
EXHIBIT E

FORM OF DESIGN-BUILD CONTRACT

The attached form of Design-Build Contract is intended to provide Proposers with suggested terms and conditions for their contract with the Design-Builder. The Department acknowledges that the Preferred Proposer will seek to negotiate the Design-Build Contract with the Design-Builder, and the Department does not intend to dictate the Design-Build Contract in its entirety, but rather to review and approve the Design-Build Contract in accordance with Section [6.1.4 of the Instructions to Proposers]. **However, the following provisions in the attached form of Design-Build Contract may not be modified from those in the form without the Department's written consent:**¹

[To come].

¹ Subject to continuing review and further revision by the Department.

Design-Build Contract Between

[•]

And

[•]

This **CONTRACT** (the “**Contract**”) is made as of [•] (the “**Agreement Date**”) by and between [•] (“**Developer**”), a [•], and [•] (“**Design-Builder**”), a [•], for services in connection with the Project (together, the “**Parties**”).

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In consideration of the mutual covenants and obligations contained herein, Developer and Design-Builder agree as set forth herein.

Article 1

Scope of Design-Build Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Design-Build Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

- 2.1** The Contract Documents are comprised of the following:
- 2.1.1** that certain agreement dated [•], [•], a copy of which is attached hereto as Exhibit [•] and incorporated herein by reference (hereinafter the “Comprehensive Agreement”) with the Virginia Department of Transportation for the design, development, finance, operation and maintenance of the Project;
 - 2.1.2** all written modifications, amendments and work orders to this Contract, the General Conditions of Contract or the Technical Requirements, in each case issued in accordance with the General Conditions of Contract;
 - 2.1.3** this Contract, executed by Developer and Design-Builder, inclusive of all Exhibits;
 - 2.1.4** the General Conditions of Contract Between Developer and Design-Builder attached hereto as Exhibit A (the “General Conditions of Contract”);
 - 2.1.5** the Technical Requirements attached hereto as Exhibit [•] (the “Technical Requirements”);
 - 2.1.6** the Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract; and
 - 2.1.7** those portions of Developer’s proposal submitted in response to the Department’s Request for Proposals (“RFP”), issued [•], including all final modifications, as required pursuant to the Technical Requirements.

Article 3

Interpretation and Intent

3.1 The Contract Documents are intended to permit the Parties to complete the Design-Build Work and all obligations required by the Contract Documents within the Contract Time(s) for the

Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.2 Terms, words and phrases used in the Contract Documents, including this Contract, shall have the meanings given them in this Contract and the General Conditions of Contract, as applicable. References herein or elsewhere to the “Department” shall mean and refer to the Virginia Department of Transportation.

3.3 The Contract Documents form the entire agreement between Developer and Design-Builder with respect to its subject matter and by incorporation herein are as fully binding on the Parties as if repeated herein. The Parties have made no oral representations or other agreements, except as specifically stated in the Contract Documents.

3.4 Design-Builder shall not take advantage of any obvious or apparent error or omission in the Contract Documents. If Design-Builder discovers an error or omission, he shall immediately notify Developer of any required corrections in accordance with the Contract Documents and make such corrections as necessary for fulfilling the intent of the Contract Documents.

3.5 The Parties acknowledge that the Construction Documents require further development, are in many respects preliminary and have not been fully bid or priced by Subcontractors. Design-Builder has, nevertheless, committed to a fixed lump sum Contract Sum and has provided in it for such further development. The Contract Sum agreed to by the Parties is based on an unqualified hard bid of the Design-Builder, and assumes the risk of design and Project refinement, development and detailing, as well as gaps, incompleteness and those clarifications, selections and changes that are part of the design build process and, which would otherwise constitute “scope creep” and entitle a party to an increase in the Contract Sum.

3.6 Capitalized terms used in the Contract Documents but not defined in this Contract, the General Conditions of Contract or that certain Comprehensive Agreement entered into between the Developer and the Virginia Department of Transportation (the definitions contained therein being explicitly incorporated herein) shall have the meanings customarily attributed to them by trade usage.

Article 4

Ownership of Work Product

4.1 Work Product Defined. The term “**Work Product**” is intended to include all drawings, specifications, calculations, reports, and documentation, whether in paper copy or electronic format, produced by or through Design-Builder that are furnished to Developer.

