



I-64 HAMPTON ROADS BRIDGE-TUNNEL EXPANSION PROJECT

Subject: Request for Proposals

Project No: 0064-M06-032

Date: December 19, 2018

Offerors are hereby notified that the Department has made revisions to the above-referenced Request for Proposals pursuant to this Addendum No. 3 to Final RFP (“Addendum No. 3”). Please see Attachment 1 (Revisions) hereto for said revisions.

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



**ATTACHMENT 1
REVISIONS**

[Please see the attached pages.]



VIRGINIA DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSALS

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

**UNDER THE PUBLIC-PRIVATE
TRANSPORTATION ACT OF 1995 (AS AMENDED)**

STATE PROJECT NO. 0064-M06-032

FEDERAL PROJECT NO. [●]

ISSUANCE OF FIRST DRAFT RFP: MAY 22, 2018

ISSUANCE OF SECOND DRAFT RFP: JUNE 29, 2018

ISSUANCE OF THIRD DRAFT RFP: AUGUST 24, 2018

ISSUANCE OF FINAL RFP: SEPTEMBER 27, 2018

ISSUANCE OF ADDENDUM NO. 1: NOVEMBER 28, 2018

ISSUANCE OF ADDENDUM NO. 2: DECEMBER 14, 2018

ISSUANCE OF ADDENDUM NO. 3: DECEMBER 19, 2018

financial and construction risk mitigation included in the public sector option were 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. The Steering Committee met again on May 9, 2018, and by a unanimous vote, made an affirmative determination that the development of the Project as a qualifying transportation facility under the Act serves the public interest pursuant to § 33.2-1803.1 of the Code of Virginia. The Commissioner has 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 the CTB, concurred.

2.2 Maximum Contract Value

VDOT’s maximum contract value for the Base Scope is three billion one hundred million dollars (\$3,100,000,000) (“**Maximum Contract Value**”). As further described in Section 4.14 (Price Proposal), the Offeror’s Price Proposal will be deemed non-responsive if the Offeror’s Price Proposal for the Base Scope exceeds the Maximum Contract Value.

As further described in Section 9.8 of the General Conditions of Contract, following execution of the Comprehensive Agreement VDOT may elect, in its sole discretion, to modify the Base Scope by eliminating the South Island Trestle Bridge Replacement Work (as defined in the General Conditions of Contract) from the Base Scope. Should VDOT elect to modify the Base Scope by eliminating the South Island Trestle Bridge Replacement Work, the Contract Price will be decreased and the Contract Times will be reduced pursuant to Section 9.8 of the General Conditions of Contract.

2.3 Procurement Schedule

2.3.1 VDOT currently anticipates conducting the procurement of the Project in accordance with the following list of milestones leading to award of the Comprehensive Agreement. This schedule is subject to revision in VDOT’s sole discretion.

Event	Date
Kick-Off Meeting with Offerors	May 10, 2018
First Draft RFP Release Date	May 22, 2018
Deadline for Comments on First Draft RFP	June 6, 2018 at 5:00 PM
Deadline for Offerors to Submit Agendas for Proprietary Meeting No. 1 and Agendas and ATC Summaries for ATC Meeting No. 1	June 6, 2018 at 5:00 PM
Proprietary Meeting No. 1	June 11-12, 2018
ATC Meeting No. 1	June 11-12, 2018
Second Draft RFP Release Date	June 29, 2018
First Day VDOT will Accept ATC Submittals	July 9, 2018
Deadline for Offerors to Submit Agendas for Proprietary Meeting No. 2 and Agendas and ATC Summaries for ATC Meeting No. 2	July 11, 2018 at 5:00 PM
Proprietary Meeting No. 2	July 16-17, 2018
ATC Meeting No. 2	July 16-17, 2018
Deadline for Offerors to Select Tunnel Construction Method	July 31, 2018 at 5:00 PM

4.1.4 The Letter of Submittal shall set forth the name, title, address, phone number, and e-mail address of an individual who will serve as the point of contact for the Offeror with respect to the Proposal.

4.1.5 The Letter of Submittal shall set forth the name, address and telephone number of the individual who will serve as the principal officer for the Offeror (e.g., president, treasurer, chairperson of the board of directors, etc.).

4.1.6 The Letter of Submittal shall set forth a Substantial Completion Deadline and a Final Completion Deadline. The proposed dates herein shall be no later than the Mandatory Substantial Completion Deadline and the Mandatory Final Completion Deadline, respectively.

4.1.7 The Letter of Submittal shall include either an executed Proposal Payment Agreement, in the form set forth in Attachment 9.3.1, or an executed Waiver of Proposal Payment, in the form set forth in Attachment 9.3.2.

4.1.8 The Letter of Submittal shall include the Certification Regarding Debarment Forms as set forth in Section 11.7.6 (*Administrative Requirements*).

4.1.9 The Letter of Submittal shall include a list of the approved ATCs included in the Technical Proposal, in the form set forth in Attachment 3.4.6.

4.2 Offeror's Qualifications

4.2.1 The Offeror shall confirm in its Proposal that the information set forth in its SOQ remains true and accurate. Except with respect to the Project Manager, Environmental Manager, and Entrusted Engineer in Charge ("**EIC**") (the Key Personnel position formerly known as the Responsible Charge Engineer), which are discussed in Section 4.3 (*Key Personnel*) below, any changes to the Offeror's organizational structure, the Lead Contractor, the Lead Designer, or other Key Personnel or individuals identified in the SOQ, require prior written approval in accordance with Section 11.4 (*Requirement to Keep Team Intact*).

4.2.2 The Offeror shall furnish an organizational chart, showing the "chain of command" and identifying major functions to be performed and reporting relationships in managing, designing and constructing the Project, including quality assurance/quality control. In addition, the Offeror shall provide a narrative describing the functional relationships among participants for the updates made to its organizational chart since submission of the SOQ. The organizational chart and narrative shall be updated from the SOQ as necessary and shall clearly indicate all changes that have been made.

4.3 Key Personnel

4.3.1 General

VDOT will evaluate the qualifications of individuals identified for three Key Personnel positions as part of its evaluation of the Technical Proposal: (i) Project Manager; (ii)

Environmental Manager; and (iii) ~~Entrusted Engineer in Charge~~EIC. Descriptions of each Key Personnel position, and the minimum qualifications for individuals designated to serve in each such positions are set forth in Exhibit 20 (*Key Personnel Positions*) to the Comprehensive Agreement. Please note that the “Responsible Charge Engineer” is now known as the “Entrusted Engineer in Charge.”

The Offeror shall identify and describe the qualifications of the individuals who will serve as the Project Manager, Environmental Manager, and ~~Entrusted Engineer in Charge~~EIC using the Key Personnel Resume ~~form~~Form set forth as Attachment 4.3.1(a). Each resume may be up to three (3) pages in length. The Offeror shall not modify the format or appearance of the Key Personnel Resume Form. Each completed Key Personnel Resume Form must include references for all project experience described in such form. Offerors should verify that the contact information for each reference is correct. If the contact information provided is not current, VDOT may elect to exclude such experience in determining the individual’s qualifications.

The Offeror also shall make the required written commitment (in the form set forth in Attachment 4.3.1(b)) with respect to each of the individuals who will serve as the Project Manager, Environmental Manager, and ~~Entrusted Engineer in Charge~~ (“EIC”). The written commitment must be signed by the respective employer of each individual. The individuals who will serve in the relevant Key Personnel positions must be employed on a full-time basis by the respective firms shown on the Offeror’s organizational chart at the time of submission of the Technical Proposal.

The Offeror shall provide as part of its Technical Proposal a “Key Personnel Narrative” that provides detailed descriptions of (i) how the qualifications and experience of the individuals proposed to be the Project Manager, Environmental Manager, and ~~Entrusted Engineer in Charge~~EIC meet and exceed the minimum requirements for each position, as applicable, and (ii) how the qualifications and experience of each individual proposed will ~~provide a benefit to~~ the Project.

