

EXHIBIT A
DEFINITIONS

Accountant means any nationally-recognized certified public accountant or firm of certified public accountants or accounting corporation of recognized experience and qualifications.

Accountant's Certificate means a certificate or opinion signed by the Accountant.

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

Affiliate Contract is defined in Section 11.02(f).

Agreement means the Amended and Restated Comprehensive Agreement (Relating to the Grant of a Permit) to Develop and Operate the Route 895 Connector dated June 29, 2006, by and between the Department and the Operator.

Agreement Date means the date written on the cover page of this Agreement.

Airport Connector Road means an approximately 1.58-mile, four-lane roadway as depicted in Exhibit L to this Agreement that, if constructed, will provide motorists with direct access to the Richmond International Airport from the Project.

Allocable Costs means:

- (a) for services performed using Department or Operator personnel, materials and equipment, the sum of:
 - (i) an amount equal to the fully burdened hourly rate (including overhead and fringe benefits) of each employee providing such services multiplied by the actual number of hours such employee performs such services; plus
 - (ii) the cost of all materials used, including normal wastage allowance per Department standards, and including sales taxes, freight and delivery charges and any allowable discounts; plus

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

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

- (i) the amount owing under such contract, provided that if the contract is an Affiliate Contract, the lesser of the contract amount or the amount that would be reasonably obtained in an arm's length transaction for comparable services with a person that is not an Affiliate; plus
- (ii) 10% of such amount to reimburse the Department or Operator for costs of administering the contract; plus
- (iii) all costs the Department or Operator 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.

Association means Pocahontas Parkway Association, a Virginia nonstock, nonprofit corporation.

Assumed Liabilities means all debts, liabilities and obligations whatsoever relating to the Project and its operation that have been assumed by the Operator under the Asset Purchase Agreement (other than liabilities and obligations for which the Department is expressly responsible under this Agreement).

AVI means automatic vehicle identification equipment used as part of ETTM Equipment.

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

Base Case Financial Model means the Financial Model and the assumptions and information used by or incorporated in the Financial Model as of the Agreement Date: (a) on the basis of which the Operator and the Department entered into this Agreement; (b) which include certain projections and calculations with respect to revenues, expenses, the repayment of Operator Debt; and (c) which is prepared on the basis of the Base Case

Traffic Model, as it may be amended from time to time by mutual agreement of the parties.

Base Case Initial Targeted Rate of Return means a pre-tax internal rate of return (rounded up, if necessary, to a whole multiple of 1/1000 of 1%) on Total Invested Project Funds of 6.5%, calculated based on the Real Net Cash Flow of the Project for each Semi-Annual Period.

Base Case Secondary Targeted Rate of Return means a pre-tax internal rate of return (rounded up, if necessary, to a whole multiple of 1/1000 of 1%) on Total Invested Project Funds of 8.0%, calculated based on the Real Net Cash Flow of the Project for each Semi-Annual Period.

Base Case Traffic Model means the traffic and revenue model and the assumptions and information used by or incorporated in the traffic and revenue model, the results of operation of which are incorporated into the Base Case Financial Model.

Breakage Costs means any commercially reasonable breakage costs, make-whole payments or other prepayment amounts (including premiums) that the Operator must pay under any Project Financing Agreement as a result of the early repayment of such debt prior to its scheduled maturity date.

Budget Shortfall means, at any time, the greater of (a) the Operator's annual budget for ordinary operating, maintenance and repair costs and expenses for the forthcoming full year minus reasonably projected Toll Revenues, investment earnings and other Revenues in substitution or replacement of Toll Revenues for the forthcoming full year or (b) the Operator's ordinary operating, maintenance and repair costs and expenses for the full year then ended minus Toll Revenues, investment earnings and other Revenues in substitution or replacement of Toll Revenues for the full year then ended; provided, that if either such calculation results in a negative number, such amount shall be deemed to be zero.

Business Day means any day other than a Saturday, Sunday or other day observed as a holiday by either the State or the U.S. government.

Change in Control means, with respect to any Person, whether accomplished through a single transaction or a series of related or unrelated transactions, and whether accomplished directly or indirectly, either (a) a change in ownership so that 50% or more of the direct or indirect voting interests in such Person is transferred, (b) the power directly or indirectly to direct or cause the direction of management and policy of such Person, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred, or (c) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person; provided, however, that (i) clause (a) and clause (b) above does not apply to transactions in shares of a publicly-traded company and (ii) Transfers of direct or indirect ownership interests in the Operator (as applicable) between or among Persons that are under common "control" - (within the meaning contemplated

by the definition of Affiliate) do not constitute a "Change in Control" for the purposes of this Agreement.

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

Closing Date means the date on which the Comprehensive Agreement, the Consent to Assignment, the Memorandum and Assignment, the Technical Support Agreement, and the Acquisition Documents (as defined in the Asset Purchase Agreement described in **Section 1.17**) are executed and delivered by each of the parties hereto and thereto.

Collateral Agent means the Institutional Lender acting on behalf of or at the direction of the other Lenders or the Person or Persons so designated in an intercreditor agreement or other document executed by all Lenders to whom Financing Assignments are outstanding at the time of execution of such document, a copy of which shall be delivered by the Operator to the Department. Initially, the Collateral Agent means the Institutional Lender listed as the collateral agent for the Lenders in the Initial Project Financing Agreements.

Commissioner means the Commonwealth Transportation Commissioner or any successor in function.

