

**AMENDMENT NO. 9 TO THE COMPREHENSIVE AGREEMENT RELATING TO  
THE DOWNTOWN TUNNEL/MIDTOWN TUNNEL/MARTIN LUTHER KING  
FREEWAY EXTENSION PROJECT**

THIS AMENDMENT NO. 9 TO THE COMPREHENSIVE AGREEMENT RELATING TO THE DOWNTOWN TUNNEL/MIDTOWN TUNNEL/MARTIN LUTHER KING FREEWAY EXTENSION PROJECT (this “Amendment No. 9”) is made and entered into as of November 10, 2021 by and between the **VIRGINIA DEPARTMENT OF TRANSPORTATION** (the “Department”), an agency of the Commonwealth of Virginia (the “Commonwealth”), the address of which 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, Virginia 23707. The Department and the Concessionaire are each herein referred to as “Party” or collectively as the “Parties.”

**RECITALS**

WHEREAS, the Department and the Concessionaire have entered into a Comprehensive Agreement Relating to the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project (the “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. 4 dated as of January 31, 2014, Amendment No. 5 dated as of September 18, 2015, Amendment No. 6 dated as of October 27, 2016, Amendment No. 7 dated as of October 29, 2019, and Amendment No. 8 dated as of October 20, 2020 (as amended, the “Comprehensive Agreement”), pursuant to which the Department has granted to the Concessionaire a permit to (i) finance, develop, design, construct manage, operate, maintain, and improve the Project and (ii) establish, impose, charge, collect, use, and enforce payment of tolls and related charges; and

**WHEREAS**, the Parties desire to amend their respective rights and obligations under the Comprehensive Agreement, on the terms set forth in this Amendment No. 9.

**WHEREAS**, the Parties had executed an Amendment No. 9 to the Comprehensive Agreement dated November 9, 2021 (the “Prior Amendment No. 9”). This Amendment No. 9 amends and replaces in full the Prior Amendment No. 9 in its entirety.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of these premises and in consideration of the mutual covenants herein contained, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, the Parties do hereby agree as follows.

1. Definitions; References.

(a) Each capitalized term used and not otherwise defined herein shall have the meaning assigned to such term in the Comprehensive Agreement.

(b) Exhibit A (Definitions) to the Comprehensive Agreement is hereby amended by adding the following:

Acronym	Definition
VDMV	Virginia Department of Motor Vehicles

**2022 Refinancing** means the July 1, 2022 Refinancing set forth in the bond purchase agreement anticipated to be executed in November/December 2021. Such Refinancing does not include refinancing of the TIFIA debt.

**Annual Contribution** is defined in Section 5.09.

**Available Funds** means those funds that are available to be paid after debt service and prior to the payments for discretionary capital expenditures in the Concessionaire's funding order under the Initial Project Financing Agreements, as such agreements may be amended, or amended and restated, in accordance with the Comprehensive Agreement.

**Business Day** is defined in the Initial Project Financing Agreements.

**Bi-Annual Installment** is defined in Section 5.09(a)(iii).

**Contribution Administrator** is defined in Section 5.09(d)(i).

**Contribution Period** means calendar year 2022 through and including calendar year 2036; provided that if the Department enters into the reciprocity agreement with North Carolina described in Section 5.09(c)(v) by not later than December 31, 2024, then the Contribution Period shall automatically extend through and including calendar year 2041.

**Elective Department Payment** is defined in Section 7.02(b)(iii).

**Installment Shortfall** is defined in Section 5.09(a)(iv).

**Prior Amendment No. 9** is defined in the Recitals of this Amendment.

**Toll Relief Program** is defined in Section 5.09.

**Two-Year Sum** is defined in Section 5.09(b).

**Untolled O&M Payments** is defined in Section 7.02(b).

(c) All references to Sections in this Amendment No. 9 are to the Sections of the Comprehensive Agreement unless otherwise indicated.

