

**AMENDMENT NO. 6 TO THE COMPREHENSIVE AGREEMENT RELATING TO THE
DOWNTOWN TUNNEL/MIDTOWN TUNNEL/MARTIN LUTHER KING FREEWAY EXTENSION
PROJECT**

This AMENDMENT NO. 6 TO THE COMPREHENSIVE AGREEMENT RELATING TO THE DOWNTOWN TUNNEL/MIDTOWN TUNNEL/MARTIN LUTHER KING FREEWAY EXTENSION PROJECT (this "Amendment") is made and entered into and effective October 27, 2016, 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 21, 2012, Amendment No. 2 dated as of April 13, 2012, Amendment No. 3 dated as of January 15, 2014 ("Amendment No. 3"), Amendment No. 4 dated as of January 31, 2014 and Amendment No. 5 dated as of September 18, 2015 ("Amendment No. 5," and collectively, together with all other preceding amendments, 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. 3, among other things, set forth (a) the Concessionaire's agreement to reduce the maximum transponder toll rates on the Existing Project Assets for the period from the commencement of the imposition, collection and enforcement of tolls on the Existing Project Assets until the earlier to occur of (i) December 31, 2016 or (ii) the day preceding the Substantial Completion Date for the New Project Assets, (b) the Department's agreement to pay the cost and revenue impacts totaling \$82,542,000 that were projected to result from such reduction and (c) an amended Exhibit J (Toll Rate Schedule) to the Comprehensive Agreement;

WHEREAS, Amendment No. 5, among other things, (a) eliminated the Concessionaire's right to impose, charge, collect, use and enforce the collection and payment of the Toll Revenues for the New MLK Extension in exchange for payment by the Department to the Concessionaire of \$78,000,000 pursuant to Amendment No. 5 and (b) further amended Exhibit J (Toll Rate Schedule) to the Comprehensive Agreement;

WHEREAS, the Department and the Concessionaire desire to formalize/establish a date certain upon which the tolls can be escalated and upon which the Department will cease making payments to the Concessionaire for the reduction in toll rates pursuant to Amendment No. 3;

WHEREAS, Exhibit J as amended provided for tolls to be escalated on the anniversary of the New Midtown Tunnel Substantial Completion Date (now certified as August 26, 2016) and the Department and the Concessionaire desire to defer that escalation, herein defined as the Residual %, until January 1, 2018;

WHEREAS, the New MLK Extension Scheduled Substantial Completion Date is defined in the Comprehensive Agreement as the date that is 1715 Days following the Financial Close Date, as such date may be extended for Delay Events from time to time pursuant to the Agreement:

WHEREAS, Amendment No. 5 also amended the Comprehensive Agreement to require the Concessionaire to 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 ten years commencing in January 2017, for a total of \$5,000,000, ("Contribution Funds"), to be paid to a new or existing community organization identified by the Commonwealth and to be used solely for the purpose of compensating economically disadvantaged tunnel users for tolls on the Midtown and Downtown tunnels;

WHEREAS, as the program to distribute the Contribution Funds was developed, it has been determined that it is necessary to modify the provisions in Amendment No. 5 relating to the Contribution Funds in order to provide flexibility as to the entity that will be paid and bear responsibility for administering the Concessionaire contributions; and

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. Exhibit J (Toll Rate Schedule) of the Comprehensive Agreement. Exhibit J (Toll Rates Schedule) to the Comprehensive Agreement (as amended by Amendment No. 3 and Amendment No. 5), and including all attachments thereto, shall effective as of the effective date of this Amendment No. 6 — October 27, 2016, be replaced in its entirety with the document attached to this Amendment as Annex A ("Exhibit J"). Nothing herein is intended to retroactively void or nullify the provisions of Exhibit J as it previously existed for purposes of matters that arose prior to the effective date of this Amendment No. 6.
3. Amendment No. 3. Amendment No. 3, including all attachments thereto, is rescinded in its entirety, effective as of the effective date of this Amendment No. 6, and those sections of Amendment No. 3 remaining in effect, as amended, are hereby integrated into Exhibit J. Nothing herein is intended to retroactively void or nullify the provisions of Amendment No. 3 for purposes of matters that arose prior to the effective date of this Amendment No. 6.
4. Amendment No. 5. Amendment No. 5, is amended by deleting the existing language in paragraph 5 and adding the following language:
 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 ten years commencing in January 2017, for a total of \$5,000,000 (collectively, Contribution Funds), to be paid to an entity designated by the Department to administer the Contribution Funds (Contribution Administrator), provided that:

