

## EXHIBIT A

### DEFINITIONS

| <b>Acronym</b> |  |
|----------------|--|
| 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  |
| 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  |
| EDMS           | Electronic Document Management System  |
| EIR            | Environmental Impact Review  |
| 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   |
| GAAP           | Generally Accepted Accounting Principles   |
| GFCI           | Ground Fault Circuit Interrupter   |
| GFE            | Good Faith Effort  |
| GUI            | Graphical User-Interface   |

| <b>Acronym</b> |  |
|----------------|--|
| 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   |
| L RTP          | Long Range Transportation Plan   |
| 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  |
| MTR            | 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  |
| SPT            | Standard Penetration Test  |
| SRA            | Safety Rest Area   |
| STIP           | State Transportation Improvement Plan  |

| <b>Acronym</b> |  |
|----------------|--|
| STRAHNET       | Strategic Highway Network  |
| SWaM           | Small Woman-Owned and Minority Business  |
| SYIP           | Six-Year Improvement Plan  |
| 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  |
| 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  |

**2022 Project Financing Agreements** means the Project Financing Agreements entered into by the Concessionaire on or about the Series 2022 Financial Close Date, if applicable, in the form agreed between the parties.

**395 Additional Early Work** means any design work, permitting, preparation of right of way, project management activities and other work performed by the 395 Design-Build Contractor necessary to complete the 395 Early Work.

**395 Baseline Schedule** means (a) the Initial 395 Baseline Schedule identifying the major Work activities in sufficient detail to enable the Department to monitor and evaluate design and construction progress until such time as the 395 Baseline Schedule is approved by the Department pursuant to the Technical Requirements and (b) the 395 Baseline Schedule thereafter as updated according to the Technical Requirements.

**395 Benchmark Interest Rates** means the 395 PABs Benchmark Interest Rate, the 395 TIFIA Benchmark Interest Rate and the 395 VTIB Benchmark Interest Rate.

**395 Commercial Close Conditions** means delivery to the Department by the Concessionaire of the following:

(a) Final term sheet(s) for the Concessionaire Debt to be incurred in connection with the 395 Project, as applicable;

(b) Drafts of amendments to the Initial Project Financing Agreements to be executed in connection with the 395 Project;

(c) Copies of any technical, legal, tax and insurance due diligence reports in connection with the implementation of the financing for the 395 Project and evidence of the review and acceptance, in principle, by the Lenders of the same that are specifically requested by the Department and available for distribution to the Parties;

(d) Evidence of consent from the Project's existing Lenders to the Concessionaire executing the Amended and Restated Comprehensive Agreement, the 395 Design-Build Contract, the 395 TTMS Contract and other related matters;

(e) Indicative letters of support from proposed providers of Concessionaire Debt to be incurred in connection with the 395 Project, as described in Appendix B, II(b) of the Proposal Specifications; and

(f) A Base Case Financial Model scenario reflecting the requirements in the Second Amendment.

**395 Concessionaire Assets** means (a) the 395 Express Lanes Northern Extension and (b) the Eads Street Component.

**395 Concessionaire Breach** is defined in Section 19.06.

**395 Concessionaire Breach Termination Amount** means the lesser of (a) the Completed Work Value and (b) the lesser of 80% of Concessionaire Debt (for the 395 Project) then outstanding or 80% of Concessionaire Debt (for the 395 Project) projected in the Base Case Financial Model Update (Fred Ex Final) or, if applicable, the Base Case Financial Model Update (Fred Ex Final/Additional) to be then outstanding; less:

(i) 395 Credit Balances;

(ii) unpaid and/or accrued default interest;

(iii) Breakage Costs;

(iv) any other amounts referred to in the definition of Concessionaire Debt that arise as a consequence of the termination of the 395 Project or the acceleration of or requirement to mandatorily prepay the Concessionaire Debt; and

(v) Allocable Costs incurred by the Department in terminating the 395 Project for 395 Concessionaire Breach.

**395 Concessionaire Breach Triggering Event** is defined in Section 19.06.

**395 Construction Escrow Documents** is defined in Section 18.05(a)(ii).

**395 Contract Documents** has the meaning set forth in Article 2 of Part 3 of the 395 Design-Build Contract.

**395 Converted Eligible Work** means 395 Early Work for which the Concessionaire has paid the 395 Design Build Contractor, but which does not meet the definition of 395 Eligible Work until after the Concessionaire's assignment of the 395 Design-Build Contract to the Department under Section 20.04(f).

**395 Corridor** means the portion of Interstate 395 located within the State with a northern terminus of the Washington D.C. line and a southern terminus approximately 1 mile north of Route 648 (Edsall Road). For the avoidance of doubt, the Seminary Road Ramp HOT Lanes ROW is located within the 395 Corridor.

**395 Credit Balances** means the aggregate of any amounts standing to the credit of any bank account held by or on behalf of the Concessionaire for the 395 Project.

**395 Credit Spreads** means the 395 PABs Credit Spreads, the 395 TIFIA Credit Spreads and the 395 VTIB Credit Spreads.

**395 Delayed Annual Transit Investment Amount** is defined in Section 7 of Part B of Exhibit P.

**395 Department Assets** means (a) the DEW Component, (b) the Seminary Road Soundwall Component, (c) the Pentagon Improvements and (d) the GP Bridges Component.

**395 Design-Build Cost** means \$336,303,841.02.

**395 Design-Build Contract** means the design-build contract to be entered into between the Concessionaire and the 395 Design-Build Contractor pursuant to the 395 Design-Build RFP.

**395 Design-Build Contractor** means The Lane Construction Corporation, a Connecticut corporation.

**395 Design-Build Work** means the "395 Work" as defined within the 395 Design-Build Contract.

**395 Design-Build Proposal** means the proposal submitted by the 395 Design-Build Contractor to the Concessionaire pursuant to the 395 Design-Build RFP.

**395 Design-Build Proposal Submission Date** means December 19, 2016.

**395 Design-Build RFP** means the Request for Proposals (RFP) dated August 10, 2016, including all addenda thereto.

**395 Direct Agreement** means the Direct Agreement executed among the Department, the Concessionaire and the Collateral Agent, in the form attached as Exhibit R-2.

**395 Direct Agreement (Second ARCA)** means the 395 Direct Agreement (Second ARCA) executed among the Department, the Concessionaire and the Collateral Agent, in the form attached as Exhibit R-5.

**395 Early Final Completion** means the satisfaction of the criteria for completion of construction of a 395 Department Asset, as set forth in Section 8.18(f), as and when confirmed by the Department's issuance of the 395 Early Final Completion Certificate.

**395 Early Final Completion Certificate** means a letter or certificate issued by the Department in accordance with Section 8.18(f) evidencing the Department's determination that 395 Early Final Completion has occurred for a 395 Department Asset.

**395 Early Final Completion Date** means the date on which 395 Early Final Completion is achieved, as indicated in the 395 Early Final Completion Certificate.

**395 Early Work** means (a) the 395 Scope Validation Work; (b) any design work, permitting, preparation of right of way, project management activities and other work performed by the 395 Design-Build Contractor necessary to complete the 395 Scope Validation Work; (c) the commencement and completion of the final noise studies and reports; and (d) the 395 Additional Early Work.

**395 Early Work Commencement Date** means the date the Second Amendment is signed by the last Party to sign.

**395 Eligible Work** means:

(a) any Work that (i) is eligible for reimbursement with federal-aid funds, (ii) is reusable by the Department, in the Department's sole discretion and (iii) is approved by the Department; and

(b) any Work that would meet the definition under (a) immediately above except that it was performed prior to FHWA's Project Authorization within the Fiscal Management Information System;

provided that the 395 Eligible Work will not include any third-party costs, except for costs of the 395 Design-Build Contractor.

**395 Eligible Work Costs** is defined in Section 20.04(g).

**395 Environmental Assessment** means the approved Environmental Assessment document (and supporting technical reports) for the 395 Express Lanes Northern Extension and associated facilities, including the Eads Street Component, dated September 2016.

**395 Equity Commitment Amount** means \$164,819,350.

**395 Equity Funding Agreements** means the equity funding agreements by and among each Equity Sponsor, the Concessionaire and the agent for the Lenders, with respect to the capital commitments for the 395 Project.

**395 Equity Funding Guaranty** is defined in Section 17.08(a)(ii)(B).

**395 Equity Letter of Credit** is defined in Section 17.08(a)(ii)(A).

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

**395 Express Lanes Northern Extension** means the development, design, construction, financing, operation and maintenance of the 395 HOT Lanes and associated facilities.

**395 Final Completion** means the satisfaction of the criteria for completion of construction of the 395 Project set forth in Section 8.18, as and when confirmed by the Department's issuance of the 395 Final Completion Certificate.

**395 Final Completion Certificate** means a letter or certificate issued by the Department in accordance with Section 8.18 evidencing the Department's determination that 395 Final Completion has occurred.

**395 Final Completion Date** means the date on which 395 Final Completion is achieved, as indicated in the 395 Final Completion Certificate.

**395 Final Completion Recovery Plan** has the meaning given to it in Section 8.15(d).

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

**395 Financial Close Adjustment Protocol** attached as Exhibit BB.

**395 Financial Close Date** means the date on which 395 Financial Close occurs.

**395 Financial Close Deadline** means the date by which 395 Financial Close must occur, which is September 1, 2017.

**395 Financial Close Security** means a bond (from a surety or firm acceptable to the Department) or a Letter of Credit in the minimum amount of \$10,000,000 delivered pursuant to Section 7.03A(d).

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

**395 Guaranteed Final Completion Date** means the date that is one thousand fifty-seven (1,057) days after the 395 Financial Close Date, as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

**395 HOT Lanes** means the high occupancy toll lanes that are separated from the adjacent GP Lanes and the associated entry and exit ramps within the Project Right of Way on the 395 Corridor, including, solely during its Operating Period, the Seminary Road Ramp HOT Lanes.

**395 Interest Rate Protection Period** means the period beginning on the 395 Interest Rate Setting Date and ending on the earlier of (a) the 395 Financial Close Date and (b) the 395 Financial Close Deadline.

**395 Interest Rate Setting Date** means January 24, 2017

**395 Letter Agreement** is defined in Section 8.19(b).

**395 LNTP** means the LNTP as defined in the 395 Design-Build Contract.

**395 Long Stop Date** means the date that is 365 Days after the 395 Guaranteed Final Completion Date; *provided* that a new 395 Long Stop Date may be established pursuant to a 395 Final Completion Recovery Plan proposed and approved pursuant to Section 8.15(d) as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

**395 Market Interest Rate Adjustment** is defined in Section 7.03A(b)(i)(B).

**395 NEPA Approval** means the Finding of No Significant Impact with respect to certain elements of the 395 Project issued by the FHWA on February 27, 2017, the 395 Environmental Assessment, the DEW Categorical Exclusion and the Seminary Road Soundwall Categorical Exclusion.

**395 PABs Benchmark Interest Rate** is the rate included in Table 1 of Exhibit BB for the relevant credit rating at 395 Financial Close at the 395 Interest Rate Setting Date and the AAA MMD for a comparable maturity as of the 395 Pricing Date.

**395 PABs Credit Spreads** is the rate included in Table 1 of Exhibit BB for the relevant credit rating at 395 Financial Close at the 395 Interest Rate Setting Date and the yield to call for premium bonds and yield to maturity for discount bonds and par bonds less the 395 PABs Benchmark Interest Rate as of the 395 Pricing Date.

**395 Payment Bond** is defined in Section 17.08(b)(ii)(A).

**395 Performance Bond** is defined in Section 17.08(b)(ii)(A).

**395 Pricing Date** means the date the PABs issued to finance the 395 Project are priced.

**395 Project** means (a) the 395 Express Lanes Northern Extension, (b) the DEW Component, (c) the Seminary Road Soundwall Component, (d) the Pentagon Improvements, (e) the GP Bridges Component, (f) the Eads Street Component, and (g) solely during its Operating Period, the Seminary Road Ramp HOT Lanes.

**395 Project Financing Agreements** means the Project Financing Agreements entered into by the Concessionaire on or about the 395 Financial Close Date in the form agreed between the parties.

**395 Public Funds Amount** means the amount set forth as such in the most recent Base Case Financial Model Update.

**395 Reserve Account** means a reserve account established by the Concessionaire as set forth in Exhibit P and established under the 395 Project Financing Agreements.



**395 Revenues** is defined in Section 4 of Part B of Exhibit P.

**395 Risk Pool Costs** is defined in Section 8.19(a).

**395 Risk Pool Deposit** is defined in Section 7.03A(b)(i)(D).

**395 Risk Pool Eligibility Determination** is defined in Section 8.19(a)(ii).

**395 Service Commencement Date** means, with respect to the 395 HOT Lanes, the date on which Service Commencement for such 395 HOT Lanes was achieved, as indicated in the 395 Service Commencement Notice to Proceed.

**395 Service Commencement Notice to Proceed** is defined in Section 9.02(f).

**395 Scope Validation Documents** means the 395 Contract Documents and the Department Generated Documents.

**395 Scope Validation Work** means work performed by the Concessionaire or the 395 Design-Build Contractor between the 395 Early Work Commencement Date and the 395 Scope Validation Work Completion Date to identify any Scope Issues by: (a) thoroughly reviewing the 395 Scope Validation Documents, (b) comparing the 395 Scope Validation Documents to actual field conditions to verify and validate the 395 Design-Build Contractor's proposed design concept and (c) conducting site investigations.

**395 Scope Validation Work Completion Date** is defined in Section 8.17(b)(ii).

**395 Sponsor Funded Early Work** means any 395 Additional Early Work that is not 395 Eligible Work and which one or more of the Concessionaire's direct or indirect owners elect to fund.

**395 TIFIA Benchmark Interest Rate** is the rate included in Table 1 of Exhibit BB at the 395 Interest Rate Setting Date and the State and Local Government Series (SLGS) rate included in the 395 Project Financing Agreement for the TIFIA loan.

**395 TIFIA Credit Spreads** means one Basis Point.

**395 TTMS Contract** means the Turnkey Lump-Sum Design-Build Contract Relating to the I-395 HOV/HOT Lanes Tolling and Traffic Management System dated February 24, 2017 between the Concessionaire and the TTMS Contractor.

**395 TTMS Contractor** means the TTMS Contractor in relation to the 395 TTMS Contract.

**395 TTMS Letter of Credit** is defined in Section 17.08(b)(ii)(B).

**395 TTMS Payment Bond** is defined in Section 17.08(b)(ii)(B).

**395 TTMS Performance Bond** is defined in Section 17.08(b)(ii)(B).

**395 TTMS Work** means the services provided by the TTMS Contractor under the 395 TTMS Contract in respect of the construction of the Project Assets.

**395 VTIB Benchmark Interest Rate** is the rate included in Table 1 of Exhibit BB at the 395 Interest Rate Setting Date and the Taxable AAA MMD rate included in the 395 Project Financing Agreement for the VTIB assistance.

**395 VTIB Credit Spreads** is the rate included in Table 1 of Exhibit BB at the 395 Interest Rate Setting Date and the aggregate all-in VTIB interest rate less the 395 VTIB Benchmark Interest Rate included in the 395 Project Financing Agreement for the VTIB assistance

**95 Express Funding Commitment** shall have the meaning assigned to such term in the Cost Sharing Agreement.

**95 Construction Escrow Documents** is defined in Section 18.05(a)(i).

**95 Escrow Documents** is defined in Section 18.05(a)(i).

**95 Financing Escrow Documents** is defined in Section 18.05(a)(i).

**Actual Equity IRR** means, as of the end of each partial or full year under the Agreement, the post-tax Internal Rate of Return on Committed Investment, based on Distributions, as provided in the most recent undisputed Base Case Financial Model Update, from the Agreement Date to the end of such partial or full year.

**Additional Lanes** means any additional GP Lanes along the Original Corridor within the Project Right of Way to the extent the plans for such improvements have not been included in (a) the CLRP and the SYIP as of November 30, 2011 or (b) the Technical Requirements; *provided* however, that neither (i) the addition of a fourth general purpose traffic lane travelling southbound on I-395 between Seminary Road and Edsall Road nor (ii) the Occoquan Auxiliary Lane, will be considered an Additional Lane.

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

**Adjusted Equity IRR (95/395 Interim)** is defined in Section 2 of Exhibit BB.

**Adjusted Financial Model** means the Initial Base Case Financial Model, as adjusted at Financial Close in accordance with Section 7.03(b)(i) through (vi) of the Agreement.

**Adjusted Financial Model Update** means the Adjusted Financial Model, as adjusted at Financial Close for the Original Project of the Original TIFIA Credit Assistance in accordance with Section 7.07(b) of the Agreement.

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

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

**Affiliate Contract** means a Contract with an Affiliate.

**Affiliate Debt** means any indebtedness incurred by the Concessionaire to an Affiliate of the Concessionaire unless the terms of such indebtedness are comparable to terms, or are no less favorable to the Concessionaire than terms that could have been obtained on an arms-length basis from a Person that is not an Affiliate of the Concessionaire.

**Agreement** means the Third 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 July 31, 2012.

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

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

**Allocable Costs** means:

(a) for services performed using Department or Concessionaire personnel, materials and equipment, the sum of:

(i) an amount equal to the reasonable 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 reasonable cost of all materials used, including sales taxes, freight and delivery charges and any allowable discounts; plus

(iii) reasonable and documented out-of-pocket costs and expenses of each employee (including travel, meals and lodging costs), subject to any limitations and requirements on such costs and expenses set forth in the Department's travel guidelines; plus

(iv) the costs for the use, operating, maintenance, fuel, storage and other costs of all deployed tools (excluding small tools) and equipment, calculated at hourly rates determined from the most current volume of the Rental Rate Blue Book published by Nielsen/DATAQUEST, Inc. of Palo Alto, California, or its successors, or at any lesser hourly rate the Department may approve from time to time in its sole discretion, without area adjustment, but with equipment life adjustment made in accordance with the rate adjustment tables, *provided*, that if rates are not published for a specific type of tool or equipment, the Department will establish a rate for it that is consistent with its cost and use in the industry; and

(b) if the services are performed by a contractor under contract with the Department or the Concessionaire, the sum of:

(i) all reasonable amounts 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) the amount to reimburse the Department or the Concessionaire for the actual and documented reasonable costs of administering the contract, but not to exceed 10% of the value of the contract; plus

(iii) all reasonable 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.

