



**CONSTRUCTION MANAGER / GENERAL
CONTRACTOR AGREEMENT**

Franconia-Springfield Bypass

Addendum 1

Contract ID No.: 01-007-23-0001

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This Construction Manager / General Contractor Agreement (“Contract”) is entered into by and between the Virginia Passenger Rail authority, a political subdivision of the Commonwealth of Virginia (“VPRA”) and _____, a [state] [type of entity] (“Contractor”). VPRA and Contractor are each individually a “Party” and collectively, the “Parties.”

RECITALS

- A. Pursuant to its enabling legislation, Va. Code § 33.2-287 *et seq.*, VPRA was established as a body corporate and political subdivision of the Commonwealth for purposes of increasing passenger rail capacity, improving passenger rail services, and ameliorating current and future traffic congestion on the highways of the Commonwealth.
- B. VPRA has determined that the Project—a key component to VPRA’s Transforming Rail in Virginia Program—will significantly promote and expand the availability of passenger and commuter rail service in the Commonwealth and increase ridership by connecting population centers with passenger and commuter rail service.
- C. By the authority granted in Va. Code § 33.2-292, VPRA may enter into contracts necessary and incidental to the performance of its duties.
- D. On [date], VPRA issued a Request for Proposals (“RFP”) seeking proposals from firms interested in serving as the Contractor on the Project.
- E. Proposals were evaluated in accordance with the RFP requirements and VPRA’s Procurement Rules, whereupon VPRA determined that Contractor was the Proposer that best met the selection criteria in the RFP.
- F. Following limited negotiations with Contractor, VPRA concluded that Contractor submitted the best Proposal and offered the Best Value to VPRA and its funding partners.
- G. By vote of VPRA’s Board of Directors held on [date], the VPRA Executive Director has been expressly authorized to enter into this Contract and to take all action contemplated by such instrument, including the execution of such other contracts which are incidental to the Contract.
- H. This Contract is structured as CM/GC agreement consisting of two phases. In Phase 1, Contractor shall perform the Phase 1 Services (Preconstruction Services). During Phase 1, the Parties will attempt to negotiate a price and schedule for the Phase 2 Services (Construction Work). If the Parties successfully negotiate a price and schedule for the Phase 2 Services, VPRA may issue the Phase 2 NTP for Contractor to perform the Phase 2 Services. If the Parties do not successfully negotiate a price and schedule for Contractor to perform the Phase 2 Services, VPRA may terminate this Contract in accordance with the terms herein.
- I. As part of the CM/GC delivery method, the Parties will work collaboratively to develop the Project during Phase 1. There is no guarantee that Contractor will perform the Phase 2 Services, which includes the Construction Work. VPRA has no obligation to issue the Phase 2 NTP to Contractor.
- J. Each of Phase 1, and, if performed by Contractor, Phase 2, is subject to a separate pricing structure. Contractor shall perform the Phase 1 Services on an hourly rate basis subject to the not-to-exceed amount of the Phase 1 Services Fee. If VPRA issues the Phase 2

NTP, Contractor shall perform the Phase 2 Services for the agreed GMP. Neither the Phase 1 Services Fee nor the GMP is subject to adjustment except as specifically provided herein.

- K. Contractor shall perform all Work necessary to complete the Phase 1 Services and, if awarded, the Phase 2 Services, by the Completion Deadlines. The Completion Deadlines are not subject to adjustment except as specifically provided herein.
- L. The Parties acknowledge that VPRA will suffer substantial losses if Contractor fails to comply with certain of the requirements herein, including the failure to complete the Project within the time limitations set forth in the Contract Documents and the retention of Key Personnel. Due to the imprecise nature of the damages sustained, Liquidated Damages may be assessed for these and other events specified herein.

NOW, THEREFORE, in consideration of the sums to be paid to Contractor, the foregoing promises, and covenants and agreements herein, the Parties agree as follows.

AGREEMENT

1.0 ACRONYMS AND DEFINITIONS

Exhibit A contains a list of acronyms and definitions used throughout the Contract Documents. Unless otherwise specifically defined elsewhere within the Contract Documents, acronyms and capitalized terms shall have the corresponding meanings set forth in Exhibit A. Any acronym or capitalized term used in this Contract, but not defined within the Contract Documents, shall have the meaning generally ascribed to such terms within the construction industry.

2.0 DUTY TO COOPERATE

VPRA and Contractor commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, so as to permit each Party to realize the benefits afforded under the Contract Documents.

3.0 CONTRACT DOCUMENTS; ORDER OF PRECEDENCE

Each of the documents listed below, (together the "Contract Documents") is an essential part of the Contract and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to comprise the complete agreement between the Parties. In the event of any conflict among the Contract Documents, the order of precedence is as follows:

- (a) Change Orders;
- (b) This *Construction Manager / General Contractor Agreement*, including the Exhibits hereto (the "Contract");
- (c) The Phase 2 Amendment and any Early Work Amendment;
- (d) Construction Provisions developed during the Phase 1 Services, including the Exhibits thereto;
- (e) Applicable Standards;
- (f) the Design;
- (g) The Proposal, except that Contractor shall comply with all statements, offers, and terms that can reasonably be interpreted as offers to provide higher quality items than otherwise

required by the higher-priority Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms that are more advantageous to VPRA than the requirements of the higher-priority Contract Documents, as determined by VPRA.

4.0 REPRESENTATIVES OF THE PARTIES

VPRA designates _____ as its Project Manager, and _____ as its Senior Representative. VPRA's Contract Administrator for this Contract is JASON LOFGREEN. VPRA's Project Manager, Senior Representative, and Contract Administrator are referred to collectively as the "VPRA Representatives."

Contractor designates _____ as its Project Manager and _____ as its Senior Representative (collectively, the "Contractor Representatives").

5.0 PROJECT FAMILIARITY

The Contractor shall visit the Site, review the Project documents, coordinate with VPRA and the Design Consultant, and fully familiarize itself with the Project requirements necessary to the furnish all labor, materials, and equipment and perform all responsibilities of the Contractor in strict accordance with the Contract Documents.

6.0 SCOPE OF WORK, GENERALLY

Contractor shall perform the Work, as such term is defined herein. For ease of reference, the Work is generally categorized as the following: (a) Phase 1 Services (Preconstruction Services), and (b) Phase 2 Services (Construction Work).

7.0 PHASE 1 SERVICES

Upon issuance by VPRA of the Phase 1 NTP, Contractor shall furnish and provide all services, labor, materials, and equipment and perform all responsibilities of Contractor for the Phase 1 Services identified in Exhibit C. If the Phase 1 Services are not completed within 400 Days after the date VPRA issues the Phase 1 NTP, VPRA may, in its sole discretion, elect to:

- (a) extend the time for the provision and completion of the Phases 1 Services; or
- (b) terminate this Contract pursuant to Section 20.0.

Contractor shall not be entitled to payment for the Phase 1 Services unless and until VPRA has issued the Phase 1 NTP. All Work performed by Contractor prior to VPRA's issuance of the Phase 1 NTP shall be at Contractor's sole risk. VPRA has no obligation to issue a Phase 1 NTP and Contractor shall not be entitled to any compensation if VPRA does not issue a Phase 1 NTP.

Contractor shall not be entitled to Delay Costs due to any impacts, disruption, delays or otherwise occurring during performance of the Phase 1 Services. If VPRA or any other party exceeds or fails to meet any time limit provided in the Contract Documents for performance of any action during the Phase 1 Services, Contractor's sole remedy shall be an adjustment of the time period for performance. Any delay that occurs during the Phase 1 Services shall have no impact on VPRA's unilateral right to terminate the Phase 1 Services at any time as provided in Section 20.0.

The Phase 1 Services shall terminate when: (a) the Parties execute a Phase 2 Amendment; (b) the Parties mutually agree that the Phase 1 Services required by this Contract have been provided and that a GMP cannot be agreed upon; or (c) this Contract is terminated as provided for in Section 20.0.

8.0 COMPENSATION TO CONTRACTOR

8.1 Phase 1 Services

As full compensation for completing the Phase 1 Services in accordance with the Contract Documents, VPRA shall pay the Contractor in accordance with the rates indicated in Contractor's Proposal and subject to (a) the not-to-exceed amount of \$ _____ (the "Phase 1 Services Fee"), and (b) the markup allowed under Section 8.2.

If VPRA requests that Contractor perform additional services beyond those stated in the Scope of Phase 1 Services (Exhibit C), Contractor shall be entitled to an adjustment of the Phase 1 Services Fee to the extent that the cost of the additional services requested would exceed the Phase 1 Services Fee. For purposes of clarity, the Contractor is not entitled to an increase in the Phase 1 Services Fee if the additional services would not result in Contractor exceeding the Phase 1 Services Fee.

Except as provided in the General Terms and Conditions, Contractor shall not be entitled to payment for performance of the Phase 1 Services in excess of the Phase 1 Services Fee until execution of a Change Order containing an adjustment to the Phase 1 Services Fee.

8.2 Markup in the Phase 1 Services Fee

In addition to dollar-for-dollar reimbursement for direct labor costs incurred in performing the Phase 1 Services, Contractor will be entitled to a 90% markup, which compensates Contractor for all other costs (in addition to direct labor costs) to perform the Phase 1 Services, including profit, overhead, and all additional indirect costs of labor, including fringe, taxes, and insurance.

8.3 Early Work and Phase 2 Services

Contractor's compensation for any Early Work or Phase 2 Services shall be as stated in the Early Work Amendment and/or Phase 2 Amendment.

9.0 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. At Contractor's request, VPRA shall promptly furnish reasonable evidence satisfactory to Contractor that VPRA has adequate funds available and committed to fulfill all of VPRA's contractual obligations under the Contract Documents.

10.0 DOCUMENTS FURNISHED BY VPRA

VPRA makes no representation or warranty as to the accuracy, completeness, or sufficiency of any document furnished by VPRA to Contractor prior to the Effective Date, including the RFP Documents and the Reference Documents. Contractor shall, as part of the Phase 1 Services, independently verify and confirm the accuracy, completeness, and sufficiency of any documents furnished by VPRA, and shall promptly report in writing to VPRA any error, omission, or insufficiency in such documents that Contractor discovers. Contractor's warranties and indemnities under the Contract cover errors in the Project even though they may be related to any error, omission, or insufficiency in the RFP Documents and Reference Documents. Contractor shall have no right to seek any adjustment to the Contract Price or the Completion Deadlines as the result of any error, omission, or insufficiency relating to any information provided to Contractor by or on behalf of VPRA in connection with this Contract.

11.0 CHANGES IN THE WORK

Contractor shall not undertake any activity that materially changes the Work, or materially deviates from the requirements of the Contract Documents, except as authorized by a Change Order (as defined by, and to be issued in accordance with the provisions set forth in the General Terms and Conditions, attached hereto as Exhibit B.)

12.0 GMP NEGOTIATIONS

As part of the Phase 1 Services, Contractor shall participate in GMP Negotiations for the Phase 2 Services.

12.1 Submission of Opinion of Probable Construction Costs

Contractor shall submit the OPCC no later than 90 days after VPRA issues the Phase 1 NTP.

12.2 Submission of Binding GMP Proposal

Contractor shall submit its Binding GMP Proposal following the resolution of comments (including comments from CSXT, Amtrak, and other stakeholders) on the Design Consultant's 90% design submittal, as provided in Exhibit C. The Binding GMP Proposal shall include the Baseline Schedule on which it is based and a proposed Construction Draw Schedule. Additionally, each Binding GMP Proposal shall include the Construction Cost Markup expressed as a fixed fee, lump sum.

12.3 Construction Cost Estimates to Be on an Open Book Basis

Each Construction Cost Estimate submitted by Contractor shall be on an Open Book Basis. VPRA shall be entitled to request any further information about the Construction Cost Estimate as it deems appropriate, and Contractor shall provide such information to VPRA.

12.4 Reconciliation of Binding GMP Proposal

After submission of the Binding GMP Proposal, Contractor shall participate in workshops with VPRA and the ICE to review the Binding GMP Proposal, reconcile any differences, and attempt to negotiate a GMP for the Phase 2 Services.

12.5 Updates to Binding GMP Proposal

Contractor shall submit an updated Binding GMP Proposal following the workshops with VPRA and the ICE. Upon submission of an updated Binding GMP Proposal from Contractor, Contractor, VPRA, and the ICE shall engage in further workshops as described in Section 12.4.

12.6 Further Consideration of Binding GMP Proposal

Contractor shall submit such updated Binding GMP Proposals as may be necessary to continue negotiations for the GMP. The process shall continue until VPRA agrees to a GMP or VPRA terminates this Contract in accordance with Section 20.0.

12.7 Final Binding GMP Proposal

If VPRA accepts a particular GMP and Baseline Schedule contained in a Binding GMP Proposal, as may be amended, VPRA shall request that Contractor prepare a Final Binding GMP Proposal incorporating the agreed-upon terms for the Phase 2 Amendment. Contractor shall submit the Final Binding GMP Proposal in the form of a Phase 2 Amendment within 15 Days after VPRA's request.

13.0 PHASE 2 AMENDMENT

13.1 Phase 2 Services Acceptance

VPRA shall determine, in its sole discretion, whether to accept any Binding GMP Proposal offered by Contractor. VPRA may condition its acceptance of a Binding GMP Proposal on Contractor's agreement to, and incorporation of, conditions determined to be appropriate by VPRA. If VPRA accepts any Binding GMP Proposal, Contractor shall submit a Final Binding GMP Proposal incorporating the agreed-upon terms in accordance with Section 12.7. Once VPRA has approved the Final Binding GMP Proposal, and upon Contractor's completion of any prerequisites thereto, the Parties shall thereafter execute a Phase 2 Amendment and VPRA may, in its sole discretion, issue the Phase 2 NTP. The Phase 2 Amendment shall contain the GMP contained in the Final Binding GMP Proposal. Additionally, the Phase 2 Amendment shall contain the Baseline Schedule submitted with the Final Binding GMP Proposal.

13.2 Performance and Payment Bonds

Contractor shall either (a) provide the Performance and Payment Bonds as a condition precedent to VPRA's execution of the Phase 2 Amendment and issuance of the Phase 2 NTP, or (b) may increase the penal sum of the Performance and Payment Bonds if they are already in place in appropriate form pursuant to Section 14.2 below.

13.3 Form of Phase 2 Amendment

The form of the Phase 2 Amendment is as set forth in Exhibit G.

14.0 EARLY WORK PACKAGES

14.1 VPRA May Authorize Early Work

The Parties anticipate that there may be some elements of the Phase 2 Services that are more appropriately or beneficially undertaken by Contractor before execution of the Phase 2 Amendment. As part of the Phase 1 Services, Contractor shall identify and recommend to VPRA any potential Early Work Packages. VPRA shall have the sole discretion whether to consider an Early Work Package and authorize Contractor to prepare an Early Work Proposal for an Early Work Package. If VPRA chooses to authorize the preparation of an Early Work Proposal for an Early Work Package, the Parties will agree upon the specific process for doing so, with the understanding that the process is intended generally to follow the submittal and negotiation process set forth in Section 12.0 for a Binding GMP Proposal.

14.2 Early Work Amendments

Each Early Work Amendment, if any, shall set forth all pricing, schedule, and other relevant commercial terms specific to the corresponding Early Work Package. All Work performed pursuant to an Early Work Amendment shall constitute Construction Work hereunder and shall be performed in accordance with the contractual requirements for Phase 2 Services. For the avoidance of doubt, all Early Work Packages will, among other things, be subject to the insurance requirements set forth in Exhibit E, and performance and payment bond requirements set forth in Section 9.1 of the General Terms and Conditions, with penal sums of the bonds set at 100% of the contemporaneous aggregate value of all Early Work.

14.3 Early Work NTP

Contractor shall not commence Work on an Early Work Package until VPRA issues an Early Work NTP. VPRA shall have no liability to Contractor with respect to Early Work unless and until

VPRA issues an Early Work NTP, and then only to the extent of the Early Work Amendment for which VPRA issued the Early Work NTP.

14.4 Early Work NTP Does not Affect VPRA's Rights

Approval by VPRA of an Early Work Amendment shall not prejudice any right of VPRA with respect to the remainder of the Phase 2 Services, including VPRA's right to terminate the Contract prior to issuance of the Phase 2 NTP. For the avoidance of doubt, in no event shall an Early Work Amendment be construed as a Phase 2 Amendment or an Early Work NTP as a Phase 2 NTP.

14.5 Contractor to Proceed with Early Work

If VPRA terminates the Phase 1 Services pursuant to Section 20.0, Contractor shall proceed in accordance with any existing Early Work Amendments for which VPRA has issued an Early Work NTP. Termination of an Early Work Package shall be governed by Article 18 of the General Terms and Conditions.

14.6 Form of Early Work Amendment

If utilized, the form of the Early Work Amendment shall be generally consistent with the Phase 2 Amendment (Exhibit G).

15.0 KEY PERSONNEL REQUIREMENTS

15.1 Key Personnel

Key Personnel positions, qualifications, and responsibilities for the Project are identified in Exhibit D. Contractor shall not replace or suffer replacement of individuals filling a Key Personnel position unless Approved in writing by VPRA. A proposed replacement individual to fill a Key Personnel position shall meet the requirements for the role stated in Exhibit D.

15.2 Representations, Warranties, and Covenants

Contractor acknowledges and agrees that VPRA's award of this Contract was based, in large part, on the qualifications and experience of the Key Personnel listed in the Proposal and on Contractor's commitment that such individuals would be available to perform the Work. Contractor represents, warrants, and covenants that such individuals are available for and will fulfill the roles identified for them in connection with the Work. Unless VPRA agrees otherwise in writing, individuals filling Key Personnel roles must comply with the time commitment for each Key Personnel identified in Exhibit D and Contractor shall document such commitment to VPRA's satisfaction upon VPRA's request.

15.3 Incapacity, Resignation or Termination of Key Personnel

Contractor shall not be liable for the Liquidated Damages in Section 17.1 if the departure of an individual filling a Key Personnel role is due to the death of the individual or an injury or health condition that prevents the individual from fulfilling the role. Additionally, Contractor shall not be liable for the Liquidated Damages in Section 17.1 if the individual filling a Key Personnel role resigns or is terminated from employment with Contractor or a Contractor-Related-Entity, provided that the individual does not become employed with an Affiliate of the foregoing within 180 days of resignation or termination. In the event of a Key Personnel departure under this Section 15.3, Contractor shall be responsible for replacing the Key Personnel position and, in the event of non-performance, shall be liable for the Liquidated Damages as described in Section 17.1.3.2.

16.0 INVOICING AND PAYMENT

Invoicing and payment for Phase 1 Services shall be as stated in this Section 16.0. Invoicing and payment for Early Work and/or Phase 2 Services shall be as stated in Article 12 of the General Terms and Conditions.

- (a) To receive payment, Contractor shall submit to VPRA an invoice requesting payment for all Phase 1 Services performed as of the date of the invoice. Contractor shall not submit invoices more often than once per month. The invoice must identify the number of hours worked per each Task stated in the Scope of Work attached as Exhibit C. The total hours worked on each Task must be further broken down by the title or position of the individual(s) performing the work and their hourly rates. The invoice may be accompanied by other supporting documentation sufficient to establish Contractor's entitlement to receive payment. The total sum requested for the Phase 1 Services shall not exceed the Phase 1 Services Fee stated in Section 8.1, including any amendments thereto properly issued in accordance with Section 8.1 herein.
- (b) The invoice will constitute Contractor's representation that the Phase 1 Services described therein have been performed consistent with the Contract Documents, and that the hours submitted are accurate.
- (c) VPRA shall pay Contractor all amounts properly requested and documented within thirty (30) days of receipt of an invoice. Notwithstanding the preceding sentence, if VPRA determines that Contractor is not entitled to all or part of an invoice as a result of Contractor's failure to meet its obligations hereunder, VPRA will notify Contractor in writing at least five (5) days prior to the date payment is due. The notice must indicate the specific amounts VPRA intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Contractor must take to rectify VPRA's concerns. Contractor and VPRA will attempt to resolve VPRA's concerns prior to the date payment is due. If the Parties cannot resolve such concerns, Contractor may pursue its rights under the Contract Documents. Notwithstanding the foregoing, Contractor shall continue to perform the Phase 1 Services pending the resolution of any such Dispute.

17.0 LIQUIDATED DAMAGES AND DISINCENTIVES

17.1 Basis of Liquidated Damages; Waiver

The Parties have agreed to Liquidated Damages under this Section 17.1 to fix and limit Contractor's costs and to avoid later disputes over the amount of damages that VPRA has suffered and are properly chargeable to Contractor. Contractor understands and agrees that any Liquidated Damages payable in accordance with this Section 17.1 are in the nature of liquidated damages and not a penalty, and that the sums are reasonable under the circumstances as of the Effective Date. Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred. Contractor expressly waives the right to subsequently challenge the Liquidated Damages in any court of competent jurisdiction, including asserting as a claim or defense that the amount of the Liquidated Damages is disproportionate to any probable loss or that the amount of the Liquidated Damages grossly exceeds the actual damages sustained by VPRA.

17.1.1. Failure to Meet Completion Deadlines

If Contractor fails to complete the Work in accordance with the Contract Documents, VPRA will suffer substantial losses and damages. Contractor shall be liable for all such losses and damages. Contractor acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the rail transit system in the I-95 corridor, and the fact that

inconvenience to the traveling public and freight traffic will be one of the significant impacts of any completion delay, it is impracticable and extremely difficult to ascertain and determine the actual damages that would accrue to VPRA and the public if Contractor fails to achieve Substantial Completion and/or achieve Final Acceptance by the applicable Completion Deadlines. Therefore, Contractor and VPRA agree to stipulate the amount payable by Contractor for its failure to meet the Completion Deadlines. Liquidated Damages are intended to compensate VPRA solely for Contractor's failure to meet the Completion Deadlines and will not excuse Contractor from liability for any other breach of the Contract, including any failure of the Work to conform to applicable requirements.

If Contractor fails to achieve Substantial Completion or Final Acceptance by the applicable Completion Deadlines, Contractor shall pay VPRA Liquidated Damages in the following amounts:

- (a) \$[##] per Day for Contractor's failure to achieve Substantial Completion by the Substantial Completion Deadline, until the date Contractor achieves Substantial Completion; and
- (b) \$[##] per Day for Contractor's failure to achieve Final Acceptance by the Final Acceptance Deadline, until the date Contractor achieves Final Acceptance.

The fact that VPRA has agreed to accept Liquidated Damages as compensation for its damages associated with any delay in meeting a Completion Deadline will not preclude VPRA from exercising its other rights and remedies concerning the delay set forth in Section 17.2, other than the right to collect other damages due to the delay.

17.1.2. Unpermitted Road Closures and Unpermitted Track Closures

17.1.2.1. Unpermitted Road Closure Liquidated Damages

Contractor shall pay VPRA Liquidated Damages for each Unpermitted Road Closure as provided in Exhibit Q.

17.1.2.2. Inapplicability of Liquidated Damages for Unpermitted Road Closures

Liquidated Damages for Unpermitted Road Closures shall not be assessed for Road Closures that occur due to the following:

- (a) A Relief Event that entitles Contractor to relief under Article 14 of the General Terms and Conditions that occurs during a Road Closure that impacts Contractor's ability to end the Road Closure on time;
- (b) A Relief Event that entitles Contractor to relief under Article 14 of the General Terms and Conditions that requires an unscheduled Road Closure to remediate the impacts of the Relief Event;
- (c) An incident or emergency that requires a Road Closure, provided that the incident or emergency was not caused by a Contractor-Related-Entity;
- (d) Unexpected loss, disruption, break, explosion, leak or other damage to a Utility that requires a Road Closure to remediate, provided that the damage was not caused by a Contractor-Related-Entity; or
- (e) VPRA's unjustified and direct delay of, or unjustified and direct interference with, Contractor's efforts to end a Road Closure timely.

The foregoing situations shall only preclude assessment of Liquidated Damages for such time as is necessary to remove the condition.

17.1.2.3. Maintenance of Rail Traffic

An Unpermitted Track Closure shall be grounds for VPRA or a Railroad Owner to deny future requests by Contractor for Track Closures or adjacent work until Contractor develops a plan to avoid further Unpermitted Track Closures that is approved by VPRA and the Railroad Owner.

17.1.3. Key Personnel

17.1.3.1. Removal or Substitution of Key Personnel

The individuals identified in Exhibit D shall perform the Key Personnel role and responsibilities stated therein and Contractor’s failure to maintain such individuals in their identified roles or perform the identified responsibilities shall entitle VPRA to assess the Liquidated Damages described in this Section 17.1.3.1. Contractor shall not remove or substitute any Person identified as Key Personnel in Exhibit D or allow a position to remain vacant unless approved in writing by VPRA. If Contractor removes or substitutes an individual filling a Key Personnel position or the individual filling a Key Personnel position is not in compliance with the time commitment identified in Exhibit D for the Key Personnel role, unless otherwise authorized by VPRA in writing, VPRA may assess Liquidated Damages as follows:

Key Personnel Role	Liquidated Damages Amount
CM/GC Project Manager	\$250,000
Construction Manager	\$200,000
Quality Manager	\$200,000
Environmental Compliance Manager	\$200,000
Lead Cost Estimator	\$200,000
Lead Scheduler	\$200,000
Safety Manager	\$200,000
Additional Value Personnel	\$200,000

17.1.3.2. Replacement of Key Personnel

Unless otherwise agreed in writing by VPRA, in the event of a Key Personnel vacancy, Contractor shall replace any Key Personnel described within Section 15.3 within sixty (60) days after the departure of the individual previously filling the position. A replacement individual must meet the qualifications for the Key Personnel position stated in Exhibit D. VPRA may assess Liquidated Damages of \$1,000 per day starting on the 61st day until and including the day on which the Key Personnel position is filled with a qualified individual.

17.2 Set-Off; Waiver

17.2.1. 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 Contractor under this Agreement 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 tax delinquencies, fee delinquencies or monetary penalties relative thereto.

17.2.2. Waiver of Liquidated Damages

VPRA may, but is not required to, reduce or waive all or any portion of Liquidated Damages, in its sole discretion.

17.2.3. No Waiver of Liquidated Damages

VPRA does not waive its right to receive Liquidated Damages or to exercise any other rights or remedies if VPRA permits or requires Contractor to continue and finish the Work or any part of the Work after a Completion Deadline. VPRA does not forfeit the right to recover Liquidated Damages from Contractor or Contractor's Surety(ies) by taking over the Work, or by terminating the Contract due to an Event of Default by Contractor.

17.3 Payment of Liquidated Damages

Liquidated Damages, to the extent not paid as provided in Section 17.2.1, shall be payable by Contractor to VPRA within ten (10) Days after Contractor's receipt of an invoice for the damages from VPRA.

17.4 Limitations on Damages

17.4.1. Limitations on Damages Recoverable by Contractor

Contractor shall not be entitled to damages of the following nature:

- (a) damages for delay other than those in Section 2 of Exhibit J;
- (b) punitive damages;
- (c) damages, costs, or expenses that are indirect, special, incidental, exemplary or consequential, including lost or impaired bonding capacity, loss of bidding and contracting opportunities, loss of credit standing, cost of financing, interest paid, lost material discounts, economic loss, loss of reputation, loss of other work, loss of use, loss of business opportunity, loss of product or output, income, loss of profit or revenue, cost of capital, financing, and for loss of management or employee productivity or of the services of such persons, and business devastation, bankruptcy, or insolvency;
- (d) interest, late payment charges associated with any Claim, or disputed construction services or Materials (provided, however, that VPRA will pay interest with respect to undisputed amounts owed to Contractor, pursuant to Section 12.7 of the General Terms and Conditions);
- (e) late payment charges for any judgment or award to Contractor;
- (f) pre-judgment interest relating to or arising from any disputed Claim or on any award to Contractor; and

(g) attorney's fees and costs, Claim preparation expenses, and litigation or other costs relating to or arising from any disputed Claim, or prosecution thereof.

17.4.2. Waiver of Consequential and Punitive Damages by VPRA

VPRA waives any entitlement to consequential or punitive damages from Contractor.

18.0 CSXT PROJECT ACTIVITIES

Contractor agrees and acknowledges that certain items related the Project must be coordinated and delivered by CSXT including flagging services; final ballasting and surfacing of tracks; signal and systems design, construction, commissioning, and testing (inclusive of hardware and software); and modification of existing trackage and trackage tie-ins (collectively the "CSXT Project Activities"). Contractor shall coordinate the Work so as to not impede or impair the CSXT Project Activities and shall cooperate and liaise with CSXT in good faith in order to promote the successful delivery of the Project.

19.0 NOTICES AND COMMUNICATIONS

19.1 Delivery of Notices

Notices under the Contract Documents will be in writing and (a) delivered personally, (b) sent by certified mail, return receipt requested, (c) sent by a recognized overnight mail or courier service, or (d) by email, with delivery receipt requested, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

19.1.1 Notices to Contractor

All correspondence with Contractor shall be sent to Contractor's Project Manager or as otherwise directed by such Project Manager. The address for such communications will be:

Attn.: _____

Email: _____

In addition, copies of all notices to proceed and suspension, termination, and default notices must be delivered to the following persons:

Attn.: _____

Email: _____

19.1.2 Notices to VPRA

All communications to VPRA must be marked with VPRA's contract identification number and delivered to VPRA's Project Manager, with copies to such additional Persons as may be designated by VPRA's Project Manager, at the address set forth below:

Virginia Passenger Rail Authority

Attn.: _____

919 E. Main Street, Suite 2400

Richmond, VA 23219

Email: _____

In addition, copies of all notices regarding disputes, termination, and default notices must be delivered to the following persons:

Virginia Passenger Rail Authority

Attn: Michael Westermann, General Counsel

919 E. Main Street, Suite 2400

Richmond, VA 23219

With a copy to: michael.westermann@vpra.virginia.gov.

Additionally, Contractor shall submit a copy of all notices and other documents under the Contract Documents through the Sharepoint site. Documents that must be submitted to Sharepoint include notices, submittals, correspondence, and any other information that the Contract Documents require Contractor to provide to VPRA.

19.2 Receipt of Notices

Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier, other Person making the delivery or by email receipt. Notwithstanding the foregoing, notices received after 4:00 p.m. local time in Richmond, Virginia will be deemed received on the first Working Day following delivery.

19.3 Copies of Correspondence to VPRA

Contractor shall copy VPRA on all written correspondence pertaining to the Contract between Contractor and any Person other than Contractor's Subcontractors, consultants, and attorneys.

20.0 TERMINATION

Termination of Phase 1 Services shall be as stated in this Section 20.0. Termination of Early Work and Phase 2 Services shall be as stated in the Article 18 of the General Terms and Conditions.

VPRA may, in its sole discretion, terminate the Phase 1 Services at any time, and for any reason, prior to issuance of the Phase 2 NTP. To effect such termination, VPRA shall provide notice of the Work that has already commenced and that is to be completed prior to the effective date of the termination of the Contract. Upon the date of the termination, this Contract shall terminate and be of no further force or effect except for those provisions which survive termination of the Contract.

If VPRA terminates the Contract pursuant to this Section 20.0, Contractor shall only be entitled to payment for the Phase 1 Services performed up to the date of termination. Contractor shall submit a final invoice of Work performed to VPRA within 15 days of VPRA's notice of termination. Except for a claim that VPRA failed to pay sums owing to Contractor, Contractor shall not be

entitled to any damages of any nature arising out of VPRA's termination of the Contract pursuant to this Section 20.0.

21.0 FEDERAL REQUIREMENTS

Financial assistance for the Project is being furnished by the USDOT in the form of grant(s) and/or cooperative agreement(s) from the FRA. Contractor shall comply with the provisions required to be a part of federal-aid construction funded by the FRA, including the *Special Terms and Conditions* (Form PD 260 (FRA/CON)), attached hereto as Exhibit K. Notwithstanding anything to the contrary contained in the Contract Documents, in the event of any conflict between any Federal Requirement and the other requirements of the Contract Documents, the Federal Requirements will prevail, take precedence, and be in force over and against any such conflicting provisions. However, in the event of any conflict within the Contract Documents regarding any document retention periods, the longer period specified within the Contract Documents shall be deemed to control.

22.0 EQUAL EMPLOYMENT OPPORTUNITY

22.1 Equal Employment Opportunity Requirements.

Contractor shall comply with the Equal Employment Opportunity (EEO) requirements set forth in Exhibits K and L, respectively.

22.2 Inclusion in Subcontracts.

Contractor shall include Exhibits K and L in every Subcontract over \$10,000 (including purchase orders), and must require that Exhibits K and L be included in all Subcontracts over \$10,000 at lower tiers.

23.0 SMALL BUSINESS UTILIZATION

It is the policy of VPRA that firms certified as a small business by the DSBSD have an equal opportunity to participate in the Project. Wherever feasible, Contractor should seek to maximize the use of certified small businesses for as much of the Work as possible throughout the lifetime of the Project. This includes utilization of firms certified as small and any subcategory of small, small women-owned, small minority-owned, small micro or small service-disabled veteran-owned businesses. The Small Business Subcontracting Plan submitted by Contractor for the Phase 1 Services, and approved by VPRA on [##] is hereby incorporated in and made a material part of this Contract. During the performance of the Contract, Contractor shall comply with the requirements of the Small Business Subcontracting Plan as well as the *Special Provision Regarding the Utilization of Small and Diverse Businesses* (SP 06), attached hereto as Exhibit M. Any required revisions to the Small Business Subcontracting Plan shall be accomplished by a Change Order.

24.0 INSURANCE

Contractor shall obtain and maintain the insurance coverages set forth in Exhibit E and comply with the obligations set forth in Exhibit E and Article 10 of the General Terms and Conditions, for the duration of the Contract. In executing this Contract, Contractor 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.

25.0 GUARANTY [As Needed]

[Entity] is the Guarantor guaranteeing Contractor's obligations under the Contract Documents and has provided a Guaranty to VPRA. Each Guaranty shall be in the form attached hereto as

Exhibit R and provided to VPRA within five (5) Days of execution of this Contract together with appropriate evidence of authorization, execution, delivery, and validity thereof. Contractor may replace an existing Guaranty with a new Guaranty only with VPRA's written consent. Any new Guaranty shall be in the form provided as Exhibit R.

26.0 AUTHORIZATION TO TRANSACT BUSINESS

Contractor certifies that, if it is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, it 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, and 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. Contractor understands and agrees that VPRA may void this Contract if Contractor fails to comply with these provisions.

27.0 DEBARMENT AND ENJOINMENT

By signing this Contract, the undersigned on behalf of Contractor, certifies that this Contractor including any officer, director, partner or owner of the Contractor, is not currently barred from bidding on contracts by any agency of the Commonwealth of Virginia, or any public body or agency of another state, or any agency of the federal government, nor is this Contractor a subsidiary or affiliate of any entity that is currently barred from bidding on contracts by any of the same.

28.0 REPRESENTATIONS AND WARRANTIES COMPLETE

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

29.0 COUNTERPARTS; ELECTRONIC SIGNATURES

This Contract may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Each of the Parties agree that this Contract and any other documents to be delivered in connection herewith may be electronically signed, that any digital or electronic signatures (including pdf, facsimile or electronically imaged signatures provided by DocuSign or any other digital signature provider) appearing on this Contract or such other documents are the same as handwritten signatures for the purposes of validity, enforceability and admissibility, and that delivery of any such electronic signature to, or a signed copy of, this Contract and such other documents may be made by facsimile, email or other electronic transmission.

30.0 EFFECTIVENESS

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

31.0 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.

[SIGNATURES FOLLOW ON SUBSEQUENT PAGE]

DRAFT

IN WITNESS WHEREOF, the Parties have executed the Contract as of the last date set forth next to signatures of the Parties, below.

VIRGINIA PASSENGER RAIL AUTHORITY

By, _____
(signature)

Name, _____
(print)

Its, _____
(title)

Dated: _____

CONTRACTOR

[FOR A JOINT VENTURE, AUTHORIZED REPRESENTATIVES OF EACH PRINCIPAL PARTICIPANT MUST SIGN]

By, _____
(signature)

Name, _____
(print)

Its, _____
(title)

Dated: _____

By, _____
(signature)

Name, _____
(print)

Its, _____
(title)

Dated: _____

EXHIBIT A

ACRONYMS AND DEFINITIONS

As used in the Construction Manager / General Contractor Agreement to which this Exhibit is attached and in the other Contract Documents (unless otherwise specified therein), the following acronyms and terms shall have the meanings set forth below (unless the context requires otherwise).

1.1 A.1 ACRONYMS

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ACM	Asbestos-containing Materials
ADA	Americans with Disabilities Act
AES	Area of Environmental Sensitivity
AGC	Associated General Contractors of America, Inc.
AHJ	Authorities Having Jurisdiction
AISC	American Institute of Steel Construction
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
AOR	Audited Overhead Rate
APL	Approved Products List
APS	Accessible Pedestrian Signals
AREMA	American Railway Engineering and Maintenance Association
ARTBA	American Road and Transportation Builders Association
ASCII	American Standard Code of Information Interchange
ASTM	ASTM International; formerly American Society of Testing and Materials
ATMS	Advanced Traffic Management System
BMP	Best Management Practices
CADD	Computer-Assisted Drafting and Design
CCI	ENR Construction Cost Index
CCTV	Closed-Circuit Television
CFR	Code of Federal Regulations
CIP	Cast-In-Place
CLOMA	Conditional Letters of Map Amendment
CLOMR	Conditional Letters of Map Revision
CLSM	Controlled Low Strength Material
CMS	Changeable Message Sign
CMP	Communications Plenum Cable or Corrugated Metal Pipe
CPD	Construction Pricing Documents
CPR	Concrete Pavement Rehabilitation
CPT	Cone Penetration Test
CQM	Construction Quality Manager
CQP	Construction Quality Procedure
DCP	Dynamic Cone Penetrometer or Penetration Index Method
DMS	Dynamic Message Sign
EA	Environmental Assessment

EAW	Environmental Assessment Worksheet
ECM	Environmental Compliance Manager
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EMI	Environmental Monitoring Inspector
EMR	Environmental Monitoring Report
EOR	Engineer of Record
EPA	(U.S.) Environmental Protection Agency
ESA	Endangered Species Act
FAR	Federal Acquisition Regulation
FCC	Federal Communications Commission
FDC	Field Design Change
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
GAAP	Generally Accepted Accounting Principles
GIS	Geographic Information System
GMP	Guaranteed Maximum Price
HMA	Hot Mix Asphalt
ICE	Independent Cost Estimator
IDQM	Independent Design Quality Manager
ISO	International Organization for Standardization
ITS	Intelligent Transportation Systems
klf	kip per linear foot
ksi	kip per square inch
KW	Kilowatt
LOS	Level of Service
LRFD	Load Resistance Factor Design
LRFR	Load and Resistance Factor Rating
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
MSDS	Material Safety Data Sheets
MSE	Mechanically Stabilized Earth
MUA	Master Utility Agreement
MUTCD	Manual on Uniform Traffic Control Devices
NBIS	National Bridge Inspection Standards
NCR	Non-Conformance Report
NDC	Notice of Design Change
NEC	National Electrical Code
NEPA	National Environmental Policy Act
NFPA	National Fire Protection Association
NHS	National Highway System
NPDES	National Pollutant Discharge Elimination System
NPS	National Park Service
NTP	Notice to Proceed
NWL	Normal Water Level

OPCC	Opinion of Probable Construction Costs
OSHA	Occupational Safety and Health Administration
OTS	Over-the-Shoulder
PCC	Portland Cement Concrete
PM	Project Manager
PMO	Project Management Office
Psi	Pounds per square inch (pressure, stress)
QA	Quality Assurance
QC	Quality Control
QP	Quality Plan
RFCO	Request for Change Order
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Qualifications
ROD	Record of Decision
ROW	Right of Way
R/W	Right of Way
RSC	Rigid Steel Conduit
RSS	Reinforced Soil Slopes
SIA	Schedule Impact Analysis
SMP	Stormwater Management Plan
SOQ	Statement of Qualifications
SSI	Sensitive Security Information
SWPPP	Stormwater Pollution Prevention Plan
TCD	Traffic Control Device
TMP	Transportation Management Plan
UDS	Utility Design Sheet
U.S.C.	United States Code
USACE	(U.S.) Army Corps of Engineers
USCG	United States Coast Guard
USDOT	United States Department of Transportation
USGS	United States Geological Survey
USFWS	U.S. Fish and Wildlife Service
VE	Value Engineering
VQMP	Visual Quality Management Plan
VQP	Visual Quality Plan
WMATA	Washington Metropolitan Area Transit Authority

1.2 A.2 DEFINITIONS

Acceleration Costs	Costs reasonably incurred by Contractor (i.e., costs over and above what Contractor would otherwise have incurred) that are directly attributable to increasing the performance level of the Work to complete necessary activities of the Work earlier than otherwise anticipated or to meet an existing Completion Deadline, such as for additional Equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision, and any unexpected movement of Materials, Equipment, or crews necessary for resequencing in connection with acceleration efforts.
Accept or Acceptance	Formal conditional determination in writing by VPRRA that a particular matter or item appears to meet the requirements of the Contract Documents.
Affidavit of Final Completion	The affidavit described in <u>Section 21.2.1.2 of the General Terms and Conditions</u> .
Affiliate	<p>(a) Any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Contractor or a Principal Participant; or</p> <p>(b) any Person for which 10 percent or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by, [i] Contractor, [ii] any Principal Participant, or [iii] any Affiliate of Contractor under clause (a) of this definition.</p> <p>For purposes of this definition, the term “control” means the possession directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relation, or otherwise.</p>
Amtrak	The National Railroad Passenger Corporation.
Applicable Standards	The standards, regulations, requirements or similar that are applicable to the Work.
Application for Final Payment	The application described in <u>Section 12.9 of the General Terms and Conditions</u> .
Application for Payment	Contractor’s application for a progress payment during the Phase 2 Services or Early Work if applicable, in accordance with <u>Section 12.2 of the General Terms and Conditions</u> .
Approve or Approval	Formal conditional determination in writing by VPRRA that a particular matter or item is good or satisfactory for the Project.
As-Built Documents	Documents that reflect all changes made in the drawings and specifications during the construction process, and show the exact dimensions, geometry, and location (including alignment points) of all elements of the Work completed under the Contract Documents.

Baseline Schedule	The schedule Approved by VPRA setting forth the schedule of Work, as described in <u>Section 5.2 of the General Terms and Conditions</u> . Baseline Schedule means the most recent Approved Baseline Schedule.
Best Value	Shall have the meaning ascribed in the Procurement Rules.
Betterment	The upgrading of a Utility being relocated that is not attributable to the construction of the Project or is made solely for the benefit of and at the election of the Utility Owner. The use of new Materials or compliance with current standards in the performance of the Utility Work is not considered a Betterment.
Binding GMP Proposal	Contractor's binding submission of a proposed GMP to perform the Construction Work.
Calendar Day	Any day shown on the calendar, beginning and ending at midnight.
Change in Law	The adoption of any Law of the Commonwealth after the Final Binding GMP Proposal that materially impacts Contractor's costs or time to complete the Work. A "Change in Law" excludes: <ul style="list-style-type: none">(a) Any change in, or new, federal or Local Law; and(b) Any change in, or new, Law relating to Contractor's general business operations, including minimum wage, licensing and registration fees, income taxes, gross receipts taxes, property taxes, transaction privilege taxes, sales and use taxes, payroll-related taxes, and unemployment taxes.
Change Notice	Notification by Contractor that a Relief Event has or may occurred, as further described in <u>Article 14 of the General Terms and Conditions</u> .
Change Order	A written amendment to the Contract Documents, including a Unilateral Change Order.
Claim	A request or demand by Contractor for (a) a Completion Deadline adjustment that is disputed (or not yet accepted) by VPRA, or (b) payment of money or damages arising from work done by or on behalf of Contractor in connection with the Contract that is disputed (or not yet accepted) by VPRA. A claim will cease to be a Claim upon resolution thereof, including resolution by delivery of a Change Order. Claims include all requests for adjustments to the Contract Price and/or Completion Deadlines arising out of a Relief Event. A Claim arising out of such Relief Event is considered filed or submitted upon Contractor's submission to VPRA of a Change Notice.
Commonwealth	The Commonwealth of Virginia.
Completion Deadline	The Substantial Completion Deadline and/or Final Acceptance Deadline, depending on the context.
Concurrent Delay	Delay to the Critical Path of the Baseline Schedule that is simultaneously caused by both VPRA and Contractor.
Construction Cost Estimate	An estimate by Contractor of the cost to perform the Phase 2 Services, including the Opinion of Probable Construction Cost and Final Binding GMP Proposal.

Construction Cost Markup (or CM/GC Fee)	The fixed amount calculated with respect to each Binding GMP Proposal (including the Final Binding GMP Proposal, if any) by multiplying (a) the Contractor's contemporaneously proposed GMP in the Binding GMP Proposal by (b) the percentage established in Contractor's Form U provided by Contractor with its Proposal submission. The Construction Cost Markup compensates Contractor for all costs of home office expenses, overhead, profit, and general management services for the Work and the Contract during Construction. It is also referred to as the CM/GC Fee.
Construction Documents	All working drawings and samples necessary for construction of the Project in accordance with the Contract Documents. Documents include Non-Conformance Reports (NCR), monthly reports, submittals, test reports, test results, Request for Information (RFI), shop drawings, supplemental design drawings, calculations, specifications, and standards, materials certifications, materials receipts and bills of lading, work plans, and other official correspondence to/from Contractor, VPRA, and Subcontractors.
Construction Pricing Documents	All documentary information used in Contractor's preparation of the Binding GMP Proposals, Final Binding GMP Proposal, and by Subcontractors in the preparation of their Subcontract prices, in addition to all documents relating to the pricing of Change Orders.
Construction Provisions	The terms and conditions prepared by VPRA and the Contractor during the Phase 1 Services governing the performance of the Construction Work.
Construction Work	All work to build or construct, make, form, manufacture, furnish, supply, install, deliver, or equip the Project. Construction Work includes Early Work.
Constructor	A Principal Participant or Subcontractor that performs Construction Work for the Project.
Contaminated Materials	(a) Any soil, sediment, debris, or water that has chemical contaminants at or above federal, Commonwealth or Local regulatory criteria, (b) any substance, product, waste or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to any Environmental Law, (c) any substance, product, waste or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds or inorganic compounds, as defined by any Law, (d) any substance, product, waste or other material of any nature whatsoever that may give rise to liability under clause (b) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (e) petroleum hydrocarbons, excluding petroleum hydrocarbon products contained within regularly operated motor vehicles, and (f) all hazardous or toxic substances, materials, wastes, pollutants and contaminants which are listed, defined, or regulated under applicable laws, rules, regulations, codes, ordinances, orders and directives pertaining or regulated to health, safety or the environment, including the Comprehensive Environmental Response Compensation and Liability Act as amended, (42 U.S.C. § 9601 et seq), the Resource Conservation and Recovery Act as amended, (42 U.S.C. § 6901 et

seq), the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1451 to 1387), the Clean Air Act (42 U.S.C.A. §§ 7401 to 7671q), the Emergency Planning and Community Right to Know Act (42 U.S.C.A. §§ 11001 to 11050), the Toxic Substances Control Act (15 U.S.C.A. §§ 2601 to 2692), the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901 to 6992k), the Oil Pollution Act (33 U.S.C.A. §§ 2701 to 2761) and all rules and regulations promulgated pursuant thereto. Without limiting the generality of the foregoing, "Contaminated Materials" shall specifically include polychlorinated biphenyl, asbestos (friable and non-friable), radon, urea formaldehyde, gasoline, diesel, oil, hydrocarbons, petroleum derived constituents, biomedical waste, or hazardous or toxic residue.

Contract	The Construction Manager / General Contractor agreement between VPRA and Contractor dated [##] and the Contract Documents as defined in <u>Section 3.0 of the Contract</u> .
Contract Days	The total number of Days for performance of the Phase 2 Services, starting (and including) the date of issuance of the Phase 2 NTP and ending on the date of Substantial Completion.
Contract Documents	The meaning set forth in <u>Section 3.0 of the Contract</u> .
Contract Price	The Phase 1 Services Fee and the GMP.
Contractor	[insert at execution].
Contractor-Related-Entity	Contractor; Contractor's shareholders, members, partners, or joint venture members; Principal Participants; Subcontractors and Suppliers; any other Persons performing any of the Work directly or indirectly on Contractor's behalf over which Contractor directly or indirectly exercises control; any other Persons for whom Contractor may be legally or contractually responsible; and the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns, and invitees of any of the foregoing.
Cost Breakdown Structure	A breakdown or hierarchal representation of the various costs on the Project that represents the cost components in the Contractor's Construction Cost Estimate as provided in Exhibit I.
Court Order	An order by a court of competent jurisdiction that enjoins or otherwise significantly restricts all or any portion of the Work.
Critical Infrastructure	A system or asset so vital that its incapacity or destruction would (i) have a debilitating impact on public health, safety or security; or (ii) cause significant economic harm or instability.
Critical Path	The longest continuous sequence of activities through a schedule that establishes the minimal overall duration to Substantial Completion.
Day or day	The meaning set forth in <u>Section 2.2 of the General Terms and Conditions</u> .
Delay Costs	Contractor's additional costs due to a delay to the Critical Path caused by Relief Event during Phase 2 or Early Work, as limited to those costs provided in <u>Exhibit J</u> .

Design	The final plans, drawings and other documentation furnished by the Design Consultant for the construction of the Project.
Design Consultant	The engineering firm engaged by VPRA to prepare the Design. The Design Consultant for the Project is Parsons Transportation Group.
Differing Site Condition	<p>Concealed or latent physical conditions or subsurface conditions at the Site that:</p> <p>(i) materially differ from the conditions discovered during the Phase 1 Services or</p> <p>(ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.</p> <p>The foregoing definition shall not apply to Utilities, Contaminated Materials, or Force Majeure events.</p>
Directive Letter	The letter defined in <u>Section 14.1.1.2 of the General Terms and Conditions</u> .
Discovery of Unknown Preexisting Contaminated Materials	The discovery of Contaminated Materials in the Project ROW existing prior to the Effective Date that requires assessment, containment, and/or remediation before the Work can proceed at the affected location and was either not disclosed in the RFP or Reference Documents or was not and could not have been discovered by Contractor with reasonable diligence prior to the Final Binding GMP Proposal.
Discrepancy	The meaning set forth in <u>Section 2.4 of the General Terms and Conditions</u> .
Dispute	A dispute between VPRA and Contractor that qualifies for resolution using the Dispute Resolution Process. When used in its lower case form, “dispute” shall have its plain language meaning.
Dispute Resolution Process	The procedures under <u>Article 20 of the General Terms and Conditions</u> for the resolution of Disputes.
Early Work	Construction Work that is negotiated separately from the overall Construction Work and may be performed by Contractor prior to agreement on a GMP for the entirety of the Phase 2 Services.
Early Work Amendment	An amendment to the Contract Documents that adds an Early Work Package to Contractor’s scope of Work for the Early Work Price and schedule negotiated by the Parties.
Early Work NTP	An NTP issued by VPRA that authorizes Contractor to perform a specified Early Work Package.
Early Work Package	A discrete package of Early Work performed for a specific Early Work Price and under an agreed-upon schedule.
Early Work Price	The negotiated price for which Contractor performs an Early Work Package.
Early Work Proposal	A proposal submitted by Contractor to perform Early Work.
Easement	A right acquired by VPRA to use or control property for a designated purpose.
Effective Date	The date of execution of the Contract by the final Party thereto.

