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## I-64 HAMPTON ROADS BRIDGE-TUNNEL EXPANSION PROJECT

**Subject:** Statement of Clarification Relating to Final RFP Addendum No. 3

**Project No:** 0064-M06-032

**Date:** January 8, 2019

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Offerors are hereby notified that the Department makes the following clarifications and revisions with respect to the Final RFP dated September 27, 2018, as amended by Addendum No. 1 dated November 28, 2018, Addendum No. 2 dated December 14, 2018, and Addendum No. 3 dated December 19, 2018:

1. Section 2.3.1 of the Instructions for Offerors has been revised as shown in Attachment 1 (Revisions to Part 1) hereto.
2. Section 4.11 of the Instructions for Offerors has been revised as shown in Attachment 1 (Revisions to Part 1) hereto.
3. Section 5.2.2 of the Instructions for Offerors has been revised as shown in Attachment 1 (Revisions to Part 1) hereto.
4. Attachment 3.5 to the Instructions for Offerors has been revised as shown in Attachment 2 (Revisions to Part 1 Attachments) hereto.
5. Offerors may modify the form of the Letter from Insurance Broker/Consultant set forth in Attachment 8.5.1 to the Instructions for Offerors as shown in Attachment 2 (Revisions to Part 1 Attachments) hereto.
6. Section 5.1.1 of Part 3 has been revised as shown in Attachment 3 (Revisions to Part 3) hereto.
7. Section 5.4 of Part 3 has been revised as shown in Attachment 3 (Revisions to Part 3) hereto.
8. Section 8.1.1 of Part 3 has been revised as shown in Attachment 3 (Revisions to Part 3) hereto.
9. Section 1.2.1 of Part 4 has been revised as shown in Attachment 4 (Revisions to Part 4) hereto.
10. Section 10.2.3 of Part 4 has been revised as shown in Attachment 1 (Revisions to Part 4) hereto.

All other terms, conditions, and requirements of the Final RFP dated September 27, 2018, as amended by Addendum No. 1 dated November 28, 2018, Addendum No. 2 dated December 14, 2018, and Addendum No. 3 dated December 19, 2018, remain unchanged.

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**ATTACHMENT 1  
REVISIONS TO PART 1**

[Please see the attached pages.]

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<b>Event</b>	<b>Date</b>
Deadline for Comments on Second Draft RFP	August 2, 2018 at 5:00 PM
Deadline for Offerors to Submit Agendas for Proprietary Meeting No. 3 and Agendas and ATC Summaries for ATC Meeting No. 3	August 2, 2018 at 5:00 PM
Proprietary Meeting No. 3	August 7-8, 2018
ATC Meeting No. 3	August 7-8, 2018
Utility Meeting	August 9, 2018
Third Draft RFP Release Date	August 24, 2018
Deadline for Comments on Third Draft RFP	September 5, 2018 at 5:00 PM
Deadline for Offerors to Submit Agendas for Proprietary Meeting No. 4 and Agendas and ATC Summaries for ATC Meeting No. 4	September 5, 2018 at 5:00 PM
Proprietary Meeting No. 4	September 10-11, 2018
ATC Meeting No. 4	September 10-11, 2018
Final RFP Release Date	September 27, 2018
Deadline to Submit ATC Submittals	October 8, 2018 at 5:00 PM
Deadline for Comments on Final RFP	October 8, 2018 at 5:00 PM
Deadline for Offerors to Submit Agendas for Proprietary Meeting No. 5 and Agendas for ATC Meeting No. 5	October 18, 2018 at 5:00 PM
Proprietary Meeting No. 5	October 23-24, 2018
ATC Meeting No. 5	October 23-24, 2018
DBE-SWaM Outreach Event	October 25, 2018
Addendum No. 1 Release Date	November 28, 2018
VDOT Responds to Outstanding ATCs	November 28, 2018
ATC Meeting No. 6	December 4-5, 2018
Proprietary Meeting No. 6	December 12, 2018
Deadline for Requests to Change Key Personnel	December 14, 2018 at 5:00 PM
Deadline for VDOT to Issue Addenda to Final RFP	December 21, 2018
VDOT Responds to Requests to Change Key Personnel	December 21, 2018
Technical Proposal Submission Date	January 15, 2019 at 5:00 PM
<b>Proposal Schedule Update Due</b>	<b>February 4, 2019 at 5:00 PM</b>
Price Proposal Submission Date	February 8, 2019 at 5:00 PM
Selection of Successful Offeror	February 2019
Anticipated Date for Execution of Comprehensive Agreement and Issuance of LNTP1	April 15, 2019*