4.2 Ownership of Work Product. Developer shall own all rights, title and interest in the Work Product upon its receipt of such Work Product. Developer’s ownership rights include, without restriction or limitation, the right of Developer and/or its assignees, and anyone

contracting with Developer and/or its assignees, to incorporate any ideas or information from the Work Product into: (a) any other contract awarded in reference to the Project; or (b) any subsequent procurement by Developer and/or its assignees on another project. In receiving all rights, title and interest in the Work Product, Developer is deemed to own all intellectual property rights, copyrights, patents, trade secrets, trademarks, and service marks in Work Product, and Design-Builder agrees that it shall, at the request of Developer, execute all papers and perform all other acts that may be necessary (if any) to ensure that Developer's rights, title and interest in the Work Product are protected. The rights conferred herein to Developer include, without limitation, Developer's ability to use the Work Product and assign all or part of the Work Product (together with all associated rights and obligations set forth herein) to any other party (including the Department, pursuant to Section 18.03 of the Comprehensive Agreement), without the obligation to notify or seek permission from Design-Builder or any other party. Design-Builder shall obtain comparable and equal agreements regarding rights to and interests in the Work Product in favor of Developer from all persons and parties engaged by or under Design-Builder.

4.3 Use of Work Product at Developer's Risk. Developer's use of the Work Product on any subsequent procurement by Developer or on another project shall be at Developer's sole risk, and Design-Builder neither warrants nor represents that the Work Product is suitable for use on another project without modification. Developer waives any rights to seek recovery from Design-Builder for any claims, damages, liabilities, losses and expenses arising out of or resulting from Developer's use of the Work Product on another project.

Article 5

Contract Time

5.1 Date of Commencement. The Design-Build Work shall commence upon Design-Builder's receipt of the initial Limited Notice to Proceed with design work or the date set forth in such Limited Notice to Proceed ("**Date of Commencement**"). Developer will issue a Construction Notice to Proceed to Design-Builder promptly following the Department issuance of the Construction Notice to Proceed pursuant to the Comprehensive Agreement.

5.2 Completion Dates.

5.2.1 Final Completion Date. The Design-Builder shall fully and finally complete the Design-Build Work and it shall be open for traffic on or before November 15, 2020 (the "**Project Completion Date**"). As a condition of achieving the Project Completion, the Design-Build Work must have received Project Completion by the Department.

5.2.2 Interim Milestone Dates. In the event any identified portion of the Design-Build Work is to be completed earlier than the Project Completion Date, such Design-Build Work shall be identified in **Exhibit [•]** and the dates such Design-Build Work shall be completed shall be set forth in **Exhibit [•]** ("**Interim Milestone Dates**");

5.3 Adjustments. All of the scheduled completion dates set forth in Section 5.2 above (collectively referred to as “**Contract Times**”) shall be subject to adjustment in accordance with the General Conditions of Contract.

5.4 Time is of the Essence. Developer and Design-Builder mutually agree that time is of the essence with respect to the Contract Times.

5.5 Liquidated Damages. Design-Builder understands that if the Project Completion Date or any Interim Milestone Dates are not attained, Developer will suffer damages which are difficult to determine and accurately specify. To compensate Developer for such damages, Design-Builder hereby agrees as follows:

5.5.1 If Project Completion is not attained by the Project Completion Date, Designer-Builder shall pay Developer [•] as liquidated damages for each day that actual Project Completion extends beyond the Project Completion Date.

5.5.2 If Interim Milestone(s) are not attained by the Interim Milestone Date(s), Designer-Builder shall pay Developer [•] as liquidated damages for each day that each Interim Milestone(s) extends beyond the Interim Milestone Date.

5.6 Liquidated Damages Not Penalty. The Parties acknowledge, recognize and agree on the following:

- (a) that because of the unique nature of the Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Developer as a result of Design-Builder’s failure to complete the Design-Build Work on or before the applicable Contract Time(s);
- (b) that any sums which would be payable under this Article 5 are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure; and
- (c) that any sums which would be payable herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Developer which are occasioned by any delay in achieving the applicable Contract Times for the above-referenced Design-Build Work. Notwithstanding the above, liquidated damages are not intended to excuse Design-Builder from liability for any other breach of its obligations under the Contract Documents.

Article 6

Contract Price

6.1 Contract Price. Developer shall pay Design-Builder for the performance of the Design-Build Work in accordance with Article 6 of the General Conditions of Contract the sum of [•]

(“**Contract Price**”), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Law.

6.2 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Design-Build Work, to the extent permitted in accordance with the Contract Documents, and the cost of such changes is determined under Section 9.4.1 of the General Conditions of Contract, markups shall be allowed on such changes in accordance with the Comprehensive Agreement or the Technical Requirements, as applicable.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Developer on the tenth (10th) day of each month, beginning with the first month after the Agreement Date, Design-Builder’s Application for Payment in accordance with Article 6 of the General Conditions of Contract. For the avoidance of doubt, Design-Builder shall be entitled to submit its first Application for Payment on 10/1.