2. Amendment of Section 5.01(b) (Concerning Tolls). Section 5.01(b) is hereby amended and restated in its entirety to read as follows:

(a) Concerning Tolls. The Concessionaire's rights under Section 5.01(a) are limited by, and conditioned on, compliance with Law and all other provisions in this Agreement, including the following provisions:

(i) subject to Section 33.2-613 of the Code of Virginia, vehicles exempted from tolls thereunder ("Exempt Vehicles");

(ii) vehicles (other than vehicles referred to in Section 5.01(b)(i) and vehicles operated by persons described in Section 5.01(b)(v)) will be entitled to use the Project subject to payment of the applicable tolls;

(iii) the toll rates will be set in accordance with the Toll Rate Schedule attached as Exhibit J;

(iv) the Concessionaire may charge, debit and collect tolls through open road tolling facilities that comply with Section 5.04 or use remote sensing or other technologies (including global positioning system technology) which must be interoperable with E-ZPass (or any successor to E-ZPass utilized on State Highways at that time) to charge, debit, and collect tolls for actual vehicular use of the Project;

(v) the following persons shall be entitled to use the Project without payment of the applicable toll:

(A) local police officers while on duty and traveling in official vehicles;

(B) persons operating school buses being used to transport pupils to or from school or for other official school business;

(C) persons operating firefighting equipment and ambulances owned by a political subdivision of the State, a nonprofit association or corporation, or the United States military;

(D) persons operating commuter buses and support vehicles for such buses operated by Hampton Roads Transit that service Hampton Roads Transit Routes 44, 45, and 47 in and between the cities of Norfolk and Portsmouth or equivalent Hampton Roads Transit commuter bus routes;

(E) employees of the Concessionaire while on duty and while commuting to and from the Concessionaire's offices for work; and

(F) at the Concessionaire's discretion, subcontractors that have contracts directly with the Concessionaire for the performance of the Work, when use of the Project by such subcontractors is necessary and incidental to the performance of the Work;

(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; and

(vii) Section 5.09.

3. New Section 5.09 Replacing Section 8.01(j). Section 8.01(j) is deleted in its entirety and replaced with new Section 5.09, as follows:

### **Section 5.09 Toll Relief Program**

The Parties establish a program of toll relief (the “Toll Relief Program”) on the terms and conditions of this Section 5.09. Concessionaire shall make annual contributions for the Toll Relief Program (each an “Annual Contribution”) on the terms and conditions of this Section 5.09.

(a) Amount and Timing of Annual Contributions

(i) The Concessionaire previously paid \$500,000 into the Toll Relief Program each year beginning in January 2017 through January 2021 and shall not continue to make such payments.

(ii) Except as provided otherwise in Sections 5.09(a)(iv) and (b), the Concessionaire shall make Annual Contributions to the Toll Relief Program throughout the Contribution Period as follows:

(A) For calendar year 2022, \$3,227,220; and

(B) For each calendar year of the Contribution Period thereafter, an amount equal to 103.5% of the immediately-preceding year’s scheduled Annual Contribution requirement (determined without regard to prior Installment Shortfalls or prior relief from payment pursuant to Section 5.09(b)).

(iii) The Annual Contribution for a given year of the Contribution Period is payable to the Contribution Administrator in two equal installments (each a “Bi-Annual Installment”) not later than March 31 and September 30 of such year, provided if such day is not a Business Day, on the next succeeding Business Day, (each such date a “Contribution Payment Date”), except to the extent provided otherwise in Section 5.09(a)(iv). The Concessionaire shall make each Bi-Annual Installment payment to the Contribution Administrator on the corresponding Contribution Payment Date.

(iv) If the Available Funds at any Contribution Payment Date are less than the Bi-Annual Installment due, then the Concessionaire shall be

entitled to defer payment of the shortfall between the amount payable as the Bi-Annual Installment and the amount of the Available Funds (an “Installment Shortfall”) as follows:

(A) The Concessionaire shall pay to the Contribution Administrator the unpaid Installment Shortfall not later than the next-occurring Contribution Payment Date, to the extent there are Available Funds to catch up the Installment Shortfall as of such Contribution Payment Date;

(B) Installment Shortfalls will continue to be payable on each Contribution Payment Date to the extent there are Available Funds and will roll forward until paid in full, including after the expiration of the Contribution Period; and

(C) In any event, all then outstanding Installment Shortfalls shall be due and payable in full concurrent with the close of any Refinancing (x) described in clause (b) of the definition of Refinancing other than the 2022 Refinancing and (y) only so long as any TIFIA Obligations (as defined in the Initial Project Financing Documents) are, or would be, outstanding after giving effect to such Refinancing, that satisfies the requirements of clause (d) of the definition of “Additional Senior Obligations” of the TIFIA Loan Agreement (as defined in the Initial Project Financing Documents), including the application of the proceeds of such Refinancing as required by such clause. The Concessionaire shall not be excused from its obligation under this Section 5.09 to pay in full outstanding Installment Shortfalls should the share of the net proceeds of a Refinancing implemented under such clause (d) that is available to the Concessionaire be less than the outstanding Installment Shortfalls.

