
PART 3

Comprehensive Agreement Between Department and Design-Builder

This **COMPREHENSIVE AGREEMENT** for the I-64 Hampton Roads Bridge-Tunnel Project (the “**Agreement**”) is made as of [●], 2019 (the “**Agreement Date**”), by and between the **VIRGINIA DEPARTMENT OF TRANSPORTATION (“Department”)**, an agency of the **Commonwealth of Virginia** and [●] (“**Design-Builder**”), a [●], for services in connection with the Project.

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RECITALS:

WHEREAS, on March 25, 1995, the Governor of the Commonwealth of Virginia signed into law, effective July 1, 1995, the Public-Private Transportation Act, which was amended and re-enacted by Chapter 612 of the 2015 Acts of Assembly and signed into law by the Governor, effective July 1, 2015 (as amended, the “**Act**”);

WHEREAS, the Act grants Department the authority to allow private entities to develop and/or operate qualifying transportation facilities if Department determines there is a need for the qualifying transportation facilities and private involvement would provide the facilities to the public in a timely and cost-effective fashion and the Transportation Public-Private Partnership Steering Committee (the “**Steering Committee**”) determines, and the Commissioner of Highways certifies, that the risks, liabilities, and responsibilities transferred, assigned, or assumed by the private entity provide sufficient benefits to the public to not proceed with the development and/or operation of the transportation facility through other means of procurement available to Department;

WHEREAS, in June 2015, Department, working in conjunction with the Federal Highway Administration (“**FHWA**”), began a supplemental environmental impact statement for the Hampton Roads Crossing Study to examine alternatives to relieve traffic congestion at the existing Interstate 64 (“**I-64**”) Hampton Roads Bridge-Tunnel, located between Interstate 664 in the City of Hampton and Interstate 564 in the City of Norfolk;

WHEREAS, in December 2016, following a public review of the draft supplemental environmental impact statement, the Commonwealth Transportation Board (the “**CTB**”), identified a preferred alternative (titled “**Alternative A**”), comprised of the expansion of the existing Hampton Roads Bridge-Tunnel and other improvements to the I-64 corridor;

WHEREAS, the I-64 Hampton Roads Bridge-Tunnel Expansion Project represents the components of Alternative A that Department has chosen to procure under the Act to improve accessibility, mobility, and the movement of goods in the Hampton Roads metropolitan region;

WHEREAS, on June 12, 2017, FHWA issued the Record of Decision for the Project;

WHEREAS, on December 12, 2017, the Steering Committee met to review the public sector analysis prepared for the Project and concurred that: (i) the assumptions regarding the scope of the Project, benefits, and costs for the public sector option developed by Department pursuant to § 33.2-1803.1:1 of the Code of Virginia were fully and reasonably developed; (ii) the assumed financing costs and valuation of both financial and construction risk mitigation included in the public sector option are financially sound and reflect the best interest of the public; and (iii) the term sheets developed for the procurement of the Project contained all necessary elements;

WHEREAS, Department issued a Request for Qualifications on December 15, 2017 (the “**RFQ**”), requesting statements of qualifications from offerors desiring to deliver the Project;

WHEREAS, on January 9, 2018, the Commissioner of Highways issued a finding of public

interest (“**Finding of Public Interest**”) for the Project pursuant to § 33.2-1803.1 of the Code of Virginia that found that development of the Project pursuant to the Act was in the public interest of the Commonwealth of Virginia, a determination to which the Secretary of Transportation, in his role as chairman of CTB, concurred;

WHEREAS, on April 27, 2018, pursuant to the process outlined in the RFQ, Department selected three (3) respondents to the RFQ to be “Offerors” that would be eligible to submit proposals in response to the Request for Proposals issued by Department based on their respective technical qualifications as detailed in their responses to the RFQ;

WHEREAS, on May 22, 2018, Department issued the Request for Proposals (including a form of this Agreement) and thereafter issued a series of addenda thereto (collectively, the “**RFP**”);

WHEREAS, on [●] [●], 2018, Department received responses to the RFP, including the response of [●] (the “**Successful Offeror**”) on behalf of Design-Builder;

WHEREAS, on [●], pursuant to the evaluation process outlined in the RFP, Department selected the Successful Offeror’s Proposal identifying Design-Builder as the “Successful Offeror” under the RFP;

WHEREAS, on [●], the Commissioner of Highways certified in writing to the Governor and the General Assembly that: (i) the Finding of Public Interest issued pursuant to § 33.2-1803.1 of the Code of Virginia was still valid; (ii) the transfer, assignment, and assumption of risks, liabilities, and permitting responsibilities and the mitigation of revenue risk by the private sector enumerated in the Finding of Public Interest had not materially changed since the Finding of Public Interest was issued; and (iii) the public contribution requested by the private entity does not exceed the maximum public contribution determined pursuant to subsection (A) of § 33.2-1803.1:1 of the Code of Virginia;

WHEREAS, Department and Design-Builder desire to set forth in this Agreement the terms to develop, design, and construct the Project; and

WHEREAS, this Agreement is entered into pursuant to the Act.

