



**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 indemnitees 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 and Unpermitted Track~~ Closure as provided in Exhibit Q.

17.1.2.1.17.1.2.2. Inapplicability of Liquidated Damages for Unpermitted Road Closures and Unpermitted Track Closures

Liquidated Damages for Unpermitted Road Closures ~~and Unpermitted Track Closures~~ shall not be assessed for Road ~~Closures or Track~~ 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 ~~or Track Closure~~ that impacts Contractor's ability to end the Road ~~Closure or Track~~ 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 ~~or Track Closure~~ to remediate the impacts of the Relief Event;
- (c) An incident or emergency that requires a Road Closure ~~or Track 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 ~~or Track 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 ~~or Track 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
WBS	Work Breakdown Structure
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 Agreement <u>Contract</u> 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.
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>.

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 Section 3.0 of the Contract.

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 Section 3.0 of the Contract.

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 Section 2.2 of the General Terms and Conditions.

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 Exhibit J .
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: (i) materially differ from the conditions discovered during the Phase 1 Services or (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 Section 14.1.1.2 of the General Terms and Conditions .
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 Section 2.4 of the General Terms and Conditions .
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 Article 20 of the General Terms and Conditions 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 AgreementContract 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 Section 7.4.3 of the General Terms and Conditions .
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 Section 20.2.1 of the General Terms and Conditions for resolving Disputes.
Event of Default	A default as described in Section 21.1.1 of the General Terms and Conditions following notice and opportunity to cure to the extent permitted by Section 21.1.2 of the General Terms and Conditions 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 Exhibit J . 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 Costs or “OPCC”	The non-binding cost estimate performed by Contractor, as provided in <u>Section 12.1 of the Contract</u> and <u>Exhibit C</u> .
Partnering	The processes and procedures described in <u>Section 20.1 of the General Terms and Conditions</u> .
Party	A party to the <u>AgreementContract</u> , 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: <ul style="list-style-type: none">(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	All work other than Construction Work, including: <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. Professional Services does not include construction superintendence, construction project management, or other services of a professional nature (accounting, legal, financial) performed by a Constructor.
Project	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.
Project ROW	The parcels of Right of Way shown in the ROW Work Map. Project ROW does not include Temporary Work Areas.
Prompt Payment Law	Subcontractor payment requirements under the Code of Virginia, § 11-4.6.
Proposal	The documents constituting Contractor's response to the RFP, including any supplements as may have been requested by VPRA.
Proposer	An individual, firm, partnership, corporation, joint venture or combination thereof that submitted a Proposal in response to the RFP.
Public Utility	A Utility that is owned by a Public Utility Owner.
Public Utility Owner	An owner or operator of a Utility that is a municipality, county, or other political subdivision of a state or the federal government.
Punch List	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.
Quality Control ("QC")	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.
Quality Plan	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> .
Railroad	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.

Railroad Delay	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 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 <u>AgreementContract</u> 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 <u>or a Railroad Owner</u> .
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	Unavoidable delays, to the extent that they affect the Critical Path, arising from the following matters and no others: (a) A suspension for convenience pursuant to <u>Section 17.1 of the General Terms and Conditions</u> , to the extent provided therein; (b) VPRA-Directed Changes; (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 (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.
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**

DRAFT

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; ~~and~~
- ix. Field indirect costs, bonds, taxes, and insurance; ~~and~~
- ~~ix-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> <hr/>	<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>

<hr/>	<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</p> <p>Name:</p> <hr/>	<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</p> <p>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><i>[to be added as needed]</i></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.

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]

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IN WITNESS WHEREOF, the Parties have executed the AgreementContract 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.

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EXHIBIT H
REQUIRED CERTIFICATIONS

[to be inserted]

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EXHIBIT I

RESERVED

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COST BREAKDOWN STRUCTURE

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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:

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

~~Reserved~~*[to be provided]*

1.2.1.2

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:

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

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:

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.

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

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EXHIBIT L
STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION
CONTRACT SPECIFICATIONS
(EXECUTIVE ORDER 11246) (SP 07)

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EXHIBIT M
SPECIAL PROVISION REGARDING THE UTILIZATION OF
SMALL AND DIVERSE BUSINESSES
(SP 06)

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EXHIBIT N
FORM OF SMALL BUSINESS SUBCONTRACTING PLAN
(FORM PD 60)

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EXHIBIT O
FORM OF MONTHLY SMALL BUSINESS PARTICIPATION REPORT
(FORM PD 61)

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EXHIBIT P
DAVIS-BACON WAGE RATE DETERMINATION

[to be inserted]

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EXHIBIT Q

UNPERMITTED ROAD CLOSURE ~~AND UNPERMITTED TRACK CLOSURE~~

{to be inserted}

<u>Functional Roadway Classification</u>	<u>Lane User Fees</u>			<u>Limitations</u>
	<u>1-5 minutes</u>	<u>6th minute</u>	<u>Each subsequent minute</u>	
<u>Interstate (including ramps), Freeway / Expressway, Principal Arterial and Minor Arterial</u>	<u>\$0</u>	<u>\$2,000</u>	<u>\$500</u>	<u>Maximum of \$200,000 per incident for any single location in 24-hr period</u>
<u>Collector and Local</u>	<u>\$0</u>	<u>\$1,500</u>	<u>\$250</u>	<u>Maximum of \$100,000 per incident for any single location in 24-hr period</u>
<u>Pedestrian / Bicycle Trails</u>	<u>\$0</u>	<u>\$500</u>	<u>\$100</u>	<u>Maximum of \$20,000 per incident for any single location in 24-hr period</u>

EXHIBIT R
FORM OF GUARANTY

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EXHIBIT S
FORM OF PERFORMANCE AND PAYMENT BONDS

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