



REQUEST FOR PROPOSALS (RFP) AND CONTRACT

RFP Number: 1-000-22-0007

ISSUE DATE:	12/20/2022
ISSUING AND USING AUTHORITY:	Virginia Passenger Rail Authority (VPRA)
SERVICES PROCURED:	Program Management Services
DESCRIPTION:	Comprehensive Program Management Services in support of VPRA's Transforming Rail in Virginia (TRV) Program
TERM/PERFORMANCE PERIOD:	Initial phase/contract shall be five (5) years, renewable for five (5) successive one (1) year renewals. The consultant selected under this procurement will provide TRV Program Management staff augmentation services and program level support in assisting VPRA to manage and oversee the TRV program.
DUE DATE:	Proposals will be received until 2:00 PM, February 2, 2023
MULTIPLE AWARDS:	NO
ACCESS TO SOLICITATION:	This solicitation and any addenda are publicly posted and may be accessed at any time at: Procurement / Current RFPs - VPRA (vapassengerrailauthority.org)
SUBMIT PROPOSALS TO:	proposals@vpra.virginia.gov

*****NOTICE*****

The VPRA is requesting proposals from firms to provide as-needed program management support. All requests for information and questions regarding this procurement should be directed to: John Kostyniuk, Director of Procurement, john.kostyniuk@vpra.virginia.gov. Questions concerning this RFP must be received via email no later than: 01/13/2023 @ 5:00PM. All email communications shall contain "RFP 1-000-22-0007" in the subject line followed by the Offeror's name.

Proposals must be received electronically by VPRA's office of procurement on or before the date and time designated on this solicitation. Hard-copy and facsimile submissions will not be accepted in lieu of electronic submissions. Offerors are responsible for the timely delivery of their proposal. Proposals received after the official date and time will be rejected. The official date and time used in receipt of responses is the timestamp associated when emails are received at proposals@vpra.virginia.gov

VIRGINIA PASSENGER RAIL AUTHORITY
RFP No. 1-000-22-0007-VPRA

CONSULTANT INFORMATION AND ACKNOWLEDGEMENT

A. Contact Information

Company Name: _____

Address: _____

Phone: () _____ Fax Number: () _____

DUNS NO.: _____ FEI/FIN NO.: _____

Website: _____

B. Offeror's Point of Contact (POC)

Name: _____

Title: _____

Phone (W): _____

Phone (C): _____

Email: _____

C. Small and Diverse Business Information

(Please check all that apply)

Federal Classifications:

DBE: () YES () NO CERTIFICATION#: _____

ISSUING BODY: _____

Out of State firm that is certified as a DBE by their home state's Unified Certification Program:

() YES () NO

Commonwealth of Virginia Classifications (SWaMs):

Small/Micro Business: () YES () NO

Women-Owned Business: () YES () NO

Minority-Owned Business: () YES () NO

Service-Disabled Veteran
Owned Business: () YES () NO

DSBSD CERTIFIED: () YES () NO CERTIFICATION#: _____

Other Classifications:

Certified small, disadvantaged or veteran-owned businesses recognized by any other local, state, or federal government entity not listed above: () YES () NO

CERTIFICATION#: _____ ISSUING BODY: _____

D. Proprietary or Confidential Information

Does your proposal contain proprietary or confidential information? () YES () NO

If so, *complete and attach Appendix 1 with your proposal*

E. Addenda

Acknowledge your receipt of any addenda that may have been issued under this solicitation.

Addendum # _____

Addendum # _____

Addendum Date ____/____/____

Addendum Date ____/____/____

Addendum # _____

Addendum # _____

Addendum Date ____/____/____

Addendum Date ____/____/____

F. Acknowledgement

In compliance with this RFP and all the conditions imposed herein, Consultant, through its duly authorized representative, offers and agrees to furnish these services in accordance with the proposal.

By, _____
(signature)

(printed name)

Its, _____
(title)

Dated: _____

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EXHIBITS

EXHIBIT 1 SCOPE OF WORK

ATTACHMENTS

ATTACHMENT A GENERAL TERMS AND CONDITIONS (FORM PD 100)
ATTACHMENT B SPECIAL TERMS AND CONDITIONS (FORM PD 210 (FRA/SVC))
ATTACHMENT C INSURANCE REQUIREMENTS
ATTACHMENT D SMALL BUSINESS SUBCONTRACTING PLAN (FORM PD 60)
ATTACHMENT E PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA (FORM PD 44)
ATTACHMENT F MONTHLY SMALL BUSINESS SUBCONTRACTING PLAN REPORT (FORM PD 61)
ATTACHMENT G FEE PROPOSAL (FORM PD 70)

SPECIAL PROVISIONS

SP 01 CRA SPECIAL PROVISION INVOLVING PROPERTY AND FACILITIES OWNED, CONTROLLED OR UTILIZED BY CSX TRANSPORTATION, INC., NORFOLK SOUTHERN RAILWAY COMPANY, AND THE NATIONAL RAILROAD PASSENGER CORPORATION

APPENDICES

APPENDIX 1 EXCEPTIONS TO RFP DOCUMENTS (FORM PD 20)
APPENDIX 2 DISCLOSURE OF PROPRIETARY/CONFIDENTIAL INFORMATION (FORM PD 25)

1.0 PROCUREMENT OVERVIEW; OBJECTIVE

- 1.1 The Virginia Passenger Rail Authority (VPRA) is issuing this Request for Proposal (RFP) to solicit proposals from qualified single entities or a team of firms to establish a contract through competitive negotiation for the procurement of as-needed program management services (collectively, the “Program Management Services”) in support of VPRA’s capital and infrastructure improvement program known as Transforming Rail in Virginia (TRV).
- 1.2 The objective of the procurement is to provide VPRA with a consultant capable of delivering a comprehensive range of Program Management Services which will, at a minimum, include: capital program management support; capital projects development and delivery support; real estate and asset management support; passenger rail service planning and performance monitoring support; and grant management support.
- 1.3 Offerors are advised that being awarded this Contract will likely preclude the successful Offeror from participation in any follow-on contracts pertaining to specific TRV project initiatives.

2.0 LEGAL AUTHORITY

- 2.1 VPRA was created by the Virginia General Assembly on July 1, 2020, pursuant to Va. Code § 33.2-287, *et seq.*, and established as “a body corporate and political subdivision of the Commonwealth....” Pursuant to its enabling legislation, VPRA administers all capital expansion projects, infrastructure, and land acquisitions related to the TRV program, which will double Amtrak state-supported service and increase Virginia Railway Express (VRE) service in Virginia over the next decade.
- 2.2 VPRA undertakes its procurements in accordance with the *Virginia Passenger Rail Authority Procurement Rules* dated May 23, 2022 (Procurement Rules). Offerors shall read and familiarize themselves with the Procurement Rules and the submittal of a Proposal shall constitute acceptance of the Procurement Rules for purposes of this procurement.
- 2.3 VPRA is exempt from the requirements of the Virginia Public Procurement Act (VPPA) (Va. Code § 2.2-4300 *et seq.*) and this procurement is not subject to or otherwise governed by the VPPA.

3.0 SCOPE OF WORK

- 3.1 The service requirements associated with the RFP are detailed in the attached Exhibit 1 (Scope of Work) which is incorporated by reference and made a part of this RFP:

4.0 PROCUREMENT SCHEDULE

- 4.1 VPRA currently anticipates conducting the procurement of the Contract in accordance with the following list of milestones leading to award of the contract.

Event/Milestone	Date/Date Range
Issue Date of RFP	12/20/2022
Pre-Proposal Meeting	01/10/2023
Due Date for Questions/Request for Clarification	01/13/2023

Proposal Due Date	02/02/2023
Informal Interviews (if applicable)	February 2023
Negotiations	February 2023
Contract Award	March 2023

- 4.2 VPRA reserves the right to modify the foregoing schedule as it finds necessary in its sole discretion.

5.0 VPRA'S POINT OF CONTACT; COMMUNICATIONS

- 5.1 VPRA's sole point of contact (POC) for matters related to this RFP shall be John Kostyniuk, Director of Procurement. VPRA's POC is the only individual authorized to discuss this RFP with any interested parties, including Offerors. All communications with VPRA's POC about the Project or this RFP shall be by electronic mail addressed to: john.kostyniuk@vpri.virginia.gov.
- 5.2 VPRA disclaims the accuracy of information derived from any source other than VPRA's POC, and the use of any such information is at the sole risk of the Offeror.
- 5.3 Written communications to VPRA's POC from Offerors shall contain "RFP 1-000-22-0007" in the subject line followed by the Offeror's name.

6.0 QUESTIONS AND CLARIFICATIONS

- 6.1 All questions and requests for clarification regarding this RFP shall be submitted to VPRA's POC via electronic mail. No requests for additional information, clarification or any other communication should be directed to any other individual. NO ORAL REQUESTS FOR INFORMATION WILL BE ACCEPTED.
- 6.2 All questions or requests for clarification must be submitted by the due date and time set forth in the RFP. Questions or clarifications requested after such time will not be answered, unless VPRA elects, in its sole discretion, to do so.
- 6.3 VPRA will review all questions and/or requests for clarification received and respond in writing through an Addendum. If it deems appropriate, VPRA, in its sole discretion, may also modify the RFP Documents through an Addendum. Offerors shall base their Proposals on the terms and conditions of the RFP Documents included in the latest issued Addendum.
- 6.4 VPRA will not be bound by any oral communications, written interpretations, or clarifications that are not set forth in an Addendum.
- 6.5 VPRA, in its sole discretion, shall have the right to seek clarifications from any Offeror to fully understand information contained in the Proposal.

7.0 PRE-PROPOSAL CONFERENCE

- 7.1 VPRA will be hosting a Pre-Proposal Conference at **10:00 AM EST on January 10, 2023** at the following location:

Truist Place
919 East Main St.
Virginia Room, 4th Floor
Richmond VA 23219.

- 7.2 Attendance at the pre-proposal conference is optional; however, Offerors who intend to submit a proposal are highly encouraged to be present. Offerors unable to attend in-person will be able to attend via webinar. Registration to attend the pre-proposal conference via webinar is required by January 9, 2023 at 11:59 PM. Offerors can register for the webinar at <https://teams.microsoft.com/registration/PRECONFRegistrationVPRA>. No registration is required for in-person attendance.
- 7.3 Any questions and answers that are presented during the conference or any changes to the solicitation resulting from this conference will be issued in a written Addendum to the solicitation

8.0 RULES OF CONTACT

- 8.1 As of the date of issuance of this RFP, no Offeror or representative thereof shall contact any employee, board member or representative of VPRA concerning the solicitation, except for the POC as specifically permitted in this RFP.
- 8.2 No Offeror or representative thereof may communicate with another Offeror or any representative thereof in regard to the RFP or their respective Proposals. However, notwithstanding the foregoing, Offerors may communicate with subcontractors that have been identified by multiple Offerors (and not deemed ineligible to participate in this RFP), provided Offerors establish a protocol to ensure that the prospective subcontractor will not impermissibly share information between Offerors or otherwise allow for collusions or the appearance thereof.
- 8.3 The foregoing prohibitions do not apply to (i) discussions unrelated to the RFP; or (ii) public discussions regarding the RFP at any VPRA-sponsored industry workshops and meetings.
- 8.4 Any Offeror engaging in prohibited communications may be disqualified at the sole discretion of VPRA.

9.0 FEDERAL FUNDING AND REQUIREMENTS

- 9.1 VPRA anticipates receiving federal financial assistance on the Project in the form of a grant from the Federal Railroad Administration (FRA). Accordingly, this procurement shall be subject to all requirements associated with FRA federal financial assistance.

10.0 QUALIFICATIONS; LICENSURE

- 10.1 Certain aspects of the Scope of Work for this RFP may involve the limited performance of professional services. Each business entity (prime and sub-consultants) on the proposed team that is practicing or offering to practice professional services in Virginia, including, but not limited to, those practicing or offering to practice engineering, surveying, hydrologic and hydraulic analysis, geotechnical analysis and landscape architecture, shall be required to possess the appropriate commercial professional registration and license details for all main and branch offices proposed for this solicitation, as well as appropriate individual registration and license details for those professional occupations.

11.0 SMALL BUSINESS PARTICIPATION

- 11.1 It is the policy of VPRA to actively promote the inclusion of small businesses within its procurements and whenever practicable, to achieve at least **10%** participation by such

entities on each procurement. This procurement includes a small business participation goal of **10%**.

- 11.2 In accordance with the Procurement Rules, all Offerors are required to submit a Small Business Subcontracting Plan (**Form PD 60**), which shall indicate the Offeror's anticipated utilization of firms certified as a small business by the Department of Small Business and Supplier Diversity (DSBSD). For purposes of this RFP, "small business" shall include small, and any subcategory of small, small women-owned, small minority-owned, or small service-disabled veteran-owned businesses (collectively defined herein as a "SWaM").
- 11.3 Offerors are encouraged to take all necessary and reasonable steps to ensure that SWaM firms have the maximum opportunity to compete for and perform services on the Contract. A list of DSBSD-certified SWaM firms is maintained on the DSBSD web site (www.sbsd.virginia.gov) under the DBE/SWAM Certification Directory link. VPRA recommends that Offerors contact SWaM firms to solicit their interest, capability, and qualifications.
- 11.4 No Offeror or subcontractor shall be considered a small business unless certified as such by DSBSD by the due date for receipt of proposals. Offerors and Sub-offerors that are eligible for certification by DSBSD (as a small business or otherwise) but are not able to obtain certification at time of the due date for proposals are nonetheless encouraged to pursue the appropriate credentialing as this may be of benefit to the firm(s) on future procurements.
- 11.5 It is prohibited for an Offeror and a SWaM firm to agree that the SWaM will refrain from providing quotations for performance of work to other Offerors.

12.0 PRE-SUBMITTAL OBLIGATIONS

- 12.1 Each Offeror shall be solely responsible for examining the RFP Documents, including any Addenda issued to such documents, and all conditions that may in any way affect its Proposal or the performance of the work on the Contract, including but not limited to the following:
 - 1. examining and carefully studying the RFP Documents, including any Addenda and other information or data identified in the RFP Documents;
 - 2. evaluating their organizational capacity to fulfill the requirements of the RFP in a timely and professional manner;
 - 3. addressing all potential issues and/or impacts involving third parties and ensuring all such issues and/or impacts have been included in the Offeror's Proposal;
 - 4. becoming familiar with and satisfying itself as to all federal, state, and local laws and regulations that may affect the cost, progress, or performance of its work on the Contract;
 - 5. determining that the RFP Documents are sufficient to indicate and convey understanding of all terms and conditions for the performance of Offeror's work on the Contract; and
 - 6. notifying VPRA in writing, in accordance with the processes set forth in Section 6.0, of all conflicts, errors, ambiguities, or discrepancies that Offeror discovers in the RFP Documents which require correction and/or clarification.

- 12.2 Any failure to fulfill these responsibilities is at the Offeror's sole risk and no relief will be provided by VPRA.

13.0 EXCEPTIONS

- 13.1 Offerors seeking to list exceptions to the RFP terms and conditions must complete the Exception to RFP Documents form (**Form PD 20**) which is due at time of proposal submittal. RFP terms required by law or policy or otherwise included in fulfillment of third-party contractual obligations cannot be waived or negotiated by VPRA.

14.0 DESIGNATION OF CONFIDENTIAL INFORMATION

- 14.1 All Proposals submitted to VPRA become the property of VPRA and are subject to the disclosure requirements of the Virginia Freedom of Information Act (VFOIA) (Va. Code § 2.2-3700 *et seq.*). Offerors are advised to familiarize themselves with the provisions of VFOIA and its exemptions to ensure that documents identified as confidential will not be subject to disclosure under VFOIA. In no event shall the Commonwealth or VPRA be liable to an Offeror for the disclosure of all or a portion of a Proposal submitted pursuant to this request.
- 14.2 If a responding Offeror has special concerns about information that it desires to make available to VPRA but that it believes constitutes a trade secret, proprietary information, or other confidential information exempted from disclosure, then such responding Offeror should specifically and conspicuously designate that information as such in its Proposal and state in writing the relevant VFOIA exemption and why protection of that information is needed in accordance with the Disclosure of Proprietary/Confidential Information form (**Form PD 25**).
- 14.3 Blanket designations that do not identify the specific information shall not be acceptable and may be cause for VPRA to treat the entire Proposal as public information. Nothing contained in this provision shall modify or amend requirements and obligations imposed on VPRA by applicable law, and the applicable law(s) shall control in the event of a conflict between the procedures described above and any applicable law(s).
- 14.4 If VPRA receives a request for public disclosure of all or any portion of a Proposal identified as confidential information, VPRA, whenever practicable, will attempt to notify the Offeror of the request, providing an opportunity for such Offeror to assert in writing claimed exemptions under the VFOIA or other Commonwealth law. Notwithstanding the foregoing, VPRA will come to its own determination whether or not the requested materials are exempt from disclosure.

15.0 PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

15.1 *General Requirements*

1. To be considered for selection, Offerors must submit a complete written response to this RFP to: proposals@vpra.virginia.gov.
2. Proposals must be received by **2:00 PM EST, February 2, 2023**.
3. Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in the VPRA requiring prompt submission of missing information and/or giving a lowered evaluation of the Proposal. Proposals that are substantially incomplete or lack key information may be rejected by VPRA at its discretion.

4. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the Proposal should be numbered. The Proposal should contain a table of contents which cross-references the RFP requirements. Information which the Offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the Proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
5. Proposals should be prepared simply and economically, providing straightforward concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Elaborate brochures and other representations beyond that sufficient to present a complete and effective proposal are not required and will not be utilized in the evaluation of the Proposal. VPRA wants to remind Offerors to be mindful about size limits when sending electronic Proposals to proposals@vpri.virginia.gov. VPRA can accept files up to 150 MB in size. If the response exceeds 150 MB, it is recommended that the file(s) be compressed and sent as an attachment or zip file, if possible. VPRA will only accept a downloadable link if the response cannot be compressed.
6. As used in this RFP, the terms "must", "shall", "should" and "may" identify the degree to which requirements are critical. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labelled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful but are not necessary. Depending on the overall response to the RFP, some individual "must" and "shall" items may not be fully satisfied, but it is the intent to satisfy most, if not all, "must" and "shall" requirements. The inability of an Offeror to satisfy a "must" or "shall" requirement does not automatically remove that Offeror from consideration; however, it may seriously affect the overall rating of the Offeror's Proposal. Once the Offeror and VPRA have entered into the Contract, the terms "must", "shall", "should" and "may" where used in those portions of the RFP incorporated into the Contract shall have their ordinary meaning.

15.2 *Specific Requirements*

1. Proposals should be as thorough and detailed as possible so that VPRA may properly evaluate the Offeror's capabilities to provide the required services.
2. Offerors are required to submit the following items in order for their Proposal to be considered complete:

TAB 1: General (non-scoring)

The Offeror shall include the following documents as part of their submittal requirements under this tab:

- a. **the RFP Cover Sheet, (Form PD 07)** shall be completely filled out and signed;
- b. **Proof of Authority to Transact Business in Virginia, (Form PD 44);**
- c. **Exceptions to RFP Documents (Form PD 20)** (if applicable);
- d. **Disclosure of Proprietary/Confidential Information (Form PD 25)** (if applicable); and

- e. copies of all registrations and licenses for main and branch offices, and copies of individual licenses for project staff as issued by the Department of Professional and Occupational Regulation and such other applicable bodies.

To the extent Subofferor(s) are included in an Offeror's Proposal, items b. and e. above should also be submitted for each Subofferor.

TAB 2: Qualifications and Experience of Firm

The Offeror must describe the qualifications and experience and demonstrate its ability to successfully complete the various services described in **Exhibit 1**, Scope of Work. The Offeror shall provide all the following information concerning its company, and Subofferors:

- a. expertise and experience of the firm relative to the Scope of Work. Include expertise with major rail and transportation infrastructure programs, including examples of jurisdictional coordination in Virginia, North Carolina, and the District of Columbia.
- b. a detailed statement indicating the organizational structure under which the firm proposes to conduct business. If more than one firm is involved in the Proposal, state the type of arrangement between the firms, the percentage of work to be performed by each, and a list of previous projects in which the firms have previously collaborated.
 - i. If the Offeror is a joint venture, partnership, or other consortium, provide a copy of the agreement between the constituent entities. If such agreement has not yet been executed, provide a copy of the anticipated key terms of the agreement. The agreement or the key terms must include, at a minimum, the percentages of ownership of each constituent entity, roles of the various entities, a stated commitment to execute an agreement prior to submission of a Proposal, and the provisions concerning joint and several liability stated in subsection ii. below.
 - ii. If the Offeror is a joint venture, partnership, or other consortium, each constituent entity of Offeror must agree to be jointly and severally liable for all obligations under the Contract.
- c. a list of no more than five (5) project references within the past 10 years to include name, address, telephone number, project name/number, and total project cost. Emphasis should be placed on references that will highlight the Offeror's experience and which demonstrate the Offeror's successful completion of service requirements similar in nature to this RFP.
- d. disclosure of any professional disciplinary judgments or actions taken against the Offeror or the Offeror's principles by any professional regulatory body.
- e. disclosure of the conditions surrounding any contract (or portion thereof) entered into by Offeror over the past five (5) years that has been terminated for cause, or which required completion by another party. Describe the reasons for termination and the amounts involved, and claims lost or won regarding the termination.

- f. identification of any legal issues that must be resolved by Offeror to permit Offeror to carry out its obligations if awarded the Contract. If there are no such legal issues, affirmatively state that there are none. This information is to be provided as a narrative explanation.

TAB 3: Qualifications and Experience of Program Staffing

The Offeror shall identify and describe the skills and qualifications of Key Personnel available to perform the services set forth in the Scope of Work. VPRA recognizes that due to the open-ended nature of the Contract that will be issued as a result of this RFP, Offerors will not be able to guarantee that all of the individuals identified in the Proposal will be available for assignment when a specific Annual Work Plan (AWP) is executed, as set forth in Section 18 below. The Offeror must therefore demonstrate that it has sufficient personnel with the various types of skills needed to staff the AWP as needed. The Offeror shall provide the following information concerning its company, sub-consultants, and personnel qualifications:

- a. A list of the Key Personnel including Subofferors who could be assigned to fulfill the services identified in the Scope of Work. Give the relevant experience record of each and include resumes and certifications.
- b. How you propose assigning responsibilities and coordination of the disciplines involved.
- c. A list of no more than three (3) professional references for each Key Personnel to include name, address, telephone number, project, and total project cost.

TAB 4: Methodology / Approach for Providing Services

The Offeror must provide a detailed description of its understanding of the services to be provided with descriptions of the approach and procedures employed on similar procurements. Additional required elements shall include the following:

- a. the Offeror must describe the process it will follow to respond to an AWP and implement the work. Include reporting hierarchy and roles of staff and Subofferors.
- b. a description of the firm's risk management and mitigation strategies relevant to the duties and responsibilities described in the Scope of Work.
- c. a description of Offeror's quality control procedures and how they will be deployed towards the successful completion of the duties and responsibilities described in the Scope of Work.
- d. procedures for managing programs/projects with particular emphasis on scheduling, costs, and on time delivery.
- e. any innovative program management strategies that will be relevant to this procurement.

Where applicable, the Offeror may identify and describe relevant support services that will be available to VPRA in support of fulfillment of the Scope of Work.

TAB 5: Organizational Capacity

The Offeror shall describe its human and financial resources and discuss any issues which might positively or negatively impact its ability to fulfill the services described in the Scope of Work. Additional required elements shall include the following:

- a. disclosure of the location of Offeror's headquarters and primary office from where the Program Management Services will be performed.
- b. disclosure of Offeror's current workload in Virginia, and specifically within the offices from where the Program Management Services will be performed.
- c. disclosure of a plan for effectively managing resources to efficiently support VPRA's TRV program. The Offeror shall describe its ability to quickly respond to TRV program needs, schedule requirements, and funding availability, as well as the ability to readily provide staffing and resources.

TAB 6: Small Business Utilization/Status

The Offeror shall submit a Small Business Subcontracting Plan (**Form PD 60**) and indicate its planned utilization of DSBSD-certified SWaMs on the resulting Contract. The Offeror shall also indicate its status as a DSBSD-certified SWaM in accordance with the instructions set forth in Form PD 60.

TAB 7: Staffing Plan and Fee Schedule

The Offeror shall identify all proposed staff positions consistent with the requirements set forth in Exhibit 1 (Scope of Work) and provide the proposed Hourly Wage Rate, Overhead Rate, and Annual Percentage Rate Increase using Attachment G (**Form PD 70**). Final pricing/rates will be addressed in the negotiation phase.

16.0 EVALUATION CRITERIA

16.1 Proposals will be evaluated and scored in accordance with the following criteria:

Description	Score
<i>Qualifications and Experience of Firm (Tab 2):</i> Overall qualifications of the Offeror and the expertise with major rail and transportation infrastructure programs including examples of jurisdictional coordination in Virginia, North Carolina, and the District of Columbia.	15 points
<i>Staffing (Tab 3): Qualifications and Experience of Program Staff</i> The skills and qualifications of Key Personnel available to perform the various services described in the Scope of Work.	25 points
<i>Methodology/Approach for Providing Services (Tab 4):</i> Soundness of the plan and creativity of approach towards the work; demonstrated understanding of the work and the needs of VPRA.	30 points
<i>Organizational Capacity (Tab 5):</i> Offeror's ability to fully staff the AWP's and timely perform the deliverables given its current resources.	15 points

<i>Small Business Utilization (Tab 6):</i> Offeror's plan to utilize firms certified as SWaM by DSBSD; Offeror's status as a SWaM. Full points are awarded for Offeror's meeting or exceeding the stated 10% contract goal, with partial points available for Offeror's that include small business participation below the stated 10% contract goal.	5 Points
<i>Staffing Plan and Fee Schedule (Tab 7):</i> Offeror's ability to deliver services effectively and efficiently in relation to market rates and other Offeror's proposals; fees are reasonable and appropriate.	5 Points
<i>Quality of Proposal:</i> Overall quality and organization of the proposal; Offeror's ability to address each RFP criterion in a clear and concise manner and in conformance with the RFP instructions and forms.	5 Points
Total	100 points

17.0 INFORMAL INTERVIEWS

- 17.1 Offerors may be asked to participate in one or more informal interviews, which may be repetitive, and may include each such Offeror giving an oral presentation of its Proposal. Informal interviews are designed to provide an opportunity for two or more selected Offerors to clarify or elaborate on the corresponding proposal. This is only a fact-finding and explanation session and does not include negotiation.
- 17.2 Informal interviews are at VPRA's option and may or may not be conducted. If selected for an informal interview, VPRA will provide the Offeror with the date and time it is to appear. All informal interviews will be held in person at VPRA's Richmond office. Whenever feasible, VPRA will in its sole discretion accommodate any request by an Offeror to modify the date and/or time established for their informal interview; however, no accommodation will be made with respect to the location of the informal interview.

18.0 NEGOTIATION, AND AWARD OF THE CONTRACT

- 18.1 After receipt and evaluation of all proposals, VPRA will conduct negotiations with the Offeror or Offerors deemed to be fully qualified and best suited among those submitting proposals, including the negotiation of any terms and conditions proposed by VPRA to which the selected Offeror took exception in writing at the time it submitted its Proposal. After negotiations have been conducted with each Offeror so selected, VPRA will select the Offeror, which, in its opinion, has submitted the best proposal and provides the **Best Value (price being considered but not determinative)**, and shall award the contract to that Offeror, subject to the provisions of Section 17.4.
- 18.2 Should VPRA determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
- 18.3 The award document will be a contract incorporating by reference all the requirements, terms and conditions of the RFP, the successful Offeror's Proposal, and any negotiated exceptions to the RFP Documents.
- 18.4 Notice of the award will be published on VPRA's website and remain available for public viewing for at least ten (10) days: [Procurement - VPRA \(vapassengerrailauthority.org\)](http://Procurement - VPRA (vapassengerrailauthority.org)).

19.0 CONTRACT EXECUTION/ANNUAL WORK PLANS

- 19.1 Upon award of the Contract, VPRA will deliver the negotiated Contract Documents to the successful Offeror(s), who shall execute and deliver such copy to VPRA within seven (7) days of receipt.
- 19.2 VPRA will issue an Annual Work Plan (AWP) to the successful Offeror(s) under the Contract. No minimum quantity of work is guaranteed during the term of the Contract, and only those services which are ordered pursuant to the AWP will be compensated.
- 19.3 No work shall be performed by the successful Offeror(s) under the Contract until the successful Offeror(s) has been issued an executed Notice to Proceed and an AWP has been executed.

20.0 REPORTING AND DELIVERY REQUIREMENTS

- 20.1 **Meetings and Reviews.** Upon execution of the Contract, VPRA shall hold an initial conference with the Offeror(s) at a place and time selected by VPRA for the purpose of reviewing the Offeror's schedules, procedures, and methods, and to clarify ambiguities that may exist. The Offeror's principal officer and others requested by VPRA shall attend the conference. VPRA may request additional meetings and reviews during the Contract term to evaluate vendor performance and provide feedback.
- 20.2 **Annual Work Plans.** VPRA will administer this contract through AWP's to be executed by the parties. The AWP will describe the work for the upcoming year and establish anticipated budget for the Work on an annual basis. The service deliverables shall be described in detail within the AWP along with Offeror's timeframe for performance. An AWP will be prepared by the Offeror each year and approved by VPRA on a fiscal-year basis (July 1 to June 30). The first AWP will be from the date of issuance of the Notice to Proceed through June 30, 2024, and due to VPRA no later than fifteen (15) calendar days after the Contract execution. Offeror's time spent developing AWP's cannot be charged to the VPRA.
- 20.3 **Progress Reports.** Offerors must meet all due dates within the agreed AWP's. To provide feedback to VPRA concerning this requirement, the Offeror shall submit monthly progress reports providing detailed information on the status of the work effort on each of the various deliverables within the AWP's. The progress reports shall include total authorized funds and expended funds to date. It shall summarize all work efforts in the reporting period, including personnel and hourly utilization. It shall also discuss any anticipated difficulties and proposed resolution.
- 20.4 **Small Business Utilization Reporting.** The Offeror shall provide documentation to VPRA demonstrating Offeror's use of SWaM businesses in accordance with the Offeror's Small Business Subcontracting Plan (**Form PD 60**). The Offeror shall use the Monthly Small Business Subcontracting Plan Report (**Form PD 61**), or other form approved by VPRA to report amounts paid to SWaMs. Form PD 61 or other approved form shall be submitted with the monthly progress reports addressed above.

21.0 APPLICABLE COST PRINCIPLES; ACCOUNTING REQUIREMENTS

- 21.1 This Contract will be performed and audited in accordance with 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, which provisions are incorporated herein by reference. To be eligible for reimbursement, the Offeror's and Sub-offerors costs must (1) be incurred in accordance with the terms of an agreed AWP; (2) be in accordance with the final approved Fee Schedule; and (3) comply with cost principles set forth in 2 C.F.R. Part 200. All Offerors submitting Proposals (prime consultants, joint ventures and sub-consultants) must have internal control systems in place that meet federal requirements for accounting. These systems must comply with

requirements of 2 C.F.R. Part 200 and be sufficient to exclude unallowable cost items from Contract invoicing to VPRA.

22.0 ORGANIZATIONAL CONFLICTS OF INTEREST

- 22.1 Matters involving real or perceived organizational conflicts of interest (OCI) will be administered in accordance with VPRA's Organizational Conflict of Interest Policy (the "OCI Policy") which is available on the VPRA website.
- 22.2 Offerors are notified that prior or existing contractual obligations between a company and a federal or state agency relative to the RFP or VPRA's programs may give rise to an OCI. Each Offeror shall independently assess potential OCI and require its proposed team members to identify real and apparent OCI, with particular emphasis on that which provides a real or perceived unfair competitive advantage relative to this procurement. In accordance with the OCI Policy, Offerors shall promptly disclose to VPRA all real or apparent OCI to VPRA's Director of Procurement. In instances where an Offeror is unclear as to whether a particular circumstance may be considered a real or apparent OCI, it must seek a determination from VPRA in accordance with the OCI Policy.
- 22.3 VPRA shall have sole discretion as it relates to determinations involving OCI on this RFP. Any firm determined to have an OCI that cannot be neutralized, mitigated, or otherwise waived (when determined to be in the public interest), shall not be allowed to participate in the procurement. Failure to abide by VPRA's determination and mitigation plan, if applicable, may result in a Proposal being declared non-responsive.
- 22.4 If an OCI is discovered after award of the Contract, then the successful Offeror must make an immediate and full written disclosure to VPRA, including a description of the action taken to avoid, neutralize or mitigate the conflict. If it is determined that the successful Offeror was aware, or should have been aware, of an OCI prior to award of the Contract and did not disclose the conflict to VPRA, VPRA may terminate the Contract for default and/or exercise any other remedies available.
- 22.5 The following entities (the "Ineligible Firms") have prior and/or existing contractual obligations with VPRA or other third parties and have been deemed ineligible to participate in this procurement as either an Offeror or Subofferor in accordance with the OCI Policy.

Michael Baker International; and
Patrick Engineering Inc.

The foregoing determination does not affect future VPRA procurements. Offerors are also advised that this list is not exhaustive and that a firm not currently included within the Ineligible Firms may still be prohibited from participating in this RFP pursuant to the provisions of the OCI Policy.

23.0 DURATION OF PROPOSAL

- 23.1 Unless removed by the Offeror in accordance with the Procurement Rules, the Proposal shall be binding upon the Offeror for ninety (90) days following the due date for proposal submittal. If not withdrawn by Offeror at that time, the Proposal shall remain effective until an award is made or the solicitation is canceled.

24.0 PROCUREMENT DECISION APPEALS

- 24.1 Any Offeror who desires to file a procurement decision appeal (other than matters involving OCI) must do so in accordance with sections 7.3, 7.4, and 7.5 of the Procurement Rules. Procurement decision appeals will be administered in accordance with the Procurement Rules.

25.0 NO ASSUMPTION OF LIABILITY

- 25.1 VPRA assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. Such costs shall be borne solely by each Offeror and its team members.
- 25.2 In no event shall VPRA be bound by, or liable for, any obligations with respect to the RFP until such time (if at all) a contract, in form and substance satisfactory to VPRA, has been executed and authorized by VPRA and then, only to the extent set forth therein.

