

**AMENDMENT NO. 5 TO THE COMPREHENSIVE AGREEMENT RELATING TO THE  
DOWNTOWN TUNNEL/MIDTOWN TUNNEL/MARTIN LUTHER KING FREEWAY EXTENSION  
PROJECT**

This AMENDMENT NO. 5 TO THE COMPREHENSIVE AGREEMENT RELATING TO THE DOWNTOWN TUNNEL/MIDTOWN TUNNEL/MARTIN LUTHER KING FREEWAY EXTENSION PROJECT (this "Amendment") is made and entered into as of September 18, 2015, by and between the VIRGINIA DEPARTMENT OF TRANSPORTATION (the "Department"), an agency of the Commonwealth of Virginia (the "Commonwealth"), the address of which Department is 1401 East Broad Street, Richmond, Virginia 23219; and ELIZABETH RIVER CROSSINGS OPCO, LLC, a Delaware limited liability company (the "Concessionaire"), the address of which is 152 Tunnel Facility Drive, Portsmouth, VA 23707.

**RECITALS**

**WHEREAS**, the Department and the Concessionaire entered into the Comprehensive Agreement Relating to the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project, dated as of December 5, 2011, as amended by Amendment No. 1 dated as of March 12, 2012, by Amendment No. 2 dated as of April 13, 2012 (Amendment No. 2), by Amendment No. 3 dated as of January 15, 2014 and by Amendment No. 4 dated as of January 31, 2014 (collectively, the "Comprehensive Agreement"), pursuant to which the Department has granted to the Concessionaire the right to develop and operate the Project (as more specifically defined and described in the Comprehensive Agreement);

**WHEREAS**, Amendment No. 2, among other things, amended Section 5.01(a) of the Comprehensive Agreement addressing the Concessionaire's obligations regarding toll collection on the Martin Luther King Freeway Extension ("New MLK Extension");

**WHEREAS**, the Department and the Concessionaire desire to eliminate tolls on the New MLK Expressway;

**WHEREAS**, the Department and the Concessionaire desire to amend and clarify their respective rights and obligations under the Comprehensive Agreement on the terms set forth in this Amendment.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions**. Each capitalized term used and not otherwise defined herein shall have the respective meanings assigned to such term in the Comprehensive Agreement.
2. **Amendment to Section 5.01(a) of the Comprehensive Agreement (Tolling of the Project)**.
  - (a) Section 5.01(a) is hereby amended by deleting Sections (iii) and (iv) added in Amendment No. 2.

- (b) Section 5.01(a) (i) is hereby amended to delete the existing first sentence and replace with the following first sentence:

From and after the Tolling and O&M Work Commencement Date for each Project Asset except the New MLK Extension and continuing during the Term, the Concessionaire will have the exclusive right to impose, charge, collect, use and enforce the collection and payment of the Toll Revenues, in accordance with the terms of this Agreement.

3. Amendment to Section 5.01(b) of the Comprehensive Agreement (Tolling of the Project). Section 5.01(b) is hereby amended by adding the following new clause:

(vi) notwithstanding the provisions of Law, in a first proceeding in the general district court against a vehicle owner or operator for violation of Law due to failure to pay tolls, the Concessionaire will not impose and/or collect an amount for administrative fees plus civil penalties in excess of \$2,200.00.

4. Amendments to Exhibit J to Comprehensive Agreement (Toll Rate Schedule):

(a) Table J-3 User Classifications, shall be amended by deleting Sections E-H.

(b) Section 8 Definitions shall be amended by deleting the definitions of **Tunnel Users** and **Non-Tunnel Users**.

5. Amendment to Section 8.01 General Obligations of the Concessionaire. Section 8.01 is hereby amended by adding the following new Section 8.01(j):

(j) The Concessionaire shall make a contribution of \$500,000, to be paid after debt service and prior to payments for discretionary capital expenditures in Concessionaire's funding order, each year for 10 years beginning in January 2017, for a total of \$5,000,000.00, to a new or existing community-based organization that will be identified by the Commonwealth, provided that:

- (i) the community-based organization has been recognized by the United States Internal Revenue Service as a qualified tax-exempt organization;
- (ii) the community-based organization will disburse funds to tunnel users as determined by the community-based organization to be economically disadvantaged;
- (iii) the Concessionaire's contribution shall be utilized only for the purpose of compensating tunnel users for tolls on the Downtown Tunnel and the Midtown Tunnel and shall not be used for administration of the community-based organization;
- (iv) the Concessionaire will not be responsible for the establishment or operation of the community-based organization, or for the disbursement of funds. All operations, administration, and disbursement of funds shall be the responsibility of the community-based organization;
- (v) the Concessionaire will not be liable for any and all losses, claims and costs incurred as a result of the activities of the community-based organization.

