EXHIBIT I

FORM OF O&M AGREEMENT

[SEE ATTACHED]
OPERATING AND SUPPORT SERVICES AGREEMENT

FOR

THE I-95 HOV/HOT LANES PROJECT

BETWEEN

95 EXPRESS LANES LLC,
 a Delaware limited liability company

AND

TRANSURBAN (USA) OPERATIONS INC.,
 a Delaware corporation

July 31, 2012
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- EXHIBIT A Definitions
- EXHIBIT B Initial Budget for FY2013
- EXHIBIT C Scope of Services
- EXHIBIT D Labor, Employment and DBE/SWaM Related Matters
- EXHIBIT E Federal Requirements
OPERATING AND SUPPORT SERVICES AGREEMENT FOR I-95 HOV/HOT LANES PROJECT (this “Agreement”), entered into as of July 31, 2012 between 95 Express Lanes LLC, a Delaware limited liability company (the “Concessionaire”), and Transurban (USA) Operations Inc., a Delaware corporation (the “Operating Company”).

RECIPIALS

The Concessionaire and the Virginia Department of Transportation (the “Department”) have entered into a Comprehensive Agreement Relating to the I-95 HOV/HOT Lanes Project, dated as of July 31, 2012 (the “CA”), under which the Concessionaire, among other things, will construct, operate and maintain the Project (as defined in the CA).

The Concessionaire wishes to appoint the Operating Company to perform the Work (as defined in the CA) required to be performed by the Concessionaire during the pre-Construction, Construction and Operating Periods 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 Definitions attached as Exhibit A or, if not defined herein or therein, in the CA.

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 CA 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 2013 is attached as Exhibit B, which budget has been approved by the Concessionaire.

(b) For each Agreement Year and partial Agreement Year from and after the Financial Close Date, the Operating Company shall deliver to the Concessionaire an Annual Budget for the Project for such full or partial Agreement Year at least 120 days prior to the start of such Agreement Year or partial Agreement 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 Gross Revenues, projected Operating Costs (including all amounts payable to the Department), projected maintenance expenses (including the costs of Major Maintenance activities to be performed pursuant to the Life Cycle Maintenance Plan), projected capital expenses, projected debt service and other amounts payable with respect to Concessionaire Debt (identifying separately projected debt service), contributions to individual reserves, projected Distributions, 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 Agreement Year or partial Agreement Year. While the Shared Facilities Agreement is in effect, the Annual Budget shall reflect the Concessionaire’s allocated costs for the Shared Services, using the allocation percentage provided by the Concessionaire from time to time.

(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 Agreement Year, the Operating Company shall have the right at any time subsequent to the approval and acceptance of the Annual Budget for such Agreement 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. The Annual Budget as approved by the Concessionaire from time-to-time is the “Approved Budget.”

(d) In addition, no later than 120 days before the beginning of each calendar 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 Project in conformance with the Concessionaire’s obligations under Section 9.04 of the CA (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, the underlying assumptions used to develop such plans, including the assumptions arising from the re-evaluations of the conditions of the Assets conducted pursuant to Section 9.04(c) of the CA 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 Law, Technical Requirements or Governmental Approvals and the other requirements of the CA and this Agreement. The Department is to approve the Life Cycle Maintenance Plans in accordance with the terms of the CA. The Life Cycle Maintenance Plan as approved by the Concessionaire and the Department is the “Approved Life Cycle Maintenance Plan.”

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 of 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 Budget and Approved 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 Approved 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 Approved Life Cycle Maintenance Plan and shall supervise the day-to-day operations of the Project in accordance with the then-current Approved Budget. Prior to the approval and acceptance of any proposed Annual Budget and following expiration of the immediately preceding Approved 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 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 Approved Budget (or appropriate portion thereof). If an Annual Budget has not been approved for four consecutive months following the expiration of the last Approved Budget and the Concessionaire has not approved an alternative Annual Budget, the Operating Company
shall thereafter operate in accordance with the last Approved 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, and, subject to the Concessionaire’s right to dispute the propriety of specific expenditures, shall be compensated in accordance with Section 9.01 for, 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 Safety Compliance Orders or (v) for the Concessionaire to comply with any of the terms, conditions or provisions of the CA or the other Project Agreements, including required capital expenditures to be made by the Concessionaire under the CA or the other Project Agreements that the Operating Company did not reasonably contemplate when proposing its Annual Budget including as a result of the acts or omissions of the Department, the Concessionaire or other third parties. To the greatest extent practicable under the circumstances, the Operating Company shall notify the Concessionaire of its intention to incur any costs under this Section 3.02(c) and seek the Concessionaire’s concurrence regarding the need for and amount of any such costs.