26.0 RESERVATION OF RIGHTS

- 26.1 In connection with this procurement, VPRA reserves to itself all rights (which rights shall be exercisable by VPRA in its sole discretion) available to it under applicable law, including without limitation, the following, with or without cause and with or without notice:
1. The right to cancel, withdraw, postpone or extend this RFP in whole or in part at any time prior to the execution by VPRA of the Contract, without incurring any obligations or liabilities.
 2. The right to issue a new RFP.
 3. The right to reject at any time any and all submittals, responses, and Proposals received.
 4. The right to modify all dates set or projected in this RFP.
 5. The right to suspend and terminate the procurement process for the solicitation, at any time.
 6. The right to waive or permit corrections to data submitted with any response to this RFP until such time as VPRA declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed.
 7. The right to issue Addenda, supplements, and modifications to this RFP.
 8. The right to permit submittal of addenda and supplements to data previously provided with any response to this RFP until such time as VPRA declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed.
 9. The right to hold meetings and conduct discussions and correspondence with one or more of the Offerors responding to this RFP to seek an improved understanding of the responses to this RFP.
 10. The right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to the RFP, including the right to seek clarifications from Offerors.
 11. The right to permit Offerors to add or delete firms and/or Key Personnel until such time as VPRA declares in writing that a particular stage or phase of its review has been completed and closed.
 12. The right to add or delete Offeror responsibilities from the information contained in this RFP.

13. The right to waive deficiencies, informalities and irregularities in a Proposal, to accept and review a non-conforming Proposal, or to seek clarifications or supplements to a Proposal.
14. The right to disqualify any Offeror that changes its submittal without VPRA approval.
15. The right to change the method of award at any time prior to submission of the proposals.
16. The right to respond to all, some, or none of the inquiries, questions and/or request for clarifications received relative to the RFP.

27.0 COMPLIANCE WITH LAW IN VIRGINIA

- 27.1 Failure to comply with the law in regard to those legal requirements in Virginia (whether federal or state) regarding the Offeror's ability to lawfully offer and perform any services proposed or related to the RFP may be cause for rejection of an Offeror's Proposal, in the sole and reasonable discretion of VPRA, and in that event an Offeror's Proposal submittal may be returned without any consideration for selection of contract award.

28.0 ETHICS IN PUBLIC CONTRACTING

- 28.1 By submitting their proposals, Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their Proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

29.0 REPRESENTATIONS

- 29.1 The Offeror hereby represents and warrants that (1) as of the date hereof, and on and as of the date of the provision of goods or services contemplated herein, the Offeror is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; and (2) the Offeror has the full right, power and authority and has taken all necessary action under the laws of its jurisdiction of organization to authorize it to execute and deliver a Contract, to consummate the transactions contemplated hereby and in the Contract and to perform its obligations thereunder.
- 29.2 The Offeror hereby agrees to furnish to the VPRA any and all certificates of governmental authorities and/or officers or directors of the Offeror that the VPRA may reasonably require in order to confirm the due authorization and execution of the Proposal and the Contract and the Offeror's right, title and authority to perform its obligations under the Contract.

30.0 MANDATORY USE OF FORMS; MODIFICATION OF TERMS

- 30.1 Failure to submit a proposal on the official VPRA or state form provided for that purpose may be a cause for rejection of the Proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, VPRA reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject such a proposal.

31.0 RFP DOCUMENTS

- 31.1 The documents included within this RFP shall consist of the RFP cover page, these RFP terms, as well as any attachments, exhibits, special provisions, appendices, and addenda.

- 31.2 Addenda to the RFP Documents, if any, will be posted on VPRA's website at <https://vapassengerrailauthority.org/working-with-us/procurement/>. Hard copies of the RFP Documents and Addenda on file will be available upon request. If there is any conflict between the electronic format and hard copy of any RFP Documents or addenda, the hard copy on file shall control.

****END OF DOCUMENT****

Exhibit 1
Scope of Work
Request for Proposals 1-000-22-0007
Program Management Services

I. BACKGROUND INFORMATION

VPRA has responsibility for executing the Transforming Rail in Virginia (TRV) major capital programs to enhance passenger rail within Virginia, including the RF&P/I-95 Rail Corridor and the Western Rail Corridor capital improvement programs, administering a portfolio of capital and operating grants, and managing the Commonwealth's intercity passenger rail operations.

A. Transforming Rail in Virginia Capital Programs

The Transforming Rail in Virginia (TRV) program currently includes two (2) main corridors of programmed capital improvements which are described below. VPRA is working with other partners, such as North Carolina Department of Transportation (NCDOT) and Maryland Department of Transportation (MDOT), to collaborate on future passenger expansion and improvements within Virginia and across state borders. Therefore, TRV may include additional corridors of projects in the future.

1. RF&P/I-95 Rail Corridor Program

In December 2019, Virginia Governor Ralph Northam announced a landmark rail agreement between the Commonwealth of Virginia and CSX Corporation (CSX). The Comprehensive Rail Agreement with CSX was finalized on March 26, 2021. Through this agreement, Virginia acquired 384 miles of CSX right-of-way and 223 miles of track in rail corridors paralleling I-95, I-64, and I-85. Development of the specific RF&P/I-95 Rail Corridor projects, representing a \$3.7 billion investment, is broken down into four phases based on the estimated date of completion, as shown in Table 1

In addition to the landmark Comprehensive Agreement with CSX, a series of additional important agreements were executed with TRV program partners in the RF&P/I-95 Rail Corridor including CSX, Amtrak, and Virginia Railway Express (VRE). Together, these agreements provide the construct for how state-supported intercity passenger rail operations are provided in Virginia and they also govern how the TRV's programs of projects in the RF&P/I-95 Rail Corridor are administered, managed, and delivered. The additional agreements executed for the RF&P/I-95 Corridor in early 2021 include:

- Master Engineering Agreements with CSX
- Master Construction Agreements with CSX
- Joint Operating and Maintenance Agreement with CSX
- Passenger Rail Improvement Funding and Partnership Agreement with Amtrak
- Operating Agreement with Amtrak
- Passenger Rail Improvements and Funding Agreement with VRE
- Passenger Rail Operations and Access Agreement with VRE

CSXT conveyed a permanent easement for passenger rail purposes for approximately one-half of the corridor to DRPT on April 14, 2021. The easement will convert to a full conveyance of CSXT's right, title and interest in the property upon completion by VPRA of a boundary survey, and VPRA and CSXT entering into a Deed of Confirmation.

VPRA has several vital funding partners contributing to this significant corridor development including the Federal Railroad Administration and Amtrak. The funding for RF&P/I-95 TRV program is a mixture of Federal, state, and local funds.

Some projects in the RF&P/I-95 Rail Corridor program are being implemented by CSX and others are being implemented directly by VPRA. In addition, VRE is implementing VPRA-funded projects in the same corridor. Table 1 shows projects in the RF&P/I-95 Rail Corridor program by phase including budget, current stage of development, completion date and implementer.

A map of this rail corridor and additional information about the projects within this corridor are available on the VPRA website at [Virginia Passenger Rail Authority \(vpassengerrailauthority.org\)](http://vpassengerrailauthority.org)

In addition to the L'Enfant 4th Track and Station Improvements project being implemented by VRE noted below in Table 1, VRE is also active with many other capital improvement projects within the RF&P Corridor, all of which will require coordination with VPRA due to design and construction dependencies and service impacts. These projects include:

- L'Enfant Station
- Crystal City Station
- Alexandria Station
- Franconia-Springfield Station
- Lorton Station
- Woodbridge Station
- Rippon Station
- Potomac Shores Station (new)
- Quantico Station
- Brooke Station
- Leeland Road Station
- Fredericksburg Station (rehabilitation and improvements)

VRE's capital program also includes other station and facility improvement projects that need to be coordinated with the TRV program. These projects include:

- Rolling Road Station Improvements
- Manassas Park Parking Improvements
- Manassas Station Improvements
- New York Avenue Midday Storage Facility
- Broad Run Yard Expansion
- Crossroads Maintenance and Storage Facility
- Life-Cycle Overhaul and Upgrade Facility

In addition, the following Amtrak-led improvements will also require coordination due to design and construction dependencies and potential temporary service impacts:

- Washington Union Station Sub Basement
- First Street Tunnel
- Crystal City Station

Table 1 – TRV Projects in the RF&P Corridor

PROJECT NAME	BUDGET ¹ (Millions)	FUNDED	CURRENT PROJECT STAGE	COMPLETION DATE	IMPLE- MENTER
Phase 1					
Alexandria 4th Track	\$ 210	Y	Eng	2026	CSX
Franconia to Lorton 3rd Track	\$ 209	Y	Eng	2025	CSX
Franconia-Springfield Bypass	\$ 241	Y	PD	2026	VPRA
Railroad Bridges over Newington Rd.	\$ 36	Y	Eng	2026	CSX
Potomac Creek 3rd Track (Siding A)	\$ 108	Y	PD	2026	CSX
Woodford to Milford 3rd Track (Siding B)	\$ 67	Y	PD	2025	CSX
Hanover 3rd Track (Siding C)	\$ 59	Y	PD	2026	CSX
Phase 2					
L'Enfant 4th Track & Station Improvements	\$ 22	Y	PD	2028	VRE
Long Bridge	\$ 2,039	Y	PD	2030	VPRA
Neabsco Crk to Woodbridge 3rd Track (Siding D)	\$ 91	Y	Inactive	2029	CSX
Aquia Creek 3rd Track South (Siding E)	\$ 53	Y	Inactive	2028	CSX
Crossroads 3rd Track (Siding F)	\$ 93	Y	Inactive	2029	CSX
Phase 3					
Lorton to Route 1 3rd Track	\$ 21	Y	Eng	2026	CSX
Railroad Bridges over Route 1	\$ 57	Y	Eng	2026	CSX
Powell's Creek to Neabsco Creek 3rd Track	TBD	N	Concept	TBD	TBD
Occoquoan River 3rd Track	TBD	N	Concept	TBD	TBD
Phase 4					
Aquia Creek 3rd Track North	TBD	N	Concept	TBD	TBD
Potomac Creek 3rd Track North	TBD	N	Concept	TBD	TBD
Rappahannock River 3rd Track	TBD	N	Concept	TBD	TBD
Total - Funded Projects Only	\$ 3,306				

¹ Budget figures in Table 1 only include the VPRA-funded portion of the projects and do not reflect total project costs.

2. Western Rail Corridor Program

In May 2021, Governor Northam announced that the Commonwealth had reached an agreement with Norfolk Southern Railway to expand passenger rail service to Southwest Virginia. As part of the agreement, Virginia is acquiring approximately 28.5 miles of Norfolk Southern owned right-of-way ("V-Line") from the Salem Crossovers (MP 250.904) in Salem, VA to a location (MP 279.00) in Christiansburg, VA. The acquisition of railroad right-of-way and tracks, along with infrastructure improvements and improved operations, will allow for the expansion of first-rate passenger rail services from Roanoke to Christiansburg. The Comprehensive Rail Agreement between VPRA and Norfolk Southern Railway was signed on January 10, 2022, and financial close took place in July 2022. The TRV Western Rail Corridor program of projects includes required capital improvements on the newly acquired V-Line and extending the V-Line to the New River Valley of Southwest Virginia. Table 2 below shows the TRV projects in the Western Rail Corridor.

Table 2 – TRV Projects in the Western Rail Corridor

PROJECT NAME	BUDGET (Millions)	FULLY FUNDED	CURRENT PROJECT STAGE	COMPLETION DATE	IMPLE- MENTER
Phase 1					
New River Valley Platform & Track Improvements	\$ 74	Y	PD	2026	VPRA
V-Line Tunnel Improvements	\$ 48	Y	PD	2026	VPRA
V-Line Bridge Improvements	\$ 14	Y	PD	2026	VPRA
V-Line Track Upgrades	\$ 22	Y	PD	2026	VPRA
Total - Funded Projects Only	\$ 158				

In addition to the projects listed in Table 2, Norfolk Southern is using \$132 million in VPRA funds to finance capital improvements, capital maintenance, and program maintenance in the Western Rail Corridor; and another \$37 million in VPRA funds to construct approximately 5 miles of new or upgraded track and associated improvements at the Roanoke Rail Yard to streamline passenger rail service alongside Norfolk Southern freight operations.

3. Station Improvements

In addition to the two main corridors of projects described above, VPRA also manages passenger rail station improvements throughout the Commonwealth. Current station improvement projects being developed by VPRA include Ettrick Station and Newport News Station with other improvements to existing stations being considered.

4. TRV Program Development for Additional Passenger Rail Expansion

VPRA also engages in the identification, evaluation and development of prospective capital projects and associated service planning for improvements needed to enhance passenger rail service, including track, stations, signals, and other related rail facilities. For example, VPRA is currently working with partners at the NCDOT and the MDOT to collaborate on future passenger rail expansion and improvements within Virginia and across state borders.

5. TRV Capital Programs Management

The TRV capital programs described above are developed and managed under the direction of VPRA's Chief Operating Officer (COO). The COO's organizational structure is depicted in Figure A below which shows filled and unfilled but planned VPRA staff positions.

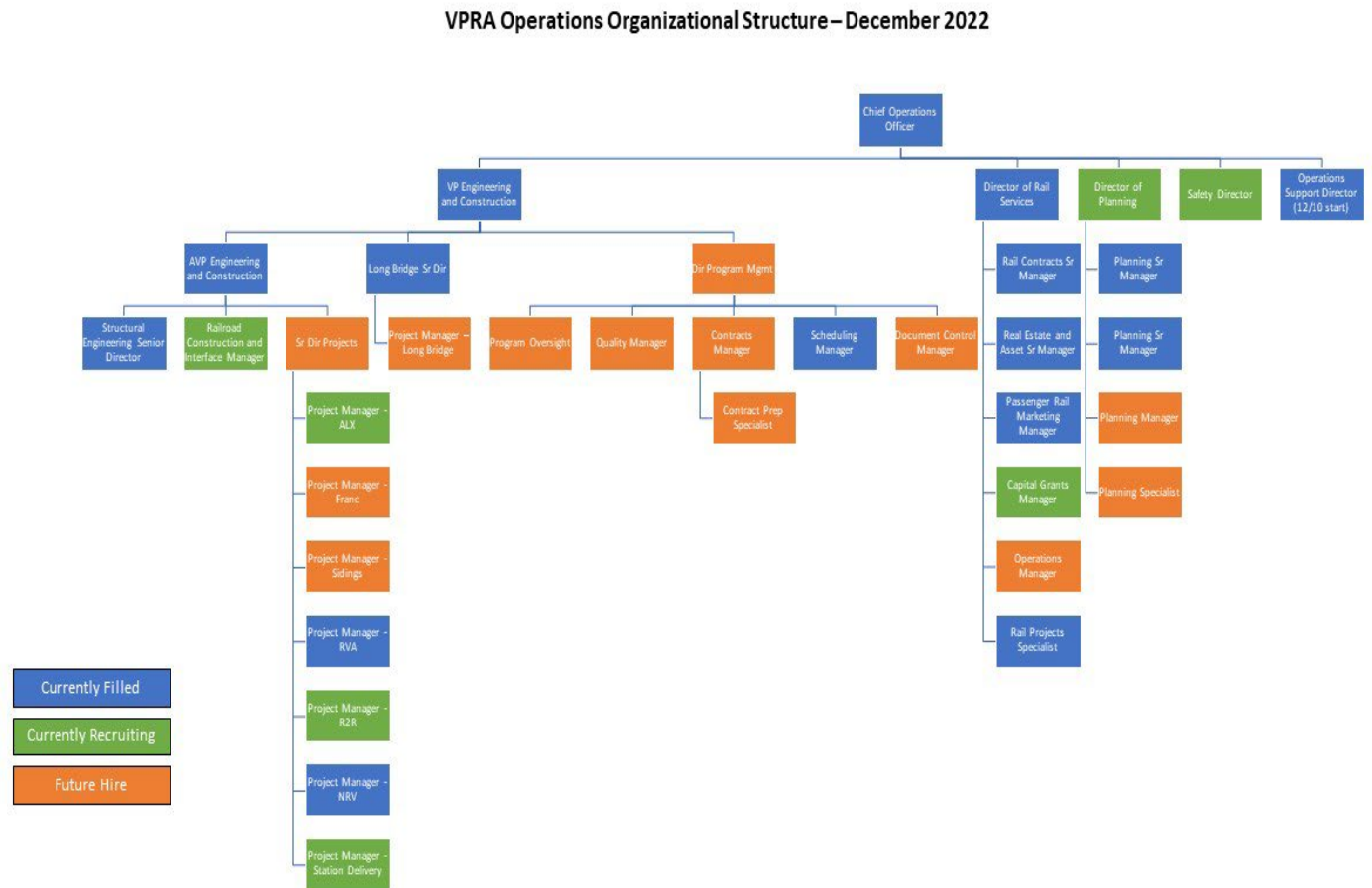
Projects being implemented directly by VPRA, including the Long Bridge and Franconia Bypass, will have VPRA staff and project-specific engineering and construction contractors procured and dedicated to delivery of those projects. Projects being implemented by CSX and VRE will require VPRA oversight and coordination through a mixture of VPRA staff, general planning contractors, general engineering contractors and the program management Consultant.

In accordance with best practices and Federal guidance, VPRA has developed a Program Management Plan for the RF&P/I-95 Rail Corridor program that includes the following subplans:

- Real Estate Acquisition Plan (RAMP)
- Risk and Contingency Management Plan
- Quality Management Plan
- Annual Program Milestone Plan

A program management plan for the Western Rail Corridor is under development and will be similar in scope and structure to the plan for the RF&P/I-95 Rail Corridor.

Figure A – VPRA Operations Organizational Structure



B. Capital Grants

VPRA intends to develop a competitive capital grant program in which state funding is provided to a third party (such as a Class I Railroad, VRE or a local government) for design and construction of eligible passenger rail projects. As the grantor, VPRA will establish project eligibility and performance criteria, solicit grant applications and be responsible for all grant making and grantee oversight functions associated with these grants.