Environmental Approvals	The Governmental Approvals necessary to comply with Environmental Laws impacting the Project.
Environmental Compliance Plan	The environmental compliance plan provided by Contractor and Approved by VPRA as described in <u>Section 7.4.3 of the General Terms and Conditions</u> .
Environmental Laws	All Laws now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases, or threatened releases of hazardous, toxic or dangerous waste, substance or material into the environment, including into the air, surface water or groundwater, or onto land, or relating to the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport, or handling of Contaminated Materials or otherwise relating to the protection of public health, public welfare, or the environment (including protection of nonhuman forms of life, land, surface water, groundwater and air), including CERCLA; RCRA; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 <i>et seq.</i> ; the National Environmental Policy Act, 42 U.S.C. §§ 4321 <i>et seq.</i> ; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 <i>et seq.</i> ; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 <i>et seq.</i> ; the Endangered Species Act, 16 U.S.C. §§ 1531 <i>et seq.</i> ; the Clean Water Act, 33 U.S.C. §§ 1251 <i>et seq.</i> ; the Clean Air Act, 42 U.S.C. §§ 7401 <i>et seq.</i> ; the Safe Drinking Water Act, 42 U.S.C. §§ 300f <i>et seq.</i> ; the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 <i>et seq.</i> ; and the Bald Eagle Protection Act, 16 U.S.C. § 668, each as amended.
Equipment	All machinery, tools, and apparatus, together with the necessary supplies for upkeep and maintenance, necessary for the proper construction and/or completion of the Work.
Escalation Ladder	The process described in <u>Section 20.2.1 of the General Terms and Conditions</u> for resolving Disputes.
Event of Default	A default as described in <u>Section 21.1.1 of the General Terms and Conditions</u> following notice and opportunity to cure to the extent permitted by <u>Section 21.1.2 of the General Terms and Conditions</u> and issuance by VPRA of notice to Contractor that an Event of Default has occurred.
Extra Work	Any Work in the nature of additional work, altered work or deleted work that is directly attributable to a Relief Event and that, absent the Relief Event, would not be required by the Contract Documents.
Extra Work Costs	The additional costs attributable to Extra Work, including costs for labor, Material, and Equipment, and other direct and indirect costs. Extra Work Costs shall be calculated in accordance with <u>Exhibit J</u> . Extra Work Costs do not include Delay Costs.
Extreme Weather Event	The occurrence of rain or snow at any location on the Project ROW that prevents Contractor from performing Work on a Critical Path activity for 6 hours or more and that does not otherwise qualify as a Force Majeure. For a rain event to qualify as an Extreme Weather Event, the rainfall must be at least equivalent to a 100-year frequency 24-hour rainfall event, as defined by the National Oceanic and Atmospheric Administration (NOAA) Atlas 14. The total rainfall experienced during

an analyzed duration must equal or exceed the single depth listed for the duration by NOAA, in inches, to qualify as an Extreme Weather Event; confidence intervals do not apply. For snow to qualify as an Extreme Weather Event, the snow must be at a rate of no less than 20 inches per 24 hour period, as defined by the National Weather Service.

Federal Prevailing Wage Rates	The wage rates provided in <u>Exhibit P</u> , as specified by the U.S. Department of Labor.
Federal Requirements	All Laws applicable to work financed with federal funds and the provisions required to be included in contracts therefor, including the provisions set forth in <u>Exhibits K and L</u> .
Field Indirect Costs	The costs of performing Construction Work not allocable to a specific construction activity, also referred to as field overhead or general conditions costs. Field Indirect Costs are the costs of maintaining field operations staff, facilities, equipment, and other such costs, as well as the salaries of clerks, supervisors, timekeepers, and other similar positions. Field Indirect Costs may also include trailers, office equipment, utilities, phones, and vehicles for Project work. Field Indirect Costs do not include any home office overhead.
Final Acceptance	VPRA's Acceptance of the Project as described in <u>Section 22.2 of the General Terms and Conditions</u> .
Final Acceptance Deadline	The meaning set forth in <u>Section 5.1.2 of the General Terms and Conditions</u> .
Final Completion	Has the meaning given in <u>Section 12.9 of the General Terms and Conditions</u> .
Final Payment	VPRA's final payment to Contractor for the Work, with the exception of any payment that the Contract Documents contemplate will be paid by VPRA to Contractor after Final Acceptance.
Final Binding GMP Proposal	A proposal submitted by Contractor containing a binding offer to perform the Phase 2 Services for a Guaranteed Maximum Price and Baseline Schedule.
Float	The number of days between the earliest an activity can start or finish and the latest an activity must start or finish. Float is a shared commodity for the use of VPRA and Contractor and is not for the exclusive use or benefit of either party. Both parties have the full use of the float until depleted. Float must be calculated relative to the Final Acceptance Deadline.
Force Account	The basis of payment set forth in <u>Exhibit J</u> .
Force Account Change Order	A Change Order for which additional compensation is paid on the basis of Force Account.
Force Majeure	An unforeseeable event beyond the control of Contractor, not due to an act or omission of any Contractor-Related-Entity, that materially and adversely affects Contractor's ability to meet its obligations under the Contract Documents, to the extent that the event (or the effects of which event) could not have been avoided

or prevented by due diligence and use of reasonable efforts by Contractor. Force Majeure shall include only the following events:

- (a) war;
- (b) an act of terrorism, riot, insurrection, civil commotion, or sabotage within the Project ROW;
- (c) national strikes that specifically caused disruption to the Project and are not specific to a Contractor-Related-Entity;
- (d) explosion caused by an explosive device that causes direct physical damages to the Project or the Project ROW;
- (e) flood, other than that caused by an Extreme Weather Event;
- (f) a fire, tornado, sinkhole, or landslide, in each case caused by natural events and causing direct physical damage within the Project ROW that impacts the Project;
- (g) a state of emergency (as declared by the Governor of Virginia or Mayor of Washington, D.C.) within the limits of the Project ROW other than an Extreme Weather Event, except one consisting of or arising out of traffic accidents;
- (h) one or more earthquakes with a moment magnitude greater than 5.0 (measured by the U.S. Geological Survey moment magnitude) with an epicenter within 100 miles of the northernmost point of the Project ROW, where such earthquake(s) cause direct physical damages to the temporary or permanent works of the Project; and
- (i) pandemic or epidemic, in each case to the extent that it results in a delay to the supply of Materials or the quarantine of workers located in the Commonwealth or Washington, D.C.

General Assembly

The legislative body of the Commonwealth.

Good Industry Practice

As applied to the Construction Work, the degree of skill and judgment prevailing on the Effective Date that is expected to be exercised by prudent, skilled, and experienced contractors on similar projects in the Commonwealth of Virginia or District of Columbia, taking into consideration safety, operational requirements, level of service and lifecycle costs.

As applied to the Professional Services, Good Industry Practice refers to the duty to exercise the degree of care and skill of those ordinarily skilled in the business providing similar services in the same or a similar location, at the same time, and under similar circumstances.

Governmental Approval

Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration or ruling required by or with any Governmental Person (other than a Governmental Person in its capacity as a Utility Owner) to perform the Work.

Governmental Person

Any federal, state, Local or foreign government and any political subdivision of each of the foregoing, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity. The term

	includes the Commonwealth and agencies and subdivisions thereof, other than VPRA.
Guaranteed Maximum Price (GMP)	The maximum possible compensation for the Phase 2 Services to be paid by VPRA to the Contractor (exclusive of any payment for any Early Work Packages).
GMP Negotiations	The process of VPRA's and Contractor's negotiation of the GMP, including comparison of the Construction Cost Estimates to the ICE's estimates and the reconciliation of differences in price.
Guarantor	Each entity providing a Guaranty.
Guaranty	Each guaranty of Contractor's obligations under the Contract Documents.
Hold Point	A specific point in the design or construction process at which further activity associated with the deliverable is suspended until formal Acceptance of the interim product is obtained. Acceptance is formally obtained when all issues and design changes have been resolved, all Materials testing and inspection procedures have been performed and provide passing results, and the work meets the requirements of the Contract Documents.
Holidays	The days of each year set aside by legal authority for public commemoration of special events, and on which no public business shall be transacted except as specifically provided in cases of necessity. Unless otherwise noted, Holidays shall be as established in § 2.2-3300 of the Code of Virginia.
Inaccurate Utility Information	The meaning set forth in <u>Section 14.12.3.1 of the General Terms and Conditions.</u>
Indemnified Party(ies)	The Virginia Indemnitees and other parties expressly entitled to indemnification by Contractor under the Contract Documents, including Amtrak and CSXT to the extent specified in Exhibit F.
Independent Cost Estimator (ICE)	The firm engaged by VPRA to prepare an independent cost estimate of the cost to perform the Phase 2 Services and Early Work and other incidental cost estimating tasks.
Lane Closure	The closing of a traffic lane or shoulder by Contractor such that traffic cannot move freely.
Law	All applicable federal, state, and Local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, and orders and decrees of any Governmental Person having jurisdiction over the Project or Project ROW, the practices involved in the Project or Project ROW, any Work, or any Utility Work being performed by a Utility Owner. "Law" does not include Governmental Approvals.
Lien	Any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument, and the filing

	of or agreement to file any financing statement or other instrument intended to perfect a security interest).
Liquidated Damages	The liquidated damages that may be assessed by VPRA as provided in the Contract Documents.
Local	Any municipality or other subdivision of a state or federal government, including Washington, D.C.
Local Agency	Any subdivision of the Commonwealth or federal government with jurisdiction over any portion of the Project.
Material	Any substances required for use in the completion of the Project and its appurtenances.
Neutral	The Person to whom Disputes may be referred subsequent to the Escalation Ladder, as described in <u>Section 20.3 of the General Terms and Conditions</u> .
Neutral Session	A session held with the Neutral during which the Parties present their position on Disputes submitted to the Neutral, as described in <u>Section 20.3.5 of the General Terms and Conditions</u> .
New Environmental Approval	Any of the following: (a) a new Governmental Approval of the same type as an Environmental Approval; and (b) a revision, modification or amendment to one or more of the Environmental Approvals, that is the responsibility or obligation of the Contractor to obtain under <u>Section 7.4.2 of the General Terms and Conditions</u> .
Nonconforming Work	Work that does not meet the requirements of the Contract Documents.
Non-renewal of VPRA Permits or Environmental Clearance	The non-renewal of permits or environmental clearance that VPRA is required by the Contract Documents to obtain, provided that Contractor has cooperated with all requests for information from VPRA or other steps for which Contractor is responsible that are necessary for VPRA to obtain renewal of the permit or environmental clearance at issue.
Notice of Substantial Completion	Notice issued by VPRA stating that Substantial Completion has occurred.
Open Book Basis	Contractor's provision of information, including pricing, that shows all assumptions, data, and other substantiation supporting the information presented and that allows VPRA to check and verify the accuracy of the material presented. For cost estimates, this entails the provision of all information that Contractor used to develop the cost under consideration, including labor, fringe, benefits, equipment, materials, productivity, estimating factors, allowances, risk, contingency, indirect costs, discount rates, interest rates, inflation, insurance, bonding, fees, overhead, profit, and other items that comprise the cost.
Opinion of Probable Construction	The non-binding cost estimate performed by Contractor, as provided in <u>Section 12.1 of the Contract</u> and <u>Exhibit C</u> .

**Costs or
“OPCC”**

Partnering	The processes and procedures described in <u>Section 20.1 of the General Terms and Conditions</u> .
Party	A party to the Contract, as identified therein.
Performance and Payment Bonds	The performance and payment bonds described in <u>Section 9.1 of the General Terms and Conditions</u> .
Person	Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization, joint venture, or Governmental Person, including VPRA.
Phase 1	The preconstruction period during which Contractor performs the Phase 1 Services.
Phase 1 NTP	The NTP issued by VPRA to Contractor that authorizes Contractor to commence performance of the Phase 1 Services.
Phase 1 Services	The services identified in <u>Exhibit C</u> .
Phase 1 Services Fee	The not-to-exceed fee payable to Contractor for performance of the Phase 1 Services.
Phase 2	The construction period during which Contractor performs the Phase 2 Services.
Phase 2 Amendment	An amendment to the Contract Documents that adds the Phase 2 Services to the Contractor’s scope of Work, and includes all terms and conditions for Contractor’s performance of the Phase 2 Services.
Phase 2 NTP	The NTP issued by VPRA to Contractor that authorizes Contractor to commence performance of the Phase 2 Services.
Phase 2 Services	The Construction Work as specified in further detail in the Phase 2 Amendment.
Price Reconciliation	The process of reconciling differences between Contractor’s Construction Cost Estimates and estimates of the price and schedule to perform the Phase 2 Services and Early Work prepared by VPRA and the ICE.
Principal Participant	A Person that is: (a) A member of the joint venture, if Contractor is a joint venture; (b) Contractor, if Contractor is a corporation; or (c) An equity owner of Contractor, if Contractor is organized as a business other than a corporation (e.g., a member, partner, or shareholder of the Respondent entity).
Procurement Rules	The rules of procurement adopted by VPRA that govern VPRA’s procurements, available at: https://vapassengerrailauthority.org/working-with-us/procurement/

Professional Services	<p>All work other than Construction Work, including:</p> <ul style="list-style-type: none">(a) engineering;(b) environmental permitting and compliance;(c) public involvement and communications;(d) right of Way acquisition and support;(e) surveying other than for construction;(f) quality management planning. <p>Professional Services does not include construction superintendence, construction project management, or other services of a professional nature (accounting, legal, financial) performed by a Constructor.</p>
Project	<p>The Franconia-Springfield Bypass project as described in the Design consisting of the rail flyover bypass bridge and all other Work to be provided by Contractor as a condition to Final Acceptance in accordance with the Contract Documents.</p>
Project ROW	<p>The parcels of Right of Way shown in the ROW Work Map. Project ROW does not include Temporary Work Areas.</p>
Prompt Payment Law	<p>Subcontractor payment requirements under the Code of Virginia, § 11-4.6.</p>
Proposal	<p>The documents constituting Contractor's response to the RFP, including any supplements as may have been requested by VPRA.</p>
Proposer	<p>An individual, firm, partnership, corporation, joint venture or combination thereof that submitted a Proposal in response to the RFP.</p>
Public Utility	<p>A Utility that is owned by a Public Utility Owner.</p>
Public Utility Owner	<p>An owner or operator of a Utility that is a municipality, county, or other political subdivision of a state or the federal government.</p>
Punch List	<p>The list of Work items that remain to be completed after Substantial Completion, which is subject to Approval by VPRA and is limited to minor incidental items of Work that have no adverse effect on the safety or operability of the Project and that can be performed without shutting down rail operations or a roadway.</p>
Quality Control ("QC")	<p>The total of all activities that are performed by the production staff of the Contractor, Subcontractors, producer, or manufacturer to ensure the Work meets the requirements of the Contract. QC may include checks; inspection of material handling and construction; calibration and maintenance of sampling and testing equipment; working plan review; document control; production process control; any inspection, sampling, and testing done for these purposes; and documentation of QC activities.</p>
Quality Plan	<p>The quality plan provided by Contractor and Approved by VPRA as described in <u>Section 6.3.4 of the General Terms and Conditions</u>.</p>
Railroad	<p>Depending on the context, either the right of way, tracks, and systems used for rail traffic, or the owners and/or operators of such rail systems.</p>
Railroad Delay	<p>A delay to the Critical Path caused by a Railroad's failure to issue a permit or other approval necessary for Work that impacts a Railroad by the time required by a</p>

legal obligation, whether by Law or contract, or a Railroad's failure to comply with any approved permit or other commitment, provided that Contractor has cooperated with all reasonable requests from the Railroad with respect to the matter causing the delay.

Railroad Owner	The owner and/or operator of a Railroad, including Amtrak and CSXT (excluding WMATA).
Reasonable Accuracy	The meaning set forth in <u>Section 14.12.3.2 of the General Terms and Conditions</u> .
Recommendations	The non-binding report of recommendations issued by the Neutral in accordance with <u>Section 20.3.6 of the General Terms and Conditions</u> .
Reference Documents	The documents provided by VPRA showing preliminary design concepts and other information for the Project.
Release of Contaminated Materials	Any release of Contaminated Materials that requires remediation to continue the Work safely.
Relief Event	Relief Event shall mean the occurrence of one or more of the following: <ul style="list-style-type: none">(a) VPRA-Directed Change;(b) VPRA-Caused Delay;(c) Force Majeure;(d) Utility Delay;(e) Inaccurate Utility Information;(f) Railroad Delays;(g) Release of Contaminated Materials;(h) Discovery of Unknown Preexisting Contaminated Materials;(i) Discovery of archeological, paleontological, cultural, or biological resources;(j) Discovery of threatened or endangered species;(k) Differing Site Condition;(l) Change in Law;(m) Court Order;(n) Uncovering and Restoring Work;(o) Non-renewal of VPRA Permits or Environmental Clearance; and(p) Extreme Weather Event.
Relocation or Relocate	As related to Utilities, each removal, transfer of location, In-Place/Out-of-Service, and/or Protection of Existing Utilities (including provision of temporary services as necessary) of any and all Utilities that is necessary or advisable to accommodate or permit construction of the Project.
Request for Change Order	The request submitted by Contractor for a Change Order in accordance with <u>Section 14.4 of the General Terms and Conditions</u> .

Request for Change Proposal	A proposal issued by VPRA under <u>Section 14.2.1 of the General Terms and Conditions</u> .
Request for Information	A formal request for additional information regarding the design and construction of the Project that may be initiated by anyone associated with the Project.
Request for Proposals (“RFP”)	The Request for Proposals for the Project issued by VPRA on August 4, 2023, and as amended.
Review Level	The levels of review in the Escalation Ladder, as described in <u>Section 20.2.1.1 of the General Terms and Conditions</u> .
RFP Documents	Any information and materials supplied by VPRA with the RFP.
Right of Way (“ROW”)	The real property (inclusive of all estates and interests in real property) that is necessary for ownership and operation of the Project (includes permits).
Road	A general term denoting a public way for purposes of vehicular travel.
Road Closure	The closure of a Road, whether due to an intended, purposeful closing of the Road or by activities that cause the Road to be unusable by the traveling public.
ROW Schedule	The dates that VPRA will make the ROW shown on the ROW Work Map available to Contractor for access and use as provided to the Contractor during the Phase 1 Services.
ROW Work Map	The information identifying the ROW currently owned by VPRA and the ROW to be acquired by VPRA for purposes of the Project and other information provided by VPRA. The ROW Work Map constitutes the Right of Way that will be made available to Contractor for the Project.
Safety Plan	The plan described in <u>Section 6.2.2 of the General Terms and Conditions</u> .
Schedule Impact Analysis	Analysis of the anticipated impacts of schedule changes impacting the Critical Path.
Self-Perform	The act of Contractor undertaking the Construction Work directly with its own forces (rather than having a Subcontractor or other Person undertake such Construction Work).
Self-Performed Work	Construction Work undertaken by Contractor’s own forces. Self-Performed Work does not include Construction Work performed by Subcontractors or other Persons.
Service Line	A Utility line, the function of which is to connect an individual service location (e.g., a single-family residence or an industrial warehouse) to another Utility line that connects more than one such individual line to a larger system. The term “Service Line” also includes any Utility on public or private property that services structures located on such property.
Shared Cost Saving	Has the meaning given in <u>Section 12.10 of the General Terms and Conditions</u> .

Sharepoint	The electronic system provided by VPRA for the purpose of exchanging documents and information for the Project.
Site	The parcels of Right of Way identified on the ROW Work Map on which the Project is to be constructed and areas in the vicinity used by Contractor to facilitate work for the Project. With respect to Early Work, "Site" shall mean the parcels of Right of Way on which the Early Work takes place, as specified in the Early Work NTP, and areas in the vicinity used by Contractor to facilitate performance of the Early Work.
Stop Work Notice	A formal notification by VPRA or Contractor's authorized personnel requiring Contractor to stop work partially or fully in accordance with the terms of the notice.
Street	A general term denoting a public way for purposes of vehicular travel.
Structures	Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains, and other man-made features.
Subcontract	Any subcontract to perform any part of the Work or provide any Materials, Equipment or supplies for any part of the Work between Contractor and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.
Subcontractor	Any Person with whom Contractor has entered into any Subcontract and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier.
Substantial Completion	The occurrence and completion of the events described in <u>Section 22.1 of the General Terms and Conditions</u> to VPRA's satisfaction, evidenced by VPRA's issuance of a Notice of Substantial Completion.
Substantial Completion Deadline	The meaning set forth in <u>Section 5.1.1 of the General Terms and Conditions</u> .
Supplier	Any Person other than employees of Contractor not performing Work at the Site that supplies machinery, Equipment, Materials or systems to Contractor or any Subcontractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver, or carry Materials, personnel, parts, or Equipment or any other items or Persons to or from the Site shall not be deemed to be performing Work at the Site.
Surety	Each properly licensed surety company approved by VPRA that has issued the Performance and Payment Bonds.
Temporary Work Area	Areas in which Contractor performs Project-specific or Project-related activities on a temporary basis in connection with the Work, but that are not within the Project ROW, including certain construction work sites, staging areas, storage areas, lay-down areas, earth work material borrow sites, and other locations for Contractor's convenience, in addition to any co-located office.
Third-Party	A Person that is not a Party to the Contract but that has approval rights or a right to provide input over the Work.

Track Closure	The closure of a railroad track, whether due to an intended, purposeful closing of the track or by activities that cause the track to become unusable for rail operations.
Unilateral Change Order	A Change Order issued by VPRA as defined in <u>Section 14.2.2 of the General Terms and Conditions</u> .
Unpermitted Road Closure	The closure of any Road outside the time Approved by VPRA.
Unpermitted Track Closure	The closure of any Railroad outside the time Approved by VPRA or a Railroad Owner.
Unresolved Disputes	The Disputes that have not achieved resolution at Final Acceptance of the Project and that have complied with all requirements to which the Dispute is subject under the Contract Documents, including <u>Article 14 and Article 20 of the General Terms and Conditions</u> .
Utility	A privately, publicly or cooperatively owned line, facility, and/or system that supplies a resource or substance that directly or indirectly serves the public, including power, light, gas, heat, telecommunications, cable, telegraph, telephone, crude products, water, steam, waste, storm water, signal system, pipeline or sewer service. Except for Service Lines, the necessary appurtenances to each utility facility shall be considered part of such utility. The term "Utility" shall specifically exclude existing storm water facilities connected with drainage of the roadway.
Utility Agreement	An agreement between (a) VPRA or Contractor and (b) a Utility Owner, addressing one or more Utility conflicts associated with the Project.
Utility Delay	Subject to <u>Section 14.12.4 of the General Terms and Conditions</u> , any failure by a Utility Owner to meet any time parameters for performance by such Utility Owner that are set forth in a Utility Agreement or other arrangement for performance by a Utility Owner, which failure by the Utility Owner delays the Critical Path.
Utility Easements	All permanent easements and/or other permanent interests in real property owned by Utility Owners in connection with existing Utilities, including those acquired for the purpose of Relocating a Utility to accommodate the Project.
Utility Information	The information regarding Utilities provided by the Design Consultant during the Phase 1 Services, as well as any additional information about Utilities discovered during the Phase 1 Services or otherwise prior to the date of the Final Binding GMP Proposal.
Utility Owner	The owner or operator of any Utility.
Utility Work	(a) The Work associated with Relocation of Utilities, including the design, construction, installation, manufacture, supply, testing and inspection, adjustments (including manholes and valves), and otherwise required by the Contract Documents, including all labor, Materials, Equipment, supplies, utilities, and subcontracted services provided or to be provided by Contractor and/or the Utility Owners, and (b) any Betterments added to the Work pursuant to <u>Section 7.2.2 of the General Terms and Conditions</u> .
Virginia Indemnitees	The Commonwealth of Virginia and VPRA as defined in <u>Section 19.1.1 of the General Terms and Conditions</u> .

VPRA	The Virginia Passenger Rail Authority.
VPRA-Caused Delay	<p>Unavoidable delays, to the extent that they affect the Critical Path, arising from the following matters and no others:</p> <p>(a) A suspension for convenience pursuant to <u>Section 17.1 of the General Terms and Conditions</u>, to the extent provided therein;</p> <p>(b) VPRA-Directed Changes;</p> <p>(c) Failure or inability of VPRA to provide Contractor with access to Right of Way identified on the ROW Work Map on or before the date stated in the ROW Schedule, subject to <u>Section 7.1 of the General Terms and Conditions</u>; and</p> <p>(d) Failure or inability of VPRA to provide responses to proposed schedules, design submittals, and other submittals and matters for which response by VPRA is required, within the time periods provided in the Contract Documents. This clause (d) applies to VPRA's late provision of responses due to a Third-Party's delay in returning comments to VPRA on a Contractor submittal or other document.</p>
VPRA-Directed Change	Any changes in the Work or the Contract Documents that VPRA has directed Contractor to perform, as described in <u>Article 14 of the General Terms and Conditions</u> .
Warranty	Contractor's warranties of the Work specified in <u>Section 4.1.1 of the General Terms and Conditions</u> .
Subcontractor Warranties	Subcontractor's warranties specified in <u>Section 4.2 of the General Terms and Conditions</u> .
Warranty Work	Corrective Work performed or to be performed by Contractor to remedy defects or otherwise cause an element of the Work to comply with Contractor's Warranties.
Work	All work required under the Contract Documents, including all administrative, engineering, support services, Utility Work, procurement, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, Materials, Equipment, maintenance, documentation, and other duties and services to be furnished and provided by Contractor as required under the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance, except for those efforts that the Contract Documents expressly state will be performed by Persons other than a Contractor-Related-Entity. Work refers to and includes the Phase 1 Services, Phase 2 Services, and Early Work.
Work Product	All drawings, specifications, calculations, reports, documentation, and all other deliverables required by or contemplated by the Work, as well as all underlying documents and information prepared by Contractor in the course of generating the foregoing. Work Product includes all formats in which the foregoing exists, including paper, electronic, or otherwise. Work Product shall also include all rights, title, and interest to Governmental Approvals for which Contractor applied for performance of the Work, and agreed-upon Materials ordered or purchased as part of the Phase 1 Services.
Working Day	Any Day other than Saturday, Sunday, or a Holiday.

EXHIBIT B
GENERAL TERMS AND CONDITIONS

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GENERAL TERMS AND CONDITIONS

CM/GC Contract

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ARTICLE 1

(Compliance with Laws, Standards, and Specifications)

1.1 Compliance with Laws

Contractor shall comply with all applicable Laws in its performance of the Work. Contractor shall keep fully informed of all applicable Laws that may affect the conduct of the services provided by Contractor. If any discrepancy or inconsistency is discovered between this Contract and any Law, Contractor shall immediately report such discrepancy or inconsistency to VPRA's Contract Administrator in writing.

1.2 Violations of Law

If Contractor violates Laws that govern the Project, Contractor shall take prompt action to correct or abate such violation and shall indemnify and hold VPRA harmless against any fines and/or penalties that result from such violation. Contractor shall also indemnify and hold VPRA harmless against any third-party claims, suits, awards, actions, causes of action or judgments, including attorney's fees and costs incurred thereunder, that arise from Contractor's violation of Laws.

1.3 Referenced Standards and Specifications

Work that must comply with a specified standard established by reference to a described publication must comply with the latest edition or revision of that standard in effect on the date of submission of the Final Binding GMP Proposal, including any amendments in effect on that date, unless otherwise specified in the Contract Documents or otherwise directed by VPRA. In the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a described manual or publication within a Contract Document or set of Contract Documents, the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless VPRA approves otherwise in writing.

1.4 Standards for Approvals

In all cases where approvals, acceptances, or consents are required from VPRA or Contractor, these approvals, acceptances, or consents may not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified, and may not be unreasonably delayed if no response time is specified. In cases where sole discretion is specified, VPRA's decision is binding and mandatory and Contractor shall have no right to an increase in the Contract Price or adjustment of a Completion Deadline, and VPRA's decision will not be subject to dispute resolution or other legal challenge.

ARTICLE 2

(Interpretation of Contract Documents)

2.1 Interpretation, Generally

In the Contract Documents, where appropriate:

- (a) the singular includes the plural and vice versa;
- (b) references to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to;
- (c) the words "including," "included," "includes," and "include" are deemed to be followed by the words "without limitation";

- (d) unless the context requires otherwise, in phrases involving performance by a Person, the words “will”, “must” or “shall” indicate a requirement imposed on the Person;
- (e) unless otherwise indicated, references to sections, appendices, and exhibits are to the document that contains such references;
- (f) words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings;
- (g) references to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and
- (h) words of any gender include each other gender where appropriate.

The parties intend that the Contract Documents be interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction industry standards.

2.2 Computation of Periods

References to “days” or “Days” in the Contract Documents mean Calendar Days unless otherwise specified. Unless stated otherwise, the counting of Days shall not include the day triggering the applicable time period, but shall include the last day. For example, if a Party must respond within 3 days of receipt of notice, and notice is received on a Monday, Tuesday shall be day 1, Wednesday day 2, and Thursday day 3, with the response due on Thursday.

If the date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice “within” a specified time period) falls on a non-Working Day, the act or notice may be timely performed on the next succeeding day that is a Working Day. Notwithstanding this provision, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, requirements contained in Sections 14.12.2 and 19.2.3 of these General Terms and Conditions, and any other requirements for which it is clear that performance is intended to occur on a non-Working Day, will be required to be performed as specified, even though the date in question may fall on a non-Working Day.

2.3 Omission of Details

Contractor shall not take advantage of any apparent error in the Contract Documents. If it appears that the Work to be done or any matter related to the Work is not sufficiently detailed or explained in the Contract Documents, Contractor shall request in writing from VPRA further written explanations as may be necessary and will conform to the explanation provided. Contractor shall promptly notify VPRA of any error that it discovers in the Contract Documents and must obtain specific instructions in writing from VPRA regarding any such error before proceeding with the affected Work. The fact that the Contract Documents omit or misdescribe any minor details of any Work that are necessary to carry out the intent of the Contract Documents, or that are customarily performed under similar circumstances, will not relieve Contractor from performing the omitted Work or the misdescribed details of the Work, and they must be performed as if fully and correctly stated and described in the Contract Documents, without entitlement to adjustment of the Contract Price or a Completion Deadline except as specifically allowed under Article 14 of these General Terms and Conditions.

2.4 Discrepancies

Contractor acknowledges that, prior to the execution of this Contract, it has carefully reviewed the Contract Documents for errors, omissions, conflicts or ambiguities (each, a “Discrepancy”), and is not aware of any Discrepancies as of the execution of this Contract. If the Contractor becomes

aware of a Discrepancy, the Contractor shall immediately notify VPRA's Project Manager of that Discrepancy in writing. VPRA's Project Manager shall promptly resolve the Discrepancy in writing. Contractor's failure to promptly notify VPRA of an apparent discrepancy will be deemed a waiver of Contractor's right to seek an adjustment of the Contract Price and Substantial Completion Date due to the discrepancy.

2.5 Legal Review

Contractor acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret, and agree to the language of the Contract Documents. If there is an ambiguity in or dispute regarding the interpretation of the Contract Documents, the Contract Documents will not be construed against the Person who prepared them; instead, other rules of interpretation shall be used.

ARTICLE 3

(Performance Standards; Warranties and Representations)

3.1 General Obligations of Contractor

Contractor shall perform the following obligations, in addition to meeting all other requirements of the Contract Documents:

- (a) Obtain all Governmental Approvals, except those the Contract Documents identify as to be obtained by others;
- (b) Comply with all conditions imposed by all Governmental Approvals, and undertake all actions required by and necessary to maintain the Governmental Approvals in full force and effect. This includes implementing all environmental mitigation measures required by the Contract Documents, except where the Contract Documents expressly assign responsibility for those measures to another Person;
- (c) Provide such assistance as is reasonably requested by VPRA in dealing with any Person, and in prosecuting and defending lawsuits in any and all Project-related matters. This may include providing information and reports regarding the Project, executing declarations, and attending meetings and hearings.
- (d) Comply with all requirements of all Laws.
- (e) Cooperate with VPRA and Governmental Persons with jurisdiction over the Project in the review and oversight of the Project and other Work-related matters.
- (f) Supervise and be responsible to VPRA for acts and omissions of all Contractor-Related-Entities, as though all such entities (and Persons employed by those entities) were directly employed by Contractor.
- (g) Pay all applicable taxes, fees, charges or levies, whether direct or indirect, relating to, or incurred in connection with, performing the Work.

3.2 Contractor's Performance Requirements

3.2.1 Performance of Work

Contractor shall provide all Materials and perform all Work and services necessary to achieve Substantial Completion and Final Acceptance on or before the applicable Completion Deadlines, except for the Materials, work, and services that are the responsibility of others as specifically

provided in the Contract Documents. The costs of all such Materials, services, and efforts are included in the Contract Price, except for changes in the Work as provided in Article 14 of these General Terms and Conditions.

Without limiting the foregoing, Contractor shall perform or cause to be performed all Work to complete construction of the Project consistent with the Contract Documents. Contractor shall endeavor to develop, implement, and maintain, a spirit of cooperation, collegiality, and open communication with VPRA so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by the Parties.

3.2.2 Performance as Directed

Contractor shall, at all times, comply with all provisions of the Contract Documents. Contractor shall perform the Work diligently, without delay, and in compliance with VPRA's decisions and orders, including during the course of a dispute between the Parties. The existence of a dispute between the Parties shall not be grounds for Contractor to stop Work on any aspect of the Project.

3.2.3 Management of the Work

Contractor shall be responsible for completely supervising and directing the Work under this Agreement and all Subcontractors using its best skill and attention. Subcontractors who perform Work under this Contract shall be responsible to the Contractor, and Contractor 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. Contractor shall manage the services provided under this Contract until all services have been completed in accordance with the Contract Documents and Final Acceptance of the Project has been achieved. Contractor understands and acknowledges that the Work may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. Contractor shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.

3.2.3.1 Contractor shall proceed with construction in accordance with the approved Construction Documents.

3.2.3.2 Except to the extent that the Contract Documents expressly identify VPRA obligations related to the Work, Contractor shall provide through itself or Subcontractors, subject to any minimum or maximum concerning the amount of Work that may be self-performed, the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities (whether or not expressly stated or depicted in the Contract Documents or Construction Documents) to permit Contractor to complete construction of the Project consistent with the Contract Documents.

3.2.3.3 Contractor is responsible for securing the Site until VPRA issues a Notice of Substantial Completion.

3.2.3.4 Contractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Contractor shall perform Construction Work in accordance with Good Industry Practice (but at least meeting the requirements of the Contract Documents) and in a good and workmanlike manner, free from defects.

- 3.2.3.5** Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take necessary precautions for the safety of, and shall provide necessary protection to prevent damage, injury or loss to the following: (i) all Contractor, Subcontractor, VPRA employees, the public and other persons who may be affected thereby; (ii) all Work and all equipment and materials to be incorporated into the Work; and (iii) other property at the Site or adjacent thereto. Contractor shall also be responsible for all additional measures as necessary to protect persons and property and comply with applicable Legal Requirements related to safety. If applicable, Contractor shall be responsible for its and its Subcontractor's compliance with all Federal Railroad Administration regulations applicable to Work to be performed in VPRA railroad corridors including, without limitation, those set forth in 49 CFR Parts 214, 219, 228, 234 and 236.
- 3.2.3.6** Contractor shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. VPRA may require Contractor to remove from the Project a Subcontractor or anyone employed directly or indirectly by any Subcontractor, if VPRA reasonably concludes that the Subcontractor is creating safety risks at the Site or quality risks to the Project.
- 3.2.3.7** Contractor is responsible for the proper performance of the Work by Subcontractors and for any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between VPRA and any Subcontractor, including but not limited to any third-party beneficiary rights.
- 3.2.3.8** Contractor shall coordinate the activities of all of its Subcontractors. If VPRA performs other work on the Project or at the Site with separate contractors under VPRA's control, Contractor agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 3.2.3.9** Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit VPRA to occupy the Project or a portion of the Project for its intended use.

3.3 Representations, Warranties, and Covenants

Contractor represents, warrants, and covenants as follows.

3.3.1 Maintenance of Professional Qualifications

Contractor and all Subcontractors have all required professional licenses and the professional skills, competence, and capacity to perform the Work in accordance with the requirements of the Contract Documents.

3.3.2 Evaluation of Constraints

During its preparation of its Proposal and its performance of the Phase 1 Services, Contractor evaluated the constraints affecting delivery of the Project, including the availability of ROW, the conditions of the Environmental Approvals, and the timing of Utility Work. Contractor represents that such constraints are incorporated into the Baseline Schedule and that the Project can otherwise be delivered within those constraints.

3.3.3 Feasibility of Performance

Contractor has evaluated the feasibility of performing the Work within the Completion Deadlines specified in the Contract Documents and for the Contract Price. Contractor represents that it is feasible to perform the Work within those cost and time constraints.

3.3.4 Review of Site Information

Contractor has, before submitting its Final Binding GMP Proposal, and in accordance with prudent and generally-accepted engineering and construction practices, undertaken appropriate and reasonable activities sufficient to familiarize itself with surface conditions and subsurface conditions affecting the Project. These activities included reviewing the utility and geotechnical information provided by VPRA, including in the Reference Documents, if any, and inspecting and examining the Site and surrounding locations to the extent possible. Having performed these activities, Contractor represents that it is familiar with and accepts the physical requirements of the Work, subject to the right to receive a Change Order only for Differing Site Conditions as provided in Article 14 of these General Terms and Conditions. Before commencing any Work on a particular aspect of the Project, Contractor shall verify all governing dimensions and conditions at the Site and examine all adjoining work that may have an impact on such Work.

3.3.5 Governmental Approvals

Contractor represents and warrants that it has obtained or will obtain all Governmental Approvals to permit the Work to proceed in accordance with the Contract Documents. If any Governmental Approval that Contractor is required to obtain must formally be issued in the name of VPRA, Contractor shall undertake all efforts to obtain such Governmental Approvals. VPRA will cooperate with Contractor, including by executing and delivering appropriate applications and other documentation in a form approved by VPRA. Contractor shall assist VPRA in obtaining any Governmental Approvals that VPRA is obligated to obtain, including by providing information requested by VPRA and participating in meetings regarding the Governmental Approvals.

3.3.6 Personnel Performing Professional Services

Where applicable, Contractor shall ensure that the Work is performed by or under the supervision of Persons licensed to practice architecture, engineering or surveying (as applicable) in the Commonwealth. Contractor's Work shall be performed by personnel who are: (1) competent, skilled, and experienced in their respective trades or professions, (2) professionally qualified to perform the Work in accordance with the Contract Documents, and (3) able and willing to assume professional responsibility for the accuracy and completeness of the any documents that they prepare or check.

3.3.7 Organization

Contractor represents and warrants that it is a [##] duly organized and validly existing under the laws of the state of [##]. Contractor represents and warrants that it is in good standing and duly qualified to conduct business in the Commonwealth. Contractor warrants that it will remain in

good standing for as long as needed to perform its obligations under the Contract Documents.
[Insert information for Guarantor, if required]

3.3.8 Authorization

Contractor represents and warrants that it has taken all actions necessary to execute, deliver, and perform the Contract. If applicable, Contractor's members have also taken all actions necessary to execute, deliver, and perform the Contract. Contractor represents that executing and performing this Contract will not result in a material breach or a default under any other contract or legal obligation.

3.3.9 Legal, Valid, and Binding Obligation

The Contract constitutes the legal, valid, and binding obligation of Contractor and, if applicable, of each Principal Participant of Contractor. If applicable, each Guaranty constitutes the legal, valid, and binding obligation of Guarantor.

3.3.10 False or Fraudulent Statements and Claims

Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801 *et seq.*) and the USDOT regulations, "Program Fraud Civil Remedies," (49 C.F.R. Part 31), apply to its actions under this Contract. By signing this Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Contract. Any false, fictitious, or fraudulent claim, statement, submission, or certification is subject to penalties under federal law and regulations.

Contractor recognizes that the Virginia Fraud Against Taxpayers Act (Va. Code § 8.01-216.1. *et seq.*) applies to this Contract.

3.3.11 Covenant Regarding Brokerage

Contractor 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 Subcontractors procured under this Contract or a bona fide employee working solely for Contractor, 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, VPRR 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.

ARTICLE 4

(Warranties)

4.1 Warranties by Contractor

4.1.1 Project Warranties

Contractor warrants that:

- (a) the Project shall be free of defects in Materials and workmanship;
- (b) Materials and Equipment furnished under the Contract Documents shall be of good quality and be new when installed;
- (c) the Work shall meet all of the requirements of the Contract Documents; and
- (d) the Project shall be fit for use for the intended function.

4.1.2 Project Warranty Period

Contractor's Warranty period starts at Substantial Completion, except that a Warranty for a specific element owned by a Third-Party may start at the date the Third-Party accepts that specific element if (1) that date is prior to Substantial Completion, and (2) VPRA and Contractor have documented the earlier Warranty start date. Subject to extensions under Section 4.1.5 of these General Terms and Conditions Contractor's Warranty obligations for all elements of the Project that will be owned by VPRA shall remain in effect until two years after Substantial Completion, except that any longer Warranty period specified elsewhere in the Contract Documents for a specific element of the Project shall control.

If at any time during the Warranty period VPRA determines that any of the Work has not met the standards specified in this Section 4.1 of these General Terms and Conditions, then Contractor shall correct such Work as specified in this Article 4 of these General Terms and Conditions, even if the performance of such Warranty Work extends beyond the stated Warranty period. Alternatively, VPRA may elect, in its sole discretion, to Accept the Work in accordance with Section 6.5.3 of these General Terms and Conditions and adjust the Contract Price or seek damages as provided therein.

4.1.3 Corrective Work

4.1.3.1 Site Inspections

VPRA and Contractor will conduct a joint walkthrough of the Site at the following times: (i) once no less than one year after commencement of the Warranty period; and (ii) once 60 Days prior to the end of the Warranty period specified in Section 4.1.2 of these General Terms and Conditions. VPRA may require additional Site inspections with Contractor if VPRA identifies Warranty Work. On each walkthrough or Site visit, VPRA will produce a list of items requiring Warranty Work. In addition, VPRA reserves the right at any time during the Warranty period to identify Work that fails to meet the Warranties.

Contractor may also monitor the Site for any Warranty Work required during the Warranty period. Contractor must provide advance notice to VPRA of all monitoring dates and times.

4.1.3.2 Notification and Performance of Corrective Work

VPRA will notify Contractor of any failure of any of the Work that is Contractor's responsibility to correct under the terms of the Warranty. Contractor shall perform necessary Warranty Work to remedy any failures of Contractor's Work to meet Contractor's Warranties, whether identified by VPRA or Contractor. Such Warranty Work shall be performed at Contractor's sole expense.

4.1.3.3 Contractor Plan to Perform Warranty Work

For all corrective actions required, Contractor shall provide a written proposal to VPRA for performing Warranty Work within five (5) Days after receiving notice from VPRA that Warranty Work is required. Contractor shall also provide a written proposal to VPRA for performing Warranty Work if Contractor elects to perform Warranty Work based on Contractor's assessment of the Site. The proposal must include, as a minimum:

- (a) The proposed remedy;
- (b) The proposed schedule for prosecution and completion of the Warranty Work; and
- (c) The proposed plan to manage rail or road traffic, as applicable.

VPRA will respond to Contractor's proposal within five (5) Days after VPRA receives Contractor's complete submittal, provided that, if the Warranty Work requires approval from a Railroad, VPRA

shall respond to Contractor's proposal within two (2) days of receiving such approval or rejection from a Railroad.

4.1.3.4 Performance of Warranty Work

Contractor must begin corrective action Work within 30 Days after VPRA's Acceptance of the written plan for Warranty Work. If the Work cannot be started within such time because of seasonal or other limitations, Contractor must notify VPRA of this circumstance in writing and submit a schedule for completion of the Warranty Work for VPRA's Approval. If Contractor does not use its best efforts to perform Warranty Work within the agreed time, or if Contractor and VPRA fail to reach an agreement, VPRA, after notice to Contractor, will have the right to perform the Warranty Work itself or have the Warranty Work performed by Third-Parties. Contractor shall be responsible for the costs of performance of Warranty Work by VPRA or Third-Parties. Contractor shall also be responsible for the performance or cost of inspection and testing of the Warranty Work.

4.1.3.5 Emergency Corrective Work

If VPRA determines that emergency repairs are necessary for public safety, VPRA may perform Warranty Work. Before performing the emergency repairs, VPRA will (1) document the basis for the emergency action; and (2) preserve evidence of the defective condition. VPRA will coordinate emergency repairs with Contractor when possible. Contractor is responsible for all costs associated with the emergency repairs that are covered by the Warranty.

4.1.3.6 Contractor Not Responsible for Certain Corrective Work

During the Warranty period, Contractor shall not be responsible for defects caused by identifiable factors unrelated to Contractor's Work. Upon written request from Contractor and on a case-by-case basis, VPRA will consider other factors that appear to be beyond the control of Contractor and may relieve Contractor from particular Warranty obligations.

4.1.4 Costs of Correction of Work

All costs of correcting rejected Work, including additional testing and inspections, shall be borne by Contractor. Contractor shall reimburse VPRA and pay VPRA's expenses made necessary by the correction of rejected Work within 10 Days after Contractor's receipt of an invoice from VPRA for such costs. Contractor shall be responsible for obtaining any required Governmental Approvals or other consents from any other Person in connection with the Warranty Work.

4.1.5 Warranty of Corrected Work

The Warranties will apply to all Work redone, repaired, corrected or replaced. The Warranties as to each redone, repaired, corrected or replaced element of the Work shall extend for the longer of:

- (a) the remaining Warranty period; or
- (b) one year after completion of the Warranty Work.

4.2 Subcontractor Warranties

4.2.1 Assignment

Contractor shall obtain from all Subcontractors appropriate representations, warranties, guarantees, and obligations with respect to the Materials, workmanship, Equipment, tools, and supplies furnished by Subcontractors, including the representations, warranties, guarantees, and obligations that Subcontractors are required to furnish under the Contract Documents. The

Subcontractor representations, warranties, guarantees, and obligations must expressly extend to VPRA. The Subcontractor representations, warranties, guarantees, and obligations in no way reduce or negate Contractor's own representations, warranties, guarantees, and obligations, including Contractor Warranties. All representations, warranties, guarantees, and obligations of Subcontractors must (a) expressly survive all VPRA and Contractor inspections, tests, Acceptance, and Approval, and (b) run directly to and be enforceable by Contractor and/or VPRA and their respective successors and assigns.

4.2.2 Enforcement

Upon receipt from VPRA of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee, or obligation, Contractor shall enforce or perform the representation, warranty, guarantee or obligation, in addition to Contractor's other obligations under this Article 4 of these General Terms and Conditions. VPRA's rights under this Section 4.2.2 of these General Terms and Conditions begin at the time the representation, warranty, guarantee or obligation is furnished, and must continue until the expiration of Contractor's relevant Warranties. Until expiration, Contractor shall be responsible for the cost of any Equipment, Material, labor (including re-engineering) or shipping, and Contractor shall replace or repair defective Equipment, Material or workmanship furnished by any Subcontractor.

4.3 Assignment of Other Warranties

Contractor shall assign, and cause all Subcontractors to assign, any warranties received or otherwise acquired in connection with the installation of any products or Materials incorporated into the Project.

The foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed Materials, products (including software products), Equipment or supplies where the warranty cannot be extended to VPRA using commercially reasonable efforts. In such case, Contractor shall acquire the proper rights for VPRA to make use of such products for the time necessary for Contractor to comply with the Contract Documents. Upon notice from VPRA, Contractor agrees to pursue any necessary remedies under such warranties to cause the correction of any defects in the warranted Materials or products until such time as the applicable warranty expires.

Contractor's warranties in Section 4.1 of these General Terms and Conditions are not intended to limit any manufacturer's warranty that provides VPRA with greater warranty rights than specified. Contractor shall provide VPRA with all manufacturers' warranties as a condition to Final Acceptance.

4.4 No Limitation of Liability

The warranties described in this Article 4 of these General Terms and Conditions are in addition to all rights and remedies available under the Contract Documents or applicable Law and will not limit Contractor's liability or responsibility imposed by the Contract Documents or applicable Law with respect to the Work, including liability for construction defects, strict liability, negligence or fraud.

4.5 Warranty Beneficiaries

When Local Agencies, Railroads, or Utility Owners own and control a portion of the Work, then these Local Agencies, Railroads, or Utility Owners are intended to be benefitted by and may directly enforce the Warranties and Subcontractor Warranties related to that work.

ARTICLE 5

(Performance of Construction Work)

5.1 Completion Deadlines

5.1.1 Substantial Completion Deadline

Contractor shall achieve Substantial Completion of the Phase 2 Services by the date stated in the Phase 2 Amendment.

5.1.2 Final Acceptance Deadline

Contractor shall achieve Final Acceptance no later than [120] days after it achieves Substantial Completion.

5.1.3 No Completion Deadline Extensions

No Completion Deadline shall be extended, except as specifically provided in Article 14 of these General Terms and Conditions.

5.2 Baseline Schedule

Contractor shall plan, schedule, and construct the Project by using a P6 Critical Path Method schedule (the "Baseline Schedule"). Contractor shall use the Baseline Schedule for coordinating and monitoring the Work, including all activities of Subcontractors, vendors, Suppliers, utilities, VPRA, and all other parties associated with the Project. All Work, including activities associated with milestones, permits, Utility Work, and submittals must be represented by schedule activities. All Work, including submittals, major procurement, delivery, and Construction Work including any required Hold Points for inspection and testing activities must be included. All appropriate schedule logic relationships must be shown. All activities, including Work breakdown line items, quantified in the Contract Documents must be included. Contractor shall base the Baseline Schedule upon the entirety of the Contract Documents.

5.3 Prerequisites for Start of Construction

Contractor shall not start Construction Work (or recommence Construction Work following any suspension) of any portion of the Project, until all the following events have occurred:

- (a) VPRA has issued the Phase 2 NTP or an Early Work NTP, as applicable;
- (b) Contractor has met all requirements of the Quality Plan and the Safety Plan that are a condition to commencing construction;
- (c) The Design Consultant has furnished the Design related to that portion of the Work;
- (d) Contractor and VPRA have obtained all Governmental Approvals necessary for construction of the relevant portion of the Project and have satisfied all conditions of those Governmental Approvals that are a prerequisite to commencing the relevant portion of Construction Work;
- (e) VPRA and Contractor have obtained all necessary rights of access for the relevant portion of the Project;
- (f) Contractor has complied with the relevant insurance requirements of Exhibit E of the Contract, and bond requirements of Article 9 of these General Terms and Conditions, and has delivered to VPRA certificates of such insurance, and executed bonds in the required forms; and

- (g) any additional conditions for construction set forth in the Contract Documents have been satisfied, including that Contractor has received VPRA's Acceptance or Approval of any other submittals required for construction of the portion of Work.

5.4 Contractor's Self-Performance of Construction Work

5.4.1 Minimum Self-Performed Work

Contractor shall Self-Perform a minimum of 30% of the value of the Construction Work during the Phase 2 Services. This portion of the Self-Performed Work is not subject to the competitive bidding process requirements in the Subcontracting Plan, and Contractor shall negotiate the construction price of this portion of the Self-Performed Work with VPRA.

5.4.2 Maximum Self-Performed Work

Contractor shall Self-Perform a maximum of 70% of the value of the Construction Work during the Phase 2 Services. The value of Self-Performed Work in a Construction Cost Estimate shall not exceed 70% of the total value of the Construction Work included in a Construction Cost Estimate. If Contractor intends to Self-Perform a portion of the Construction Work in excess of 50% of the Construction Work during the Phase 2 Services, such Self-Performed Work shall be subject to the competitive bidding requirements in the Subcontracting Plan.

5.4.3 Subcontracted Work

At least 50% of the value of the Construction Work shall be priced under the competitive bidding process in the Subcontracting Plan.

5.4.4 Value of the Construction Work

To determine the value of Construction Work that is Self-Performed or subject to competitive bidding, all costs of performing the Construction work, whether direct or indirect, shall be included, except for the direct cost of permanent Materials. For purposes of clarity, this means that the value of Construction Work for purposes of this Section 5.4 of these General Terms and Conditions shall include all direct costs (other than permanent Materials), profit, overhead, Field Indirect Costs, general conditions costs, and other costs of a similar nature, however named. This Section 5.4.4 of these General Terms and Conditions applies only to the value of Construction Work for purposes of determining compliance with the Self-Performed Work and competitive bidding requirements.

ARTICLE 6

(Control of the Work; Quality Management)

6.1 Control and Coordination of Work

Contractor is solely responsible for and has control over the means, methods, techniques, sequences, procedures, and Site safety for the Construction Work. Contractor is solely responsible for coordinating all portions of the Work under the Contract Documents, subject to all requirements contained in the Contract Documents.