6. Payment for Elimination of Tolls on New MLK Expressway.

- (a) The Department and the Concessionaire have agreed that the amount payable to the Concessionaire as a result of the elimination of tolls on the New MLK Expressway pursuant to this amendment shall be \$78,000,000.00 (the "Payment");
- (b) The amount payable by VDOT to the Concessionaire of \$78 million will be added to the Public Funds Amount and the Department will make payments to the Concessionaire pursuant to Section 7.02 of the Comprehensive Agreement, commencing with eligible expenditures to be drawn during the month of September, 2015.

7. Amendment to Exhibit H to the Comprehensive Agreement (Assigned Gross Revenue and Refinancing Gain Share Calculation). Attachment 1 to Exhibit H is revised and replaced with the version attached to this amendment, which is incorporated by reference into the Comprehensive Agreement.

8. No Modification. This Amendment is limited to the matters set forth herein and shall not constitute a modification or waiver of any other provision of the Comprehensive Agreement.

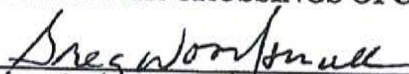
9. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State. Venue for any legal action arising out of this Amendment shall lie in the Circuit Court in the City of Richmond, Virginia, Division I.

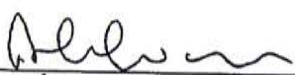
IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Amendment on the date first written above, and effective as of this date.

**VIRGINIA DEPARTMENT OF TRANSPORTATION**

By:   
Charles A. Kilpatrick, P.E.  
Commissioner of Highways

**ELIZABETH RIVER CROSSINGS OPCO, LLC**

By:   
Name: GREG WOODSMALL  
Title: CEO

By:   
Name: A. G. EVANS  
Title: C. F. O

Attachment 1 to Exhibit H

Band	Revenue Payment Percentage
1	0.00%
2	5.00%
3	15.00%
4	30.00%
5	60.00%

Year	Band 1		Band 2		Band 3		Band		Band 5
	Floor - Cumulative Gross Revenues from:	Ceiling - Cumulative Gross Revenues to and including:	Floor - Cumulative Gross Revenues from:	Ceiling - Cumulative Gross Revenues to and including:	Floor - Cumulative Gross Revenues from:	Ceiling - Cumulative Gross Revenues to and including:	Floor - Cumulative Gross Revenues from:	Ceiling - Cumulative Gross Revenues to and including:	Floor - Cumulative Gross Revenues from:
1	0	102,603	102,603	107,488	107,488	117,260	117,260	127,032	127,032
2	0	210,880	210,880	220,922	220,922	241,006	241,006	261,090	261,090
3	0	325,041	325,041	340,519	340,519	371,475	371,475	402,432	402,432
4	0	445,298	445,298	466,503	466,503	508,912	508,912	551,321	551,321
5	0	572,037	572,037	599,277	599,277	653,757	653,757	708,237	708,237
6	0	704,828	704,828	738,391	738,391	805,518	805,518	872,644	872,644
7	0	843,807	843,807	883,989	883,989	964,351	964,351	1,044,714	1,044,714
8	0	990,201	990,201	1,037,353	1,037,353	1,131,658	1,131,658	1,225,963	1,225,963
9	0	1,144,229	1,144,229	1,198,716	1,198,716	1,307,690	1,307,690	1,416,665	1,416,665
10	0	1,306,151	1,306,151	1,368,349	1,368,349	1,492,744	1,492,744	1,617,139	1,617,139
11	0	1,475,387	1,475,387	1,545,644	1,545,644	1,686,157	1,686,157	1,826,670	1,826,670
12	0	1,652,739	1,652,739	1,731,440	1,731,440	1,888,844	1,888,844	2,046,248	2,046,248
13	0	1,838,298	1,838,298	1,925,836	1,925,836	2,100,912	2,100,912	2,275,988	2,275,988
14	0	2,032,872	2,032,872	2,129,675	2,129,675	2,323,282	2,323,282	2,516,889	2,516,889
15	0	2,236,618	2,236,618	2,343,124	2,343,124	2,556,135	2,556,135	2,769,147	2,769,147
16	0	2,450,100	2,450,100	2,566,771	2,566,771	2,800,114	2,800,114	3,033,457	3,033,457
17	0	2,674,001	2,674,001	2,801,334	2,801,334	3,056,001	3,056,001	3,310,668	3,310,668
18	0	2,908,337	2,908,337	3,046,829	3,046,829	3,323,814	3,323,814	3,600,798	3,600,798
19	0	3,152,397	3,152,397	3,302,511	3,302,511	3,602,739	3,602,739	3,902,967	3,902,967
20	0	3,406,676	3,406,676	3,568,899	3,568,899	3,893,344	3,893,344	4,217,789	4,217,789
21	0	3,671,416	3,671,416	3,846,245	3,846,245	4,195,904	4,195,904	4,545,562	4,545,562
22	0	3,947,047	3,947,047	4,135,001	4,135,001	4,510,910	4,510,910	4,886,820	4,886,820
23	0	4,234,295	4,234,295	4,435,928	4,435,929	4,839,195	4,839,195	5,242,461	5,242,461
24	0	4,533,676	4,533,676	4,749,566	4,749,566	5,181,344	5,181,344	5,613,123	5,613,123
25	0	4,844,327	4,844,327	5,075,009	5,075,009	5,536,374	5,536,374	5,997,738	5,997,738