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

Article 1

Scope of Work

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

Article 2

Contract Documents

2.1 The Contract Documents comprise the following:

2.1.1 all written modifications, amendments and Work Orders to this Agreement issued in accordance with the General Conditions of Contract;

2.1.2 this Agreement, executed by Department and Design-Builder, inclusive of all Exhibits;

2.1.3 the General Conditions of Contract between Department and Design-Builder, attached hereto as **Exhibit 1** (the “**General Conditions of Contract**”);

2.1.4 the Technical Requirements, attached hereto as **Exhibit 2** (the “**Technical Requirements**”);

2.1.5 the Division I Amendments to Standard Road and Bridge Specifications, attached hereto as **Exhibit 3** (the “**Division I Amendments**”);

2.1.6 the Released for Construction Plans prepared and approved in accordance with Section 2.4 of the General Conditions of Contract,

2.1.7 **Exhibit 5**, **Exhibit 6**, **Exhibit 7**, **Exhibit 8**, **Exhibit 9**, **Exhibit 10**, **Exhibit 11**, **Exhibit 12**, **Exhibit 13**, **Exhibit 14**, **Exhibit 15**, **Exhibit 16**, **Exhibit 17**, **Exhibit 18**, **Exhibit 19**, **Exhibit 20**, **[Exhibit 21]**, **[Exhibit 22]** and **Exhibit 23** to this Agreement; and

2.1.7 Design-Builder’s Proposal submitted in response to the RFP (“**Design-Builder’s Proposal**”), including all final modifications and approved Alternative Technical Concepts, attached hereto as **Exhibit 4**.

Article 3

Interpretation and Intent

3.1 The Contract Documents are intended to permit the parties to complete the 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 above[; *provided* that with respect to any discussion of geotechnical conditions in respect of the Tunnel Improvements, **Exhibit 21** shall take precedence].

3.2 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in this Agreement and the General Conditions of Contract.

3.3 The Contract Documents form the entire agreement between Department 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 Except as specifically set forth in this Section 3.4, and notwithstanding anything to the contrary in Design-Builder’s Proposal, Design-Builder is obligated to perform the Work in full compliance with the RFP Documents. The parties agree, however, that:

.1 Betterments and higher and/or more stringent standards or specifications and design and construction criteria, concepts, and drawings set forth in Design-Builder’s Proposal (collectively referred to as “**Enhancements**”) shall supersede the minimum requirements of the RFP Documents and Design-Builder is obligated to perform the Work in compliance with the Enhancements.

.2 Those ATCs identified in **Exhibit 4** have been approved, either fully or conditionally, by Department and supersede the requirements of the RFP Documents. Design-Builder has the right to perform the Work in accordance with such ATCs, subject to Section 2.1.10 of the General Conditions of Contract.

3.5 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, Design-Builder shall immediately notify Department and, promptly thereafter, Design-Builder and Department shall meet and confer to determine the corrections to the Contract Documents (which shall be acceptable to the Department, acting reasonably) necessary to fulfill the intent of the Contract Documents.

3.6 Capitalized terms used in the Contract Documents but not defined in this Agreement or in the General Conditions of Contract 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 is furnished to Department.

4.2 Ownership of Work Product. Department shall own all rights, title and interest in the Work Product upon its receipt of such Work Product. Department’s ownership rights, include without restriction or limitation, the right of Department, and anyone contracting with Department, 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 Department on another project. In receiving all rights, title and interest in the Work Product, Department 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 Department, execute all papers and perform all other acts that may be necessary (if any) to ensure that Department’s rights, title and interest in the Work Product are protected. The rights

conferred herein to Department include, without limitation, Department's ability to use the Work Product without the obligation to notify or seek permission from Design-Builder.

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

Article 5 **Contract Time**

5.1 Commencement of Work.

5.1.1 Limited Notice to Proceed. At any time after the Agreement Date, Department anticipates issuing a Limited Notice to Proceed ("LNTP") authorizing and obligating Design-Builder to commence the Early Work. Design-Builder shall commence the Early Work within seven (7) days of its receipt of the LNTP, unless the parties mutually agree otherwise in writing. The scope, schedule, payment amount and payment terms for such Early Work are set forth in the Early Work Scope Document attached hereto as **Exhibit 5**.

5.1.2 Notice to Proceed. The Work not previously performed as Early Work shall commence upon Design-Builder's receipt of Department's Notice to Proceed ("NTP"), unless the parties mutually agree otherwise in writing.

5.1.3 Delays to Notice to Proceed.

.1 If the NTP is not issued by Department until after [●], due to issues that the Design-Builder demonstrates to Department's satisfaction are entirely outside the control of Design-Builder, then, as Design-Builder's sole and exclusive remedy for any increased costs, impacts, delays and disruptions due to the delayed issuance, Design-Builder shall be entitled to the following adjustments:

- (a) the Contract Price, excluding amounts to be paid for Early Work under the LNTP, shall be increased at a [●] percent ([●]%) annualized rate (i.e., [●]% per day), based on the number of days between [●] and the date of issuance of the NTP; and
- (b) the Final Completion Deadline shall be extended by the number of days between [●] and the date of issuance of the NTP.

.2 Notwithstanding Section 5.1.3.1 above, if Department determines that the NTP will not be issued on or before [●], or if the NTP is not issued by Department on or before [●], the Contract Price and the Final Completion Deadline shall be subject to good faith renegotiation, in accordance with the following protocol:

- (a) Department shall direct Design-Builder in writing to provide a proposal with respect to its contemplated adjustments under Section 5.1.3.1 above, with Department identifying those assumptions upon which the proposal is to be based;
- (b) Design-Builder shall promptly furnish its proposal after receipt of Department's directive; and
- (c) if the parties do not reach agreement on a revised Contract Price and Final Completion Deadline within thirty (30) days of the date Department receives Design-Builder's proposal, Department may terminate this Agreement for convenience in accordance with Article 8.

