Electronic Toll Collection Services Agreement means the Electronic Toll Collection Services Agreement between the Concessionaire and the Department, as it may be amended or supplemented, attached as Exhibit D.

Eligible Investments means any one or more of the following securities:

(a) Direct obligations of, and obligations fully and unconditionally guaranteed by, (i) the United States of America or (ii) any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America;

(b) Demand or time deposits, federal funds or bankers' acceptances issued by any depository institution or trust company, *provided* that (i) any demand or time deposit or certificate of deposit is fully insured by the Federal Deposit Insurance Corporation or (ii) any commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such depository institution or trust company at the time of such investment or contractual commitment providing for such investment have been rated "A" or higher by a Rating Agency;

(c) Commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) which has been rated "A" or higher by a Rating Agency at the time of such investment;

(d) Any money market funds, the investments of which consist of cash and obligations fully and unconditionally guaranteed by (i) the United States of America or (ii) any agency or

instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America and which have been rated “A” or higher by a Rating Agency;

(e) Any guaranteed investment contract satisfying the requirements for the same provided in the applicable Project Financing Agreement; and

(f) Other investments then customarily accepted by the State in similar circumstances.

Eligible Sharing Amount is defined in Section 4.09(e)(ii).

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 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.

EPD Escrow Agreement means the Amended and Restated EPD Escrow Agreement dated as of the Second Amended and Restated Agreement Date by and among the Concessionaire, the Department and the Escrow Agent, which will be in substantially the form attached as Exhibit R, as it may be amended or supplemented from time to time.

EPDs means the Original EPDs and the NEXT EPDs.

Equity Contributions means (without duplication) (i) cash, (ii) funds available for distribution in a distribution account established under the Project Financing Agreements that have not yet been distributed and are made available for Project-related expenditures, and (iii) funds made available from the NEXT Equity Funding Agreements, each in form and substance acceptable to the Department in its reasonable sole discretion.

Equity Sponsor(s) means as of and after the Second Amended and Restated Agreement Date, Transurban Express Lanes LLC.

ESA Payment Date is defined in Section 4.09(a).

ESA Reserve Account is defined in Section 4.09(c).

Escrow Agent means SunTrust Bank, and its successors and assigns, in its role as escrow agent under Sections 18.05 and 18.06, or such other entity serving as escrow agent thereunder as may be agreed to in writing by the Department and the Concessionaire.

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, and including but not

limited to use and enforcement data, origin and destination information, ETTM performance statistics, and real time traffic flow 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 (including both the tolling subsystem and the Express Operations Center traffic management subsystem).

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

Excess Sharing Amount is defined in Section 4.09(a).

Exempt Vehicles means emergency vehicles and law-enforcement vehicles using the HOT Lanes in the performance of their duties.

Existing TIFIA Loan means the TIFIA Loan outstanding under the Amended and Restated TIFIA Loan Agreement dated as of June 1, 2008 between the Concessionaire the TIFIA Lender.

Express Operations Center means the HOT OC Services facilities located at 6440 General Green Way, Alexandria, Virginia.

Federal Requirements means the provisions required to be part of federal-aid contracts relating to highway projects and applicable to the Project, including the provisions set forth in Exhibit W.

FHWA means the Federal Highway Administration.

Final Acceptance means the occurrence of all the events and satisfaction of all the conditions with respect to the Work as set forth in Section 7.14(b) of the Agreement.

Final Acceptance Certificate means the certificate issued by the Department pursuant to Section 7.14(b) of the Agreement.

Final Acceptance Date means the date on which the Department issues the Final Acceptance Certificate.

Final Audit is defined in Section 7.20(e)(iv).

Financial Model means the financial formulas that the Concessionaire and the Department have agreed upon as of the Agreement Date for projecting over the Term the pre-tax internal rate of return on Total Invested Project Funds and the pre-tax internal rates of return to equity investors in Concessionaire, which financial formulas are used as part of the Base Case Financial Model and each Base Case Financial Model Update, but without the data and information used by or incorporated into the Base Case Financial

Model and each Base Case Financial Model Update, as modified from time to time with the approval of both parties.

Financing Assignment is defined in Section 6.02(b).

FI/RW is defined in Section 7.5(e).

Financing EPDs means the Original Financing EPDs and the NEXT Financing EPDs.

First ARCA is defined in the Recitals to this Agreement.

First Level Targeted Rate of Return has the meaning specified in Exhibit L.

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

Fluor Corporation is defined in Section 3.02(b).

Fluor Enterprises is defined in the Recitals to this Agreement.

Force Majeure Dispute Notice has the meaning specified in Section 13.07(c).

Force Majeure Election is defined in Section 16.03(a).

Force Majeure Event means any intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, condemnation or confiscation of property or equipment by any Governmental Authority (other than the Department), nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, earthquake that causes ground accelerations in excess of the AASHTO bridge design standards for the site, floods in excess of the base flood (as defined in the Department's Division I Amendment), hurricane force winds, tornados, industry-wide or regional strikes or labor disputes, riot or other public disorder, epidemic, quarantine restriction, stop-work order or injunction issued by a Governmental Authority (other than the Department) of competent jurisdiction, governmental embargo, *provided* that such event neither is otherwise specifically dealt with in this Agreement nor arises by reason of:

(a) the negligence or misconduct of the Concessionaire, a Concessionaire Party or their Representatives;

(b) any act or omission by the Concessionaire, a Concessionaire Party or their Representatives in breach of the provisions of this Agreement;

(c) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire;

(d) any strike, labor dispute or labor protest directed solely at Concessionaire, or a Concessionaire Party or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the Concessionaire, a Concessionaire Party or their Representatives;

(e) the development, redevelopment, construction, modification, maintenance or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of User Fees or in the number of vehicles using the HOT Lanes; or

(f) during the Operating Period, damage to the Project caused by severe weather, flood or earthquake if such damage would not have occurred but for the Project's failure to have been designed or constructed in accordance with the Technical Requirements.

It is specifically understood that other than earthquakes causing ground acceleration in excess of the AASHTO bridge design standards for the site, floods in excess of the base flood (as defined in the Department's Division I Amendment), hurricane force winds or tornados, the Concessionaire shall assume the risk and other weather or conditions resulting from weather shall not constitute a Force Majeure Event.

Force Majeure Extension is defined in Section 13.07(b).

Force Majeure Extension Notice is defined in Section 13.07(c).

Force Majeure Notice is defined in Section 13.07(a).

Force Majeure Termination Note is defined in Section 16.03(a).

Fragnet or Fragmentary Network means the sequence of new activities and/or activity revisions, logic relationships, and resource changes that are proposed to be added to the existing schedule to demonstrate the influence of impacts to the schedule.

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

George Washington Memorial Parkway Interface means accommodation of the Bi-State Project's design and interface with the George Washington Memorial Parkway.

GFE is defined in Section 11.03(b).

Good Industry Practice means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Concessionaire or contractor seeking in good faith to comply with its contractual obligations, complying with all applicable Laws and Regulatory Approvals and engaged in the same type of undertaking under similar circumstances and conditions.

Governmental Authority means any court, federal, state, or local government, department, commission, board, bureau, agency or other regulatory or governmental authority.

GP Lanes means the general-purpose traffic lanes (in either or both directions, as applicable) on the Capital Beltway.

Guaranteed Substantial Completion Date is defined in Section 7.01(e).

Guaranty of Investment Obligations means each Guaranty of Investment Obligations dated as of December 19, 2007 to the Department, one from Transurban and one from Fluor Corporation, as they may be amended or supplemented.

GWMP Work Approvals means the additional Department approvals related to the NEXT Project sufficient to advance the hold-point area as demarcated in Exhibit F-3, beyond preliminary engineering.