Section 3.03 Preparatory Services Prior to the Construction Period

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

Section 3.04 Services During the Construction 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 Construction Period in order to manage, coordinate and supervise the Work and comply with the Concessionaire’s obligations under the CA 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:

(i) During the Construction Period the Operating Company shall supply the personnel, resources and services described in Part I of Exhibit C.

(ii) 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 the other Project Agreements.
(iii) The Operating Company shall review and approve payments to Design-Build Contractor and other parties, as appropriate, in accordance with the terms of the Design-Build Contract and the CA, as applicable.

(iv) 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.

(b) As between the Concessionaire and the Operating Company, the Concessionaire shall pay directly, or make funds available to the Operating Company for the Operating Company to pay, any costs for which the Concessionaire becomes responsible under Section 8.04(h) of the CA.

Section 3.05 Services Prior to the Operating Period

Prior to the Service Commencement Date, 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 Governmental Approvals necessary to operate the Project.

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 in compliance with the Concessionaire’s obligations under the CA 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. Without limiting the foregoing, the Operating Company is responsible for the following:

(a) Management and Operation of Project. 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 Project in accordance with the applicable sections of Exhibit B of the CA – Scope of Work, with all applicable Law, all Governmental Approvals, and the terms, conditions and standards set forth in the CA and this Agreement, including the operations and maintenance requirements set forth in the Technical Requirements (Exhibit C to the CA) and in accordance with Good Industry Practices. Without limiting the foregoing, the Operating Company agrees to be responsible for the following:
(i) the management and control of traffic on the Project, including, but not limited to, incident response services and temporary partial or full closures of the Project, subject to the Department’s rights to assume control as expressly provided in this Agreement or the CA;

(ii) the maintenance, inspection and repair of the 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, the CA and the Technical Requirements;

(iii) the operation of the Project and the ETTM System, and otherwise carrying out the collection and enforcement of tolls and other incidental charges in accordance with Article 5 of the CA respecting the Project;

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

(v) traffic management, and maintenance and repair responsibilities in accordance with the CA and the Technical Requirements; and

(vi) except as otherwise specifically provided herein (including the right of the Concessionaire to close all or a portion of the Project in accordance with the provisions hereof), at all times during the Term, causing the Project to be continuously open and operational for use by all members of the public travelling in Permitted Vehicles (as defined in the CA) 24 hours a day, 365 Days a year.

(b) (i) The Operating Company acknowledges that from time to time the Concessionaire and the Department may agree to changes to the Scope of Work (Exhibit B to the CA) and the Technical Requirements (Exhibit C to the CA). In the event that either Exhibit B or Exhibit C of the CA is 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.

(ii) In the event that the Operating Company is unable to provide or, in the reasonable view of the Concessionaire (which may be subject to approval by the Department pursuant to the CA) is not an appropriate party to provide, the requisite services to comply with the amendment to either Exhibit B or Exhibit C of the CA, then the Operating Company will procure from a suitably qualified and capable third party a proposal to deliver in full the requisite services. If the Concessionaire itself enters into a contract for such 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 the foregoing:

(A) the Operating Company acknowledges that the Concessionaire may engage a third party to provide the requisite services in compliance with the amendment; and
(B) the versions of the Exhibit B or Exhibit C of the CA last agreed to by the Concessionaire and Operating Company will continue to apply to the Operating Company in the performance of its services hereunder.

(iii) 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. If the Operating Company believes that it will incur costs not included in the Approved Budget in order to provide such operational interfaces, it shall propose an appropriate modification to the Approved Budget pursuant to Section 3.01(c) and shall provide such operational interfaces as agreed with the Concessionaire pursuant to the revised Approved Budget.

(c) Maintenance Work; Inspection and Implementation of Life Cycle Maintenance Plan. The Operating Company, on behalf of the Concessionaire, shall be responsible for fulfilling the Concessionaire’s obligations under Section 9.04 of the CA to (i) perform, or cause to be performed, all life cycle maintenance (including Major Maintenance) in accordance with Life Cycle Maintenance Plans approved by the Department, and (ii) conduct re-assessments of the physical condition of the Project in accordance with the CA and the Technical Requirements.

(d) 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 9.06 of the CA.

(e) Hazardous Substances Management. The Operating Company, on behalf of the Concessionaire, will manage the Hazardous Substances management and other services to be provided by the Concessionaire pursuant to Article 16 of the CA.

(f) Snow and Ice Removal. The Operating Company, on behalf of the Concessionaire, will provide access to the HOT Lanes to the Department and its contractors for snow and ice removal services as provided in Section 9.03(b)(ii) of the CA.

