

EXHIBIT A

DEFINITIONS

Acronym	Definition
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	Active 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

Acronym	Definition
Express/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
MMS	Maintenance Management System
MOI	Department Manual of Instructions for Material Division
MOT	Maintenance of Traffic
MPO	Metropolitan Planning Organization
MTBF	Mean Time Between Failure
MTTR	Mean Time To Repair
MUTCD	Manual on Uniform Traffic Control Devices
NEPA	National Environmental Policy Act
NFPA	National Fire Protection Association
NS	Norfolk Southern
ORT	Open Road Tolling
OSHA	Occupational Health and Safety
PA	Programmatic Agreement
PABs	Private Activity Bonds
PCI	Payment Card Industry
PDP	Project Development Plan
PPTA	Public-Private Transportation Act
PTZ	Pan Tilt Zoom
QMSP	Quality Management System Plan
RLD	Responsible Land Disturber Certification
ROD	Record of Decision
RUMS	Right of Way and Utilities Management System
SAT	Site Acceptance Testing
SIA	Schedule Impact Analysis
SPT	Standard Penetration Test
SRA	Safety Rest Area
STIP	State Transportation Improvement Plan
STRAHNET	Strategic Highway Network
SWaM	Small Woman-Owned and Minority Business
SYIP	Six-Year Improvement Plan

Acronym	Definition
SWM	Storm Water Management
SWPPP	Storm Water Pollution Prevention Plan
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
VPS	Violation Processing System
VSBA	Virginia Small Business Financing Authority
VPSTF	Virginia Petroleum Underground Storage Tank Fund
VSMMP	Virginia Stormwater Management Program
VSP	Virginia State Police
WMATA	Washington Metropolitan Area Transit Authority

1991 Easement means the *Easement Between Washington Metropolitan Transit Authority and Virginia Department of Transportation*, dated November 25, 1991.

Act is defined in the first Recital to the Agreement.

Actual Cumulative NPV of Gross Revenues means the sum of the net present value of the annual Gross Revenues from the Service Commencement Date through the specified date for the calculation year, discounted to the Financial Close Date using as a discount rate the Initial Equity IRR.

Actual TIFIA Financial Terms means the terms and conditions contained in the TIFIA Loan Documentation.

Adjustment Period End Date means the Financial Close Date.

Adjustment Period Start Date means 10:00 a.m. on the date Benchmark Rates and credit spreads are required to be submitted for approval in accordance with the ITP.

Administering Employees means employees of Developer and the Key Members whose work related to the Project has not been completed that are involved in the administration of Federal or Commonwealth 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 Developer to an Affiliate of the Developer unless the terms of such indebtedness are comparable to terms, or are no less favorable to the Developer than terms that could have been obtained on an arm's length basis from a Person that is not an Affiliate of the Developer.

Agreement or **Comprehensive Agreement** means the Comprehensive Agreement Relating to the Transform 66 P3 Project, dated as of the Agreement Date, and all exhibits and schedules thereto, as supplemented or further amended from time to time.

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

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

Allocable Costs means:

(a) for services performed using Department or Developer 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 Developer, 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 Developer 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 Developer reasonably incurs to enforce or pursue remedies for the contractor's failure to perform in accordance with the contract, except in the case of a contract that is an Affiliate Contract.

Alternative Facility means the following:

(a) Additional general-purpose lanes within the I-66 Corridor encompassing the Express Lanes during the term of the Agreement; *provided*, general purpose lanes do not include the use of auxiliary lanes for any of their intended uses or the use of the shoulder between auxiliary lanes as an additional travel lane for incident management, maintenance and construction activities; and

(b) The expansion of the Orange Line within the I-66 Corridor encompassing the Express Lanes within the 10 years following the Agreement Year in which the Project Completion Date occurs.

Alternative Technical Concepts are innovative concepts that deviate from the Technical Requirements for design, construction, operation and maintenance of the Project, or otherwise require a modification of the Technical Requirements, that were included as part of Developer's Proposal and have been accepted by the Department for inclusion in the Project.

Annual Budget is defined in Section 9.07(a).

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 Commonwealth.

As-Built Schedule means the last Project Schedule Update submitted to and approved by the Department in accordance with the Technical Requirements.

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

Assumed TIFIA Financial Terms means TIFIA Credit Assistance that contains the terms in the Indicative TIFIA Term Sheet (as such term is defined in the ITP).

Authorized Representatives means the individuals identified in Section 25.04.

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 Base Case Financial Model or the Base Case Financial Model Update, as applicable.

Base Case Financial Model means Initial Base Case Financial Model adjusted at Financial Close pursuant to Section 7.06(b).

Base Case Financial Model Update is defined in Section 6.02(a).

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 Transform 66 P3 Project Investment Grade Traffic and Revenue Study dated January 2016, the results of operation of which are incorporated into the Base Case Financial Model.

Baseline Schedule means the Baseline Schedule, as approved by the Department in accordance with the terms hereof following review of the Initial Baseline Schedule, identifying the major Work activities in sufficient detail to enable the Department to monitor and evaluate design and construction progress pursuant to the Technical Requirements.

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

Benchmark Rates means the rates for TIFIA financing, bonds, and bank debt contained in Exhibit P.

Breakage Costs means any prepayment premiums or penalties, make-whole payments or other prepayment amounts (including premiums) that the Developer must pay under any Project Financing Agreement as a result of the early repayment of Developer 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)(ii).

Change in Control means (a) the Transfer of 50% or more of the equity interests in the Developer 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 Developer 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 Developer may constitute a Change in Control of the Developer 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 Developer; *provided*, that the following will not constitute a Change in Control:

(1) a change in possession of the power to direct or control the management of the Developer 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 of the Developer;

(2) a change in possession of the power to direct or control the management of the Developer 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 Developer, unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any Federal department or agency or State Party;

(3) an upstream reorganization or transfer of direct or indirect interests in the Developer so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of such person, whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise;

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

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

(6) transfers of direct or indirect ownership interests in the Developer (as applicable) between or among (i) Persons that are under common “control” (within the meaning of control contemplated by the definition clause (b) of Affiliate) or (ii) any fund or entity managed directly or indirectly by a shareholder, member or partner of the Developer or any Affiliate, provided it can be demonstrated to the Department, for its prior approval (of only the following matters), that such transfers (a) do not affect the direction or control of the management of the Developer and (b) continue to permit ongoing performance by the Developer under this Agreement.

