

**EXHIBIT A**  
**DEFINITIONS**

<b>Acronym</b>	<b>Definition</b>
AASHTO	American Association of State Highway and Transportation Officials
AFC	Approved for Construction
CGL	Commercial General Liability
CTB	Commonwealth Transportation Board
DBE/SWaM	Disadvantaged Business Enterprise/Small, Women- and Minority-owned Business Enterprise
EEO	Equal Employment Opportunity
ERC	Elizabeth River Crossings LLC
ERCO	Elizabeth River Crossings Opco, LLC
ETTM	Electronic Toll and Traffic Management
FHWA	Federal Highway Administration
GAAP	Generally Accepted Accounting Principles
IRP	Independent Review Panel
ITS	Intelligent Transportation System
NEPA	National Environmental Policy Act
PABs	Private Activity Bonds
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (Public Law 109-59)
SFP	Solicitation for Conceptual Proposals
SWaM	Small Woman-Owned and Minority Business
TIA	Time Impact Analysis
TIFIA	Transportation Infrastructure Finance and Innovation Act of 1998
TMS	Traffic Management System
USDOT	United States Department of Transportation
VPSTF	Virginia Petroleum Storage Tank Fund

**Act** is defined in the first Recital to the Agreement.

**Additional Work Options** means each item described on Exhibit B-7 that may, at the election of the Concessionaire, be added to the scope of the DB Work for a fixed adjustment to the Contract Sum as specified in Exhibit B-7.

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

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

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

**Agreement** or **Design-Build Contract** means this Design-Build Contract Relating to the Downtown Tunnel/Midtown Tunnel/MLK Extension Project, dated as of the Agreement Date, and all exhibits and schedules hereto, as amended or supplemented 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.

**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 or developing, permitting, designing, financing, constructing, installing, equipping, operating, maintaining, tolling, repairing, reconstructing, restoring, rehabilitating, renewing or replacing the Project or the Concessionaire's timely fulfillment of its obligations under the Project Agreements.

**Allocable Costs** means:

- (a) for services performed using Department or Concessionaire personnel, materials and equipment, the sum of:
  - (i) an amount equal to the fully burdened hourly rate (including overhead and fringe benefits) of each employee providing such services multiplied by the actual number of hours such employee performs such services; plus
  - (ii) the cost of all materials used, including sales taxes, freight and delivery charges and any allowable discounts; plus
  - (iii) reasonable and documented out-of-pocket costs and expenses of each employee (including travel, meals and lodging costs), subject to any limitations and requirements on such costs and expenses set forth in the Department's travel guidelines; plus
  - (iv) the costs for the use, operating, maintenance, fuel, storage and other costs of all deployed tools (excluding small tools) and equipment, calculated at hourly rates determined from the most current volume of the Rental Rate Blue Book published by Nielsen/DATAQUEST, Inc. of Palo Alto,

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California, or its successors, or at any lesser hourly rate the Department may approve from time to time in its sole discretion, without area adjustment, but with equipment life adjustment made in accordance with the rate adjustment tables, *provided*, that if rates are not published for a specific type of tool or equipment, the Department will establish a rate for it that is consistent with its cost and use in the industry.

- (b) if the services are performed by a contractor under contract with the Department or the Concessionaire, the sum of:
  - (i) the amount owing under such contract; *provided*, that if the contract is an Affiliate Contract, the lesser of the contract amount or the amount that would be reasonably obtained in an arm's length transaction for comparable services with a person that is not an Affiliate; plus
  - (ii) the amount to reimburse the Department or the Concessionaire for the actual and documented costs of administering the contract, but not to exceed 10% of the value of the contract; plus
  - (iii) all costs the Department or the Concessionaire reasonably incurs to enforce or pursue remedies for the contractor's failure to perform in accordance with the contract, except in the case of a contract that is an Affiliate Contract.

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

**Applicable Standards** means those codes and standards listed in the Scope Document and the Technical Requirements; provided, however, that if any portion of such codes and standards conflicts with or is less stringent than applicable Laws or other requirements in the Contract Documents, such conflicting or less stringent portions of such standards shall not be deemed "applicable."

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

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

**Back-To-Back Agreement** is defined in the Recitals to the Agreement.

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

**Base Case Financial Model** means the Initial Base Case Financial Model updated by the Concessionaire pursuant to Section 6.01(b) of the Comprehensive Agreement.

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

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

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

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

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

**CA Existing Downtown Tunnels Scheduled Substantial Completion Date** means the date that is 1,576 Days following the Financial Close Date, as such date may be extended for Delay Events from time to time pursuant to the Comprehensive Agreement.

**CA Existing Midtown Tunnels Scheduled Substantial Completion Date** means the date that is 2,219 Days following the Financial Close Date, as such date may be extended for Delay Events from time to time pursuant to the Comprehensive Agreement.

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

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

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

**CA Guaranteed Substantial Completion Date** means the date of the last CA Scheduled Substantial Completion Date to occur, as such date may be extended for Delay Events from time to time pursuant to the Comprehensive Agreement.

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

**CA New Midtown Tunnel Scheduled Substantial Completion Date** means the date that is 1,716 Days following the Financial Close Date, as such date may be extended for Delay Events from time to time pursuant to the Comprehensive Agreement.