(i) if, by January 2017, the Department has not yet designated a third party to serve as the Contribution Administrator nor identified itself as the Contribution Administrator, Contribution Funds shall be remitted to, and held in trust by, the Department until such time that the Department has made such designation;

(ii) the Contribution Administrator will disburse Contribution Funds as determined and directed by the Department to benefit tunnel users who are economically disadvantaged;

(iii) the Contribution Administrator will utilize Contribution Funds only for the purpose of compensating tunnel users for tolls on the Downtown and Midtown Tunnel and shall not utilize said funds for its own administration;

(iv) the Concessionaire will not be responsible for the operations of the Contribution Administrator nor the administration or disbursement of Contribution Funds once Concessionaire has remitted said funds to the Contribution Administrator or the Department; and

(v) the Concessionaire will not be liable for any and all losses, claims and costs incurred as a result of the activities of the Contribution Administrator.

5. The definition of the New MLK Extension Scheduled Substantial Completion Date in the Comprehensive Agreement shall be amended to read as follows: the date that is 1722 Days following the Financial Close Date, as such date may be extended for Delay Events from time to time pursuant to the Agreement.

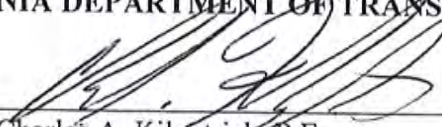
6. No Modification. This Amendment is limited to the matters set forth herein and shall not constitute a modification or waiver of any provision of the Comprehensive Agreement (including, for the avoidance of doubt, any amendment to the Comprehensive Agreement) not expressly amended pursuant to this Amendment, and such provisions shall continue in effect.

7. 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.

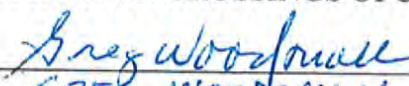
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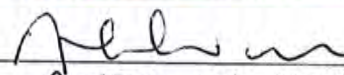
IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Amendment on the date first written above.

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: ANTHONY EVANS
Title: CFO

Annex A

EXHIBIT J

(TOLL RATE SCHEDULE)

EXHIBIT J

TOLL RATE SCHEDULE

Section 1. Vehicle Classifications

Pursuant to the Agreement, the Concessionaire will have the right to charge toll rates for different vehicle classes that will be determined based on the vehicle classifications (“Vehicle Classifications”) defined in Table J-1 below:

Table J-1: Vehicle Classifications

<u>Vehicle Classification</u>	<u>Description</u>
Light Vehicles	Vehicles with up to two axles and six tires, including passenger cars, motorcycles, motorcycles equipped with a sidecar, towing a trailer or equipped with a sidecar and towing a trailer, and 2-axle trucks (4 and 6 tires)
Heavy Vehicles	Vehicles with three or more axles

Section 2. Tolling Periods

The Concessionaire will have the right to charge tolls for different time periods within a day (“Tolling Periods”) defined Table J-2 below:

Table J-2: Tolling Periods

<u>Tolling Period</u>	<u>Hours</u>
Peak Period	Every Monday through Friday from 5:30 am eastern time to 9:00 am eastern time and 2:30 pm eastern time to 7:00 pm eastern time*
Off-Peak Period	All other times not specifically defined as Peak Period

* All times are U.S. eastern standard time or eastern daylight savings time, as applicable.

