



## Midtown Tunnel Project

### Updated Finance Plan Supplement

March 2018

Revision June 2018

For the year ending December 31, 2017

## 1. **Project**

### *Overview*

The Downtown Tunnel/Midtown Tunnel/MLK Extension Project located in the cities of Portsmouth and Norfolk, Virginia (“Project”) includes (i) the development, design, construction, operation, maintenance, and tolling of a new two-lane immersed tube tunnel adjacent to the existing Midtown Tunnel; (ii) the development, design, construction, operation, maintenance, and tolling of the four-lane limited access extension of the Martin Luther King Freeway in Portsmouth, Virginia; (iii) the rehabilitation, operation, maintenance, and tolling of the existing Midtown Tunnel; (iv) the rehabilitation, operation, maintenance, and tolling of the existing Downtown Tunnel; and (v) the installation of an all-electronic tolling system that is compatible with the regional tolling network.

### *Comprehensive Agreement*

The Project is being undertaken pursuant to a Comprehensive Agreement by and between Elizabeth River Crossings Opco LLC (“ERC”) and the Virginia Department of Transportation (“VDOT”), whereby VDOT has granted ERC the exclusive right to (i) finance, develop, design, construct, manage, operate, and maintain the Project and (ii) establish, impose, charge, collect, use, and enforce payment of tolls and related charges. The Comprehensive Agreement (“CA”) commenced on December 5, 2011, and will remain in effect for 58 years from the financial close date (April 13, 2012), subject to extension or early termination in accordance with the CA.

### *Environmental Review Process*

The approved environmental documents for the Project are shown in Table 1-1 below. Pursuant to the terms of the CA, ERC must comply with all environmental documents. ERC is responsible for all costs and delays associated with updates to the environmental documents required as a result of changes to ERC’s design which are not directed by VDOT.

**Table 1-1 – Environmental Documents**

| Document  | Status   |
|---|--|
| Downtown Tunnels National Fire Protection Association work                  | Programmatic Categorical Exclusion (5/13/09)   |
| Midtown Tunnel National Fire Protection Association work                    | Programmatic Categorical Exclusion (5/13/09)   |
| Rt. 58/Midtown Tunnel (Pinner Point)  | Final Environmental Impact Statement (11/8/96) and Record of Decision (3/17/97)<br>Revised Record of Decision (7/9/07) |
| Martin Luther King Freeway Extension  | Environmental Assessment (4/7/08)<br>Revised Environmental Assessment/Finding of No Significant Impact (2/26/09)       |
| Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project | Environmental Assessment (Reevaluation) (3/24/11) /Finding of No Significant Impact (8/1/11)                           |
| Brambleton Interchange ITS  | Programmatic Categorical Exclusion (5/22/09)   |

*Public-Private Partnership*

The Project is being undertaken as a public-private partnership, pursuant to the Public-Private Transportation Act of 1995 (Va. Code §§ 56-556 *et seq.*) (“PPTA”). In enacting the PPTA, Virginia’s General Assembly found that there is a public need for the timely development and/or operation of qualifying transportation facilities and that such public need may not be satisfied by existing procurement methods (Va. Code § 56-558). The PPTA enables VDOT to leverage investment by the private sector in developing qualifying transportation facilities. Under the PPTA, VDOT and its private partners can use a wide range of sources to finance projects, including revenues generated by user fees, debt, equity, or other securities (Va. Code § 56-565 and 56-567.1).

In electing to pursue a public-private partnership for the Project, VDOT determined that the levels of state and federal funds available were insufficient to enable VDOT to procure the Project in a reasonable timeframe using traditional project delivery methods. A public-private partnership would enable VDOT to leverage limited state and federal funds using private financing (including equity and debt) to fund development of the Project. In addition, the technical complexities of the Project, which include construction of approximately 4,100 feet of immersed tube tunnel and the operation of an all-electronic, open-road toll collection system,

created significant opportunities for VDOT to take advantage of private sector innovation and to transfer significant risk to the private sector.<sup>1</sup>

As discussed in more detail below, the sources of funding for VDOT's contribution to the Project include GARVEE bond proceeds. In 2011, the General Assembly enacted legislation as part of Governor McDonnell's transportation plan that included a revolving authorization for the issuance of GARVEE bonds (with no more than \$1.2 billion in bonds to be outstanding at any time). The Commonwealth Transportation Board issued the first series of GARVEE bonds in January 2012 in order to meet VDOT's funding commitment for the Project.

### *Final Completion*

On September 1, 2017, VDOT granted to ERC written certificate of the Existing Midtown Tunnel Asset, and as the final Project Asset, also served as the Project's Final Completion. This signified successful completion of all Design-Build Work.

## **2. Purpose of Updated Finance Plan Supplement**

Pursuant to the terms of the TIFIA loan agreement, ERC is to provide annual updates to the Project's plan of finance. The most current ERC update to the Project's plan of finance is dated March 31, 2018 ("ERC Updated Finance Plan") and covers the period from January 1, 2017 through December 31, 2017. The purpose of this supplement is to provide further details regarding the Project costs for which VDOT is responsible, and covers the same term as the ERC plan. As Project Final Completion was achieved on September 1, 2017, this is intended to be the final required financial plan update.