7.1.2 Developer shall make payment within thirty (30) days after Developer’s receipt of each completed Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.1.3 Design-Builder agrees that, within seven (7) days following receipt of monies from Developer for work performed by any Subcontractor, Design-Builder shall either: (a) pay the Subcontractor for the proportionate share of the total payment received from Developer attributable to the work performed by the Subcontractor; or (b) notify Developer and Subcontractor, in writing, of Design-Builder’s intention to withhold all or a part of the Subcontractor’s payment, specifying the reason for the non-payment. Design-Builder also agrees that it shall include in all subcontracts it enters into with any Subcontractor a provision that: (a) obligates Design-Builder to pay interest to such Subcontractor on all amounts owed by Design-Builder that remain unpaid after seven (7) days following receipt of monies from Developer for work performed by such Subcontractor, except for amounts withheld as allowed in the preceding sentence; (b) states, “Unless otherwise provided under the terms of this contract, interest shall accrue at the base rate on corporate loans at large United States money center commercial banks as reported daily in the publication entitled the Wall Street Journal (the Prime Rate).”; and (c) obligates each Subcontractor to include or otherwise be subject to the same payment and interest requirements as specified in this Section 7.1.3 with respect to each Subcontractor’s lower-tier Sub-subcontractor.

7.1.4 Design-Builder’s obligations to pay an interest charge to a Subcontractor pursuant to Section 7.1.3 shall not be construed to be an obligation of Developer, nor shall any

modification to this Contract be allowed for the purpose of providing reimbursement for the interest charge. Cost reimbursement claims shall not include any amount for reimbursement for the interest charge.

7.1.5 Design-Builder agrees to provide Developer, within five (5) days of the Agreement Date, its federal employer identification number.

7.2 **Retainage.** Retainage will not be withheld from payments due to Design-Builder in accordance with this Contract.

7.3 **Final Payment.** Design-Builder shall submit its final Application for Payment to Developer in accordance with Section 6.6.3 of the General Conditions of Contract. Developer shall, subject to Section 6.6.3 of the General Conditions of Contract, make payment on Design-Builder's completed final Application for Payment within thirty (30) days after Developer's receipt of the final Application for Payment; *provided*, that Design-Builder has satisfied the requirements for such final payment set forth in Section 6.6.3.1 - 6.6.3.5 of the General Conditions of Contract.

7.4 **Interest.** Payments due and unpaid by Developer to Design-Builder, whether progress payments or final payment, shall bear interest at the base rate on corporate loans at large United States money center commercial banks as reported daily in the publication entitled the Wall Street Journal (the "**Prime Rate**").

7.5 **Record Maintenance and Retention of Records.** Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Design-Build Work and for a period of five (5) years after final payment, Developer and Developer's accountants shall be afforded access from time-to-time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data, including but not limited to electronic schedules and other electronic data (all collectively referred to as "**Books and Records**") relating to: (a) changes in the Design-Build Work performed on a cost basis; and (b) any request by Design-Builder for an adjustment in the Contract Price or Contract Times. Design-Builder shall preserve all of its Books and Records for a period of five (5) years after the date of Project Completion.

Article 8

Termination for Convenience

8.1 Upon ten (10) days written notice to Design-Builder, Developer may, for its convenience and without cause, elect to terminate all or part of the Design-Build Work if Developer, in its sole discretion, determines that such a termination is in Developer's best interests. Developer shall notify Design-Builder of the decision to terminate by delivering to Design-Builder a written notice of termination specifying the extent of termination and its effective date (a "**Notice of Termination**").

8.1.1 If Developer terminates all of the Design-Build Work for convenience before issuing a Notice to Proceed, Developer shall pay to Design-Builder up to [•] of costs incurred by or on behalf of Design-Builder (whether internally or to outside vendors or contractors) since [•], associated with responding to the Department's RFP, as the same may be documented to the reasonable satisfaction of Developer within thirty (30) days after the date on which Design-Builder receives a Notice of Termination. Except as expressly provided in the previous sentence, Design-Builder specifically waives any and all rights to claim from Developer for any cost, profit, overhead contribution or any other monetary relief associated with the Contract Documents or Project, including but not limited to bid and proposal costs, or any services that might have constituted Design-Build Work under the Contract Documents.

8.1.2 If Developer terminates all or part of the Design-Build Work for convenience after issuing a Notice to Proceed, then Sections 8.2 through 8.8 below shall apply.