Section 3. User Classifications

The Department and the Concessionaire have established the user classifications (“User Classifications”) for Tolloed Vehicles as set forth in Table J-3 below:

Table J-3: User Classifications

User Classification	Project Asset	Vehicle Class and User (if applicable)	Tolling Period
A	Existing Downtown Tunnels, Existing Midtown Tunnel and New Midtown Tunnel	Light Vehicles	Off-Peak Period
B	Existing Downtown Tunnels, Existing Midtown Tunnel and New Midtown Tunnel	Light Vehicles	Peak Period
C	Existing Downtown Tunnels, Existing Midtown Tunnel and New Midtown Tunnel	Heavy Vehicles	Off-Peak Period
D	Existing Downtown Tunnels, Existing Midtown Tunnel and New Midtown Tunnel	Heavy Vehicles	Peak Period

Section 4. Transponder Toll Rate

Subject to the terms of the Agreement (including any adjustments to the toll rates mutually agreed to by the Department and the Concessionaire in relation to funding secured pursuant to Section 8.11(c)(ii)(A) or 14.01(d) of the Agreement), the maximum transponder toll rate (“Maximum Transponder Toll Rate”) for Tolled Vehicles with transponders from January 1, 2017 until the end of the Term will be calculated in accordance with the following formula:

$$\text{Maximum Transponder Toll Rate for each calendar year} = \frac{\text{Base Toll Rate for each calendar year} \times \text{Cumulative Escalation Index at beginning of each calendar year}}{\text{Cumulative Escalation Index at beginning of each calendar year}}$$

Where:

Base Toll Rate = the Base Toll Rates for each calendar year for each user classification in Table J-A of Attachment 1 to this Exhibit J for Tolled Vehicles with transponders, in U.S. dollars.

Cumulative Escalation Index (January 1, 2017) = 1.035

Cumulative Escalation Index (January 1, 2018) = (1 + Applicable Escalation Factor previous year + Residual %) x 1.035

Residual % = number of days from the date of the first anniversary of the Substantial Completion Date of the New Midtown Tunnel (August 26, 2017) to December 31, 2017, divided by 365 multiplied by 3.5% which is 1.22%.

Cumulative Escalation Index (January 1, 2019 and each anniversary thereof thereafter throughout the Term) =
 $(1 + \text{Applicable Escalation Factor}_{\text{previous year}}) \times \text{Cumulative Escalation Index at beginning of previous year.}$

Applicable Escalation Factor $_{\text{previous year}}$ = the greater of (i) $\{(CPI_t / CPI_{t-1}) - 1\}$ or (ii) $\{3.50\%$.

CPI_t = the most recently published Consumer Price Index as of the beginning of year t .

CPI_{t-1} = the most recently published Consumer Price Index as of the date 12 months prior to the beginning of year t .

Section 5. Non Transponder Toll Rate

Subject to the terms of the Agreement (including any adjustments to the toll rates mutually agreed to by the Department and the Concessionaire in relation to funding secured pursuant to Section 8.11(c)(ii)(A) or 14.01(d) of the Agreement), the Concessionaire will have the right to impose, charge, collect and enforce a surcharge for Tolloed Vehicles without a transponder ("Surcharge"). From January 1, 2017 until the end of the Term, the maximum toll rate for Tolloed Vehicles without transponders (the "Maximum Non Transponder Toll Rate") will be calculated in accordance with the following formula:

Maximum Non Transponder Toll Rate for each calendar year = (Base Toll Rate for each calendar year +
Surcharge) x Cumulative Escalation Index at beginning of each calendar year

Where:

Base Toll Rate = the Base Toll Rates for each calendar year for each user classification in Table J-A of Attachment 1 for Tolloed Vehicles with transponders, in U.S. dollars.