C. Operations

1. Passenger Rail Service

One of the core functions of VPRA is to provide intercity passenger rail service in Virginia. VPRA contracts with Amtrak to deliver this Virginia state-supported service. VPRA is responsible for

intercity passenger rail service planning, ridership analysis, marketing, and performance monitoring. Additional service planned as a result of the TRV capital improvement programs include the following:

- Doubling the number of Virginia Amtrak trains,
- Providing nearly hourly Amtrak service between Richmond and Washington, D.C.,
- Increasing VRE service along the I-95 corridor,
- Laying the foundation for Southeast High Speed Rail (SEHSR) through the acquisition of the abandoned S-Line that runs from Petersburg into North Carolina, and
- Preserving an existing freight corridor between Doswell and Clifton Forge for future east-west passenger service.

2. Real Estate and Asset Management

VPRA is also responsible for the management of capital rail assets, including real estate assets, acquired, and owned by VPRA. CSXT conveyed a permanent easement for passenger rail purposes for approximately one-half of the corridor to DRPT on April 14, 2021. The easement will convert to a full conveyance of CSXT's right, title and interest in the property upon completion by VPRA of a boundary survey, and VPRA and CSXT entering into a Deed of Confirmation.

Maintenance work for track and right of way acquired by VPRA is currently performed by the Class 1 Railroads at VPRA expense based on inspections the Class 1 Railroads perform. A comprehensive asset management strategy with supporting processes is needed to identify, schedule, budget and oversee necessary OpEx maintenance activities and CapEx projects in a timely and cost-effective manner. VPRA is in the early stages of building an asset inventory and establishing processes for conducting inspections, updating asset conditions, and coordinating public projects which adjoin or intersect track and right of way owned by VPRA.

From a real estate management perspective, VPRA is responsible for addressing encroachment issues, responding to requests for right of entry, and responding to requests for maintenance submitted by third parties.

II. DETAILED SCOPE OF WORK

This scope of work includes several broad categories of consultant services:

- Capital program management support,
- Capital projects development and delivery support,
- Real estate and asset management services support,
- Passenger rail service planning and performance monitoring support, and
- Grants program management support.

In performing work under this contract, it is expected that the Consultant will, at times, assist with directing, managing, reviewing, and evaluating activities performed by VPRA's general engineering and general planning professional services consultants. A more detailed scope of work with specific task codes within each of these broad categories of consultant support are described below.

A. Capital Program Management Support

This category includes, but is not necessarily limited to, the following services:

1. Provide strategic assistance with contract negotiations including grant agreements, Memorandum of Agreements, Memorandum Of Understandings, and other types of legal

- agreements between VPRA and the Federal Government including Amtrak, State partners, owner/operators of the railroad and other stakeholders. *(Task Code A.1)*
2. Provide strategic and administrative support for the development and submission of Federal grant applications in response to Notices of Funding Opportunities (NOFOs). *(Task Code A.2)*
 3. Provide support in the development and maintenance of programmatic management plans such as program management plans and subplans, annual program milestone plans, etc. *(Task Code A.3)*
 4. Provide support in the use of programmatic project controls processes and systems across VPRA's programs of capital projects for schedule, budget, and document control, including maintenance of a master schedule for each corridor covering all projects within that corridor. *(Task Code A.4)*
 5. Provide support in the establishment and use of project management protocols, systems, and processes across VPRA's programs of capital projects that will improve the management, oversight, and accountability of VPRA's capital programs and projects. *(Task Code A.5)*
 6. Assist with corridor-level scheduling and strategic management of finite resources, such as railroad flaggers and railroad rights-of-entry, to support effective corridor management of capital improvement projects, operations, and maintenance activities. *(Task Code A.6)*
 7. Provide support in making strategic procurements of some project materials based on analysis of supply chain risk, materials storage capabilities and risk, and construction schedules at the programmatic level. *(Task Code A.7)*
 8. Assist with developing, producing, and implementing research, marketing, public relations, and stakeholder outreach programs at the programmatic level, including development of brochures, presentations, and graphics, etc. *(Task Code A.8)*
 9. Provide support with resource planning, roles/responsibilities studies, and related activities at the programmatic level. *(Task Code A.9)*
 10. Provide support in the development of materials for board presentations, special reports, public hearings, etc. which support delivery of VPRA's program of projects. *(Task Code A.10)*
 11. Provide programmatic support with the management of collaboration sites using software such as MS SharePoint. *(Task Code A.11)*
 12. Assist with evaluating project feasibility, developing order of magnitude cost estimates, conducting service planning, and identifying funding opportunities for potential capital improvement projects VPRA may consider undertaking to enhance passenger rail service in Virginia. *(Task Code A.12)*
 13. Provide support at the programmatic level for the development and use of effective risk management measures in a consistent manner across all VPRA projects. *(Task Code A.13)*
 14. Provide support at the programmatic level for maintaining a strong safety culture at VPRA including development, review and updates to safety plans, policies, and procedures. *(Task Code A.14)*
 15. Provide support at the programmatic level for maintaining a robust quality control program at VPRA including development, review and updates to quality control plans, policies and procedures. *(Task Code A.15)*
 16. Provide general administrative support including document control, meeting coordination and logistics, taking and publishing meeting notes, etc. *(Task Code A.16)*
 17. Provide administrative, communications, marketing, and/or public relations support unrelated to project development and delivery. *(Task A.17)*

B. Capital Projects Development and Delivery Support

This category includes, but is not necessarily limited to, the following services:

1. Assist with performing early project development activities such as planning and assessing the need for federal and state regulated environmental studies, including environmental analysis and reviews, development of impact analysis and mitigations relating to all applicable laws, review of feasibility documents, identification of utility conflicts, and identifying and preparing funding analysis. *(Task Code B.1)*
2. Assist with the review and analysis of geotechnical reports prepared by others. *(Task Code*

- B.2)
3. Assist with managing conceptual engineering activities and prepare associated documents such as order of magnitude cost estimates and feasibility analyses. *(Task B.3)*
 4. Assist with utility coordination, designation, and relocation efforts. *(Task Code B.4)*
 5. Assist with securing and managing required permits and temporary easements. *(Task Code B.5)*
 6. Assist with the technical review of engineering drawings and specifications prepared by others for civil, track, structures and signals for thoroughness, reasonableness, fatal flaws, staying within approved project scope, consistency with program standards, identification of unapproved betterments, etc. *(Task Code B.6)*
 7. Assist with reviewing independent value engineering and constructability reviews. *(Task Code B.7)*
 8. Assist with managing professional land surveys of railroad track, stations, facilities and adjacent properties. *(Task Code B.8)*
 9. Assist with reviewing geotechnical investigations and preparing reports based on same. *(Task Code B.9)*
 10. Assist with oversight of design and construction management on projects being implemented by CSX or VRE, to include attending meetings, conducting site visits, and reviewing technical aspects of project documents such as schedules, progress reports, scope change requests, plans, specifications, etc. *(Task Code B.10)*
 11. Assist with performing construction management activities on VPRA implemented projects such as conducting site visits, performing technical reviews of construction contractor's progress reports, daily logs, RFI's, material submittals, etc., overseeing inspections of materials and completed work, maintaining field records in accordance with records management and document control procedures, and preparing written reports on a weekly and monthly basis, etc. *(Task Code B.11)*
 12. Assist with monitoring compliance with environmental commitments, grant funding agreement requirements, applicable federal and state regulations, and governing agreements with TRV program partners on individual projects. *(Task Code B.12)*
 13. Assist with performing project control functions related to individual project schedules using modern software scheduling such as MS Project or Primavera, budgets, and document control. *(Task Code B.13)*
 14. Assist with performing project-specific risk management functions including risk register management, contingency management, and risk management meetings/workshops. *(Task Code B.14)*
 15. Assist with developing, producing, and presenting public relations and stakeholder outreach materials for specific projects. *(Task Code B.15)*
 16. Assist with project closeout activities including contracts closeout, transitioning completed assets to a state of continuing operations and maintenance, and ensuring all projects records are properly organized and stored according to records management and document control requirements. *(Task Code B.16)*
 17. Assist with the evaluation, analysis, and response to contractor claims. *(Task B.17)*
 18. Assist with performing periodic cost-to-complete studies on individual projects. *(Task Code B.18)*
 19. Assist with developing project-specific reports, evaluations, and presentations. *(Task Code B.19)*

C. Real Estate and Asset Management Support

This category includes, but is not necessarily limited to, the following services:

1. Assist with researching land use in connection with project development. *(Task Code C.1)*
2. Assist with performing land assessments and conducting formal real estate appraisals. *(Task Code C.2)*
3. Assist with real estate transactions and brokerage activities. *(Task Code C.3)*
4. Provide strategic assistance with negotiating and finalizing real estate acquisitions. *(Task Code C.4)*

C.4)

5. Provide support in developing and establishing an effective asset management strategy for all assets owned by VPRA, including track, stations, facilities, non-revenue vehicles, and real estate. *(Task Code C.5)*
6. Assist with establishing a comprehensive asset management program to include systems, processes and record-keeping that will satisfy all applicable federal and state requirements and agreements with TRV program partners, and will meet VPRA's safety, financial and operational goals. *(Task Code C.6)*
7. Assist with the management of third-party utility agreements involving VPRA-owned real estate. *(Task Code C.7)*
8. Assist with the management of third-party requests to enter VPRA-owned real estate. *(Task Code C.8)*
9. Assist with managing land surveys and assist with the development of GIS shape files for real estate and associated assets owned by VPRA. *(Task C.9)*
10. Review and validate the need for maintenance projects identified by Class 1 Railroads to be performed at VPRA's expense, including an assessment of the reasonableness of scope, schedule, and budget. *(Task C.10)*

D. Passenger Rail Service Planning and Performance Monitoring Support

This category includes, but is not necessarily limited to, the following services:

1. Provide support with the gathering of ridership data and researching travel data/trends applicable to VPRA's state supported rail service. *(Task Code D.1)*
2. Assist with analysis of ridership data to determine trends, demographics, origin/destination patterns, etc. and develop recommendations based on same. *(Task Code D.2)*
3. Assist with development and implementation of strategic service planning activities and deliverables for VPRA's state supported rail service. *(Task Code D.3)*
4. Assist with developing brochures, presentation materials, graphics, etc. related to informing VPRA's customers of new or changing train schedules, passenger amenities, service disruptions, etc. *(Task Code D.4)*
5. Provide support communicating unplanned service disruptions to VPRA's customers. *(Task Code D.5)*
6. Support VPRA in remaining compliant with all applicable federal requirements and agreements with TRV program partners in managing state-supported passenger rail service in Virginia. *(Task Code D.6)*
7. Provide support for research and collaboration with Amtrak and other states providing state supported passenger rail service including neighboring states such as North Carolina for regional service ridership trends, marketing, service amenities, etc. *(Task Code D.7)*
8. Assist with analysis of performance data from Class 1 railroads, Amtrak and VRE and provide expertise in freight and passenger rail operations to promote passenger rail delivery accountability and improve passenger rail service planning. *(Task Code D.8)*
9. Assist with monitoring, evaluating, and modifying service standards in accordance with VPRA's contractual requirement with Amtrak for Virginia's state-supported passenger rail services. *(Task Code D.9)*

E. Grants Program Management Support

This category includes, but is not necessarily limited to, the following services:

1. Assist with developing, maintaining, and updating state-funded grant programs VPRA manages for the enhancement of passenger rail in Virginia. *(Task Code E.1)*
2. Provide support for analyzing the effectiveness of VPRA-managed passenger rail grant programs and making recommendations for program changes and/or new programs. *(Task*

Code E.2)

3. Assist with oversight of grantee implementation of projects funded by VPRA-managed grants to include compliance with grant requirements. *(Task Code E.3)*
4. Assist with development of brochures, presentation materials, website content, and graphics to support management of VPRA-funded passenger rail grant programs. *(Task Code E.4)*
5. Provide technical and administrative support related to public meetings and stakeholder outreach for VPRA-funded passenger rail grant programs. *(Task Code E.5)*

III. Task Orders and Consultant Invoicing

On an annual basis, VPRA will issue an Annual Work Plan (AWP) to the Consultant for a core level of program management support based on an assessment of VPRA's anticipated needs. This AWP serves as a task order pursuant to section 18.0 of the RFP. The AWP will outline the services to be provided according to the task codes above and will be issued on a not-to-exceed (NTE) basis. Within the AWP, there will be an allocation of the NTE amount for each category of work to establish an administrative budget for each category. Work will be performed and managed against those administrative budgets. It is expected that the Consultant and VPRA will work collaboratively to develop and manage the AWP.

In addition to an overall VPRA contracts manager for the Consultant, VPRA will assign a staff lead to oversee Consultant activities within each category of work. This staff lead will be responsible for directing Consultant activities within their category of work, reviewing Consultant deliverables, monitoring general progress of the Consultant's work, monitoring the administrative budget assigned to their category of work, and reviewing/approving invoiced costs.

At VPRA's discretion, the Consultant may be issued an initial short term task order within 10 days of contract award to work closely with the existing program management contractor to facilitate a transfer of knowledge and develop the first AWP.

Within the limits of the contract, VPRA may supplement the AWP with additional task orders to the Consultant, as needed. VPRA reserves the right in its sole discretion to issue RFPs or issue task orders to other VPRA consultants under contract, for work included in this RFP's scope of work.

Monthly invoices against the AWP and/or additional task orders will be submitted in accordance with the task coding and administrative budgets established in the AWP task orders and described in the Scope of Work in this RFP. In addition, all work for task codes B.1 through B.19 must identify the specific project(s) for which the work was performed. (See Section II(B) above.) Invoices shall be accompanied by a written progress report sufficiently detailed to identify deliverables provided by task code, a detailed breakdown of personnel hours spent on each task code, and general progress for each task code for which costs are billed.

IV. Personnel Classification

- A. Subject to the terms set forth in the contract, VPRA will compensate the Consultant for work satisfactorily performed and reimburse all allowable costs in accordance with RFP Attachment G, Fee Proposal, as negotiated and agreed to by the Parties at the time of contract negotiation.
- B. Key Personnel Classifications may include, but not be limited to, the following:
 1. Program Manager
 2. Project Manager
 3. Engineering/Design Advisor
 4. Rail Industry Advisor
 5. USDOT Funding Programs Advisor
 6. Grants Advisor
 7. Risk Management Advisor

8. Financial Analyst
9. Safety Management Advisor
10. Real Estate & Asset Management Advisor

ATTACHMENT A

GENERAL TERMS AND CONDITIONS

The following general terms and conditions shall govern the RFP and any contract that is awarded in connection with the RFP. Each of VPRA and Consultant are referred to herein, individually, as a "Party" and, collectively, as the "Parties." Capitalized terms shall have the meaning set forth herein or elsewhere in the RFP Documents and/or Contract Documents. Terms required by state law or policy are not subject to negotiation or modification.

1. NATURE OF RELATIONSHIP

Consultant shall be acting as an independent contractor. Neither Consultant nor employees of Consultant are employees of VPRA under the meaning or application of any federal or state unemployment or insurance laws or workers' compensation laws, or otherwise. Consultant shall assume all liabilities or obligations imposed by any one or more of such laws with respect to employees of Consultant in the performance of this Contract. Consultant shall not have any authority to assume or create any obligation, express or implied, on behalf of VPRA, and Consultant shall have no authority to represent itself as an agent, employee, or in any other capacity of VPRA. Any Consultant employee who is assigned a VPRA email account shall identify the name of the firm under which they are employed in the signature block and shall clearly indicate that they are not employees of VPRA. In addition, while attending any meetings for assignments under this Contract, Consultant employee(s) shall introduce themselves as a Consultant to VPRA while also noting the name of the company they are employed with. For the avoidance of doubt, in no instance, shall Consultant employee(s) identify themselves as employees of VPRA.

2. STANDARD OF CARE

Consultant shall perform all services under this Contract in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline and, in the case of projects using federal funds, consistent with the standards of the federal funding partner (e.g., Federal Railroad Administration (FRA), Federal Transit Administration (FTA), etc.). Consultant warrants and represents that it is skilled in the professional calling necessary to perform the Contract services and that all employees and subconsultants, if any, shall have sufficient skill and experience to perform the services assigned to them. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Contract; all applicable federal, state and local laws; and the professional standard of care. All services shall be subject to the approval of VPRA through its designated representatives.

3. CONSULTANT'S MANAGEMENT OF THE WORK

Consultant shall be responsible for completely supervising and directing the work under this Contract and all subcontractors that it may utilize with the prior written consent of VPRA, using its best skill and attention. Subcontractors who perform Work under this Contract shall be responsible to the Consultant, and Consultant agrees that it is as fully responsible for the acts and omissions of its subcontractors as it is for the acts and omissions of its own employees. The control and supervision of all phases of the services provided by Consultant shall be under the direction of a Project/Contracts Manager. The Project/Contracts Manager shall manage the services provided under this Contract until all services have been completed and shall keep VPRA informed on a regular basis regarding the status and progress of the Contract services.

4. QUALIFICATIONS OF STAFF

A competent staff, adequate in number and experience to perform the described services in the prescribed time, shall be assigned at all times. Job duties and responsibilities of key personnel shall not be delegated to others for the duration of the Contract. If the services covered by this Contract include the practice of architecture, professional engineering, land surveying or certified landscape architecture, Consultant or subcontractor shall have in responsible charge at each place of business a full-time resident Virginia licensed architect, professional engineer, land surveyor or certified landscape architect exercising supervision and control of the services of each profession being practiced. Any personnel or subconsultant,

if any, who fail or refuse to perform the Contract services in a manner acceptable to VPRA, or who are determined by VPRA, in its sole discretion, to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, or a threat to the safety of persons or property, shall be promptly removed from the Project by Consultant at the request of VPRA. Consultant warrants that it will continuously furnish the necessary personnel to complete the services on a timely basis as contemplated by the Contract.

