

OPERATING AND SUPPORT SERVICES AGREEMENT

FOR

THE CAPITAL BELTWAY HOT LANES PROJECT

BETWEEN

**CAPITAL BELTWAY EXPRESS LLC,
a Delaware limited liability company**

AND

**TRANSURBAN (USA) OPERATIONS INC.,
a Delaware corporation**

December 19, 2007

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LIST OF EXHIBITS AND SCHEDULES:

EXHIBIT A	Definitions
EXHIBIT B	Initial Budget for FY2008 & FY2009
EXHIBIT C	[RESERVED]
EXHIBIT D	Scope of Services
EXHIBIT E	[RESERVED]

OPERATING AND SUPPORT SERVICES AGREEMENT FOR THE CAPITAL BELTWAY HOT LANES PROJECT (this “Agreement”), entered into as of December 19, 2007 between Capital Beltway Express LLC, a Delaware limited liability company (the “Concessionaire”); and Transurban (USA) Operations Inc., a Delaware corporation (the “Operating Company”).

RECITALS

The Concessionaire and the Virginia Department of Transportation (the “Department”) have entered into an Amended and Restated Comprehensive Agreement relating to the Route 495 Hot Lanes in Virginia Project, dated as of December 19, 2007 (the “ARCA”), under which the Concessionaire, among other things, will construct, operate and maintain the HOT Lanes Project (as defined in the ARCA).

The Concessionaire wishes to appoint the Operating Company to perform the HOT Lanes Operations (as defined in the ARCA) required to be performed by the Concessionaire under the ARCA and certain other services specified herein, and the Operating Company wishes to accept that appointment, subject to, and in accordance with, the terms and conditions of this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

All capitalized terms used herein shall have the respective meanings given to them in this Agreement and in the Schedule of Definitions attached as Exhibit A or, if not defined herein or therein, in the ARCA.

ARTICLE 2

APPOINTMENT OF THE OPERATING COMPANY

The Concessionaire hereby appoints the Operating Company to perform the management, operations, maintenance, administration and other services described herein (the “Services”), subject to the terms, conditions and provisions set forth herein. The Operating Company accepts such appointment and agrees to perform the Services in accordance with the terms, conditions and provisions set forth herein. The Operating Company shall have no interest in or rights under the ARCA or interest in the Project.

ARTICLE 3

OPERATING COMPANY'S RESPONSIBILITIES AND AUTHORITY

Section 3.01 Annual Budget

(a) A copy of the initial Annual Budget for the Project for the period from the date hereof through the end of fiscal year 2008/fiscal year 2009 is attached as Exhibit B, which budget has been approved by the Concessionaire.

(b) For each fiscal year and partial fiscal year from and after July 1, 2009, the Operating Company shall deliver to the Concessionaire an Annual Budget for the Project for such full or partial fiscal year at least 120 days prior to the start of such fiscal year or partial fiscal year. The Operating Company acknowledges and agrees that each such Annual Budget shall be in a form reasonably acceptable to the Concessionaire and the Department and show in reasonable detail all management and coordination expenses payable to the Operating Company under this Agreement. During the Operating Period, such Annual Budget shall show, where appropriate, projected Revenues, operating and maintenance expenses, capital expenses, debt service (identifying separately projected debt service), contributions to individual reserves, projected Total Return on Investment, nominal TRI on Total Invested Project Funds, any projected permit fee payable to the Department under the ARCA, distributions to holders of equity interests in the Concessionaire and other related items for such period on an annual basis and such other information as the Concessionaire or the Department may reasonably require. Each Annual Budget, approved in accordance with this Section, shall be provided by the Operating Company (on behalf of the Concessionaire) to the Department not later than 90 days prior to the start of each fiscal year or partial fiscal year.

(c) Not later than ten (10) Business Days after receipt by the Concessionaire of a proposed Annual Budget, the Concessionaire may deliver a notice (an "Objection Notice") to the Operating Company stating that the Concessionaire objects to any information contained in or omitted from such proposed Annual Budget and setting forth the nature of such objections. With respect to all or any portion of such proposed Annual Budget as to which no Objection Notice is timely delivered, the proposed Annual Budget or such portion thereof will be deemed to have been approved and accepted by the Concessionaire. If an Objection Notice is timely delivered, the Operating Company shall modify the proposed Annual Budget, taking into account the Concessionaire's objections, and shall resubmit the same to the Concessionaire for its approval within five (5) Business Days thereafter, and the Concessionaire may deliver further Objection Notices (if any) within five (5) Business Days thereafter (in which event, the re-submission and review process described above in this sentence shall continue until such Annual Budget is approved and accepted by the Concessionaire or deemed to be so approved and accepted). During any fiscal year, the Operating Company shall have the right at any time subsequent to the approval and acceptance of the Annual Budget for such fiscal year to propose and submit an amended Annual Budget to the Concessionaire for approval. The approval process for such amended Annual Budget shall be as set forth above for Annual Budgets.

(d) In addition, no later than 120 days before the beginning of each fiscal year after the Service Commencement Date, the Operating Company shall annually prepare and provide to

the Concessionaire for its review (in accordance with Section 3.01) a full five-year period maintenance plan on a rolling basis that describes life cycle asset maintenance for the HOT Lanes Project (the "Life Cycle Maintenance Plan"), which shall be subject to approval by the Concessionaire and (following approval by the Concessionaire) the Department. The Life Cycle Maintenance Plan shall include a description of all Major Maintenance to be undertaken during such five-year period, by component, item or discrete project (each a "Task"), the estimated costs and timing relating to each Task, and such other information as may be reasonably requested by the Concessionaire or the Department. The Operating Company shall reasonably consider any changes or additions proposed by the Concessionaire or the Department (as conveyed to the Operating Company through the Concessionaire or directly from the Department) to the proposed Life Cycle Maintenance Plan and modify the Life Cycle Maintenance Plan to reflect those changes and additions which are consistent with Good Industry Practice, applicable Laws, Technical Requirements or Regulatory Approvals, and the Department will approve the Life Cycle Maintenance Plans in accordance with the terms of the ARCA.

Section 3.02 Implementation of Annual Budget and Life Cycle Maintenance Plan

(a) Following approval and acceptance of each Annual Budget by the Concessionaire and each Life Cycle Maintenance Plan by the Concessionaire and Department, the Operating Company shall have the authority, consistent with prudent industry practice to implement such approved Annual Budget and Life Cycle Maintenance Plan in accordance with its terms and to incur expenses or capital expenditures on behalf of the Concessionaire in accordance with the Annual Budget in an aggregate up to 110% of such Approved Budget. The Operating Company shall use its commercially reasonable efforts to implement the provisions of the Approved Budget and Life Cycle Maintenance Plan and shall supervise the day-to-day operations of the Project in accordance with the then-current Annual Budget. Prior to the approval and acceptance of any proposed Annual Budget and following expiration of the immediately preceding Annual Budget, the Operating Company shall have authority to manage the Project in the ordinary course of business, in accordance with the requirements set forth in Section 3.01 and Section 3.02 (b).

(b) In the event that all or any part of an Annual Budget has not been approved at the time the prior year's approved Annual Budget has expired and the Concessionaire has not approved an alternative Annual Budget, the Operating Company shall thereafter operate in accordance with the prior year's Annual Budget (or appropriate portion thereof). If an Annual Budget has not been approved for four consecutive months following the expiration of the last approved Annual Budget and the Concessionaire has not approved an alternative Annual Budget, the Operating Company shall thereafter operate in accordance with the last approved Annual Budget (or appropriate portion thereof), escalated by applying the annual CPI change to each line item.

(c) Notwithstanding the limitations set forth in paragraphs (a) and (b) above and anything to the contrary set forth herein, the Operating Company is authorized to incur any expenses and capital expenditures to the extent required (i) to preserve the public health and safety of the Project, (ii) in order for the Operating Company or the Concessionaire to comply with all applicable Law, (iii) to protect and preserve the Project from imminent or irreparable

harm, (iv) in order for the Operating Company (on behalf of the Concessionaire) to expeditiously carry out the Safety Compliance Order or (v) for the Concessionaire to comply with any of the terms, conditions or provisions of the ARCA or the other Project Agreements, including required capital expenditures to be made by the Concessionaire under the ARCA or the other Project Agreements.

Section 3.03 Preparatory Services Prior to the Work Period

Commencing on the Closing Date, but prior to commencement of the Work Period, the Operating Company, on behalf of the Concessionaire, acknowledges and agrees to be responsible for complying with the Concessionaire's obligations under the ARCA and the other Project Agreements, including preparing for and achieving the Commencement Date so as to be ready to provide all Work Period services pursuant hereto from and after the Commencement Date.

Section 3.04 Management Services During the Work Period

(a) The Operating Company, on behalf of the Concessionaire, shall be responsible for providing or contracting for all services required to be performed during the Work Period in order to manage, coordinate and supervise the Work and comply with the Concessionaire's obligations under the ARCA and the other Project Agreements, including providing required notices to, and meeting with or otherwise maintaining relations with, the Department and the Lenders; all such obligations subject to the limitations set forth in Section 3.01. The services of the Operating Company shall specifically include the following:

(b) The Operating Company shall, during the Work Period, manage, coordinate and supervise the Work carried out by the Design-Build Contractor under the Design-Build Contract.

(c) The Operating Company shall perform all of the duties and obligations associated with a Concessionaire's Project Manager and/or Concessionaire's Field Representative (as applicable) in accordance with the Design-Build Contract and other Project Agreements.

(d) The Operating Company shall review and approve payments to Design-Build Contractor and other parties, as appropriate, in accordance with the terms of the ARCA.

(e) The Operating Company acknowledges and agrees to be responsible for all other obligations and duties of Concessionaire under the Design-Build Contract and the other Project Agreements to the extent such obligations are not required to be performed by Design-Build Contractor under the Design-Build Contract.

Section 3.05 Preparatory Services Prior to the Operating Period

Prior to the Service Commencement Date of the HOT Lanes, the Operating Company, on behalf of the Concessionaire, shall prepare for Service Commencement so as to be ready to provide all Operating Period services pursuant hereto from and after the Service Commencement Date, subject to the limitations set forth in Section 3.01. Without limiting the foregoing, the Operating Company agrees to be responsible for (i) providing oversight and input into design requirements and business process, training, testing and documentation, (ii) providing planning and management services associated with the Concessionaire's approved communications,

public outreach and community education plan during the period prior to the Service Commencement Date, and (iii) as appropriate, obtaining Regulatory Approvals necessary to provide all services set forth in Section 3.06.