(g) 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 CA, the documents governing Concessionaire Debt, or otherwise, including audits and financial services; the Operating Company will also perform major marketing and public relations based upon a plan to be developed by the Operating Company and agreed to by the Concessionaire. The Operating Company will also be responsible for monitoring and providing: asset enhancement services, including the identification of safety enhancements for the Project; and asset improvements to improve the present value of the Project. To the extent requested by the Concessionaire, Operating Company will provide, maintenance of governance documents of the Concessionaire under the Concessionaire LLC Agreement; and handling all legal issues arising under the CA, including litigation.
(h) **Shared Facilities.** The Operating Company acknowledges that it has received a copy of the Shared Facilities Agreement, is familiar with its contents, and has been designated (and accepts the designation as) the “Shared Facilities Operator” thereunder and will fulfill the obligations of the Shared Facilities Operator as part of the Services. The Operating Company further agrees that if the Beltway OSSA is terminated for any reason but this Agreement is not terminated and the Concessionaire elects to retain the Operating Company as the Shared Facilities Operator, then, as contemplated in the Shared Facilities Agreement, the Operating Company will enter into an appropriate subcontract with the entity replacing it as the operator of the Beltway Project such that it continues to be the Shared Facilities Operator on behalf of both the Project and the Beltway Project.

(i) **Meetings with the Department.** The Operating Company shall participate in meetings between the Concessionaire and the Department, upon the Department’s reasonable request, concerning matters pertaining to the Operating Company or the Work; provided, that all direction to the Operating Company will be provided by the Concessionaire.

### 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 (the “Additional Services”). Such Additional Services shall be paid in accordance with Section 9.01, and the Approved Budget shall be adjusted as agreed by the parties to account for the costs of such Additional Services.

### Section 3.08 Personnel

The Operating Company shall provide and make available as necessary, in accordance with the requirements of the Approved 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 Law. 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 Financial Close 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 Law, all Governmental Approvals, the CA and the terms, conditions and standards set forth in this Agreement. As required by Section 24.02(j) of the CA,
the Operating Company covenants that it will not subcontract any part of the Work to a subcontractor who is not prequalified with the Department in accordance with the Department’s Rules Governing Prequalification Privileges (as such term is used in the CA), unless otherwise indicated in the CA; provided, that this restriction does not apply to contract specialty items, consultants, manufacturers, suppliers, haulers or snow removal service providers. 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 this 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 five (5) Business Days’ notice to the Operating Company 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 Project at End of OSSA Term

Not later than 180 Days preceding the end of the OSSA Term, the Operating Company shall develop a Transition 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 20.02 and 20.08 of the CA, including providing all tangible property with respect to the Project to the Department.

ARTICLE 4

LIMITATIONS ON AUTHORITY

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 Paragraph 6.04 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, any State Party 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 subcontractors of any tier;

(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 of any tier, 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.
(c) The Operating Company agrees that: (i) no gifts, gratuities, or favors of any nature whatsoever will be given or offered by or on behalf of it to personnel of the Department; and (ii) it will not employ any personnel of the Department for any services during the OSSA Term, without the prior written consent of the Department. Under Section 25.02(c) of the CA, if the Department determines, after investigation, that the Operating Company or any of its employees, representatives, or agents of any person acting in its behalf have violated this provision, the Operating Company may, at the discretion of the Department, be disqualified from bidding on future contracts with the Department for a period of six months from the date of the Department’s determination of such a violation. Any implicated employees, agents, or representatives of the Operating Company may be prohibited from working on any contract awarded by the Department for the period of disqualification.

Section 5.02 Standard of Performance

The Operating Company shall perform its obligations under this Agreement in accordance with all applicable Law (including all construction and safety and health standards established by law, including the State and Federal Occupational Health and Safety Acts (as defined in the CA), all applicable Governmental Approvals, and, with respect to each obligation hereunder, at the same standards set forth in the CA for the Concessionaire, including the operations and maintenance requirements set forth in the Technical Requirements (Exhibit C to the CA, 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

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.

Section 5.04 Federal Immigration Reform and Control Act

In accordance with Section 2.2-4311.1 of the Virginia Code, the Operating Company hereby certifies that it does not and agrees that it will not, during the term hereof, knowingly employ in connection with the performance of the Services an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986. The Operating Company further agrees that it will require all of its subcontractors of any tier to certify that they do not and will not knowingly employ an unauthorized alien as defined by such Act.
Section 5.05 Labor, Employment and DBE/SWaM Related Matters

The Operating Company will comply, and will cause its subcontractors of any tier to comply, with the provisions set forth in the Labor, Employment and DBE/SWaM Related Matters attached as Exhibit D.

Section 5.06 Federal Aid Transportation Projects

In addition to complying with all other Laws, in performing the Services, the Operating Company shall comply, and require all subcontractors of any tier to comply, with all legal requirements applicable to the Project as a result of the costs of the Project being financed in part with State funds, federal-aid funds and State bond proceeds, including the applicable Federal Requirements set forth in Exhibit E.