6.2 Safety

6.2.1 Safety obligations

Contractor shall take all reasonable precautions to prevent damage, injury, or loss to all persons on the Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of VPRA and its consultants, visitors to the Site, and members of the public who may be affected by the Work. Contractor shall at all times comply with the Safety Plan. Contractor shall immediately notify VPRA if Contractor believes that any requirement in the Contract Documents creates a safety risk.

Contractor recognizes the importance of performing the Work in a safe manner and shall be responsible for preventing damage, injury or loss to: (i) all individuals at the Site, whether working or visiting; (ii) the Work, including Materials and Equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. Contractor shall be responsible for implementing and monitoring all safety precautions and programs related to the performance of the Work.

6.2.2 Safety Plan

Within thirty (30) Days of the Phase 1 NTP, Contractor shall develop and submit a comprehensive, Site specific Safety Plan to VPRA for review and Approval. Contractor shall comply with all applicable regulations, including OSHA, and any state, local and federal laws. At a minimum, the Safety Plan shall include:

- (a) policies and procedures utilized by personnel on-site;
- (b) performance objectives for all line supervisors for the achievement of a zero-incident goal;
- (c) definition of administrative responsibilities for implementing the Safety Plan and identification of the personnel accountable for incident prevention. Incidents include employee injuries, equipment and property damage, fires, and injury to the public. Include the name of Contractor's Safety Manager, and delineate their authority to direct work stoppage and cause the elimination or correction of hazardous conditions;
- (d) means for coordinating and controlling Work activities of Contractor, Subcontractors, and suppliers;
- (e) training programs required and/or anticipated to complete the Work, including railroad training programs, environmental training and quality training;
- (f) personal protective equipment required on-site as required for protection against Contaminated Materials;
- (g) safety and security measures to be utilized to protect workers and any VPRA or other agency representatives while on-site, as well as measures to protect the general public;
- (h) an incident management and response plan;
- (i) all applicable regulations;
- (j) environmental monitoring and compliance; and
- (k) emergency contacts.

VPRA is under no obligation to detect safety issues or issue a notice of deficiency or non-compliant condition, in the Safety Plan or during performance of Work by the Contractor, Subcontractor(s), Suppliers, or any other Contractor-Related-Entity. Under no circumstances

shall Contractor (or Subcontractor(s), Suppliers, or any other Contractor-Related-Entity) be relieved of the obligations, pursuant to any applicable law or regulatory requirements, to provide a safe workplace and comply fully with the safety laws and regulations.

6.2.3 Maintenance of Railroad Traffic

Contractor shall maintain two (2) tracks of railroad operations at all times unless there is a CSXT approved closure of the railroad corridor. Contractor shall maintain proper safety measures and emergency protocols on standby at all times. Any shutdown, impact, or construction work on or adjacent to CSXT track shall be approved in writing by CSXT and communicated via established notice protocols prior to any Work commencing on or adjacent to CSXT track.

6.3 Construction Quality Management

6.3.1 Contractor Quality Management

Contractor shall perform the quality management necessary for Contractor to comply with its obligations under the Contract Documents. During the Construction Work, Contractor shall only be responsible for Quality Control;

6.3.2 Oversight, Inspection, and Testing by VPRA and Others

All Materials and each part or detail of the Work is subject to oversight, inspection, testing, and Acceptance by VPRA and other Persons designated by VPRA. When any Utility Owner is required to accept Work or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, inspect, and test the Work. Such oversight, inspection, testing, and Acceptance does not make the Person a party to the Contract and does not change the rights of Contractor or VPRA. Contractor consents to this oversight, inspection, testing, and Acceptance. Upon request from VPRA, Contractor shall furnish information to the Persons VPRA designates and permit these Persons access to the Site and all parts of the Work.

6.3.3 Obligation to Uncover Finished Work

Contractor shall remove or uncover portions of the finished Construction Work as directed by VPRA at any time before Final Acceptance. After VPRA and any other Persons designated by VPRA examine the Work, Contractor shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing, and restoring the Work and any delay or recovery thereof as a result of these activities will be at Contractor's expense and Contractor shall not be entitled to a Contract Price or Completion Deadline adjustment.

VPRA may also order Contractor to uncover, remove, and restore any Work (i) that was performed or Materials that were used without notice to and opportunity for prior inspection by VPRA or (ii) was performed past a Hold Point but did not receive proper Acceptance prior to proceeding. Any uncovering, removal, or restoration undertaken by Contractor will be at Contractor's expense and without eligibility for a Contract Price or Completion Deadline adjustment, even if the Work proves acceptable after uncovering.

Except for Work performed or Materials used without opportunity for inspection or past a Hold Point without Acceptance prior to proceeding, if Work exposed or examined under this Section 6.3.3 of these General Terms and Conditions is in conformance with the requirements of the Contract Documents, then Contractor shall be entitled to a Change Order adjusting the Contract Price for the costs of performance of these activities and a Completion Deadline adjustment for any delay, subject to the provisions and limitations of Article 14 of these General Terms and Conditions.

6.3.4 Quality Plan

Contractor shall prepare and submit to VPRA for review and Approval a written Quality Plan that encompasses all requirements of the Contract Documents with regard to design, construction, environmental compliance, and documentation for all quality processes. The Quality Plan shall identify Contractor's overall framework for implementation of its Quality Control programs across all aspects of the Project.

The Quality Plan shall:

- (a) include an organizational chart showing all key roles and persons, and lines of communication and authority between Contractor and VPRA teams, and with other organizations involved;
- (b) define a process consistent with the draft Quality Plan presented in Contractor's Proposal;
- (c) be approved and endorsed by Contractor's executive management committee;
- (d) be in effect until all requirements of the Contract Documents have been fulfilled and VPRA issues the Notice of Final Acceptance;
- (e) describe the quality manager's accountability for ensuring the effective implementation and maintenance of the Quality Plan;
- (f) define project quality staff levels of authority and authorized individuals for signing and certifying all quality documents;
- (g) describe all verification resources, such as design verifiers, checkers, inspectors, and testers that Contractor will use;
- (h) detail how Contractor will provide quality management for Construction Work, including any supporting administrative activities associated with the Project;
- (i) detail how Contractor will ensure compliance with all Environmental Laws, Environmental Approvals and any other environmental requirements and permit conditions;
- (j) detail the quality management for elements to be completed by a Subcontractor, Supplier, vendor, agent, or other entity with contractual obligations to complete the Work;
- (k) describe procedures for identifying training needs and provide for the training of all personnel performing activities affecting quality; and
- (l) describe the process for performing internal quality audits.

6.3.4.1 Submittal and Composition of Quality Plan

- (a) Contractor shall submit the Quality Plan for VPRA's Approval. VPRA's Approval of the overall Quality Plan shall be a condition precedent to execution of a Phase 2 Amendment and issuance of the Phase 2 NTP.
- (b) Contractor shall revise its Quality Plan and its implementation to reflect current conditions or when either Contractor or VPRA identifies a systemic problem. These revisions must be Approved by VPRA prior to implementation. Contractor shall submit a conformed copy of the updated Quality Plan with revisions redlined and highlighted.
- (c) The structure of the documents describing the Quality Plan shall be: Quality policy (for the entire quality program), quality objectives, policies (for each element of the Quality Plan), and procedures.

- (d) All written procedures shall clearly describe the purpose of the process, overview of the process, responsibilities, steps of the process, and records resulting from the process.

6.3.4.2 Contractor Review of Quality Plan

Contractor shall review the performance of the Quality Plan at least quarterly to ensure its continuing suitability in satisfying the requirements of the Contract Documents and Contractor's stated quality policy and objectives. The Contractor's reviews shall, at a minimum, review the results of internal audits, VPRA audit results, corrective actions taken, trends in Nonconforming Work, and time to resolution. VPRA may, in its sole discretion, participate in the Contractor's reviews and may request data from the reviews. Contractor shall incorporate the findings and quality improvement recommendations of Contractor reviews into the Quality Plan and documented in an appendix to the Quality Plan.

6.3.4.3 Internal Quality Audits

Contractor shall establish and maintain documented procedures for planning and implementing internal quality audits to verify whether quality activities and related results comply with planned arrangements and to determine the effectiveness of the quality system. Contractor shall ensure that internal quality audits:

- (a) are conducted at least every quarter and in accordance with sound auditing principles;
- (b) shall be initiated early enough in the life of the Project to assure effective Quality Control during all phases of the Work;
- (c) shall include Contractor's entire quality management program and technical work activities;
- (d) are undertaken by personnel independent of those having direct responsibility for the activity being audited;
- (e) provide verification that the quality system is operating effectively and being implemented as planned. Audits shall be conducted on a planned and scheduled basis, consistent with the importance of the activities being performed;
- (f) results are recorded and brought to the attention of the personnel having responsibility in the area audited.

The Contractor's management personnel responsible for the relevant area shall take timely corrective action on deficiencies found during the audit. VPRA shall have the right to request and review the audit results. Follow-up audit activities shall verify and record the implementation and effectiveness of the corrective action taken. VPRA may require Contractor to perform follow-up audits at VPRA's sole discretion.

6.4 Effect of Oversight

6.4.1 Oversight and Acceptance

Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, audits, reviews, tests, inspections, Hold Points, Acceptances or Approvals by any Persons, or by any failure of any Person to take this action. The oversight, spot checks, audits, reviews, tests, inspections, Hold Points, Acceptances, and Approvals by any Person do not constitute Final Acceptance of the Material or Work, or a waiver of any legal or equitable right regarding the Material or Work. VPRA may reject or require Contractor to remedy any Nonconforming Work and/or VPRA may identify additional Work that must be done to bring the

Project into compliance with the requirements of the Contract Documents at any time before Final Acceptance, whether or not previous oversight, spot checks, audits, reviews, tests, inspections, Hold Points, Acceptances or Approvals were conducted or provided by any Person.

6.4.2 No Estoppel

VPRA will not be precluded or estopped by any measurement, estimate or certificate, made either before or after Final Acceptance and payment for the Work, from showing: (1) that any measurement, estimate or certificate is incorrectly made or untrue, or (2) the true amount and character of the Work performed and Materials furnished by Contractor, or (3) that the Work or Materials do not conform to the requirements of the Contract Documents. Notwithstanding any measurement, estimate or certificate, or payment, VPRA will not be precluded or estopped from recovering from Contractor and its Surety(ies) the damages that VPRA may sustain as a result of Contractor's failure to comply with the Contract Documents.

6.5 Nonconforming Work

6.5.1 Rejection, Removal, and Replacement of Nonconforming Work

VPRA may, in its sole discretion, reject Nonconforming Work. Upon the discovery of Nonconforming Work by Contractor or VPRA, VPRA shall provide notice of its decision to Contractor and Contractor shall remove and replace rejected Nonconforming Work to ensure compliance with the requirements of the Contract Documents within ten (10) Days of VPRA's notice or, if the Nonconforming Work cannot be removed and replaced within ten (10) Days, provide VPRA with a schedule for correcting the Nonconforming Work to be Approved by VPRA. Contractor shall provide such schedule to VPRA within ten (10) Days after receipt of VPRA's notice. All work required to remove and replace the Nonconforming Work shall be undertaken at Contractor's expense and without any adjustment of the Contract Price or Completion Deadline. Contractor shall promptly take all action necessary to prevent similar deficiencies from occurring in the future.

6.5.2 VPRA Removal and Replacement of Nonconforming Work

If:

- (a) Contractor fails to correct any Nonconforming Work within ten (10) Days of receipt of notice from VPRA requesting correction, or
- (b) the Nonconforming Work cannot be corrected within ten (10) Days and, Contractor does not provide a schedule Approved by VPRA for correcting the Nonconforming Work; or
- (c) Contractor does not diligently prosecute the correction of the Nonconforming Work in accordance with the Approved schedule to completion; then

VPRA will have the right to cause the Nonconforming Work to be remedied, removed, and/or replaced, and may either:

- (d) deduct the cost of doing so from any payment due or to become due to Contractor; or
- (e) obtain reimbursement from Contractor for the cost of remediation, removal, and/or replacement.

6.5.3 Acceptance of Nonconforming Work

VPRA may, in its sole discretion, Accept any Nonconforming Work without requiring it to be fully corrected. If VPRA Accepts Nonconforming Work, VPRA will be entitled to reduce the Contract

Price (or to be reimbursed a portion of the Contract Price, if applicable). The reduction in Contract Price (or reimbursement) shall equal, at VPRA's election:

- (a) Contractor's cost savings associated with its failure to perform the Work in accordance with the requirements of the Contract Documents; 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.

When VPRA deems it appropriate, VPRA will be entitled to a pay adjustment (or reimbursement) as expressly stated elsewhere in the Contract Documents.

Any failure by VPRA to discover Nonconforming Work after Acceptance of the Work, including Acceptance at a Hold Point, shall not constitute VPRA's Acceptance of the Nonconforming Work and does not relieve Contractor of its obligations under this Section 6.5 of these General Terms and Conditions. Notwithstanding Final Acceptance, Contractor shall remain liable to VPRA for latent defects, fraud, including gross mistakes that amount to fraud, and failing to meet its obligations to VPRA under any warranty or guaranty.

ARTICLE 7

(Site Access, Utilities, Environmental, Railroads)

7.1 Access to Project ROW

7.1.1 VPRA to Acquire Project ROW

VPRA shall acquire the Project ROW.

7.1.2 Contractor to Work within the Project ROW

Other than Temporary Work Areas, Contractor affirms that it can construct the Project within the Project ROW. Contractor shall not be entitled to an adjustment of the Contract Price or a Completion Deadline arising out a claim that there is insufficient ROW to construct the Project.

7.1.3 Obligation to Provide ROW

VPRA will provide access to the Right of Way identified on the ROW Work Map by the dates stated therein.

7.1.4 Delays to ROW Access

If VPRA is unable to provide access to a particular parcel by the scheduled date on the ROW Work Map, VPRA will notify Contractor of the revised projected date for provision of access. Contractor shall take appropriate action to minimize any cost and time impact and must work around the parcel until access can be provided, including rescheduling and resequencing Work so as to avoid any delay to the Project. Subject to Section 7.1.5 and Article 14 of these General Terms and Conditions, to the extent that a delay to the Critical Path cannot be avoided, Contractor may seek relief for a VPRA-Caused Delay and shall prepare an estimate of the cost and schedule impact of the inability to access the particular parcel. Upon agreement between VPRA and Contractor on the scope of the change to the Work, and the adjustment, if any, to the Contract Price and/or Completion Deadlines, VPRA and Contractor shall execute a written Change Order.

7.1.5 Obligation to Provide Written Notice

Contractor shall not be entitled to an increase in the Contract Price or adjustment of a Completion Deadline related to VPRA's delivery of access to the parcels identified on the ROW Work Map unless Contractor: (a) gives 30-Day written notice to VPRA, describing how the unavailability of a given parcel will result in an impact to the cost or schedule, and (b) complies with the requirements of Section 7.1.4 of these General Terms and Conditions.

7.1.6 Temporary Work Areas

Contractor may acquire, in its own name, Temporary Work Areas beyond the limits of the Project ROW. Contractor is responsible for the acquisition and cost of all Temporary Work Areas and in no event will VPRA exercise its power of eminent domain in connection with Contractor's acquisition of any such property right or interest for Contractor's Temporary Work Areas. VPRA will have no obligations or liabilities with respect to the acquisition, maintenance or disposition of Contractor's Temporary Work Areas, with all such costs and expenses to be borne by Contractor. Contractor shall not be entitled to an adjustment of the Contract Price or Completion Deadlines arising out of a delay in obtaining or inability to obtain a Temporary Work Area.

7.2 Utility Work

7.2.1 Contractor to Perform Utility Work

Contractor shall perform the Utility Work consistent with the responsibility for the Relocation of Utilities stated in the Phase 2 Amendment.

7.2.2 Betterments

Utility Betterments may be added to the Work pursuant to this Section 7.2.2 of these General Terms and Conditions. The addition of Betterments is subject to VPRA's Approval.

7.2.2.1 Procedure

Any Utility Owner may ask VPRA to permit Contractor to construct Betterments, at the Utility Owner's expense. If VPRA Approves the request, Contractor shall perform the work, with the right to receive an adjustment to the Contract Price and Completion Deadline(s). VPRA will pay Contractor for the work relating to the Betterment based on either a lump sum amount that Contractor negotiates with the Utility Owner, or on a Force Account cost method as specified below. Any extension of any Completion Deadline(s) or Contract Price increase requested for any Betterment will be subject to the requirements of this Section 7.2 and Article 14 of these General Terms and Conditions, as applicable.

7.2.2.2 Betterment Pricing

If a Utility Owner requests that Contractor construct a Betterment, Contractor shall use its best efforts to negotiate a lump sum price or unit prices with the Utility Owner in good faith. If Contractor and the Utility Owner are not able to agree on a lump sum price or unit prices, VPRA may direct Contractor to perform the work with compensation determined by the Parties, provided that the conditions set forth in Section 7.2.2.4 of these General Terms and Conditions are satisfied.

7.2.2.3 Change Order Increasing the Contract Price

If VPRA approves a proposed Betterment, it will be added to the scope of the Work through a Change Order that adjusts the scope of Work and Contract Price. The amount of any Change Order issued will be a direct pass-through of the lump sum price negotiated by Contractor and the Utility Owner (with no additional mark-ups) or, if no such price has been negotiated, an amount

determined in accordance with Exhibit J of the Contract. Contractor may not request or accept any payment directly from the Utility Owner for any Betterment added to the Work.

7.2.2.4 VPRA's Approval of Betterments

VPRA may approve the addition of a Betterment to the scope of the Work only if: (a) the Utility Owner has requested the addition of the Betterment to the Work, (b) the Betterment is compatible with the Project, (c) the Utility Owner has agreed to reimburse VPRA for all the costs of the Work relating to the Betterment, including costs associated with a Completion Deadline adjustment (d) the Utility Owner has agreed to the method of pricing the Work (e.g., negotiated lump sum amount, unit prices or Force Account cost basis), and (e) it is feasible to separate the pricing of the Betterment work from the pricing of any other Utility Work being furnished by Contractor. Contractor shall provide VPRA with information, analyses, and certificates requested by VPRA in connection with any Approval needed from VPRA for a potential Betterment.

7.2.2.5 Change Order Reducing the Contract Price

If any Betterment has been added to the Work and the Contract Price has been increased accordingly by Change Order, but the Betterment is later deleted from the Work, or the scope of Contractor's Work relating to the Betterment is materially reduced, VPRA will be entitled to issue a Change Order reducing the Contract Price to reflect the value of any reduction in the costs of the Work and reducing any adjustment of a Completion Deadline, in both cases to the extent directly attributable to the deletion or reduction of the Betterment. With respect to costs, the Change Order will be equal to the lump sum amount added to the Contract Price pursuant to Section 7.2.2.3 of these General Terms and Conditions, if applicable, if the entire Betterment has been deleted from the Work, and the reduction in time will be equal to the Completion Deadline adjustment previously granted. If the entire Betterment is not deleted from the Work, the amount of the Change Order and the time adjustment will be determined in accordance with Article 14 of these General Terms and Conditions.

7.2.2.6 Betterment not a VPRA-Directed Change

Any change in the scope of the Work pursuant to this Section 7.2.2 of these General Terms and Conditions will not be considered a VPRA-Directed Change.

7.3 Utility Work Obligations

7.3.1 Multiple Relocations of the Same Utility

Contractor shall make reasonable efforts to avoid multiple Relocations of the same Utility, whether by the Utility Owner or by Contractor. After a Utility has been Relocated once for the Project, Contractor shall be responsible for all costs incurred by either Contractor or the Utility Owner for all further instances to Relocate the Utility to accommodate the Project. If the Utility Owner performs subsequent Relocation(s) at VPRA's expense, then Contractor shall reimburse VPRA for all amounts paid by VPRA to the Utility Owner in reimbursement for the later Relocation(s). If Contractor performs the subsequent Relocation(s), then Contractor shall not receive any adjustment of a Completion Deadline or increase in the Contract Price based on the performance of the later Relocation(s).

The foregoing shall not apply if the subsequent Relocation(s) must occur due to a Relief Event subject to Article 14 of these General Terms and Conditions and provided that the Relief Event is the cause of the subsequent Relocation(s).

7.3.2 Minimizing Utility Costs

Contractor shall take all reasonable steps to minimize costs to the Utility Owners that are entitled to reimbursement from VPRA, to the extent practicable and otherwise consistent with the requirements of the Contract Documents.

7.3.3 Utility-Related Right of Way Costs

7.3.3.1 VPRA's Responsibility

With respect to Utility Easements other than those described in Section 7.3.3.2 of these General Terms and Conditions, VPRA will be responsible for any compensation required to be paid to Utility Owners for relinquishing their Utility Easements.

7.3.3.2 Contractor's Responsibility

With respect to Utility Easements relinquished as a result of a Contractor initiated Change Proposal, Contractor shall be responsible for any compensation that VPRA may be obligated to pay to the Utility Owners for relinquishing the Utility Easements. Contractor shall reimburse VPRA for these costs no later than ten (10) days after receiving an invoice for the costs.

7.4 Environmental Compliance

Contractor shall comply with all requirements of all applicable Environmental Laws and Governmental Approvals issued under these laws, whether obtained by VPRA or Contractor. Contractor acknowledges and agrees that it will be responsible for all fines and penalties that may be assessed in connection with any failure by Contractor to comply with these requirements. Contractor shall promptly deliver to VPRA (i) notice of any pending or threatened environmental claim with respect to the Project, and (ii) upon becoming available, copies of written communications with any Governmental Person relating to any such environmental claim.

7.4.1 Mitigation Requirements

Contractor shall perform all environmental mitigation measures for the Project. The phrase "environmental mitigation measures" includes all requirements of the Environmental Approvals and similar Governmental Approvals, regardless of whether these requirements fall within a strict definition of the phrase. The Contract Price includes compensation for Contractor's performance of all mitigation measures and for performance of all mitigation measures arising from New Environmental Approvals that Section 7.4.2 of these General Terms and Conditions designates as Contractor's responsibility, and the cost of all activities to be performed by Contractor.

7.4.2 New Environmental Approvals

7.4.2.1 New Environmental Approvals under Certain Conditions

Unless otherwise agreed, Contractor shall be responsible for obtaining any New Environmental Approvals necessitated by a VPRA-Directed Change, VPRA-Caused Delay, or Force Majeure event. Any Change Order resulting from a VPRA-Directed Change, VPRA-Caused Delay, or Force Majeure may include compensation to Contractor for any changes in the Work (including performance of additional mitigation measures and performance of the support services) resulting from such New Environmental Approvals and Contractor shall prepare an estimate of the cost and schedule impact of such New Environmental Approval. Upon agreement between VPRA and Contractor on the scope of the change to the Work, and the adjustment, if any, to the Contract Price and/or Completion Deadlines, VPRA and Contractor shall execute a written Change Order.

7.4.2.2 Approvals to be Obtained by Contractor

If a New Environmental Approval becomes necessary for any reason other than those specified in Section 7.4.2.1 of these General Terms and Conditions, Contractor shall be fully responsible for the effort and cost of obtaining the New Environmental Approval and for all requirements resulting from these approvals. Contractor shall be responsible for any litigation and shall notify VPRA of any potential or pending litigation arising in connection with any such New Environmental Approval. VPRA shall reasonably assist Contractor in obtaining any New Environmental Approvals and provide support as necessary to Contractor in the conduct of any litigation arising in relation to a New Environmental Approval. Contractor shall confer and coordinate with VPRA as necessary in relation to any potential, pending or ongoing litigation arising from a New Environmental Approval. If the New Environmental Approval is associated with a Contractor initiated Change Proposal, Contractor shall be responsible for obtaining the approval, and the costs of obtaining and complying with the terms of the New Environmental Approval will be considered in determining the Contract Price adjustment under Article 14 of these General Terms and Conditions.

7.4.3 Environmental Compliance Plan

Design-Builder shall prepare and submit an Environmental Compliance Plan to VPRA within sixty (60) days after Phase 1 NTP that details all necessary approvals and permits required to complete the Project and how all environmental commitments and permit or authorization conditions that will be maintained throughout Construction. Contractor shall update the Environmental Compliance Plan throughout the Project as environmental requirements change or are added.

7.5 Railroads

7.5.1 Railroad Permits

Contractor shall comply with the terms of all permits obtained by VPRA for Work that impacts a Railroad.

7.5.2 Railroad Coordination

Contractor shall coordinate with Railroad Owners impacted by the Project to obtain all necessary permits and approvals from such Railroads other than those permits obtained by VPRA.

7.5.3 Railroad Rights to Review and Approve Contractor's Work

Railroad Owners have the right to review and approve certain aspects of Contractor's Work that may impact a Railroad. Where a Railroad Owner is required to approve an element of the Work, VPRA shall be responsible for obtaining such required approval before Contractor's scheduled performance of the Work. VPRA and Contractor shall coordinate the submittals to the Railroad Owners. Contractor shall allow at least thirty (30) Working Days for a Railroad Owner to provide approval of any submission that must be approved by a Railroad Owner. Contractor may request relief for a Railroad Delay if the Railroad Owner does not deliver the required approval within such time, subject to Article 14 of these General Terms and Conditions and other conditions hereunder concerning a Railroad Delay.

7.5.4 Indemnity and Insurance Obligations – Railroad Owners

Contractor shall comply with the indemnity and insurance obligations applicable to the Railroad Owners as set forth in Exhibit F of the Contract.

ARTICLE 8

(Site Conditions)

8.1 Differing Site Conditions

- 8.1.1** If Contractor encounters a Differing Site Condition, Contractor will be entitled to an adjustment to the Contract Price and/or Completion Deadline(s) to the extent Contractor's cost and/or time of performance have been adversely impacted by the Differing Site Condition.
- 8.1.2** Upon encountering a Differing Site Condition, Contractor shall provide prompt written notice to VPRA of such condition, which notice shall not be later than two (2) Days after such condition has been encountered. Contractor shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.
- 8.1.3** Contractor bears the reasonable burden of proving (1) that a Differing Site Condition exists and (2) that it could not reasonably have worked around the Differing Site Condition so as to avoid additional costs or impacts to the Critical Path. Contractor's request for any Change Order relating to a Differing Site Condition must include a statement signed by a Virginia-licensed professional engineer providing: (1) all of Contractor's relevant assumptions concerning the condition of the Site and justifying the basis for such assumptions, (2) a specific explanation of how the existing conditions differ from those assumptions, and (3) a description of Contractor's efforts to find alternative construction solutions to eliminate or minimize the problem and the associated costs.

ARTICLE 9

(Surety Bonds, Joint & Several Liability)

9.1 Performance and Payment Bond

Contractor shall provide Performance and Payment Bonds in the form attached hereto as Exhibit S of the Contract for the Work in accordance with the Early Work and Phase 2 Services requirements within the Contract. Contractor shall maintain the bonds in effect at all times during the performance of Early Work and the Phase 2 Services. Contractor shall obtain the required bonds from a Surety licensed as a Surety and qualified to do business in the Commonwealth. The surety or insurance company providing the bonds must be rated AA-/Aa3 by two nationally recognized rating agencies or at least A-VII by A.M. Best and Company, be listed on Treasury Department Circular 570, and be authorized to transact the business of suretyship in the Commonwealth.

Contractor shall provide Performance and Payment Bonds in the amount of 100% of the Early Work Price of any Early Work Package(s) and 100% of the Phase 2 Price.

9.2 Duration of Performance Bond

Contractor shall continue to provide a Performance Bond in the amount of [10]% of the Phase 2 Price until the later of (1) the second anniversary of Final Acceptance; or (2) the expiration of the Warranty if extended in accordance with Section 4.1 of these General Terms and Conditions.

9.3 Utility Work

The Utility Work must be covered by the Performance and Payment Bond.

9.4 Joint and Several Liability

If Contractor is an unincorporated entity, including a joint venture, partnership, or consortium, all members or Principal Participants shall be jointly and severally liable for all obligations of Contractor under the Contract Documents.

9.5 No Relief of Liability and Double Recovery

If a Surety or Guarantor performs any of Contractor's obligations under this Agreement, that performance will not relieve Contractor of any of its other obligations under this Agreement. VPRA shall not, however, be entitled to recover any amount in respect of any claim or to enforce the performance of any obligations under this Agreement to the extent that VPRA has already recovered any amount in respect of such claim or to the extent that a Surety or Guarantor has performed the Contractor's obligations in respect of the same subject matter.

ARTICLE 10

(Insurance)

10.1 General Insurance Requirements

Contractor shall procure, at its own expense (or, as appropriate, cause others to procure and maintain), insurance with coverage types and limits acceptable to VPRA, as described in Exhibit E of the Contract and this Article 10 of these General Terms and Conditions (for clarity, the requirements of Exhibit D of the Contract are also deemed requirements of this Article 10 of these General Terms and Conditions), and must maintain the insurance in accordance with the requirements stated therein, or as otherwise approved by VPRA in its sole discretion. The insurance and minimum insurance limits required in this Article 10 of these General Terms and Conditions will not be deemed a limitation on Contractor's liability regarding the indemnities under this Contract.

10.1.1 Evidence of Insurance

Contractor shall provide evidence of insurance to show that it complies with all insurance requirements contained in this Article 10 of these General Terms and Conditions. VPRA reserves the right, at its sole discretion, to request a complete copy of any policy required by this Article 10 of these General Terms and Conditions.

10.1.2 A.M. Best Rating

Contractor shall obtain all insurance coverage from insurers that have an A.M. Best rating of A-VII or better, and are authorized to transact business in the Commonwealth.

10.1.3 Full Force and Effect; Notice of Cancellation or Non-Renewal

Contractor shall ensure that all required policies remain in full force and effect throughout the term of the Contract, and for any extended reporting period or continuation of coverage when required by this Contract. Contractor shall promptly notify VPRA when any policy required by this Contract is cancelled or not renewed.

10.1.4 No Recourse

Except to the extent covered by the Contract Price, VPRA will not be responsible for: (1) paying premiums or other amounts with respect to Contractor's insurance policies, or (2) paying or reimbursing Contractor for deductibles or self-insured retentions under Contractor's insurance policies.

10.1.5 Indemnification

The insurance coverage required by this Article 10 of these General Terms and Conditions is intended, among other things, to support Contractor's indemnification obligations under Article 19 these General Terms and Conditions. The insurance coverage is not intended to limit or otherwise modify such indemnification obligations.

10.1.6 Commercial Unavailability of Required Coverage

Contractor may propose alternative insurance packages and programs if, through no fault of Contractor, any of the coverages required in this Article 10 of these General Terms and Conditions (or any of the required terms of such coverages, including policy limits) become unavailable. VPRA may approve Contractor's proposal if VPRA determines, in its sole discretion, that the proposed alternative provides coverage equivalent to that specified in this Article 10 of these General Terms and Conditions. Contractor shall demonstrate and document, to VPRA's reasonable satisfaction, that Contractor used diligent efforts in the global insurance markets to place the required insurance coverages. Contractor shall not be entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. VPRA will be entitled to a reduction in the Contract Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes included in the CCPDs (or based on other evidence of insurance premiums as of the Final Binding GMP Proposal if the CCPDs do not provide adequate information).

10.1.7 Primary and Non-Contributory

For claims covered by the insurance required by this Article 10 of these General Terms and Conditions, the insurance coverage will be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents, and consultants, and must specify that coverage continues notwithstanding the fact that Contractor has left the Site. Any insurance or self-insurance beyond that specified in this Contract that is maintained by an insured, additional insured, or their members, directors, officers, employees, agents, and consultants shall be excess of such insurance and shall not contribute with it.

10.1.8 Governmental Immunity

Insurance companies providing the liability insurance policies required by this Article 10 of these General Terms and Conditions must waive their rights to assert the immunity of VPRA and the Commonwealth as a defense to any claims arising out of this Contract.

ARTICLE 11

(Risk of Loss)

11.1 Site Security and Maintenance

Commencing on the date of the Early Work NTP and/or Phase 2 NTP, as applicable, Contractor shall be responsible for securing the Site. Contractor shall provide appropriate security for the Site, including securing any buildings and structures from entry. Contractor shall take all

reasonable precautions and provide protection to prevent damage, injury or loss to Equipment, the Work, and Materials to be incorporated into the Work, as well as all other property at the Site, whether owned by Contractor, VPRA, or any other Person. Contractor shall maintain the Site in a neat and clean condition at all times, including removing litter and graffiti and controlling weeds. Trash and scrap shall not be allowed to accumulate on the Site.

11.2 Maintenance and Repair of Work and On-Site Property

11.2.1 Responsibility of Contractor

Contractor shall maintain, rebuild, repair, restore, or replace all Work that is injured or damaged prior to the date that VPRA or a third party accepts maintenance liability as specified in Section 11.2.2 of these General Terms and Conditions. This responsibility includes Construction Documents, Materials, Equipment, supplies, and maintenance Equipment that are purchased to be permanently installed in the Work, or for use during Project construction, regardless of whether VPRA has title thereto under the Contract Documents. Contractor is responsible for rebuilding, repairing, and restoring all other property at the Site, whether owned by Contractor, VPRA or any other Person, until acceptance as specified in Section 11.2.2 of these General Terms and Conditions.

For damage within the Site for which VPRA would typically seek compensation from the responsible party (or the responsible party's insurer), VPRA will subrogate to Contractor VPRA's right to seek such financial reimbursement. VPRA will provide copies of accident reports, when they exist, to Contractor. VPRA makes no guarantee that Contractor shall be able to obtain any financial reimbursement based on this subrogation of VPRA's rights.

11.2.2 Relief from Liability for Maintenance

Starting the day after the date on which VPRA issues a Notice of Substantial Completion, VPRA accepts maintenance responsibility, and the risk of loss shall shift from Contractor to VPRA, for all elements of the Project for which VPRA has issued the Notice of Substantial Completion. Notwithstanding the foregoing, Contractor shall retain maintenance responsibility and risk of loss for any elements of the Project or portions of the Project Site for which performance of a Punch List item or other prerequisite to Final Acceptance requires Contractor to maintain control over a select portion of the Site. VPRA accepts maintenance responsibility for all remaining Project elements at Final Acceptance. For elements of the Work that will be owned by Persons other than VPRA (such as Utility facilities), maintenance responsibility will transfer to those Persons when they accept (or are contractually required to accept) those elements.

11.3 Damage to Off-Site Property

Contractor shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to property adjacent to the Site or likely to be affected by the Work. If property is damaged, injured, or lost due to an act or omission of any Contractor-Related-Entity, then Contractor shall restore such property to a condition similar or equal to that existing before the damage, injury or loss occurred or compensate the owner of the affected property for the cost of restoration. VPRA shall not be responsible for reimbursing or compensating the Contractor for the cost of such damage, injury or loss or compensation.

11.4 Title

Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all Materials, Equipment, tools, and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or that are otherwise purchased for VPRA in connection with the Project, free and clear of all Liens. Title to all such Materials, Equipment,

tools, and supplies will pass to VPRA, free and clear of all Liens, following delivery to the Site and upon the sooner of (a) being incorporated into the Project, or (b) VPRA paying Contractor invoiced amounts pertaining to such Materials, Equipment, tools, and supplies. Notwithstanding any such passage of title, and subject to Section 11.1 of these General Terms and Conditions, Contractor shall retain sole care, custody, and control of such Materials, Equipment, tools, and supplies, and must exercise due care with respect thereto as part of the Work until Final Acceptance or until Contractor is removed from the Project.

ARTICLE 12

(Invoicing and Payment)

12.1 Schedule of Values

12.1.1 At least fifteen (15) days prior to its first Application for Payment, Contractor shall submit for VPRA's review and Approval a Schedule of Values for the Work. The Schedule of Values will: (i) subdivide the Work into its respective parts; and (ii) include estimated values for all items comprising the Work; and (iii) serve as the basis for CM/GC Fee payments made to Contractor throughout the Work. This Section shall not apply to the extent that VPRA and the Contractor have agreed to a method of payment for which a Schedule of Values is unnecessary; in such case, the Contractor shall follow the agreed-upon method of submitting an Application for Payment.

12.1.2 VPRA will timely review and Approve (or reject) the Schedule of Values so as not to delay the submission of the Contractor's first Application for Payment. VPRA and Contractor shall timely resolve any differences so as not to delay the Contractor's submission of its first Application for Payment. Once Approved by VPRA, the Schedule of Values shall be deemed a part of the Contract Documents.

12.2 Application for Payment

12.2.1 To receive payment, Contractor shall submit to VPRA an Application for Payment requesting payment for all Work performed during the period of time covered in the Application for Payment. Contractor shall not submit Applications for Payment more often than once per month. The Application for Payment must be accompanied by supporting documentation sufficient to establish, to VPRA's reasonable satisfaction, Contractor's entitlement to receive payment, and shall contain a progress schedule and such information as required by the agreed-upon method of invoicing and payment.

12.2.2 Reserved.

12.2.3 The allocable portion of the Construction Cost Markup (CM/GC Fee) for each progress payment shall be a percentage which is equivalent to the percentage of completion of the Work in each payment period.

12.2.4 Contractor may request payment for equipment and materials not yet incorporated into the Project, provided that: (i) VPRA is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (ii) the equipment and materials are protected by suitable insurance; and (iii) upon payment, VPRA will receive the equipment and materials free and clear of all liens and encumbrances.

12.2.5 The Application for Payment will constitute Contractor's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to

all materials and equipment will pass to VPRA free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the materials and equipment into the Project, or upon Contractor's receipt of payment, whichever occurs earlier.

12.3 Calculation of Payment for Construction Work.

Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- (a) Take Contractor's actual costs for labor and materials directly allocable to the Construction Work together with general conditions;
- (b) Add Contractor's insurance and bonding costs on the Project;
- (c) Add allowable amounts for materials and equipment delivered and suitably stored and otherwise in compliance with these General Terms and Conditions;
- (d) Add the applicable portion of the Construction Cost Markup (CC/GC Fee);
- (e) Subtract the aggregate of previous payments made by the VPRA
- (f) Subtract the shortfall, if any, indicated by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by VPRA in such documentation; and
- (g) Subtract any amounts for which VPRA has withheld or nullified payment as provided in the Contract Documents.

12.4 VPRA's Payment Obligations

12.4.1 VPRA shall pay Contractor all amounts properly requested and documented within thirty (30) Days of receipt of an Application for Payment.

12.4.2 Notwithstanding Section 12.4.1 of these General Terms and Conditions, VPRA may offset from such Application for Payment any amounts owed to VPRA by Contractor pursuant to the Contract Documents.

12.5 Limitations on Payment; Retainage

12.5.1 If VPRA determines that Contractor is not entitled to all or part of an Application for Payment as a result of Contractor's failure to meet its obligations under the Contract Documents, VPRA will notify Contractor of the specific amounts VPRA has withheld (or intends to withhold), the reasons and contractual basis for the withholding, and the specific actions Contractor must take to qualify for payment under the Contract Documents. If Contractor disputes VPRA's bases for withholding, Contractor may pursue its rights under the Contract Documents, including those under Article 20 of these General Terms and Conditions.

12.5.2 VPRA may withhold retainage if VPRA determines that Contractor's progress is unsatisfactory (i.e., not in accordance with the Baseline Schedule). VPRA may in its sole discretion withhold up to five percent (5%) retainage of the monthly payment for each month that Contractor's actual progress is determined to be unsatisfactory. If and when VPRA determines that Contractor's progress has achieved compliance with the Baseline Schedule, the five percent (5%) retainage previously withheld because of unsatisfactory progress will be released in Contractor's next monthly payment, and

the remaining monthly payments will not be subject to retainage provided that Contractor's progress continues to be satisfactory.

12.6 Contractor's Payment Obligations.

Contractor shall promptly pay each Subcontractor, out of the amount VPRA paid to Contractor for the Subcontractor, all undisputed amounts (less any retainage and any other offsets and deductions provided in the Subcontract or by Law) due and owing under the Subcontract. In accordance with the Prompt Payment Law, payment by Contractor shall be made the earlier of (i) sixty (60) Days after the satisfactory completion of the portion of the Work for which the Subcontractor has invoiced or (ii) seven (7) days after receipt of amounts paid by VPRA to Contractor for Work performed by the Subcontractor. Within 30 Days after satisfactory completion of all Work to be performed by a Subcontractor, including provision of appropriate releases, certificates, and other evidence of the Subcontractor's compliance with all applicable requirements of the Contract Documents, Contractor shall return any moneys withheld in retention from the Subcontractor. Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its lower tier Subcontractors in a similar manner. VPRA will have no obligation to pay or responsibility to cause the payment of money to a Subcontractor, except as may otherwise be required by Law.

12.7 Interest on Late Payments

All amounts that Contractor owes to VPRA under this Contract will earn interest from the date on which the amount is owing at the lesser of (i) 10 percent per year or (ii) the maximum rate allowable under Law.

All amounts that VPRA owes to Contractor under the Contract will earn interest from the date that is seven (7) days after the date on which the amount is owing at the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used.

12.8 Disputes

Subject to VPRA's right to withhold from payments any amounts in dispute, and except as expressly stated otherwise in this Article 12 of these General Terms and Conditions, any disagreement between VPRA and Contractor relating to this Article 12 of these General Terms and Conditions will be considered a Dispute eligible for resolution under Article 20 of these General Terms and Conditions. Failure by VPRA to pay any amount in dispute will not alleviate, diminish or modify in any respect Contractor's obligation to perform under the Contract Documents, including Contractor's obligation to achieve the Completion Deadlines in accordance with the Contract Documents. Contractor shall not cease or slow down its performance under the Contract Documents due to any amount in dispute. Contractor shall proceed as directed by VPRA pending resolution of the Dispute. Upon resolution of any Dispute, each Party must pay to the other any amount owing within thirty (30) Days.

12.9 Final Payment

When Contractor has achieved Final Completion of the Work, Contractor shall submit an Application for Final Payment requesting payment for all Work performed not already subject to an Application for Payment and including the Affidavit of Final Completion in accordance with Section 22.1.2 of these General Terms and Conditions. As used in the Contract Documents, "Final Completion" refers to the Contractor's satisfactory completion of all Work in accordance with the Contract Documents, including completion of Punchlist items, demobilization from the Site and the transmittal of all deliverables required by the Contract Documents.

12.10 Shared Cost Savings

If the total aggregate compensation paid by VPRA to Contractor with respect to the Phase 2 Services (as evidenced by the value of Applications for Payment paid by VPRA plus the value of the Application for Final Payment) is less than the GMP, Contractor shall be entitled to payment from VPRA in the amount equaling [50%] of the difference between the total compensation for the Phase 2 Services and the GMP (the "Shared Cost Saving").

If the Contractor is eligible for payment for the Shared Cost Saving under this Section 12.10 of these General Terms and Conditions, Contractor shall provide with the Application for Final Payment:

- (a) all previously paid Applications for Payment; and
- (b) a summary ledger showing: (1) the total value of all Applications for Payment; (2) the Application for Final Payment value; (3) the difference between total construction cost for the Project and the Contract Price; and (4) the dollar amount of the Shared Cost Saving.

ARTICLE 13

(Time)

13.1 Obligation to Achieve the Completion Deadlines

Contractor shall commence performance of the Work and achieve the Completion Deadline(s) in accordance with the Contract Documents. The Contract Documents specify critical Completion Deadlines with which Contractor must comply. All time and schedule requirements included within the Contract Documents are of the essence. By executing the Contract, Contractor confirms that the Completion Deadlines in the Contract Documents are reasonable for the performance of the Work. Unless otherwise excused by the terms of the Contract Documents, Contractor's failure to timely perform the Work in accordance with the Completion Deadlines shall result in the assessment of liquidated damages, unless waived by VPRA in its sole discretion.

ARTICLE 14

(Changes)

This Article 14 of these General Terms and Conditions sets forth the requirements for obtaining all Change Orders under the Contract. Contractor agrees (1) that the Contract Price constitutes full compensation for performing all of the Work, subject only to those exceptions specified in this Article 14, and (2) that VPRA is subject to constraints that limit its ability to increase the Contract Price or adjust the Completion Deadlines. Contractor waives the right to make any Claim for an adjustment of the Contract Price or a Completion Deadline, except as set forth in this Article 14 of these General Terms and Conditions. If any other provision of the Contract Documents provides for a Change Order to be issued, the provision is incorporated into, and subject to the limitations of, this Article 14 of these General Terms and Conditions. This Article 14 of these General Terms and Conditions shall constitute Contractor's sole remedy to receive an adjustment to the Contract Price or a Completion Deadline. Contractor shall have no other rights under the Contract Documents, at law or in equity, to obtain an adjustment to the Contract Price or a Completion Deadline.

14.1 Circumstances Under Which a Change Order May Be Issued

14.1.1 Definition and Requirements

14.1.1.1 Change Orders

The term “Change Order” means a written amendment to the Contract Documents issued in accordance with this Article 14 of these General Terms and Conditions. VPRA may issue unilateral Change Orders as specified in Section 14.2 of these General Terms and Conditions. A Change Order will not be effective unless executed by VPRA as specified herein. Change Orders may be requested by Contractor only pursuant to Section 14.3 of these General Terms and Conditions. Change Orders may be issued for the following purposes (or combination of the following purposes):

- (a) to modify the scope of the Work;
- (b) to revise a Completion Deadline;
- (c) to revise the Contract Price; and
- (d) to revise other terms and conditions of the Contract Documents.

14.1.1.2 Directive Letters

VPRA may issue a letter to Contractor, at any time, if VPRA desires a change in the Work or if there is a dispute regarding the scope of the Work (“Directive Letter”). Each Directive Letter will (1) state that it is issued under this Section 14.1.1.2 of these General Terms and Conditions, (2) describe the required Work, and (3) may state the basis for determining compensation, if any. Contractor shall immediately proceed with the Work as directed in the Directive Letter, and, if applicable, request a Change Order as promptly as possible. If the Directive Letter states that the Work is within the original scope of the Work, Contractor shall proceed with the Work as directed but may request that VPRA issue a Change Order for the work as specified in Section 14.3 of these General Terms and Conditions.

14.1.2 Performance of Changed or Extra Work

Contractor’s receipt of a Change Order executed by VPRA or a Directive Letter is a condition precedent to Contractor’s right to receive an adjustment to the Contract Price or a Completion Deadline for changed or Extra Work, provided that VPRA’s failure to execute a Change Order or Directive Letter does not negate Contractor’s right to pursue the Relief Event process in the event of a dispute over entitlement to relief. If Contractor undertakes any such work without receiving a Directive Letter or Change Order executed by VPRA, Contractor shall be deemed to have performed such work voluntarily and will not be entitled to a Change Order for performing that work. In addition, VPRA has the right to require Contractor to remove or otherwise undo any such voluntary work, at Contractor’s sole cost.

14.1.3 Impact of Directive Letter

The fact that VPRA issued a Directive Letter will not be considered determinative that a VPRA-Directed Change occurred. The determination of whether a VPRA-Directed Change occurred will be made by comparing the original requirements of the Contract Documents and determining whether the Directive Letter constitutes a change to those requirements.

14.2 VPRA-Initiated Change Orders

This Section 14.2 of these General Terms and Conditions describes how VPRA may initiate and unilaterally issue Change Orders, with or without using a Request for Change Proposal.

14.2.1 Request for Change Proposal

14.2.1.1 Issuance of Request

VPRA may, at its discretion, issue a Request for Change Proposal if VPRA wishes to issue a VPRA-Directed Change or to evaluate whether to initiate a VPRA-Directed Change.

14.2.1.2 Initial Consultation

Upon issuance by VPRA of a Request for Change Proposal, VPRA and Contractor shall:

- (a) have a first consultation to define the proposed scope of the change no later than two (2) Working Days after Contractor receives a Request for Change Proposal; and
- (b) have a second consultation concerning the estimated cost and time impacts no later than seven (7) Working Days after the first consultation.

Contractor shall provide data regarding the Request for Change Proposal as requested by VPRA.

14.2.1.3 Notification by VPRA

VPRA will notify Contractor of VPRA's decision no later than seven (7) Days after the later of: the second consultation described in Section 14.2.1.2(b) of these General Terms and Conditions or Contractor's provision of data as described in Section 14.2.1.2 of these General Terms and Conditions. At such time, VPRA will notify Contractor whether VPRA:

- (a) wishes to issue a Change Order;
- (b) wishes to request Contractor to prepare a Change Order form; or
- (c) no longer wishes to issue a Change Order.

VPRA may require Contractor to provide two alternative Change Order forms: one providing for a Completion Deadline adjustment and any additional costs permitted by the Contract, and the other showing all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted by the Contract.

14.2.1.4 Submittal of Change Order Form

If VPRA requests that Contractor prepare a Change Order form, then Contractor shall prepare and submit the Change Order form to VPRA no later than twenty-one (21) Days after Contractor receives notice pursuant to Section 14.2.1.3 of these General Terms and Conditions. Contractor's Change Order form must comply with all applicable requirements of Section 14.4 of these General Terms and Conditions and must incorporate and fully reflect all of VPRA's requests. Contractor shall bear the cost of developing the Change Order form, and modifying the form as requested by VPRA, except that costs of Design Work required to prepare plans and exhibits necessary to the Change Order form may be included in the Change Order as reimbursable items if pre-authorized in writing by VPRA. If VPRA approves the Change Order, the cost of such Design Work may be included within the Change Order; otherwise, VPRA will reimburse those costs through a separate Change Order. VPRA reserves the right not to issue a Change Order after Contractor has provided a Change Order form.

14.2.2 Unilateral Change Orders

VPRA may unilaterally issue a Change Order at any time if VPRA has not issued a Request for Change Proposal ("Unilateral Change Order"). Contractor's approval of a Unilateral Change Order shall not be required and Contractor shall implement all changes contained within a Unilateral Change Order promptly or by such time as specified therein.

Additive Unilateral Change Orders must state that Contractor shall be entitled to compensation for the corresponding Extra Work. A deductive Unilateral Change Order may contain a corresponding price deduction deemed appropriate by VPRA.

14.3 Contractor-Initiated Change Orders

14.3.1 Eligible Changes

This section outlines when Contractor shall submit a Change Notice and Request for Change Order to VPRA. Contractor shall use this process to request an adjustment to the Contract Price or a Completion Deadline due to a Relief Event. All Relief Events are subject to the limitations stated in this Article 14 of these General Terms and Conditions in addition to any limitations stated in the definition of each Relief Event or elsewhere in the Contract Documents. Other than for the Relief Events herein, Contractor shall not be entitled to any adjustment of the Contract Price or a Completion Deadline. With respect to any request for relief, Contractor shall bear the burden of proving that it is entitled to the relief sought. Contractor shall not be entitled to relief for a Relief Event that occurs during the provision of the Phase 1 Services, provided that this shall not preclude a Relief Event arising out of performance of an Early Work Package.

14.3.1.1 Contract Price Adjustment

Upon the occurrence of a Relief Event, Contractor shall follow the process in this Article 14 of these General Terms and Conditions to adjust the Contract Price for Extra Work Costs and Delay Costs. Except as otherwise provided herein, Contractor may request a Contract Price adjustment for Extra Work Costs and Delay Costs for all Relief Events.

14.3.1.2 Completion Deadline Adjustment

Upon the occurrence of a Relief Event, Contractor shall follow the process in this Article 14 of these General Terms and Conditions to request adjustment of a Completion Deadline, subject to the limitations herein. Except as otherwise provided herein, Contractor may submit a request to adjust a Completion Deadline for all Relief Events.

14.3.1.3 Contractor-Initiated Change Proposal

Contractor at any time may submit a Request for Change Order to VPRA that proposes changes to the scope of Work of the Contract Documents. Proposals can include changes to add or reduce the scope of Work or implement changes that are “equal to or better” than the original requirements. The provisions of Section 14.3.2 of these General Terms and Conditions regarding delivery of a Change Notice do not apply to a Contractor-initiated Change Proposal under this Section 14.3.1.3 of these General Terms and Conditions. All cost and schedule savings associated with a deductive Contractor-Initiated Change Proposal shall accrue to VPRA by issuance of a deductive Change Order in accordance with this Article 14 of these General Terms and Conditions.

