



COMMONWEALTH of VIRGINIA

Virginia Passenger Rail Authority

DJ Stadtler
Executive Director

919 East Main Street, Suite 2400
Richmond, Virginia 23219

(804) 303-8700
www.vpra.virginia.gov

Jennifer DeBruhl
Chairperson

RESOLUTION OF THE VIRGINIA PASSENGER RAIL AUTHORITY BOARD

December 6, 2023

MOTION

Made By: Sharon Bulova Seconded By: Victor Cardwell

Action: Award Progressive Design-Build Agreement for Long Bridge Project – North Package

Title: Award of Progressive Design-Build Agreement for Long Bridge Project – North Package

WHEREAS, on March 24, 2023, the Virginia Passenger Rail Authority (“VPRA”) published a request for qualifications soliciting statements of qualifications from design-build teams for the Long Bridge Project – North Package; and

WHEREAS, VPRA received five statements of qualifications in response, and on June 21, 2023, VPRA shortlisted two design-build teams to submit proposals to design and construct the Long Bridge Project – North Package; and

WHEREAS, on July 7, 2023, VPRA published Request for Proposals No. 01-001-23-0001 (the “RFP”), soliciting proposals from the two shortlisted teams; and

WHEREAS, on September 15, 2023, VPRA received a proposal in response to the RFP from each of the following two shortlisted teams:

- (i) a joint venture comprised of: (a) Skanska USA Civil Northeast, Inc. and (b) Flatiron Constructors, Inc. (“SKJV”), and
- (ii) a joint venture comprised of: (a) Archer Western Construction LLC and (b) Kokosing Construction Company, Inc.; and

WHEREAS, VPRA evaluated the proposals, held informal interviews with each proposer, and selected SKJV as the top-ranked proposer; and

WHEREAS, in accordance with § 2.11 of the RFP and § 3.2.3.3 of VPRA's *Procurement Rules*, VPRA conducted limited negotiations with SKJV and has finalized terms and conditions of a progressive design-build agreement, which is attached hereto as **EXHIBIT A**; and

WHEREAS, the Board now desires to award the progressive design-build agreement for the Long Bridge Project – North Package to SKJV.

NOW THEREFORE, BE IT RESOLVED, that the Board hereby approves the award of the progressive design-build agreement for the Long Bridge Project – North Package to SKJV, and authorizes the VPRA Executive Director to execute an agreement between VPRA and SKJV in substantially the form attached hereto as **EXHIBIT A**, with any modifications he deems necessary or reasonable.

EXHIBIT A

####



LONG BRIDGE PROJECT NORTH PACKAGE

PROGRESSIVE DESIGN-BUILD AGREEMENT

Contract ID No.: 01-001-23-0001



TABLE OF CONTENTS

RECITALS	1
ARTICLE 1 Contract Components, Interpretation.....	3
1.1 Definitions.....	3
1.2 Contract Documents and Order of Precedence.....	3
1.3 Interpretations.....	4
1.4 Referenced Standards and Specifications	4
1.5 Omission of Details	5
1.6 Computation of Periods	5
1.7 Standards for Approvals.....	5
1.8 Federal Requirements	5
1.9 Compliance with Laws	6
ARTICLE 2 Scope of Work.....	7
2.1 General Scope of Work.....	7
2.2 Phase 1 Services.....	8
2.3 Phase 1 Services Notice to Proceed.....	8
2.4 Phase 1 Services Fee.....	8
2.5 Phase 1 Services Schedule	11
2.6 Small Business Utilization in the Phase 1 Services	11
2.7 Construction Price Negotiations	11
2.8 Construction Cost Estimate Requirements.....	12
2.9 VPRA’s Right to Terminate the Phase 1 Services Prior to Phase 2 NTP.....	15
2.10 Ownership of Work Product	15
2.11 Early Work Packages.....	16
2.12 Phase 2 Amendment	17
2.13 Phase 2 Services	17
ARTICLE 3 Design-Builder’s Obligations; VPRA’s Obligations.....	19
3.1 Design-Builder’s Performance Requirements.....	19

3.2	General Obligations of Design-Builder	20
3.3	Representations, Warranties, and Covenants	20
3.4	Design Requirements	22
3.5	VPRA's Obligations, Generally.....	23
ARTICLE 4	Performance of Construction Work.....	25
4.1	Completion Deadlines	25
4.2	Baseline Schedule	25
4.3	Prerequisites for Start of Construction.....	25
ARTICLE 5	Control of the Work	27
5.1	Control and Coordination of Work	27
5.2	Safety	27
5.3	Construction Quality Management	27
5.4	Effect of Oversight	28
5.5	Nonconforming Work	29
ARTICLE 6	Site Access, Utilities, Environmental, Railroads.....	31
6.1	Access to Project ROW	31
6.2	Utility Work.....	32
6.3	Utility Work Obligations	33
6.4	Environmental Compliance	34
6.5	Railroads	35
ARTICLE 7	Equal Employment Opportunity, Non-Discrimination, Subcontracts, Labor.....	36
7.1	Equal Employment Opportunity.....	36
7.2	Non-Discrimination.....	36
7.3	Prevailing Wages	37
7.4	Subcontracting Requirements.....	38
7.5	Key Personnel Requirements	41
7.6	Major Subcontractor Requirements.....	42
7.7	Independent Design Quality Manager	42
7.8	Employee Performance Requirements.....	42
ARTICLE 8	Surety Bonds, Guarantees, Joint & Several Liability.....	43

8.1	Performance and Payment Bonds	43
8.2	Duration of Performance Bond.....	43
8.3	Utility Work.....	43
8.4	Guaranty	43
8.5	Joint and Several Liability	44
8.6	No Relief of Liability and Double Recovery	44
ARTICLE 9 Insurance		45
9.1	General Insurance Requirements	45
ARTICLE 10 Risk of Loss		47
10.1	Site Security and Maintenance	47
10.2	Maintenance and Repair of Work and On-Site Property.....	47
10.3	Damage to Off-Site Property.....	47
10.4	Title.....	48
ARTICLE 11 Payment.....		49
11.1	Contract Price	49
11.2	Invoices and Payment.....	49
11.3	Limitations on Payment; Retainage.....	50
11.4	Deductions.....	52
11.5	Final Payment.....	53
11.6	Payments to Subcontractors	54
11.7	Interest on Late Payments	54
11.8	Disputes.....	54
ARTICLE 12 Changes in the Work.....		55
12.1	Circumstances Under Which a Change Order May Be Issued	55
12.2	VPRA-Initiated Change Orders	56
12.3	Design-Builder-Initiated Agreement Modification.....	57
12.4	Delivery of Request for Change Order	60
12.5	VPRA Response to Request for Change Order	63
12.6	Subcontractor Claims.....	63
12.7	Allowance for Specified Relief Events	64

12.8	Limitations on Change Orders and Allowance Draws.....	65
12.9	Payment for Extra Work Change Orders.....	67
12.10	Force Account Change Orders.....	68
12.11	Payment of Change Orders	68
12.12	Additional Conditions and Limitations on Certain Relief Events	69
12.13	Price Adjustments for Certain Materials	72
12.14	Matters Not Eligible for Change Orders.....	73
12.15	Waiver	74
12.16	No Release or Waiver	74
12.17	Change Order Disputes	74
12.18	Performance of Disputed Work	75
12.19	Change Order Status Log	75
ARTICLE 13	Suspension of the Work	76
13.1	Suspension for Convenience	76
13.2	Suspension for Cause.....	76
13.3	Design-Builder Responsibilities During Suspension	76
13.4	Suspension of Early Work.....	76
13.5	Suspension of Phase 2 Services.....	77
ARTICLE 14	Termination for Convenience	78
14.1	Notice of Termination	78
14.2	Design-Builder's Responsibilities upon Termination.....	78
14.3	Responsibility After Notice of Termination.....	79
14.4	Negotiated Termination Settlement.....	80
14.5	Determination of Settlement Amount if Negotiations Fail.....	80
14.6	Partial Termination.....	82
14.7	Reduction in Amount of Claim.....	82
14.8	Inclusion in Subcontracts	82
14.9	Limitation on Payments to Subcontractors	82
14.10	No Unearned Profits or Consequential Damages.....	83
14.11	No Waiver.....	83

14.12	Dispute Resolution.....	83
14.13	Allowability of Costs	83
14.14	Provision of Records to Establish Costs.....	83
ARTICLE 15	Default.....	84
15.1	Default by Design-Builder	84
15.2	Remedies	86
15.3	Right to Stop Work if Undisputed Payment is Not Made.....	88
15.4	Notice and Opportunity to Cure Other Types of VPRA Breaches	89
15.5	Availability of Funds; Appropriation	89
ARTICLE 16	Damages.....	90
16.1	Liquidated Damages and Disincentives	90
16.2	Other Remedies, Damages.....	93
16.3	Set-Off; Waiver	93
16.4	Payment of Liquidated Damages	94
16.5	Limitations on Damages.....	94
ARTICLE 17	Indemnification	95
17.1	Indemnifications by Design-Builder	95
17.2	Responsibility of VPRA for Certain Contaminated Materials	95
17.3	No Effect on Other Rights	96
17.4	CERCLA Agreement.....	96
ARTICLE 18	Partnering and Dispute Resolution	97
18.1	Partnering	97
18.2	Dispute Resolution Process	97
18.3	Use of Neutral for Dispute Resolution	98
18.4	Continuation of Work During a Dispute	102
18.5	Litigation of Unresolved Disputes.....	102
18.6	Attorney's Fees.....	103
ARTICLE 19	Acceptance of Project	104
19.1	Substantial Completion	104
19.2	Final Acceptance	105

19.3 Clayton Act Assignment	107
ARTICLE 20 Warranties	109
20.1 Warranties by Design-Builder	109
20.2 Subcontractor Warranties	111
20.3 Assignment of Other Warranties	112
20.4 No Limitation of Liability	112
20.5 Warranty Beneficiaries	112
ARTICLE 21 Documents and Records	113
21.1 Construction Pricing Documents	113
21.2 Subcontractor Documents	115
21.3 Project Records	116
21.4 Retention of Records	118
21.5 Virginia Freedom of Information Act	118
ARTICLE 22 Miscellaneous Provisions	120
22.1 Amendments	120
22.2 Waiver	120
22.3 Independent Contractor	120
22.4 Successors and Assigns	121
22.5 Designation of and Cooperation with Representatives	121
22.6 Reserved	121
22.7 Survival	121
22.8 Limitation on Third-Party Beneficiaries	122
22.9 No Personal Liability	122
22.10 Notices and Communication	122
22.11 Forum and Venue; Waiver of Jury Trial	123
22.12 Notice of Bankruptcy or Insolvency	123
22.13 Immigration Reform and Control Act of 1986	124
22.14 Drug Free Workplace	124
22.15 Occupational Safety and Health Standards	124
22.16 Sensitive Security Information; Critical Infrastructure	124

22.17 Marketing and Publicity125

22.18 Duty to Cooperate on Funding Opportunities125

22.19 Further Assurances.....125

22.20 Severability125

22.21 Headings125

22.22 Governing Law.....125

22.23 Sovereign Immunity126

22.24 Entire Agreement.....126

22.25 Counterparts; Electronic Signatures.....126

EXHIBITS

Exhibit	
A.	Acronyms and Definitions
B.	Phase 1 Scope of Work
C.	FRA Required Terms (Form PD 260)
D.	Special Provision Regarding Small Business Utilization (SP 06)
E.	Designated VPRA-Furnished Information
F.	Required Certifications
G.	Utility Relocation Agreement Template
H.	Davis-Bacon Wages
I.	Force Account Work / Extra Work and Delay Cost Specification
J.	Key Personnel
K.	Major Subcontractors
L.	Three-Party Agreement
M.	Form of Performance and Payment Bonds
N.	Form of Guaranty
O.	Insurance Requirements
P.	Designated Representatives
Q.	Railroad Operator Indemnifications
R.	Phase 2 Cash Flow
S.	Form of Phase 2 Amendment
T.	Form of Early Work Amendment
U.	Confidentiality Form
V.	Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) (SP 07)
W.	Small Business Subcontracting Plan (Form PD60)
X.	Monthly Small Business Participation Report (Form PD 61)
Y.	Cost Breakdown Structure
Z.	Unpermitted Road Closure FEES

This Progressive Design-Build Agreement (the “Agreement”) is entered into by and between the Virginia Passenger Rail Authority, a political subdivision of the Commonwealth of Virginia (“VPRA”) and Skanska Flatiron LBN Joint Venture, a joint venture comprised of Skanska USA Civil Northeast, Inc., a New York corporation and Flatiron Constructors, Inc., a Delaware corporation (“Design-Builder”) (each individually a “Party” and collectively, the “Parties”), and is effective as of the Effective Date.

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 March 24, 2023, VPRA issued a Request for Qualifications (“RFQ”) to obtain Statements of Qualification (“SOQs”) from firms interested in serving as the design-builder on the Project. After evaluation of the SOQs, VPRA named two (2) design-build entities to a shortlist that would be invited to submit Proposals for the Project.
- E. On July 7, 2023, VPRA issued a Request for Proposals (“RFP”) to the shortlisted design-build entities. Of the shortlisted design-build firms, two (2) submitted Proposals on or before the due date designated within the RFP. Each such Proposal was evaluated in accordance with the RFP requirements and VPRA’s procurement rules whereupon VPRA determined that Design-Builder was the Proposer that best met the selection criteria in the RFP. Following limited negotiations with Design-Builder, VPRA concluded that Design-Builder submitted the best Proposal and offered the Best Value to VPRA and its funding partners.
- F. By vote of the VPRA board of directors held on December 6, 2023, the VPRA executive director has been expressly authorized to enter into this Agreement and to take all action contemplated by such instrument, including the execution of such other contracts which are incidental to the Agreement.
- G. This Agreement is structured as a progressive design-build agreement consisting of two phases. In Phase 1, Design-Builder shall perform design and the additional services identified herein to prepare the Design. During Phase 1, the Parties will attempt to negotiate a price and schedule for the Phase 2 Services. If the Parties successfully negotiate a price and schedule for the Phase 2 Services, VPRA may issue the Phase 2 NTP for Design-Builder to perform the Phase 2 Services. If the Parties do not successfully negotiate a price and schedule for Design-Builder to perform the Phase 2 Services, VPRA may terminate this Agreement in accordance with the terms herein.

- H. As part of the progressive design-build model, the Parties will work collaboratively to develop the Project during Phase 1. There is no guarantee that Design-Builder will perform the Phase 2 Services, which include the Final Design and Construction Work. VPRA has no obligation to issue the Phase 2 NTP to Design-Builder. If VPRA decides to terminate Design-Builder prior to issuance of the Phase 2 NTP, VPRA may take possession of all Work Product produced by Design-Builder and seek alternative bids to construct the Project.
- I. Each of Phase 1, and, if performed by Design-Builder, Phase 2, is subject to a separate pricing structure. Design-Builder 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, Design-Builder shall perform the Phase 2 Services for the lump-sum Phase 2 Price. Neither the Phase 1 Services Fee nor the Phase 2 Price is subject to adjustment except as specifically provided herein.
- J. Design-Builder 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.
- K. The Parties acknowledge that VPRA will suffer substantial losses if Design-Builder 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 Design-Builder, the foregoing promises, and covenants and agreements herein, the Parties agree as follows.

ARTICLE 1

Contract Components, Interpretation

1.1 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 meaning set forth in Exhibit A. Any acronym or capitalized term used in this Agreement, but not defined within the Contract Documents, shall have the meaning generally ascribed to such terms within the construction industry.

1.2 Contract Documents and Order of Precedence

Each of the documents listed below, (together the “Contract Documents”) is an essential part of the Agreement 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 a complete Agreement. In the event of any conflict among the Contract Documents, the order of precedence is as follows:

- (a) Change Orders;
- (b) The Agreement, including the Exhibits thereto and such other documents as may be incorporated by reference;
- (c) The Minimum Requirements, and the Basis of Design Documents (to the extent expressly incorporated therein);
- (d) The Phase 2 Amendment and any Early Work Amendment;
- (e) Technical Provisions, including the Exhibits thereto;
- (f) Applicable Standards;
- (g) Issued for Construction Documents;
- (h) The Basis of Design Documents, except where explicitly incorporated into the Minimum Requirements, which shall have the same order of precedence as the Minimum Requirements;
- (i) The Proposal, except that Design-Builder 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 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 Contract Documents, as determined by VPRA; and
- (j) The Statement of Qualifications, except that Design-Builder 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 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 Contract Documents, as determined by VPRA.

1.3 Interpretations

In the Contract Documents, where appropriate:

- (a) the singular includes the plural and vice versa;
- (b) references to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to;
- (c) the words “including,” “included,” “includes,” and “include” are deemed to be followed by the words “without limitation”;
- (d) unless the context requires otherwise, in phrases involving performance by a Person, the words “will,” “must” or “shall” indicate a mandatory requirement imposed on the Person;
- (e) unless otherwise indicated, references to sections, appendices, and exhibits are to the document that contains such references;
- (f) words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings;
- (g) references to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and
- (h) words of any gender include each other gender where appropriate.

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

1.4 Referenced Standards and Specifications

Work that must comply with a specified standard established by reference to a described publication must comply with the latest edition or revision of that standard in effect on the date of submission of the Final Construction Price Proposal, including any amendments in effect on that date, unless otherwise specified in the Contract Documents or otherwise directed by VPRA. In the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a described manual or publication within a Contract Document or set of Contract Documents, the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless VPRA approves otherwise in writing. VPRA may direct Design-Builder to comply with an updated standard after submission of the Final Construction Price Proposal and Design-Builder may follow the process for a VPRA-Directed Change if Design-Builder contends that following the updated standard entitles Design-Builder to an adjustment of the Contract Price or a Completion Deadline.

1.5 Omission of Details

Design-Builder shall not take advantage of any apparent error in the Contract Documents. If it appears that the Work to be performed or any matter related to the Work is not sufficiently detailed or explained in the Contract Documents, Design-Builder shall request in writing from VPRA further written explanations as may be necessary and will conform to the explanation provided. Design-Builder shall promptly notify VPRA of any error that it discovers in the Contract Documents and must obtain specific instructions in writing from VPRA regarding any such error before proceeding with the affected Work. The fact that the Contract Documents omit or misdescribe any minor details of any Work that are necessary to carry out the intent of the Contract Documents, or that are customarily performed under similar circumstances, will not relieve Design-Builder from performing the omitted Work or the misdescribed details of the Work, and they must be performed as if fully and correctly stated and described in the Contract Documents, without entitlement to adjustment of the Contract Price or a Completion Deadline except as specifically allowed under Article 12.

1.6 Computation of Periods

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

If the date to perform any act or give any notice specified in the Contract Documents (including the last date for performance or provision of notice “within” a specified time period) falls on a non-Working Day, the act or notice may be timely performed on the next succeeding day that is a Working Day. Notwithstanding this provision, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, requirements contained in Sections 12.12.2 and 17.2.3, and any other requirements for which it is clear that performance is intended to occur on a non-Working Day, will be required to be performed as specified, even though the date in question may fall on a non-Working Day.

1.7 Standards for Approvals

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

1.8 Federal Requirements

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.

1.9 Compliance with Laws

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

ARTICLE 2

Scope of Work

2.1 General Scope of Work

2.1.1 Design-Builder to Perform the Work

Design-Builder 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 and (b) Phase 2 Services.

2.1.2 Design Work

The Lead Designer shall lead the efforts to perform the Design Work. Design-Builder may enter into contracts with such Subcontractors and other consultants as it deems necessary to assist in the performance of the Design Work, provided, however, that:

- (a) such Subcontractors, including those used in performance of the Phase 1 Services, shall be subject to the approval of VPRA in accordance with Section 7.4.2;
- (b) the terms of any agreement between Design-Builder and such Subcontractors shall be provided to VPRA no less than 7 Days before the Subcontractor commences performance of any Design Work; and
- (c) the Subcontract(s) contain all terms required herein.

2.1.3 Documents Furnished by VPRA

Except as set forth in Section 2.1.4 below, VPRA makes no representation or warranty as to the accuracy, completeness, or sufficiency of any document furnished by VPRA to Design-Builder prior to the Effective Date, including the RFP Documents and the Basis of Design Documents. Design-Builder 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 Design-Builder discovers. Design-Builder's warranties and indemnitees under the Agreement cover errors in the Project even though they may be related to any error, omission, or insufficiency in the RFP Documents and Basis of Design Documents. Except as set forth in Section 2.1.4 below, Design-Builder shall have no right to seek any adjustment to a Contract Price or the Completion Deadlines as the result of any error, omission, or insufficiency relating to any information provided to Design-Builder by or on behalf of VPRA in connection with this Agreement.

2.1.4 Designated VPRA-Furnished Information

Notwithstanding Section 2.1.3 above, Design-Builder shall be entitled to reasonably rely upon the accuracy of certain information provided to Design-Builder by VPRA and identified in Exhibit E (as may be supplemented during the Phase 1 Services) ("Designated VPRA-Furnished Information"). VPRA does not, however, represent that the Designated VPRA-Furnished Information is complete or sufficient for purposes of Design-Builder's performance of the Work. Design-Builder shall be responsible for identifying what additional information is required in addition to the Designated VPRA-Furnished Information to develop a complete and sufficient Design for the Project, and shall so advise VPRA during Phase 1. If Design-Builder discovers any material inaccuracy in the Designated VPRA-Furnished Information, it shall promptly report

in writing to VPRA such material inaccuracy, whereupon VPRA shall determine and instruct Design-Builder how to proceed. Design-Builder shall have the right to seek an adjustment to a Contract Price and/or Completion Deadlines arising out of or related to material inaccuracies in Designated VPRA-Furnished Information.

2.2 Phase 1 Services

Upon issuance by VPRA of the Phase 1 NTP, Design-Builder shall perform the Phase 1 Services identified in Exhibit B. Design-Builder shall perform the Work included within the Phase 1 Services in accordance with the requirements of the Contract Documents.

2.3 Phase 1 Services Notice to Proceed

Design-Builder 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 Design-Builder prior to VPRA's issuance of the Phase 1 NTP shall be at Design-Builder's sole risk. VPRA has no obligation to issue a Phase 1 NTP and Design-Builder shall not be entitled to any compensation if VPRA does not issue a Phase 1 NTP.

2.4 Phase 1 Services Fee

2.4.1 Phase 1 Services Fee

Unless modified as provided herein, the Phase 1 Services Fee to be paid to the Design-Builder shall not exceed Thirty-Eight Million Seven Hundred Ninety-Four Thousand Seven Hundred Seventy-Eight and 50/100 dollars (\$38,794,778.50):

2.4.2 Base Assumption for the Phase 1 Services Fee

The Phase 1 Services Fee as of the Effective Date is based on the following assumptions contained in the RFP or terms otherwise negotiated between the parties:

- (a) Direct Labor Costs to prepare, and resolve all comments on, Design-Builder's 60% design submittal (Task 6 in Exhibit B); plus
 - i. Audited Overhead Rate of the firms employing the individuals who perform the Design Work; plus
 - ii. a markup of twelve percent (12%) of the sum of Direct Labor Costs plus Audited Overhead Rate; and
- (b) 30,000 hours of Direct Labor Cost to perform the non-design Phase 1 Services plus a markup of 90% on the Direct Labor Cost; plus
- (c) Design-Builder's Risk Recapture Fee fixed at Two Million Nine Hundred Fifty Thousand and no/100 (\$2,950,000) Dollars.
- (d) The Phase 1 Services Fee does not include Other Direct Costs identified in Exhibit B.

The Direct Labor Costs comprising the initial Phase 1 Services Fee are the costs contained in Design-Builder's Proposal. The base Phase 1 Services Fee included in the Proposal and as of the Effective Date does not include Direct Labor Costs to perform Design Work related to Utility Work or to prepare Utility Relocation Plans. Design-Builder and VPRA shall negotiate the scope and fee for Design Work related to Utility Relocation Plans after issuance of the Phase 1 NTP.

2.4.3 Adjustment of the Phase 1 Services Fee

The Phase 1 Services Fee may only be adjusted by agreement of the Parties if:

- (a) There is a Material Phase 1 Design Change, VPRA requests Design-Builder to proceed with Design development beyond the 60% design submittal, or VPRA requests Design-Builder to proceed with Design Work to prepare Utility Relocation Plans; or
- (b) VPRA requests that Design-Builder perform non-design Phase 1 Services that exceed the 30,000 hours of non-design work assumed for purposes of Design-Builder's Proposal.

If VPRA requests that Design-Builder perform services as stated in (a) or (b) above, subject to Section 2.4.4, Design-Builder shall be entitled to an adjustment of the Phase 1 Services Fee as follows:

- (c) for additional Design Work, Design-Builder shall be paid the Direct Labor Costs of performing the additional Design Work; plus
 - i. Audited Overhead Rate of the firm employing each individual performing Design Work; plus
 - ii. a markup of twelve percent (12%) of the sum of Direct Labor Costs plus Audited Overhead Rate to perform the additional Design Work; and
- (d) for additional non-design services, Design-Builder shall be paid the Direct Labor Costs of performing the additional non-design services, plus a markup of 90% on the Direct Labor Costs.

The Parties shall negotiate an amendment to the Phase 1 Services Fee prior to Design-Builder becoming eligible for any payment that exceeds the Phase 1 Services Fee as of the Effective Date, provided, however, that VPRA may issue a Directive Letter authorizing Design-Builder to proceed with additional Phase 1 Services prior to issuance of a Change Order adjusting the Phase 1 Services Fee. Design-Builder 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. For the avoidance of doubt, any adjustment to the Phase 1 Services Fee shall not include an adjustment to the Design-Builder Risk Recapture Fee, which is deemed fixed for the full duration of the Phase 1 Services.

The Parties may further adjust the Phase 1 Services as needed using the process described in this Section 2.4.3, in each instance calculating the fee adjustment in accordance with (c) and (d) above.

2.4.4 No Adjustment of Phase 1 Services Fee

Notwithstanding Section 2.4.3, and except in the case of adding the preparation of Utility Relocation Plans to the Design Work or a Material Phase 1 Design Change, Design-Builder shall only be entitled to an adjustment of the Phase 1 Services Fee to the extent that the cost of the additional services requested, calculated as provided in Section 2.4.3, would exceed the Phase 1 Services Fee. For purposes of clarity, this means that Design-Builder is not entitled to an increase in the Phase 1 Services Fee if the additional services would not result in Design-Builder exceeding the Phase 1 Services Fee then in effect, except when the adjustment is to add Design Work to prepare Utility Relocation Plans or there is a Material Phase 1 Design Change. With respect to adding the preparation of Utility Relocation Plans to the scope of the Design Work or

for a Material Phase 1 Design Change, VPRA and Design-Builder may adjust the Phase 1 Services Fee at any time and as needed.

2.4.5 No Delay Costs during Phase 1

Design-Builder 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, Design-Builder's sole remedy shall be an adjustment of the time period stated in Section 2.5 for termination of the Phase 1 Services. 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 2.9.

2.4.6 Payment and Invoice of Phase 1 Services Fee

Design-Builder shall invoice VPRA by the 10th of each month for Phase 1 Services performed in the preceding calendar month. The invoice submitted to VPRA shall be on a time and materials basis and shall contain the following information:

- (a) the identity of all staff who performed work;
- (b) the negotiated hourly rate for each staff member;
- (c) the allowable markup rate for each staff member;
- (d) identity of all tasks performed and descriptive task narratives;
- (e) the number of hours worked by each staff member on each task performed;
- (f) allowable costs that are eligible for reimbursement from VPRA; and
- (g) receipts and other substantiation acceptable to VPRA for reimbursable Other Direct Costs.

Design-Builder's invoice to VPRA shall also include Design-Builder's Cost Recapture Fee which shall be billed in thirteen equal monthly installments of Two Hundred Twenty Six Thousand Nine Hundred Twenty Three and Eight/100 (\$226,923.08) Dollars over each of the first thirteen months of the Phase 1 Services. Design-Builder shall not include Design-Builder's Cost Recapture Fee in any invoice following the initial thirteen-month billing cycle for the Phase 1 Services.

2.4.6.1 Design-Builder's At-Risk Work

Prior to the Effective Date, VPRA authorized Design-Builder to perform certain of the Phase 1 Services at Design-Builder's risk. Design-Builder may invoice VPRA for the Phase 1 Services performed prior to the Effective Date in the first invoice after VPRA issues the Phase 1 NTP in accordance with Section 2.4.6. Any amount invoiced for this at-risk Work shall be counted against the not-to-exceed amount of the Phase 1 Services Fee. The foregoing does not impact Section 2.3, such that VPRA has no obligation to pay Design-Builder for any Work performed prior to issuance of the Phase 1 NTP, including the at-risk Work contemplated by this Section 2.4.6.1.

2.4.7 Markup and Risk Recapture in the Phase 1 Services Fee

The markup in the Phase 1 Services Fee for both the Design (AOR and profit) and non-design services (90%), together with Direct Labor Costs and Design-Builder's Risk Recapture Fee, shall constitute full compensation for all services necessary to perform the Work, including profit, overhead, and all additional costs of labor, including fringe, taxes, and insurance. The markup, together with Direct Labor Costs and Design-Builder's Risk Recapture Fee, shall also constitute full compensation for all labor, materials, services, equipment, office expenses, computer, software, insurance (except as otherwise provided in Exhibit B), home office expenses or other inputs otherwise necessary for Design-Builder to complete the Phase 1 Services, other than reimbursable Other Direct Costs or additional services that VPRA may add to the scope of the Phase 1 Services by Change Order. No additional markup or risk recapture shall be applied to the Phase 1 Services, including markup and risk recapture for subcontracted Work.

2.4.8 Other Direct Costs

Design-Builder shall be entitled to reimbursement only for Other Direct Costs identified in Exhibit B and subject to the terms stated therein. Design-Builder shall not be entitled to reimbursement of any costs not identified as Other Direct Costs unless otherwise authorized by VPRA.

2.5 Phase 1 Services Schedule

The Phase 1 Services shall commence on the day VPRA issues the Phase 1 NTP. 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 Agreement pursuant to Section 2.9.

2.6 Small Business Utilization in the Phase 1 Services

The Small Business Subcontracting Plan submitted by the Design-Builder for the Phase 1 Services, and approved by VPRA on the Effective Date, is hereby incorporated in and made a material part of this Agreement. Design-Builder shall comply with the requirements of the Small Business Subcontracting Plan. Any required revisions to the Small Business Subcontracting Plan shall be accomplished by Change Order.

2.7 Construction Price Negotiations

2.7.1 Design-Builder to Participate in Construction Price Negotiations

As part of the Phase 1 Services, Design-Builder shall participate in Construction Price Negotiations for the Phase 2 Services.

2.7.2 Submission of Opinion of Probable Construction Costs

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

2.7.3 Submission of Binding Construction Price Proposal

Design-Builder shall submit the Binding Construction Price Proposal following the resolution of comments on Design-Builder's 60% design submittal and VPRA's issuance of the memorandum

consistent with Section 4.2 of the Minimum Requirements, as provided in Exhibit B. The Binding Construction Price Proposal shall include the Baseline Schedule on which it is based and a proposed Construction Draw Schedule.

2.7.4 Construction Cost Estimates to Be on an Open Book Basis

Each Construction Cost Estimate submitted by Design-Builder 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 Design-Builder shall provide such information to VPRA.

2.7.5 Reconciliation of Binding Construction Price Proposal

After submission of the Binding Construction Price Proposal, Design-Builder shall participate in workshops with VPRA and the Independent Cost Estimator (“ICE”) to review the Binding Construction Price Proposal, reconcile any differences, and attempt to negotiate a Phase 2 Price.

2.7.6 Updates to Binding Construction Price Proposal

Design-Builder shall submit an updated Binding Construction Price Proposal following the workshops with VPRA and the ICE. Upon submission of an updated Binding Construction Price Proposal from Design-Builder, Design-Builder, VPRA, and the ICE shall engage in further workshops as described in Section 2.7.5.

2.7.7 Further Consideration of Binding Construction Price Proposal

Design-Builder shall submit such updated Binding Construction Price Proposals as may be necessary to continue negotiations for the Phase 2 Price. The process shall continue until VPRA agrees to a Phase 2 Price or VPRA terminates this Agreement in accordance with Section 2.9.