5.1.3 Termination Prior to Notice to Proceed. If Department terminates all of the Work for convenience prior to the issuance of the Notice to Proceed, the provisions set forth in Section 8.1.1 shall apply.

5.2 Completion Dates

5.2.1 Final Completion Deadline. Design-Builder shall finally complete the Work in accordance with the Contract Documents on or before December 31, 2024 (the "**Final Completion Deadline**"). The date the Project has achieved Final Acceptance is the "**Final Completion Date**".

5.2.2 Interim Milestone Dates. In the event any identified portion of the Work is to be completed earlier than the Final Completion Deadline, such Work and the dates such Work shall be completed shall be described in **Exhibit 6** ("**Interim Milestone Dates**").

5.3 Early Completion of the Project.

5.3.1 No Excuses Incentive Payment. Department will pay Design-Builder a payment in the amount of \$[●] (the "**No Excuses Incentive Payment**") if all of the Work is completed at least [●] days prior to the Final Completion Deadline (the "**Early Completion Date**"). Department will not pay the No Excuses Incentive Payment if the Work is completed on or after the Final Completion Deadline. Department will pay the No Excuses Incentive Payment in addition to and separate from the Contract Price. For purposes of this Section 5.3, completion of the Work shall be defined as Final Acceptance of all Work completed in accordance with the Contract Documents in accordance with the process described in Section 6.6.2 of the General Conditions of Contract.

5.3.2 Acknowledgement of Delays. The parties acknowledge that delays may be caused by, or arise from, any number of events during the performance of the Work including, but not

limited to, work performed, work deleted, Work Orders, valid Roadway and Bridge Improvements Scope Issues identified during the Scope Validation Period, Differing Tunnel Improvements Site Conditions, Delay Events, Compensation Events, supplemental agreements, force accounts, delays disruptions, differing site conditions, utility conflicts, design changes or defects, time extension, extra work, overruns, nearby or adjacent projects, right of way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions of third parties, actions of local residences and business owners, shop drawing approval, process delays, expansion of the physical limits of the Project, weather (other than floods in excess of the base flood, hurricane forces winds and tornados), weekends, holidays, suspension of contract time, extended or absorbed home office or job site overhead, lump sum maintenance of traffic adjustments, lost profits, prime mark-up impacts, conditions, circumstances, or potential damages on or pertaining to or as arising out of the Contract Documents, or other events, forces, or factors sometimes experienced in highway, bridge and tunnel construction work. Accordingly, Design-Builder acknowledges and agrees that it shall be solely responsible for all costs or impacts incurred by Design-Builder (not previously identified and covered by Work Order, overrun, or force account) if Design-Builder chooses to accept the No Excuses Incentive Payment.

5.3.3 Procedures to Receive No Excuses Incentive Payment. Design-Builder shall, in order to receive the No Excuses Incentive Payment:

- .1 achieve early completion of the Project on or prior to the Early Completion Date;
- .2 obtain Department's written concurrence of Final Acceptance, in accordance with the process set forth in Section 6.6.2 of the General Conditions of Contract; and
- .3 after receiving written concurrence of Final Acceptance from Department, execute and deliver to Department a release of all claims in the form set forth in **Exhibit 7**.

5.3.4 Failure to Earn the No Excuses Incentive Payment. Should Design-Builder fail to achieve early completion of the Work in accordance with Section 5.3, or having satisfactorily completed the Work failed to request the No Excuses Incentive Payment for any reason (including but not limited to Design-Builder's refusal to execute a release of all claims in the form set forth in **Exhibit 7**), Design-Builder shall have no rights to the No Excuses Incentive Payment whatsoever.

5.4 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. The Early Completion Date will not be adjusted for any reason, cause or circumstance whatsoever, unless determined otherwise by Department in accordance with Article 9 of the General Conditions to Contract. In the event that Department approves adjustments to the Contract Times or Early Completion Date, Department will issue a Work Order to clearly identify the date changes and the application, if any, of any incentive or liquidated damage with regard to any revised Final Completion Deadline.

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

5.6 Liquidated Damages Related to Completion Dates. Design-Builder understands that if the Final Completion Deadline or any Interim Milestone Dates are not attained, Department will suffer damages which are difficult to determine and accurately specify. To compensate Department for such damages, Design-Builder shall pay Department liquidated damages in accordance with Section 11.2.

Article 6 **Contract Price**

6.1 Contract Price. Department shall pay Design-Builder 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 Legal Requirements.

6.2 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, 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 requirements of Section 109.05 of the Division I Amendments.

6.3 Adjustments to Asphalt, Fuel and Steel. Department and Design-Builder agree to adjust prices for the items identified in **Exhibit 8**, in accordance with Department’s pertinent special provisions, attached hereto as **Exhibit 9**, **Exhibit 10** and **Exhibit 11**; *provided*, Design-Builder declares its intent, in the Price Proposal, to use the provisions for price adjustments, and also submits the information required in the pertinent special provisions with its Proposal. Notwithstanding the special provisions, price adjustments for the items identified in **Exhibit 8** will be based on the quantities identified in the Schedule of Items in Design-Builder’s Proposal, which quantities shall be specifically summarized and provided in the Price Proposal. Actual quantities shall be monitored and documented by Design-Builder, and submitted to Department in the monthly report required by Section 11.1.8 below, on forms provided by Department.

