

**EXHIBIT 16**

**GUARANTEES**

*[See attached]*

## GUARANTEE

This **GUARANTEE** (this “Guarantee”) is made as of April 3, 2019, by Dragados, S.A., a corporation (*sociedad anónima*) organized under the laws of Spain (the “Guarantor”), to the Virginia Department of Transportation (the “Department”), an agency of the Commonwealth of Virginia, with respect to the obligations of 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, pursuant to that certain Comprehensive Agreement for the I-64 Hampton Roads Bridge-Tunnel Expansion Project, dated as of April 3, 2019, by and between the Department and the Design-Builder (as amended, altered, varied or supplemented, the “Comprehensive Agreement”). The Comprehensive Agreement is hereby incorporated by reference herein, and capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Comprehensive Agreement. The Guarantor is an Affiliate of the Design-Builder. The Guarantor acknowledges that financial and direct benefits will accrue to the Guarantor by virtue of entering into this Guarantee and that such benefits constitute adequate consideration therefor.

This Guarantee is provided pursuant to Section 10.3 of the Comprehensive Agreement.

### 1. GUARANTEE

**1.1. Guarantee.** The Guarantor guarantees to the Department, absolutely, unconditionally and irrevocably, that each and every payment and performance obligation and other liability of the Design-Builder now or hereafter arising under the Comprehensive Agreement, including but not limited to all obligations and liabilities of the Design-Builder under any and all representations and warranties made or given by the Design-Builder under the Comprehensive Agreement, under any and all liquidated or stipulated damage provisions of the Comprehensive Agreement and under any and all indemnities given by the Design-Builder under the Comprehensive Agreement (collectively the “Guaranteed Obligations”) will be paid promptly and satisfied in full when due and without offset, and performed and completed when required. This is a continuing guaranty of payment and performance of the Guaranteed Obligations.

**1.2. Obligations.** Except as otherwise provided in Section 4.6, the obligations of the Guarantor hereunder are absolute and unconditional and independent of the Guaranteed Obligations and shall remain in full force and effect until all the Guaranteed Obligations have been paid, performed and completed in full, irrespective of any assignment, amendment, modification or termination of the Comprehensive Agreement.

**1.3. No Exoneration.** Except as otherwise provided in Section 4.6 below, the obligations of the Guarantor hereunder shall not be released, discharged, exonerated or impaired in any way by reason of:

1.3.1. any failure of the Design-Builder to retain or preserve any rights against any person, except to the extent the Design-Builder is required to do so under the terms of the Comprehensive Agreement and such failure prejudices Guarantor;

1.3.2. the lack of prior enforcement by the Design-Builder of any rights against any person and the lack of exhaustion of any bond, letter of credit or other security held by the Design-Builder, except to the extent the Design-Builder is required to do so under the terms of the Comprehensive Agreement and such failure prejudices Guarantor;

1.3.3. the lack of authority or standing of the Design-Builder or the dissolution of the Guarantor or the Design-Builder;

1.3.4. with or without notice to the Guarantor, the amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or failure to assert, any portion of the Guaranteed Obligations, the Comprehensive Agreement, any rights or remedies of the Department (including rights of offset) against the Design-Builder, or any bond, letter of credit, other guarantee, instrument, document, collateral security or other property given or available to the Department to secure all or any part of the Guaranteed Obligations; *provided* that, notwithstanding the foregoing, the Guarantor shall have available to it any and all defenses relating to the Guaranteed Obligations that may be available to the Design-Builder based on any such amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination or failure to assert voluntarily made by the Department, except defenses available to the Design-Builder under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors and those expressly waived under this Guarantee;

1.3.5. the extension of the time for payment of any amount owing or payable under the Comprehensive Agreement or of the time for performance or completion of any Guaranteed Obligation; *provided, however*, that to the extent the Department grants the Design-Builder an extension of time under the Comprehensive Agreement for performance of any of the obligations of the Design-Builder thereunder, such extension of time shall likewise extend the time for performance by the Guarantor;

1.3.6. the existence now or hereafter of any other guarantee or endorsement by the Guarantor or anyone else of all or any portion of the Guaranteed Obligations;

1.3.7. the acceptance, release, exchange or subordination of additional or substituted security for all or any portion of the Guaranteed Obligations;

1.3.8. the taking of any action or the failure to take any action simply because it would constitute a legal or equitable defense, release or discharge of a surety;

1.3.9. any bankruptcy, arrangement, reorganization or similar proceeding for relief of debtors under federal or state law hereafter initiated by or against the Design-Builder or any of its members;

1.3.10. any full or partial payment or performance of any Guaranteed Obligation which is required to be returned as a result of or in connection with the insolvency, reorganization or bankruptcy of the Design-Builder or any of its members or otherwise;

1.3.11. the rejection of the Comprehensive Agreement in connection with the insolvency, reorganization or bankruptcy of the Design-Builder or any of its members;

1.3.12. an impairment of or limitation on damages otherwise due from the Design-Builder by operation of law as a result of any insolvency, reorganization or bankruptcy proceeding by or against the Design-Builder or any of its members;

1.3.13. failure by the Department to file or enforce a claim against the estate (either in administration, bankruptcy or other proceedings) of the Design-Builder, any of its members, the Guarantor or any other guarantor;

1.3.14. any merger, consolidation or other reorganization to which the Design-Builder or the Guarantor is a party;

1.3.15. any sale or disposition of all or any portion of the Guarantor's direct or indirect ownership in the Design-Builder, or action by the Guarantor or its Affiliates which results in discontinuation or interruption in the business relations of the Design-Builder with the Guarantor (unless another entity acceptable to the Department, in the Department's sole discretion, assumes the Guarantor's liability hereunder); or

1.3.16. the failure of the Department to assert any claim or demand, bring any action or exhaust its remedies against the Design-Builder or any security before proceeding against the Guarantor hereunder after the expiration of applicable notice and cure periods.

**1.4. Enforcement of the Comprehensive Agreement and Guaranteed Obligations.**

1.4.1. Nothing contained herein shall prevent or limit the Department from pursuing any of its rights and remedies under the Comprehensive Agreement. The Department may apply any available moneys, property or security in such manner and amounts and at such times to the payment or reduction or performance of any Guaranteed Obligation as it may elect, and may generally deal with the Design-Builder, the Guaranteed Obligations, such security and property as the Department may see fit. Notwithstanding the foregoing, the Guarantor shall remain bound by this Guarantee.

1.4.2. In the event that Design-Builder defaults on any of the Guaranteed Obligations, the Guarantor shall be obligated to undertake all curative actions (which may include payments relating to the Guaranteed Obligations and/or

performance of the Guaranteed Obligations) within fourteen (14) days (or immediately, in the case of emergency conditions) following notice under Section 4.6 below (to the extent not prohibited thereunder). Thereafter, the Guarantor shall use commercially reasonable efforts to effectuate such curative actions without further notice. If the Guarantor fails to undertake such curative actions in a timely manner, the Department shall have the right to perform or have performed by third parties the necessary curative actions, and the costs thereof shall be borne by the Guarantor. Any payment by the Guarantor to the Department shall be in U.S. dollars.

1.4.3. The Department may bring and prosecute a separate action or actions against the Guarantor to enforce its liabilities hereunder, regardless of whether any action is brought against the Design-Builder and regardless of whether any other person is joined in any such action or actions. Nothing shall prohibit the Department from exercising its rights against the Guarantor, the Design-Builder, any other guarantor of the Guaranteed Obligations, a performance bond or other security, if any, which insures the payment relating to or performance of the Guaranteed Obligations, or any other person simultaneously, or any combination thereof jointly and/or severally. The Department may proceed against the Guarantor from time to time as it sees fit in its sole and absolute discretion; *provided, however*, the Department shall not be entitled to enforce its rights and claims under this Guarantee for a breach of the Guaranteed Obligations to the extent that it has already received payment or discharge or has otherwise been compensated in respect of the same breach of Guaranteed Obligations, including through insurance proceeds or call of any other security that the Department may hold under the Comprehensive Agreement.