14.3.2 Conditions Precedent

The requirements set forth in this Section 14.3 of these General Terms and Conditions constitute conditions precedent to Contractor’s entitlement to request and receive a Change Order in all circumstances except those involving a Request for Change Proposal by VPRA or a Unilateral Change Order. Contractor agrees that the filing of Change Notices and subsequent filing of Requests for Change Orders with VPRA pursuant to Sections 14.3 and 14.4 of these General Terms and Conditions are necessary to begin the administrative process for Contractor-initiated Change Orders. Contractor understands that it shall be forever barred from recovering against

VPRA under this Article 14 of these General Terms and Conditions and the Contract if it fails to follow the process under Sections 14.3 and 14.4 of these General Terms and Conditions.

14.3.3 Delivery of Change Notice

Contractor shall deliver to VPRA written notice (“Change Notice”) stating that a Relief Event has occurred within the scope of Section(s) 14.3.1.1 and/or 14.3.1.2 of these General Terms and Conditions. The first notice must be labeled “Change Notice No. 1” and subsequent notices must be numbered sequentially. The identification number shall be used on all subsequent materials connected to the Relief Event. The Change Notice must contain the information stated in Section 14.3.5 of these General Terms and Conditions.

14.3.4 Prompt Delivery of Change Notice Required

Early or prior knowledge by VPRA of an existing or impending Claim could alter the plans, scheduling, or other VPRA action or result in mitigation or elimination of the basis for the Claim. Accordingly, each Change Notice must be delivered as promptly as possible after the occurrence of the Relief Event upon which it is based. Except as otherwise provided herein, if any Change Notice is delivered later than seven (7) Days after Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described in the Change Notice, Contractor shall be deemed to have waived the right to collect any and all costs incurred prior to the delivery date of the Change Notice. Contractor’s failure to provide a Change Notice within twenty-one (21) Days after Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a Relief Event shall preclude Contractor from any relief associated with the events, actions, omissions, or otherwise that comprise the Relief Event(s). A Change Notice will be deemed delivered only if it fully conforms to the requirements of Section 14.3.5 of these General Terms and Conditions.

Furthermore, if any Change Notice concerns any condition or material described in Sections 14.12.2 or 14.12.7 of these General Terms and Conditions, Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection with the condition or material if VPRA is not afforded the opportunity to inspect the material or condition before it is disturbed.

14.3.5 Contents of Change Notice

The Change Notice shall:

- (a) specify the applicable Relief Event(s);
- (b) state in detail the facts underlying the potential Change Order;
- (c) state the type of relief sought, including Extra Work Costs, Delay Costs, and/or a Completion Deadline adjustment;
- (d) specify the reasons why Contractor believes that it is entitled to an adjustment of the Contract Price or a Completion Deadline;
- (e) provide the date of occurrence or inception in reasonable detail;
- (f) provide a good faith preliminary estimate of the anticipated cost impacts (including cost savings) due to the Relief Event and the basis for such estimate;
- (g) state the actions Contractor has taken prior to submission of the Change Notice, and proposed actions to be taken thereafter, to mitigate the costs, delay, and other consequences of the Relief Event;

- (h) state in detail the factual and legal bases supporting the conclusion that the work is not required by the Contract Documents, if applicable;
- (i) identify all provisions of the Contract Documents relevant to the issue;
- (j) identify any potential Critical Path impacts;
- (k) if Contractor intends to seek a Completion Deadline extension, include a good faith estimate of the potential time impact;
- (l) provide an estimate of the time within which a response to the notice is required to minimize cost, delay, or disruption of performance; and
- (m) state the type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance.

The nature and scope of the potential Change Order stated in the Change Notice shall remain consistent (except for reductions) for the remainder of the Change Order process and, if applicable, during any subsequent Dispute Resolution Process, except with respect to consequences of a Relief Event that (i) are of a different nature or scope, (ii) first arise or occur after Contractor delivers the Change Notice to VPRA, and (iii) could not have been anticipated through the exercise of reasonable diligence prior to delivering the Change Notice. If any such new consequences arise or occur prior to submission of the Request for Change Order, Contractor shall report them to VPRA by a supplemental Change Notice. If a single Relief Event is a continuing cause of delay, only one Change Notice shall be necessary.

14.4 Delivery of Request for Change Order

Contractor shall deliver a Request for Change Order to VPRA within sixty (60) Days after Contractor's delivery of the Change Notice. If Contractor fails to submit a complete Request for Change Order within sixty (60) Days after Contractor's delivery of the Change Notice, Contractor shall be deemed to have irrevocably and forever waived and released any right to any relief whatsoever for any effect attributable or related to the Relief Event and the acts or omissions comprising such Relief Event; provided, however, that if Contractor submits a Request for Change Order within sixty (60) Days of the date of Contractor's delivery of the Change Notice and VPRA responds as provided in Section 14.5.1 of these General Terms and Conditions that Contractor's Request for Change Order is incomplete, Contractor shall have until the later of (a) fifteen (15) Days after receipt of VPRA's notice pursuant to Section 14.5.1 of these General Terms and Conditions or (b) sixty (60) Days after Contractor's delivery of the Change Notice, to comply in full with Section 14.4.1 of these General Terms and Conditions before the waiver herein becomes effective.

14.4.1 Contents of Request for Change Order

Each Request for Change Order shall contain the following information:

- (a) full details of the Relief Event, including its nature, the date of its occurrence, its duration (to the extent that the Relief Event and the effects thereof have ceased, or estimated duration to the extent that the Relief Event and the effects thereof have not ceased), affected locations, items of Work affected, and information required by Section 14.8.5 of these General Terms and Conditions;
- (b) any written communications between VPRA, Contractor, and other Persons concerning the Relief Event and identification of the substance of any material oral communications between VPRA and Contractor, if any, relating to the Relief Event and the name of the Person or Persons making such oral communications;

- (c) identification of the specific provisions of the Contract Documents that are impacted by the Relief Event or that Contractor claims entitles it to the relief sought or pertain to the relief sought, and a complete, detailed statement that explains the reasons why the provisions entitle Contractor to that relief or are otherwise impacted by the requested relief. Contractor shall additionally include any documents or other materials that Contractor contends support entitlement to the relief sought;
- (d) except as provided in Section 14.4.2 of these General Terms and Conditions, where Contractor makes a request for a Completion Deadline adjustment, a Schedule Impact Analysis of the Baseline Schedule that identifies the Critical Path (with activity durations, predecessor, and successor activities and resources, including total Float), and illustrates the effect of schedule changes or disruptions on the Completion Deadlines;
- (e) a detailed, itemized estimate of all amounts claimed for Extra Work Costs and Delay Costs to the extent such amounts are eligible for compensation under this Article 14 of these General Terms and Conditions for the Relief Event in question, subject to the following requirements:
 - (i) all such amounts shall be broken down in terms of the eligible costs for labor (including hourly wage rates, fringe benefits rates, and audited burden), Materials, Equipment, third party fees and charges, extra insurance, and performance and payment security (e.g., bonds and letters of credit), as applicable, and other costs, including expenses and profit, and any other cost category or categories VPRA specifies; and
 - (ii) Contractor shall provide copies of invoices or other proof of payment for Equipment or Materials, and for Equipment, shall provide evidence of the applicable rental rate or cost of Equipment in accordance with Exhibit J of the Contract;
- (f) the effect of the Relief Event on Contractor's ability to perform any of its obligations under the Contract Documents, including details of the relevant obligations, the effect on each such obligation, and the likely duration of that effect;
- (g) copies of the Construction Pricing Documents and other documents showing Contractor's assumptions forming the basis of Contractor's Final Binding GMP Proposal concerning the Work that is the subject of the Request for Change Order;
- (h) an explanation of the measures that Contractor has previously taken to prevent, and proposes to undertake to mitigate, the costs, delay, and other consequences of the Relief Event;
- (i) the type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance, subject to the following requirements:
 - (i) Contractor shall provide a copy of every notice letter and/or claim submitted to an insurer or other party that may be liable to reimburse or indemnify Contractor due to the Relief Event;
 - (ii) and, if the Relief Event may be covered by Contractor's self-insurance, Contractor shall provide documentation of any claim against such insurance that it prepares in the ordinary course of business; and
- (j) Contractor Representation: Each Request for Change Order must contain a sworn certification by Contractor certifying that the amount of the Completion Deadline or

Contract Price adjustment requested includes all known and anticipated impacts or amounts that may be incurred as a result of the event or matter giving rise to the Relief Event and also certifying that Contractor has no reason to believe and does not believe that the factual basis for the Request for Change Order is falsely represented.

14.4.2 Updates to Schedule Impact Analysis in a Request for Change Order

If Contractor seeks a Completion Deadline adjustment and/or Delay Costs arising from a Relief Event, Contractor shall update VPRA as to the time impact of the Relief Event until such time as VPRA issues a Change Order, Contractor withdraws the Request for Change Order, or resolution of the Dispute Resolution Process. Unless VPRA has issued a Change Order for the Relief Event, Contractor withdraws the Request for Change Order, or the Dispute Resolution Process is complete, once Contractor knows or should reasonably be expected to know the actual time impact of a Relief Event, Contractor shall submit a revised Schedule Impact Analysis showing the actual impact of the Relief Event to the Critical Path. Such updated information shall supersede any previously submitted Schedule Impact Analysis for purposes of establishing the appropriate amount of a Completion Deadline adjustment and Delay Costs, if applicable, in a Change Order issued with respect to the Relief Event.

14.4.3 Alternative Requests for Change Orders for Time-Related Relief

If Contractor requests a Completion Deadline adjustment and Delay Costs, if applicable, VPRA, in its sole discretion, may require Contractor to provide two alternative Request for Change Orders, one of which shall provide for a Completion Deadline adjustment and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder. If Contractor reasonably believes that it is not feasible to recover to the non-adjusted Completion Deadlines, or that the costs associated with such a recovery are prohibitive, then Contractor shall so state and provide its applicable, supporting analysis.

Contractor shall not be entitled to Acceleration Costs unless authorized in writing by VPRA.

14.4.4 Supplements to Request for Change Order

If, following delivery of a Request for Change Order, Contractor receives or becomes aware of any further information or estimates relating to the Relief Event and its impact on cost, schedule, or performance of Work, including information on new consequences as described in Sections 14.3.5 or 14.4.2 of these General Terms and Conditions, Contractor shall submit such further information to VPRA as soon as possible. VPRA may request from Contractor any further information that VPRA may reasonably require, and Contractor shall supply the same within the time period stated in VPRA's request for additional information.

14.5 VPRA Response to Request for Change Order

Once Contractor has submitted a complete Request for Change Order, VPRA will respond within forty-five (45) Days. VPRA's time to respond to a Request for Change Order does not commence until Contractor submits a complete Request for Change Order and VPRA will have no obligation to review an incomplete Request for Change Order. If Contractor has complied with the requirements of Sections 14.3 and 14.4 of these General Terms and Conditions, and VPRA provides a written response within such forty-five (45)-Day period stating that there are matters in dispute regarding the Request for Change Order, such matters in dispute shall be considered a Dispute for which Contractor may initiate the Dispute Resolution Process in Article 20 of these General Terms and Conditions. If VPRA does not respond within the forty-five (45)-Day period, and Contractor has complied with all requirements of Sections 14.3 and 14.4 of these General Terms and Conditions, then the Request for Change Order shall be considered a Dispute for

which Contractor may initiate the Dispute Resolution Process in Article 20 of these General Terms and Conditions. If VPRA responds that it accepts the Request for Change Order in full or in part, the Parties shall execute a corresponding Change Order; with the remainder of a partial acceptance eligible to proceed to the Dispute Resolution Process in Article 20 of these General Terms and Conditions.

14.5.1 VPRA Response to an Incomplete Request for Change Order

If Contractor does not comply in full with the requirements of Sections 14.3 and 14.4 of these General Terms and Conditions, VPRA may provide written notice rejecting Contractor's Request for Change Order within the forty-five (45)-Day time period and such notice shall identify the deficiencies within Contractor's submittal. Such response by VPRA shall not constitute recognition that the Request for Change Order is a Dispute eligible for resolution by the Dispute Resolution Process. Contractor shall have the option to the withdraw the Request for Change Order or, subject to Section 14.4 of these General Terms and Conditions, to correct the deficiencies therein and timely resubmit the Request for Change Order for VPRA's consideration.

14.6 Subcontractor Claims

All Claims must be submitted by Contractor. Subcontractors may not directly submit requests for relief to VPRA. Contractor shall be responsible for verifying the accuracy of all Claims submitted, including those submitted on behalf of Subcontractors. For all Claims made by Contractor on behalf of a Subcontractor, both Contractor and the applicable Subcontractor shall execute the certification required by Section 14.4.1(j) of these General Terms and Conditions and submit it with the Request for Change Order. A Request for Change Order shall not be considered complete until receipt of the certification executed by Contractor and all Subcontractors on whose behalf Contractor is submitting a Claim to VPRA.

14.7 Reserved

14.8 Limitations on Change Orders

14.8.1 Duty to Mitigate

Contractor shall take all steps reasonably necessary to mitigate the consequences of any Relief Event. Contractor shall not be entitled to an adjustment of the Contract Price or a Completion Deadline for impacts that could have been avoided; provided, however, that Contractor shall not be required to implement mitigation measures where the cost or schedule impacts thereof would exceed the Contract Price adjustment or Completion Deadline adjustment if the mitigation measures were not implemented. As part of a Change Order, Contractor shall be entitled to the reasonable costs of mitigation measures provided that such costs are less than the Contract Price adjustment that would have occurred in the absence of Contractor's mitigation efforts.

14.8.2 Limitation on Contract Price Increases

Any increase in the Contract Price allowed by this Article 14 of these General Terms and Conditions is not eligible to include:

- (a) costs caused by the breach of contract or fault or negligence, or act or failure to act, of any Contractor-Related Entity;
- (b) costs or circumstances that could reasonably have been anticipated due to Contractor's performance of the Phase 1 Services;

- (c) costs that could reasonably have been avoided by Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work, or other work-around measures;
- (d) costs covered by insurance;
- (e) costs for any rejected Work that failed to meet the requirements of the Contract Documents and any necessary remedial Work; and
- (f) any costs incurred to prepare a Claim or Dispute, including costs of preparing a Change Notice, Request for Change Order, and all costs incident thereto, including attorney's fees and expert fees.

14.8.3 Completion Deadline Adjustments and Delay Costs

Contractor shall only be entitled to an adjustment of a Completion Deadline and/or Delay Costs for Relief Events that delay the Critical Path and only to the extent of such delay to the Critical Path. Contractor shall not be entitled to any time-related relief, whether a Completion Deadline adjustment or Delay Costs for any delay arising from a Relief Event, that does not delay the Critical Path. No Relief Event shall be considered to delay the Critical Path until all available Float has been exhausted. Contractor shall not be entitled to an adjustment of the Completion Deadline or Delay Costs for the Phase 1 Services.

14.8.4 Limitations on Delay Costs

Except for Acceleration Costs authorized by VPRA in accordance with Section 14.4.3 of these General Terms and Conditions, Delay Costs shall be limited to only those costs specified in Exhibit J of the Contract. Other than Delay Costs specified in Exhibit J of the Contract, Contractor shall not be entitled to any other costs, damages, or otherwise attributable to delays, disruption, inefficiencies, or any other claim of a similar nature. Further, except as otherwise provided by the Contract Documents, in no event shall Contractor submit or be entitled to payment based on any of the following, including: Eichleay formula, the total cost method, original Contract period formula, burden fluctuation method, comparative absorption rates, and other similar or related methods. Regardless of the basis asserted, Contractor shall not recover and is not entitled to recover the following categories of damage:

- (a) any compensation except as provided by [Section 2] of Exhibit J of the Contract;
- (b) loss of anticipated profit, incentives, or bonuses;
- (c) labor inefficiencies that are the fault of Contractor;
- (d) home office overhead regardless of whether it is characterized as absorbed, unabsorbed, or extended exceeding that provided in [Section 2.4] of Exhibit J of the Contract;
- (e) any damages, costs or expenses that are indirect, special, incidental or consequential, including lost or impaired bonding capacity, loss of bidding and contracting opportunities, loss of credit standing, cost of financing, interest paid, lost Material discounts, economic loss, loss of reputation, loss of other Work, loss of use, loss of business opportunity, loss of product or output, income, loss of profit or revenue, cost of capital, financing, and for loss of management or employee productivity or of the services of such persons, and business devastation, bankruptcy, or insolvency;
- (f) Acceleration Costs, except as provided under Section 14.4.3 of these General Terms and Conditions;

- (g) late payment charges associated with any Claim, or disputed Work or Materials. Contractor is also not entitled to late payment charges on any judgment or award made to Contractor;
- (h) prejudgment or post-judgment interest related to or arising from any disputed Claim or on any award made to Contractor; or
- (i) attorney's fees and costs, Claim preparation expenses, and litigation or other costs related to or arising from any disputed Claim, or prosecution thereof.

14.8.5 Additional Limitations on Completion Deadline Adjustments and Delay Costs

Contractor shall not be entitled to (i) an adjustment of a Completion Deadline or (ii) any increase in the Contract Price to compensate for Delay Costs or VPRA-authorized Acceleration Costs, to the extent that:

- (a) Contractor's schedule that defines the affected Critical Path did not set forth a reasonable method for completion of the Work;
- (b) the Relief Event that is the subject of the requested Change Order has not caused or will not result in an identifiable and measurable disruption of the Work that impacted the Critical Path activity;
- (c) the delay or damage was due to any breach of contract or fault or negligence, or act or failure to act, of any Contractor-Related Entity;
- (d) the delay or damage could have reasonably been avoided by Contractor, including by resequencing, reallocating, or redeploying its forces to other portions of the Work or to other activities unrelated to the Work, or other work-around measures; or
- (e) the Relief Event will only impact the provision of the Phase 1 Services.

When requesting a Completion Deadline adjustment and/or Delay Costs, Contractor shall demonstrate in the Request for Change Order that the alleged delay or damage was not attributable to the conditions stated above.

14.8.6 Concurrent Delay

In the event of a Concurrent Delay, Contractor shall not be entitled to Delay Costs for the duration of the delay that is concurrent with a delay to the Critical Path for which Contractor is responsible. A Concurrent Delay shall not affect Contractor's right to a Completion Deadline adjustment hereunder.

14.9 Payment for Extra Work Change Orders

14.9.1 Negotiated Price for Extra Work

VPRA and Contractor (on its own behalf and on behalf of its Subcontractors) will endeavor to negotiate, in good faith, a reasonable amount for the Extra Work Costs in a Change Order. In general, the price of a Change Order will be negotiated in accordance with this Section 14.9 of these General Terms and Conditions or be paid in accordance with the Force Account specifications in Exhibit J of the Contract. This Section 14.9 of these General Terms and Conditions shall not apply to Delay Costs, which are payable solely in accordance with Section 14.10.2 of these General Terms and Conditions and Exhibit J of the Contract.

14.9.2 Extra Work

When the Change Order includes Extra Work, VPRA and Contractor shall negotiate an increase in the Contract Price based on estimated costs of labor, Material, and Equipment; negotiate a unit price Change Order; or determine the amount based on actual costs in accordance with Exhibit J. Compensation for Extra Work shall not include any amount covered by insurance.

14.9.3 Deleted Work

When the Change Order deletes Work from Contractor's scope, the amount of the reduction in the Contract Price will be based upon all of the following associated with the deleted work: the cost of Materials, labor and Equipment costs, and overhead and profit. VPRA will be entitled to credits for mark-up for profit and overhead in the amounts provided in Exhibit J of the Contract. Documented cancellation and restocking charges may be included in costs of deleting Work and be subtracted from the price deduction for the deleted Work.

14.9.4 Work Both Added and Deleted

When the Change Order includes both Extra Work and deleted Work, Contractor shall prepare separate cost breakdowns for Extra Work and deleted Work in accordance with Sections 14.9.2 and 14.9.3 of these General Terms and Conditions. The difference between the Extra Work and deleted Work cost breakdowns will be the cost (or credit to VPRA) of the Change Order. If the change results in a net change of zero, the Contract Price will not be changed.

14.10 Force Account Change Orders

VPRA may issue a Force Account Change Order if VPRA determines that doing so is beneficial, including if VPRA and Contractor are unable to negotiate a price for Extra Work Costs in a Change Order as provided in Section 14.9 of these General Terms and Conditions. VPRA may also issue a Directive Letter with pricing determined on a Force Account basis.

14.10.1 Determination of Costs

Compensation for Force Account Change Orders will be in accordance with Exhibit J of the Contract.

14.10.2 Payment of Delay Costs

Delay Costs shall solely be payable in accordance with Exhibit J of the Contract.

14.11 Payment of Change Orders

VPRA shall determine how to pay Contractor for Change Orders. VPRA shall compensate Contractor through one of the following:

- (a) to the extent permitted by Law, as a lump-sum payment;
- (b) invoiced as Work is completed; or
- (c) through any combination of the above, subject to Section 14.11.2 of these General Terms and Conditions.

14.11.1 Timing of Change Order Payments

Following receipt of required documentation establishing the pricing of a Change Order, VPRA will make payment as follows:

- (a) if as a lump sum payment other than a negotiated fixed price, VPRA will make payment of all undisputed amounts not later than with the first Application for Payment after VPRA's receipt of all pertinent data, documents, and information on an Open Book basis with respect to the Extra Work or Delay Costs, as applicable;
- (b) if as a lump sum payment that is a negotiated fixed price, VPRA will make payment of all undisputed amounts with the first Application for Payment after VPRA's receipt of all documentation required from Contractor pursuant to the terms of the negotiated fixed price Change Order with respect to Extra Work or Delay Costs, as applicable;
- (c) if invoiced as the Work is completed, VPRA will make payment of all undisputed amounts with the payment occurring after Contractor submits and VPRA approves an itemized invoice showing the components of the Extra Work and Delay Costs included in the Change Order, to be submitted with Application for Payment request, of the Extra Work and Delay Costs, as applicable, incurred during the previous month.

14.11.2 Limitations on Payment of Change Orders for Work Not Completed

If any portion of the Extra Work Costs and Delay Costs consists of costs for design or construction not then performed, VPRA shall have no obligation to make advance payments and shall have the right to pay such portion as invoiced payments in accordance with Section 14.11.1(c) of these General Terms and Conditions.

14.11.3 Compliance with Federal Acquisition Regulation

Reimbursable expenses in Change Orders, regardless of whether unit price, negotiated, or Force Account, must comply with the allowability and allocability requirements under the FAR. Expenses excluded by the FAR are not eligible for reimbursement, and to the extent paid by VPRA, will be subject to recapture upon demand by VPRA. Such right of recapture shall extend beyond Final Acceptance. If a federal agency asserts that any claimed reimbursable expenses are not reimbursable under FAR, VPRA will allow Contractor the opportunity to respond to the federal agency and defend the allowability and allocability of the expenses. Any determination made by a federal agency on the matter shall be deemed final and binding on the Parties.

14.12 Additional Conditions and Limitations on Certain Change Orders

14.12.1 VPRA-Directed Change

A VPRA-Directed Change shall only be eligible for Extra Work Costs. A VPRA-Directed Change shall not be eligible for Delay Costs or an adjustment of a Completion Deadline. Notwithstanding the foregoing, Contractor may seek schedule-related relief for a VPRA-Caused Delay in accordance with Section 14.12.9 of these General Terms and Conditions.

14.12.2 Differing Site Conditions

If Contractor encounters a Differing Site Condition, Contractor will be entitled to submit a request for an adjustment in the Contract Price and/or Completion Deadlines to the extent Contractor's cost and/or time of performance are adversely impacted by the Differing Site Condition as allowed for herein. Upon encountering a Differing Site Condition, Contractor shall provide prompt written notice to VPRA of such condition, which notice shall not be later than two (2) days after such condition has been encountered. Contractor shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Contractor bears the reasonable burden of proving (1) that a Differing Site Condition exists and (2) that it could not reasonably have worked around the Differing Site Condition so as to avoid additional costs or impacts to the Critical Path. Contractor's request for any Change Order relating to a Differing Site Condition must include a statement signed by a District of Columbia-licensed professional engineer providing: (1) all of Contractor's relevant assumptions concerning the condition of the Site and justifying the basis for such assumptions, (2) a specific explanation of how the existing conditions differ from those assumptions, and (3) a description of Contractor's efforts to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

14.12.3 Inaccurate Utility Information

14.12.3.1 Inaccurate Utility Information Defined

If any existing underground Utility that requires Relocation as part of the Work (or any portion of the Utility) is not indicated at all in the Utility Information or is not indicated with "Reasonable Accuracy" therein (as defined in Section 14.12.3.2 of these General Terms and Conditions), Contractor may request a Change Order for Inaccurate Utility Information. Notwithstanding the obligations in this section, Contractor shall be responsible for, and no Change Order will be issued due to, Inaccurate Utility Information for any of the following:

- (a) any Utility (or portion thereof) for which a surface inspection of the area within a 50-foot radius of the Utility would have shown the existence or the likelihood of existence in the correct location and/or size, as applicable, due to above-ground facilities such as buildings, meters, junction boxes or identifying markers;
- (b) any Utility (or portion thereof) that Contractor encounters after failing to contact the proper Utility Notification Service for the area in which the Utility (or portion thereof) is located or Contractor's failure to wait the minimum time required after contacting the Utility Notification Service; or
- (c) Service Lines.

14.12.3.2 Reasonable Accuracy

For purposes of Inaccurate Utility Information, a Utility will be deemed indicated with Reasonable Accuracy if:

- (a) with respect to Utility Information that is referred to as "Quality Level A," the Utility's actual location is within 2 feet of the indicated horizontal and vertical locations at the "xyz" coordinates in the SUE data or test holes; or
- (b) with respect to Utility Information that is referred to as "Quality Level B," the Utility's actual location is within 2 feet of the indicated horizontal location at the "xy" coordinates in the SUE data or test holes (with no limitation on vertical location).

For purposes of the definition of "Reasonable Accuracy," a SUE with a higher level of Quality takes precedence over a SUE with a lower level of quality. For example, a SUE Quality Level A takes precedence over a SUE Quality Level B, a SUE Quality Level B takes precedence over a SUE Quality Level C, and a SUE Quality Level C takes precedence over a SUE Quality Level D.

If there is any inconsistency between any two or more Certified SUE Plans of the same quality level or test holes, the most recent of the information will be applicable for purposes of Inaccurate Utility Information.

14.12.3.3 Contractor Acknowledgement Regarding Reference Documents

Contractor acknowledges that statements in the \Reference Documents about the extent or nature of the Work required to Relocate any Utility shall have no relevance to the determination of Reasonable Accuracy and will not be considered in calculating the amount of the Change Order.

14.12.3.4 Partial Inaccuracy

If only a portion of an existing underground Utility that requires Relocation to accommodate the Work is not indicated at all in the Utility Information, or is not indicated with Reasonable Accuracy, VPRA will issue a Change Order only for the resulting increased or decreased costs (respectively) of the Utility Work incurred by Contractor related to that portion of the Utility. In the case of any increase in the Contract Price, this obligation is subject to the restrictions set forth in clauses (a) and (b) of Section 14.12.3.1 of these General Terms and Conditions.

14.12.4 Utility Delays

Contractor shall not be entitled to claim relief for a Utility Delay unless all of the following conditions are satisfied:

- (a) Contractor has provided evidence reasonably satisfactory to VPRA that (i) Contractor has fulfilled its obligation under the applicable Utility Agreement(s) to coordinate with the Utility Owner to prevent or reduce the delays, and (ii) Contractor has otherwise made diligent efforts to obtain the timely cooperation of the Utility Owner but has been unable to obtain this timely cooperation;
- (b) if Contractor is responsible for the Relocation, Contractor has provided a reasonable Relocation Plan to the Utility Owner and Contractor has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, options, and/or rulings required by any Governmental Approval or Law to design and construct the Relocation; and
- (c) no circumstances exist that have delayed or are delaying the affected Relocation that are attributable to Contractor, other than those that fit within the definition of a Utility Delay.

Contractor shall provide an explanation and details demonstrating compliance with the above-stated conditions in the Request for Change Order submitted as provided in Section 14.4 of these General Terms and Conditions.

14.12.5 Force Majeure

A Force Majeure shall be eligible solely for a Completion Deadline adjustment directly attributable to the Force Majeure. Force Majeure shall not be eligible for Extra Work Costs or Delay Costs.

14.12.6 Extreme Weather Event

An Extreme Weather Event shall be eligible solely for a Completion Deadline adjustment. An Extreme Weather Event shall not entitle Contractor to Extra Work Costs or Delay Costs.

14.12.7 Contaminated Materials

14.12.7.1 Release of Contaminated Materials

Contractor shall not be entitled to a Relief Event for the Release of Contaminated Materials (Relief Event (g) of the definition thereof) to the extent that Contractor or any Contractor-Related Entity

was the cause of the Release of Contaminated Materials. Further, Contractor shall not be entitled to any incremental costs or delay that occurs due to Contractor's exacerbation of a Release of Contaminated Materials.

14.12.7.2 Discovery of Unknown Preexisting Contaminated Materials

Contractor shall not be entitled to a Relief Event for the Discovery of Unknown Preexisting Contaminated Materials (Relief Event (h) of the definition thereof) arising from the discovery of Contaminated Materials that were identified in the Reference Documents or other information furnished prior to the Final Binding GMP Proposal, or where the presence of such Contaminated Materials was discovered or should have been discovered through an investigation of the Site performed by Contractor prior to the Final Binding GMP Proposal.

14.12.7.3 Notification of Discovery of Unknown Preexisting Contaminated Materials

Contractor's entitlement to a Relief Event for the Discovery of Unknown Preexisting Contaminated Materials is subject to Contractor's compliance with notice requirements in Section 19.2.3 of these General Terms and Conditions. Contractor shall not be entitled to Extra Work Costs, a Completion Deadline adjustment, or Delay Costs to the extent attributable to Contractor's failure to provide timely notification to VPRA.

14.12.7.4 Contaminated Materials for Which Contractor is Responsible

Contractor shall not be entitled to a Change Order for Work dealing with Contaminated Materials for which Contractor is obligated to indemnify VPRA.

14.12.8 Relief Events (i) and (j)

Contractor shall not be entitled to relief under Relief Events (i) and (j) in the definition thereof to the extent that the archeological, paleontological, cultural, or biological resources, or the threatened or endangered species, were identified in the Reference Documents or other information furnished prior to the Final Binding GMP Proposal, or where the presence of such archeological, paleontological, cultural, or biological resources was discovered or should have been discovered through an investigation of the Site performed by Contractor prior to the Final Binding GMP Proposal.

14.12.8.1 Occurrences Outside the Project ROW

Contractor shall not be entitled to any relief (Extra Work Costs, Delay Costs, Completion Deadline Adjustment) for Relief Events (g), (h), (i) or (j) in the definition thereof that occur outside the Project ROW. Contractor shall not be entitled to any relief (Extra Work Costs, Delay Costs, Completion Deadline Adjustment) for Relief Events (e), (k) or (p) in the definition thereof that occur outside the Project ROW.

This Section 14.12.8.1 of these General Terms and Conditions shall not preclude Contractor's right to relief under Relief Event (g) of the definition thereof (Release of Contaminated Materials) where, subject to Section 14.12.7 of these General Terms and Conditions, a Release of Contaminated Materials occurs outside the Project ROW but spills or sequesters onto the Project ROW and has an impact on the Project.

14.12.9 VPRA-Caused Delay

A VPRA-Caused Delay shall be eligible solely for a Completion Deadline adjustment directly attributable to the VPRA-Caused Delay. VPRA-Caused Delay shall not be eligible for Extra Work Costs or Delay Costs.

14.12.10 Change in Law

A Change in Law may be eligible for Extra Work Costs and/or a Completion Deadline adjustment depending on the effects directly attributable to the Change in Law.

14.12.11 Relief Events Impact on Early Work

If Early Work is impacted by a Relief Event, Contractor shall submit a Change Notice and Request for Change Order to VPRA in accordance with this Article 14 of these General Terms and Conditions.

14.13 Price Adjustments for Certain Materials

The Phase 2 Price and any Early Work Price shall be subject to adjustment to account for the price of steel at the time Contractor purchases steel for use on the Project. Contractor shall submit the actual direct cost of steel with the Application for Payment in which Contractor seeks payment for steel. Contractor shall only be entitled to payment for the quantity of steel in the Construction Pricing Documents for the Phase 2 Price or Early Work Price.

During Phase 1, Contractor may propose similar adjustments to other commodities to be used in the performance of, or incorporated into, the Work, which VPRA may accept or reject in its sole discretion.

14.14 Matters Not Eligible for Change Orders

Contractor acknowledges and agrees that no increase in the Contract Price or adjustment of a Completion Deadline is available except in circumstances expressly provided for in the Contract, that such Contract Price and Completion Deadline adjustments shall be available only as provided in this Article 14 of these General Terms and Conditions, and that Contractor shall bear full responsibility for the consequences of all other events and circumstances. Matters that are Contractor's exclusive responsibility include the following:

- (a) errors in the Construction Documents (including errors directly attributable to errors in the Reference Documents);
- (b) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (except to the extent arising from a Relief Event);
- (c) action or inaction of Contractor's employees, Suppliers, Subcontractors or any Contractor-Related Entity (unless arising from a Relief Event);
- (d) untimely delivery of Equipment or Material, or unavailability, defectiveness, or increases in costs of Material, Equipment or products specified by the Contract Documents (except to the extent arising from causes that otherwise constitute a Relief Event or under Section 14.13 of these General Terms and Conditions concerning price adjustments);
- (e) delays not on the Critical Path;
- (f) costs covered by insurance proceeds received by or on behalf of Contractor;

- (g) correction of Nonconforming Work and oversight and related activities in connection therewith by VPRA (including rejected design submittals);
- (h) failure by Contractor to comply with the requirements of the Contract Documents;
- (i) all other events beyond the control of VPRA for which VPRA has not agreed to assume liability hereunder;
- (j) a Railroad Owner's or VPRA's refusal to grant a Track Closure or permission to perform adjacent work, in either case in response to a prior Unpermitted Track Closure, until approval by VPRA and/or a Railroad Owner of Design-Builder's plan to avoid future Unpermitted Track Closures, as provided in Section 17.1.2.3 of the Contract; and
- (k) any situations (other than Force Majeure events) which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in the Contract Documents or arise out of the nature of the Work.

Contractor assumes responsibility for all such matters and acknowledges and agrees that assumption by Contractor of responsibility for such risks, and the consequences, costs, and delays resulting therefrom, is reasonable under the circumstances and that contingencies included in the Final Binding GMP Proposal in Contractor's sole judgment, constitute sufficient consideration for its acceptance and assumption of said risks and responsibilities.

14.15 Waiver

CONTRACTOR HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY OR ACCELERATION (INCLUDING ANY CHANGE, DELAY, SUSPENSION OR ACCELERATION WHICH, BUT FOR THE EXPRESS TERMS OF THE CONTRACT DOCUMENTS, COULD BE INFERRED OR IMPLIED AT LAW) FOR WHICH CONTRACTOR FAILED TO PROVIDE A PROPER AND TIMELY CHANGE NOTICE OR FAILED TO PROVIDE A PROPER AND TIMELY REQUEST FOR CHANGE ORDER, AND AGREES THAT CONTRACTOR SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT CONTRACTOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

14.16 No Release or Waiver

14.16.1 Extension of Time for Performance

No Completion Deadline extension hereunder shall release Contractor, Contractor's Surety, or any Guarantor from its obligations. VPRA shall not be deemed to have waived any rights under the Contract (including its right to abrogate the Contract for abandonment or for failure to complete within the time specified, or to impose and deduct damages as may be provided herein) as the result of any grant of an extension of a Completion Deadline beyond the date fixed for the completion of any part of the Work, any Acceptance of performance of any part of the Work after a Completion Deadline, or the making of any payments to Contractor after such date.

14.16.2 No Change Order Based on Course of Conduct or Order by Unauthorized Person

No course of conduct or dealings between the Parties nor express or implied Acceptance of alterations or additions to the Work, and no claim that VPRA has been unjustly enriched shall be

the basis for any Claim, request for additional compensation or adjustment of a Completion Deadline. Further, Contractor shall undertake, at its risk, work included in any request, order or other authorization issued by a Person in excess of that Person's authority as provided herein, or included in any oral request. Contractor shall be deemed to have performed such work as a volunteer and at its sole cost. In addition, VPRA may require Contractor to remove or otherwise undo any such work at Contractor's sole cost without the right to an adjustment of the Contract Price or a Completion Deadline.

14.17 Change Order Disputes

If VPRA and Contractor cannot agree on (i) whether certain matters constitute a Relief Event, (ii) whether a Change Order is required under this Article 14 of these General Terms and Conditions, or (iii) the amount of the adjustments in the Contract Price and/or the Completion Deadline proposed within a Change Order issued under this Article 14 of these General Terms and Conditions, then such matters will be considered a Dispute eligible for resolution under Article 20 of these General Terms and Conditions, provided that Contractor has first complied with the requirements of this Article 14 of these General Terms and Conditions.

14.18 Performance of Disputed Work

Contractor shall continue to perform all Work, including any disputed Work, during the pendency of a Dispute concerning Contractor's entitlement to a Change Order or the relief due Contractor pursuant to a Directive Letter or VPRA-Directed Change. Contractor's continued performance in accordance with this Section 14.18 of these General Terms and Conditions will be without prejudice to any pending Claim.

14.19 Change Order Status Log

On the last Working Day of each month, Contractor shall submit a log showing all Change Notices and their status. The log shall be organized by Change Notice number and for each Change Notice shall state, at a minimum:

- (a) a brief description of the issue;
- (b) an estimate of the anticipated cost;
- (c) an estimate of the schedule impact of the issue;
- (d) submission date of the Change Notice;
- (e) whether and when Contractor has submitted a Request for Change Order;
- (f) VPRA's response to the Request for Change Order;
- (g) status of the Dispute Resolution Process; and
- (h) whether and when a Change Order has been issued.

ARTICLE 15

(Wages, Subcontracts, and Labor)

15.1 Prevailing Wages

15.1.1 Contractor to Pay Federal Prevailing Wage Rates

Contractor shall pay or cause to be paid to all applicable workers employed by it or its Subcontractors to perform the Work not less than the Federal Prevailing Wage Rates, as provided in the statutes and regulations applicable to public works contracts, including the Davis-Bacon Act. Contractor shall comply and cause its Subcontractors to comply with all Laws pertaining to Federal Prevailing Wage Rates. The foregoing shall not apply to Subcontracts at any tier with VPRA or Governmental Entities.

15.1.2 Changes to Federal Prevailing Wage Rates

Contractor shall bear the cost of any changes in the Federal Prevailing Wage Rates throughout the life of the Project and shall not be entitled to an increase in the Contract Price or a Completion Deadline adjustment. Without limiting the foregoing, no Claim will be allowed that is based upon Contractor's lack of knowledge or a misunderstanding of any such requirements or Contractor's failure to include in the Contract Price adequate increases for applicable Federal Prevailing Wage Rates to the extent required by law.

15.1.3 Subcontractor Compliance with Federal Prevailing Wage Rates

Contractor shall comply and cause its Subcontractors to comply with all Laws regarding notice and posting of intent to pay Federal Prevailing Wage Rates, of prevailing wage requirements, and of Federal Prevailing Wage Rates. Contractor shall be responsible for any Subcontractor's failure to pay the Federal Prevailing Wage Rates.

15.1.4 Certified Payrolls

Contractor and each Subcontractor shall maintain weekly certified payroll records for submittal to VPRA, as required. Contractor shall be responsible for the submittal of payroll records of all Subcontractors. Additionally, the certified payroll records shall be available for inspection at all reasonable hours at the principal office of Contractor.

15.2 Subcontracting Requirements

Contractor shall comply with all applicable requirements of the Contract Documents relating to Subcontracts and must ensure that its Subcontractors (at all tiers) comply with all applicable requirements of the Contract Documents relating to subcontracting.

15.2.1 Subcontract Terms

Each Subcontract must include terms and conditions sufficient to ensure each Subcontractor complies with all applicable requirements of the Contract Documents. Each Subcontract must include provisions addressing the requirements below, as well as any other terms that the Contract Documents specifically require to be included in Subcontracts:

- (a) Set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the Contract Documents for work of similar scope and scale and shall set forth effective procedures for claims and change orders;

- (b) Require the Subcontractor to carry out its scope of work in accordance with the Contract Documents, the Governmental Approvals, and applicable Law;
- (c) Expressly include the Davis-Bacon prevailing wage rate determinations applicable to the Project;
- (d) Provide that VPRA is a third-party beneficiary of the Subcontract with the right to enforce all terms of the Subcontract for its own benefit;
- (e) Without cost to Contractor or VPRA, expressly permit assignment to VPRA or its successor, assign or designee of all Contractor's rights under the Subcontract, contingent only upon delivery of request from VPRA following termination of this Contract, allowing VPRA or its successor, assign or designee to assume the benefit of Contractor's rights, with liability only for those remaining obligations of Contractor accruing after the date of assumption, such assignment to include the benefit of all Subcontractor warranties, indemnities, guarantees, and professional responsibility;
- (f) Expressly state that any acceptance of assignment of the Subcontract to VPRA or its successor, assign or designee shall not operate to make the successor, assignee or designee responsible or liable for any breach of the Subcontract by Contractor or for any amounts due and owing under the Subcontract for work or services rendered prior to assumption (but without restriction on the Subcontractor's rights to suspend work or demobilize due to Contractor's breach);
- (g) Expressly include a covenant to recognize and attorn to VPRA upon receipt of notice from VPRA that it has exercised its rights under this Contract, without necessity for consent or approval from Contractor or to determine whether VPRA validly exercised its rights, and Contractor's covenant to waive and release any claim or cause of action against the Subcontractor arising out of or relating to its recognition and attornment in reliance on any such notice;
- (h) Not be assignable by the Subcontractor to any Person other than VPRA (or its successor, assignee or designee) without Contractor's prior consent;
- (i) Expressly require that the Subcontractor will: (1) maintain usual and customary books and records for the type and scope of business operations in which it is engaged (e.g., constructor, equipment Supplier, designer, service provider) and maintain records for disputed work in compliance with Section 23.3.6 of these General Terms and Conditions; (2) permit audit of books and records with respect to the Project or Work by each of Contractor and VPRA pursuant to Section 23.3.2 of these General Terms and Conditions; and (3) provide progress reports to Contractor appropriate for the type of work it is performing sufficient to enable Contractor to provide the reports it is required to furnish VPRA under this Contract;
- (j) Include the right of Contractor to terminate the Subcontract in whole or in part upon any termination of this Contract without liability of Contractor or VPRA for the Subcontractor's lost profits, business opportunity or other consequential damages;
- (k) Expressly require the Subcontractor to participate in meetings between Contractor and VPRA, upon VPRA's request, concerning matters pertaining to such Subcontract or the work thereunder, provided that all direction to such Subcontractor shall be provided by Contractor, and provided further that nothing in this clause (k) shall limit the authority of VPRA to give such direction or take such action which, in its sole opinion, is necessary to remove an immediate and present threat to the safety of life or property;

- (l) Include an agreement by the Subcontractor to give evidence in any dispute resolution proceeding pursuant to Article 20 of these General Terms and Conditions, if such participation is requested by either VPRA or Contractor;
- (m) Expressly include a provision prohibiting cross-contract offset between the parties thereto, meaning that if a Subcontractor is performing work on multiple contracts for the other party to the Subcontract or the other party's affiliates, the other party or its affiliate shall not withhold payment from the Subcontractor on its Subcontract because of disputes or claims on another contract;
- (n) Expressly include Sections 16.1 and 16.2 of these General Terms and Conditions (with appropriate changes in the names of the parties);
- (o) Expressly require the Subcontractor to make payments to its lower tier Subcontractors, and be liable for interest payments to such Subcontractors, as set forth in Sections 12.6 and 12.7 of these General Terms and Conditions respectively;
- (p) Contain no waiver of the prompt payment protections for the Subcontractor;
- (q) Expressly provide that all claims and charges of the Subcontractor and its Subcontractors at any tier shall not attach to any interest of VPRA in the Project or the Project ROW;
- (r) Expressly include a covenant, expressly stated to survive termination of the Subcontract, to promptly execute and deliver to VPRA a new contract between the Subcontractor and VPRA on the same terms and conditions as the Subcontract, in the event: (1) the Subcontract is rejected by Contractor in bankruptcy or otherwise wrongfully terminated by Contractor; or (2) VPRA delivers a request for such new contract following termination or expiration of this Contract;
- (s) Provide that all guarantees and warranties, express and implied, will inure to the benefit of VPRA and VPRA's successors and assigns, as well as Contractor;
- (t) Contain the language in Section 15.2.4 of these General Terms and Conditions;
- (u) Be consistent in all other respects with the terms and conditions of the Contract Documents to the extent such terms and conditions are applicable to the scope of work of a Subcontractor, and include all provisions required by this Contract;
- (v) Include provisions concerning termination consistent with Article 18 of these General Terms and Conditions; and
- (w) Expressly include Exhibits K and L of the Contract.

15.2.2 Subcontractor Approval

All Subcontractors are subject to VPRA's Approval. Contractor shall submit the following to VPRA no less than seven (7) days prior to the day on which Contractor intends to have a proposed Subcontractor commence Work:

- (a) Documentation that Contractor followed the Subcontractor bidding process in the Subcontracting Plan;
- (b) Identity of the Subcontractor;
- (c) Licenses held by the proposed Subcontractor relevant to the work to be performed;
- (d) Proposed scope of Work;

- (e) A copy of the Proposed Subcontract including the price for the subcontracted work;
- (f) A statement concerning whether the Subcontractor is currently prohibited or has been prohibited from performing work for any local, state, or federal agency in the preceding five (5) years; and
- (g) Evidence that the proposed Subcontractor has obtained the insurance required by Article 10 of these General Terms and Conditions to perform its scope of work.

The foregoing requirements apply to all proposed Subcontractors, including those identified in Contractor's Proposal. A proposed Subcontractor shall not commence Work until receipt of VPRA's Approval.

15.2.3 Subcontract Data

Contractor shall allow VPRA access to all Subcontracts and records regarding Subcontracts no later than 7 Days after receiving a request from VPRA. All Subcontracts must be in writing.

15.2.4 Responsibility for Work by Subcontractors

Contractor is fully responsible for all of the Work, notwithstanding the terms of any Subcontract. VPRA will not be bound by any Subcontract, and no Subcontract may include a provision purporting to bind VPRA. Each Subcontract shall include the following provision:

Nothing contained in this contract will be deemed to create any privity of contract between VPRA and Subcontractor. Nor will this subcontract create any duties, obligations or liabilities on the part of VPRA to Subcontractor except those allowed under Virginia law. If any claim or dispute arises under this Subcontract or Contractor's contract with VPRA, Subcontractor may look only to Contractor for any payment, redress, relief or other satisfaction. Subcontractor waives any claim or cause of action against VPRA arising out of this Subcontract or in connection with Subcontractor's work.

15.2.5 Debarred Subcontractors

Contractor shall not enter into any Subcontracts with any Subcontractor listed on the excluded parties list published by the System for Awards Management (<https://sam.gov/content/exclusions>) or which is otherwise suspended or debarred from submitting bids by the federal government or the Commonwealth. If any Subcontractor or Person becomes suspended or debarred after commencing Work on the Project, Contractor shall immediately notify VPRA. VPRA shall be entitled to require Contractor to remove the Subcontractor or other Person from the Project and Contractor shall not be entitled to an adjustment to the Contract Price or a Completion Deadline.

15.3 Employee Performance Requirements

All individuals performing the Work must have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If VPRA determines, in its sole discretion, that any Person employed by Contractor or by any Subcontractor is not performing the Work properly and skillfully, or is intemperate or disorderly, then Contractor or Subcontractor must remove that Person and must not re-employ that person on the Project without VPRA's prior written approval. If Contractor or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, VPRA may suspend the affected portion of the Work by delivering written notice to Contractor. A suspension under this clause will not relieve Contractor of any obligation contained in the Contract Documents or entitle Contractor to an adjustment of the Contract Price or a Completion Deadline. Contractor shall promptly resume the Work when compliance is attained and VPRA provides written notice

that Contractor may resume. VPRA reserves the right to require Contractor to disclose the identities of and obtain VPRA's pre-approval for, all employees it intends to utilize in the self-performance of the Work.

ARTICLE 16

(Non-Discrimination)

16.1 Federal Requirements

Contractor and its Subcontractors shall comply with the non-discrimination requirements set forth in Exhibit K of the Contract.

16.2 State Law Provisions

16.2.1 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, Contractor agrees as follows:

1. Contractor 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 Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor 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 Contractor employs more than five employees, Contractor shall (i) provide annual training on Contractor'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 Contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that Contractor owns or leases for business purposes and (b) Contractor's employee handbook.
4. The requirements of these provisions A. and B. are a material part of the Contract. If Contractor 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. Contractor 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.

16.2.2 Where applicable, Contractor and all Subcontractors shall comply with the provisions of the Virginians with Disabilities Act, Va. Code § 51.5-40 *et seq.*

ARTICLE 17

(Suspension)

17.1 Suspension for Convenience

VPRA may suspend all or any part of the Work required under the Contract Documents, at any time and for any reason, by written notice to Contractor. The suspension will remain in effect for the period of time that VPRA deems appropriate for the convenience of VPRA. Contractor shall promptly comply with any written suspension order. Contractor shall promptly recommence the Work upon receipt of written notice from VPRA directing Contractor to resume Work. Except for suspensions of work requested by Contractor, a suspension for convenience shall be considered a VPRA-Caused Delay.

17.2 Suspension for Cause

VPRA may suspend all or part of the Work if Contractor fails to:

- (a) correct conditions unsafe for the Project personnel or general public;
- (b) comply with any Governmental Approval, Law, or otherwise carry out the requirements of the Contract Documents;
- (c) carry out orders of VPRA, including a Directive Letter;
- (d) comply with environmental requirements; or
- (e) comply with requirements for developing and implementing the Quality Plan.

Contractor shall promptly comply with any such written suspension order. Contractor shall promptly recommence the Work upon receipt of written notice from VPRA directing Contractor to resume Work. Contractor shall not be entitled to an adjustment to the Contract Price or Completion Deadlines for a suspension under this Section 17.2 of these General Terms and Conditions.

17.3 Contractor Responsibilities During Suspension

Unless otherwise directed by VPRA, while the Work is suspended, Contractor remains responsible for the Work and for preventing damage or injury to the Project. Contractor shall continue to provide for drainage, obtain and maintain compliance with all Governmental Approvals, maintain all Contractor-provided insurance and bonds, and erect necessary temporary structures, signs or other facilities required to maintain the Project, the Site, and other facilities in the Project vicinity. Contractor shall continue to be responsible for maintenance of traffic in accordance with the requirements of the Contract Documents, for plant and landscape maintenance, and for maintenance during construction, unless otherwise directed by VPRA in writing. If the suspension is for VPRA's convenience, the additional work performed by Contractor during the suspension period will be considered VPRA-Directed Changes, unless the suspension was requested by Contractor.

17.4 Suspension of Early Work

If VPRA suspends an Early Work Package for convenience for more than 180 consecutive Days after issuing the Early Work NTP, Contractor may consider the Early Work as having been terminated for convenience under Article 18 of these General Terms and Conditions. If Contractor wishes to exercise this option, Contractor shall deliver written notice of termination to VPRA,

specifying its effective date. The provisions of Article 18 of these General Terms and Conditions shall apply with respect to the terminated Early Work Package if Contractor exercises this option. This Section 17.4 of these General Terms and Conditions shall not apply to suspensions by VPRA for cause.

17.5 Suspension of Phase 2 Services

If VPRA suspends the Work for convenience for more than 180 consecutive Days after issuing the Phase 2 NTP, Contractor may consider the Contract as having been terminated for convenience under Article 18 of these General Terms and Conditions. If Contractor wishes to exercise this option, Contractor shall deliver written notice of termination to VPRA, specifying its effective date. The provisions of Article 14 of these General Terms and Conditions shall apply if Contractor exercises this option. This Section 17.5 of these General Terms and Conditions shall not apply to suspensions by VPRA for cause.