Article 7
Procedure for Payment

7.1 Progress Payments

7.1.1 Prior to Department's issuance of the NTP, Department shall make payments to Design-Builder in accordance with payment procedure set forth in **Exhibit 5**. Following Department's issuance of the NTP, Department shall make payments to Design-Builder in accordance with this Article 7.

7.1.2 Design-Builder shall submit to Department on the tenth (10th) day of each month, beginning with the first month after Design-Builder's receipt of Department's Notice to Proceed, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.3 Department shall make payment within thirty (30) days after Department's receipt of each properly submitted and accurate 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.

7.1.4 Design-Builder agrees that, within seven (7) days following receipt of monies from Department for work performed by any Subcontractor, Design-Builder shall either: (a) pay the Subcontractor for the proportionate share of the total payment received from Department attributable to the work performed by the Subcontractor; or (b) notify Department 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 of its subcontracts a provision that: (a) obligates Design-Builder to pay interest to Subcontractors on all amounts owed by Design-Builder that remain unpaid after seven (7) days following receipt of monies from Department for work performed by any 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 rate of one percent per month."; and (c) obligates each Subcontractor to include or otherwise be subject to the same payment and interest requirements as specified in this Section 7.1.4 with respect to each lower-tier Sub-subcontractor.

7.1.5 Design-Builder's obligations to pay an interest charge to a Subcontractor pursuant to Section 7.1.4 above shall not be construed to be an obligation of Department, nor shall any modification to this Agreement 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.

7.1.6 If Design-Builder fails to make payment to the Subcontractor within the time frame and provisions specified in Sections 7.1.4 and 7.1.5 above, the Subcontractor shall notify Department and Design-Builder's surety in writing. Design-Builder's surety shall be responsible for insuring

payment to the Subcontractor.

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

7.2 **Retainage on Progress Payments.** Retainage will not be withheld from Progress Payments.

7.3 **Final Payment.** Design-Builder shall submit its Final Application for Payment to Department in accordance with Section 6.6 of the General Conditions of Contract. Department shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Department's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for Final Payment set forth in Section 6.6.2 of the General Conditions of Contract.

7.4 **Interest.** Payments due and unpaid by Department to Design-Builder, whether progress payments or Final Payment, shall bear interest commencing seven (7) days after payment is due.

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 GAAP and as may be provided in the Contract Documents. During the performance of the Work and for a period of five (5) years after Final Payment, Department and Department'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 Work performed on a cost basis; or (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 Final Payment.

Article 8

Termination for Convenience

8.1 Upon ten (10) days written notice to Design-Builder, Department may, for its convenience and without cause, elect to terminate all or part of the Work if Department, in its sole discretion, determines that such a termination is in Department's best interests. Department 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 Department terminates all of the Work for convenience before issuing the NTP, Department shall pay Design-Builder for the Early Work performed by Design-Builder as of the date of the Notice of Termination; *provided*, that in no event shall the total amount of

compensation paid by Department to Design-Builder in respect of the Early Work exceed \$[●].¹ Department shall pay any amounts due to Design-Builder pursuant to this Section 8.1.1 within sixty (60) days of Department's receipt of reasonable documentary evidence from Design-Builder of the performance of the applicable elements of the Early Work sufficient for Department to reasonably determine that such performance has occurred and such payment is due. Except as expressly provided in the preceding sentence, Design-Builder specifically waives any and all rights to claim from Department 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 Work under the Contract Documents.

8.1.2 If Department terminates all or part of the Work for convenience after issuing the NTP, then Sections 8.2 through 8.8 below shall apply.

8.2 After receipt of a Notice of Termination, and except as directed by Department, Design-Builder shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Article 8:

- (a) stop Work as specified in the Notice of Termination;
- (b) 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 Work, if any, or for mitigation of damages;
- (c) unless instructed otherwise by Department, terminate all Subcontracts to the extent they relate to the Work terminated and except to the extent that continuation of the Subcontract is necessary in order to mitigate damages;
- (d) assign to Department or its designee in the manner, at the times, and to the extent directed by Department, all of the right, title, and interest of Design-Builder under the Subcontracts so terminated, in which case Department 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;
- (e) settle outstanding liabilities and claims arising out of such termination of Subcontracts, with the approval or ratification of Department, to the extent it may require, which approval or ratification shall be final;
- (f) transfer and deliver to Department or its designee, as directed by Department: (1) possession and control of the Project; and (2) all right, title and interest of Design-Builder in and to: (i) the Work in process, completed Work, supplies and other materials produced or acquired for the Work terminated; (ii) the Released for Construction Plans and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, reports, books, samples,

¹ **Note to Offerors:** Amount of termination compensation to be sized to the maximum value of the Early Work.

information and other Work Product that would have been required to be furnished to Department if the Work had been completed; and (iii) all intellectual property developed specifically for the Project; provided, however, that in the event of such transfer, Design-Builder shall not be liable for any warranties for Work which has not achieved Final Acceptance, nor shall Design-Builder have any liability with respect to any design materials produced with respect to the Project;

(g) complete performance in accordance with the Contract Documents of all Work not terminated;

(h) take all action that may be necessary, or that Department 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 Department has or may acquire an interest; and

(i) as authorized by Department, use its best efforts to sell at fair market value any property of the types referred to in Section 8.3 below; provided, however, that Design-Builder: (1) shall not take any such action with respect to any items for which title has previously transferred to Department; (2) is not required to extend credit to any purchaser; and (3) may acquire the property itself, under the conditions prescribed and at prices approved by Department. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Department under the Contract Documents or paid in any other manner directed by Department.

