

**EXHIBIT D**

**FORM OF ESCROW AGREEMENT**

This **ESCROW AGREEMENT** (“Escrow Agreement”) is made and entered into as of [•] by and among the **VIRGINIA DEPARTMENT OF TRANSPORTATION** (the “Department”), an agency of the Commonwealth of Virginia, [•] (the “Developer”), a [•], and [•] a [•], as escrow agent hereunder (the “Escrow Agent”) (the Department, the Developer and the Escrow Agent are herein referred to collectively as the “Parties”).

**RECITALS**

**WHEREAS**, the Department and the Developer have entered into a Comprehensive Agreement Relating to the Transform 66 P3 Project (the “Project”), dated as of [•], 2016 (the “Comprehensive Agreement”), pursuant to which the Department has granted a permit to the Developer, which includes (i) the right and obligation to develop, design, finance, construct, operate and maintain the Project and (ii) the right to establish, impose, charge, collect, use and enforce payment of tolls and related charges;

**WHEREAS**, pursuant to Section 18.05 of the Comprehensive Agreement, the Developer is required to submit to the Department the Escrow Documents;

**WHEREAS**, the Developer and the Department desire to appoint the Escrow Agent to act as escrow agent hereunder in the manner hereinafter set forth, and the Escrow Agent is willing to act in such capacity; and

**WHEREAS**, it is a condition to the execution and delivery by the Department of the Comprehensive Agreement that this Escrow Agreement be entered into among the Parties.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of these premises and in consideration of the mutual covenants herein contained, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, the Parties, intending to be legally bound, do hereby agree as follows.

**ARTICLE 1.**

**DEFINITIONS AND ORDER OF PRECEDENCE**

**Section 1.01 Definitions**

Capitalized terms used but not otherwise defined in this Escrow Agreement have the respective meanings set forth in Exhibit A to the Comprehensive Agreement.

### **Section 1.02 Order of Precedence**

In the event of any conflict, ambiguity or inconsistency between the provisions of the Comprehensive Agreement and the provisions of this Escrow Agreement, the provisions of this Escrow Agreement shall prevail.

### **Section 1.03 No Effect on Comprehensive Agreement**

Nothing in this Escrow Agreement amends or modifies any of the Developer's or the Department's obligations and rights under the Comprehensive Agreement.

## **ARTICLE 2.**

### **ESCROW ARRANGEMENTS**

#### **Section 2.01 Appointment of Escrow Agent**

The Developer and the Department hereby appoint the Escrow Agent to serve as escrow agent hereunder, and the Escrow Agent hereby accepts such appointment, subject to the terms and conditions set forth in this Escrow Agreement. The Escrow Agent shall hold, manage, provide access to and dispose of the Escrow Documents in accordance with the terms hereof.

#### **Section 2.02 Deposit of Escrow Documents and Source Code Escrows**

In accordance with Section 18.05 of the Comprehensive Agreement, the Department (or, at the request of the Department, the Developer) shall deliver and deposit with the Escrow Agent the Escrow Documents and Source Code Escrows in the same sealed containers in which the Developer delivered the Escrow Documents and Source Code Escrows to the Department, which containers shall not have been opened or the contents thereof altered or modified in any way by the Department or any other person. The Escrow Agent shall provide to each Party written acknowledgment of the receipt of the Escrow Documents and Source Code Escrows, and any subsequent additions or modifications to the Escrow Documents or Source Code Escrows, promptly upon receipt thereof. The Escrow Agent is not required to take notice of the Escrow Documents or Source Code Escrows or the contents thereof, which the Escrow Agent shall hold only for custodial purposes.

#### **Section 2.03 Ownership; Use and Review of Escrow Documents**

The Parties hereby acknowledge and agree that the Escrow Documents are, and shall always be, the property of the Developer. The Escrow Agent shall provide prompt access to the Escrow Documents for review and copying upon receipt by it of a written notice requesting such access signed by the Department or the Developer; *provided* that the Department, prior to making such request, has given a minimum of 24 hours written notice to the Developer, and the Developer, prior to making such request, has given a minimum of 24 hours written notice to the Department. The Escrow Agent shall not permit access to the Escrow Documents to any person other than the Developer, authorized representatives of the Developer, the Department, members of the Department's staff pursuant to Section 18.05 of the Comprehensive Agreement and to the Department's Consultants. For purposes of certainty, authorized representatives of the

Developer shall include designated representatives of the Design-Build Contractor. Such authorized representatives of the Developer and the Department staff and Consultants shall be entitled to conduct examinations, reviews and make copies of of the Escrow Documents at any time deemed necessary and for any reason.