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 its subcontractors of any tier 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 permitting, design, acquisition, construction, maintenance, operation or management 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 Project; 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

(a) 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 CA 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.

(b) Each Third Party Agreement that Operating Company executes at a minimum shall include the terms and conditions set forth in Sections 24.02(d), (f), (g), (h), (i), (j) and (m) of the CA. Upon entering into a Third Party Agreement in excess of $100,000, the Operating
Company will provide the Department and the Concessionaire with a copy of such Third Party Agreement and, if such Third Party Agreement is with an Affiliate of the Concessionaire or Operating Company, a list of all Third Party Agreements in effect to which such Affiliate is a party and under which all or a substantial portion of the Affiliate’s responsibilities or obligations under its Third Party Agreement are delegated to its contractor. The Operating Company will allow the Concessionaire and the Department ready access to all Third Party Agreements and records regarding Third Party Agreements, including amendments and supplements to Contracts and guarantees thereof.

(c) The Operating Company will, within seven days following receipt of monies from the Concessionaire for Services performed by any subcontractor, either (i) pay such subcontractor for the proportionate share of the total payment received from the Concessionaire attributable to the Services performed by such subcontractor or (ii) notify the Concessionaire and such subcontractor, in writing, of the Operating Company’s intention to withhold all or a part of the subcontractor’s payment, specifying the reason for the non-payment. The Operating Company will include in all of its subcontracts a provision that (A) obligates the it to pay interest to its subcontractors on all amounts owed by it that remain unpaid after seven days following receipt of monies from the Concessionaire for Services performed by its subcontractor, except for amounts withheld as allowed in clause (ii) of this Section 6.02(c); (B) states, “Unless otherwise provided under the terms of this contract, interest will accrue at the rate of one percent per month.” and (C) obligates each subcontractor to include or otherwise be subject to the same payment and interest requirements as specified in this Section 6.02(c) with respect to each lower-tier subcontractor.

Section 6.03 Small, Women-Owned and Minority Business (SWaM) and Disadvantaged Business Enterprise (DBE) Programs

(a) The parties recognize the importance of pursuing, inviting and developing the participation of minority, women-owned and small businesses through the DBE and SWaM programs, where applicable. Further, the Operating Company will encourage the participation of DBE firms and SWaM firms in the Project. The Operating Company will carry out applicable Federal Requirements, including but not limited to the requirements of 49 CFR part 26, and the applicable requirements of Executive Order 33 (2006) in the administration of this Agreement and the award and administration of subcontracts pursuant to this Agreement.

(b) The Concessionaire will set annual DBE and SWaM goals and the Operating Company will make Good Faith Efforts to achieve or exceed such goals in contracts for the O&M Work. The Operating Company will provide its participation on SWaM matters to the Concessionaire and the Department Representative, and the Department may include those participation rates, as appropriately adjusted, with its own towards the State’s long-term goal established pursuant to the Office of the Governor’s Executive Order 33 (2006). The annual and long-term participation SWaM goal for the Concessionaire in contracting for the O&M Work is 4% and the annual and long-term participating DBE goal for the Concessionaire in contracting for the O&M Work is 2%.

(c) During the Operating Period, the Operating Company, on behalf of the Concessionaire, shall be responsible for fulfilling the Concessionaire’s obligations under Article
24 of the CA, including those under Section 24.03 of the CA. The Operating Company acknowledges the remedies available to the Department under such Section 24.03 of the CA (including debarment and disqualification) if such obligations are not satisfied, and agrees that the Department’s exercise of such remedies shall not relieve the Operating Company of any of its obligations under this Agreement and that it shall be fully liable to Concessionaire for any failure to timely and fully fulfill such obligations in accordance with the terms of this Agreement.

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, Deviations, Directive Letters or Project Enhancements and the performance by the Operating Company of the Services. The Operating Company, at the request of the Concessionaire, agrees to cooperate in all reasonable respects 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, the FHWA and their respective 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 and the Project Right of Way, as well as any materials, supplies, machinery and equipment to be incorporated into or used in construction, operation or maintenance of the Project. The Operating Company further acknowledges and agrees that the Department shall also have the right, upon reasonable advance written notice to the Operating Company (except as provided in Section 18.07(a) of the CA), 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 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

The Operating Company shall make available to the Concessionaire, the Department and, subject to Section 18.07(c) of the CA, FHWA (including their employees, contractors, consultants, agents and designees), and allow each of them access to, such books, records and documents as they may reasonably request in connection with the Project for any purpose related to the Project, this Agreement, the CA or the other Project Agreements, including but not limited to monitoring compliance with the terms and conditions of this Agreement, the CA and the other Project Agreements; provided, however, that the Department may exercise such rights unannounced and without prior notice during a Concessionaire Default or where there is good faith suspicion of fraud.