2.7.8 Final Construction Price Proposal

If VPRA accepts a particular Phase 2 Price and Baseline Schedule contained in a Binding Construction Price Proposal, as may be amended, VPRA shall request that Design-Builder prepare a Final Construction Price Proposal incorporating the agreed-upon terms for the Phase 2 Amendment. Design-Builder shall submit the Final Construction Price Proposal in the form of a Phase 2 Amendment within 15 days after VPRA’s request. Subject to compliance with all other prerequisites in the Contract Documents, VPRA shall thereafter execute the Phase 2 Amendment and may issue the Phase 2 NTP.

2.8 Construction Cost Estimate Requirements

2.8.1 Opinion of Probable Construction Cost

The OPCC shall be a good faith estimate of the cost to complete the Phase 2 Services and shall be based on the assumptions and risks that are known at the time Design-Builder submits the OPCC to VPRA. The OPCC shall contain the same information required in a Binding Construction Price Proposal, to the extent then known, and must include a narrative explaining risks, assumptions, and contingencies. The OPCC shall also include an indicative Baseline Schedule and an indicative Construction Draw Schedule.

2.8.2 Binding Construction Price Proposal

Each Binding Construction Price Proposal shall be an estimate, prepared and provided on an Open Book Basis, of the cost to perform the Phase 2 Services in the form of a lump sum price. The estimate shall include negotiated Self-Performed Work, competitively bid Self-Performed Work, and Work to be performed by Subcontractors, each of which shall be subject to Section 2.8.3. At a minimum, Design-Builder's Binding Construction Price Proposal shall contain the following information:

- (a) unit prices;
- (b) quantity take-offs;
- (c) 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);
- (d) risk assumptions and assignment of risks;
- (e) contingencies;
- (f) production rates, transportation, and other facilities and services necessary for the proper execution of the Work;
- (g) pricing of Subcontracted Work and copies of quotations from Subcontractors and suppliers;
- (h) Field Indirect Costs, bonds, taxes, and insurance;
- (i) a narrative of all assumptions made in generating the estimate;
- (j) a Baseline Schedule for completion of the Construction Work;
- (k) a Construction Draw Schedule;
- (l) Construction Pricing Documents;
- (m) a Cost Breakdown Structure in accordance with Exhibit Y;
- (n) the cost to perform the Final Design (including markup at the Audited Overhead Rate of the individuals who will perform the Work); and
- (o) a fixed-fee markup that constitutes full compensation for profit and Design-Builder's Home Office Overhead, which shall not exceed eleven and a half percent (11.5%) of the total costs of performing the Construction Work (i.e., not including cost to perform Final Design, for which the markup is different).

2.8.3 Design-Builder's Self-Performance of Construction Work

2.8.3.1 Minimum Self-Performed Work

Design-Builder shall Self-Perform a minimum of 50% of the value of the Construction Work during the Phase 2 Services. This portion of the Self-Performed Work is not subject to the competitive bidding process requirements in Section 8 of the Minimum Requirements, and Design-Builder shall negotiate the construction price of this portion of the Self-Performed Work with VPRA. The Work to be performed by Major Subcontractor(s) identified in Exhibit K shall be included in, and

counted toward, the 50% of the Construction Work not subject to competitive bidding requirements, except that additional work performed by a Major Subcontractor may be competitively bid as provided in Section 2.8.3.2. For clarity, this provision does not apply to the provision of Professional Services.

2.8.3.2 Maximum Self-Performed Work

The value of Self-Performed Work in a Construction Cost Estimate shall not exceed 70% of the total value of the Construction Work included in a Construction Cost Estimate. For purposes of this limitation, the value of all Construction Work performed by a Major Subcontractor shall count toward the 70% maximum value of the Self-Performed Work. If Design-Builder intends to Self-Perform a portion of the Construction Work in addition to the minimum amount of Self-Performed Work required by Section 2.8.3.1, such Self-Performed Work shall be subject to the competitive bidding requirements in Section 8 of the Minimum Requirements.

2.8.3.3 Subcontracted Work

At least 30% of the value of the Construction Work shall be priced under the competitive bidding process in Section 8 of the Minimum Requirements. All Construction Work performed by a Subcontractor at any tier to a Major Subcontractor shall not constitute Self-Performed Work and shall be subject to the competitive bidding process in Section 8 of the Minimum Requirements.

2.8.3.4 Value of the Construction Work

To determine the value of Construction Work that is Self-Performed or subject to competitive bidding, all costs of performing the Construction work, whether direct or indirect, shall be included, except for the direct cost of Materials. For purposes of clarity, this means that the value of Construction Work for purposes of this Section 2.8.3 shall include all direct costs (other than Materials), profit, overhead, Field Indirect Costs, general conditions costs, and other costs of a similar nature, however named. This Section 2.8.3.4 applies only to the value of Construction Work for purposes of determining compliance with the Self-Performed Work and competitive bidding requirements.

2.8.3.5 Performance of the Phase 2 Services

Except as provided in Sections 2.8.3.1 and 2.8.3.6, the requirements and limitations of this Section 2.8.3 apply only to the negotiation process for the Phase 2 Price. After agreement to the Phase 2 Price and execution of the Phase 2 Amendment, Design-Builder is not required to use the Subcontractors whose bids were incorporated into the agreed-upon Phase 2 Price, nor is Design-Builder limited to a maximum amount of work that it can Self-Perform, except that Major Subcontractors must perform the scopes of Work identified in Exhibit K and where a Subcontractor bid is not selected on a lowest bid basis (including Small Businesses), that Subcontractor is required to perform the relevant scope of work in accordance with Section 8.2 of the Minimum Requirements.

2.8.3.6 Small Business Utilization in the Phase 2 Services

Small Business utilization for Phase 2 Services (and any Early Work packages) shall be in accordance with the terms of the Phase 2 Amendment/Early Work Amendment and conform to the requirements set forth in Exhibit D.

If the Small Business cannot perform the Work for which it is committed or the Small Business is terminated, VPRA shall be entitled to decrease the Phase 2 Price in the amount of the difference between the committed Small Business's price and the price amount for which the scope of work is performed.

2.9 VPRA's Right to Terminate the Phase 1 Services Prior to Phase 2 NTP

2.9.1 VPRA May Terminate at Any Time

VPRA may, in its sole discretion, terminate the Phase 1 Services at any time, and for any or no 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 PDBA. Upon the date of the termination of the agreement, this Agreement shall terminate and be of no further force or effect except for those provisions which survive termination of the PDBA. VPRA's termination of the Agreement after issuance of the Phase 2 NTP or an Early Work NTP with respect to an Early Work Package shall be governed by Articles 14 and 15.

2.9.2 Limitations on Payment to Design-Builder

If VPRA terminates the Agreement pursuant to this Section 2.9, Design-Builder shall only be entitled to payment for the Phase 1 Services work performed up to the date of termination in accordance with Section 2.4. Design-Builder 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 Design-Builder, Design-Builder shall not be entitled to any damages of any nature arising out of VPRA's termination of the Agreement pursuant to this Section 2.9.

2.9.3 Design-Builder to Deliver all Work Product to VPRA

If VPRA terminates the Agreement pursuant to this Section 2.9, Design-Builder shall deliver all Work Product produced in the performance of the Agreement to VPRA within 5 days of the date of VPRA's notice of termination. In addition, Design-Builder shall assign or take such other steps as may be necessary to transfer the interest or rights under any applications for Governmental Approvals, Material orders, or otherwise to VPRA. Design-Builder shall not withhold any Work Product on any ground, including on the basis that VPRA has not yet paid the final invoice submitted by Design-Builder.

2.9.4 VPRA's Rights to Exercise Three-Party Agreement

If VPRA terminates the Agreement pursuant to this Section 2.9, VPRA may exercise the rights afforded it under the Three-Party Agreement attached as Exhibit L to the Agreement.

2.10 Ownership of Work Product

2.10.1 VPRA Owns All Work Product

VPRA shall own all rights, title, and interest in the Work Product upon Design-Builder's production of such Work Product, except for (i) Governmental Approvals, which shall only transfer to VPRA upon termination in accordance with Section 2.9 and (ii) Materials, which shall only become property of VPRA upon fulfillment of the conditions in Sections 10.4 and 11.3.2. VPRA's ownership rights include the right of VPRA, and anyone contracting with VPRA, to incorporate any ideas or information from the Work Product into: (a) any other contract awarded in reference

to the Project; or (b) any subsequent procurement by VPRA on another project. In receiving all rights, title, and interest in the Work Product, subject to the exclusions in this Section 2.10.1, VPRA is deemed to own all intellectual property rights, copyrights, patents, trade secrets, trademarks, and service marks in the Work Product, and Design-Builder agrees that it shall, at the request of VPRA, execute all papers and perform all other acts that may be necessary (if any) to ensure that VPRA's rights, title, and interest in the Work Product are protected. The rights conferred herein to VPRA include VPRA's ability to use the Work Product without the obligation to notify or seek permission from Design-Builder.

2.10.2 VPRA to Use the Work Product at its Sole Risk

VPRA's use of the Work Product in any subsequent procurement by VPRA or on another project shall be at VPRA's sole risk and Design-Builder neither warrants nor represents that the Work Product is suitable for use in any subsequent procurement by VPRA or on another project without modification. VPRA waives any rights to seek recovery from Design-Builder for any claims, damages, liabilities, losses, and expenses arising out of or resulting from VPRA's use of the Work Product on another project.

2.10.3 Other Documents Prepared by Design-Builder

Other documents prepared or obtained by Design-Builder to meet its obligations under the Contract Documents become VPRA's property when Design-Builder prepares or receives them, including Construction Documents, Design Documents, studies, manuals, as-built drawings, calculations, technical and other reports, and documents of a similar nature.

2.11 Early Work Packages

2.11.1 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 Design-Builder before execution of the Phase 2 Amendment. As part of the Phase 1 Services, Design-Builder 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 Design-Builder 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 2.8.2 for a Binding Construction Price Proposal and the negotiation thereof stated in Section 2.7.

2.11.2 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 Final Design and Construction hereunder and shall be performed in accordance with the requirements of the Contract Documents for the Phase 2 Services. For the avoidance of doubt, all Early Work Packages will be subject to the performance and payment bond and insurance requirements of Articles 8 and 9.

2.11.3 Early Work NTP

Design-Builder shall not commence Work on an Early Work Package until VPRA issues an Early Work NTP. VPRA shall have no liability to Design-Builder 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.

2.11.4 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 Agreement prior to issuance of the Phase 2 NTP pursuant to Section 2.9. 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.

2.11.5 Design-Builder to Proceed with Early Work

If VPRA terminates the Phase 1 Services pursuant to Section 2.9, Design-Builder 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 Articles 14 and 15.

2.12 Phase 2 Amendment

2.12.1 Phase 2 Services Acceptance

VPRA shall determine, in its sole discretion, whether to accept any Binding Construction Price Proposal offered by Design-Builder. VPRA may condition its acceptance of a Binding Construction Price Proposal on Design-Builder's agreement to, and incorporation of, conditions determined to be appropriate by VPRA. If VPRA accepts any Binding Construction Price Proposal, Design-Builder shall submit a Final Construction Price Proposal incorporating the agreed-upon terms in accordance with Section 2.7.8. Subject to Section 2.12.3, once VPRA has approved the Final Construction Price Proposal, and upon Design-Builder'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 Phase 2 Price contained in the Final Construction Price Proposal. Additionally, the Phase 2 Amendment shall contain the Baseline Schedule submitted with the Final Construction Price Proposal.

2.12.2 ICE Threshold

VPRA shall not accept a Binding Construction Price Proposal where the total cost of the Phase 2 Services exceeds the contemporaneous ICE estimate for the total cost of the Phase 2 Services by 10% or more. VPRA shall not be obligated to accept a Binding Construction Price Proposal solely on the basis that a Binding Construction Price Proposal contains a total cost of the Phase 2 Services that is within 10% of the contemporaneous ICE estimate.

2.12.3 Performance and Payment Bonds

Design-Builder shall provide the Performance and Payment Bonds in accordance with Section 8.1 as a condition precedent to VPRA's execution of the Phase 2 Amendment and issuance of the Phase 2 NTP.

2.13 Phase 2 Services

The Phase 2 Services shall consist of Final Design and Construction Work. Design-Builder shall not be entitled to any payment for the Phase 2 Services unless and until the Parties have executed a Phase 2 Amendment and VPRA issues the Phase 2 NTP. Design-Builder shall perform the Final Design and Construction Work necessary to complete the Project in accordance with the requirements of the Contract Documents, including the Phase 2 Amendment.

ARTICLE 3

Design-Builder's Obligations; VPRA's Obligations

3.1 Design-Builder's Performance Requirements

3.1.1 Performance of Work

Design-Builder shall provide all Materials and perform all Work and services necessary to achieve Substantial Completion and Final Acceptance on or before the applicable Completion Deadlines, except for the Materials, work, and services that are the responsibility of others as specifically provided in the Contract Documents. The costs of all such Materials, services, and efforts are included in the Contract Price, except for changes in the Work as provided in Article 12.

Without limiting the foregoing, Design-Builder shall perform or cause to be performed all Design Work, engineering, procurement, Construction Work, supervision, labor, inspection, testing, start-up, and provide Material, Equipment, machinery, temporary utilities, and other temporary facilities to complete construction of the Project consistent with the Contract Documents. Design/Builder shall endeavor to develop, implement, and maintain, a spirit of cooperation, collegiality, and open communication with VPRA so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by the Parties.

3.1.2 Performance Standards

Design-Builder shall perform Design Work in accordance with all professional engineering principles, Good Industry Practice, and the requirements of the Contract Documents. Design-Builder shall perform Construction Work in accordance with Good Industry Practice (but at least meeting the requirements of the Contract Documents) and in a good and workmanlike manner, free from defects.

3.1.3 Performance as Directed

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

3.1.4 Management of the Work

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

within or from, other structures on the Site.

3.2 General Obligations of Design-Builder

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

- (a) Obtain all Governmental Approvals, except those the Contract Documents identify as to be obtained by others;
- (b) Comply with all conditions imposed by all Governmental Approvals, and undertake all actions required by and necessary to maintain the Governmental Approvals in full force and effect. This includes implementing all environmental mitigation measures required by the Contract Documents, except where the Contract Documents expressly assign responsibility for those measures to another Person;
- (c) Provide such assistance as is reasonably requested by VPRA in dealing with any Person, and in prosecuting and defending lawsuits in any and all Project-related matters. This may include providing information and reports regarding the Project, executing declarations, and attending meetings and hearings;
- (d) Comply with all requirements of all Laws;
- (e) Comply with the Quality Plan requirements in Section 5.5 of the Minimum Requirements;
- (f) Cooperate with VPRA and Governmental Persons with jurisdiction over the Project in the review and oversight of the Project and other Work-related matters;
- (g) Supervise and be responsible to VPRA for acts and omissions of all Design-Builder-Related Entities, as though all such entities (and Persons employed by those entities) were directly employed by Design-Builder; and
- (h) Pay all applicable taxes, fees, charges or levies, whether direct or indirect, relating to, or incurred in connection with, performing the Work.

3.3 Representations, Warranties, and Covenants

Design-Builder represents, warrants, and covenants as follows.

3.3.1 Maintenance of Professional Qualifications

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

3.3.2 Evaluation of Constraints

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

3.3.3 Feasibility of Performance

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

3.3.4 Review of Site Information

Design-Builder has, before submitting its Final Construction Price Proposal, and in accordance with prudent and generally-accepted engineering and construction practices, undertaken appropriate and reasonable activities sufficient to familiarize itself with surface conditions and subsurface conditions affecting the Project. These activities included reviewing the utility and geotechnical information provided by VPRA, including in the Designated VPRA-Furnished Information, if any, and inspecting and examining the Site and surrounding locations to the extent possible. Having performed these activities, Design-Builder represents that it is familiar with and accepts the physical requirements of the Work, subject to the right to receive a Change Order only for Differing Site Conditions as provided in Section 12.12.2. Before commencing any Work on a particular aspect of the Project, Design-Builder shall verify all governing dimensions and conditions at the Site and examine all adjoining work that may have an impact on such Work. Design-Builder is responsible for ensuring that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions and conditions.

3.3.5 Governmental Approvals

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

3.3.6 Design and Engineering Personnel

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

3.3.7 Organization

Design-Builder represents and warrants that it is a joint venture duly organized and validly existing under the laws of the Commonwealth, comprised of Skanska USA Civil Northeast, Inc., a corporation duly existing under the laws of the state of New York and Flatiron Constructors, Inc., a corporation duly existing under the laws of the state of Delaware. Design-Builder represents and warrants that it is and its Principal Participants are in good standing and duly qualified to

conduct business in the Commonwealth. Design-Builder warrants that it will remain in good standing for as long as needed to perform its obligations under the Contract Documents.

3.3.7.1 Guarantor

Any time a Guaranty is required to be in place pursuant to the Contract Documents, the applicable Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization. Guarantor shall remain in good standing for as long as any obligations guaranteed by such Guarantor remain outstanding under the Contract Documents, and, each such Guarantor has all requisite power and all required licenses to carry on its present and proposed obligations under the Contract Documents.

3.3.8 Authorization

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

3.3.9 Legal, Valid, and Binding Obligation

The Agreement constitutes the legal, valid, and binding obligation of Design-Builder and, if applicable, of each Principal Participant of Design-Builder. If applicable, each Guaranty constitutes the legal, valid, and binding obligation of Guarantor.

3.3.10 False or Fraudulent Statements and Claims

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

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

3.3.11 Covenant Regarding Brokerage

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

3.4 Design Requirements

3.4.1 Design Compliance

Design-Builder acknowledges and agrees that the Design must meet all requirements and comply with (i) the Minimum Requirements and (ii) the Technical Provisions developed during the Phase 1 Services. VPRA has furnished the Basis of Design Documents for Design-Builder's reference and use in the design process; however, Design-Builder is only bound to the requirements in the Basis of Design Documents to the extent stated in Section 1.2.

3.4.2 Design Review Process

Design-Builder shall furnish the Design Documents to VPRA and obtain VPRA's Acceptance of the Design Documents in accordance with Section 4.2 of the Minimum Requirements. VPRA may review all Design Documents for compliance with the requirements of the Contract Documents and provide comments on all Design Documents. Unless specified otherwise elsewhere in the Contract Documents, VPRA may provide any comments within 14 Days of receipt of Design-Builder's fully compliant submission to VPRA of Design Documents. During the Phase 1 Services, VPRA may comment on the Design Documents at any time.

3.4.3 Design Reviews Required by Third Parties

Design-Builder shall be responsible for obtaining all design reviews and approvals required by Third-Parties, including Governmental Persons, Utility Owners, Regulatory Agencies, Railroad Owners, and any Persons other than VPRA. VPRA shall coordinate these reviews in accordance with Section 4.2 of the Minimum Requirements. Design-Builder shall comply with and be subject to the timelines and other commitments to Third-Parties described in Section 4.7 of the Minimum Requirements.

3.4.4 Compliance with Contract Documents and Design

Design-Builder shall deliver the Project in accordance with, and otherwise meet the requirements of, the Contract Documents and Design Documents. If there are any conflicts between the Contract Documents and the Design Documents, the Contract Documents take precedence over the Design Documents.

3.4.5 Engineer of Record

Design-Builder shall comply with all requirements of all applicable Laws and Governmental Approvals with regards to the Engineer of Record. Design-Builder shall ensure that the Engineer of Record is a member of Design-Builder's personnel unless otherwise specified.

3.4.6 Professional Licensing Laws

VPRA does not intend to contract for, pay for, or receive any design services that are in violation of any professional licensing laws, and by executing the Agreement, Design-Builder acknowledges that VPRA has no such intent. The Parties intend that Design-Builder is fully responsible for furnishing the design of the Project and that the fully licensed design firm(s) or individuals designated in the Contract Documents will perform the design services required by the Contract Documents. The terms and provisions of this Section 3.4.6 shall control and supersede every other provision of the Contract Documents.

3.5 VPRA's Obligations, Generally

VPRA shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations, and services in a timely manner to facilitate Design-Builder's timely

and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents. VPRA shall provide timely reviews and (where required) approvals of any submittals, requests, submissions or Design Documents consistent with the turnaround times set forth in the Contract Documents. This Section 3.5 shall not be construed to apply to the acquisition of Governmental Approvals by either Design-Builder or VPRA.

ARTICLE 4

Performance of Construction Work

4.1 Completion Deadlines

4.1.1 Substantial Completion Deadline

Design-Builder shall achieve Substantial Completion of the Phase 2 Services by the date stated in the Phase 2 Amendment.

4.1.2 Final Acceptance Deadline

Design-Builder shall achieve Final Acceptance no later than 120 days after it achieves Substantial Completion.

4.1.3 No Completion Deadline Extensions

No Completion Deadline shall be extended except as specifically provided in Article 12.

4.2 Baseline Schedule

Design-Builder shall deliver the Project in accordance with the Baseline Schedule identified in the Phase 2 Amendment, as updated in accordance with the Minimum Requirements.

4.3 Prerequisites for Start of Construction

Design-Builder shall not start construction (or recommence construction following any suspension) of any portion of the Project, until all the following events have occurred;

- (a) VPRA has issued the Phase 2 NTP or an Early Work NTP, as applicable;
- (b) Design-Builder has met all requirements of the Quality Plan and the Health and Safety Plan that are a condition to commencing construction;
- (c) Design-Builder has furnished the Issued for Construction Documents related to that portion of the Work, and has received VPRA's Acceptance of those Issued for Construction Documents;
- (d) Design-Builder and VPRA have obtained all Governmental Approvals necessary for construction of the relevant portion of the Project and have satisfied all conditions of those Governmental Approvals that are a prerequisite to commencing the relevant portion of construction;
- (e) VPRA and Design-Builder have obtained all necessary rights of access for the relevant portion of the Project;
- (f) Design-Builder has complied with the relevant insurance and bond requirements and has delivered to VPRA certificates of such insurance, and executed bonds in the required forms; and
- (g) any additional conditions for construction set forth in the Contract Documents have been satisfied, including that Design-Builder has received VPRA's Acceptance or Approval of any other submittals required for construction of the portion of Work.

ARTICLE 5

Control of the Work

5.1 Control and Coordination of Work

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

5.2 Safety

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

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

5.3 Construction Quality Management

5.3.1 Design-Builder Quality Management

Design-Builder shall perform the quality management necessary for Design-Builder to comply with its obligations under the Contract Documents.

5.3.2 Oversight, Inspection, and Testing by VPRA and Others

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

5.3.3 Obligation to Uncover Finished Work

Design-Builder shall remove or uncover portions of the finished Construction Work as directed by VPRA at any time before Final Acceptance. After VPRA and any other Persons designated by VPRA examine the Work, Design-Builder shall restore the Work to the standard required by the

Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing, and restoring the Work and any delay or recovery thereof as a result of these activities will be at Design-Builder's expense and Design-Builder shall not be entitled to a Contract Price or Completion Deadline adjustment.

VPRA may order Design-Builder to uncover, remove, and restore (i) any Work that was performed or Materials that were used without notice to and opportunity for prior inspection by VPRA as provided in Section 5.2 of the Minimum Requirements or (ii) any Work that was performed past a Hold Point but did not receive required Acceptance prior to proceeding. Any uncovering, removal, or restoration undertaken by Design-Builder will be at Design-Builder's expense and without eligibility for a Contract Price or Completion Deadline adjustment, even if the Work proves acceptable after uncovering.

Except for Work performed or Materials used without opportunity for inspection or past a Hold Point without Acceptance prior to proceeding, if Work exposed or examined under this Section 5.3.3 is in conformance with the requirements of the Contract Documents, then Design-Builder shall be entitled to a Change Order adjusting the Contract Price for the costs of performance of these activities and a Completion Deadline adjustment for any delay, subject to the provisions and limitations of Article 12.

5.4 Effect of Oversight

5.4.1 Oversight and Acceptance

Design-Builder shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, audits, reviews, tests, inspections, Hold Points, Acceptances or Approvals by any Persons, or by any failure of any Person to take this action. The oversight, spot checks, audits, reviews, tests, inspections, Hold Points, Acceptances, and Approvals by any Person do not constitute Final Acceptance of the Material or Work, or a waiver of any legal or equitable right regarding the Material or Work. VPRA may reject or require Design-Builder to remedy any Nonconforming Work and/or VPRA may identify additional Work that must be performed to bring the Project into compliance with the requirements of the Contract Documents at any time before Final Acceptance, whether or not previous oversight, spot checks, audits, reviews, tests, inspections, Hold Points, Acceptances or Approvals were conducted or provided by any Person.

5.4.2 No Estoppel

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

5.5 Nonconforming Work

5.5.1 Rejection, Removal, and Replacement of Nonconforming Work

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

For purposes of clarity, VPRA's sole discretion applies to the decision of whether to reject or Accept Nonconforming Work. VPRA does not possess sole discretion over whether Work constitutes Nonconforming Work.

5.5.2 VPRA Removal and Replacement of Nonconforming Work

If:

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

VPRA may:

- (d) cause the Nonconforming Work to be remedied, removed, and/or replaced, and may deduct the cost of doing so from any payment due or to become due to Design-Builder; or
- (e) obtain reimbursement from Design-Builder for the cost of remediation, removal, and/or replacement.

Notwithstanding Final Acceptance, Design-Builder shall remain liable to VPRA for latent defects, fraud, including gross mistakes that amount to fraud, and failing to meet its obligations to VPRA under any warranty or guaranty.

5.5.3 Acceptance of Nonconforming Work

VPRA may, in its sole discretion, Accept any Nonconforming Work without requiring it to be fully corrected. If VPRA Accepts Nonconforming Work, VPRA will be entitled to reduce the Contract Price (or to be reimbursed a portion of the Contract Price, if applicable). The reduction in Contract Price (or reimbursement) shall equal, at VPRA's election:

- (a) Design-Builder's cost savings associated with its failure to perform the Work in accordance with the requirements of the Contract Documents; and/or
- (b) the amount deemed appropriate by VPRA to provide compensation for impacts to affected Nonconforming Work, such as future additional maintenance and other costs and loss of value.

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

Any failure by VPRA to discover Nonconforming Work after Acceptance of the Work, including Acceptance at a Hold Point, shall not constitute VPRA's Acceptance of the Nonconforming Work and does not relieve Design-Builder of its obligations under this Section 5.5.

ARTICLE 6

Site Access, Utilities, Environmental, Railroads

6.1 Access to Project ROW

6.1.1 VPRA to Acquire Project ROW

VPRA shall acquire the Project ROW.

6.1.2 Design-Builder to Work within the Project ROW

During the provision of the Phase 1 Services, Design-Builder shall evaluate the ROW to be made available for the Project and prepare the Design within the ROW constraints identified in the ROW Work Map. Other than Temporary Work Areas, Design-Builder affirms that it can design and construct the Project within the Project ROW. Design-Builder shall not be entitled to an adjustment of the Contract Price or a Completion Deadline arising out a claim that there is insufficient ROW to construct the Project.

6.1.3 Obligation to Provide ROW

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

6.1.4 Delays to ROW Access

If VPRA is unable to provide access to a particular parcel by the scheduled date on the ROW Schedule, VPRA will notify Design-Builder of the revised projected date for provision of access. Design-Builder shall take appropriate action to minimize any cost and time impact and must work around the parcel until access can be provided, including rescheduling and resequencing Work so as to avoid any delay to the Project. Subject to Section 6.1.5 and Article 12, to the extent that a delay to the Critical Path cannot be avoided, Design-Builder may seek relief for a VPRA-Caused Delay.

6.1.5 Obligation to Provide Written Notice

Design-Builder shall not be entitled to an increase in the Contract Price or adjustment of a Completion Deadline related to VPRA's delivery of access to the parcels identified on the ROW Work Map later than the date identified in the ROW Schedule unless Design-Builder: (a) gives written notice to VPRA within thirty (30) days of VPRA's notice provided under Section 6.1.4, describing how the unavailability of a given parcel will result in an impact to the cost or schedule, and (b) complies with the requirements of Section 6.1.4.

6.1.6 Temporary Work Areas

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

6.2 Utility Work

6.2.1 Design-Builder to Perform Utility Work

Design-Builder shall perform the Utility Work consistent with the responsibility for the Relocation of Utilities stated in the Phase 2 Amendment. As contemplated by the Minimum Requirements, certain Utility Work may be self-performed by a Utility Owner rather than Design-Builder. Using Exhibit G and in accordance with the Minimum Requirements, Design-Builder will use commercially reasonable efforts to negotiate and execute Utility Agreements with those Utility Owners that are not already party to a Utility Agreement, and that require a Utility Agreement for the purposes of the Utility Work.

6.2.2 Betterments

Utility Betterments not already identified in the Minimum Requirements, if any, may be added to the Work pursuant to this Section 6.2.2. The addition of Betterments is subject to VPRA's Approval.

6.2.2.1 Procedure

Any Utility Owner may ask VPRA to permit Design-Builder to design and/or construct Betterments, at the Utility Owner's expense. If VPRA Approves the request, Design-Builder shall perform the work, with the right to receive an adjustment to the Contract Price and Completion Deadline(s). VPRA will pay Design-Builder for the work relating to the Betterment based on either a lump sum amount that Design-Builder negotiates with the Utility Owner, or on a Force Account cost method as specified below. Any extension of any Completion Deadline(s) or Contract Price increase requested for any Betterment will be subject to the requirements of this Section 6.2 and Article 12, as applicable.

6.2.2.2 Betterment Pricing

If a Utility Owner requests that Design-Builder design and/or construct a Betterment, Design-Builder shall use its best efforts to negotiate a lump sum price or unit prices with the Utility Owner in good faith. If Design-Builder and the Utility Owner are not able to agree on a lump sum price or unit prices, VPRA may direct Design-Builder to perform the work with compensation determined in accordance with Exhibit I, provided that the conditions set forth in Section 6.2.2.4 are satisfied.

6.2.2.3 Change Order Increasing the Contract Price

If VPRA approves a proposed Betterment, it will be added to the scope of the Work through a Change Order that adjusts the scope of Work and Contract Price. The amount of any Change Order issued will be a direct pass-through of the lump sum price negotiated by Design-Builder and the Utility Owner (with no additional mark-ups) or, if no such price has been negotiated, an amount determined in accordance with Exhibit I. Design-Builder may not request or accept any payment directly from the Utility Owner for any Betterment added to the Work.

6.2.2.4 VPRA's Approval of Betterments

VPRA may approve the addition of a Betterment to the scope of the Work only if: (a) the Utility Owner has requested the addition of the Betterment to the Work, (b) the Betterment is compatible with the Project, (c) the Utility Owner has agreed to reimburse VPRA for all the costs of the Work relating to the Betterment, including costs associated with a Completion Deadline adjustment,

(d) the Utility Owner has agreed to the method of pricing the Work (e.g., negotiated lump sum amount, unit prices or Force Account cost basis), and (e) it is feasible to separate the pricing of the Betterment work from the pricing of any other Utility Work being furnished by Design-Builder. Design-Builder shall provide VPRA with information, analyses, and certificates requested by VPRA in connection with any Approval needed from VPRA for a potential Betterment.

6.2.2.5 Change Order Reducing the Contract Price

If any Betterment has been added to the Work and the Contract Price has been increased accordingly by Change Order, but the Betterment is later deleted from the Work, or the scope of Design-Builder's Work relating to the Betterment is materially reduced, VPRA will be entitled to issue a Change Order reducing the Contract Price to reflect the value of any reduction in the costs of the Work and reducing any adjustment of a Completion Deadline, in both cases to the extent directly attributable to the deletion or reduction. With respect to costs, the Change Order will be equal to the lump sum amount added to the Contract Price pursuant to Section 6.2.2.3, if applicable, if the entire Betterment has been deleted from the Work, and the reduction in time will be equal to the Completion Deadline adjustment previously granted. If the entire Betterment is not deleted from the Work, the amount of the Change Order and the time adjustment will be determined in accordance with Article 12.

6.2.2.6 Betterment not a VPRA-Directed Change

Any change in the scope of the Work pursuant to this Section 6.2.2 will not be considered a VPRA-Directed Change.

6.3 Utility Work Obligations

6.3.1 Multiple Relocations of the Same Utility

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

The foregoing shall not apply if the subsequent Relocation(s) must occur due to a Relief Event, subject to Article 12 and provided that the Relief Event is the cause of the subsequent Relocation(s).

