

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
WITH RESPECT TO INTERIM AGREEMENT**

This ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter the "Assignment"), dated as of December 5, 2011 is made by Elizabeth River Crossings LLC, a Delaware limited liability company ("Assignor") to Elizabeth River Crossings Opco, LLC, a Delaware limited liability company ("Assignee"), and consented to by the Virginia Department of Transportation, an agency of the Commonwealth of Virginia ("VDOT"). Each capitalized term used and not otherwise defined herein shall have the meaning assigned to such term in the Interim Agreement (as defined below).

**RECITALS:**

WHEREAS, VDOT and Assignor are parties to that certain Interim Agreement to Develop and/or Operate the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project in Virginia, dated as of January 7, 2010, and a First Amendment to such Interim Agreement, dated as of August 19, 2011 (the "Interim Agreement");

WHEREAS, pursuant to the Interim Agreement, Assignor was granted the exclusive right to develop the Project and negotiate the Comprehensive Agreement as concessionaire with respect to the Project (the "Exclusivity Right");

WHEREAS, Assignor is the owner of certain Work Packages, Project Deliverables, any completed portions thereof, Work Product and Proprietary Work Product and, to the extent assignable without the prior written approval of the applicable licensor, the licensee of certain Proprietary Work Product (each as defined in the Interim Agreement and each, a "Development Product"), as contemplated under the Interim Agreement;

WHEREAS, subject to the terms of this Assignment, Assignor desires to assign to Assignee, and Assignee desires to assume, the rights and obligations of the Assignor under the Interim Agreement;

WHEREAS, immediately following the effectiveness of this Assignment, VDOT and Assignor intend to terminate the Interim Agreement, and VDOT intends to enter into that certain Comprehensive Agreement Relating to the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project (the "Comprehensive Agreement") with Assignee, as the Concessionaire therein, pursuant to which Assignee will develop, design, finance, construct, operate and maintain the Project; and

WHEREAS, Elizabeth River Crossings Holdco, LLC, a Delaware limited liability company ("ERC Holdco"), owns 100% of the membership interests in Assignee.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the foregoing recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of

which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Assignment. On and as of the date hereof, subject to paragraph 7, Assignor hereby assigns and transfers to Assignee Assignor's rights and obligations under the Interim Agreement, including the Exclusivity Right, and all of Assignor's right, title and interest in and to the Development Products, but excluding any obligations or liability for performance or non-performance of obligations prior to the date hereof (the "Assigned IA Rights and Obligations").

2. Assumption. On and as of the date hereof, subject to paragraph 7, Assignee hereby assumes from Assignor all of the Assigned IA Rights and Obligations.

3. Further Assurances. Assignor and Assignee agree to execute and deliver such other further instruments and to do such other and further acts as may be necessary to carry out more effectively the intents and purposes of this Assignment.

4. Complete Assignment and Assumption. (a) Assignor hereby agrees that this Assignment is a complete assignment of the Assigned IA Rights and Obligations. Assignee hereby accepts and assumes the Assigned IA Rights and Obligations, and agrees that Assignor is hereby released by Assignee from all obligations and any liability arising from the performance or non-performance by Assignee of the Assigned IA Rights and Obligations.

(b) VDOT hereby consents to the assignment hereunder on the terms set forth herein, and hereby confirms and agrees that VDOT shall not be entitled, as a result of or after giving effect to, the assignment hereunder, to any repayment of any amounts previously paid or reimbursed by it in respect of the Development Products and agrees that Assignee will have no obligations or liability for performance or non-performance of obligations under the Interim Agreement prior to the date hereof; except that nothing in this Assignment shall alter the agreement of VDOT and Assignee in, and any rights that VDOT may have pursuant to, Section 14.01(g) and Section 23.02(n) of the Comprehensive Agreement.

5. Third Party Approvals. Assignor hereby agrees to use reasonable best efforts to obtain any third party approvals that are necessary to assign to Assignee any license to use Proprietary Work Product.

6. Indemnification. (a) Assignor shall indemnify, defend, and hold harmless Assignee, ERC Holdco, the shareholders or members of ERC Holdco, and each of their respective officers, directors, agents and employees (each, an "Assignee Indemnitee") from and against any and all Losses (except to the extent such Losses are solely caused by the misconduct, negligent or other culpable act, error or omission of Assignee) caused by (i) any failure by Assignor to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions of the Interim Agreement (determined immediately after giving effect to the assignment contemplated hereby), or any breach by Assignor of its representations or warranties set forth in the Interim Agreement, or (ii) any gross negligence or willful and intentional misconduct of Assignor in connection with the Project, including, without limitation, any such act which is committed by any of its subcontractors, agents or employees, in connection with the Project prior to the date hereof; or (iii) any patent or copyright infringement or other

misappropriation or use by Assignor or its subcontractors, agents or employees, of trade secrets, patents, proprietary information, know-how, trademarked or service marked materials, equipment, devices or processes, copyright rights or inventions of third parties incorporated into the Development Products prior to the date hereof, in each case, whether or not such Losses arise prior to or after the effectiveness of this Assignment.

