



DRAFT MAJOR BUSINESS TERMS SUMMARY
LONG BRIDGE PROJECT/NORTH PACKAGE

February 17, 2023

This Draft Major Business Terms Summary (“Term Sheet”) summarizes the significant commercial terms anticipated for the Long Bridge Project/North Package (the “Project”), and is designed to serve as interim guidance for potential Respondents on the Project pending release of the Request for Proposals (“RFP”) by the Virginia Passenger Rail Authority (“VPRA”).

In order to properly gauge their interest in the Project, potential Respondents are encouraged to review this Term Sheet prior to submitting a response to the Request for Qualifications (“RFQ”). Capitalized terms used in this Term Sheet but not otherwise defined herein have the meanings set forth in the RFQ.

This Term Sheet is offered for informational purposes only. The summary of major business terms set forth herein is not intended to be a detailed or complete description of the contents of the contract terms for the Project. VPRA reserves the right to, at its sole discretion, amend, modify, add to or remove major business terms (in whole or in part) prior to issuance of the RFP and to also modify major business terms based on the outcomes of the competitive procurement process for the Project.

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| 1. | Delivery Method and Scope of Work | <p>The Project will be delivered using the progressive design build (“PDB”) delivery method. The Work required to deliver the Project by the Design-Builder will consist of the Phase 1 Services and the Phase 2 Services, as follows.</p> <ul style="list-style-type: none"> (a) Phase 1 Services (Design and Preconstruction, and may include Early Work identified by the Design-Builder and agreed by VPRA); and (b) Phase 2 Services (Final Design and Construction). <p>The Project includes the following major scope items:</p> <ul style="list-style-type: none"> (a) Early and enabling work (i.e., demolition, sitework, soil improvements, utility relocations, etc.); (b) Phased construction of railroad embankment fills; (c) Geotechnical ground improvements; (d) New non-CSXT-owned trackwork;* (e) New rail bridge over the WMATA Portal/I-395; (f) Replacement of the existing two-track Ohio Drive SW Rail Bridge with a four-track bridge; (g) Replacement of the existing two-track Washington Channel Rail Bridge with a four-track bridge; (h) Replacement of the existing two-track Maine Avenue SW Rail Bridge with a four-track bridge; (i) Replacement of the Maine Avenue SW Pedestrian Bridge; (j) New retaining walls and associated embankments and ground improvements; (k) Landscaping; (l) Railroad crashwalls; (m) Stormwater Management Facilities; (n) Erosion and sediment control; (o) Maintenance of traffic and roadway work; (p) Utility coordination and adjustment work; (q) Right-of-Way coordination; (r) Coordination with regulatory agencies and property owners; (s) Securing of applicable permits; (t) Public and stakeholder outreach; and (u) Coordination with adjacent projects and owners. <p>*CSXT will install all signals and will install CSXT track in the shared corridor.</p> |
| 2. | Project Limits | <p>The Project limits are the northern terminus at L’Enfant Interlocking and the southern terminus at new Long Bridge northern abutment (the interlocking and the northern abutment are not included in the Project).</p> |