4.3.2 Project Manager

The Project Manager is responsible for meeting the Design-Builder’s contract obligations and is otherwise responsible for the design, construction, and management of the Project, including the avoidance and resolution of disputes. The Project Manager shall supervise and exercise control over the design and construction work, including safety, quality management, contract administration, and timely provision of all materials, equipment, services, and labor reasonably inferable from the Comprehensive Agreement. The Project Manager shall be assigned to the Project on a full-time basis until completion of the construction Work.

The preferred qualifications for the individual serving as the Project Manager include: (i) demonstrated experience in similar roles in construction and management-of-construction for tunnel and/or major transportation infrastructure projects with similar size, type of work, and complexity as the Project; (ii) experience with design-build delivery; (iii) experience with

Confined Space, Air Monitoring, Work Zone, Erosion and Sediment Control, etc.).

- (2) **Craft Training and Worker Benefits:** Provide a narrative that describes the Offeror's strategy for the Project to address craft training, worker benefits, and critical skills retention focusing on what the Offeror's team considers the most relevant to the success of the Project. This narrative shall describe the criticality of having a coordinated labor strategy for the Project's success and the measures the Offeror's team may implement to address potential challenges and ensure an adequate supply of skilled labor. The discussion should include the Offeror's prime contractor and subcontractors, participation in programs for skilled labor and craft training, apprenticeship and apprenticeship type programs, on the job training, journeyman programs or other such formal training provided by the Offeror and subcontractors that are to perform work on the Project. The approval or certification authority (i.e., the Virginia Apprenticeship Council, etc.) for identified apprenticeship programs shall also be identified.
- (3) **Skilled Labor Availability:** Provide a narrative that addresses any Project specific challenges that the Offeror may anticipate regarding skilled labor due to the nature of the Project, as well as any measures the Offeror will put in place to mitigate these challenges or other unforeseen reductions in skilled labor.

4.5 Summary of Tunnel Grade

The Offeror shall provide a summary of the tunnel grades within each tunnel, as further described [in](#) the Offeror's narrative description of its approach for designing the Tunnel Improvements and conceptual bored tunnel plans.

4.6 Approach to Material Disposal

The Offeror shall provide sufficient information to enable VDOT to understand the Offeror's approach to material disposal, including the selection of disposal site(s), approach for securing necessary permits, and methods for transporting spoil material to the disposal site(s). To the extent that the Offeror already has identified and secured commitments for the disposal site(s) for some or all spoil material, the Offeror shall provide evidence of the level of any such commitments, including executed agreements, memoranda of understanding, or documentation demonstrating ownership of such site(s). Such commitments should clearly describe the amount of material that may be disposed of at the relevant site(s). The Offeror also shall provide details regarding the percentage of spoil material that can be disposed of pursuant to existing commitments and the timing for when additional sites will be needed.

4.7 Design Concepts

The Offeror shall provide sufficient information to enable VDOT to understand and evaluate the Offeror's approach to designing the Project. The roadway inventory information and major roadway design criteria are identified in the Major Design Criteria Table included the Technical

- (v) lighting;
 - (vi) cameras, lane use signs and traffic signals;
 - (vii) roadway wearing surfaces;
 - (viii) walkways and traffic barriers;
 - (ix) egress corridor (for cut-and-cover sections); and
 - (x) access doors and hatches.
- (4) Conceptual Plans – Modifications to Existing Islands and any Proposed New Islands. For modifications to existing islands and any new islands, the Offeror shall provide descriptions and 11” x 17” conceptual plans depicting the following:
- (a) layout of proposed existing island expansion depicting conceptual disturbance limits;
 - (b) layout of any new islands;
 - (c) layout of tunnel support buildings, facilities and site work, including but not limited to operations, inspection stations, gate/fence locations separating public from island operations, ingress and egress to each island, circulation roadways, truck turnarounds and damaged vehicle storage;
 - (d) location of existing utilities and conceptual utility plans showing utility corridors, major utilities to be removed, and existing utilities to remain in service;
 - (e) details of proposed retaining structures/splash walls required for island expansion including plan, elevation and cross section drawings of proposed panels indicating length, width and shape;
 - (f) locations and limits of ground improvements to reduce anticipated consolidation, **or** settlement, or improve stability; and
 - (g) locations and limits of subsurface drainage elements or surcharges used to expedite consolidation of the island expansions.
- (5) Construction Sequencing Plans. The Offeror shall provide construction sequencing plans that are coordinated with the Proposal Schedule and demonstrate the major stages of the proposed construction sequencing, including ground improvements, dredging, island expansions (including any surcharging), installation of excavation support elements, shifts in roads, excavation for below-

- (a) An event of bankruptcy involving the affected entity, a related business unit within the same corporation or the parent corporation of the affected entity;
 - (b) A decrease in tangible net worth of ten percent (10%) or greater of shareholder equity;
 - (c) A sale, merger or acquisition exceeding ten percent (10%) of the value of shareholder equity prior to the sale, merger or acquisition that in any way involves the affected entity, a related business unit or parent corporation of the affected entity;
 - (d) A downward change in credit rating for the affected entity, a related business unit or parent corporation of the affected entity;
 - (e) Inability to meet material conditions of loan or debt covenants by the affected entity, a related business unit or parent corporation of the affected entity that has required, or is expected to require, a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;
 - (f) The affected entity, a related business unit or the parent corporation of the affected entity either:
 - (1) sustained charges exceeding five percent (5%) of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or
 - (2) implemented a restructuring/reduction in salaried personnel exceeding ten (10%) of its workforce or involving the disposition of assets exceeding ten (10%) of the then shareholder equity; and
 - (g) Other events known to the affected entity, a related business unit or parent corporation of the affected entity that represent a materially adverse change in financial condition since submission of the SOQs or may be pending for the next reporting period.
- (4) Off-Balance Sheet Liabilities

A letter from the certified public accountant, chief financial officer, or treasurer (or, if neither a chief financial officer nor treasurer exists for an entity, an individual who serves in an equivalent capacity and whose title shall be specified in the letter) for each entity for which financial information is submitted, identifying all off-balance sheet liabilities in excess of twenty-five million dollars (\$25,000,000) ~~dollars~~ in the aggregate.

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;
- (4) except with respect to the Project Manager, Environmental Manager, and ~~Entrusted Engineer-in-Charge~~ **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:

- (1) the Price Proposal sets forth a Contract Price for the Base Scope that does not exceed the Maximum Contract Value;
- (2) the Price Proposal includes pricing for the I-564 Direct Connections;
- (3) Offeror has delivered a cost breakdown summary in accordance with Section 4.14.1 (Price Proposal);
- (4) Offeror has delivered a proposed monthly payment schedule showing the anticipated monthly earnings on which funds will be required, in accordance with Section 4.14.3 (Price Proposal);
- (5) Offeror has delivered the required information set forth in Section 6.3 (*Adjustments to Asphalt, Fuel and Steel Prices*) of the Comprehensive Agreement, pursuant to Section 4.14.4 (Price Proposal);

Evaluation Factor	Maximum Points
Material Disposal	2
Design Concepts	12
Construction Concepts	15
Environmental Permitting	3
Maintenance Concepts	3
Total	40