## **3. VDOT's Funding Obligation for the Project**

VDOT's estimated obligation was approximately \$362,000,000. At financial close, VDOT's obligation was set at \$308,605,000 pursuant to the adjustment protocol set out in the CA. Following financial close, VDOT's estimated obligation increased by \$112,500,000 as a result of VDOT exercising its right, in accordance with Amendment 1 to the CA, dated March 21, 2012, ("CA Amendment 1") to postpone the commencement of the imposition and collection of tolls on the existing Midtown Tunnel and existing Downtown Tunnel until January 31, 2014.

Additionally, VDOT's obligation increased by \$82,542,000 in accordance with Amendment 3 to the CA ("CA Amendment 3"), dated January 15, 2014. VDOT also contributed additional funding for construction costs to reduce the maximum transponder toll rates on the Existing

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<sup>1</sup> The Commonwealth substantially revised its PPTA Implementation Manual and Guidelines in December 2010. The revised guidelines describe in detail the Commonwealth's approach to selecting projects for delivery as public-private partnerships. In addition to considering factors such as the levels of funding available for a project, the project's potential to generate revenues, and the technical complexity of the project (as described above), the revised guidelines call for the use of a value-for-money analysis further assess the business case for pursuing a public-private partnership structure.

Project Assets for the period from the commencement of tolls (February 1, 2014) until December 28, 2016, when substantial completion of the New Project Assets was achieved. Of the amount provided, \$25,295,962 was from GARVEE funding.

VDOT's obligation increased by \$78,000,000 in accordance with Amendment 5 of the CA ("CA Amendment 5"), dated September 18, 2015. VDOT contributed additional funding for construction costs as the Concessionaire agreed to forego tolling the Martin Luther King Extension component of the Project. The amount provided was from GARVEE funding.

VDOT has established Task Order Funding totaling \$8,000,000 for the purpose of paying Construction Contract Change Orders as outlined in the CA.

VDOT's contribution, including the \$112,500,000 increase related to CA Amendment 1, the \$82,542,000 related to CA Amendment 3, and the \$78,000,000 related to CA Amendment 5 were used to support design and construction work.<sup>2</sup> The sources of funding for VDOT's contribution include GARVEE bond proceeds, state maintenance funds, Priority Transportation Fund (PTF) funding (state funding), NHPP Statewide funds, Federal NHS – Interstate, Bond Proceeds funds, and funds advanced from the Commonwealth's Toll Facilities Revolving Account ("TFRA"). Funds advanced from the TFRA will be repaid with future allocations of state maintenance funds.

As of the December 2016 payment to ERC, VDOT has completed its Public Funds Amount commitment to ERC as described in the CA and subsequent amendments. This is reflected in no planned 2017 expenditures shown in Table 3-3 – Public Funds Disbursement Schedule.

Payment was made to ERC in 2017 in accordance with CO-42 as described in Chapter 5. The potential still exists for payments to cover any future contract Change Orders for Compensation Events that may arise during the Operations and Maintenance Work through the end of the Contract in 2070.

Table 3-1 shows the sources of funding for VDOT's contribution to the Project. The UPCs shown below relate to federal project 965-5(079). VDOT's detailed estimate for the federal project is attached as Appendix 1.

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<sup>2</sup> VDOT's contribution to the Project can only be used to fund activities that are eligible for reimbursement from federal-aid funds. See CA Exhibit M.

**Table 3-1 – VDOT Contribution**

| UPC   | TFRA               | State Maintenance <sup>3</sup> | GARVEE                           | PTF                 | Grand Total                      |
|---|--------------------|--------------------------------|----------------------------------|---------------------|----------------------------------|
| <b>101851 – Primary Construction</b>          |                    |                                |                                  |                     |                                  |
| PE  | \$5,489,590        |                                | \$147,944,324                    |                     | <b>\$153,433,914</b>             |
| ROW   | \$381,549          | \$9,700,000                    | \$15,520,000                     |                     | <b>\$25,601,549</b>              |
| CN  | \$2,960,711        |                                | \$327,072,759                    | \$55,528,657        | <b>\$385,562,127</b>             |
| <b>101860</b>                                 |                    |                                |                                  |                     |                                  |
| <b>Toll Gantries – Primary<sup>4</sup></b>    |                    |                                |                                  |                     |                                  |
| PE  |                    | \$1,940,000                    |                                  |                     | <b>\$1,940,000</b>               |
| <b>101852 – Interstate Construction</b>       |                    |                                |                                  |                     |                                  |
| PE  | \$197,179          |                                | \$4,548,200                      |                     | <b>\$4,745,379</b>               |
| ROW   |                    |                                | \$791,800                        |                     | <b>\$791,800</b>                 |
| CN  | \$75,971           | \$300,000                      | \$7,418,879                      | \$1,717,381         | <b>\$9,512,231</b>               |
| <b>101861</b>                                 |                    |                                |                                  |                     |                                  |
| <b>Toll Gantries – Interstate<sup>4</sup></b> |                    |                                |                                  |                     |                                  |
| PE  |                    | \$60,000                       |                                  |                     | <b>\$60,000</b>                  |
| <b>Current Subtotal</b>                       | <b>\$9,105,000</b> | <b>\$12,000,000</b>            | <b>\$503,295,962<sup>5</sup></b> | <b>\$57,246,038</b> | <b>\$581,647,000<sup>6</sup></b> |
| UPC   | TFRA               | State Maintenance*             | GARVEE                           | PTF                 | Grand Total                      |
| <b>Original Finance Plan</b>                  | <b>\$9,105,000</b> | <b>\$12,000,000</b>            | <b>\$400,000,000</b>             | <b>-</b>            | <b>\$421,105,000</b>             |
| <b>2013 Update</b>                            | <b>\$9,105,000</b> | <b>\$12,000,000</b>            | <b>\$425,295,962</b>             | <b>\$57,246,038</b> | <b>\$503,647,000</b>             |
| <b>2014 Update</b>                            | <b>\$9,105,000</b> | <b>\$12,000,000</b>            | <b>\$425,295,962</b>             | <b>\$57,246,038</b> | <b>\$503,647,000</b>             |
| <b>2015 Update</b>                            | <b>\$9,105,000</b> | <b>\$12,000,000</b>            | <b>\$503,295,962</b>             | <b>\$57,246,038</b> | <b>\$581,647,000</b>             |
| <b>2016 Update</b>                            | <b>\$9,105,000</b> | <b>\$12,000,000</b>            | <b>\$503,295,962</b>             | <b>\$57,246,038</b> | <b>\$581,647,000</b>             |
| <b>Difference – 2016 to Current</b>           | <b>-</b>           | <b>-</b>                       |                                  | <b>-</b>            |                                  |