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. Further, the Operating Company will maintain or cause to be maintained such books, records and accounts in accordance with applicable Law, including Laws applicable to the Project as a result of the costs of the Project being financed in part with State funds, federal-aid funds and State bond proceeds.

(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 Transurban DRIVe Holdings LLC, 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) months 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 Financial Reports; Base Case Financial Model Updates. 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 (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. Operating Company shall also provide Base Case Financial Model Updates as and when required by the CA.

(ii) Annual Financial 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 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; and

(iii) Monthly Operational Reports. Within fourteen (14) days after the end of each month, the Operating Company shall prepare and deliver to the members of Concessionaire a written report, in a form approved by the Concessionaire which provides a written summary of the Services provided during the preceding month which shall (among other things) include details of:

(A) during the Construction Period, the occurrence of any event under the Design-Build Contract which the Operating Company considers has caused or is reasonably likely to cause a delay to the achievement of the Service Commencement Date; any Scope Change, Department Change Proposal, Change Order, Technical Requirements Revisions, Work Order (as such terms are defined in the Design-Build Contract) initiated or effected under the Design-Build Contract which the Operating Company considers has caused or is reasonably likely to cause a delay in the progress of the Work or an increase to the Contract Sum (as such terms are defined in the Design-Build Contract); the occurrence of any dispute under the Design-Build Contract; and

(B) during the Operating Period, the occurrence (number and type) of incidents or accidents; the occurrence of partial or full closures of the HOT Lanes (number and length of such closures); Major Maintenance carried out; any complaints made by third parties in respect of the collection and enforcement of tolls and other fees by the Operating Company respecting the HOT Lanes; marketing and public relations activities carried out by the Operating Company in accordance with the approved marketing and public relations plan;

(C) and such other information as may be reasonably requested by the Concessionaire from time to time. The monthly reports provided by the Operating Company under this Section 8.02(a)(iii) shall be
in addition to any other operational reports required to be prepared and delivered to the Department under the CA in respect of the management, maintenance and operation of the HOT Lanes.

(b) **Audit and Tax Preparation.** The Operating Company shall provide Concessionaire’s internal and external accountants with all information required for them 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 Person 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 use commercially reasonable efforts to 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; provided, however, Operating
Company shall not contract with any Person from whom such a license is not provided without Concessionaire’s written consent. 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 CA.

Section 8.04 License of Concessionaire Proprietary Intellectual Property

The Concessionaire hereby grants the Operating Company a nonexclusive, nontransferable, fully paid up license to use all Proprietary Intellectual Property of Concessionaire solely for use 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 use only the name the Concessionaire gives to the I-95 HOT Lanes.

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 as set forth in the following sections of this Article.
(b) Commencing on Financial Close and during the Construction Period, for the services set forth in Sections 3.03 and 3.04 and listed in Exhibit C:

(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 and listed in Exhibit C:

(i) except for the services provided by quoted rates pursuant to Section 9.01(d), 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 and Section 24.02(d)(iii) of the CA) 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) For Additional Services set forth in Section 3.07 and as listed in Exhibit C:

(i) except as otherwise agreed by the Concessionaire and the Operating Company, the Concessionaire shall pay the Operating Company’s quoted rates (as the same are set forth in the applicable Approved Budget) plus a 12.5% margin (subject to state and federal reimbursement and audit requirements and Section 24.02(d)(iii) of the CA) for services provided by its own personnel or an Affiliate; and

(ii) except as otherwise agreed by the Concessionaire and the Operating Company, 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.

(e) If use of the 12.5% margin set forth above becomes prohibited by applicable Law or state and federal reimbursement and audit requirements, then the parties shall agree as part of the process of preparing the Annual Budget to a fixed margin that would reasonably be expected provide comparable compensation to the Operating Company for the applicable Agreement Year.
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 Financial Close, the Operating Company shall submit to the Concessionaire an invoice, with reasonably documented supporting information, setting forth 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 provided in Sections 9.03(c) and 9.05, and any disputed amount which is ultimately determined to have been payable in accordance with Section 14.01 shall be paid, when so determined to have been payable, with interest in accordance with the provisions of Section 9.04. The Concessionaire shall notify the Operating Company in writing of any objection(s) it may have to full payment of an invoice within thirty (30) days of receipt of an invoice from the Operating Company, including the item and amount in dispute and the specific cause of the objection(s); provided, however, that failure to provide such notice shall not affect Concessionaire’s right to dispute the propriety of amounts previously paid, whether based on audit results or otherwise. Any dispute over invoiced amounts shall be resolved in accordance with the dispute resolution provisions set forth in Article 14 of this Agreement.