Compensation Event means any of the following, in each case to the extent the Agreement entitles the Operator to compensation on account of such event:

- (a) claims or remediation work respecting certain Hazardous Substances pursuant to **Section 8.14(e)**;
- (b) the development, construction, operation or maintenance of any Project Enhancement directed by the Department pursuant to **Section 9.02** or the Operator's compliance with or the implementation of any directive to develop, construct, operate or maintain any Project Enhancement pursuant to **Section 9.02** or any Compliance Order which is treated as a Project Enhancement pursuant to **Section 9.03(c)**;
- (c) any event with respect to Competitive Transportation Facilities enumerated in **Section 12.01(a)**;
- (d) the performance by the Department of certain ITS activities pursuant to **Section 12.04** that subject the Department to payment of Operator Damages;
- (e) any Discriminatory Action pursuant to **Section 13.05**;
- (f) any Reimbursable Tax Imposition pursuant to **Section 13.06**;

- (g) the exercise by the Department of a Reserved Right pursuant to **Section 19.02**; or
- (h) any other event the occurrence of which under the terms of this Agreement requires the payment of Operator Damages or other compensation in respect of Net Revenue Impact or Net Cost Impact.

Competitive Transportation Facilities means any State Highway, expressway, freeway or limited access highway crossing of the James River (a) which is within three miles of the centerline of the Project's bridge crossing of the James River; (b) which is first placed into service after the Closing Date; and (c) the operation of which could reasonably be foreseen to have a materially adverse impact on the annual amount of Toll Revenues.

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

Comprehensive Agreement means the Amended and Restated Comprehensive Agreement (Relating to the Grant of a Permit) to Develop and Operate the Route 895 Connector between the Operator and the Department, dated as of June 29, 2006, and all exhibits thereto, as supplemented or further amended from time to time

Consent to Assignment is defined in **Section 1.18**.

Consortium is defined in **Section 1.15**.

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

Construction Traffic Management Plans means a plan setting forth a program for traffic management and related activities to be implemented by the Operator in connection with the construction of the Airport Connector Road or any Project Enhancement.

CPI means the "Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items" (not seasonally adjusted) of the U.S. Department of Labor, Bureau of Labor Statistics; provided, however, that if the CPI is changed so that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics; provided, further, that if the CPI is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

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

Days or days means calendar days, unless otherwise designated as Business Days.

Delay Event means:

- (a) an event of Force Majeure;
- (b) a failure to obtain, or delay in obtaining, any Regulatory Approval or other authorization from a Governmental Authority (provided that such failure or delay could not have been reasonably prevented by technical and scheduling measures of the Operator);
- (c) a change to Law arising after the Agreement Date;
- (d) a delay caused by the performance of works carried out by a Governmental Authority or any utility or railway operator;
- (e) a failure by the Department to perform or observe any of its covenants or obligations under this Agreement; or
- (f) a delay caused by the presence in, on, under or around the Project of Hazardous Substances;

which in each case results in or would result in a delay or interruption in the performance by the Operator of any obligation under this Agreement; provided that such delay or the cause thereof is neither specifically dealt with in this Agreement nor arises by reason of:

- (i) the negligence or misconduct of the Operator or its Representatives;
- (ii) any act or omission by the Operator or its Representatives in breach of the provisions of this Agreement;
- (iii) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Operator;
- (iv) except to the extent such events constitute an event of Force Majeure, any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Operator or its Representatives to supply materials or services for or in connection with the Project's operation or any strike, labor dispute or labor protest caused by or attributable to any act (including any pricing or other price or method of operation) or omission of the Operator or its Representatives;

- (v) except to the extent such events constitute an event of Force Majeure, any weather conditions (including any flooding) whether or not such weather conditions or the severity of such weather conditions are not or have not ordinarily or customarily been encountered or experienced; or
- (vi) the development, redevelopment, construction, modification, maintenance or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of User Fees or in the number of vehicles using the Project.

Department means the Virginia Department of Transportation, a department of the State, and any other state agency succeeding to the powers, authorities and responsibilities of the Department invoked by or under the Comprehensive Agreement.

Department Default is defined in Section 17.03.

Department's Option is defined in Section 6.07(a).

Design-Build Contract is defined in Section 1.10.

Development Contract means an agreement that is entered into by the Department and the Operator from time to time after the Closing Date that sets forth the parties' rights and obligations with respect to the design and construction of the Airport Access Road or a Project Enhancement, which shall include such terms as may be mutually agreed by the Operator and the Department.

Development Duties are defined in Section 3.01(c).

Discriminatory Action is defined in Section 13.05(a).

Distribution means any distribution, dividend or other payment, monetary or in-kind, made or projected to be made by the Operator to the shareholders, members, partners, joint venturers or other holders of an equity interest in the Operator, including from the proceeds of any Refinancing, on account of equity investment in the Operator.

Duff & Phelps means Duff & Phelps, LLC, an independent financial advisory firm.

EIS means that certain signed final environmental impact statement, record of decision and re-evaluation for the Project prepared and approved by FHWA in 1994.