Section 3.06 Management and Operation of the HOT Lanes; Operating Period

The Operating Company, on behalf of the Concessionaire, shall be responsible for providing or contracting for all services required to be performed during the Operating Period in order to operate, maintain, repair, renew and restore the HOT Lanes and comply with the Concessionaire's obligations under the ARCA and the other Project Agreements, including providing required notices to, and meeting with or otherwise maintaining relations with, the Department and the Lenders; all such obligations subject to the requirements set forth in Sections 3.01 and 3.02. The services of the Operating Company shall specifically include the following:

(a) Management and Operation of the HOT Lanes. The Operating Company, on behalf of the Concessionaire, shall, from and after the first to occur of the Service Commencement Date and the Final Acceptance Date, manage and operate the HOT Lanes in accordance with the applicable sections of Exhibit U of the ARCA – Scope Document, with all applicable Laws, all Regulatory Approvals, and the terms, conditions and standards set forth in the ARCA and this Agreement, including the operations and maintenance requirements set forth in the Technical Requirements (Exhibit N to the ARCA,). Without limiting the foregoing, the Operating Company agrees to be responsible for the following:

(i) the management and control of traffic on the HOT Lanes, including but not limited to, incident response services and temporary partial or full closures of the HOT Lanes;

(ii) the maintenance, inspection and repair of the HOT Lanes Project and all systems and components thereof, including the ETTM System, including the upgrade, modification, change and replacement thereof, as applicable, in accordance with this Agreement and the operations and maintenance requirements set forth in the Technical Requirements (Exhibit N to the ARCA);

(iii) the operation of the HOT Lanes Project, the ETTM Facilities and the ETTM System and otherwise carrying out the collection and enforcement of tolls and other fees respecting the HOT Lanes, including performing its obligations under the ETC Agreement;

(iv) the management and administration of contracts necessary and incidental to the foregoing activities;

(v) the operation of the customer services staff in accordance with the operations requirements set forth in the Technical Requirements (Exhibit N to the ARCA);

(vi) the planning and management services associated with the Concessionaire's approved marketing and public relations plan during the Operating Period;

(vii) the management of administrative services related to enforcement of toll violations on the HOT Lanes in accordance with the operations requirements set forth in the

Technical Requirements (Exhibit N to the ARCA);

(viii) the maintenance, compliance with and renewal of Regulatory Approvals necessary and incidental to the foregoing activities;

(ix) traffic management, and maintenance and repair responsibilities under clause (i) above in accordance with the Technical Requirements (Exhibit N to the ARCA); and

(x) carrying out activities in accordance with a TMP to be developed by the Operating Company in coordination with the Concessionaire and the Department in accordance with the ARCA.

The Operating Company acknowledges that from time to time the Concessionaire and the Department may agree to changes to the Technical Requirements (Exhibit N to the ARCA and Exhibit U of the ARCA – Scope Document). In the event that either Exhibit N or Exhibit U of the ARCA are amended, the Operating Company will review, comment and provide indicative costs of compliance with the proposed amendment. The Operating Company will use good faith endeavors to agree with the Concessionaire to provide any requisite services in accordance with section 3.07 to comply with the amendment agreed to by the Department.

In the event that the Operating Company is unable to provide or, in the view of Department or the Concessionaire is not an appropriate party to provide, the requisite services to comply with the amendment to either Exhibit N or Exhibit U of the ARCA, then the Operating Company will procure from a suitably qualified and capable third party a proposal to deliver in full the requisite services. The Concessionaire must ensure the services are provided in a timely and appropriate manner no matter who performs the services as determined by the Independent Engineer. Notwithstanding:

- i) the Operating Company acknowledges that the Concessionaire may engage a third party to provide the requisite services in compliance with the amendment; and
- ii) the versions of the Exhibit N or Exhibit U of the ARCA last agreed to by the Concessionaire and Operating Company will continue apply to the Operating Company in the performance of its services hereunder.

The Operating Company further acknowledges that should the Concessionaire accept the proposal to provide the requisite services through the third party, the Operating Company is responsible to ensure all operational interfaces are provided such that the full responsibilities of this agreement are met.

(b) Major Maintenance Work.

(i) The Operating Company, on behalf of the Concessionaire, shall perform, or cause to be performed, all Major Maintenance with respect to the HOT Lanes Project, the ETTM Facilities and the ETTM System on the HOT Lanes Project in accordance with Life Cycle Maintenance Plans approved by the Department. All design and construction Work during the Operating Period must comply with the Technical Requirements.

(ii) Commencing with the date that is five years after the adoption of the Baseline Report in accordance with Section 8.06(b) of the ARCA, and every five years thereafter, the Operating Company shall conduct a reassessment of the physical condition of the HOT Lanes Assets, and prepare an analysis, comparable to the Baseline Report, of the condition the HOT Lanes and all other improvements and assets of the HOT Lanes Project and their physical conditions as of the date of such report as reported in the Baseline Report (or, with respect to any Project Enhancements, their condition upon completion thereof), such analysis to take into account any changes in federal requirements and changes to safety standards. If the condition of any HOT Lanes Asset is determined by the Operating Company, the Department or the Independent Engineer to fall below its assessment rating in the Baseline Report (or the original condition of such Project Enhancement), the Operating Company shall, within 120 days of such assessment, develop and submit to the Concessionaire (and the Concessionaire shall deliver to the Department in accordance with the terms of the ARCA) a plan to restore such HOT Lanes Asset to its baseline or original condition, as applicable, subject to ordinary wear and tear, including a budget, timeline and identification of the funding sources that will be utilized to restore such HOT Lanes Asset.

(iii) The parties hereby agree that any obligation of the Operating Company with respect to Major Maintenance pursuant to this Section 3.05(b) shall not include any Major Maintenance with respect to the Springfield Interchange Phase VIII which shall be subject to the provisions of Section 8.07 of the ARCA.

(c) Police and Enforcement Services. The Operating Company, on behalf of the Concessionaire, will manage the provision of customary police services to be provided by the State and enforcement on the HOT Lanes pursuant to Section 8.10 of the ARCA.

(d) Hazardous Substances Management. The Operating Company, on behalf of the Concessionaire, will manage the Hazardous Substances management services to be provided by the Concessionaire pursuant to Section 8.11 of the ARCA.

(e) Snow and Ice Removal. The Operating Company, on behalf of the Concessionaire, will manage the snow and ice removal services to be provided by the Department and arrange for payment of such services as provided in Section 8.13 of the ARCA.

(f) Other Operations Services. The Operating Company, on behalf of the Concessionaire, will also provide such other administrative and general management services for the ongoing operations of the Concessionaire, including but not limited to: coordination of all financial reporting required by law, under the ARCA or otherwise, including audits and financial services; major marketing and public relations based upon a plan to be developed by the Operating Company and agreed to by the Concessionaire; to the extent requested by the Concessionaire, maintenance of governance documents of the Concessionaire under the Concessionaire LLC Agreement; and handling all legal issues arising under the ARCA, including litigation. The Operating Company will also be responsible for monitoring and providing: asset enhancement services, including the identification of safety enhancements for the HOT Lanes Project; and asset improvements to improve the present value of the HOT Lanes Project.

Section 3.07 Additional Services

The Operating Company shall provide such other additional services from time to time requested by the Concessionaire and agreed to by the Operating Company. Such additional services shall be paid in accordance with Section 9.01.

Section 3.08 Personnel

The Operating Company shall provide and make available as necessary, in accordance with the requirements of the approved Annual Budget all such labor and professional, supervisory, administrative and managerial personnel as are required to perform the Services in accordance with this Agreement. The Operating Company will use reasonable care to select personnel performing the Services during the OSSA Term with requisite experience and skills for the tasks assigned and who meet licensing and certification requirements imposed by applicable Laws. The Operating Company's personnel shall carry out the Operating Company's obligations hereunder using skill, competence and diligence consistent with prudent industry practice for the management, operation and maintenance of a HOT lanes toll road project.

Section 3.09 Subcontracting of Services

(a) The management and coordination of the Work and the operation and maintenance of the HOT Lanes shall, at all times from the Closing Date and continuing during the OSSA Term, be under the direction of the Operating Company, which may perform its management services relating to Work, traffic management, ordinary maintenance and repair, and other responsibilities under this Agreement through use of its own personnel, materials and equipment, or by subcontracting to Persons with the expertise, qualifications, experience, competence, skills and know-how to perform the responsibilities being subcontracted in accordance with all applicable Laws, all Regulatory Approvals and the terms, conditions and standards set forth in this Agreement. Notwithstanding its use of a subcontractor, the Operating Company remains ultimately responsible for the management and coordination of the Work and the operation and maintenance of the HOT Lanes during the OSSA Term in accordance with this Agreement. Any subcontractor shall at all times be subject to the direction and control of the Operating Company and, to the extent specified herein, the Concessionaire, and any delegation to a subcontractor does not relieve the Operating Company of any obligations, duties or liability hereunder.

(b) To the extent that the Operating Company intends to subcontract all or substantially all of its obligations and responsibilities under the Agreement to a subcontractor, the Operating Company shall not engage or appoint such subcontractor unless the Concessionaire and the Department have approved such subcontractor. The Operating Company shall immediately notify the Concessionaire and the Department upon the termination or resignation of such subcontractor. Any agreement between the Operating Company and such subcontractor shall by its terms terminate without penalty at the election of the Department upon three Business Days' notice to such subcontractor upon the termination of this Agreement. No subcontractor shall have any interest in or rights under this Agreement or the Project.

Section 3.10 Obligation to Turn Over HOT Lanes at End of OSSA Term

(a) Not later than 200 Days preceding the end of the OSSA Term, the Operating Company shall develop a plan to assure the orderly transition of the HOT Lanes to the Department or a Department contractor and the Operating Company shall assist the Concessionaire in the development of such plan, which may be directly with the Department, if so instructed by the Concessionaire, until the execution of such plans. Until the last day of the OSSA Term, whether upon expiration or earlier termination, the Operating Company shall cooperate with the Concessionaire in the satisfaction of the Concessionaire's obligations set forth in Sections 16.05 and 16.09 of the ARCA, including providing all tangible property with respect to the Project to the Department.