(v) Failure of the Concessionaire to pay a Bi-Annual Installment to the extent of an Installment Shortfall shall not constitute a default of its obligation to make such payment hereunder, unless Concessionaire fails to pay when required under Section 5.09(a)(iv)(B) or (C).

(vi) Concurrently with each payment of a Bi-Annual Installment or Installment Shortfall (in whole or in part), the Concessionaire shall notify the Department of the amount and date of payment.

(vii) At the end of the Contribution Period, the Concessionaire’s obligation to pay Annual Contributions shall cease unless otherwise mutually agreed in writing; provided that the Concessionaire’s obligation to pay outstanding Installment Shortfalls accrued but not paid during the Contribution Period shall survive expiration of the Contribution Period until

all Installment Shortfalls are paid in full in accordance with Sections 5.09(a)(iv)(B) and (C).

(viii) If for any reason the Department fails to make an Untolled O&M Payment (including because the Department is relieved of such duty under Section 7.02(b)(v)), then, notwithstanding any contrary provision of the Comprehensive Agreement, as its exclusive remedy, the Concessionaire will be permitted to reduce its next-occurring Bi-Annual Installment payment by an amount equal to the unpaid portion of the Untolled O&M Payment.

(ix) If the Department makes an Elective Department Payment to the Concessionaire pursuant to Section 7.02(b)(iii), then on the next-occurring Contribution Date after the Department makes the Elective Department Payment, the Concessionaire shall make an additional contribution to the Toll Relief Program (in addition to the Annual Contribution) in an amount equal to the corresponding Elective Department Payment; provided that Sections 5.09(a)(iv) through (vii) inclusive shall apply to such Concessionaire payment obligation.

(b) Relief from Paying Annual Contribution

At the beginning of each calendar year starting with 2027, the Department and the Concessionaire will determine the amount available in the Toll Relief Program account as of January 1 of such calendar year. If the amount then available exceeds the total amount of the Annual Contributions calculated for the immediately preceding 24-month period (calculated as if paid in full and without regard to Installment Shortfalls) (the “Two-Year Sum”), then the Concessionaire shall not be obligated to make the corresponding Annual Contribution to the Toll Relief Program for that calendar year.

(c) Value Sources to Support Increased Annual Contributions

The following administrative measures will be implemented after the effective date of Amendment No. 9 to support the Concessionaire’s video tolling enforcement and collection efforts, and to support the Concessionaire’s increased Annual Contributions to the Toll Relief Program for 2022 and thereafter.

(i) The Virginia Department of Motor Vehicles (“VDMV”) will allow the Concessionaire secure electronic access to VDMV information on vehicle registrations, including email addresses and phone numbers on such registrations to the extent available under applicable Laws, and including information on vehicle registrations that have expired within the past 24 months. This access will be limited to registration information for vehicles that have traveled on the Project without automatic payment of tolls, and will be subject to all applicable requirements to protect the confidentiality of personal identifiable information.

(ii) Subject to complying with applicable Laws and its customary practices, including notices and opportunities to cure or contest, the Concessionaire may place stops on vehicle registrations that have expired within the past 24 months and are associated with delinquent tolls. Registration stops will be lifted as and when delinquent tolls are paid or as and when otherwise required by applicable Laws and regulations and in accordance with the current Agreement with Toll Facility Operator signed by both parties.

(iii) By not later than December 1, 2022, the VDMV and the Concessionaire will renew the related VDMV/Concessionaire agreements setting forth the detailed terms and conditions to accomplish the administrative measures set forth in Section 5.09(c)(i) and (ii).

