

## **ESCROW AGREEMENT**

This **ESCROW AGREEMENT** (“Escrow Agreement”) is made and entered into as of April \_\_\_\_, 2019, by and among the **VIRGINIA DEPARTMENT OF TRANSPORTATION** (the “Department”), an agency of the Commonwealth of Virginia, **HAMPTON ROADS CONNECTOR PARTNERS** (the “Design-Builder”), an unincorporated joint venture comprised of its members, Dragados USA, Inc., Vinci Construction Grands Projets, Flatiron Constructors, Inc., and Dodin Campenon Bernard, and **SUNTRUST BANK**, a Georgia banking corporation, as escrow agent hereunder (the “Escrow Agent”) (the Department, the Design-Builder and the Escrow Agent are herein referred to collectively as the “Parties”).

### **RECITALS**

**WHEREAS**, on May 22, 2018, the Department issued a Request for Proposals and thereafter issued a series of addenda thereto (collectively, the “RFP”) for the design and construction of the I-64 Hampton Roads Bridge-Tunnel Expansion Project (the “Project”);

**WHEREAS**, the Department has selected the Design-Builder as the successful offeror pursuant to the RFP;

**WHEREAS**, the Department and the Design-Builder intend to enter into a Comprehensive Agreement for the Project (the “Comprehensive Agreement”), pursuant to which the Design-Builder will design and construct the Project;

**WHEREAS**, pursuant to the RFP, the Design-Builder is required to submit to the Department the Escrow Proposal Documents;

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

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

### **AGREEMENT**

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

**ARTICLE 1.**

**DEFINITIONS AND ORDER OF PRECEDENCE**

**Section 1.01 Definitions**

(a) Prior to the effective date of the Comprehensive Agreement, capitalized terms used but not otherwise defined in this Escrow Agreement shall have the respective meanings set forth in Section 1.2 (*Basic Definition*) of Part 4 of the RFP.

(b) Following the effective date of the Comprehensive Agreement, capitalized terms used but not otherwise defined in this Escrow Agreement shall have the respective meanings set forth in Section 1.2 (*Basic Definition*) of Exhibit 1 (*General Conditions of Contract*) to the Comprehensive Agreement.

**Section 1.02 Order of Precedence**

In the event of any conflict, ambiguity or inconsistency between the provisions of the RFP (and, following the effective date of the Comprehensive Agreement, the Comprehensive Agreement) and the provisions of this Escrow Agreement, the provisions of this Escrow Agreement shall prevail.

**Section 1.03 No Effect on Comprehensive Agreement**

Nothing in this Escrow Agreement amends or modifies any of the Design-Builder's or the Department's obligations and rights under the RFP or, following the effective date of the Comprehensive Agreement, the Comprehensive Agreement. The Escrow Agent will be deemed to have no knowledge of the Comprehensive Agreement.

**ARTICLE 2.**

**ESCROW ARRANGEMENTS**

**Section 2.01 Appointment of Escrow Agent**

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

**Section 2.02 Deposit of Escrow Proposal Documents**

In accordance with Section 12.9 (*Escrow Proposal Documents*) of Part 4 of the RFP, the Department (or, at the request of the Department, the Design-Builder) shall deliver and deposit with the Escrow Agent the Escrow Proposal Documents in the same sealed containers in which the Design-Builder delivered the Escrow Proposal Documents to the Department, which containers shall not have been opened or the contents thereof altered or modified in any way by

the Department or any other person. The Escrow Agent shall provide to each Party written acknowledgment of the receipt of the Escrow Proposal Documents, and any subsequent additions or modifications to the Escrow Proposal Documents, promptly upon receipt thereof. The Escrow Agent is not required to take notice of the Escrow Proposal Documents or the contents thereof, which the Escrow Agent shall hold only for custodial purposes.

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

The Parties hereby acknowledge and agree that the Escrow Proposal Documents are, and shall always be, the property of the Design-Builder. The Escrow Agent shall provide prompt access to the Escrow Proposal Documents for review upon receipt by it of a written notice requesting such access signed by an authorized signer of the Department or the Design-Builder (each as identified to the Escrow Agent by the applicable Party pursuant to an executed Certificate of Incumbency substantially in the form of Exhibit A attached hereto); *provided* that the Department, prior to making such request, has given a minimum of 24 hours written notice to the Design-Builder, and the Design-Builder, prior to making such request, has given a minimum of 24 hours written notice to the Department. The Escrow Agent shall not permit access to the Escrow Proposal Documents to any person other than the Design-Builder, authorized representatives of the Design-Builder, the Department, members of the Department's staff and to the Department's consultants. For purposes of certainty, authorized representatives of the Design-Builder shall include designated representatives of the Design-Builder. Such authorized representatives of the Design-Builder and the Department staff and consultants shall be entitled to conduct examinations and review the Escrow Proposal Documents at any time deemed necessary and for any reason. At the request of either Party and at such Party's sole expense, the Escrow Agent shall make and provide copies of any Escrow Proposal Documents to such Party.