#### **Section 2.04 Release and Return of Escrow Documents**

(a) The Escrow Agent shall hold the Escrow Documents in its possession at its offices in Richmond, Virginia until directed to deliver such Escrow Documents upon receipt of a written certification delivered pursuant to Section 2.04(b) or (c) below or a final adjudication, as applicable, whereupon the Escrow Agent shall deliver the appropriate Escrow Documents to the Developer.

(b) The Escrow Agent shall release the Construction Escrow Documents to the Developer upon receipt by the Escrow Agent of a certification from the Developer and the Department (which the Developer and the Department hereby agree to deliver promptly following the occurrence of the events noted in this clause (b)) stating that the Project has achieved Project Completion, final payment has been made to the Design-Build Contractor and all claims or disputes arising under or related to the Design-Build Contract have been fully and finally resolved and/or adjudicated.

(c) The Escrow Agent shall release the Construction Escrow Documents (to the extent not released earlier pursuant to clause (b) above) and the Financing Escrow Documents to the Developer upon receipt by the Escrow Agent of a certification from the Developer and the Department (which the Developer and the Department hereby agree to deliver promptly following the occurrence of the events noted in this clause (c)) stating that the Comprehensive Agreement has been terminated in accordance with the provisions thereof and all claims or disputes arising under or related to the Comprehensive Agreement have been fully and finally resolved and/or adjudicated.

#### **Section 2.05 Termination**

This Escrow Agreement shall continue in effect and shall automatically terminate at such time as all Escrow Documents are released to the Developer as provided in Section 2.04(c) hereof. It is agreed and understood that in the event of disagreement between the Parties hereto, the Escrow Agent will, and does, reserve the right to hold the Escrow Documents in its possession, and all papers in connection with or concerning this escrow, until mutual agreement has been reached between the Parties or until delivery thereof is ordered pursuant to a final disposition reached pursuant to the dispute resolution provisions of Article 21 of the Comprehensive Agreement.

## ARTICLE 3.

### ESCROW AGENT

#### **Section 3.01 Liability of Escrow Agent**

The Escrow Agent shall have no responsibility to any person in connection with this Escrow Agreement, except as specifically provided, and shall not be responsible for anything done or omitted to be done by it except for its own gross negligence or willful default in the performance of any obligation imposed on it hereunder. Unless specifically provided herein, the Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of the other Parties with respect to arrangements or contracts with others, the Escrow Agent's sole duty hereunder being to safeguard the Escrow Documents and to dispose of and deliver the same in accordance with this Escrow Agreement. If the Escrow Agent is called upon by the terms of this Escrow Agreement to determine the occurrence of any event or contingency, the Escrow Agent may request from the other Parties or any other person such reasonable additional evidence as the Escrow Agent in its discretion may deem necessary to determine any fact relating to the occurrence of such event or contingency, and in this connection may inquire and consult with the other Parties, among others, at any time. The Escrow Agent may request an opinion of counsel for a determination of any legal issue which might arise in the performance of its duties hereunder and such opinion of counsel shall be full and complete authorization for any action taken, suffered or omitted by the Escrow Agent in reliance thereon. This Escrow Agreement sets forth exclusively the duties of the Escrow Agent with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into this Escrow Agreement against the Escrow Agent.

#### **Section 3.02 Payment of Escrow Agent**

The Escrow Agent acknowledges receipt of good and valuable consideration for the services rendered or to be rendered by it pursuant to this Escrow Agreement. The Developer shall pay the Escrow Agent's reasonable fees and expenses in connection with the performance of its duties under this Escrow Agreement. The annual administrative fee is \$[•] and shall be payable at signing by the Developer or within [•] days of receipt of an invoice from the Escrow Agent. The Escrow Agent and the Developer acknowledge and agree that the Department shall have no liability in respect of any fees or expenses of the Escrow Agent.

#### **Section 3.03 Resignation and Replacement of Escrow Agent**

The Escrow Agent may resign, and thereby become discharged from the trusts, duties and obligations hereby created, by written notice given to the Department and the Developer, not less than [•] days before such resignation shall take effect. Such resignation shall take effect immediately, however, upon the earlier appointment of a new Escrow Agent hereunder and acceptance of the trusts hereby created. The Escrow Agent shall continue to serve as Escrow Agent until a successor is appointed and the Escrow Documents have been properly transferred to the successor Escrow Agent. In the event of the resignation of the Escrow Agent prior to the expiration of this Escrow Agreement, the Escrow Agent shall rebate to the Developer a ratable portion of any prepaid fee theretofore paid by the Developer to the Escrow Agent for its services

hereunder. After any notice of resignation of the Escrow Agent, the Developer shall undertake to appoint a replacement Escrow Agent on terms reasonably acceptable to the Developer and the Department.