<sup>3</sup> State maintenance funds include dollars allocated to the Hampton Roads District for the operations and maintenance of the Midtown Tunnel and Downtown Tunnel.

<sup>4</sup> Work related to toll gantries began in accordance with Amendment 1 to the Interim Agreement, which was prior to federal authorization for construction. As such, that work is being paid for with state funding.

<sup>5</sup> Of the total GARVEE funds shown, VDOT has “advance constructed” \$277,673,000 in accordance with the federal-aid project agreement.

<sup>6</sup> This total, \$581,647,000, corresponds with the total of the Public Funds Amount and the CA Amendment 1, 3 and 5 payments from the ERC Financial Plan Annual Update.

**Table 3-1 Continued – VDOT Contribution**

| UPC                              | NHPP Statewide | NHPP Statewide 80/20 Soft Match | Federal NHS Interstate | Interstate NHS Soft Match | NHS State Match | Bond Proceeds-Capital Projects Revenue | Grand Total          |
|----------------------------------|----------------|---------------------------------|------------------------|---------------------------|-----------------|--|----------------------|
| <b>105900 – ERC Task Funding</b> |                |                                 |                        |                           |                 |  |                      |
| CN                               | \$5,539,653    | \$1,384,913                     | \$803,756              | \$142,324                 | \$58,615        | \$70,739                               | \$8,000,000          |
| <b>Subtotal</b>                  |                |                                 |                        |                           |                 |  | <b>\$8,000,000</b>   |
| <b>Grand Total</b>               |                |                                 |                        |                           |                 |  | <b>\$589,647,000</b> |

The following table outlines the current federal projects that are committed to the debt service obligations of the Project.

**Table 3-2 – GARVEE Debt Service Federal Projects**

| Federal Project                     | Federal Funds               | Amount                  |
|-------------------------------------|-----------------------------|-------------------------|
| 9655(078) – Interstate Debt Service | L050                        | \$408,257.00            |
|                                     | L050 – Advance Construction | -                       |
|                                     | L05E                        | \$936,448.00            |
|                                     | L05E – Advance Construction | \$9,065,392.93          |
|                                     | M001                        | \$1,872,929.35          |
|                                     | M001 – Advance Construction | -                       |
|                                     | M0E1                        | \$1,000,264.57          |
|                                     | Z001                        | \$2,000,387.46          |
| 9655(077) – Primary Debt Service    | L050                        | \$7,906,999.00          |
|                                     | L050 – Advance Construction | -                       |
|                                     | L20E                        | \$4,808,576.00          |
|                                     | L20E – Advance Construction | -                       |
|                                     | L24E                        | -                       |
|                                     | L24E – Advance Construction | \$358,563,594.21        |
|                                     | LZ20                        | \$484,724.00            |
|                                     | LZ20 – Advance Construction | -                       |
|                                     | LZ2E                        | \$30,278,479.00         |
|                                     | LZ2E – Advance Construction | -                       |
|                                     | M0E1                        | \$62,620,481.04         |
|                                     | M001                        | \$30,279,439.00         |
|                                     | M001 – Advance Construction | -                       |
| Z001                                | \$84,313,789.01             |                         |
| <b>TOTAL</b>                        |                             | <b>\$594,539,760.57</b> |

**Note:** The Federal Project Agreements have been modified to convert Advance Construction for the debt service commitments. To date, \$6,218,286.38 was converted under agreement 9655(078) and \$220,692,487.05 was converted under agreement 9655(077). This conversion process is outlined in the Memorandum of Agreement (MOA) by and among Federal Highway Administration, Commonwealth Transportation Board, and the Virginia Department of Transportation for the Stewardship and Oversight of Debt Service Projects.

Authorizations may be updated in the future based on savings related to refunding of the GARVEE Bonds sold for the project’s construction. This represents debt service savings.

The funding for VDOT’s contribution is allocated in VDOT’s 2018-2023 Six-Year Improvement Program (“SYIP”). The Commonwealth Transportation Board (“CTB”) approved VDOT’s 2018-2023 SYIP on June 20, 2017.

VDOT’s use of the Public Funds Amount proceeded in accordance with the disbursement schedule shown in Table 3-3 (amounts may not add due to rounding). This table has been updated to reflect actual activity. Additional details, including disbursements by month, are set forth in the ERC Updated Finance Plan.