- (3) Points for Key Personnel will be awarded as follows (maximum of two (2) points).
- (a) The extent to which the Offeror demonstrates that (i) the qualifications and experience of the Project Manager, Environmental Manager, and ~~Entrusted Engineer in Charge~~**EIC** exceed the preferred requirements for such positions set out in the RFP Documents and (ii) the Project Manager, Environmental Manager, and ~~Entrusted Engineer in Charge~~**EIC** have successfully fulfilled comparable roles on similar projects and how such success will ~~provide a benefit to~~ the Project.
- (4) Points for Partnership will be awarded as follows (maximum of one (1) point).
- (a) The Offeror demonstrates a commitment to construction safety, including: (1) strategies and procedures for realizing a “zero incident” safety culture and (2) the extent to which such strategies and procedures account for the unique attributes of the Project (including the urban and maritime environments, heavy traffic conditions, and the size and scope of the Project).
 - (b) Credit for responses regarding specialized training will be based upon a sliding scale. The scale will be based upon the degree that the Offeror can commit in its response that its Project employees designated for training (including subcontractor employees) will have attained specialized training. Those Offerors demonstrating the highest levels of commitment and past experience will receive full credit. Lesser degrees of commitment and experience will receive lower credit.
 - (c) Credit for responses will be based upon a sliding scale according to the degree that the Offeror can commit in its response that its prime contractor and subcontractors, participate in apprenticeship and apprenticeship type programs, on the job training, journeyman programs or other such formal training, with the highest levels of commitment receiving full credit and lesser degrees of commitment receiving lower credit.
- (5) Points for Tunnel Grade will be awarded as follows (maximum of two (2) points).

(13) the entities identified in Section 11.2.5 (~~Conflicts~~Conflict of Interest).

11.5.5 Any contact by an Offeror determined by VDOT to be improper, in the Department's sole discretion, may result in disqualification of the Offeror.

11.5.6 VDOT will not be bound by any oral communication or any other information or exchange that occurs outside the official communication protocol specified in this RFP.

11.6 Civil Rights Requirements

11.6.1 VDOT has determined that DBE and SWaM requirements apply to the Project under the Comprehensive Agreement and has adopted a DBE/SWaM Program to provide DBEs and SWaMs opportunities to participate in the business activities of VDOT as service providers, vendors, contractors, subcontractors, advisors and consultants. VDOT has adopted the definition of DBEs set forth in 49 CFR Part 26.5. Offeror's DBE compliance obligations shall be governed by all applicable federal DBE regulations, including Title 49 CFR Part 26, as well as applicable requirements set forth in the Comprehensive Agreement and the VDOT's Special Provision 107.09. Regulations regarding the registration of SWaM businesses pursuant to Chapter 14 (§ 2.2-1400 et seq.) of Title 2.2 of the Code of Virginia can be found in 7VAC10-21 of the Virginia Administrative Code. The parties recognize the importance of pursuing, inviting and developing the participation of minority, women-owned and small businesses through the SWaM program, where applicable. If selected as the Successful Offeror, pursuant to Section 2.13 (*DBE and SWaM Matters*) of the General Conditions of Contract, the Design-Builder shall not and will not permit its Contractors to discriminate on the basis of race, color, national origin, or sex, sexual orientation or gender identity in the performance of work on the Project.

11.6.2 VDOT's DBE/SWaM requirements applicable to the Comprehensive Agreement and the VDOT's DBE/SWaM Program adopted pursuant to Title 49 CFR Part 26, are set forth and provided in Exhibit 23 (*DBE and SWaM Matters*) to the Comprehensive Agreement. During performance of the Work, in an effort to comply with 49 CFR Part 26, VDOT has established a goal of twelve percent (12%) for DBE participation and, in an effort to support Executive Order 33 (2006), VDOT has established a goal of twenty percent (20%) for SWaM participation.

11.7 Administrative Requirements

In addition to the specific submittal requirements set forth in Sections 3.0 (*General Procedures and Requirements*) and 4.0 (*Contents of Proposals*), all Offerors shall comply with the following:

11.7.1 All business entities, except for sole proprietorships, are required to be registered with the Virginia State Corporation Commission. Foreign Professional Corporations and Foreign Professional Limited Liability Companies must possess a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission to render professional services. Any business entity other than a professional corporation, professional limited liability company or sole proprietorship must be registered in the Commonwealth of Virginia with the Department of Professional & Occupational Regulation, Virginia Board for Architects, Professional Engineers,

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)

SIGNATURE DATE

PRINTED NAME TITLE

PART 3 SOUND BARRIER UNIT COST SUMMARY FORM

- (1) The sound barriers as ~~shown~~shown in the RFP Concept Plan shall be used for purposes of preparing the Proposal. A total of 881,752 square feet of noise wall shall be assumed for purposes of preparing the Proposal.
- (2) ~~Bridge-mounted~~The bridge-mounted sound barrier square footage shall be quantified independently from the ground-mounted sound barrier square footage.
- (3) The bridge-mounted sound barrier pricing shall include any needed additional structural modifications to the proposed supporting structure.
- (4) ~~Bridge-mounted~~The bridge-mounted sound barrier square footage shall be measured in square feet of surface area from the top of the parapet or mounting structure to the sound attenuation (noise abatement) line shown in the plans, complete-in-place, and shall be quantified at a unit cost per square foot.
- (5) ~~Ground~~The ground-mounted sound barrier square footage shall be measured in square feet of surface area from the finished grade to the sound attenuation line shown on the plans and from ~~end to end~~end-to-end of the wall, complete-in-place, and shall be quantified at a unit cost per square foot. The six-inch minimum embedment and any additional embedment in the ground of all base panels of ground-mounted sound barriers shall be considered incidental and will not be measured for separate payment. Sound barrier walls on a retaining wall shall be considered a ground-mounted sound barrier, and the square footage shall be included in this quantity.
- (6) ~~Unit~~The unit costs for both ground-mounted and bridge-mounted sound barriers shall include: costs for material and installation, designing, furnishing, utility relocation, right-of-way, foundation exposure and tie-back conflicts, grading, seeding, disposing of surplus and unsuitable material, restoring property, wall structural supports, construction outside the grade or sound attenuation line, and any other costs associated with the sound barriers; costs of excavation of tree roots, existing limited access fence, and other clearing and grubbing items required for the placement of sound barriers; costs of foundation designs and supplemental geotechnical investigation and foundations; costs for ultrasonic and radiographic testing and all other quality control measures required by the specifications.

Item Description	Estimated Quantities	Sound Barrier		Sub-total (A*B)
		A. Unit Cost	B. Square Feet (SF)	
Ground-mounted Sound Barrier	569,352 SF		569,352	
Bridge-mounted Sound Barrier	312,400 SF		312,400	
		TOTAL SF	881,752	
			TOTAL COST	

*Total must match the dollar value set forth in Section E, Item 35 of Part 1 of Attachment 4.14.1

ATTACHMENT 4.14.3

PROPOSED MONTHLY PAYMENT SCHEDULE

DATE: _____

AMOUNT _____

CONTRACT

DURATION _____ **Days**

CONTRACT

_____ **Months**

PAYMENT APPLICATION NO.	MONTHLY BILLING AMOUNT MONTH	TOTAL MONTHLY BILLING AMOUNT	SCHEDULED % COMPLETE	ACTUAL BILLING	TOTAL ACTUAL BILLING AMOUNT	ACTUAL % COMPLETE	DURATION	% OF TIME
1	<u>April 2019</u>							
2	<u>May 2019</u>							
3	<u>June 2019</u>							
4	<u>July 2019</u>							
5	<u>August 2019</u>							
6	<u>September 2019</u>							
7	<u>October 2019</u>							
8	<u>November 2019</u>							
9	<u>December 2019</u>							
10	<u>January 2020</u>							
11	<u>February 2020</u>							
12	<u>March 2020</u>							
13	<u>April 2020</u>							
14	<u>May 2020</u>							
15	<u>June 2020</u>							
16	<u>July 2020</u>							
17	<u>August</u>							