Change in Law means (a) the enactment of any Law after the Setting 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 Setting Date; excluding, however, any change in or new Law enacted but not yet effective as of the Setting Date.

Change Order means a written order issued by the Department to the Developer 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).

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

Chief Engineer means the Department’s Chief Engineer.

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

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

Collateral Agent means the Institutional Lender (or representatives thereof) 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 Developer to the Department.

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

Committed Investment means (a) any form of direct investment by Equity Members, including the purchase of equity shares in the Developer; (b) any bona fide indebtedness of the Developer for funds borrowed that: (i) is held by any Equity Member and (ii) is subordinated in priority of payment and security to all Developer 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 Developer or the Collateral Agent as beneficiary and guaranteeing the provision of the direct investment or loan referenced in clause (a) or (b) of this definition.

Commonwealth or **State** means the Commonwealth of Virginia.

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

Communications Plan means the plan developed by the Developer setting forth the Developer'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.

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) an Alternative Facility, to the extent provided for in Section 12.05;
- (e) any Significant Force Majeure Event to the extent the Department or the Developer elects to continue the Agreement pursuant to Section 20.03;
- (f) in connection with a challenge to the NEPA Documents, the issuance by a court having jurisdiction over the Project of an injunction or other order enjoining or estopping the Developer 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;
- (g) in connection with a delay attributable to (i) a Utility Owner's refusing to enter or delay in entering into a two-party agreement on terms customary for utility providers affected by projects of a similar size and scope or (ii) a Utility Owner failing to perform its obligations under a two-party agreement (as described in the Technical Requirements) in accordance with the terms of such agreement, where such delay (or delays resulting from such failures by multiple Utility Owners) causes one or more Critical Path activities approved by the Department to be adversely impacted for a period of 180 days in the aggregate. The computation of 180 days in the aggregate shall treat any day of delay that runs concurrently with another day of delay, regardless of whether it is a delay caused by the Utility Owner or a different Utility Owner, as a single day and not as two days;
- (h) the occurrence of a Significant Reserved Rights event within or immediately adjacent to the Express Lanes or the Design-Build Project Right of Way;
- (i) the Department's lack of good and sufficient title or right to enter or occupy any parcel that the Department owns as of the Agreement Date;

(j) subject to the condition that the Developer has not failed to perform as is required and necessary in the preparation and submission of a Design Exception or Design Waiver, a Design Exception or Design Waiver necessary to perform the Work in accordance with the RFP Conceptual Plans is not timely granted or is revoked;

(k) a Tax Imposition;

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

(m) the issuance by a court having jurisdiction over the Project of any injunction or other order enjoining or stopping 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;

(n) any change in Law taking effect prior to the Project Completion Date that specifically affects the physical construction of the Project Assets in such a way that directly increases the costs of the Work

(o) discovery within or immediately adjacent to the Express Lanes or the Design-Build Right of Way of archeological, paleontological or cultural resources (including historic properties), excluding any such resources known to Developer prior to the Setting Date or that would have become known to Developer by undertaking reasonable investigation prior to the Setting Date;

(p) discovery within or immediately adjacent to the Express Lanes or the Design-Build Right of Way of any threatened or endangered species (regardless of whether the species is listed as threatened or endangered prior to the Setting Date), excluding any such presence of species known to Developer prior to submission of the Proposal or that would have become known to Developer by undertaking reasonable investigation prior to the Setting Date;

(q) any failure to obtain, or delay in obtaining, a USACE 404 Individual Permit within 240 Days of the Developer's submittal of a complete (as determined by the U.S. Army Corps of Engineers) permit application therefor, or any change in the design concept of the Project or any portion thereof resulting from judicial or administrative action taken with respect to a legal challenge to such USACE 404 Individual Permit as compared to the design concept indicated in the alternative that was the subject of such USACE 404 Individual Permit, except to the extent the change in design concept had already been incorporated into the Developer's design schematics;

(r) any failure to obtain, or delay in obtaining, any of the Major Environmental Permits within 240 Days of the Developer's submittal of a complete permit application(s) therefore;

(s) a WMATA-Caused Compensation Delay; or

(t) any change in Law during the Term that, with respect to Interstate 66 between Interstate 495 in Fairfax County and U.S. Route 29 in the Rosslyn area of Arlington County, (i) prior to the imposition of tolling thereon, prohibits tolling of any vehicles with less than two

occupants (other than motorcycles) between 5:30 a.m. and 9:30 a.m. and between 3:00 p.m. and 7:00 p.m. on weekdays or (ii) at any time after the imposition of tolling thereon, permits non-HOV-3 vehicles to travel at reduced tolls or without tolls between 5:30 a.m. and 9:30 a.m. and between 3:00 p.m. and 7:00 p.m. on weekdays.

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

- (1) the negligence or misconduct of a Developer Party; or
- (2) any act or omission by a Developer 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 $(A - (B + C))$, where:

A = the total Contract Price (as defined in the Design-Build Contract);

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

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

Comprehensive I-66 Corridor has the meaning given in the third recital.

Concession Fee means the amount shown in the Initial Base Case Financial Model as the Concession Fee, as may be adjusted at Financial Close pursuant to Section 7.06(b).

Condemnation Certificate means the certificate filed with the appropriate Circuit Court certifying the amount of the offer made by the Developer to the property owner for a Right of Way parcel for which the Developer seeks condemnation.

Construction Cost Index means the Construction Cost Index for the 20-city average as published by Engineering News-Record, for which the base year is 1913 United States Department of Labor, Bureau of Labor Statistics, for which the base year is 1913 = 100, or if such publication ceases to be in existence, a comparable index selected by the Department and approved by Developer, acting reasonably. For example, the Construction Cost Index for April 2015 was 9992.34.

Construction Documentation means all Design Documentation, Approved for Construction 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 is defined in Section 18.05(a).

Construction Notice to Proceed (Construction NTP) means the notice to proceed issued pursuant to Section 8.03(a).

Construction Period means the period commencing on the Agreement Date through the Project Completion Date.

Construction Quality Management Plan means the plan developed by the Developer 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 Attachment 1.3 of the Technical Requirements.