8.2 If Design-Builder has received a Notice to Proceed and Developer thereafter issues a Notice of Termination, except as directed otherwise by Developer, Design-Builder shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Article 8:

8.2.1 stop Design-Build Work as specified in the Notice of Termination;

8.2.2 enter into no further Subcontracts and place no further orders for materials, services or facilities, except as necessary to complete the continued portion of the Design-Build Work, if any, or for mitigation of damages;

8.2.3 unless instructed otherwise by Developer, terminate all Subcontracts to the extent they relate to the Design-Build Work terminated and except to the extent that continuation of the Subcontract is necessary in order to mitigate damages;

8.2.4 if requested by Developer, assign to Developer or its designee in the manner, at the times, and to the extent directed by Developer, all of the right, title, and interest of Design-Builder under the Subcontracts so terminated as to which Developer wishes to take assignment (and so identifies in writing), in which case Developer will have the right, in its sole discretion, to accept performance, settle or pay any or all claims under or arising out of the termination of such Subcontracts;

8.2.5 settle outstanding liabilities and claims arising out of such termination of Subcontracts, with the approval or ratification of Developer, to the extent it may require, which approval or ratification shall be final;

8.2.6 transfer and deliver to Developer or its designee, as directed by Developer: (a) possession and control of the Project; and (b) all right, title and interest of Design-Builder in and to: (i) the Design-Build Work in process, completed Design-Build Work, supplies and other materials produced or acquired for the Design-Build Work terminated; (ii) the Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records,

reports, books, samples, information and other Design-Build Work Product that would have been required to be furnished to Developer if the Design-Build Work had been completed; and (iii) all intellectual property developed specifically for the Project; *provided, however*, that in the event of such transfer, make payment to Design-Builder on the same basis as set forth in Section 4.3;

8.2.7 complete performance in accordance with the Contract Documents of all Design-Build Work not terminated;

8.2.8 take all reasonable action that may be necessary, or that Developer may direct, for the protection and preservation of the property related to the Contract Documents that is in the possession of Design-Builder and in which Developer has or may acquire an interest; and

8.2.9 as authorized by Developer, use its best efforts to sell or cause to be sold at fair market value any inventory of the types referred to in Section 8.3; provided, however, that Design-Builder: (a) shall not take any such action with respect to any items for which title has previously transferred to Developer; (b) is not required to extend credit to any purchaser; and (c) may acquire the property itself, under the conditions prescribed and at prices approved by Developer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Developer under the Contract Documents or paid in any other manner directed by Developer.

8.3 Inventory. Design-Builder shall submit to Developer a list of termination inventory not previously disposed of and excluding items authorized for disposition by Developer; and within thirty (30) days of receipt of the list, Design-Builder shall deliver such inventory to Developer and Developer shall accept title to such inventory as appropriate.

8.4 Settlement Proposal. After termination, Design-Builder shall submit a final termination settlement proposal to Developer in respect of the Design-Build Work in the form and with the certification prescribed by Developer. Design-Builder shall submit the proposal promptly, but no later than thirty (30) days from the effective date of termination unless Design-Builder has requested a time extension in writing within such 30-day period and Developer has agreed in writing to allow such an extension.

8.5 Amount of Termination Settlement. Upon a termination of the Design-Build Work pursuant to this Article 8, Design-Builder will be entitled to a termination settlement payment in an amount equal to the sum of the following:

8.5.1 with respect to all Design-Build Work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:

- .1** except to the extent Developer has previously paid Design-Builder in respect of such Design-Build Work in conjunction with a completed work package pursuant to Section 6.2.1 of the General Conditions of Contract, Design-Builder's documented costs and expenses in respect of such Design-Build Work; and

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- .2 the cost of settling and paying claims arising out of the termination of Design-Build Work under Subcontracts as provided in Section 8.2.5 above, exclusive of the amounts paid or payable on account of equipment and/or materials delivered or services furnished by a Subcontractor prior to the effective date of the Notice of Termination, which amounts shall be included in the cost on account of which payment is made under clause .1 above; and

- 8.5.2** the reasonable cost of the preservation and protection of property incurred pursuant to Section 8.2.8, reasonable demobilization and wind-down expenses, and any other reasonable cost incidental to termination of Design-Build Work under the Contract including expense incidental to the determination of the amount due to Design-Builder as the result of the termination of Design-Build Work under the Contract.

Such agreed amount or amounts payable for the terminated Design-Build Work shall not exceed the total Contract Price as reduced by the Contract Price of Design-Build Work not performed. Developer's payment to Design-Builder of any amount pursuant to this Section 8.5 shall not be deemed to affect any of its rights with respect to compliance of the Design-Build Work performed with all applicable requirements or any of its rights under payment and performance bonds or any of its rights against Subcontractors.