## **2. REPRESENTATIONS AND WARRANTIES**

**2.1. Representations and Warranties.** The Guarantor hereby represents and warrants, which shall be continuing representations and warranties until the expiration of the Guarantor's obligations under this Guarantee, that:

2.1.1. Consents. Consent of the Design-Builder to any modification or amendment of the Comprehensive Agreement to which it is a party constitutes knowledge thereof and consent thereto by the Guarantor;

2.1.2. Organization and Existence. The Design-Builder is an unincorporated joint venture duly organized, validly existing and in good standing under the laws of its state of formation. The Guarantor is a corporation (*sociedad anónima*) duly organized, validly existing and in good standing under the laws of Spain;

2.1.3. Power and Authority. The Guarantor has the full power and authority to execute, deliver and perform this Guarantee, and to own and lease its properties and to carry on its business as now conducted and as contemplated hereby;

2.1.4. Authorization and Enforceability. This Guarantee has been duly authorized, executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with the terms hereof, subject as to enforceability of remedies to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating, to or affecting the enforcement of creditors' rights generally, as applicable to the Guarantor, and to general principles of equity;

2.1.5. No Governmental Consents. No authorization, consent or approval of, notice to or filing with, any governmental authority, is required for the execution, delivery and performance by the Guarantor of this Guarantee;

2.1.6. No Conflict or Breach. Neither the execution, delivery or performance by the Guarantor of this Guarantee, nor compliance with the terms and provisions hereof, conflicts or will conflict with or will result in a breach or violation of any material terms, conditions, or provisions of any Laws, regulations and ordinances applicable to the Guarantor or the charter documents, as amended, or bylaws or equivalent governing documents, as amended, of the Guarantor, or any order, writ, injunction or decree of any court or governmental authority against the Guarantor or by which it or any of its properties are bound, or any indenture, mortgage or contract or other agreement or instrument to which the Guarantor is a party or by which it or any of its properties are bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties;

2.1.7. No Proceedings. There are no suits or proceedings pending, or, to the knowledge of the Guarantor, threatened in any court or before any regulatory commission, board or other governmental administrative agency against the Guarantor which could reasonably be expected to have a material adverse effect on the business or operations of the Guarantor, financial or otherwise, or on its ability to fulfill its obligations hereunder;

2.1.8. Contract. The Guarantor is fully aware of and consents to the terms and conditions of the Comprehensive Agreement;

2.1.9. Financial Statements. All financial statements and data that have been given to the Department by the Guarantor with respect to the Guarantor: (i) are complete and correct in all material respects as of the date given; (ii) accurately present in all material respects the financial condition of the Guarantor as of the date thereof; and (iii) have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered thereby;

2.1.10. No Adverse Change. There has been no material adverse change in the financial condition of the Guarantor since the date of the most recent financial statements given to the Department with respect to the Guarantor;

2.1.11. No Default. The Guarantor is not in default in the performance, observance or fulfillment of any of the obligations, covenants or

conditions set forth in any agreement or instrument to which the Guarantor is a party, which default may materially and adversely affect the Guarantor's ability to fulfill its obligations hereunder;

2.1.12. Accuracy of Information. All other reports, papers and written data and information given to the Department by the Guarantor with respect to the Guarantor are accurate and correct in all material respects and complete; and

2.1.13. Notice of Change. The Guarantor shall advise the Department in writing of any material adverse change in the business or financial condition of the Guarantor and promptly furnish to the Department such information about the financial condition of the Guarantor as the Department shall reasonably request.

### **3. WAIVERS, SUBROGATION AND SUBORDINATION**

#### **3.1. Waivers.**

3.1.1. The Guarantor hereby unconditionally waives:

- 3.1.1.1. notice of acceptance of this Guarantee or of the intention to act in reliance hereon and of reliance hereon;
- 3.1.1.2. notice of the incurring, contracting, amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or of the failure to assert, any Guaranteed Obligation;
- 3.1.1.3. demand on the Guarantor in the event of default of the Design-Builder under the Comprehensive Agreement (but not the giving of notice to the extent required in Section 4. 6 below);
- 3.1.1.4. any invalidity of the Comprehensive Agreement due to lack of proper authorization of or a defect in execution thereof by the Design-Builder, its purported representatives or agents;
- 3.1.1.5. demand for payment or performance, presentment, protest and notice of nonpayment or dishonor to the Guarantor respecting any Guaranteed Obligation;
- 3.1.1.6. any right of the Guarantor to receive notices to the Design-Builder to which the Guarantor might otherwise be entitled except notice to the extent required in Section 4. 6 below;
- 3.1.1.7. any demand for payment hereunder (but not the giving of notice to the extent required in Section 4. 6 below); and
- 3.1.1.8. any duty on the part of the Department to disclose to the Guarantor any facts the Department may now or hereafter know with regard to the Design-Builder.

3.1.2. The Guarantor also hereby waives any right to require, and the benefit of all laws now or hereafter in effect giving the Guarantor the right to require, any prior enforcement as referred to in Section 1.3.2 above, and the Guarantor agrees that any delay in enforcing or failure to enforce any such rights or in making demand on the Guarantor for the performance of the obligations of the Guarantor under this Guaranty shall not in any way affect the liability of the Guarantor hereunder.

3.1.3. The Guarantor hereby waives, as against the Department or any person claiming under the Department, all rights and benefits which might accrue to the Guarantor by reason of any bankruptcy, arrangement, reorganization or similar proceedings by or against the Design-Builder and agrees that its obligations and liabilities hereunder shall not be affected by any modification, limitation or discharge of the obligations of the Design-Builder that may result from any such proceedings.

3.1.4. Until the Design-Builder shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor hereby agrees not to file, or solicit the filing by others of, any involuntary petition in bankruptcy against the Design-Builder.

**3.2. Subrogation.** Until the Design-Builder shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor shall not (absent the Department's prior written consent) claim or enforce any right of subrogation, reimbursement or indemnity against the Design-Builder, or any other right or remedy which might otherwise arise on account of any payment made by the Guarantor or any act or thing done by the Guarantor on account of or in accordance with this Guarantee.

**3.3. Subordination.**

3.3.1. All existing or future indebtedness of the Design-Builder to the Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as the Design-Builder shall be in default in the performance or payment of any Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by the Design-Builder to the Guarantor without prior written notice to the Department.

3.3.2. In the event that the Department provides written consent pursuant to Section 3.2, the Guarantor shall file all claims against the Design-Builder in any bankruptcy or other proceedings in which the filing of claims is required or permitted by law upon any obligation or indebtedness of the Design-Builder to the Guarantor, and shall have assigned to the Department all of the Guarantor's rights thereunder to the extent of outstanding and unsatisfied Guaranteed Obligations. If the Guarantor does not file any such claim, the Department is authorized as the Guarantor's attorney-in-fact to do so in the Guarantor's name, or in the discretion of the Department, the Department is authorized to assign the claim to, and cause proof of claim to be filed in the name of the Department or its nominee. In all such cases,



whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to the Department or its nominee the full amount payable on the claim in the proceeding before making any payment to the Guarantor, and to the full extent necessary for that purpose, the Guarantor assigns to the Department all of its rights to any payments or distributions to which it otherwise would be entitled. If the amount so paid is in excess of the Guaranteed Obligations covered hereby, the Department shall pay the amount of the excess to the party determined by it to be entitled thereto.

#### **4. MISCELLANEOUS**

##### **4.1. Enforcement of Guarantee.**

4.1.1. The terms and provisions of this Guarantee shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia.

4.1.2. No supplement, amendment, modification, waiver or termination of this Guarantee shall be binding unless executed in writing and duly signed by the Guarantor and the Department. No waiver of any of the provisions of this Guarantee shall be deemed or shall constitute a waiver of any other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No failure on the part of the Department to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise of any other right.

4.1.3. All disputes between the Department and the Guarantor arising under or relating to this Guarantee or its breach shall be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, and any appellate court from any thereof, which shall have exclusive jurisdiction and venue. The Guarantor hereby irrevocably waives the defense of an inconvenient forum to the maintenance of any action or proceedings in such court arising out of or relating to this Guarantee. The Guarantor agrees that a final non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Guarantor agrees and consents to service of process by delivery in the manner and to the address set forth in Section 4.2 below. Nothing in this section shall affect the right of the Department or to serve legal process in any other manner permitted by law.

4.1.4. The rights of the Department hereunder are cumulative and shall not be exhausted by any one or more exercises of said rights against the Guarantor or other guarantors or by any number of successive actions until and unless all Guaranteed Obligations have been fully paid or performed.

4.1.5. The Department acknowledges and agrees that this Guarantee does not and is not intended to impose, in the event the Guarantee is called

upon, any greater obligations upon the Guarantor than are imposed upon the Design-Builder under the Comprehensive Agreement, other than with respect to the Guarantor's obligation hereunder to pay the Department for its reasonable costs and expenses of enforcing this Guarantee.

4.1.6. The Guarantor shall pay to the Department all reasonable out-of-pocket legal fees and other reasonable out-of-pocket costs and expenses (including fees and costs on appeal) it incurs by reason of any permitted enforcement of its rights hereunder, *provided* that it is the prevailing party with respect to a substantial portion of its claim.