5. CHANGES IN STAFF

Consultant shall not change or substitute any key personnel including those identified in Consultant's proposal except due to voluntary or involuntary termination of employment, retirement, death, disability, incapacity, or as otherwise approved by VPRA. Unauthorized changes to Consultant's team at any time during the Contract may result in termination of services. If extenuating circumstances as listed above require a change, the Consultant shall submit in writing to VPRA's Project Manager, who, in his/her sole discretion, will determine whether to authorize a change, with it being understood and agreed that Consultant will provide VPRA at least thirty (30) days written notice of any request wherever practical. VPRA will have the right to review the qualifications of each individual proposed as a replacement and to approve or disapprove such individual prior to the commencement of any work by such individual. The individual proposed as a replacement shall be equally or more qualified than the key personnel that is being replaced. Consultant acknowledges that the discretionary reassignment of a key personnel to another project of Consultant is not considered extenuating circumstance and will not be permitted.

6. INSURANCE

Consultant shall furnish VPRA with certificates evidencing insurance as specified in the Insurance Requirements provision within RFP Documents on or before the Effective Date of the Contract and prior to beginning any work on the Project. Consultant agrees to maintain all required insurance coverages throughout the life of this Contract and to furnish certificates of coverage upon each renewal. In the event of a non-renewal or cancellation of such required insurance coverage, thirty (30) days written notice must be given to VPRA prior to such non-renewal or cancellation. Should a claim or other legal action be filed against VPRA, and if VPRA in its good faith opinion, believes it may have coverage under any of the insurance required herein, then VPRA has the right to demand, and to receive within a reasonable time period, copies of the insurance policies related to such required insurance without regard to whether Consultant has agreed to fully defend, hold harmless, and indemnify VPRA against any such claim or other legal action. In the event Consultant hires other persons or firms to perform some of the work related to this Contract, Consultant shall ensure, and certify to VPRA in writing that: (i) the acts or omissions of such persons or firms are covered under the above-referenced liability insurance; or (ii) such firms maintain insurance equal to or better than, and subject to the same limits, terms and conditions as, the insurance required of Consultant under this Contract (except for firms which, by the nature of their work, are not be required to carry professional liability insurance); and in either instance, Consultant shall provide, or cause to be provided, evidence of such insurance coverage, reasonably acceptable to VPRA.

7. OPERATING AUTHORITY AND CREDENTIALS OF VEHICLES

Wherever and whenever during the course of performing any Work under this Contract, Consultant will ensure that all vehicles utilized to accomplish the terms of the Contract are properly titled, registered, plated and have the required operating authority and credentials in accord with the *Code of Virginia*.

8. DELIVERABLES

Consultant shall deliver to VPRA the studies, plans, reports, specifications, or other documents and/or materials as are identified in the Scope of Work and as may be more particularly described in any Work Plan or Task Order (the "Deliverables"); and Consultant shall, upon completion of the Work, submit to VPRA all information developed in the course of the Consultant's services. Where applicable, Consultant shall endorse, as required by law, plans and reports prepared under this Contract, and shall affix thereto his or her seal of professional registration, showing that he or she is licensed to practice in the Commonwealth of Virginia. Consultant shall, upon request by VPRA and upon completion or termination of this Contract, deliver to VPRA all material furnished to Consultant by VPRA. Except as provided for herein or otherwise agreed in writing by the Parties, each and every report, draft, work product, map, record, and other

document reproduced, prepared, or caused to be prepared by the Consultant pursuant to or in connection with this Contract shall be the exclusive property of VPRA.

9. CORRECTION OF ERRORS

Consultant shall check for accuracy any reports, and the design, drafting and details of final plans prior to submission. Consultant will be required, without additional compensation, to correct any errors, including but not limited to omissions, discrepancies and ambiguities, in any services performed in fulfillment of the obligations of this Contract, and shall also reimburse VPRA for any costs incurred. Acceptance of the plans or reports by VPRA shall not relieve Consultant of the responsibility of subsequent correction of errors. Costs incurred by the Consultant in correcting errors in the plans or reports and reimbursing VPRA for costs incurred by VPRA as a result of such error shall be maintained in a separate account. Such account shall be clearly coded and identified, and shall be subject to audit by VPRA. Such costs shall not be billed to VPRA as a direct charge or an overhead item.

10. CHANGES TO THE CONTRACT

VPRA may, at any time, by written order, make any changes in this Contract which either increase or decrease the services hereunder. If such change causes an increase or decrease in the cost of or the time required for performance of this Contract, an equitable increase or decrease in consideration may be made and this Contract shall be modified in writing between VPRA and Consultant. Such written Contract modification shall set forth the proposed changes in services, extension of time for completion and adjustment of the compensation, including net fee, to be paid to Consultant, if any. If the Parties fail to agree upon the adjustment to be made, the Dispute shall be determined as provided in this Contract, but nothing in this section shall excuse Consultant from promptly and diligently proceeding with the prosecution of the services so changed.

11. CONTINGENCY FUND

On Contracts containing a contingency fund, the contingency fund shall not be used without written permission of VPRA. The additional services compensated by application of the contingency fund shall not begin until an agreement has been reached between the Parties with regarding the man-hours and costs required to perform such additional services. If any such additional services are provided prior to an agreement being reached between the parties regarding man-hours and costs, only those man-hours and costs determined to be necessary and reasonable by VPRA will be reimbursed.

12. INVOICING; PERIODIC PAYMENTS

Invoices for services rendered or scheduled shall be submitted by Consultant directly to accountspayable@vpva.virginia.gov. In the event Consultant is unable to email, invoices shall be mailed to 919 E. Main Street, 24th Floor, Richmond, VA 23219, Attn: Accounts Payable Department. Periodic payment of Consultant's invoices will be made within thirty (30) days of receipt by VPRA, subject to adjustment as set forth herein. All invoices shall show the VPRA Contract number and federal employer identification number for Consultant's firm. Additionally, Consultant's invoices shall include the name of the person who performed the work, a brief description of the services performed and/or the specific task in the Scope of Work to which it relates, the date the services were performed, the number of hours spent on all work billed on an hourly basis, and a description of any reimbursable expenditures. Consultant may submit invoices for progress payments no more than once each month and no less than once each calendar quarter for Work performed during such period. VPRA, in its sole discretion, may reject and refuse payment on any invoice that includes charges for Work performed more than 180 days prior to the invoice date. VPRA reserves the right to audit and refuse to process payment should there be findings associated with excessive hours to perform the required task or an excessive number of persons utilized to complete the necessary task.

13. FINAL ACCEPTANCE AND FINAL PAYMENT

Upon receipt of a written notice from Consultant of completion of the services, VPRA will make a review to determine if all Work specified in the Contract has been satisfactorily completed in accordance with the

Contract Documents and applicable standards. If all services have been satisfactorily completed, VPRA will make final acceptance and provide written notification of same to Consultant. If the review discloses that any services, in whole or in part, are not in conformance with the Contract Documents and applicable standards, Consultant shall immediately correct the deficiency. Upon notification of completion or correction of the Work by Consultant, another review will be made that will constitute the final review. In such event, provided the services are in conformance with the Contract Documents and applicable standards, VPRA will make the final acceptance and provide notification to Consultant.

When final acceptance has been duly made by VPRA, Consultant shall submit a final estimate invoice. Upon review and approval of the final estimate invoice by VPRA, Consultant will be paid the entire sum due after previous payments are deducted and other amounts are retained or deducted under the provisions of the Contract. Final payment will become due and the final estimate paid within thirty (30) calendar days after approval of the final estimate invoice. VPRA will notify Consultant in writing when the final payment is made. Payments shall be subject to correction at the time of the final audit.

14. SET-OFF RIGHTS

VPRA shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, VPRA's option to withhold for the purposes of set-off any moneys due to Consultant under this Contract up to any amounts due and owing to VPRA with regard to this Contract, plus any amounts due and owing to the Commonwealth for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

15. AVAILABILITY OF FUNDS; APPROPRIATION

This Contract is contingent upon and subject to the availability and appropriation of sufficient state and/or federal funds. A failure by the Parties to perform any condition on its part to be performed under this Contract as a result of the failure of the General Assembly to appropriate sufficient funds, or the applicable oversight board or funding partner (e.g., FRA, FTA, etc.) to allocate sufficient funds, shall not in any manner constitute a breach or default by the Parties.

16. PROMPT PAYMENT OF SUBCONTRACTORS

Consultant is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than thirty (30) calendar days after Consultant's receipt of payment for that work from VPRA. VPRA does not require retainage to be withheld by Consultant on any subcontracts. If Consultant elects to withhold retainage on subcontracts, Consultant agrees to pay subcontractors all undisputed retainage payments within thirty (30) calendar days of completion of the work, regardless of whether Consultant has received any retainage payment from the VPRA. VPRA will notify Consultant and the subcontractor in writing when the services have been satisfactorily accepted. If retainage is not promptly paid, Consultant shall notify VPRA and the subcontractor in writing as to the reasons for not making payment. Consultant shall keep all property of VPRA and such property belonging to any third party which is managed, leased or operated by VPRA, free from all liens arising from services to be furnished in connection with this Contract. VPRA may, as a condition of final payment, require Consultant to submit an affidavit stating that all subcontractors and suppliers, if any, have been paid in full for any goods and/or services provided in connection with this Contract.

17. TAX EXEMPT STATUS

VPRA is exempt from state sales and use tax and federal excise tax. Consultant shall not include in the invoice any taxes imposed by any taxing authority of the state in which the Project is located, or any political subdivision thereof, upon the sale or use of the Work covered by this Contract. Any such sales or use tax, if applicable, shall be paid by Consultant. Consultant shall prepay all freight and transportation charges to the F.O.B point of delivery and such freight charges shall be stated separately, as requested from the sales price of material, so as not to impose any tax upon VPRA. Tax exemption certification shall be furnished to Consultant upon request.

18. SUSPENSION OF WORK

VPRA may, at its sole discretion, suspend any of the Work when determined to be in its best interest to do so. After receiving a suspension notice, Consultant must comply with the notice and cease performance of all Work under the Contract. Suspension of work will not entitle Consultant to any additional compensation. Consultant shall not resume Work unless and until so authorized by VPRA.

19. TERMINATION

19.1 Termination for Convenience

VPRA may cancel this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant. Reasons for such termination shall be left to the sole discretion of VPRA. Upon termination, Consultant will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed up to and including the effective date of termination.

19.2 Termination for Insufficient Funding

VPRA may immediately terminate this contract if the General Assembly fails to appropriate, or the applicable oversight board (i.e., the VPRA board of directors and/or the Commonwealth Transportation Board, depending on the funding source) fails to allocate, sufficient funds to continue the services, or if VPRA fails to receive funding anticipated from any other funding source. VPRA is not obligated to pay for any services that are provided after notice and effective date of termination. However, Consultant will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed up to and including the effective date of termination.

19.3 Termination for Cause

VPRA may, in its sole and absolute discretion, by written notice of default to Consultant, terminate all or any part of this Contract if (a) Consultant fails to perform the Work described herein, within the time specified herein or any extension hereof; (b) Consultant fails to satisfy any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms; (c) Consultant is or becomes insolvent or unable to pay its debts as they become due; (d) any bankruptcy or insolvency proceeding is commenced by or against Consultant; or (e) application is made for appointment of a receiver or custodian for the Consultant or any of Consultant's properties, or for an assignment for the benefit of Consultant's creditors, and in any of these above-described circumstances, does not cure such failure within a period of ten (10) days (or such longer period as VPRA may in its sole discretion authorize in a writing signed by VPRA) after receipt of notice from VPRA specifying such failure. Any termination by VPRA shall be without prejudice to any claims for damages or other rights of VPRA against Consultant. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by Consultant pursuant to this Contract shall, at the option of VPRA, be turned over to VPRA and become the property of VPRA.

19.4 Termination Necessitated by Standard

Consultant may, at any point, immediately terminate the Contract whenever it determines that the required services would be in violation of law or industry standard. In such instance, Consultant shall provide written notice to VPRA and include the specific law or industry standard that forms the basis for Consultant's determination that it is required to suspend work or terminate the Contract. Upon such termination by Consultant, VPRA shall only be obligated to compensate Consultant for services satisfactorily rendered through the date of termination.

20. EXAMINATION AND AUDIT; RETENTION OF RECORDS

Consultant agrees that VPRA or its designated representative (provided they have executed a

confidentiality/non-disclosure agreement with Consultant) shall have the right to review, photograph, and copy any records and supporting documentation pertaining to performance of this Contract. Consultant agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Consultant agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Consultant agrees to include a similar right of VPRA to audit records and interview staff in any subcontract related to performance of this Contract. It shall be Consultant's responsibility to notify VPRA, in writing, of the completion of that subcontractor's portion of the services so that the records of the subcontractor can be audited within the three (3) year retention period. Failure to do so may result in Consultant's liability for any costs not supported by the proper documentation for the subcontractor's phase of the services. Any overcharges determined as a result of an audit shall be set off against any future invoices of the Consultant, if work is ongoing, or invoiced to Consultant in the event final payment has already been tendered. Invoices for overcharges shall be deemed a debt due VPRA and the Commonwealth and shall be due and payable by Consultant within thirty (30) days of the date of the invoice.

21. DISPUTE RESOLUTION

Upon the occurrence of any Dispute that is not otherwise resolved by the Parties: (a) the Parties must first use all reasonable efforts to resolve the Dispute through a senior representative (b) if the Parties fail to achieve a resolution through a Senior Representative Negotiation, before either Party may institute legal action against the other in connection with the Dispute, the Parties must first attempt to resolve the Dispute by referring the matter to a Mediation. For purposes of this Section 21, "Dispute" shall be defined as "any claim, disagreement or controversy between the Parties concerning their respective rights and obligations under this Contract."

21.1 Senior Representative Negotiations

If either Party notifies the other Party of a Dispute, senior representatives of each Party (with authority to make decisions for the respective Parties) must meet and use all reasonable efforts to resolve the Dispute ("Senior Representative Negotiations"). The Senior Representative Negotiation must commence within thirty (30) days of receipt of notification from a Party initiating a Dispute and will not exceed sixty (60) consecutive days once commenced (or such longer period agreed by the Parties, with such period of negotiation being the "Senior Representative Negotiations Period"). Statements, materials and information prepared for, made or presented at, or otherwise derived from a Senior Representative Negotiation (including any meeting of the senior representatives) are privileged and confidential and may not be used as evidence in any proceedings. If the Senior Representative Negotiation resolves the Dispute, the Parties must record the resolution in writing.

21.2 Mediation

If the Parties are unable to come to a resolution through Senior Representative Negotiations during the Senior Representative Negotiations Period, then either Party may submit such Dispute to mediation proceedings (a "Mediation"). Mediation is intended to assist the Parties in resolving Disputes over the correct interpretation of this Contract.

21.2.1 The mediator must be selected by mutual agreement of the Parties or, if an agreement cannot be reached by the Parties within seven (7) Business Days of submission of the Dispute to Mediation, the mediator will be selected by the American Arbitration Association ("AAA") in accordance with its Commercial Industry Mediation Rules and Procedures then in effect. Any mediator selected by mutual agreement of the Parties or through the AAA selection process must have no current or ongoing relationship with either Party (or an Affiliate of either Party). The Parties agree that only one (1) mediator shall be selected as the AAA mediator.

21.2.2 Each Mediation must: (a) be administered in accordance with AAA's Commercial Industry Mediation Rules and Procedures then in effect; (b) be held in Richmond,

Virginia, unless the Parties mutually agree, in writing, to the Mediation being held in a different location; (c) be concluded within sixty (60) days of the date of selection of the mediator, or within such other time period as may be agreed by the Parties (acting reasonably having regard to the nature of the Dispute). The Parties shall share the mediator's fee and any filing or administrative fees equally. No mediator will be empowered to render a binding decision as to any Dispute. Any Mediation will be nonbinding.

22. FORUM AND VENUE

Any and all Disputes arising out of or in connection with this Contract, or any performances made hereunder that are not otherwise resolved through Senior Representative Negotiations or Mediation, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia or the United States District Court for the Eastern District of Virginia, Richmond Division. The Consultant accepts the personal jurisdiction of such court and waives all jurisdiction and venue-related defenses to the maintenance of such actions.

23. GOVERNING LAW

The validity, performance, and construction of the solicitation and this Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to its choice of law provisions. No doctrine of choice of law shall be used to apply any law other than that of the Commonwealth of Virginia, and no defense, counterclaim or right of set-off given or allowed by the laws of any other state or jurisdiction, or arising out of the enactment, modification or repeal of any law, regulation, ordinance or decree of any foreign jurisdiction, be interposed in any action hereon.

24. NOTICES

Any notice required pursuant to the Contract shall be in writing and sent by registered or certified mail, return receipt requested, or by courier, express or overnight delivery, and by confirmed e-mail at the addresses of the Point of Contact designated by the Parties. In the event of notice to VPRA, a copy shall also be contemporaneously transmitted to its General Counsel. The date such notice shall be deemed to have been given shall be the Business Day of receipt if received during business hours, the first Business Day after the Business Day of receipt if received after business hours on the preceding Business Day, the first Business Day after the date sent by courier, express or overnight ("next day delivery") service, or the third Business Day after the date of the postmark on the envelope if mailed, whichever occurs first. As used herein, "Business Day" shall mean that day that is neither a Saturday, a Sunday nor a day observed as a legal holiday by the Commonwealth of Virginia or the United States Government.