GWMP Work Directive is defined in Section 7.20(a)(ii).

Handback Requirements is defined in Section 16.09(a).

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, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including but not limited to gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation, and naturally asbestos-containing soils or sulfidic geological materials).

High Occupancy Requirement means the number of Persons in accordance with Law applicable to HOT Lanes required to be traveling in a vehicle for the vehicle to use the HOT Lanes without the payment of a toll.

High Occupancy Vehicles means, at any given time during the Term, Permitted Vehicles traveling with at least that number of persons required by the High Occupancy Requirement applicable at such time.

Hiring Development Plan means the plan developed by the Concessionaire that describes its approach to complying with the Department's geographic labor and veterans hiring preference work plan.

HOT Lanes means the (a) Original HOT Lanes, (b) the NEXT HOT Lanes and NEXT Access Ramps and (c) when constructed or designated as such, any Additional Traffic Lanes dedicated for use by qualifying HOT Lanes traffic or other Project Enhancements (including any portion of any NEXT Project (Phase 2) Asset that is dedicated for use by qualifying HOT Lanes traffic). The HOT Lanes are shown on the drawings attached to the Agreement as Exhibit B-2 and, upon Substantial Completion of the Original Project and upon NEXT Final Completion, as applicable, such drawings shall be superseded by the as-built drawings delivered to the Concessionaire under the applicable Design-Build Contract.

HOT Lanes Assets is defined in Section 8.06(a).

HOT Lanes Operations means (a) the operation, management, maintenance and tolling of the HOT Lanes Project and (b) all other actions relating to the HOT Lanes Project or otherwise that are to be performed by or on behalf of the Concessionaire during the Operating Period pursuant to this Agreement.

HOT Lanes Project means (a) the HOT Lanes Right of Way, the Express Operations Center and the HOT Lanes, together with all improvements thereon, including the ETTM Facilities and ETTM System, and all associated assets including signage the cost of which is borne by the Concessionaire under the Agreement, in each case as more fully described in the applicable Scope Document, and (b) when constructed, any Project Enhancements intended by the Department to be included in the HOT Lanes Project. The HOT Lanes Project shall not include frontage roads, overpasses, underpasses, bridges and other crossings that cross the HOT Lanes Right of Way.

HOT Lanes Project Purposes means the operations, maintenance, repair, preservation, modification, management and administration of the HOT Lanes Project, including establishing, imposing, charging, collecting, using and enforcing payment of tolls.

HOT Lanes Right of Way means all real property within the access control line for the HOT Lanes Project, including the separation zone from the adjacent general-purpose lanes of the Capital Beltway and dedicated for use by qualifying HOT Lanes traffic, together with all improvements thereon related to in accordance with the HOT Lanes Project Purposes, including the Express Operations Center site and easements for fiber optic routing to the Express Operations Center, and the property on which the ETTM

Facilities and ETTM System is located, and all other facilities and improvements required for the opening and operations of the HOT Lanes. The area comprising the HOT Lanes Right of Way is indicated as the cross-hatched portion shown on the map attached to the Agreement as Exhibit B-3.

HOV-2 means a High Occupancy Requirement of at least two persons.

Independent Engineer means the independent engineering consultant retained by the Concessionaire and the Department in accordance with an Independent Engineer Agreement.

Independent Engineer Agreement means with respect to the Original Project and the Original HOT Lanes, the Independent Engineer Agreement dated as of December 19, 2007 among the Concessionaire, the Department, the Collateral Agent and the Independent Engineer, as it may be amended or supplemented.

Initial Baseline Schedule means the preliminary construction schedule attached to this Agreement as Exhibit O-1. The Initial Baseline Schedule will be superseded by a subsequent Baseline Schedule to be updated periodically throughout the Work Period in accordance with this Agreement.

Initial NEXT Baseline Schedule means the preliminary construction schedule to be delivered by the Concessionaire on or before October 1, 2021 and attached to this Agreement as Exhibit O-2. The Initial NEXT Baseline Schedule will be superseded by a subsequent NEXT Baseline Schedule to be updated periodically throughout the Work Period in accordance with this Agreement.

Initial Project Financing Agreements means, collectively, the Project Financing Agreements listed on Exhibit H-1 of this Agreement.

Initial Scope Document means the document attached as Exhibit B-4.

Initial Service Commencement Date means November 17, 2012.

Initial Transit and Corridor Investment Payment is defined in Section 4.08(a).

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) under the Securities Act or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms;

(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 this Agreement, is acceptable under then current guidelines and practices of the State); or

(e) 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 shall have individual or combined assets, as the case may be, of not less than \$1 billion; and provided, further, that an entity described in clause (b)(iv) of this definition must have assets of not less than \$100 million.

Intellectual Property means the ETTM books and records, toll-setting and traffic management algorithms, EPDs and Software and associated documentation used in connection with the HOT Lanes Project (including but not limited to Software and associated documentation used for management of traffic on the HOT Lanes), copyrights (including moral rights), trade marks (registered and unregistered), designs (registered, including applications, and unregistered), patents (including applications), circuit layouts, 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.

ITS 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; *provided* that ITS does not include the ETTM System as used for HOT Lanes Project Purposes.

Jones Branch means a four lane connector roadway and structures connecting the HOT Lanes with Jones Branch Drive, as depicted in Exhibit B-2, which shall be designed to accommodate future expansion to six lanes and through traffic across the Capital Beltway to Route 124, and which shall constitute a part of the HOT Lanes Project.

Labor, Employment and DBE/SWaM Related Matters means Exhibit X

Law means any current or future order, writ, injunction, decree, judgment, law, ordinance, decision, opinion, ruling, statute, code, rule or regulation of any Governmental Authority.

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.

Letter of Credit means an irrevocable, unconditional, standby letter of credit, in favor of the Department (or where indicated, the Collateral Agent with the Department as permitted transferee), in form and content reasonably acceptable to the Department, payable in U.S. dollars upon presentation of a sight draft and a certificate confirming that the Department has the right to draw under such letter of credit in the amount of such sight draft, without presentation of any other document, statement or authorization, which letter of credit (a) is issued by a commercial bank or trust company that is a member of the New York Clearing House Association, that has a combined capital and surplus of at least \$1,000,000,000, that is a

national banking association, a state bank chartered in one of the states of the United States, or the U.S. branch of a foreign bank, and that has a current credit rating of A1 or better by S&P and an equivalent credit rating by another Rating Agency (or an equivalent credit rating from at least two nationally recognized Rating Agencies if S&P ceases to publish ratings) (or such other commercial bank or trust company reasonably acceptable to the Department and approved by the Department prior to the submission of the letter of credit), and (b) provides for the continuance of such letter of credit for a period of at least one year or as otherwise provided in this Agreement. The office for presentment of sight drafts specified in the Letter of Credit shall be located at a specified street address within the City of Richmond, Virginia or City of New York, New York. For the avoidance of doubt, the obligations of the account party during the Term to reimburse the issuer for draws under any Letter of Credit may be secured by a Financing Assignment if it encumbers the entire Concessionaire's Interest.

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 is defined in Section 8.06(b).

Lock-up Period means the 10-year period commencing on the Closing Date and ending on the tenth anniversary of the Closing Date.

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 or the HOT Lanes Project, as applicable, of a type which is not normally included as an annually recurring cost in roadway maintenance and repair budgets.

Major Maintenance Reserve Fund means any reserve required pursuant to the Project Financing Agreements to meet the Major Maintenance requirements of the Project.

Major Subcontract means a contract entered into by the Concessionaire for the construction, installation, or development of the NEXT Project with a value in excess of \$10,000,000.