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| 3. | Compensation | <p>The Phase 1 Services will be compensated based on hourly rates to be agreed and stated in the PDBA, capped at a not-to-exceed amount.</p> <p>Early Work, if any, will be performed during Phase 1 and will be compensated on a negotiated basis.</p> <p>Phase 2 Services will be compensated on a lump sum basis, negotiated according to the timing and process contemplated under § 1.3.2 of the RFQ.</p> |
| 4. | Completion Deadlines | <p>Design Builder must achieve:</p> <p>(a) substantial completion on or before the third quarter of 2030; (b) Final Acceptance within 120 days of substantial completion.</p> <p>The precise completion deadlines will be established as part of the Construction Price Negotiations for the Phase 2 Services.</p> <p>The Design-Builder will be liable for delay liquidated damages if the Design-Builder fails to achieve substantial completion or Final Acceptance by the applicable deadline.</p> |
| 5. | Notices to Proceed | <p>The Design-Builder will receive the following notices to proceed during the course of the Project:</p> <p>(a) after execution of the PDBA, and subject to any conditions precedent therein, VPRA will issue a Phase 1 Notice to Proceed (“Phase 1 NTP”) authorizing the Design-Builder to commence the Phase 1 Services (not including any Early Works);</p> <p>(b) upon successful negotiation and achieving the conditions precedent set out in the PDBA (inclusive of insurance and bonding requirements), VPRA may issue an Early Works Notice to Proceed, authorizing Design-Builder to commence Early Works (if any). Each Early Work Package will be performed under a separate notice to proceed; and</p> <p>(c) upon meeting the conditions precedent set out in the PDBA (inclusive of increased insurance and bonding requirements applicable to the construction period), VPRA will issue a Phase 2 Notice to Proceed (“Phase 2 NTP”), authorizing Design-Builder to commence the Phase 2 Services.</p> |

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| 6. | Construction Cost Estimates | <p>During the provision of the Phase 1 Services, Design Builder shall:</p> <ul style="list-style-type: none"> (a) submit an Opinion of Probable Construction Cost within 60 days after issuance of the Phase 1 NTP; (b) submit a Binding Construction Price Proposal, including a baseline Project schedule (the “Baseline Schedule”), when design is approximately 60% complete; (c) on an Open Book basis, participate in structured workshops with VPRA and an Independent Cost Estimator to review the Binding Construction Price Proposal, reconcile any differences, and attempt to negotiate a Construction Price for the Phase 2 Services; (d) submit updated Binding Construction Price Proposals as may be necessary to continue Construction Price Negotiations; and (e) if VPRA accepts the Binding Construction Price Proposal and Baseline Schedule, prepare a Final Construction Price Proposal incorporating the agreed-upon terms for execution of the Phase 2 Amendment. |
| 7. | Unsuccessful Construction Price Negotiations | <p>VPRA will not execute a Phase 2 Amendment with the Design-Builder if the Design-Builder’s Binding Construction Price Proposal exceeds the Independent Cost Estimator’s estimate by 10% or more. If VPRA does not accept a Binding Construction Price Proposal, VPRA may terminate the PDBA, take possession of all Work Product, and seek bids from other contractors to perform the Construction Work.</p> <p>VPRA may also contract separately with the Lead Designer to complete the in-process design, pursuant to a Tri-Party Agreement, the form of which will be appended to the PDBA.</p> |
| 8. | Phase 2 Services Self-Performed Work | <p>Design-Builder must self-perform at least 30% of the Construction Work with its own forces but may not self-perform more than 70% of the Construction Work with its own forces. The scope and price of the 30% of the Construction Work that Design-Builder must self-perform will be negotiated with VPRA and is not subject to competitive bidding requirements. Work performed by a Major Subcontractor must be included in, and counts toward, the 30% of Construction Work not subject to competitive bidding requirements. If the Design-Builder and Major Subcontractor(s) self-perform in excess of 30% of the Construction Work, that portion in excess of 30% (up to the limit of 70%) will be subject to the competitive procurement requirements set forth in the PDBA.</p> <p>Other than work performed by DBEs, any Construction Work not self-performed by Design-Builder’s or Major Subcontractors’ own forces will be subject to the competitive procurement requirements set forth in the PDBA.</p> |

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| 9. | Right-of-Way | <p>VPRA will obtain and provide Design-Builder with access to the site (<i>i.e.</i>, the real property to be identified by VPRA by dates to be specified). During Phase 1, the Design-Builder will incorporate the timing of right-of-way acquisition into the Construction Schedule on which the Construction Cost Estimates are based.</p> <p>During Phase 1, the Design-Builder will have the opportunity to identify additional right-of-way that may benefit the Project. VPRA may approve or reject Design-Builder’s request for additional right-of-way. If VPRA approves additional right-of-way, the Design-Builder and VPRA will negotiate the acquisition process and timing of the additional right-of-way.</p> <p>Design-Builder must take appropriate action to minimize any cost and time impacts resulting from VPRA’s inability to provide access to a particular parcel by the scheduled date. Subject to the provisions of the PDDBA, to the extent that a delay to the critical path cannot be avoided, Design-Builder may seek relief for a “VPR</p> <p>Design-Builder may acquire temporary work areas beyond the limits of the Project ROW identified by VPRA and will be responsible for the acquisition and cost of all temporary work areas.</p> |
| 10. | Utility Relocation | <p>During Phase 1, the Design-Builder will work with VPRA to coordinate with utility owners to develop a utility conflict matrix that identifies the location of all utility conflicts impacting the Project and identifying who (as between Design-Builder and utility owners) will perform the design and construction of each utility adjustment. Additionally, Design-Builder’s coordination efforts will include determining a schedule for the utility adjustment work and incorporating the timing of utility adjustments into the Construction Schedule.</p> |
| 11. | Governmental Approvals | <p>The Design-Builder will be responsible for obtaining all permits and governmental approvals other than the permits and governmental approvals obtained by VPRA. The RFP will identify the permits that VPRA anticipates obtaining.</p> <p>In addition, the Design-Builder will be responsible for all cost and schedule impacts relating to any re-evaluation of the NEPA Document or new or amended governmental approvals required as a result of the Design-Builder’s final design, to the extent the Design-Builder’s final design differs from the design on which the NEPA Document was based.</p> |
| 12. | DBE Requirements | <p>To the extent there is a DBE contract goal, the Design-Builder shall achieve or use good faith efforts to achieve the goals for DBE participation set forth in the PDDBA and ensure that all Subcontractors comply with such requirements. Failure to do so with respect to the DBE participation goals may result in increased oversight by VPRA, liquidated damages, debarment, or disqualification from participating in other VPRA procurements.</p> |

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| 13. | Key Personnel | <p>Design-Builder shall not replace individuals filling a Key Personnel position unless approved in writing by VPRA and any proposed replacement individual must meet the requirements for the role stated in the RFQ.</p> <p>Design-Builder will be liable for liquidated damages if it substitutes an individual filling a Key Personnel position or the stated time commitment for a Key Personnel is not satisfied, unless otherwise authorized by VPRA in writing.</p> |
| 14. | Major Subcontractors | <p>Design-Builder shall use a Major Subcontractor to perform the scope of work for which Design-Builder identified the Major Subcontractor in its SOQ. Design-Builder will be liable for liquidated damages if it does not use a Major Subcontractor for the role identified in the SOQ, unless Design-Builder can establish that the failure to use a Major Subcontractor is due in no part to the acts or omissions of Design-Builder.</p> |
| 15. | Performance Security | <p>To secure Design-Builder's obligations under the PDBA, VPRA will require a performance bond and a payment bond, each with the penal sum set at 100% of the Construction Price and, in the case of Early Work Package(s), 100% of the agreed budgeted cost.</p> <p>In addition, a guarantor may be required to secure the Design-Builder's obligations under the PDBA if the Design-Builder cannot meet the Tangible Net Worth requirements set forth in the RFQ, or if VPRA determines that a guarantor is required based on its review of Design-Builder's financial statements.</p> |
| 16. | Insurance | <p>The Design-Builder will obtain and maintain the insurance coverages in types and amounts described in the PDBA from insurers that have an A.M. Best rating of A-VII or better and are authorized to transact business in Virginia. The RFP published by VPRA will include a final insurance specification applicable to the Design-Builder.</p> |
| 17. | Risk of Loss | <p>From Phase 2 NTP (or the Early Works NTP if applicable), Design-Builder shall be responsible for securing the Project site and providing appropriate security and shall maintain, rebuild, repair, restore, or replace all Work that is injured or damaged prior to the day after the date on which VPRA issues a Notice of Substantial Completion, unless performance of a Punch List item or other prerequisite to Final Acceptance requires Design-Builder to maintain control over a select portion of the Project site.</p> |

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| 18. | Payment Conditions | <p>The Design-Builder shall pay each Subcontractor all undisputed amounts (less any retainage and any other offsets and deductions provided in the Subcontract or by law) within 30 calendar days after receipt of payment from VPRA and Design-Builder shall return any moneys withheld in retention from the Subcontractor within 30 calendar days after satisfactory completion of all Work to be performed by a Subcontractor.</p> <p>Invoicing processes for the Phase 1 Services and Phase 2 Services will be detailed in the PDBA.</p> |
| 19. | Retainage | <p>Retainage will not be withheld on progress payments to Design-Builder unless and until VPRA determines that the Design-Builder's progress is unsatisfactory (i.e., not in accordance with the Construction Schedule). In such event, VPRA shall have the right to withhold up to five percent (5%) retainage of the monthly progress estimate for each month the Design-Builder's actual progress is determined to be unsatisfactory. If and when VPRA determines that the Design-Builder's progress has achieved compliance with Construction Schedule, the five percent (5%) retainage previously withheld because of unsatisfactory progress will be released in Design-Builder's next monthly progress estimate, and the remaining monthly progress estimates will not be subject to retainage provided the Design-Builder's progress continues to be satisfactory.</p> |
| 20. | Nonconforming Work | <p>VPRA has the right, in its sole discretion, to reject Work that does not conform to the requirements of the PDBA ("Nonconforming Work") or accept Nonconforming Work without requiring it to be fully corrected. If VPRA rejects Nonconforming Work, Design-Builder shall remove and replace rejected Nonconforming Work to conform with the requirements of the PDBA, at Design-Builder's expense and without any schedule or monetary adjustments.</p> <p>If VPRA accepts Nonconforming Work, VPRA will be entitled to reduce compensation by the value of (a) Design-Builder's cost savings associated with its failure to perform the Work in accordance with the PDBA's requirements; and/or (b) the amount deemed appropriate by VPRA to provide compensation for impacts to affected Nonconforming Work, such as future additional maintenance and other costs and loss of value.</p> |

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| 21. | Relief Events | <p>Anticipated Relief Events, a brief description of their application, and the available relief are included in Attachment 1. The PDBA will provide schedule and monetary relief to the Design-Builder for Relief Events that occur during the Phase 2 Services, subject to the detailed procedural requirements, conditions, and limitations to be included in the PDBA. In all cases, the following conditions apply to all Relief Events:</p> <ul style="list-style-type: none"> (a) costs are only recoverable if the Design-Builder could not reasonably have avoided them; (b) costs are not recoverable if those costs arise due to the action, inaction, error, omission, or breach of contract by the Design-Builder; and (c) delay-related relief (time extensions and/or delay costs) is not available unless the Relief Event impacts the critical path. |
| 22. | Allowances | <p>The PDBA will provide for an allowance pool to compensate the Design-Builder for the occurrence of specified Relief Events. The Design-Builder and VPRA will negotiate the allowance pool as part of the Construction Price Negotiations.</p> <p>The Design-Builder must prove entitlement to draw from the allowance pool and the amount of compensation owed, similar to the process for requesting a change order. Requests to draw from the allowance pool will be subject to the same limitations on Relief Events generally.</p> <p>VPRA anticipates that the allowance pool will be available to cover delays caused by utility owners, the discovery of unidentified utilities, differing site conditions, and delays caused by railroad owners.</p> |
| 23. | Contract Price Adjustment Relating to Steel | <p>The PDBA will contain a formula to adjust the compensation (up or down) to reflect changes in market prices for steel as between a baseline price and the actual price for steel at the time it is purchased by Design-Builder for incorporation into the Project.</p> |
| 24. | Termination | <p>Termination events will be listed in the PDBA and will be typical for projects of similar scope and purpose, and will include, among other things, termination for convenience of VPRA.</p> |
| 25. | Design-Builder Damages | <p>Design-Builder shall be liable for liquidated damages for:</p> <ul style="list-style-type: none"> (a) the failure to achieve substantial completion by the substantial completion deadline or Final Acceptance by the Final Acceptance deadline, with liquidate damages accruing daily; (b) the unpermitted departure of Key Personnel or the failure of Key Personnel to commit the required time to the Project; (c) the failure to use a Major Subcontractor for the role identified in the SOQ; (d) unpermitted road and track closures; and (e) other damages to be specified in the PDBA. |

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| 26. | Indemnification | <p>Design-Builder shall indemnify, defend, and hold harmless the Commonwealth of Virginia and VPRA together with their officers, agents, and employees (collectively, the “Virginia Indemnitees”) from and against all claims, losses, damages, liabilities, including reasonable attorneys’ fees, costs, and expenses, that may arise from Design-Builder’s performance of, or the failure to perform, the Work.</p> <p>Design-Builder’s indemnity obligations will not extend to any loss, damage or cost only to the extent that such loss, damage or cost was caused by the negligence or willful misconduct of a Virginia Indemnatee.</p> <p>In addition to Design-Builder’s indemnification of the Virginia Indemnitees, the Design-Builder will be required to indemnify CSX Transportation, Inc. and Amtrak pursuant to VPRA’s special provision SP 01 CRA, included as Attachment 2.</p> |
| 27. | Dispute Resolution | <p>It is a goal of VPRA to resolve (at the lowest level possible) disputes efficiently and fairly as they arise, to avoid languishing disputes during the life of the Project, and to avoid litigation during the life of the Project. Disputes that arise under the PDBA will be resolved via the following process:</p> <ul style="list-style-type: none"> (a) a dispute escalation ladder process involving three levels of review at project, project manager and executive levels (if required); (b) if unresolved after the escalation ladder process, submission of the dispute to a neutral person jointly selected by VPRA and Design-Builder who has a background in law and/or engineering; and (c) if unresolved after the escalation ladder and neutral processes, Design-Builder may re-assert all unresolved claim within a specified number of days after, but no earlier than, the later of Final Acceptance or the conclusion of all pending claims submitted to the neutral person. |
| 28. | Governing Law | Laws of the Commonwealth of Virginia will govern the PDBA. |
| 29. | Federal and State Law | The Design-Builder shall comply and require its contractors to comply with all federal and state laws and regulations applicable to transportation projects that receive federal or state funds. Federal or state laws and regulations will prevail over any conflicting provisions in the PDBA and Design-Builder must comply with any changes in federal or state laws that occur during its performance of the Contract. |
| 30. | Federal Funding Partners | Design-Builder shall be required to comply with all requirements for projects receiving federal financial assistance from any DOT Component. These requirements will be set forth as Special Terms and Conditions within the PDBA. |

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| 31. | Other Stakeholders | VPRA is delivering the Project in cooperation with numerous stakeholders, including District of Columbia Department of Transportation, Amtrak, CSXT, and the County of Arlington, VA. These stakeholders and other third-parties will have approval rights over certain aspects of design and construction, and the Design-Builder will be required to coordinate with and obtain necessary approvals from these and other third-parties. |
| 32. | Project Warranties | Design-Builder shall provide a general warranty against defects in the Work for a period of two years after Final Acceptance. During the warranty period, the performance bond penal sum will be reduced. Design-Builder's general warranty is in addition to all other warranties in favor of VPRA that Design-Builder provides or obtains in connection with the Work. |

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ATTACHMENT 1 – RELIEF EVENTS

The chart below identifies anticipated Relief Events that could entitle the Design-Builder to an adjustment to compensation and/or schedule, as well as the relief available to the Design-Builder for each Relief Event, in every case subject to the detailed procedural requirements, conditions, and limitations to be included in the PDBA. The available relief is anticipated to be as follows:

