



U.S. Department
of Transportation
**Federal Highway
Administration**

Virginia Division

400 North 8th Street, Room 750
Richmond, Virginia 23219-4825

7 January 2010

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In Reply Refer To:
HDA-VA

Mr. Malcolm Kerley,
Chief Engineer
Virginia Department of Transportation
Richmond, Virginia

Attention: Mr. Thomas Pelnik

Dear Mr. Kerley:

This is in response to Mr. Thomas Pelnik's letter of January 4, 2010, concerning the Federal Highway Administration's (FHWA) review of the draft interim agreement (IA) between VDOT and the Elizabeth River Crossings, LLC for the proposed Martin Luther King Extension/Downtown Tunnel/Midtown Tunnel (DT/MT/MLK) project. We appreciated the opportunity to look at the draft agreement because of the potential use of Federal funds on this major improvement on the National Highway System.

We examined the draft IA and did not identify any significant concerns or required changes that are needed to the document; thus, we concur with the use of Federal-aid funding. We recognize this establishes an initial agreement to further develop the project, and more details will be provided in future agreements if a decision is made to move forward with implementation. We have attached some of FHWA's assumptions and understandings related to the draft IA in order to make clear FHWA's position and expectations.

We recognize the importance of Public Private Partnerships, and compliment Virginia on the use of innovative financing to advance transportation improvements. This is an exciting project and we look forward to the unique and challenging opportunities it will provide both agencies. Contact Project Manager, John Mazur at 804 775-3320 if you have any concerns.

Sincerely,

Signature on file

Mary Ridgeway
Acting Division Administrator



MLK/DT/MT
FHWA UNDERSTANDINGS
DRAFT INTERIM AGREEMENT (IA)

- 1) We recognize that many details need to be worked out in future agreements and documents, between VDOT and ERC, between VDOT and FHWA, and possibly between FHWA and ERC (on a Federal TIFIA loan). We understand these agreements will provide more specificity.
- 2) We understand VDOT has required the concessionaire to complete the federal Anti-Lobbying and Anti- Collusion certifications.
- 3) As discussed and recognized by VDOT, this is a FHWA major project and will need to meet the various FHWA major project requirements. A finance plan and a FHWA cost estimate review will be needed. We are pleased that an initial project management plan (PMP) has been developed and understand it will be updated over the next year to more fully address design and construction issues.
- 4) The FHWA reserves our right to review and audit project records as well as oversee design & construction work as allowed by regulations.
- 5) We recognize that more details on tolling will be provided in future agreements, but it is important to note that a VDOT and FHWA toll agreement will be needed requiring that all excess revenues be used for Title 23 purposes. In addition, please be advised of the FHWA's final rule regarding electronic tolling which can be found at:
http://ops.fhwa.dot.gov/tolling_pricing/index.htm
- 6) We assume that future agreements will include expected performance standards to ensure the facilities are properly maintained and operated.
- 7) We understand that a TIFIA loan may be applied for which will involve the FHWA Headquarters TIFIA office. We also understand that other Federal-aid funds may be desired for various project expenses, including funding for operations and maintenance improvements. Our normal procedures apply for regular Federal-aid funding, where work must be authorized prior to expenditure and where we will need details on the scope, time, and cost.
- 8) We assume that Exhibit F (Standards and Specifications) will be reviewed and possibly updated as the scope is more fully developed.
- 9) FHWA believes an updated staffing plan is needed for how VDOT will provide the project oversight and evaluation of the development of the project, including the design and construction of specialty areas where VDOT lacks expertise, such as the tunnel development. This plan should include both District and Central Office staff and detail any major roles VDOT expects to accomplish through professional service contracts. A copy of this plan should be provided to FHWA.
- 10) VDOT's role and oversight is essential to ensure the public interest is best served. Utilization of professional services does not relieve VDOT of any of it's responsibilities as the grantee under federal law.
- 11) We understand that timely review and responses are of the utmost importance to the stakeholders and the FHWA will make every effort to accommodate requested review timeframes. However, review times will be dependant on the amount, complexity and quality of the material submitted for our review and approval. While time is of great importance, it is critical that project documentation is thoroughly reviewed and found to be consistent with industry standards and applicable QA/QC protocols.
- 12) The FHWA has various review and approval responsibilities on this project including but not limited to authorizing funding, design exceptions, bridge type, size and locations, and change

orders. We recognize the 21 day response time in section 3.2 of the IA and will do our best to provide expeditious reviews. However, failure to provide comments or approvals within 21 days or failure of VDOT to pass along FHWA's concerns within the 21 day period does not constitute a FHWA approval action.

- 13) FHWA may request to review materials related to delay and compensation events (section 7.1 and 7.2) to determine the reasonableness and level of any possible federal participation.
- 14) Federal participation in any costs due to delays, scope changes or changed conditions will be evaluated on a case by case basis. A detailed and accurate schedule will be important to determine the level of participation.
- 15) Lessons Learned – We consider this very important to this undertaking and recommend that two items be accomplished. One, a running list of lessons learned should be documented as the project is developed and included in some type of report. Two, lessons learned and documented from other PPTA projects and past SEP-14 reports should be reviewed and considered as this project is advanced.
- 16) FHWA will need to review the VDOT analysis for the Lump Sum Estimates and what work each work package includes, the base line schedule, the VDOT resources or staffing plan and any technical analysis for major project features like the ventilation system. Any federal funds used in the cost sharing will be reimbursed to FHWA should VDOT receive reimbursement from ERC.
- 17) The authorization of federal funding will be based on satisfactory supporting justification that the costs are reasonable for the work to be performed. Any ERC costs incurred prior to the authorization are not eligible for federal funding.
- 18) A SEP-14 work plan will not be required for this project. VDOT should refer to the FHWA Memo dated December 17, 2009 for further details.
- 19) FHWA will need to review the feasibility findings from phase one prior to expending federal funding on phase two of the IA.