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

8.4 Settlement Proposal. After termination, Design-Builder shall submit a final termination settlement proposal to Department in the form and with the certification prescribed by Department. Design-Builder shall submit the proposal promptly, but no later than ninety (90) days from the effective date of termination unless Design-Builder has requested a time extension in writing within such ninety (90) -day period and Department has agreed in writing to allow such an extension.

8.5 Amount of Termination Settlement. Design-Builder and Department shall negotiate in good faith to reach agreement on the settlement amount to be paid to Design-Builder by reason of the termination of Work pursuant to this Article 8. Such negotiated settlement shall include an allowance for profit solely on Work that has been performed as of the termination date. Such agreed amount or amounts payable for the terminated Work shall not exceed the total Contract Price, as reduced by the Contract Price of Work not performed. Upon determination of the settlement amount, this Agreement will be amended accordingly, and Design-Builder will be paid the agreed amount as described in this Section 8.5. Department's execution and delivery of any settlement agreement shall not be deemed to affect any of its rights with respect to compliance of the Work which has achieved Final Acceptance with all applicable Contract

requirements or any of its rights under payment and performance bonds or any of its rights against Subcontractors.

8.6 No Agreement as to Amount of Claim. In the event of failure of Design-Builder and Department to agree upon the amount to be paid Design-Builder by reason of the termination of Work pursuant to this Article 8, the amount payable (exclusive of interest charges) shall be determined in accordance with the dispute resolution procedures set forth in Article 10 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 Department may have against Design-Builder in connection with this Agreement and (b) the agreed price for, or the proceeds of sale of, materials, supplies or other things previously paid for by Department and to be retained by Design-Builder or sold by Design-Builder (with the proceeds being retained by Design-Builder), pursuant to the provisions of this Article 8.

8.8 Payment. Department 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 Agreement, whenever in the opinion of Department 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 Department upon demand together with interest at a variable rate per annum equal to the reference rate announced by Bank of America, N.A., from time-to-time, plus one percent (1%).

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

8.10 No Consequential Damages. 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. 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 Agreement to the contrary notwithstanding, a termination under this Article 8 shall not waive any right or claim to damages which Department may have with respect to Work which has achieved Final Acceptance prior to the date of termination, and Department may pursue any cause of action which it may have by law or under this Agreement on account of such completed Work. Design-Builder makes no warranties with respect to Work which has not achieved Final Acceptance prior to the date of termination. Department's termination of this Agreement shall not relieve any rights Department 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 Article 10 of the General Conditions of Contract.

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

Article 9

Representatives of the Parties

9.1 Department Representatives.

9.1.1 Department designates the individual listed below as its senior representative (“**Department’s Senior Representative**”), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.2 of the General Conditions of Contract:

James S. Utterback
Project Director
Virginia Department of Transportation
204 National Avenue
Hampton, Virginia 23663
Telephone: 757-925-2500
E-mail: HRBTproject@vdot.virginia.gov

9.1.2 Department designates the individual listed below as its representative (“**Department’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 Representatives.

9.2.1 Design-Builder designates the individual listed below as its senior representative (“**Design-Builder’s Senior Representative**”), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.2 of the General Conditions of Contract:

[•]

9.2.2 Design-Builder designates the individual listed below as its representative (“**Design-Builder’s Representative**”), which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

[•]

9.3 Department 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.

Article 10

Insurance; Performance and Payment Security

10.1 Insurance. Design-Builder shall procure and maintain insurance in accordance with the Contract Documents, including Article 5 of the General Conditions of Contract and **Exhibit 12.**

10.2 Performance and Payment Security.

10.2.1 As a condition precedent to Department's issuance of the LNTP, Design-Builder shall procure and maintain: [•].²

10.2.2 As a condition precedent to Department's issuance of the NTP, Design-Builder shall procure and maintain:

.1 a performance bond in the form set forth in **Exhibit 13** executed by a surety acceptable to Department in an amount equal to one billion seven hundred fifty million dollars (\$1,750,000,000) (the "**Performance Bond**");

.2 a payment bond in the form set forth in **Exhibit 14** executed by a surety acceptable to Department in an amount equal to one billion seven hundred fifty million dollars (\$1,750,000,000) (the "**Payment Bond**"); and

.3 one or more letters of credit in the form set forth in **Exhibit 15** (the "**Liquid Performance Security**"), each meeting the requirements of Section 10.4, in an aggregate amount equal to one hundred million dollars (\$100,000,000).

10.2.3 Design-Builder shall maintain each of the Performance Bond, the Payment Bond, and the Liquid Performance Security until the second (2nd) anniversary of the Final Completion Date; *provided, however*, that as of the Final Completion Date, (i) the Liquid Performance Security shall be reduced to fifteen million dollars (\$15,000,000) and (ii) surety's penal sum under the Performance Bond shall be reduced to one hundred million dollars (\$100,000,000).