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

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

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

Cost is defined in Section 3.03(b).

Credit Balances means proceeds of Developer Debt and contributed and unreturned cash Equity Contributions, as well as Toll Revenues and interest earnings, that are held as cash and credit balances in accounts held by or on behalf of the Developer, including in Lender accounts and reserve accounts, but excluding the Handback Requirements reserve.

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

Day or day means a calendar day.

DBE Performance Improvement Plan means the plan submitted and approved by the Department pursuant to Section 24.04(a)(v)(B) with respect to improving the Developer's performance.

DBE/SWaM Design-Build Contract Value means the Design-Build Contract price, less the value of the items listed in Attachment 2, as set forth in the Developer's Proposal.

DBE/SWaM Plan means the plan developed by the Developer that defines the Developer's approach to meet the DBE/SWaM participation goal, as described in more detail in Attachment 1.3 of the Technical Requirements.

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) a 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 any time between the Agreement Date and the Project Completion Date, the occurrence of one or more of the following before the Project Completion Date:
 - (i) a Force Majeure Event;
 - (ii) 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;
 - (iii) issuance by a Governmental Authority of competent jurisdiction of an injunction or other order enjoining or estopping either the Department or the Developer from the performance of its rights or obligations under the Agreement;

(iv) 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 developer;

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

(vi) Department-Caused Delay;

(vii) the performance of Work by the Department within or immediately adjacent to the Express Lanes or the Design-Build Right of Way;

(viii) a delay attributable to (i) a Utility Owner's refusal to enter or delay in entering into a two-party agreement on terms customary for utility providers affected by projects of a similar size and scope, *provided*, the Developer has exercised diligent efforts to obtain the Utility Owner's acceptance or (ii) a Utility Owner failing to perform its obligations under a two-party agreement (as described in the Technical Requirements) in accordance with the terms of such agreement, and such failure following the Developer's diligent efforts to obtain the Utility Owner's cooperation;

(ix) any failure to obtain, or delay in obtaining a USACE 404 Individual Permit within 120 Days of the Developer's submittal of a complete (as determined by the U.S. Army Corps of Engineers) permit application therefor, or any change in the design concept of the Project or any portion thereof resulting from judicial or administrative action taken with respect to a legal challenge to such USACE 404 Individual Permit as compared to the design concept indicated in the alternative that was the subject of such USACE 404 Individual Permit, except to the extent the change in design concept had already been incorporated into the Developer's design schematics;

(x) discovery of a Utility which could not have been reasonably discovered pursuant to, or the existence of which could not have been reasonably inferred from, the Developer's examinations, investigations, review, inspections and other activities undertaken prior to the Setting Date.;

(xi) the Department's lack of good and sufficient title or right to enter or occupy any parcel that the Department owns as of the Agreement Date;

(xii) a Design Exception or Design Waiver necessary to perform the Work in accordance with the RFP Conceptual Plans is not timely granted or is revoked *provided* that the Developer has not failed to perform as is required and necessary in submission of the Design Exception or Design Waiver;

(xiii) the discovery of a Significant Hazardous Environmental Condition;

(xiv) any failure to obtain, or delay in obtaining, any of the Major Environmental Permits within 120 Days of the Developer's submittal of a complete permit application therefore; or

(xv) a WMATA-Caused Delay.

(b) with respect to the Operating Period following the Project Completion Date, 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 Developer from the performance of its rights or obligations under the Agreement;

(iii) a Change in Law occurring after the 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 developer;

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

(v) Department-Caused Delay; and

(c) which in either case under clause (a) or (b) above results in a delay or interruption in the performance by the Developer 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 Developer Party;

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

(iii) is caused by any act or omission by a Developer 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 Developer 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 Developer 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 Developer 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 Express 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 Developer to demobilize and terminate Contracts between the Developer and third parties or Affiliates for performance of Work, excluding the Developer's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to third parties or Affiliates.

Demonstration and Performance Testing has the meaning given in the Technical Requirements.

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

Department-Caused Delay means any of the following events, to the extent they result in a material delay or interruption in performance of any obligation under the Agreement, and provided such events are beyond the Developer's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Law of any of the Developer Parties and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by the Developer:

(a) Failure of the Department to issue the Construction Notice to Proceed within 14 Days after the Developer has fulfilled the conditions set forth in Section 8.03;

(b) Department Changes;

(c) Failure of the Department to provide responses to proposed schedules, plans, Design Documentation, condemnation and acquisition packages, and other submittals and matters submitted to the Department after the effective date for which response is required under this Agreement as an express prerequisite to the Developer's right to proceed or act, within the time periods (if any) indicated in this Agreement, or if no time period is indicated, within a reasonable time, taking into consideration the nature, importance and complexity of the submittal or matter, following delivery of notice from the Developer requesting such action in accordance with the terms and requirements of this Agreement;

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

(e) any delay or interference with the Design-Build Work or physical damage to the Design-Build Work directly attributable to the Department's separate contractors working in the Project Right of Way; or

(f) a suspension of the Early Work in accordance with the provisions set forth in Section 10.07(e).

Any proper suspension of Work pursuant to Section 10.07 (other than pursuant to paragraph (e) thereof) will not be considered a Department-Caused Delay.

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 Default is defined in Section 19.03.

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 Protected TIFIA Financial Terms means TIFIA Credit Assistance that contains the terms attached hereto as Exhibit H.

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 Developer as part of the Project that are set forth in the Technical Requirements.

Department Termination Amount means the greater of (i) 100% of the Developer Debt Termination Amount, plus Demobilization Costs, and (ii) the Project Value, plus Demobilization Costs, 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.

Depositary 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 Developer and approved by the Department, to serve as depositary pursuant to the Agreement; provided, that so long as Developer Debt is outstanding, the Depositary will be the Collateral Agent.

Design-Build Contract means the contract, dated as of December 8, 2016 between the Developer and the Design-Build Contractor for the Project, containing provisions that incorporate the required terms set forth in Exhibit E attached hereto, as it may be amended or supplemented.

Design-Build Contract Indexation Date is defined in Section 7.06(b)(iv)(A).

Design-Build Contract Price means the price as defined in the Design-Build Contract

Design-Build Contractor means FAM Construction, LLC, a Delaware limited liability company, and its permitted successors and assigns.