\* Subject to Design-Builder's satisfaction of the relevant conditions precedent to issuance of LNTP1.

**2.3.2** VDOT has established the following milestones for completion of the Project, and Offerors shall base their Proposals on such milestones.

(1) Substantial Completion

The Substantial Completion Deadline shall be no later than September 1, 2025 (the “**Mandatory Substantial Completion Deadline**”). VDOT has established an incentive for early completion of the Project. The requirements to achieve the incentive are included in RFP Part 3 (*Comprehensive Agreement*), Section 5.3 (*No Excuses Incentive Payment*).

On or before the date set forth in Section 2.3.1 (*Procurement Schedule*), the Offeror may submit an updated version of its Proposal Schedule (the “Proposal Schedule Update”) and an accompanying schedule narrative. If the Offeror elects to submit the Proposal Schedule Update and accompanying schedule narrative, such Proposal Schedule Update submission and accompanying schedule narrative shall include the information required by, and otherwise conform to the requirements of, this Section 4.11 (*Proposal Schedule*). In addition to the content required pursuant to Section 4.11(2) (*Schedule Narrative*), the schedule narrative that accompanies the Proposal Schedule Update shall describe how the Offeror’s proposed overall sequence of work and milestones have been modified from the Proposal Schedule submitted as part of the Offeror’s Technical Proposal.

The Proposal Schedule Update submission shall consist of fifteen (15) identical paper copies of the Proposal Schedule Update and accompanying schedule narrative and one (1) USB flash drive containing the back-up copy of the Proposal Schedule Update source document that complies with the requirements of this Section 4.11 (*Proposal Schedule*).

#### **4.12 DBE and SWaM Participation Goals**

Provide a written statement that the Offeror is committed to achieving the goals for DBE and SWaM participation for the Project set forth in Exhibit 23 (*DBE and SWaM Matters*) to the Comprehensive Agreement.

#### **4.13 Offeror’s Financial Capacity and Condition**

**4.13.1** Each Offeror shall submit to VDOT information describing the Offeror’s financial capacity and any material differences between the financial capacity information submitted as part of the Proposal and the information submitted in the SOQ (the “**Financial Capacity and Condition Submittal**”). The Financial Capacity and Condition Submittal shall be included as Volume III of the Technical Proposal; *provided* that Offerors have a continuing obligation to submit to VDOT written notice of any material adverse change in the Offeror’s financial condition (since submission of its SOQ) and Offerors shall submit to VDOT a written notice of any such material adverse changes as soon as possible but in no event later than the date and time designated for submission of the Price Proposal.

**4.13.2** The Financial Capacity and Condition Submittal shall include the following information for the Design-Builder, each Design-Builder Member (if any), and each Guarantor:

- (1) audited financial statements (in searchable PDF format) for all periods subsequent to those included in the SOQ; and
- (2) in addition, interim unaudited financial statements (in searchable PDF format) for the period since the most recent completed fiscal year for the above entities are to be provided.