Cumulative Escalation Index (January 1, 2017) = 1.035

Cumulative Escalation Index (January 1, 2018) = $(1 + \text{Applicable Escalation Factor}_{\text{previous year}} + \text{Residual \%}) \times 1.035$

Residual % = number of days from the date of the first anniversary of the Substantial Completion Date of the New Midtown Tunnel (August 26, 2017) to December 31, 2017, divided by 365 multiplied by 3.5% which is 1.22%.

Cumulative Escalation Index (January 1, 2019 and each anniversary thereafter through Term) = $(1 + \text{Applicable Escalation Factor}_{\text{previous year}}) \times \text{Cumulative Escalation Index at beginning of previous year.}$

Applicable Escalation Factor $_{\text{previous year}}$ = the greater of (i) $\{(CPI_t / CPI_{t-1}) - 1\}$ or (ii) $\{3.50\%$.

Surcharge = \$3.18.

[Amendment No. 6 – Exhibit J to the Comprehensive Agreement: Effective October 27, 2016]

CPI_t = the most recently published Consumer Price Index as of the beginning of year t .

CPI_{t-1} = the most recently published Consumer Price Index as of the date 12 months prior to the beginning of year t .

Section 6. Rounding of Toll Rates

The resulting Maximum Transponder Toll Rate and Maximum Non Transponder Toll Rate for each User Classification will be rounded up to the next greatest hundredth of a dollar denomination (\$0.01); *provided*, however, that any calculation made pursuant to Section 4 and Section 5 of this Exhibit J shall be made as if any such increase had not occurred.

Section 7. Toll Rate Changes

Subject to Sections 5.02 and 5.03 of the Agreement, the Concessionaire will have the right to change toll rates for each User Classification at any time; *provided*, that (a) the toll rates charged do not exceed the applicable Maximum Transponder Toll Rate and Maximum Non Transponder Toll Rate for each User Classification, and (b) the toll rates charged are rounded up to the next greatest hundredth of a dollar denomination (\$0.01).

Section 8. Definitions

Capitalized terms used but not otherwise defined in this Exhibit J have the respective meanings set forth in Exhibit A to the Agreement. In addition, the following term has the meaning specified below:

Tolled Vehicles means Light Vehicles and Heavy Vehicles, excluding Exempt Vehicles.

Section 9. Toll Rates from February 1, 2014 through December 31, 2016

Notwithstanding anything to the contrary contained in this Exhibit J, the maximum toll rates on the Existing Project Assets for Tolled Vehicles during the period from February 1, 2014 to December 31, 2016 will be as follows:

- (a) Maximum Transponder Toll Rate for Light Vehicles
- (i) February 1, 2014 to December 31, 2014:
 - Off-Peak Period toll — \$0.75, Peak Period toll — \$1.00.
 - (ii) January 1, 2015 to December 31, 2015:
 - Off-Peak Period toll — \$1.00, Peak Period toll — \$1.25.
 - (iii) January 1, 2016 to December 31, 2016:
 - Off-Peak Period toll — \$1.25, Peak Period toll — \$1.50.

[Amendment No. 6 – Exhibit J to the Comprehensive Agreement: Effective October 27, 2016]

(b) Maximum Transponder Toll Rate for Heavy Vehicles

- (i) Off-Peak Period toll — three times the applicable Maximum Transponder Toll Rate for Light Vehicles.
- (ii) Peak Period toll — four times the applicable Maximum Transponder Toll Rate for Light Vehicles.

(c) Maximum Non Transponder Toll Rate

The applicable Maximum Transponder Toll Rate *plus* a surcharge equal to two times the Maximum Transponder Toll Rate for Light Vehicles for the Off-Peak Period.

Section 10. Payments for Reduction in Toll Rates

(a) Pursuant to Amendment No. 3, the Department and the Concessionaire agreed and subject to the terms set forth in this Section 10, the Department and Concessionaire hereby reaffirm their agreement, that the amount payable to the Concessionaire as a result of the reduction in toll rates pursuant to the Comprehensive Agreement totaled \$82,542,000, payable monthly in installments as set out in Attachment 2 to this Exhibit J.