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

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

Design-Build Work means the services provided by the Design-Build Contractor under the Design-Build Contract for the construction of the Project Assets.

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 Developer for the purposes of the performance of the Work or any component thereof in accordance with the Agreement.

Design Exceptions and Design Waivers have meanings given such terms in the Technical Requirements.

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

Design Quality Management Plan means the plan developed by, and set forth in the Proposal of, the Developer 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 Attachment 1.3 of the Technical Requirements.

Developer means I-66 Express Mobility Partners LLC, a Delaware limited liability company, and its permitted successors and assigns.

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

Developer Debt means bona fide indebtedness (including subordinated indebtedness) 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, the repayment of which has specified payment dates and is secured by one or more Financing Assignment including 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 but excluding:

(a) indebtedness of the Developer or any shareholder, member, partner or joint venture member of the Developer that is secured by anything less than the entire Developer's Interest, such as indebtedness secured only by an assignment of economic interest in the Developer or of rights to cash flow or dividends from the Developer;

(b) any increase in indebtedness to the extent resulting from an agreement or other arrangement Developer enters into or first becomes obligated to repay after it was aware (or should have been aware, using reasonable due diligence) of the occurrence or prospective occurrence of an event of termination, including the Developer's receipt of a notice of termination for convenience under Section 20.07 and occurrence of a Department Default of the type entitling the Developer to terminate this Agreement, but excluding a rescue refinancing approved by the Department;

(c) any debt for which notice has not been given to the Department in accordance with the Agreement (together with the related Project Financing Agreements); and

(d) any default interest unless such default interest has accrued as a result of Department Default.

Developer Debt Termination Amount means the aggregate of (without double counting): all principal, interest, banking fees and premiums on financial insurance policies, costs and expenses and other amounts properly incurred owing or outstanding to any person or entity that provides Developer Debt by the Developer under or pursuant to the Project Financing Agreements on the date of expiration of the Agreement, including any Breakage Costs.

Developer Default is defined in Section 19.01.

Developer Default Termination Amount means:

(a) with respect to termination prior to the Service Commencement Date, the lesser of (i) the Completed Work Value and (ii) 80% of the Developer Debt Termination Amount; and

(b) with respect to termination following the Service Commencement Date, the lesser of (i) the Project Value and (ii) 100% of the Developer Debt Termination Amount;

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

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

(2) unpaid and/or accrued default interest;

(3) Breakage Costs;

(4) any other amounts referred to in the definition of Developer Debt that arise as a consequence of the termination of the Agreement or the acceleration of or requirement to mandatorily prepay the Developer Debt (this clause (4) only to be taken into account if the Developer Default Termination Amount is based on the Developer Debt Termination Amount);

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

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

Developer Financial Party means any guarantor of the Developer's material and executory obligations under the Agreement or any Equity Member of the Developer with material financial obligations to the Developer, unless such obligations have been satisfied or are fully secured under the terms of the Equity Funding Guaranties.

Developer Management Plan means the plan developed by the Developer that describes the Developer'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.

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

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

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

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

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

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

Development Contract means any agreement that is entered into by the Department and the Developer 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 Developer and the Department.

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

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

Directive Letter means an order issued by the Department in accordance with Section 14.02 directing the Developer 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 Developer or operators of toll roads in the Commonwealth, except where such State Law or change in State Law or in interpretation or application (1) 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 Developer Party or (2) 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 Developer'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; or

(iii) the exercise by the Commonwealth of its regulatory and police powers.

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 Commonwealth or of any department, commission, board, bureau, agency or other regulatory or governmental authority established under the laws of the Commonwealth.

Dispute means any Claim, dispute, disagreement or controversy between the Department and the Developer 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, repayment of shareholder loan or other payment, monetary or in-kind, made by the Developer to any Equity Members, including from the proceeds of any Refinancing, on account of equity investment in the Developer;

(b) any payment by the Developer 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.

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

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

E-ZPass Interagency Group means an association of toll agencies that operates the E-ZPass electronic toll collection program.

Early Work means the work identified in Exhibit B-3.

Early Work Amount is defined in Section 8.02(e).

Electronic Toll Collection Agreement means the agreement between the Developer and the Department executed in accordance with Exhibit K.

Eligible Security Issuer means any Person which has a credit rating for long-term, unsecured debt of not less than "A-/A3" from one of the Rating Agencies, and has an office in Richmond, Virginia or in New York, New York at which the letter of credit can be presented for payment by facsimile or by electronic means.

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 Commonwealth or Federal Law.

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

Environmental Assessment means the Tier 2 Final Environmental Assessment dated June 21, 2016, including all appendices thereto.

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 Developer that sets forth the Developer's approach to environmental management, including remediation of hazardous substances, as described in more detail in Attachment 1.3 of the Technical Requirements.

Equity Contribution Amount means one or more equity contributions in the aggregate amount shown, as of the date of this Agreement, in the Initial Base Case Financial Model and, as of the Financial Close Date, in the Base Case Financial Model.

Equity Contributions means (without duplication) cash and Equity Funding Agreements, each in form and substance acceptable to the Department in its sole discretion.

Equity Funding Agreements means the equity funding agreements, dated the Financial Close Date, by and among the Equity Sponsors, the Developer and the Collateral Agent, with respect to the capital commitments for the Project.

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

Equity IRR means the nominal post-tax Internal Rate of Return calculated on the Committed Investment on a cash on cash basis over the full Term projected in the Base Case Financial Model.

Equity Letter of Credit is defined in Section 17.08(a).

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

Equity Sponsors means (x) Cintra Global Ltd. and (y) Meridiam Infrastructure North America Fund II, LP, Meridiam Infrastructure North America Fund II (Domestic), LP, Meridiam Infrastructure North America Fund II AIV, LP and Meridiam Infrastructure North America Fund II AIV II, LP.

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

Escrow Agreement means the Escrow Agreement dated as of December 8, 2016 among the Developer, 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 in accordance with its terms.

Escrow Documents is defined in Section 18.05(a) and includes any documents submitted on or after the Agreement Date 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 Refinancing has the meaning set forth in Section 7.08(c).

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 Express Lanes; (b) emergency vehicles and law-enforcement vehicles using the Project for the performance of their duties; and (c) maintenance vehicles of WMATA and its contractors in the performance of its duties related to WMATA facilities located adjacent to the Express Lanes.