4.1.7. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION OR CLAIM WHICH IS BASED ON, OR ARISES OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTEE OR THE TRANSACTIONS CONTEMPLATED BY THIS GUARANTEE.

4.1.8. Notwithstanding anything to the contrary, if at any time payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned upon bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law, the Guarantor shall continue to remain liable therefor.

**4.2. Notices.** All notices, demands or other communications under this Guarantee shall be in writing and shall be sent to each other party, at its address specified below (or such other address as a party may from time to time specify to the other parties by notice given in accordance with this Guarantee), and shall be deemed to have been duly given when actually received by the addressee or when served:

4.2.1. personally;

4.2.2. by independent, reputable, overnight commercial courier; or

4.2.3. 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 E. 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 Guarantor:*

Dragados, S.A.  
Avenida del Camino de Santiago, 50  
28050 Madrid – Spain  
Attention: General Counsel  
Facsimile: +34 9 1 703 81 04

*With copies to:*

Dragados USA, Inc.  
810 Seventh Avenue, 9<sup>th</sup> Floor  
New York, New York 10019  
Attention: Joseph G. Portela, General Counsel & Senior Vice President  
Facsimile: (212) 764-6020

**4.3. Severability.** If any provision of this Guarantee shall for any reason be held invalid or unenforceable, to the fullest extent permitted by law, such invalidity or unenforceability shall not affect any other provisions hereof, but this Guarantee shall be construed as if such invalid or unenforceable provision had never been contained herein.

**4.4. Assignment.** Neither this Guarantee nor any of the rights, interest or obligations hereunder shall be assigned or delegated by the Guarantor without the prior written consent of the Department. The Department may assign this Guarantee, with prior notice but without need for the consent of Guarantor, but only together with an assignment of the Comprehensive Agreement. This Guarantee and all of the provisions hereof shall be binding upon the Guarantor and its successors and permitted assigns and shall inure to the benefit of the Department and its successors and assigns.

**4.5. No Third Party Beneficiaries.** Nothing in this Guarantee shall entitle any person other than the Department and its successors and assigns to any claim, cause or action, remedy or right of any kind.

**4.6. Certain Rights, Duties, Obligations and Defenses.** Notwithstanding Sections 1. 1, 1. 2, 1. 3, 3. 1 and 4. 8 hereof, the Guarantor shall have all rights, duties, obligations and defenses available to the Design-Builder under the Comprehensive Agreement relating to waiver, surrender, compromise, settlement, release or termination voluntarily made by the Department, failure to give notice of default to the Design-Builder to the extent required by the Comprehensive Agreement (except to the extent the giving of notice is precluded by bankruptcy or other applicable law), interpretation or performance of terms and conditions of the Comprehensive Agreement, or other defenses available to the Design-Builder under the Comprehensive Agreement except those expressly waived (otherwise than in Section 1. 2) in this Guarantee and defenses available to the Design-Builder as a result of any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. The Guarantor's duties under Section 1.4 above shall be subject to no prior notice or demand except for fourteen (14) days' prior written notice to the Guarantor (except to the extent the giving of notice to the Guarantor is precluded by bankruptcy or other applicable law affecting the Guarantor) in the case of any demand relative to any Guaranteed Obligation not paid or performed when due under the Comprehensive Agreement setting forth the default of the Design-Builder.

**4.7. Mergers, etc.** The Guarantor shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other person or sell, assign, convey, transfer, lease or otherwise dispose of any material portion of its properties and assets to any person(s) or group of affiliated persons, unless:

4.7.1. in case of a merger, the Guarantor shall be the continuing corporation; or

4.7.2. the person (if other than the Guarantor) formed by such consolidation or into which the Guarantor merges or the person(s) (or group of affiliated persons) that acquires by sale, assignment, conveyance, transfer, lease or other disposition a material portion of the properties and assets of the Guarantor shall expressly agree to perform all of the obligations of the Guarantor hereunder, as a joint and several obligor with the Guarantor if the Guarantor continues to exist after such transaction, by a writing in form and substance reasonably satisfactory to the Department.

Notwithstanding the agreement by any such person to perform the obligation of the Guarantor hereunder, the Guarantor shall not be released from its obligations hereunder unless released by operation of law or by consent.

**4.8. Survival.** The obligations and liabilities of the Guarantor hereunder shall survive termination of any or all of the Comprehensive Agreement or the Design-Builder's rights thereunder due to default by the Design-Builder thereunder; *provided, however*, that for the avoidance of doubt, such obligations and liabilities are only in respect of the Guaranteed Obligations.

**4.9. Headings.** The Article and Section headings in this Guarantee are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

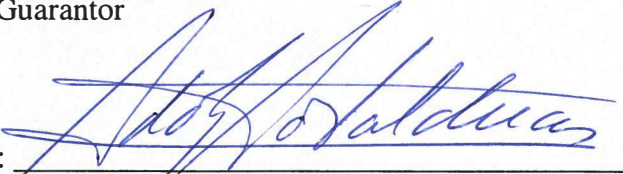
**4.10. Counterparts.** This Guarantee may be executed in one or more counterparts, all of which shall constitute one and the same instrument.

**4.11. Entire Agreement.** This Guaranty constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. The Guarantor agrees to execute, have acknowledged and delivered to the Department such other and further instruments as may be reasonably required by the Department to effectuate the intent and purpose hereof.

*[Signature page(s) follow]*

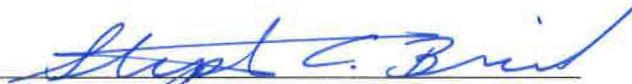
**IN WITNESS WHEREOF**, the Guarantor has caused this Guarantee to be executed as of the day and year first above written by its duly authorized officer.

**DRAGADOS, S.A.,**  
as Guarantor

By:   
Name: Adolfo Valderas  
Title: Chief Executive Officer

Receipt of this Guarantee is hereby acknowledged and accepted effective as of the day and year first written above.

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

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

## GUARANTEE

This **GUARANTEE** (this “Guarantee”) is made as of April 3, 2019, by HOCHTIEF USA, Inc., a corporation organized under the laws of Delaware (the “Guarantor”), to the Virginia Department of Transportation (the “Department”), an agency of the Commonwealth of Virginia, with respect to the obligations of 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, pursuant to that certain Comprehensive Agreement for the I-64 Hampton Roads Bridge-Tunnel Expansion Project, dated as of April 3, 2019, by and between the Department and the Design-Builder (as amended, altered, varied or supplemented, the “Comprehensive Agreement”). The Comprehensive Agreement is hereby incorporated by reference herein, and capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Comprehensive Agreement. The Guarantor is an Affiliate of the Design-Builder. The Guarantor acknowledges that financial and direct benefits will accrue to the Guarantor by virtue of entering into this Guarantee and that such benefits constitute adequate consideration therefor.

This Guarantee is provided pursuant to Section 10.3 of the Comprehensive Agreement.

### 1. GUARANTEE

**1.1. Guarantee.** The Guarantor guarantees to the Department, absolutely, unconditionally and irrevocably, that each and every payment and performance obligation and other liability of the Design-Builder now or hereafter arising under the Comprehensive Agreement, including but not limited to all obligations and liabilities of the Design-Builder under any and all representations and warranties made or given by the Design-Builder under the Comprehensive Agreement, under any and all liquidated or stipulated damage provisions of the Comprehensive Agreement and under any and all indemnities given by the Design-Builder under the Comprehensive Agreement (collectively the “Guaranteed Obligations”) will be paid promptly and satisfied in full when due and without offset, and performed and completed when required. This is a continuing guaranty of payment and performance of the Guaranteed Obligations.

**1.2. Obligations.** Except as otherwise provided in Section 4.6, the obligations of the Guarantor hereunder are absolute and unconditional and independent of the Guaranteed Obligations and shall remain in full force and effect until all the Guaranteed Obligations have been paid, performed and completed in full, irrespective of any assignment, amendment, modification or termination of the Comprehensive Agreement.