**CA New MLK Extension Scheduled Substantial Completion Date** means the date that is 1,715 Days following the Financial Close Date, as such date may be extended for Delay Events from time to time pursuant to the Comprehensive Agreement.

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

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

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

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

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

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

**CA Term** is the term of the Comprehensive Agreement, as defined in Section 4.02(a) of the CA.

**Change in Control** means (a) the Transfer of 50% or more of the equity interests in the Concessionaire or any of the Persons comprising the DB Contractor, as applicable, 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

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of the Concessionaire or any of the Persons comprising the DB Contractor, as applicable, or a material aspect of its business. A change in the power to direct or control or cause the direction or control of the management of a shareholder, member, partner or joint venture member of the Concessionaire or any of the Persons comprising the DB Contractor, as applicable, may constitute a Change in Control of the Concessionaire or any of the Persons comprising the DB Contractor, as applicable, if such shareholder, member, partner or joint venture member possesses the power to direct or control or cause the direction or control of the management of the Concessionaire or any of the Persons comprising the DB Contractor, as applicable; provided, that the following will not constitute a Change in Control:

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

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contemplated by the definition clause (b) of Affiliate) or (ii) any fund or entity managed directly or indirectly by a shareholder, member or partner of the Concessionaire or any Affiliate or any of the Persons comprising the DB Contractor or any Affiliate, as applicable.

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

**Change Order Proposal** is defined in Section 14.05(b).

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

**Chief Engineer** means the Department's Chief Engineer.

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

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

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

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

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

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

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

**Compensation Event** means any of the following events, in each case to the extent the Comprehensive Agreement entitles the Concessionaire to Concessionaire Damages and the Agreement entitles the DB Contractor to a Scope Change Order adjusting the Contract Sum:

- (a) Department-Caused Delays;
- (b) [not used]
- (c) the development or implementation of any Department Change pursuant to the Agreement;

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- (d) any Discriminatory Change in Law;
- (e) one or more injunctions or other legal proceedings enjoining or estopping the Concessionaire from the performance of its obligations pursuant to the Comprehensive Agreement, in any case for more than 30 days in the aggregate;
- (f) [not used]
- (g) [not used]
- (h) discovery of archeological, paleontological or cultural resources on the Project Right of Way, excluding any such resources known to the DB Contractor on the Agreement Date;
- (i) a failure to relocate, or a delay in relocating, Utilities by a Qualifying Utility, to the extent provided under Section 14.01(f)(i);
- (j) a failure to obtain, or a delay in obtaining, any Major Permit, to the extent provided under Section 14.01(f)(i);
- (k) a failure to obtain, or delay in obtaining, the acquisition of parcels identified in the ROW Cost and Acquisition Baseline Schedule, to the extent provided under Section 14.01(f)(i);
- (l) a failure to obtain, or delay in obtaining, Governmental Approvals from FHWA, to the extent provided under Section 14.01(f)(i);
- (m) changes in the Joint Permit Application that imposes conditions that directly and materially adversely impact the DB Work, to the extent provided under Section 14.01(f)(ii);
- (n) discovery of man-made, subsurface structures within the New Midtown Tunnel alignment, excluding any such structures known to the DB Contractor on the Agreement Date and to the extent provided under Section 14.01(f)(iii); or
- (o) an exercise by the Department of its Reserved Rights within the Project Right of Way, unless the Agreement expressly provides that such exercise will not entitle the DB Contractor to the Contract Sum adjustment.

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

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

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



**Comprehensive Agreement** or **CA** means the Comprehensive Agreement Relating to the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project, dated as of the CA Agreement Date, between the Concessionaire and the Department, and all exhibits and schedules thereto, as supplemented or further amended from time to time.

**Conceptual Proposal** is defined in the Recitals to the Agreement.

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

**Concessionaire Approval** means the right of the Concessionaire to review and approve such items designated in the Agreement and other Contract Documents as requiring Concessionaire's approval (which approval by the Concessionaire may be contingent upon its receipt of the Department's approval to the extent required under the Comprehensive Agreement or as otherwise designated in the Agreement or other Contract Documents). The DB Contractor shall submit items of DB Work subject to Concessionaire Approval by the date specified in the Agreement or in another Contract Document (or if a date is not specified, when DB Contractor desires), and the Concessionaire shall provide its written approval or denial thereof within 25 Days of such submission, unless another time period for such approval is specified in the Agreement or in the applicable Contract Document. If the Concessionaire determines to deny its approval, it shall provide a brief summary of the reasons for its determination. If the Concessionaire does not respond within the time allotted, Concessionaire Approval shall be deemed to have been given unless otherwise provided in the Agreement or other applicable Contract Document with respect to the approval of such item. Unless the Parties expressly agree otherwise in writing, Concessionaire Approval of any aspect of the DB Work (whether deemed or actual) shall not affect the DB Contractor's obligation to provide the complete Project in accordance with the requirements of the Agreement or any of the DB Contractor's other obligations hereunder, or change the scope of DB Work set forth in the Scope Document, or reduce, increase or waive the DB Contractor's obligations under the Agreement and its independent responsibility for performance of the DB Work hereunder or for any acts or omissions of the DB Contractor's design professionals or other Subcontractors engaged by DB Contractor to perform the DB Work, or constitute a waiver of the Concessionaire's rights with respect thereto. Each Concessionaire Approval is given by the Concessionaire in reliance upon, and subject to, full and satisfactory performance by the DB Contractor of its obligations hereunder.