ARTICLE 4

LIMITATIONS ON AUTHORITY

(a) Other than as set forth or contemplated herein, the Operating Company shall have no authority, without the prior written consent of the Concessionaire (given with the approval of the Supermajority of all Members (as defined in the Concessionaire LLC Agreement), to take any action that requires the consent of the Supermajority of all Members pursuant to Section 6.03 of the Concessionaire LLC Agreement.

ARTICLE 5

STANDARD OF CARE; COOPERATION

Section 5.01 Ethical Standards

(a) The Operating Company has adopted and provided copies to the Concessionaire (and to the Department) of its written policies establishing ethical standards of conduct for all its directors, officers and supervisory or management personnel in dealing with the Department and employment relations. Such policy including any amendments or modifications shall include standards of ethical conduct concerning the following:

(i) Restrictions on gifts and contributions to, and lobbying of, the Department, the CTB and any of their respective commissioners, directors, officers and employees;

(ii) Protection of employees from unethical practices in the selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;

(iii) Protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting of illegal (including the making of a false claim), unethical or unsafe actions or failures to act by the Operating Company or its personnel or any contractors;

(iv) Restrictions on directors, members, officers or supervisory or management personnel of the Operating Company engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Project or employees;

(v) Restrictions on use of an office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director, member, officer or supervisory or management person, rather than primarily for the benefit of the Operating Company or the Project, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

(vi) Adherence to the Department's organizational conflict of interest rules and policies pertaining to the hiring of any consultant which has assisted the Department in connection with the negotiation of this Agreement or the conduct of Oversight Services for the Project.

(b) The Operating Company shall cause its directors, members, officers and supervisory and management personnel, and require those of its contractors, to adhere to and enforce the adopted policy on ethical standards of conduct. The Operating Company shall establish reasonable systems and procedures to promote and monitor compliance with the policy.

Section 5.02 Standard of Performance

The Operating Company shall perform its obligations under this Agreement in accordance with all applicable Laws, all applicable Regulatory Approvals, and, with respect to each obligation hereunder, at the same standards set forth in the ARCA for the Concessionaire, including the operations and maintenance requirements set forth in the Technical Requirements (Exhibit N to the ARCA, as amended from time to time), provided that if there is a conflict between any of the above requirements, the Operating Company shall inform the Concessionaire and Department accordingly, and the parties shall agree in writing on the manner in which the Operating Company shall perform the services hereunder. The Operating Company shall at all times act in good faith and in the best interests of the Concessionaire and its subsidiaries with respect to the Project, and shall carry out its obligations hereunder using skill, competence and diligence consistent with prudent industry practice for such services.

Section 5.03 Cooperation of the Parties.

(a) The Concessionaire and the Operating Company will each reasonably cooperate with each other in the performance of its respective obligations and enforcement of its respective rights and remedies under this Agreement, including providing such other party with assistance and information that is reasonably necessary for such purposes.

ARTICLE 6
CONTRACTING PRACTICES

Section 6.01 Obligation to Refrain from Discrimination

The Operating Company covenants and agrees that it shall not discriminate and it shall require all contractors not to discriminate against any person, or group of persons, on account of age, sex, marital status, race, creed, color, national origin, religion or the presence of any sensory, mental or physical handicap in the management, operation or maintenance of the Project, nor shall the Operating Company establish or permit any such practice or practices of discrimination or segregation with reference to the selection, use, hiring, firing, promotion or termination of employees, contractors, subcontractors and vendors or with reference to the use, occupancy or enjoyment of or access to or toll rates charged for use of the HOT Lanes; *provided*, that the prohibition against discrimination on the basis of sensory, mental or physical handicap shall not apply if the particular disability prevents the proper performance of the particular person involved.

Section 6.02 Third-Party Agreements

The Operating Company shall advise the Concessionaire as to the necessity or desirability of entering into agreements, at Concessionaire's expense, with third parties ("Third-Party Agreements"), to perform the duties Operating Company reasonably deems necessary under the ARCA and this Agreement. At the request of Concessionaire, the Operating Company will obtain competing bids from third parties approved by the Concessionaire. The Operating Company shall endeavor to (i) obtain such Third-Party Agreements on terms no less favorable to Concessionaire than those obtained by Operating Company for comparable services, and (ii) where appropriate, cause such Third-Party Agreements to provide that the members of Concessionaire and the Department shall have rights to examine the books and records of such third parties pertaining to the Concessionaire and the Project.

Section 6.03 Small, Women-Owned and Minority Business (SWAM) and Disadvantaged Business Enterprise (DBE) Reporting

The parties recognize the importance of pursuing, inviting and developing the participation of minority, women-owned and small businesses through the federal DBE program, where applicable. Further, the Operating Company will promote the participation of local small business as well as minority and women owned businesses. The Operating Company will set goals and make a good faith effort to achieve or exceed them in contracts for operating and for goods and services related to operating the HOT Lanes Project. The Operating Company will provide its participation on such matters to the Department, and the Department may include those participation rates, as appropriately adjusted, with its own towards the Commonwealth's long-term goal established pursuant to the Office of the Governor's Executive Order 33 (2006). Such long-term SWAM goal for the Operating Company during the Operating Period shall be 40%.

ARTICLE 7

CONCESSIONAIRE OVERSIGHT

Section 7.01 Right to Oversee Work

The Operating Company acknowledges and agrees that the Department shall have the right at all times during the OSSA Term to carry out Oversight Services with respect to all aspects of the management, maintenance, repair, preservation, modification, operation and administration of the Project, and any Change Orders or Project Enhancements and the performance by the Operating Company of the Services. The Operating Company, at the request of the Concessionaire, agrees to fully cooperate with the Department to facilitate its conduct of Oversight Services. In the course of performing Oversight Services, the Operating Company acknowledges that the Department will use reasonable efforts to minimize the effect and duration of any disruption to or impairment of the Project and may perform Oversight Services in cooperation with the Independent Engineer so as to minimize to the extent reasonably possible duplication or inefficiencies in the performance of such Oversight Services.

Section 7.02 Department Access and Inspection

The Operating Company acknowledges and agrees that the Department and its duly authorized agents and the Independent Engineer shall have unrestricted access at all times to enter upon, inspect, sample, measure and physically test any part of the Project or the Rights of Way. The Operating Company further acknowledges and agrees that the Department shall also have the right, upon reasonable advance written notice to the Operating Company, to inspect financial or other records relating to the Project. If at any time the Operating Company has failed to perform any of its operating or maintenance obligations in any material respect then, in addition to other remedies available under this Agreement and the other Project Agreements, the Operating Company acknowledges and agrees that the Department is entitled to increase the level of its monitoring during the Operating Period, of the HOT Lanes Project, and the Operating Company's compliance with its operation and maintenance obligations under this Agreement until such time as the Operating Company has demonstrated to the Department's reasonable satisfaction that it will perform and is capable of performing its operation and maintenance obligations under this Agreement.

Section 7.03 Inspection and Audit Rights

Subject to this Agreement, the Operating Company shall make available to the Department (or appointed representative), FHWA and Concessionaire, and allow the Concessionaire such access to, such books, records and documents as the Department (or appointed representative), FHWA and Concessionaire may reasonably request in connection with the Project for any purpose related to the Project, this Agreement or the other Project Agreements, including but not limited to monitoring compliance with the terms and conditions of this Agreement and the other Project Agreements.

ARTICLE 8

BOOKS AND RECORDS; REPORTS; INTELLECTUAL PROPERTY; BRANDING

Section 8.01 Books and Records

(a) General. The Operating Company shall maintain or cause to be maintained proper books of records and accounts in which complete and correct entries shall be made of its transactions with respect to the Project in accordance with Generally Accepted Accounting Principles. Such books and records shall be maintained at a location situated within the contiguous United States as designated by the Operating Company by delivery of notice of such location to the Concessionaire.

(b) Availability of Books and Records. All the books and records referred to above in this Section 8.01 shall, upon reasonable notice to Operating Company, be open to inspection and examination by any member of Concessionaire, or any of Concessionaire's other direct or indirect subsidiaries or their representatives, during reasonable business hours, for any purpose reasonably related to such member's interest as a member in such entity during the term of this Agreement and for a period of twelve (12) month period following the expiration or termination of this Agreement, subject to the Concessionaire's right to instruct the Operating Company to obtain confidentiality agreements and other reasonable safeguards against disclosure, for such period of time as the Concessionaire deems reasonable, with respect to any information the disclosure of which the Concessionaire reasonably believes to be in the nature of trade secrets or other information the disclosure of which the Concessionaire in good faith believes is not in the best interests of Concessionaire or could damage Concessionaire or its business; provided, that the Operating Company may disclose information without a confidentiality agreement to the extent required by law or judicial order.

Section 8.02 Reports; Audit and Tax Preparation; GAAP

(a) Reports. The Operating Company shall timely prepare and submit the following reports:

(i) Quarterly Reports. Within sixty (60) days after the end of the first three quarters of each fiscal year, Operating Company shall prepare and deliver to the members of Concessionaire and the Department (1) quarterly financial statements of Concessionaire and its subsidiaries, including a quarterly balance sheet, profit and loss statement and a statement of changes in financial position, and a statement showing distributions to the members of Concessionaire, and (2) such tax estimates as any member of Concessionaire shall reasonably request; and

(ii) Annual Reports. Within ninety (90) days after the end of each fiscal year of Concessionaire during the term of this Agreement, Operating Company shall prepare and deliver to the members of Concessionaire and the Department an annual consolidated audited financial and operating report of Concessionaire, including a consolidated balance sheet, profit and loss statement and a statement of changes in financial position and a statement showing distributions to the members, audited by Concessionaire's independent registered accountants.

(b) Audit and Tax Preparation. The Operating Company shall provide Concessionaire's internal and external accountants with all information required to insure such accountants' ability to complete and issue Concessionaire's annual financial statements and tax returns within ninety (90) days after the end of Concessionaire's fiscal year.