### 5.2.2 Pass/Fail Review of Technical Proposals

Technical Proposals will be evaluated based on the following pass/fail criteria:

- (1) the information, certification, signed statements, and documents listed in Section 4.1 (*Letter of Submittal*) are included in the Technical Proposal and do not identify any materially adverse information;
- (2) the Technical Proposal (i) contains the information and materials as listed in Section 4.2 (*Offeror's Qualifications*), Section 4.3 (*Key Personnel*), Section 4.4 (*Partnerships*), Section 4.5 (*Summary of Tunnel Grade*), Section 4.6 (*Approach to Material Disposal*), Section 4.7 (*Design Concepts*), Section 4.8 (*Construction Concepts*), Section 4.9 (*Environmental Permitting and Management*), Section 4.10 (*Maintenance Concepts*), Section 4.11 (*Proposal Schedule*), and Section 4.12 (*DBE and SWaM Participation Goals*) and (ii) demonstrates compliance with the Technical Requirements;
- (3) the Proposal Schedule sets forth a logical and credible plan (as determined by VDOT) for achieving the Substantial Completion Deadline and Final Completion Deadline specified in the Proposal; **provided, VDOT shall consider the Proposal Schedule Update, if any, prior to making a final determination regarding whether the Offeror has set forth a logical and credible plan for achieving the Substantial Completion Deadline and Final Completion Deadline specified in the Proposal;**
- (4) except with respect to the Project Manager, Environmental Manager, and EIC, the Key Personnel listed in the Offeror's SOQ have not changed since the Offeror's submission of the SOQ, or if the Offeror previously has advised VDOT of a change, VDOT has consented to such change, and the Technical Proposal includes a true and correct copy of VDOT's consent attached thereto;
- (5) the financial condition and capabilities of the Offeror, the Design-Builder, the Design-Builder Members, and the Guarantors shall have not materially adversely changed from their respective financial conditions and capabilities as evidenced by the financial and other data submitted in the SOQ, such that the Offeror, the Design-Builder, each Design-Builder Member, and each Guarantor continue to have the financial capacity to satisfy its respective obligations under the Comprehensive Agreement; and
- (6) Offeror has delivered all other specified forms and documents, properly completed and signed (if required), and such forms and documents do not identify any materially adverse information (to the extent applicable).

### 5.2.3 Pass/Fail Review of Price Proposals

Price Proposals will be evaluated based on the following pass/fail criteria:



**ATTACHMENT 2  
REVISIONS TO PART 1 ATTACHMENTS**

[Please see the attached pages.]

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**ATTACHMENT 3.5**

**COMMONWEALTH OF VIRGINIA DEPARTMENT OF TRANSPORTATION**

**PROJECT: I-64 HAMPTON ROADS BRIDGE-TUNNEL EXPANSION PROJECT**

**ACKNOWLEDGEMENT OF RFP, REVISION AND/OR ADDENDA**

Offeror shall acknowledge receipt of the Request for Proposals (RFP) and/or any and all revisions and/or addenda pertaining to the above designated project which are issued by the Department prior to the Technical Proposal Submission Date shown herein. Failure to include this acknowledgement in the Technical Proposal may result in the rejection of your proposal.

By signing this Attachment 3.5, the Offeror acknowledges receipt of the RFP and/or following revisions and/or addenda to the RFP for the above designated project which were issued under cover letter(s) of the date(s) shown hereon:

1. Cover letter of RFP – May 22, 2018  
(Date)
2. Cover letter of RFP – June 29, 2018  
(Date)
3. Cover letter of RFP – August 24, 2018  
(Date)
4. Cover letter of RFP – September 27, 2018  
(Date)
5. Cover letter of RFP – November 28, 2018  
(Date)
6. Cover letter of RFP – December 14, 2018  
(Date)
7. Cover letter of RFP – December 19, 2018  
(Date)
8. Cover letter of Statement of Clarification – January 8, 2019  
(Date)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

**ATTACHMENT 8.5.1**

**LETTER FROM INSURANCE BROKER/CONSULTANT**

[●], 2019

Mr. James S. Utterback  
Virginia Department of Transportation  
204 National Avenue  
Hampton, Virginia 23663

Re: [Insert Offeror Name] Proposal with Respect to Insurance Policies, I-64 Hampton Roads Bridge-Tunnel Expansion Project (the “Project”)

Dear Mr. Utterback:

Reference is made to that certain Request for Proposals for the Project issued by the Virginia Department of Transportation (the “Department”) on May 22, 2018 (as amended, the “RFP”). Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the current RFP version of the Comprehensive Agreement (the “Agreement”), to be entered into between the Successful Offeror (as the Design-Builder) and the Department, in accordance with the RFP.