## ARTICLE 4.

### GENERAL PROVISIONS

#### **Section 4.01 Address for Notices**

(a) Whenever under the provisions of this Escrow Agreement it will be necessary or desirable for one Party to serve any approval, notice, request, demand, report or other communication on another Party, the same will be in writing and will not be effective for any purpose unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by facsimile transmission, where the transmitting Party includes a cover sheet identifying the name, location and identity of the transmitting Party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission immediately is followed by service of the original of the subject item in another manner permitted herein or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Department:  
Virginia Department of Transportation  
1401 E. Broad Street  
Richmond, VA 23219  
Attention: Chief Engineer  
Facsimile: (804) 786-2940

With copies to:

Office of the Attorney General  
900 E. Main Street  
Richmond, VA 23219  
Attention: Chief of Transportation Section  
Facsimile: (804) 786-9136

If to the Developer: [•]  
Attention: [•]  
Facsimile: [•]

If to the Escrow Agent:

[•]

Attention: [•]

Telephone: [•]

Facsimile: [•]

(b) Any Party may, from time to time, by notice in writing served upon the other Parties, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally will be deemed delivered upon receipt, if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by facsimile transmission will be deemed delivered on the date of receipt as shown on the received facsimile (provided, that the original is thereafter delivered as aforesaid).

#### **Section 4.02 Successors and Assigns**

This Escrow Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns. The Department and the Escrow Agent hereby consent to the collateral assignment (the "Assignment") of this Escrow Agreement in whole by the Developer to the Collateral Agent as security for the performance of the Developer's obligations under the Project Financing Agreements. Pursuant to the Assignment, the Collateral Agent and its designee or assignee shall have the right to assume the benefits and obligations of the Developer under this Escrow Agreement. In the event that the Collateral Agent or such designee or assignee exercise such right by notice to the Escrow Agent, as of the date of such assumption of benefits and obligations of the Developer hereunder, the Collateral Agent may, in connection with any default under any Project Financing Agreement, assign any rights assigned to it hereunder to any other entity. However, the Escrow Agent shall have no obligation in performing this Escrow Agreement to recognize any successor or assign of the Developer unless the Escrow Agent receives clear, authoritative and conclusive written evidence of the change of Party.

#### **Section 4.03 Counterparts**

This Escrow Agreement may be executed in several counterparts each of which shall be an original and all of which together shall constitute one and the same instrument.

#### **Section 4.04 Waiver**

Any term of this Escrow Agreement may be waived by the Party entitled to the benefits thereof, provided that any such waiver must be in writing and signed by the Party against whom the enforcement of the waiver is sought. No waiver of any condition, or breach of any provision of this Escrow Agreement, in any one or more instances, shall be deemed to be a further or

continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed the waiver of that right or remedy.

#### **Section 4.05 Benefit of Agreement; Amendments**

(a) This Escrow Agreement is made for the benefit of the Developer and the Department, except as otherwise expressly provided herein.

(b) This Escrow Agreement shall not be amended without the prior written consent of the Developer, the Department and the Escrow Agent.

#### **Section 4.06 Severability**

In the event any one or more of the provisions contained in this Escrow Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Escrow Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

#### **Section 4.07 Prior Contracts Superseded**

This Escrow Agreement constitutes the sole agreement of the Parties hereto with respect to the subject matter set forth herein and supersedes any prior understandings or written or oral contracts between the Parties respecting such subject matter.

#### **Section 4.08 Effect of Breach**

Without prejudice to any rights a Party otherwise may have, a breach of this Escrow Agreement shall not of itself give rise to a right to terminate the Comprehensive Agreement.

#### **Section 4.09 No Third-Party Beneficiaries**

Nothing contained in this Escrow Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward, any person or entity that is not a Party.

#### **Section 4.10 No Partnership**

Nothing contained in this Escrow Agreement shall be deemed to constitute a partnership between the Parties hereto. None of the Parties shall hold itself out contrary to the terms of this Section 4.10.

#### **Section 4.11 Governing Law**

This Escrow Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia applicable to contracts executed and to be performed within the State. Venue for any legal action arising out of this Escrow Agreement shall lie in the Circuit Court in the City of Richmond, Virginia, Division I.

**IN WITNESS WHEREOF**, the Parties have caused this Escrow Agreement to be executed by their duly authorized representatives as of the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION  
an agency of the Commonwealth of Virginia

By: \_\_\_\_\_  
Name: [•]  
Title: [•]

[•]

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

[•]

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