PAYMENT APPLICATION NO.	MONTHLY BILLING AMOUNT MONTH	TOTAL MONTHLY BILLING AMOUNT	SCHEDULED % COMPLETE	ACTUAL BILLING	TOTAL ACTUAL BILLING AMOUNT	ACTUAL % COMPLETE	DURATION	% OF TIME
	<u>2020</u>							
18	<u>September 2020</u>							
19	<u>October 2020</u>							
20	<u>November 2020</u>							
21	<u>December 2020</u>							
22	<u>January 2021</u>							
23	<u>February 2021</u>							
24	<u>March 2021</u>							
25	<u>April 2021</u>							
26	<u>May 2021</u>							
27	<u>June 2021</u>							
28	<u>July 2021</u>							
29	<u>August 2021</u>							
30	<u>September 2021</u>							
31	<u>October 2021</u>							
32	<u>November 2021</u>							
33	<u>December 2021</u>							
34	<u>January 2022</u>							
35	<u>February 2022</u>							
36	<u>March 2022</u>							
37	<u>April 2022</u>							
38	<u>May 2022</u>							
39	<u>June 2022</u>							
40	<u>July 2022</u>							
41	<u>August 2022</u>							
42	<u>September 2022</u>							

PAYMENT APPLICATION NO.	MONTHLY BILLING AMOUNT MONTH	TOTAL MONTHLY BILLING AMOUNT	SCHEDULED % COMPLETE	ACTUAL BILLING	TOTAL ACTUAL BILLING AMOUNT	ACTUAL % COMPLETE	DURATION	% OF TIME
43	October 2022							
44	November 2022							
45	December 2022							
46	January 2023							
47	February 2023							
48	March 2023							
49	April 2023							
50	May 2023							
51	June 2023							
52	July 2023							
53	August 2023							
54	September 2023							
55	October 2023							
56	November 2023							
57	December 2023							
58	January 2024							
59	February 2024							
60	March 2024							
61	April 2024							
62	May 2024							
63	June 2024							
64	July 2024							
65	August 2024							
66	September 2024							
67	October 2024							
68	November 2024							

PAYMENT APPLICATION NO.	MONTHLY BILLING AMOUNT MONTH	TOTALMONTHLY BILLING AMOUNT	SCHEDULED-% COMPLETE	ACTUAL BILLING	TOTAL ACTUAL BILLING AMOUNT	ACTUAL-% COMPLETE	DURATION	% OF TIME
69	December 2024							
70	January 2025							
71	February 2025							
72	March 2025							
73	April 2025							
74	May 2025							
75	June 2025							
76	July 2025							
77	August 2025							
78	September 2025							
79	October 2025							
80	November 2025							
	TOTAL							

PART 3

Comprehensive Agreement Between Department and Design-Builder

This **COMPREHENSIVE AGREEMENT** for the I-64 Hampton Roads Bridge-Tunnel Expansion 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.

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;
3. Design-Builder has obtained and provided copies to Department of the Joint Permit;
4. Design-Builder has provided, and Department has approved, the Schedule of Values; and
5. Design-Builder has provided proof that Design-Builder has obtained the insurance policies required pursuant to Section 1.B (*Insurance Coverages Required for NTP*) of **Exhibit 12**.

5.1.3 Delays to Notice to Proceed.

.1 If the NTP is not issued by Department on or before the date that is ~~twenty-four (24) months~~ **seven hundred twenty (720) days** following the date on which Department issues LNTP1 (such date, the "NTP Delay Date") solely because the Joint Permit Application for the Project has not yet been approved by the relevant Governmental Unit(s) due to events or circumstances that the Design-Builder demonstrates to Department's satisfaction (acting reasonably) are entirely outside the control of Design-Builder, then the Contract Price will be adjusted to reflect an amount equal to the Contract Price (excluding amounts having been paid or to be paid for Early Work) multiplied by a percentage equal to the Construction Cost Index for the month during which the NTP Delay Date occurs divided by the Construction Cost Index for the month during which NTP is issued. In addition, the Substantial Completion Deadline and the Final Completion Deadline shall each be extended by the number of days between the NTP Delay Date and the date of issuance of the NTP if the conditions described in this Section 5.1.3.1 occur.

.2 Notwithstanding Section 5.1.3.1 above, (i) if Department determines that the NTP will not be issued on or before the date that is ~~six (6) months~~ **one hundred eighty (180) days** following the NTP Delay Date (such date, the "Extended NTP Delay Date"), provided that Department may not make such determination more than ninety (90) days in advance of the Extended NTP Delay Date, or (ii) if the NTP is not issued by Department on or before the Extended NTP Delay Date, the Contract Price, the Substantial Completion Deadline, and the Final Completion Deadline shall be subject to good faith renegotiation, in accordance with the following protocol:

.2 executes and delivers to Department a release of all claims in the form set forth in **Exhibit 7**.

If Design-Builder: (i) fails to achieve Substantial Completion prior to the Substantial Completion Deadline; (ii) having achieved Substantial Completion prior to the Substantial Completion Deadline, refuses to execute a release of all claims in the form set forth in **Exhibit 7**; or (iii) initiates against Department litigation under Section 10.2 of the General Conditions of Contract with respect to any unresolved dispute, then Design-Builder shall have no right to the No Excuses Incentive Payment whatsoever.

5.3.2 Determination of Amount of No Excuses Incentive Payment. The amount of the No Excuses Incentive Payment shall be determined in accordance with the following provisions.

.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)~~;~~~~and~~.

.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.

5.4.5.5 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.

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

5.65.7 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

6.1 Contract Price. Department shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of \$[●]¹ (“**Contract Price**”), subject to adjustments, if any, 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 9.5.1.4 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 certain commodities, in accordance with Department’s pertinent special provisions, attached hereto as **Exhibit 9**, **Exhibit 10** and **Exhibit 11**; *provided* Design-Builder (i) declares its intent, in the Price Proposal, to use such provisions for price adjustments and (ii) submits the information required in the pertinent special provisions with its Proposal. Notwithstanding the special provisions, such price adjustments will be based on the quantities identified in the Schedule of Items in Design-Builder’s Proposal, which quantities shall be (i) specifically summarized and provided in the Price Proposal and (ii) subject to adjustment due to the issuance of a Work Order. 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.

¹ **Note to Draft:** To be inserted from the Successful Offeror’s Financial Proposal.

Department if the Work had been completed; and (c) 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 Completion, 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, if any;

(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: (i) shall not take any such action with respect to any items for which title has previously transferred to Department; (ii) is not required to extend credit to any purchaser; and (iii) 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. 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 under this Article 8, or for any other category of termination for which the Contract Documents expressly permit Design-Builder to recover under this Article 8, 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 (i) the total Contract Price, as reduced by the value of the Work not performed, plus (ii) Demobilization Costs. 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 Completion

.4 A five (5)-minute grace period will be allowed before the first fifteen (15)-minute period or incident assessment begins for purposes of determining any Lane Closure Liquidated Damages to be assessed pursuant to Section 11.2.3.3 above. For any Non-Permitted Lane Closure that persists for only a portion of a fifteen (15)-minute period, the relevant Lane Closure Liquidated Damages amount shall be assessed as if the impact is in place for the full fifteen (15)-minute period. A Non-Permitted Lane Closure or Non-Permitted Interstate Closure will cease when traffic has been restored. Restoration of traffic shall mean removal of all blockages, including the removal of all traffic control devices, signs, workers, materials, and equipment from the roadway, thereby allowing all lanes to be opened safely to public traffic. If an incident includes both a Non-Permitted Interstate Closure and a Non-Permitted Lane Closure, Lane Closure Liquidated Damages will be assessed for both (a) the Non-Permitted Interstate Closure and (b) any Non-Permitted Lane Closure that persists beyond cessation of the Non-Permitted Interstate Closure. Design-Builder shall exert diligent efforts to re-open all closed lanes as soon as safely possible.