25. COMPLIANCE WITH ALL LAWS AND REGULATIONS

Consultant shall comply with the applicable provisions of all federal, state, or local laws or ordinances and all related lawful orders, rules, and regulations, as well as any provisions, representations, or agreements, or contractual clauses required to be included or incorporated by reference or operation of law in the Contract. Consultant shall keep fully informed of all federal, state, and local laws, ordinances, and regulations, and all orders, decrees, and guidance of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on this Contract, or which in any way affect the conduct of the services provided by Consultant. If any discrepancy or inconsistency is discovered between this Contract and any such law, ordinance, regulation, order, or decree, Consultant shall immediately report the same to the VPRA in writing. To the extent required for the Work, Consultant shall secure and obtain any and all permits, licenses, and consents as may be necessary.

26. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH

A consultant organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code Virginia* or as otherwise required by law. Any business entity described above that enters

into a contract with VPRA shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provision of this section.

27. NON-DISCRIMINATION PROVISION

The Consultant shall comply with the provisions of the Virginians with Disabilities Act, Sections 51.5-40 through 51.5-46 of the Code of Virginia (1950); Further, pursuant to Va. Code § 2.2-4201, in every Contract over \$10,000 the provisions in A. and B. below apply:

A. During the performance of the Contract, Consultant agrees as follows:

1. Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Consultant. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. Consultant, in all solicitations or advertisements for employees placed by or on behalf of Consultant, will state that Consultant is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
3. If Consultant employs more than five employees, Consultant shall (i) provide annual training on Consultant's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post Consultant's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that Consultant owns or leases for business purposes and (b) Consultant's employee handbook.
4. The requirements of these provisions A. and B. are a material part of the Contract. If Consultant violates one of these provisions, VPRA may terminate the affected part of the Contract for breach, or at its option, the whole Contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.

B. Consultant will include the provisions of subdivisions 1-3 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or supplier.

28. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By signing this Agreement, Consultant certifies that it does not and will not during the performance of this Agreement violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

29. DRUG FREE WORKPLACE

Consultant acknowledges and certifies that they understand that the following acts by Consultant, its employees, and/or agents performing services on state property are prohibited: The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and any impairment or incapacitation from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes). Consultant further acknowledges and certifies that they understand that a violation of these prohibitions constitutes breach of contract and may result in default action being taken by VPRA in addition to any criminal penalties that may result from such conduct. During the performance of this Contract, Consultant agrees to provide a drug-free workplace for Consultant's employees.

30. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Consultant shall not require any individual employed in the performance of this Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety as determined under the Occupational Safety and Health Standards promulgated by the United States Secretary of Labor. This provision shall be made a condition of any subcontract entered into pursuant to this Contract. In addition, Consultant shall abide by the Virginia Occupational Safety and Health Standards adopted under Section 40.1-22 of the Code of Virginia (1950), as amended, and will fulfill the duties imposed under Section 40.1-51.1 of the Code of Virginia. Any violation of the aforementioned requirements or duties which is brought to the attention of Consultant by any person shall be immediately abated.

31. CRITICAL INFRASTRUCTURE INFORMATION/SENSITIVE SECURITY INFORMATION (CII/SSI)

The required services may involve the handling of Critical Infrastructure Information/Sensitive Security Information (CII/SSI) material. Firm(s) handling CII/SSI material will be required to sign non-disclosure agreements. Individuals with the firm(s) that handle CII/SSI material will be required to sign non-disclosure agreements. Once negotiations have been completed and prior to executing a contract, personnel handling CII/SSI material, visiting Critical Infrastructure (CI) facilities or performing bridge/tunnel inspections may be required to pass a fingerprint-based Criminal History Background Check (CHBC). An individual employee's failure to successfully pass the fingerprint-based CHBC will not negate the selection and offerors will be allowed to replace those individuals. However, if key personnel fail the fingerprint-based CHBC, the selection may be cancelled and negotiations begun with the next ranked offeror. VPRA reserves the right to conduct fingerprint-based CHBC on all employees of Consultant, on any employees of sub-consultants or on any proposed replacements during the term of the Contract who will be involved in this Project. All costs associated with the fingerprint-based CHBC are the responsibility of Consultant. A VPRA issued photo-identification badge is required for each employee of Consultant or any sub-consultant who will need access to VPRA CI facilities or who will be performing bridge/tunnel inspections. Based upon the results of the fingerprint-based CHBC, VPRA reserves the right to deny issuance of a VPRA security clearance or a VPRA issued photo-identification badge.

32. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION

Consultant assures that information and data obtained as to personal facts and circumstances related to VPRA will be collected and held confidential, during and following the term of this Contract, and unless disclosure is required pursuant to court order, subpoena or other regulatory authority, will not be divulged without the VPRA's written consent and only in accordance with federal law or the Code of Virginia. Consultants who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify VPRA of any breach or suspected breach in the security of such information. Consultant shall allow VPRA to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Consultants, subconsultants and their respective employees working on this Contract may be required to sign a confidentiality statement.

33. INTELLECTUAL PROPERTY RIGHTS

33.1 Rights, Generally

All rights in intellectual property developed or created pursuant to this Contract shall be the sole property of VPRA and deemed part of the Contract Deliverables. For purposes of this Contract, "Intellectual property" includes all inventions subject to the U.S. Patent System (including but not limited to new processes, materials, compounds and chemicals), and all creations subject to the U.S. Copyright Act of 1976 (including but not limited to printed material, software, drawings, blueprints, and compilations such as electronic databases). All copyrightable material created pursuant to this Contract shall be considered work made for hire and shall be considered part of the Contract Deliverables. Neither Party intends any copyrightable material created pursuant to this Contract, together with any other copyrightable material with which it may be combined or used, to be a "joint work" under the copyright laws. If the whole or any part of any such copyrightable material cannot be deemed work made for

hire or is deemed a joint work, Consultant agrees to assign, and does hereby irrevocably assign, its entire copyright interest therein to VPRA and shall execute and deliver such further documents as VPRA may reasonably request for the purpose of acknowledging or implementing such assignment. Consultant warrants that no individual, other than regular employees of Consultant or VPRA working within the scope of their employment, shall participate in the creation of any intellectual property pursuant to this Contract unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to VPRA.

33.2 Exceptions and Exclusions

Notwithstanding the foregoing, Consultant shall retain all right, title and interest in and to any intellectual property, technology, know-how, methodologies, works of authorship, and other materials pre-existing the Contract, created, acquired, or licensed separately from the Contract, or created in performance of the Contract but not identified as a Contract Deliverable, including any modifications, enhancements, improvements, or derivative works thereof (collectively referred to herein as, "Consultant Property"). To the extent that Consultant Property is contained in any of the Contract Deliverables, upon full and final payment, Consultant grants the VPRA, under Consultant's intellectual property rights in such Consultant Property, a royalty-free, non-exclusive, non-transferable, perpetual license to use such Consultant Property solely in connection with the VPRA's use of the Deliverables. Further, VPRA agrees that nothing in this Contract shall prevent Consultant from using any generalized knowledge, experience, know-how, or any of the ideas, concepts, methodologies, tools, or techniques derived from or discovered during the provision of services and that are not unique to the VPRA (collectively, "Residual Knowledge") to perform similar services and develop similar work product, results, or technology as that performed or developed under the Contract. Consultant reserves the right to use, disclose, reproduce, sublicense, modify, prepare derivative works from, perform, and display its Residual Knowledge, subject to the obligations of confidentiality set forth in this Contract.

34. COVENANT REGARDING BROKERAGE

Consultant warrants that it has not employed or retained any company or person to solicit or secure this Contract and that it has not paid or agreed to pay any company or person, other than subconsultants identified in this Contract or a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, VPRA shall have the right to void this Contract without liability or, at its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, brokerage fee, gift, or contingent fee.

35. TESTIMONY

In the event that the testimony of Consultant is required in any legal proceeding in connection with claims brought against or prosecuted by VPRA, Consultant agrees to appear as a witness on behalf of VPRA. Payment for appearance will be based on the approved current hourly salary rate and daily per diem rate for each eight-hour day's preparation for, or attendance in, court and one-fourth of this sum for each two hours or fraction thereof.

36. CONFIDENTIAL RELATIONSHIP; PUBLICITY

Consultant shall keep in strictest confidence, and treat as proprietary all information that may be acquired in connection with, or as a result of, this Contract. During the term of the Contract and at all times thereafter, Consultant shall not, without the prior written consent of VPRA, publish, communicate, divulge, or use (except in the performance of the Contract itself) any such information unless it is in the public domain. Except as required by any applicable law, regulation or judicial process, Consultant shall not release any information concerning the Contract or disclose or use VPRA's name for purposes of advertising or soliciting

business, including, but not limited to, press releases, social media posts, brochures, photographs, or verbal announcements without the prior written permission of VPRA.

37. STRICT LOYALTY

Consultant acknowledges its duty of loyalty to VPRA and covenants to conduct itself in accordance with such duty. Consultant and its employees shall avoid all circumstances and actions that would place Consultant in a position of divided loyalty with respect to the obligations undertaken under this Contract.

38. INDEMNIFICATION

Subject to Va. Code § 11-4.4 and other applicable laws, Consultant shall indemnify and hold harmless the Commonwealth of Virginia and VPRA together with their officers, agents, and employees and the owners of VPRA managed, leased, or operated facilities and equipment, and their respective officers, directors, members, consultants, agents, and employees, (collectively, the "VPRA Indemnitees") from and against all claims, losses, damages, liabilities, including reasonable attorneys' fees, costs, and expenses, that may arise from Consultant's performance of, or the failure to perform, services under this Contract, except to the extent caused by the negligent acts or omissions, or breach of contract, of a VPRA Indemnitee. Acceptance of the services by VPRA shall not waive any of the rights of VPRA contained in this section nor release or absolve Consultant from any liability, responsibility or duty contained herein.

39. LIMITATION OF LIABILITY

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Contract, is limited to the amount of direct damage actually incurred. To the extent permitted by applicable law, neither Party will be liable to the other under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this Contract.

40. FORCE MAJEURE

A Party shall not be in default for any failure to perform any of its obligations under the Contract if such failure arises from any cause that could not have been prevented by means reasonably available to the Party and that was beyond the control of and without the fault or negligence of the Party. Such causes include but are not limited to: acts of God or of the public enemy; acts of Government in either its sovereign, legislative or contractual capacity; fire; flood; landslide; earthquake; epidemic; pandemic; quarantine restrictions; freight embargo; sabotage; or unusually severe weather. The affected Party shall, as soon as reasonably possible, give Notice to the other, including all relevant information that it has available, regarding any such actual event that is impacting or any potential event that threatens to impact the affected Party's performance of its obligations under the Contract.

41. ASSIGNMENT AND SUBCONTRACTING

Any Contract awarded or any interest thereunder shall not be assigned, subcontracted, or transferred, in whole or in part, by Consultant without the prior written consent of VPRA. Consultant shall not assign any monies due or to become due to it, without the prior written consent of VPRA. No assignment shall relieve Consultant from its obligations under the Contract. This Contract shall inure to the benefit of and shall be binding upon the personal representatives and legal successors of the respective Parties hereto. Nothing contained in this Contract is intended or shall be construed to inure to the benefit of any person or entity other than the Parties hereto and their legal successors.

42. DUTY TO COOPERATE ON FUNDING OPPORTUNITIES

VPRA seeks to maximize funding opportunities pertaining to its projects and the Work included in this Contract may become eligible for a grant and subject to certain requirements of a funding sponsor. Consultant agrees to work cooperatively and creatively with VPRA in connection with any grant application

submittals to VPRA's funding partners. Consultant further agrees to fully comply with any terms and conditions required as a result of VPRA's participation in a grant.

43. REMEDIES CUMULATIVE

Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon the Parties hereto shall be cumulative and in addition to all other rights, powers, and remedies hereunder and those available at law or in equity. All such rights, powers, and remedies may be exercised separately or at once, and no exercise of any right, power or remedy shall be construed to be an election of remedies or shall preclude future exercise of any or all other rights, powers, and remedies granted hereunder or available at law or equity, except as provided herein.

44. NO WAIVER

Except as otherwise expressly provided herein, neither the failure of either Party to exercise any power given such Party hereunder or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

45. ENTIRE AGREEMENT

This Contract contains the entire agreement of the Parties hereto with respect to the subject matter hereof, and no representations, inducements, promises or agreements, oral or otherwise, between the Parties not embodied herein or incorporated herein by reference with respect to the subject matter hereof, shall be of any force or effect. Any previous agreements or understandings among the Parties regarding the subject matter hereof are merged into and superseded by this Contract.

46. AMENDMENTS

No amendment to the Contract shall be binding on the Parties hereto unless such amendment is in writing and is executed by an authorized representative of the Party against whom enforcement of such amendment is sought.

47. SOVEREIGN IMMUNITY

VPRA, specifically and the Commonwealth of Virginia generally, neither waive nor abrogate their sovereign immunity, in part or in whole, in any manner, under any theory, hereunder. Notwithstanding the foregoing, VPRA agrees and acknowledges that the Contract constitutes a legal, valid, and binding obligation of VPRA, enforceable against VPRA in accordance with its terms, except as enforceability may be limited or otherwise affected by (i) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (ii) principles of equity, whether considered at law or in equity, and (iii) the sovereign immunity of the Commonwealth of Virginia; provided that sovereign immunity shall not bar an action to enforce a claim based on a breach of this Contract presented in accordance with the law of the Commonwealth of Virginia.

48. SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Contract or the occurrence of any event rendering any provision of this Contract void, shall not affect the validity or enforceability of any other provision. Any such provision shall be severed from the Contract and the remainder shall be construed and enforced as if it did not contain it.

END OF DOCUMENT

ATTACHMENT B

SPECIAL TERMS AND CONDITIONS (Federal Railroad Administration Clauses)

These Special Terms and Conditions shall apply in instances in which this Contract is funded in whole or in part by the United States Department of Transportation, Federal Railroad Administration. The requirements set forth herein are in addition to and, unless inconsistent and irreconcilable, do not supplant requirements found elsewhere in this Contract. If any requirement in these Special Terms and Conditions is inconsistent with a provision found elsewhere in this Contract and is irreconcilable with such provision, the requirement in these Special Terms and Conditions shall prevail.

ARTICLE-1: DEFINITIONS

- 1.1 “**C.F.R.**” means the United States Code of Federal Regulations, which contains regulations applicable to FRA grant recipients and their consultants and subconsultants.
- 1.2 “**Consultant**” means the service provider identified in the Contract.
- 1.3 “**DOT**” means the United States Department of Transportation (also represented as USDOT).
- 1.4 “**EPA**” means the United States Environmental Protection Agency (also represented as USEPA).
- 1.5 “**Federal Government**” means the government of the United States of America, and any body or entity exercising executive, legislative, judicial, regulatory or administrative functions of the government of the United States of America.
- 1.6 “**Grant Agreement**” shall mean the grant agreement between VPRA and FRA which forms the basis for federal financial assistance to the Contract.
- 1.7 “**FRA**” means the Federal Railroad Administration, an operating administration of the USDOT.
- 1.8 “**Project**” shall have the meaning set forth in the Contract and, if no such definition is specified, shall mean the subject matter pertaining to Consultant’s Contract services.
- 1.9 “**U.S.C.**” means the United States Code.
- 1.10 “**Work**” shall have the meaning set forth in the Contract and includes the services to be furnished by Consultant under the Contract.

ARTICLE 2: COMPLIANCE WITH LAWS, REGULATIONS, POLICIES, ETC.

- 2.1 The Consultant shall at all times comply with the required FRA clauses set forth in this Contract and with all applicable federal laws together with DOT/FRA regulations, policies, procedures, guidance, required terms and conditions, and directives including, without limitation, those listed directly or by reference in the Grant Agreement (or any underlying agreement thereto). Federal requirements applicable to this Contract may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Grant Agreement (or any underlying agreement thereto), including any information incorporated by reference and made part of the Grant Agreement (or any underlying agreement thereto). The Consultant shall comply with any changes to the federal requirements as are applicable to this Contract, including but not limited to, any new DOT/FRA required terms and conditions as may be issued in response to changes in the federal requirements. The Consultant's failure to fully comply with the provisions of this Article 2.1 shall constitute a material breach of this Contract.
- 2.2 Specific provisions in this Contract include, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in the Contract provisions. All contractual provisions

required by USDOT, including those set forth Appendix II of 2 C.F.R. Part 200 are hereby incorporated by reference. Notwithstanding anything to the contrary in this Contract, all FRA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any VPRA requests which would cause the VPRA to be in violation of the FRA terms and conditions and/or the Grant Agreement.

ARTICLE 3: PROHIBITED INTERESTS

- 3.1 No member of or delegate to, the Congress of the United States shall have any interest, direct or indirect, in this Contract or to the benefits thereof.

ARTICLE 4: UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES AND AUDIT REQUIREMENTS

- 4.1 The Consultant shall comply with applicable provisions of 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and DOT's implementing regulations at 2 C.F.R. Part 1201.