(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

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 funds withdrawn from the “Revenue Account” (or similar lockbox account) maintained under the terms of the documents governing Concessionaire Debt or from other funding sources Concessionaire determines to utilize, from which the Operating Company may withdraw amounts payable to it or under authorized subcontracts with third-parties, in each case, in accordance with Section 9.03; 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 third-party claims that are asserted at any time against any Operating Company Indemnitee that result from or are based upon the gross negligence or willful misconduct of the Concessionaire.

(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 in connection with third-party claims that are asserted at any time against any Concessionaire Indemnitee that result from or are based upon 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.

(d) **Insurance.** The Parties’ obligations under this Section 10.01 are in addition to, and not in limitation of, the insurance coverage to be procured by the Parties under Sections 10.02 and 10.03. No provision of this Agreement is intended to in any way benefit any insurer or to afford any insurer any basis to deny insurance coverage to any insured or additional insured under any policy procured in accordance with this Agreement. Any indemnification payable to a Person with respect to a claim hereunder shall be net of any insurance proceeds paid to such Person with respect to the circumstances giving rise to the indemnitor’s obligation to indemnify such Person under 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 17.01(b) of the CA (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, and shall otherwise deliver to the Department (with copies to the Concessionaire) all copies and certifications when and as required under Section 17.03 of the CA.

(b) The Concessionaire Insurance shall be project specific. Except for professional liability insurance, worker’s compensation insurance and employer’s liability insurance, the Operating Company and the Department shall be included as an “additional insured” on such insurance policies on a primary, non-contributory basis. 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 caused by 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 Operating Company’s 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 and shall be reimbursed in accordance with Section 9.01.

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 and provide the Concessionaire with a certificate of insurance evidencing this coverage on or prior to Financial Close.

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 Law and Governmental
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 and the
Department 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 Law and Governmental Approvals applicable to the Operating Company, the Project or its activities in connection with this Agreement and the other Project Agreements.

(h) None of the Operating Company or any affiliate of the Operating Company (as “affiliate” is defined in 29 CFR 98.905) is suspended or debarred, subject to a proceeding to suspend or debar it, or subject to an agreement for voluntary exclusion, from bidding, proposing or contracting with any Federal or State department or agency.

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.

Section 11.04 Department as Third Party Beneficiary

(a) It is the intention of the parties hereto that the Department be a third party beneficiary of Sections 11.02 and 11.03 and each of the parties hereto agree that the Department shall be entitled to enforce the rights created in its favor under Sections 11.02 and 11.03 directly and in its own name; provided, that the Department will have the right to exercise its rights under such representations and warranties only so long as the Concessionaire or a Lender is not pursuing remedies thereunder.

(b) All subcontracts that the Operating Company enters into shall name the Department as a third-party beneficiary of all subcontractor representations and warranties contained in such Contract; provided, that the Department will have the right to exercise its rights under such representations and warranties only so long as the Concessionaire, the Operating Company or a Lender is not pursuing remedies thereunder.
ARTICLE 12

OSSA TERM AND TERMINATION

Section 12.01 OSSA Contract Term

The term of this Agreement shall commence on Financial Close, and shall remain in effect until the end of the Term (as such term is defined in the CA), or earlier termination of this Agreement pursuant to this Article 12, or the termination of the CA (the “OSSA Term”).

Section 12.02 Termination Upon Expiration of OSSA Term

Unless earlier terminated in accordance with the terms of this Article 12 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, and the parties’ rights and obligations under Article 14, 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 subject to Section 12.08(c).

(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 and in Section 12.07(d).

(c) The Operating Company agrees that following termination of the CA, this Agreement can be terminated by the Department at its election, without penalty, upon notice by the Department to the Operating Company in accordance with Section 24.02(d)(i) of the CA.

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 fails to pay any third parties when due all monies payable to such third parties under any authorized subcontract in accordance with this Agreement or fails to deposit
funds to any reserve or account in the amount and within the time period required by the CA (unless any such failure results from failure by the Concessionaire to make funds available to the Operating Company), and such failure continues unremedied for a period of thirty (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, 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 thirty (30) 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 agreed by the Concessionaire which 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 an 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 it, 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 (other than amounts disputed in good faith by the Concessionaire in accordance with Section 14.01, but only to the extent that such amounts are not required to be made available to pay for material work or services required to be performed hereunder), 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.

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 without prejudice to its rights under Article 14:

(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 operation of the HOT Lanes;

(ii) possession and control of the Project and Project Right 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 operation of the HOT Lanes;

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 CA.

