COMMONWEALTH of VIRGINIA

Office of the Governor

Aubrey L. Layne, Jr.
Secretary of Transportation

March 17, 2017

Mr. Gregory Woodsmall
Chief Executive Officer
Elizabeth River Crossings OpCo, LLC
152 Tunnel Facility Drive
Portsmouth, Virginia 23707

Dear Mr. Woodsmall:

I write to express my disappointment with the manner in which Elizabeth River Crossings OpCo, LLC ("ERC") is handling toll collections, particularly the additional charges accessed by ERC for toll violations. As I have stated in previous correspondence to you, actions of ERC regarding additional charges have had a tremendous negative impact, not only on your organization, but on the other toll facility operators in the Commonwealth, and could impact the advancement of similar facilities under the Public-Private Transportation Act.

As you know, ERC's authorization to toll the facilities under your operation is limited by and conditioned on compliance with law, as well as the terms of the Comprehensive Agreement between ERC and the Virginia Department of Transportation. The Comprehensive Agreement while speaking to the rights of the Concessionaire to charge tolls, as well as fees, penalties and interest for toll violations, also states that such charges must be *reasonable* as provided for in Section 5.01. Recent media disclosures pertaining to the fees, penalties, and interest on toll violations highlight my own concerns as to the reasonability of such charges being levied by ERC.

Moreover, as you will recall, in 2015 the parties executed Amendment Number 5 to the Comprehensive Agreement which stated that ERC would not impose or collect any amount of civil penalties/administrative fees in excess of $2,200.00 for a first General District Court proceeding. Apropos of this Amendment, legislation passed in the 2016 General Assembly, and signed by the Governor, which capped the penalties and interest for convicted first time toll-violators fees at $2,200 dollars. Given these two governing provisions, charging amounts greater than $2,200.00 against first time toll violators, or to propose settlement greater than that amount

with first time toll violators, runs counter to the spirit and intent behind both the Amendment and the 2016 legislation.

The above examples aside, I remind you that failure to administer tolls in a reasonable manner consistent with the provision of Section 5.01 of the Comprehensive Agreement could be considered a default under Section 19.01. Should such actions be deemed a default, under Section 19.02 of the Comprehensive Agreement, the Department of Transportation would be entitled to disgorge any and all increases in toll revenues that would not have been realized in the absence of such unreasonable practices.

I trust that ERC will take appropriate action to resolve these outstanding toll violations in a manner that comports with the reasonability requirements of the Comprehensive Agreement, as amended, and builds upon the legislative changes in 2016. Further, first time offenders who meet the criteria for the toll relief program in the Hampton Roads region should be offered an opportunity to settle all of their outstanding violations for $1,100 with a payment plan if they have signed up to participate in the program and have acquired an EZ-Pass. This will provide a reasonable path forward for both ERC and the users of these facilities in the Hampton Roads region.

I trust that this letter will generate a positive response and direction from ERC.

Sincerely,

Aubrey L. Layne, Jr.

cc: Paul Reagan, Chief of Staff, Office of the Governor
Charlie Kilpatrick, VDOT Commissioner
Magnus Eriksson, Executive Vice President, Skanska Infrastructure Development
Bill Horowitz, Director, Asset Management, Skanska Infrastructure Development
Karl Kuchel, CEO, Macquarie Infrastructure Partners
Andrew Ancone, Managing Director, Macquarie Capital