ARTICLE 5: ACCESS TO RECORDS, ACCESS TO CONSTRUCTION SITE, AND MAINTENANCE OF RECORDS

- 5.1 **Access to Records.** The Consultant agrees to provide sufficient access to FRA and its agents to examine, inspect, and audit records and information related to performance of this Contract as reasonably may be required.
- 5.2 **Access to the Sites of Performance.** The Consultant agrees to permit FRA and its agents access to the sites of performance under this Contract as may reasonably may be required.
- 5.3 **Reproduction of Documents.** The Consultant will retain, and will require its subconsultants at all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- 5.4 **Retention Period.** The Consultant agrees to comply with the record retention requirements in accordance with 2 C.F.R § 200.333. The Consultant shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto. The expiration or termination of this Contract does not alter the record retention or access requirements of this Article.

ARTICLE 6: PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- 6.1 The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and USDOT regulations, "*Program Fraud Civil Remedies*," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. Upon execution of this Contract, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FRA-assisted project for which this work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

ARTICLE 7: CIVIL RIGHTS

- 7.1 VPRA is an Equal Opportunity Employer. As such, the VPRA agrees to comply with all applicable

Federal civil rights laws and implementing regulations. Under this Contract, the Consultant shall at all times comply with the following requirements.

7.2 Nondiscrimination. The following nondiscrimination requirements apply to this Contract:

7.2.1 Nondiscrimination in Employment. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including gender identity), age, or disability. In addition, the Consultant agrees to comply with applicable federal implementing regulations and other implementing requirements FRA may issue.

7.2.2 Nondiscrimination in Contracting. The Consultant agrees and assures that it will abide by the following conditions, and that it will include the following assurance in every subagreement and third-party contract it signs: (1) The Consultant must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FRA or U.S. DOT-assisted subagreement, third party contract, or third party subcontract, as applicable, and (2) the Consultant must take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable.

7.3 Equal Employment Opportunity. The following equal employment opportunity requirements apply to this Contract:

7.3.1 Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 2000e *et seq.*, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S.DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FRA may issue.

7.3.2 Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FRA may issue.

7.4 Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, the Consultant agrees that it will not discriminate against individuals on the basis of disability. In addition, the Consultant agrees to comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part

1630, and any implementing requirements FRA may issue. The Consultant will also ensure that accessible facilities (including vehicles and buildings) and services are made available to individuals with disabilities in accordance with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and any applicable implementing regulations.

7.5 Information and Reports. The Consultant shall provide all information and reports required by the regulations, or orders and instruction issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the VPRA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the VPRA, and shall set forth what efforts it has made to obtain the information.

7.6 Sanctions for Noncompliance. In the event of the Consultant's noncompliance with the provisions of this Contract, VPRA shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to,

- i. Withholding the payments to the Consultant otherwise due under Contract until the Consultant achieves compliance, and/or
- ii. Cancellation, termination, or suspension of the Contract, in whole or in part.

ARTICLE 8: NONDISCRIMINATION LEGAL AUTHORITIES APPLICABLE TO THE CONTRACT

8.1 During the performance of this Contract, the Consultant, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and consultants, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*)

8.2 USDOT 1050.2A, Appendices A and E are hereby incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds.

ARTICLE 9: EMPLOYEE PROTECTIONS

- 9.1** The Consultant agrees to comply and assures that each subconsultant will comply with all federal laws, regulations, and requirements providing wage and hour protections for employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701, *et seq.*, and U.S.DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5.
- 9.2** The Consultant agrees to comply and assures that each subconsultant will comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq.* to the extent that the FLSA applies to employees performing Work under the Contract.
- 9.3** The Consultant shall maintain payrolls and basic payroll records during the course of the Work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Such records maintained under this paragraph shall be made available by the Consultant for inspection, copying, or transcription by authorized representatives of the FRA and the USDOL, and the Consultant will permit such representatives to interview employees during working hours on the job.

ARTICLE 10: CERTIFICATION REGARDING DEBARMENT; SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

- 10.1** The Contractor shall comply and facilitate compliance with USDOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the U.S. Office of Management and Budget (USOMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FRA official irrespective of the contract amount. The Consultant agrees to, and assures that its third party contractors will, review the System for Award Management (SAM) before entering into any lower tier subconsultant/subcontractor agreements.
- 10.2** By signing this Contract, the Consultant certifies to the best of its knowledge and belief, that it and its principals:
- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; and have not been convicted of any violations of Federal or

State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

10.3 This certification is a material representation of fact upon which VPRA relies in entering this Contract. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the VPRA, the Federal Government may pursue available remedies, including suspension and/or debarment. The Consultant shall provide to VPRA immediate written notice if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

ARTICLE 11: CERTIFICATION REGARDING LOBBYING

11.1 For any project of \$100,000 or more, the Consultant is required to make the following certifications. The Consultant must also require its consultants or subconsultants to make the following certification in any contracts or subcontracts valued at or above \$100,000.

- a. The Consultant certifies, to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid by or on behalf of the Consultant for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)]; and
- c. The Consultant shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

11.2 This certification is a material representation of fact upon which VPRA has relied to enter this Contract. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. section 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

11.3 By its signature on this Contract, the Consultant certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. § 3801, *et seq.*, apply to this certification and disclosure, if any.

ARTICLE 12: TELECOMMUNICATIONS CERTIFICATION

12.1 Consultant certifies through the signing of this Contract that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), the Consultant does not and will not use any equipment, system, or service that uses "covered

telecommunications equipment or services” (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system.

ARTICLE 13: INTELLECTUAL PROPERTY RIGHTS

- 13.1** The requirements of this Article apply to all contracts for experimental, developmental, or research work purposes. Certain patent rights and data rights apply to all subject data first produced in the performance of this Contract. The Consultant shall grant the VPRA intellectual property access and licenses deemed necessary for the Work performed under this Contract and in accordance with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FRA or USDOT.
- 13.2** Except for its own internal use, the Consultant may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Consultant authorize others to do so, without the written consent of FRA, until such time as FRA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
- 13.3** The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
- 13.3.1 Any subject data developed under the Contract, whether or not a copyright has been obtained; and
- 13.3.2 Any rights of copyright purchased by the Consultant using Federal assistance in whole or in part by the FRA.
- 13.4** Unless FRA determines otherwise, the Consultant performing experimental, developmental, or research work required as part of this Contract agrees to permit FRA to make available to the public, either FRA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- 13.5** Unless prohibited by state law, upon request by the Federal Government, the Consultant agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Consultant of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the contract. Notwithstanding the foregoing, the Consultant shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- 13.6** Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

- 13.7** Data developed by the Consultant and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into Work required by the underlying Contract is exempt from the requirements herein, provided that the Consultant identifies those data in writing at the time of delivery of the Contract Work.

ARTICLE 14: ENVIRONMENTAL STANDARDS AND PRACTICES

- 14.1** ***Generally.*** The Consultant agrees to, and assures that its subconsultants will, comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements.
- 14.2** ***Clean Water Act.*** For any project of \$150,000 or more, the Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387. The Consultant agrees to report each violation to the VPRA and understands and agrees that the VPRA will, in turn, report each violation as required to assure notification to FRA and the appropriate Environmental Protection Agency ("EPA") Regional Office.
- 14.3** ***Clean Air Act Compliance.*** For any project of \$150,000 or more, the Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671q. The Consultant agrees to report each violation to VPRA and understands and agrees that VPRA will, in turn, report each violation as required to assure notification to FRA and the appropriate EPA Regional Office.
- 14.4** ***Energy Conservation.*** The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.
- 14.5** ***Recovered Materials.*** The Consultant agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247.

ARTICLE 15: GEOGRAPHIC RESTRICTIONS

- 15.1** The Recipient agrees that it will not use any state or local geographic preference, except as permitted by federal law (for example, Section 25019 of the Infrastructure Investment and Jobs Act of 2021, Pub. L. 117- 58), regulation, requirement, or guidance.

ARTICLE 16: FLY AMERICA REQUIREMENTS

- 16.1** The Consultant agrees to comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their consultants are required to use U.S. Flag Air Carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.
- 16.2** The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag Air Carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

ARTICLE 17: NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

- 17.1** To the extent applicable, the Consultant agrees to conform to the National Intelligent Transportation

Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note.

ARTICLE 18: SEISMIC SAFETY

- 18.1** To the extent applicable, the Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations, 49 C.F.R. Part 41, and will certify to compliance to the extent required by the regulations. The Consultant also agrees to ensure that all Work performed under this Contract, including Work performed by a subconsultant, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

ARTICLE 19: SAFE OPERATION OF MOTOR VEHICLES

- 19.1** ***Seat Belt Use.*** The Consultant agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

19.1.1 Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and

19.1.2 Including a "Seat Belt Use" provision in each subconsultant agreement and lower tier subcontract issued under this Contract, modified only to identify the subconsultant/subcontractor that will be subject to the provisions.

- 19.2** ***Distracted Driving, Including Text Messaging While Driving.*** The Consultant agrees to implement Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009; and U.S. DOT Special Provision pertaining to Distracted Driving as follows:

19.2.1 The Consultant agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Consultant owns, leases, or rents, or a privately-owned vehicle when on official business in connection with this Contract or when performing any Work for or on behalf of this Contract.

19.2.2 The Consultant agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

ARTICLE 20: RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION

- 20.1** When applicable contracts in excess of \$175,000, and all non-procurement transaction, as defined in 2 C.F.R. §§ 180.220 and 1200.220, in excess of \$25,000 will contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures. As relates to these items, Consultant is referred to the "Termination" and "Dispute Resolution" provisions of the General Terms and Conditions applicable to the Contract.

- 20.2** If a current or prospective legal matter that may affect the Federal Government emerges, the Consultant must promptly notify VPRA and FRA's Regional Counsel. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming

the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

ARTICLE 21: NO OBLIGATION OF FEDERAL GOVERNMENT

- 21.1** VPRA and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the VPRA, the Consultant, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from this Contract.

ARTICLE 22: INCLUSION IN SUBCONTRACTOR AGREEMENTS

- 22.1** The Consultant agrees to have the foregoing terms flow down to each subconsultant agreement and lower tier subcontract issued under this Contract, modified only to identify the subconsultant/subcontractor that will be subject to the provisions.

END OF DOCUMENT

ATTACHMENT C
INSURANCE REQUIREMENTS
RFP NUMBER: 1-000-22-0007

Consultant at its sole expense shall procure and maintain, during the entire period of performance under this Contract, the types of insurance specified below, subject to any conditions noted therein. Consultant shall have its insurance broker or insurance company submit a Certificate of Insurance to the Director of Procurement giving evidence of Insurance Specification Nos. 1-7 below (the "Mandatory Coverages") prior to commencing performance under this Contract. All Mandatory Coverages shall contain a waiver of subrogation provision in favor of the Commonwealth of Virginia of and Virginia Passenger Rail Authority.

1. **Workers' Compensation** for all of its employees engaged in the Project as required by Chapter 8 of Title 65.2 of the *Code of Virginia* (1950), as amended and/or any other jurisdiction in which the Contract work is performed.
2. **Employer's Liability Insurance** with limit of no less than \$1,000,00 per accident for bodily injury or disease. \$500,000 per accident for injury; \$500,000
3. **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, and broad form contractual liability of limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate applicable on a per project basis. Policy must include a CG 24 17 Contractual Liability – Railroads endorsement. The Commonwealth of Virginia, Virginia Passenger Rail Authority, CSX Transportation, Inc., Norfolk Southern Railway Company, and National Railroad Passenger Corporation are to be named as an additional insured on a primary, non-contributory basis.
4. **Automobile Liability Insurance** with a limit of at least \$1,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Commonwealth of Virginia, Virginia Passenger Rail Authority, CSX Transportation, Inc., Norfolk Southern Railway Company, and National Railroad Passenger Corporation are to be named as an additional insured on a primary, non-contributory basis.
5. **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for all the above mentioned policies in the amount of \$5,000,000 per occurrence and in the aggregate. Such policy(ies) shall apply without any gaps in the limits of coverages and be at least as broad as and follow the form of underlying primary coverages required herein. The Commonwealth of Virginia, Virginia Passenger Rail Authority, CSX Transportation, Inc., Norfolk Southern Railway Company, and National Railroad Passenger Corporation are to be named as an additional insured on a primary, non-contributory basis.
6. **Professional Liability Insurance** covering liability for acts, errors, or omissions arising in connection with professional services, for not less than \$2,000,000 with respect to any one claim and in the aggregate.
7. **Cyber Liability Insurance** with limits not less than \$1,000,000 per claim. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this Contract and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

8. **Railroad Protective Liability Insurance** will be maintained on behalf of owners/operators of railway service within the Project limits (the "Rail Carriers") whenever requested by the Rail Carriers. The policy, which shall name the Rail Carriers as covered insureds, shall be in accordance with the form prescribed by the Rail Carriers and must comply with Federal Aid Policy Guide 23 CFR 646 subpart A. The limits of the policy will be set by the Rail Carriers.

END OF DOCUMENT

Attachment D



SMALL BUSINESS SUBCONTRACTING PLAN

In accordance with VPRA's Procurement Rules, all potential bidders are required to submit a Small Business Subcontracting Plan (SWaM Plan) on procurements that do not include a Disadvantaged Business Enterprise (DBE) contract goal.

Definitions:

"Small business" shall have the meanings set forth in Va. Code § 2.2-1604 and includes only those firms which hold a certification as such by the Virginia Department of Small Business and Supplier Diversity (DSBSD) on the due date for bids/proposals. This shall also include DSBSD-certified micro, women-owned, minority-owned, and service-disabled veteran-owned businesses when they also hold a DSBSD certification as a small business on the proposal due date.

Certification:

The Certification Division of DSBSD is responsible for the administration of Virginia's business certification programs. Certification applications are available through DSBSD online at: <https://www.sbsd.virginia.gov/certification-division/>.

Point Allocation:

Where applicable, point allocation relative to an Offeror's proposed utilization of a DSBSD certified small business shall be made in accordance with the RFP Documents. Offerors which are not certified as small businesses with DSBSD or otherwise utilizing DSBSD certified small businesses will not be eligible for points, but, to the extent applicable, are encouraged to report other certifications which demonstrate performance by small or underprivileged businesses.

Modification:

No modification of the Small Business Subcontracting Plan will be allowed during the performance of the Contract absent the express written consent of VPRA's Director of Procurement. The Consultant/Contractor shall keep the Director of Procurement apprised of any material issues that arise relative to its performance under the Small Business Subcontracting Plan.

Instructions:

- A. If you are certified by the DSBSD as a small business, complete only Section A of this form. This includes but is not limited to DSBSD-certified micro, women-owned, minority-owned, and service-disabled veteran-owned businesses when they have also received DSBSD small business certification.
- B. If you are not a DSBSD-certified small business, complete Section B of this form. For the offeror to receive credit for the small business subcontracting plan evaluation criteria, the offeror shall fully complete all required informational items within Section B.

Small Business Subcontracting Plan (cont.)

Section A

If your firm is certified by the DSBSD as a small business, provide your certification number and the date of certification):

Certification number: _____ Certification Date: _____

Small Business Subsets (check all that apply):

Micro _____
Women-Owned _____
Minority-Owned _____
Service Disabled Veteran-Owned _____

Section B

Populate the table below to show your firm's plans for utilization of **DSBSD-certified small businesses** in the performance of this Contract for the initial contract period. Include plans to utilize small businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc. It is important to note that the proposed participation will be incorporated into the subsequent contract and will be a requirement of the Contract.

Failure to obtain the proposed participation percentages may result in breach of the Contract.

SUBCONTRACTOR NAME/ADDRESS	DSBSD CERTIFICATION NO.	ADDITIONAL DSBSD CERTIFICATIONS or STATUS (e.g., micro (MIC), women-owned (W), minority-owned (M), service disabled veteran-owned (SDV))	OTHER CERTIFICATIONS (can be local, state or federal) [OPTIONAL] ¹	DESCRIPTION OF WORK	PLANNED CONTRACT INVOLVEMENT (%)	ESTIMATED SPEND (\$) <i>Applicable to fixed price contracts only</i>

***Attach additional sheets as necessary

Offeror Name: _____

Preparer Name: _____ Date: _____

¹ This information is collected for informational purposes only. Offerors are encouraged to report the participation of subcontractors which, while not qualifying as a DSBSD certified small business, hold other, related certifications which demonstrate participation by either a small, disadvantaged or veteran-owned businesses.

ATTACHMENT E

PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

THIS FORM MUST BE SUBMITTED WITH YOUR BID/PROPOSAL, FAILURE TO
INCLUDE THIS FORM MAY RESULT IN REJECTION OF YOUR BID/PROPOSAL

Please check the appropriate line below and provide the requested information:

☐

A. Bidder/Offeror is a Virginia business entity organized and authorized to transact business in Virginia by the State Corporation Commission (SCC) and such vendor's Identification Number issued to it by the SCC is: _____.

☐

B. Bidder/Offeror is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the SCC and such vendor's Identification Number issued to it by the SCC is: _____.

☐

C. Bidder/Offeror does not have an Identification Number issued to it by the SCC such vendor is not required to be authorized to transact business in Virginia by the SCC for the following reason(s):

(Please attach additional sheets if necessary.)

☐

D. Bidder/offeror currently have a pending application before the SCC for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids/proposals (VPA reserves the right to determine in its sole discretion whether to allow such waiver)

Legal Name of Bidder/Offeror (as listed on W-9)

Authorized Signature

Print or Type Name and Title

Date

*****RETURN THIS PAGE WITH COPIES OF DOCUMENTATION*****

ATTACHMENT F



MONTHLY SMALL BUSINESS SUBCONTRACTING PLAN REPORT

Contract No.