(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 that are stated to or by their nature must survive termination.
(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 an Operating Company Default or a Concessionaire 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 and the Department

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, solely in the case of an assumption of this Agreement by any Lender or its designee, payment of any sums due to the Operating Company for the Services performed to and including the date of Concessionaire’s default. If the Department succeeds to the Concessionaire’s rights under this Agreement (by assignment or otherwise), then the Operating Company agrees that it will (A) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged, (B) permit audit thereof by the Concessionaire, and provide
progress reports to the Concessionaire appropriate for operations and maintenance contracts sufficient to enable the Concessionaire to provide the reports it is required to furnish the Department pursuant to the CA and (C) allow the Department to assume the benefit of the Concessionaire’s contract rights and the work performed hereunder, with liability only for those remaining obligations accruing after the date of assumption, but excluding any monetary claims or obligations that the Concessionaire may have against the Operating Company that existed prior to the Department’s assumption of this Agreement. 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 Agreement 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 Sections 9.01 and 9.02 for the Agreement Year (annualized in the case of any partial Agreement Year during the OSSA Term) in which the basis for the claim first occurred (without regard for when the claim is first made); provided, however, the foregoing limitation on liability shall not apply to (i) indemnities payable by Operating Company under Section 10.01(a)(ii), or (ii) proceeds of insurance received by Operating Company. This limitation of the Operating Company’s total liability to the Concessionaire in any Agreement Year shall apply regardless of whether the claim continues beyond the Agreement Year in which the basis of the claim first occurred, i.e., there shall be no aggregation of the amounts paid to Operating Company pursuant to Sections 9.01 and 9.02 in more than one Agreement Year in calculating the Operating Company’s total liability to the Concessionaire in any Agreement Year. Except as previously asserted by the Concessionaire as provided in Section 15.08, the Operating Company’s liability under this Agreement shall cease 365 days 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 Section 10 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 the 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 CA, 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; and provided, further, that upon termination of this Agreement, this
Agreement will be fully assignable by the Concessionaire to the Department at the election of the Department, such assignability to include the benefit of all of the Operating Company’s warranties, indemnities, guarantees and obligations of professional responsibility arising under this Agreement.

(b) [Not used]

(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:

President
95 Express Lanes LLC
6440 General Green Way, Room 95
Alexandria, VA 22312

Operating Company Authorized Representative:

President
Transurban (USA) Operations, Inc.
6440 General Green Way
Alexandria, VA 22312

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:

President
95 Express Lanes LLC
6440 General Green Way, Room 95
Alexandria, VA 22312

If to the Operating Company:

President
Transurban (USA) Operations, Inc.
6440 General Green Way
Alexandria, VA 22312

(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 by the Operating Company against the Department or the 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 under this Agreement or the Design-Build Contract. 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 either party, 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. All references to a subsection or clause “above” or “below” refer to the denoted subsection or clause within the section in which the reference appears. 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. Wherever the word “including,” “includes” or “include” is used in this Agreement or the Project
Agreements, except where immediately preceded by the word “not”, it will be deemed to be followed by the words “without limitation”. Wherever reference is made in the Project Agreements to a particular Governmental Authority, it includes any public agency succeeding to the powers and authority of such Governmental Authority.

(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 CA, the parties agree that the CA’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, REVOVED 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 Section 24.02(l) of the CA. 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 CA 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 CA.

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 to any of Concessionaire’s other direct or indirect subsidiaries or any of their members.

(b) Neither party nor any of their 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 to 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 party 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 and the Project Right of Way, as applicable, free and clear of all liens and encumbrances arising out of its performance of, or failure to perform, the Services.

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

95 EXPRESS LANES LLC

By: ____________________________________________
   Name: ________________________________________
   Title: _________________________________________

TRANSURBAN (USA) OPERATIONS INC.

By: ____________________________________________
   Name: ________________________________________
   Title: _________________________________________
EXHIBIT A – DEFINITIONS

Account is defined in Section 9.05.

Additional Services are defined in Section 3.07.

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

Agreement means this Agreement and all exhibits and schedules thereto, as supplemented or further amended from time to time.

Agreement Year means (a) the period beginning on the Financial Close Date and ending on the first December 31 (or, if the Concessionaire has a fiscal year ending June 30 and so elects, ending on the first June 30) following the Financial Close Date, (b) each succeeding full calendar year or full fiscal year, as relevant, during which the Agreement remains in effect, and (c) the period beginning on January 1 or July 1 of the calendar year or fiscal year, as relevant, in which the Agreement terminates and ending on the date of termination.

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

Approved Budget means the Annual Budget approved by the Concessionaire in accordance with the process described in Section 3.01(c).

Approved Life Cycle Maintenance Plan means the Life Cycle Maintenance Plan approved by the Concessionaire and the Department in accordance with the process described in Section 3.01(d).

Assets means each “Asset” as defined in Exhibit A (Definitions) to the CA.

CA has the meaning given in the Recitals.