10.3 Guarantee. On or before the Agreement Date, Design-Builder shall cause each of the Guarantors to execute and deliver a guarantee in the form of **Exhibit 16** (each, a "**Guarantee**") pursuant to which each of the Guarantors shall jointly and severally guarantee the full

² **Note to Offerors:** Security package required in respect of the Early Work to be developed as the scope of the Early Work is refined.

performance of Design-Builder's obligations under this Agreement.

10.4 Letters of Credit. Each letter of credit provided pursuant to this Agreement shall be an irrevocable, unconditional letter of credit in favor of Department, in form and content reasonably acceptable to Department that:

10.4.1 is payable within three (3) Business Days in U.S. dollars upon presentation of a sight draft and a certificate confirming that Department has the right to draw under such letter of credit from time to time in the amount of such sight draft and confirming such other matters that may be required under the letter of credit, without presentation of any other document, statement or authorization;

10.4.2 is issued by a commercial bank or trust company that (i) has a combined capital and surplus of at least one billion dollars (\$1,000,000,000) and (ii) is a national banking association, a state bank chartered in one of the states of the United States, or the U.S branch of a foreign bank;

10.4.3 is issued by a commercial bank or trust company that has a current credit rating of at least A- or its equivalent from at least two nationally recognized rating agencies (or such other credit rating as is acceptable to Department in its discretion and approved by Department prior to submission of the letter of credit);

10.4.4 provides that, if the issuer of the letter of credit fails to maintain the ratings specified above in Section 10.4.3, then the letter of credit may be drawn upon in full within thirty (30) days unless Design-Builder or other applicable account party provides a replacement letter of credit that meets the requirements of the Agreement or provides additional security acceptable to Department in its sole discretion;

10.4.5 has an initial term as specified in this Agreement, to the extent applicable;

10.4.6 provides for the continuance or extension of its term for a period of at least one year or, if earlier, until the end of the term for which the letter of credit is required;

10.4.7 provides that the office for presentment of sight drafts specified in the Letter of Credit will be located at a specified street address in the City of Richmond, Virginia or the City of New York, New York; and

10.4.8 provides that it may be drawn upon in accordance with its terms within ten (10) Business Days of its scheduled expiration date unless, prior to such tenth (10th) Business Day, Department has received evidence that the scheduled expiration date of such letter of credit has been extended or continued in accordance with the provisions hereof or that the replacement letter of credit meeting the requirements of this Agreement has been provided to the intended beneficiary of the expiring letter of credit.

Article 11

Other Provisions

11.1 Project Management and Reporting Requirements

11.1.1 Preliminary Schedule. Within fifteen (15) days of Design-Builder's receipt of the Notice to Proceed, Design-Builder shall submit to Department, for its review and approval, a Preliminary Schedule in accordance with **Exhibit 17**. The Preliminary Schedule shall be the basis for monitoring Design-Builder's performance of the Work until such time as a Baseline Schedule has been approved by Department in accordance with Section 11.1.2 below. Department 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 Preliminary Schedule.

11.1.2 Baseline Schedule. Within ninety (90) days of Design-Builder's receipt of the Notice to Proceed, Design-Builder shall submit to Department, for its review and approval, a Baseline Schedule in accordance with **Exhibit 17**. Department 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.

11.1.3 Schedule Updates. Design-Builder shall submit Schedule Updates in accordance with **Exhibit 17**. Department 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 Schedule Update.

11.1.4 Revised Baseline Schedule. Design-Builder shall submit a Revised Baseline Schedule when required in accordance with **Exhibit 17**. Department 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 Revised Baseline Schedule.

11.1.5 Final As-Built Schedule. Design-Builder shall submit a Final As-Built Schedule in accordance with **Exhibit 17**. Department 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.

11.1.6 Other Information and Alteration. Design-Builder shall, whenever required by Department, provide in writing a general description of the arrangements and methods which Design-Builder proposes to adopt for the execution of the Work. No significant alteration to the Baseline Schedule, or to such arrangements and methods, shall be made without informing Department and any alterations made shall reflect the requirement for coordination of the Work with the actions and obligations of Department and the work to be carried out by contractors performing work (other than the Work) on, near, or within the same geographic area of the Work (each such contractor, a "**Separate Contractor**"). If any alteration affects any such actions, obligations or Work, it shall not be made without the prior approval of Department. If the progress of the Work does not conform to the Baseline Schedule, as updated herein, Department may instruct Design-Builder to revise the Baseline Schedule, showing the modifications necessary to achieve completion within the Contract Times.

11.1.7 Department's Separate Contractors. Design-Builder agrees to include the activities of Department's Separate Contractors into the Baseline Schedule. Design-Builder shall reasonably cooperate with Department'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.

11.1.8 Department's Review and Approval of Schedule Submissions. Department's review and approval of the Preliminary, Baseline Schedule or subsequent Schedule Updates and Revised Baseline Schedule 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 Work and does not constitute approval or acceptance of Design-Builder's ability to complete the Work within the Contract Time(s).