- “Extra Work Costs” means the direct costs of performing additional work resulting from a Relief Event, including labor, materials, and equipment;
- “Time” means an extension of the substantial completion and/or Final Acceptance deadline(s); and
- “Delay Costs” means the direct and indirect costs of a delay to the critical path, including idle labor, idle equipment, and additional overhead.

| Relief Event | Description of Event | Extra Work Costs | Time | Delay Cost |
|--------------------------------|---|------------------|------|------------|
| VPRA-Directed Change | A change directed by VPRA to increase or adjust the scope of work. | X | | |
| VPRA-Caused Delay | A delay caused by a VPRA-Directed Change or by VPRA’s failure to comply with a timeline to which it is bound under the contract. May include untimely submittal response, inability to provide ROW, suspensions of the work for convenience, etc. | X | X | X |
| Force Majeure | Natural disasters, terrorist acts, wars, national strikes, riots, state-declared emergencies, pandemic/epidemic. | | X | |
| Utility Delay | A Utility Company’s failure to comply with its Utility Agreement obligations. Includes untimely completion of utility-performed relocation, failure to coordinate with a Design-Builder performed relocation, and failure/refusal to negotiate the terms of a relocation. | X | X | X |
| Inaccurate Utility Information | A utility facility that is either (a) not identified in the utility information provided in the utility information developed during the Phase 1 Services, or (b) is in a different location (by a specified margin) than as identified in the utility information. | X | X | X |
| Railroad Delays | Delays caused by a railroad impacted by the Project, including permit review time, railroad approvals, or work coordination. | X | X | X |

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| Unknown Pre-Existing Contaminated Materials | The discovery of hazardous materials that require remediation and that were not identified in the RFP or during the Phase 1 Services. | X | X | X |
| Release of Contaminated Materials | A release of hazardous materials by someone other than Design-Builder or someone under the control of Design-Builder (e.g., subcontractors or material suppliers) that impacts the Project. | X | X | X |
| Discovery of archeological, paleontological, or cultural resources | The discovery of archeological, paleontological, or cultural resources within the Project's ROW and that are not identified in the RFP or during the Phase 1 Services. | X | X | X |
| Discovery of threatened or endangered species. | Discovery of threatened or endangered species not identified in the RFP or during the Phase 1 Services. | X | X | X |
| Differing Site Conditions | Type 1: those that differ from the information in the RFP or discovered during the Phase 1 Services; Type 2: those differing from conditions generally existing in the area. | X | X | X |
| Change in law | A change in laws after the final Binding Construction Price Proposal that increases the costs of performing the work, excluding federal law or laws that are generally considered the cost of doing business (e.g., tax laws). | X | X | X |
| Court Order | A court order that impacts the ability to perform the work. | X | X | X |
| Extreme Weather Event | Delays caused by weather that impacts the ability to perform critical path work for a minimum of 6 hours, after exhaustion of all weather days in the Project schedule. | | X | |
| Uncovering and restoring work | The cost of uncovering and restoring work that VPRA requests to inspect, provided that such work conforms to the contract requirements and VPRA was given a prior opportunity to inspect the work, including at a hold point. | X | X | X |

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| Non-renewal of permits or environmental clearance for which VPRA is responsible | VPRA fails to obtain a required permit that VPRA is responsible to obtain. | X | X | X |
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**ATTACHMENT 2 – VPRA SPECIAL PROVISION 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**

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 CSXT Comprehensive Rail Agreement, which document is incorporated herein by reference. A copy of the CSXT Comprehensive Rail Agreement can be obtained at <https://vapassengerrailauthority.org/resources/rail-agreements/> or by written request to procurement@vpra.virginia.gov.

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, Norfolk Southern Railway Indemnified Parties shall have the meaning set forth in the NS Comprehensive Rail Agreement, which document is incorporated herein by reference. A copy of the NS Comprehensive Rail Agreement can be obtained at <https://vapassengerrailauthority.org/resources/rail-agreements/> or by written request to procurement@vpra.virginia.gov.

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.