(iv) Commencing not later than April 1, 2022, the Department will provide the Concessionaire, through its E-Z Pass operation and secure electronic protocols, account details of Virginia E-Z Pass account holders that have unfunded E-Z Pass transponder accounts. The Concessionaire will only request customer information related to accounts that have remained unfunded following the retry process (Section 33.2-615 of the Code of Virginia). The Concessionaire will have the right to use this information solely for creating video toll invoices to Project users. Access to account details will be subject to requirements to protect the confidentiality of personal identifiable information.

(v) The VDMV and the Department will use good faith efforts to enter into a reciprocity agreement (or extension of any existing reciprocity agreement) with the department of motor vehicles for North Carolina that provides for each state to either withhold renewal of vehicle registration or suspend the vehicle registration as provided by each state's laws for a resident who does not satisfy his or her toll violations incurred in the other state, including payment of tolls, penalties, and associated administrative fees in accordance with the terms of the agreement and the Laws of the two states.

(vi) The Department and VDMV will use good faith efforts to obtain access to information on vehicles and vehicle owners that owe tolls for use of the Project and to share that information with the Concessionaire.

(d) Management of Toll Relief Program

(i) The Concessionaire shall pay all Annual Contributions (and Installment Shortfall payments and additional contributions under Section 5.09(a)) to an entity designated and controlled by the Department (or the Department itself) to administer the funds in the Toll Relief Program (the "Contribution Administrator").

(ii) The Contribution Administrator will disburse funds in the Toll Relief Program as determined and directed by the Department to benefit tunnel users who are economically disadvantaged.

(iii) The Department will cause the Contribution Administrator to use funds in the Toll Relief Program only for the purpose of compensating program enrollees for tolls on the Downtown Tunnel and the Midtown Tunnel; provided that the Department shall have the right to direct the Contribution Administrator to make available a portion of the funds for its and the Department's marketing and administration costs related to the Toll Relief Program. The Department and the Concessionaire shall cooperate to establish a budget for such marketing and administration costs prior to the beginning of each calendar year of the Contribution Period (including calendar year 2022). The Department and the Concessionaire recognize that a budget target in the range of 10% of funds available in the Toll Relief Program is a reasonable amount, except that a higher amount is expected and reasonable for calendar year 2022 to take into account needs for program updating and a strong initial marketing and outreach effort.

(iv) The Concessionaire will not be responsible for the operations of the Contribution Administrator nor the administration or disbursement of funds in the Toll Relief Program once Concessionaire has remitted said funds to the Contribution Administrator.

(v) The Concessionaire will not be liable for any losses, claims and costs incurred as a result of the activities of the Department or Contribution Administrator with respect to the Toll Relief Program.

(vi) From and after the effective date of Amendment No. 9, the Department will provide, or arrange for the Contribution Administrator (if a third party) to provide, the Concessionaire with annual Toll Relief Program reports demonstrating (on an aggregated basis and without the personal information of any program enrollee) the number of program applicants, the number of applications accepted, approved, and denied, and the aggregate funds paid out through the Toll Relief Program.

(vii) From and after the effective date of Amendment No. 9, the Toll Relief Program will be co-branded between the Department and the Concessionaire. The Concessionaire's branding will consist of including "Funded by [name of Concessionaire]" and its logo, reasonably acceptable to the Department, on the Department's website for the Program.

(viii) In addition to the annual determinations required under Section 5.09(b), the Department and the Concessionaire will conduct a joint review of the effectiveness of the Toll Relief Program, and identify strategies to improve it:



(A) no less frequently than every four years, with the first review during calendar year 2025;

(B) during any other calendar year in which the amount available in the Toll Relief Program account exceeds the Two-Year Sum; and

(C) at the Department's election in its sole discretion, in the last calendar year of the Contribution Period.

(ix) As part of each joint review of the Toll Relief Program, the Department and the Concessionaire will work together, in consultation with and with input from regional stakeholders, to structure the Toll Relief Program in a manner that, to the maximum extent practicable, reduces barriers to enrollment and ensures effective and efficient use of funds.

4. Amendment of Section 7.02 (Public Funds). Section 7.02 is hereby amended and restated in its entirety to read as follows:

#### **Section 7.02 Public Funds**

(a) Public Funds Amount. The Department will make payments of the Public Funds Amount to the Concessionaire in accordance with the terms set forth in the Public Funds Amount Payment Terms attached as Exhibit M. The Public Funds Amount will be adjusted pursuant to Section 7.03(b).