**1.3. No Exoneration.** Except as otherwise provided in Section 4.6 below, the obligations of the Guarantor hereunder shall not be released, discharged, exonerated or impaired in any way by reason of:

1.3.1. any failure of the Design-Builder to retain or preserve any rights against any person, except to the extent the Design-Builder is required to do so under the terms of the Comprehensive Agreement and such failure prejudices Guarantor;



1.3.2. the lack of prior enforcement by the Design-Builder of any rights against any person and the lack of exhaustion of any bond, letter of credit or other security held by the Design-Builder, except to the extent the Design-Builder is required to do so under the terms of the Comprehensive Agreement and such failure prejudices Guarantor;

1.3.3. the lack of authority or standing of the Design-Builder or the dissolution of the Guarantor or the Design-Builder;

1.3.4. with or without notice to the Guarantor, the amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or failure to assert, any portion of the Guaranteed Obligations, the Comprehensive Agreement, any rights or remedies of the Department (including rights of offset) against the Design-Builder, or any bond, letter of credit, other guarantee, instrument, document, collateral security or other property given or available to the Department to secure all or any part of the Guaranteed Obligations; *provided* that, notwithstanding the foregoing, the Guarantor shall have available to it any and all defenses relating to the Guaranteed Obligations that may be available to the Design-Builder based on any such amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination or failure to assert voluntarily made by the Department, except defenses available to the Design-Builder under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors and those expressly waived under this Guarantee;

1.3.5. the extension of the time for payment of any amount owing or payable under the Comprehensive Agreement or of the time for performance or completion of any Guaranteed Obligation; *provided, however*, that to the extent the Department grants the Design-Builder an extension of time under the Comprehensive Agreement for performance of any of the obligations of the Design-Builder thereunder, such extension of time shall likewise extend the time for performance by the Guarantor;

1.3.6. the existence now or hereafter of any other guarantee or endorsement by the Guarantor or anyone else of all or any portion of the Guaranteed Obligations;

1.3.7. the acceptance, release, exchange or subordination of additional or substituted security for all or any portion of the Guaranteed Obligations;

1.3.8. the taking of any action or the failure to take any action simply because it would constitute a legal or equitable defense, release or discharge of a surety;

1.3.9. any bankruptcy, arrangement, reorganization or similar proceeding for relief of debtors under federal or state law hereafter initiated by or against the Design-Builder or any of its members;

1.3.10. any full or partial payment or performance of any Guaranteed Obligation which is required to be returned as a result of or in connection with the insolvency, reorganization or bankruptcy of the Design-Builder or any of its members or otherwise;

1.3.11. the rejection of the Comprehensive Agreement in connection with the insolvency, reorganization or bankruptcy of the Design-Builder or any of its members;

1.3.12. an impairment of or limitation on damages otherwise due from the Design-Builder by operation of law as a result of any insolvency, reorganization or bankruptcy proceeding by or against the Design-Builder or any of its members;

1.3.13. failure by the Department to file or enforce a claim against the estate (either in administration, bankruptcy or other proceedings) of the Design-Builder, any of its members, the Guarantor or any other guarantor;

1.3.14. any merger, consolidation or other reorganization to which the Design-Builder or the Guarantor is a party;

1.3.15. any sale or disposition of all or any portion of the Guarantor's direct or indirect ownership in the Design-Builder, or action by the Guarantor or its Affiliates which results in discontinuation or interruption in the business relations of the Design-Builder with the Guarantor (unless another entity acceptable to the Department, in the Department's sole discretion, assumes the Guarantor's liability hereunder); or

1.3.16. the failure of the Department to assert any claim or demand, bring any action or exhaust its remedies against the Design-Builder or any security before proceeding against the Guarantor hereunder after the expiration of applicable notice and cure periods.

**1.4. Enforcement of the Comprehensive Agreement and Guaranteed Obligations.**

1.4.1. Nothing contained herein shall prevent or limit the Department from pursuing any of its rights and remedies under the Comprehensive Agreement. The Department may apply any available moneys, property or security in such manner and amounts and at such times to the payment or reduction or performance of any Guaranteed Obligation as it may elect, and may generally deal with the Design-Builder, the Guaranteed Obligations, such security and property as the Department may see fit. Notwithstanding the foregoing, the Guarantor shall remain bound by this Guarantee.

1.4.2. In the event that Design-Builder defaults on any of the Guaranteed Obligations, the Guarantor shall be obligated to undertake all curative actions (which may include payments relating to the Guaranteed Obligations and/or

performance of the Guaranteed Obligations) within fourteen (14) days (or immediately, in the case of emergency conditions) following notice under Section 4.6 below (to the extent not prohibited thereunder). Thereafter, the Guarantor shall use commercially reasonable efforts to effectuate such curative actions without further notice. If the Guarantor fails to undertake such curative actions in a timely manner, the Department shall have the right to perform or have performed by third parties the necessary curative actions, and the costs thereof shall be borne by the Guarantor. Any payment by the Guarantor to the Department shall be in U.S. dollars.

1.4.3. The Department may bring and prosecute a separate action or actions against the Guarantor to enforce its liabilities hereunder, regardless of whether any action is brought against the Design-Builder and regardless of whether any other person is joined in any such action or actions. Nothing shall prohibit the Department from exercising its rights against the Guarantor, the Design-Builder, any other guarantor of the Guaranteed Obligations, a performance bond or other security, if any, which insures the payment relating to or performance of the Guaranteed Obligations, or any other person simultaneously, or any combination thereof jointly and/or severally. The Department may proceed against the Guarantor from time to time as it sees fit in its sole and absolute discretion; *provided, however*, the Department shall not be entitled to enforce its rights and claims under this Guarantee for a breach of the Guaranteed Obligations to the extent that it has already received payment or discharge or has otherwise been compensated in respect of the same breach of Guaranteed Obligations, including through insurance proceeds or call of any other security that the Department may hold under the Comprehensive Agreement.

## **2. REPRESENTATIONS AND WARRANTIES**

**2.1. Representations and Warranties.** The Guarantor hereby represents and warrants, which shall be continuing representations and warranties until the expiration of the Guarantor's obligations under this Guarantee, that:

2.1.1. Consents. Consent of the Design-Builder to any modification or amendment of the Comprehensive Agreement to which it is a party constitutes knowledge thereof and consent thereto by the Guarantor;

2.1.2. Organization and Existence. The Design-Builder is an unincorporated joint venture duly organized, validly existing and in good standing under the laws of its state of formation. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of Delaware;

2.1.3. Power and Authority. The Guarantor has the full power and authority to execute, deliver and perform this Guarantee, and to own and lease its properties and to carry on its business as now conducted and as contemplated hereby;

2.1.4. Authorization and Enforceability. This Guarantee has been duly authorized, executed and delivered by the Guarantor and constitutes the legal,

valid and binding obligation of the Guarantor, enforceable against it in accordance with the terms hereof, subject as to enforceability of remedies to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating, to or affecting the enforcement of creditors' rights generally, as applicable to the Guarantor, and to general principles of equity;

2.1.5. No Governmental Consents. No authorization, consent or approval of, notice to or filing with, any governmental authority, is required for the execution, delivery and performance by the Guarantor of this Guarantee;

2.1.6. No Conflict or Breach. Neither the execution, delivery or performance by the Guarantor of this Guarantee, nor compliance with the terms and provisions hereof, conflicts or will conflict with or will result in a breach or violation of any material terms, conditions, or provisions of any Laws, regulations and ordinances applicable to the Guarantor or the charter documents, as amended, or bylaws or equivalent governing documents, as amended, of the Guarantor, or any order, writ, injunction or decree of any court or governmental authority against the Guarantor or by which it or any of its properties are bound, or any indenture, mortgage or contract or other agreement or instrument to which the Guarantor is a party or by which it or any of its properties are bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties;

2.1.7. No Proceedings. There are no suits or proceedings pending, or, to the knowledge of the Guarantor, threatened in any court or before any regulatory commission, board or other governmental administrative agency against the Guarantor which could reasonably be expected to have a material adverse effect on the business or operations of the Guarantor, financial or otherwise, or on its ability to fulfill its obligations hereunder;

2.1.8. Contract. The Guarantor is fully aware of and consents to the terms and conditions of the Comprehensive Agreement;

2.1.9. Financial Statements. All financial statements and data that have been given to the Department by the Guarantor with respect to the Guarantor: (i) are complete and correct in all material respects as of the date given; (ii) accurately present in all material respects the financial condition of the Guarantor as of the date thereof; and (iii) have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered thereby;

2.1.10. No Adverse Change. There has been no material adverse change in the financial condition of the Guarantor since the date of the most recent financial statements given to the Department with respect to the Guarantor;

2.1.11. No Default. The Guarantor is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any agreement or instrument to which the Guarantor is a party,

which default may materially and adversely affect the Guarantor's ability to fulfill its obligations hereunder;

2.1.12. Accuracy of Information. All other reports, papers and written data and information given to the Department by the Guarantor with respect to the Guarantor are accurate and correct in all material respects and complete; and

2.1.13. Notice of Change. The Guarantor shall advise the Department in writing of any material adverse change in the business or financial condition of the Guarantor and promptly furnish to the Department such information about the financial condition of the Guarantor as the Department shall reasonably request.