11.1.9 Monthly Reports. Monthly reports shall be prepared by Design-Builder and submitted to Department in [six (6)] copies. The first report shall cover the time period up to the end of the calendar month after that in which the Agreement Date occurred; reports shall be submitted monthly thereafter, on or before the tenth (10th) day of each month. Reporting shall continue until Department's determination that the Project has achieved Final Acceptance. Each report shall include:

.1 Photographs and detailed descriptions of progress, including each stage of design, right-of-way acquisition, Governmental Approvals (including but not limited to permit acquisition), procurement, delivery to Site, and construction;

.2 Charts showing the status of all design documents, purchase orders, right-of-way acquisition, Governmental Approvals (including but not limited to permit acquisition) and construction;

.3 Records of Design-Builder's personnel and equipment;

.4 Copies of quality assurance documents, and test results;

.5 Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;

.6 Status of approvals for Governmental Approvals, as required by Section 2.6.1 of the General Conditions of Contract;

.7 Monthly updates to the Baseline Schedule and narrative;

.8 Unresolved claims or disputes that involve requests for extension to the Contract Time(s) or adjustment to any other date or milestone set forth in the Contract Documents or increases in the Contract Price;

.9 All required EEO documentation for federal-aid projects;

-
- .10 Weekly work zone safety reviews, on Department-provided forms;
 - .11 Erosion & Sediment Control Reports, on Department-provided forms; and
 - .12 Actual quantities for fuel, asphalt and steel on Department-provided forms.

Failure of Design-Builder to provide complete monthly reports, including but not limited to the monthly schedule updates, shall be grounds for Department to withhold approval for all or part of Design-Builder's Applications for Payment until such time Design-Builder furnishes such complete reports.

11.1.10 Project Records. Design-Builder shall organize and maintain its project records in a manner that allows such project records to be filed by work packages, as applicable. Additionally, Design-Builder shall develop a tracking log wherein the project records are provided chronologically, with the file type, description, date received/sent, entity the documentation is from/to, pay package reference, status and electronic location. The Project Record Tracking Log shall be developed in accordance with the format outlined in **Exhibit 18**. If the project record relates to changes in the Work, preferably only one work package shall be referenced in such project record. If a project record relates to multiple work packages, then all related work packages shall be referenced in such project record. As a condition of Final Payment, Design-Builder shall provide Department with a complete set of all project records by and between Design-Builder and Department exchanged on the Project.

11.2 Liquidated Damages

11.2.1 General. Department shall have the right to deduct any amount owed by Design-Builder to Department pursuant to this Section 11.2 from any amounts owed by Department to Design-Builder, or to collect any such amount from the Performance Security. Department's right to recover liquidated damages from Design-Builder shall not prejudice any other right Department has under the Contract Documents, including but not limited the right of Department to terminate this Agreement for Design-Builder's default.

11.2.2 Liquidated Damages Related to Completion

- .1 If Final Acceptance of the Work is not attained by the Final Completion Deadline, Design-Builder shall pay Department \$[●] for each day that actual Final Acceptance of the Work extends beyond the Final Completion Deadline.
- .2 If any Interim Milestone is not attained by the applicable Interim Milestone Date, Design-Builder shall pay Department \$[●] for each day that such Interim Milestone extends beyond such Interim Milestone Date.
- .3 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 Department as a result of Design-Builder's failure to complete the Work on or before the applicable Contract Time(s);

(b) that any sums which would be payable under this Article 11 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 Department which are occasioned by any delay in achieving the applicable Contract Time(s) for the above-referenced Work.

11.2.3 Lane Closure Liquidated Damages

.1 Design-Builder shall pay to Department liquidated damages for any Non-Permitted Lane Closure ("**Lane Closure Liquidated Damages**").

.2 If a Non-Permitted Lane Closure occurs, Department will notify Design-Builder thereof and of the associated Lane Closure Liquidated Damages, in writing, within forty-eight (48) hours. Design-Builder shall pay to Department the Lane Closure Liquidated Damages at the time and in the manner set forth in the [Technical Requirements].

.3 The Lane Closure Liquidated Damages paid by Design-Builder for any Non-Permitted Lane Closure shall not exceed \$[●] per incident; provided, however, that under no circumstances shall any Lane Closure Liquidated Damages paid by Design-Builder to Department count toward the per-incident cap where Design-Builder:

(a) intentionally causes, facilitates, or allows to continue a Non-Permitted Lane Closure in order to reduce its costs for performing any Work; or

(b) is not diligently and in good faith attempting to remedy any such Non-Permitted Lane Closure.

.4 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 Department as a result of any Non-Permitted Lane Closure;

(b) the occurrence of any Non-Permitted Lane Closure shall result in the assessment of Lane Closure Liquidated Damages in accordance with the Technical Requirements; and

(c) such Lane Closure Liquidated Damages are in the nature of liquidated damages (and not a penalty) and are fair and reasonable to compensate Department for losses it will incur as a result of the Non-Permitted Lane Closure, including but not limited to (i) additional costs of providing oversight of the Work and (ii) loss of use, enjoyment and benefit of travel lanes by the traveling public.

11.2.4 Liquidated Damages for Changes to Key Personnel

.1 If Design-Builder changes or substitutes any of the individuals identified as Key Personnel in **Exhibit 20** for reasons other than the voluntary or involuntary termination of employment, retirement, death, disability or incapacity of any such individual or because Department has directed Design-Builder to remove or replace any such individual, Design-Builder acknowledges and agrees that (a) Department will suffer significant and substantial losses due to such change or substitution and (b) it is impracticable and extremely difficult to ascertain and determine the actual losses which would accrue to the Department. In such event, and regardless of whether Design-Builder has replaced any such individual with another individual approved by Department, Design-Builder shall pay to Department the liquidated damages amount set forth in **Exhibit 20** for each Key Personnel as compensation to Department for such losses.

.2 Design-Builder understands and agrees that any amounts payable to Department pursuant to this Section 11.2.4 are in the nature of liquidated damages, not a penalty, and are reasonable under the circumstances existing as of the Agreement Date.

