

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement reflects the non binding major business terms and conditions agreed to between the Virginia Department of Transportation (VDOT) and Elizabeth River Crossings LLC (ERC) for the development of the Downtown Tunnel/Midtown MLK Extension Project and are subject to entering an interim agreement (Interim Agreement or IA) between said parties. The terms and conditions described herein are further subject to gaining the approval of the Commonwealth Transportation Commissioner and any further approvals required by the respective parties, including board approvals.

### 1. Termination

#### 1.1 VDOT default

- a. Parties share ERC's external costs at 50/50 in terms of funding.
  - i. VDOT pays 50% of ERC's external expenses (VDOT Exposure NTE \$10M) at time of submittal of work package [earned value process as noted below].
  - ii. Payment for work packages using earned value process – 20% of share upon initiation of work package, 80% of share upon completion of work package.
- b. VDOT at time of termination pays the remaining 50% of ERC's external expenses for completed work packages and ERC's external expenses incurred with respect to partially completed work packages (VDOT Exposure NTE Additional \$10M).
- c. VDOT can request ERC to finish partially completed Work Product it deems has value (paying external and internal ERC costs).
- d. VDOT pays ERC's Internal Costs (VDOT Exposure NTE \$9M) at time of termination.
- e. VDOT gets and has exclusive right to use all Work Product developed following payment to ERC. [definition of Work Product including permissible use of duplicate of proprietary Work Products by ERC consistent with I 495 Agreement (section 18.03)].
- f. Tracking of external and internal expenses is done by ERC on a monthly basis.

#### 1.2 VDOT Termination for Convenience

- a. Parties share ERC's external costs at 50/50 in terms of funding.
  - i. VDOT pays 50% of ERC's external expenses (VDOT Exposure NTE \$10M) at time of submittal of work package [earned value process as noted below].
  - ii. Payment for work packages using earned value process – 20% of share upon initiation of work package, 80% of share upon completion of work package.
- b. VDOT at time of termination pays the remaining 50% of ERC's external expenses for completed work packages and ERC's external expenses incurred with respect to partially completed work packages (VDOT Exposure NTE Additional \$10M) at time of termination.
- c. VDOT can request ERC to finish partially completed Work Product it deems has value (paying external and internal ERC costs).
- d. VDOT pays ERC's Internal Costs (VDOT Exposure NTE \$9M) at time of termination.

- e. VDOT gets and has exclusive right to use all Work Product developed following payment to ERC. [definition of Work Product including permissible of use of duplicate of proprietary Work Product by ERC ,to be consistent with I 495 Agreement (section 18.03)]
- f. Tracking of external and internal expenses is done by ERC on a monthly basis
- g. VDOT provides Notice of Intent to Terminate for Public Convenience
  - i. Termination will go into effect upon the earlier of 180 days after notice of intent or the Long Stop Date.
  - ii. ERC will continue to have the exclusive right to develop a feasible project during the term of the Agreement.
  - iii. ERC will bear all of its internal and external costs incurred after the date of the Notice of Intent to Terminate for Public Convenience.
  - iv. If the project is not feasible and the agreement is terminated for public convenience ERC will reimburse VDOT's internal and external expenses incurred between the date of the Notice of Intent to Terminate for Public Convenience and the termination date.

### 1.3 ERC default

- a. Parties share ERC's external costs at 50/50 in terms of funding.
  - i. VDOT pays 50% of ERC's external expenses (VDOT Exposure NTE \$10M) at time of submittal of work package [earned value process as noted below].
  - ii. Payment for work packages using earned value process – 20% of share upon initiation of work package, 80% of share upon completion of work package..
- b. Reimbursement for the remaining 50% of ERC external expenses will be divided and tracked on a monthly basis into two packages, each having separate and distinct reimbursement obligations (VDOT Exposure NTE Additional \$10.M).
  - i. Package 1 – Bid Package (Package value is \$10.6M): This will include project development activities such as design (10%), traffic studies/report, asset condition survey/report and geotechnical studies/report. For Package 1, VDOT pays remaining 50% of ERC external expenses relating to completed work product at the time of termination. For partially completed Work Product, VDOT pays incurred cost at the time of termination.
  - ii. Package 2 – Additional Development Package: This will include all other project development activities. For Package 2, VDOT at the time of termination pays 50% of ERC's incurred external expenses net of any applicable amounts previously paid under 1.3 a. Furthermore, VDOT at the time of termination pays the remaining 50% of ERC external expenses on work product that VDOT deems to have value.
- c. VDOT pays none of ERC Internal Costs.
- d. ERC pays VDOT development expenses incurred as of the time of termination NTE \$2M.
- e. Tracking of external and internal expenses is done by ERC on a monthly basis.