### **3. WAIVERS, SUBROGATION AND SUBORDINATION**

#### **3.1. Waivers.**

3.1.1. The Guarantor hereby unconditionally waives:

- 3.1.1.1. notice of acceptance of this Guarantee or of the intention to act in reliance hereon and of reliance hereon;
- 3.1.1.2. notice of the incurring, contracting, amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or of the failure to assert, any Guaranteed Obligation;
- 3.1.1.3. demand on the Guarantor in the event of default of the Design-Builder under the Comprehensive Agreement (but not the giving of notice to the extent required in Section 4. 6 below);
- 3.1.1.4. any invalidity of the Comprehensive Agreement due to lack of proper authorization of or a defect in execution thereof by the Design-Builder, its purported representatives or agents;
- 3.1.1.5. demand for payment or performance, presentment, protest and notice of nonpayment or dishonor to the Guarantor respecting any Guaranteed Obligation;
- 3.1.1.6. any right of the Guarantor to receive notices to the Design-Builder to which the Guarantor might otherwise be entitled except notice to the extent required in Section 4. 6 below;
- 3.1.1.7. any demand for payment hereunder (but not the giving of notice to the extent required in Section 4. 6 below); and
- 3.1.1.8. any duty on the part of the Department to disclose to the Guarantor any facts the Department may now or hereafter know with regard to the Design-Builder.

3.1.2. The Guarantor also hereby waives any right to require, and the benefit of all laws now or hereafter in effect giving the Guarantor the right to require, any prior enforcement as referred to in Section 1.3.2 above, and the Guarantor agrees that any delay in enforcing or failure to enforce any such rights or in making demand on the Guarantor for the performance of the obligations of the Guarantor under this Guaranty shall not in any way affect the liability of the Guarantor hereunder.

3.1.3. The Guarantor hereby waives, as against the Department or any person claiming under the Department, all rights and benefits which might accrue to the Guarantor by reason of any bankruptcy, arrangement, reorganization or similar proceedings by or against the Design-Builder and agrees that its obligations and liabilities hereunder shall not be affected by any modification, limitation or discharge of the obligations of the Design-Builder that may result from any such proceedings.

3.1.4. Until the Design-Builder shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor hereby agrees not to file, or solicit the filing by others of, any involuntary petition in bankruptcy against the Design-Builder.

**3.2. Subrogation.** Until the Design-Builder shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor shall not (absent the Department's prior written consent) claim or enforce any right of subrogation, reimbursement or indemnity against the Design-Builder, or any other right or remedy which might otherwise arise on account of any payment made by the Guarantor or any act or thing done by the Guarantor on account of or in accordance with this Guarantee.

**3.3. Subordination.**

3.3.1. All existing or future indebtedness of the Design-Builder to the Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as the Design-Builder shall be in default in the performance or payment of any Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by the Design-Builder to the Guarantor without prior written notice to the Department.

3.3.2. In the event that the Department provides written consent pursuant to Section 3.2, the Guarantor shall file all claims against the Design-Builder in any bankruptcy or other proceedings in which the filing of claims is required or permitted by law upon any obligation or indebtedness of the Design-Builder to the Guarantor, and shall have assigned to the Department all of the Guarantor's rights thereunder to the extent of outstanding and unsatisfied Guaranteed Obligations. If the Guarantor does not file any such claim, the Department is authorized as the Guarantor's attorney-in-fact to do so in the Guarantor's name, or in the discretion of the Department, the Department is authorized to assign the claim to, and cause proof of claim to be filed in the name of the Department or its nominee. In all such cases,

whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to the Department or its nominee the full amount payable on the claim in the proceeding before making any payment to the Guarantor, and to the full extent necessary for that purpose, the Guarantor assigns to the Department all of its rights to any payments or distributions to which it otherwise would be entitled. If the amount so paid is in excess of the Guaranteed Obligations covered hereby, the Department shall pay the amount of the excess to the party determined by it to be entitled thereto.

#### **4. MISCELLANEOUS**

##### **4.1. Enforcement of Guarantee.**

4.1.1. The terms and provisions of this Guarantee shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia.

4.1.2. No supplement, amendment, modification, waiver or termination of this Guarantee shall be binding unless executed in writing and duly signed by the Guarantor and the Department. No waiver of any of the provisions of this Guarantee shall be deemed or shall constitute a waiver of any other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No failure on the part of the Department to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise of any other right.

4.1.3. All disputes between the Department and the Guarantor arising under or relating to this Guarantee or its breach shall be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, and any appellate court from any thereof, which shall have exclusive jurisdiction and venue. The Guarantor hereby irrevocably waives the defense of an inconvenient forum to the maintenance of any action or proceedings in such court arising out of or relating to this Guarantee. The Guarantor agrees that a final non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Guarantor agrees and consents to service of process by delivery in the manner and to the address set forth in Section 4.2 below. Nothing in this section shall affect the right of the Department or to serve legal process in any other manner permitted by law.

4.1.4. The rights of the Department hereunder are cumulative and shall not be exhausted by any one or more exercises of said rights against the Guarantor or other guarantors or by any number of successive actions until and unless all Guaranteed Obligations have been fully paid or performed.

4.1.5. The Department acknowledges and agrees that this Guarantee does not and is not intended to impose, in the event the Guarantee is called

upon, any greater obligations upon the Guarantor than are imposed upon the Design-Builder under the Comprehensive Agreement, other than with respect to the Guarantor's obligation hereunder to pay the Department for its reasonable costs and expenses of enforcing this Guarantee.

4.1.6. The Guarantor shall pay to the Department all reasonable out-of-pocket legal fees and other reasonable out-of-pocket costs and expenses (including fees and costs on appeal) it incurs by reason of any permitted enforcement of its rights hereunder, *provided* that it is the prevailing party with respect to a substantial portion of its claim.

4.1.7. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION OR CLAIM WHICH IS BASED ON, OR ARISES OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTEE OR THE TRANSACTIONS CONTEMPLATED BY THIS GUARANTEE.

4.1.8. Notwithstanding anything to the contrary, if at any time payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned upon bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law, the Guarantor shall continue to remain liable therefor.

**4.2. Notices.** All notices, demands or other communications under this Guarantee shall be in writing and shall be sent to each other party, at its address specified below (or such other address as a party may from time to time specify to the other parties by notice given in accordance with this Guarantee), and shall be deemed to have been duly given when actually received by the addressee or when served:

4.2.1. personally;

4.2.2. by independent, reputable, overnight commercial courier; or

4.2.3. 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 E. 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 Guarantor:*

HOCHTIEF USA, Inc.  
375 Hudson Street  
New York, New York 10014  
Attention: Christian Kothe, Managing Director  
Facsimile: (212) 229-6416

*With copies to:*

Flatiron Construction Corp.  
385 Interlocken Crescent Blvd., Suite 900  
Broomfield, Colorado 80021  
Attention: Jeff Turner, Treasurer  
Facsimile: (303) 485-3922

**4.3. Severability.** If any provision of this Guarantee shall for any reason be held invalid or unenforceable, to the fullest extent permitted by law, such invalidity or unenforceability shall not affect any other provisions hereof, but this Guarantee shall be construed as if such invalid or unenforceable provision had never been contained herein.

**4.4. Assignment.** Neither this Guarantee nor any of the rights, interest or obligations hereunder shall be assigned or delegated by the Guarantor without the prior written consent of the Department. The Department may assign this Guarantee, with prior notice but without need for the consent of Guarantor, but only together with an assignment of the Comprehensive Agreement. This Guarantee and all of the provisions hereof shall be binding upon the Guarantor and its successors and permitted assigns and shall inure to the benefit of the Department and its successors and assigns.

**4.5. No Third Party Beneficiaries.** Nothing in this Guarantee shall entitle any person other than the Department and its successors and assigns to any claim, cause or action, remedy or right of any kind.

**4.6. Certain Rights, Duties, Obligations and Defenses.** Notwithstanding Sections 1. 1, 1. 2, 1. 3, 3. 1 and 4. 8 hereof, the Guarantor shall have all rights, duties, obligations and defenses available to the Design-Builder under the Comprehensive Agreement relating to waiver, surrender, compromise, settlement, release or termination voluntarily made by the Department, failure to give notice of default to the Design-Builder to the extent required by the Comprehensive Agreement (except to the extent the giving of notice is precluded by bankruptcy or other applicable law), interpretation or performance of terms and conditions of the Comprehensive Agreement, or other defenses available to the Design-Builder under the Comprehensive Agreement except those expressly waived (otherwise than in Section 1. 2) in this Guarantee and defenses available to the Design-Builder as a result of any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. The Guarantor's duties under Section 1.4 above shall be subject to no prior notice or demand except for fourteen (14) days' prior written notice to the Guarantor (except to the extent the giving of notice to the Guarantor is precluded by bankruptcy or other applicable law affecting the Guarantor) in the case of any demand relative to any Guaranteed Obligation not paid or performed when due under the Comprehensive Agreement setting forth the default of the Design-Builder.