8.6 Disagreement as to Amount of Claim. In the event of any disagreement as to any portion of the amount to be paid Design-Builder by reason of the termination of Design-Build Work pursuant to this Article 8, Developer shall pay the un-disputed portion of such amount to Design-Builder when due, and such disputed portion may be withheld pending resolution of such dispute in accordance with the dispute resolution procedures of the General Conditions of Contract.

8.7 Reduction in Amount of Claim. The amount otherwise due Design-Builder under this Article 8 shall be reduced by: (a) the amount of any valid claim which Developer may have against Design-Builder in connection with this Contract (including but not limited to any liquidated damages due and payable from Design-Builder); (b) the agreed Price for, or the proceeds of sale of, materials, supplies or other things previously paid for by Developer and to be retained by Design-Builder or sold by the Design-Builder (with the proceeds being retained by the Design-Builder), pursuant to the provisions of this Article 8; and (c) all un-liquidated advances or other payments on account theretofore made to Design-Builder, applicable to the terminated portion of the Design-Build Work.

8.8 Payment. Developer may, from time-to-time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by Design-Builder in connection with the terminated portion of this Contract, whenever in the opinion of Developer the aggregate of such payments shall be within the amount to which Design-Builder will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article 8, such excess shall be payable by Design-Builder to Developer upon written demand and, if not paid within seven (7) days after receipt by Design-Builder of such demand, shall accrue interest at the Prime Rate.

8.9 Inclusion in Subcontracts. Design-Builder shall insert into all Subcontracts that the Subcontractor shall stop Design-Build Work on the date of and to the extent specified in a Notice of Termination from Developer and shall require that Subcontractors insert the same provision into each Subcontract at all tiers. Design-Builder shall communicate, promptly following receipt thereof, any Notice of Termination issued by Developer to all affected Subcontractors.

8.10 No Consequential Damages. In the event of a termination for convenience under this Article 8, Design-Builder acknowledges and agrees that, except as expressly provided in this Article 8, it shall not be entitled to any compensation in excess of the value of the Design-Build Work performed plus its settlement and closeout costs. Under no circumstances shall Design-Builder or any Subcontractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of a termination for convenience under this Article 8 and the payment to Design-Builder determined in accordance with this Article 8 constitutes Design-Builder's exclusive remedy for a termination hereunder.

8.11 No Waiver. Anything contained in this Contract to the contrary notwithstanding, a termination under this Article 8 shall not waive any right or claim to damages which Developer may have with respect to Design-Build Work which has achieved Final Completion prior to the date of termination, and Developer may pursue any cause of action which it may have by law or under this Contract on account of such completed Design-Build Work. Design-Builder makes no warranties with respect to work items that are left incomplete after post-termination demobilization. Developer's termination of this Contract shall not relieve any rights Developer or other obligee has under any performance bonds issued on the Project.

8.12 Dispute Resolution. The failure of the Parties to agree on amounts due under this Article 8 shall be a dispute to be resolved in accordance with the requirements of the General Conditions of Contract, Article 10.

8.13 Right to Use Work Product. If Developer terminates this Contract pursuant to this Article 8, Developer's rights to use the Work Product shall be as set forth in Article 4 hereof.

Article 9

Representatives of the Parties

9.1 Developer's Representatives.

9.1.1 Developer designates the individual listed below, or such other individual as Developer may notify in writing to Design-Builder from time to time, as its Developer's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

[•]

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates each of the individuals listed below, or such other individual as Design-Builder may notify in writing to Developer from time to time, as its Design-Builder's Representative, each of whom shall have, acting independently and without the other, the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

[•]

[•]

For the avoidance of doubt, Developer shall be entitled to rely on any exercise of the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract by either of Design-Builder's Representatives without notice to or confirmation from the other, and any such exercise of such authority or responsibility from either of such Design-Builder's Representatives shall be binding on Design-Builder. If Developer receives conflicting notices, communications or other manifestations of the exercise of the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract from Design-Builder's Representatives in respect of any matter, Developer shall be entitled to rely on such notice, communication or other manifestation of such authority and responsibility which shall have been first received by Developer, without any further obligation to confirm or clarify any such conflict.

9.2.2 Design-Builder may from time to time request a change to the individual designated as Design-Builder's Representative by providing Developer not less than ten (10) days' written notice of the date on which such proposed change shall take effect, together with the name and qualifications of the proposed individual. The proposed change shall take effect on the date set out in such notice unless Developer shall have notified Design-Builder in writing of its objection to the proposed change within the ten (10) day notice period.