(c) Generally Accepted Accounting Principles. The Operating Company shall maintain and prepare all financial statements and accounts required under this Agreement in accordance with generally accepted accounting principles in the United States of America, consistently applied.

Section 8.03 Ownership of Intellectual Property; Royalties and License Fees

(a) All Proprietary Intellectual Property of Operating Company shall remain exclusively the property of the Operating Company, notwithstanding any delivery of copies thereof to the Concessionaire. Upon the expiration or earlier termination of, or any assignment by the Operating Company of its rights under, this Agreement for any reason whatsoever, the Concessionaire and the Department shall have a nonexclusive, nontransferable, irrevocable fully paid up license to use the Proprietary Intellectual Property of the Operating Company solely in connection with the Project. The Concessionaire shall not at any time sell any such Proprietary Intellectual Property or use or allow any party to use any such Proprietary Intellectual Property for any purpose whatsoever other than in connection with the Project. The Concessionaire shall not disclose any Proprietary Intellectual Property of Operating Company (other than to contractors, subcontractors, employees, attorneys and agents in connection with the Project who agree to be bound by any confidentiality obligations of the Concessionaire relating thereto) and the Concessionaire shall enter into a confidentiality agreement reasonably requested by the Operating Company with respect to any such Proprietary Intellectual Property. The Operating Company shall continue to have a full and complete right to use any and all duplicates or other originals of its Proprietary Intellectual Property in any manner it chooses.

(b) The Operating Company agrees that the Department shall have the right to purchase from the Operating Company a nonexclusive, nontransferable, irrevocable, fully paid up license to use the Proprietary Intellectual Property of Operating Company on any other tolled state highway owned and operated by the Department or other State agency on commercially reasonable terms.

(c) With respect to any Proprietary Intellectual Property owned by a Person other than the Operating Company, Concessionaire or the Department, the Operating Company shall obtain from such owner, concurrently with execution of any contract, subcontract or purchase order with such owner, for Concessionaire and the Department, nonexclusive, nontransferable, irrevocable, fully paid up (other than with respect to ongoing maintenance and support fees) licenses to use such Proprietary Intellectual Property solely in connection with the Project, of at least identical scope, purpose, duration and applicability as the licenses granted by Section 8.03(a) above. The Operating Company shall use commercially reasonable efforts to obtain from such owner a right in favor of the Department to purchase from such owner a nonexclusive, nontransferable, irrevocable, fully paid up (other than with respect to ongoing maintenance and support fees) license to use such owner's Proprietary Intellectual Property on any other tolled state highway owned and operated by the Department or other State agency on commercially

reasonable terms. The limitations on sale and disclosure by Operating Company set forth in Section 8.03(a) above shall also apply to the Operating Company's, Concessionaire's and the Department's licenses in such Proprietary Intellectual Property.

(d) The Operating Company's name and/or other trademarks, service marks and tradenames owned by the Operating Company (the "Operating Company Marks") may appear on some of the Project-related assets, including supplies, materials, stationery and similar consumable items on the last day of the term hereof. The Parties agree that the Operating Company shall remain the owner of the Operating Company Marks at the end of the term hereof, and the Operating Company may remove, at its expense, the Operating Company Marks prior to the end of the term. The Concessionaire acknowledges and agrees that it shall have no right, title, interest or license in the Operating Company Marks.

(e) The Operating Company shall comply with the Concessionaire's reasonable direction, and agrees to execute further agreements as may be required, in order that the Operating Company and Concessionaire, as applicable, may fulfill their obligations under Section 18.06 of the ARCA.

Section 8.04 License of Concessionaire Property

The Concessionaire hereby grants the Operating Company a license to use the Concessionaire intellectual property in the performance of the Operating Company's obligations under this Agreement. Such license shall automatically expire immediately upon the termination or expiration of this Agreement.

Section 8.05 Branding Exclusivity

The Operating Company shall not use any name the Department may give to the Capital Beltway during the OSSA Term unless such use is approved by the Concessionaire, provided that such use conforms with the requirements of Section 19.05 of the ARCA.

ARTICLE 9

COMPENSATION; REIMBURSEMENT OF COSTS; BANK ACCOUNT

Section 9.01 Compensation; Reimbursement of Costs

(a) Subject to the limitations set forth in Section 3.01, unless the parties have agreed to a fixed price structure in accordance with Section 9.02, the Concessionaire shall pay or reimburse the Operating Company for its services under this Agreement during the OSSA Term, in accordance with Section 9.03 and as follows:

(b) Commencing on the Closing Date and during the Work Period (for the services set forth in Sections 3.03 and 3.04 – as listed in Exhibit D):

(i) the Concessionaire shall pay the Operating Company's allocable Fully Burdened Costs (including overhead and fringe benefits) for services provided by its own personnel or an Affiliate;

(ii) the Concessionaire shall pay the Operating Company's documented third-party contract costs for confirmed services provided by a third-party.

(c) Prior to the Service Commencement Date and during the Operating Period (for the services set forth in Sections 3.05 and 3.06 – as listed in Exhibit D):

(i) except for the services provided by quoted fees pursuant to Section 9.01(c), the Concessionaire shall pay the Operating Company's allocable Fully Burdened Costs (including overhead and fringe benefits) plus a 12.5% margin (subject to state and federal reimbursement and audit requirements) for services provided by its own personnel or an Affiliate;

(ii) the Concessionaire shall pay the Operating Company's documented third-party contract costs plus a 12.5% margin (subject to state and federal reimbursement and audit requirements) for confirmed services provided by a third-party (except for third parties that have contracted directly with the Concessionaire); and

(iii) the Concessionaire shall pay the Operating Company an annual fee of \$500,000 for corporate administration and financial services beginning on the Service Commencement Date, which amount shall be escalated in accordance with increases in the CPI from the Service Commencement Date, using the CPI published for the calendar year immediately preceding the year of such payment.

(d) During the OSSA Term (for the services set forth in Section 3.07 - as listed in Exhibit D):

(i) the Concessionaire shall pay the Operating Company's quoted rates plus a 12.5% margin (subject to state and federal reimbursement and audit requirements) for services provided by its own personnel or an Affiliate; and

(ii) the Concessionaire shall pay the Operating Company's documented third-party contract costs plus a 12.5% margin (subject to state and federal reimbursement and audit requirements) for confirmed services provided by a third-party in accordance with Section 9.03.

Section 9.02 Fixed Fee Structure

At any time after the second anniversary of the Service Commencement Date, upon the request of either party, the parties shall negotiate in good faith with a view to agreeing upon a fixed-price structure using the previous period costs, for the services provided hereunder (excluding performance of Major Maintenance obligations).

Section 9.03 Payment Procedure

(a) Within thirty (30) days of the end of each calendar month following the Closing Date, the Operating Company shall submit to the Concessionaire an invoice, with reasonably documented supporting information, amounts due and payable in accordance with Sections 9.01 or 9.02 for services rendered during such month.

(b) If there is a dispute about any amount invoiced by the Operating Company under Section 9.03(a), the amount not in dispute shall be paid as described in Section 9.03(c), and any disputed amount which is ultimately determined to have been payable shall be paid, when so determined to have been payable, with interest in accordance with the provisions of Section 9.04.

(c) All payments made by the Concessionaire to the Operating Company under this Article 9 shall be paid to the Operating Company within thirty (30) days of receipt of the invoice by the Concessionaire in accordance with the provisions of Sections 2.2-4347 through 4355 of the Virginia Code. The Operating Company is authorized to withdraw the funds for any authorized expenditure from the Account.

(d) Upon receipt from third parties contracted directly with the Concessionaire of such invoices and/or other documentation as may be necessary to confirm services rendered and amounts due, the Operating Company shall pay from the Account all amounts due and payable for the costs of third-party contracts.

Section 9.04 Interest on Overdue Amounts

Any amount not paid when due under this Agreement shall bear interest from the date such payment is due until payment is made (after as well as before judgment) at a variable rate per annum at all times equal to the Bank Rate, which interest shall be payable on demand.

Section 9.05 Bank Account

(i) The Concessionaire and Operating Company shall cause an account (the "Account") to be established in Concessionaire's name to be established and maintained with an insured financial institution as to which each of the Concessionaire and the Operating Company shall have signing authority. The Concessionaire shall cause to be deposited to the Account sufficient funds from which the Operating Company may reimburse itself for authorized operating expenses incurred in accordance with the terms of this Agreement and to pay authorized subcontracts with third-parties; *provided*, the Operating Company may not reimburse itself for disputed items.

ARTICLE 10

INDEMNIFICATION AND INSURANCE

Section 10.01 Indemnification; Exculpation

(a) Agreement to Indemnify. (i) The Concessionaire agrees to indemnify and hold harmless Operating Company and its affiliates, successors and assigns, and all of their respective officers, directors, partners, shareholders, employees (including "contract" employees), agents, and controlling persons ("Operating Company Indemnitees"), against any and all costs, losses, liabilities, demands, actions, expenses (including reasonable attorneys' fees), judgments, fines, charges and amounts paid in settlement actually and reasonably incurred (collectively, "Losses") in connection with claims asserted at any time against any Operating Company Indemnitee that result from or are based upon (1) Operating Company's performance (or lack of performance) under this Agreement, except to the extent such Losses result directly from the gross negligence

or willful misconduct of Operating Company, or (2) reliance on the part of any third party on Operating Company's work product or services produced for Concessionaire pursuant to this Agreement.

(ii) The Operating Company agrees to indemnify and hold harmless Concessionaire, and any of Concessionaire's other direct or indirect subsidiaries, their members, and their affiliates, successors and assigns, and all of their respective officers, directors, partners, shareholders, employees, agents and controlling persons and Lenders ("Concessionaire Indemnitees") against any and all Losses that any Concessionaire Indemnitee may sustain to the extent such Loss has been judicially determined to have resulted directly from the gross negligence or willful misconduct of Operating Company.

