

**FIRST AMENDMENT TO
INTERIM AGREEMENT
TO DEVELOP AND/OR OPERATE THE
DOWNTOWN TUNNEL/MIDTOWN
TUNNEL/MARTIN LUTHER KING
FREEWAY EXTENSION PROJECT IN
VIRGINIA**

DATED AS OF AUGUST 19, 2011

BY AND BETWEEN

VIRGINIA DEPARTMENT OF TRANSPORTATION,

an Agency of the Commonwealth of Virginia

AND

ELIZABETH RIVER CROSSINGS LLC,

a Delaware Limited Liability Company

This **FIRST AMENDMENT TO THE INTERIM AGREEMENT** to develop and/or operate the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension (“MLK”) Project in Virginia (the “First Amendment”) is made and entered into as of August 19, 2011, by and between:

(1) the **VIRGINIA DEPARTMENT OF TRANSPORTATION** (“VDOT”), an agency of the Commonwealth of Virginia, whose address is 1401 East Broad Street, Richmond, Virginia 23219; and

(2) **ELIZABETH RIVER CROSSINGS LLC**, a Delaware limited liability company (“ERC”), whose address is 99 Canal Center Plaza, Suite 125 Alexandria, VA 22314.

RECITALS

WHEREAS, VDOT and ERC are parties to that certain Interim Agreement to develop and/or operate the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension (“MLK”) Project in Virginia (the “Agreement”) made and entered into as of January 7, 2010;

WHEREAS, as part of the development of the Project and in the context of the negotiation of the Comprehensive Agreement, the Parties have determined that the Project can capture certain value by advancing the Early Work (as defined below) so as to enable tolling on various aspects of the Project as soon as possible after commercial close; and

WHEREAS, the Parties desire to enter into this First Amendment to the Agreement in order to set forth their understandings and agreements with respect to the Early Work.

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 agree as follows:

AGREEMENT

1. Defined Terms. Capitalized terms used in this First Amendment without definition have their respective means as used in the Agreement.

2. Agreements Regarding Early Work.

a. VDOT hereby authorizes ERC to undertake and perform the work described on Exhibit A hereto (the “Early Work”), and ERC agrees to undertake and perform such Early Work (except that ERC shall not be obligated to perform Early Work in excess of the \$2 million to be paid by VDOT pursuant to this Agreement).

b. VDOT agrees to provide such access to the Project Right of Way as ERC may reasonably request in connection with the performance of the Early Work.

c. VDOT shall pay 100 percent of ERC's Internal Costs and External Costs of performing the Early Work, not to exceed \$2 million in the aggregate. Costs of the Early Work shall be excluded from the \$10 million limitation for Phase 2 Project Deliverables progress payments set forth in the Agreement.

d. VDOT shall make payments to ERC for the Early Work on a monthly basis. ERC shall submit monthly Applications for Payment in respect of the Early Work in accordance with the procedures set forth in Section 4.5 of the Agreement and shall include all supporting documentation detailing the services provided and the External Cost and Internal Cost incurred or accrued for the Early Work, and VDOT shall make payments therefor as set forth in Section 4.6 of the Agreement. For the avoidance of doubt, the provisions of Sections 4.5.1.1 and 4.5.1.2 regarding partial payments of amounts requested in an Application for Payment shall not apply to the Early Work, it being understood and agreed that, subject to VDOT's rights under Section 4.6.2 of the Agreement, 100 percent of the undisputed amount set forth in the Application for Payment shall be payable within 30 Days of VDOT's receipt of the Application for Payment.

e. To the extent any elements of the Early Work or payment therefor have not been completed or paid in full by VDOT prior to the execution of the Comprehensive Agreement, the Early Work shall be completed pursuant to the Comprehensive Agreement and payment therefor shall be made under a comprehensive agreement (including for any such Early Work performed by ERC but not paid by VDOT prior to execution of a comprehensive agreement). Any Early Work performed prior to the execution of the Comprehensive Agreement shall, upon execution of the Comprehensive Agreement, be deemed to have been performed pursuant to, and subject to the terms and conditions of, the Comprehensive Agreement.

3. Incorporation into Agreement. The terms of this First Amendment shall be considered part of the Agreement, which as modified by this First Amendment and is hereby ratified in full. In the event of any conflict between this First Amendment and the Agreement, the terms of this First Amendment shall prevail.

4. Counterparts. This First 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.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an agency of the Commonwealth of Virginia

By: Original with signatures on file with the Virginia Department of Transportation

Name:
Title:

ELIZABETH RIVER CROSSINGS LLC,
a Delaware limited liability company

By: Original with signatures on file with the Virginia Department of Transportation

Name:
Title:

By: _____

Name:
Title:

EXHIBIT A

SCOPE OF EARLY WORK

1. Design and preparation of the site drawings for the Midtown and Downtown Tunnels all-electronic toll gantry locations, including designs for the gantries. Work includes site surveys (including geotech), review of as-built plans, existing utility research, planning for power and communications services, preparation of drawing packages for review and approval, preparation and submittal of geotech reports, and development of installation drawings. This work is scheduled for the August through December 2011 timeframe. The approximate cost of such work is \$485,000.
2. Design, fabrication and delivery of gantries for the Midtown and Downtown Tunnels sites. This work is scheduled for the October 2011 through the December 2011 timeframe. Site prep work and erection of the gantries would not occur until after the Project achieves financial close as set forth in the Comprehensive Agreement. Initial installations is scheduled to begin in February 2012. The approximate cost of such work is \$810,000.
3. Purchase of initial lane/toll zone equipment, such as cameras, loops, controllers and laser scanners (including long-lead items – i.e., Mark IV readers and antennas) and primary data center server and network equipment. This work is scheduled to start with procurement list development in early August 2011, followed by actual initial purchase in October 2011, with delivery of equipment from November 2011 through December 2011. This equipment will support development, and initial testing (with Factory Acceptance Test scheduled for February 2012) prior to deployment. The approximate cost of such work is \$1,000,000. The Concessionaire shall purchase any such equipment only from vendors or suppliers approved by VDOT, such approval not to be unreasonably withheld.
4. ERC will bear the cost of certain pass-through items such as a lease for office space and initial planning for the back office location and walk-in centers for Customer Service in Norfolk and/or Portsmouth. These expenditures will occur before financial close.