9.2.3 Design-Builder shall timely remove or replace, or have removed or replaced, Design-Builder's Representative if Developer has a reasonable objection to such person.

9.3 Developer and Design-Builder shall, in the spirit of cooperation, exchange information in a timely manner. While the Contract Documents establish a timeline and process for making decisions and managing communications on the Project, the Parties recognize it is not possible to specify processes for all activities that may occur. The Parties shall communicate in a manner consistent with the *Special Provision for Project Communication and Decision Making for Design-Build Projects (August 2009)*; provided, that references therein to Department shall be deemed to have been amended to refer to Developer.

Article 10

Insurance, Performance Security, Parent Guarantee and Cash Collateral

10.1 Insurance. Design-Builder shall procure and maintain insurance in accordance with Article 5 of the General Conditions of Contract.

10.2 Performance Security. *[Note to Proposers – the Department will conform this section based on approach in Comprehensive Agreement and industry feedback.]*

10.2.1 Design-Builder shall procure performance and payment bonds executed by a surety acceptable to the Developer, in each case in the amount of [•]. The payment bond shall be maintained in full force and effect from the Agreement Date until the date which is one (1) year after the date of Final Completion. The performance bond shall be maintained in full force and effect from the Agreement Date until the date which is thirty (30) days after the expiration of the Warranty Period; *provided*, that upon the achievement of Final Completion, the penal amount of such performance bond shall be reduced to [•]. Bonds shall include the Department as an additional obligee thereunder.

10.3 Parent Guarantee. *[Note to Proposers – the Department will conform this section based on approach in Comprehensive Agreement and industry feedback.]*

10.3.1 Design-Builder shall cause each Design-Builder Parent, on a joint and several basis, to provide to Developer a guarantee substantially in the form of **Exhibit [•]** (the “**Parent Guarantee**”), which Parent Guarantee shall be maintained in full force and effect from the Agreement Date until thirty (30) days after the final day of the Warranty Period.

10.4 Cash Collateral Account. *[Note to Proposers – the Department will conform this section based on approach in Comprehensive Agreement and industry feedback.]*

10.4.1 Design-Builder hereby agrees, until such time as the Cash Collateral Total Deposit Amount (as defined below) shall have been deposited into the Cash Collateral Account (as defined below), promptly following receipt (or in conjunction of the receipt) of any monthly payment made to the Design-Builder from the Developer pursuant to Article 6 of the General Conditions of Contract, to deposit (or to direct in writing the Developer to deposit) into the cash collateral account held in the name of Developer (the “**Cash Collateral Account**”) an amount equal to 10% of any such monthly payment, which deposited funds shall be available to be used by the Developer to satisfy any obligations of the Design-Builder pursuant to this Contract in the same manner and under the same conditions pursuant to which the Performance Security and the Parent Guarantee may be exercised by the Developer hereunder, including in respect of the failure of the Design-Builder to complete the Design-Build Work by the relevant deadlines contemplated in this Contract, in accordance with the terms of the cash collateral account agreement governing the Cash Collateral Account to be entered into prior to the first required deposit into the Cash Collateral Account hereunder among the Developer, the Design-Builder and the applicable account bank (the “**Cash Collateral Agreement**”); *provided*, that the Design-Builder shall not be required to make any deposits into the Cash Collateral Account once the balance therein shall be equal to or in excess of the highest monthly value of Design-Build Work forecasted by the Design-Builder, from time to time, to be completed by the Design-Builder during any future month prior to the scheduled date of Final Completion (the amount allocated to such highest monthly value of Design-Build Work contemplated to be completed during any one month by the Design-Builder prior to Final Completion, the “**Cash Collateral Total Deposit**”

Amount”), which each forecast of monthly values of Design-Build Work to be confirmed, at least annually (or more frequently if forecasts are made more frequently than on an annual basis) as reasonable by an independent engineer or engineering firm, in each case, of national recognition and reputation, selected by the Design-Builder.