6.3.2 Minimizing Utility Costs

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

6.3.3 Utility-Related Right of Way Costs

6.3.3.1 VPRA's Responsibility

With respect to Utility Easements other than those described in Section 6.3.3.2, VPRA will be responsible for any compensation required to be paid to Utility Owners for relinquishing their Utility Easements.

6.3.3.2 Design-Builder's Responsibility

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

6.4 Environmental Compliance

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

6.4.1 Mitigation Requirements

Design-Builder shall perform all environmental mitigation measures for the Project. The phrase "environmental mitigation measures" includes all requirements of the Environmental Approvals and similar Governmental Approvals, regardless of whether these requirements fall within a strict definition of the phrase. The Contract Price includes compensation for Design-Builder's performance of all mitigation measures and for performance of all mitigation measures arising from New Environmental Approvals that Section 6.4.2 designates as Design-Builder's responsibility, and the cost of all activities to be performed by Design-Builder as described in Section 12 of the Minimum Requirements.

6.4.2 New Environmental Approvals

6.4.2.1 New Environmental Approvals under Certain Conditions

Unless otherwise agreed, Design-Builder shall be responsible for obtaining any New Environmental Approvals necessitated by a VPRA-Directed Change, VPRA-Caused Delay, or Force Majeure event. Any Change Order resulting from a VPRA-Directed Change, VPRA-Caused Delay, or Force Majeure may include compensation to Design-Builder for any changes in the Work (including performance of additional mitigation measures and performance of the support services) resulting from such New Environmental Approvals. Any such Change Order will be subject to the conditions and limitations contained in Article 12.

6.4.2.2 Approvals to be Obtained by Design-Builder

If a New Environmental Approval becomes necessary for any reason within Design-Builder's reasonable control, Design-Builder shall be fully responsible for the effort and cost of obtaining the New Environmental Approval and for all requirements resulting from these approvals. Design-Builder shall be responsible for any litigation and shall notify VPRA of any potential or pending litigation arising in connection with any such New Environmental Approval. VPRA shall reasonably assist Design-Builder in obtaining any New Environmental Approvals and provide support as necessary to Design-Builder in the conduct of any litigation arising in relation to a New Environmental Approval. Design-Builder shall confer and coordinate with VPRA as necessary in relation to any potential, pending or ongoing litigation arising from a New Environmental Approval. If the New Environmental Approval is associated with a Design-Builder-initiated Agreement modification, Design-Builder shall be responsible for obtaining the approval, and the costs of obtaining and complying with the terms of the New Environmental Approval will be considered in determining the Contract Price adjustment under Article 12.

6.5 Railroads

6.5.1 Railroad Permits

Design-Builder shall comply with the terms of all permits obtained by VPRA for Work that impacts a Railroad. The permits that VPRA will obtain are identified in Section 12.4.5 of the Minimum Requirements.

6.5.2 Railroad Coordination

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

6.5.3 Railroad Rights to Review and Approve Design-Builder's Work

Railroad Owners have the right to review and approve certain aspects of Design-Builder's Work that may impact a Railroad. Where a Railroad Owner is required to approve a design or other document before Design-Builder may perform certain Work, Design-Builder shall be responsible for obtaining such required approval before proceeding with the Work, except that VPRA will coordinate review of Design-Builder's Design with Railroad Owners. Design-Builder shall allow the time stated in Section 4.2 of the Minimum Requirements days for a Railroad Owner to provide approval of any submission that must be approved by a Railroad Owner. Design-Builder shall be entitled to relief for a Railroad Delay if the Railroad Owner does not deliver the required approval within such time, subject to Article 12 and other conditions hereunder concerning a Railroad Delay.

6.5.4 Indemnity and Insurance Obligations

Design-Builder shall comply with the indemnity and insurance obligations applicable to the Railroad Owners as set forth in Exhibit Q.

ARTICLE 7

Equal Employment Opportunity, Non-Discrimination, Subcontracts, Labor

7.1 Equal Employment Opportunity

7.1.1 Equal Employment Opportunity Requirements

Design-Builder shall comply with the Equal Employment Opportunity (EEO) requirements set forth in Exhibit C and Exhibit V.

7.1.2 Inclusion in Subcontracts

Design-Builder shall include Exhibits C and V in every Subcontract over \$10,000 (including purchase orders), and must require that Exhibits C and V be included in all Subcontracts over \$10,000 at lower tiers.

7.2 Non-Discrimination

7.2.1 Federal Requirements

Design-Builder and its Subcontractors shall comply with the non-discrimination requirements set forth in Exhibit C.

7.2.2 State Law Provisions

7.2.2.1 Va. Code § 2.2-4201

Pursuant to Va. Code § 2.2-4201, in every contract over \$10,000 the provisions in (a) and (b) below apply:

(a) During the performance of the Agreement, Design-Builder agrees as follows:

- (i) Design-Builder will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Design-Builder. Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- (ii) Design-Builder, in all solicitations or advertisements for employees placed by or on behalf of Design-Builder, will state that Design-Builder is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- (iii) If Design-Builder employs more than five employees, Design-Builder shall (1) provide annual training on Design-Builder's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (2) post Design-Builder's sexual harassment policy in (A) a conspicuous public place in each building

located in the Commonwealth that Design-Builder owns or leases for business purposes and (B) Design-Builder's employee handbook.

- (iv) The requirements of these provisions (a) and (b) are a material part of the Agreement. If Design-Builder violates one of these provisions, VPRA may terminate the affected part of the Agreement for breach, or at its option, the whole Agreement. Violation of one of these provisions may also result in debarment from state contracting regardless of whether the specific contract is terminated.

- (b) Design-Builder will include the provisions of subdivisions (i)-(iii) above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Subcontractor or supplier.

7.2.2.2 Disabilities Act, Va. Code § 51.5-40

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

7.3 Prevailing Wages

7.3.1 Design-Builder to Pay Federal Prevailing Wage Rates

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

7.3.2 Federal Prevailing Wage Rate Determination

Federal Prevailing Wage Rates for heavy construction labor in the District of Columbia (statewide), as established by the United States Department of Labor, are set forth in Exhibit H, an Early Work Amendment, and the Phase 2 Amendment, as applicable, and can be obtained from <https://sam.gov/content/wage-determinations>. Design-Builder shall bear the cost of any changes in the Federal Prevailing Wage Rates throughout the life of the Project and shall not be entitled to an increase in the Contract Price or a Completion Deadline adjustment. Without limiting the foregoing, no Claim will be allowed that is based upon Design-Builder's lack of knowledge or a misunderstanding of any such requirements or Design-Builder's failure to include in the Contract Price adequate increases for applicable prevailing wage rates to the extent required by law.

7.3.3 Subcontractor Compliance with Prevailing Wage Rates

Design-Builder shall comply and cause its Subcontractors to comply with all Laws regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements, and of prevailing wage rates. Design-Builder shall be responsible for any Subcontractor's failure to pay the proper Prevailing Wages.

7.3.4 Certified Payrolls

Design-Builder and each Subcontractor shall maintain weekly certified payroll records for submittal to VPRA, as required. Design-Builder shall be responsible for the submittal of payroll

records of all Subcontractors. Additionally, the certified payroll records shall be available for inspection at all reasonable hours at the principal office of Design-Builder.

7.4 Subcontracting Requirements

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

7.4.1 Subcontract Terms

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

- (a) Set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the Contract Documents for work of similar scope and scale and shall set forth effective procedures for claims and change orders;
- (b) Require the Subcontractor to carry out its scope of work in accordance with the Contract Documents, the Governmental Approvals, and applicable Law;
- (c) Expressly include the Federal Prevailing Wage Rates determinations applicable to the Project;
- (d) Provide that VPRA is a third-party beneficiary of the Subcontract with the right to enforce all terms of the Subcontract for its own benefit;
- (e) Without cost to Design-Builder or VPRA, expressly permit assignment to VPRA or its successor, assign or designee of all Design-Builder's rights under the Subcontract, contingent only upon delivery of request from VPRA following termination of this Agreement, allowing VPRA or its successor, assign or designee to assume the benefit of Design-Builder's rights, with liability only for those remaining obligations of Design-Builder accruing after the date of assumption, such assignment to include the benefit of all Subcontractor warranties, indemnities, guarantees, and professional responsibility;
- (f) Expressly state that any acceptance of assignment of the Subcontract to VPRA or its successor, assign or designee shall not operate to make the successor, assignee or designee responsible or liable for any breach of the Subcontract by Design-Builder or for any amounts due and owing under the Subcontract for work or services rendered prior to assumption (but without restriction on the Subcontractor's rights to suspend work or demobilize due to Design-Builder's breach);
- (g) Expressly include a covenant to recognize and attorn to VPRA upon receipt of notice from VPRA that it has exercised its rights under this Agreement, without necessity for consent or approval from Design-Builder or to determine whether VPRA validly exercised its rights, and Design-Builder's covenant to waive and release any claim or cause of action against the Subcontractor arising out of or relating to its recognition and attornment in reliance on any such notice;

- (h) Not be assignable by the Subcontractor to any Person other than VPRA (or its successor, assignee or designee) without Design-Builder's prior consent;
- (i) Expressly require that the Subcontractor will: (1) maintain usual and customary books and records for the type and scope of business operations in which it is engaged (e.g., constructor, equipment Supplier, designer, service provider) and maintain records for disputed work in compliance with Section 21.3.6; (2) permit audit of books and records with respect to the Project or Work by each of Design-Builder and VPRA pursuant to Section 21.3; and (3) provide progress reports to Design-Builder appropriate for the type of work it is performing sufficient to enable Design-Builder to provide the reports it is required to furnish VPRA under this Agreement;
- (j) Include the right of Design-Builder to terminate the Subcontract in whole or in part upon any termination of this Agreement without liability of Design-Builder or VPRA for the Subcontractor's lost profits, business opportunity or other consequential damages;
- (k) Expressly require the Subcontractor to participate in meetings between Design-Builder and VPRA, upon VPRA's request, concerning matters pertaining to such Subcontract or the work thereunder, provided that all direction to such Subcontractor shall be provided by Design-Builder, and provided further that nothing in this clause (k) shall limit the authority of VPRA to give such direction or take such action which, in its sole opinion, is necessary to remove an immediate and present threat to the safety of life or property;
- (l) Include an agreement by the Subcontractor to give evidence in any dispute resolution proceeding pursuant to Article 21, if such participation is requested by either VPRA or Design-Builder;
- (m) Expressly include a provision prohibiting cross-contract offset between the parties thereto, meaning that if a Subcontractor is performing work on multiple contracts for the other party to the Subcontract or the other party's affiliates, the other party or its affiliate shall not withhold payment from the Subcontractor on its Subcontract because of disputes or claims on another contract;
- (n) Expressly include Sections 7.1, 7.2, and 7.3 (with appropriate changes in the names of the parties);
- (o) Expressly include in every Subcontract (including purchase orders and in every Subcontract of any Design-Builder-Related Entity for the Work), provisions to effectuate the Small Business requirements and require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor. All Subcontracts at any tier, including those with Small Businesses, and all contracts with Suppliers, shall require compliance with the Small Business utilization requirements in the Contract Documents. The requirements of this subparagraph (n) shall not apply to Subcontracts at any tier with VPRA or Governmental Entities;
- (p) Expressly require the Subcontractor to make payments to its lower tier Subcontractors, and be liable for interest payments to such Subcontractors, as set forth in Section 11.6, respectively;
- (q) Contain no waiver of the prompt payment protections for the Subcontractor;

- (r) Expressly provide that all claims and charges of the Subcontractor and its Subcontractors at any tier shall not attach to any interest of VPRA in the Project or the Project ROW;
- (s) Expressly include a covenant, expressly stated to survive termination of the Subcontract, to promptly execute and deliver to VPRA a new contract between the Subcontractor and VPRA on the same terms and conditions as the Subcontract, in the event: (1) the Subcontract is rejected by Design-Builder in bankruptcy or otherwise wrongfully terminated by Design-Builder; or (2) VPRA delivers a request for such new contract following termination or expiration of this Agreement;
- (t) Provide that all guarantees and warranties, express and implied, will inure to the benefit of VPRA and VPRA's successors and assigns, as well as Design-Builder;
- (u) Contain the language in Section 7.4.4;
- (v) Be consistent in all other respects with the terms and conditions of the Contract Documents to the extent such terms and conditions are applicable to the scope of work of a Subcontractor, and include all provisions required by this Agreement;
- (w) Include provisions concerning termination consistent with Article 14;
- (x) Include all safety requirements applicable to the Work, including Section 2.8.1 of the Minimum Requirements; and
- (y) Expressly include Exhibits C, D and V.

7.4.2 Subcontractor Approval

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

- (a) Identity of the Subcontractor;
- (b) Licenses held by the proposed Subcontractor relevant to the work to be performed;
- (c) Proposed scope of Work;
- (d) A copy of the proposed Subcontract including the price for the subcontracted work;
- (e) A statement concerning whether the Subcontractor is currently prohibited or has been prohibited from performing work for any local, state, or federal agency in the preceding five (5) years; and
- (f) Evidence that the proposed Subcontractor has obtained the insurance required by Article 9 to perform its scope of work.

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

7.4.3 Subcontract Data

Design-Builder shall allow VPRA access to all Subcontracts and records regarding Subcontracts no later than 7 Days after receiving a request from VPRA. All Subcontracts must be in writing and must include design costs (if applicable).

7.4.4 Responsibility for Work by Subcontractors

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

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

7.4.5 Debarred Subcontractors

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

7.5 Key Personnel Requirements

7.5.1 Key Personnel

Key Personnel positions, qualifications, and responsibilities for the Project are identified in Exhibit J. Design-Builder 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 J.

7.5.2 Representations, Warranties, and Covenants

Design-Builder acknowledges and agrees that VPRA's award of this Agreement was based, in large part, on the qualifications and experience of the Key Personnel listed in the SOQ and Proposal and on Design-Builder's commitment that such individuals would be available to perform the Work. Design-Builder 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 the RFQ and Exhibit J and Design-Builder shall document such commitment to VPRA's satisfaction upon VPRA's request.

7.5.3 Not Used

7.5.4 Incapacity, Resignation or Termination of Key Personnel

Design-Builder shall not be liable for the Liquidated Damages in Section 16.1.3.2 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, Design-Builder shall not be liable for the Liquidated Damages in Section 16.1.3.2 if the individual filling a Key Personnel role resigns or is terminated from employment with Design-Builder or a Design-Builder-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 7.5.4, Design-Builder shall be responsible for replacing the Key Personnel position and shall be liable for the Liquidated Damages as described in Section 16.1.3.4 if Design-Builder fails to replace the individual.

7.6 Major Subcontractor Requirements

7.6.1 Major Subcontractors

Major Subcontractors are identified in Exhibit K. Design-Builder shall use Major Subcontractors to perform the scopes of work identified in Exhibit K.

7.6.2 Representations, Warranties, and Covenants

Design-Builder acknowledges and agrees that VPRA's award of this Agreement was based, in large part, on the qualifications and experience of the Major Subcontractors listed in the SOQ and Proposal and on Design-Builder's commitment that such Major Subcontractors would be available to perform the Work. Design-Builder represents, warrants, and covenants that such Major Subcontractors are available for and will fulfill the roles identified for them in connection with the Work.

7.7 Independent Design Quality Manager

At all times until completion of the Final Design, Design-Builder shall employ one or more Independent Design Quality Manager firms as provided in Section 5.7.2 of the Minimum Requirements. No Independent Design Quality Manager firm shall be an Affiliate of, or have any other contractual relation to, the Lead Designer or a Subcontractor performing Professional Services.

7.8 Employee Performance Requirements

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

ARTICLE 8

Surety Bonds, Guarantees, Joint & Several Liability

8.1 Performance and Payment Bonds

Design-Builder shall provide Performance and Payment Bonds in the form attached hereto as Exhibit M for the Work in accordance with Sections 2.12.3 and 2.11.2. Design-Builder shall maintain the bonds in effect at all times during the performance of Early Work and the Phase 2 Services until Final Acceptance of an Early Work Package and the Phase 2 Services, respectively, and thereafter in accordance with Section 8.2. Design-Builder shall obtain the required bonds from a Surety licensed as a Surety and qualified to do business in the Commonwealth. The surety or insurance company providing the bonds must be rated AA-/Aa3 by two nationally recognized rating agencies or at least A-VII by A.M. Best and Company, be listed on Treasury Department Circular 570, and be authorized to transact the business of suretyship in the Commonwealth.

Design-Builder shall provide Performance and Payment Bonds in the amount of 100% of the Early Work Price of any Early Work Package(s) and 100% of the Phase 2 Price for the Phase 2 Services. At its election, Design-Builder can provide separate Performance and Payment Bonds for an Early Work Package and the Phase 2 Services.

8.2 Duration of Performance Bond

Starting at Final Acceptance, Design-Builder shall continue to provide a Performance Bond in the amount of 10% of the Phase 2 Price until the later of (1) the second anniversary of Final Acceptance; or (2) the expiration of the Warranty if extended in accordance with Section 20.1. For an Early Work Package, starting at Final Acceptance of the Early Work Package, Design-Builder shall continue to provide a Performance Bond in the amount of 10% the Early Work Price until the later of (1) the second anniversary of Final Acceptance of the Early Work Package; or (2) the expiration of the Warranty if extended in accordance with Section 20.1.

8.3 Utility Work

The Utility Work must be covered by the Performance and Payment Bond. At the request of a Utility Owner having Utility Work performed by Design-Builder, Design-Builder shall add the Utility Owner as an additional obligee to the Performance and Payment Bond (as their interests may appear), as well as to such replacement bond or other security (as their interests may appear), to the limited extent of the amount of the Utility Work required on behalf of the Utility Owner. Design-Builder shall provide a Performance and Payment Bond in their full amount on behalf of VPRA, with no riders that reduce VPRA's potential of recovery based on the Utility Owner's limited obligee amounts. Alternatively, Design-Builder may provide separate bonds satisfactory to the Utility Owners. Design-Builder shall provide all information necessary for such coverage to the surety(ies) providing such bonds. Design-Builder shall include the cost of bond premiums in all cost estimates Design-Builder is required to provide under the Contract Documents for Utility Work performed by Design-Builder.

8.4 Guaranty

Skanska AB is the Guarantor guaranteeing the obligations of Skanska USA Civil Northeast, Inc. under the Contract Documents and has provided a Guaranty to VPRA and Flatiron Construction

Corp. is the Guarantor guaranteeing the obligations of Flatiron Constructors, Inc. under the Contract Documents and has provided a Guaranty to VPRA. Each Guaranty shall be in the form attached hereto as Exhibit N, and shall be provided with appropriate evidence of authorization, execution, delivery, and validity thereof, and shall guarantee the respective entity's obligations under the Contract Documents. Design-Builder 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 N.

8.5 Joint and Several Liability

Design-Builder is a joint venture comprised of two independent business entities combining resources to fulfill the requirements of the Contract Documents. Accordingly, Design-Builder acknowledges and agrees that each Principal Participant is jointly and severally liable for all obligations of Design-Builder under the Contract Documents.

8.6 No Relief of Liability and Double Recovery

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

ARTICLE 9

Insurance

9.1 General Insurance Requirements

Design-Builder shall procure, at its own expense (or, as appropriate, cause others to procure and maintain), insurance with coverage types and minimum limits acceptable to VPRA, as described in Exhibit O and must maintain the insurance in accordance with the requirements stated therein and in this Article 9, or as otherwise approved by VPRA in its sole discretion. The insurance and minimum insurance limits required in this Article 9 will not be deemed a limitation on Design-Builder's liability regarding the indemnities under this Agreement.

9.1.1 Evidence of Insurance

Design-Builder shall provide evidence of insurance to show that it complies with all insurance requirements contained in this Article 9. VPRA reserves the right, at its sole discretion, to request a complete copy of any policy required by this Article 9.

9.1.2 A.M. Best Rating

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

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

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

9.1.4 No Recourse

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

9.1.5 Indemnification

The insurance coverage required by this Article 9 is intended, among other things, to support Design-Builder's indemnification obligations under Article 17. The insurance coverage is not intended to limit or otherwise modify such indemnification obligations.

9.1.6 Commercial Unavailability of Required Coverage

Design-Builder may propose alternative insurance packages and programs if, through no fault of Design-Builder, any of the coverages required in this Article 9 (or any of the required terms of such coverages, including policy limits) become unavailable. VPRA may approve Design-Builder's proposal if VPRA determines, in its sole discretion, that the proposed alternative provides coverage equivalent to that specified in this Article 9. Design-Builder shall demonstrate and document, to VPRA's reasonable satisfaction, that Design-Builder used diligent efforts in the global insurance markets to place the required insurance coverages. Design-Builder shall not be

entitled to any increase in the Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. VPRA will be entitled to a reduction in the Contract Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes included in the CCPDs (or based on other evidence of insurance premiums as of the Final Construction Price Proposal if the CCPDs do not provide adequate information).

9.1.7 Primary and Non-Contributory

For claims covered by the insurance required by this Article 9, the insurance coverage will be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents, and consultants, and must specify that coverage continues notwithstanding the fact that Design-Builder has left the Site. Any insurance or self-insurance beyond that specified in this Agreement that is maintained by an insured, additional insured, or their members, directors, officers, employees, agents, and consultants shall be excess of such insurance and shall not contribute with it.

9.1.8 Governmental Immunity

Insurance companies providing the liability insurance policies required by this Article 9 must waive their rights to assert the immunity of VPRA and the Commonwealth as a defense to any claims arising out of this Agreement.

ARTICLE 10

Risk of Loss

10.1 Site Security and Maintenance

Commencing on the date of the Phase 2 NTP, or for Early Work, the Early Work NTP, Design-Builder shall be responsible for securing the Site. Design-Builder shall provide appropriate security for the Site, including securing any buildings and structures from entry. Design-Builder shall take all reasonable precautions and provide protection to prevent damage, injury or loss to Equipment, the Work, and Materials to be incorporated into the Work, as well as all other property at the Site, whether owned by Design-Builder, VPRA, or any other Person. Design-Builder shall maintain the Site in a neat and clean condition at all times, including removing litter and graffiti and controlling weeds. Trash and scrap shall not be allowed to accumulate on the Site.

10.2 Maintenance and Repair of Work and On-Site Property

10.2.1 Responsibility of Design-Builder

Design-Builder shall maintain, rebuild, repair, restore, or replace all Work that is injured or damaged prior to the date that VPRA or a third party accepts maintenance liability as specified in Section 10.2.2. This responsibility includes Design Documents, Construction Documents, Materials, Equipment, supplies, and maintenance Equipment that are purchased to be permanently installed in the Work, or for use during Project construction, regardless of whether VPRA has title thereto under the Contract Documents. Design-Builder is responsible for rebuilding, repairing, and restoring all other property at the Site, whether owned by Design-Builder, VPRA or any other Person, until acceptance as specified in Section 10.2.2.

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

10.2.2 Relief from Liability for Maintenance

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

10.3 Damage to Off-Site Property

Design-Builder shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to property adjacent to the Site or likely to be affected by the Work. If property is

damaged, injured, or lost due to an act or omission of any Design-Builder-Related Entity, then Design-Builder shall restore such property to a condition similar or equal to that existing before the damage, injury or loss occurred or compensate the owner of the affected property for the cost of restoration.

10.4 Title

Design-Builder warrants that it owns, or will own, and has, or will have, good and marketable title to all Materials, Equipment, tools, and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or that are otherwise purchased for VPRA in connection with the Project, free and clear of all Liens. Title to all such Materials, Equipment, tools, and supplies will pass to VPRA, free and clear of all Liens, following delivery to the Site and upon the sooner of (a) being incorporated into the Project, or (b) VPRA paying Design-Builder invoiced amounts pertaining to such Materials, Equipment, tools, and supplies. Notwithstanding any such passage of title, and subject to Section 10.1, Design-Builder shall retain sole care, custody, and control of such Materials, Equipment, tools, and supplies, and must exercise due care with respect thereto as part of the Work until Final Acceptance or until Design-Builder is removed from the Project.

ARTICLE 11

Payment

11.1 Contract Price

11.1.1 Phase 1 Services Fee

The Phase 1 Services Fee shall be as stated in Section 2.4.

11.1.2 Early Work Price

The Early Work Price for an Early Work Package shall be as stated in the Early Work Amendment for each Early Work Package.

11.1.3 Phase 2 Price

The Phase 2 Price shall be as stated in the Phase 2 Amendment.

11.1.4 Items Included in Contract Price

Design-Builder agrees that the Contract Prices include the following, subject to Design-Builder's rights under Article 12, as relevant to each Phase of the Work:

- (a) performance of the relevant phase of the Work;
- (b) all designs, Equipment, Materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit, and services relating to Design-Builder's performance of its obligations under the Contract Documents (including all Work, Warranties, Equipment, Materials, labor, and services provided by Subcontractors, and intellectual property rights necessary to perform the Work);
- (c) the cost of obtaining all Governmental Approvals (except for Governmental Approvals that are the responsibility of VPRA, as provided elsewhere in the Contract Documents);
- (d) all costs of compliance with and maintenance of the Governmental Approvals and compliance with all Laws;
- (e) payment of any taxes, duties, permit fees, and other fees or royalties imposed with respect to the Work;
- (f) any Equipment, Materials, labor, or services included in the Work; and
- (g) any and all other costs to comply with Design-Builder's obligations in the Contract Documents.

11.2 Invoices and Payment

11.2.1 Phase 1 Services

Invoicing and payment for the Phase 1 Services shall be as stated in Section 2.4.6 and comply with the Prompt Payment Law. VPRA reserves the right to withhold processing and payment of an invoice if the requirements stated in Section 2.4.6 or Prompt Payment Law are not met. VPRA

will make payment of all undisputed and valid amounts invoiced within thirty (30) days of VPRA's receipt of a compliant invoice.

11.2.2 Phase 2 Services

Invoicing and payment for the Phase 2 Services shall be as stated in Section 2.5 of the Minimum Requirements and comply with the Prompt Payment Law. VPRA reserves the right to withhold processing and payment of an invoice if the requirements of Section 2.5 of the Minimum Requirements or Prompt Payment Law are not met. VPRA will make payment of all undisputed and valid amounts invoiced within thirty (30) days of VPRA's receipt of a compliant invoice.

11.2.3 Early Work

Invoicing and payment for Early Work shall be as stated in Section 2.5 of the Minimum Requirements and comply with the Prompt Payment Law. VPRA reserves the right to withhold processing and payment of an invoice if the requirements of Section 2.5 of the Minimum Requirements or Prompt Payment Law are not met. VPRA will make payment of all undisputed and valid amounts invoiced within thirty (30) days of VPRA's receipt of a compliant invoice.

11.3 Limitations on Payment; Retainage

VPRA has no obligation to pay Design-Builder any amount that would result in (a) payment for any activity that is more than the value of the entire activity multiplied by the percent that the activity is completed, or (b) aggregate payments that are more than the overall completion percentage for the Project multiplied by the Contract Price.

VPRA may withhold retainage if VPRA determines that Design-Builder's progress is unsatisfactory (i.e., not in accordance with the Baseline Schedule). VPRA may in its sole discretion withhold up to five percent (5%) retainage of the monthly progress payment for each month that Design-Builder's actual progress is determined to be unsatisfactory. If and when VPRA determines that Design-Builder's progress has achieved compliance with the Baseline Schedule, the five percent (5%) retainage previously withheld because of unsatisfactory progress will be released in Design-Builder's next monthly progress payment, and the remaining monthly progress payments will not be subject to retainage provided that Design-Builder's progress continues to be satisfactory. The foregoing right of VPRA to withhold retainage applies solely to the Phase 2 Services and Early Work, and shall not apply to the Phase 1 Services.

11.3.1 Limitations on Payment for Mobilization

Design-Builder shall be entitled to payment for mobilization in an amount equal to the lesser of the amount for mobilization set forth in the Phase 2 Amendment or 10% of the Phase 2 Price as of the Phase 2 NTP (other than mobilization). This amount shall be fixed and not subject to adjustment, and shall be paid in installments as follows:

- (a) the first payment for mobilization shall be in an amount not to exceed 20% of the total payment for mobilization, and shall become payable to Design-Builder after 5% or more of the Phase 2 Price is earned on items other than mobilization;
- (b) the second payment for mobilization shall be in an amount not to exceed 40% of the total payment for mobilization less other payments previously received for mobilization, and

shall become payable after 10% or more of the Phase 2 Price is earned on items other than mobilization;

- (c) the third payment for mobilization shall be in an amount not to exceed 60% of the total payment for mobilization less other payments previously received for mobilization, and shall become payable after 20% or more of the Phase 2 Price is earned on items other than mobilization; and
- (d) the fourth payment for mobilization shall be in an amount not to exceed 80% of the total payment for mobilization less other payments previously received for mobilization, and shall become payable after 30% or more of the Phase 2 Price is earned on items other than mobilization; and
- (e) the final payment for mobilization shall be in an amount not to exceed 100% of the total payment for mobilization less other payments previously received for mobilization, and shall become payable after 50% or more of the Phase 2 Price is earned on items other than mobilization.

11.3.2 Unincorporated Materials

Design-Builder shall only be entitled to payment for Materials not yet incorporated into the Work if all of the following conditions are met:

- (a) the Material (i) has been delivered to the Site, (ii) has been delivered to Design-Builder and stored in a bonded storage location approved by VPRA, or (iii) is stored at a Supplier's fabrication site, which must be a bonded commercial location approved by VPRA;
- (b) if such Materials are stored at any site not approved by VPRA, Design-Builder shall accept responsibility for and pay all personal and property taxes that may be levied against VPRA by any state or subdivision thereof on account of such storage of such Material;
- (c) VPRA's Quality Acceptance has certified that the quantity of Materials is correct and accurate;
- (d) VPRA's Quality Acceptance has certified that the Materials contain no defects and meet the requirements of the Contract Documents;
- (e) Design-Builder shall submit certified bills for such Materials with the progress payment request; and
- (f) all such Materials that meet the requirements of the Contract Documents shall be and become the property of VPRA. Design-Builder shall promptly execute, acknowledge, and deliver to VPRA proper bills of sale or other instruments in writing in a form acceptable to VPRA conveying and assuring to VPRA title to such material included in any progress payment request, free and clear of all Liens and accompanied by a Surety's written consent acknowledging and consenting to such transfer of property title as required. Design-Builder shall conspicuously mark such material as the property of VPRA, shall not permit such Materials to become commingled with non-VPRA-owned property or with Materials that do not conform with the Contract Documents, and shall take such other steps, if any, as VPRA may require or regard as necessary to vest title to such material in VPRA free and clear of Liens.

Notwithstanding VPRA's payment for the materials, risk of loss shall remain with the Design-Builder in accordance with Section 10.4.

11.3.3 Third-Party Payments

Design-Builder is prohibited from accepting payment from any other Person for performing the Work, including any incentive or bonus payment, except for authorized payments from sureties. Design-Builder shall promptly report offers of additional payments from any third party to VPRA.

11.3.4 Tax-Exempt Status

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

11.4 Deductions

VPRA may deduct from any amounts otherwise owing to Design-Builder, including each progress payment and the final payment, the following:

- (a) any anticipated or accrued losses, liability, Liquidated Damages or other damages for which Design-Builder is responsible under this Agreement;
- (b) the estimated cost of remedying any Nonconforming Work or otherwise remedying any breach of contract by Design-Builder;
- (c) any amounts that are reasonably necessary to cover any existing or threatened claims, Liens and stop work notices by Subcontractors, Suppliers, laborers, Utility Owners or other third parties relating to the Project;
- (d) amounts in dispute;
- (e) any sums expended by VPRA in performing any of Design-Builder's obligations under the Contract Documents that Design-Builder has failed to perform; and
- (f) any other sums that VPRA is entitled to recover from Design-Builder under the terms of the Contract Documents.

VPRA's failure to deduct from a progress payment any amount that VPRA is entitled to recover from Design-Builder under the Agreement will not constitute a waiver of VPRA's right to these amounts. Design-Builder may request payment for any withheld amounts in the progress payment after Design-Builder cures the issue for which VPRA is withholding payment.