ARTICLE 18

(Termination for Convenience)

This Article 18 of these General Terms and Conditions shall apply only to Work authorized by an Early Work NTP or Phase 2 NTP. This Article 18 of these General Terms and Conditions shall not apply to the Phase 1 Services.

18.1 Notice of Termination

VPRA may terminate all or part of the Contract (including an Early Work Package) if VPRA determines, in its sole discretion, that termination is in the public interest. VPRA will deliver a written notice of termination to Contractor, specifying the extent and effective date of termination. Contractor and Surety will remain responsible for any claims arising out of the Work performed before the effective date of termination, including any claims for latent defects.

18.1.1 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, Contractor will be entitled to recover in the same manner as if VPRA had terminated the Contract for its convenience as provided in this Article 18 of these General Terms and Conditions.

18.2 Contractor's Responsibilities upon Termination

Contractor shall take the following actions promptly after receiving a notice of termination from VPRA with respect to the terminated Work, regardless of any delay in determining or adjusting any amounts due under this Article 18 of these General Terms and Conditions:

- (a) stop Work as specified in the notice;
- (b) communicate the termination to all affected Subcontractors and cause Subcontractors to stop Work as specified in the notice, unless otherwise authorized in writing by VPRA;

- (c) not enter into additional Subcontracts or place orders for Materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or as necessary to mitigate damages;
- (d) terminate all Subcontracts to the extent that they relate to the Work terminated;
- (e) if directed to do so by VPRA and in the manner directed by VPRA, assign to VPRA all of Contractor's right, title, and interest in the terminated Subcontracts. VPRA will have the right, in its sole discretion, to assume Contractor's rights and responsibilities under the assigned Subcontract accruing after the date of assignment, or to settle or pay any or all claims arising out of terminating those Subcontracts;
- (f) settle all outstanding liabilities and claims arising out of the terminated Subcontracts, with VPRA's prior approval, provided that VPRA shall not be responsible for anticipated profit on work not yet performed as of the effective date of the notice of termination;
- (g) provide VPRA with an inventory list of all Materials previously produced, purchased or ordered from Suppliers for use in the terminated Work and not yet used in the terminated Work, including their storage location. Provide VPRA with any documentation or other property required to be delivered for the terminated Work that is either being developed or has been completed but not yet delivered to VPRA. Provide other information as requested by VPRA. Transfer title and deliver to VPRA, in the manner directed by VPRA,:
 - (i) fabricated or unfabricated parts, Work in process, completed Work, supplies, and other Material produced or acquired for the Work terminated; and
 - (ii) the Construction Documents, and all other completed or partially completed drawings (including plans, elevations, sections, details, and diagrams), specifications, records, samples, information, and other property that would have been required to be furnished to VPRA if the terminated Work had been completed;
- (h) perform, in accordance with the Contract Documents, all Work not terminated by VPRA;
- (i) take all action that may be necessary, or that VPRA directs, for the safety, protection, and preservation of (i) the public, including rail users, motorists, bicyclists, and pedestrians, (ii) the Work, and (iii) the Equipment, machinery, Materials, and property related to the Contract Documents that is in the possession of Contractor and in which VPRA has or may acquire an interest;
- (j) use best efforts to sell any property of the types referred to in Section 18.2(g) of these General Terms and Conditions as directed or authorized by VPRA. Best efforts does not require Contractor to extend credit to any purchaser. Contractor may acquire the property for itself under the conditions prescribed and at prices approved by VPRA. The proceeds of any sale, transfer or disposition will be applied to reduce any payments to be made by VPRA to Contractor due to the termination;
- (k) remove Materials, Equipment, tools and instruments, debris or waste Materials, from all or parts of the Site as directed by VPRA; and
- (l) take other actions directed by VPRA.

18.3 Responsibility After Notice of Termination

Contractor shall remain responsible for damage to Materials after VPRA issues the notice of termination, except as follows:

- (a) Contractor shall not be responsible for damage to Materials for which partial payment has been made as provided in this Agreement when VPRA certifies that Contractor has stored those Materials in the manner and at the locations directed by VPRA; and
- (b) Contractor shall not be responsible for damage to Materials purchased by VPRA after issuing the notice of termination, once VPRA has received and taken title to those Materials.

Contractor shall be relieved of its obligations to provide for continuing safety, security, and maintenance at the Site immediately after VPRA determines that Contractor has completed: (1) the Work directed to be completed before termination, and (2) any other Work that VPRA ordered to secure the Project for termination.

18.4 Negotiated Termination Settlement

18.4.1 Settlement Proposal

Contractor shall submit a termination settlement proposal to VPRA in the form prescribed by VPRA no later than sixty (60) Days after the effective date of termination. Contractor may request a time extension in writing. An extension request must be received by VPRA within the sixty (60)-Day period in which Contractor was to have delivered the termination settlement proposal.

VPRA will review Contractor's termination settlement proposal and will accept it, return it with comments, or reject it. If Contractor fails to submit the proposal within the time allowed, VPRA may determine the amount, if any, due Contractor because of the termination consistent with Section 18.5 of these General Terms and Conditions.

18.4.2 Negotiated Settlement Amount

Contractor and VPRA may agree, as provided in Section 18.4.1 of these General Terms and Conditions, on the whole or any part of the amount due to Contractor because of total or partial termination of Work pursuant to this Article 18 of these General Terms and Conditions. A negotiated settlement may include a reasonable allowance for profit solely on Work that has been completed by the termination date and Accepted by VPRA. The negotiated settlement amount will not exceed the total Contract Price, as reduced by (1) the amount of payments already made, and (2) the value of any non-terminated Work for which the Contractor remains obligated to complete. VPRA will promptly pay the agreed amount to Contractor. A settlement under this Section 18.4 of these General Terms and Conditions is not subject to the limits and requirements of Section 18.5 of these General Terms and Conditions. If VPRA and Contractor enter into a settlement agreement, that agreement will not (1) affect any of VPRA's rights under the Contract Documents with respect to completed Work, (2) relieve Contractor from Contractor's warranty(ies) under the Contract Documents and other obligations with respect to the completed Work, or (3) relieve Contractor of any payment obligations to Subcontractors, or affect obligations under the Performance and Payment Bonds as to completed or non-terminated Work.

18.5 Determination of Settlement Amount if Negotiations Fail

If VPRA terminates the Work pursuant to this Article 18 of these General Terms and Conditions and Contractor and VPRA fail to agree on the whole amount to be paid to Contractor as provided in Section 18.4.2 of these General Terms and Conditions, VPRA will determine the amount payable in accordance with the following, but without duplicating any amounts agreed upon in accordance with Section 18.4 of these General Terms and Conditions.

18.5.1 Payment Amount

VPRA will pay Contractor the sum of the following amounts for Work performed prior to the effective date of the notice of termination, as such amounts are determined by VPRA:

- (a) Contractor's actual reasonable out-of-pocket cost for all Work performed. This includes mobilization, demobilization, and Work performed to secure the Project for termination, including reasonable overhead but also accounting for any refunds related to insurance premiums, deposits, or similar items, as established to VPRA's satisfaction. When VPRA determines the reasonable cost, VPRA will make deductions for the cost of Materials to be retained by Contractor, amounts realized by Contractor's sale of Materials, and other appropriate credits for other funds received by Contractor due to the termination. VPRA will also make deductions for the cost of damaged Materials. When, in VPRA's opinion, the cost of an item of Work is excessively high due to costs incurred to remedy or replace Nonconforming Work, defective or rejected Work, VPRA will allow the estimated reasonable cost of performing that Work in compliance with the requirements of the Contract Documents, and VPRA will disallow the excessive actual cost.
- (b) A fair and reasonable profit on work performed, as determined by VPRA in its sole discretion. VPRA will allow reasonable profit only on the work actually performed and will not allow loss of anticipated profit on terminated Work not performed.

The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section 18.2(f) of these General Terms and Conditions. This excludes amounts paid or payable for supplies or Materials delivered or services furnished by the Subcontractor prior to the effective date of the notice of termination; VPRA will include those amounts under Section 18.5.1(a) of these General Terms and Conditions.

The reasonable out-of-pocket cost incurred to preserve and protect property pursuant to Section 18.2(i) of these General Terms and Conditions, and any other reasonable out-of-pocket cost incidental to terminating the Work. This allowance includes reasonable overhead and Contractor's reasonable costs of handling Material returned to the vendor, delivered to VPRA or otherwise disposed of as directed by VPRA. The allowance also includes a reasonable amount for Contractor's administrative costs in determining the amount due to Contractor as the result of the termination of Work.

18.5.2 Maximum Compensation

Contractor shall not be entitled to any compensation exceeding the amount determined in accordance with Section 18.5.1 of these General Terms and Conditions. Contractor shall not be entitled to recover for items such as unabsorbed overhead and opportunity costs upon termination of the Contract. Contractor shall not be entitled to loss of anticipated profit, except as provided in Section 18.5.1(b) of these General Terms and Conditions. The total amount to be paid to Contractor shall not exceed the total Contract Price less the amount of payments previously made and less the Contract Price of any non-terminated Work. The Contract Price may only be exceeded, however, due to amounts provided for in Sections 18.5.1(c) and (d) of these General Terms and Conditions. If Contractor is entitled to any refund of insurance or bond premiums, deposits or similar items that Contractor previously passed through to VPRA, then Contractor shall arrange for that refund to be paid directly to VPRA, or Contractor shall otherwise credit those refunds to VPRA.

18.5.3 Excluded Items

Except for normal spoilage, and except to the extent that VPRA will have otherwise expressly assumed the risk of loss, the amounts payable to Contractor under Section 18.5.1 of these General Terms and Conditions will exclude the fair value, as determined by VPRA, of Equipment, machinery, Materials, and property that is destroyed, lost, stolen or damaged so as to become undeliverable to VPRA, or to a buyer pursuant to Section 18.2(j) of these General Terms and Conditions. VPRA may analyze the amount set forth in Contractor's Construction Pricing Documents, in addition to other records provided or maintained by Contractor, as a factor in determining the value of the Work terminated.

18.5.4 Payment of Termination Amount

After the amount of the termination payment has been determined, the Parties will execute a Change Order to reflect the agreed termination payment, and VPRA will pay the amount determined.

18.6 Partial Termination

If the termination is partial, the Contract Price for the remainder of the Work will be adjusted as appropriate to account for the change in the overall Project scope.

18.7 Reduction in Amount of Claim

The amount due to Contractor under this Article 18 of these General Terms and Conditions will be reduced by:

- (a) all unliquidated advance or other payments made by VPRA to or on behalf of Contractor applicable to the terminated portion of the Contract;
- (b) the amount of any claim that VPRA may have against any Contractor-Related-Entity in connection with the Contract;
- (c) the agreed price for, or the proceeds of the sale of, any property, Materials, supplies or other things acquired by Contractor or sold, pursuant to the provisions of this Article 18 of these General Terms and Conditions, and not otherwise recovered by or credited to VPRA;
- (d) amounts that VPRA deems advisable, in its sole discretion, to retain to cover any existing or threatened claims relating to the Project, including claims by Utility Owners or claims for which Contractor may be liable under Article 19 of these General Terms and Conditions;
- (e) the cost of repairing any Nonconforming Work;
- (f) the diminished value of Nonconforming Work;
- (g) the additional future costs that VPRA may incur as a result of Nonconforming Work; and
- (h) any amounts due or payable by Contractor to VPRA.

18.8 Inclusion in Subcontracts

Contractor shall include a clause in all Subcontracts requiring the Subcontractor to stop Work on the date and to the extent specified in a notice of termination from VPRA in accordance with this Article 18 of these General Terms and Conditions. Contractor shall require Subcontractors to

insert the same provision in each Subcontract at all tiers. If Contractor fails to include the clause, Contractor is solely responsible for the impacts of failing to add that clause.

18.9 Limitation on Payments to Subcontractors

For the purposes of Sections 18.4.2 and 18.5 of these General Terms and Conditions, upon termination of Work under any Subcontract pursuant to Section 18.2(d) of these General Terms and Conditions, Contractor shall not be entitled to reimbursement for any amount under the Subcontract that would constitute anticipatory or unearned profit on Work not performed, or that would constitute consequential damages on account of the termination or partial termination of the Subcontract.

18.10 No Unearned Profits or Consequential Damages

Contractor shall not be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Article 18 of these General Terms and Conditions. The payment to Contractor determined in accordance with this Article 18 of these General Terms and Conditions constitutes Contractor's sole and exclusive remedy for a termination under this Article 18 of these General Terms and Conditions.

18.11 No Waiver

A termination under this Article 18 of these General Terms and Conditions does not waive any of VPRA's rights or claim to damages, and VPRA may pursue any cause of action related to the Contract. This Section 18.11 of these General Terms and Conditions takes precedence over any contrary clause in the Contract.

18.12 Dispute Resolution

If VPRA and Contractor fail to agree on amounts due under this Article 18 of these General Terms and Conditions, the issue shall be a Dispute eligible for resolution in accordance with Article 20 of these General Terms and Conditions.

18.13 Allowability of Costs

All costs claimed by Contractor under this Article 18 must, at a minimum, be allowable, allocable, and reasonable in accordance with the Contract Documents and applicable Law.

18.14 Provision of Records to Establish Costs

Contractor shall provide such records, including financial and accounting records, as VPRA determines to be necessary to establish the costs and other amounts under this Article 18 of these General Terms and Conditions, including the records identified in Section 23.3.5 of these General Terms and Conditions. Contractor shall cause Subcontractors to provide such records for costs and other amounts associated with Subcontracts. Costs and other amounts that cannot be reasonably established through records made available by Contractor and/or its Subcontractors will not be eligible for reimbursement under this Article 18 of these General Terms and Conditions.

ARTICLE 19

(Indemnification)

19.1 Indemnifications by Contractor

19.1.1 General Indemnification of Virginia Indemnitees

Contractor 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 third-party claims, losses, damages, liabilities, including reasonable attorneys’ fees, costs, and expenses, asserted against a Virginia Indemnitee and arising from Contractor’s performance of, or the failure to perform, the Work.

19.1.2 Losses Due to Negligence or Misconduct of Virginia Indemnitees

Contractor’s indemnity obligations under Section 19.1.1 of these General Terms and Conditions 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 Indemnitee, *however*, Contractor’s indemnity obligations under Section 19.1.3 of these General Terms and Conditions will be in accordance with Exhibit F of the Contract and will not be limited by this Section 19.1.2 of these General Terms and Conditions.

19.1.3 Railroad Operator Indemnifications

In addition to its other indemnification obligations hereunder, Contractor shall indemnify Amtrak and CSXT as provided in Exhibit F of the Contract. In the event of a conflict between the indemnification requirements in Exhibit F of the Contract and this Section 19.1 of these General Terms and Conditions, the terms of Exhibit F of the Contract shall prevail.

19.2 Responsibility of VPRA for Certain Contaminated Materials

19.2.1 Pre-Existing Site Contamination

VPRA may assert that certain third persons or parties may rightfully bear the ultimate legal responsibility for any or all Contaminated Materials that are present on the Site not due to the presence of Contractor. It is further recognized that certain state and federal statutes provide that individuals and firms may be held liable for damages and claims related to Contaminated Materials under such doctrines as joint and several liability and/or strict liability. It is not the intention of the Parties that Contractor be exposed to any such liability to the extent arising out of (a) pre-existing Site contamination, whether known or unknown, except as provided by Law, (b) the handling of such Contaminated Materials not attributable to the negligence, willful misconduct or breach of contract by any Contractor-Related-Entity, and/or (c) the activities of any Persons not described in clause (b) above, including VPRA.

19.2.2 Generator Number for Contaminated Materials

Except for Contaminated Materials for which Contractor is responsible:

- (a) Contractor shall not be required to execute any hazardous materials manifests as a “generator”; and
- (b) Contaminated Materials encountered in the performance of the Work shall be disposed of, if at all, utilizing an EPA identification number or other appropriate legal device obtained by, and carried in the name of, VPRA or another Person designated by VPRA.

19.2.3 Notification of Discovery of Contaminated Materials

Upon discovery of Unknown Pre-existing Contaminated Materials, Contractor shall stop work in the impacted area immediately and shall notify VPRA within 8 hours by any means available and shall provide written notice within 24 hours of such discovery. Contractor shall not resume Work in the impacted area until directed by VPRA.

19.3 No Effect on Other Rights

The foregoing obligations must not be construed to negate, abridge or reduce other rights or obligations that would otherwise exist in favor of a party indemnified hereunder.

19.4 CERCLA Agreement

Without limiting their generality, any requirement for Contractor to indemnify any party entitled to indemnity hereunder with respect to Contaminated Materials is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e), to insure, protect, hold harmless, and indemnify all parties entitled to indemnification hereunder.

ARTICLE 20

(Partnering and Dispute Resolution)

20.1 Partnering

Contractor and VPRA shall enter into a procedure for Partnering as identified within this Article 20 of these General Terms and Conditions for the Phase 2 Services.

Within seven Days after VPRA's issuance of the Phase 2 NTP, Contractor shall arrange a Partnering meeting between Contractor, VPRA, and, if desired, key stakeholders. This meeting will establish:

- (a) Communication procedures; and
- (b) A partnering checklist to be reviewed at Partnering meetings. The checklist will contain items such as quality, communication, issue resolution, team and work relationships, potential and actual disputes, and schedule.

The Parties shall hold Partnering meetings on a regularly scheduled basis to be established at the first Partnering meeting. The Partnering meetings shall be attended primarily by Project-level personnel and shall also include VPRA's Project Manager and Contractor's Project Manager. The Parties shall additionally hold quarterly Partnering meetings attended by VPRA and Contractor management.

20.1.1 Third-Party Facilitator

Contractor and VPRA may employ a third-party facilitator for the Partnering process. A third-party facilitator shall only be used if Contractor and VPRA mutually agree to use a third-party facilitator and mutually agree on the Person to serve as the third-party facilitator. If the Parties agree to use a third-party facilitator, Contractor shall make all arrangements to hire the facilitator and provide a suitable meeting location for the workshops and VPRA will reimburse Contractor for half the costs of the use of the third-party facilitator through a Change Order. Either Party may elect to discontinue use of the third-party facilitator at any time and without cause.

20.2 Dispute Resolution Process

A Dispute under the Contract Documents shall be resolved in accordance with the Dispute Resolution Process herein. Issues may only proceed to the Dispute Resolution Process once all prerequisites to ripening into a Dispute under the Contract Documents have been met. All Disputes must be submitted to the Dispute Resolution Process within 30 days of the date that the Dispute becomes eligible for resolution under this Article 20 of these General Terms and Conditions. Unless VPRA provides a written exception, Disputes not timely submitted in accordance with this Section 20.2 of these General Terms and Conditions shall be considered forever waived, abandoned, barred, and ineligible for any relief based on the acts, omissions, and circumstances underlying the matter.

20.2.1 Escalation Ladder

As a condition precedent to the right to submit a Dispute to the Neutral and thereafter to litigation, the Parties shall first attempt to resolve the Dispute using the Escalation Ladder.

20.2.1.1 Escalation Ladder Process

- (a) Once a Dispute is eligible, the Escalation Ladder may be commenced by submitting a written request to the other Party. Where Contractor is the Party requesting the Escalation Ladder, to the extent not previously provided, Contractor shall submit all information pertaining to the Dispute, including the information upon which Contractor relies in support of its Claim. This includes the information specified in Section 14.4 of these General Terms and Conditions for Requests for Change Orders, including the certifications from both Contractor and any Subcontractors as required by Section 14.6 of these General Terms and Conditions. A request to invoke the Escalation Ladder by Contractor shall not be considered complete until Contractor complies in full with this provision, including by providing all required information concerning the Dispute.
- (b) Provided that the Party seeking to invoke the Escalation Ladder has complied in full with all requisite notice and information requirements set forth in the Contract before a Dispute is eligible for consideration using the Escalation Ladder, the Parties shall meet and commence the Escalation Ladder within 7 days following the invoking Party's complete written request to initiate the Escalation Ladder.
- (c) The Escalation Ladder shall consist of three levels of review and corresponding time periods, as follows:

Review Level	VPRA Reviewer	Contractor Review	Time Limit
1	Construction Lead	[Project level]	10 days
2	Project Manager	[Project Manager]	10 days
3	Senior Representative	[Executive Officer]	20 days

- (d) All Disputes eligible for the Escalation Ladder shall start at Review Level 1. If the Dispute is not resolved at each Review Level within the time limit stated, the Dispute shall be eligible to move to the next Review Level. If reviewers at any Review Level of the Escalation Ladder cannot resolve a Dispute within the applicable time limit, then

they may mutually elect to continue efforts to resolve the Dispute at their level, provided that either reviewer shall have the unilateral right after the applicable time limit to elevate the Dispute to the next Review Level in the Escalation Ladder.

20.2.1.2 Escalation Ladder Outcome

If VPRA and Contractor succeed in resolving all or part of a Dispute using the Escalation Ladder, the Parties shall memorialize the resolution in writing, including execution of any Change Order as appropriate, and perform their respective obligations in accordance therewith. If the Parties are unable to resolve all or part of a Dispute using the Escalation Ladder, then either Party shall have the right, after the time limit has passed for Review Level 3, to invoke the procedures in Section 20.3 and 20.5 of these General Terms and Conditions, subject to the terms thereof, for the unresolved part of the Dispute.

20.3 Use of Neutral for Dispute Resolution

If issue resolution efforts through the Escalation Ladder are not successful, either Party may submit any unresolved part of a Dispute for resolution to a Neutral who will render a Recommendation concerning the Dispute.

20.3.1 Timing of Submission

The Party seeking to invoke the Neutral must submit a request to use the Neutral within 60 days after the conclusion of Review Level 3 without resolution of all or part of any Dispute. The submission of the Dispute to the Neutral shall contain the following information:

- (a) identification of the Change Notice number;
- (b) a description of the Dispute, which shall not exceed one (1) page;
- (c) a description of the attempts to resolve the Dispute showing that the Dispute is eligible to be heard by the Neutral, including the dates on which all prerequisite steps took place;
- (d) copies of relevant correspondence concerning the Dispute; and
- (e) a description of the issues that the Neutral will be requested to address and provide Recommendations.

20.3.2 Effect of Submission to Neutral

Submission of a Dispute to the Neutral is a prerequisite to a Party's right to submit a Dispute to litigation, subject to Section 20.5.1 of these General Terms and Conditions.

20.3.3 Qualifications of Neutral

Within sixty (60) days of issuance of the Phase 2 NTP, the Parties shall meet to select a Neutral for the Project. The Neutral shall be a Person with a background in law and/or engineering and who has substantial experience resolving disputes related to similar types of construction as the Project. The Parties must mutually agree on the Person to serve as the Neutral, provided that a Party may only object to a Neutral candidate in good faith.

Unless otherwise agreed by the Parties, the Neutral may not have a prohibited conflict of interest. A prohibited conflict of interest includes the following:

- (a) A Person who has a financial interest (including equity or stock ownership) in (i) VPRA or (ii) a Contractor-Related-Entity or an Affiliate thereof,

- (b) A Person who has a financial interest in the Project other than engagement as the Neutral;
- (c) A current employee or consultant of (i) VPRA or (ii) a Contractor-Related-Entity or any Affiliate thereof;
- (d) A Person who was previously employed in the two years preceding selection of the Neutral by (i) VPRA or (ii) a Contractor-Related-Entity or any Affiliate thereof;
- (e) A Person who was previously engaged as a consultant in the two years preceding selection of the Neutral by (i) VPRA or (ii) a Contractor-Related Entity or any Affiliate thereof; or
- (f) A Person who has any other actual or apparent conflict of interest that may prevent the Person from impartially considering any Dispute.

Prior to engagement of the Neutral, all candidates to become the Neutral shall submit a sworn disclosure statement identifying any potential prohibited conflict of interest or affirming that no such prohibited conflict of interest is known to exist. Once a Neutral is engaged, the Neutral shall have a continuous, ongoing obligation to disclose any prohibited conflict of interest that arises or of which the Neutral becomes aware.

Once the Parties have agreed on the Neutral, the Parties shall execute an agreement in a form satisfactory to VPRA with the Neutral for the Neutral's services. The Parties shall each be responsible for 50% of the costs of the Neutral process. Contractor shall pay the Neutral in the first instance and submit an invoice to VPRA for VPRA's share.

Except for the exchange of written statements and materials as provided in Section 20.3.5.2 of these General Terms and Conditions, and as may be requested by the Neutral as provided in Section 20.3.5.3 of these General Terms and Conditions, neither Party shall have *ex parte* communications with the Neutral. A party's violation of this restriction shall be grounds for a new Neutral Session with a different Neutral at the sole expense of the Party that improperly engages in *ex parte* communications.

20.3.4 Dismissal of the Neutral

The intention of the Neutral process is to have a single Person serve as the Neutral for the duration of the Project.

Either Party may dismiss the Neutral for any reason at any time. If a Party dismisses the Neutral, the Neutral shall issue a Recommendation for Disputes previously heard at a Neutral Session, but shall not hold any further Neutral Sessions. All Disputes that have been submitted to the Neutral but for which no Neutral Session has taken place shall be stayed until a new Neutral is engaged.

The Parties shall meet within 10 days of dismissal of a Neutral to discuss engagement of a replacement Neutral. The replacement Neutral shall be subject to the same requirements described in Section 20.3.3 of these General Terms and Conditions. The Parties shall follow the same process if a Neutral resigns.

20.3.5 Neutral Procedure

20.3.5.1 Initial Meeting

Within 10 days of the Neutral's receipt of all information required by Section 20.3.1 of these General Terms and Conditions, the Parties shall arrange a meeting with the Neutral to schedule a Neutral Session for presentation of the Dispute. The schedule for the Neutral Session shall

account for sufficient time to comply with the Pre-Neutral Session submissions in Section 20.3.5.2 of these General Terms and Conditions. During this meeting, the Parties and the Neutral shall agree to the amount of time each Party will have to present its position to the Neutral, subject to the total time limit stated in Section 20.3.5.3 of these General Terms and Conditions.

20.3.5.2 Pre-Neutral Session Submissions

In advance of the Neutral Session, the Parties shall perform the following:

- (a) 45 days prior to the Neutral Session, the Parties shall exchange written statements containing their position on the Dispute. The written statements shall be limited to 10 written pages. The Parties may attach no more than 30 pages of exhibits to the written statements. No other information or materials may be submitted with the written statements.
- (b) 20 days prior to the Neutral Session, the Parties shall exchange written statements in rebuttal to the other Party's written statement. The rebuttal statements shall be limited to 5 written pages and 15 pages of exhibits. The rebuttal statements shall only respond to the other Party's arguments in the initial written statements and shall not contain any new arguments or positions. No other information or materials may be submitted with the rebuttal statements.
- (c) 5 days prior the Neutral Session, the Parties shall exchange copies of the presentations they plan to present at the Neutral Session.

Other than as identified in this Section 20.3.5.2 of these General Terms and Conditions, the Parties shall not submit any other materials to the Neutral prior to the Neutral Session, nor may the Neutral consider any other submitted materials. The Parties shall exchange the materials by sending them via electronic transmission to the Neutral without copying the other Party. Once the Neutral receives submissions from both parties, the Neutral will send the materials simultaneously to both Parties. The Neutral may request hard copies of the materials from the Parties.

Neither Party shall be entitled to discover documents or information from the other Party as part of the Neutral process, provided that this limitation shall not in any way limit or otherwise restrict the Parties' rights under the Contract Documents or at law to obtain information from the other Party. Contractor's full compliance with an examination request from VPRA pursuant to Sections 23.1.4 or 23.3 of these General Terms and Conditions shall be a prerequisite to commencement of the Neutral process and the Neutral shall not schedule a Neutral Session until Contractor has fully complied with VPRA's request for information about a Claim or Dispute and VPRA has had no fewer than 15 days to perform a detailed examination of the information and materials provided.

20.3.5.3 Neutral Session

The Parties and the Neutral shall hold a Neutral Session at which the Parties present their positions to the Neutral. A Neutral Session for a single Dispute shall not exceed 6 hours in total duration, including presentations by the Parties and questions from the Neutral.

The Parties' presenters during the Neutral Session shall be limited to project staff with knowledge of the Dispute. Notwithstanding the foregoing, the Parties may engage experts solely to present on cost and schedule impacts. Experts who do not have direct knowledge of the Dispute shall not be permitted to present on technical issues. Legal counsel shall not be permitted to present during the Neutral Session but may attend the Neutral Session provided that the Party intending

to have legal counsel present provide no less than 5 days' notice prior to the Neutral Session of its intention.

During the Neutral Session, the Neutral may ask questions of each Party relevant to the Dispute. The Neutral may also hold private conversations with each Party to discuss the Dispute during the designated time for the Neutral Session. If the Neutral finds it necessary, the Neutral may request that the Parties provide supplemental information on a specific issue relevant to the Dispute. Such supplemental information shall be limited to 5 written pages and 10 pages of exhibits and must be submitted to the Neutral within 10 days after requested by the Neutral. The Neutral shall distribute the supplemental information to both Parties in the same manner provided for exchange of written Materials in Section 20.3.5.2 of these General Terms and Conditions. The Neutral Session shall not be considered concluded until receipt by the Neutral of any supplemental material requested.

20.3.6 Recommendation

Within 30 days of the conclusion of a Neutral Session, the Neutral shall issue written Recommendations concerning the Dispute. The Recommendations shall explain the Neutral's view of the Dispute, including the arguments of each Party that have merit and the arguments that lack merit. The Recommendations shall be limited to 10 pages and may refer to the materials submitted by the Parties in accordance with Section 20.3.5.2 and 20.3.5.3 of these General Terms and Conditions.

The Parties may hold a follow-up meeting with the Neutral for further discussion or clarification of the Recommendations. Any such follow-up meeting shall be limited to two hours in duration and shall not include any further written submissions or presentations by the Parties.

20.3.7 Confidentiality

Except as otherwise provided by Law, all materials submitted and exchanged as part of the Neutral process shall be considered confidential and to have been prepared in contemplation of settlement, and deemed inadmissible in any subsequent proceedings under Section 20.5 of these General Terms and Conditions or otherwise. This includes all written materials submitted in advance of the Neutral Session, the Recommendations, any supplements to the foregoing, and the substance of any communications between the Parties in connection with the Neutral process. The foregoing shall not be construed to prevent the discovery or admissibility of information or materials otherwise discoverable or admissible separate and apart from their inclusion in the Neutral process.

20.3.8 Neutral Process is Non-Binding

The Neutral process shall be non-binding on the Parties. The Parties are not required to accept or reject the Recommendations in any manner, but are encouraged to use the Recommendations to facilitate resolution of the Dispute.

20.4 Continuation of Work During a Dispute

Failure by VPRA to pay any amount in dispute shall not alleviate, diminish, or modify in any respect Contractor's obligation to perform under the Contract Documents, including Contractor's obligation to achieve the Completion Deadlines and perform all Work in accordance with the Contract Documents. At all times while any dispute is pending or during the Dispute Resolution Process, Contractor and all Contractor-Related Entities shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay or slow down, in accordance with the Contract Documents, except to the extent enjoined by order of a court or otherwise specified or directed by VPRA.

20.5 Litigation of Unresolved Disputes

20.5.1 Tolling of Claims and Statute of Limitations

Neither Party may invoke the option to litigate the unresolved Disputes in accordance with Section 20.5.2 of these General Terms and Conditions until Contractor has identified all outstanding Claims concurrently with its submission to VPRA of the Application for Final Payment pursuant to Section 12.9 of these General Terms and Conditions (and has released and waived all other potential Claims), and only after full compliance of each Unresolved Dispute with Article 14 and Sections 20.2 and 20.3 of these General Terms and Conditions.

The Parties waive any defense predicated on the expiration of the statute of limitations applicable to a Dispute, provided that all Unresolved Disputes are consolidated into a single litigation that is commenced within the later of: (i) 60 Days after Final Acceptance or (ii) 30 Days after the Neutral has issued a Recommendation on all Disputes submitted to the Neutral. Any Disputes not included in the single action shall be deemed forever and irrevocably waived, abandoned, and barred and no recovery shall be permitted for the actions, omissions or circumstances comprising such waived Disputes.

The foregoing restriction on the commencement of litigation shall not apply to causes of action that are not related to or arising from a pending Claim or Dispute under the Contract Documents, including the right to seek equitable relief for matters unrelated to a Claim or Dispute.

20.5.2 Litigation

Subject to Section 20.5.1 of these General Terms and Conditions, either Party shall have the right to initiate litigation for Unresolved Disputes. All litigation between the Parties shall be as provided in Section 25.8 of these General Terms and Conditions.

20.6 Attorney's Fees

Except as otherwise provided herein, each Party shall bear its own attorney's fees and expenses incurred in connection with the Dispute Resolution Process, regardless of the outcome.

ARTICLE 21

(Default)

21.1 Default by Contractor

21.1.1 Events of Default

Contractor shall be in default if any one or more of the following events or conditions occur:

- (a) Contractor fails to promptly begin the Work under the Contract Documents after VPRA issues a Phase 1 NTP, Early Work NTP or Phase 2 NTP, as applicable, authorizing such Work;
- (b) Contractor fails to perform the Work with sufficient resources to ensure the Work is completed promptly;
- (c) Contractor fails to comply with the Quality Plan;
- (d) Contractor fails to perform the Work in accordance with the Contract Documents;
- (e) Contractor refuses to remove and replace rejected Materials or Nonconforming or unacceptable Work, or fails to remove and replace workers as directed by VPRA under Section 15.3 of these General Terms and Conditions;

- (f) Contractor stops prosecuting the Work (unless due to one of the following:
 - (i) VPRA suspends or terminates the Work;
 - (ii) a Force Majeure event occurs; or
 - (iii) VPRA fails to pay Contractor undisputed sums, subject to Section 21.3 of these General Terms and Conditions;
- (g) Contractor fails to resume performing Work that has been suspended or stopped after receipt of notice from VPRA to do so within the time stated in VPRA's notice or (if applicable) after the event or condition preventing performance has ceased;
- (h) Contractor breaches any other agreement, representation or warranty contained in the Contract Documents;
- (i) Contractor fails to perform any other obligation under the Contract Documents, including EEO requirements;
- (j) Contractor fails to provide and maintain the required insurance;
- (k) Contractor fails to provide and maintain the required Performance and Payment Bonds;
- (l) Contractor assigns or transfers the Contract Documents or any right under the Contract Documents, except as expressly permitted under Section 25.3 of these General Terms and Conditions;
- (m) Contractor fails to make undisputed payment when due for labor, Equipment or Materials in accordance with its agreements with Subcontractors or Suppliers and applicable law;
- (n) Contractor fails to comply with any Law or Governmental Approval; or fails reasonably to comply with the instructions of VPRA consistent with the Contract Documents, including Directive Letters;
- (o) Contractor fails to discharge or obtain a stay within ten (10) Days of any final judgment(s) or order for the payment of money against it in excess of \$100,000 in the aggregate arising out of the prosecution of the Work (provided that, for purposes hereof, posting of a bond in the amount of 125 percent of such judgment or order will be deemed an effective stay);
- (p) Contractor has become insolvent, is generally not paying Contractor's debts as they become due, admits in writing that Contractor is unable to pay its debts, or makes an assignment for the benefit of creditors;
- (q) Any Guarantor has become insolvent, is generally not paying its debts as they become due, admits in writing that Guarantor is unable to pay its debts, or makes an assignment for the benefit of creditors;
- (r) Contractor or a Principal Participant is the subject of any voluntary or involuntary insolvency, receivership, reorganization, or bankruptcy proceedings, and Contractor fails to have those proceedings dismissed within sixty (60) Days;
- (s) VPRA determines that any representation or warranty made by Contractor or any Guarantor in the Contract Documents or in any certificate, schedule, instrument or other document delivered pursuant to the Contract Documents was false or materially misleading when made;
- (t) Contractor or any Guarantor is a party to fraud;

- (u) Any Guarantor revokes or attempts to revoke its obligations under the Guaranty, or otherwise takes the position that such instrument is no longer in full force and effect;
- (v) Contractor or a Principal Participant is debarred or suspended by the Commonwealth or is suspended or debarred by any federal agency;
- (w) Contractor communicates that it cannot perform its obligations under the Contract Documents; or
- (x) Contractor fails to complete the Phase 1 Services within 400 Days, or any extended date in accordance with Section 7.0 of the Contract, after the date VPRA issues the Phase 1 Services NTP.

21.1.2 Right to Cure

- (a) VPRA may, at any time, notify Contractor in writing that Contractor is in default pursuant to Section 21.1.1 of these General Terms and Conditions. After VPRA gives written notice, Contractor shall have thirty (30) Days to cure the identified breach before VPRA declares an Event of Default. There are two exceptions to the notice provisions and the right to cure: (1) the cure period will only be three (3) Days for a breach under Section 21.1.1(j) of these General Terms and Conditions and (2) no notice and opportunity to cure is required for any breach which by its nature cannot be cured, including the breaches described in Sections 21.1 (k), (p), (s), and (u) of these General Terms and Conditions. If a breach for which a thirty (30)-Day cure period is provided is curable but by its nature cannot be cured within thirty (30) Days, as determined by VPRA, VPRA will not declare an Event of Default if Contractor commences the cure within the thirty (30)-Day cure period and thereafter diligently prosecutes the cure to completion. No cure period may exceed sixty (60) Days in total.
- (b) If VPRA believes a condition affecting the Project poses an immediate and imminent danger to public health or safety, VPRA may rectify the condition at Contractor's cost without giving notice or providing any cure period. Public safety is paramount for VPRA; Contractor shall be liable for the costs to correct the danger to the public health or safety even if VPRA was under a mistaken belief that the occurrence of a breach or default required VPRA to take such action. VPRA's good faith determination of the existence of such danger will be deemed conclusive in the absence of clear and convincing evidence to the contrary.
- (c) If Contractor fails to cure any curable breach in accordance with this Section 21.1.2 of these General Terms and Conditions and VPRA declares an Event of Default, VPRA may exercise the remedies in Section 21.2 of these General Terms and Conditions.

21.2 Remedies

21.2.1 Rights of VPRA

If an Event of Default occurs as provided in Section 21.1.2 of these General Terms and Conditions, then, in addition to all other rights and remedies provided by law or equity or available under the Contract Documents or otherwise, including the rights to recover Liquidated Damages and to seek recourse against the Performance and Payment Bonds required hereunder, any Guaranty, and/or other performance security, VPRA will have the following rights and remedies, without further notice, and without prejudice to any of its other rights or remedies and without waiving or releasing Contractor from any obligations, and Contractor shall have the following obligations (as applicable):

- (a) VPRA may order Contractor to suspend or discontinue the Work or any portion of the Work;
- (b) VPRA may terminate the Contract or a portion thereof, in which case, the provisions of Sections 17.2 and 18.4 of these General Terms and Conditions apply;
- (c) If and as directed by VPRA, Contractor shall withdraw from the Site and must remove such Materials, Equipment, tools, and instruments used by, and any debris or waste Materials generated by, any Contractor-Related-Entity in the performance of the Work;
- (d) Contractor shall deliver to VPRA possession of any or all facilities of Contractor located on the Site as well as any or all Work Product, Construction Documents, and all other completed or partially completed drawings (including plans, elevations, sections, details, and diagrams), specifications, records, information, schedules, samples, and other documents that VPRA deems necessary for completion of the Work;
- (e) Contractor shall confirm the assignment to VPRA of the Subcontracts requested by VPRA, and Contractor shall terminate, at its own cost and without recourse from VPRA, all other Subcontracts;
- (f) VPRA may deduct from any amounts payable by VPRA to Contractor such amounts payable by Contractor to VPRA, including Liquidated Damages or other damages payable to VPRA under the Contract Documents or at law;
- (g) VPRA will have the right, but not the obligation, to pay such amount and/or perform such act(s) as may then be required for the Project;
- (h) VPRA, without incurring any liability to Contractor, will have the rights (i) to take the performance of all or a portion of the Work from Contractor (either with or without the use of Contractor's Materials, Equipment, tools, and instruments) and enter into an agreement with another Person for the completion of such Work; or (ii) to use such other methods, as in the opinion of VPRA, will be required for the completion of the Project; and/or
- (i) If VPRA exercises any right to perform any obligations of Contractor, in the exercise of such right VPRA may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such Work; (ii) spend such sums as VPRA deems necessary and reasonable to employ and pay such architects, engineers, consultants, and contractors, and obtain Materials and Equipment as may be required for the purpose of completing such Work; (iii) execute all applications, certificates, and other documents as may be required for completing the Work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions that it may consider necessary to complete the Work; and (vi) prosecute and defend any action or proceeding incident to the Work.

21.2.2 Liability of Contractor

21.2.2.1 Occurrence of Event of Default

If an Event of Default has occurred, Contractor, its Principal Participants, Surety, and any Guarantor(s) shall be jointly and severally liable to VPRA for all costs VPRA reasonably incurs to complete the Work or to have the Work completed by others. This liability is in addition to any other damages under the Contract Documents other than those costs intended to be covered by Liquidated Damages payable under the Contract Documents. Costs of completing the Work include re-procurement costs, cost of construction, throw away costs for unused portions of the completed Work, and increased financing costs. If an Event of Default has occurred, VPRA will

be entitled to withhold all or any portion of further payments to Contractor until VPRA determines the amount (if any) that VPRA owes to Contractor. VPRA will promptly notify Contractor in writing of the amount due to Contractor from VPRA, or due to VPRA from Contractor. VPRA will deduct all costs and charges incurred by VPRA, including attorney's, accountant's, and expert witness' fees and costs, together with the cost of completing the Work, under the Contract Documents, from any sum due (or which may become due) to Contractor. If the amount due to VPRA exceeds the amount that would have been payable under the Contract, then Contractor, its Principal Participants, its Surety(ies), and any Guarantor shall be liable for the difference, and shall promptly pay the difference to VPRA.

21.2.2.2 Alternative to Terminating the Contract and Completing the Work

Instead of exercising the other provisions of this Section 21.2 of these General Terms and Conditions for terminating the Contract and completing the Work, VPRA may pay Contractor for the portions of Work already performed in accordance with the Contract Documents and may eliminate the remaining portions of the Work and treat the remaining portions as if they had never been included or contemplated by the Contract Documents. If VPRA exercises this option, Contractor shall not be entitled to prospective profits on, or any other compensation relating to, Work that Contractor did not complete.

21.2.2.3 Termination Deemed to Constitute a Termination for Convenience

If VPRA terminates the Contract for grounds that are later determined not to justify a termination for default, then the termination will be deemed a termination for convenience pursuant to Article 18 of these General Terms and Conditions.

21.2.2.4 Damages Resulting From Contractor's Breach or Failure to Perform

If VPRA suffers damages because Contractor failed to perform an obligation under the Contract Documents, VPRA will be entitled to recover those damages from Contractor regardless of whether the breach or failure that caused the damages ripens into an Event of Default. Contractor, its Principal Participants, Surety, and Guarantor shall be jointly and severally liable for such damages.

21.2.2.5 Cumulative Remedies

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.

21.2.2.6 Continued Liability of Contractor and Surety

Contractor, any Guarantor, and Surety will not be relieved of liability for continuing Liquidated Damages because VPRA has declared an Event of Default or taken other actions under this Section 21.2 of these General Terms and Conditions.

21.3 Right to Stop Work if Undisputed Payment is Not Made

Contractor has the right to stop Work if VPRA fails to make an undisputed payment. As a precondition to exercising such right, Contractor must submit written notice of nonpayment to VPRA after VPRA's thirty (30) Days to make such payment have lapsed without payment by VPRA, and sixty (60) Days must thereafter elapse without payment of the undisputed amounts

from VPRA after VPRA's receipt of such notice. If Contractor stops Work under this Section 21.3 of these General Terms and Conditions, that stoppage will be considered a suspension under Section 17.1 of these General Terms and Conditions. Contractor shall not have the right to terminate the Contract for default if VPRA fails to make an undisputed payment when due, but Contractor shall have the right to declare a termination for convenience under Article 18 of these General Terms and Conditions upon meeting the requirements of Section 17.5 of these General Terms and Conditions. For purposes of clarity, Contractor shall not be entitled to declare a termination for convenience until no less than 240 Days have elapsed since the expiration of VPRA's thirty (30) Days to make payment have passed without payment by VPRA.

21.4 Notice and Opportunity to Cure Other Types of VPRA Breaches

If VPRA breaches the Contract (other than by failing to make payments to Contractor as provided in Section 21.3 of these General Terms and Conditions), Contractor shall provide a written notice to VPRA describing the breach. VPRA will have 30 Days from the date VPRA received the notice to cure the breach. The thirty (30)-Day cure period is extended for any breach that is capable of cure but by its nature cannot be cured within thirty (30) Days; in such case, VPRA will have an additional period of time as may be reasonably necessary to cure the breach so long as VPRA commences the cure within the 30-Day period and diligently proceeds to cure the breach. Contractor shall have no right to exercise any remedies to which it may be entitled at law or in equity until (1) Contractor has given the required notice and (2) the cure period has lapsed and VPRA has not cured the breach.

21.5 Availability of Funds; Appropriation

This Agreement 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 Agreement 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. At Contractor's request, VPRA shall promptly furnish reasonable evidence satisfactory to Contractor that VPRA has adequate funds available and committed to fulfill all of VPRA's contractual obligations under the Contract Documents.

ARTICLE 22

(Acceptance of Project)

22.1 Substantial Completion

22.1.1 Notice by Contractor

Contractor shall provide written notice to VPRA when all of the following have occurred:

- (a) Contractor has completed all Work, except for Punch List items and other items only included in the requirements for Final Acceptance;
- (b) Contractor has ensured that the Work has been performed in accordance with the requirements of the Contract Documents;
- (c) Contractor has received all applicable Governmental Approvals required for Project use;
- (d) Contractor has furnished to VPRA certifications from Contractor's Project Manager, in form and substance satisfactory to VPRA, certifying conformity of the construction with the Contract Documents;

- (e) Contractor has furnished to VPRA certifications from Contractor's quality manager, in form and substance satisfactory to VPRA, certifying that there are no outstanding nonconformances other than those identified on the Punch List and that such nonconformances will be corrected;
- (f) Contractor has furnished to VPRA a certification from Contractor's quality manager, in form and substance satisfactory to VPRA, certifying that the Work is completed in accordance with the requirements of the Contract Documents.
- (g) Contractor has ensured that the Project may be used without damage to the Project or any other property on or off the Site, and without injury to any Person;
- (h) Contractor has obtained all applicable Third-Party approvals relating to the Work and all Third-Parties have completed all Work that involves obligations by Contractor;
- (i) Contractor has removed all temporary facilities, supports, staging, storage and equipment that require interruption of the final rail and vehicle traffic configuration to remove;
- (j) Contractor has ensured that the bypass structure and track are accessible to rail traffic and all other elements of the Project are complete and functional for final traffic configuration;
- (k) CSXT has inspected the Work and issued a written certificate that the Work is substantially complete; and
- (l) Completion of Punch List items and final cleanup and other construction operations will not alter the final traffic configuration.

When Contractor submits the foregoing, Contractor shall also submit the proposed Punch List to VPRA.

22.1.2 Correction of Defects

Upon receipt of Contractor's notice under Section 21.1.1 of these General Terms and Conditions, VPRA will conduct such inspections, surveys, and/or testing as VPRA deems desirable. If such inspections, surveys, and/or tests disclose that any Work does not meet the requirements of Section 21.1.1 of these General Terms and Conditions or the Contract Documents, VPRA will promptly advise Contractor as to Nonconforming Work (including incomplete Work) necessary to be corrected as a condition to Substantial Completion, Nonconforming Work (including incomplete Work) that may be corrected as Punch List items, and/or whether Contractor shall reassess the accuracy and completeness of its notice. Upon correction of the Nonconforming Work (including incomplete Work) identified as a prerequisite to Substantial Completion, Contractor shall provide written notification to VPRA and VPRA will conduct additional inspections, surveys, and/or tests as VPRA deems desirable. This procedure shall be repeated until VPRA finds that Contractor has met all prerequisites to Substantial Completion.

22.1.3 Notice of Substantial Completion

VPRA will issue a Notice of Substantial Completion when:

- (a) VPRA determines that all conditions set forth in Section 21.1.1 of these General Terms and Conditions have been satisfied;
- (b) VPRA determines that all Nonconforming Work (including incomplete Work) identified as prerequisites to Substantial Completion has been corrected or may be included in the Punch List, or VPRA has Accepted the Nonconforming Work in accordance with Section 6.5.3 of these General Terms and Conditions; and

(c) VPRA has Approved Contractor's Punch List.

22.2 Final Acceptance

22.2.1 Conditions to Final Acceptance

22.2.1.1 Performance of Work After Substantial Completion

Promptly after VPRA has issued the Notice of Substantial Completion, Contractor shall perform all Work included on the Punch List. Contractor shall also satisfy all of its other obligations under the Contract Documents, including ensuring that the Project has been completed and all components have been properly adjusted and tested.

22.2.1.2 Conditions to Affidavit of Final Completion

Contractor shall provide to VPRA an executed and sworn Affidavit of Final Completion stating the following, in addition to including the statement in Section 21.2.1.3 of these General Terms and Conditions:

- (a) all requirements for Substantial Completion have been fully satisfied and VPRA has issued Notice of Substantial Completion;
- (b) VPRA has received all Work Product, As-Built Documents, right-of-way record maps, surveys, material certifications, redlined drawings, operating manuals, test data, manufacturer's warranties and warranty assignments, and other deliverables required under the Contract Documents;
- (c) all special tools, Equipment, furnishings, and supplies purchased by and/or used by Contractor as provided in the Contract Documents have been delivered to VPRA and all replacement spare parts have been purchased and delivered to VPRA free and clear of Liens;
- (d) all of Contractor's and Subcontractors' personnel, supplies, Equipment, waste materials, rubbish, and temporary facilities have been removed from the Site, Contractor has restored and repaired all damage or injury arising from such removal to the satisfaction of VPRA, and the Site is in good working order and condition;
- (e) Contractor has furnished to VPRA certifications from Contractor's Project Manager, in form and substance satisfactory to VPRA, certifying conformity of the construction with the Contract Documents;
- (f) Contractor has furnished to VPRA certifications from Contractor's quality manager, in form and substance satisfactory to VPRA, certifying that there are no outstanding nonconformances;
- (g) Contractor has furnished to VPRA certifications from Contractor's Environmental Compliance Manager, in form and substance satisfactory to VPRA, certifying that the Work is completed in accordance with the environmental requirements, including the completion of the Environmental Compliance Plan;
- (h) the Punch List items have been completed to the satisfaction of VPRA;
- (i) all of Contractor's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance as determined by VPRA) have been satisfied in full or waived in writing by VPRA;
- (j) Contractor has furnished a list of the Unresolved Disputes to VPRA;

- (k) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect VPRA's interests;
- (l) Contractor has provided certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents; and
- (m) deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier. The rectification of such deficiencies in the Work will be deemed warranty Work. Contractor shall correct such deficiencies pursuant to Section 4.1 of these General Terms and Conditions, and VPRA may withhold from the final payment the reasonable value of completion of the deficient work until that work is completed.

In addition to confirming that Contractor has met the preceding conditions, Contractor shall attach such documents to the affidavit as are necessary to comply with the conditions or demonstrate compliance with the conditions.

22.2.1.3 Requirements of Affidavit of Final Completion

The Affidavit of Final Completion referred to in Section 21.2.1.2 of these General Terms and Conditions must include the following statement:

To the best of Contractor's knowledge and belief, the Work under the Contract has been completed in strict accordance with the Contract Documents, no lawful debts for labor or Materials are outstanding, and no federal excise tax has been included in the Contract Price; all requests for funds for undisputed Work under the Contract, including changes in the Work, and under all billings of whatsoever nature are accurate, complete, and final and no additional compensation over and above the Final Payment will be requested or is due under the Contract or under any adjustment issued thereunder for said undisputed Work; except for the disclosed Unresolved Disputes and other disclosed claims and disputes, there are no outstanding claims, Liens or stop work notices relating to the Project, including claims by Utility Owners, Subcontractors, and Suppliers; there is no existing default by Contractor under any Utility Agreement, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a claim relating to the Work or Event of Default under any Utility Agreement; and upon receipt of Final Payment, Contractor and Subcontractors acknowledge that VPRA and any and all employees of VPRA and their authorized representatives will thereby be released, discharged, and acquitted from any and all claims or liability for additional sums on account of undisputed Work performed under the Contract.

