

**AMENDMENT NO.4 TO THE COMPREHENSIVE AGREEMENT RELATING TO
THE DOWNTOWN TUNNEL/MIDTOWN TUNNEL/MARTIN LUTHER KING
FREEWAY EXTENSION PROJECT**

This AMENDMENT NO.4 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 January 31, 2014, 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, Virginia 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, and by Amendment No. 3 dated as of January 15, 2014 (as amended, 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, the Concessionaire and the Department desire to permit certain persons to use the Project without payment of the applicable toll when their use of the Project is necessary and incidental to the conduct of official business; 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 5.01(b) (Concerning Tolls).

(a) Section 5.01(b)(ii) of the Comprehensive Agreement is hereby amended to read as follows:

“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;”

(b) Section 5.01(b) of the Comprehensive Agreement is hereby further amended by adding the following new clause:

“(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.”

3. Amendment to Section 5.01(c) (Incidental Charges). The first sentence of Section 5.01(c) of the Comprehensive Agreement is hereby amended to read as follows:

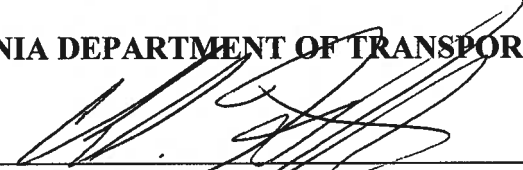
“Except with respect to Exempt Vehicles and the persons identified in Section 5.01(b)(v), the foregoing authorization to impose, charge, collect and enforce the payment of tolls includes the right, to the extent permitted by Law, and subject to the requirement to be interoperable with the E-ZPass network (and any successor to E-ZPass utilized on State Highways at that time) as set forth in Section 5.01(d), to impose, charge, collect and enforce, with respect to electronic tolling accounts managed by or on behalf of the Concessionaire, the following incidental charges:”

4. No Concessionaire Damages. The Concessionaire acknowledges and agrees that the Concessionaire shall not be entitled to Concessionaire Damages or damages of any kind, including claims for a Delay Event or Compensation Event, relating to or arising out of the modifications to the Comprehensive Agreement described in this Amendment.
5. 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.
6. 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.
7. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[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: 

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

ELIZABETH RIVER CROSSINGS OPCO, LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

[Amendment No. 4 to Comprehensive Agreement]

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: Greg Woodsmall
Name: GREG WOODSMALL
Title: CEO

By: Anthony Evans
Name: ANTHONY EVANS
Title: C.F.O

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