Existing Lanes means the GP Lanes that will be impacted by construction of the Project.

Express 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 the use of which is restricted pursuant to Section 5.01.

FAST Act means the Fixing America's Surface Transportation Act of 2015, as amended.

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 S.

Financial Close means satisfaction of all of the conditions set forth in Section 7.06.

Financial Close Adjustment Protocol attached as Exhibit X.

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 210 Days following the Agreement Date, which date may be extended according to the procedures set forth in Section 7.06(c).

Financial Close Liquidated Damages is defined in Section 8.10(a).

Financial Close Security means the irrevocable standby letter of credit in the amount of a minimum of \$20 million and a maximum of \$45 million provided by the Developer to the Department pursuant to Section 6.1.2 of the ITP and issued by an Eligible Security Issuer, with the exact amount of the Financial Close Security being based on \$20 million plus the amount the Developer proposes to be advanced under the terms of the SIB Loan.

Financial Model Auditor means any independent, recognized auditor engaged by the Developer, reasonably 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 Developer and the Department have agreed upon as of the Agreement Date as a basis for the Base Case Financial Model and any updates pursuant to the Agreement but without the data and the information used by or incorporated in the Base Case Financial Model or Base Case Financial Model Update.

Financing Assignment is defined in Section 7.07(a).

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

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

FONSI means the Finding of No Significant Impact related to the Project issued by the FHWA on June 22, 2016.

Force Majeure Event means the occurrence of any of the following events that materially and adversely affects performance of the Developer's obligations, provided that such events (or the effects of such events) could not have been avoided by the exercise of reasonable caution, due diligence, or efforts by the Developer:

(a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project, in each case occurring within the Commonwealth;

(b) any act of terrorism or sabotage that causes direct physical damage to or otherwise directly causes interruption to construction or direct losses during operation of the Project;

(c) nuclear explosion or contamination, in each case causing direct physical damage to the Project or radioactive contamination of the Project;

(d) riot and civil commotion on or in the immediate vicinity of the Project;

(e) flood, earthquake, hurricane, tornado and other significant storm or weather occurrence, in each case that causes direct physical damage to the Project; and

(f) fire or explosion not attributable to the Developer or any Developer Party that directly impacts a material element of the physical improvements to the Project or that materially impacts performance of the Work.

General Assembly means the General Assembly of the Commonwealth.

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.

Good Faith Efforts means the adequate demonstrated effort required by the Developer and its Contractors to achieve the DBE and SWaM goals or other requirements in Section 24.04, as set forth in Section 24.06.

Good Industry Practice means the industry practices and standards that would be exercised by a prudent and experienced developer, 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 and the USACE 404 Individual Permit.

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 Lanes means the general purpose traffic lanes (in either or both directions) along the I-66 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 of the Developer in accordance with GAAP, including any interest income the Developer 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 Developer 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 Developer pursuant to Section 22.05; minus
- (f) total credits and refunds of Toll Revenues made by the Developer to customers and users on account of Toll Revenue previously collected.

Handback Period is defined in Section 20.02(f).

Handback Requirements is defined in Section 4.6 of the Technical Requirements.

Handback Reserve Account is defined in Section 20.02(e).

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 Developer 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 Developer 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 Express 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 Developer that describes its approach to complying with the Department's geographic labor and veterans hiring preference workplan, approved by the FHWA on October 7, 2015.

I-66 Corridor has the meaning given in the fourth recital.

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

Initial Base Case Financial Model means the Financial Model Formulas and the assumptions and information, including, but not limited to, projections and calculations with respect to revenues, expenses, the repayment of Developer 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 design and construction schedule, proposed by the Developer and submitted to the Department, which is attached as Exhibit B-2.

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

Initial Pre-Refinancing Equity IRR means nominal post-tax Internal Rate of Return on Committed Investment on a cash on cash basis over the full Term projected in the Base Case Financial Model or the Base Case Financial Model Update with all refinancing assumptions turned off.

Initial Project Financing Agreements means the Project Agreements so identified in Exhibit N.

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 Commonwealth 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 Developer 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 Commonwealth);

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 V.

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

Intermediate Milestones means the P&R Milestone and the Route 28 Signalization Milestone.

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

ITP means the documents titled Instructions to Proposers with respect to the Project issued by the Department on July 29, 2016 as amended, revised, supplemented or otherwise modified from time to time.

Key Member means (a) the Developer and the Design-Build Contractor with respect to the Design-Build Work or (b) the Developer and the O&M Contractor with respect to the O&M Work.

Key Personnel means the individuals designated by a Proposer in its Technical Proposal in response to Exhibit B, Section 3.2.5 of the ITP.

Known Pre-Existing Hazardous Substances means Hazardous Substances:

- (a) identified in Exhibit R;
- (b) which the Developer should have known were present within the Project Right of Way based on the contents of Exhibit R, as of the Agreement Date; and
- (c) which were actually known by the Developer to be present within the Project Right of Way as of the Agreement Date.

Lane Closure Liquidated Damages is defined in Section 8.14.

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 or 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 7.07(a)(i).

Lenders' Base Case means the base case prepared by the Lenders' Traffic Advisor in connection with the underwriting of the initial Senior Developer Debt.

Lenders' Low Case means the low case prepared by the Lenders' Traffic Advisor in connection with the underwriting of the initial Senior Developer Debt.

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

- (a) is payable within three Business Days 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 Developer) 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 Developer;

(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 Developer 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 Developer) 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.

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 Developer 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 9.03(b) and the Technical Requirements.

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

List of Project Financing Agreements and Financing Assignments means Exhibit N.

List of Required Items or **LORI List** means an itemized list of Work that remains to be completed with respect to the Project Assets after Service Commencement has been achieved and before Project Completion, 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.

Local Worker means a person whose primary residence is within or adjacent to the county(ies), city(ies), region and/or area impacted by the construction or operation of the Project. Local Workers include those individuals living in the following counties: Fairfax, Arlington, Prince William, Loudoun, Stafford, Fauquier, Culpeper, Rappahannock, Warren and Clarke.

Lock-up Period means the period commencing on the Agreement Date and ending on the second anniversary of the Project Completion Date.