If Contractor is unable to provide the affidavit in the above form, the affidavit will certify that all such outstanding matters are set forth in an attached list that will describe the outstanding matters in such detail as may be requested by VPRA. If the affidavit discloses the existence of claims relating to Subcontractors, Suppliers, and/or Utility Owners, the affidavit shall include a representation of Contractor that it is diligently and in good faith contesting all such matters by appropriate legal proceedings and will provide a status report regarding the same, including an estimate of the maximum payable amount with respect to each such matter.

22.2.2 Inspection and Issuance of Notice of Final Acceptance

Upon VPRA's receipt of the Affidavit of Final Completion, VPRA will make final inspection and VPRA will either issue a Notice of Final Acceptance or notify Contractor regarding any Work remaining to be performed. If VPRA does not issue a Notice of Final Acceptance, Contractor shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, Contractor

shall provide to VPRA a revised Affidavit of Final Completion with a new date based on when the defective and/or uncompleted portions of the Work were corrected. The foregoing procedure will apply successively thereafter until VPRA has issued a Notice of Final Acceptance.

22.2.3 Overpayments; No Relief from Continuing Obligations

Final Acceptance will not prevent VPRA from correcting any measurement, estimate or certificate made before or after completion of the Work, or from recovering from Contractor, the Surety(ies), and/or any Guarantor, the amount of any overpayment sustained due to failure of Contractor to fulfill the obligations under the Contract Documents. A waiver on the part of VPRA of any breach by Contractor shall not be held to be a waiver of any other or subsequent breach. Final Acceptance shall not relieve Contractor from any of its continuing obligations hereunder or constitute any assumption of liability by VPRA.

22.3 Clayton Act Assignment

Contractor hereby offers and agrees to assign to VPRA all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), arising from purchases of goods, services or Materials pursuant to the Contract or any Subcontract. This assignment will be made and become effective at the time VPRA tenders Final Payment to Contractor, without further acknowledgment by the parties.

ARTICLE 23

(Documents and Records)

23.1 Construction Pricing Documents

23.1.1 Contents of Construction Pricing Documents

The Construction Pricing Documents (“CPDs”) shall consist of all cost, unit pricing, price quote, and other documentary information used in preparation of the Phase 2 Price and any Early Work Price, and provided to VPRA as part of the Construction Cost Estimates. The CPDs shall clearly detail how each cost or price included in the Final Binding GMP Proposal or Early Work Proposal has been determined and shall show cost or price elements in sufficient detail adequate to enable VPRA to understand how Contractor calculated the applicable price. For steel, the CPDs shall show the unit price and assumed quantity used in the Construction Cost Estimates.

The CPDs provided in connection with quotations and Change Orders shall clearly detail how the total cost or price and individual components of that cost or price were determined. The CPDs shall itemize the estimated costs or price of performing the Work separated into usual and customary items and cost or price categories to present a detailed estimate of costs and price, such as direct labor, repair labor, Equipment ownership and operation, expendable Materials, permanent Materials, supplies, Subcontract costs, plant and Equipment, insurance, bonds, letters of credit, indirect costs, contingencies, mark-up, overhead, and profit. The CPDs shall itemize the estimated annual costs of insurance premiums for each coverage required to be provided by Contractor under the Contract Documents. The CPDs shall include all assumptions made in determining the scope of the Work and calculating the applicable price, detailed quantity takeoffs, price reductions and discounts, rates of production and progress calculations, and quotes from Subcontractors used by Contractor to arrive at the Phase 2 Price or Early Work Price and any adjustments to the Contract Price.

23.1.2 Manner and Duration of Retaining Construction Pricing Documents

Prior to execution of each Early Work Amendment and the Phase 2 Amendment, Contractor shall deliver to VPRA one final copy of all the CPDs and a detailed index and catalog of the CPDs used to calculate the price of each Early Work Package and the Phase 2 Services. Upon execution of each Early Work Amendment and the Phase 2 Amendment, the CPDs and index shall be held in locked fireproof cabinet(s) supplied by Contractor and located in VPRA's project office with the key to the fireproof cabinet(s) held only by Contractor. Further, concurrently with execution of each Subcontract or with approval of each Change Order or amendment to any Contract Document, the Parties shall add to the cabinet one copy of all documentary information respecting the Subcontractor bidding, pricing by the Subcontractor, or used in preparation of the Change Order or amendment, and shall update the index and catalog.

23.1.3 Retention of Construction Pricing Documents

The CPDs and index and catalog shall be held in such cabinet or otherwise maintained until all of the following have occurred:

- (a) 180 days have elapsed from the earlier of Final Acceptance or termination of the Contract;
- (b) All Claims or Disputes regarding the Work have been settled; and
- (c) The Final Payment has been made and accepted.

The release of the CPDs from the locked cabinet shall not impair Contractor's obligation to maintain all Project records in accordance with Section 23.3 of these General Terms and Conditions.

23.1.4 Availability for Review

The CPDs shall be available during business hours for joint review by Contractor and VPRA, or by Contractor, VPRA, and any dispute resolver as provided in Article 14 of these General Terms and Conditions, and in connection with approval of the Baseline Schedule and any updates thereto, negotiation of Change Orders, resolution of Claims or disputes under the Contract Documents, and aiding in determining the value of terminated Work. VPRA will be entitled to review all or any part of the CPDs to satisfy itself regarding the applicability of the individual documents to the matter at issue. Contractor shall provide access to VPRA for review of the CPDs upon 24 hours' notice.

23.1.5 Proprietary Information

The CPDs are, and shall always remain, the property of Contractor and shall be considered to be in Contractor's possession, subject to VPRA's right to review the CPDs as provided in this Section 23.1.5 of these General Terms and Conditions. Contractor shall have and control the keys to the cabinet containing the CPDs. VPRA acknowledges that Contractor may consider that the CPDs constitute trade secrets or proprietary information. VPRA will have the right to copy the CPDs for the purposes set forth in this Section 23.1.5 of these General Terms and Conditions, provided that the Parties execute a mutually agreeable confidentiality agreement with respect to CPDs that constitute trade secrets or proprietary information, which confidentiality agreement shall explicitly acknowledge that it is subject to applicable Law (including VFOIA). If VPRA receives a request for disclosure of information under VFOIA that could be construed to request production of Contractor's CPDs or copies thereof held by VPRA, VPRA will notify Contractor of the request.

23.1.6 Contractor Representation

Contractor represents and warrants that the CPDs constitute all documentary information used in the preparation of the Construction Cost Estimates, Final Binding GMP Proposal, and each Early Work Proposal. Contractor agrees that no other information used to prepare the Final Binding GMP Proposal or an Early Work Proposal will be considered in resolving Disputes or Claims. Contractor further agrees that the CPDs are not part of the Contract Documents and that nothing in the CPDs shall change or modify any Contract Document.

23.1.7 Form of CPDs

Except as otherwise provided in the Contract Documents, Contractor shall submit the CPDs in such format as is used by Contractor in connection with the Construction Cost Estimates. Contractor represents and warrants that the CPDs provided with the Final Binding GMP Proposal and each Early Work Proposal were personally examined by an authorized officer of Contractor prior to delivery, and that the CPDs meet the requirements of this Section 23.1 of these General Terms and Conditions. Contractor further represents and warrants that all additional CPDs to be provided hereunder were or will be personally examined prior to delivery by an authorized officer of Contractor, and that they shall meet the requirements of this Section 23.1 of these General Terms and Conditions.

23.1.8 Review by VPRA to Confirm Completeness

VPRA may at any time conduct a review of the CPDs to determine whether they are complete. If VPRA determines that any data is missing from a CPD, Contractor shall provide such data within three Days after delivery of VPRA's request for such data. At the time of its submission to VPRA, such data will be date stamped, labeled to identify them as supplementary CPD information, added to the CPDs, and added to the CPD catalog. Contractor shall have no right to add documents to the CPDs except upon VPRA's request and as provided by Section 23.1.9 of these General Terms and Conditions.

23.1.9 CPDs for Change Order Pricing

Contractor shall supplement the CPDs with all documents to prepare the pricing of Change Orders. The CPDs associated with any Change Order or Contract Price adjustment under this Contract shall be reviewed, organized, and indexed in the same manner as the original CPDs.

23.2 Subcontractor Documents

23.2.1 Subcontractor Bidding Documents

For each Subcontractor, Contractor shall add to the CPDs all bid documents to procure the Subcontractor, including the solicitation materials, all bids received, and records of any negotiations with the selected Subcontractor. Contractor shall also include any document generated in accordance with the competitive bidding requirements in the Subcontracting Plan for each Subcontractor procurement, including, if applicable, written approval from VPRA for Contractor to select a Subcontractor other than the lowest priced responsible bidder.

23.2.2 Subcontractor Pricing Documents

Contractor shall require each Subcontractor to submit to Contractor a copy of all documents used in determining its Subcontract price. Contractor shall also require each Subcontractor to submit a copy of all documents to determine the price of a Subcontractor change order greater than \$25,000. Contractor shall require each such Subcontractor to submit the documents immediately prior to executing the relevant Subcontract or Subcontractor change order in the same manner as the CPDs. Each Subcontract shall provide that the Subcontractor CPDs will be accessible by

Contractor, VPRA, and other dispute resolvers on terms substantially similar to those contained in Article 14 of these General Terms and Conditions. Contractor shall ensure that each Subcontract subject to this Section 23.2 of these General Terms and Conditions includes a representation and warranty from the Subcontractor stating that its CPDs include all the documents used in establishing its Subcontract price or change order price.

23.3 Project Records

23.3.1 Maintenance of Records

Contractor shall maintain a complete set of all books, records, and documents prepared or employed by Contractor with respect to the Project. The books, records, and documents must be maintained at Contractor's Project office and be available for inspection at the office on one Day's notice.

23.3.2 Audit and Examination Rights

Contractor grants to VPRA, Utility Owners, USDOT funding partners including FTA and FRA, the Secretary of Transportation, the Comptroller General of the United States, Amtrak, and other applicable state and federal agencies, as well as authorized representatives of each of the foregoing, the right to audit and examine books and records relevant to the Project (including all tax returns and supporting documentation filed with any Governmental Persons). The entities authorized under this Section 23.3.2 of these General Terms and Conditions may audit and examine the books and records in connection with the issuance of Change Orders, Claims, the resolution of disputes, or as otherwise needed to comply or verify compliance with the Contract and Laws. The audit and examination rights include the rights to have convenient access to all paper and electronic records, and to make and save copies of those records. For Contractor's documents in electronic form, Contractor shall provide the entities authorized under this Section 23.3.2 of these General Terms and Conditions with electronic copies of the documents on a portable media device or through another method of electronic transmission. The entities authorized under this Section 23.3.2 of these General Terms and Conditions are entitled to review and retain copies of all native electronic files in addition to copies thereof in electronic or other formats. Contractor shall include this Section in all Subcontracts.

23.3.3 Audit of Force Account Work

If VPRA is paying for any Work on a Force Account basis, then the audit and examination rights include all books, records, documents, and other evidence and accounting principles and practices sufficient to reflect all direct and indirect costs of any nature that Contractor claims to have incurred or anticipated to be incurred in performing the Work. If an examination indicates that Contractor has been overpaid under a previous progress report or monthly payment, that overpayment will be credited against current progress reports or payments.

23.3.4 Change Order Pricing Data

For cost and pricing data submitted in connection with pricing Change Orders or potential Change Orders, the Persons authorized under Section 23.3.2 of these General Terms and Conditions and their representatives have the right to examine all books, records, documents, and other data of Contractor related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

23.3.5 Claims Examinations

All Claims filed against VPRA are subject to detailed examination at any time following the filing of the Claim. The examination may be performed by VPRA employees or by an auditor or other Person under contract with VPRA or under contract with VPRA's consultants. No notice is required before commencing any examination prior to sixty (60) Days after Final Acceptance. Thereafter, VPRA will provide 20 Days' notice to Contractor and any Subcontractors or their respective agents whose records will be examined before commencing an examination. Contractor, Subcontractors or their agents must provide adequate facilities, acceptable to VPRA, for the examination during normal business hours. Contractor, Subcontractors, and their agents must cooperate with the auditors. If Contractor, Subcontractors or their agents fail to maintain and retain sufficient records to allow the auditors to examine all of the Claim (or a Subcontractor's portion of the Claim) or fail to provide access to the books and records of Contractor, Subcontractors or their agents, then the Claim will be deemed waived and recovery for the Claim will be barred. At a minimum, the following documents must be available as part of an examination:

- (a) Daily time sheets and supervisor's daily reports;
- (b) Union agreements;
- (c) Insurance, welfare and benefits records;
- (d) Payroll registers;
- (e) Earnings records;
- (f) Payroll tax forms;
- (g) Material invoices and requisitions;
- (h) Material cost distribution worksheet;
- (i) Equipment records (list of company Equipment, rates, etc.);
- (j) Subcontractors' (including Suppliers) and agents' invoices;
- (k) Subcontractors' and agents' payment certificates;
- (l) Canceled checks (payroll and Suppliers);
- (m) Job cost report;
- (n) Job payroll ledger;
- (o) General ledger;
- (p) Cash disbursements journal;
- (q) E-mail, letters, and correspondence, including with Subcontractors and Suppliers;
- (r) Network servers, data storage devices, backup media;
- (s) All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim;
- (t) Work sheets used to prepare the Claim establishing the cost components for items of the Claim including labor, benefits and insurance, Materials, Equipment, Subcontractors, all

documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and

- (u) The native electronic files for all of the foregoing.

Contractor's full compliance with the provisions of this Section 23.3.5 of these General Terms and Conditions is a condition precedent to Contractor's right to seek relief under Articles 14 and 20 of these General Terms and Conditions and to the scheduling of a Neutral Session as provided in Section 20.3.5.2 of these General Terms and Conditions. Contractor represents and warrants the completeness and accuracy of all information it or its agents provide in connection with this Section 23.3 of these General Terms and Conditions.

23.3.6 Separate Records for Disputed Work

For any Work performed pursuant to a VPRA-Directed Change or Work that Contractor otherwise contends entitles it to Extra Work Costs or Delay Costs following a Relief Event, and throughout the course of any Work that is in dispute and/or is subject to the Dispute Resolution Process, Contractor shall keep separate and complete books and records that provide a clear distinction between the incurred direct costs of disputed Work (or Work for which Contractor seeks Extra Work Costs and Delay Costs) and that of undisputed Work, and shall permit VPRA access to these records consistent with this Article 23 of these General Terms and Conditions.

23.4 Retention of Records

Contractor shall maintain all records and documents relating to the Contract (including copies of all original documents delivered to VPRA) for five (5) years after Final Acceptance, unless otherwise notified by VPRA. Contractor shall notify VPRA of where Contractor is storing the records and documents.

Contractor shall retain all records relating to Claims being processed or actions brought under the Dispute Resolution Process of this Contract, even if the preceding paragraph allows Contractor to discard such records. Contractor shall make those records available to VPRA and its agents until the Parties have finally resolved the Claims and disputes. Contractor shall retain all books, records, and other evidence bearing on Contractor's costs and expenses under the Contract Documents. Contractor shall make these records and documents available for examination at Contractor's Project office, at all reasonable times, and without charge to VPRA or VPRA's agents. Contractor shall allow VPRA and VPRA's agents to make copies of such documents. For Contractor's records in electronic form, Contractor shall provide VPRA and VPRA's agents with electronic copies of the documents on a portable media device or through another method of electronic transmission. VPRA and VPRA's agents are entitled to copy and retain all native electronic files in addition to copies thereof in electronic or other formats.

23.5 Virginia Freedom of Information Act

23.5.1 Applicability of VFOIA

Contractor understands VPRA must follow the requirements of the Virginia Freedom of Information Act ("VFOIA"), §§ 2.2-3700 *et seq.* of the Code of Virginia, and must disclose records requested under VFOIA for which there is no applicable exclusion. If Contractor discloses to VPRA information it deems confidential under this Contract, it agrees to clearly mark any information as with the word "confidential" before providing it to VPRA and to use such form as may be required by VPRA to invoke the appropriate provision of VFOIA exempting such records. If Contractor desires to prevent disclosure of certain materials or information, Contractor shall take all steps Contractor deems necessary at its sole cost and expense without the right to an

adjustment of the Contract Price or a Completion Deadline. VPRA will respond to all requests for records and information as required by Law or Court Order.

23.5.2 Confidential Materials

If Contractor submits any materials clearly and prominently labeled “trade secret” or “non-public” to VPRA, VPRA will use reasonable efforts to advise Contractor before VPRA produces those materials in response to any VFOIA request. VPRA will not be responsible or liable to Contractor or any other Person for disclosing any Contractor material when the disclosure is required by law or by Court Order.

23.5.3 Request for Contractor Construction Pricing Documents

If VPRA receives a request for disclosure of information under VFOIA that could be construed to request production of Contractor’s CPDs or copies thereof held by VPRA, VPRA will notify Contractor of the request. If Contractor desires to prevent disclosure of certain materials or information, Contractor shall take all steps Contractor deems necessary at its sole cost and expense without the right to an adjustment of the Contract Price or a Completion Deadline. VPRA will respond to all requests for records and information as required by Law or Court Order.

ARTICLE 24

(Tax Matters)

24.1 Tax Exempt Status

VPRA is exempt from state sales and use tax and federal excise tax. Contractor shall not include in any invoice or Application for Payment 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 Contractor. Tax exemption certification shall be furnished to Contractor upon request.

24.2 Freight and Transportation

Contractor 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.

ARTICLE 25

(Miscellaneous Provisions)

25.1 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.

25.1 Waiver

25.1.1 No Waiver of Subsequent Rights

Either Party’s waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time (including any agreement by VPRA to Accept Nonconforming Work under Section 6.5.3 of these General Terms and Conditions) shall not in any way limit or waive that Party’s right to subsequently enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the

trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future disputes. The consent by one Party to any act by the other Party requiring such consent will not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

25.1.2 Custom Does not Constitute Waiver

No act, delay or omission done, suffered or permitted by one Party or its agents will be deemed to waive, exhaust or impair any right, remedy or power of such Party under the Contract Documents, or to relieve the other Party from the full performance of its obligations under the Contract Documents. No custom or practice between the Parties in the administration of the terms of the Contract Documents will be construed to waive or lessen the right of a Party to insist upon performance by the other Party in strict compliance with the terms of the Contract Documents.

25.1.3 Waivers Must Be in Writing

No waiver of any term, covenant or condition of the Contract Documents will be valid unless in writing and signed by the Party providing the waiver.

25.2 Independent Contractor

Contractor is an independent contractor, and nothing contained in the Contract Documents will be construed as constituting any relationship with VPRA other than that of Project owner and independent contractor. In no event will the relationship between VPRA and Contractor be construed as creating any relationship whatsoever between VPRA and any of Contractor's employees. Neither Contractor nor any of its employees is or will be deemed to be an employee of VPRA. Except as otherwise specified in the Contract Documents, Contractor has sole authority and responsibility to employ, discharge, and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that Contractor or any Subcontractor hires or engages to perform or assist in performing the Work.

25.3 Successors and Assigns

The Contract Documents will be binding upon and inure to the benefit of VPRA and Contractor and their permitted successors, assigns, and legal representatives.

25.3.1 Assignment by VPRA

VPRA may assign all or part of its right, title, and interest in and to the Contract, including rights with respect to the Performance and Payment Bond, any Guaranty, and any other performance security provided, to any Person.

25.3.2 Assignment by Contractor

Contractor may subcontract Work in compliance with the requirements of the Contract Documents. Contractor shall not otherwise sublet, transfer, assign or dispose of any portion of the Contract, or delegate any of its duties hereunder, except with VPRA's prior written approval. Contractor's assignment or delegation of any of its Work under the Contract Documents will not relieve Contractor of its responsibility for the Work assigned or delegated, unless VPRA, in its sole discretion, has approved such relief from responsibility. Any assignment of money is subject to all proper set-offs and withholdings in favor of VPRA and to all deductions provided for in the Contract.

25.4 Designation of and Cooperation with Representatives

25.4.1 Designation of Representatives

VPRA and Contractor shall each designate an individual or individuals who will be authorized to make decisions and bind the Parties on matters relating to the Contract Documents. Such designations may be changed by a subsequent writing delivered to the other party in accordance with the Contract Documents. The Parties may also designate technical representatives who will be authorized to investigate and report on matters relating to the design and construction of the Project and negotiate on behalf of each of the Parties but who do not have authority to bind VPRA or Contractor.

25.4.2 Cooperation

Contractor shall cooperate with VPRA and all representatives of VPRA designated as described above.

25.5 Survival

Contractor's representations and warranties, the obligations and requirements in Article 9 of these General Terms and Conditions, representations and warranties, the obligations and requirements, the provisions concerning changes in the work contained in Article 14 of these General Terms and Conditions, the indemnification provisions in Article 19 of these General Terms and Conditions, the Dispute Resolution Process contained in Article 20 of these General Terms and Conditions, the requirements concerning documents and records in Article 23 of these General Terms and Conditions, and all other provisions which by their inherent character should survive termination of the Contract, will survive the termination of the Contract.

25.6 Limitation on Third-Party Beneficiaries

The Parties do not intend for any of the provisions of the Contract Documents to create any third-party beneficiary unless a specific provision (such as the warranty and indemnity provisions) specifically identifies third parties (such as Utility Owners) and states that they are entitled to benefits under this Contract. Except as otherwise provided in this Section 25.6 of these General Terms and Conditions, the duties, obligations, and responsibilities of the Parties to the Contract Documents with respect to third parties remains as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between VPRA and a Subcontractor, Supplier, or any other Person except Contractor.

25.7 No Personal Liability

VPRA's authorized representatives (including its consultants) are acting solely as agents and representatives of VPRA when carrying out the provisions of or exercising the power or authority granted to them under the Contract Documents. They will not be liable either personally or as employees of VPRA for actions in their ordinary course of employment. No agent, consultant, officer or employee of VPRA will be personally responsible for any liability arising under the Contract.

25.8 Forum and Venue; Waiver of Jury Trial

Any and all Disputes arising out of or in connection with this Contract, or any performances made hereunder that are not otherwise resolved through the processes in Sections 20.2 and 20.3 of these General Terms and Conditions 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. Contractor accepts the personal jurisdiction of such court and waives all jurisdiction and venue-related defenses to the maintenance of such

actions. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS CONTRACT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

25.9 Notice of Bankruptcy or Insolvency

In the event Contractor or any Principal Participant enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish written notification of the bankruptcy to VPRA. This notification shall be furnished within five (5) Days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of VPRA contract numbers against which the Contractor asserts Final Payment has not been made. This obligation remains in effect until Final Payment under this Contract.

25.10 Immigration Reform and Control Act of 1986

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

25.11 Drug Free Workplace

Contractor acknowledges and certifies that they understand that the following acts by Contractor, 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). Contractor further acknowledges and certifies that it understands 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, Contractor agrees to provide a drug-free workplace for Contractor's employees.

25.12 Occupational Safety and Health Standards

Contractor 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, Contractor 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 Person violating the aforementioned requirements or duties which is brought to the attention of Contractor shall immediately abate such violation.

25.13 Sensitive Security Information; Critical Infrastructure

Contractor must protect, and take measures to assure that its Subcontractors at each tier protect sensitive security information ("SSI") made available during the course of administering a VPRA contract or Subcontract in accordance with 49 U.S.C. § 40119(b) and implementing U.S.DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. § 114(s) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520. VPRA reserves the right to conduct a fingerprint-based CHBC on all employees of Contractor and Subcontractors (together with any proposed replacements) during the term of the Contract to the extent those individuals will require access to SSI and/or Critical Infrastructure associated with the Project. All costs associated with the

fingerprint-based CHBC are the responsibility of Contractor. A VPRA issued photo-identification badge may be required for each employee of Contractor or any Subcontractor who will need access to SSI and/or Critical Infrastructure. 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. Contractor shall promptly return all VPRA-issued photo-identification badges whenever an employee of Contractor or a Subcontractor is no longer assigned to the Project or is otherwise terminated from employment.

25.14 Marketing and Publicity

Contractor shall not use VPRA's name for purposes of advertising or soliciting business, including, but not limited to, press releases, social media posts, presentations, brochures, photographs, or verbal announcements without the prior written permission of VPRA.

25.15 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. Contractor agrees to work cooperatively and creatively with VPRA in connection with any grant application submittals to VPRA's funding partners. Contractor further agrees to fully comply with any terms and conditions required as a result of VPRA's participation in a grant.

25.16 Further Assurances

Contractor shall promptly execute and deliver to VPRA all such instruments and other documents and assurances as are reasonably requested by VPRA to further evidence the obligations of Contractor hereunder.

25.17 Severability

If any clause, provision, section or part of the Contract is ruled invalid under Article 20 of these General Terms and Conditions or otherwise by a court of competent jurisdiction, then the parties will: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which will, to the greatest extent legally permissible, effect the original intent of the Parties, (b) if necessary or desirable, apply to the court or other decision maker (as applicable) that declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part will not affect the validity or enforceability of the balance of the Contract, which will be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, section or part.

25.18 Headings

The headings of the sections of the Contract Documents are for convenience only and shall not be deemed part of the Contract or considered in construing the Contract.

25.19 Governing Law

The validity 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, may be interposed in any action hereon.

25.20 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.

25.21 Entire Agreement

The Contract Documents contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations, and negotiations between the Parties with respect to its subject matter.

END OF DOCUMENT

EXHIBIT C

SCOPE OF PHASE 1 SERVICES

The below describes the Phase 1 Services. Approximate timelines for submission of required deliverables and workshop participation are provided at the end of this Scope of Work. Timelines and schedule for the Phase 1 Services may be subject to negotiation with the CM/GC Contractor.

Task 1. Design and Construction Phase 1 Services

- a) Validate VPRA's Design: CM/GC Contractor shall evaluate the Design as it is prepared and compare it to the scope of Work, the required budget, and schedule to determine if the scope can be executed within those constraints. A validated Design is one that can be constructed within the budget and schedule constraints of the Project. CM/GC Contractor shall provide suggestions to reduce costs or meet budget constraints.
- b) Assist/input to VPRA's Design: CM/GC Contractor shall offer ideas/cost information to the Design Consultant to be evaluated during the Design phase.
- c) Design reviews: CM/GC Contractor shall review the Design to identify errors, omissions, and ambiguities to improve the constructability and economy of the design.
- d) Design innovation: CM/GC Contractor shall participate in structured brain-storming sessions with VPRA to generate ideas to solve design problems and other issues associated with the Project.
- e) Constructability reviews: CM/GC Contractor shall review the Design to determine if it can be constructed within the constraints of the Work and that the required level of tools, methods, techniques, and technology are available to permit a competent and qualified construction contractor to build the Project feature under review in accordance with applicable quality requirements. CM/GC Contractor shall perform constructability reviews on the 30%, 60%, and 90% Designs. At each review, CM/GC Contractor shall prepare a constructability report that identifies potential constructability issues in the Design and provides potential solutions.
- f) Operability reviews: CM/GC Contractor shall confer with VPRA's operations and maintenance personnel and provide them with an opportunity to make suggestions that will improve the operations and maintenance of the completed Project.
- g) Regulatory reviews: CM/GC Contractor shall verify that the Design complies with current codes and will be able to obtain necessary permits. This activity shall consist only of a review and shall not be construed to constitute design or engineering services.
- h) Market surveys for design decisions: CM/GC Contractor shall furnish the Design Consultant with alternative materials or equipment and current pricing data and availability to assist them in making informed design decisions to reduce the need to change the design late in the process resulting from budget or schedule considerations.
- i) Verify/take-off quantities: CM/GC Contractor shall verify the quantities generated by the Design Consultant for the engineer's estimate.
- j) Identify potential Early Work packages: CM/GC Contractor shall identify Early Work packages and negotiate the price to perform the Early Work with VPRA. Performance of the Early Work, if any, will occur under a separate contract. For potential Early Work packages, CM/GC Contractor shall submit cost estimates and negotiate price and schedule consistent with the process established in this Phase 1 scope of work for

estimating and negotiating the Phase 2 Services.

- k) Assistance in shaping the scope of Work: CM/GC Contractor shall generate priced alternatives for VPRA to ensure that the scope of Work correlates to the constraints dictated by the budget and/or schedule. Where appropriate, CM/GC Contractor shall suggest modifications to the scope of Work to fit within the Project's budget and constraints.
- l) Feasibility studies: CM/GC Contractor shall investigate the feasibility of possible solutions to resolve design issues on the Project.
- m) Risk identification and mitigation: CM/GC Contractor shall identify risks associated with the Project and propose response strategies.
- n) Maintenance of Rail Operations: CM/GC Contractor shall review, validate, and/or propose alternative methods to maintain rail service while construction is underway.
- o) Maintenance of Traffic: CM/GC Contractor shall review, validate, and/or propose alternative traffic handling concepts for the Project.
- p) Staging needs: CM/GC Contractor shall review, validate, and/or propose alternative staging construction concepts for the Project.
- q) Construction approach planning: Based on its review and input on the Project's design, CM/GC Contractor shall prepare conceptual plans for means and methods, temporary works, laydown areas, debris containment, dewatering, and other necessary preparations for construction.
- r) Prepare construction provisions and other documents and requirements for the Construction Work. The construction provisions shall contain terms and conditions governing the performance of the construction work that shall be collaboratively developed by CM/GC Contractor and VPRA.

Task 2. Cost-Related Phase 1 Services

- a) Validate VPRA/consultant estimates: CM/GC Contractor shall evaluate VPRA's estimates and determine if the scope can be executed within the constraints of the budget.
- b) Prepare Project estimates: CM/GC Contractor shall provide real-time cost information on the Project at different points in the design process to ensure that the Project is staying within budget.
- c) Cost/benefit engineering reviews: CM/GC Contractor shall review cost to include not only the aspects of pricing but also focus on the concept that "time equals money" in construction projects.
- d) Early award of critical bid packages: CM/GC Contractor shall recommend which design packages should be completed first to ensure that pricing can be locked in on the packages.
- e) Life-cycle cost analysis: CM/GC Contractor shall provide input for design decisions that impact the performance of the Project over its lifespan.
- f) Value analysis/engineering: CM/GC Contractor shall identify aspects of the Design that either do not add value or whose value may be enhanced by changing them in some form or fashion. The change does not necessarily reduce the construction cost; it may instead decrease the life-cycle costs. CM/GC Contractor shall also identify other potential cost

savings for the Project. CM/GC Contractor shall identify and provide value engineering concepts to the Design Consultant. CM/GC Contractor shall prepare cost estimates and if applicable, schedules of the value engineering concepts.

- g) Material selection and cost forecasting: CM/GC Contractor shall develop estimates of construction material escalation to assist VPRA in making decisions regarding material selection and early construction packages. CM/GC Contractor may engage in early procurement of materials with long-lead times if approved by VPRA.
- h) Cost risk analysis: CM/GC Contractor shall furnish VPRA with information regarding cost items that have the greatest probability of being exceeded.
- i) Cash flow projections/cost control: CM/GC Contractor shall conduct earned value analysis to provide VPRA with information on how Project financing must be made available to avoid delaying Project progress. This also may include an estimate of construction carrying costs to aid VPRA in determining projected cash flow decisions.
- j) Biddability reviews: CM/GC Contractor shall review the Design to ensure that Subcontractor work packages can be bid out and receive competitive pricing. This action reduces the risk to the Subcontractors because they are given the specific design product they need for their bids.
- k) Subcontractor bid packaging: CM/GC Contractor shall coordinate the Design packaging to correlate with Subcontractor work packages so that work packages can be easily bid out and awarded. Where appropriate, CM/GC Contractor shall identify portions of Early Work that may be suitable for Subcontractor bidding and recommend advancement of the Design for those packages to facilitate participation by Subcontractors.
- l) Prepare Subcontracting Plan: CM/GC Contractor shall identify the Construction Work that it desires to self-perform and the Construction Work that will likely be performed by Subcontractors. CM/GC Contractor shall prepare a procedure to obtain competitive bids from potential Subcontractors for subcontracted work. CM/GC Contractor and VPRA shall negotiate the scope of self-performed work and the CM/GC Contractor's Subcontracting Plan.
- m) Prepare and submit Construction Cost Estimates containing CM/GC Contractor's Binding GMP Proposal, in the form of a Guaranteed Maximum Price, to construct the Project. CM/GC Contractor shall submit Construction Cost Estimates commencing upon finalization of comments on the 60% design submittal. On or before finalization of the 90% Design, CM/GC Contractor shall submit a Binding GMP Proposal containing a binding offer to perform the Construction Work for a specified GMP and Construction Schedule.

The Construction Cost Estimates include both the self-performed work and subcontracted work. CM/GC Contractor shall attend meetings with VPRA and the preparer of VPRA's independent cost estimates to reconcile differences on an Open Book basis and attempt to negotiate a GMP. CM/GC Contractor and VPRA shall discuss and agree to the format in which CM/GC Contractor will provide the Construction Cost Estimates. At a minimum, CM/GC Contractor's cost breakdown shall show:

- i. A complete list of drawings and construction documents on which the estimate is based;
- ii. Unit prices and quantity take-offs;

- iii. Material costs, equipment costs, labor costs, hourly labor rates, crew sizes, shifts per day, hours per shifts (labor rates shall include employee benefits, payroll taxes and other payroll burdens);
- iv. Risk assumptions and assignment of risks;
- v. Production rates, transportation, and other facilities and services necessary for the proper execution of the work;
- vi. Breakdown of costs by trade;
- vii. Breakdown of contingencies;
- viii. Copies of quotations from Subcontractors and suppliers;
- ix. Field indirect costs, bonds, taxes, and insurance; and
- x. a Cost Breakdown Structure in accordance with Exhibit I.

Additionally, CM/GC Contractor will provide a written narrative of each Construction Cost Estimate that identifies the means, methods, assumptions, and risks that were used to price the Construction Work.

During the reconciliation meetings, CM/GC Contractor shall explain all assumptions used to build the Construction Cost Estimate and answer questions from the ICE and VPRA concerning the estimate.

Task 3. Schedule-Related Phase 1 Services

- a) Validate VPRA's schedules: CM/GC Contractor shall evaluate if the current scope of Work can be executed within the constraints of the schedule.
- b) Prepare Project schedule: CM/GC Contractor shall prepare a Project schedule based on the known constraints and the Design that will form the basis of the Construction Cost Estimates and a proposed GMP. The final Construction Schedule will be incorporated into the Phase 2 Amendment, if awarded.
- c) Develop sequence of Design Work: CM/GC Contractor recommends the sequence of the remaining Design work to mirror the Construction Work so that Early Work packages and Construction Work packages can be developed.
- d) Construction phasing: CM/GC Contractor shall develop a construction phasing plan to facilitate construction progress and ensure maintenance of rail operations and traffic. This includes identification of critical third-party approvals and permitting, right-of-way parcel acquisition, and utility relocations.
- e) Schedule risk analysis/control: CM/GC Contractor shall evaluate the risks inherent to design decisions regarding the schedule and offer alternative materials, means, and/or methods to mitigate those risks.

Task 4. Administrative-Related Phase 1 Services

- a) Kick-off meeting: CM/GC Contractor shall attend a kick-off meeting to discuss issues such as: a plan and schedule for the Phase 1 Services, scheduling of the meetings and workshops, identification of goals for the Phase 1 Services, and other related issues. This meeting shall take place within 3 days of CM/GC Contractor's receipt of Notice to Proceed for the Phase 1 Services.

- b) Third-party impact avoidance and reduction strategies: CM/GC Contractor shall review agreements, permits, and work arounds (commitments) made to third-parties (cities, utilities, property owners, and regulatory agencies) and determine and/or identify the feasibility of the commitments. CM/GC Contractor shall advise VPRA of impacts and alternative solutions to comply.
- c) Assistance in obtaining third-party approvals and permits: CM/GC Contractor shall work with VPRA to obtain approvals and permits required from third-parties, including by suggesting design concepts, attending meetings, developing construction means and methods, developing construction sequencing, planning construction staging, and other necessary tasks that assist the effort to obtain necessary approvals.
- d) Utility Coordination: CM/GC Contractor shall assist VPRA's efforts to coordinate with utility owners to determine how to address utility facilities impacted by the Project. Where appropriate, CM/GC Contractor shall assist with the preparation of agreements with utility owners.
- e) Document control: CM/GC Contractor shall implement a document control process and software solution, as agreed upon by VPRA, that will allow for the efficient transmittal, sharing, tracking, approval, and filing of all Project related documents.
- f) Coordinate with third-party stakeholders: CM/GC Contractor shall assist VPRA with communication with third-parties involved in the Project, including utilities, railroads, and the general public.
- g) Attend public meetings: CM/GC Contractor shall attend public meetings to answer questions from the public about the construction of the Project.
- h) Assist in Right of Way acquisition/validation: CM/GC Contractor shall assist VPRA and the Design Consultant with identifying options for Right of Way acquisitions. The primary purpose is to minimize the amount of Right of Way actions that must be undertaken and to assist in prioritizing individual parcel acquisition.
- i) Study labor availability/conditions: CM/GC Contractor shall furnish advice during Design regarding the availability of specialty trade Subcontractors and the impact of that availability on the Project budget and schedule constraints.
- j) Analyze environmental commitments/permits: CM/GC Contractor shall review environmental commitments/permits attached to the Project and identify feasibility issues of such commitments/permits.
- k) Coordinate site visits for Subcontractors: CM/GC Contractor shall coordinate site visits for Subcontractors to facilitate the Subcontractor procurement process.
- l) Project Meetings: CM/GC Contractor shall attend scheduled Project meetings and contribute with comments, provide solutions, and carry needed action items.
- m) Project Management Plan: CM/GC Contractor shall prepare a Project Management Plan for VPRA's approval that describes CM/GC Contractor's managerial approach, strategy, and procedures to construct the Project in a way that achieves all requirements of the Construction Work. CM/GC Contractor shall ensure that the PMP complies with Federal Railroad Administration (FRA) guidance.
- n) Quality Plan: CM/GC Contractor shall prepare a plan for quality management of the

Construction Work.

- o) Small Business Utilization Submittals: CM/GC Contractor shall submit the items set forth in Sections 1.0 and 2.0 of the *Special Provision Regarding the Utilization of Small and Diverse Businesses on the Project* (SP 06).
- p) Safety Plan: CM/GC Contractor shall prepare a plan establishing its safety management process for the Project.
- q) Environmental Management Plan: CM/GC Contractor shall prepare a plan to comply with the environmental requirements in the Contract.
- r) Sustainability Plan: CM/GC Contractor shall prepare a plan to achieve sustainability in the construction of the Project, including CM/GC Contractor’s plan to use recycled and renewable energy materials, efficiently use energy, and minimize the generation of waste.

Optional Services

The following services are not included in the Phase 1 Price Component submitted with the Proposal. VPRA may request that CM/GC Contractor perform the following at an agreed-upon price:

- a) Geotechnical investigation
- b) Subsurface utility investigation
- c) Test piles
- d) Site preparation
- e) Survey
- f) Other Site investigation tasks to support completion of the design and risk mitigation
- g) Public Information
- h) Right-of-way acquisition assistance

Phase 1 Services Schedule

Event/Milestone/Workshop	Day
Phase 1 Services NTP	0
Kickoff Workshop	3
30 % Constructability Workshop (Recurring – Schedule to be set)	5
Submission of OPCC	45
Cost Reconciliation for OPCC	60
60% Constructability Workshop (Recurring – Schedule to be set)	90

Submission of Construction Cost Estimate	150
Reconciliation workshops/ Proposed Guaranteed Maximum Price Revisions	175
90 % Constructability Workshop (Recurring – Schedule to be set)	215
Submission of Binding GMP Proposal	215
Submission of Final Binding GMP Proposal	297
Phase 2 NTP (Contingent)	365

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EXHIBIT D
DESIGNATION OF KEY PERSONNEL

Key Personnel	Requirements and Preferred Qualifications	Time Commitment
<p>CM/GC Project Manager</p> <p>Name: _____</p>	<p>The CM/GC Project Manager will manage the overall Project for the CM/GC Contractor, including both the Phase 1 Services and, if awarded, the Construction Work. This person will be the main point of communication for the CM/GC Contractor and VPRA's primary point of contact. The CM/GC Project Manager will be responsible to ensure adequate personnel and other resources are made available for the Project, will support VPRA engagement with third parties and stakeholders as needed, will handle contractual matters, and will be responsible for quality and timeliness of the team performance.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years managing similar projects, including heavy railroad bridges • Experience with alternative delivery methods or projects with early contractor involvement, including CM/GC, progressive design-build, or design-build for example • Experience working/constructing in an active Railroad environment 	<p>Phase 1: ##%</p> <p>Phase 2: ##%</p>
<p>Construction Manager</p> <p>Name: _____</p>	<p>During the Phase 1 Services, the Construction Manager will lead constructability reviews and provide input on the Design to ensure that the Design is constructible within the constraints of the Construction Work. During the Construction Work and any Early Work, the Construction Manager is responsible for coordinating and overseeing all aspects of Construction Work.</p> <p>Preferred Qualifications:</p>	<p>Phase 1: ##%</p> <p>Phase 2: ##%</p>

	<ul style="list-style-type: none"> • 20 years managing construction of similar projects • Providing constructability reviews of designs • Experience with alternative delivery methods or projects with early contractor involvement, including CM/GC, progressive design-build, or design-build for example • Experience working/constructing in an active Railroad environment 	
<p>Quality Manager</p> <p>Name:</p> <p>_____</p>	<p>The Quality Manager will be in charge of the CM/GC Contractor's quality program. During Phase 1 Services, the Quality Manager will be responsible for development of the CM/GC Contractor's quality program. During the Construction Work, the Quality Manager will oversee that the Project is built in conformance with the approved quality plan and the Design. The Quality Manager will be the primary liaison with VPRA's quality program. The Quality Manager must work for the CM/GC Contractor under the direct supervision of an executive officer above the level of and under a line of authority independent of the CM/GC Contractor's Project Manager. The individual must have the ability to stop construction at any time in the individual's sole discretion.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years of quality management experience for similar projects • Licensed Professional Engineer in the Commonwealth 	<p>Phase 1: ##%</p> <p>Phase 2: ##%</p>
<p>Environmental Compliance Manager</p> <p>Name:</p>	<p>The Environmental Compliance Manager is responsible for ensuring that all Work complies with all environmental laws and environmental requirements specific to the Project. During the Phase 1 Services, the Environmental Compliance Manager may</p>	<p>Phase 1: ##%</p> <p>Phase 2: ##%</p>

<p>_____</p>	<p>review designs to ensure compliance with environmental requirements. During the Construction Work, the Environmental Compliance Manager will oversee construction operations to ensure compliance with environmental requirements.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 10 years of overseeing environmental compliance for similar projects 	
<p>Lead Cost Estimator Name: _____</p>	<p>The Lead Cost Estimator is responsible for the cost estimating process during the Phase 1 Services. This person shall be a construction cost estimator with experience assessing price and risk and must be capable of clearly articulating the assumptions used to prepare a Construction Cost Estimate. The Lead Cost Estimator will be charged with maintaining and ensuring that the CM/GC Contractor provides its Construction Cost Estimates in an Open Book environment.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years of preparing construction cost estimates for similar projects • Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example • Experience estimating construction costs directly associated with Railroad projects 	<p>Phase 1: ##%</p> <p>Phase 2: ##%</p>
<p>Lead Scheduler Name:</p>	<p>The Lead Scheduler is responsible for preparing the proposed Construction Schedule during the Phase 1 Services and managing the Construction Schedule during the Construction Work. The schedule prepared by the Lead Scheduler will be the</p>	<p>Phase 1: ##%</p> <p>Phase 2: ##%</p>

	<p>schedule on which the Construction Cost Estimates are based.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years of preparing construction schedules for similar projects • Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example 	
<p>Safety Manager</p> <p>Name:</p> <hr/>	<p>The Safety Manager shall oversee and be responsible for safety on the Project site. During the Phase 1 Services, the Safety Manager shall be responsible for preparation of CM/GC Contractor's safety management plan and may assist with constructability review to verify that construction can be performed safely. During the Construction Work, the Safety Manager shall ensure that all Construction Work is performed safely and in compliance with the safety management plan. The Safety Manager must be on site during all major construction operations.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 15 years of managing safety for similar types of construction work, with an emphasis on rail construction and construction in a dense, urban environment 	<p>Phase 1: ##%</p> <p>Phase 2: ##%</p>
<p>Additional Value Personnel</p>	<p>[to be added as needed]</p>	

EXHIBIT E

INSURANCE REQUIREMENTS

All capitalized terms not otherwise defined in this Exhibit E shall have the meanings ascribed to such terms within Exhibit A (*Acronyms and Definitions*) to the Contract. Contractor at its sole expense shall procure and maintain the types of insurance specified below (or cause others to procure the types and amounts of insurance specified below as appropriate) subject to any conditions noted therein. As a condition to each corresponding notice to proceed, Contractor shall have its insurance broker or insurance company submit a certificate of insurance to VPRA giving evidence of the relevant coverage types and amounts set forth below, as well as compliance with the provisions of Article 10 of the General Terms and Conditions, prior to commencing the corresponding Work under the Contract. All required insurances shall contain a waiver of subrogation provision in favor of the Commonwealth, VPRA, Amtrak, and CSXT.

A. PHASE 1 AND EARLY WORK INSURANCE REQUIREMENTS

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 Work is performed. If Contractor leases one or more employees through the use of a payroll, employee management, or other similar company, then Contractor must procure workers' compensation insurance written on an "if any" policy form, including an endorsement providing coverage for alternate employer/leased employee liability. Such insurance shall be in addition to the workers' compensation coverage provided to the leased employee by the payroll, employee management, or other similar company.
2. **Employer's Liability Insurance** with limits of \$1,000,000 per occurrence for bodily injury, \$1,000,000 per employee for bodily injury by occupation disease, and \$1,000,000 policy limit for bodily injury by disease.
3. **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, products-completed operations, and broad form contractual liability with limits of at least \$1,000,000 per occurrence and \$2,000,000 annual general aggregate applicable on a per project basis. Such coverage shall be on an occurrence form providing for Named Insured Cross Liability and Severability of Interest and include endorsement CG 24 17 (10/01) Contractual Liability – Railroads, or equivalent. There shall be no exclusion for work within 50 feet of a railroad. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis. Such insurance shall provide coverage for all operations and shall be maintained for five years after Final Acceptance and final payment for the Work.
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, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis.
5. **Cyber Liability Insurance** with limits not less than \$2,000,000 per claim. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in the Contract 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. VPRA, the Commonwealth, Amtrak, and CSXT shall be additional insureds with regard to any third-party claims.

6. **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for all the above mentioned policies (except cyber insurance and workers compensation) in the amount of \$10,000,000 per occurrence and in the aggregate. Such policy(ies) shall be written on a “following form” basis, 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, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis. Such insurance shall provide coverage for all operations including the products-completed operations hazard and shall be maintained for five years after Final Acceptance and final payment for the Work.
7. **Contractor’s Professional Liability Insurance** covering liability for acts, errors, or omissions arising in connection with Professional Services provided as part of the Work. Such coverage may be evidenced utilizing so-called “practice” or “corporate” policies and shall be for a minimum limit of \$5,000,000 any one claim and in the aggregate. The Commonwealth, VPRA, CSXT, and Amtrak are to be included on any such policies as indemnified parties, subject to market availability. The retroactive date for coverage will be no later than the commencement date of any work by Contractor and will provide that in the event of cancellation or non-renewal the discovery period for insurance claims will be at least five years or otherwise as by agreement with VPRA.
8. **Contractor’s Pollution Liability Insurance** shall be required of any entity that is undertaking any Construction Work during Phase 1 including any utility relocation, test boring, or digging test pits. Such coverage shall have a minimum limit of \$3,000,000 per claim and in the aggregate and need not be Project-specific. Such coverage shall indemnify for bodily injury, property damage, cleanup/remediation costs or other amounts which the entity undertaking the Work, its employees, its agents, or its Subcontractors are legally obligated to pay arising out of such activities, including any transit and/or disposal at non-owned disposal sites. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as additional insureds on a primary, non-contributory basis. If coverage is placed on a claims-made basis, such coverage shall continue for a period of three (3) years after all work is complete.
9. **Subcontractor Insurance.** The Contractor will cause all Subcontractors working at the site to obtain and maintain the following insurance coverages with the Commonwealth, VPRA, CSXT, and Amtrak as additional insureds on a primary, non-contributory basis (except for professional liability) and including a waiver of subrogation in favor of the above-noted parties:
 - (a) **Workers’ Compensation and Employer’s Liability Insurance** with statutory workers’ compensation (Coverage A) limits and employer’s liability (Coverage B) limits of \$500,000 bodily injury by accident, each accident, and \$500,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers’

Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).

- (b) **Commercial General Liability Insurance** will include coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and contractual liability with limits must no less than \$1,000,000 per occurrence and \$1,000,000 in the general aggregate annually. There shall be no exclusion for work within 50 feet of a railroad.
- (c) **Automobile Liability Insurance** with a limit of at least \$500,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off.
- (d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability and automobile liability in the amount of \$2,000,000 per occurrence and in the aggregate for any contracts valued at \$1,000,000 or more.

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B. PHASE 2 INSURANCE REQUIREMENTS

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 Work is performed. If Contractor leases one or more employees through the use of a payroll, employee management, or other similar company, then Contractor must procure workers' compensation insurance written on an "if any" policy form, including an endorsement providing coverage for alternate employer/leased employee liability. Such insurance shall be in addition to the workers' compensation coverage provided to the leased employee by the payroll, employee management, or other similar company.
2. **Employer's Liability Insurance** with limits of \$1,000,000 per occurrence for bodily injury, \$1,000,000 per employee for bodily injury by occupation disease, and \$1,000,000 policy limit for bodily injury by disease.
3. **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, products-completed operations, and broad form contractual liability of limits of at least \$1,000,000 per occurrence and \$2,000,000 annual general aggregate applicable on a per project basis. Such coverage shall be on an occurrence form providing for Named Insured Cross Liability and Severability of Interest and include endorsement CG 24 17 (10/01) Contractual Liability – Railroads, or its equivalent. There shall be no exclusion for work within 50 feet of a railroad. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis. Such insurance shall provide coverage for all operations and shall be maintained for five years after Final Acceptance and final payment for the Work.
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, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis.
5. **Cyber Liability Insurance** with limits not less than \$2,000,000 per claim. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in the Contract 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. VPRA, the Commonwealth, Amtrak, and CSXT shall be additional insureds with regard to any third-party claims.
6. **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for all the above mentioned policies (except workers compensation and cyber liability) with a minimum limit of \$50,000,000 per occurrence and in the aggregate. Such policy(ies) shall be written on a "following form" basis 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, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis. Such insurance shall provide coverage for all

operations and shall be maintained for five years after Final Acceptance and final payment for the Work.