- 10.4.2** The Design-Builder shall be entitled to withdraw monies from time to time on deposit in the Cash Collateral Account in excess of the Cash Collateral Total Deposit Amount and, upon Final Completion, the Design-Builder shall be entitled to withdraw all amounts on deposit in such Cash Collateral Account. It being understood and agreed by the Parties hereto that nothing herein shall diminish or reduce any obligation that the Design-Builder shall have to make payments to any subcontractors in accordance with this Contract or applicable Legal Requirements.
- 10.4.3** At any time, and from time to time, during the period in which the Design-Builder is required to maintain funds on deposit in the Cash Collateral Account, the Design-Builder may deliver a letter of credit in lieu thereof (in accordance with the below) or if amount are already on deposit in the Cash Collateral Account, withdraw such funds, in part or in whole, from the Cash Collateral Account without restriction in the event that concurrently with such withdrawal, and as a condition thereto, the Design-Builder shall have delivered to the Developer a standby letter of credit, issued by a financial institution that has a credit rating of at least “A-” by Standard and Poor’s Investors Service or equivalent rating from any other internationally recognized rating agency (provided that Standard and Poor’s Investors Service or such other internationally recognized rating agency has also provided a rating with respect to the Developer Debt), for the benefit of the Developer, in a stated amount equal to the amount contemplated to be withdrawn, or if provided initially, in an amount equal to or in excess of the amount that would otherwise be required to be maintained on deposit pursuant to the terms hereof in the Cash Collateral Account. Any draws on the letter of credit shall be effected solely for the same purposes for which the Developer may draw on funds in the Cash Collateral Account as contemplated herein. Such letter of credit may be returned to the Design-Builder at any time if concurrently with such return, a cash deposit is made by the Design-Builder into the Cash Collateral Account in an amount equal to the letter of credit being withdrawn, unless no further deposit is required to be maintained. Any letter of credit delivered by the Design-Builder pursuant to the terms hereof shall be maintained, or replaced by a cash deposit as contemplated above, for the time period during which the relevant cash deposit that it is replacing is required to be maintained hereunder. The stated amount of any letter of credit may be reduced in accordance with the release mechanism contemplated above. The Parties hereby confirm and agree that any cash or letter of credit provided hereunder and drawn upon by the Developer shall be in lieu of (and without duplication of) a similar draw or action in respect of the Performance Security or Parent Guaranty contemplated herein. The Design-Builder’s liability under this Contract shall not increase by the provision of any cash collateral or a letter of credit contemplated herein.

Article 11

Other Provisions

11.1 Project Management and Reporting Requirements.

11.1.1 Responsible Charge Engineer (“RCE”). To the extent that the Responsible Charge Engineer is employed by the Developer (rather than by the Design-Builder), the Design-Builder acknowledges that the RCE will have the following rights and responsibilities related to the Design-Build Work: (i) rejecting or approving both the engineering and construction work in progress and the final product, (ii) ensuring all engineering services are performed by professionals properly licensed in the Commonwealth of Virginia and plans are signed and sealed by such professional, (iii) meeting the Developer’s obligations under the Contract, (iv) avoiding and resolving disputes; and (v) the right to order the Design-Builder to stop work.

11.1.2 Proposed Initial Baseline Schedule. This schedule, attached hereto as **Exhibit [•]**, shall be the basis for monitoring Design-Builder’s performance of the Design-Build Work until such time as a Baseline Schedule has been approved by Developer in accordance with Section 11.1.3 below.

11.1.3 Baseline Schedule. Within sixty (60) days after the Agreement Date, Design-Builder shall submit to Developer, for its review and approval, a Baseline Schedule in accordance with the terms of, and in the format required by, the Technical Requirements. Developer reserves the right to withhold approval for all or part of Design-Builder’s Applications for Payment until such time Design-Builder furnishes an approved Baseline Schedule.

11.1.4 Schedule Updates. As part of, and in conjunction with, the monthly reports required by Section 11.1.8, Design-Builder shall provide Developer with any proposed update of the Baseline Schedule (a “**Schedule Update**”) in accordance with the terms of and in the format required by the Technical Requirements.

11.1.5 Other Information and Alteration. Design-Builder shall, whenever required by Developer, provide in writing a general description of the arrangements and methods which Design-Builder proposes to adopt for the execution of the Design-Build Work. No significant alteration to the Baseline Schedule, or to such arrangements and methods, shall be made without the prior written consent of Developer and any alterations made shall reflect the requirement for coordination of the Design-Build Work with the actions and obligations of Developer. If any alteration affects any such actions, obligations or Design-Build Work, it shall not be made without the prior approval of Developer. If the progress of the Design-Build Work does not conform to the Baseline Schedule, as updated herein, Developer may instruct Design-Builder to revise the Baseline Schedule, showing the modifications necessary to achieve completion within the Contract Times.