**Allowance Items** is defined in Section 8.16(a).

**Alternative Facility** means (a) the Route One Improvements, (b) Additional Lanes, (c) the Occoquan Bridge Improvements, (d) the Fred Ex Route One Improvements, or (e) Fred Ex Additional Lanes, in any case, for which Commencement of Use occurs during the Term and that is built and opened to traffic, except for any Alternative Facility developed by or at the direction of the federal government, where the CTB or the Department does not have discretionary authority to effectively prevent the construction or opening to traffic or to control the location of such Alternative Facility. For the avoidance of doubt, the Southern HOT Lanes are not an Alternative Facility.

**Amended and Restated Agreement Date** means June 8, 2017.

**Amendment to O&M Agreement** means the Amendment No. 2 to the Operating and Support Services Agreement for I-95 HOV/HOT Lanes Project dated May 15, 2017 between the Concessionaire and the Initial O&M Contractor.

**Annual Budget** is defined in Section 9.08(a).

**Annual Transit Investment** means those payments required to be made by the Concessionaire to the Department in accordance with Section 5.11 and as shown in Exhibit P.

**Applicable Baseline Schedule** means the Baseline Schedule for the Original HOT Lanes, the 395 Baseline Schedule for the 395 Project, the Fred Ex Baseline Schedule for the Fred Ex Project, the Opitz Boulevard Ramp Baseline Schedule for the Opitz Boulevard Ramp Project, and the Seminary Road Ramp Baseline Schedule for the Seminary Road Ramp Project.

**Approved for Construction (AFC) Documents** means all drawings, specifications, revisions thereto, and any other items necessary to construct the Work, sealed by a professional engineer licensed by the State. **As-Built Schedule** means the last Project Schedule Update submitted to and approved by the Department.

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

**Average Toll** means, for any period of not less than 45 consecutive minutes during which Permitted Vehicles not including Permitted Vehicles violating the High Occupancy Requirement going in the same direction for two consecutive Toll Sections exceeds the applicable rate of vehicles per hour per traffic lane specified in Section 5.07 and the percentage of High Occupancy Vehicles exceeds the applicable threshold specified in Section 5.07, (a) the total revenue for all toll paying vehicles going in such direction using such Toll Section in such period, divided by (b) the number of toll paying vehicles going in such direction using such Toll Section in such 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 Equity IRR** means the nominal post-tax Internal Rate of Return on Committed Investment over the full Term projected in the most recent undisputed Base Case Financial Model Update.

**Base Case Financial Model** means the Adjusted Financial Model adjusted at Financial Close pursuant to Section 7.03(b)(vii).

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

**Base Case Financial Model Update (95/395 Draft)** is the draft(s) of the Base Case Financial Model Update (95/395 Final) delivered to the Department by the Concessionaire as required by Section 7.03A.

**Base Case Financial Model Update (95/395 Early Work Completion)** is defined in Section 8.17(b)(viii).

**Base Case Financial Model Update (95/395 Early Work Resolution)** is defined in Section 8.17(b)(x).

**Base Case Financial Model Update (95/395 Final)** is the Base Case Financial Model Update (95/395 Final) dated July 18, 2017 (18:06 EST) and delivered to the Department by the Concessionaire in conjunction with 395 Financial Close.

**Base Case Financial Model Update (Fred Ex Draft)** is an iterative financial model submitted by the Concessionaire initially with its written proposal to develop and construct the Fred Ex Project, and updated at various times by the Concessionaire before Fred Ex Financial Close, as set forth in Sections 6.02 and 7.03B.

**Base Case Financial Model Update (Fred Ex Final)** is defined in Section 6.02(f).

**Base Case Financial Model Update (Fred Ex Final/Additional)** is defined in Section 7.03C(a)(iii).

**Base Case Financial Model Update (Third ARCA)** is the Base Case Financial Model Update dated July 11, 2022 (17:08 EDT) delivered to the Department by the Concessionaire in conjunction with the execution of this Third ARCA.

**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 I-95 HOV/HOT Lanes Project Investment Grade Traffic and Revenue Study dated March 2012, the results of operation of which are incorporated into the Base Case Financial Model.

**Base Equity Contributions** is defined in Section 7.01(d).

**Baseline Quantities** is defined in Section 8.16(a).

**Baseline Schedule** means (a) the Initial Baseline Schedule identifying the major Work activities in sufficient detail to enable the Department to monitor and evaluate design and construction progress until such time as the Baseline Schedule is approved by the Department pursuant to the Technical Requirements, (b) the Baseline Schedule thereafter as updated according to the Technical Requirements, (c) the 395 Baseline Schedule as updated according to the Technical Requirements, (d) the Fred Ex Baseline Schedule as updated according to the Technical Requirements, (e) the Opitz Boulevard Ramp Baseline Schedule as updated according to the Technical Requirements, and (f) the Seminary Road Ramp Baseline Schedule as updated monthly.

**Basis Points** or **bp** means one hundredth of one percent (0.0001).

**Benchmark PABs Interest Rate** means 7.00% per annum.

**Benchmark TIFIA Interest Rate** means 3.50% per annum.

**Benchmark TIFIA Credit Assistance Amount** is \$300 million.

**Benchmark TIFIA Eligible Costs Amount** is \$913.6 million.

**Breakage Costs** means any prepayment premiums or penalties, make-whole payments or other prepayment amounts (including premiums) that the Concessionaire must pay under any

Project Financing Agreement as a result of the early repayment of Concessionaire Debt prior to its scheduled maturity date.

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

**Capital Beltway Comprehensive Agreement** means the Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project, dated as of December 19, 2007, between the Department and CBE.

**CBE** means Capital Beltway Express LLC, a Delaware limited liability company.

**Casualty Cost** is defined in Section 17.07(a).

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

- (i) 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;
- (ii) a change in possession of the power to direct or control the management of the Concessionaire or a material aspect of its business due solely to a bona fide transaction involving securities or beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of the Concessionaire, unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any Federal department or agency or State Party;
- (iii) 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;
- (iv) the exercise of preferred or minority equity holder veto or voting rights (whether provided by Law or by the Concessionaire's organizational documents) over major business decisions of the Concessionaire;

(v) the grant of Financing Assignments in accordance with the Agreement, or the exercise of Lender remedies thereunder, including foreclosure;

(vi) transfers of direct or indirect ownership interests in the Concessionaire (as applicable) between or among (1) Persons that are under common “control” (within the meaning of control contemplated by the definition clause (b) of Affiliate) or (2) any fund or entity managed directly or indirectly by a shareholder, member or partner of the Concessionaire or any Affiliate.

(vii) Transfers from either Equity Member as of the Agreement Date to the other Equity Member as of the Agreement Date or its Affiliate; or

(viii) a pledge or grant of a security interest, lien or other encumbrance of an Equity Member’s Distributions or its parent entities indirect right to receive such Distributions from the Concessionaire for the purpose of securing or serving as collateral for a debt instrument.

**Change in Law** means (a) the enactment of any Law after the Agreement Date or (b) any change, amendment to, repeal or revocation of any Law or in the interpretation or application thereof by any Governmental Authority after the Agreement Date; excluding, however, subject to the following sentence, any change in or new Law enacted but not yet effective as of the Agreement Date. Change in Law shall apply (i) for the southbound portion of the STE as if the phrase “after the Agreement Date” in the preceding sentence was “after the Southbound Opening Date,” (ii) for the northbound portion of the STE as if the phrase “after the Agreement Date” in the preceding sentence was “after the STE Final Acceptance Date,” (iii) for the 395 Project as if the phrase “after the Agreement Date” in the preceding sentence was “after January 17, 2017,” (iv) for the Fred Ex Project, as if the phrase “after the Agreement Date” in the preceding sentence was “after October 16, 2018,” and (v) for the Opitz Boulevard Ramp Project and the Seminary Road Ramp Project, as if the phrase “after the Agreement Date” in the preceding sentence was “after July 29, 2022.”

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

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

**Chief Engineer** means the Department’s Chief Engineer or any successor in function.

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

**Claim Threshold** is defined in Section 14.01(f)(i).

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

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



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

**Collateral Agency Agreement** means the Collateral Agency and Account Agreement, dated as of July 1, 2012, by and among the Concessionaire, the Trustee and the Collateral Agent; as amended and restated by the Amended and Restated Collateral Agency and Account Agreement, dated as of November 20, 2012, by and among the Concessionaire, the Trustee and the Collateral Agent; as further amended and restated by the Second Amended and Restated Collateral Agency and Account Agreement, dated as of July 25, 2017, by and among the Concessionaire, the Trustee and the Collateral Agent; as further amended and restated by the Third Amended and Restated Collateral Agency and Account Agreement, dated as of February 10, 2022, by and among the Concessionaire, the Trustee and the Collateral Agent, and any future amendments to the Collateral Agency Agreement or any successor agreement.

**Commencement of Use** occurs when an Alternative Facility is opened for normal and continuous use by the travelling public or when a Project Enhancement is substantially completed.

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

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

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

**Compensation Event** means any of the following events:

- (a) Department-Caused Delays;
- (b) the development or implementation of any Department Change or Department Project Enhancement pursuant to the Agreement;
- (c) any Discriminatory Change in Law;
- (d) a Toll Exemption Event;
- (e) an Alternative Facility, to the extent provided for in Section 12.05;

(f) any Significant Force Majeure Event to the extent the Department or the Concessionaire elects to continue the Agreement pursuant to Section 20.03;

(g) Tax Imposition;

(h) an order by the Department suspending tolls on, or diverting traffic onto, the HOT Lanes, other than as provided in the Agreement;

(i) an exercise by the Department of its Reserved Rights within or immediately adjacent to the HOT Lanes or the Design-Build Right of Way;

(j) an issuance by a Governmental Authority having jurisdiction over the Project of an injunction or other order enjoining or estopping the Concessionaire or the Department from the performance of its rights or obligations pursuant to the Agreement, in any case for more than 45 days in the aggregate;

(k) the discovery of any subsurface, man-made structure within the Project Right of Way, excluding any such structure known to the Concessionaire prior to the Agreement Date and to the extent provided under Section 14.01(f)(i); *provided*, however, that this subsection (k) shall not apply to the development and construction of the 395 Concessionaire Assets, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project;

(l) any Change in Law taking effect prior to the Guaranteed Substantial Completion Date, the 395 Guaranteed Final Completion Date, the Fred Ex Guaranteed Final Completion Date, the Opitz Boulevard Ramp Guaranteed Final Completion Date, or the Seminary Road Ramp Guaranteed Final Completion Date, respectively, that specifically affects the physical construction of the Project Assets in such a way as to increase the costs of the Work, to the extent *provided* under Section 14.01(f)(ii); or

(m) a delay in the completion of the Southbound RRC Project that results in (i) a loss of Toll Revenue to the Concessionaire or (ii) additional compensation under the Fred Ex Design-Build Contract to the Fred Ex Design-Build Contractor, which compensation must be based on an actual delay to the Southbound RRC Project baseline schedule that delays the Fred Ex Project Critical Path, substantiated by a schedule impact analysis provided by the Concessionaire in accordance with the Fred Ex Technical Requirements, *provided*, that any loss or delay under clauses (i) or (ii) above must arise directly and solely from the delay in the completion of the Southbound RRC Project, *provided further*, that Concessionaire Damages under clauses (i) and (ii) above shall not exceed (x) \$5,000 per day and (y) \$250,000 in the aggregate; *provided further*, however that no Compensation Event under this paragraph (m) may arise by reason of any delay in the completion of the Southbound RRC Project due to a Force Majeure Event or due to an action of the Concessionaire or the Fred Ex Design-Build Contractor;

*provided*, that no Compensation Event may arise by reason of:

(1) the negligence or misconduct of a Concessionaire Party; or

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

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

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

A = the total Contract Price (as defined in the Design-Build Contract), the total Contract Sum (as defined in the 395 TTMS Contract), the 395 Design-Build Cost, the total Contract Sum (as defined in the Fred Ex TTMS Contract), the Fred Ex Design-Build Cost, the Opitz Boulevard Ramp Construction Cost, the total Contract Sum (as defined in the Opitz Boulevard Ramp TMS Contract), and the Seminary Road Ramp Construction Cost, as applicable, plus the value of all Department-approved change orders to each of the Design-Build Contract, the 395 TTMS Contract, the 395 Design-Build Contract, the Fred Ex TTMS Contract, the Fred Ex Design-Build Contract, the Opitz Boulevard Ramp Construction Contract, the Opitz Boulevard Ramp TMS Contract, and the Seminary Road Ramp Construction Contract, each as applicable;

B = the estimated cost to complete all of the Work required to be undertaken in order to achieve Initial Service Commencement, 395 Service Commencement, Fred Ex Service Commencement, Opitz Boulevard Ramp Service Commencement, or Seminary Road Ramp Service Commencement, as applicable;

C = the Department's estimate of all those costs (internal and external) that it is reasonably likely to incur in retendering: (i) the Agreement, (ii) a replacement agreement to complete the 395 Project, (iii) a replacement agreement to complete the Fred Ex Project, (iv) a replacement agreement to complete the Opitz Boulevard Ramp Project, and/or (v) a replacement agreement to complete the Seminary Road Ramp Project, each as applicable; and

D = the aggregate of all amounts paid to the Concessionaire by the Department in respect of (i) Public Funds Amount, (ii) the 395 Public Funds Amount, (iii) any Fred Ex Pooled Contingency Covered-Costs paid by the Department, and (iv) any other amounts paid by the Department to the Concessionaire as compensation for the Work, as applicable, in accordance with Exhibit N on or prior to the date of termination of the Agreement, the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, or the Seminary Road Ramp Project, as applicable.

**Concessionaire** has the meaning assigned to such term in Section 56-557 of the Code of Virginia and, for purposes of the Agreement, means 95 Express Lanes LLC, a Delaware limited liability company, and its permitted successors and assigns.

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

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

and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with respect thereto, payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto, lease financing obligations and Breakage Costs. Concessionaire Debt excludes any increase in indebtedness to the extent resulting from an agreement or other arrangement the Concessionaire enters into or first becomes obligated to repay after the occurrence of an event of termination giving rise to an obligation of the Department to pay termination compensation, including the Concessionaire's receipt of a notice of termination by the Department or the Concessionaire's declaration of a Department Default of the type entitling the Concessionaire to terminate the Agreement, as applicable, *provided*, that Concessionaire Debt will include any increase in indebtedness resulting from a Refinancing. In addition, (a) no indebtedness will constitute Concessionaire Debt unless and until the Department is *provided* with notice thereof and any related funding agreements and security documents in accordance with the Agreement and (b) for the purpose of calculating compensation upon a termination of the Agreement, Concessionaire Debt will not include Shareholder Loans. For the avoidance of doubt, the 95 Express Funding Commitment, the 395 Equity Commitment Amount, the Fred Ex Equity Commitment and Subordinate Debt incurred in connection with the Fred Ex Project shall not be considered Concessionaire Debt.

**Concessionaire Default** is defined in Section 19.01.

**Concessionaire Default Termination Amount** means:

(a) with respect to termination prior to the Substantial Completion Date for the Original HOT Lanes, the lesser of **A** or **B**;

(b) with respect to termination following the Substantial Completion Date for the Original HOT Lanes but prior to both the 395 Final Completion Date and Fred Ex Final Completion Date, (i) the lesser of **C** or **D**, *plus* (ii) the lesser of **E** or **F**;

(c) with respect to termination following the 395 Final Completion Date but prior to the Fred Ex Final Completion Date, (i) the lesser of **G** or **H**, *plus* (ii) the lesser of **I** or **J**;

(d) with respect to termination following the Fred Ex Final Completion Date but prior to the 395 Final Completion Date, (i) the lesser of **K** or **L**, *plus* (ii) the lesser of **M** or **N**; and

(e) with respect to termination following all of (i) the Substantial Completion Date for the Original HOT Lanes, (ii) the 395 Final Completion Date, and (iii) the Fred Ex Final Completion Date, the lesser of **O** or **P**;

where:

**A** = the Completed Work Value (for the Original HOT Lanes only);

**B** = the lesser of 80% of Concessionaire Debt (for the Original HOT Lanes only) then outstanding or 80% of Concessionaire Debt (for the Original HOT Lanes only) projected in the most recent Base Case Financial Model Update to be then outstanding;

**C** = the Project Value (for the Original HOT Lanes only);

**D** = the lesser of 100% of Concessionaire Debt (for the Original HOT Lanes only) then outstanding or 100% of Concessionaire Debt (for the Original HOT Lanes only) projected in the most recent Base Case Financial Model Update to be then outstanding;

**E** = the Completed Work Value (for the 395 HOT Lanes and Fred Ex HOT Lanes, but not the Original HOT Lanes);

**F** = the lesser of 80% of Concessionaire Debt (for the 395 Project and the Fred Ex Project, but not the Original HOT Lanes) then outstanding or 80% of Concessionaire Debt (for the 395 Project and the Fred Ex Project, but not the Original HOT Lanes) projected in the Base Case Financial Model Update (Fred Ex Final) (or, if applicable, Base Case Financial Model Update (Fred Ex Final/Additional)) to be then outstanding;

**G** = the Project Value (for the Original HOT Lanes and the 395 HOT Lanes (including the Opitz Boulevard Ramp HOT Lanes and/or the Seminary Road Ramp HOT Lanes, if on or after the Opitz Boulevard Ramp Final Completion Date or the Seminary Road Ramp Final Completion Date, respectively), but not the Fred Ex HOT Lanes);

**H** = the lesser of 100% of Concessionaire Debt (for the Original HOT Lanes and the 395 HOT Lanes, but not the Fred Ex HOT Lanes) then outstanding or 100% of Concessionaire Debt (for the Original HOT Lanes and the 395 HOT Lanes, but not the Fred Ex HOT Lanes) projected in the most recent Base Case Financial Model Update to be then outstanding;

**I** = the Completed Work Value (for the Fred Ex HOT Lanes only, but including the Opitz Boulevard Ramp HOT Lanes and/or the Seminary Road Ramp HOT Lanes, if prior to the Opitz Boulevard Ramp Final Completion Date or the Seminary Road Ramp Final Completion Date, respectively);

**J** = the lesser of 80% of Concessionaire Debt (for the Fred Ex Project only) then outstanding or 80% of Concessionaire Debt (for the Fred Ex Project only) projected in the most recent Base Case Financial Model Update to be then outstanding;

**K** = the Project Value (for the Original HOT Lanes and the Fred Ex HOT Lanes, but not the 395 HOT Lanes);

**L** = the lesser of 100% of Concessionaire Debt (for the Original HOT Lanes and the Fred Ex HOT Lanes, but not the 395 HOT Lanes) then outstanding or 100% of Concessionaire Debt (for the Original HOT Lanes and the Fred Ex HOT Lanes, but not the 395 HOT Lanes) projected in the Base Case Financial Model Update (Fred Ex Final) (or, if applicable, Base Case Financial Model Update (Fred Ex Final/Additional)) to be then outstanding;

**M** = the Completed Work Value (for the 395 HOT Lanes only);

**N** = the lesser of 80% of Concessionaire Debt (for the 395 Project only) then outstanding or 80% of Concessionaire Debt (for the 395 Project only) projected in the Base Case Financial

Model Update (Fred Ex Final) (or, if applicable, Base Case Financial Model Update (Fred Ex Final/Additional)) to be then outstanding;

**O** = the Project Value (for the Original HOT Lanes, the 395 HOT Lanes (including the Opitz Boulevard Ramp HOT Lanes and/or the Seminary Road Ramp HOT Lanes, if on or after the Opitz Boulevard Ramp Final Completion Date or the Seminary Road Ramp Final Completion Date, respectively), and the Fred Ex HOT Lanes) plus the Completed Work Value (for the Opitz Boulevard Ramp HOT Lanes and/or the Seminary Road Ramp HOT Lanes, if prior to the Opitz Boulevard Ramp Final Completion Date or the Seminary Road Ramp Final Completion Date, respectively); and,

**P** = the lesser of 100% of Concessionaire Debt then outstanding or 100% of Concessionaire Debt projected in the most recent Base Case Financial Model Update to be then outstanding;

in each case, less:

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

(2) unpaid and/or accrued default interest;

(3) Breakage Costs;

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

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

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

**Concessionaire Default Triggering Event** is defined in Section 19.01.

**Concessionaire Financial Party** means any guarantor of the Concessionaire's material and executory obligations under the Agreement or any Equity Member of the Concessionaire with material financial obligations to the Concessionaire, unless such obligations have been satisfied or are fully secured under the terms of the Equity Funding Guaranties, the 395 Equity Funding Guaranty or 395 Equity Letter of Credit, or the Fred Ex Equity Funding Guaranty or Fred Ex Equity Funding Letter of Credit.