11.5 Final Payment

11.5.1 Application for Final Payment

On or about the date Design-Builder delivers its Affidavit of Final Completion, Design-Builder shall prepare and submit a proposed Application for Final Payment showing the proposed total amount due Design-Builder. In addition to meeting all other requirements for invoices under the Agreement, the Application for Final Payment shall list all Unresolved Disputes and all existing or threatened claims, and Liens by Subcontractors, laborers, Utility Owners or other third parties relating to the Project, including any notices filed or to be filed with the Affidavit of Final Completion. The Application must state the amount at issue associated with each notice. The Application for Final Payment must be accompanied by (a) complete and legally effective releases or waivers of Liens satisfactory to VPRA from all Persons legally eligible to file Liens in connection with the Work, (b) consent of Surety(ies) to final payment, (c) the release and affidavit required by Section 11.5.2, and (d) such other documentation as VPRA may reasonably require. Prior applications and payments will be subject to correction in the proposed Application for Final Payment. Change Notices filed concurrently with the Application for Final Payment must be otherwise timely and meet all requirements under Articles 12 and 18. If a Subcontractor or Supplier refuses to furnish a release or waiver required by VPRA, Design-Builder may furnish a bond satisfactory to VPRA to indemnify VPRA against such Lien.

VPRA will review Design-Builder's proposed Application for Final Payment and will provide changes or corrections to Design-Builder.

11.5.2 Release and Affidavit as Condition to Final Payment

VPRA's obligation to pay Design-Builder based on the Application for Final Payment does not arise until VPRA has received an executed release from Design-Builder for any and all Claims arising from the Work and releasing and waiving any claims against the Indemnified Parties, excluding only those matters identified in any Change Notices listed as outstanding in the Application for Final Payment. VPRA's obligation to pay does not arise unless the Application for Final Payment is otherwise satisfactory in form and content to VPRA.

The release must be accompanied by an affidavit from Design-Builder certifying:

- (a) that it has resolved any claims made by Subcontractors, Utility Owners, and others against Design-Builder or the Project;
- (b) that it has no reason to believe that any Person has a valid claim against Design-Builder or the Project that has not been communicated in writing by Design-Builder to VPRA as of the date of the certificate; and
- (c) that all guarantees and warranties are in full force and effect.

The release and the affidavit will survive final payment. The payment amount will be reduced by any amounts deductible under Section 11.4.

11.5.3 Partial Estimates and Payments Subject to Correction

All prior partial estimates and payments will be subject to correction in the final payment.

11.6 Payments to Subcontractors

11.6.1 Prompt Payment

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

11.7 Interest on Late Payments

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

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

11.8 Disputes

Subject to VPRA's right to withhold from progress payments any amounts in dispute, and except as expressly stated otherwise in this Article 11, any disagreement between VPRA and Design-Builder relating to this Article 11 will be considered a Dispute eligible for resolution under Article 18. Failure by VPRA to pay any amount in dispute will not alleviate, diminish or modify in any respect Design-Builder's obligation to perform under the Contract Documents, including Design-Builder's obligation to achieve the Completion Deadlines in accordance with the Contract Documents. Design-Builder shall not cease or slow down its performance under the Contract Documents due to any amount in dispute. Design-Builder shall proceed as directed by VPRA pending resolution of the Dispute.

ARTICLE 12

Changes in the Work

This Article 12 sets forth the requirements for obtaining all Change Orders under the Agreement. Design-Builder agrees (1) that the Contract Price constitutes full compensation for performing all of the Work, subject only to those exceptions specified in this Article 12, and (2) that VPRA is subject to constraints that limit its ability to increase the Contract Price or adjust the Completion Deadlines. Design-Builder waives the right to make any Claim for an adjustment of the Contract Price or a Completion Deadline, except as set forth in this Article 12. If any other provision of the Contract Documents provides for a Change Order to be issued, the provision is incorporated into, and subject to the limitations of, this Article 12. This Article 12 shall constitute Design-Builder's sole remedy to receive an adjustment to the Contract Price or a Completion Deadline. Design-Builder shall have no other rights under the Contract Documents, at law or in equity, to obtain an adjustment to the Contract Price or a Completion Deadline.

12.1 Circumstances Under Which a Change Order May Be Issued

12.1.1 Definition and Requirements

12.1.1.1 Change Orders

The term "Change Order" means a written amendment to the Contract Documents issued in accordance with this Article 12. VPRA may issue unilateral Change Orders as specified in Section 12.2. A Change Order will not be effective unless executed by VPRA as specified herein. Change Orders may be requested by Design-Builder only pursuant to Section 12.3. Change Orders may be issued for the following purposes (or combination of the following purposes):

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

12.1.1.2 Directive Letters

VPRA may issue a letter to Design-Builder, at any time, if VPRA desires a change in the Work or if there is a dispute regarding the scope of the Work ("Directive Letter"). Each Directive Letter will (1) state that it is issued under this Section 12.1.1.2, (2) describe the required Work, and (3) may state the basis for determining compensation, if any. Design-Builder shall immediately proceed with the Work as directed in the Directive Letter, and, if applicable, request a Change Order as promptly as possible. If the Directive Letter states that the Work is within the original scope of the Work, Design-Builder shall proceed with the Work as directed but may request that VPRA issue a Change Order for the work as specified in Section 12.3.

12.1.2 Performance of Changed or Extra Work

Design-Builder's receipt of a Change Order executed by VPRA or a Directive Letter is a condition precedent to Design-Builder's right to receive an adjustment to the Contract Price or a Completion Deadline for changed or Extra Work, provided that VPRA's failure to execute a Change Order or

Directive Letter does not negate Design-Builder's right to pursue the Relief Event process in the event of a dispute over entitlement to relief. If Design-Builder undertakes any such work without receiving a Directive Letter or Change Order executed by VPRA, Design-Builder shall be deemed to have performed such work voluntarily and will not be entitled to a Change Order for performing that work. In addition, VPRA has the right to require Design-Builder to remove or otherwise undo any such voluntary work, at Design-Builder's sole cost.

12.1.3 Impact of Directive Letter

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

12.2 VPRA-Initiated Change Orders

This Section 12.2 describes how VPRA may initiate issue Change Orders, with or without using a Request for Change Proposal.

12.2.1 Request for Change Proposal

12.2.1.1 Issuance of Request

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

12.2.1.2 Initial Consultation

Upon issuance by VPRA of a Request for Change Proposal, VPRA and Design-Builder shall:

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

Design-Builder shall provide data regarding the Request for Change Proposal as requested by VPRA.

12.2.1.3 Notification by VPRA

VPRA will notify Design-Builder of VPRA's decision no later than seven (7) Days after the later of: the second consultation described in Section 12.2.1.2(b) or Design-Builder's provision of data as described in Section 12.2.1.2. At such time, VPRA will notify Design-Builder whether VPRA:

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

VPRA may require Design-Builder to provide two alternative Change Order forms: one providing for a Completion Deadline adjustment and any additional costs permitted by the Agreement, and

the other showing all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted by the Agreement.

12.2.1.4 Submittal of Change Order Form

If VPRA requests that Design-Builder prepare a Change Order form, then Design-Builder shall prepare and submit the Change Order form to VPRA no later than twenty-one (21) Days after Design-Builder receives notice pursuant to Section 12.2.1.3. Design-Builder's Change Order form must comply with all applicable requirements of Section 12.4 and must incorporate and fully reflect all of VPRA's requests. Design-Builder shall bear the cost of developing the Change Order form, and modifying the form as requested by VPRA, except that costs of Design Work required to prepare plans and exhibits necessary to the Change Order form may be included in the Change Order as reimbursable items if pre-authorized in writing by VPRA. If VPRA approves the Change Order, the cost of such Design Work may be included within the Change Order; otherwise, VPRA will reimburse those costs through a separate Change Order. VPRA reserves the right not to issue a Change Order after Design-Builder has provided a Change Order form.

12.2.2 Unilateral Change Orders

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

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

VPRA's issuance of a Unilateral Change Order does not impact Design-Builder's right to an adjustment of the Contract Price or a Completion Deadline under this Article 12. Design-Builder may follow the process under this Article 12 if Design-Builder disagrees with the content of a Unilateral Change Order.

12.3 Design-Builder-Initiated Agreement Modification

12.3.1 Eligible Changes

This section outlines when Design-Builder shall submit a Change Notice and Request for Change Order to VPRA. Design-Builder shall use this process to request an adjustment to the Contract Price or a Completion Deadline due to a Relief Event. All Relief Events are subject to the limitations stated in this Article 12 in addition to any limitations stated in the definition of each Relief Event or elsewhere in the Contract Documents. Other than for the Relief Events herein, Design-Builder shall not be entitled to any adjustment of the Contract Price or a Completion Deadline. With respect to any request for relief, Design-Builder shall bear the burden of proving that it is entitled to the relief sought. Design-Builder shall not be entitled to relief for a Relief Event that occurs during the provision of the Phase 1 Services, provided that this shall not preclude a Relief Event arising out of performance of an Early Work Package.

12.3.1.1 Contract Price Adjustment

Upon the occurrence of a Relief Event, Design-Builder shall follow the process in this Article 12 to adjust the Contract Price for Extra Work Costs and Delay Costs. Except as otherwise provided herein, Design-Builder may request a Contract Price adjustment for Extra Work Costs and Delay Costs for all Relief Events.

12.3.1.2 Completion Deadline Adjustment

Upon the occurrence of a Relief Event, Design-Builder shall follow the process in this Article 12 to request adjustment of a Completion Deadline, subject to the limitations herein. Except as otherwise provided herein, Design-Builder may submit a request to adjust a Completion Deadline for all Relief Events.

12.3.1.3 Design-Builder-Initiated Agreement Modification

Design-Builder at any time may submit a Request for Change Order to VPRA that proposes changes to the scope of Work of the Contract Documents. Proposals can include changes to add or reduce the scope of Work or implement changes that are “equal to or better” than the original requirements. The provisions of Section 12.3.3 regarding delivery of a Change Notice do not apply to a proposed Design-Builder-initiated Agreement modification under this Section 12.3.1.3. Except as provided in Section 12.3.1.4, all cost and schedule savings associated with a Design-Builder-Initiated Agreement modification shall accrue to VPRA by issuance of a deductive Change Order in accordance with this Article 12.

12.3.1.4 Cost Sharing for Certain Design-Builder-Initiated Agreement Modification

Design-Builder may submit a Request for Change Order to VPRA that proposes a change to the scope of Work that is equal to or better than the requirements of the Contract Documents and that is the result of a new technology or technique, in each case that was not known or available on the date of the Final Construction Price Proposal. The provisions of Section 12.3.3 regarding delivery of a Change Notice do not apply to a Design-Builder-initiated Agreement modification under this Section 12.3.1.4.

If VPRA approves a Request for Change Order submitted under this Section 12.3.1.4, Design-Builder and VPRA shall each be entitled to 50% of any cost and schedule savings. The cost savings shall be realized by issuance of a deductive Change Order reducing the Contract Price by 50% of the value of the change to the Work. Any schedule savings shall be realized by a deductive Change Order that makes the applicable Substantial Completion Deadline earlier by one-half the number of Days saved due to the change. If the schedule savings are an odd number of days, the half-day shall not be counted toward the reduction in schedule time; for example, if the time savings is five (5) Days, the applicable Substantial Completion Deadline will become two (2) Days earlier.

12.3.2 Conditions Precedent

The requirements set forth in this Section 12.3 constitute conditions precedent to Design-Builder’s entitlement to request and receive a Change Order in all circumstances except those involving a Request for Change Proposal by VPRA, a Unilateral Change Order, a Design-Builder-initiated Agreement modification under Section 12.3.1.3, or a share of cost savings under Section 12.3.1.4.

Design-Builder agrees that the filing of Change Notices and subsequent filing of Requests for Change Orders with VPRA pursuant to Sections 12.3 and 12.4 are necessary to begin the administrative process for Design-Builder-initiated Agreement modifications. Design-Builder understands that it shall be forever barred from recovering against VPRA under this Article 12 and the Agreement if it fails to follow the process under Sections 12.3 and 12.4.

12.3.3 Delivery of Change Notice

Design-Builder shall deliver to VPRA written notice (“Change Notice”) stating that a Relief Event has occurred within the scope of Section(s) 12.3.1.1 and/or 12.3.1.2. The first notice must be labeled “Change Notice No. 1” and subsequent notices must be numbered sequentially. The identification number shall be used on all subsequent materials connected to the Relief Event. The Change Notice must contain the information stated in Section 12.3.5.

12.3.4 Prompt Delivery of Change Notice Required

Early or prior knowledge by VPRA of an existing or impending Claim could alter the plans, scheduling, or other VPRA action or result in mitigation or elimination of the basis for the Claim. Accordingly, each Change Notice must be delivered as promptly as possible after the occurrence of the Relief Event upon which it is based. Except as otherwise provided herein, if any Change Notice is delivered later than seven (7) Days after Design-Builder first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence described in the Change Notice, Design-Builder shall be deemed to have waived the right to collect any and all costs incurred prior to the delivery date of the Change Notice. Design-Builder’s failure to provide a Change Notice within twenty-one (21) Days after Design-Builder first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a Relief Event shall preclude Design-Builder from any relief associated with the events, actions, omissions, or otherwise that comprise the Relief Event(s). A Change Notice will be deemed delivered only if it fully conforms to the requirements of Section 12.3.5. VPRA will acknowledge receipt of a Change Notice in writing within seven (7) Days of receipt, provided that such written notice shall not constitute acknowledgement that the Change Notice meets the requirements of Section 12.3.5.

Furthermore, if any Change Notice concerns any condition or material described in Sections 12.12.2 or 12.12.7, Design-Builder shall be deemed to have waived the right to collect any and all costs incurred in connection with the condition or material if VPRA is not afforded the opportunity to inspect the material or condition before it is disturbed.

12.3.5 Contents of Change Notice

The Change Notice shall, to the maximum extent of the information available at the time of submission:

- (a) specify the applicable Relief Event(s);
- (b) state in detail the facts underlying the potential Change Order;
- (c) state the type of relief sought, including Extra Work Costs, Delay Costs, and/or a Completion Deadline adjustment;
- (d) specify the reasons why Design-Builder believes that it is entitled to an adjustment of the Contract Price or a Completion Deadline;

- (e) provide the date of occurrence or inception in reasonable detail;
- (f) provide a good faith preliminary estimate of the anticipated cost impacts (including cost savings) due to the Relief Event and the basis for such estimate;
- (g) state the actions Design-Builder has taken prior to submission of the Change Notice, and proposed actions to be taken thereafter, to mitigate the costs, delay, and other consequences of the Relief Event;
- (h) state in detail the factual and legal bases supporting the conclusion that the work is not required by the Contract Documents, if applicable;
- (i) identify all provisions of the Contract Documents relevant to the issue;
- (j) identify any potential Critical Path impacts;
- (k) if Design-Builder intends to seek a Completion Deadline extension, include a good faith estimate of the potential time impact;
- (l) provide an estimate of the time within which a response to the notice is required to minimize cost, delay, or disruption of performance; and
- (m) state the type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance.

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

12.4 Delivery of Request for Change Order

Design-Builder shall deliver a Request for Change Order to VPRA within sixty (60) Days after Design-Builder's delivery of the Change Notice. If Design-Builder fails to submit a complete Request for Change Order within sixty (60) Days after Design-Builder's delivery of the Change Notice, Design-Builder shall be deemed to have irrevocably and forever waived and released any right to any relief whatsoever for any effect attributable or related to the Relief Event and the acts or omissions comprising such Relief Event; provided, however, that if Design-Builder submits a Request for Change Order within sixty (60) Days of the date of Design-Builder's delivery of the Change Notice and VPRA responds as provided in Section 12.5.1 that Design-Builder's Request for Change Order is incomplete, Design-Builder shall have until the later of (a) fifteen (15) Days after receipt of VPRA's notice pursuant to Section 12.5.1 or (b) sixty (60) Days after Design-Builder's delivery of the Change Notice, to comply in full with Section 12.4.1 before the waiver herein becomes effective.

12.4.1 Contents of Request for Change Order

Each Request for Change Order shall contain the following information:

- (a) full details of the Relief Event, including its nature, the date of its occurrence, its duration (to the extent that the Relief Event and the effects thereof have ceased, or estimated duration to the extent that the Relief Event and the effects thereof have not ceased), affected locations, items of Work affected, and information required by Section 12.8.5;
- (b) any written communications between VPRA, Design-Builder, and other Persons concerning the Relief Event and identification of the substance of any material oral communications between VPRA and Design-Builder, if any, relating to the Relief Event and the name of the Person or Persons making such oral communications;
- (c) identification of the specific provisions of the Contract Documents that are impacted by the Relief Event or that Design-Builder claims entitles it to the relief sought or pertain to the relief sought, and a complete, detailed statement that explains the reasons why the provisions entitle Design-Builder to that relief or are otherwise impacted by the requested relief. Design-Builder shall additionally include any documents or other materials that Design-Builder contends support entitlement to the relief sought;
- (d) except as provided in Section 12.4.2, where Design-Builder makes a request for a Completion Deadline adjustment, a Schedule Impact Analysis of the Baseline Schedule that: (i) identifies the Critical Path (with activity durations, predecessor, and successor activities and resources, including total Float), and illustrates the effect of schedule changes or disruptions on the Completion Deadlines; and (ii) complies with the requirements of Section 3.8 of the Minimum Requirements;
- (e) a detailed, itemized estimate of all amounts claimed for Extra Work Costs and Delay Costs to the extent such amounts are eligible for compensation under this Article 12 for the Relief Event in question, subject to the following requirements:
 - (i) all such amounts shall be broken down in terms of the eligible costs for labor (including hourly wage rates, fringe benefits rates, and audited burden), Materials, Equipment, third party fees and charges, extra insurance, and performance and payment security (e.g., bonds and letters of credit), as applicable, and other costs, including expenses and profit, and any other cost category or categories VPRA specifies; and
 - (ii) Design-Builder shall provide copies of invoices or other documentation of incurred or potential future costs for Equipment or Materials, and for Equipment, shall provide evidence of the applicable rental rate or cost of Equipment in accordance with Exhibit I;
- (f) the effect of the Relief Event on Design-Builder's ability to perform any of its obligations under the Contract Documents, including details of the relevant obligations, the effect on each such obligation, and the likely duration of that effect;
- (g) copies of the Construction Pricing Documents and other documents showing Design-Builder's assumptions forming the basis of Design-Builder's Final Construction Price Proposal concerning the Work that is the subject of the Request for Change Order;

- (h) an explanation of the measures that Design-Builder has previously taken to prevent, and proposes to undertake to mitigate, the costs, delay, and other consequences of the Relief Event;
- (i) the type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance, subject to the following requirements:
 - (i) Design-Builder shall provide a copy of every notice letter and/or claim submitted to an insurer or other party that may be liable to reimburse or indemnify Design-Builder due to the Relief Event;
 - (ii) and, if the Relief Event may be covered by Design-Builder's self-insurance, Design-Builder shall provide documentation of any claim against such insurance that it prepares in the ordinary course of business; and
- (j) Design-Builder Representation: Each Request for Change Order must contain a sworn certification by Design-Builder certifying that the amount of the Completion Deadline or Contract Price adjustment requested includes all known and anticipated impacts or amounts that may be incurred as a result of the event or matter giving rise to the Relief Event and also certifying that Design-Builder has no reason to believe and does not believe that the factual basis for the Request for Change Order is falsely represented.

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

If Design-Builder seeks a Completion Deadline adjustment and/or Delay Costs arising from a Relief Event, Design-Builder shall update VPRA as to the time impact of the Relief Event until such time as VPRA issues a Change Order, Design-Builder withdraws the Request for Change Order, or resolution of the Dispute Resolution Process. Unless VPRA has issued a Change Order for the Relief Event, Design-Builder withdraws the Request for Change Order, or the Dispute Resolution Process is complete, once Design-Builder knows or should reasonably be expected to know the actual time impact of a Relief Event, Design-Builder shall submit a revised Schedule Impact Analysis showing the actual impact of the Relief Event to the Critical Path consistent with Section 3.8.1.1(c) and (d) of the Minimum Requirements. Such updated information shall supersede any previously submitted Schedule Impact Analysis for purposes of establishing the appropriate amount of a Completion Deadline adjustment and Delay Costs, if applicable, in a Change Order issued with respect to the Relief Event.

12.4.3 Alternative Requests for Change Orders for Time-Related Relief

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

Design-Builder shall not be entitled to Acceleration Costs unless authorized in writing by VPRA.

12.4.4 Supplements to Request for Change Order

If, following delivery of a Request for Change Order, Design-Builder receives or becomes aware of any further information or estimates relating to the Relief Event and its impact on cost, schedule, or performance of Work, including information on new consequences as described in Sections 12.3.5 or 12.4.2, Design-Builder shall submit such further information to VPRA as soon as possible. VPRA may request from Design-Builder any further information that VPRA may reasonably require, and Design-Builder shall supply the same within the time period stated in VPRA's request for additional information.

12.5 VPRA Response to Request for Change Order

Once Design-Builder has submitted a complete Request for Change Order, VPRA will respond within forty-five (45) Days. VPRA's time to respond to a Request for Change Order does not commence until Design-Builder submits a complete Request for Change Order and VPRA will have no obligation to review an incomplete Request for Change Order. If Design-Builder has complied with the requirements of Sections 12.3 and 12.4, and VPRA provides a written response within such forty-five (45)-Day period stating that there are matters in dispute regarding the Request for Change Order, such matters in dispute shall be considered a Dispute for which Design-Builder may initiate the Dispute Resolution Process in Article 18. If VPRA does not respond within the forty-five (45)-Day period, and Design-Builder has complied with all requirements of Sections 12.3 and 12.4, then the Request for Change Order shall be considered a Dispute for which Design-Builder may initiate the Dispute Resolution Process in Article 18. If VPRA responds that it accepts the Request for Change Order in full or in part, the Parties shall execute a corresponding Change Order; with the remainder of a partial acceptance eligible to proceed to the Dispute Resolution Process in Article 18.

12.5.1 VPRA Response to an Incomplete Request for Change Order

If Design-Builder does not comply in full with the requirements of Sections 12.3 and 12.4, VPRA may provide written notice rejecting Design-Builder's Request for a Change Order within the forty five (45)-Day time period and such notice shall identify the deficiencies within Design-Builder's submittal. Such response by VPRA shall not constitute recognition that the Request for Change Order is a Dispute eligible for resolution by the Dispute Resolution Process. Design-Builder shall have the option to the withdraw the Request for Change Order or, subject to Section 12.4, to correct the deficiencies therein and timely resubmit the Request for Change Order for VPRA's consideration.

12.6 Subcontractor Claims

All Claims must be submitted by Design-Builder. Subcontractors may not directly submit requests for relief to VPRA. Design-Builder shall be responsible for verifying the accuracy of all Claims submitted, including those submitted on behalf of Subcontractors. For all Claims made by Design-Builder on behalf of a Subcontractor, both Design-Builder and the applicable Subcontractor shall execute the certification required by Section 12.4.1(j) and submit it with the Request for Change Order. A Request for Change Order shall not be considered complete until receipt of the certification executed by Design-Builder and all Subcontractors on whose behalf Design-Builder is submitting a Claim to VPRA.

12.7 Allowance for Specified Relief Events

12.7.1 Eligible Relief Events

Design-Builder will have access to the Allowance to provide compensation for Extra Work Costs and Delay Costs arising out of the following Relief Events: Inaccurate Utility Information, Utility Delay, Differing Site Conditions, and Railroad Delay.

The amount of the Allowance pool shall be as stated in the Phase 2 Amendment.

12.7.2 Use of Allowance Funds

Design-Builder may request to draw from the Allowance when a Relief Event identified in Section 12.7.1 occurs. Design-Builder may request to draw from the Allowance until such funds have been exhausted. Once the Allowance is exhausted, a Change Order shall be required for an adjustment of the Contract Price caused by any additional occurrence of the Relief Events identified in Section 12.7.1.

12.7.3 Procedure to Request Disbursement from the Allowance

If Design-Builder requests payment from the Allowance, Design-Builder shall follow the process for requesting a Change Order under this Article 12, including Sections 12.3 and 12.4. If the Relief Event that is the subject of the Allowance request is a Differing Site Condition, Design-Builder shall additionally submit the information required by Section 12.12.2. All timeframes, waivers, and limitations contained in this Article 12 and the Contract Documents shall apply to requests to draw from the Allowance.

VPRA's response to Design-Builder's request to draw from the Allowance consistent with Section 12.5 (in place of the Request for Change Order) shall be that VPRA either approves the request to draw from the Allowance in whole or in part, denies the request, or denies the request on the basis that Design-Builder's request is not complete and further information is required. If Design-Builder submits a complete request to draw from the Allowance and VPRA denies the request in whole or in part, the denied portion shall be considered a Dispute eligible for submission to the Dispute Resolution Process under Article 18.

12.7.4 Completion Deadline Adjustment

A request for a Completion Deadline adjustment shall only be implemented through a Change Order. Design-Builder may include a request for an adjustment of a Completion Deadline in a request to draw from the Allowance. To be eligible for an adjustment of a Completion Deadline, the request must comply with all other requirements under the Contract Documents. VPRA will issue a Change Order if Design-Builder establishes entitlement to a Completion Deadline adjustment consistent with the requirements of this Article 12.

12.7.5 Payment of Allowance

If VPRA approves Design-Builder's request to draw from the Allowance, in whole or in part, VPRA shall authorize payment of the approved amount in the next progress payment. Design-Builder shall include the approved Allowance amount in the subsequent Application for Payment.

12.7.6 Unused Allowance

Design-Builder shall only be entitled to draw from the Allowance to the extent of proven Extra Work Costs and Delay Costs caused by the Relief Events identified in Section 12.7.1. For the avoidance of doubt, Design-Builder shall not be entitled to any remaining Allowance funds after resolution of all Claims and any such remaining amounts shall be retained by VPRA.

12.8 Limitations on Change Orders and Allowance Draws

12.8.1 Duty to Mitigate

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

12.8.2 Limitation on Contract Price Increases

Any increase in the Contract Price allowed by this Article 12 is not eligible to include:

- (a) costs caused by the breach of contract or fault or negligence, or act or failure to act, of any Design-Builder-Related Entity;
- (b) costs or circumstances that could reasonably have been anticipated due to Design-Builder's performance of the Phase 1 Services;
- (c) costs that could reasonably have been avoided by Design-Builder, including by resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work, or other work-around measures;
- (d) costs covered by insurance;
- (e) costs for any rejected Work that failed to meet the requirements of the Contract Documents and any necessary remedial Work; and
- (f) any costs incurred to prepare a Claim or Dispute, including costs of preparing a Change Notice, Request for Change Order, requests to draw from the Allowance, and all costs incident thereto, including attorney's fees and expert fees.

12.8.3 Completion Deadline Adjustments and Delay Costs

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

12.8.4 Limitations on Delay Costs and Other Costs

Except for Acceleration Costs authorized by VPRA in accordance with Section 12.4.3, Delay Costs shall be limited to only those costs specified in Exhibit I. Other than Delay Costs specified in Exhibit I, Design-Builder shall not be entitled to any other costs, damages, or otherwise attributable to delays, disruption, inefficiencies, or any other claim of a similar nature arising out of a delay to the Critical Path caused by a Relief Event. The foregoing limitation shall not limit or otherwise impact Design-Builder's entitlement to Extra Work Costs arising out of a Relief Event.

Further, except as otherwise provided by the Contract Documents, in no event shall Design-Builder submit or be entitled to payment based on any of the following, including: Eichleay formula; the total cost method; original Contract period formula; burden fluctuation method; comparative absorption rates; cumulative disruption, inefficiencies, or impacts caused by multiple Relief Events or Change Orders; and other similar or related methods.

Regardless of the basis asserted, Design-Builder shall not recover and is not entitled to recover the following categories of damage:

- (a) any compensation for Delay Costs except as provided by Section 2 of Exhibit I;
- (b) loss of anticipated profit, incentives, or bonuses;
- (c) labor inefficiencies that are the fault of Design-Builder;
- (d) Home Office Overhead regardless of whether it is characterized as absorbed, unabsorbed, or extended exceeding that provided in Section 2.4 of Exhibit I;
- (e) any damages, costs or expenses that are indirect, special, incidental or consequential, including lost or impaired bonding capacity, loss of bidding and contracting opportunities, loss of credit standing, cost of financing, interest paid, lost Material discounts, economic loss, loss of reputation, loss of other Work, loss of use, loss of business opportunity, loss of product or output, income, loss of profit or revenue, cost of capital, financing, and for loss of management or employee productivity or of the services of such persons, and business devastation, bankruptcy, or insolvency;
- (f) Acceleration Costs, except as provided under Section 12.4.3;
- (g) late payment charges associated with any Claim, or disputed Work or Materials. Design-Builder is also not entitled to late payment charges on any judgment or award made to Design-Builder;
- (h) prejudgment or post-judgment interest related to or arising from any disputed Claim or on any award made to Design-Builder; or
- (i) attorney's fees and costs, Claim preparation expenses, and litigation or other costs related to or arising from any disputed Claim, or prosecution thereof.

12.8.5 Additional Limitations on Completion Deadline Adjustments and Delay Costs

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

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

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

12.8.6 Concurrent Delay

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

12.9 Payment for Extra Work Change Orders

12.9.1 Negotiated Price for Extra Work

VPRA and Design-Builder (on its own behalf and on behalf of its Subcontractors) will endeavor to negotiate, in good faith, a reasonable amount for the Extra Work Costs in a Change Order. In general, the price of a Change Order will be negotiated in accordance with this Section 12.9 or be paid in accordance with the Force Account specifications in Exhibit I. This Section 12.9 shall not apply to Delay Costs, which are payable solely in accordance with Section 12.10.2 and Exhibit I.

12.9.2 Extra Work

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

12.9.3 Deleted Work

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

12.9.4 Work Both Added and Deleted

When the Change Order includes both Extra Work and deleted Work, Design-Builder shall prepare separate cost breakdowns for Extra Work and deleted Work in accordance with Sections 12.9.2 and 12.9.3. The difference between the Extra Work and deleted Work cost breakdowns will be the cost (or credit to VPRA) of the Change Order. If the change results in a net change of zero, the Contract Price will not be changed.

12.10 Force Account Change Orders

VPRA may issue a Force Account Change Order if VPRA determines that doing so is beneficial, including if VPRA and Design-Builder are unable to negotiate a price for Extra Work Costs in a Change Order as provided in Section 12.9. VPRA may also issue a Directive Letter with pricing determined on a Force Account basis.

12.10.1 Determination of Costs

Compensation for Force Account Change Orders will be in accordance with Exhibit I.

12.10.2 Payment of Delay Costs

Delay Costs shall solely be payable in accordance with Exhibit I.

12.11 Payment of Change Orders

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

- (a) to the extent permitted by Law, as a lump-sum payment;
- (b) as progress payments invoiced as Work is completed; or
- (c) through any combination of the above, subject to Section 12.11.2.

12.11.1 Timing of Change Order Payments

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

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

request, of the Extra Work and Delay Costs, as applicable, incurred during the previous month.

12.11.2 Limitations on Payment of Change Orders for Work Not Completed

If any portion of the Extra Work Costs and Delay Costs consists of costs for design or construction not then performed, VPRA shall have no obligation to make advance payments and shall have the right to pay such portion in monthly progress payments in accordance with Section 12.11.1(c).

12.11.3 Compliance with Federal Acquisition Regulation

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

12.12 Additional Conditions and Limitations on Certain Relief Events

12.12.1 Reserved

12.12.2 Differing Site Conditions

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

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

12.12.3 Inaccurate Utility Information

12.12.3.1 Inaccurate Utility Information Defined

If any existing underground Utility that requires Relocation as part of the Work (or any portion of the Utility) is not indicated at all in the Utility Information or is not indicated with "Reasonable Accuracy" therein (as defined in Section 12.12.3.2), Design-Builder may request a Change Order

for Inaccurate Utility Information. Notwithstanding the obligations in this section, Design-Builder shall be responsible for, no drawings from the Allowance and no Change Order will be issued due to, Inaccurate Utility Information for any of the following:

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

12.12.3.2 Reasonable Accuracy

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

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

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

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

12.12.3.3 Design-Builder Acknowledgement Regarding Designated VPRA-Furnished Information

Design-Builder acknowledges that statements in the Designated VPRA-Furnished Information about the extent or nature of the Work required to Relocate any Utility shall have no relevance to the determination of Reasonable Accuracy and will not be considered in calculating the amount of the Change Order.