**Table 3-3 – Public Funds Amount Disbursement Schedule**

| Date         | Amount (000s)<br>Actual and Projected |
|--------------|---------------------------------------|
| 2012         | \$208,617                             |
| 2013         | \$179,271                             |
| 2014         | \$60,659                              |
| 2015         | \$98,812                              |
| 2016         | \$34,287                              |
| 2017         | -                                     |
| <b>Total</b> | <b>\$581,647<sup>7</sup></b>          |

<sup>7</sup> This total, \$581,647,000, corresponds with the total of the Public Funds Amount as described in the CA and the CA Amendment 1, 3 and 5. Payments for Change Orders are not included and discussed in Section 5.

#### 4. Funding for Project Risks

During the cost estimate review process, the Federal Highway Administration (“FHWA”) identified risks that could result in additional payments being owed by VDOT should those risks occur during the construction of the Project.<sup>8</sup> Those risks, and the suggested contingency for each risk identified by the cost estimate review team, are listed in Table 4-1.

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<sup>8</sup> The FHWA Cost Estimate Review report concludes that there is a 70<sup>th</sup> percentile level of confidence that design-build costs for the Project will not exceed \$1.693 billion. The difference in costs shown in the FHWA Cost Estimate Review report and the ERC Updated Finance Plan likely is due to assumptions made by the VDOT-FHWA team during the cost estimate review process (which was completed in advance of VDOT and ERC finalizing commercial terms and the design-build price). For example, during that exercise the VDOT-FHWA team modeled oversight costs of approximately \$112 million (which included, among other things, administrative expenses incurred during the project development process up to financial close and costs related to development of the tolling system). Those assumed costs do not necessarily correlate to a single line items shown in the ERC Updated Finance Plan (e.g., the approximately \$11.1 million shown for ERC construction oversight costs).

**Table 4-1 – Cost Estimate Review (CER) Review Risks**

| Risk                                  | Description  | Estimated Costs at financial close and execution of the CA | Estimated Costs 12/31/2017  |
|---------------------------------------|--|--|---|
| Aggregate risks                       | Aggregate of less significant risks that have been allocated to VDOT                                 | \$2.5 million  | There are no additional anticipated aggregate risks at this time  |
| Rehabilitation work                   | Additional costs associated with unanticipated rehabilitation work                                   | Risk Assessment \$15 million anticipated                   | Work complete and reconciled in CO-42 for \$493,601, no additional costs  |
| Fuel price adjustment                 | VDOT bears the risk for the price per gallon for off-road diesel fuel in excess of \$3.50 per gallon | \$9.7 million was the anticipated risk                     | All Work associated with Fuel Price Adjustments is complete, therefore no cost risk.  |
| Utility relocations                   | Additional costs associated with project-wide utility relocations                                    | \$10 million   | There is no anticipated risk associated with Utility relocations as utilities are 100% relocated  |
| Right of way (“ROW”) acquisition work | Increased costs for damages such as business relocations and condemnations                           | \$1.4 million  | There is low risk for additional costs associated with ROW acquisition work. All acquisitions and relocations are complete and costs remained below the threshold for VDOT participation. While not anticipated, several parcels that were acquired by court order could require additional action. |
| Oversight costs                       | VDOT responsible for construction oversight  | \$0 million  | There is not additional Oversight cost risk to the Department at this time  |

The Commonwealth Transportation Board (CTB) is responsible for allocating the necessary construction funds to projects. The CTB allocates funding to projects through a rolling six-year planning process to support the funding of selected construction projects. By July 1 of each year,

the CTB is required to approve an annual budget and a six-year improvement program (“SYIP”). During the year, the CTB may transfer funding between projects as needed and as those risks occur. In anticipation of potential change orders, as needed, funding for a contingency was first included in the FY 2015-2020 SYIP.

VDOT elected not to fund the original contingencies listed above to address the risks described in Table 4-1 at the time of financial close and signing of the CA. In FY15, VDOT created a contingency UPC (UPC 105900) for the purpose of paying outstanding contractual requirements as identified in the CA for Construction Contract Change Orders. The CTB has approved the additional funding; the STIP and TIP were amended to include the contingency UPC. The UPC has been fully funded. As of December 31, 2017, VDOT has executed 33 Contract Change Orders that have totaled - -\$323,256.

In addition, VDOT also has the right under the CA to direct ERC to explore financing damages stemming from Compensation Events (CA § 14.01(d)) via adjustments to the toll rate schedule and/or extensions of the term. This provides VDOT with another option for funding Project risks.

As described in more detail below, VDOT also has mitigated the likelihood that it will be exposed to costs due to the risks identified in Table 4-1 via the structure of the CA. Oversight costs are discussed below in the section entitled “Funding for VDOT Oversight Costs.”

### *Rehabilitation Work*

ERC is solely responsible for up to \$5 million of unanticipated rehabilitation work (CA § 8.11(c)).<sup>9</sup> Any unanticipated rehabilitation work must exceed this \$5 million threshold before VDOT participates in any costs.

As of December 31, 2017, VDOT has authorized \$5,493,601 worth of work against the \$5 million Excess Rehabilitation deductible. VDOT and ERC executed Change Order 42 to reconcile the rehabilitation work, with the \$493,601 funded using the contingency UPC 105900. All Rehabilitation Work is complete and there are no further cost risks.

### *Fuel Price Adjustment*

ERC may make a claim to VDOT if the price per gallon for off-road diesel fuel red dye #2 exceeds \$3.50 per gallon.<sup>10</sup> VDOT is entitled to payment from ERC if the price per gallon is below \$3.50. VDOT’s liability (and benefit) for changes in the price of fuel is capped at \$9.4 million. All Work associated with Fuel Price Adjustments is complete, therefore, future cost risk is zero.