(b) Operating and Maintenance Expenses. During the Contribution Period, the Department will provide funds to the Concessionaire to support operating and maintenance expenses for O&M Work relating to the untolled portions of the Project, *i.e.* the MLK Expressway and the Pinner's Point Interchange (the "Untolled O&M Payments"), on the following terms:

(i) The Department will pay the Concessionaire the sum of \$1,727,220 as the Untolled O&M Payment for calendar year 2022.

(ii) Except as provided otherwise in Sections 7.02(b)(v) and (vi) below, for each calendar year thereafter, the Department will pay the Concessionaire an Untolled O&M Payment equal to 103.5% of the immediately-preceding year's required Untolled O&M Payment, as fixed compensation.

(iii) The Department may elect, in its sole discretion, to increase its compensation for any particular calendar year, up to but not exceeding the Concessionaire's actual operating and maintenance expenses for O&M Work relating to the untolled portions of the Project for such calendar year as reasonably determined by the Concessionaire and the Department (each such additional amount an "Elective Department Payment"). Any Elective Department Payment will not be counted in determining the Untolled O&M Payments due for succeeding years.

(iv) The Department's Untolled O&M Payment for calendar year 2022 is payable in a single payment of \$1,727,220 no later than March 20, 2022. Each of the Department's Untolled O&M Payments to the Concessionaire for each calendar year thereafter is payable in two equal installments not later than March 20 and September 20 of such year.

(v) If the amount available under the Toll Relief Program on January 1 of 2027 or any January 1 of any calendar year thereafter during the Contribution Period exceeds the Two-Year Sum, then the Department may, but will not be obligated to, make any Untolled O&M Payment for that calendar year, in its sole discretion.

(vi) Funding for the Department's Untolled O&M Payments is subject to appropriation by the General Assembly and allocation by the Commonwealth Transportation Board.

(vii) For each calendar year for which the Department makes Untolled O&M Payments, the Concessionaire shall provide to the Department a report demonstrating that such funds were used to support the operations and maintenance of the untolled portions of the Project, *i.e.* the MLK Expressway and the Pinner's Point Interchange. The Concessionaire shall deliver such report not later than March 1 immediately following the end of the subject calendar year.

(viii) The Concessionaire's obligation under this Comprehensive Agreement to perform O&M Work for the untolled portions of the Project, including its obligation to meet the Performance Requirements, shall not be relieved or altered due to (A) the Department's payment or non-payment of one or more Untolled O&M Payments or (B) the Department's election to reduce or cease Untolled O&M Payments.

(ix) At the end of the Contribution Period, the Department's obligation to pay Untolled O&M Payments shall cease unless otherwise mutually agreed in writing.

5. Toll Increase Deferral.

(a) Section 3(b) of Amendment No. 8 is deleted in its entirety.

(b) The "Applicable Escalation Factor previous years" set forth in each of Section 4 and Section 5 of Exhibit J (Toll Rate Schedule) to the Comprehensive Agreement is revised in its entirety to read as follows:

Applicable Escalation Factor previous year=

(i) For the calculation on January 1, 2019 and January 1, 2020: the greater of (i)  $\{(CPI_t / CPI_{t-1}) - 1\}$  or (ii)  $\{3.50\%$ };

- (ii) For the calculation on January 1, 2021: 0%.
- (iii) For the calculation on January 1, 2022 and January 1, 2023: the sum of:
  - (A) the greater of (i)  $\{(CPit/ CPit-I) - 1\}$  or (ii)  $\{3.50\%$  and
  - (B) 117 basis points (1.17%);
- (iv) For the calculation on January 1, 2024: the escalation factor that would have been calculated in the absence of Amendments No. 8 and this Amendment No. 9, such that the escalation factor for that calculation will result in the same Maximum Transponder Toll Rate and Maximum Non Transponder Toll Rate as would have been without the temporary toll freeze and phased catch-up for 2021, 2022 and 2023.
- (v) For the calculation on January 1, 2025 and each January 1 thereafter throughout the Term: the greater of (i)  $\{(CPit/ CPit-I)- 1\}$  or (ii)  $\{3.50\%$ .
- (c) Attachment 1 to Exhibit J is replaced in its entirety with Attachment 1 to Exhibit J as set forth in the Annex to this Amendment No. 9.