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

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

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

(c) The Escrow Agent shall release the Escrow Proposal Documents (to the extent not released earlier pursuant to clause (b) above) to the Design-Builder upon receipt by the Escrow Agent of a certification from the Design-Builder and the Department (which the Design-Builder and the Department hereby agree to deliver promptly following the occurrence of the events noted in this clause (c)) stating, as applicable, that (i) the Department and the Design-Builder no

longer intend to enter into the Comprehensive Agreement or (ii) following the effective date of the Comprehensive Agreement, the Comprehensive Agreement has been terminated in accordance with the provisions thereof and all claims or disputes arising under or related to the Comprehensive Agreement have been fully and finally resolved and/or adjudicated.

**Section 2.05 Termination**

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

**ARTICLE 3.**

**ESCROW AGENT**

**Section 3.04 Liability of Escrow Agent**

The Escrow Agent shall have no responsibility to any person in connection with this Escrow Agreement, except as specifically provided, and shall not be responsible for anything done or omitted to be done by it except for its own gross negligence or willful default in the performance of any obligation imposed on it hereunder. Unless specifically provided herein, the Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of the other Parties with respect to arrangements or contracts with others, the Escrow Agent's sole duty hereunder being to safeguard the Escrow Proposal Documents and to dispose of and deliver the same in accordance with this Escrow Agreement. If the Escrow Agent is called upon by the terms of this Escrow Agreement to determine the occurrence of any event or contingency, the Escrow Agent may request from the other Parties or any other person such reasonable additional evidence as the Escrow Agent in its discretion may deem necessary to determine any fact relating to the occurrence of such event or contingency, and in this connection may inquire and consult with the other Parties, among others, at any time. The Escrow Agent may request an opinion of counsel for a determination of any legal issue which might arise in the performance of its duties hereunder and such opinion of counsel shall be full and complete authorization for any action taken, suffered or omitted by the Escrow Agent in reliance thereon. This Escrow Agreement sets forth exclusively the duties of the Escrow Agent with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into this Escrow Agreement against the Escrow Agent. This Escrow Agreement constitutes the entire agreement between the Escrow Agent and the Parties in connection with the subject matter of this Escrow Agreement, and no other agreement entered into between the Parties, or any of them, including, without limitation, the Comprehensive Agreement, shall be considered as adopted or binding, in whole or in part, upon the Escrow Agent notwithstanding that any such other agreement may be deposited with the Escrow Agent or the Escrow Agent may have knowledge thereof.

### **Section 3.05 Payment of Escrow Agent**

The Escrow Agent acknowledges receipt of good and valuable consideration for the services rendered or to be rendered by it pursuant to this Escrow Agreement. The Design-Builder shall pay the Escrow Agent's reasonable fees and expenses in connection with the performance of its duties under this Escrow Agreement, including, but not limited to, those fees described in Exhibit B attached hereto. As described in Exhibit B, the annual administration fee is \$2,500 and shall be payable at signing by the Design-Builder. If the Escrow Agent continues to serve under this Escrow Agreement beyond the initial twelve (12)-month term, the Design-Builder shall be invoiced each year on the anniversary date of the execution of this Escrow Agreement for the Escrow Agent's continuing service hereunder, and payment for such continuing service shall be due within 30 days of receipt of such invoice. The Escrow Agent and the Design-Builder acknowledge and agree that the Department shall have no liability in respect of any fees or expenses of the Escrow Agent.

### **Section 3.06 Resignation and Replacement of Escrow Agent**

The Escrow Agent may resign, and thereby become discharged from the trusts, duties and obligations hereby created, by written notice given to the Department and the Design-Builder, not less than thirty (30) days before such resignation shall take effect. Such resignation shall take effect immediately, however, upon the earlier appointment of a new Escrow Agent hereunder and acceptance of the trusts hereby created. The Escrow Agent shall continue to serve as Escrow Agent until a successor is appointed and the Escrow Proposal Documents have been properly transferred to the successor Escrow Agent. In the event of the resignation of the Escrow Agent prior to the expiration of this Escrow Agreement, the Escrow Agent shall rebate to the Design-Builder a ratable portion of any prepaid fee theretofore paid by the Design-Builder to the Escrow Agent for its services hereunder. After any notice of resignation of the Escrow Agent, the Design-Builder shall undertake to appoint a replacement Escrow Agent on terms reasonably acceptable to the Design-Builder and the Department.