**4.7. Mergers, etc.** The Guarantor shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other person or sell, assign, convey, transfer, lease or otherwise dispose of any material portion of its properties and assets to any person(s) or group of affiliated persons, unless:

4.7.1. in case of a merger, the Guarantor shall be the continuing corporation; or

4.7.2. the person (if other than the Guarantor) formed by such consolidation or into which the Guarantor merges or the person(s) (or group of affiliated persons) that acquires by sale, assignment, conveyance, transfer, lease or other disposition a material portion of the properties and assets of the Guarantor shall expressly agree to perform all of the obligations of the Guarantor hereunder, as a joint and several obligor with the Guarantor if the Guarantor continues to exist after such transaction, by a writing in form and substance reasonably satisfactory to the Department.

Notwithstanding the agreement by any such person to perform the obligation of the Guarantor hereunder, the Guarantor shall not be released from its obligations hereunder unless released by operation of law or by consent.

**4.8. Survival.** The obligations and liabilities of the Guarantor hereunder shall survive termination of any or all of the Comprehensive Agreement or the Design-Builder's rights thereunder due to default by the Design-Builder thereunder; *provided, however*, that for the avoidance of doubt, such obligations and liabilities are only in respect of the Guaranteed Obligations.

**4.9. Headings.** The Article and Section headings in this Guarantee are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

**4.10. Counterparts.** This Guarantee may be executed in one or more counterparts, all of which shall constitute one and the same instrument.

**4.11. Entire Agreement.** This Guaranty constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. The Guarantor agrees to execute, have acknowledged and delivered to the Department such other and further instruments as may be reasonably required by the Department to effectuate the intent and purpose hereof.


*[Signature page(s) follow]*

Execution Version

**IN WITNESS WHEREOF**, the Guarantor has caused this Guarantee to be executed as of the day and year first above written by its duly authorized officer.

**HOCHTIEF USA, INC.,**  
as Guarantor


By:   
Name: Christian Kothe  
Title: Managing Director

By:   
Name: Dr. Lars Petzold  
Title: Managing Director

*[Signature Page to Guarantee of HOCHTIEF USA, INC.]*

Receipt of this Guarantee is hereby acknowledged and accepted effective as of the day and year first written above.

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

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

## GUARANTEE

This **GUARANTEE** (this “Guarantee”) is made as of April 3, 2019, by Vinci Construction, a corporation (*Société par actions simplifiée*) organized under the laws of France (the “Guarantor”), to the Virginia Department of Transportation (the “Department”), an agency of the Commonwealth of Virginia, with respect to the obligations of 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, pursuant to that certain Comprehensive Agreement for the I-64 Hampton Roads Bridge-Tunnel Expansion Project, dated as of April 3, 2019, by and between the Department and the Design-Builder (as amended, altered, varied or supplemented, the “Comprehensive Agreement”). The Comprehensive Agreement is hereby incorporated by reference herein, and capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Comprehensive Agreement. The Guarantor is an Affiliate of the Design-Builder. The Guarantor acknowledges that financial and direct benefits will accrue to the Guarantor by virtue of entering into this Guarantee and that such benefits constitute adequate consideration therefor.

This Guarantee is provided pursuant to Section 10.3 of the Comprehensive Agreement.

### 1. GUARANTEE

**1.1. Guarantee.** The Guarantor guarantees to the Department, absolutely, unconditionally and irrevocably, that each and every payment and performance obligation and other liability of the Design-Builder now or hereafter arising under the Comprehensive Agreement, including but not limited to all obligations and liabilities of the Design-Builder under any and all representations and warranties made or given by the Design-Builder under the Comprehensive Agreement, under any and all liquidated or stipulated damage provisions of the Comprehensive Agreement and under any and all indemnities given by the Design-Builder under the Comprehensive Agreement (collectively the “Guaranteed Obligations”) will be paid promptly and satisfied in full when due and without offset, and performed and completed when required. This is a continuing guaranty of payment and performance of the Guaranteed Obligations.

**1.2. Obligations.** Except as otherwise provided in Section 4.6, the obligations of the Guarantor hereunder are absolute and unconditional and independent of the Guaranteed Obligations and shall remain in full force and effect until all the Guaranteed Obligations have been paid, performed and completed in full, irrespective of any assignment, amendment, modification or termination of the Comprehensive Agreement.

**1.3. No Exoneration.** Except as otherwise provided in Section 4.6 below, the obligations of the Guarantor hereunder shall not be released, discharged, exonerated or impaired in any way by reason of:

1.3.1. any failure of the Design-Builder to retain or preserve any rights against any person, except to the extent the Design-Builder is required to do so under the terms of the Comprehensive Agreement and such failure prejudices Guarantor;

1.3.2. the lack of prior enforcement by the Design-Builder of any rights against any person and the lack of exhaustion of any bond, letter of credit or other security held by the Design-Builder, except to the extent the Design-Builder is required to do so under the terms of the Comprehensive Agreement and such failure prejudices Guarantor;

1.3.3. the lack of authority or standing of the Design-Builder or the dissolution of the Guarantor or the Design-Builder;

1.3.4. with or without notice to the Guarantor, the amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or failure to assert, any portion of the Guaranteed Obligations, the Comprehensive Agreement, any rights or remedies of the Department (including rights of offset) against the Design-Builder, or any bond, letter of credit, other guarantee, instrument, document, collateral security or other property given or available to the Department to secure all or any part of the Guaranteed Obligations; *provided* that, notwithstanding the foregoing, the Guarantor shall have available to it any and all defenses relating to the Guaranteed Obligations that may be available to the Design-Builder based on any such amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination or failure to assert voluntarily made by the Department, except defenses available to the Design-Builder under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors and those expressly waived under this Guarantee;

1.3.5. the extension of the time for payment of any amount owing or payable under the Comprehensive Agreement or of the time for performance or completion of any Guaranteed Obligation; *provided, however*, that to the extent the Department grants the Design-Builder an extension of time under the Comprehensive Agreement for performance of any of the obligations of the Design-Builder thereunder, such extension of time shall likewise extend the time for performance by the Guarantor;

1.3.6. the existence now or hereafter of any other guarantee or endorsement by the Guarantor or anyone else of all or any portion of the Guaranteed Obligations;

1.3.7. the acceptance, release, exchange or subordination of additional or substituted security for all or any portion of the Guaranteed Obligations;

1.3.8. the taking of any action or the failure to take any action simply because it would constitute a legal or equitable defense, release or discharge of a surety;

1.3.9. any bankruptcy, arrangement, reorganization or similar proceeding for relief of debtors under federal or state law hereafter initiated by or against the Design-Builder or any of its members;

1.3.10. any full or partial payment or performance of any Guaranteed Obligation which is required to be returned as a result of or in connection with the insolvency, reorganization or bankruptcy of the Design-Builder or any of its members or otherwise;

1.3.11. the rejection of the Comprehensive Agreement in connection with the insolvency, reorganization or bankruptcy of the Design-Builder or any of its members;

1.3.12. an impairment of or limitation on damages otherwise due from the Design-Builder by operation of law as a result of any insolvency, reorganization or bankruptcy proceeding by or against the Design-Builder or any of its members;

1.3.13. failure by the Department to file or enforce a claim against the estate (either in administration, bankruptcy or other proceedings) of the Design-Builder, any of its members, the Guarantor or any other guarantor;

1.3.14. any merger, consolidation or other reorganization to which the Design-Builder or the Guarantor is a party;

1.3.15. any sale or disposition of all or any portion of the Guarantor's direct or indirect ownership in the Design-Builder, or action by the Guarantor or its Affiliates which results in discontinuation or interruption in the business relations of the Design-Builder with the Guarantor (unless another entity acceptable to the Department, in the Department's sole discretion, assumes the Guarantor's liability hereunder); or

1.3.16. the failure of the Department to assert any claim or demand, bring any action or exhaust its remedies against the Design-Builder or any security before proceeding against the Guarantor hereunder after the expiration of applicable notice and cure periods.