**Concessionaire-Caused Delay** means:

- (a) a delay by the Concessionaire in performing any of its obligations pursuant to the Agreement; or
- (b) performance of work by the Concessionaire or any of the Concessionaire Contractors within the Project Right of Way that delays the DB Work;

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

- (1) the submission of incomplete documentation for the Concessionaire’s review;
- (2) consumption of available Float;
- (3) submittals or requests that are “deemed approved” if no response is provided within the applicable timeframe;
- (4) Force Majeure Events; or
- (5) Department-Caused Delays.

**Concessionaire Contractors** means contractors engaged by the Concessionaire or its designees at the Project Right of Way, including the Tolling Contractor and the O&M Contractor, if any, but excluding the DB Contractor and its Subcontractors.

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

**Concessionaire Debt** means (without duplication) any bona fide indebtedness (including, but not limited to, PABs, State or TIFIA loans, guaranties and credit support, subordinated indebtedness and all such obligations arising under such indebtedness) related to the Project for or in respect of funds borrowed (including bona fide indebtedness with respect to any financial insurance issued for funds borrowed) or for the value of goods or services rendered or received. Concessionaire Debt includes principal, capitalized interest, accrued interest, customary and reasonable lender, financial insurer, agent and trustee fees, costs, expenses and premiums with respect thereto, payment obligations under interest rate and inflation rate hedging agreements or other derivative facilities with respect thereto, reimbursement obligations with respect thereto, lease financing obligations, and Breakage Costs. Concessionaire Debt excludes any increase in indebtedness to the extent resulting from an agreement or other arrangement the Concessionaire enters into or first becomes obligated to repay after the occurrence of an event of termination giving rise to an obligation of the Department to pay termination compensation, including the Concessionaire’s receipt of a notice of termination by the Department or the Concessionaire’s declaration of a Department Default of the type entitling the Concessionaire to terminate the Comprehensive Agreement, as applicable; *provided*, that Concessionaire Debt will include any increase in indebtedness resulting from a Refinancing. In addition, no indebtedness will constitute Concessionaire Debt unless and until the Department is provided with notice thereof and any related funding agreements and security documents in accordance with the Comprehensive Agreement. For the purposes of termination compensation under the Comprehensive Agreement, the term Concessionaire Debt does not include Shareholder Loans (as defined in the CA).

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

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

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

**Concessionaire Party** means the Concessionaire and any Affiliate and any agents, Representatives, officers, directors, employees, Contractors, suppliers and materialmen of the Concessionaire or any Affiliate, and will include the DB Contractor, the Tolling Contractor and the O&M Contractor, if any.

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

**Concessionaire Representative** means an individual designated by the Concessionaire to administer the Agreement on behalf of the Concessionaire.

**Concessionaire Review** means the right of the Concessionaire to review such items designated in the Agreement or other Contract Documents as requiring Concessionaire's review, or inspect an aspect of the DB Work (which review may include review or inspection by the Department to the extent required under the Comprehensive Agreement or otherwise designated in the Agreement or other Contract Documents). The DB Contractor shall submit items of DB Work subject to Concessionaire Review to the Concessionaire by the applicable date specified in the Agreement or in another Contract Document (or if a date is not specified, when the DB Contractor desires), and the Concessionaire shall provide its comments thereon, if any, within 25 Days of such submission, unless another time period is specified in the Agreement or other applicable Contract Document. If the Concessionaire fails to respond within the time allotted, Concessionaire Review shall be deemed to have been made, unless otherwise provided in the Agreement or other applicable Contract Document with respect to such item. Unless the Parties expressly agree otherwise in writing, Concessionaire Review of any aspect of the DB Work (whether deemed or actual) shall not affect the DB Contractor's obligation to provide the complete Project in accordance with the requirements of the Agreement or any of DB Contractor's other obligations hereunder, or change the scope of DB Work set forth in the Scope Document, or reduce, increase or waive DB Contractor's obligations under the Agreement and its independent responsibility for performance of the DB Work hereunder or for any acts or omissions of the DB Contractor's design professionals or other Subcontractors engaged by DB Contractor to perform the DB Work, or constitute a waiver of the Concessionaire's rights with respect thereto.

**Construction Quality Management Plan** means the plan developed by the DB Contractor that provides the organization, relationship and procedures that define clear lines of

responsibility and well defined approach for meeting Project requirements and innovation in construction approach, as described in more detail in the Technical Requirements.

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

**Construction Manager** means an individual designated and employed by the DB Contractor to supervise and coordinate the prosecution of the DB Work at the Project ROW on behalf of the DB Contractor. The Construction Manager may or may not be the same individual as the Project Director.

**Construction Segment** means any segment or portion of the Project Assets which the DB Contractor and the Concessionaire have designated pursuant to the Agreement for the purpose of scheduling rehabilitation or construction of the Project Assets, subject to the approval of the Department under the CA.