11.1.6 Developer’s Separate Contractors. Design-Builder agrees to include the activities of Developer’s Separate Contractors into the Baseline Schedule from time to time in accordance with its undertaking pursuant to Section 3.5.3 of the General Conditions of

Contract. Design-Builder shall reasonably cooperate with Developer's Separate Contractors and coordinate its activities with those of such Separate Contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

11.1.7 Developer's Review and Approval of Baseline Schedule. Developer's review and approval of the Baseline Schedule or subsequent updates shall not be construed as relieving Design-Builder of its complete and exclusive control and responsibility over the means, methods, sequences and techniques for executing the Design-Build Work and does not constitute approval or acceptance of Design-Builder's ability to complete the Design-Build Work within the Contract Time(s).

11.1.8 Monthly Reports. Monthly reports shall be prepared by Design-Builder and submitted to Developer in accordance with the Technical Requirements. Failure of Design-Builder to provide complete monthly reports, including but not limited to the monthly schedule updates, shall be grounds for Developer to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes such complete reports.

11.1.9 Project Records. Design-Builder shall organize and maintain its Project records in accordance with the Technical Requirements. As a condition of final payment, Design-Builder shall provide Developer with a complete set of all Project records by and between Design-Builder and Developer exchanged on the Project, which shall be satisfactory in form and substance to Developer.

11.1.10 Final As-Built Schedule. Design-Builder shall submit a Final As-Built Schedule in accordance with the Technical Requirements. The Developer reserves the right to withhold approval for all or part of Design-Builder's Applications for Final Payment until such time Design-Builder furnishes an approved Final As-Built Schedule.

11.2 Miscellaneous.

11.2.1 In executing this Contract, Developer and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Contract, and each has the necessary approvals to execute this Contract and to perform the services and obligations described herein.

11.2.2 Design-Builder understands that Developer has or will enter the Comprehensive Agreement. The Design-Build Work to be performed by Design-Builder in accordance with the Contract Documents constitutes the design and construction for the Project and related services necessary for the Developer to perform its obligations under the Comprehensive Agreement. Design-Builder acknowledges Developer's design and construction obligations to the Department, and assumes towards Developer all such duties as Developer, by the Comprehensive Agreement, has to the Department with respect to the services and Design-Build Work thereunder. Without limiting the foregoing, Design-Builder specifically agrees to perform and provide the design and construction services and the Design-Build Work set forth in the Contract Documents and

to comply with and satisfy the requirements of the Comprehensive Agreement that are specific to the Design-Builder or that have been delegated to the Design-Builder by the Developer by virtue of this Contract and/or the other Contract Documents.

11.2.3 If the Comprehensive Agreement is terminated prior to the date of Project Completion, this Contract will terminate simultaneously and Design-Builder will be entitled to recover in the same manner as if Developer had terminated the Contract for its convenience under Article 8 of the Contract.

11.3 Exhibits.

11.3.1 The following exhibits are specifically made part of, and incorporated by reference into, this Contract:

EXHIBIT A	--	GENERAL CONDITIONS OF CONTRACT
EXHIBIT ___	--	TECHNICAL REQUIREMENTS
EXHIBIT ___	--	SCHEMATIC DESIGN
EXHIBIT ___	--	INITIAL BASELINE SCHEDULE
EXHIBIT ___	--	DRAFT PROJECT DEVELOPMENT PLANS
EXHIBIT ___	--	SCHEDULE OF VALUES
EXHIBIT ___	--	MONTHLY PAYMENT SCHEDULE
EXHIBIT ___	--	OTHER PROPOSAL COMMITMENTS
EXHIBIT ___	--	EMPLOYMENT RELATED MATTERS
EXHIBIT ___	--	FEDERAL REQUIREMENTS
EXHIBIT ___	--	INFORMATION DOCUMENTS
EXHIBIT ___	--	INSURANCE REQUIREMENTS
EXHIBIT ___	--	ASPHALT AND FUEL PRICES
EXHIBIT ___	--	CONTRACT PRICE ADJUSTMENTS
EXHIBIT ___	--	DISPUTE RESOLUTION
EXHIBIT ___	--	FORM OF PARENT GUARANTEE
EXHIBIT ___	--	EXAMPLE PROJECT RECORD TRACKING LOG
EXHIBIT ___	--	FORM OF ESCROW AGREEMENT
EXHIBIT ___	--	_____
EXHIBIT ___	--	_____
EXHIBIT ___	--	_____

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Contract Relating to the Transform 66 P3 Project as of the date first written above.

DEVELOPER:

[•]

(Name of Developer)

(Signature)

(Printed Name)

(Title)

DESIGN-BUILDER:

(Name of Design-Builder)

(Signature)

(Printed Name)

(Title)

(Signature)

(Printed Name)

(Title)