Mass Transit Vehicles and **Commuter Buses** means vehicles providing a scheduled transportation service to the general public over designated routes with specified stops and for purposes of Section 4.04(b)(ii) transporting at minimum the High Occupancy Requirement. Such vehicles shall comprise non-profit, publicly or privately owned or operated transportation services, programs, or systems that may be funded pursuant to Section 58.1-638 of the Virginia Code.

Modified Base Work Directive is defined in Section 7.20(a)(ii).

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

MUTCD means the *Manual on Uniform Traffic Control Devices*, which defines the guidelines used by road managers nationwide to install and maintain traffic control devices on all streets and highways. FHWA references the MUTCD under 23 Code of Federal Regulations (CFR), Part 655, Subpart F.

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

NEPA Documents means the Original NEPA Documents and the NEXT NEPA Documents.

Net Cash Flow means:

- (a) Prior to the applicable Service Commencement Date:
 - (i) any aggregate Toll Revenues, investment earnings and other Revenues in substitution or replacement of Toll Revenues (including any compensation the Department pays for Net Revenue Impact) received by the Concessionaire for the period from the Agreement Date or the Second Amended and Restated Agreement Date, as applicable, to the applicable Service Commencement Date; plus
 - (ii) Refinancing Gains for the Work Period; plus
 - (iii) amounts deposited to Construction Reserves during the period from the Agreement Date or the Second Amended and Restated Agreement Date, as applicable, to the applicable Service Commencement Date; less
 - (iv) draws from such Construction Reserves to meet payment for Construction Costs as required; less
 - (v) any Operating Costs, maintenance costs, reasonable administrative or other fees incurred during the Work Period.
- (b) As of any date after the applicable Service Commencement Date:
 - (i) aggregate Toll Revenues, investment earnings and other Revenues in substitution or replacement of Toll Revenues (including any compensation the Department pays for Net Revenue Impact) received by the Concessionaire; plus
 - (ii) Refinancing Gains; plus
 - (iii) withdrawals from Major Maintenance Reserve Fund and any operating reserves; plus
 - (iv) any amounts released from debt service reserve accounts funded prior to the applicable Service Commencement Date and any amounts released from other reserves other than amounts used to pay principal or interest on Concessionaire Debt, except for funds used to meet payment for Construction Costs after the applicable Service Commencement Date which shall be a deduction from Net Cash Flow; less
 - (v) aggregate Operating Costs paid during such period; less

(vi) aggregate amounts contributed to any reserve for Operating Costs, Major Maintenance, debt service or Distributions (other than proceeds from Total Invested Project Funds).

Net Cost Impact means any net increase or decrease in the Concessionaire's costs (including the Concessionaire's reasonable Allocable Costs and taking into account any savings in the Concessionaire's operating and finance costs resulting from the Compensation Event) directly attributable to a Compensation Event, as compared with what the Concessionaire's costs (including the Concessionaire's reasonable Allocable Costs) would have been absent occurrence of the Compensation Event, less the increased costs that can reasonably be mitigated by the Concessionaire in accordance with Section 13.02.

Net Revenue Impact means (a) any net increase or decrease in Toll Revenue directly attributable to a Compensation Event (taking into account the lost Toll Revenue that would be returned to the Department under the permitting fee arrangements detailed in Article 5), and less (b) any savings in facility operating and maintenance costs resulting from a Compensation Event (excluding any savings in costs subtracted from Net Cost Impact for the same Compensation Event) as compared with what the Toll Revenues would have been absent occurrence of the Compensation Event, less (c) any lost Toll Revenues that can reasonably be mitigated by the Concessionaire in accordance with Section 13.02 (excluding any mitigation of costs subtracted from Net Cost Impact for the same Compensation Event).

New Lanes means the four new general-purpose traffic lanes (two lanes in each direction) to be constructed on the outer sides of the existing Capital Beltway as part of the Original Project, as more fully described in the Scope Document.

NEXT Access Ramps means the following new access ramps: (a) eastbound Dulles Toll Road to northbound HOT lanes (ramp E1) (including necessary adjustments to the existing ramp D2); (b) westbound Dulles Toll Road to northbound HOT lanes (ramp E3) (including necessary adjustments to the existing ramp G10); (c) northbound 495 Express Lanes to eastbound George Washington Memorial Parkway; and (d) westbound George Washington Memorial Parkway to southbound 495 Express Lanes.

NEXT Base Design-Build Scope means the scope set forth in the NEXT Final RFP and included in the NEXT Design-Build Proposals. For the avoidance of doubt, the term "scope" as used in this definition shall mean the "base scope" set forth in the NEXT Final RFP and/or NEXT Design-Build Proposals and shall not mean any other scope set forth in the NEXT Final RFP and/or NEXT Design-Build Proposals, including the "AMELI scope" or any scope that includes accommodating the Maryland Express Lanes interface or the George Washington Memorial Parkway Interface (howsoever described).

NEXT Baseline Schedule means the revised construction schedule that will supersede the Initial NEXT Baseline Schedule, which will be updated periodically throughout the Work Period in accordance with this Agreement.

NEXT Binding Proposal Base Case Financial Model means the financial model delivered by the Concessionaire to the Department on June 11, 2021, in conjunction with the Concessionaire's binding proposal relating to the NEXT Project.

NEXT Completion Guaranty means the Guaranty of Performance and Completion issued by the NEXT Contractor Guarantor in substantially the form attached to the Agreement as Exhibit J-2, as it may be amended or supplemented.

NEXT Concessionaire Breach is defined in Section 17.07.

NEXT Concessionaire Breach Termination Amount means the lesser of (a) the Completed Work Value and (b) 80% of Concessionaire Debt (for the NEXT Project) then outstanding.

NEXT Concessionaire Breach Triggering Event is defined in Section 17.07.

NEXT Contractor Guarantor means is defined in Section 3.02(b).

NEXT Corridor means that portion of the Capital Beltway with a northern terminus of the George Washington Memorial Parkway overpass and a southern terminus of the Old Dominion Drive Bridge (Route 738) just south of Georgetown Pike (Route 193).

NEXT Decreased Design-Build Price is defined in Section 7.20(c)(iv).

NEXT Department Asset means any NEXT Project Asset other than the NEXT HOT Lanes and the NEXT Access Ramps.

NEXT Department Development Recoupment Amount is defined in Section 10.03(d).

NEXT Design-Build Bid Price means \$441,700,000.

NEXT Design-Build Bid Price Estimate means \$438,000,000.

NEXT Design-Build Contract means the design-build contract to be entered into between the Concessionaire and the NEXT Design-Build Contractor.

NEXT Design-Build Contractor means The Lane Construction Corporation.

NEXT Design-Build Cost means (a) as of the Second Amended and Restated Agreement Date, \$441,700,000 and (b) as of the NEXT Modified Base Configuration Cost Date, the NEXT Modified Base Configuration Cost.

NEXT Design-Build EPDs is defined in Section 18.05(a)(ii).

NEXT Design-Build Proposals means the proposals received by the Concessionaire in response to the NEXT Final RFP.

NEXT Design-Build Risk Sharing Mechanism is defined in Section 7.20(c)(i).

NEXT Design-Build Scope means (a) as of the Second Amended and Restated Agreement Date, the NEXT Base Design-Build Scope and (b) as of NEXT Modified Base Configuration Cost Date, the NEXT Modified Base Configuration.

NEXT Direct Agreement means the Direct Agreement executed among the Department, the Concessionaire, and the Collateral Agent related to the NEXT Project, substantially in the form attached as Exhibit U-2.

NEXT Early Work is defined in Exhibit B-5.

NEXT EPDs is defined in Section 18.05(a)(ii).

NEXT Equity Commitment Amount means the Equity Commitment Amount in the Base Case Financial Model Update (NEXT Final) delivered before Financial Close.