.5 The parties acknowledges that in some cases Appendix A13-1 of the Technical Requirements permits Lane Closures during certain times included in the Schedule of Lane Closure Liquidated Damages above. With respect to each such case, the permitted Lane Closure hours set forth in Appendix A13-1 shall take precedence over the Schedule of Lane Closure Liquidated Damages above and Department shall not assess Lane Closure Liquidated Damages for such Lane Closures undertaken in accordance with the Technical Requirements.

.6 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 or Non-Permitted Interstate Closure;

(b) the occurrence of any Non-Permitted Lane Closure or Non-Permitted Interstate Closure shall result in the assessment of Lane Closure Liquidated Damages in accordance with this Section 11.2.3;

(c) that any sums which would be payable herein shall be in lieu of all liability for any and all costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, incurred by Department arising from any Non-Permitted Lane ~~Closures~~Closure or Non-Permitted Interstate Closure; and

(d) 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 or Non-Permitted Interstate 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.

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(10) days of exchanging such information, if either party believes that the other party's nominee does not meet the criteria for DRB membership set forth in Section 2.1 (Requirements for DRB Membership), the party will provide notice (including a reasonably detailed description of such party's concerns) to the other party. Within twenty (20) days following its receipt of such notice, the party whose nominee has been objected to will provide a replacement nominee, along with the statements required pursuant to Section 2.2(b) (Establishment of the DRB) for such replacement nominee. This process will be repeated until each of the members of the DRB to be selected by the Department and the Design-Builder are finalized.

- (d) No later than ten (10) days following the appointment of the first two (2) members of the DRB, such members will select a nominee to serve as chairperson and provide to the Department and the Design-Builder the name, qualifications, and financial disclosures for such nominee. Such nominee must be mutually acceptable to the Department and the Design-Builder; *provided*, the grounds on which the Department and Design-Builder may object to such nominee are limited to whether the nominee meets the criteria for DRB membership set forth in Section 2.1 (Requirements for DRB Membership). In the event the parties cannot agree on the appointment of the chairperson within twenty (20) days following the appointment of the first two (2) members of the DRB, the chairperson will be appointed by the American Arbitration Association upon the request of either party. Each party will be responsible for paying one-half of the costs of retaining the American Arbitration Association to select the chairperson.
- (e) Within fifteen (15) days of completion of the selection process described above, the DRB Agreement shall be executed by the three (3) DRB members, the Department, and the Design-Builder. The DRB Agreement sets forth the terms and conditions that apply to the services to be provided by the members and, if the composition of the DRB changes, shall be amended to reflect such changes. The DRB shall be deemed constituted when the DRB Agreement is fully executed by all signatories.

2.3 Term of the DRB; Termination

- (a) The DRB shall be dissolved upon completion of its deliberations on any disputes pending at Final Completion; except that if the Comprehensive Agreement is terminated, the DRB also shall immediately be dissolved. After the DRB is dissolved as provided herein, it shall have no further authority to process disputes.
- (b) The services of a DRB member may be terminated without cause only by mutual agreement of the Parties Directly Involved. In such event, written notice of the termination, signed by both Parties Directly Involved, will be provided to the

Involved. Requests for clarification shall be submitted in writing simultaneously to the DRB and to the other Party Directly Involved. Only one request for clarification per dispute from each Party Directly Involved will be allowed.

- (f) Either Party Directly Involved may request reconsideration of a DRB Report within ten (10) days following receipt of the DRB Report when new information is obtained or developed that was not known at the time of the DRB Hearing, or when, in the Party Directly Involved's opinion, the DRB misunderstood or failed to consider pertinent facts of the dispute. As expeditiously as practicable, the DRB shall provide written reconsideration to both Parties Directly Involved. Reconsideration requests are subject to the rules and restrictions set forth below.
 - (i) Requests for reconsideration shall be submitted in writing simultaneously to the DRB and to the other Party Directly Involved.
 - (ii) The DRB will not entertain requests for reconsideration that amount to a renewal of prior argument or additional argument based on facts available at the time of the DRB Hearing.
 - (iii) Only one request for reconsideration per dispute from each Party Directly Involved will be allowed.
- (g) Within fourteen (14) days of receiving the DRB's recommendations, as set out in the DRB Report, the Parties Directly Involved shall determine whether or not they will each accept or reject the DRB's recommendations.
 - (i) If the Department and the Design-Builder are able to resolve their dispute with the aid of the DRB's recommendations, the Department shall promptly process the Work Order.
 - (ii) If, after consideration of the DRB's recommendations, the Department and the Design-Builder are unable to resolve their dispute, 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. In the absence of complete resolution by the Steering Committee within such thirty (30) -day period, the party seeking relief may file a legal action in accordance with, and subject to the limitations of, Section 10.2.3 and Section 10.2.4 of the General Conditions of Contract.

EXHIBIT 23

DBE & SWAM MATTERS

Part 1. DBE Matters

1.1 General

.1 The parties recognize the importance of pursuing, inviting and developing the participation of minority, women-owned and small business through the DBE program, where applicable.

.2 Design-Builder (and each of its Subcontractors) shall not discriminate on the basis of race, color, national origin or sex in the performance of the Agreement. Design-Builder (and each of its Subcontractors) shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation-assisted contract. Failure by Design-Builder (and each of its Subcontractors) to carry out these requirements is a material breach of the Agreement, which may result in the termination of the Agreement or such other remedy as set forth in Section 1.5 of this Exhibit 23.

1.2 Design-Builder's Work

.1 During the performance of the Work, in an effort to comply with 49 CFR Part 26, Department has established a goal of twelve percent (12%) for DBE participation, such percentage relating to the DBE/SWaM Contract Value.

.2 Design-Builder agrees to manage the foregoing goals as follows:

(a) Design-Builder will submit an updated DBE/SWaM Plan on each anniversary of the issuance of NTP prior to the Final Completion Date that defines Design-Builder's approach to meeting the DBE goals;

(b) Design-Builder will have dedicated resources to the DBE inclusion program to ensure compliance with 49 CFR Part 26, the DBE/SWaM Plan, nondiscrimination provisions, technical assistance activities, communication of subcontracting opportunities and to generate reports specific to DBE utilization;

(c) Design-Builder will be responsible for either achieving or making Good Faith Efforts to achieve the DBE goals by providing maximum contracting opportunities for DBE businesses;

(d) Design-Builder will provide to the Department each calendar quarter documentation of all executed Subcontracts and payments to DBE businesses;

ATTACHMENT 1

EXCLUSIONS TO DBE/SWAM CONTRACT VALUE

1. Design-Builder fee / profit
2. Contingency
 - (a) Risk-based contingency
 - (b) Design development allowance
3. Taxes / fees
4. Design-Builder staff
 - (a) Management / craft supervision
 - (b) Engineering personnel
 - (c) Office personnel
 - (d) Safety personnel
5. Insurance / bond
6. Equipment / vehicles / small tools
7. Equipment maintenance / vehicle maintenance
8. Relocation / living expenses
9. Training and safety supplies
10. Field office facilities and equipment

PART 4

General Conditions of Contract Between Department and Design-Builder

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CTB means the Commonwealth Transportation Board.

Day or *Days*, whether capitalized or not, shall mean calendar days unless otherwise specifically noted in the Contract Documents.

DBE Performance Improvement Plan is the plan submitted by Design-Builder and approved by Department pursuant to Section 1.5.2 of **Exhibit 23** to the Agreement.

DBE/SWaM Contract Value means an amount equal to ~~Design-Builder's~~ the Contract Price minus the costs of the exclusions described in Attachment 1 (Exclusions to DBE/SWaM Contract Value) of Exhibit 23 to the Agreement. The DBE and SWaM participation goals are not based upon the Contract Price, but upon contractable items that include design and construction costs for the Project work that may be self-performed by Design-Builder. The final DBE/SWaM Contract Value will be determined following selection of the Successful Offeror.