12.12.3.4 Partial Inaccuracy

If only a portion of an existing underground Utility that requires Relocation to accommodate the Work is not indicated at all in the Utility Information, or is not indicated with Reasonable Accuracy, VPRA will issue a Change Order only for the resulting increased or decreased costs (respectively) of the Utility Work incurred by Design-Builder related to that portion of the Utility. In the case of any increase in the Contract Price, this obligation is subject to the restrictions set forth in clauses (a) and (b) of Section 12.12.3.1.

12.12.4 Utility Delays

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

- (a) Design-Builder has provided evidence reasonably satisfactory to VPRA that (i) Design-Builder has fulfilled its obligation under the applicable Utility Agreement(s) to coordinate with the Utility Owner to prevent or reduce the delays, and (ii) Design-Builder has otherwise made diligent efforts to obtain the timely cooperation of the Utility Owner but has been unable to obtain this timely cooperation; and
- (b) if Design-Builder is responsible for the Relocation, Design-Builder has provided a reasonable Relocation Plan to the Utility Owner and Design-Builder has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, options, and/or rulings required by any Governmental Approval or Law to design and construct the Relocation.

Design-Builder shall provide an explanation and details demonstrating compliance with the above-stated conditions in the Request for Change Order submitted as provided in Section 12.4.

12.12.5 Force Majeure

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

12.12.6 Extreme Weather Event

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

12.12.7 Contaminated Materials

12.12.7.1 Release of Contaminated Materials

Design-Builder shall not be entitled to a Relief Event for the Release of Contaminated Materials (Relief Event (g) of the definition thereof) to the extent that Design-Builder or any Design-Builder-Related Entity was the cause of the Release of Contaminated Materials. Further, Design-Builder shall not be entitled to any incremental costs or delay that occurs due to Design-Builder's exacerbation of a Release of Contaminated Materials.

12.12.7.2 Discovery of Unknown Preexisting Contaminated Materials

Design-Builder shall not be entitled to a Relief Event for the Discovery of Unknown Preexisting Contaminated Materials (Relief Event (h) of the definition thereof) arising from the discovery of Contaminated Materials that were identified in the Designated VPRA-Furnished Information or other information furnished prior to the Final Construction Price Proposal, or where the presence of such Contaminated Materials was discovered or should have been discovered through an investigation of the Site performed by Design-Builder prior to the Final Construction Price Proposal.

12.12.7.3 Notification of Discovery of Unknown Preexisting Contaminated Materials

Design-Builder's entitlement to a Relief Event for the Discovery of Unknown Preexisting Contaminated Materials is subject to Design-Builder's compliance with notice requirements in Section 17.2.3. Design-Builder shall not be entitled to Extra Work Costs, a Completion Deadline adjustment, or Delay Costs to the extent attributable to Design-Builder's failure to provide timely notification to VPRA.

12.12.7.4 Contaminated Materials for Which Design-Builder is Responsible

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

12.12.8 Relief Events (i) and (j)

Design-Builder shall not be entitled to relief under Relief Events (i) and (j) in the definition thereof to the extent that the archeological, paleontological, cultural, or biological resources, or the threatened or endangered species, were identified in the Designated VPRA-Furnished Information or other information furnished prior to the Final Construction Price Proposal, or where the presence of such archeological, paleontological, cultural, or biological resources was discovered or should have been discovered through an investigation of the Site performed by Design-Builder prior to the Final Construction Price Proposal.

12.12.8.1 Occurrences Outside the Project ROW

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

This Section 12.12.8 shall not preclude Design-Builder's right to relief under Relief Event (g) of the definition thereof (Release of Contaminated Materials) where, subject to Section 12.12.7, a Release of Contaminated Materials occurs outside the Project ROW but spills or sequesters onto the Project ROW and has an impact on the Project.

12.12.9 Relief Events Impact on Early Work

If Early Work is impacted by a Relief Event, Design-Builder shall submit a Change Notice and Request for Change Order to VPRA in accordance with this Article 12.

12.13 Price Adjustments for Certain Materials

After the Phase 2 Price and any Early Work Price are established, each shall be subject to adjustment (increase or decrease) to account for the price of steel and fuel at the time Design-Builder purchases steel and fuel for use on the Project. Design-Builder shall submit the actual direct cost of steel and fuel with the progress payment request in which Design-Builder seeks payment for steel and fuel. Design-Builder shall only be entitled to payment for the quantity of steel and fuel in the Construction Pricing Documents for the Phase 2 Price or Early Work Price.

As part of the Construction Price Negotiations, Design-Builder may propose similar adjustments to other commodities to be used in the performance of, or incorporated into, the Work, which VPRA may accept or reject in its sole discretion.

12.14 Matters Not Eligible for Change Orders

Design-Builder acknowledges and agrees that no increase in the Contract Price or adjustment of a Completion Deadline is available except in circumstances expressly provided for in the Agreement, that such Contract Price and Completion Deadline adjustments shall be available only as provided in this Article 12, and that Design-Builder shall bear full responsibility for the consequences of all other events and circumstances. Matters that are Design-Builder's exclusive responsibility include the following:

- (a) errors in the Design Documents and Construction Documents (including errors directly attributable to errors in the Designated VPRA-Furnished Information that are not guaranteed in Section 2.1.4);
- (b) any design changes required by VPRA, a Railroad Owner, or any other third-party, as part of the process of Accepting the Design Documents for consistency with the requirements of the Contract Documents, the Governmental Approvals, and/or Laws;
- (c) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (except to the extent arising from a Relief Event);
- (d) action or inaction of Design-Builder's employees, Suppliers, Subcontractors or any Design-Builder-Related Entity (unless arising from a Relief Event);
- (e) untimely delivery of Equipment or Material, or unavailability, defectiveness, or increases in costs of Material, Equipment or products specified by the Contract Documents (except to the extent arising from causes that otherwise constitute a Relief Event or under Section 12.13 concerning price adjustments);
- (f) delays not on the Critical Path;
- (g) costs covered by insurance proceeds received by or on behalf of Design-Builder;
- (h) correction of Nonconforming Work and oversight and related activities in connection therewith by VPRA (including rejected design submittals);
- (i) failure by Design-Builder to comply with the requirements of the Contract Documents;
- (j) all other events beyond the control of VPRA for which VPRA has not agreed to assume liability hereunder,
- (k) a Railroad Owner's or VPRA's refusal to grant a Track Closure or permission to perform adjacent work, in either case in response to a prior Unpermitted Track Closure, until approval by VPRA and/or a Railroad Owner of Design-Builder's plan to avoid future Unpermitted Track Closures, as provided in Section 10.2(g) of the Minimum Requirements; and
- (l) any situations (other than Force Majeure events) which, while not within one of the categories delineated above, were or should have been anticipated because such

situations are referred to elsewhere in the Contract Documents or arise out of the nature of the Work.

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

12.15 Waiver

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

12.16 No Release or Waiver

12.16.1 Extension of Time for Performance

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

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

No course of conduct or dealings between the Parties nor express or implied Acceptance of alterations or additions to the Work, and no claim that VPRA has been unjustly enriched shall be the basis for any Claim, request for additional compensation or adjustment of a Completion Deadline. In addition, VPRA may require Design-Builder to remove or otherwise undo any such work at Design-Builder's sole cost without the right to an adjustment of the Contract Price or a Completion Deadline.

12.17 Change Order Disputes

If VPRA and Design-Builder cannot agree on (i) whether certain matters constitute a Relief Event, (ii) whether a Change Order is required under Article 12, or (iii) the amount of the adjustments in the Contract Price and/or the Completion Deadline proposed within a Change Order issued under

Article 12, then such matters will be considered a Dispute eligible for resolution under Article 18, provided that Design-Builder has first complied with the requirements of Article 12.

12.18 Performance of Disputed Work

Design-Builder shall continue to perform all Work, including any disputed Work, during the pendency of a Dispute concerning Design-Builder's entitlement to a Change Order or the relief due Design-Builder pursuant to a Directive Letter or VPRA-Directed Change. Design-Builder's continued performance in accordance with this Section 12.18 will be without prejudice to any pending Claim.

12.19 Change Order Status Log

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

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

The log shall also show submitted requests to draw from the Allowance and provide the information listed in this Section 12.19 for each such request.

ARTICLE 13

Suspension of the Work

13.1 Suspension for Convenience

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

13.2 Suspension for Cause

VPRA may suspend all or part of the Work if Design-Builder fails to:

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

Design-Builder shall promptly comply with any such written suspension order. Design-Builder shall promptly recommence the Work upon receipt of written notice from VPRA directing Design-Builder to resume Work. Design-Builder shall not be entitled to an adjustment to the Contract Price or Completion Deadlines for a suspension under this Section 13.2.

13.3 Design-Builder Responsibilities During Suspension

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

13.4 Suspension of Early Work

If VPRA suspends an Early Work Package for convenience for more than 180 consecutive Days after issuing the Early Work NTP, Design-Builder may consider the Early Work as having been terminated for convenience under Article 14. If Design-Builder wishes to exercise this option,

Design-Builder shall deliver written notice of termination to VPRA, specifying its effective date. The provisions of Article 14 shall apply with respect to the terminated Early Work Package if Design-Builder exercises this option. This Section 13.4 shall not apply to suspensions by VPRA for cause.

13.5 Suspension of Phase 2 Services

If VPRA suspends the Work for convenience for more than 180 consecutive Days after issuing the Phase 2 NTP, Design-Builder may consider the Agreement as having been terminated for convenience under Article 14. If Design-Builder wishes to exercise this option, Design-Builder shall deliver written notice of termination to VPRA, specifying its effective date. The provisions of Article 14 shall apply if Design-Builder exercises this option. This Section 13.5 shall not apply to suspensions by VPRA for cause.

ARTICLE 14

Termination for Convenience

This Article 14 shall apply only to Work authorized by an Early Work NTP or Phase 2 NTP. This Article 14 shall not apply to the Phase 1 Services.

14.1 Notice of Termination

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

14.1.1 Termination for Insufficient Funding

VPRA may immediately terminate this Agreement if the General Assembly fails to appropriate, or the applicable oversight board (i.e., the VPRA board of directors and/or the Commonwealth Transportation Board, depending on the funding source) fails to allocate sufficient funds to continue the services, or if VPRA fails to receive funding anticipated from any other funding source. VPRA is not obligated to pay for any services that are provided after notice and effective date of termination. However, Design-Builder will be entitled to recover in the same manner as if VPRA had terminated the Agreement for its convenience as provided in this Article 14.

14.2 Design-Builder's Responsibilities upon Termination

Design-Builder shall take the following actions promptly after receiving a notice of termination from VPRA with respect to the terminated Work, regardless of any delay in determining or adjusting any amounts due under this Article 14:

- (a) stop Work as specified in the notice;
- (b) communicate the termination to all affected Subcontractors and cause Subcontractors to stop Work as specified in the notice, unless otherwise authorized in writing by VPRA;
- (c) not enter into additional Subcontracts or place orders for Materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or as necessary to mitigate damages;
- (d) terminate all Subcontracts to the extent that they relate to the Work terminated;
- (e) if directed to do so by VPRA and in the manner directed by VPRA, assign to VPRA all of Design-Builder's right, title, and interest in the terminated Subcontracts. VPRA will have the right, in its sole discretion, to assume Design-Builder's rights and responsibilities under the assigned Subcontract accruing after the date of assignment, or to settle or pay any or all claims arising out of terminating those Subcontracts;
- (f) settle all outstanding liabilities and claims arising out of the terminated Subcontracts, with VPRA's prior approval, provided that VPRA shall not be responsible for anticipated profit on work not yet performed as of the effective date of the notice of termination;

- (g) provide VPRA with an inventory list of all Materials previously produced, purchased or ordered from Suppliers for use in the terminated Work and not yet used in the terminated Work, including their storage location. Provide VPRA with any documentation or other property required to be delivered for the terminated Work that is either being developed or has been completed but not yet delivered to VPRA. Provide other information as requested by VPRA. Transfer title and deliver to VPRA, in the manner directed by VPRA,; (i) fabricated or unfabricated parts, Work in process, completed Work, supplies, and other Material produced or acquired for the Work terminated; and (ii) the Design Documents, Construction Documents, and all other completed or partially completed drawings (including plans, elevations, sections, details, and diagrams), specifications, records, samples, information, and other property that would have been required to be furnished to VPRA if the terminated Work had been completed;
- (h) perform, in accordance with the Contract Documents, all Work not terminated by VPRA;
- (i) take all action that may be necessary, or that VPRA directs, for the safety, protection, and preservation of (i) the public, including rail users, motorists, bicyclists, and pedestrians, (ii) the Work, and (iii) the Equipment, machinery, Materials, and property related to the Contract Documents that is in the possession of Design-Builder and in which VPRA has or may acquire an interest;
- (j) use best efforts to sell any property of the types referred to in Section 14.2(g) as directed or authorized by VPRA. Best efforts does not require Design-Builder to extend credit to any purchaser. Design-Builder may acquire the property for itself under the conditions prescribed and at prices approved by VPRA. The proceeds of any sale, transfer or disposition will be applied to reduce any payments to be made by VPRA to Design-Builder due to the termination;
- (k) remove Materials, Equipment, tools and instruments, debris or waste Materials, from all or parts of the Site as directed by VPRA; and
- (l) take other actions directed by VPRA.

14.3 Responsibility After Notice of Termination

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

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

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

14.4 Negotiated Termination Settlement

14.4.1 Settlement Proposal

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

VPRA will review Design-Builder's termination settlement proposal and will accept it, return it with comments, or reject it. If Design-Builder fails to submit the proposal within the time allowed, VPRA may determine the amount, if any, due Design-Builder because of the termination consistent with Section 14.5.

14.4.2 Negotiated Settlement Amount

Design-Builder and VPRA may agree, as provided in Section 14.4.1, on the whole or any part of the amount due to Design-Builder because of total or partial termination of Work pursuant to this Article 14. A negotiated settlement may include a reasonable allowance for profit solely on Work that has been completed by the termination date and Accepted by VPRA. The negotiated settlement amount will not exceed the total Contract Price, as reduced by (1) the amount of payments already made, and (2) the Contract Price of Work not terminated. VPRA will promptly pay the agreed amount to Design-Builder. A settlement under this Section 14.4 is not subject to the limits and requirements of Section 14.5. If VPRA and Design-Builder enter into a settlement agreement, that agreement will not (1) affect any of VPRA's rights under the Contract Documents with respect to completed Work, (2) relieve Design-Builder from Design-Builder's warranty(ies) under the Contract Documents and other obligations with respect to the completed Work, or (3) relieve Design-Builder of any payment obligations to Subcontractors, or affect obligations under the Performance and Payment Bonds as to completed or non-terminated Work.

14.5 Determination of Settlement Amount if Negotiations Fail

If VPRA terminates the Work pursuant to this Article 14 and Design-Builder and VPRA fail to agree on the whole amount to be paid to Design-Builder as provided in Section 14.4.2, VPRA will determine the amount payable in accordance with the following, but without duplicating any amounts agreed upon in accordance with Section 14.4.

14.5.1 Payment Amount

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

- (a) Design-Builder's actual reasonable out-of-pocket cost for all Work performed. This includes mobilization, demobilization, and Work performed to secure the Project for termination, including reasonable overhead but also accounting for any refunds related to insurance premiums, deposits, or similar items, as established to VPRA's satisfaction. When VPRA determines the reasonable cost, VPRA will make deductions for the cost of Materials to be retained by Design-Builder, amounts realized by Design-Builder's sale of Materials, and other appropriate credits for other funds received by Design-Builder due to the termination. VPRA will also make deductions for the cost of damaged Materials. When,

in VPRA's opinion, the cost of an item of Work is excessively high due to costs incurred to remedy or replace Nonconforming Work, defective or rejected Work, VPRA will allow the estimated reasonable cost of performing that Work in compliance with the requirements of the Contract Documents, and VPRA will disallow the excessive actual cost.

- (b) A fair and reasonable profit on work performed, as determined by VPRA in its sole discretion. VPRA will allow reasonable profit only on the work actually performed and will not allow loss of anticipated profit on terminated Work not performed.
- (c) The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section 14.2(f). This excludes amounts paid or payable for supplies or Materials delivered or services furnished by the Subcontractor prior to the effective date of the notice of termination; VPRA will include those amounts under Section 14.5.1(a).
- (d) The reasonable out-of-pocket cost incurred to preserve and protect property pursuant to Section 14.2(i), and any other reasonable out-of-pocket cost incidental to terminating the Work. This allowance includes reasonable overhead and Design-Builder's reasonable costs of handling Material returned to the vendor, delivered to VPRA or otherwise disposed of as directed by VPRA. The allowance also includes a reasonable amount for Design-Builder's administrative costs in determining the amount due to Design-Builder as the result of the termination of Work.

14.5.2 Maximum Compensation

Design-Builder shall not be entitled to any compensation exceeding the amount determined in accordance with Section 14.5.1. Design-Builder shall not be entitled to recover for items such as unabsorbed overhead and opportunity costs upon termination of the Agreement. Design-Builder shall not be entitled to loss of anticipated profit, except as provided in Section 14.5.1(b). The total amount to be paid to Design-Builder shall not exceed the total Contract Price less the amount of payments previously made and less the Contract Price of any Work not terminated. The Contract Price may only be exceeded, however, due to amounts provided for in Sections 14.5.1(c) and (d). If Design-Builder is entitled to any refund of insurance or bond premiums, deposits or similar items that Design-Builder previously passed through to VPRA, then Design-Builder shall arrange for that refund to be paid directly to VPRA, or Design-Builder shall otherwise credit those refunds to VPRA.

14.5.3 Excluded Items

Except for normal spoilage, and except to the extent that VPRA will have otherwise expressly assumed the risk of loss, the amounts payable to Design-Builder under Section 14.5.1 will exclude the fair value, as determined by VPRA, of Equipment, machinery, Materials, and property that is destroyed, lost, stolen or damaged so as to become undeliverable to VPRA, or to a buyer pursuant to Section 14.2(j). VPRA may analyze the amount set forth in Design-Builder's Construction Pricing Documents, in addition to other records provided or maintained by Design-Builder, as a factor in determining the value of the Work terminated.

14.5.4 Payment of Termination Amount

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

14.6 Partial Termination

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

14.7 Reduction in Amount of Claim

The amount due to Design-Builder under this Article 14 will be reduced by:

- (a) all unliquidated advance or other payments made by VPRA to or on behalf of Design-Builder applicable to the terminated portion of the Agreement;
- (b) the amount of any claim that VPRA may have against any Design-Builder-Related Entity in connection with the Agreement;
- (c) the agreed price for, or the proceeds of the sale of, any property, Materials, supplies or other things acquired by Design-Builder or sold, pursuant to the provisions of this Article 14, and not otherwise recovered by or credited to VPRA;
- (d) amounts that VPRA deems advisable, in its discretion, to retain to cover any existing or threatened claims relating to the Project, including claims by Utility Owners or claims for which Design-Builder may be liable under Article 17;
- (e) the cost of repairing any Nonconforming Work;
- (f) the diminished value of Nonconforming Work;
- (g) the additional future costs that VPRA may incur as a result of Nonconforming Work; and
- (h) any amounts due or payable by Design-Builder to VPRA.

14.8 Inclusion in Subcontracts

Design-Builder shall include a clause in all Subcontracts requiring the Subcontractor to stop Work on the date and to the extent specified in a notice of termination from VPRA in accordance with this Article 14. Design-Builder shall require Subcontractors to insert the same provision in each Subcontract at all tiers. If Design-Builder fails to include the clause, Design-Builder is solely responsible for the impacts of failing to add that clause.

14.9 Limitation on Payments to Subcontractors

For the purposes of Sections 14.4.2 and 14.5, upon termination of Work under any Subcontract pursuant to Section 14.2(d), Design-Builder shall not be entitled to reimbursement for any amount under the Subcontract that would constitute anticipatory or unearned profit on Work not performed, or that would constitute consequential damages on account of the termination or partial termination of the Subcontract.

14.10 No Unearned Profits or Consequential Damages

Design-Builder shall not be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Article 14. The payment to Design-Builder determined in accordance with this Article 14 constitutes Design-Builder's sole and exclusive remedy for a termination under this Article 14.

14.11 No Waiver

A termination under this Article 14 does not waive any of VPRA's rights or claim to damages, and VPRA may pursue any cause of action related to the Agreement. This Section 14.11 takes precedence over any contrary clause in the Agreement.

14.12 Dispute Resolution

If VPRA and Design-Builder fail to agree on amounts due under this Article 14, the issue shall be a Dispute eligible for resolution in accordance with Article 18.

14.13 Allowability of Costs

All costs claimed by Design-Builder under this Article 14 must, at a minimum, be allowable, allocable, and reasonable in accordance with the Contract Documents and applicable Law.

14.14 Provision of Records to Establish Costs

Design-Builder shall provide such records, including financial and accounting records, as VPRA determines to be necessary to establish the costs and other amounts under this Article 14, including the records identified in Section 21.3.5. Design-Builder shall cause Subcontractors to provide such records for costs and other amounts associated with Subcontracts. Costs and other amounts that cannot be reasonably established through records made available by Design-Builder and/or its Subcontractors will not be eligible for reimbursement under this Article 14.

ARTICLE 15

Default

15.1 Default by Design-Builder

15.1.1 Events of Default

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

- (a) Design-Builder fails to promptly begin the Work under the Contract Documents after VPRA issues a Phase 1 NTP, Early Work NTP or Phase 2 NTP, as applicable, authorizing such Work;
- (b) Design-Builder fails to perform the Work with sufficient resources to ensure the Work is completed promptly;
- (c) Design-Builder fails to comply with the Quality Plan;
- (d) Design-Builder fails to perform the Work in accordance with the Contract Documents;
- (e) Design-Builder refuses to remove and replace rejected Materials or Nonconforming or unacceptable Work, or fails to remove and replace workers as directed by VPRA under Section 7.8;
- (f) Design-Builder stops prosecuting the Work, unless due to one of the following:
 - (i) VPRA suspends or terminates the Work;
 - (ii) a Force Majeure event occurs; or
 - (iii) VPRA fails to pay Design-Builder undisputed sums, subject to Section 15.3;
- (g) Design-Builder fails to resume performing Work that has been suspended or stopped after receipt of notice from VPRA to do so within the time stated in VPRA's notice or (if applicable) after the event or condition preventing performance has ceased;
- (h) Design-Builder breaches any other agreement, representation or warranty contained in the Contract Documents;
- (i) Design-Builder fails to perform any other obligation under the Contract Documents, including EEO and Small Business subcontracting requirements;
- (j) Design-Builder fails to provide and maintain the required insurance;
- (k) Design-Builder fails to provide and maintain the required Performance and Payment Bonds;
- (l) Design-Builder assigns or transfers the Contract Documents or any right under the Contract Documents, except as expressly permitted under Section 22.4.2;
- (m) Design-Builder fails to make undisputed payment when due for labor, Equipment or Materials in accordance with its agreements with Subcontractors or Suppliers and applicable law;

- (n) Design-Builder fails to comply with any Law or Governmental Approval; or fails reasonably to comply with the instructions of VPRA consistent with the Contract Documents, including Directive Letters;
- (o) Design-Builder fails to discharge or obtain a stay within ten (10) Days of any final judgment(s) or order for the payment of money against it in excess of \$100,000 in the aggregate arising out of the prosecution of the Work (provided that, for purposes hereof, posting of a bond in the amount of 125 percent of such judgment or order will be deemed an effective stay);
- (p) Design-Builder has become insolvent, is generally not paying Design-Builder's debts as they become due, admits in writing that Design-Builder is unable to pay its debts, or makes an assignment for the benefit of creditors;
- (q) Any Guarantor has become insolvent, is generally not paying its debts as they become due, admits in writing that Guarantor is unable to pay its debts, or makes an assignment for the benefit of creditors;
- (r) Design-Builder or a Principal Participant is the subject of any voluntary or involuntary insolvency, receivership, reorganization, or bankruptcy proceedings, and Design-Builder fails to have those proceedings dismissed within sixty (60) Days;
- (s) VPRA determines that any representation or warranty made by Design-Builder or any Guarantor in the Contract Documents or in any certificate, schedule, instrument or other document delivered pursuant to the Contract Documents was false or materially misleading when made;
- (t) Design-Builder or any Guarantor is a party to fraud;
- (u) Any Guarantor revokes or attempts to revoke its obligations under the Guaranty, or otherwise takes the position that such instrument is no longer in full force and effect;
- (v) Design-Builder or a Principal Participant is debarred or suspended by the Commonwealth or is suspended or debarred by any federal agency;
- (w) Design-Builder communicates that it cannot perform its obligations under the Contract Documents;
- (x) Design-Builder fails to complete the Phase 1 Services within 400 Days, or any extended date in accordance with Section 2.4.5, after the date VPRA issues the Phase 1 Services NTP; or
- (y) Design-Builder fails to employ an Independent Design Quality Management firm at any point prior to completion of the Final Design.

15.1.2 Right to Cure

VPRA may, at any time, notify Design-Builder in writing that Design-Builder is in default pursuant to Section 15.1.1. After VPRA gives written notice, Design-Builder shall have thirty (30) Days to cure the identified breach before VPRA declares an Event of Default, except that the cure period will only be three (3) Days for a breach under Section 15.1.1(j), (k), (p), (s), and (u). If a breach for which a thirty (30)-Day cure period is provided is curable but by its nature cannot be cured

within thirty (30) Days, as determined by VPRA, VPRA will not declare an Event of Default if Design-Builder commences the cure within the thirty (30)-Day cure period and thereafter diligently prosecutes the cure to completion.

If VPRA believes a condition affecting the Project poses an immediate and imminent danger to public health or safety, VPRA may rectify the condition at Design-Builder's cost without giving notice or providing any cure period. Public safety is paramount for VPRA; Design-Builder shall be liable for the costs to correct the danger to the public health or safety even if VPRA was under a mistaken belief that the occurrence of a breach or default required VPRA to take such action. VPRA's good faith determination of the existence of such danger will be deemed conclusive in the absence of clear and convincing evidence to the contrary.

If Design-Builder fails to cure any curable breach in accordance with this Section 15.1.2 and VPRA declares an Event of Default, VPRA may exercise the remedies in Section 15.2. VPRA may withdraw its declaration of an Event of Default if Design-Builder provides evidence that no Event of Default occurred.

15.2 Remedies

15.2.1 Rights of VPRA

If an Event of Default occurs as provided in Section 15.1.2, then, in addition to all other rights and remedies provided by law or equity or available under the Contract Documents or otherwise, including the rights to recover Liquidated Damages and to seek recourse against the Performance and Payment Bonds required hereunder, any Guaranty, and/or other performance security, VPRA will have the following rights and remedies, without further notice, and without prejudice to any of its other rights or remedies and without waiving or releasing Design-Builder from any obligations, and Design-Builder shall have the following obligations (as applicable):

- (a) VPRA may order Design-Builder to suspend or discontinue the Work or any portion of the Work;
- (b) VPRA may terminate the Agreement or a portion thereof, in which case, the provisions of Sections 13.2, 14.4, and 14.5 apply;
- (c) If and as directed by VPRA, Design-Builder shall withdraw from the Site and must remove such Materials, Equipment, tools, and instruments used by, and any debris or waste Materials generated by, any Design-Builder-Related Entity in the performance of the Work;
- (d) Design-Builder shall deliver to VPRA possession of any or all facilities of Design-Builder located on the Site as well as any or all Work Product, Design Documents, Construction Documents, and all other completed or partially completed drawings (including plans, elevations, sections, details, and diagrams), specifications, records, information, schedules, samples, Shop Drawings, and other documents that VPRA deems necessary for completion of the Work;
- (e) Design-Builder shall confirm the assignment to VPRA of the Subcontracts requested by VPRA, and Design-Builder shall terminate, at its own cost and without recourse from VPRA, all other Subcontracts;

- (f) VPRA may deduct from any amounts payable by VPRA to Design-Builder such amounts payable by Design-Builder to VPRA, including Liquidated Damages or other damages payable to VPRA under the Contract Documents or at law;
- (g) VPRA will have the right, but not the obligation, to pay such amount and/or perform such act(s) as may then be required for the Project;
- (h) VPRA, without incurring any liability to Design-Builder, will have the rights (i) to take the performance of all or a portion of the Work from Design-Builder (either with or without the use of Design-Builder's Materials, Equipment, tools, and instruments) and enter into an agreement with another Person for the completion of such Work; or (ii) to use such other methods, as in the opinion of VPRA, will be required for the completion of the Project; and/or
- (i) If VPRA exercises any right to perform any obligations of Design-Builder, in the exercise of such right VPRA may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such Work; (ii) spend such sums as VPRA deems necessary and reasonable to employ and pay such architects, engineers, consultants, and contractors, and obtain Materials and Equipment as may be required for the purpose of completing such Work; (iii) execute all applications, certificates, and other documents as may be required for completing the Work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions that it may consider necessary to complete the Work; and (vi) prosecute and defend any action or proceeding incident to the Work.

15.2.2 Liability of Design-Builder

15.2.2.1 Occurrence of Event of Default

If an Event of Default has occurred, Design-Builder, its Principal Participants, Surety, and any Guarantor(s) shall be jointly and severally liable to VPRA for all costs VPRA reasonably incurs to complete the Work or to have the Work completed by others. This liability is in addition to any other damages under the Contract Documents other than those costs intended to be covered by Liquidated Damages payable under the Contract Documents. Costs of completing the Work include re-procurement costs, costs of design and construction, and throw away costs for unused portions of the completed Work. If an Event of Default has occurred, VPRA will be entitled to withhold all or any portion of further payments to Design-Builder until VPRA determines the amount (if any) that VPRA owes to Design-Builder. VPRA will promptly notify Design-Builder in writing of the amount due to Design-Builder from VPRA, or due to VPRA from Design-Builder. VPRA will deduct all costs and charges incurred by VPRA, including attorney's, accountant's, and expert witness fees and costs, together with the cost of completing the Work, under the Contract Documents, from any sum due (or which may become due) to Design-Builder. If the amount due to VPRA exceeds the amount that would have been payable under the Agreement, then Design-Builder, its Principal Participants, its Surety(ies), and any Guarantor shall be liable for the difference, and shall promptly pay the difference to VPRA.

15.2.2.2 Alternative to Terminating the Contract and Completing the Work

Instead of exercising the other provisions of this Section 15.2 for terminating the Agreement and completing the Work, VPRA may pay Design-Builder for the portions of Work already performed

in accordance with the Contract Documents and may eliminate the remaining portions of the Work and treat the remaining portions as if they had never been included or contemplated by the Contract Documents. If VPRA exercises this option, Design-Builder shall not be entitled to prospective profits on, or any other compensation relating to, Work that Design-Builder did not complete.

15.2.2.3 Termination Deemed to Constitute a Termination for Convenience

If VPRA terminates the Agreement for grounds that are later determined not to justify a termination for default, then the termination will be deemed a termination for convenience pursuant to Article 14.

15.2.2.4 Damages Resulting From Design-Builder's Breach or Failure to Perform

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

15.2.2.5 Cumulative Remedies

Except as otherwise expressly provided herein, including Section 16.1.1.2, all rights, powers, and privileges conferred hereunder upon the Parties hereto shall be cumulative and in addition to all other rights, powers, and remedies hereunder and those available at law or in equity. All such rights, powers, and remedies may be exercised separately or at once, and no exercise of any right, power or remedy shall be construed to be an election of remedies or shall preclude future exercise of any or all other rights, powers, and remedies granted hereunder or available at law or equity, except as provided herein.

15.2.2.6 Continued Liability of Design-Builder and Surety

Design-Builder, any Guarantor, and Surety will not be relieved of liability for continuing Liquidated Damages because VPRA has declared an Event of Default or taken other actions under this Section 15.2.

15.3 Right to Stop Work if Undisputed Payment is Not Made

Design-Builder has the right to stop Work if VPRA fails to make an undisputed payment. As a precondition to exercising such right, Design-Builder must submit written notice of nonpayment to VPRA after VPRA's thirty (30) Days to make such payment have lapsed without payment by VPRA, and sixty (60) Days must thereafter elapse without payment of the undisputed amounts from VPRA after VPRA's receipt of such notice. If Design-Builder stops Work under this Section 15.3, that stoppage will be considered a suspension under Section 13.1. Design-Builder shall not have the right to terminate the Agreement for default if VPRA fails to make an undisputed payment when due, but Design-Builder shall have the right to declare a termination for convenience under Article 14 upon meeting the requirements of Section 13.5. For purposes of clarity, Design-Builder shall not be entitled to declare a termination for convenience until no less than 240 Days have elapsed since the expiration of VPRA's thirty (30) Days to make payment have passed without payment by VPRA.