**Construction Segment Notice to Proceed** is defined in Section 8.03(b) of the CA.

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

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

**Contract Documents** means, collectively, the Agreement, the Comprehensive Agreement, the Interface Agreement, the Design Documentation, all Scope Change Orders, the Operating Manual, the DB Contractor Management Plan, Document Management Plan, Quality Management System Plan, Design Quality Management Plan, DBE/SWaM Plan, Construction Quality Management Plan, Maintenance of the Traffic Plan, Environmental Management Plan, ROW Acquisition and Relocation Plan, Health, Safety and Security Plan, Utilities Plan, Public Information and Communications Plan, DB Rehabilitation Plan and any other plan which the DB Contractor is required to prepare and/or comply with under the Agreement.

**Contract Sum** is defined in Section 7.01.

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

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

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

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

**DB Construction Segment NTP** means the notice to proceed issued by the Concessionaire to the DB Contractor to commence the portion to the DB Work relating to the applicable Construction Segment.

**DB Contractor** is defined in the Preamble.

**DB Contractor Default** is defined in Section 19.01.

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

**DB Contractor Party** means the DB Contractor and any Affiliate and any agents, Representatives, officers, directors, employees, Subcontractors, suppliers and materialmen of the DB Contractor or any Affiliate.

**DB Defect** means: (a) when used with respect to the performance of labor or service items of the DB Work, such items are not provided in a workmanlike manner in accordance with the requirements of the Agreement; (b) when used with respect to structures, materials and equipment items of the DB Work, such items that are (i) not new and of good quality or free from improper workmanship and defects in accordance with the requirements of the Agreement, or (ii) have not been designed or engineered in accordance with the requirements of the Agreement; and (c) in general, DB Work that does not conform to the requirements of the Agreement.

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

**DB Design Work NTP** means the notice to proceed issued by the Concessionaire to the DB Contractor to commence the portion of the DB Work relating to the design of the Project.

**DB Direct Agreement** means the Direct Agreement, dated as of the date hereof, among the Concessionaire, the DB Contractor and the Collateral Agent, substantially in the form of Exhibit N.

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

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

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

**DB Key Members** means the joint venture members of the DB Contractor.

**DB Indemnitee** means the Concessionaire, the State Indemnitees, the Lenders, the Independent Engineer, each of their subsidiaries and Affiliates, and the directors, officers, agents, employees and successors.

**DB LNTP** is defined in Section 8.02(a).

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

**DB Work** means, collectively, the planning, design, procurement, construction and rehabilitation, commissioning, completion and any other services and work identified in the Agreement to be performed by the DB Contractor, including the services, equipment and materials to be provided by the DB Contractor for rehabilitation of the Existing Project Assets and the construction of the New Project Assets, as described generally in Exhibit CC (*Scope of Work*) and Exhibits B-1 through B-5; with respect to specific elements of the DB Work described in Exhibit R (*DB Rehabilitation Plan*) and Exhibit A to the Interface Agreement, the scope of such elements shall be as set forth in and limited by such exhibits.

**Delay Event** means one or more of the following events:

- (i) the implementation of a Department Change;
- (ii) a Force Majeure Event;
- (iii) discovery of a Differing Site Condition;
- (iv) a failure to obtain, or a delay in obtaining, any Major Permit by the deadlines specified in the Permit Baseline Schedule;
- (v) a Change in Law that imposes additional requirements that directly and materially adversely impact performance of the DB Work;
- (vi) issuance by a Governmental Authority of competent jurisdiction of an injunction or other order enjoining or estopping either the Department or the Concessionaire from the performance of its obligations under the Comprehensive Agreement;
- (vii) a failure to obtain, or a delay in obtaining, the Railroad Easements within the deadlines specified in the Railroad Easement Baseline Schedule;

- (viii) a failure to obtain, or delay in obtaining, the acquisition of parcels by the deadlines specified in the ROW Cost and Acquisition Baseline Schedule;
- (ix) a failure to relocate, or delay in relocating, utilities by a Qualifying Utility by the deadlines specified in the Utility Baseline Schedule;
- (x) a Department-Caused Delay; or
- (xi) a failure to obtain, or delay in obtaining, Governmental Approvals from FHWA;

which in each case results in a delay or interruption in the performance by the DB Contractor of any obligation under the Agreement, *provided*, however, that such delay or the cause thereof is not specifically dealt with in the Agreement, and excluding any delay that:

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

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

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

**Department-Caused Delay** means:

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

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

- (1) the submission of incomplete documentation for the Department's review;
- (2) required review of Governmental Approvals from other Governmental Authorities necessary or appropriate to the Department's review;
- (3) failure to obtain appropriation and allocation of public funds;
- (4) consumption of available Float;

- (5) submittals or requests that are “deemed approved” if no response is provided within the applicable timeframe; or
- (6) Force Majeure Events.

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

**Department Convenience Termination Amount** is defined in the CA.

**Department Default** is defined in Section 19.04 of the CA.

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

**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 of the Comprehensive Agreement, except as part of maintenance, repair, reconstruction, rehabilitation, restoration or replacement of any improvements and assets.

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

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

**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 DB Contractor for the purposes of the performance of the DB Work or any component thereof in accordance with the Agreement.