DBE/SWaM Plan means the plan developed by Design-Builder that defines Design-Builder's approach for meeting the DBE and SWaM participation goals for the Project, as described in more detail in the Technical Requirements.

Delay Event is defined in Section 8.2.1 of the General Conditions of Contract.

Demobilization Costs means the amount necessary to reimburse the reasonable out-of-pocket and documented costs and expenses incurred by Design-Builder to demobilize and terminate Subcontracts, excluding Design-Builder's non-contractual liabilities and indemnity liabilities (contractual or non-contractual) to Subcontractors or third parties.

Department means the Virginia Department of Transportation.

Department-Caused Delay means any of the following events, to the extent they result in a material delay or interruption in performance of any obligation under the Contract Documents; *provided* such events are beyond Design-Builder's control and are not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or Legal Requirements on the part of Design-Builder; and *provided further* that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence, or reasonable efforts by Design-Builder:

- (a) any breach of a material obligation under the Agreement by Department;
- (b) any violation of Legal Requirements by Department;
- (c) failure by Department to issue LNTP1, LNTP2, or LNTP3 within three (3) Business Days after Design-Builder has fulfilled the relevant conditions precedent to the issuance of LNTP1, LNTP2, or LNTP3, as applicable, set forth in Section 5.1.1 of the Agreement;

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 (2nd) 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

Builder's entitlement to an extension of the Contract Times due to the occurrence of a Delay Event.

Schedule of Operations is defined in Section 2.15.3.2 of the General Conditions of Contract.

Schedule of Values means the schedule developed by Design-Builder pursuant to Section 6.2.1 of the General Conditions of Contract.

Schedule Update is defined in Section 2.3 of the Technical Requirements.

Scope Validation Period is defined in Section 2.2.1 of the General Conditions of Contract.

Separate Contractor means a contractor retained by Department other than Design-Builder to perform work (other than the Work) on, near, or within the same geographic area of the Work. The Toll System Contractor is not a Separate Contractor.

Setting Date means the deadline for the issuance of Addenda to the Final RFP, as set forth in the Instructions for Offerors.

Small, Women-Owned, and Minority Business or *SWaM* means the State program to support small, women-owned and minority groups in doing business with the State.

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

South Island Trestle Bridge Replacement Work means (i) the construction of new marine approach bridges to carry westbound I-64 across the water between Norfolk and the South Island and (ii) the demolition of the existing marine approach bridges between Norfolk and the South Island.

Standard Drawings are the applicable drawings in the Virginia Department of Transportation *Road and Bridge Standards* in effect as of the Agreement Date.

Standard Specifications are the Virginia Department of Transportation *Road and Bridge Specifications* in effect as of the Agreement Date.

State means the Commonwealth of Virginia.

State Highway means any highway designated a State Highway pursuant to Title 33.2 of the Code of Virginia.

State Indemnitee means and includes Department, the Commissioner, the Commonwealth Transportation Board, the HRTAC Parties, the State and all elected representatives, appointed officials, commissioners, officers, members, employees, authorized agents and authorized representatives of any of them.

2.14.3 If Department objects in writing to a request for assistance pursuant to Section 2.14.1 based on Design-Builder's failure to satisfy one or both of the Conditions to Assistance described in clauses (a) and (b) of Section 2.14.2.1, then Design-Builder shall take such action as is appropriate to satisfy the condition(s) and shall then have the right to submit another request for assistance on the same subject matter.

2.14.4 If Department objects in writing to a request for assistance pursuant to Section 2.14.1 based on Design-Builder's failure to satisfy one or both of the Conditions to Assistance described in clauses (c) and (d) of Section 2.14.2.1, then Design-Builder shall take such action as Design-Builder deems advisable during the next ten (10) days to obtain the utility owner's cooperation and shall then have the right to submit another request for assistance on the same subject matter.

2.14.5 Notwithstanding the foregoing, no resubmittal will be accepted unless all of the Department's objections have been addressed in accordance with Section 2.14.3 and 2.14.4. This process shall be followed until Design-Builder succeeds in obtaining the utility owner's cooperation or in otherwise resolving the dispute until Department determines, based on evidence the Design-Builder presents, that the Conditions to Assistance have been satisfied, at which time Department will take such reasonable steps as Design-Builder may request to obtain the cooperation of the utility owner to resolve the dispute. Design-Builder shall have the right to submit the question of the reasonableness of the Department's determination for resolution in accordance with the dispute resolution procedures set forth in Article 10 of the General Conditions of Contract.

2.15 Cooperation with Toll System Contractor

2.15.1 Design-Builder acknowledges that (i) while Department intends to operate one or more of the travel lanes to be provided as part of the Project as Express Lanes, the provision of the ETTM System is not included in the Work and (ii) Department intends to procure the provision of the ETTM System as a separate agreement. In order to help facilitate Department's procurement, design, and installation of the ETTM System, Design-Builder shall cooperate with Department and the Toll System Contractor in accordance with the terms of this Section 2.15.

2.15.2 In order to assist Department with Department's procurement of the ETTM System, Design-Builder shall provide Department with such information regarding Design-Builder's schedule for performance of the Work and sequencing of construction operations as Department may reasonably request, and Design-Builder further acknowledges and agrees that Department will share such information with prospective offerors as part of Department's procurement of the ETTM System. Department shall require the Toll System Contractor to take such information into account and otherwise ensure that its schedule for delivery of the ETTM System is consistent and compatible with the Revised Baseline Schedule and any relevant Schedule UpdateUpdates.

2.15.3 Beginning at least eighteen (18) months prior to the anticipated Substantial Completion Date, or such earlier time as Department may reasonably require, Design-Builder will begin to meet and confer with Department and the Toll System Contractor to discuss issues affecting the

administration of the ETTM Work and to develop and agree to the necessary procedures to facilitate Design-Builder's and the Toll System Contractor's performance of their obligations under their respective agreements with Department. Such procedures shall include, but are not limited to:

.1 procedures relating to the Toll System Contractor's review of submittals prepared by Design-Builder that may impact the ETTM Work, including but limited to submittals relating to signage for the Project; and

.2 a written joint schedule of operations (the "**Schedule of Operations**") that ~~shall~~ beis consistent and compatible with the then-current Revised Baseline Schedule and ~~described~~ describes, among other things, (i) the areas of the Project Right-of-Way to which the Toll System Contractor will require access in order to perform the ETTM Work and (ii) the timing for Design-Builder to make such areas available to the Toll System Contractor.

2.15.4 The Schedule of Operations shall be binding on each of Design-Builder and the Toll System Contractor. Any modification of the Schedule of Operations shall be in writing and mutually agreed to by Design-Builder and the Toll System Contractor.

2.15.5 The Schedule of Operations shall be agreed to no later than fifteen (15) months prior to the anticipated Substantial Completion Date, as shown in the Baseline Schedule. If Department, Design-Builder, and the Toll System Contractor fail to agree on the Schedule of Operations on or before such date, Design-Builder and the Toll System Contractor shall each submit a proposed schedule to Department's Representative, who will prepare the final Schedule of Operations, which shall be binding on Design-Builder and Toll System Contractor.

2.15.6 Design-Builder shall indemnify Department for any and all losses Department incurs due to Design-Builder's failure to abide by the terms of the Schedule of Operations, including but not limited to any increase in the costs of the ETTM Work. Design-Builder acknowledges and agrees that its persistent failure to abide by the terms of the Schedule of Operations will be justification for Department to declare Design-Builder in default of the Agreement pursuant to Section 11.2.1.9 of the General Conditions of Contract.