15.4 Notice and Opportunity to Cure Other Types of VPRA Breaches

If VPRA breaches the Agreement (other than by failing to make payments to Design-Builder as provided in Section 15.3), Design-Builder shall provide a written notice to VPRA describing the breach. VPRA will have 30 Days from the date VPRA received the notice to cure the breach. The thirty (30)-Day cure period is extended for any breach that is capable of cure but by its nature cannot be cured within thirty (30) Days; in such case, VPRA will have an additional period of time as may be reasonably necessary to cure the breach so long as VPRA commences the cure within the 30-Day period and diligently proceeds to cure the breach. Design-Builder shall have no right to exercise any remedies to which it may be entitled at law or in equity until (1) Design-Builder has given the required notice and (2) the cure period has lapsed and VPRA has not cured the breach.

15.5 Availability of Funds; Appropriation

This Agreement is contingent upon and subject to the availability and appropriation of sufficient state and/or federal funds. A failure by the Parties to perform any condition on its part to be performed under this Agreement as a result of the failure of the General Assembly to appropriate sufficient funds, or the applicable oversight board or funding partner (e.g., FRA,) to allocate sufficient funds, shall not in any manner constitute a breach or default by the Parties. At Design-Builder's request, VPRA shall promptly furnish reasonable evidence satisfactory to Design-Builder that VPRA has adequate funds available and committed to fulfill all of VPRA's contractual obligations under the Contract Documents.

ARTICLE 16

Damages

16.1 Liquidated Damages and Disincentives

The Parties have agreed to Liquidated Damages under this Section 16.1 to fix and limit Design-Builder's costs and to avoid later disputes over the amount of damages that VPRA has suffered and are properly chargeable to Design-Builder. Design-Builder 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.

16.1.1 Failure to Meet Completion Deadlines

If Design-Builder fails to complete the Work in accordance with the Contract Documents, VPRA will suffer substantial losses and damages. Design-Builder shall be liable for all such losses and damages. Design-Builder 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 Washington, D.C. metropolitan area, 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 Design-Builder fails to achieve Substantial Completion and/or achieve Final Acceptance by the applicable Completion Deadlines. Therefore, Design-Builder and VPRA agree to stipulate the amount payable by Design-Builder for its failure to meet the Completion Deadlines. Liquidated Damages are intended to compensate VPRA solely for Design-Builder's failure to meet the Completion Deadlines and will not excuse Design-Builder from liability for any other breach of the Agreement, including any failure of the Work to conform to applicable requirements. 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 15.2, other than the right to collect other damages due to the delay.

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

- (a) \$95,000 per Day for Design-Builder's failure to achieve Substantial Completion by the Substantial Completion Deadline, until the date Design-Builder achieves Substantial Completion; and
- (b) \$26,000 per Day for Design-Builder's failure to achieve Final Acceptance by the Final Acceptance Deadline, until the date Design-Builder achieves Final Acceptance.

16.1.1.1 Maximum Liquidated Damages for Delay

The total amount of Liquidated Damages assessed under Section 16.1.1 shall not exceed \$100,000,000.

16.1.1.2 Liquidated Damages as Remedy for Delay

The Liquidated Damages assessed under Section 16.1.1 shall be VPRA's sole and exclusive monetary damages for Design-Builder's failure to meet the Completion Deadlines. This limitation shall not impact VPRA's other remedies under the Contract Documents arising from Design-Builder's failure to meet the Completion Deadlines.

16.1.2 Unpermitted Road Closures

Design-Builder shall pay VPRA Liquidated Damages for each Unpermitted Road Closure as provided in Exhibit Z.

16.1.2.1 Inapplicability of Liquidated Damages for Certain Unpermitted Road Closures

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

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

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

16.1.3 Key Personnel

16.1.3.1 Reasonableness of Liquidated Damages Amounts; Waiver

Design-Builder understands and agrees that any Liquidated Damages payable in accordance with this Section 16.1 are in the nature of liquidated damages and not a penalty, and that the sums are reasonable under the circumstances existing as of the Effective Date. Design-Builder further acknowledges and agrees that Liquidated Damages may be owing even though no Event of Default has occurred.

16.1.3.2 Removal or Substitution of Key Personnel

The individuals identified in Exhibit J shall perform the Key Personnel role and responsibilities stated therein and Design-Builder'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 16.1.3.2. Design-Builder shall not remove or substitute any Person identified as Key Personnel in Exhibit J or allow a position to remain vacant unless approved in writing by VPRA. If Design-Builder 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 J 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
Project Manager	\$250,000
Construction Manager	\$200,000
Design Manager	\$200,000
Quality Manager	\$200,000
Independent Design Quality Manager Director	\$200,000
Structures Design Manager	\$200,000
Geotechnical Design Manager	\$200,000
Environmental Compliance Manager	\$200,000
Utility Coordinator	\$200,000
Lead Scheduler	\$200,000
Lead Cost Estimator	\$200,000
Third Party Coordinator	\$200,000
Public Information Coordinator	\$200,000
Safety Manager	\$200,000
Other Key Personnel	\$200,000

16.1.3.3 Basis of Liquidated Damages; Waiver

Design-Builder understands and agrees that any Liquidated Damages payable under Section 16.1.3.2 and/or Section 16.1.3.4 are not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date. The Parties have agreed to Liquidated Damages under Section 16.1.3.2 and Section 16.1.3.4 to fix and limit Design-Builder's costs and

to avoid later disputes over the amount of damages that VPRA has suffered and are properly chargeable to Design-Builder.

16.1.3.4 Replacement of Key Personnel

Unless otherwise agreed in writing by VPRA, in the event of a Key Personnel vacancy, Design-Builder shall replace any Key Personnel 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 J. 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.

16.1.4 Major Subcontractors

16.1.4.1 Non-Use or Substitution of a Major Subcontractor

The Major Subcontractors identified in Exhibit K shall perform the Work and responsibilities stated therein and Design-Builder's failure to employ such Major Subcontractors in their identified roles shall entitle VPRA to assess the liquidated damages described in this Section 16.1.4.1. Design-Builder shall not substitute any Major Subcontractor identified in Exhibit K unless approved in writing by VPRA. If a Major Subcontractor does not perform the Work identified in Exhibit K, unless otherwise authorized by VPRA in writing, VPRA may assess Liquidated Damages in the amount of 10% of the Major Subcontractor's contract value or 10% of the value of the Work that was to be undertaken by the Major Subcontractor, whichever is higher.

16.1.4.2 Failure to Use Major Subcontractors not Subject to Liquidated Damages

Design-Builder shall not be liable for the Liquidated Damages in Section 16.1.4.1 if the failure to use a Major Subcontractor to perform the Work identified in Exhibit K is due in no part to the acts or omissions of Design-Builder. Design-Builder shall bear the burden of establishing that this Section 16.1.4.2 applies.

16.1.4.3 Basis of Liquidated Damages; Waiver

Design-Builder acknowledges and agrees that any Liquidated Damages payable under Section 16.1.4.1 are not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date. The Parties have agreed to Liquidated Damages under Section 16.1.4.1 to fix and limit Design-Builder's costs and to avoid later disputes over the amount of damages that VPRA has suffered and are properly chargeable to Design.

16.2 Other Remedies, Damages

In addition to all other damages to which VPRA is entitled, VPRA shall be entitled to the remedies and damages provided in Exhibit C.

16.3 Set-Off; Waiver

16.3.1 Set-Off Rights

VPRA shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include VPRA's option to withhold for the purposes of set-off any moneys due to Design-Builder under this Agreement up to any amounts due and owing to VPRA with regard to this Agreement,

plus any amounts due and owing to the Commonwealth for any other reason including tax delinquencies, fee delinquencies or monetary penalties relative thereto.

16.3.2 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.

16.3.3 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 Design-Builder 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 Design-Builder or Design-Builder's Surety(ies) by taking over the Work, or by terminating the Agreement due to an Event of Default by Design-Builder.

16.4 Payment of Liquidated Damages

Liquidated Damages, to the extent not paid as provided in Section 16.3.1, shall be payable by Design-Builder to VPRA within ten (10) Days after Design-Builder's receipt of an invoice for the damages from VPRA.

16.5 Limitations on Damages

16.5.1 Limitations on Damages Recoverable by Design-Builder

Design-Builder shall not be entitled to damages of the following nature:

- (a) damages for delay other than those in Section 2 of Exhibit I;
- (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;
- (e) late payment charges for any judgment or award to Design-Builder;
- (f) pre-judgment interest relating to or arising from any disputed Claim or on any award to Design-Builder; 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.

16.5.2 Waiver of Consequential and Punitive Damages by VPRA

VPRA waives any entitlement to consequential or punitive damages from Design-Builder.

ARTICLE 17

Indemnification

17.1 Indemnifications by Design-Builder

17.1.1 General Indemnification of Virginia Indemnitees

Design-Builder shall indemnify, defend, and hold harmless the Commonwealth of Virginia and VPRA together with their officers, agents, and employees (collectively, the “Virginia Indemnitees”) from and against all third-party claims, losses, damages, liabilities, including reasonable attorneys’ fees, costs, and expenses, asserted against a Virginia Indemnitee to the extent arising from Design-Builder’s performance of, or the failure to perform, the Work.

17.1.2 Losses Due to Negligence or Misconduct of Virginia Indemnitees

Design-Builder’s indemnity obligations under Section 17.1.1 will not extend to any loss, damage, or cost only to the extent that such loss, damage or cost was caused by the negligence or willful misconduct of a Virginia Indemnitee, *however*, Design-Builder’s indemnity obligations under Section 17.1.3 will be in accordance with Exhibit Q and will not be limited by this Section 17.1.2.

17.1.3 Railroad Operator Indemnifications

In addition to its other indemnification obligations hereunder, Design-Builder shall indemnify Amtrak and CSXT as provided in Exhibit Q. In the event of a conflict between the indemnification requirements in Exhibit Q and this Section 17.1, the terms of Exhibit Q shall prevail.

17.2 Responsibility of VPRA for Certain Contaminated Materials

17.2.1 Pre-Existing Site Contamination

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

17.2.2 Generator Number for Contaminated Materials

Except for Contaminated Materials for which Design-Builder is responsible:

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

17.2.3 Notification of Discovery of Contaminated Materials

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

17.3 No Effect on Other Rights

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

17.4 CERCLA Agreement

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

ARTICLE 18

Partnering and Dispute Resolution

18.1 Partnering

Design-Builder and VPRA shall enter into a procedure for Partnering as identified within this Article 18 for the Phase 2 Services.

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

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

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

18.1.1 Third-Party Facilitator

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

18.2 Dispute Resolution Process

A Dispute under the Contract Documents shall be resolved in accordance with the Dispute Resolution Process herein. Issues may only proceed to the Dispute Resolution Process once all prerequisites to ripening into a Dispute under the Contract Documents have been met. All Disputes must be submitted to the Dispute Resolution Process within 30 days of the date that the Dispute becomes eligible for resolution under this Article 18. Unless VPRA provides a written exception, Disputes not timely submitted in accordance with this Section 18.2 shall be considered forever waived, abandoned, barred, and ineligible for any relief based on the acts, omissions, and circumstances underlying the matter.

18.2.1 Escalation Ladder

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

18.2.1.1 Escalation Ladder Process

- (a) Once a Dispute is eligible, the Escalation Ladder may be commenced by submitting a written request to the other Party. Where Design-Builder is the Party requesting the Escalation Ladder, to the extent not previously provided, Design-Builder shall submit all information pertaining to the Dispute, including the information upon which Design-Builder relies in support of its Claim. This includes the information specified in Section 12.4 for Requests for Change Orders, including the certifications from both Design-Builder and any Subcontractors as required by Section 12.6. A request to invoke the Escalation Ladder by Design-Builder shall not be considered complete until Design-Builder complies in full with this provision, including by providing all required information concerning the Dispute.
- (b) Provided that the Party seeking to invoke the Escalation Ladder has complied in full with all requisite notice and information requirements set forth in the Agreement before a Dispute is eligible for consideration using the Escalation Ladder, the Parties shall meet and commence the Escalation Ladder within 7 days following the invoking Party's complete written request to initiate the Escalation Ladder.
- (c) The Escalation Ladder shall consist of three levels of review and corresponding time periods, as follows:

Review Level	VPRA Reviewer	Design-Builder Review	Time Limit
1	Design/Construction Lead	Bjarne Gudmundsen	10 days
2	Project Manager	Thomas O'Rourke	10 days
3	Chief Operating Officer	Keith Chouinard	20 days

- (d) All Disputes eligible for the Escalation Ladder shall start at Review Level 1. If the Dispute is not resolved at each Review Level within the time limit stated, the Dispute shall be eligible to move to the next Review Level. If reviewers at any Review Level of the Escalation Ladder cannot resolve a Dispute within the applicable time limit, then they may mutually elect to continue efforts to resolve the Dispute at their level, provided that either reviewer shall have the unilateral right after the applicable time limit to elevate the Dispute to the next Review Level in the Escalation Ladder.

18.2.1.2 Escalation Ladder Outcome

If VPRA and Design-Builder succeed in resolving all or part of a Dispute using the Escalation Ladder, the Parties shall memorialize the resolution in writing, including execution of any Change Order as appropriate, and perform their respective obligations in accordance therewith. If the Parties are unable to resolve all or part of a Dispute using the Escalation Ladder, then either Party shall have the right, after the time limit has passed for Review Level 3, to invoke the procedures in Sections 18.3 and 18.5, subject to the terms thereof, for the unresolved part of the Dispute.

18.3 Use of Neutral for Dispute Resolution

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

18.3.1 Timing of Submission

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

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

18.3.2 Effect of Submission to Neutral

Submission of a Dispute to the Neutral is a prerequisite to a Party's right to submit a Dispute to litigation, subject to Section 18.5.1.

18.3.3 Qualifications of Neutral

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

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

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

Prior to engagement of the Neutral, all candidates to become the Neutral shall submit a sworn disclosure statement identifying any potential prohibited conflict of interest or affirming that no

such prohibited conflict of interest is known to exist. Once a Neutral is engaged, the Neutral shall have a continuous, ongoing obligation to disclose any prohibited conflict of interest that arises or of which the Neutral becomes aware.

Once the Parties have agreed on the Neutral, the Parties shall execute an agreement in a form satisfactory to VPRA with the Neutral for the Neutral's services. The Parties shall each be responsible for 50% of the costs of the Neutral process. Design-Builder shall pay the Neutral in the first instance and submit an invoice to VPRA for VPRA's share on a monthly basis. Design-Builder shall submit the costs of the Neutral process with the monthly Application for Payment for the costs incurred in the preceding month. Additionally, upon engagement of the Neutral, the Parties shall provide one complete copy of the Contract Documents to the Neutral.

Except for the exchange of written statements and materials as provided in Section 18.3.5.2, and as may be requested by the Neutral as provided in Section 18.3.5.3, neither Party shall have *ex parte* communications with the Neutral. A party's violation of this restriction shall be grounds for a new Neutral Session with a different Neutral at the sole expense of the Party that improperly engages in *ex parte* communications.

18.3.4 Dismissal of the Neutral

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

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

The Parties shall meet within 10 days of dismissal of a Neutral to discuss engagement of a replacement Neutral. The replacement Neutral shall be subject to the same requirements described in Section 18.3.3. The Parties shall follow the same process if a Neutral resigns.

18.3.5 Neutral Procedure

18.3.5.1 Initial Meeting

Within 10 days of the Neutral's receipt of all information required by Section 18.3.1, the Parties shall arrange a meeting with the Neutral to schedule a Neutral Session for presentation of the Dispute. The schedule for the Neutral Session shall account for sufficient time to comply with the Pre-Neutral Session submissions in Section 18.3.5.2. During this meeting, the Parties and the Neutral shall agree to the amount of time each Party will have to present its position to the Neutral, subject to the total time limit stated in Section 18.3.5.3.

18.3.5.2 Pre-Neutral Session Submissions

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

- (a) 45 days prior to the Neutral Session, the Parties shall exchange written statements containing their position on the Dispute. The written statements shall be limited to 10 written pages. The Parties may attach no more than 30 pages of exhibits to the written

statements. No other information or materials may be submitted with the written statements.

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

Other than the Contract Documents as provided in Section 18.3.3 and the materials identified in this Section 18.3.5.2, the Parties shall not submit any other materials to the Neutral prior to the Neutral Session, nor may the Neutral consider any other submitted materials. The Parties shall exchange the materials by sending them via electronic transmission to the Neutral without copying the other Party. Once the Neutral receives submissions from both parties, the Neutral will send the materials simultaneously to both Parties. The Neutral may request hard copies of the materials from the Parties.

Neither Party shall be entitled to discover documents or information from the other Party as part of the Neutral process, provided that this limitation shall not in any way limit or otherwise restrict the Parties' rights under the Contract Documents or at law to obtain information from the other Party. Design-Builder's full compliance with an examination request from VPRA pursuant to Sections 21.1.4 or 21.3 shall be a prerequisite to commencement of the Neutral process and the Neutral shall not schedule a Neutral Session until: (i) Design-Builder has fully complied with VPRA's request for information about a Claim or Dispute and (ii) VPRA has had no fewer than 15 days to perform a detailed examination of the information and materials provided.

18.3.5.3 Neutral Session

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

The Parties' presenters during the Neutral Session shall be limited to project staff with knowledge of the Dispute. Notwithstanding the foregoing, the Parties may engage experts solely to present on cost and schedule impacts. Experts who do not have direct knowledge of the Dispute shall not be permitted to present on technical issues. Legal counsel shall not be permitted to present during the Neutral Session but may attend the Neutral Session provided that the Party intending to have legal counsel present provide no less than 5 days' notice prior to the Neutral Session of its intention.

During the Neutral Session, the Neutral may ask questions of each Party relevant to the Dispute. The Neutral may also hold private conversations with each Party to discuss the Dispute during the designated time for the Neutral Session. If the Neutral finds it necessary, the Neutral may request that the Parties provide supplemental information on a specific issue relevant to the Dispute. Such supplemental information shall be limited to 5 written pages and 10 pages of exhibits and must be submitted to the Neutral within 10 days after requested by the Neutral. The

Neutral shall distribute the supplemental information to both Parties in the same manner provided for exchange of written Materials in Section 18.3.5.2. The Neutral Session shall not be considered concluded until receipt by the Neutral of any supplemental material requested.

18.3.6 Recommendation

Within 30 days of the conclusion of a Neutral Session, the Neutral shall issue written Recommendations concerning the Dispute. The Recommendations shall explain the Neutral's view of the Dispute, including the arguments of each Party that have merit and the arguments that lack merit. The Recommendations shall be limited to 10 pages and may refer to the materials submitted by the Parties in accordance with Section 18.3.5.2 and 18.3.5.3.

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

18.3.7 Confidentiality

Except as otherwise provided by Law, all materials submitted and exchanged as part of the Neutral process shall be considered confidential and to have been prepared in contemplation of settlement, and deemed inadmissible in any subsequent proceedings under Section 18.5 or otherwise. This includes all written materials submitted in advance of the Neutral Session, the Recommendations, any supplements to the foregoing, and the substance of any communications between the Parties in connection with the Neutral process. The foregoing shall not be construed to prevent the discovery or admissibility of information or materials otherwise discoverable or admissible separate and apart from their inclusion in the Neutral process.

18.3.8 Neutral Process is Non-Binding

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

18.4 Continuation of Work During a Dispute

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

18.5 Litigation of Unresolved Disputes

18.5.1 Tolling of Claims and Statute of Limitations

Neither Party may invoke the option to litigate the unresolved Disputes in accordance with Section 18.5.2 until Design-Builder has identified all outstanding Claims concurrently with its submission to VPRA of the Application for Final Payment pursuant to Section 11.5.2 (and has

released and waived all other potential Claims), and only after full compliance of each Unresolved Dispute with Article 12 and Sections 18.2 and 18.3.

The Parties waive any defense predicated on the expiration of the statute of limitations applicable to a Dispute, provided that all Unresolved Disputes are consolidated into a single litigation that is commenced within the later of: (i) 120 Days after Final Acceptance or (ii) 60 Days after the Neutral has issued a Recommendation on all Disputes submitted to the Neutral. Any Disputes not included in the single action shall be deemed forever and irrevocably waived, abandoned, and barred and no recovery shall be permitted for the actions, omissions or circumstances comprising such waived Disputes.

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

18.5.2 Litigation

Subject to Section 18.5.1, either Party shall have the right to initiate litigation for Unresolved Disputes. All litigation between the Parties shall be as provided in Section 22.11.

18.6 Attorney's Fees

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

ARTICLE 19

Acceptance of Project

19.1 Substantial Completion

19.1.1 Notice by Design-Builder

Design-Builder shall provide written notice to VPRA when all of the following have occurred:

- (a) Design-Builder has completed all Work, except for Punch List items and other items only included in the requirements for Final Acceptance;
- (b) Design-Builder has ensured that the Work has been performed in accordance with the requirements of the Contract Documents and that all requirements in the Contract Documents identified as prerequisites to Substantial Completion have been met;
- (c) Design-Builder has received all applicable Governmental Approvals required for Project use;
- (d) Design-Builder has furnished to VPRA certifications from Design-Builder's Design Manager, in form and substance satisfactory to VPRA, certifying conformity of the Design Documents with the requirements of the Contract Documents;
- (e) Design-Builder has furnished to VPRA certifications from Design-Builder's Project Manager, in form and substance satisfactory to VPRA, certifying conformity of the construction with the Design Documents;
- (f) Design-Builder has furnished to VPRA certifications from Design-Builder's Quality Manager, in form and substance satisfactory to VPRA, certifying that there are no outstanding nonconformances other than those identified on the Punch List and that such nonconformances will be corrected;
- (g) Design-Builder has furnished to VPRA a certification from Design-Builder's Quality Manager, in form and substance satisfactory to VPRA, certifying that the Work is completed in accordance with the requirements of the Contract Documents.
- (h) Design-Builder has ensured that the Project may be used without damage to the Project or any other property on or off the Site, and without injury to any Person;
- (i) Design-Builder has obtained all applicable Third-Party approvals relating to the Work and all Third-Parties have completed all Work that involves obligations by Design-Builder;
- (j) Design-Builder has removed all temporary facilities, supports, staging, storage and equipment that require interruption of the final rail and vehicle traffic configuration to remove;
- (k) Design-Builder has ensured that all four (4) tracks are open to rail traffic and all other elements of the Project are complete and functional for final traffic configuration;
- (l) CSXT has inspected the Work and issued a written certificate that the Work is substantially complete; and

- (m) Completion of Punch List items and final cleanup and other construction operations will not alter the final traffic configuration.

When Design-Builder submits the foregoing, Design-Builder shall also submit the proposed Punch List to VPRA.

19.1.2 Correction of Defects

Upon receipt of Design-Builder's notice under Section 19.1.1, VPRA will conduct such inspections, surveys, and/or testing as VPRA deems desirable. If such inspections, surveys, and/or tests disclose that any Work does not meet the requirements of Section 19.1.1 or the Contract Documents, VPRA will promptly advise Design-Builder as to Nonconforming Work (including incomplete Work) necessary to be corrected as a condition to Substantial Completion, Nonconforming Work (including incomplete Work) that may be corrected as Punch List items, and/or whether Design-Builder shall reassess the accuracy and completeness of its notice. Upon correction of the Nonconforming Work (including incomplete Work) identified as a prerequisite to Substantial Completion, Design-Builder shall provide written notification to VPRA and VPRA will conduct additional inspections, surveys, and/or tests as VPRA deems desirable. This procedure shall be repeated until VPRA finds that Design-Builder has met all prerequisites to Substantial Completion.

19.1.3 Notice of Substantial Completion

VPRA will issue a Notice of Substantial Completion when:

- (a) VPRA determines that all conditions set forth in Section 19.1.1 have been satisfied;
- (b) VPRA determines that all Nonconforming Work (including incomplete Work) identified as prerequisites to Substantial Completion has been corrected or may be included in the Punch List, or VPRA has Accepted the Nonconforming Work in accordance with Sections 5.5.2 and 5.5.3; and
- (c) VPRA has Approved Design-Builder's Punch List.

19.2 Final Acceptance

19.2.1 Conditions to Final Acceptance

19.2.1.1 Performance of Work After Substantial Completion

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

19.2.1.2 Conditions to Affidavit of Final Completion

Design-Builder shall provide to VPRA an executed and sworn Affidavit of Final Completion stating the following, in addition to including the statement in Section 19.2.1.3:

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

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

19.2.1.3 Requirements of Affidavit of Final Completion

The Affidavit of Final Completion referred to in Section 19.2.1.2 must include the following statement:

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

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

19.2.2 Inspection and Issuance of Notice of Final Acceptance

Upon VPRA's receipt of the Affidavit of Final Completion, VPRA will make final inspection and VPRA will either issue a Notice of Final Acceptance or notify Design-Builder regarding any Work remaining to be performed. If VPRA does not issue a Notice of Final Acceptance, Design-Builder shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, Design-Builder shall provide to VPRA a revised Affidavit of Final Completion with a new date based on when the defective and/or uncompleted portions of the Work were corrected. The foregoing procedure will apply successively thereafter until VPRA has issued a Notice of Final Acceptance.

19.2.3 Overpayments; No Relief from Continuing Obligations

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

19.3 Clayton Act Assignment

Design-Builder hereby offers and agrees to assign to VPRA all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), arising

from purchases of goods, services or Materials pursuant to the Agreement or any Subcontract. This assignment will be made and become effective at the time VPRA tenders Final Payment to Design-Builder, without further acknowledgment by the parties.

ARTICLE 20

Warranties

20.1 Warranties by Design-Builder

20.1.1 Project Warranties

Design-Builder warrants that:

- (a) all Design Work furnished pursuant to the Contract Documents shall be in accordance Good Industry Practice;
- (b) the Project shall be free of defects in Materials and workmanship;
- (c) Materials and Equipment furnished under the Contract Documents shall be of good quality and be new when installed;
- (d) the Work shall meet all of the requirements of the Contract Documents; and
- (e) the specifications and drawings selected or prepared for use during construction shall be appropriate for their intended use.

20.1.2 Project Warranty Period

Design-Builder's Warranty period starts at Substantial Completion, except that a Warranty for a specific element owned by a Third-Party may start at the date the Third-Party accepts that specific element if (1) that date is prior to Substantial Completion, and (2) VPRA and Design-Builder have documented the earlier Warranty start date. Subject to extensions under Section 20.1.5, Design-Builder's Warranty obligations for all elements of the Project that will be owned by VPRA shall remain in effect until two years after Substantial Completion, except that any longer Warranty period specified elsewhere in the Contract Documents for a specific element of the Project shall control.

If at any time during the Warranty period VPRA determines that any of the Work has not met the standards specified in this Section 20.1, then Design-Builder shall correct such Work as specified in this Article 20, even if the performance of such Warranty Work extends beyond the stated Warranty period. Alternatively, VPRA may elect, in its sole discretion, to Accept the Work in accordance with Section 5.5.3 and adjust the Contract Price or seek damages as provided therein.

20.1.3 Corrective Work

20.1.3.1 Site Inspections

VPRA and Design-Builder will conduct a joint walkthrough of the Site at the following times: (i) once no less than one year after commencement of the Warranty period; and (ii) once 60 Days prior to the end of the Warranty period specified in Section 20.1.2. VPRA may require additional Site inspections with Design-Builder if VPRA identifies Warranty Work. On each walkthrough or Site visit, VPRA will produce a list of items requiring Warranty Work. In addition, VPRA reserves the right at any time during the Warranty period to identify Work that fails to meet the Warranties.

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

20.1.3.2 Notification and Performance of Corrective Work

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

20.1.3.3 Design-Builder Plan to Perform Warranty Work

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

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

VPRA will respond to Design-Builder's proposal within five (5) Days after VPRA receives Design-Builder's complete submittal, provided that, if the Warranty Work requires approval from a Railroad, VPRA shall respond to Design-Builder's proposal within two (2) days of receiving such approval or rejection from a Railroad.

20.1.3.4 Performance of Warranty Work

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

20.1.3.5 Emergency Corrective Work

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

20.1.3.6 Design-Builder Not Responsible for Certain Corrective Work

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

20.1.4 Costs of Correction of Work

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

20.1.5 Warranty of Corrected Work

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

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

Notwithstanding the foregoing, no Warranty period shall extend beyond the fifth anniversary of Final Acceptance, *provided however*, that the expiration of a Warranty period shall not be construed to prevent VPRA from pursuing any other remedies it has then available at law or otherwise with respect to Nonconforming Work, even though Design-Builder is no longer responsible to perform Warranty Work.

20.2 Subcontractor Warranties

20.2.1 Assignment

Design-Builder shall obtain from all Subcontractors appropriate representations, warranties, guarantees, and obligations with respect to the design, Materials, workmanship, Equipment, tools, and supplies furnished by Subcontractors, including the representations, warranties, guarantees, and obligations that Subcontractors are required to furnish under the Contract Documents. The Subcontractor representations, warranties, guarantees, and obligations must expressly extend to VPRA. The Subcontractor representations, warranties, guarantees, and obligations in no way reduce or negate Design-Builder's own representations, warranties, guarantees, and obligations, including Design-Builder Warranties. All representations, warranties, guarantees, and obligations of Subcontractors must (a) expressly survive all VPRA and Design-Builder inspections, tests, Acceptance, and Approval, and (b) run directly to and be enforceable by Design-Builder and/or VPRA and their respective successors and assigns.

20.2.2 Enforcement

Upon receipt from VPRA of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee, or obligation, Design-Builder shall enforce or perform the

representation, warranty, guarantee or obligation, in addition to Design-Builder's other obligations under this Article 20. VPRA's rights under this Section 20.2.2 begin at the time the representation, warranty, guarantee or obligation is furnished, and must continue until the expiration of Design-Builder's relevant Warranties. Until expiration, Design-Builder shall be responsible for the cost of any Equipment, Material, labor (including re-engineering) or shipping, and Design-Builder shall replace or repair defective Equipment, Material or workmanship furnished by any Subcontractor.

20.3 Assignment of Other Warranties

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

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

Design-Builder's warranties in Section 20.1 are not intended to limit any manufacturer's warranty that provides VPRA with greater warranty rights than specified. Design-Builder shall provide VPRA with all manufacturers' warranties as a condition to Final Acceptance.

20.4 No Limitation of Liability

The warranties described in this Article 20 are in addition to all rights and remedies available under the Contract Documents or applicable Law and will not limit Design-Builder's liability or responsibility imposed by the Contract Documents or applicable Law with respect to the Work, including liability for design defects, construction defects, strict liability, negligence or fraud.

20.5 Warranty Beneficiaries

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

ARTICLE 21

Documents and Records

21.1 Construction Pricing Documents

21.1.1 Contents of Construction Pricing Documents

The Construction Pricing Documents (“CPDs”) shall consist of all cost, unit pricing, price quote, and other documentary information used in preparation of the Phase 2 Price and any Early Work Price, and provided to VPRA as part of the Construction Cost Estimates. The CPDs shall clearly detail how each cost or price included in the Binding Construction Price Proposal or Early Work Proposal has been determined and shall show cost or price elements in sufficient detail adequate to enable VPRA to understand how Design-Builder calculated the applicable price. For steel and fuel (and any other Materials agreed upon in accordance with Section 12.13), the CPDs shall show the unit price and assumed quantity used in the Construction Cost Estimates.

The CPDs provided in connection with quotations and Change Orders shall clearly detail how the total cost or price and individual components of that cost or price were determined. The CPDs shall itemize the estimated costs or price of performing the Work separated into usual and customary items and cost or price categories to present a detailed estimate of costs and price, such as direct labor, repair labor, Equipment ownership and operation, expendable Materials, permanent Materials, supplies, Subcontract costs, plant and Equipment, insurance, bonds, letters of credit, indirect costs, contingencies, mark-up, overhead, and profit. The CPDs shall itemize the estimated annual costs of insurance premiums for each coverage required to be provided by Design-Builder under Article 9. The CPDs shall include all assumptions made in determining the scope of the Work and calculating the applicable price, detailed quantity takeoffs, price reductions and discounts, rates of production and progress calculations, and quotes from Subcontractors used by Design-Builder to arrive at the Phase 2 Price or Early Work Price and any adjustments to the Contract Price.