**1.4. Enforcement of the Comprehensive Agreement and Guaranteed Obligations.**

1.4.1. Nothing contained herein shall prevent or limit the Department from pursuing any of its rights and remedies under the Comprehensive Agreement. The Department may apply any available moneys, property or security in such manner and amounts and at such times to the payment or reduction or performance of any Guaranteed Obligation as it may elect, and may generally deal with the Design-Builder, the Guaranteed Obligations, such security and property as the Department may see fit. Notwithstanding the foregoing, the Guarantor shall remain bound by this Guarantee.

1.4.2. In the event that Design-Builder defaults on any of the Guaranteed Obligations, the Guarantor shall be obligated to undertake all curative actions (which may include payments relating to the Guaranteed Obligations and/or



performance of the Guaranteed Obligations) within fourteen (14) days (or immediately, in the case of emergency conditions) following notice under Section 4.6 below (to the extent not prohibited thereunder). Thereafter, the Guarantor shall use commercially reasonable efforts to effectuate such curative actions without further notice. If the Guarantor fails to undertake such curative actions in a timely manner, the Department shall have the right to perform or have performed by third parties the necessary curative actions, and the costs thereof shall be borne by the Guarantor. Any payment by the Guarantor to the Department shall be in U.S. dollars.

1.4.3. The Department may bring and prosecute a separate action or actions against the Guarantor to enforce its liabilities hereunder, regardless of whether any action is brought against the Design-Builder and regardless of whether any other person is joined in any such action or actions. Nothing shall prohibit the Department from exercising its rights against the Guarantor, the Design-Builder, any other guarantor of the Guaranteed Obligations, a performance bond or other security, if any, which insures the payment relating to or performance of the Guaranteed Obligations, or any other person simultaneously, or any combination thereof jointly and/or severally. The Department may proceed against the Guarantor from time to time as it sees fit in its sole and absolute discretion; *provided, however*, the Department shall not be entitled to enforce its rights and claims under this Guarantee for a breach of the Guaranteed Obligations to the extent that it has already received payment or discharge or has otherwise been compensated in respect of the same breach of Guaranteed Obligations, including through insurance proceeds or call of any other security that the Department may hold under the Comprehensive Agreement.

## **2. REPRESENTATIONS AND WARRANTIES**

**2.1. Representations and Warranties.** The Guarantor hereby represents and warrants, which shall be continuing representations and warranties until the expiration of the Guarantor's obligations under this Guarantee, that:

2.1.1. Consents. Consent of the Design-Builder to any modification or amendment of the Comprehensive Agreement to which it is a party constitutes knowledge thereof and consent thereto by the Guarantor;

2.1.2. Organization and Existence. The Design-Builder is an unincorporated joint venture duly organized, validly existing and in good standing under the laws of its state of formation. The Guarantor is a corporation (*Société par actions simplifiée*) duly organized, validly existing and in good standing under the laws of France;

2.1.3. Power and Authority. The Guarantor has the full power and authority to execute, deliver and perform this Guarantee, and to own and lease its properties and to carry on its business as now conducted and as contemplated hereby;

2.1.4. Authorization and Enforceability. This Guarantee has been duly authorized, executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with the terms hereof, subject as to enforceability of remedies to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating, to or affecting the enforcement of creditors' rights generally, as applicable to the Guarantor, and to general principles of equity;

2.1.5. No Governmental Consents. No authorization, consent or approval of, notice to or filing with, any governmental authority, is required for the execution, delivery and performance by the Guarantor of this Guarantee;

2.1.6. No Conflict or Breach. Neither the execution, delivery or performance by the Guarantor of this Guarantee, nor compliance with the terms and provisions hereof, conflicts or will conflict with or will result in a breach or violation of any material terms, conditions, or provisions of any Laws, regulations and ordinances applicable to the Guarantor or the charter documents, as amended, or bylaws or equivalent governing documents, as amended, of the Guarantor, or any order, writ, injunction or decree of any court or governmental authority against the Guarantor or by which it or any of its properties are bound, or any indenture, mortgage or contract or other agreement or instrument to which the Guarantor is a party or by which it or any of its properties are bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties;

2.1.7. No Proceedings. There are no suits or proceedings pending, or, to the knowledge of the Guarantor, threatened in any court or before any regulatory commission, board or other governmental administrative agency against the Guarantor which could reasonably be expected to have a material adverse effect on the business or operations of the Guarantor, financial or otherwise, or on its ability to fulfill its obligations hereunder;

2.1.8. Contract. The Guarantor is fully aware of and consents to the terms and conditions of the Comprehensive Agreement;

2.1.9. Financial Statements. All financial statements and data that have been given to the Department by the Guarantor with respect to the Guarantor: (i) are complete and correct in all material respects as of the date given; (ii) accurately present in all material respects the financial condition of the Guarantor as of the date thereof; and (iii) have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered thereby;

2.1.10. No Adverse Change. There has been no material adverse change in the financial condition of the Guarantor since the date of the most recent financial statements given to the Department with respect to the Guarantor;

2.1.11. No Default. The Guarantor is not in default in the performance, observance or fulfillment of any of the obligations, covenants or

conditions set forth in any agreement or instrument to which the Guarantor is a party, which default may materially and adversely affect the Guarantor's ability to fulfill its obligations hereunder;

2.1.12. Accuracy of Information. All other reports, papers and written data and information given to the Department by the Guarantor with respect to the Guarantor are accurate and correct in all material respects and complete; and

2.1.13. Notice of Change. The Guarantor shall advise the Department in writing of any material adverse change in the business or financial condition of the Guarantor and promptly furnish to the Department such information about the financial condition of the Guarantor as the Department shall reasonably request.

### **3. WAIVERS, SUBROGATION AND SUBORDINATION**

#### **3.1. Waivers.**

3.1.1. The Guarantor hereby unconditionally waives:

- 3.1.1.1. notice of acceptance of this Guarantee or of the intention to act in reliance hereon and of reliance hereon;
- 3.1.1.2. notice of the incurring, contracting, amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or of the failure to assert, any Guaranteed Obligation;
- 3.1.1.3. demand on the Guarantor in the event of default of the Design-Builder under the Comprehensive Agreement (but not the giving of notice to the extent required in Section 4. 6 below);
- 3.1.1.4. any invalidity of the Comprehensive Agreement due to lack of proper authorization of or a defect in execution thereof by the Design-Builder, its purported representatives or agents;
- 3.1.1.5. demand for payment or performance, presentment, protest and notice of nonpayment or dishonor to the Guarantor respecting any Guaranteed Obligation;
- 3.1.1.6. any right of the Guarantor to receive notices to the Design-Builder to which the Guarantor might otherwise be entitled except notice to the extent required in Section 4. 6 below;
- 3.1.1.7. any demand for payment hereunder (but not the giving of notice to the extent required in Section 4. 6 below); and
- 3.1.1.8. any duty on the part of the Department to disclose to the Guarantor any facts the Department may now or hereafter know with regard to the Design-Builder.

3.1.2. The Guarantor also hereby waives any right to require, and the benefit of all laws now or hereafter in effect giving the Guarantor the right to require, any prior enforcement as referred to in Section 1.3.2 above, and the Guarantor agrees that any delay in enforcing or failure to enforce any such rights or in making demand on the Guarantor for the performance of the obligations of the Guarantor under this Guaranty shall not in any way affect the liability of the Guarantor hereunder.

3.1.3. The Guarantor hereby waives, as against the Department or any person claiming under the Department, all rights and benefits which might accrue to the Guarantor by reason of any bankruptcy, arrangement, reorganization or similar proceedings by or against the Design-Builder and agrees that its obligations and liabilities hereunder shall not be affected by any modification, limitation or discharge of the obligations of the Design-Builder that may result from any such proceedings.

3.1.4. Until the Design-Builder shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor hereby agrees not to file, or solicit the filing by others of, any involuntary petition in bankruptcy against the Design-Builder.

**3.2. Subrogation.** Until the Design-Builder shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor shall not (absent the Department's prior written consent) claim or enforce any right of subrogation, reimbursement or indemnity against the Design-Builder, or any other right or remedy which might otherwise arise on account of any payment made by the Guarantor or any act or thing done by the Guarantor on account of or in accordance with this Guarantee.

**3.3. Subordination.**

3.3.1. All existing or future indebtedness of the Design-Builder to the Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as the Design-Builder shall be in default in the performance or payment of any Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by the Design-Builder to the Guarantor without prior written notice to the Department.