(b) Control of Defense. Promptly upon learning of any grounds that may reasonably and foreseeably lead to a claim under any provision of this Agreement, which provision provides for indemnification of one party by another (a "Potential Indemnity Claim") by any party hereto (the "Indemnified Party") against the other party hereto (the "Indemnifying Party"), the Indemnified Party shall promptly notify the Indemnifying Party of such grounds in writing, provided that the Indemnifying Party can provide evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party has the financial ability to satisfy the Potential Indemnity Claim, the Indemnifying Party shall have the right, but not the obligation, to defend, contest and control the defense of any such Potential Indemnity Claim, including choosing counsel and controlling any settlement of the Potential Indemnity Claim, *provided, however*, the Indemnifying Party shall not compromise or settle any Potential Indemnity Claim without the prior written consent of the Indemnified Party, unless such compromise or settlement does not admit liability or culpability of the Indemnified Party and includes an unconditionally release from liability of the Indemnified Party. If, at any time prior to the conclusion of such defense or contest, there are reasonable grounds to believe that the Indemnifying Party does not have the financial ability to satisfy the Potential Indemnity Claim, the Indemnified Party shall have the right to assume control of such defense or contest, including replacing counsel and controlling any settlement. If the Indemnifying Party reasonably demonstrates the financial ability to satisfy the Potential Indemnity Claim but requests the Indemnified Party to control the defense or contest, the Indemnified Party shall contest any Potential Indemnity Claim in good faith and shall forebear from compromising or settling any Potential Indemnity Claim without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, delayed or conditioned.

(c) Exculpation. No implied covenants by or obligation on the part of Operating Company shall be read into this Agreement.

Section 10.02 Concessionaire's Insurance Coverages

(a) The Operating Company, on behalf of the Concessionaire, shall procure policies of insurance required during the Operating Period in accordance with Section 14.02(b) of the ARCA (the "Concessionaire Insurance"). The Operating Company shall, no later than 30 days prior to the Service Commencement Date, provide the Concessionaire with certificates of insurance evidencing the policies that are satisfactory to the Concessionaire.

(b) The Concessionaire Insurance shall be project specific. With respect to Commercial General Liability, Automobile Liability, Builder's Risk and Contractor Pollution Liability insurance policies required under Section 14.02(b) of the ARCA, the Operating Company shall be included as an "additional insured" on such insurance policies. These insurance policies shall be endorsed so that the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured, including the Operating Company.

(c) The Concessionaire shall be liable for all deductible payments under such insurance policies unless the loss, damage or claim was due to the Operating Company's negligence or willful misconduct, in which case the Operating Company shall be liable for the payment of that portion of the deductible amount attributable to the Operator as negligence or willful misconduct, subject to the overall limitation on the Operating Company's liability under Section 13.01 hereof.

(d) The cost of such Concessionaire Insurance, to the extent paid by the Operating Company, shall be an operating expense.

Section 10.03 Operating Company's Insurance Coverages

During the OSSA Term, the Operating Company shall obtain and maintain (or cause to be obtained and maintained) Workers' Compensation insurance, as prescribed by applicable Law, for the Operating Company's employees performing the Services. Moreover, the Operating Company shall, on or prior to the Closing Date, provide the Concessionaire with certificates of insurance evidencing the policies that are satisfactory to the Concessionaire.

Section 10.04 Cooperation

The Concessionaire and Operating Company shall promptly notify the other as soon as it becomes aware of any circumstances that could give rise to a claim under the other's insurance policies. Each shall provide the other on request with such information as it may require to enable the other to make or process claims under the insurance or to provide information concerning the insurance to third parties as each may direct.

Section 10.05 Insurance Cure

If either party fails to obtain any of the insurance referred to above, the other party shall, without prejudice to its other rights and remedies, have the right to procure such insurance and to recover the cost from the party that has not obtained the insurance by offset or otherwise.

ARTICLE 11

REPRESENTATIONS AND WARRANTIES

Section 11.01 Concessionaire Representations and Warranties

The Concessionaire hereby represents and warrants to the Operating Company as follows:

(a) The Concessionaire is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to conduct business in the State, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and the other Project Agreements to which the Concessionaire is a party and to perform each and all of the obligations of the Concessionaire provided for herein and therein.

(b) Each person executing this Agreement or any other Project Agreement on behalf of the Concessionaire to which the Concessionaire is a party has been or at such time will be duly authorized to execute each such document on behalf of the Concessionaire.

(c) Neither the execution and delivery by the Concessionaire of this Agreement and the other Project Agreements executed concurrently herewith to which the Concessionaire is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.

(d) There is no action, suit, proceeding, investigation or litigation pending and served on the Concessionaire which challenges the Concessionaire's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Project Agreements to which the Concessionaire is a party, or which challenges the authority of the Concessionaire official executing this Agreement or the other Project Agreements, and the Concessionaire has disclosed to the Operating Company any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Concessionaire is aware.

(e) This Agreement has been duly authorized, executed and delivered by the Concessionaire and constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(f) The Concessionaire has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other Project Agreements to which the Concessionaire is a party.

(g) The Concessionaire is in material compliance with all Laws and Regulatory Approvals applicable to the Project and its activities in connection with this Agreement.

Section 11.02 Operating Company Representations and Warranties

The Operating Company hereby represents and warrants to the Concessionaire as follows:

(a) The Operating Company is a duly organized corporation created under the laws of the State of Delaware, is qualified to conduct business in the State, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and the other Project Agreements to which the

Operating Company is a party and to perform each and all of the obligations of the Operating Company provided for herein and therein.

(b) The Operating Company has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other Project Agreements to which the Operating Company is a party.

(c) Each person executing this Agreement or any other Project Agreement on behalf of the Operating Company has been or will at such time be duly authorized to execute each such document on behalf of the Operating Company.

(d) This Agreement has been duly authorized, executed and delivered by the Operating Company and constitutes a valid and legally binding obligation of the Operating Company, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

(e) Neither the execution and delivery by the Operating Company of this Agreement and the other Project Agreements to which the Operating Company is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of the governing instruments of the Operating Company or any other agreements or instruments to which it is a party or by which it is bound.

(f) There is no action, suit, proceeding, investigation or litigation pending and served on the Operating Company which challenges the Operating Company's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Project Agreements to which the Operating Company is a party, or which challenges the authority of the Operating Company official executing this Agreement or the other Project Agreements; and the Operating Company has disclosed to the Concessionaire any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Operating Company is aware.

(g) The Operating Company is in material compliance with all Laws and Regulatory Approvals applicable to the Operating Company, the Project or its activities in connection with this Agreement and the other Project Agreements.

Section 11.03 Survival of Representations and Warranties

The representations and warranties of the Concessionaire and the Operating Company contained herein shall survive expiration or earlier termination of this Agreement and the other Project Agreements.

ARTICLE 12

OSSA TERM AND TERMINATION

Section 12.01 OSSA Contract Term

The term of this Agreement shall commence on the Closing Date, and shall remain in effect until the end of the Term (as such term is defined in the ARCA), or earlier termination of this Agreement pursuant to this Article 13, or the termination of ARCA (the “OSSA Term”).

Section 12.02 Termination Upon Expiration of OSSA Term

Unless earlier terminated in accordance with the terms of this Article 13 or the other Project Agreements, all the rights and obligations of the parties hereunder and thereunder shall cease and terminate without notice or demand on the last day of the OSSA Term; *provided, however*, the indemnities in Section 10.01 shall survive expiration or earlier termination of this Agreement.

Section 12.03 Default Termination; Termination by Department

(a) The Concessionaire is entitled to terminate this Agreement as provided in Section 12.05. In the case of such termination for Operating Company Default no compensation would be payable to the Operating Company as a result of such termination.

(b) The Operating Company is entitled to terminate this Agreement only in the event of a material default by the Concessionaire as described in Section 12.06, subject to the limitations set forth therein.

(c) The Operating Company agrees that this Agreement can be terminated by the Department upon notice by the Department in accordance with Section 8.04 of the ARCA.

Section 12.04 Operating Company Default

The occurrence of any one or more of the following events during the OSSA Term shall constitute an “Operating Company Default” under this Agreement:

(a) Any material representation or warranty made by the Operating Company herein or in any other Project Agreement is inaccurate or misleading in any respect on the date made and a material adverse effect upon the Project or the Concessionaire’s rights or obligations under the Project Agreements results therefrom, and such misrepresentation is not cured within a period of 30 days following written notice thereof;

(b) The Operating Company on behalf of the Concessionaire fails to pay to the Department when due all monies payable to the Department under this Agreement or any other Project Agreement or to deposit funds to any reserve or account in the amount and within the time period required by the ARCA, and such failure continues unremedied for a period of 30 days following written notice thereof;

(c) The Operating Company fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement or any other Project Agreement (*provided* that the failure to achieve any goals relating to SWAM or DBE participation in Section 6.03 shall not constitute an Operating Company Default), including material failure to perform any Work relating to the operation and maintenance of the Project or any material portion thereof in accordance with this Agreement, and such failure continues unremedied for a period of ninety (90) days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire or the Department (as appropriate) to the Operating Company or for such longer period as may be reasonably necessary to cure such failure, *provided*, in the latter case, that the Operating Company has demonstrated to the satisfaction of the Concessionaire or the Department (as appropriate), acting reasonably, that (i) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (ii) its proceeding can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire or the Department (as appropriate), and (iii) such failure is in fact cured within such period of time;

(d) This Agreement or all or any portion of the Operating Company's interest is transferred in contravention of Section 15.01;

(e) The Operating Company (i) admits, in writing, that it is unable to pay its debts as they become due, (ii) makes an assignment for the benefit of its creditors, (iii) files a voluntary petition under Title 11 of the U.S. Code, or if such petition is filed against it and an order for relief is entered, or if the Operating Company files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Operating Company, or of all or any substantial part of its properties or of the Project or any interest therein, or (iv) takes any action in furtherance of any action described in this paragraph; or

(f) Within 90 days after the commencement of any proceeding against the Operating Company seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or, within 90 days after the appointment, without the consent or acquiescence of the Operating Company, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Operating Company or of all or any substantial part of its properties or of the Project or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or, within 90 days after the expiration of any such stay, such appointment has not been vacated.

Section 12.05 Concessionaire Remedies upon Operating Company Default

Upon the occurrence of a Operating Company Default, the Concessionaire may, by notice to the Operating Company with a copy to the Department in accordance with the terms hereof, declare the Operating Company to be in default and may do any or all of the following as, in its discretion, shall determine:

- (a) The Concessionaire may terminate this Agreement; and/or
- (b) The Concessionaire may exercise any of its rights and remedies at law or in equity; and/or
- (c) The Concessionaire may exercise any of its other rights and remedies provided for hereunder.