21.1.2 Manner and Duration of Retaining Construction Pricing Documents

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

21.1.3 Retention of Construction Pricing Documents

The CPDs and index and catalog shall be held in the cabinet identified in Section 21.1.2 or otherwise maintained until all of the following have occurred:

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

The release of the CPDs from the locked cabinet shall not impair Design-Builder's obligation to maintain all Project records in accordance with Section 21.3.

21.1.4 Availability for Review

The CPDs shall be available during business hours for joint review by Design-Builder and VPRA, or by Design-Builder, VPRA, and any dispute resolver as provided in Article 18, and in connection with approval of the Baseline Schedule and any updates thereto, negotiation of Change Orders, resolution of Claims or disputes under the Contract Documents, and aiding in determining the value of terminated Work. VPRA will be entitled to review all or any part of the CPDs to satisfy itself regarding the applicability of the individual documents to the matter at issue. Design-Builder shall provide access to VPRA for review of the CPDs upon 24 hours' notice.

21.1.5 Proprietary Information

The CPDs are, and shall always remain, the property of Design-Builder and shall be considered to be in Design-Builder's possession, subject to VPRA's right to review the CPDs as provided in this Section 21.1. Design-Builder shall have and control the keys to the cabinet containing the CPDs. VPRA acknowledges that Design-Builder may consider that the CPDs constitute trade secrets or proprietary information. VPRA will have the right to copy the CPDs for the purposes set forth in this Section 21.1, provided that the Parties execute a mutually agreeable confidentiality agreement with respect to CPDs that constitute trade secrets or proprietary information, which confidentiality agreement shall explicitly acknowledge that it is subject to applicable Law (including VFOIA). If VPRA receives a request for disclosure of information under VFOIA that could be construed to request production of Design-Builder's CPDs or copies thereof held by VPRA, VPRA will notify Design-Builder of the request.

21.1.6 Design-Builder Representation

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

21.1.7 Form of CPDs

Except as otherwise provided in the Contract Documents, Design-Builder shall submit the CPDs in such format as is used by Design-Builder in connection with the Construction Cost Estimates.

Design-Builder represents and warrants that the CPDs provided with the Final Construction Price Proposal and each Early Work Proposal were personally examined by an authorized officer of Design-Builder prior to delivery, and that the CPDs meet the requirements of this Section 21.1. Design-Builder further represents and warrants that all additional CPDs to be provided hereunder were or will be personally examined prior to delivery by an authorized officer of Design-Builder, and that they shall meet the requirements of this Section 21.1.

21.1.8 Review by VPRA to Confirm Completeness

VPRA may at any time conduct a review of the CPDs to determine whether they are complete. If VPRA determines that any data is missing from a CPD, Design-Builder shall provide such data within three Days after delivery of VPRA's request for such data. At the time of its submission to VPRA, such data will be date stamped, labeled to identify them as supplementary CPD information, added to the CPDs, and added to the CPD catalog. Design-Builder shall have no right to add documents to the CPDs except upon VPRA's request and as otherwise provided in this Article 21.

21.1.9 CPDs for Change Order Pricing

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

21.2 Subcontractor Documents

21.2.1 Subcontractor Bidding Documents

For each Subcontractor, Design-Builder shall add to the CPDs all bid documents to procure the Subcontractor, including the solicitation materials, all bids received, and records of any negotiations with the selected Subcontractor. Design-Builder shall also include any document generated in accordance with the competitive bidding requirements in Section 8 of the Minimum Requirements for each Subcontractor procurement, including, if applicable, written approval from VPRA for Design-Builder to select a Subcontractor other than the lowest priced responsible bidder.

21.2.2 Subcontractor Pricing Documents

Design-Builder shall require each Subcontractor to submit to Design-Builder a copy of all documents used in determining its Subcontract price. Design-Builder shall also require each Subcontractor to submit a copy of all documents to determine the price of a Subcontractor change order greater than \$25,000. Design-Builder shall require each such Subcontractor to submit the documents immediately prior to executing the relevant Subcontract or Subcontractor change order in the same manner as the CPDs. Each Subcontract shall provide that the Subcontractor CPDs will be accessible by Design-Builder, VPRA, and other dispute resolvers on terms substantially similar to those contained in this Article 21. Design-Builder shall ensure that each Subcontract subject to this Section 21.2 includes a representation and warranty from the Subcontractor stating that its CPDs include all the documents used in establishing its Subcontract price or change order price.

21.3 Project Records

21.3.1 Maintenance of Records

Design-Builder shall maintain a complete set of all books, records, and documents prepared or employed by Design-Builder with respect to the Project. The books, records, and documents must be maintained at Design-Builder's Project office established as provided in Section 29 of the Minimum Requirements and be available for inspection at the office on one Day's notice.

21.3.2 Audit and Examination Rights

Design-Builder grants to VPRA, Utility Owners, USDOT funding partners including FRA, the Secretary of Transportation, the Comptroller General of the United States, Amtrak, and other applicable state and federal agencies, as well as authorized representatives of each of the foregoing, the right to audit and examine books and records relevant to the Project (including all tax returns and supporting documentation filed with any Governmental Persons). The entities authorized under this Section 21.3.2 may audit and examine the books and records in connection with the issuance of Change Orders, Claims, the resolution of disputes, or as otherwise needed to comply or verify compliance with the Agreement and Laws. The audit and examination rights include the rights to have convenient access to all paper and electronic records, and to make and save copies of those records. For Design-Builder's documents in electronic form, Design-Builder shall provide the entities authorized under this Section 21.3.2 with electronic copies of the documents on a portable media device or through another method of electronic transmission. The entities authorized under this Section 21.3.2 are entitled to review and retain copies of all native electronic files in addition to copies thereof in electronic or other formats. Design-Builder shall include this Section in all Subcontracts.

21.3.3 Audit of Force Account Work

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

21.3.4 Change Order Pricing Data

For cost and pricing data submitted in connection with pricing Change Orders or potential Change Orders, the Persons authorized under Section 21.3.2 and their representatives have the right to examine all books, records, documents, and other data of Design-Builder related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

21.3.5 Claims Examinations

All Claims filed against VPRA are subject to detailed examination at any time following the filing of the Claim. The examination may be performed by VPRA employees or by an auditor or other

Person under contract with VPRA or under contract with VPRA's consultants. No notice is required before commencing any examination prior to 60 Days after Final Acceptance. Thereafter, VPRA will provide 20 Days' notice to Design-Builder and any Subcontractors or their respective agents whose records will be examined before commencing an examination. Design-Builder, Subcontractors or their agents must provide adequate facilities, acceptable to VPRA, for the examination during normal business hours. Design-Builder, Subcontractors, and their agents must cooperate with the Persons performing the examination. If Design-Builder, Subcontractors or their agents fail to maintain and retain sufficient records to allow the examiners to examine all of the Claim (or a Subcontractor's portion of the Claim) or fail to provide access to the books and records of Design-Builder, Subcontractors or their agents, then the Claim will be deemed waived and recovery for the Claim will be barred. At a minimum, the following documents must be available as part of an examination:

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

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

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

Design-Builder's full compliance with the provisions of this Section 21.3.5 is a condition precedent to Design-Builder's right to seek relief under Article 12 and 18 and to the scheduling of a Neutral Session as provided in Section 18.3.5.2. Design-Builder represents and warrants the completeness and accuracy of all information it or its agents provide in connection with this Section 21.3.

21.3.6 Separate Records for Disputed Work

For any Work performed pursuant to a VPRA-Directed Change or Work that Design-Builder otherwise contends entitles it to Extra Work Costs or Delay Costs following a Relief Event, and throughout the course of any Work that is in dispute and/or is subject to the Dispute Resolution Process, Design-Builder shall keep separate and complete books and records that provide a clear distinction between the incurred direct costs of disputed Work (or Work for which Design-Builder seeks Extra Work Costs and Delay Costs) and that of undisputed Work, and shall permit VPRA access to these records consistent with this Article 21.

21.4 Retention of Records

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

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

21.5 Virginia Freedom of Information Act

21.5.1 Applicability of VFOIA

Design-Builder understands VPRA must follow the requirements of the Virginia Freedom of Information Act ("VFOIA"), §§ 2.2-3700 et seq. of the Code of Virginia, and must disclose records requested under VFOIA for which there is no applicable exclusion. If Design-Builder discloses to VPRA information it deems confidential under this Agreement, it agrees to clearly mark any information with the word "confidential," "trade secret," or "non-public," as applicable, before

providing it to VPRA, and to use the form attached as Exhibit U to invoke the appropriate provision of VFOIA exempting such records. If Design-Builder desires to prevent disclosure of certain materials or information, Design-Builder shall take all steps Design-Builder deems necessary at its sole cost and expense without the right to an adjustment of the Contract Price or a Completion Deadline. VPRA will respond to all requests for records and information as required by Law or court order.

21.5.2 Confidential Materials

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

21.5.3 Request for Design-Builder Construction Pricing Documents

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

ARTICLE 22

Miscellaneous Provisions

22.1 Amendments

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

22.2 Waiver

22.2.1 No Waiver of Subsequent Rights

Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time (including any agreement by VPRA to Accept Nonconforming Work under Section 5.5.3) shall not in any way limit or waive that Party's right to subsequently enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future disputes. The consent by one Party to any act by the other Party requiring such consent will not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

22.2.2 Custom Does not Constitute Waiver

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

22.2.3 Waivers Must Be in Writing

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

22.3 Independent Contractor

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

for all other Persons that Design-Builder or any Subcontractor hires or engages to perform or assist in performing the Work.

22.4 Successors and Assigns

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

22.4.1 Assignment by VPRA

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

22.4.2 Assignment by Design-Builder

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

22.5 Designation of and Cooperation with Representatives

22.5.1 Designation of Representatives

VPRA and Design-Builder shall each designate an individual or individuals who will be authorized to make decisions and bind the Parties on matters relating to the Contract Documents. Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section 22.10. The Parties may also designate technical representatives who will be authorized to investigate and report on matters relating to the design and construction of the Project and negotiate on behalf of each of the Parties but who do not have authority to bind VPRA or Design-Builder. The initial designated representatives are specified in Exhibit P.

22.5.2 Cooperation

Design-Builder shall cooperate with VPRA and all representatives of VPRA designated as described above.

22.6 Reserved

22.7 Survival

Design-Builder's representations and warranties, the obligations and requirements in Article 8, insurance requirements in Article 9, the provisions concerning changes in the work contained in Article 12, damages in Article 16, the indemnification provisions in Article 17, the Dispute Resolution Process contained in Article 18, Warranties in Article 20, the requirements concerning documents and records in Article 21, and all other provisions which by their inherent character should survive termination of the Agreement, will survive the termination of the Agreement.

22.8 Limitation on Third-Party Beneficiaries

The Parties do not intend for any of the provisions of the Contract Documents to create any third-party beneficiary unless a specific provision (such as the warranty and indemnity provisions) specifically identifies third parties (such as Utility Owners) and states that they are entitled to benefits under this Agreement. Except as otherwise provided in this Section 22.8, the duties, obligations, and responsibilities of the Parties to the Contract Documents with respect to third parties remains as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between VPRA and a Subcontractor, Supplier, or any other Person except Design-Builder.

22.9 No Personal Liability

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

22.10 Notices and Communication

22.10.1 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):

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

Skanska USA Civil Northeast Inc. Attn.: Michael Viggiano

Telephone: (718) 340-0875

Email: michael.viggiano@skanska.com

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

Skanska USA Civil Inc. Attn.: Michael Di Paolo

Telephone: (718) 340-0775

Email: michael.dipaolo@skanska.com

All communications to VPRA must be marked with VPRA's project 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.: Shirlene Cleveland
919 E. Main Street, Suite 2400

Richmond, VA 23219
Email: Shirlene.Cleveland@vpri.virginia.gov

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@vpri.virginia.gov.

Additionally, Design-Builder shall submit a copy of all notices and other documents under the Contract Documents through the Electronic Document System. Documents that must be submitted to the Electronic Document System include notices, submittals, correspondence, and any other information that the Contract Documents require Design-Builder to provide to VPRA.

22.10.2 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.

22.10.3 Copies of Correspondence to VPRA

Design-Builder shall copy VPRA on all written correspondence pertaining to the Agreement between Design-Builder and any Person other than Design-Builder's Subcontractors, consultants, and attorneys.

22.11 Forum and Venue; Waiver of Jury Trial

Any and all Disputes arising out of or in connection with this Agreement, or any performances made hereunder that are not otherwise resolved through the processes in Sections 18.2 and 18.3 shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia or the United States District Court for the Eastern District of Virginia, Richmond Division. Design-Builder accepts the personal jurisdiction of such courts and waives all jurisdiction and venue-related defenses to the maintenance of such actions. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

22.12 Notice of Bankruptcy or Insolvency

In the event Design-Builder or any Principal Participant enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Design-Builder agrees to furnish, consistent with Section 22.10, written notification of the bankruptcy to VPRA. This notification shall be furnished within five (5) Days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which

the bankruptcy petition was filed, and a listing of VPRA contract numbers against which the Design-Builder asserts final payment has not been made. This obligation remains in effect until the later of final payment under this Agreement or expiration of all Warranties.

22.13 Immigration Reform and Control Act of 1986

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

22.14 Drug Free Workplace

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

22.15 Occupational Safety and Health Standards

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

22.16 Sensitive Security Information; Critical Infrastructure

Design-Builder must protect, and take measures to assure that its Subcontractors at each tier protect sensitive information made available during the course of administering a VPRA contract or Subcontract in accordance with 49 U.S.C. § 40119(b) and implementing U.S.DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. § 114(s) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520. VPRA reserves the right to conduct a fingerprint-based CHBC on all employees of Design-Builder and Subcontractors (together with any proposed replacements) during the term of the Agreement to the extent those individuals will require access to SSI and/or Critical Infrastructure associated with the Project. All costs associated with the fingerprint-based CHBC are the responsibility of Design-Builder. A VPRA issued photo-identification badge may be required for each employee of Design-Builder or any Subcontractor who will need access to SSI and/or Critical Infrastructure. Based upon the results of the fingerprint-based CHBC, VPRA reserves the right to deny issuance of a VPRA security clearance or a VPRA issued photo-identification badge. Design-Builder shall promptly return all VPRA-

issued photo-identification badges whenever an employee of Design-Builder or a Subcontractor is no longer assigned to the Project or is otherwise terminated from employment.

22.17 Marketing and Publicity

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

22.18 Duty to Cooperate on Funding Opportunities

VPRA seeks to maximize funding opportunities pertaining to its projects and the Work included in this Agreement may become eligible for a grant and subject to certain requirements of a funding sponsor. Design-Builder agrees to work cooperatively and creatively with VPRA in connection with any grant application submittals to VPRA's funding partners. Design-Builder further agrees to fully comply with any terms and conditions required as a result of VPRA's participation in a grant.

22.19 Further Assurances

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

22.20 Severability

If any clause, provision, section or part of the Agreement is ruled invalid under Article 18 or otherwise by a court of competent jurisdiction, then the parties will: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which will, to the greatest extent legally permissible, effect the original intent of the Parties, (b) if necessary or desirable, apply to the court or other decision maker (as applicable) that declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part will not affect the validity or enforceability of the balance of the Agreement, which will be construed and enforced as if the Agreement did not contain such invalid or unenforceable clause, provision, section or part.

22.21 Headings

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

22.22 Governing Law

The validity and construction of the solicitation and this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to its choice of law provisions. No doctrine of choice of law shall be used to apply any law other than that of the Commonwealth of Virginia, and no defense, counterclaim or right of set-off given or allowed by the laws of any other state or jurisdiction, or arising out of the enactment, modification or repeal of any law, regulation, ordinance or decree of any foreign jurisdiction, may be interposed in any action hereon. Nothing contained herein shall be construed to limit or modify Design-Builder's obligations under Section 1.9.

22.23 Sovereign Immunity

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

22.24 Entire Agreement

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

22.25 Counterparts; Electronic Signatures

This Agreement 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 Agreement 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 Agreement 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 Agreement and such other documents may be made by facsimile, email or other electronic transmission

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

VIRGINIA PASSENGER RAIL AUTHORITY

<p>[AUTHORIZED REPRESENTATIVE]:</p> <p>Date: _____, 20__</p> <p>By: _____</p> <p>Pursuant to Delegation of Authority</p>	
--	--

DESIGN-BUILDER

Skanska USA Civil Northeast, Inc.	Flatiron Constructors, Inc.
By: _____ Name: _____ _____ Title: _____ Date: _____, 20__	By: _____ Name: _____ _____ Title: _____ Date: _____, 20__

PROGRESSIVE DESIGN BUILD AGREEMENT EXHIBITS

Exhibit A – Acronyms and Definitions	1
Exhibit B – Phase 1 Scope of Work	29
Exhibit C – FRA Required Terms (Form PD 260)	45
Exhibit D – Special provision regarding SMALL BUSINESS utilization (SP 06)	46
Exhibit E – Designated VPRA-Furnished Information	47
Exhibit F – Required Certifications.....	48
Exhibit G – Utility Relocation Agreement Template.....	49
Exhibit H – Davis-Bacon Wages	57
Exhibit I – Force Account Work / Extra Work And Delay Costs Specification	58
Exhibit J – Key Personnel.....	66
Exhibit K – Major Subcontractors.....	73
Exhibit L – Three-Party Agreement.....	74
Exhibit M – Form of Performance and Payment Bonds	75
Exhibit N – Form of Guarantee	87
Exhibit O – Insurance Requirements	98
Exhibit P – Designated Representatives.....	111
Exhibit Q – Railroad Operator Indemnifications	112
Exhibit R – Phase 2 Cash Flow	114
Exhibit S – Form of Phase 2 Amendment	115
Exhibit T – Form of Early Work Amendment.....	118
Exhibit U – Confidentiality Form.....	121
Exhibit V – Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) (SP 07)	122
Exhibit W – Small Business Subcontracting Plan (Form PD 60)	123
Exhibit X – Monthly Small Business Participation Report (Form PD 61)	124
Exhibit Y – Cost Breakdown Structure	125
Exhibit Z – Unpermitted Road Closure FEES	126

EXHIBIT A – ACRONYMS AND DEFINITIONS

As used in the Progressive Design-Build 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).

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
CPM	Critical Path Method
CPR	Concrete Pavement Rehabilitation
CPT	Cone Penetration Test
CQM	Construction Quality Manager
CQP	Construction Quality Procedure
CSBUA	Comprehensive Small Business Utilization Approach
DCP	Dynamic Cone Penetrometer or Penetration Index Method
DMS	Dynamic Message Sign
DQM	Design Quality Manager
DQMP	Design Quality Management Plan
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
GAAP	Generally Accepted Accounting Principles
GIS	Geographic Information System
HMA	Hot Mix Asphalt
ICE	Independent Cost Estimator
IDQM	Independent Design Quality Manager

IFC	Issued for Construction
ISO	International Organization for Standardization
ITP	Instructions to Proposers
ITS	Intelligent Transportation Systems
klf	kip per linear foot
ksi	kip per square inch
KW	Kilowatt
LOE	Level of Effort
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
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
PDBA	Progressive Design-Build Agreement
PM	Project Manager
PMO	Project Management Office
Psi	Pounds per square inch (pressure, stress)

QA	Quality Assurance
QC	Quality Control
QCP	Quality Control Point
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

A.2 Definitions

Acceleration Costs	Costs reasonably incurred by Design-Builder (i.e., costs over and above what Design-Builder 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 VPRA that a particular matter or item appears to meet the requirements of the Contract Documents.
Addendum	A change to the RFP prior to the due date for Proposals.
Affidavit of Final Completion	The affidavit described in <u>Section 19.2.1.2</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, Design-Builder 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] Design-Builder, [ii] any Principal Participant, or [iii] any Affiliate of Design-Builder 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>
Agreement	The Progressive Design-Build Agreement between VPRA and Design-Builder dated [##] and the Contract Documents as defined in <u>Section 1.2</u> .
Allowance	The amount specified in the Phase 2 Amendment to compensate Design-Builder without a Change Order for Extra Work Costs and Delay Costs caused by the occurrence of the Relief Events specified in <u>Section 12.7.1</u> up to the amount stated in the Phase 2 Amendment.
Amtrak	The National Railroad Passenger Corporation.
Applicable Standards	The standards referenced by incorporation into the Minimum Requirements and Technical Provisions.
Application for Final Payment	The application described in <u>Section 11.5.1</u> .
Application for Payment	Design-Builder’s application for a progress payment during the Phase 2 Services or Early Work if applicable, in accordance with Section 2.5 of the Minimum Requirements.

Approve or Approval	Formal conditional determination in writing by VPRA 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.
Audited Overhead Rate	The audited rate of markup that is applicable to the relevant labor costs in accordance with Part 31 of the Federal Acquisition Regulation. The amount of the Audited Overhead Rate is calculated by multiplying the rate by the amount of direct cost to which the rate applies.
Authorities Having Jurisdiction	Third-Parties that have jurisdiction and/or approval rights over all or portions of the Project.
Baseline Schedule	The schedule Approved by VPRA setting forth the schedule of Work, as described in Section 3 of the Minimum Requirements. Baseline Schedule means the most recent Approved Baseline Schedule.
Basis of Design Documents	The documents provided by VPRA showing preliminary design concepts and other information for the Project.
Best Management Practices (BMP)	Management practices for erosion prevention, sediment control, and water quality that are the most effective and practicable means of controlling, preventing, and minimizing degradation of surface water, including avoidance of impacts, construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by state or designated area-wide planning agencies.
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 Construction Price Proposal	A proposal submitted by Design-Builder containing a binding offer to perform the Phase 2 Services for a stated Phase 2 Price and Baseline Schedule.
Calendar Day	Any day shown on the calendar, beginning and ending at midnight.
Change in Law	<p>Any change in a Law or adoption of a new Law, after the date of the Final Construction Price Proposal, to the extent such changed or new Law:</p> <ul style="list-style-type: none">(a) requires a material modification to the Design;(b) requires Design-Builder to obtain a new Environmental Approval not previously required for the Project; or(c) specifically targets the Project or Design-Builder. <p>A “Change in Law” does not include the following:</p>

- (i) Any change in, or new, Law that was passed or adopted but not yet effective as of the date of the Final Construction Price Proposal;
- (ii) Any change in, or new, labor Laws of the Commonwealth or Washington, D.C.;
- (iii) Any change in, or new, Law relating to Design-Builder'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, unemployment taxes or any other tax law changes.

Change Notice	Notification by Design-Builder that a Relief Event or potential Relief Event has occurred, as further described in <u>Article 12</u> .
Change Order	A written amendment to the Contract Documents, including a Unilateral Change Order.
Claim	A request or demand by Design-Builder for (a) a Completion Deadline adjustment that is disputed by VPRA, or (b) payment of money or damages arising from work done by or on behalf of Design-Builder in connection with the Agreement that is disputed 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 a Relief Event is considered filed or submitted upon Design-Builder'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 Design-Builder.
Construction Cost Estimate	An estimate by Design-Builder of the cost to perform the Phase 2 Services, including the Opinion of Probable Construction Cost, Binding Construction Price Proposal, and Final Construction Price Proposal.
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), Field Design Changes (FDC), Notice of Design Changes (NDC), and other official correspondence to/from Design-Builder, VPRA, and Subcontractors.
Construction Draw Schedule	The schedule setting forth Design-Builder's expected monthly draw to perform the Phase 2 Services in accordance with the Baseline Schedule.

Construction Price Negotiations	The process of VPRA's and Design-Builder's negotiation of the Phase 2 Price, including comparison of the Construction Cost Estimates to the ICE's estimates and the reconciliation of differences in price.
Construction Pricing Documents	All documentary information used in Design-Builder's preparation of the Binding Construction Price Proposals, Final Construction Price Proposal, and by Subcontractors in the preparation of their Subcontract prices, in addition to all documents relating to the pricing of Change Orders.
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	<p>(a) Any soil, sediment, debris, or water that has chemical contaminants at or above federal, Commonwealth or Local regulatory criteria.</p> <p>(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,</p> <p>(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,</p> <p>(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,</p> <p>(e) petroleum hydrocarbons, excluding petroleum hydrocarbon products contained within regularly operated motor vehicles, and</p> <p>(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,</p>

	petroleum derived constituents, biomedical waste, or hazardous or toxic residue.
Contract Days	The total number of Days for performance of the Phase 2 Services, starting (and including) the date of issuance of the Phase 2 NTP and ending on the date of Substantial Completion.
Contract Documents	The meaning set forth in <u>Section 1.2</u> .
Contract Price	The Phase 1 Services Fee, Early Work Price (if any), and the Phase 2 Price.
Cost Breakdown Structure	A breakdown or hierarchal representation of the various costs on the Project that represents the cost components in the Work Breakdown Structure.
Court Order	An order by a court of competent jurisdiction that enjoins or otherwise significantly restricts all or any portion of the Work.
CPM Schedule	The meaning set forth in Section 3 of the Minimum Requirements.
Critical Activity	An activity with zero or negative total Float.
Critical Infrastructure	A system or asset so vital that its incapacity or destruction would (i) have a debilitating impact on public health, safety or security; or (ii) cause significant economic harm or instability.
Critical Path	The longest continuous sequence of activities through a schedule that establishes the minimal overall duration to Substantial Completion.
Day or day	The meaning set forth in <u>Section 1.6</u> .
Delay Costs	Design-Builder's additional costs due to a delay to the Critical Path caused by a Relief Event during Phase 2 or Early Work, as limited to those costs provided in <u>Exhibit I</u> .
Design	The design of the Project.
Design-Builder	Skanska Flatiron LBN JV, comprised of the following two entities, jointly and severally liable for the performance of the Agreement: (i) Skanska USA Civil Northeast, Inc. (a New York corporation with Virginia State Corporation Commission entity ID no. F0228090), and (ii) Flatiron Constructors, Inc. (a Delaware corporation with Virginia State Corporation Commission entity ID no. F1787565).
Design-Builder's Risk Recapture Fee	The fixed fee paid to Design-Builder as set forth in <u>Section 2.4.2</u> and which is included within the Phase 1 Services Fee.
Design-Builder-Related-Entity	Design-Builder; Design-Builder'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 Design-Builder's behalf over which Design-Builder directly or indirectly exercises control; any other Persons for whom Design-Builder may be legally or contractually responsible; and the employees, agents, officers,

	directors, shareholders, representatives, consultants, successors, assigns, and invitees of any of the foregoing.
Design Documents	Documents including design drawings, calculations, special provisions, special management plans, other reports, and shop drawings required for construction, including the Issued for Construction Documents.
Design Work	All efforts necessary to prepare the Design.
Designated VPRA-Furnished Information	The documents described in <u>Section 2.1.4</u> and identified in Exhibit E of the Agreement, including the information identified as Designated VPRA-Furnished Information in the RFP and supplemented during the Phase 1 Services.
Differing Site Condition	<p>Concealed or latent physical conditions or subsurface conditions at the Site that: (i) materially differ from the conditions indicated in the Designated VPRA-Furnished Information or as 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>
Direct Labor Cost	The direct hourly wage rate paid to an employee, not including any markup for overhead, profits, fringe, benefits, taxes, insurance, training, holidays, bonuses, perks, vehicles, equipment, uniforms, supplies, or similar costs.
Directive Letter	The letter defined in <u>Section 12.1.1.2</u> .
Discovery of Unknown Preexisting Contaminated Materials	The discovery of Contaminated Materials in the Project ROW existing prior to the Effective Date that requires assessment, containment, and/or remediation before the Work can proceed at the affected location and was either not disclosed in the RFP or Designated VPRA-Furnished Information or was not and could not have been discovered by Design-Builder with reasonable diligence prior to the Final Construction Price Proposal.
Dispute	A dispute between VPRA and Design-Builder that qualifies for resolution using the Dispute Resolution Process. When used in its lower case form, “dispute” shall have its plain language meaning.
Dispute Resolution Process	The procedures under <u>Article 18</u> for the resolution of Disputes.
Early Work	Construction Work that is negotiated separately from the overall Construction Work and may be performed by Design-Builder prior to agreement on a Phase 2 Price for the entirety of the Phase 2 Services.
Early Work Amendment	An amendment to the Contract Documents that adds an Early Work Package to Design-Builder’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 Design-Builder 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 Design-Builder performs an Early Work Package.
Early Work Proposal	A proposal submitted by Design-Builder 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 Agreement by the final Party thereto.
Electronic Document System	The electronic system provided by VPRA for the purpose of exchanging documents and information for the Project.
Engineer of Record	The District of Columbia licensed professional engineer who develops the overall design and the design criteria for the Plan, drawing, specification, plat, report, or other document and is responsible for the preparation of the Design Documents.
Environmental Approvals	The Governmental Approvals necessary to comply with Environmental Laws impacting the Project.
Environmental Compliance Plan	The environmental compliance plan provided by Design-Builder and Approved by VPRA as described in Section 12.4.1 of the Minimum Requirements.
Environmental Laws	All Laws now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases, or threatened releases of hazardous, toxic or dangerous waste, substance or material into the environment, including into the air, surface water or groundwater, or onto land, or relating to the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport, or handling of Contaminated Materials or otherwise relating to the protection of public health, public welfare, or the environment (including protection of nonhuman forms of life, land, surface water, groundwater and air), including CERCLA; RCRA; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 <i>et seq.</i> ; the National Environmental Policy Act, 42 U.S.C. §§ 4321 <i>et seq.</i> ; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 <i>et seq.</i> ; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 <i>et seq.</i> ; the Endangered Species Act, 16 U.S.C. §§ 1531 <i>et seq.</i> ; the Clean Water Act, 33 U.S.C. §§ 1251 <i>et seq.</i> ; the Clean Air Act, 42 U.S.C. §§ 7401 <i>et seq.</i> ; the Safe Drinking Water Act, 42 U.S.C. §§ 300f <i>et seq.</i> ; the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 <i>et seq.</i> ; and the Bald Eagle Protection Act, 16 U.S.C. § 668, each as amended.
Equipment	All machinery, tools, and apparatus, together with the necessary supplies for upkeep and maintenance, necessary for the proper construction and/or completion of the Work.

Escalation Ladder	The process described in <u>Section 18.2.1</u> for resolving Disputes.
Event of Default	A default as described in <u>Section 15.1.1</u> , following notice and opportunity to cure to the extent permitted by <u>Section 15.1.2</u> and issuance by VPRA of notice to Design-Builder that an Event of Default has occurred.
Extra Work	Any Work in the nature of additional work, altered work or deleted work that is directly attributable to a Relief Event and that, absent the Relief Event, would not be required by the Contract Documents.
Extra Work Costs	The additional costs attributable to Extra Work, including costs for labor, Material, and Equipment, and other direct and indirect costs. Extra Work Costs shall be calculated in accordance with <u>Exhibit I</u> . Extra Work Costs do not include Delay Costs.
Extreme Weather Event	The occurrence of rain or snow at any location on the Project ROW that prevents Design-Builder 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 or Prevailing Wage	The wage rates provided in <u>Exhibit H</u> , an Early Work Amendment, and the Phase 2 Amendment, as applicable, and 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>Exhibit C</u> and <u>V</u> .
Field Design Change	A document produced by Design-Builder to notify VPRA of a change in design resulting from situations discovered in the field after the design package has been Issued for Construction. A Field Design Change could affect Issued for Construction Documents.
Field Indirect Costs	<p>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 (which do not include any Home Office Overhead) include the following:</p> <p>(a) wages including benefits, payroll insurance, and taxes for onsite management, supervision, engineers, safety personnel, quality control staff, and administration staff;</p>

- (b) cost of construction survey;
- (c) ownership or rental of building, maintenance, facility and debris removal, utilities, office and engineering expendables, furniture, computers and infrastructure, and photographs;
- (d) insurance other than that based on payroll, such as railroad protective, Equipment insurance, and other specified or Design-Builder-required insurances (insurance that is carried by Design-Builder as a general cost of doing business and is already included as Home Office Overhead shall not be considered a Field Indirect Cost);
- (e) taxes, excluding payroll taxes, such as property tax and any special local or state sales tax, included with the applicable item taxed;
- (f) cost of ownership or rental, set up, maintenance, and removal of buildings such as owner's office (if not otherwise a direct bid item), warehouses, first aid building, and other miscellaneous buildings;
- (g) personnel expense (other than direct labor) such as small tools and supplies, safety expendables, drug screen testing, training, physicals, and hiring expense, including any per-diem costs for craft or indirect personnel;
- (h) Site utilities such as temporary electric, water, and sanitary;
- (i) mobile Equipment such as overhead vehicles, maintenance Equipment and personnel (if not in equipment operating expense), and general service Equipment and personnel (such as flatbeds and forklifts if not in direct cost);
- (j) construction plant, including site fences, parking areas, material yards, temporary access, and other such special construction costs not included in direct costs (haul road construction and maintenance are included in direct costs);
- (k) cost of Quality Control labor, Equipment, and supplies and outside services and Design-Builder-hired personnel with site overhead wages;
- (l) cost of payment and performance bonds or other guaranties as specified or allowed; and
- (m) estimated cost of items for which firm pricing cannot be obtained, including increases in craft and field indirect wage rates and fringe benefits whether by agreement or estimated.