6. Representations and Warranties.

- (a) The Concessionaire hereby represents and warrants to the Department as follows:
  - (i) the Concessionaire has full power, right and authority to execute and perform each and all of its obligations under this Amendment No. 9;
  - (ii) 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 Amendment No. 9;
  - (iii) each person executing this Amendment No. 9 on behalf of the Concessionaire has been duly authorized to execute and deliver this Amendment No. 9;
  - (iv) this Amendment No. 9 has been duly authorized, executed and delivered by the Concessionaire and as of the effective date of this Amendment No. 9 constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;
  - (v) neither the execution and delivery by the Concessionaire of this Amendment No. 9, nor the consummation of the transactions contemplated

hereby, is in conflict with or will result in a default under or a violation of the governing instruments of the Concessionaire or any other agreements or instruments to which it is a party or by which it is bound, subject, however, to lack of objection to Amendment No. 9 by the USDOT. Without limiting the foregoing, subject only to lack of objection to Amendment No. 9 by the USDOT, the terms for the Concessionaire's payments to the Contribution Administrator set forth in this Amendment No. 9 are not in conflict with, will not result in a default under, and do not and will not violate the Initial Project Financing Agreements, as amended, or the terms of the Project Financing Agreements relating to the 2022 Refinancing; and

(vi) 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 Amendment No. 9, or which challenges the authority of the Concessionaire official executing this Amendment No. 9; and the Concessionaire has disclosed to the Department any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Concessionaire is aware.

(b) The Department hereby represents and warrants to the Concessionaire as follows:

(i) the Department has full power, right and authority to execute and perform each and all of its obligations under this Amendment No. 9;

(ii) the Department 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 Amendment No. 9;

(iii) each person executing this Amendment No. 9 on behalf of the Department has been duly authorized to execute this Amendment No. 9 on behalf of the Department;

(iv) this Amendment No. 9 has been duly authorized, executed and delivered by the Department and as of the effective date of this Amendment No. 9 constitutes a valid and legally binding obligation of the Department, 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 to general principles of equity;

(v) neither the execution and delivery by the Department of this Amendment No. 9, nor the consummation of the transactions contemplated hereby, 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; and

(vi) there is no action, suit, proceeding, investigation or litigation pending and served on the Department which challenges the Department's authority to execute, deliver or perform, or the validity or enforceability of, this Amendment No. 9, or which challenges the authority of the Department official executing this Amendment No. 9, and the Department 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 Department is aware.

7. Rescission. If any material term of this Amendment No. 9 is found to be unenforceable under applicable Law, then either Party will have the unilateral right, as its sole and exclusive remedy, to rescind Amendment No. 9 by delivering written notice of rescission to the other Party.

8. No Modification. This Amendment No. 9 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 No. 9 shall be governed by and construed in accordance with the laws of the State. Venue for any legal action arising out of this Amendment No. 9 shall lie in the Circuit Court in the City of Richmond, Virginia, Division I.

10. Condition to Effectiveness. This Amendment No. 9 shall become effective only if and when it is executed by each of the Parties.

11. Lender Provisions. The Concessionaire agrees, and the Department acknowledges, that:

(a) The Concessionaire will not include (and shall be solely responsible for not including) any Annual Contribution or Installment Shortfall in its calculation of "certain payments required to VDOT under the Comprehensive Agreement" as used in the parenthetical of clause (d)(1) of the definition of "Additional Senior Obligations" in the TIFIA Loan Agreement.

(b) The Concessionaire will direct (and shall be solely responsible for directing), pursuant to the Collateral Agency Agreement (as defined in the Initial Project Financing Documents), the payment of all Annual Contributions and Installment Shortfalls after level *Eleventh* and before level *Twelfth* of the cash flow waterfall set forth in Section 5.02(b) of the Collateral Agency Agreement and not at any higher or lower level of such waterfall.