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

- (a) Direct obligations of, and obligations fully and unconditionally guaranteed by, (i) the United States of America or (ii) any agency or instrumentality

of the United States of America the obligations of which are backed by the full faith and credit of the United States of America;

- (b) Demand or time deposits, federal funds or bankers' acceptances issued by any depository institution or trust company, provided that (i) any demand or time deposit or certificate of deposit is fully insured by the Federal Deposit Insurance Corporation or (ii) any commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such depository institution or trust company at the time of such investment or contractual commitment providing for such investment have been rated "A" or higher by a Rating Agency;
- (c) Commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) which has been rated "A" or higher by a Rating Agency at the time of such investment;
- (d) Any money market funds, the investments of which consist of cash and obligations fully and unconditionally guaranteed by (i) the United States of America or (ii) any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America and which have been rated "A" or higher by a Rating Agency; and
- (e) Other investments then customarily accepted by the State in similar circumstances;

provided, however, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

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

Environmental Laws means any Laws applicable to the Project regulating or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of human health, the Environment or Hazardous Substances.

Escrow Agent is defined in **Section 18.05(b)**.

ETTM means electronic toll and traffic management.

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

customer specific information, and including but not limited to use and enforcement data, origin and destination information, ETTM performance statistics, and real time traffic flow information.

ETTM Equipment means the AVI equipment; video monitoring equipment; toll violator systems, manual, automatic and electronic toll collection equipment; the transportation management system equipment; communications equipment; and all other computer hardware necessary to meet the performance specifications for ETTM.

ETTM Facilities means the administration/operations building, toll booths, canopies, utility connections, lighting facilities, pedestrian tunnels, etc.

ETTM System means the ETTM Equipment and the Software which monitors, controls or executes the ETTM Equipment.

Extraordinary Maintenance and Repair Work means maintenance, repair, renewal, reconstruction or replacement of any portion or component of the Project of a type which is not normally included as an annually recurring cost in the Operator's roadway maintenance and repair budgets.

Extraordinary Maintenance and Repair Reserve is defined in Section 8.07(a).

Extraordinary Maintenance and Repair Required Balance means, at any time, with respect to the Extraordinary Maintenance and Repair Work set forth in the most recent Five Year Assessment, without duplication, the greater of:

- (a) 110% of the projected costs of Extraordinary Maintenance and Repair Work scheduled to be performed in or by the end of the first year of such Five Year Assessment; or
- (b) the summation of the following amounts:
 - (i) 100% of the projected costs of Extraordinary Maintenance and Repair Work scheduled to be performed in or by the end of the first year of such Five Year Assessment; plus
 - (ii) 66.67% of the projected costs of Extraordinary Maintenance and Repair Work scheduled to be performed in or by the end of the second year of such Five Year Assessment period; plus
 - (iii) 33.33% of the projected costs of Extraordinary Maintenance and Repair Work scheduled to be performed in or by the end of the third year of such Five Year Assessment period.

FD/MK means FD/MK Limited Liability Company, a Delaware limited liability company.

FHWA Agreement means the agreement among FHWA, the Department and the Association, dated September 29, 1999, as amended by that certain Modification Agreement, dated June 12, 2006, in which the parties agreed to be bound by, and to comply with, the provisions of Title 23 U.S. Code Section 129(a), as amended, for the Project.

Final Compensation Event Notice is defined in Section 13.08(a).

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

Financing Assignment is defined in Section 6.02(b).

Fiscal Year means the consecutive 12-month period beginning July 1 and ending June 30, or any other consecutive 12-month fiscal period used by the Department for financial accounting purposes.

Five-Year Assessment is defined in Section 8.08(b).

Force Majeure means any event beyond the Operator's reasonable control that delays or interrupts the performance of its obligations hereunder, including an intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, sabotage, civil commotions, interference by civil or military authorities, condemnation or confiscation of property or equipment by any Governmental Authority (other than the Department), nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, fire, earthquake, riot or other public disorder, epidemic, quarantine restriction, stop-work order or injunction issued by a Governmental Authority (other than the Department) of competent jurisdiction, governmental embargo, provided that such event neither is otherwise specifically dealt with in this Agreement nor arises by reason of:

- (a) the negligence or misconduct of the Operator or its Representatives;
- (b) any act or omission by the Operator or its Representatives in breach of the provisions of this Agreement;
- (c) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Operator;
- (d) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Operator or its Representatives to supply materials or services for or in connection with the Project's operation or any strike, labor dispute or labor protest caused by or

attributable to any act (including any pricing or other practice or method of operation) or omission of the Operator or its Representatives;

- (e) any weather conditions (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, except tornadoes and similar catastrophic weather conditions encountered or experienced at or in the vicinity of the Project; or
- (f) the development, redevelopment, construction, modification, maintenance or change in the operation of any existing or new mode of transportation (including a road, street or highway) that results in the reduction of User Fees or in the number of vehicles using the Project.

Force Majeure Dispute Notice is defined in **Section 14.02(b)**.

Force Majeure Notice is defined in **Section 14.02(b)**.

Force Majeure Remedy is defined in **Section 14.02(a)**.

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

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

Governmental Authority means any court, federal, state, local or foreign government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-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 a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, subject waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation).

Incidental Charges is defined in **Section 4.01(c)**.

Initial Compensation Event Notice is defined in **Section 13.08(a)**.

Initial Project Financing Agreements means, collectively, the Project Financing Agreements listed on Exhibit J.

Initial Targeted Return has the meaning specified in Section 5.01(b)(i).