As part of the Proposal by [Insert Offeror Name] (the “Offeror”), I hereby confirm that:

- (a) I am a licensed insurance [broker/consultant] in the ~~Commonwealth of Virginia~~ [insert jurisdiction of licensure]. I have been retained by the Offeror to serve as its independent [broker/consultant] with respect to the Project and for the purposes of making this confirmation. I have been duly authorized by the Offeror and my firm to make such confirmation to the Department, recognizing that the Department intends to rely on same for purposes of evaluation of the Proposals and for application under the Comprehensive Agreement.
- (b) I have reviewed the ~~RFP (including the draft~~ following provisions of the RFP relating to insurance requirements: (i) Exhibit 12 (Required Insurance) to the Comprehensive Agreement) and confirm that; (ii) Article 5 of the General Conditions of Contract; and (iii) Section 107.19 of the Division 1 Amendments (such requirements collectively, the “Required Insurance Coverages”). I confirm that, as of the date of this letter, we have received non-binding indications from insurers relating to the Required Insurance Coverages that, based on such non-binding indications, the Offeror is capable of obtaining the ~~specified insurance policies~~ Required Insurance Coverages on the terms required under the Comprehensive Agreement.

Very truly yours,



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**ATTACHMENT 3  
REVISIONS TO PART 3**

[Please see the attached pages.]

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1. **LNTPI1.** Upon satisfaction by Design-Builder of the conditions precedent set forth in Section 1 (*Conditions Precedent to Issuance of LNTPI1*) of **Exhibit 5**, Department shall within three (3) Business Days issue a limited notice to proceed (“**LNTPI1**”) authorizing and obligating Design-Builder to commence the Early Work described in Section 2.A (*LNTPI1 – Early Work*) of **Exhibit 5**. Design-Builder shall commence such Early Work within fourteen (14) days of its receipt of LNTPI1, unless the parties mutually agree otherwise in writing. The scope, schedule, payment amount and payment terms for such Early Work are set forth in **Exhibit 5**. ~~In no event shall~~**Except as otherwise provided in Section 5.1.1.4 below**, the total amount of compensation paid by Department to Design-Builder in respect of the Early Work undertaken pursuant to LNTPI1 **shall not** exceed one hundred twenty-five million dollars (\$125,000,000) (the “**LNTPI1 Cap**”), which amount is inclusive of the advance payment of four million dollars (\$4,000,000) made to Design-Builder in accordance with Section 8.6.2 of the Instructions for Offerors.

2. **LNTPI2.** Within three (3) Business Days of Department receiving from Design-Builder documentation demonstrating Design-Builder’s achievement of the LNTPI1 Completion Milestone, Department shall issue a limited notice to proceed (“**LNTPI2**”) authorizing and obligating Design-Builder to commence the Early Work described in Section 2.B (*LNTPI2 – Early Work*) of **Exhibit 5**. Design-Builder shall commence such Early Work within fourteen (14) days of its receipt of LNTPI2, unless the parties mutually agree otherwise in writing. The scope, schedule, payment amount and payment terms for such Early Work are set forth in **Exhibit 5**. ~~In no event shall~~**Except as otherwise provided in Section 5.1.1.4 below**, the total amount of compensation paid by Department to Design-Builder in respect of the Early Work undertaken pursuant to LNTPI2 **shall not** exceed the amount equal to (i) seventy-five million dollars (\$75,000,000) **plus** (ii) the portion, if any, of the LNTPI1 Cap that has not been paid by Department to Design-Builder for Early Work completed as of the date on which Design-Builder achieves the LNTPI1 Completion Milestone.