7. **Contractor's Professional Liability Insurance** covering liability for acts, errors, or omissions arising in connection with services provided as part of the Work. Such coverage may be evidenced utilizing so-called "practice" or "corporate" policies and shall be for a minimum limit of \$5,000,000 any one claim and in the aggregate. The Commonwealth, VPRA, CSXT, and Amtrak are to be included on any such policies as indemnified parties, subject to market availability. Such policy shall not contain any exclusions directed toward any types of projects, materials, services, or processes involved in the Work. The retroactive date for coverage will be no later than the commencement date of work by Contractor and will provide that in the event of cancellation or non-renewal the discovery period for insurance claims will be at least five years. The Commonwealth, VPRA, CSXT, and Amtrak are to be included as indemnified parties, subject to market availability. The policy shall remain in effect for five years after all work is completed or include a five year extended reporting period. Such policy shall be written in a manner that allows any additional insured to still make a claim under the policy against Contractor or other insured party (i.e., cross-liability).
8. **Builder's Risk Insurance** on an "all risks" basis for physical loss, destruction, or damage to the Work and any temporary structures or works. The Builder's Risk insurance must be project-specific and will cover the Contractor, VPRA, and other Subcontractors of all tiers prior to Substantial Completion; *provided*, that the limits of such coverage may be based on a maximum probable loss analysis, as determined by an experienced third-party and subject to VPRA's approval of such maximum probable loss analysis. In no event will the minimum limits of such coverage be less than \$200,000,000. Further, the policy shall include sub-limits as follows: (x) at least \$25,000,000 for off-site storage and transit; (y) at least \$50,000,000 for debris removal and demolition; and (z) at least \$10,000,000 for increased costs of construction, soft costs (including VPRA's continuing Project administration expenses), professional fees and loss adjustment expenses. The policy also will include replacement cost coverage for materials, supplies, equipment, machinery, and fixtures that are or will be part of the Project. Coverage will include, but not be limited to, the following (provided that commercially reasonable sublimits will be accepted where typical):
 - (a) right to partial occupancy;
 - (b) London Engineering Group (LEG) 3 type or equivalent coverage for design error, faulty workmanship, and/or faulty materials;
 - (c) earthquake;
 - (d) earth movement (including subsidence, sinkhole, and collapse);
 - (e) flood;
 - (f) windstorm, tornado, hurricane or named storm;
 - (g) fire and explosion;
 - (h) theft, vandalism, and malicious mischief;

- (i) transit;
- (j) temporary and permanent works; and
- (k) expediting expenses.

The Builder's Risk Insurance must be in place, at the latest, by Phase 2 NTP, *provided* that if the Builder's Risk Insurance is not in place on the Effective Date, Contractor shall submit to VPRA on or before the Effective Date: (x) a letter of certification from the Contractor or the Contractor's insurance broker confirming that Builder's Risk Insurance compliant with the requirements contained herein will be placed prior to Phase 2 NTP; and (y) a specimen Builder's Risk Insurance policy with all appropriate attachments, sub-limits, etc. and any maximum probable loss analysis.

9. **Contractor's Pollution Liability Insurance** to indemnify for bodily injury, property damage, cleanup/remediation costs or other amounts which the Contractor, its employees, its agents, or its Subcontractors are legally obligated to pay arising out of the Work, any transit and/or disposal at non-owned disposal sites. Such insurance will have minimum limits of \$5,000,000 for any one pollution incident and in the aggregate and will remain in full force and effect for the period of the Work and a five (5)-year extended reporting period after Final Acceptance. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis. Such policy shall be written in a manner that allows any additional insured to still make a claim under the policy against Contractor or other insured party (i.e., cross-liability).
10. **Other Insurance.** Any use of unmanned aircraft shall be appropriately insured with minimum limits of \$5,000,000 per occurrence and aggregate; the Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis.
11. **Subcontractor Insurance.** Unless covered under a Contractor-Controlled Insurance Program (CCIP) for each of the insurance policies listed below, the Contractor shall cause all Subcontractors working at the site or at a dedicated off-site fabrication facility to obtain and maintain the following insurance coverages with the Commonwealth, VPRA, CSXT and Amtrak as additional insureds on a primary, non-contributory basis (except for workers compensation and professional liability) and also including a waiver of subrogation in favor of the above-noted parties. Note that should the Contractor utilize a CCIP, any such contractors enrolled in such CCIP shall also provide the following coverages for all off-site activities including the additional insured and waiver of subrogation provisions noted above.
 - (a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$500,000 bodily injury by accident, each accident, and \$500,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).
 - (b) **Commercial General Liability Insurance** will include coverage for premises and operations, independent contractors, personal injury, product and

completed operations, explosion, collapse and underground, and contractual liability with limits not less than \$1,000,000 per occurrence and \$1,000,000 general aggregate annually. There shall be no exclusion for work within 50 feet of a railroad.

- (c) **Automobile Liability Insurance** with a limit of at least \$500,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off.
- (d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability and automobile liability in the amount of \$2,000,000 per occurrence and in the aggregate for any contracts valued at \$1,000,000 or more.

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C. GENERAL REQUIREMENTS RELATING TO INSURANCE

1. **General Insurance Requirements.** Contractor shall, at a minimum procure and keep in effect the insurance policies required herein. Each such insurance policy shall be procured from an insurer that is authorized to conduct business in the Commonwealth and shall have a current policyholder's management and financial size category rating of A- (A minus) or better and Class VIII or better by A. M Best and Company's Insurance Reports Key Rating Guide.

Each such policy maintained by the Contractor shall be endorsed to state that coverage cannot be cancelled or reduced in coverage or limits (except with respect to payments under the policy that by their nature erode or deplete the policy limits) by the insurers until 30 days prior written notice (10 days for non-payment of premium) has been provided to VPRA and any other parties as required by contract. Additionally, VPRA, the Commonwealth, CSXT, and Amtrak shall have no responsibility or liability for payment of any premiums, deductibles or self-insured retentions under any of the insurance policies required herein.

2. **Subcontract Agreements.** Contractor shall by appropriate written agreements flow down the requirements for certain insurance coverages as noted above and: (i) the waiver of subrogation for all required insurance, and (ii) additional insured coverage for all required insurance on a primary and non-contributory basis (except workers compensation and employer's liability) and (iii) other requirements of this Exhibit all tiers of Subcontractors for all insurance required of such Subcontractors under this Exhibit.
3. **Separation of Insureds/Cross Liability.** The required insurance shall apply separately to each named insured and additional insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Such provision shall provide that the interests and protections of each additional insured shall not be affected by any unintentional misrepresentation, act or omission of another named insured, or any breach by named insured of any provision in the policy that would otherwise result in forfeiture or reduction of coverage for the other insureds on the policy. There shall be no limitation of coverage for any suits by the Commonwealth, VPRA, CSXT, or Amtrak against any other insured under the policies (i.e., no 'insured v. insured' exclusion).
4. **Waiver of Right to Recover, Including Subrogation.** Contractor and Subcontractors hereby waive all their rights of recovery, under subrogation or otherwise, against the Commonwealth, VPRA, CSXT, and Amtrak with respect to the Project, to the extent covered by insurance required to be provided by Contractor and its Subcontractors of whatever tier. Contractor and all Subcontractors further waive all rights of recovery which are not covered by insurance because of deductible or self-insurance obligations relating to such insurance. These waivers do not apply to Contractor's rights of recovery against its own Subcontractors, vendors, and suppliers of whatever tier. Contractor will require all tiers of its Subcontractors, vendors, and suppliers, by appropriate written agreements, to provide similar waivers each in favor of all parties enumerated in this paragraph. To the fullest extent permitted by law, Contractor will require all insurance policies required by this Exhibit to include clauses stating each insurer will waive all rights of recovery consistent with this paragraph. All waivers provided herein shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in any property damaged.

5. **Utilization of Contractor Controlled Insurance Program (CCIP).** Contractor may utilize a Contractor Controlled-Insurance Program (CCIP) to provide any and all of the coverages required above, provided, however, that any Subcontractors and the Contractor must still maintain compliant insurance for any off-site activities and for any coverages not included in the CCIP. Any CCIP, as well as any offsite coverages, must fully comply with the additional insured, primary and non-contributory, waiver of subrogation, separation of insureds and other requirements noted above.
6. **Requirements Not Limiting.** The Parties acknowledge and agree that (i) requirements of specific coverage features or limits contained in this Exhibit are minimum coverages only and not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance policy; (ii) specific reference to a given coverage feature is not intended to be all-inclusive, or to the exclusion of other coverage, or a waiver of any type; and (iii) all insurance coverage and limits provided by Contractor, Subcontractor or by third parties pursuant to obligations of Contractor hereunder, and, in each case, available or applicable to the Project are intended to apply to the full extent of the insurance policies, and nothing contained in the Contract limits, or shall be deemed to limit, the application of such insurance coverage.

It is further understood that the insurance coverage described herein does not limit any obligations or liability of Contractor under the Contract. Furthermore, the insurance limits required hereunder are minimum limits only and not intended to restrict the liability imposed on Contractor or any Subcontractor at any tier, or otherwise to limit or reduce coverage amounts or limits under any insurance policies procured by any such Persons.

7. **Inadequacy of Required Coverages.** VPRA makes no representation that the scope of coverage and limits of liability specified for any insurance policy to be carried pursuant to the Project, or approved variances therefrom, are adequate to protect Contractor against its undertakings under the Contract or its liabilities to any third party. It is the responsibility of Contractor and any and all Subcontractors to determine if any changes or additional coverages are required to adequately protect their interests. No such limits of liability or approved variances therefrom shall preclude VPRA from taking any actions as are available to it under the Contract or otherwise at Law.

EXHIBIT F

RAILROAD OPERATOR INDEMNIFICATION PROVISIONS

I. INDEMNIFICATION DUTIES

- A. CSXT. CM/GC Contractor shall indemnify, defend, and hold harmless CSXT Indemnitees to the same extent to which VPRA is entitled to indemnity and defense under Section [**] of the Contract.
- B. Amtrak. Subject to applicable law, including Va. Code § 11-4.1, CM/GC Contractor shall indemnify and defend Amtrak for all losses or claims arising from the acts or omissions of CM/GC Contractor in performing the Contract, whether or not CM/GC Contractor is negligent and irrespective of any negligence or fault of Amtrak, *provided that*, CM/GC Contractor's indemnity and duty to defend shall not extend to Amtrak-Assumed Individuals and/or Amtrak-Assumed Property.

II. DEFINITIONS

"Affiliate" means, when used to indicate a relationship with a specified Person, Person that: (a) directly or indirectly, through one or more intermediaries has a 10% or more voting or economic interest in such specified Person or (b) controls, is controlled by or is under common control with such specified Person, and a Person is deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract, or otherwise.

"Amtrak-Assumed Individuals" means:

- (i) an employee of Amtrak;
- (ii) any person who is on an Amtrak train other than a Commonwealth-Introduced Individual;
- (iii) any person other than a Commonwealth-Introduced Individual at or adjacent to a passenger station located on the rail lines used for Amtrak service who is at such passenger station for the purpose of boarding or detraining from an Amtrak train, meeting an Amtrak train, purchasing a ticket for an Amtrak train, making a reservation for an Amtrak train, or obtaining information about Amtrak service or conducting business with Amtrak (including a vendor from whom Amtrak receives compensation);
- (iv) any person at or adjacent to a passenger station who is providing local transportation to or accompanying a person described in (iii) above; and
- (v) any person injured or killed by the collision of a vehicle or person with an Amtrak train on or adjacent to the rail lines on which Amtrak operates, including the collision of a derailed Amtrak train or any part thereof beyond the Commonwealth's railroad right-of-way.

"Amtrak-Assumed Property" means:

- (i) the property of any Amtrak-Assumed Individual;

- (ii) any locomotive, passenger car, or any other property or equipment owned by, leased to, used by or otherwise in control, custody, or possession of Amtrak (except that Amtrak's dispatching of trains, which trains are not otherwise in control, custody, or possession of Amtrak, by itself shall not be deemed to place such trains into Amtrak's control, custody, or possession); and
- (iii) property of parties other than Amtrak and VPRA, to which damage is caused by fuel oil which is demonstrated to have spilled from an Amtrak engine and for fuel oil which is demonstrated to have spilled by Amtrak's employees, agents, or contractors (but excluding CSXT) while fueling an Amtrak train.

"Commonwealth-Introduced Individual" means any employee, invitee, or agent of the Commonwealth or the Commonwealth's contractor in the course of his employment or agency, except when such employee, invitee, or agent is a fare-paying passenger of Amtrak.

"CSXT Indemnitees" means CSXT, any Affiliate of CSXT, and any of the officers, directors, shareholders, employees, agents, successors, or assigns of such entities.

III. INCLUSION IN SUBCONTRACTS

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

EXHIBIT G

FORM OF PHASE 2 AMENDMENT

This Phase 2 Amendment to the Construction Manager / General Contractor Agreement (Contract ID. No.: _____) (hereinafter, the "Phase 2 Amendment") is entered into between the Virginia Passenger Rail Authority, a political subdivision of the Commonwealth of Virginia ("VPRA") and _____, a [state] [type of entity] ("Contractor"). VPRA and Contractor are each individually a "Party" and collectively, the "Parties. Capitalized terms not otherwise defined herein shall have the meanings given in the Contract. Therefore, VPRA and Contractor agree as follows.

ARTICLE 1

Compensation to Contractor; GMP

1.1 VPRA agrees to pay and Contractor agrees to accept as just and adequate compensation for the performance of the Work in accordance with the Contract Documents the following amounts:

a. Cost of Construction Work

b. Construction Cost Markup (CM/GC Fee) \$ _____

As used herein, "Cost of Construction Work," shall mean Contractor's actual direct cost necessarily incurred for the proper performance of the Work (e.g., wages for labor, costs for Material and Equipment incorporated into the Work, Subcontract costs, and tools consumed in the Work) together with insurance and bonding costs, and general conditions costs.

In no case shall the total compensation to Contractor exceed the Guaranteed Maximum Price (GMP) of: _____ Dollars (\$ _____). Notwithstanding the foregoing, the parties may amend the GMP by Change Order in accordance with the Contract Documents, in which case the total compensation to Contractor shall not exceed the GMP as amended.

ARTICLE 2

Substantial Completion

2.1 Unless otherwise modified in accordance with the Contract Documents, the Substantial Completion Date shall be [##].

ARTICLE 3

Attachments

3.1 The following documents are attached to and incorporated into this Phase 2 Amendment and together with this Phase 2 Amendment are to be deemed part of the Contract Documents:

- a. Baseline Schedule;
- b. Phase 2 Scope of Work;
- c. Construction Provisions;

- d. Prevailing Wage Determination;
- e. Small Business Subcontracting Plan (Phase 2);
- f. Small Business Implementation Strategy (Phase 2); and
- g. Fully Executed Performance and Payment Bonds.

ARTICLE 4 **Contractor Representations**

4.1 By execution of this Phase 2 Amendment, Contractor represents and warrants, that as of the date of this Phase 2 Amendment:

- a. VPRA has satisfied its obligations under the Contract Documents to provide information and services to enable Contractor to submit its Final Binding GMP Proposal;
- b. The Contract Documents, including the drawings and specifications are sufficient to enable the Contractor to submit an accurate GMP and to construct the Project within the GMP;
- c. Contractor has carefully inspected the Project Site and has satisfied itself of the conditions at the Project Site;
- d. The GMP takes into account all work, whether or not shown or described in the drawings and specifications, which may be reasonably inferred as necessary or useful for the completion of the work in accordance with the Contract Documents; and
- e. There are no claims pending for and no facts or circumstances which would justify an increase of the Contract Price or a time extension under the terms of the Contract Documents except as disclosed in Schedule A;

ARTICLE 5 **Small and Diverse Business Participation**

5.1 Contractor shall comply with the requirements of the Small Business Subcontracting Plan (Phase 2) and Small Business Implementation Plan approved by VPRA on _____ as well as the *Special Provision Regarding the Utilization of Small and Diverse Businesses* (SP 06). Any required revisions to the Small Business Subcontracting Plan shall be accomplished by Change Order.

ARTICLE 6 **Misc.**

6.1 Contractor shall not be entitled to any payment for the Phase 2 Services unless and until the Parties have executed this Phase 2 Amendment and VPRA issues the Phase 2 NTP.

6.2 Contractor shall perform the Construction Work necessary to complete the Project in accordance with the requirements of the Contract Documents, which includes this Phase 2 Amendment.

6.3 Except as set forth in this Phase 2 Amendment, the Contract shall remain in full force and effect. In the event of a conflict between the terms of the Contract and this Phase 2 Amendment, the terms of this Phase 2 Amendment shall control.

6.4 This Phase 2 Amendment shall take effect upon the date it is last signed and may be signed in separate counterparts, each of which when signed and delivered shall be an original, and all which taken together, shall constitute one and the same instrument.

[SIGNATURES FOLLOW ON SUBSEQUENT PAGE]

DRAFT

IN WITNESS WHEREOF, the Parties have executed the Contract as of the last date set forth next to signatures of the Parties, below.

VIRGINIA PASSENGER RAIL AUTHORITY

By, _____
(signature)

Name, _____
(print)

Its, _____
(title)

Dated: _____

CONTRACTOR

[FOR A JOINT VENTURE, AUTHORIZED REPRESENTATIVES OF EACH PRINCIPAL PARTICIPANT MUST SIGN]

By, _____
(signature)

Name, _____
(print)

Its, _____
(title)

Dated: _____

By, _____
(signature)

Name, _____
(print)

Its, _____
(title)

Dated: _____

Schedule A

Pending or Reserved Claims

Instructions: Provide a description of any pending or reserved claims on the Project. If none, specify "None." Attach additional pages if necessary.

DRAFT

EXHIBIT H
REQUIRED CERTIFICATIONS

[to be inserted]

DRAFT

EXHIBIT I
COST BREAKDOWN STRUCTURE

DRAFT

Level	Level Description	Level ID	Level ID Description	Notes
Level 1	Project	R05B	Franconia-Springfield Bypass	
Level 2	Contract Package	M	Main Package	Single contract package
Level 3	Project Phase	PD	Project Development	Including, but not limited to, feasibility study, environmental impact study, preliminary design (15%, 30%)
		EN	Engineering	Including, but not limited to, PD updates, environmental works and permits, subsurface exploration, survey, final design (60% to IFC design) for civil, station, guideway, track, and roadway
		RW	Right-of-Way	Including, but not limited to, Right-of-Way acquisition activities
		CS	Construction	Including, but not limited to, early utility relocations, design support during construction, fabrication, material delivery, installation, commissioning, and testing
		PM	Program Management	Including, but not limited to, train cars procurement, transactional activities, VPRA PM, VRE PM, CSXT PM, PMSS
		UC	Unallocated Contingency	Including, but not limited to, unallocated contingency
Level 4	Element	T	Guideway/Track	Including, but not limited to, at-grade guideway and track, at-grade track special track, at-grade track crossings, bridges, flyover, tunnels, storm drainage pipes and structures, utility relocation, storm water management systems, systems signal, communication
		Z	Project Wide	Including, but not limited to, payment and performance bonds, legal, permits, review fees, general and administrative expenses, and profit, hazardous material removal/mitigation, VPRA PM, VRE PM, CXS PM, PMSS
Level 5	Sub-Element	AGT	At-grade Guideway/Track	Including, but not limited to, at-grade subgrade and tracks, at-grade special tracks, at-grade crossings, site retaining walls, site utilities, signal, and communication
		ELT	Elevated Guideway/Track	Including, but not limited to, aerial structures and tracks, special tracks, walkways, railings, signal, and communication
		SWM	Storm Water Management System (SWM)	Including, but not limited to, culvert pipe extensions, storm water pipes and structures, at-grade SWMs including landscaping
		TFS	Temporary Facilities and Services	Including, but not limited to, temporary facilities and structures, supervision, QA/QC, safety, MOT, flagging, staging and layover areas, and survey
		ZPW	Project Wide Items	Including, but not limited to, final design, general conditions, demolition, hauling, and utility relocation, payment and performance bonds, insurances, legal, permits, review fees, general and administrative expenses, and profit, hazardous material removal/mitigation, VPRA PM, VRE PM, CXS PM, PMSS
Level 6	CSI Division	01	General Requirements	Including, but not limited to, final design, start-up, bond, supervision, QA/QC, safety, MOT, staging, survey
		02	Existing Conditions	Including, but not limited to, clearing and grubbing, grading, erosion control, site demolition
		03	Concrete	Including, but not limited to, cast in place, precast concrete
		05	Metals	Including, but not limited to, structural steel, steel framing, station steel framing, canopies and roof, miscellaneous metal, fences, gates, and handrails
		10	Specialties	Including, but not limited to, station signs, parking lot signs, roadway signs, and track signs and markers

Level	Level Description	Level ID	Level ID Description	Notes
		26	Electrical	Including, but not limited to, electrical equipment and wiring, site lighting and power distribution, testing, and commissioning
		27	Communications	Including, but not limited to, signal conduits and cables, removal of existing signal equipment, new signal equipment, fiber optic
		31	Earthwork	Including, but not limited to, clearing and grubbing, excavation and backfill, grading, structural for retaining wall foundation, abutments, drilled piles and shaft foundations
		32	Exterior Improvements	Including, but not limited to, site retaining wall, concrete sidewalk, fences and rails, site furnishing, asphalt and concrete paving, curb and gutter, median barriers, traffic signal, and landscaping
		33	Utilities	Including, but not limited to, site utilities, power, gas, communication, track drainage, storm water management facilities, site grounding
		34	Transportation	Including, but not limited to, track sub-ballast, ballast, rails, ties, track signs and markers, other track materials (OTM), switches, turnouts, crossovers, bumping posts
Level 7	CSI Sub-Division	B01	Base Scope CSI Sub-Division work items	
		C01	Change Order CSI Sub-Division work items	

Franconia-Springfield Bypass Project
Cost Breakdown Structure (CBS)

No	CBS Code	CBS Description	Budgeted Cost (\$)	Actual Cost to Previous Period (\$)	Actual Cost for Current Period (\$)	Actual Cost to Current Period (\$)	Actual Cost to Current Period (%)
1	R05B.M.PD.Z.ZPW.01.B01.80.01	Project development, feasibility and environmental studies, NEPA clearance					
2	R05B.M.PD.Z.ZPW.01.B02.80.01	Project development, preliminary design					
3	R05B.M.EN.Z.ZPW.01.B01.80.02	Project engineering, NEPA reevaluation and PE updates					
4	R05B.M.EN.Z.ZPW.01.B02.80.02	Project engineering, environmental works, permits					
5	R05B.M.EN.Z.ZPW.01.B04.80.02	Project final design through IFC					
6	R05B.M.RW.Z.ZPW.01.B01.60.01	Project Right-of-Way acquisition					
7	R05B.M.PM.Z.ZPW.01.B01.80.02	Engineering activities - VPRA management					
8	R05B.M.PM.Z.ZPW.01.B02.80.02	Engineering activities - CSXT management					
9	R05B.M.PM.Z.ZPW.01.B03.80.03	Project Management for Design and Construction - VPRA management					
10	R05B.M.PM.Z.ZPW.01.B04.80.03	Project Management for Design and Construction - CSXT management					
11	R05B.M.PM.Z.ZPW.01.B05.80.04	Construction Administration & Management - VPRA management					
12	R05B.M.PM.Z.ZPW.01.B06.80.04	Project management, construction management, engineering support, and flagging during Construction - CSXT management					
13	R05B.M.PM.Z.ZPW.01.B07.80.05	Professional Liability and other Non-Construction Insurance					
14	R05B.M.PM.Z.ZPW.01.B08.80.06	Legal; Permits; Review Fees by other agencies, cities, etc.					
15	R05B.M.PM.Z.ZPW.01.B09.80.07	Surveys, Testing, Investigation, Inspection					
16	R05B.M.UC.Z.ZPW.01.B01.90	Unallocated Contingency					
17	R05B.M.CS.Z.ZPW.01.B03.40.08	Project mobilization					
18	R05B.M.CS.Z.ZPW.02.B01.40.02	Project wide early utility relocation before construction NTP					
19	R05B.M.CS.Z.ZPW.02.B02.40.01	Project wide demolition, clearing, hauling, and disposal					
20	R05B.M.CS.Z.ZPW.02.B03.40.02	Project wide utility removal, protection, and relocation during construction					
21	R05B.M.CS.T.TFS.01.B01.40.08	Project wide survey, temporary facilities, staging and laydown areas					
22	R05B.M.CS.T.TFS.01.B02.40.08	Project wide safety, MOT, contractor QC					
23	R05B.M.CS.T.TFS.01.B03.40.08	Project wide construction administration and management					
24	R05B.M.CS.Z.ZPW.01.B01.40.08	Project wide payment and performance bond, insurance					
25	R05B.M.CS.Z.ZPW.01.B02.40.08	Project wide legal, permits, review fees					
26	R05B.M.CS.Z.ZPW.02.B05.40.03	Project wide hazardous material removal/mitigation					
27	R05B.M.CS.Z.ZPW.02.B06.40.04	Project wide environmental mitigation					
28	R05B.M.CS.T.AGT.31.B01.10.08	At-grade guideway fill concrete retaining wall structure excavation, SOE, and backfill					
29	R05B.M.CS.T.AGT.03.B01.10.08	At-grade guideway fill concrete retaining wall piles and foundations					

No	CBS Code	CBS Description	Budgeted Cost (\$)	Actual Cost to Previous Period (\$)	Actual Cost for Current Period (\$)	Actual Cost to Current Period (\$)	Actual Cost to Current Period (%)
30	R05B.M.CS.T.AGT.03.B02.10.08	At-grade guideway fill concrete retaining wall footing and stem wall					
31	R05B.M.CS.T.AGT.03.B03.10.08	At-grade guideway fill concrete retaining wall architecture finishes					
32	R05B.M.CS.T.AGT.31.B02.10.08	At-grade guideway cut retaining wall structure excavation, SOE, and backfill					
33	R05B.M.CS.T.AGT.03.B04.10.08	At-grade guideway cut retaining wall drilled shafts and foundations					
34	R05B.M.CS.T.AGT.03.B05.10.08	At-grade guideway cut retaining wall piles and lagging					
35	R05B.M.CS.T.AGT.31.B03.40.05	At-grade guideway concrete crash wall structure excavation, SOE, and backfill					
36	R05B.M.CS.T.AGT.03.B06.40.05	At-grade guideway concrete crash wall piles and foundations					
37	R05B.M.CS.T.AGT.03.B07.40.05	At-grade guideway concrete crash wall footing and stem wall					
38	R05B.M.CS.T.AGT.10.B01.10.08	At-grade ballast track signage and markers					
39	R05B.M.CS.T.AGT.32.B01.10.08	At-grade guideway chain link fences and gates					
40	R05B.M.CS.T.AGT.31.B04.10.08	At-grade ballast track excavation, backfill, grading					
41	R05B.M.CS.T.AGT.33.B01.10.08	At-grade ballast track drainage system					
42	R05B.M.CS.T.AGT.34.B01.10.11	At-grade ballast track subballast/preballast/ballast					
43	R05B.M.CS.T.AGT.34.B02.10.11	At-grade ballast track wood/concrete ties					
44	R05B.M.CS.T.AGT.34.B03.10.11	At-grade ballast track running rails and guard rails					
45	R05B.M.CS.T.AGT.34.B04.10.11	At-grade ballast track existing track removal, realignment, and cutover					
46	R05B.M.CS.T.AGT.34.B05.10.12	At-grade ballast track special track including switches, turnouts, crossovers, and appurtenances					
47	R05B.M.CS.T.AGT.34.B06.10.10	At-grade ballast track crossing embedded rail and crossing					
48	R05B.M.CS.T.AGT.27.B01.50.01	At-grade guideway signal and communication system					
49	R05B.M.CS.T.AGT.32.B02.40.06	At-grade guideway landscape, trail, and access road					
50	R05B.M.CS.T.AGT.33.B02.40.02	At-grade guideway wet utilities					
51	R05B.M.CS.T.AGT.33.B03.40.02	At-grade guideway dry utilities					
51	R05B.M.CS.T.AGT.26.B02.40.06	At-grade guideway lighting and fixtures, power including low voltage and grounding					
52	R05B.M.CS.T.SWM.33.B01.40.02	Guideway stormwater management facility, RCP culvert extension					
53	R05B.M.CS.T.ELT.31.B01.10.04	Elevated guideway concrete pier structural excavation, SOE, and backfill					
54	R05B.M.CS.T.ELT.31.B02.10.04	Elevated guideway concrete pier piles and drilled shafts					
55	R05B.M.CS.T.ELT.03.B01.10.04	Elevated guideway concrete pier pile caps and footings					
56	R05B.M.CS.T.ELT.03.B02.10.04	Elevated guideway concrete pier columns					
57	R05B.M.CS.T.ELT.03.B03.10.04	Elevated guideway concrete pier caps					
58	R05B.M.CS.T.ELT.31.B03.10.04	Elevated guideway abutment structural excavation, SOE, and backfill					
59	R05B.M.CS.T.ELT.31.B04.10.04	Elevated guideway abutment piles, drilled shafts					
60	R05B.M.CS.T.ELT.03.B04.10.04	Elevated guideway abutment footings and pile caps					
62	R05B.M.CS.T.ELT.03.B05.10.04	Elevated guideway abutment concrete walls and slope protection					
63	R05B.M.CS.T.ELT.05.B01.10.04	Elevated guideway structural steel superstructure					
64	R05B.M.CS.T.ELT.03.B07.10.04	Elevated guideway precast concrete superstructure					

No	CBS Code	CBS Description	Budgeted Cost (\$)	Actual Cost to Previous Period (\$)	Actual Cost for Current Period (\$)	Actual Cost to Current Period (\$)	Actual Cost to Current Period (%)
65	R05B.M.CS.T.ELT.05.B02.10.04	Elevated guideway hand rails, fences, and miscellaneous steel					
66	R05B.M.CS.T.ELT.32.B01.10.04	Elevated guideway deck and walkway					
67	R05B.M.CS.T.ELT.32.B02.10.04	Elevated guideway approach slab					
68	R05B.M.CS.T.ELT.03.B06.10.04	Elevated guideway concrete parapet					
69	R05B.M.CS.T.ELT.33.B01.10.04	Elevated guideway concrete utility duckbank					
70	R05B.M.CS.T.ELT.33.B02.10.04	Elevated guideway deck drainage pipe					
Grand Total							

Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7			
Project ID	Contract ID	Phase ID	Element ID	Sub-Element ID	CSI ID	CSI Sub-Division ID	WBS CSI Sub-Division Description	SCC Code	CBS Code
R05B	M	PD	Z	ZPW	01	B01	Project development, feasibility and environmental studies, NEPA clearance	80.01	R05B.M.PD.Z.ZPW.01.B01.80.01
R05B	M	PD	Z	ZPW	01	B02	Project development, preliminary design	80.01	R05B.M.PD.Z.ZPW.01.B02.80.01
R05B	M	EN	Z	ZPW	01	B01	Project engineering, NEPA reevaluation and PE updates	80.02	R05B.M.EN.Z.ZPW.01.B01.80.02
R05B	M	EN	Z	ZPW	01	B02	Project engineering, environmental works, permits	80.02	R05B.M.EN.Z.ZPW.01.B02.80.02
R05B	M	EN	Z	ZPW	01	B04	Project final design through IFC	80.02	R05B.M.EN.Z.ZPW.01.B04.80.02
R05B	M	RW	Z	ZPW	01	B01	Project Right-of-Way acquisition	60.01	R05B.M.RW.Z.ZPW.01.B01.60.01
R05B	M	PM	Z	ZPW	01	B01	Engineering activities - VPRA management	80.02	R05B.M.PM.Z.ZPW.01.B01.80.02
R05B	M	PM	Z	ZPW	01	B02	Engineering activities - CSXT management	80.02	R05B.M.PM.Z.ZPW.01.B02.80.02
R05B	M	PM	Z	ZPW	01	B03	Project Management for Design and Construction - VPRA management	80.03	R05B.M.PM.Z.ZPW.01.B03.80.03
R05B	M	PM	Z	ZPW	01	B04	Project Management for Design and Construction - CSXT management	80.03	R05B.M.PM.Z.ZPW.01.B04.80.03
R05B	M	PM	Z	ZPW	01	B05	Construction Administration & Management - VPRA management	80.04	R05B.M.PM.Z.ZPW.01.B05.80.04
R05B	M	PM	Z	ZPW	01	B06	Project management, construction management, engineering support, and flagging during Construction - CSXT management	80.04	R05B.M.PM.Z.ZPW.01.B06.80.04
R05B	M	PM	Z	ZPW	01	B07	Professional Liability and other Non-Construction Insurance	80.05	R05B.M.PM.Z.ZPW.01.B07.80.05
R05B	M	PM	Z	ZPW	01	B08	Legal; Permits; Review Fees by other agencies, cities, etc.	80.06	R05B.M.PM.Z.ZPW.01.B08.80.06
R05B	M	PM	Z	ZPW	01	B09	Surveys, Testing, Investigation, Inspection	80.07	R05B.M.PM.Z.ZPW.01.B09.80.07
R05B	M	UC	Z	ZPW	01	B01	Unallocated Contingency	90.00	R05B.M.UC.Z.ZPW.01.B01.90
R05B	M	CS	Z	ZPW	01	B03	Project mobilization	40.08	R05B.M.CS.Z.ZPW.01.B03.40.08
R05B	M	CS	Z	ZPW	02	B01	Project wide early utility relocation before construction NTP	40.02	R05B.M.CS.Z.ZPW.02.B01.40.02
R05B	M	CS	Z	ZPW	02	B02	Project wide demolition, clearing, hauling, and disposal	40.01	R05B.M.CS.Z.ZPW.02.B02.40.01
R05B	M	CS	Z	ZPW	02	B03	Project wide utility removal, protection, and relocation during construction	40.02	R05B.M.CS.Z.ZPW.02.B03.40.02
R05B	M	CS	T	TFS	01	B01	Project wide survey, temporary facilities, staging and laydown areas	40.08	R05B.M.CS.T.TFS.01.B01.40.08
R05B	M	CS	T	TFS	01	B02	Project wide safety, MOT, contractor QC	40.08	R05B.M.CS.T.TFS.01.B02.40.08
R05B	M	CS	T	TFS	01	B03	Project wide construction administration and management	40.08	R05B.M.CS.T.TFS.01.B03.40.08
R05B	M	CS	Z	ZPW	01	B01	Project wide payment and performance bond, insurance	40.08	R05B.M.CS.Z.ZPW.01.B01.40.08
R05B	M	CS	Z	ZPW	01	B02	Project wide legal, permits, review fees	40.08	R05B.M.CS.Z.ZPW.01.B02.40.08
R05B	M	CS	Z	ZPW	02	B05	Project wide hazardous material removal/mitigation	40.03	R05B.M.CS.Z.ZPW.02.B05.40.03
R05B	M	CS	Z	ZPW	02	B06	Project wide environmental mitigation	40.04	R05B.M.CS.Z.ZPW.02.B06.40.04
R05B	M	CS	T	AGT	31	B01	At-grade guideway fill concrete retaining wall structure excavation, SOE, and backfill	10.08	R05B.M.CS.T.AGT.31.B01.10.08
R05B	M	CS	T	AGT	03	B01	At-grade guideway fill concrete retaining wall piles and foundations	10.08	R05B.M.CS.T.AGT.03.B01.10.08
R05B	M	CS	T	AGT	03	B02	At-grade guideway fill concrete retaining wall footing and stem wall	10.08	R05B.M.CS.T.AGT.03.B02.10.08
R05B	M	CS	T	AGT	03	B03	At-grade guideway fill concrete retaining wall architecture finishes	10.08	R05B.M.CS.T.AGT.03.B03.10.08
R05B	M	CS	T	AGT	31	B02	At-grade guideway cut retaining wall structure excavation, SOE, and backfill	10.08	R05B.M.CS.T.AGT.31.B02.10.08
R05B	M	CS	T	AGT	03	B04	At-grade guideway cut retaining wall drilled shafts and foundations	10.08	R05B.M.CS.T.AGT.03.B04.10.08
R05B	M	CS	T	AGT	03	B05	At-grade guideway cut retaining wall piles and lagging	10.08	R05B.M.CS.T.AGT.03.B05.10.08
R05B	M	CS	T	AGT	31	B03	At-grade guideway concrete crash wall structure excavation, SOE, and backfill	40.05	R05B.M.CS.T.AGT.31.B03.40.05
R05B	M	CS	T	AGT	03	B06	At-grade guideway concrete crash wall piles and foundations	40.05	R05B.M.CS.T.AGT.03.B06.40.05
R05B	M	CS	T	AGT	03	B07	At-grade guideway concrete crash wall footing and stem wall	40.05	R05B.M.CS.T.AGT.03.B07.40.05
R05B	M	CS	T	AGT	10	B01	At-grade ballast track signage and markers	10.08	R05B.M.CS.T.AGT.10.B01.10.08
R05B	M	CS	T	AGT	32	B01	At-grade guideway chain link fences and gates	10.08	R05B.M.CS.T.AGT.32.B01.10.08
R05B	M	CS	T	AGT	31	B04	At-grade ballast track excavation, backfill, grading	10.08	R05B.M.CS.T.AGT.31.B04.10.08
R05B	M	CS	T	AGT	33	B01	At-grade ballast track drainage system	10.08	R05B.M.CS.T.AGT.33.B01.10.08
R05B	M	CS	T	AGT	34	B01	At-grade ballast track subballast/preballast/ballast	10.11	R05B.M.CS.T.AGT.34.B01.10.11
R05B	M	CS	T	AGT	34	B02	At-grade ballast track wood/concrete ties	10.11	R05B.M.CS.T.AGT.34.B02.10.11
R05B	M	CS	T	AGT	34	B03	At-grade ballast track running rails and guard rails	10.11	R05B.M.CS.T.AGT.34.B03.10.11
R05B	M	CS	T	AGT	34	B04	At-grade ballast track existing track removal, realignment, and cutover	10.11	R05B.M.CS.T.AGT.34.B04.10.11
R05B	M	CS	T	AGT	34	B05	At-grade ballast track special track including switches, turnouts, crossovers, and appurtenances	10.12	R05B.M.CS.T.AGT.34.B05.10.12
R05B	M	CS	T	AGT	34	B06	At-grade ballast track crossing embedded rail and crossing	10.10	R05B.M.CS.T.AGT.34.B06.10.10
R05B	M	CS	T	AGT	27	B01	At-grade guideway signal and communication system	50.01	R05B.M.CS.T.AGT.27.B01.50.01
R05B	M	CS	T	AGT	32	B02	At-grade guideway landscape, trail, and access road	40.06	R05B.M.CS.T.AGT.32.B02.40.06
R05B	M	CS	T	AGT	33	B02	At-grade guideway dry utilities	40.02	R05B.M.CS.T.AGT.33.B02.40.02
R05B	M	CS	T	AGT	33	B03	At-grade guideway wet utilities	40.02	R05B.M.CS.T.AGT.33.B03.40.02
R05B	M	CS	T	AGT	26	B02	At-grade guideway lighting and fixtures, power including low voltage and grounding	40.06	R05B.M.CS.T.AGT.26.B02.40.06

Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7			
Project ID	Contract ID	Phase ID	Element ID	Sub-Element ID	CSI ID	CSI Sub-Division ID	WBS CSI Sub-Division Description	SCC Code	CBS Code
R05B	M	CS	T	SWM	33	B01	Guideway stormwater management facility, RCP culvert extension	40.02	R05B.M.CS.T.SWM.33.B01.40.02
R05B	M	CS	T	ELT	31	B01	Elevated guideway concrete pier structural excavation, SOE, and backfill	10.04	R05B.M.CS.T.ELT.31.B01.10.04
R05B	M	CS	T	ELT	31	B02	Elevated guideway concrete pier piles and drilled shafts	10.04	R05B.M.CS.T.ELT.31.B02.10.04
R05B	M	CS	T	ELT	03	B01	Elevated guideway concrete pier pile caps and footings	10.04	R05B.M.CS.T.ELT.03.B01.10.04
R05B	M	CS	T	ELT	03	B02	Elevated guideway concrete pier columns	10.04	R05B.M.CS.T.ELT.03.B02.10.04
R05B	M	CS	T	ELT	03	B03	Elevated guideway concrete pier caps	10.04	R05B.M.CS.T.ELT.03.B03.10.04
R05B	M	CS	T	ELT	31	B03	Elevated guideway abutment structural excavation, SOE, and backfill	10.04	R05B.M.CS.T.ELT.31.B03.10.04
R05B	M	CS	T	ELT	31	B04	Elevated guideway abutment piles, drilled shafts	10.04	R05B.M.CS.T.ELT.31.B04.10.04
R05B	M	CS	T	ELT	03	B04	Elevated guideway abutment footings and pile caps	10.04	R05B.M.CS.T.ELT.03.B04.10.04
R05B	M	CS	T	ELT	03	B05	Elevated guideway abutment concrete walls and slope protection	10.04	R05B.M.CS.T.ELT.03.B05.10.04
R05B	M	CS	T	ELT	05	B01	Elevated guideway structural steel superstructure	10.04	R05B.M.CS.T.ELT.05.B01.10.04
R05B	M	CS	T	ELT	03	B07	Elevated guideway precast concrete superstructure	10.04	R05B.M.CS.T.ELT.03.B07.10.04
R05B	M	CS	T	ELT	05	B02	Elevated guideway hand rails, fences, and miscellaneous steel	10.04	R05B.M.CS.T.ELT.05.B02.10.04
R05B	M	CS	T	ELT	32	B01	Elevated guideway deck and walkway	10.04	R05B.M.CS.T.ELT.32.B01.10.04
R05B	M	CS	T	ELT	32	B02	Elevated guideway approach slab	10.04	R05B.M.CS.T.ELT.32.B02.10.04
R05B	M	CS	T	ELT	03	B06	Elevated guideway concrete parapet	10.04	R05B.M.CS.T.ELT.03.B06.10.04
R05B	M	CS	T	ELT	33	B01	Elevated guideway concrete utility duckbank	10.04	R05B.M.CS.T.ELT.33.B01.10.04
R05B	M	CS	T	ELT	33	B02	Elevated guideway deck drainage pipe	10.04	R05B.M.CS.T.ELT.33.B02.10.04

EXHIBIT J

FORCE ACCOUNT WORK / EXTRA WORK AND DELAY COST SPECIFICATION

This Exhibit J sets forth the methods for calculating Extra Work Costs and Delay Costs owing from VPRA to Contractor under the Agreement.

1. Extra Work Costs

At the sole discretion of VPRA, Extra Work Costs shall be determined on either a negotiated lump sum basis as described in Section 1.1 or Force Account basis as described in Section 1.2. Extra Work Costs shall not include Delay Costs; Delay Costs shall be calculated separately as provided in Section 2 of this Exhibit J and shall not be eligible for additional markup as Extra Work Costs.

1.1. Negotiated Lump Sum

1.1.1. When Extra Work Costs are determined on a lump sum basis, such Extra Work Costs shall be negotiated based on:

- (a) Estimated costs of labor;
- (b) Estimated costs of Material;
- (c) Estimated costs of Equipment;
- (d) Actual fees and charges (e.g., permit fees, plan check fees, review fees and charges) of Governmental Persons in connection with Governmental Approvals required to perform the Extra Work;
- (e) Extra insurance costs and extra costs of bonds and letters of credit; and
- (f) Other estimated direct costs.

1.1.2. Negotiated lump sum Extra Work Costs shall also include a 15% markup for Contractor indirect costs, field office overhead, and profit. Where the Extra Work is performed by Subcontractors, the Subcontractor may include a 15% markup for the Subcontractor's indirect costs, field office overhead, and profit. The negotiated lump sum shall not include any home office overhead of Contractor or Subcontractors.

1.1.3. Where Extra Work is performed by Subcontractors, Contractor may only include a supplemental markup of 5% of the Subcontractor's costs as Extra Work Costs. Contractor's 5% markup shall apply only to the costs of the Subcontractor, at any tier, that actually performs the Extra Work. VPRA will apply such 5% markup only to the Subcontractor's direct Extra Work Costs, i.e., not in addition to direct Extra Work Costs plus the Subcontractor's 15% markup for overhead and profit.

1.1.4. The price of a negotiated lump sum for Extra Work Costs shall be based on the original allocations of pricing to comparable activities, Materials, and Equipment, as indicated in the Construction Pricing Documents. Price negotiations for lump sum Extra Work Costs shall be on an Open Book Basis.

1.1.5. In pricing any negotiated lump sum for Extra Work Costs, Contractor shall include sales or use taxes only on such portion of the Extra Work Costs that does not qualify for exemption from such sales or use taxes under applicable Law.

1.2 Force Account Basis

When Extra Work Costs are determined on a Force Account basis, VPRA will pay Contractor for the direct costs of labor, Materials and Equipment used, and fees and charges of Governmental Approvals required, to perform the Extra Work, plus markup for labor burden costs, indirect costs, overhead and profit, as set forth in and as limited by this Section 1.2.

1.2.1 Labor

1.2.1.1 Construction Labor

For construction labor, VPRA will pay the wage rate actually paid by Contractor during the pay period ending before the Force Account work commences. Such payment shall include Work by supervisors in direct charge of the Force Account Work. If there is no wage rate for a labor classification needed to perform the type of Work required, VPRA and Contractor will negotiate and document a new wage rate before beginning the Force Account Work or as needed to negotiate a Change Order. Fringe rates are to be determined by payroll records.

VPRA will pay an amount equal to 30 percent of the sum of the direct labor costs and fringe benefits. This payment is in compensation in the following increments: field office overhead (10 percent), home office overhead (10 percent), and profit (10 percent).

Accordingly, for regular (non-overtime) work, labor costs will be calculated as follows:

$$\text{Hourly Rate} = (\text{Wage Rate} + \text{Fringe Rate}) \times 1.3.$$

For overtime work, labor costs will be calculated as follows:

$$\text{Hourly Rate} = ([\text{Wage Rate} \times 1.5] + \text{Fringe Rate}) \times 1.3.$$

1.2.1.2 Reserved

1.2.1.3 Other Reimbursable Costs

In addition to the hourly wages provided in Sections 1.2.1.1 and 1.2.1.2, VPRA will reimburse Contractor for the following actual reasonable costs paid to (or on behalf of) workers:

- (a) Subsistence and travel allowances that do not exceed applicable per diem rates and allowable expenses and rates under the Federal Acquisition Regulation; and
- (b) Other benefits required by collective bargaining agreements or other employment contracts, applicable to the class of labor, and that are not included as fringe benefits.

1.2.2 Bond, Insurance, and Tax

For bonds, insurance, and taxes, VPRA will pay Contractor the actual cost of the following items as they relate to the Extra Work, plus six percent (6%):

- (a) Property damage, liability, and worker's compensation insurance premiums;
- (b) Unemployment insurance premiums or contributions;
- (c) Applicable payroll taxes (not including gross receipts taxes); and
- (d) Social Security taxes.

To recover actual costs, Contractor shall provide actual invoice costs of the rate(s) it has paid for bonds, insurance, and taxes.

1.2.3 Materials

VPRA will pay Contractor the reasonable actual cost of Materials provided by the Contractor, Accepted by VPRA, and incorporated into the Force Account work, including reasonable transportation charges paid by Contractor (exclusive of Equipment rentals), plus 15% of the Material cost.

1.2.4 Equipment

1.2.4.1 General Equipment Rental Provisions

Force Account Extra Work costs for the use of equipment owned by Contractor, an Affiliate or a Subcontractor shall be determined at the rental rates listed for that equipment in the current edition and appropriate volume of the Rental Rate Blue Book (RRBB) as published by EquipmentWatch®, which is in effect on the date on which the Force Account Extra Work is performed, modified in accordance with the formula below, and regardless of ownership and any rental or other agreement, if they may exist, for the use of that equipment entered into by Contractor or any Subcontractor. The hourly equipment rental rate (HERR) in such circumstances will be determined in accordance with the following formula (which does not include operators):

$$\text{HERR} = (F \times \{[1.15 \times R] / 176\}) + \text{HOC}$$

Where:

F = VPRA adjustment factor to R as follows: 0.933;

R = the then current monthly rate as published in the then current RRBB;
and

HOC = hourly operation cost;

provided, however, that the following provisions (a) through (k) shall apply.

- (a) Contractor shall not charge for those pieces of Equipment with a rental rate of \$5.00 per hour or less as listed in the RRBB.
- (b) An overhead and profit adjustment of 15 percent of the rates provided in the RRBB is included in the above formula.
- (c) If VPRA concurs that it is necessary to use Equipment owned by Contractor, an Affiliate or a Subcontractor that is not listed in the RRBB, VPRA will establish a suitable rental rate for that Equipment. Contractor may furnish any cost data which might assist VPRA in the establishment of the rental rate. If the rental rate established by VPRA is \$5.00 per hour or less, the provisions of Section 1.2.4.1(a) above shall apply.
- (d) The hourly operating cost (HOC) as provided above shall include the major costs of Equipment operation, such as the cost of fuel, oil, lubrication, supplies, field repairs, tires, expendable parts, up to one necessary attachment per piece of Equipment, maintenance, depreciation, storage, and insurance.

- (e) When multiple attachments are necessary or included for a piece of Equipment, only the attachment having the highest rate will be included for the purpose of calculating Force Account Extra Work costs, provided that the attachment has been approved by VPRA as being necessary to the Force Account Extra Work.
- (f) The cost of labor for operators of rented Equipment shall be determined as provided in Section 1.2.1 above ("Labor").
- (g) For costs of Equipment to be eligible for inclusion in Force Account Extra Work Costs, the Equipment must be in good working condition and suitable for the purpose for which the Equipment is to be used. Contractor shall handle and use the Equipment to provide normal output or normal production. All Equipment is subject to approval by VPRA. Equipment that is not in good working order or that is not of proper size for efficient performance of the Force Account Extra Work may be rejected by VPRA. Rental time shall apply to eligible Equipment used for Force Account Extra Work to establish or calculate the Extra Work Costs related thereto or resulting therefrom until such time as VPRA directs that the use of such Equipment be discontinued or until completion of the relevant work.
- (h) Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify Equipment for the determination of applicable rental rates. Equipment that has no direct power unit must be powered by a unit of at least the minimum rating recommended by the manufacturer.
- (i) Extra Work costs shall not include the costs of small tools. Individual pieces of Equipment or tools not listed in the RRBB and having a replacement value of \$400 or less, regardless of whether consumed by use, shall be considered to be small tools, ineligible to be included in Force Account Extra Work Costs.
- (j) Rental time will not be allowed while Equipment is inoperative due to breakdowns.
- (k) For each piece of Equipment to be used to perform Force Account Extra Work, whether owned by Contractor, an Affiliate or a Subcontractor (and, therefore, covered by this Section 1.2.4.1) or rented (and covered by Section 1.2.4.3 below), Equipment use hours shall be recorded and charged to the nearest one-half hour and Contractor shall provide VPRA with the following additional information: the manufacturer's name; Equipment type; year of manufacture; model number; type of fuel used; horsepower rating; attachments required, together with their size or capacity; and any other information necessary to determine the Extra Work costs.

1.2.4.2 Stand-By Time

Force Account Extra Work Costs for Equipment owned by Contractor, an Affiliate or a Subcontractor that is in operational condition and is standing by with VPRA's approval for participation in the Force Account Extra Work shall be determined in accordance with the following stand-by rate (SBR) formula:

$$\text{SBR} = F \times (R / 176) \times 0.5$$

Where "F" and "R" are as provided in Section 1.2.4.1.

Stand-by hours will be limited to not more than eight hours in a 24-hour day or 40 hours in a week. No hours will be allowed or included and Force Account Extra Work Costs shall not be paid for Equipment that is inoperable. No hours shall be allowed or included and Extra Work costs shall not be paid for Equipment that is not operating because the Force Account Extra Work has been

suspended by Contractor. Contractor shall request VPRA's approval for stand-by time no less than 48 hours prior to commencement of such stand-by time.

1.2.4.3 Outside Rented Equipment

In cases where a piece of Equipment to be used for Force Account Extra Work is rented or leased by Contractor from a third party (not an Affiliate or Subcontractor) exclusively for such Force Account Extra Work, the Extra Work costs shall be determined in accordance with the following formula:

$$(\text{Rental Invoice} \times 1.10) + \text{HOC}$$

The above formula includes a 10 percent mark-up of the rental invoice for all overhead and incidental costs of furnishing the equipment.