11.3 Limitation on Liability

11.3.1 The maximum aggregate liability of Design-Builder to Department under this Agreement, including for defaults, breaches, negligence, liquidated damages or otherwise in connection with the Work shall be limited in an amount equal to [fifty percent (50%)] of the Contract Price (the “**Aggregate Liability Cap**”).

11.3.2 The Aggregate Liability Cap does not apply to, and the calculation thereof shall not include:

- .1 any losses or obligations to the extent that:
 - (a) the amount thereof is paid from the proceeds of insurance policies required to be maintained by Design-Builder under this Agreement;
 - (b) an amount paid by Design-Builder but subsequently recovered by Design-Builder from the proceeds of insurance, or from any third party (other than an entity providing insurance); or

- (c) the same would have been recovered through insurance and (i) Design-Builder failed to maintain such insurance if required to be maintained by Design-Builder under this Agreement or (ii) Design-Builder failed to comply with its obligations under, and the limitations of, such insurance policies or did not diligently pursue a relevant insurance claim;
- .2 losses that arise from any indemnity obligation of Design-Builder under the Contract Documents;
- .3 losses that arise from Design-Builder's intentional breach of this Agreement;
- .4 losses, fines, and penalties under any Legal Requirements or any costs incurred that arise out of any failure by Design-Builder to comply with any Legal Requirements, including workers' compensation, employment, or health and safety laws or regulations; or
- .5 any reasonable amount incurred by Department in enforcing any claim against Design-Builder under or in connection with this Agreement, including any costs, losses, fees, liabilities, expenses, or damages incurred in the enforcement of any of the performance or payment security, which is settled or finally resolved in favor of Department.

11.4 **Miscellaneous**

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

11.4.2 [Design-Builder is comprised of the Design-Builder Members and, for good and valuable consideration the receipt and sufficiency of which are acknowledged by each of them, each Design-Builder Member agrees that it is and shall be jointly and severally obligated to Department to perform all of the duties and obligations of Design-Builder pursuant to this Agreement and to satisfy all liabilities of Design-Builder arising under or in connection with this Agreement.]³

11.4.3 Department's payment to Design-Builder of any amounts due and owing by Department pursuant to this Agreement shall be subject to appropriation by the General Assembly and allocation by the CTB.

11.4 **Exhibits**

11.4.1 The following exhibits are made part of, and incorporated into this Agreement.

EXHIBIT 1 -- GENERAL CONDITIONS OF CONTRACT

³ **Note to Offerors:** Section 11.4.2 to be deleted if Design-Builder is not structured as a joint venture.

| | | |
|------------|----|----------------------------------------------|
| EXHIBIT 2 | -- | TECHNICAL REQUIREMENTS |
| EXHIBIT 3 | -- | DIVISION I AMENDMENTS |
| EXHIBIT 4 | -- | DESIGN-BUILDER'S PROPOSAL |
| EXHIBIT 5 | -- | EARLY WORK SCOPE DOCUMENT |
| EXHIBIT 6 | -- | INTERIM MILESTONE DATES |
| EXHIBIT 7 | -- | FORM OF RELEASE OF ALL CLAIMS |
| EXHIBIT 8 | -- | ITEMS FOR ADJUSTMENT |
| EXHIBIT 9 | -- | PRICE ADJUSTMENT FOR ASPHALT |
| EXHIBIT 10 | -- | PRICE ADJUSTMENT FOR FUEL |
| EXHIBIT 11 | -- | PRICE ADJUSTMENT FOR STEEL |
| EXHIBIT 12 | -- | REQUIRED INSURANCE |
| EXHIBIT 13 | -- | FORM OF PERFORMANCE BOND |
| EXHIBIT 14 | -- | FORM OF PAYMENT BOND |
| EXHIBIT 15 | -- | FORM OF LETTER OF CREDIT |
| EXHIBIT 16 | -- | FORM OF GUARANTEE |
| EXHIBIT 17 | -- | SPECIAL PROVISION FOR DESIGN-BUILD SCHEDULES |
| EXHIBIT 18 | -- | EXAMPLE CORRESPONDENCE TRACKING LOG |
| EXHIBIT 19 | -- | DEPARTMENT'S GOVERNMENTAL APPROVALS LIST |
| EXHIBIT 20 | -- | KEY PERSONNEL POSITIONS |
| EXHIBIT 21 | -- | [GEOTECHNICAL BASELINE REPORT] ⁴ |
| EXHIBIT 22 | -- | [GEOTECHNICAL DATA REPORT] ⁵ |
| EXHIBIT 23 | -- | DBE & SWaM Matters |
| EXHIBIT 24 | -- | FORM OF ESCROW AGREEMENT |
| EXHIBIT 25 | -- | REFERENCE INFORMATION INDEX |

[SIGNATURE PAGE(S) TO FOLLOW]

4 **Note to Offerors:** To be included if Tunnel Improvements are constructed using the bored tunnel construction method.

5 **Note to Offerors:** To be included if Tunnel Improvements are constructed using the bored tunnel construction method.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Comprehensive Agreement relating to the I-64 Hampton Roads Bridge-Tunnel Expansion Project as of the date first written above.

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

By: _____
Stephen C. Brich, P.E.
Commissioner of Highways

[•],
a [•]

By: _____
Name: _____
Title: _____