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

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



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

**Designer** means Parsons Brinckerhoff, Inc.

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

**Deviation** is defined in Section 14.03(a).

**Differing Site Conditions** means any:

- (a) Unknown Geotechnical Conditions;
- (b) threatened or endangered species whose habitat is protected by Law on the Project Right of Way;
- (c) archaeological, paleontological or cultural resources on the Project Right of Way;
- (d) Unknown Pre-Existing Hazardous Substances;
- (e) Hazardous Substances spilled or otherwise placed on the Project Right of Way subsequent to the Agreement Date other than by a DB Contractor Party in the course of performing the DB Work; or
- (f) Utilities in the Project Right of Way, excluding any such Utilities known to the DB Contractor on the Agreement Date;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ERC** is defined in the Recitals.

**ERCO** is defined in the Preamble.

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

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

**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.

**ETTM System Design Documentation** means the Design Documentation relating to the ETTM System.

**eVA** means the State's electronic vendor registration and purchasing system, available at [www.eva.state.va.us](http://www.eva.state.va.us).

**Excess Rehabilitation Work** is defined in Section 8.11(c)(ii).

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

**Existing Downtown Tunnels Scheduled Substantial Completion Date** means the date that is 1,576 Days following the Financial Close Date, as such date may be extended for Delay Events from time to time pursuant to the Agreement.

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

**Existing Midtown Tunnel Scheduled Substantial Completion Date** means the date that is 2,219 Days following the Financial Close Date, as such date may be extended for Delay Events from time to time pursuant to the Agreement.

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

**Existing Project Assets Tolling and O&M Work Commencement Date** means the date that the Department issues the notice to proceed pursuant to Section 9.02(a) of the CA.

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

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

**Federal Requirements** means the provisions required to be part of federal aid construction projects, including the provisions set forth in Exhibit BB.

**Final Acceptance** means the occurrence of all the events and satisfaction of all the conditions with respect to final acceptance of each Project Asset as set forth in Section 8.09(b), as and when confirmed by the Concessionaire’s countersignature of the applicable Final Acceptance Certificate.

**Final Acceptance Certificate** means a certificate, substantially in the form of Exhibit MM, signed by the DB Contractor and countersigned by the Concessionaire in accordance with Section 8.09(b)(x) evidencing the Concessionaire’s determination that Final Acceptance has occurred for the applicable Project Asset.

**Final As-Built Drawings and Construction Documentation** means all drawings, specifications and other documentation which accurately and completely represent in detail the physical placement of all Project components and systems as installed and/or constructed as part of the DB Work and as they exist at the time of Final Completion.

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

**Final Payment** is defined in Section 7.02(d).

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

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

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

**Financing Assignment** is defined in Section 7.04(a) of the Comprehensive Agreement.

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

**FM Termination Payment** is defined in Section 20.03(c).

**Force Account Provisions** means Exhibit X.

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

- (a) the negligence or misconduct of a DB Contractor Party;
- (b) any act or omission by a DB Contractor Party in breach of the provisions of the Agreement;
- (c) Delay Events, other than Force Majeure Events;
- (d) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of a DB Contractor Party;
- (e) any strike, labor dispute or labor protest directed solely at a DB Contractor Party or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of a DB Contractor Party;
- (f) an earthquake after Substantial Completion of a New Project Asset that causes ground accelerations below the AASHTO bridge design standards for the site of the Project that affects such New Project Asset or, in the case of the New

Midtown Tunnel, the minimum design standards for the New Midtown Tunnel required by the Technical Requirements;

- (g) floods after Substantial Completion of the applicable Project Asset below the base flood levels specified in the Technical Requirements that affects such Project Asset;
- (h) fire that affects the New Midtown Tunnel after Substantial Completion of the New Midtown Tunnel below the minimum design standards specified in the Technical Requirements;
- (i) market conditions and economic conditions affecting the availability, supply, or cost of labor, equipment and materials, construction equipment and supplies, or commodities;
- (j) market conditions and economic conditions affecting traffic volumes, traffic revenue or the DB Contractor's ability to meet its financial obligations for the Project; or
- (k) weather conditions, other than hurricane force winds, tornadoes and floods to the extent not excluded by the above.

**Fuel Adjustment Provisions** means Exhibit S.

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

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

**Good Faith Efforts** means the adequate demonstrated efforts required by the DB Contractor and its Subcontractors to achieve the DBE and SWaM goals or other requirements in Section 24.03, as set forth in Exhibit AA.

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

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

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

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

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

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

**Guarantors** means (i) Skanska AB, a corporation organized under the laws of Sweden and (ii) Kiewit Infrastructure Group Inc., a corporation organized under the laws of the State of Delaware.

**Guaranties** is defined in Section 17.08(b)(i).

**Hazardous Environmental Condition** means the presence of any Hazardous Substances on, in, under or emanating from the Project Right of Way that is present at concentrations or in quantities that: (a) may present an imminent or substantial safety or health hazard for the Department, the Concessionaire, the DB Contactor 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 DB Contractor that defines the health, safety and security activities required during the design and construction of the Project, as described in more detail in the Technical Requirements.

**Implementation Guidelines** is defined in the Recitals to the Agreement.

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

**Indemnifying Party** is defined in Section 15.03(a).

**Indemnitee** means any of the DB Indemnitees or the Concessionaire Indemnitees.

**Initial Baseline Schedule** means the initial construction schedule proposed by the DB Contractor and approved by the Concessionaire, which is attached as Exhibit B-1.

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

**Institutional Lender** means:

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



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- (c) any “qualified institutional buyer” under Rule 144(a) of the U.S. Securities Act of 1933 or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms; or
- (d) any other financial institution or entity designated by the Concessionaire and approved by the Department (*provided*, that such institution or entity, in its activity under the Agreement, is acceptable under then current guidelines and practices of the State);

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

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

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

**Interface Agreement** means the Interface Agreement Relating to the Downtown Tunnel/Midtown Tunnel/MLK Extension Project, dated as of December 5, 2011, among the DB Contractor, the Tolling Contractor and the Concessionaire.

**Interim Agreement** is defined in the Recitals to the Agreement.

**JAMS** means JAMS, The Resolution Experts, a private alternative dispute resolution provider.

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

**Known Geotechnical Conditions** means Geotechnical Conditions:

- (a) identified in the Known Site Conditions Baseline Report;
- (b) which the DB Contractor should have known were present within the Project Right of Way based on the Geotechnical Conditions identified in the Known Site Conditions Baseline Report as of the Agreement Date; and

- (c) which were actually known by the DB Contractor to be present within the Project Right of Way as of the Agreement Date.

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

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

**Known Pre-Existing Hazardous Substances Report** means Exhibit Q.

**Known Site Conditions Baseline Report** means Exhibit P.

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

**Latent Defect** means any DB Defect that becomes known after the date of Final Acceptance with respect to the applicable Project Asset and could not have been discovered by the Concessionaire during the applicable Warranty Period upon reasonable inspection; provided that any DB Defect that became known to the Concessionaire during the applicable Warranty Period but was not the subject of a warranty claim during such Warranty Period cannot be claimed by the Concessionaire as “Latent Defect.”

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

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

**Lenders’ Technical Advisor** means the engineering company or companies appointed from time to time by the Lenders to act on their behalf in connection with the review of the Project and the Work, including the DB Work.

**Letter of Credit** means an irrevocable, transferable standby letter of credit in the form of Exhibit G, issued by a Qualified Issuer.

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**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).

**Limitation of Liability** means the limitation of liability described in Section 25.09(c).

**Limited Notice to Proceed (LNTP)** is defined in Section 8.02(a).

**Long Stop Date** means the date that is 545 Days after the Guaranteed Substantial Completion Date (as such date may be extended from time to time pursuant to the Agreement).

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

**Maximum Cumulative Contract Sum Payment** means a cap, designated on each Project Asset Maximum Cumulative Drawdown Schedule, on the aggregate amount of payments of the Contract Sum that can be made to the DB Contractor hereunder as of any month during the performance of the DB Work in respect of the applicable Project Asset, as it may be modified from time to time pursuant to terms of the Agreement.

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

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

**Monthly Progress Report** means those reports prepared by the DB Contractor that are required pursuant to the Agreement for monthly delivery to the Concessionaire that reflect the status of and information related to the development of the Project and shall contain the following information: (a) a description of the DB Contractor's and all Subcontractors' activities and design, engineering, procurement and construction progress as compared with the Project Schedule (and, at the request of the Concessionaire, an updated Project Schedule), (b) a detailed description of the DB Work which has been completed, including photographs showing the progress of the DB Work, and the progress payments which have been received, as compared with the Payment and Values Schedule, (c) the status of material and equipment deliveries, (d) copies of quality assurance documents and test results, (e) safety statistics, including details of any incidents involving Hazardous Substances and activities relating to environmental matters and public relations, (f) all EEO and other documentation required for federal-aid projects, to the extent applicable, and (g) all other information reasonably requested by the Concessionaire or the Department relating to the DB Work.

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

**NEPA Documents** means the following:

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

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

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

31.205-44 (training and education costs), and Section 31.205-47 (costs related to legal and other proceedings); and

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

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

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

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

**New Midtown Tunnel Scheduled Substantial Completion Date** means the date that is 1,716 Days from the Financial Close Deadline, as such date may be extended for Delay Events from time to time pursuant to the Agreement.

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

**New MLK Extension Scheduled Substantial Completion Date** means the date that is 1,715 Days from the Financial Close Deadline, as such date may be extended for Delay Events from time to time pursuant to the Agreement.

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

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

**Non-Conforming Work** means the DB 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 Concessionaire.

**Notice to Proceed** means any DB Design Work NTP or any DB Construction Segment NTP issued by the Concessionaire to the DB Contractor pursuant to the Agreement.

**Notice of Project Asset Substantial Completion** is defined in Section 8.08(e).

**Notice of Project Asset Final Acceptance** is defined in Section 8.09(c).

**OCIP** is defined in Section 17.01(a).

**OCIP Administrator** means the administrator to be selected by the Concessionaire prior to the Financial Close Date.

**OCIP Manual** means the manual to be prepared prior to the Financial Close Date.

**Open Book Basis** means allowing the Department and the Concessionaire 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 or adjustments thereto, including assumptions as to costs of the DB 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 or the Concessionaire to satisfy itself as to the reasonableness and accuracy of the amount.

**Operating Manual** is defined in Section 8.12(h).

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

**Operations and Maintenance Contractor (O&M Contractor)** means Elizabeth River Crossings Opco, LLC or any other Person with whom the Concessionaire contracts to perform all or a substantial portion of the O&M Work.

**Operations and Maintenance Work (O&M Work)** means any and all operation, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Project, except to the extent such Work is furnished pursuant to the Agreement.