	Band 1		Band 2		Band 3		Band 4		Band 5
	Floor -	Ceiling -	Floor -	Ceiling -	Floor -	Ceiling -	Floor -	Ceiling -	Floor -
26	0	5,166,981	5,166,981	5,413,028	5,413,028	5,905,121	5,905,121	6,397,214	6,397,214
27	0	5,502,137	5,502,137	5,764,144	5,764,144	6,288,157	6,288,157	6,812,170	6,812,170
28	0	5,850,198	5,850,198	6,128,779	6,128,779	6,685,940	6,685,940	7,243,102	7,243,102
29	0	6,211,595	6,211,595	6,507,385	6,507,385	7,098,966	7,098,966	7,690,546	7,690,546
30	0	6,586,160	6,586,160	6,899,787	6,899,787	7,527,041	7,527,041	8,154,294	8,154,294
31	0	6,974,207	6,974,207	7,306,312	7,306,312	7,970,522	7,970,522	8,634,732	8,634,732
32	0	7,376,883	7,376,883	7,728,163	7,728,163	8,430,723	8,430,723	9,133,284	9,133,284
33	0	7,794,170	7,794,170	8,165,321	8,165,321	8,907,623	8,907,623	9,649,925	9,649,925
34	0	8,226,909	8,226,909	8,618,666	8,618,666	9,402,181	9,402,181	10,185,696	10,185,696
35	0	8,675,108	8,675,108	9,088,209	9,088,209	9,914,409	9,914,409	10,740,610	10,740,610
36	0	9,139,116	9,139,116	9,574,312	9,574,312	10,444,704	10,444,704	11,315,096	11,315,096
37	0	9,619,670	9,619,670	10,077,749	10,077,749	10,993,908	10,993,908	11,910,067	11,910,067
38	0	10,118,031	10,118,031	10,599,842	10,599,842	11,563,464	11,563,464	12,527,086	12,527,087
39	0	10,634,330	10,634,330	11,140,726	11,140,726	12,153,520	12,153,520	13,166,313	13,166,313
40	0	11,168,884	11,168,884	11,700,736	11,700,736	12,764,439	12,764,439	13,828,143	13,828,143
41	0	11,722,354	11,722,354	12,280,561	12,280,561	13,396,976	13,396,976	14,513,390	14,513,390
42	0	12,295,456	12,295,456	12,880,953	12,880,954	14,051,949	14,051,949	15,222,945	15,222,945
43	0	12,888,794	12,888,794	13,502,546	13,502,546	14,730,050	14,730,050	15,957,554	15,957,554
44	0	13,503,491	13,503,491	14,146,514	14,146,514	15,432,561	15,432,561	16,718,607	16,718,607
45	0	14,140,062	14,140,062	14,813,398	14,813,398	16,160,070	16,160,070	17,506,743	17,506,743
46	0	14,799,392	14,799,392	15,504,125	15,504,125	16,913,591	16,913,591	18,323,057	18,323,057
47	0	15,482,222	15,482,222	16,219,471	16,219,471	17,693,968	17,693,968	19,168,465	19,168,465
48	0	16,189,561	16,189,561	16,960,493	16,960,493	18,502,356	18,502,356	20,044,219	20,044,219
49	0	16,922,066	16,922,066	17,727,878	17,727,878	19,339,504	19,339,504	20,951,129	20,951,129
50	0	17,680,326	17,680,326	18,522,246	18,522,247	20,206,087	20,206,087	21,889,928	21,889,928
51	0	18,464,605	18,464,605	19,343,872	19,343,872	21,102,405	21,102,405	22,860,939	22,860,939
52	0	19,274,804	19,274,804	20,192,652	20,192,652	22,028,348	22,028,348	23,864,043	23,864,043
53	0	20,112,167	20,112,167	21,069,889	21,069,889	22,985,334	22,985,334	24,900,778	24,900,778

The above figures in the Band columns are all United States dollar amounts in 000's.