Reporting Period (M/Y)

Prime Contractor Name

Contact Name

Title/Position

Phone Number

Email

Date Submitted

Subcontractor Name	Tax ID No.	Description of Work Provided	Payments to Qualifying Small Businesses (1)	Payments to other DSBSD Certified Firms (2)	Payments to other small or diverse businesses not certified by DSBSD [OPTIONAL] (3)	TOTALS

Attach additional pages if necessary

Notes:

- (1) Denotes firms which are DSBSD certified "small businesses," and which are identified in the contractor's Small Business Subcontracting Plan (FORM PD 60).
- (2) Denotes firms which are not certified as a "small business," by DSBSD but which hold other certifications or status from DSBSD (i.e., women-owned (W), minority-owned (M), or service disabled veteran-owned (SDV), disadvantaged business enterprise (DBE)). Please include classification code along with payment information.
- (3) Denotes firms which are not certified by DSBSD, but which are otherwise certified as a small or diverse business by another certifying body. Please include a description of the certification along with payment information.

ATTACHMENT G - FEE PROPOSAL

Services Procured:		Program Management			
RFP No.:		1-000-22-0007			
Consultant:					
Personnel Classification	2023 Hourly Wage Rate	2023 Overhead Rate	2023 Profit	2023 Total Fixed Billable Rate	Annual Percentage Rate Increase ¹
Example	\$ -	\$ -	\$ -	\$ -	0.00%
Key Personnel					
Program Manager				\$ -	
Project Manager				\$ -	
Engineering/Design Advisor				\$ -	
Rail Industry Advisor				\$ -	
USDOT Funding Programs Advisor				\$ -	
Grants Advisor				\$ -	
Risk Management Advisor				\$ -	
Financial Analyst				\$ -	
Safety Management Advisor				\$ -	
Real Estate & Asset Management Advisor				\$ -	
Other Personnel					
Project Management Advisor				\$ -	
Construction Management Advisor				\$ -	
Construction Manager				\$ -	
Construction Claims Specialist				\$ -	
Project Planning & Development Advisor				\$ -	
Planning Specialist				\$ -	
Project Controls Advisor				\$ -	
Project Scheduler				\$ -	
Document Control Management Advisor				\$ -	
Environmental Specialist				\$ -	
Right of Way Specialist				\$ -	
GIS Specialist				\$ -	
Asset Management Specialist				\$ -	
Strategic Service Planning Advisor				\$ -	
Service Planning Analyst				\$ -	
Communications & Public Outreach Advisor				\$ -	
Communications Specialist				\$ -	
Public Outreach Specialist				\$ -	
Graphics Specialist				\$ -	
Document Control Specialist				\$ -	
Administrative Support Specialist				\$ -	

Optional/Additional Personnel and Hourly Rates

[illegible]

**SPECIAL PROVISION INVOLVING PROPERTY AND FACILITIES
OWNED, CONTROLLED OR UTILIZED BY
CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN RAILWAY COMPANY, AND
THE NATIONAL RAILROAD PASSENGER CORPORATION**

To the extent permitted by law, the following additional terms shall apply to the Contract:

1. Projects Involving Property/Rights of Way Used by CSX Transportation, Inc. (“CSXT”)

Where the Scope of Work involves entry or work upon “Segment 1” or “Segment 3” (as defined within the [Comprehensive Rail Agreement dated March 26, 2021](#), (“CSXT Comprehensive Rail Agreement”)), the Contractor/Consultant shall be required to indemnify the CSXT Indemnitees to the same extent Contractor/Consultant is required to indemnify VPRA pursuant to the Contract Documents. For purposes of this Special Provision, CSXT Indemnitees shall have the meaning set forth in the CSCT Comprehensive Rail Agreement which document is available at <https://transformingrailva.com/wp-content/uploads/2021/06/11.1.1.43-Comprehensive-Rail-Agreement-Fully-Executed-without-Exhibits-1.pdf?bcs-agent-scanner=395639f9-9352-0747-bc8f-9f66e4f30f75> and is incorporated herein by reference.

Additionally, prior to entering upon any property/right of way owned or controlled by CSXT, the Contractor/Consultant may be required to execute CSXT’s standard Right of Entry Agreement using the CSXT Property Portal (https://propertyportal.csx.com/pub_ps_res/ps_res/jsf/public/index.faces). CSXT shall have sole discretion on whether the Contractor/Consultant will be required to execute the standard Right of Entry Agreement and Contractor’s/Consultant’s failure to comply with the standard Right of Entry Agreement may constitute a breach of the Contract. Background information regarding the CSXT Property Portal is available at [CSXPropertyPortal_ApplicationsTutorial-1.pdf](#).

2. Projects Involving Property/Rights of Way Used by Norfolk Southern Railway Company (“Norfolk Southern”)

Where the Scope of Work involves entry upon the Purchased V-Line (as defined within the [Comprehensive Rail Agreement dated January 10, 2022](#) (“NS Comprehensive Rail Agreement”)) for purposes of construction and maintenance activities, the Contractor/Consultant shall be required to indemnify the Norfolk Southern Railway Indemnified Parties to the same extent Contractor/Consultant is required to indemnify VPRA pursuant to the Contract Documents. To the extent Contractor/Consultant engages in construction and maintenance activities on the Purchased V-line, it must also be adequately insured in accordance with the requirements set forth in Exhibit K to the NS Comprehensive Rail Agreement. For purposes of this Special Provision, North Southern Railway Indemnified Parties shall have the meaning set forth in the NS Comprehensive Rail Agreement which document is available at <https://transformingrailva.com/wp-content/uploads/2022/02/Redacted-Final-Signature-NSR-Comprehensive-Rail-Agreement-Combined-Execution-Version-c.pdf?bcs-agent-scanner=9e4748db-2aac-bf44-b5f8-128433f4a3e9> and is incorporated herein by reference.

Additionally, prior to entering upon any property/right of way owned or controlled by Norfolk Southern, the Contractor/Consultant may be required to execute Norfolk Southern’s standard Right of Entry Agreement using the Norfolk Southern Access NS Property Portal (<http://www.nscorp.com/content/nscorp/en/real-estate/norfolk-southern-services/access-norfolk-southern-property.html>). Norfolk Southern shall have sole discretion on whether the Contractor/Consultant will be required to execute the standard Right of Entry Agreement and Contractor’s/Consultant’s failure to comply with the standard Right of Entry Agreement may constitute a breach of the Contract. Background information (FAQs) on Norfolk Southern’s right of entry process

is available at <http://www.nscorp.com/content/nscorp/en/real-estate/norfolk-southern-services/access-norfolk-southern-property/right-of-entry-faqs.html>.

3. Projects Involving Rail Lines Used by the National Railroad Passenger Corporation (“Amtrak”)

Where the Scope of Work involves entry or work upon Rail Lines used in connection with the operation of Amtrak Trains, the Contractor/Consultant shall be obligated to indemnify and defend Amtrak for all losses or claims arising from the acts or omissions of the Contractor/Consultant in the performance of the Contract whether or not the Contractor/Consultant is negligent and irrespective of any negligence or fault of Amtrak. For purposes of this Special Provision:

- a. the term “Rail Lines,” shall include, but is not limited to, all of VPRA’s rights of way and real properties appurtenant thereto, whether owned or leased or otherwise held by VPRA that are necessary to operate Amtrak Trains, together with roadway structures, signal systems, and other facilities thereof or appurtenant thereto owned by VPRA and used in connection with the actual operation of Amtrak Trains and all of VPRA’s rights to use such properties of others subject to the terms of any applicable agreements for the use of such property of others; and
- b. the term “Amtrak Trains,” means all trains operated by Amtrak as part of its intercity passenger rail service, but which excludes commuter rail service.

4. Inclusion in Subcontractor Agreements

The Contractor/Consultant agrees to have the foregoing terms flow down to each subconsultant agreement and lower tier subcontract issued under this Contract, modified only to identify the subconsultant/ subcontractor that will be subject to the provisions.

APPENDIX 1

EXCEPTIONS TO RFP DOCUMENTS

Each Proposal submitted in response to this RFP shall list any deviation(s), exception(s), or variation(s) to or from the RFP Documents. The failure of Offeror to note a deviation, make an exception, or list a variation to the terms and conditions of these RFP Documents shall be deemed an express waiver by that Proposer of such deviation, exception, or variation.

Offeror notes the following deviations, exceptions or variations:

RFP Document	Section, paragraph or other identifier	Description of deviation, exception or variation

RFP No. _____

Offeror Name: _____

Preparer Name: _____ Date: _____

APPENDIX 2

PROPRIETARY/CONFIDENTIAL INFORMATION IDENTIFICATION

NAME OF FIRM/OFFEROR: _____

Pursuant to Va. Code § 33.2-299.7, offerors may request VPRA to keep confidential trade secrets or confidential proprietary information, not publicly available, provided by a private person or entity pursuant to a promise of confidentiality where if such information were made public, the financial interest of the private person or entity could be adversely affected.

For such information to be excluded from disclosure requirements under the Virginia Freedom of Information Act, offerors shall make a written request to VPRA:

- (1) invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
- (2) identifying the data or other materials for which protection is sought; and
- (3) stating the reasons why protection is necessary.

The written notice must specifically identify the data or materials to be protected including the section of the proposal in which it is contained and the page numbers, and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. In addition, a summary of proprietary information submitted shall be submitted on this form. The classification of an entire proposal document, line-item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable. VPRA will make the final determination of the appropriate scope and nature of the protection afforded to the requested records.

PROPOSAL SECTION/TITLE	PAGE NUMBER(S)	REASON(S) FOR WITHHOLDING FROM DISCLOSURE

CONTRACT FOR CONSULTING SERVICES

Contract Id No. 1-000-22-0007

This Contract for Consulting Services ("Contract") dated this ____ day of _____, 202__ is made and entered into between the VIRGINIA PASSENGER RAIL AUTHORITY, a political subdivision of the Commonwealth of Virginia ("VPRA") and _____ a [specify entity type (e.g., limited liability company, corporation, etc.)], organized under the laws of [specify state], and authorized to transact business in the Commonwealth of Virginia ("Consultant").

WITNESSETH:

WHEREAS, pursuant to its enabling legislation (Va. Code § 33.2-287 *et seq.*), VPRA is, among other things, expressly authorized to procure goods and services and to make and enter into contracts necessary or incidental to the performance of its duties;

WHEREAS, in accordance with its Procurement Rules (<https://vapassengerrailauthority.org/wp-content/uploads/2022/11/Procurement-Rules.pdf?bcs-agent-scanner=09923ef2-258f-0145-bad4-08acc9e033d9>), VPRA issued a solicitation for the above-numbered Contract and received proposals from offerors determined to be responsive and responsible; and

WHEREAS, upon consideration of the evaluation criteria set forth within the RFP Documents (defined below), VPRA has determined that Consultant possesses the requisite skill, experience, ability, background, certification, and knowledge to provide the services described in this Contract and desires to retain Consultant to render services under the terms and conditions set forth in this Contract;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:

ARTICLE 1

PROJECT TITLE/DESCRIPTION

The project or program that is the subject this Contract (the "Project") is hereby identified as follows:

Project Title: Program Management Services/Transforming Rail in Virginia (TRV).

General Project Description: Comprehensive Program Management Services in support of VPRA's TRV Program to include at a minimum: capital program management support; capital projects development and delivery support; real estate and asset management support; passenger rail service planning and performance monitoring support; and grant management support.

ARTICLE 2

SERVICES

The Consultant shall furnish services required for the Project as outlined in the Scope of Work negotiated and agreed to by the Parties and as may be more particularly described in any Work Plan and/or Task Order that may be issued under the Contract (the "Work"). All such Work shall be delivered in conformance with the Contract Documents and the requirements set forth in any Work Plan and/or Task Order. VPRA may, in its sole discretion, elect to delete certain tasks/services set forth within the Scope of Work.

No Additional Services shall be rendered by Consultant unless such Additional Services are first approved by written amendment to this Contract. As used herein, "Additional Services," means any work that is determined by VPRA to be necessary for the proper completion of the Project, but which is not included within the Scope of Work and which the parties did not reasonably anticipate would be necessary at time for execution of this Contract. Compensation for any authorized Additional Services shall be in accordance with the terms of the agreed Fee Schedule, inclusive of any adjustments made thereto with respect to any Renewal Term.

Consultant acknowledges and agrees that this Contract and the provision of services hereunder are nonexclusive and that VPRA may enter into similar agreements with other entities for the provision of similar services.

ARTICLE 3

TERM

The initial term of this Contract ("Initial Term") shall commence on the date this Contract is fully executed by the parties and shall continue in effect for the period specified in the RFP Documents unless sooner terminated as provided for in this Contract. Where authorized in the RFP Documents, the Director of Procurement may extend the term of this Contract with the extension (the "Renewal Term") to commence upon the expiration of the Initial Term or any Renewal Term.

ARTICLE 4
PAYMENT OF FEES AND COSTS

Subject to the terms set forth in the Contract Documents, VPRA will compensate the Consultant for the Work in accordance with the Fee Schedule negotiated and agreed to by the parties and made a part of the Contract Documents. For any Renewal Term, the Director of Procurement or designee and Consultant shall negotiate and agree upon any adjustment to the billing rates set forth in the Fee Schedule, prior to commencement of the Renewal Term.

Reimbursable costs shall include mileage, parking (as needed), and travel. Consultant shall not be reimbursed for any other expenses unless the expense is first approved in writing by VPRA. Reimbursement for travel (mileage, meals, and lodging) is not allowed for positions not required to have a vehicle, unless approved in advance by VPRA. In those cases where travel allowance is authorized, travel reimbursement shall be in accordance with the most current version of the Commonwealth of Virginia, Department of Accounts ("DOA"), "Commonwealth Accounting Policies and Procedures (CAPP) Manual Topic 20335." The CAPP Manual is available at the DOA website at <http://www.doa.virginia.gov>. When travel is authorized, it must originate from Consultant's nearest office.

ARTICLE 5
INSURANCE

Consultant agrees to maintain insurance in accordance with the requirements and specifications set forth in the RFP Documents, subject to any agreed exceptions and modifications as may be set forth herein. In executing this Contract, Consultant warrants and represents that the certificates of coverage furnished to VPRA remain in full force and effect as of the Effective Date of this Contract and throughout the Initial Term and any Renewal Terms.

ARTICLE 6
CONTRACT DOCUMENTS

The following documents, listed in order of priority in case of a conflict between or among them, are incorporated by reference into this Contract as if set forth fully herein and, together with this Contract, comprise the "Contract Documents":

- a. Agreed Exceptions to RFP Documents;
- b. Agreed Fee Proposal;

- c. Approved Small Business Subcontracting Plan;
- d. Request for Proposal No. 1-000-22-0007 dated December 20, 2022 (inclusive of all attachments, exhibits, and addendum) (collectively, the "RFP Documents");
- e. Consultant's RFP Submittal Package dated [specify]; and
- f. [list additional materials where applicable].

ARTICLE 7

CONTRACT REPRESENTATIVES

The respective Points of Contact for the parties and related contact information, including the places for delivery of notice, are as designated below:

For VPRA:

Virginia Passenger Rail Authority
Attn: John Kostyniuk, Director of Procurement
919 East Main Street, Suite 2400
Richmond, VA 23219
Phone: (804) 303-8700
Email: john.kostyniuk@vpra.virginia.gov

Any notice tendered to VPRA in accordance with the Contract shall also be contemporaneously sent by electronic mail to Michael Westermann, General Counsel at: michael.westermann@vpra.virginia.gov.

For the Consultant:

Company Name:
Address:

Point of Contract:
Phone:
Email:

EACH PARTY SHALL NOTIFY THE OTHER PARTY PROMPTLY OF ANY CHANGES IN THEIR CONTACT INFORMATION. UNLESS AND UNTIL NOTICE OF THE NEW ADDRESS OR POINT OF CONTACT IS GIVEN IN THE MANNER REQUIRED FOR NOTICE, A NOTICE TO SUCH PARTY IS SUFFICIENT IF GIVEN CONSISTENT WITH THE INFORMATION SET FORTH HEREIN.

ARTICLE 8

ADDITIONAL TERMS AND CONDITIONS

Subject to any negotiated exceptions between the parties, this Contract is to be governed by certain standard General Term and Conditions and where applicable, certain Special Terms and Conditions,

Special Provisions, and/or Supplemental Specifications which are set forth within the RFP Documents and made a part of the Contract Documents as set forth in Article 6.

ARTICLE 9
REPRESENTATIONS AND WARRANTIES TRUE AND COMPLETE

All representations and warranties of Consultant in this Contract are true, accurate and complete in all material respects as of the Effective Date of this Contract.

ARTICLE 10
COUNTERPARTS/FACSIMILE OR ELECTRONIC EXECUTION

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The facsimile or electronic transmission of the signature of any party executing this Contract on behalf of VPRA or the Consultant to the other party hereto shall constitute an original hereof.

ARTICLE 11
EFFECTIVENESS

This Contract shall be binding and deemed effective when executed by the parties whose signature is provided on the signature pages hereof (the "Effective Date").

ARTICLE 12
AUTHORITY TO EXECUTE AGREEMENT

Each individual executing this Contract represents that he or she is duly authorized to sign and deliver this Contract on behalf of the party indicated and that this Contract is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the undersigned have executed this Contract on the dates set forth beside their respective signatures.

[SIGNATURES FOLLOW ON SUBSEQUENT PAGE]

For: VIRGINIA PASSENGER RAIL AUTHORITY

By, _____
(signature)

(printed name)

Its, _____
(title)

Dated: _____

For: [specify]

By, _____
(signature)

(printed name)

Its, _____
(title)

Dated: _____