Institutional Lender means:

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

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

Intellectual Property means ETTM books and records, toll-setting and traffic management algorithms, and Software and associated documentation used in connection

with the Project (including but not limited to Software and associated documentation used for management of traffic on the Project), the ETTM Data, copyrights (including moral rights), trade marks (registered and unregistered), designs (registered, including applications, and unregistered), patents (including applications), circuit layouts, plant varieties, business and domain names, including *pocahontasparkway.com*, inventions, trade secrets, proposals, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and 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.

ISO 9000 means the series of quality of assurance standards for manufacturing and services industries approved and published by the International Organization for Standardization (ISO), as amended or updated from time to time.

ITS means any application of computer, electronics and/or telecommunications equipment and software and supporting fixtures and equipment whose function is to provide information, data and/or services to the traveling public or the Department or to manage and control traffic, all items listed in the Federal Highway Administration Intelligent Transportation Systems Summary Report dated January 19, 1995, and any future systems or services conceived or developed for the same or similar purposes; however ITS does not include the ETTM System as used for Project Purposes.

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

Lenders means each of the Institutional Lenders that are parties to the Project Financing Agreements, including the Collateral Agent, and their respective successors and assigns who also qualify as Institutional Lenders.

Lender's Notice is defined in Section 6.07(a).

Letter of Credit means an irrevocable, unconditional, standby letter of credit, in favor of the Department (or where indicated, the Collateral Agent with the Department as permitted transferee), in form and content reasonably acceptable to the Department, payable in U.S. dollars upon presentation of a sight draft and a certificate confirming that the Department has the right to draw under such letter of credit in the amount of such sight draft, without presentation of any other document, statement or authorization, which letter of credit (a) is issued by a commercial bank or trust company that is a member of the New York Clearing House Association, that has a combined capital and surplus of at least \$1,000,000,000 and that has a current credit rating of A1 or better by S&P and an equivalent credit rating by another Rating Agency (or an equivalent credit rating from at least two nationally recognized Rating Agencies if S&P ceases to publish ratings) (or such other commercial bank or trust company reasonably acceptable to the Department and approved by the Department prior to the submission of the letter of credit), and

(b) provides for the continuance of such letter of credit for a period of at least one year or as otherwise provided in this Agreement. The office for presentment of sight drafts specified in the Letter of Credit shall be located at a specified street address within the City of Richmond, Virginia or City of New York, New York. For the avoidance of doubt, the obligations of the account party during the Term to reimburse the issuer for draws under any Letter of Credit may be secured by a Financing Assignment if it encumbers the entire Operator's Interest.

Level of Service means the measurement system utilized by the Transportation Research Board of the National Academy of Sciences to measure traffic congestion in its most recently published Highway Capacity Manual. Should the Level of Service measurement be discontinued or revised during the Term, such other measurement index with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if such revision or replacement had not occurred.

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 Model is defined in Section 8.08(a).

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

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

Memorandum and Assignment is defined in Section 3.03(e).

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

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

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

Net Cash Flow means, in respect of each Semiannual Period after the Closing Date, (a) aggregate Toll Revenues, investment earnings and other Revenues in substitution or replacement of Toll Revenues (including any compensation the Department pays for Net Revenue Impact) received by the Operator during such

Semiannual Period, less (b) the Operating Costs paid during such Semiannual Period, less (c) contributions during such Semiannual Period to the Extraordinary Maintenance and Repair Reserve or any other reserve for operation and maintenance costs required under any Financing Assignment for senior Operator Debt.

Net Cost Impact means the net increase or decrease in Operator's costs (including design, construction, operating and finance costs, and including Operator's reasonable Allocable Costs) directly attributable to a Compensation Event, as compared with what the Operator's costs (including Operator's reasonable Allocable Costs) would have been absent occurrence of the Compensation Event, less the increased costs that can reasonably be mitigated by the Operator in accordance with **Section 13.08**, and taking into account any savings in Operator's operating and finance costs resulting from the Compensation Event. Net Cost Impact shall not include, with respect to any Compensation Event, an aggregate amount that is de minimis.

Net Revenue Impact means (a) the loss of Toll Revenue attributable to a Compensation Event as compared with what the Toll Revenues would have been absent occurrence of the Compensation Event, less (b) the loss that can reasonably be mitigated by the Operator in accordance with **Section 13.08** (excluding any mitigation of costs subtracted from Net Cost Impact for the same Compensation Event), less (c) the lost Toll Revenue that would be returned to the Department under the revenue-sharing formula detailed in **Article 5**, and less (d) any savings in facility operating and maintenance costs resulting from the Competitive Transportation Facilities or a Compensation Event (excluding any savings in costs subtracted from Net Cost Impact for the same Competitive Transportation Facilities or Compensation Event). Net Revenue Impact shall not include, with respect to any Compensation Event, an aggregate amount that is de minimis.

New Agreements is defined in **Section 6.05(c)**.

Northern Portion of the Airport Connector Road means that portion of the Airport Connector Road defined at the southerly end by a line parallel to the centerline of the proposed "Site Road" at station 20+20.000, excluding that portion of the Airport Connector Road contained within the Limited Access Line ending left of station 20+28.644 and ending right of station 20+07.243; defined at the northerly end by a line parallel to the centerline of "Charles City Road" at approximate station 34+56; and to include the proposed storm water management basin on the southeast corner of the intersection of Airport Drive and Charles City Road, as well as the drainage improvements necessary to convey any storm water outfall from the proposed basin to proposed drainage structure # 15-18, all as shown on Exhibit L to this Agreement. This Northern Portion of the Airport Connector Road shall adjoin that portion of the intersection of Airport Drive and Charles City Road that is to be maintained by the County of Henrico.