NEXT Equity Contributions is defined in Section 6.01(f).

NEXT Equity Funding Agreements means the equity funding agreements by and among each Equity Sponsor, the Concessionaire, and the agent for the Lenders relating to each Equity Sponsor's duty to fund the NEXT Project.

NEXT Equity Funding Guaranty is defined in Section 14.04(a)(i).

NEXT Equity Letter of Credit is defined in Section 14.04(a)(i).

NEXT Final Completion means the satisfaction of the conditions set forth in Section 7.15, as and when confirmed by the Department's issuance of the NEXT Final Completion Certificate.

NEXT Final Completion Certificate means a letter or certificate issued by the Department in accordance with Section 7.15(b) evidencing the Department's determination that NEXT Final Completion has occurred.

NEXT Final Completion Date means the date the Department issues the NEXT Final Completion Certificate.

NEXT Final Completion Recovery Plan is defined in Section 7.16(c).

NEXT Final Design-Build Cost is defined in Section 7.20(a)(v).

NEXT Final Design-Build Cost Date is defined in Section 7.20(a)(v).

NEXT Final Design-Build Scope means the final design-build scope for the NEXT Project agreed upon by the Department and the Concessionaire, attached hereto as Exhibit F-1.

NEXT Final RFP means the request for proposals as of the final addendum date of May 10, 2021.

NEXT Financial Close means the satisfaction (or waiver by the Department in its sole discretion) of all conditions precedent set forth in Section 6.08(b).

NEXT Financial Close Date means the date all of the conditions precedent set forth in Section 6.08(b) are satisfied (or waived by the Department in its sole discretion) such that the Department issues a certificate confirming that all such conditions precedent have been satisfied.

NEXT Financial Close Deadline means the date by which NEXT Financial Close must occur, which is December 31, 2021, which is 221 days from the date the Concessionaire delivers to the Department a written notice of intent to award the NEXT Design-Build Contract or another date as may be mutually agreed by the Concessionaire and the Department.

NEXT Financial Close Security means a Letter of Credit in the minimum amount of \$10,000,000 delivered pursuant to Section 6.08(f).

NEXT Financing EPDs is defined in Section 18.05(a)(ii).

NEXT Guaranteed Final Completion Date means 1,592 days following the date of issuance of the Work NTP under, and as defined in, the NEXT Design-Build Contract.

NEXT HOT Lanes means four new HOT lanes (two lanes in each direction) and all related improvements thereon to be constructed on the outer sides of the existing lanes of the NEXT Corridor consisting of: (a) northbound HOT lanes from current northern terminus to the George Washington Memorial Parkway overpass with temporary transition to the northbound GP Lanes and (b) southbound HOT lanes from the George Washington Memorial Parkway overpass to the current northern terminus with temporary transition from southbound GP Lanes.

NEXT Increased Design-Build Price is defined in Section 7.20(c)(iii).

NEXT Lenders means the Lenders for the NEXT Project.

NEXT Long Stop Date means the date that is 365 Days after the NEXT Guaranteed Final Completion Date; provided that a new NEXT Long Stop Date may be established pursuant to a NEXT Final Completion Recovery Plan proposed and approved pursuant to Section 7.16(c) as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

NEXT Modified Base Configuration means the modified design-build scope for the NEXT Project agreed upon by the Department and the Concessionaire, attached hereto as Exhibit F-1, as may be modified, on or after the earlier of (A) October 1, 2021 and (B) the date on which the Department delivers the Modified Base Work Directive, by one or more descoping Department Changes implemented by the Department to further reduce the otherwise applicable NEXT Modified Base Configuration Cost. For clarity, the modifications between the NEXT Base Design-Build Scope and NEXT Modified Base Configuration as of the Second Amended and Restated Agreement Date are depicted on Exhibit F-2.

NEXT Modified Base Configuration Cost is defined in Section 7.20(a)(v).

NEXT Modified Base Configuration Cost Date is defined in Section 7.20(a)(v).

NEXT NEPA Documents is defined in Exhibit M.

NEXT Payment Bond is defined in Section 14.04(b)(i).

NEXT Performance Bond is defined in Section 14.04(b)(i).

NEXT Project means the project described in Exhibit B-1-B.

NEXT Project Asset means:

- (a) the NEXT HOT Lanes,
- (b) four bridge replacements, two bridge rehabilitations, one bridge widening and one bridge modification as follows:
 - (i) bridge replacement at the Georgetown Pike overpass (to include bicycle /pedestrian facilities),
 - (ii) bridge replacement at the Old Dominion Drive overpass (to include bicycle /pedestrian facilities),
 - (iii) bridge replacement at the Live Oak Drive overpass (to include bicycle /pedestrian facilities),

- (iv) bridge replacement at the 495 GP Lanes northbound over Dulles Toll Road to the 495 GP Lanes northbound ramp,
- (v) rehabilitations of two George Washington Memorial Parkway overpasses,
- (vi) widening of the 495 GP and Express Lanes Bridge over Scott's Run Creek, and
- (vii) bridge modification at the Lewinsville Road bridge and approaches to enhance pedestrian facilities,
- (c) a new northbound 495 auxiliary lane in the GP Lanes between Dulles Toll Road and Route 193,
- (d) the NEXT Access Ramps,
- (e) any required improvements or expansion of the ETTM System and all other facilities and improvements on the HOT Lanes (inclusive of the NEXT HOT Lanes),
- (f) the design and construction of a parallel bicycle/pedestrian trail along the NEXT Corridor (from Lewinsville Road to the vicinity of George Washington Memorial Parkway),
- (g) the widening of ramp G3 to two lanes to accommodate ramp E1 tie-in,
- (h) the following Fairfax County-related work:
 - (i) shared use paths paralleling I-495 between Lewinsville Road and the George Washington Memorial Parkway,
 - (ii) pedestrian accommodations, including sidewalk, bike lanes, and crossings at Old Dominion Road, Georgetown Pike, Live Oak Drive, and Lewinsville Road,
 - (iii) two additional enhanced outfalls along Scott's Run,
 - (iv) stream bank stabilization along Scott's Run,
 - (v) additional 200 linear feet of noise barriers along Live Oak Drive, and
 - (vi) tree survey within the NEXT Project's construction limits,
- (i) the George Washington Memorial Parkway Interface,
- (j) preservation of land for future operations/maintenance facility within the interchange of I-495 and the Dulles Toll Road and
- (k) any additional scope mutually agreed by the parties.

NEXT Project (Phase 2) means the financing, design, development, construction, expansion, reconstruction, installation and/or implementation of the NEXT Project (Phase 2) Assets.

NEXT Project (Phase 2) Asset means the following: (a)(i) a new southbound 495 auxiliary lane between Route 193 and Dulles Toll Road; (ii) the DTR Ramp; (iii) the realignment of the existing

southbound GP Lanes to the westbound Dulles Toll Road (ramp G5); (iv) the provision of a direct ramp connection from the southbound general purpose lanes to westbound Dulles Airport Access Road (ramp D3) and associated widening of southbound I-495 between Lewinsville Road and eastbound Dulles Airport Access Road overpass; (v) the widening of the existing ramp from eastbound Dulles Toll Road to the northbound GP Lanes (ramp G3) to two lanes; and (vi) any additional scope mutually agreed to by the parties and (b) the tolling, operation, maintenance, and repair of the DTR Ramp in accordance with the Second ARCA, as amended from time to time.

NEXT Project Financing Agreements means the Project Financing Agreements entered into by the Concessionaire on or about the NEXT Financial Close Date in the form agreed between the parties.

NEXT Proposal Specifications means the Concessionaire Proposal Specifications for Final Proposal to Develop the NEXT Project dated June 4, 2021.

NEXT Risk Pool is defined in Section 7.20(b)(i).

NEXT ROW Cost Savings Amount is defined in Section 7.08(d).

NEXT ROW Deposit is defined in Section 7.08(d).

NEXT Scope Document means the document attached as Exhibit B-5.

NEXT Service Commencement Notice is defined in Section 8.02(a)(viii).

NEXT SPV Contingency Costs means all eligible costs and expenses incurred by the Concessionaire that are necessary to design, construct, and implement the NEXT Project and payable in order to achieve NEXT Final Completion and Service Commencement on the NEXT Project, including amounts under the NEXT Design-Build Contract, once all amounts in the construction budget (other than the line item for “SPV Contingency Costs”) are expended. NEXT SPV Contingency Costs do not include the costs of (a) discretionary betterments or enhancements to the NEXT Project, where “discretionary” means not required to satisfy the technical specifications or necessary to comply with all safety and other operational laws, or (b) Department Changes in respect of the NEXT Project, unless otherwise agreed by the parties.

NEXT SPV Contingency Risk Sharing Mechanism is defined in Section 7.20(d).

NEXT Work Period means for the NEXT Project, the period commencing on the date on which the Department grants its Work Commencement Approval pursuant to Section 7.03 of this Agreement through the NEXT Final Completion Date.

NEXT Work Product means Work Product with respect to the NEXT Project.

Nonconforming Work means Work that the Concessionaire, any Governmental Authority or the Department, as applicable, determines does not conform to the requirements of the Design-Build Contract, relevant Regulatory Approvals, applicable Law or the Design Documentation.

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 this Agreement.

Nutrient Credit Savings Amount is defined in Section 7.08(f)(ii).

O&M Contractor is defined in Section 8.04(a), and initially shall be Transurban (USA) Operations, Inc., a Delaware corporation.

Operating Costs means, subject to adjustment in accordance with Section 5.03(b) and Exhibit C, all reasonable costs incurred and paid for by the Concessionaire in relation to the management of the HOT Lanes Project, including without limitation (and without duplication) costs for operation and maintenance, consumables, payments under any lease (other than a financing lease constituting Concessionaire Debt), payments pursuant to the agreements for the management, operation and maintenance of the HOT Lanes Project, taxes (exclusive of taxes measured by net income), insurance, payments for Oversight Services, police services; and costs for any security, capital expenditures, NEXT SPV Contingency Costs, Transit and Corridor Investment Payments made to the Department in accordance with Section 4.08 (solely to the extent actually paid to the Department), Excess Sharing Amount payments made to the Department in accordance with Section 4.09 (solely to the extent actually paid to the Department), Permit Fee payments to the Department in accordance with Article 5, payments to the Department in accordance with Section 6.08(c)(iii), Right of Way payments made to the Department in accordance with Section 7.08(d) (solely to the extent actually paid to the Department and not returned to the Concessionaire), payments to the Department in accordance with Section 8.03(b)(i), payment of Department's share of Positive Revenue, and any other reasonable expense paid for the development, completion, enhancement, expansion, major maintenance, repair, reconstruction, rehabilitation, renewal and replacement of the HOT Lanes Project, but exclusive of (a) costs paid from Total Invested Project Funds, (b) payments of Concessionaire Debt (including interest thereon), (c) any Distributions, or (d) 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. Operating Costs do not include non-cash charges, such as depreciation, amortization or other bookkeeping entries of a similar nature.

Operating Period means the period during which the Concessionaire shall operate and maintain the HOT Lanes Project, such period commencing on the applicable Service Commencement Date and ending at the expiration or earlier termination of the Term.

Operations and Maintenance Agreement is defined in Section 3.02(d).

Original Completion Guaranty means the Guaranty of Performance and Completion issued by the Original Contractor Guarantor in substantially the form attached to the Agreement as Exhibit I-1, as it may be amended or supplemented.

Original Comprehensive Agreement is defined in the Recitals to this Agreement.

Original Contractor Guarantor is defined in Section 3.02(b).

Original Corridor means that portion of the Capital Beltway with a northern terminus of the Old Dominion Drive Bridge (Route 738) just south of Georgetown Pike (Route 193) and a southern terminus that encompasses the Springfield Interchange Phase VIII.

Original Design-Build Contract means the Design-Build Contract, dated as of December 19, 2007, between the Concessionaire and the Original Design-Build Contractor.

Original Design-Build Contractor means Fluor-Lane, LLC, a Delaware limited liability company.

Original Design-Build EPDs is defined in Section 18.05(a)(i).

Original EPDs is defined in Section 18.05(a)(i).

Original Financing EPDs is defined in Section 18.05(a)(i).

Original HOT Lanes means four-lane inner directional roadways (two in each direction), including shoulders and ramps exclusively providing ingress or egress to the Original HOT Lanes and terminating at the merge point with the GP Lanes, comprising a portion of the Capital Beltway to be identified separately from the adjacent general-purpose lanes of the Capital Beltway and dedicated for use by qualifying HOT Lanes traffic and operated by the Concessionaire commencing on the applicable Service Commencement Date.

Original NEPA Documents is defined in Section 7.18(a).

Original Project is defined in Exhibit B-1-A to this Agreement.

Original Work Period means for the Original Project, the period commencing on the date on which the Department grants its Work Commencement Approval pursuant to Section 7.03 of this Agreement through the Final Acceptance Date.

Original Work Product means Work Product with respect to the Original Project.

Outside Substantial Completion Date means the date that is 24 months after the Guaranteed Substantial Completion Date; *provided*, that the Outside Substantial Completion Date shall be extended day-for-day by reason of any Delay Event during the period after the Guaranteed Substantial Completion Date that causes a delay to the achievement of Substantial Completion.

Oversight Services means those services and functions the Department has the right or obligation to perform or to cause to be performed under Laws or any Project Agreement in order to monitor, review, approve, administer or audit the Project Agreements or the work or performance of the Concessionaire thereunder.

PABs means bonds, notes or other evidence of indebtedness issued by the PABs Issuer pursuant to the provisions of Code Sections 142(a)(15) and (m), including, without limitation, bond anticipation notes.

PABs Issuer means the Capital Beltway Funding Corporation of Virginia, a Virginia nonstock, nonprofit corporation, for the Initial Project Financing Agreements, and the Virginia Small Business Financing Authority, for the NEXT Project Financing Agreements.

Payment Bond means a payment bond made on official forms furnished by the Department, executed by a surety company rated in one of the two top categories by two nationally recognized rating agencies or at least A- (A minus) or better or Class VIII or better by "AM Best & Company and authorized to do business in the State in accordance with the Laws of the State and the rules and regulations of the State Corporation Commission.

Performance Bond means a performance bond made on official forms furnished by the Department, executed by a surety company rated in one of the two top categories by two nationally recognized rating agencies or at least A- (A minus) or better or Class VIII or better by "AM Best & Company and authorized to do business in the State in accordance with the Laws of the State and the rules and regulations of the State Corporation Commission.

Performance Security means (a) each of the funding and performance securities required under Section 14.04, or (b) any surety bond, letter of credit, guaranty, or similar instrument acceptable to the Department in its reasonable discretion procured in accordance with the terms of the Agreement.

Permit is defined in Section 4.01.

Permit Cost is defined in Section 3.04(b).

Permit Fee means the payments received (if any) by the Department as compensation for the Department's grant to the Concessionaire of the Permit, as set forth in Exhibit L.

Permitted Encumbrance means, with respect to the Project:

- (a) the rights and interests of the Concessionaire under this 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);
- (d) any easement, covenant, condition, right-of-way, servitude, or any zoning, building, environmental, health or safety Law relating to the development, use or operation of the Project (or other similar reservation, right and restriction) or other defects and irregularities in the title to the Project that do not materially interfere with the operations of the Project or the right and benefits of the Concessionaire under this Agreement;
- (e) any right reserved to or vested in any Governmental Authority (other than the Department) by any statutory provision;
- (f) any other encumbrance permitted hereunder;
- (g) any Lien created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it; and
- (h) any amendment, extension, renewal or replacement of any of the foregoing.

Permitted Securitization is defined in Section 4.04(f)(ii).

Permitted Vehicles means (a) any vehicle with two axles including motorcycles; (b) Mass Transit Vehicles and Commuter Buses and school buses; and (c) Exempt Vehicles. Permitted Vehicles shall not include any vehicle pulling a trailer except Exempt Vehicles.

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.

Positive Revenue means a net increase in Toll Revenue resulting from Compensation Events described in Section 7.12, 9.02, 13.04 and 19.02(c), excluding any such increase that has been taken into

account to reduce any Net Cost Impact relating thereto. Positive Revenue shall not include, with respect to any event, an aggregate amount that is *de minimis*.

PPTA means the Public-Private Transportation Act, which was amended and re-enacted by Chapter 612 of the 2015 Acts of Assembly and signed into law by the Governor, effective July 1, 2015.

Pre-Existing Hazardous Substances means any Hazardous Substance that was present on VDOT Existing ROW as of the Agreement Date (for the Original Corridor) and as of the Second Amended and Restated Agreement Date (for the NEXT Corridor).

Project means the Original Project and the NEXT Project, as each is further defined in Exhibit B-1-A and Exhibit B-1-B, respectively, to this Agreement.

Project Agreement means any of this Agreement, the Original Design-Build Contract, the NEXT Design-Build Contract, the Original Completion Guaranty, the NEXT Completion Guaranty, any Guaranty of Investment Obligations, any Development Contract, the Operations and Maintenance Agreement, the Electronic Toll Collection Services Agreement, the Independent Engineer Agreement, the Toll Agreement, the Toll MOU, the Direct Agreement, the NEXT Direct Agreement, the Initial Project Financing Agreements and the NEXT Project Financing Agreements; and the term Project Agreements means all such agreements and documents in the aggregate.

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

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

Project Purposes means (a) the development, permitting, design, financing, acquisition, construction, installation, equipping, management and administration of the Project and (b) the HOT Lanes Project Purposes.

Project Right of Way means (a) all real property within the access control line for the Project including the HOT Lanes Right of Way and (b) all other right of way, including temporary and permanent easements, that is necessary for the performance of the Work. The area comprising the Project Right of Way is indicated as the cross-hatched portion shown on the map attached to this Agreement as Exhibit B-3.

Project Value means fair market value of the Concessionaire's Interest determined according to the appraisal procedures set forth in Section 17.05.

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 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 Project (e.g. “shrink-wrap” software).

Proprietary Work Product means any Work Product that consists of, incorporates or discloses Proprietary Intellectual Property or Proprietary Software.

Public Information Plan means a plan setting forth a program for public information dissemination and related activities to be implemented by the Concessionaire and approved by the Department in connection with the construction and operation of the Project or any Project Enhancement or any Work performed pursuant to a Department Change or approved Concessionaire request for Deviations.

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

Quality Management Plan means a plan that details how the Design-Build Contractor will provide quality control and quality assurance for both the design and construction elements of the Project, obtain samples for Design-Build Contractor quality control testing, perform tests for Design-Build Contractor quality control, provide inspection, and exercise management control (e.g., quality assurance testing) to ensure the Work conforms to the contract requirements.

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:

(a) Any amendment, variation, novation or supplement of any Concessionaire Debt, Initial Project Financing Agreement, NEXT Project Financing Agreement or Financing Assignment that results in an increase of such Concessionaire Debt;

(b) The issuance by Concessionaire of any Concessionaire Debt other than the Concessionaire Debt incurred pursuant to the Initial Project Financing Agreements or the NEXT Project Financing Agreements, secured or unsecured, including issuance of any reimbursement agreement respecting a Letter of Credit; or

(c) Any other arrangement put in place by Concessionaire or another person which has an effect similar to clause (a) or (b) above,

excluding, however any capitalization of interest or accretion of principal or other committed increases on any Concessionaire Debt incurred or committed on or prior to the Closing Date or the NEXT Financial Close Date, as applicable.

Refinancing Gain means any Refinancing proceeds, after repayment of any outstanding Concessionaire Debt refinanced with such Refinancing and payment of costs of issuance not to exceed 2% of the principal amount of such Refinancing and any required deposits, that are used directly or indirectly to make Distributions.

Regulatory 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 applicable Laws prior to undertaking any particular activity contemplated by this Agreement or a Development Contract. The term “Regulatory Approvals” includes any supplements to the NEPA Documents.

Reimbursable Tax Imposition means:

(a) any State or local property tax or similar ad valorem tax or charge (including but not limited to 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 this Agreement, unless recorded by or at the behest of the Concessionaire; and

(b) any license fee or 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 against the Concessionaire and attributable to the HOT Lanes Project or the Concessionaire’s Interest,

but excluding:

(i) any (A) taxes of general application on overall net income or (B) other taxes of general application on or measured by receipts levied, rated, charged, imposed or assessed by the State in substitution for or replacement of any other State tax of general application and applicable to the Concessionaire as of July 1, 2006, 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.

Remedial Action is defined in Section 8.11(c).

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

Reserved Rights means all of the following rights:

(a) the Department’s right to use, possess, operate, maintain and enjoy State or local highways or roadways that cross the HOT Lanes Right of Way and any other real and personal property over, under or adjacent to the Capital Beltway for any purpose not expressly prohibited by the Project Agreements, including, but not limited to the following permitted purposes:

(i) develop, design, construct, operate and maintain other transportation-related projects, improvements or facilities (*provided* that if located within the HOT Lanes Right of Way this shall constitute a Department Project Enhancement);

(ii) develop, design, construct, operate and maintain office, commercial, industrial or mixed use real estate projects (*provided* that if located within the HOT Lanes Right of Way this shall constitute a Department Project Enhancement);

(iii) use, install, maintain, repair, or authorize the use, installation, maintenance, or repair, of utilities;

(iv) perform and exercise Project oversight and audit rights as provided in the Concession;

(v) perform policing and emergency response services; and

(vi) perform, exercise or enforce other rights and duties provided in the Project Agreements;

(b) the naming rights for the Project (but not including the naming rights for the HOT Lanes reserved to the Concessionaire pursuant to Section 19.05(b)), and any portion thereof, and shall have the exclusive right to place or allow advertisements on, above or under the Rights of Way, the Project or Project Enhancements, it being agreed that the Department may sell such rights to third parties, without compensation to the Concessionaire; and

(c) all right to use, and use of:

(i) all electrical, fiber optic, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity existing now or in the future over, under or adjacent to any Rights of Way installed by anyone, whether before or after the Agreement Date; and all Software which executes such equipment and hardware and related documentation;

(ii) ETTM Data or other data generated from operation of the HOT Lanes Project or toll collection technology; and

(iii) any equipment, facilities or capabilities for ITS studies or applications installed by the Department and the right to install any such equipment, facilities or capabilities other than the ETTM System.

Responsible Public Entity has the meaning assigned to such term in Section 33.2-1800 of the Code of Virginia and, for purposes hereof, means the Department.

Revenues means all amounts received by or on behalf of the Concessionaire from Toll Revenues; proceeds from insurance (other than proceeds of fire and other casualty insurance but including proceeds from business interruption insurance), Refinancing Gain, amounts received pursuant to any judgment or settlement with respect to the Project, amounts received with respect to Concessionaire Damages or other compensation from the Department, condemnation awards with respect to the Project; all amounts payable to the Concessionaire (but not the Department) as liquidated damages under contracts, in each case, to the extent the same relate to the Project; all amounts derived from the sale or other disposition of the Concessionaire's Interest (excluding, however, the proceeds of any direct or indirect sale of equity interests in the Concessionaire); amounts derived as grants, loans or otherwise from the United States of America, the State or any other Person by the Concessionaire for the acquisition, development, construction, management, operation and maintenance of the Project; and all other amounts derived from or in respect of the operation of the HOT Lanes Project which constitute revenues in accordance with Generally Accepted Accounting Principles, including without limitation tolls and any interest income earned on any funds on deposit in any bank account or securities account. Revenues exclude the costs of goods and/or services in kind provided to the Concessionaire with respect to which the Concessionaire has no obligation of repayment and revenues and proceeds arising out of or relating to Reserved Rights or the disposition of

surplus or residual property. Revenues exclude the proceeds of Concessionaire Debt or capital contributions to the Concessionaire.

Revised Outside Substantial Completion Date means the date specified in a Concessionaire Recovery Plan approved by the Department by which Substantial Completion must occur.

Rights of Way means the Project Right of Way and the HOT Lanes Right of Way (including any additional right of way acquired by or for the Department during the Work Period pursuant to requirements of this Agreement).

ROW Acquisition Costs means all costs required for the acquisition of the Project Right of Way including all 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 shall be included within the fixed price of the Design-Build Contract): (1) the remediation of hazardous materials or substances found on property acquired by the Design-Build Contractor or Concessionaire on behalf of the Department; (2) the acquisition of right of way or other property interests outside of the Project Right of Way shown in Exhibit B-3 pursuant to Section 7.09; (3) the HOT Lanes operation center and facilities related to such center (including, for example, easements for fiber optic routing to the center); or (4) acquisition and property management services.

ROW Allowance means \$42,011,750.

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 the Agreement Date, which directs the Concessionaire to undertake certain improvements to the HOT Lanes Project to correct a specific safety condition affecting the HOT Lanes Project, 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 the State Highways.

Scope Document means the Initial Scope Document or the NEXT Scope Document, as applicable.

Scott's Run Contribution is defined in Section 7.20(f).

Second Amended and Restated Agreement Date means the date on the cover of the Second ARCA.

Second Amended and Restated Comprehensive Agreement or **Second ARCA** means the Second Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project dated the Second Amended and Restated Agreement Date between the Department and the Concessionaire.

Second Level Targeted Rate of Return has the meaning specified in Exhibit L.

Senior Debt means Concessionaire Debt that is secured by the entire Concessionaire's Interest and that has first priority to such security and except as otherwise provided in the Agreement, Senior Debt excludes any indebtedness secured by anything less than the entire Concessionaire's Interest, such as indebtedness secured only by an assignment of interest in the Concessionaire or of rights to cash flow or dividends from the Concessionaire.

SEP-14 means the Special Experimental Program 14 for Innovative Contracting.

Service Commencement means (i) with respect to the Original HOT Lanes, the occurrence of all the events and satisfaction of all the conditions therefor set forth in Section 8.01 and (ii) with respect to the NEXT HOT Lanes, the occurrence of all the events and satisfaction of all the conditions therefor set forth in Section 8.02.

Service Commencement Date means (i) with respect to the Original HOT Lanes, the first date on which all of the conditions set forth in Section 8.01 have been satisfied and the Department has issued the Service Commencement Notice and (ii) with respect to the NEXT HOT Lanes, the first date on which all of the conditions set forth in Section 8.02 have been satisfied and the Department has issued the NEXT Service Commencement Notice.

Service Commencement Notice is defined in Section 8.01(a)(viii).

Shared Facilities Agreement means the Shared Facilities Agreement dated as of July 31, 2012 between the Concessionaire and 95 Express Lanes, LLC, as it may be updated from time to time.

Significant Force Majeure Event means a Force Majeure Event occurring after the Service Commencement Date for which insurance is not obtainable at commercially reasonable rates that (a) has the effect of causing physical damage or destruction to the HOT Lanes, or any ramp, feeder road or bridge within 3 miles of the HOT Lanes constituting a direct traffic route to or from the HOT Lanes, and (b) results in the HOT Lanes being substantially unavailable for public use for a period in excess of 120 consecutive days or the suspension or substantial reduction toll collections on the HOT Lanes for a period in excess of 120 consecutive days; *provided*, that such Force Majeure Event shall not become a Significant Force Majeure Event by reason of a Concessionaire Party's failure to mitigate or cure the result of such Force Majeure Event through the exercise of reasonably diligent efforts.

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 HOT Lanes Project or HOT Lanes Project Purposes or in connection with Reserved Rights, including but 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 means Software program higher order language listings, internal documentation embedded in program listings, associated data files and data structures, in electronic and/or printed form, necessary for maintenance of and modifications to the Software.

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

SPI is defined in Section 7.06(f)(i).

Springfield Interchange Phase VIII means construction of HOV connector ramps from I-95 and I-395 to the Capital Beltway. The limits of construction extend approximately 6,000 feet east and west along the Capital Beltway connecting I-95 to I-495 and approximately 1,500 feet north and south from I-95 to I-495. The Project includes seven bridges, bi-directional ramps and loops to connect the I-95/NEXT HOV system to the Capital Beltway.

State means the Commonwealth of Virginia.

State Highway means any highway designated a State Highway pursuant to Title 33.2, Chapter 3 of the Code of Virginia.

State Indemnitee means and includes the Department, the Commissioner, the CTB, the State and their respective Representatives.

STIP or Statewide Transportation Improvement Program means the state improvement program that schedules the detailed funding for all Federally supported surface transportation projects/programs within the boundaries of the state, for the next three fiscal years, that is approved by the FHWA and the Federal Transportation Administration as a prerequisite to receiving Federal transportation funds and/or agreements. Projects/programs in the STIP have to be consistent with the long-range plans of the State and/or the metropolitan planning organizations within the boundaries of the state.

Structural Elements means components of bridges or other structures including bridge superstructure, bridge substructure and retaining walls; *provided*, that repairs shall be made to such Structural Elements as necessary to restore the structural capacity of the Structural Element, or to restore the functionality of the Structural Element.

Substantial Completion means completion of the Work of the Original Project, the New Lanes or, in the Department's sole discretion pursuant to Section 7.14(c), certain segments of the Original Project, in accordance with the Design-Build Contract, the Design Documentation and the Construction Documentation, subject only to Punch List items, so that Department (or in the case of the HOT Lanes, the Concessionaire) can occupy and use the Original Project, and that the Department and the public (traveling and general) will have full and unrestricted use and benefit of the Work, from both an operational and safety standpoint, with only minor incidental Work remaining to be performed, corrected or repaired, as confirmed by the Department's issuance of a Substantial Completion Certificate in accordance with Section 7.14 of the Agreement, subject to agreement by the Department and the Concessionaire upon a Punch List.

Substantial Completion Certificate means a letter or certificate issued by the Department in accordance with Section 7.14 of the Agreement evidencing the Department's determination that Substantial Completion has occurred.

Substantial Completion Date means the date on which Substantial Completion is achieved.

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 and the NEXT Direct Agreement to perform the Concessionaire's obligations and succeed to the Concessionaire's 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(s).

SYIP or Six-Year Improvement Program means the CTB's approved allocation of funding in accordance with Title 33.2, Chapter 3, Article 5 of the Code of Virginia.

Task is defined in Section 8.06(b).

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 Code), 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.

TCI Payment Date is defined in Exhibit Z-1.

Technical Requirement Revisions is defined in Section 7.12(d)(i).

Technical Requirements means, as context may require, the Technical Requirements for the design and construction of the Original Project or the Technical Requirements for the design and construction of the NEXT Project, included as Exhibit N-1 and Exhibit N-2 to this Agreement, respectively, and/or the Technical Requirements for the operation and maintenance of the Project, included as Exhibit N-3 to this Agreement, as each may be separately revised and updated from time to time by any Technical Requirement Revisions in accordance with Section 7.12(d).

Term is defined in Section 16.01.

Tested Excess Sharing Portion is defined in Section 4.09(a).

Third Level Targeted Rate of Return has the meaning specified in Exhibit L.

Third-Party Claim means any Claim asserted against a State Indemnitee by any Person who is not a party to this Agreement or an Affiliate of such party.

TIA means a time impact analysis, (i) establishing the influence of an event on the Baseline Schedule, and shall include a Fragnet, and for events that have not yet occurred (such as proposed changes or Project Enhancements), the Fragnet shall demonstrate how the Concessionaire proposes to incorporate such event in the Baseline Schedule, and (ii) demonstrating: (1) the time impact based on the date the event occurred or notice of a proposed change is given to the Concessionaire, (2) the status of the Work at such point of time; and (3) the time computation of all affected activities, as described in the Technical Requirements.

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

TIFIA Lender means the United States Department of Transportation.

TIFIA Loan(s) means any direct loan, loan guarantee, standby letter of credit or other such credit assistance as may be authorized and approved under the TIFIA Federal credit program administered by the U.S. Department of Transportation.

TIFIA Refinancing means the refinancing by the TIFIA Lender of the Existing TIFIA Loan.

TIP or **Transportation Improvement Program** 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 (the Transportation Planning Board in the metropolitan Washington region) and approved by the FHWA and the Federal Transportation Administration as a prerequisite to receiving Federal transportation funds and/or approvals.

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.

Toll Agreement means the Toll Agreement executed by the Department and FHWA approved by the FHWA on December 12, 2007.

Toll MOU is defined in Section 3.03(g).

Toll Consultant means any internationally recognized traffic and revenue consulting firm the Concessionaire selects (with the consent and approval of the Department) to perform and carry out the duties imposed on the Toll Consultant under this Agreement.

Toll Revenues means all amounts received by or on behalf of the Concessionaire applicable to vehicles for the privilege of traveling on the HOT Lanes imposed pursuant to this Agreement and from any other permitted use or operation of the HOT Lanes, including without limitation fees, tolls, rates, incidental charges and other charges (including administrative charges such as late fees, insufficient funds fees, etc.).

Toll Section means a portion of the HOT Lanes for which a single toll point applies and would include the length from the entry into the HOT Lanes until the last exit before a second toll point would be passed.

Total Invested Project Funds means, without duplication, (a) all documented fees, costs and expenses incurred by the Concessionaire or its Affiliates on or after August 25, 2004 and paid by the Concessionaire or its Affiliates in connection with the investigation, development, negotiation, and closing of the transactions described in the Agreement; (b) all capital contributions or debt advances made by the members of the Concessionaire or its Affiliates on or after the Closing Date; (c) all Concessionaire Debt incurred by the Concessionaire on or after the Closing Date; (d) the NEXT Equity Contributions; and (e) all Concessionaire Debt incurred by the Concessionaire in connection with NEXT Financial Close (other than (i) capital contributions, debt advances or Concessionaire Debt incurred or used directly or indirectly to fund Distributions or to reimburse the Concessionaire or its Affiliates for amounts referred to in the foregoing clause (a) or (ii) any Refinancing to the extent that it does not increase the principal amount of Concessionaire Debt then outstanding, *provided*, that capital contributions, debt advances or Concessionaire Debt deposited to reserves and potentially available directly or indirectly to fund Distributions shall be included as Total Invested Project Funds when paid, contributed, incurred or received, as the case may be, and any such amounts released from reserves to fund Distributions shall be included as a revenue for purposes of the calculation of Net Cash Flow).

Total Return on Investment or **TRI** means as of any date after the Closing Date, the rate (rounded up, if necessary, to a whole multiple of 1/1000 of 1%) that should be used to discount the sum of the Total Invested Project Funds and Net Cash Flows (calculated from the respective dates on which Total Invested Project Funds and Net Cash Flows are paid, contributed, incurred, or received as the case may be) so that the sum of the then discounted Total Invested Project Funds and Net Cash Flows as at the Closing Date is zero.

Traffic and Revenue Study means any study of the projected traffic and revenue for the HOT Lanes Project prepared by or on behalf of Concessionaire, as well as all data, charts, tables, analyses and other documentation assembled or prepared in connection therewith and all existing and future updates, reissuances, supplements and amendments thereto.

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

Transferee is defined in Section 20.01(a).

Transit and Corridor Investment Payment is defined in Section 4.08(a).

Transportation Trust Fund means the State's Transportation Trust Fund, which is codified in Virginia Code Section 33.2-1524.

Transurban means Transurban (USA) Inc., a Delaware corporation.

Uniform Act is defined in Section 7.08(a)(i)(1).

Utility or **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, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water not connected with the highway drainage and similar substances 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 roadways.

Utility Owner or **utility owner** means the owner or concessionaire 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.

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

VDOT Existing ROW is defined in Section 7.09(a).

VPSTF is defined in Section 8.11(h).

Work means:

(a) during the Work Period, all of the work required to be furnished and provided by or on behalf of the Concessionaire under this Agreement, including all administrative, design, engineering, real property acquisition support services, occupant relocation, construction, Utility Relocations, utility accommodation, procurement, supply, installation, testing, verification, labor, materials, equipment, construction management services, documentation and other duties and services, except for those efforts which this Agreement expressly specifies will be performed by persons other than the Concessionaire or the Design-Build Contractor; and

(b) during the Operating Period, all of the work required to be furnished and provided by the Concessionaire pursuant to this Agreement, including Major Maintenance work.

For the avoidance of doubt, Work shall not include the operations and maintenance of the NEXT Department Assets.

Work Commencement Approval is defined in Section 7.03(a).

Work Period means the Original Work Period and the NEXT Work Period, as applicable.

Work Period Force Majeure Event means any intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, condemnation or

confiscation of property or equipment by any Governmental Authority (other than the Department), nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, earthquake, flood or other extreme weather that damages the Work or prevents access to the Project site, industry-wide or regional strikes or labor disputes, riot or other public disorder, epidemic, quarantine restriction, stop-work order or injunction issued by a Governmental Authority (other than the Department) of competent jurisdiction, or governmental embargo, in each case occurring during the Work Period, *provided* that such event neither is otherwise specifically dealt with in this Agreement nor arises by reason of:

(a) the negligence or misconduct of the Concessionaire, a Concessionaire Party or their Representatives;

(b) any act or omission by the Concessionaire, a Concessionaire Party or their Representatives in breach of the provisions of this Agreement;

(c) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire;

(d) any strike, labor dispute or labor protest directed solely at Concessionaire, or a Concessionaire Party or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of the Concessionaire, a Concessionaire Party or their Representatives; or

(e) any failure by Concessionaire to exercise reasonable care or to observe pertinent design standards when securing or shoring elements of the Work, or providing falsework for partially constructed elements of the Work, from or against the risks of the occurrence of earthquake, flood, windstorm or other weather event, or otherwise in the construction and design of elements of the Work to withstand loads or forces within design parameters.

It is specifically understood that other than floods or other extreme weather that damages the Work or prevents access to the Project site, the Design-Build Contractor shall assume the risk and other weather or conditions resulting from weather shall not constitute a Work Period Force Majeure Event.

Work Product means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Concessionaire for the Project or the Rights of Way, including but not limited to 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 Regulatory 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, Toll Equipment and Toll 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 Project Purposes, such as proprietary financial and pricing information of the Concessionaire.