### 1.4 Mutual Agreement

- a. Parties share ERC's external costs at 50/50 in terms of funding.

- i. VDOT pays 50% of ERC's external expenses (VDOT Exposure NTE \$10M) at time of submittal of work package [earned value process as noted below].
        - ii. Payment for work packages using earned value process – 20% of share upon initiation of work package, 80% of share upon completion of work package.
      - b. VDOT pays remaining 50% of ERC external expenses only on work product it deems has value and VDOT can request that ERC finish partially completed Work Product it deems has value (paying external and internal ERC costs to complete).
      - c. Neither VDOT or ERC pays other parties Internal Costs.
      - d. Tracking of external and internal expenses is done by ERC on a monthly basis
- 1.5. Expiration
  - a. Parties share ERC's external costs at 50/50 in terms of funding.
    - i. VDOT pays 50% of ERC's external expenses (VDOT Exposure NTE \$10M) at time of submittal of work package [earned value process as noted below].
    - ii. Payment for work packages using earned value process – 20% of share upon initiation of work package, 80% of share upon completion of work package.
  - b. VDOT pays remaining 50% of external costs for completed work product at the time of termination. VDOT pays 50% of partially completed work product that VDOT deems have value (VDOT Exposure NTE Additional \$10M).
  - c. Tracking of external and internal expenses is done by ERC on a monthly basis.
2. Exclusivity for ERC and Long Stop Date
  - a. If not terminated earlier for other reasons, including execution of the Comprehensive Agreement (CA), the IA will terminate on the date that is 24 months from the notice to proceed for Phase 2 (i.e. Long Stop Date).
3. Liquidated Damages
  - a. Not applicable to IA.
4. Finance Plan
  - a. Delete 3.2 and modify 3.5 of the August 21 version of the draft IA, deleting "the development of a financially viable Plan of Finance and" and replacing the deletion with "...The obligation of ERC to fund such investment shall be subject to the execution of the CA, acceptable in form..."
  - b. Amend 3.1.1.2.3(b) to read "Any amounts for project development not constituting project work products as shall be agreed to in the CA".
5. Work Plan
  - a. During Phase 1, ERC will develop a Work Plan that provides the following:
    - i. All Work Product to be produced during Phase 2.
    - ii. Development of Key Work Product Milestones as applicable to both parties.
    - iii. All Work Packages to be developed for each Work Product [packages can be broken into 30-day deliverables].
    - iv. A breakdown of the internal and external cost for development of each Work Package.

- v. The Work Plan will be submitted to VDOT either prior to or in concert with the Feasibility Determination Report for review and approval.

**6. Key Risk Allocations**

- a. The parties will hold a series of risk workshops, during Phase 1, to determine a risk allocation (key risk allocation matrix) acceptable to both parties to be used in developing the terms and conditions for the CA.

**7. Parent Guarantee**

- a. The parent guarantee(s) from the Conceptual Proposal will only apply to the IA obligations and will be extended until commercial close (securities and guarantees will be negotiated as part of the comprehensive agreement). [Modify sections 7.20 and Exhibit F in draft IA of Aug 21].

**12. Rights and Responsibilities of Parties**

- a. Amend 2.2.1.2 to read “– provide input, data and appropriate responses towards the development and review of Project Work Product, and other pertinent issues...”

The parties to this agreement concur that the above stated terms and conditions will constitute the commercial basis for the development of the Interim Agreement and that nothing herein shall be binding upon the Parties nor represent a binding agreement of the Parties to enter into an Interim Agreement.

Signature on file

\_\_\_\_\_

Malcolm T. Kerley  
 Chief Engineer  
 Virginia Department of Transportation

10/15/09

\_\_\_\_\_

Date

Signature on file

\_\_\_\_\_

Name: Karl R. [Signature] SVP  
 Skanska Infrastructure Development, Inc., a member of ERC

15 Oct 09

\_\_\_\_\_

Date

Signature on file.

\_\_\_\_\_  
Name: ANDREA HILBERT  
ERC HoldCo LLC\*, a member of ERC.

10/15/09  
Date

Signature on file.

\_\_\_\_\_  
Name: Chris Voyce  
ERC HoldCo LLC\*, a member of ERC

15 October 2009  
Date

\*ERC HoldCo LLC is a wholly-owned subsidiary of Macquarie Asset Finance Limited..