Notice of Termination for Public Convenience means a written notice from the Department to the Operator under which the Department elects to terminate the Agreement pursuant to **Section 16.01(a)**.

O&M Contractor is defined in Section 8.04(a).

O&M Letter of Credit is defined in Section 8.09(a).

Operating Costs means all reasonable costs incurred and paid for by the Operator in relation to the Project, including without limitation costs for operation and maintenance, consumables, payments under any lease (other than a financing lease constituting Operator Debt), payments pursuant to the agreements for the management, operation and maintenance of the Project, taxes (exclusive of taxes measured by net income), insurance, payments for Oversight Services, police services; costs for any Extraordinary Maintenance and Repair Letter of Credit, O&M Letter of Credit or other security, capital expenditures, payments to the Department in accordance with Section 5.01 and any other reasonable expense paid for the development, completion, enhancement, expansion, major maintenance, repair, reconstruction, rehabilitation, renewal, and replacement of the Project, but exclusive of (a) costs paid from funds deposited to the Extraordinary Maintenance and Repair Reserve or any reserve for operation and maintenance costs, (b) costs paid from Total Invested Project Funds, (c) payments of Operator Debt (including interest thereon), (d) any Distributions, (e) 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 and any other costs which are not allowable pursuant to the list attached as Exhibit M. Operating Costs do not include non-cash charges, such as depreciation, amortization or other bookkeeping entries of a similar nature.

Operator has the meaning assigned to such term in Section 56-557 of the PPTA and, for purposes of the Comprehensive Agreement, means the Association until the Closing Date and Transurban (895) LLC from such date and thereafter until the end of the Term of the Comprehensive Agreement, and its permitted successors and assigns.

Operator Damages means, with respect to any Compensation Event, the sum of (a) the Net Revenue Impact and (b) the Net Cost Impact.

Operator Debt means any bona fide debt (including principal, accrued interest and fees and customary and reasonable lender, agent and trustee costs and expenses with respect thereto, and including all payment obligations under interest rate hedging agreements with respect thereto) relating to the Project and granted by a Person (other than an Affiliate of the Operator except if the terms of such debt are comparable to the terms that could have been obtained, on an arms-length basis, from a Person that is not an Affiliate of the Operator) pursuant to an agreement entered into prior to the Notice of Termination for Public Convenience given pursuant to Section 16.01 or the declaration of a Department Default giving rise to the payment of amounts for or in respect of termination under this Agreement ; provided that if the Department shall not pay such termination amount within sixty days of the date when due under this Agreement, then the foregoing limitation on entering into agreements for debt shall not thereafter be applicable. Operator Debt, however, does not include any increase in debt to the extent

such increase is the result of an agreement or other arrangement entered into after the Operator receives a Notice of Termination for Public Convenience or declares a Department Default. In addition, no debt shall constitute Operator Debt unless the Collateral Agent provided the Department with a Notice of Operator Debt in accordance with the notice requirements of **Section 6.02(b)(iii)**. Except with respect to the incurrence of debt under the Initial Project Financing Agreements, Operator Debt shall not include any debt that would cause the Operator Debt to increase unless such debt is approved by the Department pursuant to **Section 6.06** or otherwise meets the requirements of **subclause (A), (B) or (C) of Section 6.06(b)(i)**.

Operator Default is defined in **Section 17.01**.

Operator's Interest means the interest of the Operator in and to (a) the Project, (b) this Agreement, (c) the Development Contract, (d) Revenues, (e) the Toll Servicing Rights and (f) any other property or rights of the Operator under this Agreement.

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

Operator Marks is defined in **Section 18.04(d)**.

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

Original Comprehensive Agreement is defined in **Section 1.08**.

Outcomes and Performance Targets means the outcomes, performance targets, tolerances and criteria listed in Attachment A to Exhibit H.

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

Permitted Encumbrance means, with respect to the Project:

- (a) the rights and interests of the Operator under this Agreement;
- (b) any Lien that is being contested by the Department (but only for so long as such contestation effectively postpones enforcement of any such Lien);
- (c) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's or other similar Liens arising in the ordinary course of business of the Project or the Department's performance of its obligations hereunder, and either (A) not delinquent or

- (B) which are being contested by the Department (but only for so long as such contestation effectively postpones enforcement of any such Lien);
- (d) any easement, covenant, condition, right-of-way, servitude, or any zoning, building, environmental, health or safety Law relating to the development, use or operation of the Project (or other similar reservation, right and restriction) or other defects and irregularities in the title to the Project that do not materially interfere with the operations or the right and benefits of the Operator under this Agreement;
 - (e) any right reserved to or vested in any Governmental Authority (other than the Department) by any statutory provision;
 - (f) any other encumbrance permitted hereunder;
 - (g) any Lien created, incurred, assumed or suffered to exist by the Operator or any Person claiming through it; and
 - (h) any amendment, extension, renewal or replacement of any of the foregoing.

Permitted Securitization is defined in Section 4.01(f).

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.

Plans means the following to be prepared by the Operator in accordance with the requirements of Exhibit H:

- Management Plan
- Maintenance Plan
- Inspection Plan
- Incident Response Plan
- Traffic Control Plan
- Customer Service/Response Plan
- Public Information Plan
- Environmental Protection Plan
- Quality Assurance and Quality Control Plan
- Detour Plan
- O&M Manual.