1.2.4.4 Moving of Equipment

- (a) The rental time (including for owned equipment) to be included in calculating Extra Work costs for needed Equipment shall be the time the Equipment is in operation on the Force Account Extra Work being performed, and, in addition, shall include no more than the time required to move the Equipment to the location of the Force Account Extra Work and return the Equipment to the original location, or to another location requiring no more time than that required to return the Equipment to its original location, except that moving time is not includable in Extra Work costs if the Equipment is used at the site of the Force Account Extra Work on other than the Force Account Extra Work either before or after the Force Account Extra Work. Loading and transporting costs will be included in Force Account Extra Work costs, in lieu of moving time, when the Equipment is moved by means other than its own power. However, moving time back to the original location or loading and transporting costs will not be included in the calculation of Force Account Extra Work costs if the Equipment is used at the site of the Force Account Extra Work on other than the Force Account Extra Work.
- (b) For use of Equipment moved from one location on the Site to another location on the Site exclusively for the Force Account Extra Work, the cost of transferring and/or moving the Equipment to the site of the Force Account Extra Work and returning it the original location may be included in the Extra Work Costs as specified in this Section 1.2.4.4.
- (c) For use of Equipment moved from a location not on the Site to a location on the Site, the original location of the Equipment to be hauled to the Site shall be subject to VPRA's prior Approval for the purpose of determining allowable Force Account Extra Work Costs.
- (d) Where the move of the Equipment is made by common carrier, the Force Account Extra Work costs to be included will be the invoiced amount paid for the freight plus 15 percent of such amount to cover profit, overhead, and indirect costs. If Contractor hauls the Equipment with its own forces, costs will be included in the Force Account Extra Work costs for hauling the unit plus the driver's wages and the cost of loading and unloading the Equipment.
- (e) For the purpose of determining Extra Work costs, the maximum rental period for the day that the Equipment is moved to the location on the Site where the Force Account Extra Work is performed and the day that the use of the Equipment is discontinued for Force Account Extra Work shall be the actual time that the Equipment is in operation on the Force Account Extra Work.

1.2.5 Miscellaneous

VPRA will not pay for other costs not specifically addressed in this Section 1.2.

2. Delay Costs

Delay Costs shall include only those costs identified below. Contractor shall not be entitled to any compensation other than for the categories and amounts specifically stated in this Section 2 "Delay Costs" arising out of an eligible delay.

2.1 Direct Cost of Idle Labor

Idle labor time shall consist of the hourly rate for idle workers, calculated in accordance with Section 1.2.1 above. Compensation for idle labor applies only to non-salaried workers. Compensation for idle workers is not eligible for overtime.

2.2 Direct Cost of Idle Equipment

Compensation for the direct cost of idle Equipment shall be determined in the same manner as Equipment used for Force Account Extra Work as provided in Section 1.2.4 above, subject to the following limitations:

- (a) Compensation for idle Equipment shall not exceed 8 hours in any 24-hour period or 40 hours in a week;
- (b) Compensation shall only be eligible for the Working Days during a period of eligible delay (i.e., excluding Saturdays, Sundays, and Holidays); and
- (c) Compensation is not eligible for the time that Equipment is being used on Extra Work and is compensated in accordance with Section 1.2.4 above.

VPRA may determine that the idle equipment shall not remain on Site during a delay. In that event, VPRA will pay the actual, reasonable costs, without markup to (i) demobilize the Equipment during the delay and (ii) remobilize the Equipment at the conclusion of the delay. Compensation for idle Equipment will not be paid while the Equipment is demobilized from the Site during a delay.

2.3 Subcontractor Markup

Delay Costs shall include a markup of five percent (5%) of a Subcontractor's eligible idle labor and Equipment determined as provided in Sections 2.1 and 2.2 above. This markup constitutes full compensation for all labor-related and Equipment-related costs, expenses, and profit due an eligible delay.

2.4 Daily Rate

An additional amount will be added as Delay Costs as compensation for all other items for which a specific amount is not provided above, including all overhead (field and home office) and any other costs. The additional allowable daily markup shall be determined as follows:

$$\text{Daily Rate: } (A \times C)/B$$

Where:

A = GMP on the date of the Phase 2 Amendment

B = Contract Days on the date of the Phase 2 Amendment

C = .1

Delay Costs for Early Work may be negotiated separately for each Early Work Package.

DRAFT

EXHIBIT K
SPECIAL TERMS AND CONDITIONS
FORM PD 260 (FRA/CON)

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SPECIAL TERMS AND CONDITIONS (Federal Railroad Administration Clauses)

These Special Terms and Conditions shall apply in instances in which the 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 of these Special Terms and Conditions is inconsistent with a provision found elsewhere in the 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 contractors and subcontractors.
- 1.2 **“Contractor”** means the party entering into the Contract with VPRA as a result of the solicitation for construction services and is intended to include the “Design-Builder” and “CM/GC Contractor,” to the extent that term is used and/or defined elsewhere 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 **“FRA”** means the Federal Railroad Administration, an operating administration of the USDOT.
- 1.7 **“Grant Agreement”** shall mean the grant agreement between VPRA and FRA which forms the basis for federal financial assistance on the Contract.
- 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 Contract Work.
- 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 Contractor under the Contract.

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

- 2.1 Contractor 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). Contractor 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. Contractor's failure to fully comply with the provisions of this Section 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 in 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 Contractor shall not perform any act, fail to perform any act, or refuse to comply with any VPRA requests which would cause 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: ACCESS TO RECORDS, ACCESS TO CONSTRUCTION SITE, AND MAINTENANCE OF RECORDS

- 4.1** ***Access to Records.*** Contractor 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.
- 4.2** ***Access to the Sites of Performance.*** Contractor agrees to permit FRA and its agents access to the sites of performance under this Contract as may reasonably be required.
- 4.3** ***Reproduction of Documents.*** Contractor will retain, and will require its subcontractors/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.
- 4.4** ***Retention Period.*** Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Contractor 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 5: PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- 5.1** Contractor 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, Contractor 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, Contractor 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 Contractor to the extent the Federal Government deems appropriate.
- 5.2** Contractor shall report to FRA Regional Counsel and the DOT Inspector General any current or prospective legal matter with potentially serious consequences, including a major dispute, default, breach, or litigation, or knowledge that Contractor has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, *et seq.*, or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance; suspension, debarment, or other similar administrative or enforcement action against Contractor;

or any matter or situation, including any other change or legal action that may adversely affect the Federal Government's interest in a Project or related activities.

ARTICLE 6: CIVIL RIGHTS

6.1 VPRA is an Equal Opportunity Employer. As such, VPRA agrees to comply with all applicable Federal civil rights laws and implementing regulations. Under this Contract, Contractor shall at all times comply with the following requirements:

6.2 ***Nondiscrimination.*** The following nondiscrimination requirements apply to this Contract:

6.2.1 ***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, and section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, Contractor 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, Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FRA may issue, including but not limited to 49 C.F.R Part 21.

6.2.2 ***Nondiscrimination in Contracting.*** Contractor 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) Contractor 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) Contractor must take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of USDOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable.

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

6.3.1 ***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.*, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (USDOL) 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." Contractor 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, Contractor agrees to comply with any implementing requirements FRA may issue.

6.3.2 ***Age.*** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (US 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.*, and 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, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FRA may issue.

- 6.4 *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.*, and the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, Contractor agrees to comply with the requirements of US EEOC, “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. Contractor 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.
- 6.5 *Information and Reports.*** Contractor 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 VPRA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to VPRA, and shall set forth what efforts it has made to obtain the information.
- 6.6 *Sanctions for Noncompliance.*** In the event of Contractor’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 Contractor otherwise due under Contract until Contractor achieves compliance, and/or
 - ii. Cancellation, termination, or suspension of the Contract, in whole or in part.

ARTICLE 7: SPECIAL U.S. DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS

- 7.1** If the Contract has a total value of \$10,000 or more and is for construction, Contractor will comply with (i) USDOL regulations set forth in 41 C.F.R. Part 60-4, (ii) Executive Order 11246 “Equal Employment Opportunity,” as amended (including by Executive Order 11375), and (iii) 42 U.S.C. § 2000 (e) note.
- 7.2** Contractor will comply with the equal opportunity clause set forth in 41 C.F.R. § 60-1.4(b), which is incorporated herein by reference pursuant to 41 C.F.R. § 60-1.4(d).
- 7.3** Contractor will comply with the “Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)” set forth in 41 C.F.R. § 60-4.3, which specifications, if applicable, will be included in a special provision to the Contract.
- 7.4** The requirements of this Article apply to Contractor and its subcontractors performing construction work at every tier. Contractor is responsible for ensuring that all applicable lower tier contractors and subcontractors are in compliance with this Article.

ARTICLE 8: NONDISCRIMINATION LEGAL AUTHORITIES APPLICABLE TO THE CONTRACT

- 8.1** During the performance of this Contract, Contractor, for itself, its assignees, and successors in interest, agrees to comply with all applicable nondiscrimination statutes and authorities; including but not limited to, the following:
- 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 C.F.R. 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 C.F.R. 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: PREVAILING WAGE AND ANTI-KICKBACK

9.1 For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FRA, Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146- 3148 as supplemented by USDOL regulations at 29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.”

9.2 In accordance with the statute, Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor agrees to pay wages not less than once a week. Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

ARTICLE 10: CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- 10.1** For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the USDOL regulations at 29 C.F.R. Part 5. Under 40 U.S.C. § 3702 of the Act, Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- 10.2** The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence. In the event of any violation of the clause set forth herein, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by this clause.
- 10.3** The FRA shall upon its own action or upon written request of an authorized representative of the USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

ARTICLE 11: EMPLOYEE PROTECTIONS, OTHER

- 11.1** Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, 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 C.F.R. Part 5.
- 11.2** Contractor 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 Contractor for inspection, copying, or transcription by authorized representatives of the FRA and the USDOL, and Contractor will permit such representatives to interview employees during working hours on the job.

ARTICLE 12: CERTIFICATION REGARDING DEBARMENT; SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

- 12.1** 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. Contractor 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.

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

ARTICLE 13: CERTIFICATION REGARDING LOBBYING

- 13.1** For any project of \$100,000 or more, Contractor is required to make the following certifications. Contractor must also require its subconsultants/subcontractors to make the following certification in any contracts or subcontracts valued at or above \$100,000.
- a. Contractor 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 Contractor 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, Contractor shall complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities,” 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. Contractor 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.
- 13.2** 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.
- 13.3** By its signature on this Contract, Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, *et seq.*, apply to this certification and disclosure, if any.

ARTICLE 14: CERTIFICATION REGARDING NON-SEGREGATED FACILITIES

- 14.1** By signing this Contract, Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained. Contractor further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- 14.2** As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, national origin, age or handicap, because of habit, local custom or otherwise.

ARTICLE 15: TELECOMMUNICATIONS CERTIFICATION

- 15.1** Contractor 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), Contractor 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 16: INTELLECTUAL PROPERTY RIGHTS [applies to contracts that include research and development deliverables]

- 16.1** Certain patent rights and data rights apply to all subject data first produced in the performance of this Contract. Contractor shall grant 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.
- 16.2** Except for its own internal use, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor 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.

16.3 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.

16.3.1 Any subject data developed under the Contract, whether or not a copyright has been obtained; and

16.3.2 Any rights of copyright purchased by Contractor using Federal assistance in whole or in part by the FRA.

16.4 Unless FRA determines otherwise, a Contractor 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.

16.5 Unless prohibited by state law, upon request by the Federal Government, Contractor 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 Contractor 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, Contractor 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.

16.6 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.

16.7 Data developed by Contractor 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 Contractor identifies that data in writing at the time of delivery of the Contract Work.

ARTICLE 17 ENVIRONMENTAL STANDARDS AND PRACTICES

17.1 **Generally.** Contractor agrees to, and assures that its subcontractors 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.

17.2 **Clean Water Act.** For any project of \$150,000 or more, Contractor 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. Contractor 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.

- 17.3 *Clean Air Act Compliance.*** For any project of \$150,000 or more, Contractor 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. Contractor 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.
- 17.4 *Energy Conservation.*** Contractor 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.
- 17.5 *Recovered Materials.*** Contractor 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 the EPA's, "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247.

ARTICLE 18: GEOGRAPHIC RESTRICTIONS

- 18.1** Contractor 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 19: BONDING

- 19.1** In accordance with 2 C.F.R. § 200.326, Contractor agrees to provide bid guarantee, contract performance, and payment bonds which bonds shall be consistent with such forms and amounts designated by VPRA within the solicitation materials.

ARTICLE 20: ACQUISITION BY LEASE

- 20.1** Contractor agrees that if it intends to acquire Project property through a lease it will comply, as applicable, with section 3019 of the FAST Act.

ARTICLE 21: BUY AMERICA REQUIREMENTS

The provisions of this Article apply if the value of this Contract (including the value of any amendments) exceeds \$100,000.

- 21.1** Contractor agrees to comply with 49 U.S.C. § 22905(a)(1), which provides that Federal funds may not be obligated unless iron, steel, and manufactured products used in FRA-funded projects are produced in the United States, unless a waiver has been granted by the Secretary of Transportation in accordance with 49 U.S.C. § 22905(a)(2).
- 21.2** Contractor must submit to VPRA the appropriate Buy America certification attached to the solicitation or otherwise provided by VPRA with its (i) Bid (in the case of a sealed bidding procurement) or (ii) final offer or final revised Proposal (in the case of a negotiated procurement). Bids or Proposals (as applicable) that are not accompanied by a completed Buy America certification will be rejected as nonresponsive and cannot be considered by VPRA.

ARTICLE 22: BUILD AMERICA, BUY AMERICA REQUIREMENTS

- 22.1** Contractor agrees that iron, steel, manufactured goods, construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the USDOT, and FRA.
- 22.2** Contractor must submit to VPRA the appropriate Build America, Buy America certification attached to the solicitation or otherwise provided by VPRA with its (i) Bid (in the case of a sealed bidding

procurement) or (ii) final offer or final revised Proposal (in the case of a negotiated procurement). Bids or Proposals (as applicable) that are not accompanied by a completed Build America, Buy America certification will be rejected as nonresponsive and cannot be considered by VPRA.

ARTICLE 23: FLY AMERICA REQUIREMENTS

- 23.1** Contractor 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 contractors 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.
- 23.2** Contractor 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 24: CARGO PREFERENCE

Contractor agrees:

- 24.1** To use privately owned United States-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- 24.2** To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in Section 25.1 above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to VPRA (through Contractor in the case of a lower-tier participating subcontractor’s bill of lading); and
- 24.3** To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

ARTICLE 25: VETERANS PREFERENCE

- 25.1** Contractor will give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S.C Section 2108) who have the requisite skills and abilities to perform the construction work required under this Contract. This provision shall not be understood, construed, or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with disability, or former employee.

ARTICLE 26: NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

- 26.1** To the extent applicable, Contractor 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, and other FRA requirements that may be issued.

ARTICLE 27: SEISMIC SAFETY

27.1 To the extent applicable, Contractor 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. Contractor also agrees to ensure that all Work performed under this Contract, including Work performed by a subcontractor, complies with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

ARTICLE 28: SAFE OPERATION OF MOTOR VEHICLES

28.1 ***Seat Belt Use.*** Contractor 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:

28.1.1 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

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

28.2 ***Distracted Driving, Including Text Messaging While Driving.*** Contractor 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 USDOT Special Provision pertaining to Distracted Driving as follows:

28.2.1 Contractor 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 Contractor 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.

28.2.2 Contractor 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 29: NOTICE OF LEGAL MATTERS AFFECTING THE FEDERAL GOVERNMENT

29.1 If a current or prospective legal matter that may affect the Federal Government emerges, Contractor must promptly notify VPRA, which will promptly notify FRA Chief Counsel and FRA 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 30: NO OBLIGATION OF FEDERAL GOVERNMENT

30.1 VPRA and Contractor 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 VPRA, Contractor, or any other party (whether or not a party to the Contract) pertaining to any matter resulting from this Contract.

ARTICLE 31: INCLUSION IN SUBCONTRACTOR AGREEMENTS

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

END OF DOCUMENT

EXHIBIT L
STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION
CONTRACT SPECIFICATIONS
(EXECUTIVE ORDER 11246) (SP 07)

DRAFT

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer Identification Number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse

the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minority and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
 - f. Disseminate the Contractor's EEO policy by providing the notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite

- supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
 - i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and test to be used in the selection process.
 - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

END OF DOCUMENT

EXHIBIT M
SPECIAL PROVISION REGARDING THE UTILIZATION OF
SMALL AND DIVERSE BUSINESSES
(SP 06)

DRAFT

SP 06
(05/23)

SPECIAL PROVISION REGARDING THE UTILIZATION OF SMALL AND DIVERSE BUSINESSES

Section 1.0 Provisions Regarding Small Business Utilization for Phase 1 Services

(a) Reporting of Small Business Utilization.

CM/GC Contractor shall report small business utilization for the Phase 1 Services on a monthly basis using Form PD 61, which form shall be included with CM/GC Contractor's invoicing. CM/GC Contractor shall maintain a record of payments to DSBSD certified small businesses and all other Subcontractors and suppliers for Work performed. The records shall be made available to VPRA for inspection and copying upon request.

No less than quarterly, CM/GC Contractor shall meet with VPRA to discuss its performance under the Small Business Subcontracting Plan and to address any concerns VPRA may have in relation to CM/GC Contractor's compliance with the Small Business Subcontracting Plan. CM/GC Contractor and VPRA shall cooperate in arranging a mutually agreeable schedule for the meetings.

(b) Continuing Obligation to Disclose Performance Deficiencies.

CM/GC Contractor shall report to VPRA any performance deficiencies with its Small Business Subcontracting Plan. Any notice of deficiency provided by the CM/GC Contractor shall include a description of the proposed corrective action to be taken by the CM/GC Contractor.

(c) Amendments to the Small Business Subcontracting Plan.

CM/GC Contractor shall be bound by its participation commitments within its Small Business Subcontracting Plan, and CM/GC Contractor may not make changes to its contractual small business commitments, substitute a DSBSD certified small business Subcontractor or make any other changes to the Small Business Subcontracting Plan without the prior written approval of VPRA. Unauthorized changes or substitutions, including performing Work designated for a DSBSD certified small business Subcontractor with the CM/GC Contractor's own forces, without the prior written approval of VPRA shall be a violation of this Special Provision and a breach of the Contract. Notwithstanding the foregoing, VPRA may allow amendments to the Small Business Subcontracting Plan where the modification to the plan will have the effect of increasing overall DSBSD certified small business utilization on the Project or where CM/GC Contractor is able to evidence that a DSBSD small business Subcontractor has been terminated for cause or has been decertified as a small business.

(d) Inaccurate or Fraudulent Reporting.

CM/GC Contractor has a duty to accurately report information to VPRA pursuant to this Special Provision. A CM/GC Contractor who intentionally supplies inaccurate information may be subject to civil and/or criminal sanctions or contractual remedies available to VPRA and other third parties.

Section 2.0 Provisions Regarding Small Business Utilization for Early Work Packages and Phase 2 Services

(a) Submittal Requirements.

As part of the Phase 1 Services, CM/GC Contractor shall prepare and submit a supplemental Form PD 60 disclosing CM/GC Contractor's Small Business Subcontracting Plan for the Early Work Packages (if any) and the Phase 2 Services.

Additionally, CM/GC Contractor shall provide a detailed Implementation Strategy, which shall:

- (i) Provide a description of small business compliance team/staff who will be working on the Project. Include name, title, and responsibilities of small business compliance team members responsible for implementing and complying with the CM/GC Contractor's Small Business Subcontracting Plan and all small business contract requirements.
- (ii) Provide a description of proactive small business bid-specific marketing, recruitment, outreach, and community engagement efforts that will be implemented throughout the Project to identify and engage small businesses for the Project. Include processes for timely communications, outreach methods that will be used, and a process for keeping track of potential DSBSD certified small businesses. Include proposed innovative methods for (a) involving new and emerging small businesses, and (b) identifying firms that might potentially be certified as small businesses and assisting them to become DSBSD-certified and be involved in the Project. Discuss how these efforts will flow through tiers of Subcontractors on the Project.
- (iii) Provide a description/itemization of economically-feasible work units (smaller tasks or quantities) of Construction Work items on the Project that can be subcontracted to facilitate small business participation that has not yet been assigned. Describe CM/GC Contractor's plan to secure DSBSD certified small businesses for those scopes of services identified as potential work to be performed by DSBSD certified small businesses. Include efforts to encourage DSBSD certified teaming/partnering on large work items packages.
- (iv) Provide a description of measures that CM/GC Contractor will undertake throughout the Phase 2 Services to facilitate small business participation, including training workshops, technical and financial assistance, support services, mentor/protégé relationships, recruiting and encouraging potential small businesses to get certified by DSBSD.
- (v) Include a schedule of (a) anticipated awards to DSBSD certified small businesses, (b) the timing of payments to be made with respect to such awards, and (c) any small businesses whose bid for a scope of work has been included in the CM/GC Contractor's Construction Price.
- (vi) Provide a schedule of recurring meetings with VPRA, no less than once per quarter of each year, to discuss CM/GC Contractor's small business utilization as of the date of the meeting.

- (vii) Include a provision for updating the Small Business Subcontracting Plan and submission to VPRA to address deficiencies or other issues with implementation of the Small Business Subcontracting Plan during the Construction Work. Describe the remedial measures CM/GC Contractor will implement to address any performance deficiencies on its Small Business Subcontracting Plan.

CM/GC Contractor shall submit the Small Business Subcontracting Plan and Implementation Strategy for approval by VPRA's Director of Procurement within 90 days of issuance of the Phase 1 NTP. VPRA's approval of the Small Business Subcontracting Plan and Implementation Strategy shall be a condition precedent to issuance of the Phase 2 Amendment. Once approved by VPRA, CM/GC Contractor's Small Business Subcontracting Plan for the Early Work packages (if applicable) and CM/GC Contractor's Small Business Subcontracting Plan and Implementation Strategy for the Phase 2 Services become part of the Contract Documents and are to be construed as a material part of the Contract.

(b) Certification Requirements.

CM/GC Contractor's Small Business Subcontracting Plan shall include only those firms which are DSBSD certified as small or any subcategory of small to include small women-owned, small minority-owned, or small service-disabled veteran-owned businesses. A directory of DSBSD certified small businesses is available online at: <https://directory.sbsd.virginia.gov/#/executiveExport>. Only firms listed in this directory are eligible for small business utilization credit on the Project. VPRA may reject any Small Business Subcontracting Plan that includes firms which are not properly certified as small businesses by the DSBSD.

(c) Reporting of Small Business Utilization.

CM/GC Contractor shall report small business utilization for any Early Work Packages and Phase 2 Services on a monthly basis using Form PD 61, which form shall be included with CM/GC Contractor's Application for Payment. CM/GC Contractor shall maintain a record of payments to DSBSD certified small businesses and all other subcontractors and suppliers for work performed. The records shall be made available to VPRA for inspection and copying upon request.

No less than quarterly, CM/GC Contractor shall meet with VPRA to discuss its performance under the Small Business Subcontracting Plan and to address any concerns VPRA may have relative CM/GC Contractor's compliance with the Small Business Subcontracting Plan. CM/GC Contractor and VPRA shall cooperate in arranging a mutually agreeable schedule for the meetings.

(d) Continuing Obligation to Disclose Performance Deficiencies.

CM/GC Contractor will have a continuing obligation to timely report any performance deficiencies with its Small Business Subcontracting Plan. Any notice of deficiency provided by the CM/GC Contractor shall include a description of the proposed corrective action to be taken by the CM/GC Contractor.

(e) Amendments to the Small Business Subcontracting Plan.

CM/GC Contractor shall be bound by the participation commitments within its Small Business Subcontracting Plan and CM/GC Contractor may not make changes to its contractual small business commitments, substitute a DSBSD certified small business Subcontractor, or make any other changes to the Small Business Subcontracting Plan without the prior written approval of VPRA. Unauthorized changes or substitutions, including performing the Work designated for a DSBSD certified small business Subcontractor with the CM/GC Contractor's own forces, without the prior written approval of VPRA shall be a violation of this Special Provision and a breach of the Contract. Notwithstanding the foregoing, VPRA may allow amendments to the Small Business Subcontracting Plan where the modification to the plan will have the effect of increasing overall DSBSD certified small business utilization on the Project or where CM/GC Contractor is able to evidence that a DSBSD certified small business Subcontractor has been terminated for cause or has been decertified as a small business.

(f) Inaccurate or Fraudulent Reporting.

CM/GC Contractor has a duty to accurately report information to VPRA pursuant to this Special Provision. A CM/GC Contractor who intentionally supplies inaccurate information may be subject to civil and/or criminal sanctions or contractual remedies available to VPRA.

EXHIBIT N
FORM OF SMALL BUSINESS SUBCONTRACTING PLAN
(FORM PD 60)

DRAFT



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.

EXHIBIT O
FORM OF MONTHLY SMALL BUSINESS PARTICIPATION REPORT
(FORM PD 61)

DRAFT



MONTHLY SMALL BUSINESS SUBCONTRACTING PLAN REPORT

Contract No.

Prime Contractor Name

Contact Name

Title/Position

Phone Number

Email

Reporting Period (M/Y)

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 contactor’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.

EXHIBIT P
DAVIS-BACON WAGE RATE DETERMINATION

[to be inserted]

DRAFT

EXHIBIT Q
UNPERMITTED ROAD CLOSURE

Functional Roadway Classification	Lane User Fees			Limitations
	1-5 minutes	6th minute	Each subsequent minute	
Interstate (including ramps), Freeway / Expressway, Principal Arterial and Minor Arterial	\$0	\$2,000	\$500	Maximum of \$200,000 per incident for any single location in 24-hr period
Collector and Local	\$0	\$1,500	\$250	Maximum of \$100,000 per incident for any single location in 24-hr period
Pedestrian / Bicycle Trails	\$0	\$500	\$100	Maximum of \$20,000 per incident for any single location in 24-hr period

DRAFT

EXHIBIT R
FORM OF GUARANTY

DRAFT

FORM OF GUARANTY

This **GUARANTY** (this Guaranty) is made as of [●], by [●], a [●] (the "Guarantor"), to the Virginia Passenger Rail Authority ("VPRA"), political subdivision of the Commonwealth of Virginia, with respect to the obligations of [●], a [●] (the "Contractor"), pursuant to that certain contract for the Franconia-Springfield Bypass Project , dated [●], by and between the VPRA and the Contractor (the "CONTRACT"). The CONTRACT is hereby incorporated by reference herein, and capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the CONTRACT. [The Guarantor is an Affiliate of the Contractor.] The Guarantor acknowledges that financial and direct benefits will accrue to the Guarantor by virtue of entering into this Guaranty and that such benefits constitute adequate consideration therefor.

This Guaranty is provided pursuant to Section [●] of the CONTRACT.

1. GUARANTY

1.1. Guaranty. The Guarantor guarantees to VPRA, absolutely, unconditionally and irrevocably, that each and every payment and performance obligation and other liability of the Contractor now or hereafter arising under the CONTRACT, including but not limited to all obligations and liabilities of the Contractor under any and all representations and warranties made or given by the Contractor under the CONTRACT, under any and all liquidated or stipulated damage provisions of the CONTRACT and under any and all indemnities given by the Contractor under the CONTRACT (collectively the "Guarantied Obligations") will be paid promptly and satisfied in full when due and without offset, and performed and completed when required. This is a continuing guarantee of payment and performance of the Guarantied Obligations.

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

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

1.3.1. any failure of the Contractor to retain or preserve any rights against any person, except to the extent the Contractor is required under the terms of the CONTRACT to relinquish such rights and Contractor's compliance with such requirement prejudices Guarantor;

1.3.2. the lack of prior enforcement by the Contractor of any rights against any person and the lack of exhaustion of any bond, letter of credit or other security held by the Contractor, except to the extent the Contractor is required under the terms of the CONTRACT not to enforce such rights or not to exhaust any such bond, letter of credit or other security held by Contractor and Contractor's compliance with such requirement prejudices Guarantor;

1.3.3. the lack of authority or standing of the Contractor or the dissolution of the Guarantor or the Contractor;

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

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

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

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

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

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

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

1.3.11. the rejection of the CONTRACT in connection with the insolvency, reorganization or bankruptcy of the Contractor or any of its members;

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

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

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

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

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

1.4. Enforcement of the Contract and Guaranteed Obligations.

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

1.4.2. In the event that Contractor defaults on any of the Guaranteed Obligations, the Guarantor shall be obligated to undertake all curative actions (which may include payments relating to the Guaranteed Obligations and/or performance of the Guaranteed Obligations) within fourteen (14) days (or immediately, in the case of emergency conditions) following notice under Section 4.6 below (to the extent not prohibited thereunder). Thereafter, the Guarantor shall use commercially reasonable efforts to effectuate such curative actions without further notice. If the Guarantor fails to undertake such curative actions in a timely manner, VPRA shall have the right to perform or have performed by third parties the necessary curative actions, and the costs thereof shall be borne by the Guarantor. Any payment by the Guarantor to VPRA shall be in U.S. dollars.

1.4.3. VPRA may bring and prosecute a separate action or actions against the Guarantor to enforce its liabilities hereunder, regardless of whether any action is brought against the Contractor and regardless of whether any other person is joined in any such action or actions. Nothing shall prohibit VPRA from exercising its rights against the Guarantor, the Contractor, any other guarantor of the Guaranteed Obligations, a performance bond or other security, if any, which insures the payment relating to or performance of the Guaranteed Obligations, or any other person

simultaneously, or any combination thereof jointly and/or severally. VPRA may proceed against the Guarantor from time to time as it sees fit in its sole and absolute discretion; *provided, however*, VPRA shall not be entitled to enforce its rights and claims under this Guaranty for a breach of the Guaranteed Obligations to the extent that it has already received payment or discharge or has otherwise been compensated in respect of the same breach of Guaranteed Obligations, including through insurance proceeds or call of any other security that VPRA may hold under the CONTRACT.

2. REPRESENTATIONS AND WARRANTIES

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

2.1.1. Consents. Consent of the Contractor to any modification or amendment of the CONTRACT to which it is a party constitutes knowledge thereof and consent thereto by the Guarantor;

2.1.2. Organization and Existence. The Contractor is a [●] duly organized, validly existing and in good standing under the laws of its state of formation. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of [●];

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

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

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

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

any of its properties are bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties;

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

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

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

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

2.1.11. No Default. The Guarantor is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any agreement or instrument to which the Guarantor is a party, which default may materially and adversely affect the Guarantor's ability to fulfill its obligations hereunder;

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

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

3. WAIVERS, SUBROGATION AND SUBORDINATION

3.1. Waivers.

3.1.1. The Guarantor hereby unconditionally waives:

3.1.1.1. notice of acceptance of this Guaranty or of the intention to act in reliance hereon and of reliance hereon;

3.1.1.2. notice of the incurring, contracting, amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender,

compromise, settlement, release, revocation or termination of, or of the failure to assert, any Guaranteed Obligation;

3.1.1.3. demand on the Guarantor in the event of default of the Contractor under the CONTRACT (but not the giving of notice to the extent required in Section 4.6 below);

3.1.1.4. any invalidity of the CONTRACT due to lack of proper authorization of or a defect in execution thereof by the Contractor, its purported representatives or agents;

3.1.1.5. demand for payment or performance, presentment, protest and notice of nonpayment or dishonor to the Guarantor respecting any Guaranteed Obligation;

3.1.1.6. any right of the Guarantor to receive notices to the Contractor to which the Guarantor might otherwise be entitled except notice to the extent required in Section 4.6 below;

3.1.1.7. any demand for payment hereunder (but not the giving of notice to the extent required in Section 4.6 below); and

3.1.1.8. any duty on the part of VPRA to disclose to the Guarantor any facts VPRA may now or hereafter know with regard to the Contractor.

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

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

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

3.2. Subrogation. Until the Contractor shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor shall not (absent VPRA's prior written consent) claim or enforce any right of subrogation, reimbursement or indemnity against the Contractor, or any other right or remedy which

might otherwise arise on account of any payment made by the Guarantor or any act or thing done by the Guarantor on account of or in accordance with this Guaranty.

3.3. Subordination.

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

3.3.2. In the event that VPRA provides written consent pursuant to Section 3.2, the Guarantor shall file all claims against the Contractor in any bankruptcy or other proceedings in which the filing of claims is required or permitted by law upon any obligation or indebtedness of the Contractor to the Guarantor, and shall have assigned to VPRA all of the Guarantor's rights thereunder to the extent of outstanding and unsatisfied Guaranteed Obligations. If the Guarantor does not file any such claim, VPRA is authorized as the Guarantor's attorney-in-fact to do so in the Guarantor's name, or in the discretion of VPRA, VPRA is authorized to assign the claim to, and cause proof of claim to be filed in the name of VPRA or its nominee. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to VPRA or its nominee the full amount payable on the claim in the proceeding before making any payment to the Guarantor, and to the full extent necessary for that purpose, the Guarantor assigns to VPRA all of its rights to any payments or distributions to which it otherwise would be entitled. If the amount so paid is in excess of the Guaranteed Obligations covered hereby, VPRA shall pay the amount of the excess to the party determined by it to be entitled thereto.

4. MISCELLANEOUS

4.1. Enforcement of Guaranty.

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

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

4.1.3. All disputes between VPRA and the Guarantor arising under or relating to this Guaranty or its breach shall be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, and any appellate court from any thereof, which shall have exclusive jurisdiction and venue. The Guarantor hereby irrevocably waives the defense of an inconvenient forum to the maintenance of any

action or proceedings in such court arising out of or relating to this Guaranty. The Guarantor agrees that a final non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Guarantor agrees and consents to service of process by delivery in the manner and to the address set forth in Section 4.2 below. Nothing in this section shall affect the right of VPRA or to serve legal process in any other manner permitted by law.

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

4.1.5. VPRA acknowledges and agrees that this Guaranty does not and is not intended to impose, in the event the Guaranty is called upon, any greater obligations upon the Guarantor than are imposed upon the Contractor under the CONTRACT, other than with respect to the Guarantor's obligation hereunder to pay VPRA for its reasonable costs and expenses of enforcing this Guaranty.

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

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

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

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

4.2.1. personally;

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

4.2.3. by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to VPRA:

[•]

With copies to:

Virginia Passenger Rail Authority
919 E. Main Street
Richmond, VA 23219
Attention: General Counsel
email: michael.westermann@vpva.virginia.gov

If to the Guarantor:

[•]

[•]

Attention: [•]

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

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

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

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

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

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

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

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

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

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

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

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

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

[•],
a [•]

By: _____

Name: _____

Title: _____

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

VIRGINIA PASSENGER RAIL AUTHORITY

By: _____

DJ Stadtler
Executive Director

EXHIBIT S
FORM OF PERFORMANCE AND PAYMENT BONDS

DRAFT

FORM OF PERFORMANCE BOND

BOND NO. _____

PENAL SUM: \$[●]

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, the Virginia Passenger Rail Authority (“Owner”) has awarded to [●], a [●] duly organized and existing under the laws of the State of [●] (“Contractor”) a contract (“Contract”) for the [●] (“Project”) dated [●]; and

WHEREAS, one of the conditions of the Contract is that Contractor provide this duly executed instrument (“Bond”).

NOW THEREFORE, We, the undersigned Contractor and [●], a corporation duly organized and existing under and by virtue of the laws of the State of [●] and authorized to transact business as a surety within the Commonwealth of Virginia (“Surety”), are held and firmly bound unto Owner, as obligee, and its successors and assigns in the sum of [●], lawful money of the United States of America, for the payment of which, well and truly be made to Owner, Contractor and Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. Any reference to the “Surety” in this Bond shall be read as a reference to the Co-Sureties and each of them on the basis of such joint and several liability.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

1. The Contract is hereby incorporated by reference herein as if said Contract were fully set forth herein. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Contract.

2. If Contractor shall at all times promptly, and faithfully perform the Contract and any alteration in or addition to the obligations of Contractor arising thereunder in strict accordance with the terms and conditions of the Contract, including the matter or infringement, if any, of patents or other proprietary rights, and all guarantees and warranties, including the guarantee and warranty periods, established by the Contract, and comply with all of the covenants therein contained, in the manner and within the times provided in the Contract, and shall fully indemnify and save harmless Owner from all costs and damages which it may suffer by reason or failure so to do, and shall fully reimburse and repay Owner all outlay and expenses which it may incur in making good any default, and reasonable counsel fees incurred in the prosecution of or defense of any action arising out of or in connection with any such default, then Surety’s obligations under this Bond shall be void; otherwise such obligations shall remain in full force and effect.

3. This Bond shall cover the cost to perform all the obligations of Contractor arising out of or required under the Contract, and the obligations covered by this Bond

specifically include Contractor's liability for liquidated damages as specified in the Contract.

4. Whenever Contractor shall be, and is declared by Owner to be in default under the Contract, the Surety shall within thirty (30) days of receipt of a letter from Owner in the form set forth in Schedule A:

- (a) remedy such default; or
- (b) submit to Owner a proposed plan to procure a new contractor using a delivery method and process acceptable to Owner, and thereafter tender to Owner a proposed contract procured using the Owner-accepted procurement process for completion of the Contract by a contractor acceptable to Owner, secured by performance and payment bonds issued by a qualified surety, combined with payment to Owner of the amount of damages in excess of the remaining Contract balance incurred by Owner as a result of the default, including costs of completion; or
- (c) waive the Surety's right to remedy such default or submit to Owner a proposed plan to procure a new contractor and with reasonable promptness under the circumstances, make payment of the full penal sum of the bond to Owner.

5. In the event that Surety disputes its liability under this Bond, which includes any allegations of fraud, such dispute shall be determined in the first instance in accordance with the dispute resolution process ("DRP") attached hereto as Schedule B. If Surety fails to make an election within the thirty (30) days set forth in paragraph 4 of this Bond, then the claim shall be deemed to be in dispute for purposes of this paragraph. A Decision, as defined in Schedule B, shall be rendered within thirty (30) days of the Adjudication Commencement Date, or as otherwise extended pursuant to the DRP. The Decision shall be binding on the Surety, Contractor, and Owner as to their respective rights and obligations under this Bond but subject to each party's right to commence a de novo appeal of the Decision to a court of competent jurisdiction at any time. The parties shall immediately begin to comply with the Decision and the terms of this Bond until the Final Completion Date under the Contract notwithstanding of, and during, any appeal de novo of the Decision and unless or until such time as a court of competent jurisdiction issues a final order or ruling vacating or modifying the Decision, either in whole or in part, at the conclusion of any de novo appeal of the Decision (the "Obligation to Comply with the Decision"). Surety's costs to fulfill its Obligation to Comply with the Decision is limited to the penal sum of the Bond.

6. The parties acknowledge that the Obligation to Comply with the Decision is of the essence of the Bond, and the parties agree that Surety's failure to fulfill its Obligation to Comply with the Decision will cause irreparable harm to Owner and Contractor. Accordingly, Surety waives and releases any right it may have to initiate any action in court seeking a stay of its obligations arising pursuant to the Decision or seeking

a stay of enforcement of the Decision. Surety's only recourse to court processes in connection with the Decision is to file for a de novo appeal of the Decision while continuing to fulfill its Obligation to Comply with the Decision. In any such de novo appeal or in any action seeking enforcement of the Decision, the Surety (a) waives any right to file for an interim stay of its obligations arising pursuant to the Decision or to seek a stay of enforcement of the Decision, (b) waives any right to object to or contest an action brought to enforce specific performance of Surety's obligations arising pursuant to the Decision and waives all defenses in such an action, and (c) consents to an order or ruling directing and requiring Surety to perform its obligations arising pursuant to the Decision, and that an action for such an order or ruling may be sought on an expedited (emergency) basis under the rules of the court. The parties' Obligation to Comply with the Decision does not alter any party's right to pursue a de novo appeal of the Decision in a court of competent jurisdiction.

7. On the day following the Final Completion Date ("Step-Down Date"), the Penal Sum of [●] shall automatically be reduced to [●], with the understanding that such reduced Penal Sum shall be the aggregate liability of the surety and shall only be applicable to any claims submitted, or suits, or actions brought, after the Step-Down Date. For the avoidance of doubt, the entire Penal Sum of [●] is subject to any claims submitted, or suits or actions brought, against the Bond prior to the Step-Down Date; *provided, however,* that notwithstanding anything to the contrary herein, Surety's aggregate liability hereunder shall in no event exceed the Penal Sum of [●].

8. Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the Work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission by Contractor of the Contract, or this Bond, shall in any way affect its obligations on this Bond, and Surety does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

9. Correspondence or claims relating to this Bond shall be sent to Surety at the following address: [●]

10. Schedules A and B are an integral part of this Bond and are specifically incorporated herein as if set out in full in the body of this Bond.

11. If any provision of this Bond is found to be unenforceable as a matter of law, all other provisions shall remain in full force and effect.

12. Any provision in this Bond which conflicts with applicable laws, regulations, and ordinances, shall be deemed modified to conform to applicable laws, regulations, and ordinances. This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard for conflicts of laws principles, and any

action seeking enforcement of the Bond will be litigated exclusively in the courts of the Commonwealth of Virginia.

13. ***[Note: Use in case of multiple sureties (“Co-Sureties”) or, otherwise, delete; If Co-Sureties are used, modify the preceding language accordingly to reflect this]*** The Co-Sureties agree to empower and designate a single “Lead Surety” with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that Owner will have no obligation to deal with multiple sureties hereunder. All correspondence from Owner to the Co-Sureties and all claims under this Bond shall be sent to the Lead Surety and shall be deemed served upon all Co-sureties. The Lead Surety may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to Owner designating a new Lead Surety, signed by all of the Co-Sureties. The initial Lead Surety is [●].

[Signature Page Follows]

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this ____ day of _____ 20____.

CONTRACTOR (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

SURETY (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

[Note: Date of this Bond must not be prior to date of Contract.]

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: A copy of a certificate that the Surety (or Co-Sureties) is (are) authorized to transact business in Virginia must be attached.]

[Note: The Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but are not a members of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority including the appropriate power of attorney documentation must be attached.]

**SCHEDULE A
FORM OF DEMAND**

Date

Re: Performance Bond No.: [____] (the "Bond")

Principal: [_____] (the "Principal")

Obligees: Virginia Passenger Rail Authority (the "Obligee")

Contract: The Contract, dated [_____] between the Principal as Contractor and the Virginia Passenger Rail Authority for the [●] Project (the "Contract")

Dear Sir:

Pursuant to the Bond, the Obligee hereby certifies that:

1. the Principal is and continues to be in default of the Principal's obligations under the Contract;
2. the Obligee has issued a notice of default to the Principal in accordance with the provisions of the Contract; and
3. the Obligee has honored and will continue to honor and perform in all material respects its obligations under the Contract.

We hereby demand that the Surety honor its obligations under the Bond forthwith.

The Obligee acknowledges that if the Surety intends to dispute its liability pursuant to the Bond, then the parties shall proceed immediately with the DRP set forth in Schedule B.

Yours truly,

Virginia Passenger Rail Authority

By: _____

Name:

Title:

SCHEDULE B
DISPUTE RESOLUTION PROCESS

Given the on default nature of the Bond, the Principal, the Surety and the Oblige agree that they may not agree whether the Surety is liable to perform or make payment pursuant to the Bond. To ensure that such disputes are determined quickly so as to allow for the orderly and timely completion of the Contract, the Principal, the Surety and the Oblige agree to submit such disputes to the dispute resolution process set out below. Terms not defined herein shall have the meaning ascribed to them in the body of the Bond. The parties acknowledge that any decision rendered in the dispute resolution process (an "Award") will be binding, but subject to appeal de novo by any party at any time to a court of competent jurisdiction.

1. "Dispute" means a disagreement as to the Surety's liability pursuant to the Bond following an Oblige's Demand.
2. Disputes arising out of or in connection with the Bond shall be submitted for binding resolution to adjudication (the "Adjudication") administered by JAMS – The Resolution Experts! ("JAMS") in accordance with the procedure set out below. The JAMS' Dispute Resolution Rules for Surety Bond Disputes, effective as of the effective date of the Bond shall apply to the resolution of any Dispute unless modified by the provisions herein, in which case, the provisions of this Bond shall govern.
3. The Surety or the Oblige shall demand Adjudication by filing an Adjudication statement electronically with JAMS, and serving electronic copies by email upon the Principal and the Oblige, utilizing the electronic forms and filing directions provided by JAMS on its website at www.jamsadr.com. The Adjudication statement shall set forth in detail the factual and legal issues submitted for Adjudication and shall be sent no later than 10 days following the initiation of the Adjudication.
4. Within three (3) Business Days after the Adjudication statement is filed and served, the parties shall appoint an adjudicator (the "Adjudicator") who shall be a panelist on the JAMS Global Engineering & Construction Panel ("JAMS GEC Panel") of dispute adjudicators. JAMS shall appoint an Adjudicator administratively from the JAMS GEC Panel if the parties fail to appoint an Adjudicator within the three day period. The Adjudicator shall be under a duty to act impartially and fairly and shall serve as an independent neutral.
5. The Adjudication shall commence on the date that JAMS receives the Adjudication statement and initial deposit of funds, and confirms the appointment of the Adjudicator (the "Adjudication Commencement Date"). Unless the Adjudicator decides otherwise, the Principal, the Surety and the Oblige shall pay the final fees and expenses of Adjudication in accordance with the provisions set forth in the Contract governing the payment of fees and expenses of dispute resolution. In an Adjudication in which the Adjudicator determines that the Principal and Surety are aligned with the same commonality of interest against the Oblige, the Principal and Surety jointly shall be

charged with one share and the Obligee will be charged with one share. Should any party fail to deposit funds as required by JAMS, any other party may advance the deposit, and the amount of that advance deposit will be taken into consideration in the Adjudicator's decision.

6. Upon commencement of the Adjudication, the Adjudicator is empowered to take the initiative in ascertaining the facts and the law, and to exercise sole discretion in managing the Adjudication process. Among other things, the Adjudicator may require the parties to make additional factual submissions such as sworn witness statements and business documents, may interview important witnesses after notice to the parties and affording opportunity to attend, may request and consider expert reports and may call for memoranda on legal issues. Notwithstanding the foregoing, the Adjudicator must decide the following questions:
 - a. Is the Principal in default of the Principal's obligations under the Contract?
 - b. Is the Surety liable to perform in accordance with Paragraph 4 and/or 5 of the Bond?
7. The Adjudicator shall issue a written decision (the "Decision") which shall be binding upon and enforceable by the parties through the completion of the Principal's obligations under the Contract, subject to any party's right to commence an appeal de novo in a court of competent jurisdiction at any time in accordance with the terms of the Bond. Any payment required in the Decision shall be made immediately. The Decision shall be issued through JAMS as soon as practicable but in no event later than thirty (30) calendar days of the Adjudication Commencement Date or within any later time agreed upon by the parties. Unless the parties agree otherwise, the Decision shall state reasons therefore and shall be admissible in later administrative, arbitral or judicial proceedings solely concerning Surety's liability pursuant to the Bond between the parties.
8. This 30 calendar day period also may be extended by the Adjudicator in its sole discretion up to 14 days in the event that JAMS has requested any party to make an additional fee and expense deposit and such funds have not been deposited as requested or advanced by another party.
9. Any party may request clarification of the Decision within five (5) business days after issuance, and the Adjudicator shall endeavor to respond within an additional five (5) business days, and, subject to any party's right to commence an appeal de novo in a court of competent jurisdiction at any time in accordance with the terms of the Bond. The parties shall comply with the Decision, unless and until subsequently vacated or modified, through the completion of the Principal's obligations under the Contract.
10. Upon any settlement by the parties of the Dispute prior to issuance of a Decision, the parties shall jointly terminate the Adjudication. Such removal or termination shall not affect the parties' continuing joint and several obligations for payment to JAMS of unpaid fees and expenses.

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If the Decision is that the Surety is liable to perform in accordance with Paragraphs 4 and 5 of the Bond, then notwithstanding the commencement of any appeal de novo of the Decision, the Surety shall perform in accordance with the Decision and with the terms of the Bond until the Principal's Obligations under the Contract are completed, but not to exceed the penal sum of the Bond.

FORM OF PAYMENT BOND

BOND NO. _____

BOND AMOUNT: \$[●]

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, the Virginia Passenger Rail Authority (“Owner”) has awarded to [●], a [●] duly organized and existing under the laws of the State of [●] (“Contractor”) a contract (“Contract”) for the [●] Project (“Project”) dated [●]; and

WHEREAS, one of the conditions of the Contract is that Contractor provide this duly executed instrument (“Bond”).

NOW THEREFORE, We, the undersigned Contractor and [●], a corporation duly organized and existing under and by virtue of the laws of the State of [●] and authorized to transact business as a surety within the Commonwealth of Virginia (“Surety”), are held and firmly bound, jointly and severally, unto Owner, as obligee, and its successors and assigns, in the sum of [●], lawful money of the United States of America, for the payment of which, well and truly be made to Owner and Claimants, Contractor and Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

1. The Contract is hereby incorporated by reference herein as if said Contract were fully set forth herein. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Contract.

2. If Contractor shall: (a) make payments of all sums due to all persons and entities having a direct contract with Contractor, or a direct contract with a subcontractor having a direct contract with Contractor, for supplying labor, material, and/or supplies used directly or indirectly by Contractor in the prosecution of the Work provided in the Contract (such persons and entities hereinafter referred to collectively as “Claimants”); and (b) shall fully indemnify and save harmless Owner from all costs and damages which Owner may suffer by reason of Contractor’s failure to fulfill its obligations to Claimants under clause (a) above, including but not limited to, fully reimbursing and repaying Owner reasonable counsel fees incurred as a result of any action arising out of or in connection with any such failure, then Surety’s obligations under this Bond shall be void; otherwise such obligations shall remain in full force and effect.

3. All Claimants shall have a direct right of action only against Surety and Contractor under this Bond; *provided, however*, that no claim, suit or action shall be brought by any Claimant after the expiration of one (1) year following the date on which

Claimant last performed labor or last furnished or supplied materials to the Project. Any suit or action must be brought in a state or federal court of competent jurisdiction located in the Commonwealth of Virginia.

4. Any Claimant who does not have a direct contractual relationship with Contractor shall, as a condition precedent to bringing such claim, suit or action, provide written notice thereof to Contractor, Surety, and Owner, no later than ninety (90) days from the date Claimant last supplied labor or materials, stating with substantial accuracy the amount claimed, the name of the person for whom the work was performed or to whom the material was furnished, and the dates on which such labor or materials were supplied.

5. Surety shall, after receipt of reasonable notice to Surety of any claim, demand, suit or action brought against Owner by a Claimant, defend, with counsel approved by Owner, indemnify and hold harmless Owner from any and all claims, demands, suits or actions brought by any Claimant. Owner shall have a direct right of action against Surety and Contractor for any breach by Surety of its obligation to defend, indemnify and hold harmless Owner.

6. Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the Work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission by Contractor of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of Claimants otherwise entitled to recover under this Bond, shall in any way affect its obligations on this Bond, and Surety does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

7. Surety acknowledges that the amounts owed to Contractor under the Contract shall first be available for the performance of the Contract, including Owner's superior right to use the funds due for the completion of the Work, and then may be available to satisfy claims arising under this Bond. Owner shall not be liable for the payment of any costs or expenses or claims of any Claimant under this Bond and shall have no obligation to make payments to, or give notice on behalf of, any Claimant.

8. Any provision in this Bond which conflicts with applicable laws, regulations and ordinances shall be deemed modified to conform to applicable laws, regulations and ordinances.

9. Contractor or Owner shall furnish a copy of this Bond or permit a copy to be made upon request by any person or entity who may be a Claimant as defined above.

10. ***[Note: Use in case of multiple sureties ("Co-Sureties") or, otherwise, delete; If Co-Sureties are used, modify the preceding language accordingly to reflect this]*** The Co-Sureties agree to empower and designate a single, "Lead Surety"

with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that Owner and Claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from Owner and Claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated Lead Surety and service of such correspondence or notice upon the Lead Surety shall constitute service upon all co-sureties. The Lead Surety may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to Owner designating a single new Lead Surety, signed by all of the Co-Sureties. The initial Lead Surety shall be [●].

11. This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard for conflicts of laws principles, and any action seeking enforcement of the Bond will be litigated exclusively in the courts of the Commonwealth of Virginia.

[Signature Page Follows]

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this ____ day
of _____ 20____.

CONTRACTOR (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

SURETY (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

[Note: Date of this Bond must not be prior to date of Contract.]

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: A copy of a certificate that the Surety (or Co-Sureties) is (are) authorized to transact business in Virginia must be attached.]

[Note: The Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but are not a members of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority including the appropriate power of attorney documentation must be attached.]