(c) The TIFIA Lender shall be a third-party beneficiary solely of the provisions of Section 5.09(a)(iv)(C) of the Comprehensive Agreement, as set forth in paragraph 3 of this Amendment No. 9, and paragraphs 11(a) and 11(b) of this Amendment No. 9, with the right to enforce such provisions against the Concessionaire and to consent to any amendment, waiver or other modification thereto.

12. No Department Obligation to TIFIA Lender. The Department undertakes no obligation or liability toward the TIFIA Lender under this Amendment No. 9, and, while the Department acknowledges the TIFIA Lender's consent right (and the Concessionaire's related obligation) under Section 11(c) hereof with respect to any amendment, waiver or other modification of the relevant provisions set forth in this Amendment No. 9, the Department has no responsibility to obtain consent of the TIFIA Lender to any amendment, waiver or other modification of this Amendment No. 9.

*[Reminder of the page intentionally left blank. Signatures follow.]*

**IN WITNESS WHEREOF**, the parties, intending to be legally bound, have executed this Amendment No. 9 on the date first written above.

**VIRGINIA DEPARTMENT OF TRANSPORTATION**

By:   
Stephen C. Brich, P.E.  
Commissioner of Highways

**ELIZABETH RIVER CROSSINGS OPCO, LLC**

By: \_\_\_\_\_  
David Sullivan  
Chief Executive Officer

By: \_\_\_\_\_  
Billy Samra  
Chief Financial Officer

**Annex to Amendment No. 9**

**Attachment 1 to Exhibit J**

**Table J-A: Applicable Maximum Base Toll Rate for Tolloed Vehicles with transponders in un-inflated U.S. dollars**

This table shows Maximum Base Toll Rates for Tolloed Vehicles with transponders in un-inflated U.S. dollars (i.e., real toll rates).

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	\$1.999	\$2.052	\$2.105	\$2.158	\$2.198	\$2.238	\$2.238
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	\$7.996	\$8.208	\$8.420	\$8.632	\$8.791	\$8.950	\$8.950

Note: No increase in 2021, followed by linear catch up to Amendment 6 Maximum Base Toll Rates by 2024.



**Table J-B: Nominal Maximum Base Toll Rate Schedule**

This table shows estimated nominal Maximum Base Toll Rates for Tolloed Vehicles with transponders assuming annual CPI increases of 3.5% or lower. Actual Maximum Base Toll Rates and annual toll growth will be higher if inflation exceeds 3.5%.

User Classification	Vehicle Classification	Tolling Period	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
<b>Nominal U.S. Dollar Base Toll Rates for Tolloed Vehicles with transponders</b>							
A	Light Vehicle	Off Peak	\$1.85	\$1.85	\$1.94	\$2.03	\$2.12
B	Light Vehicle	Peak	\$2.33	\$2.33	\$2.50	\$2.68	\$2.88
C	Heavy Vehicle	Off Peak	\$5.54	\$5.54	\$5.80	\$6.07	\$6.36
D	Heavy Vehicle	Peak	\$9.29	\$9.29	\$9.98	\$10.71	\$11.51
<b>YOY Change in Toll Rates (\$)</b>							
A	Light Vehicle	Off Peak	n/a	\$0.00	\$0.09	\$0.09	\$0.09
B	Light Vehicle	Peak	n/a	\$0.00	\$0.17	\$0.18	\$0.20
C	Heavy Vehicle	Off Peak	n/a	\$0.00	\$0.26	\$0.27	\$0.29
D	Heavy Vehicle	Peak	n/a	\$0.00	\$0.69	\$0.73	\$0.80
<b>YOY Change in Toll Rates (%)</b>							
A	Light Vehicle	Off Peak	n/a	0.0%	4.9%	4.6%	4.4%
B	Light Vehicle	Peak	n/a	0.0%	7.3%	7.2%	7.5%
C	Heavy Vehicle	Off Peak	n/a	0.0%	4.7%	4.7%	4.8%
D	Heavy Vehicle	Peak	n/a	0.0%	7.4%	7.3%	7.5%

Toll rates were not increased by 3.5% in 2021 (3.5% applicable since CPI less than 3.5%). This foregone 3.5% is recouped in equal increments in 2022-2024, with a true-up in 2024 so that 2024 nominal \$ Maximum Base Toll Rates under Amendment 9 are equal to those in Amendment 6.