3.3.2. In the event that the Department provides written consent pursuant to Section 3.2, the Guarantor shall file all claims against the Design-Builder in any bankruptcy or other proceedings in which the filing of claims is required or permitted by law upon any obligation or indebtedness of the Design-Builder to the Guarantor, and shall have assigned to the Department all of the Guarantor's rights thereunder to the extent of outstanding and unsatisfied Guaranteed Obligations. If the Guarantor does not file any such claim, the Department is authorized as the Guarantor's attorney-in-fact to do so in the Guarantor's name, or in the discretion of the Department, the Department is authorized to assign the claim to, and cause proof of claim to be filed in the name of the Department or its nominee. In all such cases,

whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to the Department or its nominee the full amount payable on the claim in the proceeding before making any payment to the Guarantor, and to the full extent necessary for that purpose, the Guarantor assigns to the Department all of its rights to any payments or distributions to which it otherwise would be entitled. If the amount so paid is in excess of the Guaranteed Obligations covered hereby, the Department shall pay the amount of the excess to the party determined by it to be entitled thereto.

#### **4. MISCELLANEOUS**

##### **4.1. Enforcement of Guarantee.**

4.1.1. The terms and provisions of this Guarantee shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia.

4.1.2. No supplement, amendment, modification, waiver or termination of this Guarantee shall be binding unless executed in writing and duly signed by the Guarantor and the Department. No waiver of any of the provisions of this Guarantee shall be deemed or shall constitute a waiver of any other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No failure on the part of the Department to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise of any other right.

4.1.3. All disputes between the Department and the Guarantor arising under or relating to this Guarantee or its breach shall be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, and any appellate court from any thereof, which shall have exclusive jurisdiction and venue. The Guarantor hereby irrevocably waives the defense of an inconvenient forum to the maintenance of any action or proceedings in such court arising out of or relating to this Guarantee. The Guarantor agrees that a final non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Guarantor agrees and consents to service of process by delivery in the manner and to the address set forth in Section 4.2 below. Nothing in this section shall affect the right of the Department or to serve legal process in any other manner permitted by law.

4.1.4. The rights of the Department hereunder are cumulative and shall not be exhausted by any one or more exercises of said rights against the Guarantor or other guarantors or by any number of successive actions until and unless all Guaranteed Obligations have been fully paid or performed.

4.1.5. The Department acknowledges and agrees that this Guarantee does not and is not intended to impose, in the event the Guarantee is called

upon, any greater obligations upon the Guarantor than are imposed upon the Design-Builder under the Comprehensive Agreement, other than with respect to the Guarantor's obligation hereunder to pay the Department for its reasonable costs and expenses of enforcing this Guarantee.

4.1.6. The Guarantor shall pay to the Department all reasonable out-of-pocket legal fees and other reasonable out-of-pocket costs and expenses (including fees and costs on appeal) it incurs by reason of any permitted enforcement of its rights hereunder, *provided* that it is the prevailing party with respect to a substantial portion of its claim.

4.1.7. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION OR CLAIM WHICH IS BASED ON, OR ARISES OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTEE OR THE TRANSACTIONS CONTEMPLATED BY THIS GUARANTEE.

4.1.8. Notwithstanding anything to the contrary, if at any time payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned upon bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law, the Guarantor shall continue to remain liable therefor.

**4.2. Notices.** All notices, demands or other communications under this Guarantee shall be in writing and shall be sent to each other party, at its address specified below (or such other address as a party may from time to time specify to the other parties by notice given in accordance with this Guarantee), and shall be deemed to have been duly given when actually received by the addressee or when served:

4.2.1. personally;

4.2.2. by independent, reputable, overnight commercial courier; or

4.2.3. 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 E. 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 Guarantor:*

Vinci Construction  
5, cours Ferdinand-de-Lesseps  
92500 Rueil-Malmaison, France  
Attention: Chief Financial Officer  
Facsimile: +331 47 16 46 26

*With copies to:*

Vinci Construction Grands Projets  
5, cours Ferdiand-de-Lesseps  
92500 Rueil-Malmaison, France  
Attention: Chief Financial Officer  
Facsimile: +331 47 16 33 91

Vinci Construction Grands Projets  
5, cours Ferdiand-de-Lesseps  
92851 Rueil-Malmaison Cedex, France  
Attention: General Counsel  
Facsimile: +331 47 16 33 91

Dodin Campenon Bernard  
ZAC du Petit Le Roy  
9, rue Ernest Flammarion  
94550 Chevilly Larue, France  
Attention: Strategy and Development Director  
Facsimile: +331 47 16 33 91

**4.3. Severability.** If any provision of this Guarantee shall for any reason be held invalid or unenforceable, to the fullest extent permitted by law, such invalidity or unenforceability shall not affect any other provisions hereof, but this Guarantee shall be construed as if such invalid or unenforceable provision had never been contained herein.

**4.4. Assignment.** Neither this Guarantee nor any of the rights, interest or obligations hereunder shall be assigned or delegated by the Guarantor without the prior written consent of the Department. The Department may assign this Guarantee, with prior notice but without need for the consent of Guarantor, but only together with an assignment of the Comprehensive Agreement. This Guarantee and all of the provisions hereof shall be binding upon the Guarantor and its successors and permitted assigns and shall inure to the benefit of the Department and its successors and assigns.

**4.5. No Third Party Beneficiaries.** Nothing in this Guarantee shall entitle any person other than the Department and its successors and assigns to any claim, cause or action, remedy or right of any kind.

**4.6. Certain Rights, Duties, Obligations and Defenses.** Notwithstanding Sections 1. 1, 1. 2, 1. 3, 3. 1 and 4. 8 hereof, the Guarantor shall have all rights, duties, obligations and defenses available to the Design-Builder under the Comprehensive Agreement relating to waiver, surrender, compromise, settlement, release or termination voluntarily made by the Department, failure to give notice of default to the Design-Builder to the extent required by the Comprehensive Agreement (except to the extent the giving of notice is precluded by bankruptcy or other applicable law), interpretation or performance of terms and conditions of the Comprehensive Agreement, or other defenses available to the Design-Builder under the Comprehensive Agreement except those expressly waived (otherwise than in Section 1. 2) in this Guarantee and defenses available to the Design-Builder as a result of any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. The Guarantor's duties under Section 1.4 above shall be subject to no prior notice or demand except for fourteen (14) days' prior written notice to the Guarantor (except to the extent the giving of notice to the Guarantor is precluded by bankruptcy or other applicable law affecting the Guarantor) in the case of any demand relative to any Guaranteed Obligation not paid or performed when due under the Comprehensive Agreement setting forth the default of the Design-Builder.

**4.7. Mergers, etc.** The Guarantor shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other person or sell, assign, convey, transfer, lease or otherwise dispose of any material portion of its properties and assets to any person(s) or group of affiliated persons, unless:

4.7.1. in case of a merger, the Guarantor shall be the continuing corporation; or

4.7.2. the person (if other than the Guarantor) formed by such consolidation or into which the Guarantor merges or the person(s) (or group of affiliated persons) that acquires by sale, assignment, conveyance, transfer, lease or other disposition a material portion of the properties and assets of the Guarantor shall expressly agree to perform all of the obligations of the Guarantor hereunder, as a joint and several obligor with the Guarantor if the Guarantor continues to exist after such transaction, by a writing in form and substance reasonably satisfactory to the Department.



Notwithstanding the agreement by any such person to perform the obligation of the Guarantor hereunder, the Guarantor shall not be released from its obligations hereunder unless released by operation of law or by consent.

**4.8. Survival.** The obligations and liabilities of the Guarantor hereunder shall survive termination of any or all of the Comprehensive Agreement or the Design-Builder's rights thereunder due to default by the Design-Builder thereunder; *provided, however*, that for the avoidance of doubt, such obligations and liabilities are only in respect of the Guaranteed Obligations.

**4.9. Headings.** The Article and Section headings in this Guarantee are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

**4.10. Counterparts.** This Guarantee may be executed in one or more counterparts, all of which shall constitute one and the same instrument.

**4.11. Entire Agreement.** This Guaranty constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. The Guarantor agrees to execute, have acknowledged and delivered to the Department such other and further instruments as may be reasonably required by the Department to effectuate the intent and purpose hereof.

*[Signature page(s) follow]*



**IN WITNESS WHEREOF**, the Guarantor has caused this Guarantee to be executed as of the day and year first above written by its duly authorized officer.

**VINCI CONSTRUCTION,**  
as Guarantor

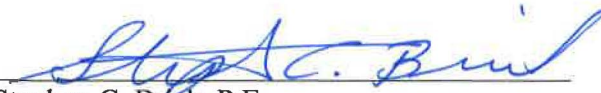
By: \_\_\_\_\_

Name: Yann Grolimund

Title: Chief Financial Officer

Receipt of this Guarantee is hereby acknowledged and accepted effective as of the day and year first written above.

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

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