Long Stop Date means the date that is 365 Days following the Project Completion Date; 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 (including legal 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 Developer that sets forth the Developer'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 Environmental Permits means (i) Virginia Department of Environmental Quality Wetland Permits (Section 401 of CWA) and (ii) the Virginia Marine Resource Commission Permit.

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 this Agreement as set forth in Section 17.08(e).

Major Maintenance Reserve Fund means a deposit account established by the Developer 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.

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).

Milestone Liquidated Damages is defined in Section 8.10(b).

Monthly Progress Reports means those reports prepared by the Developer 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 the Environmental Assessment and the FONSI.

Net Cost Impact means the aggregate value of any net increase in the Developer's costs (including the Developer's Allocable Costs to the extent applicable), reflected on an annual basis, directly attributable to a Compensation Event, as compared with what the Developer's costs (including the Developer'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 Developer. 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 Developer 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 Developer'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 Developer (excluding any mitigation of costs subtracted from Net Cost Impact for the same Compensation Event).

Nominal Equity IRR means a blended nominal post-tax rate of return on contributed unreturned Equity Contributions and Subordinate Debt over the full Term (excluding potential extensions of the Term) equal to the percentage therefor shown in the Base Case Financial Model at Financial Close.

Non-Compliance Points means the points that may be assessed for Performance Shortfalls, as set forth in Exhibits U-1 and U-2.

Non-Compliance Points Liquidated Damages has the meaning given in Section 11.05(a).

Non-Compliance Points Table means the table attached as Exhibits U-1 and U-2 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-Permitted Closure is defined in Section 8.14.

Non-Reimbursable Developer Damages means that portion of any Developer Damages previously paid to the Developer that compensated the Developer 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 Right of Way (ROW) Acquisition means a notice issued by the Department, providing the Developer 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 Developer and the O&M Contractor, to the extent that the O&M Work is not self-performed by the Developer, 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 the Developer or any Person entering into a Contract with the Developer to perform 30% or more of the O&M Work.

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.

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 Developer 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 and prudently incurred costs incurred and paid for by the Developer in connection with the performance of the Work during the Operating Period, including:

(a) (i) costs for operation and maintenance and consumables, (ii) payments under any lease (other than a financing lease constituting Developer 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) Permit Fee payments to the Department (other than Transit Funding Payments and Support for Corridor Improvements), (ix) payment of Department Share of Net Cost Saving, (x) the Developer's reasonable Allocable Costs, (xi) 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, and (xii) any other reasonable expense paid for the enhancement, expansion, major maintenance, repair, reconstruction, rehabilitation, renewal and replacement of the Project.

(b) 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 Developer, (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, or (vi) liquidated damages payable pursuant to the Agreement.

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

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

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.

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

OSPS Improvement Plan is defined in Section 5.07(a).

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.

P&R Facilities means the park-and-ride facilities to be delivered by the Developer pursuant to the Technical Requirements.

P&R Milestone means a minimum of 960 spaces at or near Balls Ford or Gainesville (University Boulevard) P&R lots to support the Transportation Management Plan during construction.

PABs means private activity bonds allocated and issued pursuant to Section 142(a) (15) and (m) of the Internal Revenue Code of 1986, as amended.

PABs Issuer means VSBFA.

Participation Performance Improvement Plan has the meaning given in Section 24.04(c)(v)(B).

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 Commonwealth in accordance with the Laws of the Commonwealth 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 (i) the Equity Funding Guaranties, the Design-Build Performance Security, the Design-Build Work Guarantee, the Major Maintenance Performance Security, any Performance Bond, and a Letter of Credit or (ii) 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 this Agreement.

Performance Shortfalls are those breaches or failures of the Developer in the performance of its duties which creates incidents for which the Department may assess Non-Compliance Points in accordance with Exhibits U-1 and U-2.

Permit is defined in Section 4.01.

Permit Fee means the payments received by the Department as compensation for the Department’s grant to the Developer of the Permit, as set forth in Exhibit J.

Permitted Encumbrance means, with respect to the Project:

- (a) the rights and interests of the Developer under the Agreement;
- (b) 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);

(c) 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 Developer and the Department under the Agreement;

(d) 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; and

(e) any right reserved to or vested in any Governmental Authority (other than the Department) by any statutory provision.

Permitted Vehicles means (a) any vehicle with two axles or more 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 (1) Exempt Vehicles and (2) any multi-axle vehicle that consists of a truck-tractor/straight truck power unit and a single trailer.

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 that is planned by the Developer and the terms of which are included in the Initial Base Case Financial Model.

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

Pre-Existing Structure means a Structure that exists within the Project Right of Way prior to the Agreement Date.

Preferred Proposer has the meaning given such term in the ITP.

Project means the development, design, financing, construction, operation, maintenance and tolling of the Project Assets and the development, design, financing, and construction of the Transferred Project Assets, all as more particularly described in Exhibit B-1.

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

Project Assets means the Express Lanes and other assets (including Transferred Project Assets until such time as they are transferred under this Agreement) constructed, maintained or held by the Developer pursuant to the Agreement (or any applicable portion of such assets).

Project Completion 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).

Project Completion Certificate means the certificate issued by the Department pursuant to Section 8.09(c).

Project Completion Date means the date which is no later than August 31, 2022, as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement, and as indicated on the Project Completion Certificate; provided, however, that in no event will the Project Completion Date be later than six months after the Service Commencement Date.

Project Completion Liquidated Damages is defined in Section 8.10(c).

Project Development Plans means the project development plans developed by the Developer 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 Section 33.2-1528 of the Code of Virginia.

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

Project Financing Agreements means the Financing Assignments and any other documents evidencing Developer 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 Right of Way or **Right of Way (ROW)** means any real property within the I-66 Corridor (which term is inclusive of all estates and interests in real property, including easements), which is the more inclusive of the following:

- (a) necessary for performance of the Work, including temporary and permanent easements, and ownership and operation of the Project; or
- (b) shown on the approved ROW Acquisition and Relocation Plan.

Project ROW Acquisition Work means the Work associated with acquisition of the Project Right of Way, other than that Project Right of Way currently owned by the Department (which will be made available to the Developer) 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.