Section 12.06 Concessionaire Defaults

The occurrence of any one or more of the following events during the OSSA Term shall constitute a “Concessionaire Default” under this Agreement:

(a) The Concessionaire fails to pay to the Operating Company when due all monies payable to the Operating Company under this Agreement, and such failure continues unremedied for a period of 90 days following written notice thereof; or

(b) The Concessionaire (i) admits, in writing, that it is unable to pay its debts as they become due, (ii) makes an assignment for the benefit of its creditors, (iii) files a voluntary petition under Title 11 of the U.S. Code, or if such petition is filed against it and an order for relief is entered, or if the Department files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire, or of all or any substantial part of its properties (in each case, to the extent applicable to a state agency), or (iv) takes any action in furtherance of any action described in this paragraph; or if within 90 days after the commencement of any proceeding against the Concessionaire seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, such proceeding has not been dismissed, or, within 90 days after the appointment, without the consent or acquiescence of the Concessionaire, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties (in each case, to the extent applicable to a state agency), such appointment has not been vacated or stayed on appeal or otherwise, or if, within 90 days after the expiration of any such stay, such appointment has not been vacated.

Section 12.07 Remedies of the Operating Company upon Concessionaire Default

Upon the occurrence of a Concessionaire Default by the Concessionaire under this Agreement, the Operating Company may by notice to the Concessionaire declare the Concessionaire to be in default and may, subject to the provisions of Section 12.06, do any or all of the following as the Operating Company, in its discretion, shall determine:

- (a) The Operating Company may terminate this Agreement; and/or
- (b) The Operating Company may exercise any of its rights and remedies at law or in

equity; and/or

(c) The Operating Company may exercise any of its other rights and remedies provided for hereunder.

(d) Any right of Operating Company to terminate this Agreement shall be subject to all cure rights of the Department and the Lenders (or the Collateral Agent acting on the behalf of the Lenders). Upon provision of notice to the Concessionaire, the Operating Company will provide notice concurrently to the Department.

Section 12.08 Operating Company Actions Upon Termination

(a) On the effective date of termination of this Agreement or the Operating Company's rights hereunder, whether due to expiration or earlier termination of the OSSA Term, the Operating Company shall deliver to the Concessionaire:

(i) all tangible personal property, reports, books, records, Work Product and Intellectual Property owned by the Concessionaire and the Department relating to the Project, the Work or HOT Lanes Operations;

(ii) possession and control of the Project and Rights of Way, free and clear of any and all Liens and encumbrances created, incurred or suffered by the Operating Company or anyone claiming under the Operating Company; and

(iii) all other intangible personal property used or owned by any Operating Company party and relating to or derived from the Project, the Work or the HOT Lanes Operations;

in each case, solely with respect to the Services that the Concessionaire would be required to deliver to the Department if the Concessionaire had performed the Services under the ARCA.

(b) The Concessionaire shall, as of the effective date of termination of this Agreement or the Operating Company's rights hereunder, whether due to expiration or earlier termination of the OSSA Term, assume full responsibility for the Services, and as of such date, the Operating Company shall have no liability or responsibility for such Services, occurring after such date; *provided*, that the Concessionaire and the Operating Company shall remain fully responsible for all of their respective obligations or liabilities under this Agreement arising before the effective date of termination and those obligations under this Agreement.

(c) Each of the Operating Company and the Concessionaire shall be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to but not including the effective date of termination of this Agreement or the Operating Company's rights hereunder, whether due to expiration or earlier termination of the OSSA Term, and the Operating Company shall not be liable for any costs, expenses and amounts incurred in connection with the Services on and after such date, except to the extent such costs, expenses and amounts are properly included in the measure of any damages due to the Concessionaire arising from a default by the Operating Company under this Agreement.

Section 12.09 Liability After Termination

(a) If this Agreement or any other Project Agreement is terminated by reason of a material default, such termination shall not excuse the defaulting party from any liability at law or in equity arising out of such default or in the Project Agreements.

(b) If this Agreement or any other Project Agreement is terminated for reason other than a default, no party shall have any further obligation or liability except for performance of their respective obligations which are either expressly stated in a Project Agreement to survive termination or by their sense and context are intended to survive termination.

Section 12.10 Exclusive Termination Remedies

This Article 12 sets forth the entire and exclusive provisions and rights of the Concessionaire and the Operating Company regarding termination of this Agreement and the Project Agreements, and any and all other rights to terminate at law or in equity are hereby waived to the maximum extent permitted by law.

Section 12.11 Performance in Favor of Lenders

The Operating Company agrees that in the event of a default by the Concessionaire under the terms and conditions of any agreement between the Concessionaire and the Department or the Concessionaire and any Lender party, the Department and/or the Lenders shall be entitled to use and enforce this Agreement, as the same may be amended or supplemented before or after such default, all without additional cost to the Department or the Lenders. In the event the Department or any Lender notifies the Operating Company in writing that Concessionaire has defaulted under any agreement between the Concessionaire and the Lenders and/or any agreement between Concessionaire and the Department and requests Operating Company to continue performance under this Agreement, the Operating Company shall thereafter perform hereunder in accordance with the terms and provisions hereof, so long as the Operating Company shall be paid in accordance with this Agreement for the Services performed hereunder, including payment of any sums due to the Operating Company for the Services performed to and including the date of Concessionaire's default. The Operating Company will consent to such other agreements with respect to the Department's and/or the Lenders' enforcement of their liens and security interests as the Department and/or the Lenders may reasonably request.

ARTICLE 13

LIMITATIONS OF LIABILITY

Section 13.01 Total Limitation of Liability

The Operating Company's total liability during the OSSA Term to the Concessionaire in any fiscal year on all claims of any kind, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of, connected with, or resulting from this Agreement or from the performance or breach thereof, or from any services covered by or furnished during the OSSA Term, shall in no case exceed an amount equal to the aggregate amounts paid to Operating Company pursuant to Section 9.01(b)

for such year plus any agreed profit component of any fixed fee paid for such year pursuant to Section 9.02 (or failing any such agreement, the amount of such fixed fee); *provided, however*, the foregoing limitation on liability shall not apply to (i) indemnities payable by Operating Company under Section 10.01(b), or (ii) proceeds of insurance received by Operating Company. Except as previously asserted by the Concessionaire as provided in Section 15.08, the Operating Company's liability under this Agreement shall cease one (1) year after expiration, or earlier termination, of this Agreement; *provided, however*, the indemnities in Section 10.01 shall survive expiration or earlier termination of this Agreement.

Section 13.02 Limitation on Consequential Damages

(a) Except as expressly provided in this Agreement to the contrary, neither party shall be liable to the other for indirect, incidental or consequential damages of any nature, whether arising in contract, tort (including negligence) or other legal theory. The foregoing limitation shall not, however, in any manner:

(i) limit either party's liability for any type of damage arising out of its obligation to indemnify, defend and hold the other party or any other Indemnified Party harmless from Third-Party Claims under Article 11 and elsewhere in this Agreement; and

(ii) limit either party's liability for any type of damage to the extent covered by insurance required hereunder.

ARTICLE 14

DISPUTE RESOLUTION

Section 14.01 Dispute Resolution

(a) Any dispute arising out of, relating to, or in connection with this Agreement shall be resolved as set forth in this Section 14.01.

(b) The parties shall attempt in good faith to resolve the dispute within fifteen (15) days or such other time period as may be specifically established for such dispute under this Agreement. If the parties are unable to resolve the dispute within that timeframe, and upon notice by either party to the other, the dispute shall be referred to mediation or any other form of alternative dispute resolution that is acceptable to both of them. They must share equally the expenses of the mediator or other alternative dispute resolution process. If, after 180 days following the date of the referral, the dispute remains unresolved, then either party may litigate the matter in a court of law as set forth in Section 14.01(c).

(c) All litigation between the parties arising out of or pertaining to this Agreement or its breach shall be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, which shall have exclusive jurisdiction and venue; *provided* that the foregoing does not affect any claims or matters which are governed by a different dispute resolution procedure set forth in any other Project Agreement.

(d) Each party shall bear its own attorneys' fees and costs in any dispute or litigation

arising out of or pertaining to this Agreement or any other Project Agreement, and no party shall seek or accept an award of attorneys' fees or costs, except as otherwise expressly set forth in this Agreement.

ARTICLE 15

MISCELLANEOUS

Section 15.01 Assignment by the Operating Company

(a) Neither party hereto shall have no right, power or authority to assign or delegate this Agreement or any portion thereof, either voluntarily or involuntarily, or by operation of law, without the prior written consent of the other party, which consent may be granted or withheld in the sole discretion of such other party; provided, that (i) the Operating Company may assign its rights hereunder to an Affiliate of the Operating Company approved by the Department in accordance with the requirements of the ARCA, and (ii) Concessionaire may assign all of its rights and interests in and under this Agreement to the Lenders and the Collateral Agent as collateral security for its obligations. The Lenders and the Collateral Agent may further assign such rights without Operating Company's consent thereto in connection with the exercise of remedies against the Concessionaire.

(b) The Operating Company agrees that in the event of a default by Concessionaire under the terms and conditions of any agreement between Concessionaire and the Department or Concessionaire and any Lender, the Department and/or the Lenders (or the Collateral Agent acting on their behalf) shall be entitled to use and enforce this Agreement, as the same may be amended or supplemented before or after such default, all without additional cost to the Department or the Lenders (or the Collateral Agent acting on their behalf). In the event the Department or any Lender (or the Collateral Agent acting on their behalf) notifies Operating Company in writing that Concessionaire has defaulted under any agreement between Concessionaire and the Lenders and/or any agreement between Concessionaire and the Department and requests Operating Company to continue performance under this Agreement, Operating Company shall thereafter perform hereunder in accordance with the terms and provisions hereof, so long as Operating Company shall be paid in accordance with this Agreement. The Operating Company will consent to such other agreements with respect to the Department's and/or the Lenders' (or the Collateral Agent acting on their behalf) enforcement of their liens and security interests as such Persons reasonably request.

(c) All of the rights, benefits, duties, liabilities and obligations of the Parties hereto shall inure to the benefit of and be binding upon their respective successors and permitted assigns.

Section 15.02 Authorized Representatives

Concessionaire Authorized Representative:
The President,
Capital Beltway Express LLC
565 5th Avenue

New York, NY 10017

Operating Company Authorized Representative:

The President,
Transurban (USA) Operations Inc.
565 5th Avenue
New York, NY 10017

Section 15.03 Notices

(a) Whenever under the provisions of this Agreement it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless and until actually received by the addressee or unless served (a) personally, (b) by independent, reputable, overnight commercial courier, (c) by facsimile transmission, where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission is immediately followed by service of the original of the subject item in another manner permitted herein, or (d) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Concessionaire:

The President,
Capital Beltway Express LLC
565 5th Avenue
New York, NY 10017

With copy to:

The Vice-President Development,
Capital Beltway Express LLC
1421 Prince Street
Suite 200
Alexandria, VA 23231

If to the Operating Company:

The President,
Transurban (USA) Operations Inc.
565 5th Avenue
New York, NY 10017

With a copy to:

The Vice-President Development,
Transurban (USA) Operations Inc.
1421 Prince Street
Suite 200
Alexandria, VA 23231

(b) Any party may, from time to time, by notice in writing served upon the other party as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally shall be deemed delivered upon receipt, if served by mail or independent courier shall be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile (provided the original is thereafter delivered as aforesaid).

Section 15.04 Binding Effect

Subject to the limitations of Section 15.01, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns, and wherever a reference in this Agreement is made to any of the parties hereto, such reference also shall be deemed to include, wherever applicable, a reference to the legal representatives, successors and permitted assigns of such party, as if in every case so expressed.

Section 15.05 No Third-Party Beneficiaries

Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement, except rights expressly contained herein for the benefit of the Department and the Lenders and/or the Collateral Agent. The parties agree to look solely to each other with respect to the obligations and liability arising in connection with this Agreement and the services performed hereunder. No claims shall be asserted directly between Operating Company and Design Build Contractor (whether arising in contract or tort); rather, such matters, if any, shall be asserted through the Concessionaire. Such matters will not be treated as "third party claims" in connection with indemnity obligations; either between the Concessionaire and Operating Company or between Concessionaire and Design Build Contractor. This Section 15.05 shall not limit contribution or other claims for bodily injury, death or third party property damage.

Section 15.06 Waiver

(a) No waiver by any party of any right or remedy under this Agreement or the other Project Agreements shall be deemed to be a waiver of any other or subsequent right or remedy

under this Agreement or the other Project Agreements. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(b) No act, delay or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such party under this Agreement or any other Project Agreement, or to relieve the other party from the full performance of its obligations under this Agreement and the other Project Agreements.

(c) No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party.

(d) The acceptance of any payment or reimbursement by a party shall not: (i) waive any preceding or then-existing breach or default by the other party of any term, covenant or condition of this Agreement, other than the other party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or reimbursement; or (ii) continue, extend or affect (A) the service of any notice, any suit, arbitration or other legal proceeding or final judgment, (B) any time within which the other party is required to perform any obligation or (C) any other notice or demand.

(e) No custom or practice between the parties in the administration of the terms of this Agreement shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of this Agreement.

Section 15.07 Governing Law and Venue

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to the conflict of laws provisions of such laws.

Section 15.08 Survival

All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall be deemed continuing and made at and as of the date of this Agreement and at and as of all other applicable times during the OSSA Term. All covenants, agreements, representations and warranties made in or pursuant to this Agreement shall survive the expiration or earlier termination of this Agreement and shall not be waived by the execution and delivery of this Agreement, by completion of construction, by any investigation by the Department or by any other event except a specific written waiver by the party against whom waiver is asserted.

Section 15.09 Construction and Interpretation of Agreement

(a) The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this

Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

(b) If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the parties in good faith shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

(c) The captions of the articles and sections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(d) References in this instrument to this “Agreement” mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation and/or undertaking “herein,” “hereunder” or “pursuant hereto” (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. Unless expressly provided otherwise, all references to Articles and Sections refer to the Articles and Sections set forth in this Agreement. Unless otherwise stated in this Agreement or the Project Agreements, words which have well-known technical or construction industry meanings are used in this Agreement or the Project Agreements in accordance with such recognized meaning.

(e) As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

(f) To the extent any provisions of this Agreement conflict with any provisions of the ARCA, the parties agree that the ARCA’s provisions shall govern.

Section 15.10 Counterpart

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 15.11 Entire Agreement

THIS AGREEMENT AND THE PROJECT AGREEMENTS CONSTITUTE THE ENTIRE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SPECIFIC MATTERS COVERED HEREIN AND THEREIN. ALL PRIOR WRITTEN AND PRIOR OR CONTEMPORANEOUS VERBAL AGREEMENTS, UNDERSTANDINGS, REPRESENTATIONS AND/OR PRACTICES RELATIVE TO THE FOREGOING ARE HEREBY SUPERSEDED, REVOKED AND RENDERED INEFFECTIVE FOR ANY PURPOSE. THIS AGREEMENT MAY BE ALTERED, AMENDED OR REVOKED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY DULY AUTHORIZED REPRESENTATIVES OF EACH PARTY HERETO, OR ITS PERMITTED SUCCESSOR OR ASSIGNEE. NO VERBAL AGREEMENT OR IMPLIED COVENANT SHALL BE HELD TO VARY THE TERMS HEREOF, ANY STATUTE, LAW OR CUSTOM TO THE CONTRARY NOTWITHSTANDING.

Section 15.12 Amendment

No modification, amendment, or other changes will be binding on any party unless consented to in writing and signed by Concessionaire's and Operating Company's authorized representatives and approval has been received from the Department where required in accordance with Article 11.02(f) of the ARCA. To the extent requirements and rights and responsibilities of the Concessionaire and/or the Operating Company have not been addressed in this Agreement and the ARCA or a party requests to change one or more existing requirements and rights and responsibilities of the Concessionaire and/or the Operating Company, the parties agree to negotiate in good faith regarding their respective existing or new responsibilities in the spirit of cooperation contemplated by this Agreement and the ARCA.

Section 15.13 No Partnership Intended

Nothing in this Agreement shall be deemed or construed to create a co-partnership or joint venture between the parties hereto and the services of the Operating Company shall be rendered as an independent contractor and not as an agent for the Concessionaire.

Section 15.14 Confidentiality

(a) Except as otherwise provided in this Section 15.14, the Operating Company's financial statements and financial results may be used and disclosed by Concessionaire, any of Concessionaire's other direct or indirect subsidiaries or any of their members.

(b) None of Operating Company or Concessionaire, any of Concessionaire's other direct or indirect subsidiaries or any of their members may disclose or permit the disclosure of any of the terms of this Agreement or of any other confidential, non-public or proprietary information relating to the investments, business plans, strategies, due diligence results, financing commitments, bids and prospective bids of Concessionaire or any of its assets (collectively, "Confidential Information"), except that such disclosure may be made (i) to any Person who is a member, partner, officer, investor, director or employee of such member or counsel to or accountants of such member solely for their use and on a need-to-know basis, as long as such persons are notified of the confidentiality obligations hereunder, or the Department

and its representatives, (ii) with the prior consent of the other parties hereto, (iii) subject to the next paragraph, in response to a subpoena or order issued by a court, arbitrator or governmental body, agency or official or (iv) to any lender providing financing to Concessionaire or any of its assets.

(c) If a party hereto receives a request or demand to disclose any Confidential Information under a subpoena or order, that party shall (i) promptly notify the other parties thereof, (ii) consult with the other parties on the advisability of taking steps to resist or narrow that request or demand and (iii) if disclosure is required or deemed advisable, cooperate with any of the other parties to obtain an order or other assurance that confidential treatment will be accorded the Confidential Information that is disclosed.

(d) No party hereto may issue or publish any press release or other public communication about the formation, existence or affairs of Concessionaire or any of its assets, without the express written consent of the other parties hereto.

(e) Each of the parties to the proposed transactions described herein (and each employee, representative or other agent thereof) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions described herein and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure. However, any information relating to the tax treatment or tax structure shall remain subject to the confidentiality provisions hereof (and the foregoing sentence shall not apply) to the extent reasonably necessary to enable the parties, their respective affiliates, and their respective affiliates' directors and employees to comply with applicable securities laws. For this purpose, "tax structure" means any facts relevant to the federal income tax treatment of the proposed transaction but does not include the identity of the parties or their respective affiliates.

Section 15.15 Notice of Claims

The Operating Company shall promptly notify Concessionaire in writing of any and all litigation and claims made or threatened against the Project, Concessionaire, or Operating Company.

Section 15.16 No Liens or Encumbrances

The Operating Company shall keep and maintain the Project or the Rights of Way, as applicable, free and clear of all liens and encumbrances arising out of its performance of, or failure to perform, the Services.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the date first above written above.

CAPITAL BELTWAY EXPRESS LLC

By: _____
Name: _____
Title: _____

TRANSURBAN (USA) OPERATIONS INC

By: _____
Name: _____
Title: _____

EXHIBIT A – DEFINITIONS

Account is defined in Section 9.05.

Affiliate means the “Affiliate” as defined in Exhibit A (Definitions) to the ARCA.

Agreement means the Operating and Support Services Agreement for the Capital Beltway HOT Lanes Project, dated as of December 19, 2007, and all exhibits and schedules thereto, as supplemented or further amended from time to time.

Annual Budget means a comprehensive annual budget (includes an operating budget and a capital budget, as appropriate) for each fiscal year that the Operating Company must prepare annually in accordance with Section 3.01.

ARCA has the meaning given in the Recitals.

Baseline Report means the “Baseline Report” as defined in Section 8.06(a) of the ARCA.

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

Change Order means the “Change Order” as defined in Exhibit A (Definitions) to the ARCA.

Closing Date means the “Closing Date” as defined in Exhibit A (Definitions) to the ARCA.

Collateral Agent means the “Collateral Agent” as defined in Exhibit A (Definitions) to the ARCA.

Commencement Date means the “Commencement Date” as defined in Section 1.1 of the Design-Build Contract.

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

Concessionaire Default is defined in Section 12.06.

Concessionaire Indemnatee is defined in Section 10.01.

Concessionaire Insurance is defined in Section 10.02.

Concessionaire LLC Agreement means the Limited Liability Company Agreement of the Concessionaire dated as of December 17, 2007, as modified, amended or restated from time to time.

Concessionaire’s Field Representative means the “Concessionaire’s Field Representative” as defined in Section 1.1 of the Design-Build Contract.

Concessionaire’s Project Manager means the “Concessionaire’s Project Manager” as defined in Section 1.1 of the Design-Build Contract.

Confidential Information is defined in Section 15.14(b).

Contractor means Transurban (USA) Inc., a Delaware corporation, and its permitted successors and assigns as contractor hereunder.

CPI means the “Consumer Price Index for all Urban Consumers” for Northern Virginia (not seasonally adjusted), or its successor, of the U.S. Department of Labor, Bureau of Labor Statistics, or its successor; *provided*, that if the CPI is changed so that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor.

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

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

Design-Build Contract means the “Design-Build Contract” as defined in Exhibit A (Definitions) to the ARCA.

Design-Build Contractor means the “Design-Build Contractor” as defined in Exhibit A (Definitions) to the ARCA.

ETC Agreement means the Electronic Toll Collection Services Agreement dated as of December 19, 2007 between the Concessionaire and the Department, as it may be amended or supplemented.

ETTM Facilities means the “ETTM Facilities” as defined in Exhibit A (Definitions) to the ARCA.

ETTM System means the “ETTM System” as defined in Exhibit A (Definitions) to the ARCA.

Final Acceptance Date means the “Final Acceptance Date” as defined in Exhibit A (Definitions) to the ARCA.

Fully Burdened Costs means the sum of:

(a) the Operating Company's and an Affiliate's direct labor costs charged to the Project multiplied by a multiplier (excluding profit and/or margin); and

(b) other non-labor costs that are charged to the Project (excluding profit and/or margin),

to be developed with the cost accounting principles that are generally consistent with Part 31 of the Federal Acquisition Regulations.

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

Hazardous Substance means the "Hazardous Substances" as defined in Exhibit A (Definitions) to the ARCA.

HOT Lanes means the "HOT Lanes" as defined in Exhibit A (Definitions) to the ARCA.

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

HOT Lanes Operations means the "HOT Lanes Operations" as defined in Exhibit A (Definitions) to the ARCA.

HOT Lanes Project means the "HOT Lanes Project" as defined in Exhibit A (Definitions) to the ARCA.

Indemnified Party is defined in Section 10.01.

Indemnifying Party is defined in Section 10.01.

Independent Engineer means the "Independent Engineer" as defined in Exhibit A (Definitions) to the ARCA.

Intellectual Property means the ETTM books and records, toll-setting and traffic management algorithms and Software and associated documentation used in connection with the Project (including but not limited to Software and associated documentation used for management of traffic on the HOT Lanes), copyrights (including moral rights), trade marks (registered and unregistered), designs (registered, including applications, and unregistered), patents (including applications), circuit layouts, plant varieties, business and domain names, inventions, trade secrets, proposals, copyrightable works, customer and supplier lists and information, and other results of intellectual activity, copies and tangible embodiments of all of the foregoing (in whatever form or medium) and licenses granting any rights with respect to any of the foregoing (to the extent assignable), in each case, relating to the Project.

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

Lenders means the “Lenders” as defined in Exhibit A (Definitions) to the ARCA.

Life Cycle Maintenance Plan is defined in Section 3.01(d).

Loss is defined in Section 10.01.

Major Maintenance means the “Major Maintenance” as defined in Exhibit A (Definitions) to the ARCA.

Objection Notice is defined in Section 3.01(c).

Operating Company has the meaning given in the Recitals.

Operating Company Default is defined in Section 12.04.

Operating Company Indemnitee is defined in Section 10.01.

Operating Company Marks is defined in Section 8.03.

Operating Period means the “Operating Period” as defined in Exhibit A (Definitions) to the ARCA.

OSSA Term is defined in Section 12.01.

Oversight Services means the “Oversight Services” as defined in Exhibit A (Definitions) to the ARCA.

Person means the “Person” as defined in Exhibit A (Definitions) to the ARCA.

Potential Indemnity Claim is defined in Section 10.01.

Project means the “Project” as defined in Exhibit A (Definitions) to the ARCA.

Project Agreements means the “Project Agreements” as defined in Exhibit A (Definitions) to the ARCA.

Project Enhancements means the “Project Enhancements” as defined in Exhibit A (Definitions) to the ARCA.

Proprietary Intellectual Property means any Intellectual Property that is patented or copyrighted by the Operating Company, Concessionaire, VDOT or any other Person, as applicable, or any of its respective contractors or subcontractors, or, if not patented or copyrighted, is created, held and managed as a trade secret or confidential information by the

Operating Company, Concessionaire, VDOT or any other Person, as applicable, or any of its respective contractors or subcontractors, but excludes any item of Intellectual Property that is produced for multiple purposes and is not unique to the technology that is being applied to or for the Project.

Regulatory Approvals means the “Regulatory Approvals” as defined in Exhibit A (Definitions) to the ARCA.

Rights of Way means the “Rights of Way” as defined in Exhibit A (Definitions) to the ARCA.

Safety Compliance Order means the “ Safety Compliance Order “ as defined in Exhibit A (Definitions) to the ARCA.

Service Commencement Date means the “Service Commencement Date” as defined in Exhibit A (Definitions) to the ARCA.

Services is defined in Article 2.

Software means (a) computer instructions, including programs, routines and databases and applications supplied, procured or developed by the Operating Company in connection with the Project, including but not limited to that which monitors, controls or executes on ETTM Equipment (as defined in ARCA) included as part of the Project or ITS (as defined in ARCA) 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.

Task is defined in Section 3.05(b).

Technical Requirements means the Technical Requirements included as Exhibit N to the ARCA, as the same may be revised by any Technical Requirement revisions in accordance with Section 7.12(d) of the ARCA.

Third-Party Agreements is defined in Section 6.02.

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

TMP means the “TMP” as defined in Exhibit A (Definitions) to the ARCA.

Total Invested Project Funds means the “Total Invested Project Funds” as defined in Exhibit A (Definitions) to the ARCA.

Total Return on Investment or **TRI** means the “Total Return on Investment” or “TRI” as defined in Exhibit A (Definitions) to the ARCA.

Work means the “Work” as defined in Exhibit A (Definitions) to the ARCA.

Work Period means the “Work Period” as defined in Exhibit A (Definitions) to the ARCA.

Work Product means the “Work Product” as defined in Exhibit A (Definitions) to the ARCA.

EXHIBIT B – INITIAL BUDGET FOR FY2008 & FY2009

EXHIBIT C – [RESERVED]

EXHIBIT D – SCOPE OF SERVICES

Part I (Section 9.01(a)) – Services rendered by the Operating Company prior to the Work Period and during the Work Period under Sections 3.03 and 3.04 that are performed by the Operating Company on behalf of the Concessionaire which may include but are not limited to are:

- a) Provision of personnel and resources for the Concessionaire management team including:
 - i) General Management
 - ii) Media/Community Relations
 - iii) Contractual & Technical Support
 - iv) Administrative Support
 - v) Support for Board of Managers
- b) Provision of direct and indirect Costs associated with running the Concessionaire business including but not limited too:
 - i) Board Costs
 - ii) Building and Consumables (rent, taxes, utilities, security, and janitorial)
 - iii) General Indirect Costs (office supplies, equipment rental, training, seminars)
 - iv) Financial Services (audits, financial statement preparation, review of payment support data)
 - v) Insurance Premium (Workers Compensation)
 - vi) Corporate Entertainment
 - vii) Independent Verifier & Certifier oversight
 - viii) Management of or provision of other Support Services including internal or external resources as deemed necessary
- c) Virginia State Trooper establishment including:
 - i) vehicles & equipment
- d) Provision of management, oversight, (and personnel, if necessary) for:
 - i) Video Enforcement System infrastructure and integration
 - ii) Vehicle Occupancy Detection infrastructure and integration
 - iii) Dynamic Pricing Messaging Strategy report and recommendations
 - iv) Spares Inventory Procurement
 - v) Marketing, Communications , Community Education and Awareness requirements,

Part II (Section 9.01(b)) - Services rendered by the Operating Company for preparatory services prior to the Operating Period and during the Operating Period under Sections 3.05, and 3.06 that are performed by the Operating Company which may include but are not limited to are:

- a) Provision of personnel and resources as necessary to complete the obligations under Section 3.05:
- b) Provision of personnel and resources and equipment as required to complete the obligations under Section 3.06 to manage and operate the HOT Lanes, the ETTM System and associated infrastructure which may include but not be limited to:
 - i) Management and Operations Personnel
 - ii) Subcontractors and Consultants
 - iii) Routine Maintenance, Incident Response and management services,
 - iv) Tolling Services management,

- v) Enforcement management,
 - vi) Coordination of the requirements under the ETC Agreement,
 - vii) HOT OC and Consumables (taxes, utilities, security, and janitorial)
 - viii) Indirect Costs (office supplies, equipment rental, training, seminars)
 - ix) Coordination with the Department in accordance with the Agreement,
- c) Provide the following resources and services on behalf of the Concessionaire under the Section 9.01(b)(iii) for the annual fee are:
- i) Governance arrangements
 - ii) Company reporting
 - iii) Corporate budgeting
 - iv) Management advice
 - v) Insurance advice
 - vi) Legal and compliance support (excluding legal costs on specific matters)
 - vii) Tax advice (excluding costs of taxation advice on specific matters)
 - viii) Financial advice (but excluding financing costs)
 - ix) Expertise advice on industry trends, intelligent roads and best practice in toll roads
 - x) Corporate relations advice
 - xi) Corporate social responsibility advice
 - xii) Services as necessary under Clause 8.02

Part III (Section 9.01(c)) - Services rendered by the Operating Company during the Term under Section 3.07 that are performed by the Operating Company are:

- a) Provide specialist or other support including, personnel and/or other resources to complete the additional services under Section 3.07 that will be detailed to the Concessionaire for their review and approval.

EXHIBIT E – [RESERVED]