

**AMENDMENT NO. 1 TO THE COMPREHENSIVE AGREEMENT RELATING TO  
THE DOWNTOWN TUNNEL/MIDTOWN TUNNEL/MARTIN LUTHER KING  
FREEWAY EXTENSION PROJECT**

This AMENDMENT NO. 1 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 March 21, 2012 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 99 Canal Center Plaza, Suite 125, Alexandria, Virginia 22314.

**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 (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); 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. Amendment to Section 25.16 (Construction and Interpretation of Agreement). The first sentence of Section 25.16(b) of the Comprehensive Agreement is hereby amended to read as follows:

"If any court of competent jurisdiction issues a final, non-appealable judicial order finding that a term or provision of this Agreement is invalid or unenforceable, the remainder of this Agreement will not be affected thereby and each other term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by Law."

3. Amendment to Section 5.01 (Tolling of the Project). Section 5.01 shall be amended to add the following new Section 5.01(h):

“(h) Option to Postpone Tolling of Existing Project Assets. The Department and the Concessionaire hereby agree that (i) they will collaborate with each other to explore strategies for postponing the commencement of the imposition, collection and enforcement of tolls on the Existing Project Assets in a manner that preserves the Concessionaire’s financial position and availability of funds to pay for construction and (ii) the Department shall have the right, by delivering to the Concessionaire a notice at least forty-five days’ in advance, to postpone the commencement of the imposition, collection and enforcement of tolls on the Existing Project Assets until such date as directed by the Department, which date may be any date prior to the date on which Concessionaire has achieved Substantial Completion of the New Project Assets; *provided*, that such right may be exercised only to the extent that funds for the payment of Concessionaire Damages payable as a result of such postponement have been authorized or appropriated by the General Assembly and allocated by the CTB. The calculation of Net Revenue Impact included in Concessionaire Damages payable as a result of the Department’s exercise of its rights pursuant to this Section 5.01(h), shall be based on the Toll Revenue projections included in the Base Case Financial Model and other incidental charges that would have been collected during the period from the date on which such tolling would have occurred but for the postponement to the actual date on which tolling occurs. Such payment by the Department shall be paid in the same manner as provided in Section 14.01(c)(i) or (ii) of the Comprehensive Agreement.

4. 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.

5. 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.

*[Signature Page Follows]*

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: Original signature on file with VDOT  
~~Gregory A. Whirley, Sr.~~  
 Gregory A. Whirley, Sr.  
 Commissioner of Highways

**ELIZABETH RIVER CROSSINGS OPCO, LLC,**

By: Original signature on file with VDOT  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: Original signature on file with VDOT  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_