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 the sum of (i) fair market value of the projected Distributions for the remainder of the Term without taking into consideration any terminations pursuant to Article 20 and (ii) the fair market value of Developer Debt outstanding as of the date of the calculation; such sum will include Developer Damages for adverse Net Cost Impacts and Net Revenue Impacts accruing after the effective date of termination from Compensation Events occurring prior to termination, determined according to the appraisal procedures set forth in Section 20.11.

Proposal has the meaning given in the ITP.

Proposal Due Date has the meaning given in the ITP.

Proprietary Intellectual Property means any Intellectual Property that is patented or copyrighted by the Developer, 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 Developer, 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 Developer or any of its Contractors, excluding traffic data from the Project pursuant to Section 18.04(a).

Public Funds Amount means \$0.

Qualified Proposer means a Proposer that received the Department's Request for Proposals following review of Part Two of the Department's Request for Qualifications.

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

Railroad Easements is defined in Section 8.05(g).

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

Rating Base Case means the base case(s), prepared by a Rating Agency, which is utilized to establish the final rating for Senior Developer Debt and the TIFIA Credit Assistance.

Rating Case means the low case(s), prepared by a Rating Agency, which is utilized to establish the final rating for Senior Developer Debt and the TIFIA Credit Assistance.

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

(a) any amendment, variation, novation or supplement of any Developer Debt, Project Financing Agreement or Financing Assignment that results in a change in the amount owed for Developer Debt;

(b) the issuance by the Developer of any Developer Debt other than the Developer Debt incurred pursuant to the 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 Developer Debt, Project Financing Agreement or Financing Assignment or the creation or granting of any other form of benefit or interest in any Developer Debt, Project Financing Agreement or Financing Assignment, or the revenues, assets or other contracts of the Developer whether by way of security or otherwise; or

(d) any other arrangement put in place by the Developer 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 Developer Debt incurred or committed on or prior to the Agreement Date, that is not part of any planned refinancing.

Refinancing Gain means, for any Refinancing, other than an Exempt Refinancing and other than as set forth below, an amount equal to the greater of zero and the amount equal to $(A - B) - C$, where:

A = the net present value of the Distributions to be made over the remaining Term following the Refinancing, as projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and any previous Refinancings which resulted in no Refinancing Gain (other than any Exempt Refinancing under Section 7.08(c)(ii)) being paid to the Department and using the relevant Base Case Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing);

The intention is to share in incremental increases in Distributions above the Base Case Financial Model projections of Distributions resulting solely from the initial financing and Refinancings. Among other things, the Parties will (a) include in Distributions under factor "A" of the Refinancing Gain definition changes to any Distributions made prior to the date of

Refinancing or projected to be made, resulting from changes to the financing terms (including changes to equity funding arrangements resulting therefrom) as compared to the Base Case Financial Model, and (b) adjust Distributions under factor “a” of the Refinancing Gain definition to reflect changes in equity contributions paid or projected to be paid to the Developer resulting from changes to the financing terms as compared to the Base Case Financial Model.

B = the net present value of the Distributions to be made over the remaining Term following the Refinancing, as projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing or any previous Refinancings which resulted in no Refinancing Gain (other than any Exempt Refinancing under Section 7.08(c)(ii)) being paid to the Department and using the Base Case Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing); and

C = any adjustment equal to the aggregate Distributions that would be required to increase the pre-Refinancing Equity IRR to the Nominal Equity IRR, calculated immediately prior to (and without giving effect to) the Refinancing.

Remaining PABs Proceeds means the aggregate of PABs proceeds received on the Financial Close Date minus all amounts contemplated as per the Initial Base Case Financial Model to be paid on the Financial Close Date.

Remedial Actions is defined in Section 16.01(b).

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

Representative means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, other Person 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 Developer 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 Developer 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 Developer as required solely for operation of the Project. For avoidance of doubt, if the Developer 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 Developer 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 Charge Engineer means the individual identified by the Developer, who must be a registered Professional Engineer in the Commonwealth of Virginia and who will communicate regularly with the Department and will be vested with the authority to act on behalf of the Developer, and who is responsible for (i) rejecting or approving both the engineering and construction work in progress and the final product, (ii) ensuring all engineering services are performed by professionals properly licensed in the Commonwealth of Virginia and plans are signed and sealed by such professional, (iii) meeting the Developer's obligations under the contract, and (iv) avoiding and resolving disputes.

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)(iii).

Revenue Sharing Payments means those payments required to be made by the Developer to the Department pursuant to Section 7.04.

RFP Conceptual Plans means the schematic drawings used as the basis for the Request for Proposals that were developed by the Department in coordination with the Tier 2 NEPA Environmental Assessment and the I-66 Interchange Justification Report and its supporting technical documents, and are available at <http://transform66.org>.

Route 28 Signalization Milestone means improvements on Route 28 that eliminate four signals (at the EC Lawrence Park entrance, at the Braddock Road/Walney Road intersection, and two signals at the I-66/route 28 interchange).

ROW Acquisition and Relocation Plan means the plan developed by the Developer that defines the approach to acquisition of the Project Right of Way 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 Right of Way 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 Right of Way 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 Service Commencement Date that directs the Developer 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.

Schedule Impact Analysis (SIA) has the meaning given in the Technical Requirements.

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

Segmental Construction Notice to Proceed (SCNTP) means the notice to proceed issued pursuant to Section 8.03(d).

Semi-Annual Period has the meaning given in Exhibit J.

Senior Developer Debt means Developer Debt secured by a Lien on the Developer's Interest that is senior to or on parity with any other Lien on the Developer's Interest.

Senior Loan Agreement means a loan agreement, dated the Financial Close Date, to be entered between the PABs Issuer and the Developer, with respect to the initial financing of the Project.

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 therefor set forth in Section 8.08(c).

Service Commencement Certificate means the certificate issued by the Department pursuant to Section 8.08.

Service Commencement Date means the date on which Service Commencement is achieved, as indicated in the Service Commencement Notice to Proceed.

Service Commencement Notice to Proceed has the meaning ascribed thereto in Section 8.08(c)(i).

Setting Date means the date that is 21 Business Days prior to the Proposal Due Date posted in the ITP.

Shareholder Loan means any Subordinated Debt made by any Equity Members to the Developer.

SIB Loan has the meaning ascribed thereto in Section 7.06(d).