**Concessionaire Management Plan** means the plan developed by the Concessionaire that describes the Concessionaire's managerial approach, strategy, and quality procedures to design,

build, operate and maintain the Project and achieve all requirements of the Agreement, as described in more detail in the Technical Requirements.

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

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

**Concessionaire Project Agreements** means the Agreement, the Design-Build Contract, the O&M Agreement, the TTMS Contract and any new construction contract entered into by the Concessionaire for a substantial rebuild of the Work.

**Concessionaire Project Enhancement** means any extensions of, additions to, or major modifications to the Project undertaken by the Concessionaire pursuant to Section 12.01 or Section 12.05.

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

**Concessionaire Response** is defined in Section 8A.07.

**Concessionaire TIFIA Protection Amount** is defined in Section 7.01(d).

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

**Concessionaire's Interest** means the interest of the Concessionaire in the Project created by the Agreement and the rights and obligations of the Concessionaire pursuant to the Agreement, which will constitute contract rights.

**Constrained Long-Range Transportation Plan (CLRP)** means the constrained long-range transportation plan that is adopted by the applicable metropolitan planning organizations and approved by the FHWA and the Federal Transit Administration as a prerequisite to receiving Federal transportation funds and/or approvals.

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

**Construction Escrow Documents** means the 95 Construction Escrow Documents, the 395 Construction Escrow Documents, the Fred Ex Construction Escrow Documents, the Opitz Boulevard, and/or the Seminary Road Ramp Construction Escrow Documents.

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

**Construction Period** means the period (a) in relation to the Original Project, commencing on the Agreement Date through the Initial Service Commencement Date, (b) in relation to the 395 Project, commencing on the Amended and Restated Agreement Date through the 395 Final Completion Date, (c) in relation to the Fred Ex Project, commencing on the Second Amended and Restated Agreement Date through the Fred Ex Final Completion Date, (d) in relation to the Opitz Boulevard Ramp Project, commencing on the Third Amended and Restated Agreement Date through the Opitz Boulevard Ramp Final Completion Date, or (e) in relation to the Seminary Road Ramp Project, commencing on the Third Amended and Restated Agreement Date through the Seminary Road Ramp Final Completion Date, as applicable; *provided* however, that the Construction Period shall not apply to the design, development, and construction of the STE.

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

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

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

**Contingent Capital Contribution Amount** is defined in Section 7.01(d).

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

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



term “Contractor” will include the Design-Build Contractor, the TTMS Contractor and the O&M Contractor.

**Cost** is defined in Section 3.03(b)(i).

**Cost Sharing Agreement** means the Cost Sharing Agreement dated May 2, 2016 between the Department and the Concessionaire.

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

**Critical Path** means the longest chain(s), in terms of time, of logically connected activities on a Project Schedule ending with Final Acceptance, 395 Final Completion, Fred Ex Final Completion, Opitz Boulevard Ramp Final Completion, or Seminary Road Ramp Final Completion, as applicable.

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

**DBE Performance Improvement Plan** is the plan submitted and approved by the Department pursuant to Section 24.03(a)(v)(B) with respect to improving the Concessionaire’s performance.

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

**Debt Service Reserve Account** means any cash fund, letter of credit or similar security required to be maintained as a reserve for the payment of debt service on the initial Senior Concessionaire Debt under the Initial Project Financing Agreements, the 395 Project Financing Agreements, the Fred Ex Project Financing Agreements, the 2022 Project Financing Agreements, or the Original TIFIA Credit Assistance.

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

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

**Definitions** means this Exhibit A.

**Delay Event** means:

(a) with respect to the Construction Period, the occurrence of one or more of the following during the Construction Period:

(i) a Force Majeure Event;

(ii) discovery of a Differing Site Condition or Unknown Geotechnical Condition;

(iii) an unreasonable and unjustifiable failure by a Governmental Authority to issue, or an unreasonable and unjustified delay by a Governmental Authority in issuing, any Governmental Approval or other authorization required for the Project or the Work;

(iv) issuance by a Governmental Authority of competent jurisdiction of an injunction or other order enjoining or estopping either the Department or the Concessionaire from the performance of its rights or obligations under the Agreement;

(v) a Change in Law that imposes one or more changed or additional requirements that directly and materially adversely impact the performance of the Work and that could not have been reasonably anticipated by a reasonable concessionaire;

(vi) the development or implementation of any Department Change or Department Project Enhancement pursuant to the Agreement;

(vii) Department-Caused Delay;

(viii) an exercise by the Department of any of its Reserved Rights within or immediately adjacent to the HOT Lanes or the Design-Build Right of Way; or

(ix) a delay in the completion of the Southbound RRC Project;

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

(i) a Force Majeure Event;

(ii) issuance by a Governmental Authority of competent jurisdiction of an injunction or other order enjoining or estopping either the Department or the Concessionaire from the performance of its rights or obligations under the Agreement;

(iii) a Change in Law occurring after the applicable Service Commencement Date that imposes one or more changed or additional requirements that directly and materially adversely impact the performance of the Work and that could not have been reasonably anticipated by a reasonable concessionaire;

(iv) the development or implementation of any Department Change or Department Project Enhancement pursuant to the Agreement;

(v) Department-Caused Delay; or

(vi) a delay in the completion of the Southbound RRC Project; and

(c) which in either case under clause (a) or (b) above results in a delay or interruption in the performance by the Concessionaire of any obligation under the Agreement, *provided*, that the Delay Events do not include any delay that:

(i) could have been reasonably avoided by a Concessionaire Party;

(ii) is caused by the negligence or misconduct of a Concessionaire Party;

(iii) is caused by any act or omission by a Concessionaire Party in breach of the provisions of the Agreement or any other Project Agreement;

(iv) arises by reason of lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of any Concessionaire Party;

(v) except to the extent the same constitutes a Force Majeure Event, arises by reason of any strike, labor dispute or other labor protest involving any Person retained, employed or hired by a Concessionaire Party or its Representatives to supply materials or services for or in connection with the Project 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 a Concessionaire Party or its Representatives;

(vi) except to the extent the same constitutes a Force Majeure Event, arises by reason of 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

(vii) arises by reason of the development, redevelopment, construction, modification, maintenance or change in the operation of any existing or new mode of transportation (including mass transit facilities or operations, a road, street or highway) that results in the reduction of Toll Revenues or in the number of vehicles using the HOT Lanes, other than an Alternative Facility to the extent provided in Section 12.05.

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

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

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

**Department 395 Early Work Funding Commitment** means not more than \$7,500,000.

**Department-Caused Delay** means:

(a) a delay or failure by the Department in performing any of its material obligations pursuant to the Agreement; or

(b) performance of work by the Department or its contractors (other than the Concessionaire and its Contractors performing the Work) within or immediately adjacent to the HOT Lanes or the Design-Build Right of Way that causes physical damage to the HOT Lanes or the Design-Build Work or limits access to the Design-Build Right of Way and such physical damage or limited access delays the Concessionaire's Work;

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

(i) the submission of incomplete documentation for the Department's review;

(ii) required review of Governmental Approvals from other Governmental Authorities necessary or appropriate to the Department's review;

(iii) failure to obtain appropriation and allocation of public funds;

(iv) consumption of available Float;

(v) submittals or requests that are "deemed approved" if no response is *provided* within the applicable timeframe;

(vi) Force Majeure Events; or

(vii) the resolution of disputed payment amounts in connection with Service Commencement pursuant to Section 9.02.

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

**Department Credit Amount** has the meaning specified in Section 7.07(d)(ii).

**Department Default** is defined in Section 19.04.

**Department Default Termination Amount** means:

(a) if a notice of termination is delivered prior to the end of the Ramp-Up Period, the aggregate of (i) the lesser of 100% of Concessionaire Debt then outstanding or 100% of Concessionaire Debt projected in the most recent Base Case Financial Model Update to be then outstanding, (ii) all reasonable Demobilization Costs, and (iii) the greater of (1) the Concessionaire's Equity Value as of the date of payment of the applicable termination compensation amount, and (2) an amount that, when added to the Distributions actually received by the Equity Members up until the date of payment of the applicable termination compensation amount, are sufficient to yield the Initial Equity IRR on aggregate amounts paid by the Equity Members to the Concessionaire in the form of capital contributions or Shareholder Loans up until the date of payment of the applicable termination compensation amount; and

(b) if a notice of termination is delivered following the Ramp-Up Period, the greater of (i) the lesser of 100% of Concessionaire Debt then outstanding or 100% of Concessionaire Debt projected in the most recent Base Case Financial Model Update to be then outstanding, and (ii) the Project Value;

in each case, less any Credit Balances; *provided*, however, that Credit Balances will not be deducted from the Project Value unless the Project Value is increased on account of such Credit Balances.

**Department Generated Documents** means the Proposal Specifications and the Technical Requirements, in each case, only as such documents relate to the 395 Project.

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

**Department Projects** is defined in Section 12.04(a).

**Department Protection 395 Benchmark Interest Rates** is defined in Section 2 of Exhibit BB.

**Department Protection 395 Credit Spreads** is defined in Section 2 of Exhibit BB.

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

**Department Shared Assets** means those components of the Department's transportation network existing as of the Agreement Date or constructed, renovated or improved by the Concessionaire as part of the Project that are set forth in the Technical Requirements as "Department Shared Assets."

**Department TIFIA Protection Amount** is defined in Section 7.02(b).

**Depository** means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by the Concessionaire

and approved by the Department, to serve as depository pursuant to the Agreement; *provided*, that so long as Concessionaire Debt is outstanding, the Depository will be the Collateral Agent.

**Design-Build Contract** means (a) for the Original HOT Lanes, the contract, dated as of July 31, 2012, between the Concessionaire and the Design-Build Contractor for the Project, attached as Exhibit E, as it may be amended or supplemented, (b) for the 395 Project, the 395 Design-Build Contract, (c) for the Fred Ex Project, the Fred Ex Design-Build Contract, (d) for the Opitz Boulevard Ramp Project, the Opitz Boulevard Ramp Construction Contract, and (e) for the Seminary Road Ramp Project, the Seminary Road Ramp Construction Contract.

**Design-Build Contractor** means (a) for the Original HOT Lanes, Fluor-Lane 95, LLC, a Delaware limited liability company, (b) for the 395 Project, the 395 Design-Build Contractor, (c) for the Fred Ex Project, the Fred Ex Design-Build Contractor, (d) for the Opitz Boulevard Ramp Project, the Opitz Boulevard Ramp Construction Contractor, and (e) for the Seminary Road Ramp Project, the Seminary Road Ramp Construction Contractor.

**Design-Build Letter of Credit** is defined in Section 17.08(b).

**Design-Build Right of Way** means active construction areas on the Project Right of Way during the applicable Construction Period.

**Design-Build Work** means the services provided by the Design-Build Contractor under the Design-Build Contract for the design and construction of the Project Assets. For the avoidance of doubt, the design, development and construction of the STE shall not be included in the Design-Build Work.

**Design-Build Work Guarantee** is defined in Section 17.08(b).

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

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

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

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

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

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

**DEW Categorical Exclusion** means the Categorical Exclusion for the DEW Component approved by FHWA on March 1, 2017.

**DEW Component** means the widening of the southbound section of I-395 between the Duke Street and Edsall Road interchanges from three general purpose lanes to four general purpose lanes, modifications to the Duke Street and Edsall Road interchanges, a modified entry ramp from Duke Street to the southbound section of I-395 and other necessary improvements to accommodate such widening.

**Differing Site Conditions** means any:

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

(b) archaeological, paleontological or cultural resources on the Project Right of Way;

(c) Unknown Pre-Existing Hazardous Substances;

(d) Hazardous Substances spilled or otherwise placed on the Project Right of Way: (i) in the case of the Original Corridor (but not the Opitz Boulevard Ramp HOT Lanes ROW), subsequent to the Agreement, (ii) in the case of the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW), subsequent to January 17, 2017, (iii) in the case of the Fred Ex Corridor, subsequent to October 16, 2018, or (iv) in the case of the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project, subsequent to July 29, 2022, as applicable, other than by a Concessionaire Party in the course of performing the Work; or

(e) Utilities in the Project Right of Way, excluding (i) in the case of the initial Project Right of Way (but not the Opitz Boulevard Ramp HOT Lanes ROW), Utilities known to the Concessionaire as of the Agreement Date, (ii) in the case of the Project Right of Way within the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW), Utilities known to the Concessionaire as of January 17, 2017, (iii) in the case of the Project Right of Way within the Fred Ex Corridor, Utilities known to the Concessionaire as of October 16, 2018, or (iv) in the case of the Project Right of Way for the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project, Utilities known to the Concessionaire as of July 29, 2022, as applicable;

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

(i) was not known or discovered by the Concessionaire prior to the Agreement Date or, in the case of the Project Right of Way within the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW), January 17, 2017, or, in the case of on the Project Right of Way within the Fred Ex Corridor, October 16, 2018, or, in the case of the Project Right of Way for the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project, July 29, 2022, as applicable, and could not reasonably be expected to have been known or discovered by the Concessionaire prior to the Agreement Date or, in the case of the Project Right of Way within the 395 Corridor (but not the Seminary Road Ramp HOT Lanes

ROW), January 17, 2017, or, in the case of on the Project Right of Way within the Fred Ex Corridor, October 16, 2018, or, in the case of the Project Right of Way for the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project, July 29, 2022 as applicable; and

(ii) has a material impact on the Concessionaire's performance of the Work pursuant to the terms of the Agreement.

**Direct Agreement** means the agreement executed among the Department, the Concessionaire and the Collateral Agent, in the form attached as Exhibit R-1.

**Direct Agreement (Comprehensive Agreement)** means the Direct Agreement (Comprehensive Agreement) executed among the Department, the Concessionaire and the Collateral Agent, in the form attached as Exhibit R-6.

**Direct Agreement (Second ARCA)** means the Direct Agreement (Second ARCA) executed among the Department, the Concessionaire and the Collateral Agent, in the form attached as Exhibit R-4.

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

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

**Discriminatory Change in Law** means the adoption of any State Law or any change in any State Law or in the interpretation or application thereof during the Term that, except as otherwise provided within this definition:

(a) has the effect of discriminating solely against the Project, the Concessionaire or operators of toll roads in the State, except where such State Law or change in State Law or in interpretation or application (i) is in response, in whole or in part, to any failure to perform or breach of the Agreement or other Project Agreement, violation of Law or Governmental Approval, culpable act, omission or negligence on the part of any Concessionaire Party or (ii) is otherwise permitted under the Agreement;

(b) permits vehicles other than Permitted Vehicles to travel on the Project;

(c) permits vehicles then paying tolls to travel on the Project at reduced tolls or without tolls, including decreases in then existing High Occupancy Requirements; or

(d) limits the Concessionaire's right to impose, charge, collect and enforce tolls and incidental charges in accordance with Section 5.01.

None of the following will be a Discriminatory Change in Law:



- (i) the development and operation of any existing or new mode of transportation (including a road, street, highway or mass transit facility) that results in the reduction of Toll Revenues or in the number of vehicles using the Project;
- (ii) any changes in Taxes of general application;
- (iii) the exercise by the State of its regulatory and police powers;
- (iv) a Toll Exemption Event; or
- (v) any order issued by a State or federal court or the interpretation by a State or federal court of any Law.

A Safety Compliance Order will not be deemed to be a Discriminatory Change in Law. For purposes of the definition of “Discriminatory Change in Law,” the term “Governmental Authority” means the government of the State or of any department, commission, board, bureau, agency or other regulatory or governmental authority established under the laws of the State.

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

**Distribution** means

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

**Division Administrator for Civil Rights** means the Department’s Division Administrator for Civil Rights or any successor in function.

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

**Eads Street Component** means the development, design, construction, financing, operation and maintenance of certain improvements to the connections at Eads Street (including the fourth lane, gates, traffic signals and betterments associated with improving transit circulation for carpools, vanpools and buses within the Pentagon) as set forth in Exhibit EE hereto.

**Early Work** means the work identified in Exhibit B-4.

**Electronic Toll Collection Agreement** means the agreement between the Concessionaire and the Department executed in accordance with Section 5.01(f), attached as Exhibit K.

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

(a) presents an immediate or imminent threat to the long term integrity of any part of the infrastructure of the Project, to the Environment, to property adjacent to the Project or to the safety of road users or the traveling public;

(b) has jeopardized the safety of road users or the traveling public; or

(c) is a declared state of emergency pursuant to State or Federal Law.

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

**Environmental Assessment** means the Revised Environmental Assessment submitted by the Department to FHWA on November 7, 2011, and consisting of (a) the Environmental Assessment prepared by the Department and dated September 8, 2011, (b) the summary of comments that the Department received to the September 8, 2011, Environmental Assessment along with the Department's responses to those comments, (c) the summary of changes to the Project and mitigation measures that were based on the comments and (d) a summary of findings, agreements, and determinations that the Department made for the Project.

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

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

**Equity Contribution Amount** is defined in Section 7.01(d).

**Equity Contributions** means (without duplication) (i) cash, (ii) funds available for distribution in the Distribution Account (as defined in the Collateral Agency Agreement) that have not yet been distributed and are made available for Project-related expenditures, and (iii) funds made available from each of the Equity Funding Agreements, the 395 Equity Funding Agreements, the Fred Ex Equity Funding Agreements, funds contributed by or on behalf of the Equity Sponsors to fund the Opitz Boulevard Ramp Project, and funds contributed by or on behalf of the Equity Sponsors to fund the Seminary Road Ramp Project, each in form and substance acceptable to the Department in its reasonable sole discretion.

**Equity Funding Agreements** means the equity funding agreements, by and among the Equity Sponsors, the Concessionaire and the agent for the Lenders, with respect to the capital commitments for the Project.

**Equity Funding Guaranty** is defined in Section 17.08(a)(i).

**Equity IRR** means the nominal post-tax Internal Rate of Return calculated on the Committed Investment over the full Term projected in the most recent Base Case Financial Model Update.

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

**Equity Sponsor(s)** means (a) initially, Fluor and DRIVE USA Investments LLC, (b) as of and after the Amended and Restated Agreement Date, DRIVE USA Investments LLC and Transurban Express Lanes LLC, (c) as of and after the Second Amended and Restated Agreement Date, Transurban Express Lanes LLC and (d) as of and after the Third Amended and Restated Agreement Date, Transurban Express Lanes LLC.

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

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

**Escrow Documents** means the 95 Escrow Documents, the 395 Escrow Documents, the Fred Ex Escrow Documents, the Opitz Boulevard Ramp Escrow Documents, and/or the Seminary Road Ramp Escrow Documents, and includes any documents submitted after the Agreement Date, the Amended and Restated Agreement Date, the Second Amended and Restated Agreement Date or the Third Amended and Restated Agreement Date, as applicable, pursuant to Section 18.05(d).

**ETC Services** means electronic toll collection services.

**ETTM** means electronic toll and traffic management.

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

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

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

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

**Exempt Vehicles** means (a) maintenance vehicles of the Department and its contractors and snow removal vehicles of the Department and its contractors, each in the performance of its duties related to the HOT Lanes; and (b) emergency vehicles and law-enforcement vehicles using the Project for the performance of their duties.

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

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

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

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

**Fiber MOA** means the Memorandum of Agreement Fiber Optic Resource Sharing Agreement dated January 25, 2013 between the Department and Summit Infrastructure Group, LLC.

**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 8.09(b).

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

**Final Acceptance Date** means the date on which Final Acceptance is achieved, as indicated on the Final Acceptance Certificate.

**Final Acceptance Deadline** means the date which is 90 Days from the Substantial Completion Date, as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

**Final Permit Fee Buyout Payment** means \$232,000,000 presented in time of payment (nominal) dollars.

**Final Proposal** means the Concessionaire’s Final Proposal in accordance with the Proposal Specifications.

**Final Proposal Security** has the meaning given to such term in the Proposal Specifications.

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

**Financial Close Adjustment Protocol** attached as Exhibit BB.

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

**Financial Close Deadline** means the date by which Financial Close must occur, which is the first to occur of (a) 270 Days following the date on which the Concessionaire has submitted an application to USDOT to obtain financing under any credit assistance program under TIFIA for the Project, or (b) 270 Days following the date on which USDOT provides written notice to the Concessionaire that the Project will not receive financing under any credit assistance program under TIFIA for the Project.

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

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

**Financing Assignment** is defined in Section 7.04(a).

**Financing Escrow Documents** means the 95 Financing Escrow Documents, the 395 Financing Escrow Documents, the Fred Ex Financing Escrow Documents, the Opitz Boulevard Ramp Financing Escrow Documents, and/or the Seminary Road Ramp Financing Escrow Documents.

**First Amendment** means the First Amendment to the Comprehensive Agreement Related to the I-95/395 HOV/HOT Lanes Project dated May 2, 2016 between the Department and the Concessionaire.

**First ARCA** means the Amended and Restated Comprehensive Agreement Related to the I-95/395 HOV/HOT Lanes Project dated June 8, 2017 between the Department and the Concessionaire.

**First Measurement Period** is defined in Section 5.07(b)(i).

**First Threshold HOV Percentage and Rate** is defined in Section 5.07(b)(i).

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

**Fixed Fred Ex TIFIA Credit Assistance Benefit** is defined in Section 7.03C(d)(i)(A).

**Float** means the amount of time that any given activity or logically connected sequence of activities shown on a Project Schedule may be delayed before it will affect the Concessionaire's ability to achieve Substantial Completion by the Guaranteed Substantial Completion Date, 395 Final Completion by the 395 Guaranteed Final Completion Date, Fred Ex Final Completion by the Fred Ex Guaranteed Final Completion Date, Opitz Boulevard Ramp Final Completion by the Opitz Boulevard Ramp Guaranteed Final Completion Date, or Seminary Road Ramp Final Completion by the Seminary Road Ramp Guaranteed Final Completion Date. Such Float is generally identified as the difference between the early completion date and late completion date for all activities as shown on a Project Schedule.

**Fluor** means Fluor Enterprises, Inc.

**Fluor Guarantor** means Fluor Corporation.

**FONSI** means the Finding of No Significant Impact related to the Project issued by the FHWA on December 5, 2011.

**Force Majeure Event** means the occurrence of an event, act, omission, condition, or circumstance beyond either parties' reasonable control and due to no fault of either party, or those for whom either party is responsible, that materially prevents or delays the Concessionaire from performing any of its obligations pursuant to the Agreement. An event is not a Force Majeure Event if such event is otherwise specifically dealt with in the Agreement or arises by reason of:

- (a) the negligence or misconduct of a Concessionaire Party;
- (b) any act or omission by a Concessionaire Party in breach of the provisions of the Agreement;
- (c) Delay Events, other than Force Majeure Events;
- (d) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of a Concessionaire Party;
- (e) any strike, labor dispute or labor protest directed solely at a Concessionaire Party or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of a Concessionaire Party;
- (f) an earthquake after Substantial Completion, 395 Final Completion, Fred Ex Final Completion, Opitz Boulevard Ramp Final Completion, or Seminary Road Ramp Final Completion, as the case may be, that causes ground accelerations below the AASHTO bridge design standards for the site of the operating Project Assets;
- (g) floods after Substantial Completion, 395 Final Completion, Fred Ex Final Completion, Opitz Boulevard Ramp Final Completion, or Seminary Road Ramp Final Completion, as the case may be, below the base flood levels specified in the Technical Requirements;

(h) market conditions and economic conditions affecting the availability, supply, or cost of labor, equipment and materials, construction equipment and supplies, or commodities;

(i) market conditions and economic conditions affecting traffic volumes, traffic revenue or the Concessionaire's ability to meet its financial obligations for the Project; or

(j) weather conditions, other than hurricane force winds, tornadoes and floods to the extent not excluded by the above.

For the avoidance of doubt, Force Majeure Events shall not apply to the design, development and construction of the STE.

**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.

**Fred Ex Additional Equity Commitment Amount** means the equity commitment committed at Fred Ex Financial Close for purposes of calculating the Total Financing Amount.

**Fred Ex Additional Financial Close** means a second financial close in relation to the Fred Ex Project that involves PABs financing and/or Fred Ex TIFIA Credit Assistance. Fred Ex Additional Financial Close: (i) shall be optional to the Concessionaire, (ii) shall be in addition to the Fred Ex Financial Close, (iii) may occur after the Fred Ex Financial Close Deadline, (iv) may occur only once with respect to PABs, (v) may occur only once with respect to Fred Ex TIFIA Credit Assistance, and (vi) will not be treated as a refinancing under Section 7.05 of the Agreement. Nothing in the Agreement prohibits the Concessionaire from incorporating PABs financing and/or Fred Ex TIFIA Credit Assistance as part of Fred Ex Financial Close.

**Fred Ex Additional Financial Close Date** means the date all of the conditions precedent set forth in Section 7.03C(b) are satisfied such that the Department issues a certificate confirming that all such conditions precedent have been satisfied.

**Fred Ex Additional Lanes** means any additional GP Lanes along the Fred Ex Corridor within the Project Right of Way to the extent the plans for such improvements have not been included in (a) CLRP or LRTP and the SYIP as of January 9, 2018 or (b) the Technical Requirements. For the avoidance of doubt, the I-95 Northbound Rappahannock River Crossing Project has been included in the applicable CLRP or LRTP and the SYIP as of January 9, 2018.

**Fred Ex Assets** means the Fred Ex HOT Lanes and other assets constructed, maintained, or held by the Concessionaire as part of the Fred Ex Project (or any applicable portion of such assets).

**Fred Ex Baseline Schedule** means (a) the Initial Fred Ex Baseline Schedule identifying the major Work activities in sufficient detail to enable the Department to monitor and evaluate design and construction progress until such time as the Fred Ex Baseline Schedule is approved by the Department pursuant to the Technical Requirements and (b) the Fred Ex Baseline Schedule thereafter as updated according to the Technical Requirements.

**Fred Ex Benchmark Design-Build Price** means \$370,000,000.

**Fred Ex Betterment** means any nonessential modification to the Fred Ex Design-Build Contract, the Fred Ex TTMS Contract, or any other Contract, in each case related to the design and construction of the Fred Ex Project as amended or supplemented from time to time, that:

- (i) exceeds the applicable Contract base requirements;
- (ii) increases compensation paid by the Concessionaire to the Fred Ex Design-Build Contractor, the Fred Ex TTMS Contractor, or to such other Contractor related to the Fred Ex Project;
- (iii) provides no more than a *de minimis* benefit to the Department; and
- (iv) can reasonably be characterized as an enhancement or upgrade.

**Fred Ex Concessionaire Breach** is defined in Section 19.09.

**Fred Ex Concessionaire Breach Termination Amount** means (x) any amounts due to the Concessionaire under Section 8.22(c)(iii) of the Agreement (but only to the extent such amounts are not counted under (y)), *plus* (y) the lesser of (a) the Completed Work Value and (b) the lesser of 80% of Concessionaire Debt (for the Fred Ex Project) then outstanding or 80% of Concessionaire Debt (for the Fred Ex Project) projected in the most recent Base Case Financial Model Update to be then outstanding; less:

- (i) Fred Ex Credit Balances;
- (ii) unpaid and/or accrued default interest;
- (iii) Breakage Costs;
- (iv) any other amounts referred to in the definition of Concessionaire Debt that arise as a consequence of the termination of the Fred Ex Project or the acceleration of or requirement to mandatorily prepay the Concessionaire Debt; and
- (v) Allocable Costs incurred by the Department in terminating the Fred Ex Project for the Fred Ex Concessionaire Breach.

**Fred Ex Concessionaire Breach Triggering Event** is defined in Section 19.09.

**Fred Ex Concessionaire Committed Contingency** is defined in Section 8.22(b)(i)(A).

**Fred Ex Construction Escrow Documents** is defined in Section 18.05(a).

**Fred Ex Corridor** means the portion of Interstate 95 located within the State with a northern terminus of approximately mile marker 145 and a southern terminus of approximately mile marker 133. For the purposes of Sections 8.12 and 8.22(a), the Fred Ex Corridor will include the STE Corridor.



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

**Fred Ex Department Committed Contingency** is defined in Section 8.22(b)(i)(B).

**Fred Ex Design-Build Contract** means the design-build contract dated April 18, 2019 between the Concessionaire and the Fred Ex Design-Build Contractor.

**Fred Ex Design-Build Contractor** means Branch-Flatiron, Joint Venture.

**Fred Ex Design-Build Cost** means \$291,000,000.

**Fred Ex Design-Build Price Protection** is defined in Section 7.03B(c)(iii).

**Fred Ex Design-Build Price Protection Benefit** is defined in Section 7.03B(c)(iii).

**Fred Ex Design-Build Price Protection Calculation Date** means the date the Concessionaire receives and opens competitive pricing proposals from firms competing for the Fred Ex Design-Build Contract, or (if applicable) the date the Concessionaire receives and opens competitive best-and-final pricing offers from firms competing for the Fred Ex Design-Build Contract.

**Fred Ex Design-Build Work** means the Fred Ex Work (or “Work”) as defined within the Fred Ex Design-Build Contract.

**Fred Ex Direct Agreement** means the Direct Agreement executed among the Department, the Concessionaire, and the Collateral Agent, in the form attached as Exhibit R-3.

**Fred Ex Direct Agreement (Comprehensive Agreement)** means the Fred Ex Direct Agreement (Comprehensive Agreement) executed among the Department, the Concessionaire and the Collateral Agent, in the form attached as Exhibit R-7.

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

**Fred Ex 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 Fred Ex Project.

**Fred Ex Equity Funding Guarantee** is defined in Section 17.08(a)(iii)(B).

**Fred Ex Equity Letter of Credit** is defined in Section 17.08(a)(iii)(A).

**Fred Ex Escrow Documents** is defined in Section 18.05(a).

**Fred Ex External Engineering Costs** means any engineering costs incurred by the Concessionaire in direct support of the scope of work of the Fred Ex Project, and performed by an individual or entity other than the Concessionaire or its employees, or any Concessionaire Affiliate or its employees.

**Fred Ex Final Completion** means the satisfaction of the conditions set forth in Section 8.21, as and when confirmed by the Department's Issuance of the Fred Ex Final Completion Certificate.

**Fred Ex Final Completion Certificate** means a letter or certificate issued by the Department in accordance with Section 8.21(b) evidencing the Department's determination that Fred Ex Final Completion has occurred.

**Fred Ex Final Completion Date** means the date the Department issues the Fred Ex Final Completion Certificate.

**Fred Ex Final Completion Recovery Plan** is defined in Section 8.15(f).

**Fred Ex Financial Close** means the satisfaction (or waiver by the Department in its sole discretion) of all conditions precedent set forth in Section 7.03B(b).

**Fred Ex Financial Close Date** means the date all of the conditions precedent set forth in Section 7.03B(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.

**Fred Ex Financial Close Deadline** means the date by which Fred Ex Financial Close must occur, which is May 29, 2019, which is 210 days from the date the Concessionaire delivers to the Department a written notice of intent to award the Fred Ex Design-Build Contract or another date as may be mutually agreed by the Concessionaire and the Department.

**Fred Ex Financial Close Security** means a Letter of Credit in the minimum amount of \$10,000,000 delivered pursuant to Section 7.03B(f).

**Fred Ex Financial Protections** are defined in Section 7.03B(c).

**Fred Ex Financial Protections Calculation Dates** means collectively, the Fred Ex Design-Build Price Protection Calculation Date, the Fred Ex PABs Interest Rate Protection Calculation Date, and the Fred Ex TIFIA Interest Rate Protection Calculation Date.

**Fred Ex Financing Escrow Documents** is defined in Section 18.05(a).

**Fred Ex Guaranteed Final Completion Date** means 1,430 days following the date of issuance of the Design Work NTP and Construction NTP under the Fred Ex Design-Build Contract.

**Fred Ex Guaranteed Route 17 GP Exit Ramp Completion Date** means July 15, 2021.

**Fred Ex HOT Lanes** means the HOT lanes separated from the adjacent GP Lanes and the associated entry and exit ramps within the Project Right of Way on the Fred Ex Corridor. For the purposes of Section 5.07, the Fred Ex HOT Lanes include the STE HOT Lanes.

**Fred Ex Interest Rate Protection Deadline** means March 31, 2020.

**Fred Ex Interest Rate Protection** is defined in Section 7.03B(c)(i).

**Fred Ex Interest Rate Protection Period** means the time period between (a) the Fred Ex Interest Rate Setting Date and (b) the date prior to the Fred Ex Interest Rate Protection Deadline that the Concessionaire locks in the last of the rates for Fred Ex TIFIA Credit Assistance and/or PABs used to finance the Fred Ex Project.

**Fred Ex Interest Rate Setting Date** means October 6, 2017.

**Fred Ex LNTP** means any LNTP relating to the Fred Ex Project issued pursuant to Section 8.02(a).

**Fred Ex Long Stop Date** means the date that is 365 Days after the Fred Ex Guaranteed Final Completion Date; *provided* that a new Fred Ex Long Stop Date may be established pursuant to a Fred Ex Final Completion Recovery Plan proposed and approved pursuant to Section 8.15(f) as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

**Fred Ex NEPA Approval** means the Finding of No Significant Impact with respect to certain elements of the Fred Ex Project issued on March 19, 2018.

**Fred Ex PABs All-In Rates** means the combined benchmark interest rates and credit spreads, each applicable to PABs and sourced as of October 6, 2017, and stated in Exhibit BB-2.

**Fred Ex PABs Interest Rate Protection Calculation Date** means the date the interest rates applicable to any PABs issued to finance the Fred Ex Project are locked.

**Fred Ex Payment Bond** is defined in Section 17.08(b)(iii).

**Fred Ex Performance Bond** is defined in Section 17.08(b)(iii).

**Fred Ex Pooled Contingency Approval** is defined in Section 8.22(b)(iv).

**Fred Ex Pooled Contingency-Covered Cost(s)** means (i) additional, unanticipated costs and expenses incurred by the Department and required to design and construct the Southbound RRC Overlap Work that are not reasonably anticipated at the time the Department executes the Southbound RRC Design-Build Contract, and (ii) additional, unanticipated costs and expenses incurred by the Concessionaire and required to design and construct the Fred Ex Project that were not included in the Fred Ex Design-Build Contract, the Fred Ex TTMS Contract, the Base Case Financial Model Update (Fred Ex Final) or Base Case Financial Model Update (Fred Ex Final/Additional). Costs expressly contemplated in the Fred Ex Design-Build Contract and the Fred Ex TTMS Contract, Fred Ex Betterments (including oversight and/or management costs associated with any Fred Ex Betterment), Department Changes in respect of the Fred Ex Project, and Department Project Enhancements will not count as Fred Ex Pooled Contingency-Covered Costs unless otherwise agreed by the parties.

**Fred Ex Pooled Contingency-Covered Cost(s) Notice** means prior written notice from a party requesting approval to classify any cost as a Fred Ex Pooled Contingency-Covered Cost(s),

which is provided to the non-requesting party. The notice shall state the amount of the expenditure, the amount of Fred Ex Department Committed Contingency or Fred Ex Concessionaire Committed Contingency required to be funded, if any, and include any applicable invoices and/or supporting documentation or information.

**Fred Ex Pooled Contingency Deductive Credits** means the aggregated amounts of any deductive modifications to the Fred Ex Design-Build Contract, the Fred Ex TTMS Contract, or any other Contract related to the design and construction of the Fred Ex Project, which amounts reduce the compensation paid by the Concessionaire under the applicable Contract. Such savings shall be made available as part of the Fred Ex Concessionaire Committed Contingency pursuant to Section 8.22(b)(i)(A).

**Fred Ex Pooled Contingency Fund** is defined in Section 8.22(b)(i).

**Fred Ex Pooled Contingency Fund Report** means a report provided by the Concessionaire to the Department on the status of the Fred Ex Pooled Contingency Fund, including (i) an up-to-date total of the amount of the Fred Ex Pooled Contingency Fund expended, (ii) any pending, approved, or disputed contingency use classifications or amounts, (iii) a break-out between internal costs and external costs (and specifically identifying all costs paid to Affiliates) for which payment or reimbursement is sought from the Fred Ex Pooled Contingency Fund, and (iv) a list of issues that the Concessionaire considers unanticipated, and which could increase Concessionaire oversight and management costs on the Fred Ex Project, and the potential result from each identified issue.

**Fred Ex Project** means the development, design, construction, financing, operation, and maintenance of the Fred Ex HOT Lanes.

**Fred Ex Project Binding Proposal Base Case Financial Model** means the financial model delivered by the Concessionaire to the Department on January 9, 2018, in conjunction with the Concessionaire's binding proposal relating to the Fred Ex Project.

**Fred Ex Project Financing Agreements** means the Project Financing Agreements entered into by the Concessionaire on or about the Fred Ex Financial Close Date or the Fred Ex Additional Financial Close Date, if applicable, in the form agreed between the parties.

**Fred Ex Project Scope** is defined in Exhibit B-1 of the Agreement.

**Fred Ex Route 17 GP Exit Ramp** means the portion of the Fred Ex Project, which provides access from the southbound GP Lanes to the Route 17 interchange.

**Fred Ex Route 17 GP Exit Ramp Completion** means the satisfaction of the conditions set forth in Section 8.22(d), as and when confirmed by the Department's Issuance of the Fred Ex Route 17 GP Exit Ramp Completion Certificate.

**Fred Ex Route 17 GP Exit Ramp Completion Certificate** means a letter or certificate issued by the Department in accordance with Section 8.22(d) evidencing the Department's determination that Fred Ex Route 17 GP Exit Ramp Completion has occurred.

**Fred Ex Route 17 GP Exit Ramp Completion Date** means the date the Department issues the Fred Ex Route 17 GP Exit Ramp Completion Certificate.

**Fred Ex Route One Improvements** means any new construction, material expansion or other additional alteration to U.S. Route One in Virginia between Route 610 (Garrisonville Road) and Route 17 in Stafford County, the plans for which have not been included in Table 7.4 in Chapter 7 (Financially Constrained Long-Range Highway Plan) of the FAMPO 2040 Long Range Transportation Plan for the George Washington Region as of April 15, 2013, that results, in the aggregate, more than two additional miles of limited access highway (as defined in Virginia Code § 33.2-400) with a speed limit of at least 55 miles per hour.

**Fred Ex ROW Costs** is defined in Section 7.03B(i)(i).

**Fred Ex Service Commencement Date** means the date on which Service Commencement for the Fred Ex Project was achieved, as indicated in the Fred Ex Service Commencement Notice to Proceed.

**Fred Ex Service Commencement Notice to Proceed** is defined in Section 9.02(g).

**Fred Ex Technical Requirements** means the Technical Requirements included as Exhibit C (including all Attachments thereto), as amended to include the Fred Ex Project.

**Fred Ex TIFIA Credit Assistance** means funding made available to the Concessionaire under the Fred Ex TIFIA Loan Documentation to fund the Fred Ex Project.

**Fred Ex TIFIA Credit Assistance Base Amount** means \$268,000,000.

**Fred Ex TIFIA Financial Close** means the execution of the Fred Ex TIFIA Loan Documentation by the Concessionaire and the TIFIA Lender.

**Fred Ex TIFIA Financial Close Date** means the date when the Fred Ex TIFIA Loan Documentation is executed by the last party to release signature pages.

**Fred Ex TIFIA Interest Rate Protection Calculation Date** means the date the interest rates applicable to any Fred Ex TIFIA Credit Assistance are locked.

**Fred Ex TIFIA Loan Documentation** means loan agreements between the Concessionaire and the TIFIA Lender pursuant to which the Fred Ex TIFIA Credit Assistance (if any) is provided, and a subordination and intercreditor agreement, in each case, that is in a form agreed and readily executable by the parties (other than the completion of terms of an administrative, non-substantive or ministerial nature, or the final interest rate and related terms that by their nature cannot be finalized prior to the date of Fred Ex TIFIA Financial Close), together with any related agreements and documents delivered therewith.

**Fred Ex TIFIA Rates** means the SLGS Daily Rate Table based on the applicable tenor of the proposed loan, published as of 10 a.m. on October 6, 2017.

**Fred Ex TTMS Contract** means the Turnkey Lump-Sum Design-Build Contract Relating to the Fredericksburg Extension of the I-95/395 HOV/HOT Lanes Tolling and Traffic Management System dated April 18, 2019 between the Concessionaire and TTMS Contractor.

**Fred Ex TTMS Contractor** means the TTMS Contractor in relation to the Fred Ex TTMS Contract.

**Fred Ex TTMS Letter of Credit** is defined in Section 17.08(b)(iii).

**Fred Ex TTMS Payment Bond** is defined in Section 17.08(b)(iii).

**Fred Ex TTMS Performance Bond** is defined in Section 17.08(b)(iii).

**Fred Ex TTMS Work** means the services provided by the TTMS Contractor under the Fred Ex TTMS Contract in respect of the construction of the Project Assets.

**Fred Ex Work Product** means all work product, complete or incomplete, generated by or on behalf of the Concessionaire relating to the Fred Ex Project, including, without limitation: (a) preliminary field inspection (PFI) level plans (PDF and DGN files associated with the plans), (b) preliminary drainage and stormwater management calculations, (c) preliminary bridge plans (PDF and DGN files), (d) conceptual signing plans, (e) topographic survey files and TIN files, (f) geotechnical boring data and the geotechnical data report, (g) any project cost estimates and (h) any independent reviews or reports related to the Fred Ex Project, all in computer readable and written format.

**GARVEE Trustee** means U.S. Bank National Association, as trustee under the Master Trust Indenture between the CTB and the U.S. Bank National Association, as the same may be supplemented from time to time.

**General Assembly** means the General Assembly of the State.

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

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

**Good Faith Efforts** means the adequate demonstrated effort required by the Concessionaire and its Contractors to achieve the DBE, SWaM and on-the-job training goals or other requirements in Section 24.03.

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

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

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

**GP Bridges Component** means the rehabilitation of the following bridges on or over the GP Lanes along the 395 Corridor: (a) 395 over Sanger Ave. (Northbound & Southbound) – Structure No. 2805, (b) 395 over West Braddock Rd. (Northbound & Southbound) – Structure No. 2806 and (c) 395 (NB GP Lanes and HOV) over Route 27 NB and Joyce Street – Structure No. 2040.

**GP Lanes** means the general purpose traffic lanes (in either or both directions) along the Original Corridor, the 395 Corridor, the Fred Ex Corridor, and, from and after the respective Service Commencement Date, along the STE Corridor.

**Gross Revenues** means the amount calculated as follows:

- (a) Toll Revenues; plus
- (b) proceeds of business interruption or similar insurance against loss of revenues from operation of the Project; plus
- (c) all other amounts derived from or in respect of the operation of the Project which constitute revenues in accordance with GAAP, including any interest income the Concessionaire earns on any funds on deposit in any bank account or securities account; plus
- (d) the amounts paid or to be paid by the Department to the Concessionaire as a result of a Compensation Event within the current calendar year that compensates for Net Revenue Impact and Net Cost Impact pursuant to the Agreement; plus
- (e) all amounts received or retained by the Concessionaire pursuant to Sections 5.07 and 22.05; minus
- (f) total credits and refunds of Toll Revenues made by the Concessionaire to customers and users on account of Toll Revenue previously collected.

**Gross Toll Revenues** means (a) toll revenues from the Project (excluding any fees recovered as part of any enforcement process but including amounts collected as tolls as part of any enforcement process); plus (b) any amounts received by the Concessionaire in lieu of any such toll revenues, including without limitation, (i) insurance proceeds, (ii) amounts paid by the Department as Compensation Events, and (iii) payments from the Electronic Toll Collection

Servicer paid by the Department under Section 2.6 (or any such succeeding provision) of Exhibit K; plus (c) all amounts received by the Concessionaire pursuant to Section 5.07.

**Gross Toll Share Payment** is defined in Exhibit J-2.

**Gross Toll Share Payment Trigger** is defined in Exhibit J-2.

**Guaranteed Substantial Completion Date** means December 31, 2014, as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

**Guidelines** means the PPTA Implementation Guidelines, as may be revised from time to time.

**Handback Period** is defined in Section 20.02(f).

**Handback Requirements** is defined in Section 20.02(a).

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

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

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

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

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

**High Occupancy Vehicle** or **HOV** means a Permitted Vehicle traveling with at least the number of Persons required by the High Occupancy Requirement.



**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 high occupancy toll lanes and the associated entry and exit ramps within the Project Right of Way that are separated from the adjacent GP Lanes, and including, for the avoidance of doubt, the Opitz Boulevard Ramp HOT Lanes and the Seminary Road Ramp HOT Lanes, and the use of which is restricted pursuant to Section 5.01.

**HOT OC Buy-In Cost or Access Fee** means the amount paid to CBE pursuant to the Shared Facilities Agreement.

**HOT OC Services** means the toll and other services to be provided to the Project pursuant to the Shared Facilities Agreement, the O&M Agreement and the Operations and Support Services Agreement for the Capital Beltway HOT Lanes Project dated December 19, 2007 between CBE and Transurban (USA) Operations, Inc.

**HOV Lanes** means the two reversible high occupancy vehicle lanes and the associated entry and exit ramps within the Project Right of Way that are separated from the adjacent GP Lanes, and in operations as of the Agreement Date.

**I-95 Northbound Rappahannock River Crossing Project** means the Department's construction project between approximately just south of Interstate 95 exit 130 to just north of exit 133, inclusive of a section of new roadway adjacent to the Fred Ex HOT Lanes (between Truslow Road and Centerport Parkway) to be constructed and maintained by the Department.

**I-95 Uplift Ratio** means the calculation as set forth in Exhibit P.

**I-95 Uplift Toll Revenue** means the incremental revenue from the Original HOT Lanes and any HOT Lanes on the STE recorded at 395 Financial Close in accordance with Exhibit P.

**Inaccessibility Notice** is defined in Section 8.17(b)(v).

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

**Initial 395 Baseline Schedule** means the initial construction schedule for the 395 Project, as proposed by the Concessionaire and approved by the Department, which is attached as Exhibit B-3.

**Initial Base Case Financial Model** means the Financial Model Formulas and the assumptions and information, including, but not limited to, projections and calculations with respect to revenues, expenses, the repayment of Concessionaire Debt, applied to the Financial Model Formulas and which is prepared on the basis of the Base Case Traffic Model as of the Agreement Date.

**Initial Baseline Schedule** means the initial construction schedule, proposed by the Concessionaire and approved by the Department, which is attached as Exhibit B-2.

**Initial Equity Commitment Amount** is defined in Section 7.01(d).

**Initial Equity IRR** means the nominal post-tax Internal Rate of Return on Committed Investment over the full Term as defined in the Initial Base Case Financial Model.

**Initial Fred Ex Baseline Schedule** means the initial construction schedule for the Fred Ex Project, as proposed by the Concessionaire and approved by the Department, which is attached as Exhibit B-3A.

**Initial Fred Ex Design-Build Contract Price** means \$291,000,000.

**Initial HOT OC Buy-In Cost** means \$21,400,000.

**Initial Opitz Boulevard Ramp Baseline Schedule** means the initial construction schedule for the Opitz Boulevard Ramp Project, as proposed by the Concessionaire and approved by the Department, which is attached as Exhibit B-3B.

**Initial Permit Fee Buyout Payment** means \$45,000,000 presented in time of payment (nominal) dollars.

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

**Initial Public Funds Amount** means \$94 million, which will be adjusted at Financial Close pursuant to Section 7.03(b).

**Initial Seminary Road Ramp Baseline Schedule** means the initial construction schedule for the Seminary Road Ramp Project, as proposed by the Concessionaire and approved by the Department, which is attached as Exhibit B-3C.

**Initial Service Commencement Date** means December 28, 2014.

**Initial Southbound RRC Overlap Work Price** means \$4,000,000.

**Institutional Lender** means:

(a) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;

(b) any (i) savings bank, commercial bank, investment bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States of America or any state thereof, (iii) pension fund, hedge fund, foundation or university or college endowment fund, (iv) entity which is formed for the purpose

of securitizing mortgages, whose securities are sold by public offering or to qualified investors under the U.S. Securities Act of 1933, as amended, (v) Person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the U.S. Securities Act of 1933, as amended, within one year of its making (*provided*, that an entity described in this clause (b) only qualifies as an Institutional Lender if it is subject to the jurisdiction of state and Federal courts in the State in any actions);

(c) any “qualified institutional buyer” under Rule 144(a) of the Securities Act of 1933 or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms;

(d) the holders of debt issued by a PABs Issuer or the trustee for such holders, so long as the indenture trustee for such holders of debt itself is an Institutional Lender; or

(e) any other financial institution or entity designated by the Concessionaire and approved by the Department (*provided*, that such institution or entity, in its activity under the Agreement, is acceptable under then current guidelines and practices of the State);

*provided*, that each such entity (other than entities described in clause (b)(iv) and clause (c) of this definition) or combination of such entities if the Institutional Lender is a combination of such entities will have individual or combined assets, as the case may be, of not less than \$1 billion; and *provided* further, that an entity described in clause (b)(iv) of this definition must have assets of not less than \$100 million.

**Insurance Requirements** means Exhibit Y.

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

**Interim Agreement** means the agreement dated October 24, 2006 between the Department, Fluor Virginia, Inc., and Transurban (USA) Development Inc., as amended from time to time.

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

**IRR Threshold** means the IRR Threshold as set forth in the most recent Base Case Financial Model Update. All Base Case Financial Model Updates shall explicitly state the IRR Threshold.

**Key Member** means (a) Fluor, Lane Construction Corporation (but not Virginia Paving Corporation) (solely with respect to the Original Project during its Construction Period) and the Design-Build Contractor with respect to the Design-Build Work, (b) Transurban and the O&M Contractor with respect to the O&M Work, or (c) the TTMS Contractor with respect to the TTMS Work.

**Known Geotechnical Conditions** means Geotechnical Conditions:

(a) identified in Exhibit S;

(b) which the Concessionaire should have known were present (i) within the Project Right of Way within the Original Corridor (but not the Opitz Boulevard Ramp HOT Lanes ROW) based on the Geotechnical Conditions identified in Exhibit S, as of the Agreement Date, (ii) within the Project Right of Way within the STE Corridor based on the contents of Exhibit S, as of the applicable Service Commencement Date, (iii) within the Project Right of Way within the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW) based on the contents of Exhibit S, as of January 17, 2017, (iv) within the Project Right of Way within the Fred Ex Corridor based on the contents of Exhibit S, as of October 16, 2018; and (v) within the Project Right of Way for the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project based on the contents of Exhibit S, as of July 29, 2022.

(c) which were actually known by the Concessionaire to be present (i) within the Project Right of Way within the Original Corridor (but not the Opitz Boulevard Ramp HOT Lanes ROW) as of the Agreement Date, (ii) within the Project Right of Way within the STE Corridor as of the applicable Service Commencement Date, (iii) within the Project Right of Way within the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW) as of January 17, 2017, (iv) within the Project Right of Way within the Fred Ex Corridor based on the contents of Exhibit S, as of October 16, 2018, and (v) within the Project Right of Way for the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project based on the contents of Exhibit S, as of July 29, 2022.

**Known Pre-Existing Hazardous Substances** means Hazardous Substances:

(a) identified in Exhibit T;

(b) which the Concessionaire should have known were present (i) within the Project Right of Way within the Original Corridor (but not the Opitz Boulevard Ramp HOT Lanes ROW) based on the contents of Exhibit T, as of the Agreement Date, (ii) within the Project Right of Way within the STE Corridor based on the contents of Exhibit T, as of the applicable Service Commencement Date, (iii) within the Project Right of Way within the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW) based on the contents of Exhibit T, as of January 17, 2017, (iv) within the Project Right of Way within the Fred Ex Corridor based on the contents of Exhibit T, as of October 16, 2018; and (v) within the Project Right of Way for the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project based on the contents of Exhibit T, as of July 29, 2022.

(c) which were actually known by the Concessionaire to be present (i) within the Project Right of Way within the Original Corridor (but not the Opitz Boulevard Ramp HOT Lanes ROW) as of the Agreement Date, (ii) within the Project Right of Way within the STE Corridor as

of the applicable Service Commencement Date, (iii) within the Project Right of Way within the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW) as of January 17, 2017, (iv) within the Project Right of Way within the Fred Ex Corridor based on the contents of Exhibit T, as of October 16, 2018; and (v) within the Project Right of Way for the Opitz Boulevard Ramp Project or the Seminary Road Ramp Project based on the contents of Exhibit T, as of July 29, 2022.

*provided*, however, that notwithstanding anything to the contrary herein (including Exhibit T), any Hazardous Substances resulting from the gasoline spill on February 26, 1995 at the northbound on-ramp to I-95 at Backlick Road in Newington, Exit 166 and any Hazardous Substances consisting of asbestos on the existing bridges within the Corridor (other than asbestos contained in insulation in steel pipes on such existing bridges) shall not be considered to be Known Pre-Existing Hazardous Substances for purposes of the Agreement.

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

**Lane Closure Damages** is defined in Section 8.14.

**Late Scope Issue** means any issue that meets the definition of Scope Issue except that the Concessionaire did not identify it to the Department before the 395 Scope Validation Work Completion Date.

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

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

**Letter of Credit** means an irrevocable, unconditional letter of credit in favor of the Department (or where indicated, the Concessionaire or the Collateral Agent with the Department as permitted transferee), in form and content reasonably acceptable to the Department that:

(a) is payable within one Business Day in U.S. dollars upon presentation of a sight draft and a certificate confirming that the Department (or, where indicated, the Collateral Agent or the Concessionaire) has the right to draw under such letter of credit from time to time in the amount of such sight draft and confirming such other matters that may be required under the Letter of Credit, without presentation of any other document, statement or authorization;

(b) is issued by a commercial bank or trust company that (i) has a combined capital and surplus of at least \$1,000,000,000, (ii) 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 (iii) is not an Affiliate of the Concessionaire;

(c) is issued by a commercial bank or trust company that has a current credit rating of at least A- or its equivalent from at least two nationally recognized Rating Agencies (or such other credit rating as is acceptable to the Department in its discretion and approved by the Department prior to the submission of the letter of credit);

(d) provides that, if the issuer of the Letter of Credit fails to maintain the ratings specified above in clause (c), then the Letter of Credit may be drawn upon in full within 30 Days unless the Concessionaire or other applicable account party provides a replacement Letter of Credit that meets the requirements of the Agreement or provides additional security acceptable to the Department in its sole discretion;

(e) has an initial term as specified in the Agreement, to the extent applicable;

(f) provides for the continuance or extension of its term for a period of at least one year or, if earlier, until the end of the term for which the Letter of Credit is required or as otherwise provided for in the Agreement;

(g) provides that the office for presentment of sight drafts specified in the Letter of Credit will be located at a specified street address in the City of New York, New York; and

(h) provides that it may be drawn upon in accordance with its terms within ten Business Days of its scheduled expiration date unless, prior to such tenth Business Day, the Department (or, where indicated, the Collateral Agent or the Concessionaire) has received evidence that the scheduled expiration date of such letter of credit has been extended or continued in accordance with the provisions hereof or that the replacement letter of credit meeting the requirements of the Agreement has been provided to the intended beneficiary of the expiring letter of credit.

**Leverage Ratio** means the ratio that results from the following calculation: Total Financing Amount minus Equity Contributions divided by the Total Financing Amount. For example and the avoidance of doubt, (a) a Leverage Ratio of 65% means 65% of the Total Financing Amount consists of funds other than Equity Contributions and 35% of the Total Financing Amount consists of Equity Contributions and (b) a positive change in the Leverage Ratio means a decrease in the percentage of Equity Contributions.

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

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

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

**List of Initial Project Financing Agreements, 395 Project Financing Agreements, Fred Ex Project Financing Agreements, 2022 Project Financing Agreements, Opitz Boulevard Ramp Project Equity Contribution Agreement and Financing Assignments** means Exhibit O.

**Lock-up Period** means the period commencing on the Agreement Date and ending on the later of (a) December 20, 2017 and (b) the Initial Service Commencement Date.

**Long Range Transportation Plan (LRTP)** means the long-range transportation plan that is adopted by the Fredericksburg Area Metropolitan Planning Organization and approved by the FHWA and the Federal Transit Administration as a prerequisite to receiving Federal transportation funds and/or approvals.

**Long Stop Date** means the date that is 547 Days after the Guaranteed Substantial Completion Date; *provided* that a new Long Stop Date may be established pursuant to a Substantial Completion Recovery Plan proposed and approved pursuant to Section 8.15 as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

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

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

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

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

**Major Arterials** means primary routes and all other State Highways in the State that connect directly to I-95, I-395, or I-495.

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

**Major Maintenance Performance Security** means any Performance Bond, surety, Letter of Credit, guaranty or similar instrument procured in accordance with the terms of the Agreement as set forth in Section 17.08(d).

**Major Maintenance Reserve Fund or Account** means a deposit account established by the Concessionaire at a financial institution which qualifies as an Institutional Lender under clause (b) of the definition thereof for the exclusive purpose of holding funds to pay for Tasks of Major

Maintenance as described in Section 9.04, together with all amounts from time to time contained therein.

**Major Subcontract** means a Contract entered into by the Concessionaire for the construction, installation, or development of the Fred Ex Project with a value of \$10,000,000 or more.

**Mass Transit Vehicles and Commuter Buses** means vehicles providing scheduled transportation services to the general public over designated routes with specified stops and for the purposes of Section 5.01(b) transporting at a minimum the High Occupancy Requirement.

**Measurement Period** means each of the First Measurement Period, the Second Measurement Period and the Third Measurement Period.

**Minimum Revenue Profile** is defined in Section 6 of Part B of Exhibit P.

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

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

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

**NEPA Documents** means (a) in the case of the Original Project, the Environmental Assessment and the FONSI, (b) in the case of the STE, the STE NEPA Reevaluation, (c) in the case of the 395 Project, the 395 NEPA Approval, (d) in the case of the Fred Ex Project, the Fred Ex NEPA Approval, and (e) in the case of the Opitz Boulevard Ramp Project, the Opitz Boulevard Ramp NEPA Approval.

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

(a) exclude:

(i) 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;



(ii) unallowable costs under the following provisions of the Federal Contract Cost Principles, 48 CFR Section 31.205: Section 31.205-8 (contributions or donations), Section 31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), Section 31.205-14 (entertainment costs), Section 31.205-15 (fines, penalties, and mischarging costs), Section 31.205-27 (organization costs), Section 31.205-34 (recruitment costs), Section 31.205-35 (relocation costs), Section 31.205-43 (trade, business, technical and professional activity costs), Section 31.205-44 (training and education costs), and Section 31.205-47 (costs related to legal and other proceedings); and

(b) exclude amounts paid or to be paid to Affiliates that have not been approved by the Department pursuant to Section 24.02(k) that are in excess of the pricing the Concessionaire could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Contractor; and

(c) take into account any savings in costs, including finance costs, attributable to the Compensation Event.

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

**Net Revenue Impact** means:

(a) any net increase or decrease in Gross Revenues directly attributable to a Compensation Event;

(b) in the case of a net decrease in Gross Revenues, less any savings in Project operating and maintenance costs resulting from the Compensation Event (excluding any savings in costs subtracted from Net Cost Impact for the same Compensation Event) as compared with what the Gross Revenues would have been absent occurrence of the Compensation Event;

(c) in the case of a net increase in Gross Revenues, less any incremental increase in Project operating and maintenance costs resulting from the Compensation Event (excluding any increase in costs included in Net Cost Impact for the same Compensation Event); less

(d) any lost Gross Revenues that can reasonably be mitigated by the Concessionaire (excluding any mitigation of costs subtracted from Net Cost Impact for the same Compensation Event).

**Non-Compliance Points** means the points that may be assessed for Performance Shortfalls, as set forth in Exhibit W.

**Non-Compliance Points Table** means the table attached as Exhibit W showing the Performance Shortfalls.

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

**Non-Financial Close Termination Amount** means the amounts due and owing for unpaid Early Work performed up to the effective date of termination of the Agreement, in an amount not to exceed \$42,706,962.

**Non-Permitted Closure** is defined in Section 8.14.

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

**Notice to Commence Acquisition** means a notice issued by the Department, providing the Concessionaire with the right and obligation to initiate an offer and/or to acquire a property.

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

**O&M Contractor or Operations and Maintenance Contractor** means Transurban (USA) Operations Inc. (the “Initial O&M Contractor”) or any Person entering into a Contract with the Concessionaire to perform the O&M Work.

**O&M Overhead Costs** is defined in Section 24.02(d)(iii).

**O&M Reserve Fund** means any cash fund or Letter of Credit required to be maintained as a reserve to pay Operating Costs.

**O&M Work** means any and all operation, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Project during the Operating Period, including Major Maintenance and potential Project Enhancements, except to the extent that such Work is furnished pursuant to the Design-Build Contract. For the avoidance of doubt, O&M Work shall not include the operations and maintenance of the 395 Department Assets.

**Occoquan Auxiliary Lane** means a single southbound auxiliary lane connecting the southbound Route 123 on-ramp onto Interstate 95 with the off-ramp at westbound Prince William Parkway as submitted by Prince William County in the SMART SCALE application (Round Three; Project ID No. 3499, but without regard to whether such application itself is ultimately approved or whether such scope is accomplished by means other than such SMART SCALE application) to the Department, *provided* that this definition shall not apply to any scope different than the one so submitted to the extent such different scope could reasonably be expected to result in improved traffic flow and/or additional throughput capacity compared to the scope so submitted. For the avoidance of doubt, the Occoquan Auxiliary Lane shall not constitute a Compensation Event.

**Occoquan Bridge Improvements** means the addition of any additional lanes on the bridge over the Occoquan River on U.S. Route One in Virginia, the plans for which have not been included in the CLRP or the SYIP as of November 30, 2011.

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

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

**Operating Costs** means all reasonable costs incurred and paid for by the Concessionaire in connection with the performance of the Work during the Operating Period, including:

(i) (i) costs for operation and maintenance and consumables, (ii) payments under any lease (other than a financing lease constituting Concessionaire Debt), (iii) payments pursuant to the agreements for the management, operation and maintenance of the Project, (iv) Taxes, (v) insurance, (vi) payments for Oversight Services, (vii) police services and costs for any security, (viii) payment of Department Share of Net Cost Saving, (ix) Concessionaire's reasonable Allocable Costs, (x) capital expenditures including the cost of implementing any Change (as and to the extent set forth in the related Change Order or Directive Letter) or Safety Compliance Order, (xi) any other reasonable expense paid for the enhancement, expansion, major maintenance, repair, reconstruction, rehabilitation, renewal and replacement of the Project and (xii) Permit Fee payments to the Department (if any).

(ii) Operating Costs do not include: (i) debt service payments or financing costs or fees, (ii) any Distributions, (iii) entertainment costs, lobbying and political activity costs not related to the business and operations of the Concessionaire, (iv) 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, (v) non-cash charges, such as depreciation, amortization or other bookkeeping entries of a similar nature, (vi) liquidated damages payable pursuant to the Agreement, (vii) the Annual Transit Investment or (viii) Gross Toll Share Payments.

For purposes of Exhibit P, Operating Costs attributable to the 395 HOT Lanes do not include (i) certain reserve and sinking fund accounts in the Department approved Base Case Financial Model (95/395 Final), (ii) capital expenditures related to any change that enhances or expands the Project, (iii) any cost of implementing a Project Enhancement, (iv) the Annual Transit Investment or (v) the Permit Fee (if any).

**Operating Period** means the period commencing on the applicable Service Commencement Date through the end of the Term.

**Operating Synergies** means reductions in Operating Costs of the Project actually occurring as a result of the HOT OC Services.

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

**Opitz Boulevard Ramp Baseline Schedule** means (a) the Initial Opitz Boulevard Ramp Baseline Schedule identifying the major Work activities in sufficient detail to enable the Department to monitor and evaluate design and construction progress until such time as the Opitz Boulevard Ramp Baseline Schedule is approved by the Department pursuant to the Technical Requirements, and (b) the Opitz Boulevard Ramp Baseline Schedule thereafter as provided within 15 Days following the Opitz Boulevard Ramp Construction Notice to Proceed, and updated according to the Technical Requirements.

**Opitz Boulevard Ramp Concessionaire Breach** is defined in Section 19.12.

**Opitz Boulevard Ramp Concessionaire Breach Termination Amount** means the Completed Work Value; less:

- (i) Opitz Boulevard Ramp Credit Balances; and
- (ii) Allocable Costs incurred by the Department in terminating the Opitz Boulevard Ramp Project for the Opitz Boulevard Ramp Concessionaire Breach.

**Opitz Boulevard Ramp Concessionaire Breach Triggering Event** is defined in Section 19.12.

**Opitz Boulevard Ramp Construction Escrow Documents** is defined in Section 18.05(a)(iv).

**Opitz Boulevard Ramp Credit Balances** means the aggregate of any amounts standing to the credit of any bank account held by or on behalf of the Concessionaire for the Opitz Boulevard Ramp Project.

**Opitz Boulevard Ramp Construction Contract** means the construction contract dated August 10, 2022 between the Concessionaire and the Opitz Boulevard Ramp Construction Contractor.

**Opitz Boulevard Ramp Construction Contractor** means Shirley Contracting Company, LLC, a Virginia limited liability company.

**Opitz Boulevard Ramp Construction Cost** means \$59,127,675.84.

**Opitz Boulevard Ramp Construction Work** means the services provided by the Opitz Boulevard Ramp Construction Contractor under the Opitz Boulevard Ramp Construction Contract for the construction of the Opitz Boulevard Ramp Project.

**Opitz Boulevard Ramp DFA** has the meaning set forth in the recitals to this Third ARCA.

**Opitz Boulevard Ramp Escrow Documents** is defined in Section 18.05(a)(iv).

**Opitz Boulevard Ramp Final Completion** means the satisfaction of the conditions set forth in Section 8.23, as and when confirmed by the Department's issuance of the Opitz Boulevard Ramp Final Completion Certificate.

**Opitz Boulevard Ramp Final Completion Certificate** means a letter or certificate issued by the Department in accordance with Section 8.23(b) evidencing the Department's determination that Opitz Boulevard Ramp Final Completion has occurred.

**Opitz Boulevard Ramp Final Completion Date** means the date the Department issues the Opitz Boulevard Ramp Final Completion Certificate.

**Opitz Boulevard Ramp Final Completion Recovery Plan** is defined in Section 8.15(h).

**Opitz Boulevard Ramp Financial Close** means the satisfaction (or waiver by the Department in its sole discretion) of all conditions precedent set forth in Section 7.03D(b).

**Opitz Boulevard Ramp Financial Close Date** means the date all of the conditions precedent set forth in Section 7.03D(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.

**Opitz Boulevard Ramp Financing Escrow Documents** is defined in Section 18.05(a)(iv).

**Opitz Boulevard Ramp Guaranteed Final Completion Date** means 790 days following the date of issuance of the Construction NTP under the Opitz Boulevard Ramp Construction Contract.

**Opitz Boulevard Ramp HOT Lanes** means the new access ramp between the HOT Lanes and Opitz Boulevard to be constructed under the Opitz Boulevard Ramp Project.

**Opitz Boulevard Ramp HOT Lanes ROW** means the "Project Right of Way" as defined in the Opitz Boulevard Ramp Construction Contract.

**Opitz Boulevard Ramp Long Stop Date** means the date that is 365 Days after the Opitz Boulevard Ramp Guaranteed Final Completion Date; *provided* that a new Opitz Boulevard Ramp Long Stop Date may be established pursuant to an Opitz Boulevard Ramp Final Completion Recovery Plan proposed and approved pursuant to Section 8.15(h) as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement.

**Opitz Boulevard Ramp NEPA Approval** means the Categorical Exclusion approved by FHWA on January 24, 2022.

**Opitz Boulevard Ramp Payment Bond** is defined in Section 17.08(b)(iv)(A).

**Opitz Boulevard Ramp Performance Bond** is defined in Section 17.08(b)(iv)(A).

**Opitz Boulevard Ramp Project** means the design, construction, financing, operation, and maintenance of the Opitz Boulevard Ramp HOT Lanes.

**Opitz Boulevard Ramp Project Costs** has the meaning given to such term in the Opitz Boulevard Ramp Project Equity Contribution Agreement.

**Opitz Boulevard Ramp Project Equity Contribution Agreement** means the equity contribution agreement entered into on or prior to the Opitz Boulevard Ramp Financial Close Date for the purposes of funding the Opitz Boulevard Ramp Project in the aggregate amount of no less than the Opitz Boulevard Ramp Project Costs and in the form agreed between the Parties.

**Opitz Boulevard Ramp Service Commencement Date** means the date on which Service Commencement for the Opitz Boulevard Ramp Project was achieved, as indicated in the Opitz Boulevard Ramp Service Commencement Notice to Proceed.

**Opitz Boulevard Ramp Service Commencement Notice to Proceed** is defined in Section 9.02(h).

**Opitz Boulevard Ramp TMS Contract** means the Turnkey Lump-Sum Design-Build Contract Relating to the Opitz Boulevard Ramp Project of the I-95/395 HOV/HOT Lanes Tolling and Traffic Management System dated August 10, 2022 between the Concessionaire and TMS Contractor.

**Opitz Boulevard Ramp TMS Letter of Credit** is defined in Section 17.08(b)(iv)(B).

**Opitz Boulevard Ramp TMS Payment Bond** is defined in Section 17.08(b)(iv)(B).

**Opitz Boulevard Ramp TMS Performance Bond** is defined in Section 17.08(b)(iv)(B).

**Opitz Boulevard Ramp TMS Work** means the services provided by the TMS Contractor under the Opitz Boulevard Ramp TMS Contract in respect of the construction of the Project Assets.

**Opitz Boulevard Ramp Work Product** means all Work Product, complete or incomplete, generated by or on behalf of the Concessionaire relating to the Opitz Boulevard Ramp Project, including, without limitation: (a) preliminary field inspection (PFI) level plans (PDF and DGN files associated with the plans), (b) preliminary drainage and stormwater management calculations, (c) preliminary plans (PDF and DGN files), (d) conceptual signing plans, (e) topographic survey files and TIN files, (f) geotechnical boring data and the geotechnical data report, (g) any project cost estimates, and (h) any independent reviews or reports related to the Opitz Boulevard Ramp Project, all in computer readable and written format.

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

**Original Comprehensive Agreement** means the Comprehensive Agreement Relating to the I-95 HOV/HOT Lanes Project entered into between the Department and the Concessionaire on July 31, 2012.

**Original Corridor** means the portion of Interstate 95 located within the State with a northern terminus approximately 1 mile north of Route 648 (Edsall Road) and a southern terminus at the ramp for the Route 610 interchange (Garrisonville Road) on Interstate 95 in Stafford County. For the avoidance of doubt, the Opitz Boulevard Ramp HOT Lanes ROW is located within the Original Corridor.

**Original HOT Lanes** means the HOT Lanes on the Original Corridor designed, developed, constructed, operated, and maintained under the Agreement, and excluding the STE and the Opitz Boulevard Ramp HOT Lanes.

**Original Project** means (a) the development, design, financing, construction, operation, maintenance, and tolling of the Original HOT Lanes and (b) solely during its Operating Period, the Opitz Boulevard Ramp HOT Lanes.

**Original TIFIA Closing Date** means the date of the execution and delivery of the Original TIFIA Loan Documentation.

**Original TIFIA Commercial Terms** means Original TIFIA Credit Assistance that: (a) contains the terms attached hereto as Exhibit H, (b) does not contain any other terms or conditions that are inconsistent with the terms and conditions contained in the TIFIA loan agreement and intercreditor agreement for the Pocahontas Parkway Project, the Capital Beltway Project, the North Tarrant Express Managed Lanes Project, the LBJ Express Project or the Midtown Tunnel Project (collectively, the “Relevant Precedent”), and the Concessionaire demonstrates to the Department that such inconsistent terms are reasonably expected to have a material adverse effect on the Concessionaire’s financial profile, its ability to perform its obligations and enjoy its rights and benefits under the Agreement or its risk profile, and (c) does not contain any material conditions precedent to execution and delivery. For purposes of (b) above, a term or condition that is inconsistent with the terms and conditions contained in the TIFIA loan agreements and intercreditor agreements for Relevant Precedent will not be reasonably expected to have a material effect on the Concessionaire’s ability to perform its obligations and enjoy its rights and benefits under the Agreement to the extent the Department agrees to perform or cause to be performed such term or condition or resolve the inconsistency in any other way, in each case, to the mutual satisfaction of the Concessionaire and the Department, each acting reasonably.

**Original TIFIA Credit Assistance** means funding made available to the Concessionaire under the Original TIFIA Loan Documentation.

**Original TIFIA Credit Assistance Amount** means \$300,000,000.

**Original TIFIA Financial Close** means the execution of the Original TIFIA Loan Documentation by the Concessionaire and the TIFIA Lender.

**Original TIFIA Interest Rate** means the rate of interest borne by the Original TIFIA Credit Assistance.

**Original TIFIA Loan Documentation** means loan agreements between the Concessionaire and the TIFIA Lender pursuant to which the Original TIFIA Credit Assistance is *provided*, and a subordination and intercreditor agreement, in each case, that is in a form agreed and readily executable by the parties (other than the completion of terms of an administrative, non-substantive or ministerial nature, or the final interest rate and related terms that by their nature cannot be finalized prior to the Second Funding Closing Date), together with any related agreements and documents delivered therewith.

**OSPS** means the Operating Speed Performance Standard described in the Technical Requirements.

**OSPS Improvement Plan** is defined in Section 5.08(a).

**Other Termination Amount** means the greater of (a) Project Value (determined, without regard to the effect of such termination, pursuant to Section 20.11) plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire, including its reasonable Allocable Costs, as a direct result of such termination and (b) the lesser of 100% of Concessionaire Debt then outstanding or 100% of Concessionaire Debt projected in the most recent Base Case Financial Model Update to be then outstanding, and any Breakage Costs related to the prepayment or satisfaction thereof on the date on which the termination payment is paid by the Department.

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

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

**PABs Interest Rate** means the all-in cost of borrowing of PABs based on the coupon and the net issuer premium or discount for the PABs proceeds received by the Concessionaire at Financial Close, 395 Financial Close, Fred Ex Financial Close, or Fred Ex Additional Financial Close, as applicable. If the PABs are issued in more than one tranche, the PABs Interest Rate will be the weighted average all-in cost of borrowing of all tranches of PABs.

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

**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.

**Pentagon Improvements** means certain improvements at the Pentagon as set forth in Exhibit EE hereto including roadway and parking improvements, enhanced bus access and circulation, and associated security measures.

**Pentagon Reservation** means the area of land and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, parking lots and other related facilities are located.

**Pentagon Reservation MOA** means the Memorandum of Agreement between the Department and the U.S. Department of Defense, Washington Headquarters Services with respect to the Pentagon Improvements and other Work being performed on or near the Pentagon Reservation, a form of which is attached hereto as Exhibit Z.

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

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

**Performance Security** means (a) each of the funding and performance securities required under Section 17.08, 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.

**Performance Shortfalls** is defined in Section 11.01(a).

**Permit** is defined in Section 4.01.

**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 J-1.

**Permit Fee Buyout Payment** is defined in Section 8.22(c)(i).

**Permitted Closure** means a Department approved closure for the below circumstances:

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

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

(C) A closure due to accident or incident investigation;

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

(E) A closure as a result of a Force Majeure Event;

(F) A necessary closure pursuant to the facilitation of the Concessionaire's snow and ice removal services in accordance with the Agreement;

(G) Closures necessary for Concessionaire or Department Enhancement Projects; and

(H) Any closure authorized by the Agreement.

**Permitted Encumbrance** means, with respect to the Project:

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

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

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

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

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

- (f) any right reserved to or vested in any Governmental Authority (other than the Department) by any statutory provision;
- (g) any other encumbrance permitted hereunder;
- (h) any Lien created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it; and
- (i) any amendment, extension, renewal or replacement of any of the foregoing.

**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 will 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.

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

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

**Pricing Date** means November 29, 2011.

**Project** means the development, design, financing, construction, operation, maintenance and tolling of the Project Assets, all as more particularly described in the Technical Requirements and in Exhibit B-1; *provided*, however, that the Project shall not include the operation and maintenance of the 395 Department Assets.

**Project Agreements** means the VDOT Project Agreements, the Concessionaire Project Agreements, the Direct Agreement, the 395 Direct Agreement, the Fred Ex Direct Agreement, and all other agreements identified in Section 3.02, as those agreements may be amended, superseded or replaced during the Term.

**Project Assets** means the HOT Lanes and other assets (including the 395 Department Assets) constructed, maintained or held by the Concessionaire pursuant to the Agreement (or any applicable portion of such assets); *provided*, however that Project Assets shall not include the 395 Department Assets when the operations, maintenance and/or tolling of the Project Assets are referenced in the Agreement.

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

**Project Documentation** means Construction Documentation and Design Public Hearing Documentation.

**Project Enhancement Account** means a concession payments account created in accordance with Virginia Code Section 33.2-1528.

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

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

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

**Project Revenues Waterfall** means the priority of uses for funds in the Revenue Account stated in Section 5.02 of the Collateral Agency Agreement, or any successor provision that governs the priority of uses of revenues related to the Project.

**Project Right of Way or Right of Way (ROW)** means any real property within (a) the Original Corridor, the 395 Corridor, and the Fred Ex Corridor, and (b) from and after the applicable Service Commencement Date, the STE Corridor (which term is inclusive of all estates and interests in real property, including easements), which is:

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

**Project ROW Acquisition Work** means the Work associated with acquisition of the Project ROW as set forth in the ROW Acquisition and Relocation Plan.

**Project Schedule** means the Initial Baseline Schedule, Baseline Schedule, Project Schedule Updates or the As-Built Schedule, as applicable, as described in more detail in the Technical Requirements.

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

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

**Proposal Specifications** means the Concessionaire Proposal Specifications for Final Proposal to Develop the 395 Project dated October 3, 2016.

**Proposed Project** means the development, design, financing, construction, operation and maintenance of the HOT Lanes on I-95 submitted by Clark/Shirley in an unsolicited conceptual proposal to the Department.

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

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

**Public Funds Amount** means the Initial Public Funds Amount, the 395 Public Funds Amount, the 395 Market Interest Rate Adjustment, the Department TIFIA Protection Amount, the Fred Ex Financial Protections (if any) and the Fred Ex Department Committed Contingency.

**Public Funds Amount Payment Terms** means Exhibit N.

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

**Punch List** means an itemized list of Work which remains to be completed with respect to the Project Assets 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 Project Assets.

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

**Railroad Easement** is defined at Section 8.05(f).

**Ramp-Up Period** means the period commencing on the Substantial Completion Date and ending on the first anniversary of the Substantial Completion Date.

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

**Refinancing** means, at any time after the initial Financial Close Date:

(a) any amendment, variation, novation or supplement of any Concessionaire Debt, Project Financing Agreement or Financing Assignment;

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

(c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Concessionaire Debt, Project Financing Agreement or Financing Assignment or the creation or granting of any other form of benefit or interest in any Concessionaire Debt, Project Financing Agreement or Financing Assignment, or the revenues, assets or other contracts of the Concessionaire whether by way of security or otherwise; or

(d) any other arrangement put in place by Concessionaire or another person which has an effect similar to clause (a), (b) or (c) of this definition;

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 Agreement Date, that is not part of any Planned Refinancing.

**Remedial Actions** is defined in Section 16.01(b).

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

**Replacement Agreements** has the meaning ascribed thereto in the Direct Agreement or the 395 Direct Agreement, as applicable.

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

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

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

(a) all rights to finance, design, construct, use, possess, operate and maintain any passenger or freight rail facility, roads and highways (State and local) or other mode of

transportation in the Airspace, including tunnels, flyovers, frontage roads, crossings, interchanges and fixed guide-ways, and to grant to others such rights;

(b) all rights to install, use, lease, grant infeasible rights of use, sell and derive revenues from electrical and fiber optic conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity, existing over, on, under or adjacent to any portion of the Project Right of Way installed by anyone, whether before or after the Agreement Date, and all software which executes such equipment and hardware and related documentation, except for the capacity of any such improvement installed by the Concessionaire that is necessary for and devoted exclusively to the operation of the Project;

(c) all rights to use, sell and derive revenues from ETTM Data and other data generated from operation of the Project or any ETTM System, except use of such data as required solely for operation of the Project and enforcement and collection of tolls and incidental charges;

(d) all ownership, possession and control of, and all rights to develop, use, operate, lease, sell and derive revenues from, the Airspace, including development and operation of service areas, rest areas and any other office, retail, commercial, industrial, residential, retail or mixed use real estate project within the Airspace;

(e) all rights to install, use and derive information, services, capabilities and revenues from ITS, except installation and use of any such systems and applications by the Concessionaire as required solely for operation of the Project. For avoidance of doubt, if the Concessionaire installs any such systems or applications, all use and capacity thereof not necessary for operation of the Project is reserved to, and will be the sole property of, the Department;

(f) all rights to use, install, maintain, repair, or authorize the use, installation, maintenance or repair, of Utilities;

(g) all rights to market, distribute, sell and derive revenues from any goods, products or merchandise depicting, utilizing or exploiting any name, image, logo, caricature or other representation, in any form or medium, of the Department or the Project, or that may be confused with those of the Department or the Project;

(h) all rights and opportunities to grant to others sponsorship and advertising rights with respect to the Project or any portion thereof, except for a non-exclusive license for the Concessionaire to use the name in connection with Project operations;

(i) all rights to revenues and profits derived from the right or ability of electronic toll account customers to use their accounts or transponders to purchase services or goods other than payment of tolls;

(j) any other commercial or noncommercial development or use of the Airspace or electronic toll collection technology for other than operation of the Project; and

(k) all ownership, possession and control of, and all rights to develop, use, lease, sell and derive revenues from, carbon credits or other environmental benefits generated by or resulting from the development, use, operation or maintenance of the Project.

**Response** is defined in Section 10.05(a).

**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.

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

**Route One Improvements** means any new construction, material expansion or other alteration to U.S. Route One in Virginia between Route 642 (Lorton Road) in Fairfax County and Route 610 (Garrisonville Road) in Stafford County, the plans for which have not been included in the CLRP or the SYIP as of November 30, 2011, that results in more than two miles in the aggregate of limited access highway with a speed limit of at least 55 miles per hour. For the avoidance of doubt, Route One Improvements excludes any new construction, material expansion or other alteration to U.S. Route One in Virginia south of Route 610 (Garrisonville Road) in Stafford County.

**ROW Acquisition and Relocation Plan** means the plan developed by the Concessionaire that defines the approach to acquisition of the Project ROW and, to the extent permitted by Section 8.05, any other real property or real property rights as set forth in Section 8.05, as described in more detail in the Technical Requirements.

**ROW Costs** means the actual amount paid or payable to a property owner for the acquisition of Project ROW and any other real property and real property rights as set forth in Section 8.05, which includes any relocation, settlement, or damage costs. For the avoidance of doubt, ROW Costs do not include any acquisition activities and/or property management services required for the acquisition of Project ROW and any other real property and real property rights as set forth in Section 8.05.

**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 Substantial Completion Date or the 395 Final Completion Date, as applicable, which directs the Concessionaire to undertake certain improvements to the Project (a) to correct a specific safety condition affecting the 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 comparable State Highways.

**Scope Issue** means any defect, error, omission, or inconsistency in the 395 Scope Validation Documents that may affect the 395 Design-Build Contractor's ability to complete the 395 Project, and which is identified by the Concessionaire to the Department before the 395 Scope Validation Work Completion Date. Scope Issues shall be limited to newly-discovered items during the 395 Scope Validation Work only, and Scope Issues shall not include any item that the 395 Design-Build Contractor or the Concessionaire should have reasonably discovered prior to the 395 Design-Build Proposal Submission Date.

**Scope of Work and Schedules and Early Work** means Exhibit B.



**Second Amended and Restated Agreement Date** means April 18, 2019.

**Second Amended and Restated Comprehensive Agreement** or **Second ARCA** means the Second Amended and Restated Comprehensive Agreement Related to the I-95/395 HOV/HOT Lanes Project dated the Second Amended and Restated Agreement Date between the Department and the Concessionaire.

**Second Amendment** means the Second Amendment to the Comprehensive Agreement Relating to the I-95 HOV/HOT Lanes Project dated February 23, 2017 between the Department and the Concessionaire.

**Second Funding Closing Amount** means, as of the Second Funding Closing Date, collectively, (a) the amount of the Original TIFIA Credit Assistance (if any), (b) the Department TIFIA Protection Amount, and (c) the Concessionaire TIFIA Protection Amount.

**Second Funding Closing Date** has the meaning specified in Section 7.07(d)(i).

**Second Measurement Period** is defined in Section 5.07(b)(ii).

**Second Threshold HOV Percentage and Rate** is defined in Section 5.07(b)(ii).

**Seminary Road Ramp Baseline Schedule** means the Initial Seminary Road Ramp Baseline Schedule identifying the major Work activities in sufficient detail to enable the Department to monitor and evaluate design and construction progress and updated monthly.

**Seminary Road Ramp Concessionaire Breach** is defined in Section 19.15.

**Seminary Road Ramp Concessionaire Breach Termination Amount** means the Completed Work Value; less:

- (i) Seminary Road Ramp Credit Balances; and
- (ii) Allocable Costs incurred by the Department in terminating the Seminary Road Ramp Project for the Seminary Road Ramp Concessionaire Breach.

**Seminary Road Ramp Concessionaire Breach Triggering Event** is defined in Section 19.15.

**Seminary Road Ramp Construction Escrow Documents** is defined in Section 18.05(a)(v).

**Seminary Road Ramp Credit Balances** means the aggregate of any amounts standing to the credit of any bank account held by or on behalf of the Concessionaire for the Seminary Road Ramp Project.

**Seminary Road Ramp Construction Contract** means the construction contract dated August 10, 2022 between the Concessionaire and the Seminary Road Ramp Construction Contractor.

**Seminary Road Ramp Construction Contractor** means CES Consulting, LLC.

**Seminary Road Ramp Construction Cost** means \$89,458.50.

**Seminary Road Ramp Construction Work** means the services provided by the Seminary Road Construction Contractor under the Seminary Road Ramp Construction Contract with respect to the Seminary Road Ramp Project.

**Seminary Road Ramp DFA** has the meaning set forth in the recitals to this Third ARCA.

**Seminary Road Ramp Escrow Documents** is defined in Section 18.05(a)(v).

**Seminary Road Ramp Final Completion** means the satisfaction of the conditions set forth in Section 8.24, as and when confirmed by the Department's issuance of the Seminary Road Ramp Final Completion Certificate.

**Seminary Road Ramp Final Completion Certificate** means a letter or certificate issued by the Department in accordance with Section 8.24(b) evidencing the Department's determination that Seminary Road Ramp Final Completion has occurred.

**Seminary Road Ramp Final Completion Date** means the date the Department issues the Seminary Road Ramp Final Completion Certificate.

**Seminary Road Ramp Final Completion Recovery Plan** is defined in Section 8.15(j).

**Seminary Road Ramp Financial Close** means the satisfaction (or waiver by the Department in its sole discretion) of all conditions precedent set forth in Section 7.03E(a).

**Seminary Road Ramp Financial Close Date** means the date all of the conditions precedent set forth in Section 7.03E(a) 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.

**Seminary Road Ramp Financing Escrow Documents** is defined in Section 18.05(a)(v).

**Seminary Road Ramp Guaranteed Final Completion Date** means 90 days following the Third Amended and Restated Agreement Date.

**Seminary Road Ramp HOT Lanes** means the existing ramp between the HOT Lanes and Seminary Road to be converted from a HOV ramp to a HOT ramp under the Seminary Road Ramp Project.

**Seminary Road Ramp HOT Lanes ROW** means the "Project Right of Way" as defined in the Seminary Road Ramp Construction Contract.

**Seminary Road Ramp Performance Bond** is defined in Section 17.08(b)(v)(A).

**Seminary Road Ramp Project** means the design, construction, and financing of the Seminary Road Ramp HOT Lanes.

**Seminary Road Ramp Service Commencement Date** means the date on which Service Commencement for the Seminary Road Ramp Project was achieved, as indicated in the Seminary Road Ramp Service Commencement Notice to Proceed.

**Seminary Road Ramp Service Commencement Notice to Proceed** is defined in Section 9.02(i).

**Seminary Road Soundwall Categorical Exclusion** means the Categorical Exclusion for the Seminary Road Soundwall Component approved by FHWA on November 30, 2012.

**Seminary Road Soundwall Component** means the design and construction of soundwalls near Seminary Road along I-395 SB on and between the Sanger Ave Bridge and Duke Street.

**Seminary Road Ramp Work Product** means all Work Product, complete or incomplete, generated by or on behalf of the Concessionaire relating to the Seminary Road Ramp Project, including, without limitation: (a) preliminary plans (PDF and DGN files), (b) conceptual signing plans, (c) any project cost estimates, and (d) any independent reviews or reports related to the Seminary Road Ramp Project, all in computer readable and written format.

**Senior Concessionaire Debt** means Concessionaire Debt secured by a Lien on the Concessionaire's Interest that is senior to or on parity with any other Lien on the Concessionaire's Interest.

**Senior Loan Agreement** means a loan agreement to be entered between the PABs Issuer and the Concessionaire, with respect to the financing of the Project.

**Series 2022 Financial Close Date** means February 10, 2022.

**Service Commencement** means the opening of the Project for normal and continuous operations and use by the traveling public, after occurrence of all the events and satisfaction of all the conditions therefore set forth in Section 9.01(a).

**Service Commencement Date** means (a) with respect to the Original Project, December 28, 2014, (b) with respect to the southbound portion of the STE, the Southbound Opening Date, (c) with respect to the northbound portion of the STE, the STE Final Acceptance Date, (d) with respect to the 395 HOT Lanes, the 395 Service Commencement Date, (e) with respect to the Fred Ex HOT Lanes, the Fred Ex Service Commencement Date, (f) with respect to the Opitz Boulevard Ramp HOT Lanes, the Opitz Boulevard Ramp Service Commencement Date, and (g) with respect to the Seminary Road Ramp HOT Lanes, the Seminary Road Ramp Service Commencement Date.

**Service Commencement Notice to Proceed** has the meaning ascribed thereto in Section 9.02(a).

**Shared Facilities Agreement** means the Shared Facilities Agreement dated as of July 31, 2012 between the Concessionaire and CBE as it may be updated from time to time.

**Shareholder Loan** means any Subordinate Debt made by any Equity Members to the Concessionaire.

**Signage Plan** is defined as the Construction Documentation associated with the signage elements of the Project.

**Significant Force Majeure Event** means one or more Force Majeure Events occurring after the Financial Close Date (a) that (i) has the effect of causing physical damage or destruction to the Project Assets or surrounding infrastructure within the Project Right of Way, and (ii) results in the Project Assets being substantially unavailable for public use or the suspension or substantial reduction of toll collections for a period in excess of (1) 180 consecutive Days; or (2) a period otherwise agreed to by the parties; or (b) which halts the performance of the Work by the Design-Build Contractor during the Construction Period for a period in excess of 180 consecutive Days; *provided* that such Force Majeure Event will not become a Significant Force Majeure Event by reason of the Concessionaire or the Design-Build Contractor's failure to mitigate or cure the result of such Force Majeure Event through the exercise of reasonably diligent efforts.

**Significant Force Majeure Termination Amount** means the aggregate of (a) the Concessionaire Debt, (b) all amounts at par paid by the Equity Members in the form of capital contributions or Shareholder Loans up until the termination date, less any amounts actually received by the Equity Members from the Concessionaire as Distributions or payment of principal and interest for such Shareholder Loans (the difference being not less than zero), and (c) all Demobilization Costs, (d) less Credit Balances and (e) less proceeds of insurance that is required to be carried pursuant to Section 17.01.

**Significant Force Majeure Termination Notice** is defined in Section 20.03.

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

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

**Software** means (a) computer instructions, including programs, routines and databases and applications supplied, procured or developed by the Concessionaire or the Department in connection with the operation of the Project or in connection with Reserved Rights, including but not limited to that which monitors, controls or executes on ETTM Equipment or ITS equipment or hardware, and (b) all modifications, updates and revisions made to the matter described in clause (a) above, including those made to correct errors or to support new models of computer equipment and/or new releases of operating systems.

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

Documentation also include all modifications, additions, substitutions, updates, upgrades and corrections made to the foregoing items.

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

**Southbound Opening Date** means the date on which the new traffic lanes in the southbound direction of the STE is opened for traffic.

**Southbound RRC Design-Build Contract** means the design-build contract entered into between the Department and a design-builder relating to Request for Proposals No. C00101595DB94 issued by the Department.

**Southbound RRC Design-Build Contract Documents** means the documents that are part of, are incorporated into, or otherwise govern the Southbound RRC Design-Build Contract.

**Southbound RRC Overlap Work** is defined in Section 7.02(d)(ii).

**Southbound RRC Project** is the Rappahannock River Crossing project defined in Section 7.02(d)(ii).

**Southern HOT Lanes** means the addition of any toll lanes in the median of the Interstate 95 general purpose lanes (in either or both directions) and not specifically part of the general purpose lanes and the associated entry and exit ramps built on Interstate 95 with a northern terminus of the Route 610 Interchange (Garrisonville Road) and a southern terminus of U.S. Route 17 By-Pass at Massaponax.

**Southern Terminus Extension** or **STE** means the development, design, financing, construction, operation and maintenance of toll lanes within the Southern Terminus Extension Corridor.

**Southern Terminus Extension Corridor** or **STE Corridor** means the portion of Interstate 95 located within the State with a northern terminus approximately 1.3 miles north of the Route 610 interchange (Garrisonville Road) and a southern terminus at approximately milepost 142.5 on Interstate 95 in Stafford County.

**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 any of the State Parties and their respective Representatives.

**State Law** means any Law or any change in any Law by any State Party.

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

**Statewide Transportation Improvement Program (STIP)** 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 Transit 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.

**STE Change or Changes** is defined in Section 8A.05.

**STE Design-Build Contract** means the Design-Build Contract between the Department and the STE Design-Build Contractor with respect to the Southern Terminus Extension in the form attached hereto as Exhibit GG.

**STE Design-Build Contractor** means the design-build contractor selected by the Department that is party to the STE Design-Build Contract.

**STE Final Acceptance** means Final Acceptance under the STE Design-Build Contract.

**STE Final Acceptance Date** means the date on which Final Acceptance is achieved under the STE Design-Build Contract.

**STE HOT Lanes** means the HOT lanes separated from the adjacent GP Lanes and the associated entry and exit ramps within the Project Right of Way on the STE Corridor.

**STE Integration Work** means the testing, commissioning and integration of the ETTM System for the STE into the ETTM System for the Original HOT Lanes, including (a) the delivery and integration of the ETTM System, (b) any ETTM System training and manuals and (c) ETTM System engineering, including network architecture, configuration management, interface control and systems integration, all as more fully set forth in the STE Design-Build Contract and the STE Technical Requirements.

**STE NEPA Reevaluation** means the Reevaluation of 2011 Environmental Assessment for I-95 Express Lanes Southern Terminus Extension Stafford County, Virginia dated March 2, 2016.

**STE RFP** means the Requests for Proposals relating to the STE issued by the Department.

**STE Technical Requirements** means (a) the Department's design-build standards as of the date hereof and (b) certain project specific standards relating to the STE to be agreed to by the Department and the Concessionaire and as set forth in STE Design-Build Contract.

**Steering Committee** means the executive-level committee established by the Concessionaire and the Department to provide executive-level business guidance on issues relating to the Project, which will include the Design-Build Contractor during the Construction Period and, solely with respect to issues involving Design-Build Work, after the Construction Period.

**Step 1 Adjusted Equity IRR** is defined in Section 2 of Exhibit BB-2.

**Subordinate Debt** means (a) Affiliate Debt or Shareholder Loans or (b) any other Concessionaire Debt that would be paid at the same level of priority as the payment of any Distributions or that would be payable at a level of priority after all payments other than Distributions are made. The term “Subordinate Debt” does not include any Concessionaire Debt constituting loans, guaranties and other credit support under TIFIA.

**Substantial Completion** means the satisfaction of the criteria for completion of construction of the Project set forth in Section 8.08(c), as and when confirmed by the Department’s issuance of the Substantial Completion Certificate.

**Substantial Completion Certificate** means a letter or certificate issued by the Department in accordance with Section 8.08(e) evidencing the Department’s determination that Substantial Completion has occurred.

**Substantial Completion Date** means the date on which Substantial Completion is achieved, as indicated in the Substantial Completion Certificate.

**Substantial Completion Recovery Plan** has the meaning given to it in Section 8.15.

**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, the 395 Direct Agreement, or the Fred Ex 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 in accordance with the Direct Agreement, the 395 Direct Agreement, or the Fred Ex Direct Agreement.

**Supporting Documentation** means any documentation that specifically supports an alleged Scope Issue, including, without limitation: (a) the assumptions that the 395 Design-Build Contractor made during the preparation of the 395 Design-Build Proposal that form the basis for its allegation, along with documentation verifying that it made such assumptions in developing the 395 Design-Build Proposal, (b) an explanation of the defect, error, omission, or inconsistency in the 395 Scope Validation Documents that the Concessionaire or the 395 Design-Build Contractor could not have reasonably identified prior to the 395 Design-Build Proposal Submission Date and (c) the specific impact that the alleged Scope Issue is expected to have on the 395 Design-Build Contractor’s price and time to perform the 395 Design-Build Work.

**SWaM Performance Improvement Plan** is the plan submitted and approved by the Department pursuant to Sections 24.03(b)(v)(B) with respect to improving the Concessionaire’s performance.

**Task** is defined in Section 9.04(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.

**Tax Imposition** means:

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

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

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

**Technical Requirements** means the Technical Requirements included as Exhibit C (including all Attachments thereto), which include the Original Project, the 395 Project, the Fred Ex Project, the Opitz Boulevard Ramp Project, the Seminary Road Ramp Project, and (with regard to O&M duties only) the STE, and as the same may be revised and updated from time to time in accordance with the Agreement.

**Term** is defined in Section 4.02.

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

**Third Amended and Restated Comprehensive Agreement** or **Third ARCA** means the Third Amended and Restated Comprehensive Agreement Related to the I-95/395 HOV/HOT Lanes Project dated the Third Amended and Restated Agreement Date between the Department and the Concessionaire.

**Third Measurement Period** is defined in Section 5.07(b)(iii).

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

**Third-Party Hazardous Substances** means any Hazardous Substances introduced or brought onto the Project ROW prior to Substantial Completion for the Original Corridor (but not the Opitz Boulevard Ramp HOT Lanes ROW), 395 Final Completion for the 395 Corridor (but not the Seminary Road Ramp HOT Lanes ROW), Fred Ex Final Completion for the Fred Ex Corridor, Opitz Boulevard Ramp Final Completion for the Opitz Boulevard Ramp Project, or the



Seminary Road Ramp Final Completion for the Seminary Road Ramp Project, as applicable, by a Person other than a Concessionaire Party.

**Third Threshold HOV Percentage and Rate** is defined in Section 5.07(b)(iii).

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

**TIFIA Credit Assistance** means the Original TIFIA Credit Assistance, the Fred Ex TIFIA Credit Assistance, if any, and any other funding made available by the TIFIA Lender to the Concessionaire.

**TIFIA Lender** means the United States Department of Transportation.

**TIGER Credit Assistance** means any financial assistance provided by USDOT to the Concessionaire or a State Party in respect of the Project under the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010 (Division A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117, Dec. 16, 2009)), regarding National Infrastructure Investments, the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-055, Nov. 18, 2011) or similar program.

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

**Toll Exemption Event** means the enactment, adoption, promulgation, modification or repeal by any Governmental Authority of any Law during the Term that (a) changes the types of vehicles or categories of users of vehicles then permitted by Section 5.02 to travel on the HOT Lanes without paying the full tolls established by the Concessionaire, including by any change in the High Occupancy Requirement lower than HOV-3 or (b) either permits vehicles other than Permitted Vehicles to travel on the HOT Lanes or restricts vehicles then classified as Permitted Vehicles from traveling on the HOT Lanes without paying a toll.

**Toll MOU** means the Memorandum of Understanding between FHWA and the Department, a copy of which is attached as Exhibit M.

**Toll Revenues** means:

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

(b) amounts received pursuant to any collection or enforcement action, judgment or settlement with respect to any of the foregoing revenues; and

(c) amounts the Concessionaire receives as contractual liquidated or other contract damages with respect to any of the foregoing revenues.

**Toll Section** means the toll sections described in Exhibit DD, which may be revised by mutual agreement of the Department and the Concessionaire. For the purposes of Section 5.07(b)(i) through (b)(iii), the Toll Section between I-495 and approximately 1 mile North of Route 648 (Edsall Road) shall be classified as HOT Lanes in the Original Corridor.

**Total Financing Amount** means the sum of the Initial Equity Commitment Amount, the 395 Equity Commitment Amount, the Contingent Capital Contribution Amount, the initial principal amount of the PABs, the Benchmark TIFIA Credit Assistance Amount and other Concessionaire Debt (including Shareholder Loans) at Financial Close, 395 Financial Close, Fred Ex Financial Close or Fred Ex Additional Financial Close, as applicable; *provided*, if Fred Ex Additional Financial Close occurs, the Fred Ex Additional Equity Commitment Amount shall be reduced by the principal amount of Concessionaire Debt which will replace all or any portion of such Fred Ex Additional Equity Commitment Amount at Fred Ex Additional Financial Close. The Total Financing Amount shall not include the Public Funds Amount.

**Traffic and Revenue Study** means any study of the projected traffic and Toll Revenue for the 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.

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

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

**Transferee** is defined in Section 25.01(a).

**Transition Plan** is defined in Section 20.01.

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

**Transportation Management Plan (TMP)** is defined in Section 8.12(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.

**Transurban Guarantor** means Transurban Holdings Limited, Transurban International Limited, and Transurban Infrastructure Management Limited, in its capacity as responsible entity of the Transurban Holding Trust.

**Trustee** means U.S. Bank National Association, as trustee under the trust indenture relating to the PABs.

**TTMS Contract** means the 395 TTMS Contract with respect to the 395 Project, the Fred Ex TTMS Contract with respect to the Fred Ex Project, and the Opitz Boulevard Ramp TMS Contract with respect to the Opitz Boulevard Ramp Project.

**TTMS Contractor** or **TMS Contractor** means Transurban (USA) Inc., a Delaware corporation.

**TTMS Work** means the 395 TTMS Work with respect to the 395 TTMS Contract, the Fred Ex TTMS Work with respect to the Fred Ex TTMS Contract, and the Opitz Boulevard Ramp TMS Work with respect to the Opitz Boulevard Ramp TMS Project.

**Turnover Plan** means the plan developed by the Concessionaire pursuant to the Technical Requirements that describes the process by which the Concessionaire will take over operations and maintenance responsibilities from the Department for the Project, attached as Exhibit V.

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

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

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

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

**Utility** means a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, data or other telecommunications, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water not connected with the highway drainage and similar systems that directly or indirectly serve the public. The term “Utility” specifically excludes (a) storm water lines connected with the highway drainage, and (b) traffic signals, street lights, and electrical systems for Project roadways.

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

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

**VDOT Funding Account** means a project trust account established by the Department or its designee to fund the Public Funds Amount pursuant to Article 7.

**VDOT Project Agreements** means the Agreement, the Escrow Agreement, the Toll MOU, the Pentagon Reservation MOA, the Electronic Toll Collection Agreement, and the Violation Processing Services Agreement (if applicable).

**Verification Process** is defined in Section 7 of Part B of Exhibit P.

**Violation Processing Services Agreement** means an agreement the Concessionaire and the Department may enter into to govern utilization of the Department's violation processing system in accordance with Section 5.01(h)(i), which will be in the form then in use by the Department.

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

**VPDES Construction Permit** is defined in Section 3.3.12 of the Technical Requirements.

**VTIB Lender** means the Virginia Transportation Infrastructure Bank.

**Warranty Period** is defined in Section 8.11(a)(ii).

**Work** means collectively, the finance, development, planning, design, acquisition, installation, construction, completion, management, equipment, operation, repair and maintenance and any other services identified in the Agreement to be performed by the Concessionaire. For the avoidance of doubt, Work shall not include the design, development and construction of the STE or the operations and maintenance of the 395 Department Assets.

**Work Product** means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Concessionaire or the Department, as applicable, for the Project or the Project Right of Way, including but not limited to designs, drawings, plans and specifications, record and as-built plans and specifications, engineering documents, geotechnical soils and soil boring data, analyses, reports and records, property acquisition files, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all construction documents relating to the Work or Project Enhancements), engineers' and inspectors' diaries and reports, Utility Relocation plans and agreements, right of way record maps and surveys, traffic and revenue studies, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, air quality monitoring data, environmental reviews,

studies and reports, mitigation studies and reports, data, assessments, studies and reports regarding Hazardous Substance investigations, testings, borings, monitoring and analyses, manifests regarding handling, storage or transportation of Hazardous Substances, correspondence and agreements relating to Governmental Approvals, change orders, final quantities, pile driving records, records of accidents and traffic management, field test records and reports, concrete pour records, surfacing depth check records, grade and alignment books, cross-section notes, drainage notes, photographs, false work and form plans, records of construction materials, ETTM Equipment and ETTM Facilities records and reports, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which the Concessionaire and the Department mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure under Section 18.02 and which is not conceived or first reduced to practice for the Project Purposes, such as proprietary financial and pricing information of the Concessionaire.