Base Case Financial Model Update means a “Base Case Financial Model Update” as defined in Exhibit A (Definitions) to the CA.

Beltway OSSA means that certain Amended and Restated Operating and Support Services Agreement for the Capital Beltway Project dated as of June 12, 2008 by and between Capital Beltway Express, LLC and the Operating Company.

Beltway Project means the “Project” as used in the Beltway OSSA.

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 a “Change Order” as defined in Exhibit A (Definitions) to the CA.

Collateral Agent means the “Collateral Agent” as defined in Exhibit A (Definitions) to the CA.
Commencement Date means the “Commencement Date” as defined in Section 1.1 of the Design-Build Contract.

Concessionaire means 95 Express Lanes LLC and its permitted successors and assigns.

Concessionaire Debt means “Concessionaire Debt” as defined in Exhibit A (Definitions) to the CA.

Concessionaire Default is defined in Section 12.06.

Concessionaire Indemnitee 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 _________ __, 2012, 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).

Construction Period means the period commencing on the Commencement Date through the Service Commencement Date.

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.

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 CA.

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

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

Distributions means each “Distribution” as defined in Exhibit A (Definitions) to the CA.
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 System means the “ETTM System” as defined in Exhibit A (Definitions) to the CA.

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

Financial Close means “Financial Close” as defined in Exhibit A (Definitions) to the CA.

Fully Burdened Costs means the sum of:

(a) the Operating Company’s and an Affiliate’s direct labor costs incurred in performing Services (excluding profit and/or margin) plus an indirect cost rate (including overhead and fringe benefits) to be developed with the cost accounting principles that are generally consistent with Part 31 of the Federal Acquisition Regulations; and

(b) the Operating Company’s and an Affiliate’s non-labor costs incurred in performing Services (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 industry practices and standards that would be exercised by a prudent and experienced operator or maintenance provider engaged in the same kinds of undertakings and under similar circumstances as those applying to the Services.

Gross Revenues means “Gross Revenues” as defined in Exhibit A (Definitions) to the CA.

Hazardous Substance means “Hazardous Substance” as defined in Exhibit A (Definitions) to the CA.

HOT Lanes means the “HOT Lanes” as defined in Exhibit A (Definitions) to the CA.

Indemnified Party is defined in Section 10.01.

Indemnifying Party is defined in Section 10.01.

Independent Engineer means an independent engineering firm serving as a technical advisor to the Lenders with regard to the Project.

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

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

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

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

Losses is defined in Section 10.01(a).

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

Objection Notice is defined in Section 3.01(c).

Operating Company has the meaning given in the first paragraph of this Agreement.

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 Costs means “Operating Costs” as defined in Exhibit A (Definitions) to the CA.

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

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

OSSA Term is defined in Section 12.01.

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

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

Potential Indemnity Claim is defined in Section 10.01.
**Project** means the “Project” as defined in Exhibit A (Definitions) to the CA.

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

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

**Project Right of Way** means the “Project Right of Way” as defined in Exhibit A (Definitions) to the CA.

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

**Safety Compliance Order** means a “Safety Compliance Order” as defined in Exhibit A (Definitions) to the CA.

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

**Services** is defined in Article 2.

**Shared Facilities Agreement** means that certain Shared Facilities Agreement dated as of ____________, 2012 by and between the Concessionaire and Capital Beltway Express, LLC.

**Shared Services** has the meaning given to such term in the Shared Facilities Agreement.

**State Party** means a “State Party” as defined in Exhibit A (Definitions) to the CA.

**Task** is defined in Section 3.01(d).

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

**Third-Party Agreements** is defined in Section 6.02.

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

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

**Work Product** means “Work Product” as defined in Exhibit A (Definitions) to the CA.
EXHIBIT B – INITIAL BUDGET THROUGH FY2013
EXHIBIT C – SCOPE OF SERVICES

Part I (Section 9.01(a)) – Services rendered by the Operating Company during the Construction Period under Section 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) Managing, coordinating, and supervising the Work carried out by the Design-Build Contractor under the Design-Build Contract
   iii) Media/Community Relations
   iv) Contractual & Technical Support
   v) Administrative Support
   vi) Support for Board of Managers

b) Provision of direct and indirect Costs associated with running the Concessionaire business including but not limited to:
   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) Independent Verifier & Certifier oversight
   vii) 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) Vehicle Occupancy Detection infrastructure and integration
   ii) Dynamic Pricing Messaging Strategy report and recommendations
   iii) Spares Inventory Procurement
   iv) Marketing, Communications, Community Education and Awareness requirements

Part II (Section 9.01(b)) - Services rendered by the Operating Company prior to 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, Consumables (taxes, utilities, security, and janitorial) and Shared Services under the Shared Facilities Agreement

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 Section 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.