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

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

**Parties** means the DB Contractor and the Concessionaire.

**Payment and Values Schedule** means the schedule of values of various items of the DB Work based upon which Scheduled Payments of the Contract Sum will be made by Concessionaire as set forth in Exhibit EE hereto, as the same may be adjusted pursuant to the Agreement. The DB Contractor shall also incorporate in the Payment and Values Schedule the Public Funds Amount paid to the Concessionaire from the Department pursuant to the CA and from the Concessionaire to the DB Contractor in accordance with the Agreement.

**Performance Security** means the Letter of Credit and the Guaranties.

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

**Permit Baseline Schedule** means the schedule for obtaining the Governmental Approvals for the Project, as set forth in Exhibit B-4.

**Permitted Closure** means:

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

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

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

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

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

(f) any other closure authorized by the Agreement, including a closure permitted under the DB Rehabilitation Plan.

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

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

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

(c) inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's or other similar Liens arising in the ordinary course of business of the

Project or the Department's performance of its obligations hereunder, and either (A) not delinquent or (B) which are being contested by the Department (but only for so long as such contestation effectively postpones enforcement of any such Lien);

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

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

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

**Phase 2 Project Deliverables** means the deliverables required to be submitted to the Concessionaire pursuant to the Back-To-Back Agreement relating to the Concessionaire's deliverables to the Department during Phase 2 of the Interim Agreement.

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

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

**Project** means the development, design and construction of the New Midtown Tunnel and the New MLK Extension; and the rehabilitation of the Existing Midtown Tunnel and Existing Downtown Tunnels; all as more particularly described in Exhibit C, Exhibits B-1 through B-5 and the Technical Requirements.

**Project Agreements** means the Comprehensive Agreement, the Lenders' Direct Agreement and all other agreements identified in Section 3.02 of the CA, as those agreements may be amended, superseded or replaced during the CA Term.

**Project Asset Maximum Cumulative Drawdown Schedule** means the schedule attached as Exhibit FF setting forth the Maximum Cumulative Contract Sum Payment stated as of any month during the performance of the DB Work in respect of a given Project Asset.



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

**Project Director** means an individual designated and employed by the DB Contractor to administer and act under the Agreement on behalf of the DB Contractor.

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

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

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

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

**Project Purposes** means the development, permitting, design, acquisition, construction, rehabilitation, installation and equipping of the Project, in each case in accordance with the Agreement.

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

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

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

**Project Schedule Update** means the schedule attached to the Monthly Progress Report submitted by the DB Contractor to the Concessionaire, as described in more detail in the Agreement and the Technical Requirements.

**Proposal Request** is defined in Section 14.05(b).

**Proprietary Intellectual Property** means any Intellectual Property that is patented or copyrighted by the DB Contractor 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 DB Contractor, 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.

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

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

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

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

**Qualified Issuer** means a U.S. commercial bank (or a foreign bank with a U.S. branch acceptable to the Concessionaire) having total assets of at least \$10 billion and a senior unsecured long-term credit rating (unenhanced by third-party support) equivalent to "A-" or better as determined by Standard and Poor's Ratings Services or its successor, and "A3" or better as determined by Moody's Investors Service Inc. or its successor.

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

**Quality Manager** means an individual designated and employed by the DB Contractor who is responsible for overseeing quality assurance and quality control of the DB Work and for ensuring that the DB Work conforms to the requirements of the Agreement.

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

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

**Railroad Easement Baseline Schedule** means the schedule attached as Exhibit B-2.

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

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

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

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

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

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

**Replacement Agreements** has the meaning ascribed thereto in the Lenders' 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 Concessionaire pursuant to Section 14.02(b) of the CA.

**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 Comprehensive Agreement and the collection, use and enjoyment of Toll Revenues as provided in the Comprehensive Agreement. The Reserved Rights reserved to the Department include but are not limited to all the following:

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- (a) all rights to finance, design, construct, use, possess, operate and maintain any passenger or freight rail facility, roads and highways (State and local) or other mode of transportation in the Airspace, including tunnels, flyovers, frontage roads, crossings, interchanges and fixed guide-ways, and to grant to others such rights;
- (b) all rights to install, use, lease, grant indefeasible rights of use, sell and derive revenues from electrical and fiber optic conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity, existing over, on, under or adjacent to any portion of the Project Right of Way installed by anyone, whether before or after the CA Agreement Date, and all software which executes such equipment and hardware and related documentation, except for the capacity of any such improvement installed by the Concessionaire that is necessary for and devoted exclusively to the operation of the Project;
- (c) all rights to use, sell and derive revenues from ETTM Data and other data generated from operation of the Project or any ETTM System, except use of such data as required solely for operation of the Project and enforcement and collection of tolls and incidental charges;
- (d) all ownership, possession and control of, and all rights to develop, use, operate, lease, sell and derive revenues from, the Airspace, including development and operation of service areas, rest areas and any other office, retail, commercial, industrial, residential, retail or mixed use real estate project within the Airspace;
- (e) all rights to install, use and derive information, services, capabilities and revenues from ITS, except installation and use of any such systems and applications by the Concessionaire as required solely for operation of the Project. For avoidance of doubt, if the Concessionaire installs any such systems or applications, all use and capacity thereof not necessary for operation of the Project is reserved to, and will be the sole property of, the Department;
- (f) all rights to use, install, maintain, repair, or authorize the use, installation, maintenance or repair, of Utilities;
- (g) all rights to market, distribute, sell and derive revenues from any goods, products or merchandise depicting, utilizing or exploiting any name, image, logo, caricature or other representation, in any form or medium, of the Department or the Project, or that may be confused with those of the Department or the Project;
- (h) all rights and opportunities to grant to others sponsorship and advertising rights with respect to the Project or any portion thereof, except for a non-exclusive license for the Concessionaire to use the name in connection with Project operations;