## **ARTICLE 4.**

### **GENERAL PROVISIONS**

#### **Section 4.04 Address for Notices**

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

manner permitted herein or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Department:

Virginia Department of Transportation  
HRBT Expansion Project  
204 National Avenue  
Hampton, VA 23663  
Attention: Project Director  
Facsimile: (757) 727-4851

*With copies to:*

Virginia Department of Transportation  
1401 East Broad Street  
Richmond, VA 23219  
Attention: Chief Engineer  
Facsimile: (804) 786-2940

Office of the Attorney General  
202 North 9<sup>th</sup> Street  
Richmond, VA 23219  
Attention: Transportation Section Chief  
Facsimile: (804) 786-9136

If to the Design-Builder:

Rafael de la Barreda  
Executive Vice President  
Dragados USA, Inc.  
810 Seventh Avenue, 9<sup>th</sup> Floor  
New York, New York 10019  
Facsimile: (212) 764-6020  
Phone: (212) 779-0900  
Email: rbarreda@dragados-usa.com

If to the Escrow Agent:

SunTrust Bank  
919 E Main St, 5th Floor  
Richmond, VA 23219  
Attention: Charles Henderson  
Facsimile: (804) 225-7141  
Phone: (804) 782-7087  
Email: Charles.Henderson@suntrust.com

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

#### **Section 4.05 Successors and Assigns**

This Escrow Agreement is for the sole benefit of the Indemnified Parties, the Parties and the Escrow Agent, and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Escrow Agreement.

#### **Section 4.06 Counterparts**

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

#### **Section 4.07 Waiver**

Any term of this Escrow Agreement may be waived by the Party entitled to the benefits thereof, provided that any such waiver must be in writing and signed by the Party against whom the enforcement of the waiver is sought. No waiver of any condition, or breach of any provision of this Escrow Agreement, in any one or more instances, shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed the waiver of that right or remedy.

#### **Section 4.08 Benefit of Agreement; Amendments**

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

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

#### **Section 4.09 Severability**

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

**Section 4.10 Prior Contracts Superseded**

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

**Section 4.11 Effect of Breach**

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

**Section 4.12 No Third-Party Beneficiaries**

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

**Section 4.13 No Partnership**

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

**Section 4.14 Governing Law**

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

*[Signature Page Follows]*

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

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

**HAMPTON ROADS CONNECTOR  
PARTNERS,**  
as Design-Builder

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

By: Its Members

**SUNTRUST BANK,**  
A Georgia banking corporation

**DRAGADOS USA, INC.**

By: \_\_\_\_\_  
Charles Henderson  
Assistant Vice President

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

**VINCI CONSTRUCTION GRANDS  
PROJETS**

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

**FLATIRON CONSTRUCTORS, INC.**

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

**DODIN CAMPENON BERNARD**

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

**Exhibit A**

**Certificate of Incumbency  
(List of Authorized Representatives)**

Client Name: Virginia Department of Transportation

As an authorized officer of the above-referenced entity, I hereby certify that each person listed below is an authorized signor for such entity and that the title and signature appearing beside each name is true and correct.

<u>Name</u>	<u>Title</u>	<u>Signature</u>	<u>Phone Number</u>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

IN WITNESS WHEREOF, this certificate has been executed by a duly authorized officer on April \_\_\_\_, 2019.

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

**Certificate of Incumbency  
(List of Authorized Representatives)**

Client Name: Hampton Roads Connector Partners

As an authorized officer of the above-referenced entity, I hereby certify that each person listed below is an authorized signor for such entity and that the title and signature appearing beside each name is true and correct.

<u>Name</u>	<u>Title</u>	<u>Signature</u>	<u>Phone Number</u>

IN WITNESS WHEREOF, this certificate has been executed by a duly authorized officer on April \_\_\_\_, 2019.

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

**Exhibit B**

**Schedule of Fees & Expenses**

**Acceptance/Legal Review Fee:**      **\$600.00** – one time only payable at the time of signing the Escrow Agreement

The Legal Review Fee includes review of all related documents and accepting the appointment of Escrow Agent on behalf of SunTrust Bank. The fee also includes setting up the required account(s) and accounting records, document filing, and coordinating the receipt of funds/assets for deposit to the Escrow Account. This is a one-time fee payable upon execution of the Escrow Agreement. As soon as SunTrust Bank's attorney begins to review the Escrow Agreement, the legal review fee is subject to payment regardless if the Parties decide to appoint a different escrow agent or a decision is made that the Escrow Agreement is not needed.

**Administration Fee:**                      **\$2,500** – payable at the time of signing the Escrow Agreement and on the anniversary date thereafter, if applicable

The Administration Fee includes providing routine and standard services of an Escrow Agent. The fee includes administering the escrow account, performing investment transactions, processing cash transactions (including wires and check processing), disbursing funds in accordance with the Agreement (note any pricing considerations below), and providing trust account statements to the Parties for a twelve (12) month period. If the account remains open beyond the twelve (12) month term, the Parties will be invoiced each year on the anniversary date of the execution of the Escrow Agreement. Extraordinary expenses, including legal counsel fees, will be billed as out-of-pocket. The Administration Fee is due upon execution of the Escrow Agreement. The fees shall be deemed earned in full upon receipt by the Escrow Agent, and no portion shall be refundable for any reason, including without limitation, termination of the agreement.

**Out-of-Pocket Expenses:**      **At Cost**

Out-of-pocket expenses such as, but not limited to, postage, courier, overnight mail, wire transfer, travel, legal (out-of-pocket to counsel) or accounting, will be billed at cost.