2.15.7 Notwithstanding the requirements of Section 2.15.3, Design-Builder shall meet with Department at any time prior to Department's engagement of the Toll System Contractor, upon Department's reasonable request, in order for Department to obtain information relating to Design-Builder's design for the Project and plan for execution of the Work so that Department may consider such information as part of its procurement of the ETTM Work.

2.15.8 Department will not have any responsibility for acts, failures, or omissions of the Toll System Contractor that delay Design-Builder, except to the extent any ~~acts~~ act, ~~failures~~ failure, or ~~omissions~~ omission of the Toll System Contractor ~~constitute~~ constitutes a Department-Caused Delay.

3.6 Department's Separate Contractors

3.6.1 Department may at any time contract or approve concurrent contracts for performance of other work on, near, or within the same geographical area of the Work. Design-Builder shall not unreasonably impede or limit access to such work by others.

3.6.2 When separate contracts are awarded within the limits of one project, contractors shall not hinder the work being performed by other contractors. Design-Builder and Separate Contractor(s) working on the same project shall cooperate with each other. In case of dispute, Department's Representative will be the referee, and his decision will be binding on all parties.

3.6.3 When contracts are awarded to Separate Contractor(s) for known concurrent construction in a common area, Design-Builder and Separate Contractor(s), in conference with Department's Representative, shall establish a written joint schedule of operations. The schedule shall be based on the limitations of the individual contracts and the joining of the work of one contract with the others. The schedule shall set forth the approximate dates and sequences for the several items of work to be performed and shall ensure completion within the contract time limit. The schedule shall be submitted to Department's Representative for review and approval no later than twenty-one (21) days after the award date of the later contract. The schedule shall be agreeable to, signed by, and binding on each of Design-Builder and any Separate Contractor(s). Department's Representative may allow modifications of the schedule when benefit to Design-Builder and/or Separate Contractor(s) and Department will result.

3.6.4 Any modification of the schedule shall be in writing, mutually agreed to and signed by Design-Builder and Separate Contractor(s), and shall be binding on Design-Builder and Separate Contractor(s) in the same manner as the original agreement.

3.6.5 If Design-Builder and Separate Contractor(s) fail to agree on a joint schedule of operations, they shall submit their individual schedules to Department's Representative, who will prepare a schedule that will be binding on Design-Builder and Separate Contractor(s).

3.6.6 The joint schedule and any modification thereof shall become a part of each contract involved. The failure of Design-Builder and Separate Contractor(s) to abide by the terms of the joint schedule will be justification for declaring Design-Builder and/or Separate Contractor(s) in default of his contract.

3.6.7 Department will not assume any responsibility for acts, failures, or omissions of Design-Builder or Separate Contractor that delay the work of another, except to the extent any ~~acts~~act, ~~failures~~failure, or ~~omissions~~omission of any Separate Contractor ~~constitute~~constitutes a Department-Caused Delay.

Article 6 Payment and Completion

6.1 Schedule of Payments

6.1.1 Design-Builder shall submit to Department an anticipated monthly earnings schedule in the monthly reports required by Section 11.1 of the Agreement.

6.1.2 Not Used.

6.1.3 The anticipated monthly earnings schedule described in Section 6.1.1 above shall not, when added to all previous payments under this Agreement, exceed the Maximum Cumulative Compensation Amount for the corresponding month, unless Department specifically approves this in writing.

6.1.4 Design-Builder shall be entitled to a payment for mobilization following Department's issuance of NTP in the amount of five percent (5%) of the Contract Price (the "NTP Mobilization Amount"). The payment of the NTP Mobilization Amount shall be distributed in two (2) ~~separate~~equal installments. The first installment ~~equal to payment of~~ fifty percent (50%) of the NTP Mobilization Amount may be scheduled for payment following partial mobilization and initiation of construction work. The second installment ~~equal to payment of~~ the remaining fifty percent (50%) of the NTP Mobilization Amount may be scheduled for payment following completion of substantial mobilization, including erection of Design-Builder's offices and buildings, if any. Preliminary engineering items, including, but not limited to, surveying, geotechnical investigations and utility coordination, shall not constitute construction work for the purpose of mobilization. Bonds and insurance premiums and field office expenses at Project start-up will not be considered part of mobilization activities. For the avoidance of doubt, this Section 6.1.4 shall prevail over any conflicting provision of Section 513 of the Road and Bridge Specifications.

6.2 Monthly Progress Payments

6.2.1 On the tenth (10th) day of each month, Design-Builder shall submit for Department's review and approval Design-Builder's Application for Payment requesting payment for all Work performed by Design-Builder during the prior month and coinciding with the progress reflected in the monthly Baseline Schedule update. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.2 hereof. Payment shall be made in accordance with the Schedule of Values.

.1 The Price Proposal Form in Design-Builder's Proposal is the basis of the Schedule of Values. This form lists Design-Builder's values for individual "Payment Headings" (as shown on the Price Proposal Form), and the sum of these values is the Contract Price.

(a) To develop the Schedule of Values, Design-Builder shall subdivide the "Payment Headings" and values into further detail sufficient to serve as the basis for monthly

has been completed in accordance with the Contract Documents, Department will notify Design-Builder in writing of such determination and Department's acceptance of the Work.

6.8.3 Upon notification of completion and acceptance of all of the Work pursuant to Section 6.8.2, Design-Builder will provide Department with a Final Application for Payment. Department shall make final payment by the time required in the Agreement. At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

- .1 an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Department's interests;
- .2 a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Department and remaining unsettled at the time of final payment, which claims shall be specifically listed in an attachment to the general release;
- .3 consent of Design-Builder's surety to final payment;
- .4 all operating manuals, warranties and other deliverables required by the Contract Documents, including the project records required by Section 11.1.9 of the Agreement;
- .5 the As-Built Drawings have been submitted to Department in accordance with the Technical Requirements; and
- .6 certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.8.4 Upon making final payment, Department waives all claims against Design-Builder except claims relating to: (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Department's interests; (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including Non-Conforming Work appearing after final payment; and (iii) the terms of any special warranties and indemnifications required by the Contract Documents.

6.8.5 Department, in its sole discretion, may agree that all of the Work has been completed and accept all of the Work even if minor deliverables required by the Contract Documents remain outstanding. If so, Department may retain a sufficient amount, as determined in Department's sole discretion, from the final payment to ensure any such outstanding deliverables are timely delivered to Department. Upon (i) Design-Builder's delivery of each and every such outstanding deliverable to Department and (ii) Department's determination that each and every such deliverable is complete in accordance with the terms of the Contract Documents, Department will pay to Design-Builder the retained balance of the final payment, as may be offset by any amounts owed by Design-Builder to Department.

act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Times on account of emergency work shall be determined as provided in this Article 9.

9.7 I-564 Direct Connections

9.7.1 Notwithstanding anything to the contrary in this Article 9 and subject to the terms of this Section 9.7, Design-Builder acknowledges and agrees that (i) Department shall have the right at any time to direct Design-Builder to undertake the design and construction of the I-564 Direct Connections and (ii) Design-Builder shall proceed with the design and construction of the I-564 Direct Connections if so directed by Department.

9.7.2 If, within one hundred eighty (180) days following the Agreement Date, Department directs Design-Builder to undertake the design and construction of the I-564 Direct Connections, the increase to the Contract Price with respect to such work (as reflected in a Work Order) shall be equal to \$[●]¹.

9.7.3 If Department directs Design-Builder to undertake the design and construction of the I-564 Direct Connections pursuant to Section 9.7.1, Design-Builder shall have the period that is the longer of (i) the portion of the Scope Validation Period remaining, if any, as of the date on which Department issues a Work Order with respect to the I-564 Direct Connections and (ii) ninety (90) days in order to identify Roadway and Bridge Improvements Scope Issues with respect to the I-564 Direct Connections in accordance with the procedures set forth in Section 2.2 of the General Conditions of Contract.