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<sup>9</sup> VDOT is responsible for unanticipated rehabilitation work costing between \$5 million and \$20 million. For work that costs in excess of \$20 million, VDOT and ERC are to collaborate on potential funding solutions, including having ERC finance the cost of such work. See CA § CA 8.11(c) (ii) and (iii).

<sup>10</sup> The process and timing for determining amounts due as a result of the fuel price adjustment risk allocated are described in CA Exhibit S.

### *Utility Relocations*

ERC is to provide all utility relocation work as part of the lump sum design-build price. ERC has completed 100% of the utility relocation work necessary to successfully complete the construction of the Project. There is no additional risk for this item.

### *ROW Acquisition*

The CA includes a provision that allocates the risk and benefit of fluctuations to the expected ROW acquisition costs. ERC is solely responsible for increases up to 10% of ROW acquisition costs (as compared to a baseline ROW acquisition cost estimate) (CA § 8.05(d)). All costs beyond this are shared 50%/50% between ERC and VDOT.

ERC is entitled to keep all the cost savings if ROW acquisition costs are less than 90% of the estimate.<sup>11</sup> As of December 31, 2016, all acquisitions and relocations have been complete. To date, 109% of eligible ROW Acquisitions Costs in the B3 schedule as listed in the CA have been expended by ERC. There remains a very low risk that any additional eligible ROW Acquisition Costs will become payable by ERC. As some parcels were acquired by Court Order, it is possible that further action would be required beyond the initial amounts paid. Should this occur, there remains approximately \$60,000 until the cost sharing is triggered, and should that occur, any amounts can be covered with the Contingency funds.

VDOT is responsible for certain ROW acquisition costs related to property owned by railroads (CA§ 8.05(f)). VDOT estimates this work will cost approximately \$6,765,795 (VDOT provided FHWA with an estimate for this work prior to financial close) and has programmed funding as part of its Project oversight budget (this estimate is shown as “child projects” to the interstate and primary oversight projects UPC 103458 and UPC 103459 and is included in federal agreement 965-5(057)). Railroad ROW acquisition costs were 100% complete as of December 31, 2015, and the total is unlikely to exceed the programmed cost for Railroad associated expenses.

Railroad ROW acquisitions work was completed on April 20, 2015. There were two (2) impacted properties and both are associated with construction of the MLK Expressway Extension. These are known on the Project as the Pond 19 Relocation and the Vulcan Relocation. The Vulcan Relocation and Pond 19 construction are now 100% complete eliminating any further risk attributable to the Department.

### *Railroad Force Account*

In addition to the Railroad property acquisition discussed above, there were expenditures associated with the repayment for the Railroads with regards to flagging and needed incidentals to the bridge crossing over Norfolk Portsmouth Belt Line (NPBL) and the new MLK Expressway over CSX Railroad. This activity was performed under UPCs 103458 and 103459. All Work was complete within the established budget and the Railroad Agreement is set to expire with no further costs anticipated.

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<sup>11</sup> The CA sets out a similar risk sharing arrangement for cost overruns and savings beyond 10%. See CA § 8.05(d).

## *Hazardous Substances*

In addition to the risks described in Table 4-1, FHWA has asked VDOT to describe the risk allocation for hazardous substances. ERC is responsible for managing, disposing, and remediating all hazardous substances encountered on the Project right-of-way (CA § 16.01(a)). For hazardous substances defined in the CA as known Pre-Existing Hazardous Substances, ERC also is responsible for the costs associated with management, disposal, and remediation.<sup>12</sup> For hazardous substances that do not qualify as Known Pre-Existing Hazardous Substances, ERC is entitled to seek reimbursement from VDOT for its costs incurred in performing the management, disposal, and remediation work and schedule relief (CA § 16.02(a)).<sup>13</sup>

As construction is complete, there are no known risks associated with Hazardous Substances. There remains the potential that that an Unknown Pre-Existing Hazardous Substance is encountered during the course of the Operations and Maintenance Work that could trigger an ERC entitlement to costs.

### **5. Change Orders**

As of December 31, 2017, there have been 33 executed Change Orders between VDOT and ERC associated with the Comprehensive Agreement. There was also an agreement between VDOT and the City of Norfolk to complete a waterline betterment costing approximately \$1.7 million for which the City has paid VDOT. The receipt of \$1,700,000.00 from the City of Norfolk and the payment of \$1,700,000.00 to ERC have been fully executed.

The following change order was executed during the 2017 calendar year:

- CO-42 – This change order paid to ERC the \$493,601 in eligible Excess Rehabilitation costs in excess of the \$5,000,000 deductible as previously described in the Funding for Project Risks section.

UPC 105900 continues to be included in the Six-Year Improvement Program (SYIP) (FY 2017-2022) with an estimate and allocations totaling \$8 million. These funds were available July 1, 2014 with the Commonwealth Transportation Board (CTB) adoption of the SYIP on June 18, 2014. The \$8 million will cover the costs of the executed change orders noted above and the fuel adjustments for the duration of the project. Any additional change orders to be negotiated will be paid from this UPC as funds are allocated. A summary of all executed change orders on the Project through December 31, 2017 are presented in the following table.

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<sup>12</sup> The CA defines pre-existing hazardous substances to include hazardous substances identified in the “Known Pre-Existing Hazardous Substances Report” (CA Exhibit Q), hazardous substances ERC should have known were present as a result of the “Known Pre-Existing Hazardous Substances Report,” and hazardous substances which were actually known by ERC to be present within the Project right-of-way at the time the CA was executed (see CA Exhibit A).

<sup>13</sup> Note, ERC is not entitled to make a claim for a Compensation Event. Rather, ERC only is entitled to a reimbursement of its actual costs incurred.

**Table 5-1 – Executed Change Orders**

| <b>Change Order</b>  | <b>Fuel Adjustments</b> | <b>Other Changes</b> |
|--|-------------------------|----------------------|
| CO-01 – OCIP Premiums Terms & Conditions                         |                         | \$0                  |
| CO-02 – Adoption of 2011 WAPM & MUTCD                            |                         | \$0                  |
| CO-05 – Fuel Adjustment 8/1/12 – 3/31/14                         | \$843,878               |                      |
| CO-06 – WBDTT Lane Closure Directive                             |                         | \$2,001,341          |
| CO-09 – Amend Exhibit S Fuel Factor                              |                         | \$0                  |
| CO-12 – Lump Sum Resolution of Multiple Outstanding Notices      |                         | \$1,522,007          |
| CO-13 – Fuel Adjustments, 4/1/14 – 10/31/14                      | (\$136,280)             |                      |
| CO-14 – Allowable Tunnel Closure Weekends Dec 2014 & Jan 2015    |                         | \$0                  |
| CO-16 – EBDTT MOT – 3/14/2015                                    |                         | \$17,000             |
| CO-17 – Fuel Adjustments, 11/1/14 – 2/28/15                      | (\$584,238)             |                      |
| CO-18 – Fuel Adjustments, 3/1/15 – 3/31/15                       | (\$120,605)             |                      |
| CO-20 – Fuel Adjustments, 4/1/15 – 4/30/15                       | (\$176,467)             |                      |
| CO-21 – Fuel Adjustments, 5/1/15 – 5/31/15                       | (\$99,524)              |                      |
| CO-22 – Fuel Adjustments, 6/1/15 – 6/30/15                       | (\$307,619)             |                      |
| CO-23 – EBDTT VDOT Directive MOT – 12/12/14                      |                         | \$63,000             |
| CO-24 – Fuel Adjustments, 7/1/15 – 7/31/15                       | (\$283,787)             |                      |
| CO-25 – I-264 Pedestrian Bridge Corrosion Protection             |                         | \$27,000             |
| CO-26 – Fuel Adjustments, 8/1/15 – 8/31/15                       | (\$277,432)             |                      |
| CO-27 – Fuel Adjustments, 9/1/15 – 9/30/15                       | (\$278,495)             |                      |
| CO-28 – Fuel Adjustments, 10/1/15 – 10/31/15                     | (\$330,456)             |                      |
| CO-29 – Fuel Adjustments, 11/1/15-11/30/15                       | (\$347,837)             |                      |
| CO-30 – Fuel Adjustments, 12/1/15-12/31/15                       | (\$294,181)             |                      |
| CO-31 - Fuel Adjustments, 1/1/16-1/31/16                         | (\$417,056)             |                      |
| CO-32 - Fuel Adjustments, 2/1/16-2/29/16                         | (\$440,036)             |                      |
| CO-33 - Fuel Adjustments, 3/1/16-3/31/16                         | (\$391,520)             |                      |
| CO-34 – Amend Rehabilitation Plan Scope (DTT)                    |                         | \$0                  |
| CO-35 - Fuel Adjustments, 4/1/16-4/30/16                         | (\$223,561)             |                      |
| CO-36 - Fuel Adjustments, 5/1/16-6/30/16                         | (\$333,277)             |                      |
| CO-37 - Fuel Adjustments, 7/1/16-7/31/16                         | (\$82,603)              |                      |
| CO-38 - Fuel Adjustments, 8/1/16-8/31/16                         | (\$62,094)              |                      |
| CO-39 - Fuel Adjustments, 9/1/16-9/30/16                         | (\$90,491)              |                      |
| CO-40 - Fuel Adjustments, 10/1/16-10/31/16                       | (\$13,524)              |                      |
| CO-42 – Department Responsibility for Excess Rehabilitation Work |                         | \$493,601            |
| <b>SUBTOTAL</b>  | <b>(\$4,447,205)</b>    | <b>\$4,123,949</b>   |
| <b>TOTAL through December 31, 2017</b>                           |                         | <b>(\$323,256)</b>   |
| <b>Potential OCIP</b>  |                         | <b>(\$8,628)</b>     |

### *Potential Change Orders*

As Project Final Completion was achieved on September 1, 2017, there are no further Change Orders associated with the Design-Build Work.

Additional Change Orders or Amendments are anticipated to construct additional noise walls within the project limits that arose from the change in Project tolling strategy that eliminated tolls from the MLK Extension. Based on this change, FHWA requested that VDOT assess the removal of tolls on this portion of the project in the form of a re-evaluation under NEPA to determine the potential for any environmental effects not previously considered, specifically changes to potential air quality and noise impacts. The reevaluation identified four noise barriers, with a total length of approximately 9,300 linear feet, which meet the feasible and reasonable criteria and were recommended for construction. A preliminary planning level cost estimate for construction of the noise walls is \$15.6M. In order to refine the design and cost estimate, CO-43 was executed to perform Phase 1 feasibility study and conceptual design for \$717,200. This work is being funded through UPC 105900 contingency funds. Funding for final design and construction will need to be determined. The additional work will be documented with either a Change Order or Amendment.

Additional future Change Orders are possible during the course of the Operations and Maintenance Work throughout the remainder of the Project Term. Any costs will be covered with Contingency funds or other funding sources.

Change Order CO-01 related to OCIP premiums expired 90 days after Final Completion, with ERC not making a claim to additional OCIP funds.

### **6. Funding for VDOT Oversight**

VDOT estimated its oversight costs to be \$65,347,200 (excluding costs for ROW acquisition work for property owned by railroads and the change order funding) and is funded through UPCs 76642 and 97175. Those costs include the VDOT staff time and staff augmentation and support resources needed to oversee ERC's design and construction work from financial close until final acceptance of the construction work. Funding for oversight costs is provided through a combination of federal and state funds, including: "Minimum Guarantee," "National Highway System," "Surface Transportation Program," "Primary Formula," "National Highway Performance Program" and bonds as outlined in Table 6-1.

As of December 31, 2017, the project oversight costs remain within the established budget, and additional funding will not be required to complete closeout activities. Through the end of this reporting period, Southeastern Transportation Partners (STP) has invoiced a total of \$27,403,038 against an established budget of \$44,070,000.

Below is Table 6.1 Construction Oversight and provides estimated and actual project data regarding this element of the project. The Actual Expenditures include only Federally Eligible costs. The estimates are provided based on spending by VDOT project management and by STP.

VDOT anticipates completing allocation adjustments to better reflect the estimated cost to complete the project in the coming months. The data provided below is based on past history and current project status.

**Table 6.1 Construction Oversight**

| Annual Work Plan                                      | <i>Amount (in millions)</i> |                        |                         |                        |                             |                        |
|---|-----------------------------|------------------------|-------------------------|------------------------|-----------------------------|------------------------|
|   | Budget                      |                        | Actual Expenditures     |                        | Estimated Spending Activity |                        |
|   | VDOT Project Management     | STP Project Management | VDOT Project Management | STP Project Management | VDOT Project Management     | STP Project Management |
| Period 1 (1/2011-6/2011)                              | \$1.5                       | \$1.5                  | \$1.4                   | \$ .4                  | \$ -                        | \$ -                   |
| Period 2 (7/2011-6/2012)                              | 2.2                         | 3.6                    | 2.3                     | 2.7                    | -                           | -                      |
| Period 3 (7/2012-6/2013)                              | 3.5                         | 6.0                    | 1.7                     | 3.6                    | -                           | -                      |
| Period 4 (7/2013-6/2014)                              | 3.5                         | 10.0                   | 1.4                     | 4.6                    | -                           | -                      |
| Period 5 (7/2014-6/2015)                              | 3.5                         | 10.0                   | 1.4                     | 6.3                    | -                           | -                      |
| Period 6 (7/2015-6/2016)                              | 3.5                         | 7.0                    | 1.2                     | 5.2                    | -                           | -                      |
| Period 7 (7/2016-6/2017)                              | 2.0                         | 5.0                    | 3.1                     | 4.2                    | -                           | -                      |
| Period 8 (7/2017-6/2018)                              | 1.5                         | 1.0                    | 0.4                     | 0.7                    | 0.4                         | 0.3                    |
| <b>Total</b>  | <b>\$21.2</b>               | <b>\$44.1</b>          | <b>\$13.0</b>           | <b>\$27.4</b>          | <b>\$0.4</b>                | <b>\$0.3</b>           |
| <b>Total Budget, Expenditures, Estimated Spending</b> | <b>\$65.3</b>               |                        | <b>\$40.4</b>           |                        | <b>\$0.7</b>                |                        |

**Table 6-1**

**Obligation Summary**

**Federal Aid Project Modification, Project 965-5(057) – Hampton Roads PPTA Midtown Tunnel Corridor & Martin Luther King Freeway Extension – PPTA Project Development & Management and ROW**

| Fund                                      | Obligation          | Federal Share | Advance Construction | Estimated Total of Project |
|---|---------------------|---------------|----------------------|----------------------------|
| L01R INTERSTATE MAINT RE.                 | \$197,257           | 90%           | \$1,567,118          | \$1,960,416                |
| L050 NHS- NATL HIGHWAY SYS NHS            | 124,829             | 80%           | -                    | 156,036                    |
| L05E NHS- NATL HIGHWAY SYS S-LU EXT NHS   | 6,860,896           | 100%          | 6,400,540            | 13,261,436                 |
| L240 SURFACE TRANSPORTATION FLEX STP/FLEX | -                   |               | 7,125,795            | 7,215,795                  |
| L24E SURFACE TRANS FLEX S-LU EXT STP/FLEX | 6,344,298           | 100%          | 21,509,669           | 33,231,384                 |
| LZ2E EQ BONUS SPEC LIM S-LU EXT EB/MG     | 21,515,171          | 80%           | -                    | 26,893,964                 |
| M0E1                                      | 7,636,187           | 100%          | -                    | 7,636,187                  |
| M240                                      | -                   |               | 291,050              | 363,813                    |
| <b>TOTAL</b>                              | <b>\$42,678,638</b> |               | <b>\$36,894,172</b>  | <b>\$90,678,638</b>        |

Federal commitments to this project are outlined in the federal agreement 965-5(057). The federal agreement includes components of project development, oversight and Right-of-Way.

**7. Tolling of the Project**

Based on VDOT's recent review, it has concluded that all revenues received from the operation of the Facility were used first for the operating costs of the project as described in the Project's Cooperative Agreement. VDOT also reviewed a report of the independent auditor of the financial statements of Elizabeth River Crossings, LLC (ERC). VDOT has not found any concerns with the tolling data and revenues shown in ERC's plan. VDOT will also review subsequent reporting from ERC later this year.

ERC adequately discusses issues with E-ZPass penetration in the area and increased violation processing costs that have become necessary.

**8. Finance Plan Updates**

ERC is to provide the TIFIA lender with annual updates to the finance plan until the TIFIA loan is repaid. With the completion of construction as signified by issuance of Project Final Completion on September 1, 2017, this will be the final supplement to ERC's updates to the finance plan.

# Appendix 1

## Detailed Estimate

(See attached)

## Appendix 2

### Project Statistical Information – Reference

#### PROJECT INFORMATION

##### Environmental Document

Date of Approval: 8/1/11                      Type: Environmental Assessment

Information on additional environmental actions (re-evaluations, supplements, etc.):  
See Table 1-1 for additional information

##### Project Management Plan

Date of PDT Concurrence: June 2009

##### Cost Estimate Review

Date of CER: November 2011              Performed by: VDOT

FMIS Major Project Indicator: Project Cost > \$500M

Project in FOIS Active Major Projects Database: Yes

## Financial Plan Information

### Cost (in millions)

See Table 3-1 for details of VDOT Contribution.

| <b><u>Total Project Cost:</u></b>   |                        | <b><u>Cost from last FPAU:</u></b> |                        |
|---|------------------------|------------------------------------|------------------------|
| ERC Total Project Cost  | \$2.050 billion        |                                    | \$2.076 billion        |
| VDOT Oversight  | \$65.3 million         |                                    | \$65.3 million         |
| <b>Total</b>  | <b>\$2.116 billion</b> |                                    | <b>\$2.141 billion</b> |
| <b>Federal Funding:</b><br>VDOT Oversight   | \$29.3 million         |                                    | \$29.3 million         |
| <b>State/Other Funding:</b>   | \$2.086 billion        |                                    | \$2.112 billion        |
| <p><b>Reason for Increase/Decrease:</b> Details provided in ERC Table 6.3.1 Sources and Uses of Funds (page 37). ERC experienced reductions in anticipated costs for the following items: tolling implementation, transit subsidy to HRT (based on contract commencement), construction management, reserve funding for the Major Maintenance Reserve Fund, Capex during construction, tolling operating, other operating &amp; maintenance costs, TIFIA interest, and the release of undrawn contingent equity. Additionally, \$78 million in additional Public Funds was provided through Amendment 5. VDOT's obligation increased by \$78,000,000 in accordance with Amendment 5 of the CA ("CA Amendment 5") dated September 18, 2015. VDOT is contributing additional funding for construction costs as the Concessionaire has agreed to forego tolling the Martin Luther King Extension component of the project. The amount provided is to be from GARVEE funding.</p> |                        |                                    |                        |

**Schedule (month and year)**

**Information previously provided**

| <b><u>Completion Date:</u></b> |          | <b><u>Date from last FPAU:</u></b>   |     |
|--------------------------------|----------|--------------------------------------|-----|
|                                |          | Same                                 |     |
| Exist. Downtown Tunnels Rehab  | 08/06/16 | <b>Reason for Increase/Decrease:</b> | N/A |
| New MLK Extension              | 12/30/16 | <b>Amendment 6</b>                   |     |
| New Midtown Tunnel             | 12/24/16 |                                      |     |
| Exist. Midtown Tunnel Rehab    | 09/01/17 |                                      |     |

**Additional Detail: ERC Schedule and Progress (page 9 of Midtown Tunnel Financial Plan, March 31, 2018)**

| <b>Project Components</b> | <b>Milestones</b>      | <b>Scheduled Substantial Completion Date</b> | <b>Actual</b> |
|---------------------------|------------------------|--|---------------|
| New Midtown Tunnel        | Substantial Completion | 12/24/2016                                   | 8/26/2016     |
|                           | Final Acceptance       | 3/24/2017                                    | 11/24/2016    |
| MLK Extension             | Substantial Completion | 12/30/2016                                   | 12/28/2016    |
|                           | Final Acceptance       | 3/30/2017                                    | 3/28/2017     |
| Existing Downtown Tunnels | Substantial Completion | 8/6/2016                                     | 8/6/2016      |
|                           | Final Acceptance       | 11/4/2016                                    | 11/4/2016     |
| Existing Midtown Tunnel   | Substantial Completion | 5/11/2018                                    | 9/1/2017      |
|                           | Final Acceptance       | 8/9/2018                                     | 9/1/2017      |
| Final Completion          | Substantial Completion | 5/11/2018                                    | 9/1/2017      |
|                           | Final Acceptance       | 8/9/2018                                     | 9/1/2017      |

Cost Estimate Review:

70% Amount for the Funded Phase:

Noteworthy Project Changes since CER (Costs/Scope/Schedule), if any: None

**Overall Funding**

Sources of Funding – See Table 6.3.1 of ERC’s Financial Plan (Page 17)

**Project Financing**

Estimated Annual Toll Revenue is provided by ERC in the Midtown Tunnel Financial Plan and the associated Financial Model.

The Public Funds Amount and contributions related to the CA Amendments 1 and 3 are provided by GARVEE Bonds. VDOT has and will pay the debt service on these bonds with federal funding. The Debt Service Schedule anticipated for this project is attached.

Cycle for Annual Updates

As of Date: December 31                      Due Date: March 31