(b) Assignee shall indemnify, defend, and hold harmless Assignor, the shareholders or members of Assignor, and each of their respective officers, directors, agents and employees (each, an “Assignor Indemnitee”) from and against any and all Losses (except to the extent such Losses are solely caused by the misconduct, negligent or other culpable act, error or omission of Assignor) caused by (i) any failure by Assignee to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions of the Comprehensive Agreement and the Project Agreements (as defined in the Comprehensive Agreement) (collectively, the “Comprehensive Agreement Documents”) or any breach by Assignee of its representations or warranties set forth in any of the Comprehensive Agreement Documents, or (ii) any gross negligence or willful and intentional misconduct of Assignee in connection with the Project, including, without limitation, any such act which is committed by any of its subcontractors, agents or employees, in connection with the Project on or after the date hereof; or (iii) any patent or copyright infringement or other misappropriation or use by Assignee or its subcontractors, agents or employees, of trade secrets, patents, proprietary information, know-how, trademarked or service marked materials, equipment, devices or processes, copyright rights or inventions of third parties incorporated into the Development Products on or after the date hereof.

For purposes of this Paragraph 6:

“Losses” means, with respect to any Indemnitee, any losses, liabilities, judgments, damages, fees, penalties, fines, sanctions, charges or reasonable out-of-pocket costs or expenses actually suffered or incurred by such Indemnitee, including as a result of any injury to or death of persons or damage to or loss of property; and

“Indemnitee” means any Assignee Indemnitee and any Assignor Indemnitee.

7. Unreimbursed Deliverables. Assignor has completed certain Work Packages and/or Project Deliverables prior to the date hereof for which VDOT has not provided approval or for which an Application for Payment has not been submitted to VDOT in accordance with the Interim Agreement. Notwithstanding anything herein to the contrary, VDOT, by consenting to this Assignment as provided in the signature pages hereto, and Assignor hereby agree to retain their respective rights and obligations to each other under Sections 3.2, 4.1, 4.4, 4.5 and 4.6 of the Interim Agreement and comply with such Sections for the sole purpose of processing the approvals and progress payments for such Work Packages and/or Project Deliverables. Assignee shall have no obligations or liability with respect to the transactions contemplated under this paragraph 7.

8. Representations and Warranties. (a) Assignee represents and warrants to Assignor as follows:

(i) Assignee is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to conduct business in the State, has the requisite power and, subject to Section 5, all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Assignment;

(ii) As of the date hereof, the membership interest in Assignee is wholly owned by ERC HoldCo, and no other person has a membership interest in Assignee;

(iii) Assignee has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Assignment; and

(iv) Each person executing this Assignment on behalf of Assignee has been or will at such time be duly authorized to execute this Assignment on behalf of Assignee.

(b) Assignor represents and warrants to Assignee as follows:

(i) Assignor is a duly organized limited liability company created under the laws of the State of Delaware, is qualified to conduct business in the State, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to enter into this Assignment;

(ii) Assignor has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Assignment; and

(iii) Each person executing this Assignment on behalf of Assignor has been or will at such time be duly authorized to execute this Assignment on behalf of Assignor.

9. Common Interests. Assignor and Assignee agree that they have a common and mutuality of legal interest in the assignment hereunder, and wish to ensure that each of them are free to share and exchange information that may be useful without waiving the protections of the attorney-client privilege, the attorney work-product doctrine, or any other privilege, immunity, or protection from discovery or disclosure. Assignor and Assignee consider that the sharing and exchange of information is necessary for the protection of each such party's interests. In addition, Assignor and Assignee have concluded that, because of certain interests that each of Assignor and Assignee have in common, it is in their interests in connection with the assignment hereunder to share and exchange information related to such matters as each party in its sole discretion deems appropriate, including legal research and analyses, reports and documents, and the information contained in each of the foregoing in connection with the assignment hereunder.

10. Severability. If any provision hereof shall be invalid, illegal or unenforceable under applicable law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

11. Successors and Assigns. This Assignment shall inure to the benefit of, and shall be binding upon, the successors and assigns of Assignor and Assignee.

12. Governing Law. This Assignment shall be governed and construed in accordance with the laws of the Commonwealth of Virginia.

13. Counterparts. This Assignment 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.

14. No Third Party Beneficiaries. Nothing in this Assignment shall create or be deemed to create any third party beneficiary rights in any person or entity not a party to this Assignment.

*[Signatures to follow.]*

IN WITNESS WHEREOF, this Assignment is executed by Assignor and Assignee effective as of the date hereof.

**ASSIGNOR:**

**ELIZABETH RIVER CROSSINGS LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

Signature on file with VDOT

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, this Assignment is executed by Assignor and Assignee effective as of the date hereof.

**ASSIGNOR:**

**ELIZABETH RIVER CROSSINGS LLC,**  
a Delaware limited liability company

Signature on file with VDOT

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**ASSIGNEE:**

**ELIZABETH RIVER CROSSINGS OPCO, LLC,**  
a Delaware limited liability company

Signature on file with VDOT

By: \_\_\_\_\_  
Name: Karl Kuchel  
Title: Authorized Signatory

By: \_\_\_\_\_  
Name: Karl Reichelt  
Title: Authorized Signatory

**ASSIGNEE:**

**ELIZABETH RIVER CROSSINGS OPCO, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Karl Kuchel

Title: Authorized Signatory

Signature on file with VDOT

By: \_\_\_\_\_

Name: Karl Reichelt

Title: Authorized Signatory

Acknowledged and consented to pursuant to Section 10.1.2 of the Interim Agreement on the date written above by:

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

Signature on file with VDOT

By: \_\_\_\_\_

Name: Gregory A. Whirley Sr.

Title: Commissioner of Highways