9.7.4 If Department directs Design-Builder to undertake the design and construction of the I-564 Direct Connections more than one hundred eighty (180) days following the Agreement Date, the increase to the Contract Price with respect to such work (as reflected in a Work Order) shall be determined in accordance with this Article 9.

9.8 South Island Trestle Bridge Replacement Work

9.8.1 Notwithstanding anything to the contrary in this Article 9 and subject to the terms of this Section 9.8, Design-Builder acknowledges and agrees that (i) Department shall have the right at any time within one hundred eighty (180) days following the Agreement Date to direct Design-Builder to remove the South Island Trestle Bridge Replacement Work from the scope of the Project and (ii) Design-Builder shall not proceed with the South Island Trestle Bridge Replacement Work if so directed by Department.

9.8.2 If Department directs Design-Builder to remove the South Island Trestle Bridge Replacement Work from the scope of the Project pursuant to Section 9.8.1, then:

.1 the Contract Price shall be decreased by an amount equal to (i) [●]² plus (ii)

¹ **Note to Draft:** Lump sum price shown on the Successful Offeror's Price Proposal Form for delivery of the I-564 Direct Connections to be inserted.

² **Note to Draft:** The amount equal to the sum of the lump-sum values for items 24.2 (Sub-Item: Westbound Marine Approach Bridges from Norfolk to South Island) and 29.2 (Sub-Item: Demolition of Marine Approach

the reasonable additional cost savings, if any, in the performance of the Work resulting from the removal of the South Island Trestle Bridge Replacement Work from the scope of the Project as Department and Design-Builder may reasonably agree; and

.2 the Contract Times shall be reduced as necessary to reflect the impacts to the critical path resulting from the removal of the South Island Trestle Bridge Replacement Work from the scope of the Project.

9.8.3 The decrease to the Contract Price and reductions to the Contract Times described in Section 9.8.2 shall be implemented via a Work Order.

Article 10 **Contract Adjustments and Disputes**

10.1 Requests for Contract Adjustments and Relief

10.1.1 If Design-Builder believes that it is entitled to an adjustment to the Contract Price or Contract Times or other relief for any occurrence arising out of or related to the Work or Project, including the acts or omissions of Department, it shall submit a written request to Department stating the basis for such Contract Price or Contract Time adjustment or relief. Such request shall be submitted (i) prior to Design-Builder incurring any cost or expense, or performing any work on which the request is based and (ii) in accordance with any specific requirements set forth in applicable sections of the General Conditions of Contract or, absent any specific requirement, then within a reasonable time, not to exceed twenty-one (21) days, after the time of the occurrence giving rise to the request for Contract Price or Contract Time adjustment or relief or after Design-Builder reasonably should have recognized the occurrence giving rise to the request for Contract Price or Contract Time adjustment or relief, whichever is later. Such request shall include sufficient information to advise Department of the facts and circumstances giving rise to the request for Contract Price or Contract Time adjustment or relief, the specific contractual adjustment or relief requested and the basis for Design-Builder's entitlement to the adjustment or relief.

10.2 Dispute Avoidance and Resolution; Litigation

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes and disagreements. If disputes or disagreements do arise, Design-Builder and Department each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Department will first attempt to resolve all disputes or disagreements at the field level, in accordance with the protocols set forth in Section 2.1 (*Collaboration*) of the Technical Requirements, through best efforts and good faith negotiations between Design-

Marine Approach Bridges from Norfolk to South Island) and 29.2 (Sub-Item: Demolition of Marine Approach Bridges from Norfolk to South Island) shown on the Successful Offeror's Price Proposal Form to be inserted.

Builder's Representative and Department's Representative. If the dispute or disagreement cannot be resolved through Design-Builder's Representative and Department's Representative, Design-Builder's Senior Representative and Department's Senior Representative, upon the request of either party, shall meet as soon as possible, but in no case later than forty-five (45) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving the dispute or disagreement. If the Senior Representatives determine that the dispute or disagreement cannot be resolved to the mutual satisfaction of both 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 ~~(i) the value of such dispute, or the aggregate value of all unresolved disputes, is at least one hundred fifty million dollars (\$100,000,000) and (ii) Design-Builder initiates the legal action with respect to such dispute no earlier than the date that is twenty-four (24) months following Design-Builder's achievement of the LNTPI Completion Milestone~~ **50,000,000**. With respect to any ~~dispute that is not at least one hundred million dollars (\$100,000,000) in value that remains~~ other disputes that remain unresolved following the Steering Committee's consideration of such ~~disputed~~ disputes pursuant to Section 10.2.2, 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 procures set forth in this Section 10.2.

10.2.6 As permitted by Section 33.2-1814 of the Code of Virginia, the parties agree that any requirement that the State Corporation Commission issue a declaratory judgment regarding a material default (as defined in Section 33.2-1813 of the Code of Virginia) pursuant to such Section 33.2-1814, as a prerequisite to exercising any remedy set forth in the Agreement or such Section 33.2-1814, will not apply to the Agreement.

10.2.7 Pending final resolution of any dispute (except a dispute regarding the cause for terminating the Agreement), the parties will continue to fulfill their respective obligations under the Agreement.

10.2.8 Neither party will seek or accept an award of attorneys' fees or costs incurred in connection with the resolution of a dispute pursuant to the provisions of this Section 10.2.

10.2.9 Within thirty (30) days of the Agreement Date, each party will identify the individuals who will serve as its representatives on the Steering Committee and provide such information to the other party. Either party may replace any of its representatives on the Steering Committee at any time during the term of the Agreement by giving notice to the other party in accordance with Section 12.8.1 of the General Conditions of Contract.

10.2.10 THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THE AGREEMENT, OR ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THE AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THE AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THE AGREEMENT. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO ~~THIS~~THE AGREEMENT AND DOES NOT APPLY TO ~~THIRD-PARTY~~THIRD-PARTY CLAIMS OR SUITS. Each of the parties (i) certifies that no representative, agent, attorney or any other Person has represented, expressly or otherwise, that such other Person would not, in the event of any suit, action or proceedings relating to the Agreement, seek to enforce the foregoing waiver and (ii) acknowledges that it has been induced to enter into the Agreement by, among other things, the mutual waivers and certifications in this Section 10.2.10.

10.3 Duty to Continue Performance

hundred eighty day (180) day period the parties are unable to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Agreement, either party may deliver notice to the other party that it wishes to terminate the Agreement (a “**Force Majeure Termination Notice**”). A Force Majeure Termination Notice must (x) provide a proposed date of termination and (y) be delivered to the other party at least fourteen (14) days before such proposed date of termination. If either party delivers a Force Majeure Termination Notice, the Agreement will terminate on the date stated in such Force Majeure Event Termination Notice.

11.6.2 If a Force Majeure Termination Notice takes effect prior to the issuance of NTP, the compensation payable to Design-Builder as a result of such termination shall be determined in accordance with Section 8.1.1 of the Agreement. If a Force Majeure Termination Notice takes effect following the issuance of NTP, the compensation payable to Design-Builder as a result of such termination shall be determined in accordance with Sections 8.2 through 8.8 of the Agreement.

Article 12 Miscellaneous

12.1 Assignment

12.1.1 Design-Builder shall not, without the prior written consent of Department (which consent may be withheld or denied for any reason), assign, transfer or sublet the Contract Documents or any portion or part of the Work or the obligations required by the Contract Documents.

12.2 Successorship

12.2.1 Design-Builder and Department intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Governing Law

12.3.1 The Agreement and all Contract Documents shall be governed by the laws of the State, without giving effect to its conflict of law principles.

12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5 No Waiver

12.5.1 The failure of either Design-Builder or Department to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract