

**AMENDMENT NO. 8 TO THE COMPREHENSIVE AGREEMENT RELATING TO
THE DOWNTOWN TUNNEL/MIDTOWN TUNNEL/MARTIN LUTHER KING
FREEWAY EXTENSION PROJECT**

THIS AMENDMENT NO. 8 TO THE COMPREHENSIVE AGREEMENT RELATING TO THE DOWNTOWN TUNNEL/MIDTOWN TUNNEL/MARTIN LUTHER KING FREEWAY EXTENSION PROJECT (this "Amendment No. 8") is made and entered into as of October __, 2020 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, and Amendment No. 7 dated as of October 29, 2019 (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 and clarify their respective rights and obligations under the Comprehensive Agreement, on the terms set forth in this Amendment No. 8.

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

2. Amendment to Section 8.01(j) (Inspection and Implementation). Section 8.01(j) is hereby amended and restated to read as follows:

(j) The Concessionaire shall make a contribution for a program of toll relief (the "Toll Relief Program") of (A) a one-time contribution of \$500,000 (previously paid by Concessionaire on April 11, 2017), plus (B) \$500,000 to be paid after debt service and prior to

payments for discretionary capital expenditures in Concessionaire's funding order, each year for 20 years beginning in January 2017, for a total (*i.e.*, (A) plus (B))) of \$10,500,000 (collectively, "Contribution Funds"), to be paid to an entity designated by the Department (which may include the Department itself) to administer the Contribution Funds ("Contribution Administrator"), provided that:

- (i) the Contribution Administrator will disburse Contribution Funds as determined and directed by the Department to benefit tunnel users who are economically disadvantaged;
- (ii) the Contribution Administrator will use Contribution Funds only for the purpose of compensating program enrollees for tolls on the Downtown Tunnel and the Midtown Tunnel and shall not use Contribution Funds for its own administration;
- (iii) 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;
- (iv) the Concessionaire will not be liable for any losses, claims, and costs incurred as a result of the activities of the Contribution Administrator;
- (v) from and after the effective date of this Amendment No. 8, 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; and
- (vi) from and after the effective date of this Amendment No. 8, the Toll Relief Program will be co-branded between the Department and the Concessionaire. 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.

3. 2021 COVID-19 Toll Increase Deferral.

(a) In view of the economic impact on the region of COVID-19, and to provide meaningful toll relief at the Concessionaire's expense during a period of recovery from a highly unusual economic dislocation, the Concessionaire agrees to forego its planned 2021 toll increase for all vehicle classifications, tolling periods, and payment methods (*i.e.*, transponder and non-transponder toll rates), which will leave all maximum toll rates flat from January 1, 2020 through December 31, 2021. Such maximum toll rates are set forth in Exhibit 1 to this Amendment No. 8.

(b) The Concessionaire may increase toll rates in January 2022 to the maximum level permitted under Exhibit J of the Comprehensive Agreement, calculated as if the maximum 2021 toll increase permitted under Exhibit J had taken effect on January 1, 2021.

4. Continuation of Certain Billing and Customer Service Practices.

(a) The Concessionaire agrees that it shall continue throughout the Term the following billing and customer service practices currently deployed by Concessionaire as of the date of this Amendment No. 8, which shall be part of its obligations under the Comprehensive Agreement:

- (i) the monthly billing process for non-transponder transactions (otherwise referred to as "Pay-by-Plate" transactions) pursuant to which such transactions within a 30-day window are accumulated into a single billing statement and provided to the relevant customer with a 30-day payment period with respect to the transactions appearing on such billing statement;
- (ii) the practice of offering an Applied Reduction at least once during each rolling two-year period for customers who can demonstrate they have an active, funded E-ZPass account (such practice does not apply to tolls assigned to collection agency);
- (iii) the practice of offering an Applied Reduction to customers who sign-up and fund an E-ZPass account (such practice does not apply to tolls assigned to collection agency);
- (iv) the practice of limiting administrative fees to \$25 per billing statement if tolls are paid within 90 days of the applicable period, provided that Concessionaire may, but is not obligated to, adjust such amount per billing statement at the same time as annual adjustments to toll rates by a factor the numerator of which is CPI_t (as such term is defined in Exhibit J, Section 4 of the Agreement) and the denominator is the most recently published Consumer Price Index as of the beginning of 2021 or, if lower, the fee cap permitted by Va. Code § 46.2-819.3:1(C); and
- (v) the practice of purging customer and vehicle information from the Concessionaire's systems after the collection and reconciliation of any unpaid tolls, administrative fees, and/or civil penalties.

(b) These practices may be changed by the Concessionaire if the revised practice is no less favorable to customers, as determined by the Department and Concessionaire by mutual agreement; provided that, in the event of a conflict between any of these required practices and applicable law, Concessionaire shall be obligated to comply with the more restrictive of the two. Concessionaire shall address compliance with these practices in the Quality Management System Project Development Plan deliveries but compliance shall not be subject to the Non-Compliance Points system.

(c) For the purposes of this Amendment No. 8, the term "Applied Reduction" means a reduction in the applied toll rate from (i) the non-transponder toll rate to (ii) the transponder toll rate, in any case for all tolls incurred at the non-transponder rate for a single monthly billing statement.

5. Effectiveness. This Amendment No. 8 shall become effective upon the Transfer of any or all of the Concessionaire's Interest or a Change in Control to or in favor of a Transferee pursuant to the 2020 offering process of the Sponsors and the Concessionaire, except that if the

EXECUTION VERSION

Transfer or Change in Control has not occurred by January 1, 2021, Section 3 shall become effective on January 1, 2021. The Concessionaire confirms that such Transfer or Change in Control is subject to the Department's approval in accordance with Section 25.01 of the Comprehensive Agreement. Concessionaire acknowledges that Department's approval shall be conditioned on, among other things, receipt of a written agreement in favor of the Department, executed by the Transferee or the assignee(s) of interests in Concessionaire that constitute a Change in Control, in which such Transferee or assignee(s) agree to be bound by this Amendment No. 8.

6. No Modification. This Amendment No. 8 is limited to the matters set forth herein and shall not constitute a modification or waiver of any other provision of the Comprehensive Agreement. Except as expressly modified hereby, the Comprehensive Agreement, as previously amended, remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Amendment No. 8 on the date first written above.


**VIRGINIA DEPARTMENT OF
TRANSPORTATION**

By: 

Print Name: Stephen C. Brich

Title: Commissioner of Highways

ELIZABETH RIVER CROSSING OPCO, LLC

By: 

Print Name: Douglas R. Wilson

Title: CEO

ELIZABETH RIVER CROSSING OPCO, LLC

By: 

Print Name: Bully Samra

Title: CFO

Exhibit 1

Maximum Effective Toll Rates – January 1, 2020 through December 31, 2021

Passenger Vehicles 2-axles, includes motorcycles 		
MONDAY – FRIDAY	<i>EZPass</i>	Pay by Plate
12:00am to 5:30am	\$1.85	\$5.54
5:30am to 9:00am (PEAK)	\$2.33	\$6.02
9:00am to 2:30pm	\$1.85	\$5.54
2:30pm to 7:00pm (PEAK)	\$2.33	\$6.02
7:00pm to 12:00am	\$1.85	\$5.54
Heavy Vehicles 3 or more axles, includes cars w/ trailers 		
MONDAY – FRIDAY	<i>EZPass</i>	Pay by Plate
12:00am to 5:30am	\$5.54	\$9.23
5:30am to 9:00am (PEAK)	\$9.29	\$12.98
9:00am to 2:30pm	\$5.54	\$9.23
2:30pm to 7:00pm (PEAK)	\$9.29	\$12.98
7:00pm to 12:00am	\$5.54	\$9.23

ELIZABETH RIVER CROSSINGS OPCO, LLC
152 Tunnel Facility Dr.
Portsmouth, VA 23707
Phone: (757) 932-4500

October __, 2020

Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Stephen C. Brich, Commissioner

Re: Amendment No. 8 to the Comprehensive Agreement Relating to the Downtown
Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project ("Amendment No. 8")

Dear Sir or Madam,

This letter refers to Amendment No. 8, which is being executed and delivered by yourselves (the "Department") and the undersigned, Elizabeth River Crossings Opco, LLC (the "Concessionaire"), a copy of which is attached hereto as Exhibit A. Terms used and not defined in this letter agreement have the meanings specified in Amendment No. 8.

The Concessionaire agrees to provide a true and complete copy of Amendment No. 8 to all short-listed bidders actively involved in the 2020 offering process referred to in Amendment No. 8 promptly after Amendment No. 8 is executed and delivered. The Concessionaire shall certify in writing to the Department that the Concessionaire has completed such disclosure promptly after completion.

The Concessionaire confirms, and by its countersignature below the Department confirms, that its undertakings herein constitute a material inducement to the other party to enter into Amendment No. 8 and that this letter agreement shall be binding upon the parties.

[Signature Page Follows]

Very truly yours,

ELIZABETH RIVER CROSSING OP CO, LLC

By: 

Print Name: Douglas R. Wilson

Title: CEO

ELIZABETH RIVER CROSSING OP CO, LLC

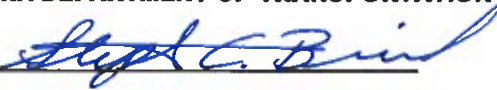
By: 

Print Name: BILLY SAMRA

Title: CFO

Agreed to by:

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: 

Print Name: Stephen C. Brich

Title: Commissioner of Highways