3. **LNTPI3.** Within three (3) Business Days of Department receiving from Design-Builder documentation demonstrating Design-Builder’s achievement of the LNTPI1 Completion Milestone, Department shall issue a limited notice to proceed (“**LNTPI3**”) authorizing and obligating Design-Builder to commence the Early Work described in Section 2.C (*LNTPI3 – Early Work*) of **Exhibit 5**. Design-Builder shall commence such Early Work within fourteen (14) days of its receipt of LNTPI3, unless the parties mutually agree otherwise in writing. The scope, schedule, payment amount and payment terms for such Early Work are set forth in **Exhibit 5**. ~~In no event shall~~**Except as otherwise provided in Section 5.1.1.4 below**, the total amount of compensation paid by Department to Design-Builder in respect of the Early Work undertaken pursuant to LNTPI3 **shall not** exceed the amount equal to (i) fifty million dollars (\$50,000,000) **plus** (ii) the portion, if any, of the LNTPI1 Cap that has not been paid by Department to Design-Builder for Early Work completed as of the date on which Design-Builder achieves the LNTPI1 Completion Milestone.

**4. Additional Funding for Early Work. Beginning after the date that is five hundred forty (540) days following the date on which Department issues LNTPI1 (such date, the “Anticipated JPA Approval Date”), the total amount of compensation available to be paid by Department to Design-Builder in respect of the Early Work shall be increased by an aggregate amount up to but not in excess of seventy-five million dollars (\$75,000,000) if and**

only if each of the following conditions is satisfied:

(a) Design-Builder achieved the LNTTP1 Completion Milestone on or before the date that is one hundred eighty (180) days following the date on which Department issues LNTTP1;

(b) the Joint Permit Application for the Project has not been approved by the relevant Governmental Unit(s) on or before the Anticipated JPA Approval Date;

(c) the failure of the relevant Governmental Unit(s) to approve the Joint Permit Application for the Project on or before the Anticipated JPA Approval Date is due to events or circumstances that the Design-Builder demonstrates to Department's satisfaction (acting reasonably) are entirely outside the control of Design-Builder and Department otherwise has received no information indicating that the Joint Permit Application will not be approved by the relevant Governmental Unit(s) in due course; and

(d) Design-Builder (i) increases the penal sum of each of the performance bond and payment bond provided by Design-Builder pursuant to Section 10.2.1 to three hundred twenty-five million dollars (\$325,000,000) or (ii) replaces each of the performance bond and payment bond provided by Design-Builder pursuant to Section 10.2.1 with a performance bond and a payment bond each in an amount equal to three hundred twenty-five million dollars (\$325,000,000) and otherwise in the forms required pursuant to Section 10.2.1.

**45. Aggregate Cap on Payments for Early Work.** ~~In no event shall~~ Design-Builder acknowledges and agrees that: (i) if the conditions set forth in Section 5.1.1.4 are not satisfied, then the total aggregate amount of compensation paid by Department to Design-Builder in respect of all Early Work ~~undertaken pursuant to LNTTP1, LNTTP2, and LNTTP3 shall not~~ exceed two hundred fifty million dollars (\$250,000,000); and (ii) if the conditions set forth in Section 5.1.1.4 are satisfied, then the total aggregate amount of compensation paid by Department to Design-Builder in respect of all Early Work shall not exceed three hundred twenty-five million dollars (\$325,000,000).

**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. Within three (3) Business Days of Design-Builder's satisfaction of the following conditions (or Department's waiver of such conditions, in its sole discretion), Department shall deliver the NTP to Design-Builder:

1. Design-Builder has provided, and Department has approved, a Revised Baseline Schedule;
2. Design-Builder has provided fully executed originals of the Performance Security;

.1 If Design-Builder achieves Substantial Completion on or before April 1, 2025, the amount of the No Excuses Incentive Payment will equal ninety million dollars (\$90,000,000).

.2 If Design-Builder achieves Substantial Completion on or after April 2, 2025, but before May 16, 2025, the amount of the No Excuses Incentive Payment will equal (i) ninety million dollars (\$90,000,000) less (ii) four hundred fifty thousand dollars (\$450,000) for each day that Substantial Completion extends beyond April 1, 2025.

.3 If Design-Builder achieves Substantial Completion on May 16, 2025, the amount of the No Excuses Incentive Payment will equal fifty million dollars (\$50,000,000).

.4 If Design-Builder achieves Substantial Completion on or after May 17, 2025, but before July 5, 2025, the amount of the No Excuses Incentive Payment will equal (i) fifty million dollars (\$50,000,000) less (ii) four hundred thousand dollars (\$400,000) for each day that Substantial Completion extends beyond May 16, 2025.

.5 If Design-Builder achieves Substantial Completion on July 5, 2025, the amount of the No Excuses Incentive Payment will equal twenty million dollars (\$20,000,000).

.6 If Design-Builder achieves Substantial Completion on or after July 6, 2025, but before September 1, 2025, the amount of the No Excuses Incentive Payment will equal (i) twenty million dollars (\$20,000,000) less (ii) three hundred fifty thousand dollars (\$350,000) for each day that Substantial Completion extends beyond July 5, 2025.

.7 If Design-Builder achieves Substantial Completion on or after September 1, 2025, the amount of the No Excuses Incentive Payment will equal zero dollars (\$0).

Department will pay the No Excuses Incentive Payment in addition to and separate from the Contract Price.

**5.3.3 Acknowledgement of Delays, Costs, and Other Impacts.** The parties acknowledge that delays, costs, and other impacts may be caused by, or arise from, any number of events or causes during the performance of the Work. Accordingly, if Design-Builder requests and is paid the No Excuses Incentive Payment, Design-Builder acknowledges and agrees that it shall be solely responsible for all delays, costs, and any other impacts experienced or incurred by Design-Builder that were not previously identified and covered by Work Order at the time Design-Builder requests the No Excuses Incentive Payment.

**5.4 ~~NTP Incentive Payment~~**

**~~5.4.1 NTP Incentive Payment; Procedures to Earn Payment. Design-Builder will be entitled to earn an additional payment (the "NTP Incentive Payment") pursuant to this Section 5.4 if Design-Builder satisfies each of the conditions precedent set forth in Section 5.1.2 on or before the date that is seven hundred nineteen (719) days following the date on which Department issues LNTP1. If Design-Builder fails to satisfy each of the conditions precedent set forth in Section 5.1.2 prior to such date, then Design-Builder shall have no right to the NTP Incentive Payment whatsoever.~~**

~~**5.4.2 Determination of Amount of NTP Incentive Payment.** The amount of the NTP Incentive Payment shall be determined in accordance with the following provisions.~~

~~.1 If Design Builder satisfies each of the conditions precedent set forth in Section 5.1.2 on or before the date that is five hundred forty (540) days following the date on which Department issues LNTP1, the amount of the NTP Incentive Payment will equal thirty million dollars (\$30,000,000).~~

~~.2 If Design Builder satisfies each of the conditions precedent set forth in Section 5.1.2 on or after the date that is five hundred forty one (541) days following the date on which Department issues LNTP1, but on or before the date that is seven hundred nineteen (719) days following the date on which Department issues LNTP1, the amount of the NTP Incentive Payment will equal (i) thirty million dollars (\$30,000,000) less (ii) one hundred sixty six thousand dollars (\$166,000) for each day that Design Builder's satisfaction of each of the conditions precedent set forth in Section 5.1.2 extends beyond the date that is five hundred forty (540) days following the date on which Department issues LNTP1.~~

~~.3 If Design Builder satisfies each of the conditions precedent set forth in Section 5.1.2 on or after the date that is seven hundred twenty (720) days following the date on which Department issues LNTP1, the amount of the NTP Incentive Payment will equal zero dollars (\$0).~~

~~Department will pay the NTP Incentive Payment in addition to and separate from the Contract Price.~~

**5.55.4 Adjustments.** The Contract Times shall be subject to adjustment in accordance with the General Conditions of Contract. The deadlines related to the calculation and payment of the No Excuses Incentive Payment will not be adjusted for any reason, cause, or circumstance whatsoever, unless determined otherwise by Department in its sole discretion. In the event that Department approves adjustments to the Contract Times, Department will issue a Work Order setting forth the date changes and the application, if any, of any incentive or liquidated damage with respect to any revised Substantial Completion Deadline or Final Completion Deadline.

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

**5.75.6 Liquidated Damages Related to Completion Dates.** Design-Builder understands that if the Substantial Completion Deadline or the Final Completion Deadline, or both, is not attained, Department will suffer damages that 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**



provided in the Contract Documents. During the performance of the Work and for a period of five (5) years after Final Payment, Department, Department's accountants, and HRTAC 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 (i) changes in the Work performed on a cost basis or (ii) any request by Design-Builder for an adjustment to 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 "**Termination for Convenience Notice**").

**8.1.1** If (i) Department terminates all of the Work for convenience before issuing the NTP or (ii) this Agreement terminates pursuant to Section 5.1.3.3, Department shall pay Design-Builder for the Early Work performed by Design-Builder as of the date of the Notice of Termination, if any, plus Demobilization Costs; *provided* that in no event shall the total amount of compensation paid by Department to Design-Builder in respect of the Early Work (including Demobilization Costs) exceed ~~two hundred fifty million dollars (\$250,000,000)~~ the aggregate cap set forth in Section 5.1.1.5. 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 assert a claim against 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,



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**ATTACHMENT 4  
REVISIONS TO PART 4**

[Please see the attached pages.]

## Article 1 **General**

### **1.1 Mutual Obligations**

**1.1.1** Department and Design-Builder commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, in order to permit each party to realize the benefits afforded under the Contract Documents.

### **1.2 Basic Definitions**

**1.2.1** For the purposes of the Contract Documents, the following words and terms shall have the meanings specified below (other words and abbreviations that have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings); *provided, however*, that capitalized terms defined in other Contract Documents, including but not limited to the Agreement, shall have the meanings specified in such document.

*Act* is defined in the first (1<sup>st</sup>) recital to the Agreement.

*Additional Right-of-Way* is defined in Section 2.1.6 of the General Conditions of Contract.

*Affiliate* means, when used to indicate a relationship with a specified Person, a Person that: (i) directly or indirectly, through one or more intermediaries, has a ten percent (10%) or more voting or economic interest in such specified Person or (ii) controls, is controlled by or is under common control with such specified Person, and a Person is deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

*Agreement* refers to the executed Comprehensive Agreement between Department and Design-Builder.

*Agreement Date* is the date that the Agreement is executed by both parties.

*Aggregate Liability Cap* is defined in Section 11.3.2 of the Agreement.

**[Anticipated JPA Approval Date is defined in Section 5.1.1.4 of the Agreement.](#)**

*Application for Early Work Payment* means the application requesting payment for Early Work performed, submitted by Design-Builder to Department in accordance with Section 3 (*Payments to Design-Builder for Early Work Tasks*) of **Exhibit 5** to the Agreement.

*Application for Payment* means the application requesting payment for Work performed, submitted by Design-Builder to Department in accordance with Article 6 of the General Conditions of Contract.

*NEPA Document* means, collectively, (i) the Record of Decision for the Project dated June 12, 2017, and (ii) the Finding of No Significant Impact dated October 23, 2018, together with any amendments, supplements, or reevaluations thereto.

*No Excuses Incentive Payment* is defined in Section 5.3.1 of the Agreement.

*Non-Conforming Work* means any Work that is not in conformance with the Contract Documents, relevant Governmental Approvals, or the Legal Requirements.

*Non-Permitted Lane Closure* means a Lane Closure that occurs outside the time period(s) when Lane Closures are permitted in accordance with the Technical Requirements.

*Non-Permitted Interstate Closure* means a full closure of either the eastbound direction or the westbound direction of Interstate 64 that occurs outside any time period(s) when such a closure is permitted in accordance with the Technical Requirements.

*North Island* means the manmade island on the Hampton-side of the existing Hampton Roads Bridge-Tunnel on which the tunnel portal and other support structures are situated.

*Notice of Termination* means either (i) a Termination for Convenience Notice or (ii) an Extended NTP Delay Termination Notice.