PPTA is defined in Section 1.01.

Pre-Existing Hazardous Substances means any Hazardous Substance that was present within the Project Right of Way limits at any time prior to the Closing Date or, with respect to the Airport Connector Road, prior to the date the Department tenders to

the Operator possession and control of the Project Right of Way for the Airport Connector Road (but only after the Operator obtains a written commitment for TIFIA financing pursuant to **Section 9.01**).

Project means, collectively, the approximately nine-mile, four-lane, limited access tollway and all related improvements depicted in **Exhibit B** to the Agreement, extending from the current eastern terminus of Chippenham Parkway (State Route 150) at I-95 to a connection with I-295 southeast of Richmond International Airport, known as the Pocahontas Parkway, as well as (a) the ramps, loops, bridges, and auxiliary lanes providing access to and from such tollway as shown in **Exhibit B**, (b) all other improvements constructed pursuant to the Design-Build Contract and any change orders or directive letters issued by the Department in connection therewith; (c) the ETTM Facilities and ETTM System, (d) when constructed by the Operator at its expense (except as otherwise provided in **Section 9.01(d)**), but not otherwise, and opened to public traffic, the Airport Connector Road, (e) when constructed, any Project Enhancements, and (f) all associated assets as identified in **Exhibit H**.

Project Agreement means any of this Agreement, the Consent to Assignment, the Development Contract, the Technical Support Agreement, the Memorandum and Assignment, and the Initial Project Financing Agreements; and the term **Project Agreements** means all such agreements and documents in the aggregate.

Project Enhancements means any extensions of, additions to, or major modifications, replacements or reconstruction of the Project undertaken by the Department or, with its approval, the Operator after the Agreement Date, including (a) the portion of the Wilton Access Road maintained by the Operator and any tolling facilities maintained by the Operator on the Wilton Access Road, (b) any other additional ramps or interchanges providing direct access to and from the Project, (c) addition of traffic lanes for bus only, high occupancy vehicle or high occupancy/toll use, or similar restricted use. Notwithstanding the foregoing, Project Enhancements exclude the Airport Connector Road.

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

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

Project Purposes means and is limited to the developing, permitting, design, financing, acquisition, construction, installation, equipping, maintenance, repair, preservation, modification, operation, management and administration of the Project.

Project Right of Way means (a) all real property within the access control line for the Project, including all real property within the access control line for the Airport Connector Road if constructed by Operator at its expense, and (b) the property on which the ETTM Facilities are located.

Project Value means:

- (a) at the time a Notice of Termination for Public Convenience is given pursuant to **Section 16.01** (Termination for Convenience), the Department terminates this Agreement pursuant to **Section 16.05**, or a Department Default occurs giving rise to the payment of amounts for or in respect of termination under this Agreement (but excluding the effect of such termination or Department Default), the greater of:
 - (i) the then fair market value of the Operator's Interest; or
 - (ii) the sum of:
 - (A) the total outstanding principal amount of Operator Debt, plus
 - (B) accrued and unpaid interest on such Operator Debt, excluding any interest at default rates, plus
 - (C) Breakage Costs respecting such Operator Debt, plus
 - (D) an amount that would be required for the Project to yield as of the termination date a pre-tax Real IRR on the total cash equity investment in the Operator (compounded annually) equal to 10.5%, taking into account all prior distributions to holders of beneficial or equity interests in Operator and all cash balances available for distribution to such holders as of the termination date.
- (b) Fair market value, for purposes of Project Value, will be determined according to the appraisal procedures set forth in **Section 17.05**.

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

Proprietary Software means all Software and associated documentation patented or copyrighted by the Operator, the Department or any other Person, as applicable, or any

of its respective contractors or subcontractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential information by the Operator, the Department or any such other Person, as applicable, or any of its respective contractors or subcontractors, but excludes any item of software that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Project (e.g. "shrink-wrap" software).

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

Public Information Plan means a plan setting forth a program for public information dissemination and related activities to be implemented by the Operator in connection with the construction of the Airport Connector Road or any Project Enhancement.

Quality Management Plans-- means the plans for quality management of the Project to be prepared and delivered by the Operator pursuant to **Section 7.03(a)**.

Rating Agency means any of Duff & Phelps, S&P, Moody's or Fitch Investors Service, Inc. or any similar entity or any of their respective successors.

Real IRR means an internal rate of return adjusted to remove the effects of inflation from the calculation of the internal rate of return (such adjustment to be calculated by reference to changes in the CPI from the Closing Date to the calculation of the internal rate of return).

Real Net Cash Flow means, for any Semiannual Period, Net Cash Flow but reduced to remove the effects of inflation from the calculation of Net Cash Flow (such reduction to be calculated by reference to changes in the CPI from the Closing Date to the close of the applicable Semiannual Period).

Refinancing means:

- (a) Any amendment, variation, novation or supplement of any Operator Debt, Initial Project Financing Agreement or Financing Assignment that results in an increase of such Operator Debt;
- (b) The issuance by Operator of any Operator Debt in addition to the Operator Debt incurred in connection with the Initial Project Financing Agreements, secured or unsecured, including issuance of any reimbursement agreement respecting a Letter of Credit; or
- (c) Any other arrangement put in place by Operator or another person which has an effect similar to clause (a) or (b) above.

Regulatory Approvals means all local, regional, state and federal agreements, studies, findings, permits, approvals, authorizations, certifications, consents, decisions, exemptions, filings, leases, licenses, registrations, rulings and other governmental

authorizations required to be obtained or completed under applicable Laws-prior to undertaking any particular activity contemplated by this Agreement or a Development Contract. The term "Regulatory Approvals" includes any supplements to the EIS.

Reimbursable Tax Imposition means:

- (a) any State or local property tax or similar ad valorem tax or charge (including but not limited to property taxes under Section 58.1-3203 of the Code of Virginia, as amended from time to time) or recordation tax on a deed, release or other document recorded in connection with this Agreement, unless recorded by or at the behest of the Operator; and
- (b) any license fee or tax on or measured by receipts, levied, rated, charged, imposed or assessed by the State or any county, city or town of the State against the Operator and attributable to the Project or the Operator's Interest, but excluding:
 - (i) any taxes of general application on or measured by receipts levied, rated, charged, imposed or assessed by the State in substitution for or replacement of any other State tax of general application and applicable to the Operator as of July 1, 2006, or
 - (ii) any taxes levied, rated, charged, imposed or assessed in connection with any Transfer during the Term of all or any portion of the Operator's Interest or of any interest in the Operator.

Report means the following to be prepared by the Operator in accordance with the requirements of **Exhibit H**:

- Quarterly Reports
- Annual Reports
- Pre-Transfer Assessment Report

Representative means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, Consultant, engineer, contractor, other Person for whom such Person is at law responsible or other representative of such Person and any professional advisor, Consultant or engineer designated by such Person as its "Representative."

Reserved Rights means all of the following:

- (a) subject to **Section 12.01** and the last sentence of **Section 19.02** of this Agreement, the Department's right to use, possess and enjoy any real and personal property over, under or adjacent to the Project Right-of-Way for other transportation and transit facilities, including but not limited to tunnels, flyovers, interchanges and fixed guideways; and

- (b) all right to use, and use of:
- (i) all electrical, fiber optic and wireless conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity existing over, under or adjacent to any 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, in each case to the extent not necessary and required for traffic management for the Project or for other Project Purposes;
 - (ii) ETTM Data or other data generated from operation of the Project or toll collection technology except as required solely for Project Purposes;
 - (iii) any area or space over, under or adjacent to the Project Right of Way for development and operation of any office, commercial, industrial or mixed use real estate project, such as but not limited to revenue-generating service or rest areas;
 - (iv) any equipment, facilities or capabilities for ITS studies or applications installed by the Department and the right to install any such equipment, facilities or capabilities other than the ETTM System;
 - (v) toll collection technology for other than Project Purposes;
 - (vi) any area or space over, on, under or adjacent to the Project Right of Way for any other commercial or non-commercial development or use; and
 - (vii) naming rights to the Project.

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

Revenues means all amounts received by or on behalf of the Operator from Toll Revenues; proceeds from insurance (other than proceeds of fire and other casualty insurance but including proceeds from business interruption insurance), amounts received pursuant to any judgment or settlement with respect to the Project, amounts received with respect to Operator Damages or other compensation from the Department, condemnation awards with respect to the Project; all amounts payable to the Operator (but not the Department) as liquidated damages under contracts, in each case, to the extent the same relate to the Project; all amounts derived from the sale or other disposition of the Operator's Interest (excluding, however, the proceeds of any direct or indirect sale of equity interests in the Operator); amounts derived as grants, loans or otherwise from the United States of America, the State or any other Person by the Operator for the

acquisition, development, construction, management, operation and maintenance of the Project; and all other amounts derived from or in respect of the operation of the Project which constitute revenues in accordance with Generally Accepted Accounting Principles, including without limitation tolls and any interest income earned on any funds on deposit in any bank account or securities account. Revenues exclude the costs of goods and/or services in kind provided to the Operator with respect to which the Operator has no obligation of repayment and revenues and proceeds arising out of or relating to Reserved Rights or the disposition of surplus or residual property. Revenues exclude the proceeds of Operator Debt or capital contributions to the Operator.

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

Secondary Targeted Return has the meaning specified in Section 5.01(b)(ii).

Semiannual Period means (a) initially the period commencing on the Closing Date and terminating June 30 and (b) thereafter, each semiannual period commencing on January 1 and terminating June 30 and commencing July 1 and terminating December 31.

Series 1998 Senior Bonds means \$353,877,863 Route 895 Connector Senior Toll Road Revenue Bonds, Series 1998A, 1998B, and 1998C issued by the Association on July 9, 1998.

SIB Bond means the Series 1998D Second Tier Subordinate Bond issued to the CTB under the Indenture and in accordance with the SIB Loan Agreement evidencing the SIB Loan, and any and all supplements and amendments thereto.

SIB Loan means the \$18,000,000 loan made by the CTB to the Association pursuant to the SIB Loan Agreement, and evidenced by the Series 1998D Second Tier Subordinate Bond.

SIB Loan Agreement means the SIB Loan Agreement among the CTB, the Association and the Trustee, and any and all amendments and supplements thereto.

Software means (a) computer instructions, including programs, routines and databases and applications supplied, procured or developed by the Operator or the Department in connection with the operation of the Project or other Project Purposes or in connection with Reserved Rights, including but not limited to that which monitors, controls or executes on ETTM Equipment or ITS equipment or hardware, and (b) all modifications, updates and revisions made to the matter described in clause (a) above, including those made to correct errors or to support new models of computer equipment and/or new releases of operating systems.

Source Code means Software program higher order language listings, internal documentation embedded in program listings, associated data files and data structures, in electronic and/or printed form, necessary for maintenance of and modifications to the Software.

Source Code Documentation means the program level Software design documentation, associated data files, data structures and algorithm descriptions necessary to make program code level modifications to delivered Software.

Source Code Escrows is defined in Section 18.04(c)(ii).

State means the Commonwealth of Virginia.

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

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

Substituted Operator means any person or entity selected by the Lenders (acting through the Collateral Agent) and approved by the Department in accordance with Section 6.04(c) to perform the Operator's obligations and succeed to the Operator's Interests after any such Lender, or any such Person, acquires the Operator's Interests by foreclosure or transfer in lieu of foreclosure, or after the Collateral Agent takes possession and control of the Project.

Task is defined in Section 8.08(a).

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

Technical Requirements means the documents detailing the Operator's responsibilities with respect to the operation and maintenance of the Project during the Term.

Technical Support Agreement means that certain technical support agreement, entered into among the Technical Support Provider, the Department and the Operator in substantially the form attached hereto as Exhibit D.

Technical Support Provider means Transurban Limited, a company incorporated under the laws of the State of Victoria, Australia whose shares are traded on the Australian Stock Exchange.

Term means 99 years from the Agreement Date, unless earlier terminated or extended pursuant to this Agreement.

Termination Event is defined in Section 6.04(a).

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

TIFIA means the Transportation Infrastructure Finance and Innovation Act of 1998, as amended.

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

Toll Revenues means all amounts received by or on behalf of the Operator from tolls and other User Fees applicable to vehicles for the privilege of traveling on the Project imposed pursuant to this Agreement. Toll Revenues excludes revenues and proceeds arising out of or relating to Reserved Rights.

Toll Servicing Rights is defined in Section 3.04(b).

Total ACR Development Cost has the meaning set forth in Section 9.01(d)(vi).

Total Invested Project Funds means (a) all amounts paid by the Operator to the Association pursuant to the Asset Purchase Agreement or deposited by the Operator or its Affiliates into any reserves as of the Closing Date as required by this Agreement or the Initial Project Financing Agreements (minus any amounts of cash or securities acquired by the Operator from the Association under the Asset Purchase Agreement, except to the extent deposited by the Operator or its Affiliates into the reserves as of the Closing Date); (b) all documented fees, costs and expenses incurred by the Operator or its Affiliates on or after April 28, 2005 and paid by the Operator or its Affiliates in connection with the investigation, evaluation, negotiation, and closing of the purchase under the Asset Purchase Agreement and this Agreement; and (c) all capital contributions or debt advances made by the members of the Operator or its Affiliates after the Closing Date and Operator Debt incurred after the Closing Date (other than (i) capital contributions, debt advances or Operator Debt incurred or used directly or indirectly to fund Distributions or (ii) any Refinancing to the extent that it does not increase the principal amount of Operator Debt then outstanding).

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

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

Transferee is defined in Section 20.01(a).

Transitional Period is defined in Section 8.03(a).

User Fees means fees, tolls, rates, incidental charges and other charges (including administrative charges such as late fees, insufficient funds fees, etc.) in respect of vehicles using the Project and imposed by or on behalf of the Operator pursuant to this Agreement.

Utility or utility means a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water not connected with the highway drainage and similar substances that directly or indirectly serve the public. The term "Utility" specifically excludes (a) storm water lines connected with the highway drainage, and (b) traffic signals, street lights, and electrical systems for roadways.

Utility Owner or utility owner means the owner or operator 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 or Project Enhancements.

Wilton Access Road means the road that will provide direct access from Route 895 into the proposed development known as Wilton Farms which was approved by the Henrico Board of Supervisors on January 25, 2005 as Conditional Rezoning Case C-56C-04, including the interchange between such Road and the Project. This interchange will be located at approximately the same location as the existing toll collection facility (2500' east of the James River). For the purposes of this Agreement, the Wilton Access Road will only include that portion of the access ramps designated as "state maintained" and will not include any portion of the ramps designated as being maintained by the County of Henrico.

Work Product means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Operator solely or primarily for the Project or Project Right of Way, including but not limited to drawings, plans and specifications, record and as-built plans and specifications, engineering documents, geotechnical soils and soil boring data, analyses, reports and records, property acquisition files, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all construction documents relating to Project Enhancements), engineers' and inspectors' diaries and reports, Utility Relocation plans and agreements, right of way record maps and surveys, Traffic and Revenue Studies, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, air quality monitoring data, environmental reviews, studies and reports, mitigation studies and reports, data, assessments, studies and reports regarding Hazardous Substance investigations, testings, borings, monitoring and analyses, manifests regarding handling, storage or transportation of Hazardous Substances, correspondence and agreements

relating to Regulatory Approvals, change orders, final quantities, pile driving records, records of accidents and traffic management, field test records and reports, concrete pour records, surfacing depth check records, grade and alignment books, cross-section notes, drainage notes, photographs, false work and form plans, records of construction materials, Toll Equipment and Toll Facilities records and reports, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which the Operator and the Department mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure under **Section 18.02** and which is not conceived or first reduced to practice for Project Purposes, such as proprietary financial and pricing information of the Operator.

Work Schedule is defined in **Section 8.08(a)**.