(b) The Department and Concessionaire agree that, as of the effective date of this Amendment No. 6, the Department has paid monthly installments through and including the installment due for October, 2016, for a total of \$79,426,000 and that two monthly installments totaling \$3,116,000 remain to be paid.

(c) Each remaining monthly installment shall be payable not later than the 25th day of each month commencing November 2016, with a final payment in December 2016.

(d) The Concessionaire acknowledges that the Department has been using federal-aid funds to make the payments described in clauses (a) and (b) of this Section 10 and intends to use such funds to make such remaining payments. The Concessionaire agrees to use the funds paid by the Department pursuant to Amendment No. 3 and this Section 10 solely to pay costs of the Project eligible for reimbursement from federal-aid funds pursuant to applicable Law.

(e) No later than 180 Days from Final Completion, the Concessionaire will provide a final accounting to the Department documenting the use of the funds paid by the Department as a result of the reduction in toll rates described in this Section 10.

(f) The Concessionaire agrees that the Department's payment of the funds described in this Section 10 fully resolves and settles all claims, demands, Concessionaire Damages, or damages of any kind, including claims for Delay Events or Compensation Events, relating to or arising out of the reduction in toll rates described in this Section 10.

Attachment 1 to Exhibit J

Table J-A: Base Toll Rates for Tolloed Vehicles with transponders in un-inflated U.S. dollars.

User Classification	Vehicle Classification	Tolling Period	Jan 1, 2017 to Dec 31, 2017	Jan 1, 2018 to Dec 31, 2018	Jan 1, 2019 to Dec 31, 2019	Jan 1, 2020 to Dec 31, 2020	Jan 1, 2021 to Dec 31, 2021	Jan 1, 2022 to Dec 31, 2022	Jan 1, 2023 to Dec 31, 2023	Jan 1, 2024 to Dec 31, 2024	Jan 1, 2025 to Dec 31, 2025	Jan 1, 2026 to Dec 31, 2026	Ongoing calendar years to end of Term
A	Light Vehicle	Off Peak	\$1,590	\$1,590	\$1,590	\$1,590	\$1,590	\$1,590	\$1,590	\$1,590	\$1,590	\$1,590	\$1,590
B	Light Vehicle	Peak	\$1,880	\$1,920	\$1,959	\$1,999	\$2,039	\$2,079	\$2,118	\$2,158	\$2,198	\$2,238	\$2,278
C	Heavy Vehicle	Off Peak	\$4,770	\$4,770	\$4,770	\$4,770	\$4,770	\$4,770	\$4,770	\$4,770	\$4,770	\$4,770	\$4,770
D	Heavy Vehicle	Peak	\$7,519	\$7,678	\$7,837	\$7,996	\$8,155	\$8,314	\$8,473	\$8,632	\$8,791	\$8,950	\$8,950

Attachment 2 to Exhibit J

Payments for Reduction in Toll Rates

Month	Amount
February 2014	\$3,022,273
March 2014	\$3,022,273
April 2014	\$3,022,273
May 2014	\$3,022,273
June 2014	\$3,022,273
July 2014	\$3,022,273
August 2014	\$3,022,273
September 2014	\$3,022,273
October 2014	\$3,022,273
November 2014	\$3,022,273
December 2014	\$3,022,273
January 2015	\$2,550,083
February 2015	\$2,550,083
March 2015	\$2,550,083
April 2015	\$2,550,083
May 2015	\$2,550,083
June 2015	\$2,550,083
July 2015	\$2,550,083
August 2015	\$2,550,083
September 2015	\$2,550,083
October 2015	\$2,550,083
November 2015	\$2,550,083
December 2015	\$2,550,084
January 2016	\$1,558,000

[Amendment No. 6 – Attachment 2 to Exhibit J to the Comprehensive Agreement]

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