*Notice to Proceed* or *NTP* is defined in Section 5.1.2 of the Agreement.

*NTP Delay Date* is defined in Section 5.1.3.1 of the Agreement.

***NTP Incentive Payment is defined in Section 5.4.1 of the Agreement.***

*NTP Mobilization Amount* is defined in Section 6.1.4 of the General Conditions of Contract.

*Payment Bond* is defined in Section 10.2.2.2 of the Agreement.

*Performance Bond* is defined in Section 10.2.2.1 of the Agreement.

*Performance Security* means, collectively, the Performance Bond, the Payment Bond, and the Guarantees.

*Person* means any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Unit.

*PPTA Steering Committee* is defined in the second (2<sup>nd</sup>) recital to the Agreement.

*Pre-Bid Site Access Limitations* means the Department-established prohibitions on Offeror access to the Department Right-of-Way and private property adjacent to the Department

parties within such forty-five (45) -day period, despite their best efforts, then the following provisions of this Section 10.2.2 shall apply. With respect to any dispute or disagreement relating to the design and construction of the Tunnel Improvements, Design-Builder may pursue the processes set forth in **Exhibit 17**. With respect to any dispute or disagreement that is not related to the Tunnel Improvements, either party shall have the right to submit the dispute or disagreement to the Steering Committee for resolution. The Steering Committee will meet within ten (10) days of written notification by either party of any unresolved dispute. The Steering Committee will have thirty (30) days following such meeting to resolve the dispute. Only in the absence of complete resolution by the Steering Committee within such thirty (30) -day period, may the party seeking relief file a legal action pursuant to, and subject to the limitations of, Section 10.2.3 and Section 10.2.4 below.

**10.2.3** With respect to any dispute that remains unresolved following the Steering Committee's consideration of such dispute pursuant to Section 10.2.2, Design-Builder shall be entitled to file legal action prior to the Final Completion Date if and only to the extent the value of such dispute, or the aggregate value of all unresolved disputes, is at least fifty million dollars (\$50,000,000). With respect to any ~~other disputes~~dispute (i) that ~~remain~~remains unresolved following, as applicable, the Steering Committee's consideration of such ~~disputes~~dispute pursuant to Section 10.2.2 or Section 2.8(g)(ii) of Exhibit 17 and (ii) for which legal action has not been filed prior to the Final Completion Date because the value of such dispute, or the aggregate value of all unresolved disputes, is less than fifty million dollars (\$50,000,000), the provisions of Section 10.2.4 shall apply.

**10.2.4** Upon the occurrence of the Final Completion Date, Design-Builder may submit any unresolved dispute to the Steering Committee for resolution (including the re-submission of any dispute considered previously by the Steering Committee that remains unresolved as of the Final Completion Date); *provided* that Design-Builder submitted a written request for relief to Department corresponding to the condition or other facts upon which the dispute is based pursuant to and within the timeframe(s) required by Section 10.1.1 of the General Conditions of Contract. The Steering Committee will meet within ten (10) days of written notification by Design-Builder of any unresolved dispute. The Steering Committee will have thirty (30) days following such meeting to resolve the dispute. Only in the absence of complete resolution by the Steering Committee within such thirty (30) -day period, may Design-Builder file a legal action pursuant to Section 10.2.5 below. Design-Builder may seek relief pursuant to this Section 10.2.4 by filing a legal action no later than one (1) year following the Final Completion Date.

**10.2.5** All litigation between the parties arising out of or pertaining to the Agreement or its breach shall be filed, heard, and decided in the Circuit Court for the City of Richmond, Virginia, Division I, which will have exclusive jurisdiction and venue. Satisfaction of the procedures set forth in this Section 10.2 shall be a condition precedent to instituting a legal action in court; *provided* that if Department determines, in its sole discretion, that a dispute involves an issue that poses an immediate and serious threat to the public health, safety, and welfare, Department shall be entitled to take whatever steps it deems appropriate and to initiate litigation of the matter in court without first submitting the dispute to the dispute resolution procedures set forth in this Section 10.2.