- (i) all rights to revenues and profits derived from the right or ability of electronic toll account customers to use their accounts or transponders to purchase services or goods other than payment of tolls;
- (j) any other commercial or noncommercial development or use of the Airspace or electronic toll collection technology for other than operation of the Project; and
- (k) all ownership, possession and control of, and all rights to develop, use, lease, sell and derive revenues from, carbon credits or other environmental benefits generated by or resulting from the development, use, operation or maintenance of the Project.

**ROW Acquisition Plan** means the plan developed by the DB Contractor that defines the approach to acquisition of the ROW, as described in more detail in the Technical Requirements.

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

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

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

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

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

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

**Scheduled Payment** is defined in Section 7.02.

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

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

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

**Schedule of Submittals** means the schedule of submittals prepared by the DB Contractor in accordance with Section 8.04(b), as approved by the Concessionaire and the Department.

**Scope Change** is defined in Section 14.05(a).

**Scope Change Order** means a written order substantially in the form of Exhibit II delineating changes in the DB Work agreed upon between the Concessionaire and the DB Contractor and issued by the DB Contractor under the Agreement.

**Scope Document** means the general description of the Project, the DB Work and the services to be performed by the DB Contractor as set forth in Exhibit CC; if the Concessionaire elects to require the DB Contractor to undertake one or more of the Additional Work Options set forth on Exhibit B-7, the Scope Document shall be deemed amended to include the scope of the elected Additional Work Option(s) as described in Exhibit B-7.

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

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

**Software** means (a) computer instructions, including programs, routines and databases and applications supplied, procured or developed by the Concessionaire or the Department in connection with the operation of the Project or in connection with Reserved Rights, including but not limited to that which monitors, controls or executes on ETTM Equipment or ITS equipment or hardware, and (b) all modifications, updates and revisions made to the matter described in

clause (a) above, including those made to correct errors or to support new models of computer equipment and/or new releases of operating systems.

**Standard of Care** means the performance of the DB Work in accordance with prudent industry practices, methods, techniques and standards, and using the degree of care, skill and diligence, that would be expected to be exercised by a prudent, skilled and experienced contractor engaged in the same types of undertakings as the Project under the same or similar circumstances and conditions as those applying to the design, development and construction of the Project, all applicable Laws, all applicable Governmental Approvals, all Applicable Standards, the requirements of the Comprehensive Agreement, the Technical Requirements, terms of insurance policies and the other requirements specified or referred to herein or in other Contract Documents.

**State** is defined in the first Recital.

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

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

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

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

**Subcontract** means a contract between the DB Contractor and a Subcontractor for the performance or supply of any portion of the DB Work by such Subcontractor.

**Subcontractor** means any Person with whom the DB Contractor has entered into any contract to perform any part of the DB Work or provide any materials, equipment or supplies in connection with the DB Work, on behalf of the DB Contractor, and any other Person with whom any Subcontractor has further subcontracted any part of the DB Work, at all tiers.

**Substantial Completion** means the satisfaction of the criteria for completion of the DB Work for the applicable Project Asset as set forth in Section 8.08(c), as and when confirmed by the Concessionaire's countersignature of the applicable Substantial Completion Certificate.

**Substantial Completion Certificate** means a certificate, substantially in the form of Exhibit LL, signed by the DB Contractor and countersigned by the Concessionaire in accordance with Section 8.08(b) and (c)(xi) evidencing the Concessionaire's determination that Substantial Completion has occurred for the applicable Project Asset.

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

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

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

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

**Termination Payment** is defined in Section 20.02(b).

**Termination For Cause** means a termination of the Agreement pursuant to Section 20.05 hereof due to the occurrence of a DB Contractor Default.

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

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

**Time and Date Restrictions** means the restrictions described in Section 3.8 of the Technical Requirements.

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

**Tolling Contractor** means Federal Signal Technologies, LLC.

**Toll Revenues** means:



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

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

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

**TR Dispute** is defined in Section 21.02(a).

**TR Dispute Decision** is defined in Section 21.02(b).

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

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

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

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

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

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

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

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

**Utility Baseline Schedule** means the schedule for relocating the Utilities for the Project, as set forth in Exhibit B-5.

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

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

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

**Virginia Port Authority Lease** means the lease that will be entered into by and among the DB Contractor and the Virginia Port Authority relating to the Project.

**Warranty Period** is defined in Section 8.11(a)(ii).

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

**Work Order** is defined in Section 14.05(e).

**Work Product** means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Concessionaire or the DB Contractor, as applicable, for the Project or the Project Right of Way, including but not limited to

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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), 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, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which the Concessionaire and the DB Contractor mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure and which is not conceived or first reduced to practice for the Project Purposes, such as proprietary financial and pricing information of the Concessionaire or the DB Contractor.