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 Agreement 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 use by the Developer or the suspension or substantial reduction of toll collections for a period in excess of (A) 180 consecutive Days; or (B) 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 Developer 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 Developer Debt Termination Amount, (b) all amounts at par paid by the Equity Members in the form of Equity Contributions up to and until the termination date less all amounts received by the Equity Members from the Developer as Distributions up to the termination date, (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 received and paid in respect of such Significant Force Majeure Event.

Significant Force Majeure Termination Notice is defined in Section 20.03.

Significant Hazardous Environmental Condition means during the Construction Period the presence on, in or under the Project Right of Way of Unknown Pre-Existing Hazardous Substances, Third-Party Hazardous Substances or Known Pre-Existing Hazardous Substances of a scale and scope materially greater than identified in Exhibit R, and where such scale and scope materially and adversely affects the Developer's ability to meet the Project Completion Date notwithstanding the Developer's exercise of reasonably diligent efforts to mitigate or cure the material and adverse impact on Developer's ability to meet the Project Completion Date.

Significant Reserved Rights means the exercise by the Department of any of its Reserved Rights that materially and adversely affect the Developer's (1) right to impose, charge, collect and enforce tolls and incidental charges in accordance with Section 5.01 or (2) ability to perform its obligations under this Agreement.

Six-Year Improvement Program (SYIP) means the CTB's approved allocation of funding in accordance with Article 1.1, Chapter 1, Title 33.2 of the Code of Virginia.

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

Software means (a) computer instructions, including programs, routines and databases and applications supplied, procured or developed by the Developer 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).

State Highway means any highway designated a State Highway pursuant to Title 33.2, Chapter 3, 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 Commonwealth, the CTB, the Department or any other agency, instrumentality or political subdivision of the Commonwealth.

Steering Committee means the executive-level committee established by the Developer 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.

Stipend Payment Agreement has the meaning given such term in the ITP.

Structure is defined in Section 3.14.1 of the Technical Requirements.

Subordinate Debt means (a) Affiliate Debt or Shareholder Loans or (b) any other Developer 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 Developer Debt constituting loans, guaranties and other credit support under TIFIA.

Substituted Developer means any person or entity selected by the Lenders (acting through the Collateral Agent) and approved by the Department in accordance with the Direct Agreement to perform the Developer's obligations and succeed to the Developer's Interests after any such Lender, or any such Person, acquires the Developer'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.

Support for Corridor Improvements means \$350,000,000 on a present value basis computed at a 6.14% discount rate over the term of this Agreement that must be paid by the Developer to the Department to support various improvements to the I-66 corridor, as set forth more fully in the Base Case Financial Model.

SWaM Performance Improvement Plan is the plan submitted and approved by the Department pursuant to Sections 24.04(b)(v)(B) with respect to improving the Developer's performance.

Task is defined in Section 9.03(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 Internal Revenue Code of 1986, as amended), customs duties, permit fees, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind whatsoever payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not including in each case utility rates or rents.

Tax Imposition means:

(a) any state or local property tax or similar ad valorem tax or charge (including property taxes under Section 58.1-3203 of the Code of Virginia, as amended from time to time) or recordation tax on a deed, release or other document recorded in connection with the Agreement, unless recorded by or at the behest of the Developer; 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 Commonwealth or any county, city or town of the Commonwealth with respect to Toll Revenues paid to or collected by the Developer 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 Developer's Interest or of any interest in the Developer.

Technical Requirements means Exhibit C (including all Attachments thereto), as the same may be revised in accordance with the Agreement.

Term is defined in Section 3.05.

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 Right of Way by a Person other than a Developer Party (including, without limitation, the Department).

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

TIFIA Credit Assistance means funding made available to the Developer under the TIFIA Loan Documentation.

TIFIA Lender means the United States Department of Transportation.

TIFIA Loan Documentation means a loan agreement between the Developer and the TIFIA Lender pursuant to which 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), together with any related agreements and documents delivered therewith.

Toll Revenues means:

(a) all amounts received by or on behalf of the Developer 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 Developer receives as contractual liquidated or other contract damages with respect to any of the foregoing revenues.

Total Financing Amount means the sum of the Equity Contribution Amount, the initial principal amount of the PABs, the Benchmark TIFIA Credit Assistance amount and other Developer Debt (including Shareholder Loans) at Financial Close. The Total Financing Amount will 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 the Developer, 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).

Transferred Project Assets means those assets listed in Exhibit O that are to be designed, financed, and constructed by the Developer and transferred to Department at Project Completion.

Transit Funding Payments means those payments required to be made by Developer to the Department in accordance with Section 7.03.

Transition Plan is defined in Section 20.01.

Transportation Management Plan (TMP) is defined in Section 8.12(a).

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

Trustee means the trustee under the trust indenture relating to the PABs.

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

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 Developer 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.

USACE 404 Individual Permit means the permit required by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act.

Utilities Plan means the plan developed by the Developer 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 within the Project Right of Way.

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 Project Agreements means the Agreement, the Escrow Agreement and the Electronic Toll Collection Agreement.

Veteran means any person that meets the definition of "veteran" in either 5 USC §2108 or 38 USC § 101. For the purpose of this Agreement, veterans must reside in the Commonwealth to be considered part of the veteran workforce.

Violation Processing Services Agreement means an agreement the Developer and the Department may enter into to govern utilization of the Department's violation processing system in accordance with Section 5.01(f)(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).

Warranty Period is defined in Section 8.11(a).

WMATA-Caused Compensation Delay is defined in Section 8.05(f).

WMATA-Caused Delay is defined in Section 8.05(f).

WMATA Easement Area means the area described in the 1991 Easement.

WMATA Easement Impacts means impacts to WMATA arising from Developer's performance of Work within the WMATA Easement Area.

WMATA Incidental Impacts means impacts to WMATA's transit operations as a result of Developer's Work that is not WMATA Work.

WMATA Reimbursable Costs means costs incurred by WMATA to ensure the safety of WMATA's passengers and equipment, and maintenance of WMATA's operating schedules, to the extent those costs are incurred due to WMATA Work, WMATA Easement Impacts, or WMATA Incidental Impacts.

WMATA Work means (i) construction of or work on assets owned by WMATA, or (ii) Work within the WMATA Easement Area.

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 Developer.

Work Product means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Developer 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 Developer 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 Developer.