**Final
Acceptance**

VPRA's Acceptance of the Project as described in Section 19.2.

**Final
Acceptance
Deadline**

The meaning set forth in Section 4.1.2.

Final Construction Price Proposal	The binding offer to perform the Phase 2 Services containing the information specified in <u>Section 2.7.8</u> .
Final Design	The Design Work performed after issuance of the Phase 2 NTP to complete the Design and enable Design-Builder to request and receive IFC disposition of design packages.
Final Payment	VPRA's final payment to Design-Builder for the Work, with the exception of any payment that the Contract Documents contemplate will be paid by VPRA to Design-Builder after Final Acceptance.
Float	The meaning set forth in Section 3 of the Minimum Requirements.
Force Account	The basis of payment set forth in <u>Exhibit I</u> .
Force Account Change Order	A Change Order for which additional compensation is paid on the basis of Force Account.
Force Majeure	<p>An unforeseeable event beyond the control of Design-Builder, not due to an act or omission of any Design-Builder-Related Entity, that materially and adversely affects Design-Builder'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 Design-Builder, and to the extent that such event directly and materially impacts the Project. Force Majeure shall include only the following events:</p> <ul style="list-style-type: none">(a) war;(b) an act of terrorism, riot, insurrection, civil commotion, or sabotage;(c) national strikes that specifically cause disruption to the Project and are not specific to a Design-Builder-Related Entity;(d) explosion caused by an explosive device;(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;(g) a state of emergency (as declared by the Governor of Virginia or Mayor of Washington, D.C.) 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; 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.
General Assembly	The legislative body of the Commonwealth.

Good Industry Practice	<p>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.</p> <p>As applied to the Design Work, Good Industry Practice refers to the duty of design professionals 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.</p>
Governmental Approval	<p>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.</p>
Governmental Person	<p>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.</p>
Guarantor	<p>Each entity providing a Guaranty.</p>
Guaranty	<p>Each guaranty of Design-Builder's obligations under the Contract Documents.</p>
Health and Safety Plan	<p>Design-Builder's Approved plan establishing all health and safety procedures for the Work.</p>
Hold Point	<p>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. A Hold Point may also be referred to as a Quality Control Point in the Contract Documents.</p>
Holidays	<p>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.</p>
Home Office Overhead	<p>Design-Builder's overhead costs and expenses that cannot be attributed and are not billed to a specific project, but are incurred in support of all of Design-Builder's (or the Principal Participants') projects, including rent, office equipment and furnishings, insurance, office supplies, depreciation,</p>

	taxes, and utilities, as well as executive salaries, administrative staff salaries, project support staff salaries, and accounting and payroll services.
Inaccurate Utility Information	The meaning set forth in <u>Section 12.12.3.1</u> .
Indemnified Party(ies)	The Virginia Indemnitees and other parties expressly entitled to indemnification by Design-Builder under the Contract Documents, including Amtrak and CSXT to the extent specified in <u>Exhibit Q</u> .
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.
Independent Design Quality Manager	The firm(s) performing quality assurance over the Design, as required by Section 5.7.2 of the Minimum Requirements.
Independent Quality Assurance	All actions performed by VPRA to verify that the Design complies with the requirements of the Contract Documents.
Instructions to Proposers	The RFP document identified as the Instructions to Proposers.
Issued for Construction (IFC)	A Final Design submittal Accepted by VPRA.
Issued for Construction Documents	Design Documents that have received an Issued for Construction disposition from VPRA in accordance with the process in Section 4.2.4 of the Minimum Requirements. IFC documents include drawings, specifications, special provisions, technical memos, studies, calculations, independent check calculations for structures, and other pertinent data, as applicable.
Issued for Construction Submittal	The design plans to be submitted by Design-Builder to VPRA for concurrence to release the Plans for construction, as further described in Section 4.2.4 of the Minimum Requirements.
Lane Closure	The closing of a traffic lane or shoulder by Design-Builder 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.

Lead Designer	The design/engineering firm leading the production of the Design. The Lead Designer is Johnson, Mirmiran & Thompson, Inc. and HNTB Corporation, a Joint Venture.
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.
Major Subcontractor	A Major Subcontractor identified in Design-Builder's SOQ and <u>Exhibit K</u> .
Material	Any substances required for use in the completion of the Project and its appurtenances.
Material Phase 1 Design Change	A change to the Project directed by VPRA that is so extensive that it alters the core goals and intent of the Project and represents such a significant departure from the Basis of Design Documents that it requires Design-Builder to perform different work than contemplated by the Contract Documents provided with the RFP.
Minimum Requirements	The Contract Document containing the mandatory aspects of the Design.
Neutral	The Person to whom Disputes may be referred subsequent to the Escalation Ladder, as described in <u>Section 18.3</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 18.3.5</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 Design-Builder to obtain under <u>Section 6.4.2</u> .
Nonconforming Work	Work that does not meet the requirements of the Contract Documents.
Non-renewal of VPRA Permits or	The non-renewal of permits or environmental clearance that VPRA is required by the Contract Documents to obtain, provided that Design-Builder has cooperated with all requests for information from VPRA or other steps

Environmental Clearance	for which Design-Builder 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	Design-Builder'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 Design-Builder 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 Design-Builder, as provided in <u>Section 2.8.1</u> and <u>Exhibit B</u> .
Other Direct Costs	The reimbursable costs identified in <u>Exhibit B</u> .
Over-the-Shoulder Reviews	Informal meetings between Design-Builder and VPRA design staff during the development of a design package intended to generate discussion and provide conceptual level feedback. No minutes of these meetings are kept, and any Design-Builder actions based on these meetings are at Design-Builder's own risk.
Partnering	The processes and procedures described in <u>Section 18.1</u> .
Party	A party to the Agreement, as identified therein.
Performance and Payment Bond	The performance and payment bonds described in <u>Section 8.1</u> .
Person	Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization, joint venture, or Governmental Person, including VPRA.
Phase 1	The preconstruction and design period during which Design-Builder performs the Phase 1 Services.
Phase 1 NTP	The NTP issued by VPRA to Design-Builder that authorizes Design-Builder to commence performance of the Phase 1 Services.
Phase 1 Services	The services identified in <u>Exhibit B</u> .

Phase 1 Services Fee	The not-to-exceed fee payable to Design-Builder for performance of the Phase 1 Services.
Phase 2	The Final Design and construction period during which Design-Builder performs the Phase 2 Services.
Phase 2 Amendment	An amendment to the Contract Documents that adds the Phase 2 Services to the Design-Builder's scope of Work, and includes all terms and conditions for Design-Builder's performance of the Phase 2 Services.
Phase 2 NTP	The NTP issued by VPRA to Design-Builder that authorizes Design-Builder to commence performance of the Phase 2 Services.
Phase 2 Price	The lump-sum price payable to Design-Builder for performance of the Phase 2 Services.
Phase 2 Services	The Final Design and Construction Work, as specified in further detail in the Phase 2 Amendment.
Plan	The plan, profiles, typical cross-Sections, and supplemental drawings that show the locations, character, dimensions, and details of the Work to be done.
Price Reconciliation	The process of reconciling differences between Design-Builder'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	<p>A Person that is:</p> <ul style="list-style-type: none">(a) A member of the joint venture, if Design-Builder is a joint venture;(b) Design-Builder, if Design-Builder is a corporation; or(c) An equity owner of Design-Builder, if Design-Builder is organized as a business other than a corporation (e.g., a member, partner, or shareholder of the Respondent entity).
Private Utility	A Utility that is owned by a Private Utility Owner.
Private Utility Owner	Any owner or operator of a Utility that is not a Public Utility Owner.
Professional Services	<p>All work other than Construction Work, including:</p> <ul style="list-style-type: none">(a) design and engineering;(b) environmental permitting and compliance;(c) public involvement and communications;(d) right of Way acquisition and support; and(e) surveying other than for construction. <p>Professional Services does not include construction superintendence, construction project management, or other services of a professional nature (accounting, legal, financial) performed by a Constructor.</p>

Progress Schedule	The schedule submitted with each Application for Payment showing the progress of the Work, consistent with Section 3 of the Minimum Requirements.
Project	The North Package of the Long Bridge Project, as more specifically described in Section 1 of the Minimum Requirements, and all other Work to be provided by Design-Builder 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 Design-Builder'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 was shortlisted under VPRA's RFQ and that submitted a Proposal in response to the RFP.
Protection of Existing Utilities	Any activity undertaken to avoid damaging a Utility that does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility's location by construction Equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered Protection of Existing Utilities; whereas temporarily moving power lines to another location after cutting them would be considered a temporary Utility Relocation.
Public Engagement and Communications Plan	The public information plan provided by Design-Builder and Approved by VPRA as described in Section 11 of the Minimum Requirements.
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 (inclusive of the government of the District of Columbia) 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 Assurance	With respect to the Construction Work, all planned and systematic actions performed by VPRA to certify that all Work complies with the requirements of the Contract Documents and that all Materials incorporated in the Work,

all Equipment used, and all elements of the Work will perform satisfactorily for the purpose(s) intended. Actions include specification reviews, document control reviews, and working plan reviews; construction inspection; Materials sampling and testing at the production Site and the Project Site; oversight of manufacturing/processing facilities and equipment; oversight of on-Site equipment; calibration of test equipment; acceptance or rejection of Material; and documentation of all activities.

With respect to the Design Work, all actions performed by the IDQM firm(s) to certify that the Design (or a design submittal) complies with the requirements of the Contract Documents.

Quality Control	The total of all activities that are performed by Design-Builder, the Lead Designer, Subcontractors, producer, or manufacturer to ensure the Work meets the requirements of the Contract Documents. Quality Control may include design reviews and 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 Quality Control activities.
Quality Plan	The quality plan provided by Design-Builder and Approved by VPRA as described in Section 5.5 of the Minimum Requirements.
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 Design-Builder 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.
Reasonable Accuracy	The meaning set forth in <u>Section 12.12.3.2</u> .
Recommendations	The non-binding report of recommendations issued by the Neutral in accordance with <u>Section 18.3.6</u> .
Recovery Schedule	A proposed schedule submitted by Design-Builder that shows Design-Builder's plan to recover from a delay and achieve the Completion Deadlines, as set forth in Section 3 of the Minimum Requirements.
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: (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.
Relocation Plan or Utility Relocation Plan	Design-Builder's plan to coordinate with Utility Owners and Relocate Utilities to accommodate the Project.
Request for Change Order	The request submitted by Design-Builder for a Change Order in accordance with <u>Section 12.4</u> .
Request for Change Proposal	A proposal issued by VPRA under <u>Section 12.2.1</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 July 7, 2023, and as amended.
Request for Qualifications ("RFQ")	The Request for Qualifications for the Project issued by VPRA on March 24, 2023, and as amended.
Review Level	The levels of review in the Escalation Ladder, as described in <u>Section 18.2.1.1</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 schedule in Section 14.3 of the Minimum Requirements providing the dates that VPRA will make the ROW shown on the ROW Work Map available to Design-Builder for access and use. For purposes of a VPRA-Caused Delay, the ROW Schedule is the version provided to Design-Builder (or updated in the Minimum Requirements) during the Phase 1 Services no later than 30 days prior to Design-Builder’s 60% design submittal described in <u>Exhibit B</u> .
ROW Work Map	The information identifying the ROW in which VPRA currently has rights to undertake the Project, together with the ROW to be acquired by VPRA for purposes of the Project, including the information provided in Section 14.3 of the Minimum Requirements and other information provided by VPRA. The ROW Work Map constitutes the Right of Way that will be made available to Design-Builder for the Project.
Schedule	The Baseline Schedule, Progress Schedule, or Recovery Schedule, as dictated by context.
Self-Perform	The act of Design-Builder or a Major Subcontractor undertaking the Construction Work directly with its own forces (rather than having a Subcontractor or other Person undertake such Construction Work).
Schedule Impact Analysis (SIA)	Analysis of the anticipated impacts of schedule changes impacting the Critical Path, as described in Section 3.8 of the Minimum Requirements.
Self-Performed Work	Construction Work undertaken by Design-Builder’s own forces, and, where applicable, by Major Subcontractors’ own forces. Self-Performed Work does not include Construction Work performed by Subcontractors or other Persons other than Major Subcontractors.
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.
Shop Drawing	Drawing submitted by Design-Builder depicting the proposed fabrication and/or assembly of structural elements or the installation of Materials or Equipment.
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 Design-Builder

	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 Design-Builder to facilitate performance of the Early Work.
Small Business	A firm certified as small business by the Department of Small Business and Supplier Diversity (DSBSD). This shall also include DSBSD- certified women- and minority-owned businesses and businesses with DSBSD service disabled veteran -owned status when they also hold a DSBSD certification as a small business.
Small Business Subcontracting Plan	The plan prepared by Design-Builder, subject to VPRA’s Approval, that describes Design-Builder’s Small Business Utilization commitments on the Project.
Statement of Qualifications	Design-Builder’s response to the Request for Qualifications.
Stormwater Pollution Prevention Plan (SWPPP)	A plan for stormwater discharge that includes both temporary and permanent measures to prevent erosion and control sediment.
Stop Work Notice	A formal notification by VPRA or Design-Builder’s authorized personnel requiring Design-Builder 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 Design-Builder and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.
Subcontractor	Any Person with whom Design-Builder 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 19.1</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 4.1.1</u> .
Supplier	Any Person other than employees of Design-Builder not performing Work at the Site that supplies machinery, Equipment, Materials or systems to Design-Builder 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 Payment and Performance Bonds.
Technical Provisions	The specifications, standards, and requirements developed as part of the Phase 1 Services and included in the Contract Documents that provide the technical specifications for the Project.
Temporary Construction Easement	A temporary interest in land to provide for temporary use of private property for construction of the Project to perform project engineering and/or Construction Work. Temporary Construction Easements include those shown in the ROW Work Map.
Temporary Work Area	Areas in which Design-Builder 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 Design-Builder's convenience, in addition to any co-located office.
Third-Party	A Person that is not a Party to the Agreement but that has approval rights or a right to provide input over the Work.
Three-Party Agreement	The agreement between VPRA, the Design-Builder, and the Lead Designer.
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.
Transportation Management Plan	The plan provided by Design-Builder and Approved by VPRA as described in Section 23.4 of the Minimum Requirements.
Uncovering and Restoring Work	The situation for which Design-Builder is entitled to relief as provided in <u>Section 5.3.3</u> .
Unilateral Change Order	A Change Order issued by VPRA as defined in <u>Section 12.2.2</u> .
Unpermitted Road Closure	The closure of any Road outside the time Approved by VPRA.
Unpermitted Track Closure	The closure of any Railroad outside the time Approved by VPRA or a Railroad Owner.
Unresolved Disputes	The Disputes that have not achieved resolution at Final Acceptance of the Project and that have complied with all requirements to which the Dispute is subject under the Contract Documents, including <u>Article 12</u> and <u>Article 18</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 with a Utility Owner, addressing one or more Utility conflicts associated with the Project. Counterparties to such agreement may be VPRA and/or Design-Builder, and in some cases, a Utility Owner may be party to an already-existing Utility Agreement between it and CSXT, which already-existing agreement contains provisions governing Relocation of the Utility Owner’s facilities for the benefit of the Project.
Utility Delay	Subject to <u>Section 12.12.4</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 in the RFP or 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 Construction Price Proposal.
Utility Notification Service	A service that notifies Utility Owners of planned work that may impact a Utility, including such services as 811, Miss Utility, Virginia 811, DigAlert, OneCall, and others, depending on location.
Utility Owner	The owner or operator of any Utility.
Utility Permit	All appropriate approvals, exemptions, filings, licenses, permits and registrations, and any other Governmental Approvals required by or with any Governmental Person or Utility Owner necessary for any Utility Work.
Utility Relocation Plans	The design plans for Relocation of a Utility impacted by the Project to be prepared by Design-Builder or the Utility Owner.
Utility Removal Work	Work necessary to remove any Utilities for which leaving the Utilities in-place is not feasible or not permitted, or that Design-Builder otherwise proposes to be removed to accommodate or permit construction of the Project, regardless of whether replacements for such Utilities are being installed in other locations.
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 Design-Builder and/or the Utility Owners, and (b) any Betterments added to the Work pursuant to Section 6.2.2.

**Virginia
Indemnitees**

The Commonwealth of Virginia and VPRA as defined in Section 17.1.1.

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 Section 13.1, to the extent provided therein;

(b) VPRA-Directed Changes;

(c) Failure or inability of VPRA to provide Design-Builder with access to Right of Way identified on the ROW Work Map on or before the date stated in the ROW Schedule, subject to Section 6.1;

(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 Design-Builder submittal or other document; and

(e) VPRA's breach of a material obligation under the Contract Documents.

**VPRA-Directed
Change**

Any changes in the Work or the Contract Documents that VPRA has directed Design-Builder to perform, as described in Article 12.

Warranty

Design-Builder's warranties of the Work specified in Section 20.1.1.

Warranty Work

Corrective Work performed or to be performed by Design-Builder to remedy defects or otherwise cause an element of the Work to comply with Design-Builder's Warranties.

Work

All work required under the Contract Documents, including all administrative, design, 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 Design-Builder 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 Design-Builder-Related-Entity. Work refers to and includes the Phase 1 Services, Phase 2 Services, and Early Work.

Work Breakdown Structure	A deliverable-oriented grouping of Project activities that organizes and defines the total scope of the Project.
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 Design-Builder 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 Design-Builder 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 – PHASE 1 SCOPE OF WORK

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 shall be subject to negotiation with the Design-Builder.

Design and Technical Services

- 1) Design-Builder shall develop a Work Breakdown Structure (“WBS”) for the Construction Work. The Design shall conform to the WBS.
- 2) Design-Builder shall develop design packages that break down the Design into discrete construction packages. The design packages shall be consistent with the WBS and ultimately enable VPRA to release discrete design packages for construction. The design package breakdown shall also include a single 60% design submittal for the entire Project. Design-Builder shall submit the design package breakdown to VPRA for Approval prior to submitting design packages to VPRA for review and comment.
- 3) Design-Builder shall prepare the Design of the Project. Design-Builder shall start with the Basis of Design Documents and other materials provided by VPRA as a basis for the Design and advance the Design toward completion. Except where Approved by VPRA, the Design shall comply with the Minimum Requirements. Design-Builder shall perform constructability reviews and ensure that the Design is constructible. The design of Utility Relocation Plans is not included in the initial scope of the Design Work and is not included in the Phase 1 Price Component submitted with the Proposal. VPRA and Design-Builder will negotiate the scope and fee of the design of Utility Relocation Plans once the scope of Utility Work for which Design-Builder is responsible is known.
- 4) Design-Builder shall perform all services incidental to preparing the Design, including survey as needed.
- 5) Design-Builder shall submit designs to VPRA for review, comment, and Acceptance by VPRA and all other Third-Parties with the right to review, comment, and approve designs. Design-Builder must receive VPRA’s Approval of the Design Quality Plan prior to submitting designs for VPRA’s review. The design submittal process shall be in accordance with the Minimum Requirements and shall include a single design submittal when the Design is 60% complete.
- 6) Design-Builder shall prepare and submit a 60% design package for review and Acceptance by VPRA. The 60% design package shall include all requirements specified in the Minimum Requirements, including all Design Work necessary for the Utility Work. Design-Builder shall resolve all comments on the 60% design submittal sufficient to receive the required Acceptance from VPRA.
- 7) Design-Builder shall incorporate approved value engineering concepts into the Design.
- 8) Design-Builder shall coordinate with and align the scope of design work with the design-build team selected for the South Project.
- 9) Design-Builder shall prepare the deliverables identified in the Minimum Requirements for the Phase 1 Services. The deliverables include those stated in Appendix A to this scope of work and any additional deliverables identified in the Minimum Requirements.
- 10) Design-Builder shall lead the preparation of the Technical Provisions that establish the parameters and guidelines for Final Design and Construction Work and shall incorporate comments from VPRA and Third-Parties into the Technical Provisions. The Technical Provisions shall be organized by discipline in the same manner as the Minimum Requirements. The Technical Provisions shall build from the Minimum Requirements but shall conform to the Minimum Requirements except where a deviation is Approved by VPRA.

The Technical Provisions shall also be consistent with the Accepted Design and Third-Party requirements and approvals. Design-Builder shall closely coordinate with VPRA for the drafting of the Technical Provisions. The final Technical Provisions shall be incorporated into the Phase 2 Amendment (if executed) and become binding on Design-Builder.

Collaborative Sessions

- 11) Design-Builder shall participate in a kickoff workshop with VPRA. During the kickoff workshop, the Parties will finalize the Phase 1 Services schedule, schedule future workshops, develop a framework for the Design Quality Plan, and agree on other administrative milestones. Within five Days after the kickoff workshop, Design-Builder shall submit a schedule for the Phase 1 Services. The Phase 1 Services schedule shall be a CPM schedule in Primavera P6 consistent with good industry practice that shows critical milestones in the Phase 1 Services.
- 12) Design-Builder and VPRA shall hold a design packaging workshop. Design-Builder shall present concepts for design packages to VPRA for feedback. Design-Builder shall incorporate feedback from VPRA before submitting the design packages for VPRA's review and comment.
- 13) Design-Builder and VPRA shall hold constructability workshops. During the workshops, Design-Builder shall present its assessment of constructability of the design packages, including any challenges it anticipates and how to address such challenges. Design-Builder shall incorporate the findings of constructability assessments and workshops into the Design.
- 14) Design-Builder shall participate in a scoping workshop to consider scope items to add or delete from the Construction Work following Design-Builder's submission of the OPCC.
- 15) Design-Builder shall participate in a general task force meeting on a monthly basis to discuss Project issues.
- 16) Design-Builder shall participate in discipline specific workshops, including structures, drainage, rail, systems, interface, maintenance of traffic, civil works, and other disciplines that warrant such workshops.
- 17) Design-Builder shall attend a design concept meeting with VPRA on a weekly basis starting upon issuance of the Phase 1 NTP. During the design concept workshops, the Parties shall discuss various design concepts for incorporation into the Design, including value engineering concepts that can reduce costs, reduce the duration of the Baseline Schedule, and mitigate risks. Any Party may propose a design concept for discussion.
- 18) Design-Builder shall participate in workshops to discuss the progression of the Technical Provisions. These meetings will coordinate drafting of various Sections, review submitted drafts, and discuss issues for resolution.
- 19) Design-Builder shall participate in monthly risk workshops with VPRA, starting within 30 days of VPRA's issuance of the Phase 1 NTP and ending when VPRA issues a Phase 2 NTP or terminates the PDBA in accordance with Section 2.9. VPRA will maintain the master risk register that will be discussed during the workshops and provide access to Design-Builder for input prior to and after the workshops. The risk register will continue to be maintained and updated during the Phase 2 Services.
- 20) Design-Builder shall evaluate the amount of the Allowance. The Allowance amount shall be a component of the Construction Cost Estimates.

Construction Cost Estimates, Schedule Preparation, and Negotiation

- 21) Design-Builder shall perform continuous cost estimating of the cost to perform the Phase 2 Services. When requested by VPRA, Design-Builder shall provide its cost estimates to VPRA and participate in Price Reconciliation workshops to discuss the estimates.
- 22) Design-Builder shall prepare Construction Cost Estimates of the design concepts considered during the design concept meetings described in Paragraph 17. Design-Builder shall also evaluate the impact of such concepts on the proposed Baseline Schedule and provide such analyses to VPRA.
- 23) Design-Builder shall prepare the Baseline Schedule for performance of the Phase 2 Services. Design-Builder shall submit the proposed Baseline Schedule with each Construction Cost Estimate milestone submission. The Baseline Schedule shall be consistent with the requirements of Section 3 of the Minimum Requirements. The Baseline Schedule with the Final Construction Price Proposal and incorporated into the Phase 2 Amendment will become the Baseline Schedule for the Phase 2 Services, which shall be updated in accordance with the Minimum Requirements.
- 24) Design-Builder shall prepare and submit to VPRA an Opinion of Probable Construction Cost ("OPCC") within 90 days of Design-Builder's receipt of the Phase 1 NTP. The OPCC shall be consistent with Section 2.8.1 of the PDBA.
- 25) Design-Builder shall prepare and submit the Binding Construction Price Proposal after Acceptance by VPRA (after resolution of all comments by VPRA and Third-Parties) of the 60% design submittal and receipt of the memorandum authorizing Design-Builder to submit the first Binding Construction Cost Proposal stated in Section 4.2.1 of the Minimum Requirements. The Binding Construction Price Proposal shall be consistent with Section 2.8.2 of the PDBA. Design-Builder shall submit the Binding Construction Price Proposal to VPRA on or before the date stated in the Phase 1 Schedule.
- 26) Design-Builder shall participate in Price Reconciliation workshops with VPRA and the ICE to discuss Design-Builder's Construction Cost Estimates. Design-Builder shall be prepared to reconcile differences between the ICE's estimate and the Design-Builder's Construction Cost Estimates, as well as to explain all assumptions that Design-Builder used to develop the estimates for the Phase 2 Services on an Open Book basis.
- 27) If requested by VPRA, or if Design-Builder's Binding Construction Price Proposal is not within the threshold specified in Section 2.12.2 of the PDBA, Design-Builder shall update the Binding Construction Price Proposal based on discussions, workshops, and the Price Reconciliation meetings with VPRA and the ICE. Design-Builder may continue to update the Binding Construction Price Proposal based on progression of the Design. Design-Builder shall update the Binding Construction Price Proposal until (i) VPRA accepts the Binding Construction Price Proposal and requests submission of a Final Construction Price Proposal, or (ii) VPRA terminates the PDBA in accordance with Section 2.9 therein.
- 28) Design-Builder shall submit a Final Construction Price Proposal consistent with Section 2.7.8 of the PDBA.

Third-Party Coordination and Design Review

- 29) Design-Builder shall coordinate with all Third-Parties (including Utility Owners, AHJs, Governmental Persons, CSXT, Amtrak, VRE, and others) to obtain all required approvals and permits necessary to perform the Work. Third-Party coordination includes discussion of the Design with Third-Parties to facilitate receiving approval of the Design from such Third-Parties consistent with VPRA's commitments to applicable Third-Parties.

- 30) Design-Builder shall assist VPRA with its efforts to coordinate with Third-Parties. Such assistance shall include preparing presentations of the Design; providing and presenting constructability reviews and construction options; and presenting means and methods, staging, phasing, and other elements of performing the Construction Work in any locations that require Third-Party approval.
- 31) Design-Builder shall confirm the location of all existing Utilities within the Project ROW. This task includes only the necessary labor; direct costs associated with Utility exploration shall be paid separately via Change Order.

Subcontracting and Competitive Bidding

- 32) Design-Builder shall meet with VPRA to discuss its plan for soliciting Subcontractor bids for incorporation into the Construction Cost Estimates.
- 33) Design-Builder shall perform Subcontractor outreach as necessary to obtain prices for performance of subcontracted Construction Work for use in the Construction Cost Estimates. Design-Builder shall submit all documents and other materials used to perform such outreach and submitted by potential Subcontractors to VPRA for review.
- 34) Design-Builder shall prepare a Small Business Subcontracting Plan (VPRA Form PD 60) for the Phase 2 Services consistent with the Special Provision Regarding Small Business Utilization (Exhibit D to the PDBA).

Early Work Packages

- 35) Design-Builder shall identify discrete aspects of the Construction Work that can be performed prior to execution of a Phase 2 Amendment. Design-Builder shall attempt to identify Construction Work that can be performed on its own and without dependence on performance of any other Construction Work. Design-Builder shall identify potential Early Work Packages that mitigate risk and enable timely completion of the remaining Construction Work.
- 36) For each Early Work Package identified, Design-Builder shall present the following to VPRA:
 - a. Design work necessary for construction
 - b. Construction Cost Estimate(s) of the Early Work Package, consistent with Article 2 of the PDBA.
- 37) Design-Builder shall participate in Price Reconciliation meetings with VPRA and the ICE to discuss and negotiate the Construction Cost Estimate(s) for the Early Work Packages.
- 38) Design-Builder shall obtain all required Design Acceptance necessary to perform Early Work, including Acceptance by VPRA and any applicable Third-Parties.

Other Deliverables

- 39) Design-Builder shall perform all necessary activities to fulfill the commitments in the Final Environmental Impact Statement and Record of Decision.
- 40) Design-Builder shall evaluate the Materials needed to complete the Work. Design-Builder shall prepare a memo identifying potential items (including long-lead items) for which early procurement may benefit the Project and submit to VPRA for review. Upon VPRA's Approval, Design-Builder shall procure such long-lead Materials. Payment for Materials procured during the Phase 1 Services shall be as provided in Section 11.3.2 of the PDBA.

Other Direct Costs

Other Direct Costs are not included in the Phase 1 Price Component submitted with the Proposal and will be reimbursed on an actual cost basis provided that they are actually incurred by Design-Builder and VPRA has approved the incurrence of such Other Direct Costs in advance and in writing. Other Direct Costs include only those identified below. All other costs of performing the Phase 1 Services are covered by the applicable markup and are not eligible for reimbursement.

- a) All travel, sustenance, and lodging necessary for performance of the Phase 1 Services, subject to compliance with the most current version of the Commonwealth of Virginia, Department of Accounts (DOA), Commonwealth Accounting Policies and Procedures (CAPP) Manual Topic 20335, available at the DOA website: www.doa.virginia.gov. When travel is authorized it must originate from Design-Builder's nearest office. Amounts in excess of the travel policy will be not be reimbursed. Design-Builder must submit invoices with itemized receipts for all expenses incurred for which Design-Builder seeks reimbursement.
- b) An employee of Design-Builder that does not live local to the Project and requires travel to perform the Work shall be eligible for reimbursement of travel expenses for a period not to exceed 128 Days (or any portion thereof) per individual. After 128 Days (or any portion thereof) of reimbursable travel for an individual, Design-Builder is responsible for all travel costs necessary for such individual to perform the Work and is not eligible for additional reimbursement. Notwithstanding the foregoing, five (5) individuals, subject to substitutions approved by VPRA, will be identified within 30 days after Phase 1 NTP and shall not be subject to the limitation of 128 Days (or any portion thereof) for reimbursement of travel expenses.
- c) Mileage charges for rental cars in connection with out-of-town travel may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations. Mileage costs for travel within the Washington, D.C. metropolitan area (the area that is within a 20 mile radius of the Project ROW) is considered to be included in the applicable markup and is not eligible for reimbursement.
- d) Permit fees and other fees paid to secure the approval of a Third-Party are eligible for reimbursement on an actual cost basis.
- e) The cost of premiums for the Project-specific insurance requirements in Exhibit O.

Phase 1 Services Tentative Schedule*

*This schedule is subject to change based on discussions with Design-Builder. A final Phase 1 schedule will be developed after issuance of the Phase 1 NTP. Not all required meetings in the Minimum Requirements are shown on the chart below.

Event/Milestone/Workshop	Day
Phase 1 NTP	0
Kickoff Workshop	1
Initial design concept workshop (Recurring weekly)	1
Design packaging workshop	7
Technical Provisions Workshop (Recurring – Schedule to be set)	7
Constructability Workshops (recurring)	14
Initial Monthly Risk Workshop	30
Task Force Meetings (Recurring)	30

Discipline Specific Workshops (Recurring – Schedule to be set)	30
Submission of OPCC	90
Cost Reconciliation for OPCC	105
Post-OPCC Scoping Workshop (Recurring as needed)	105
Submission of 60% Design	150
Resolution of 60% Design Comments	230
Submission of Binding Construction Price Proposal	250
Reconciliation workshops/ Proposed Binding Construction Price Revisions	270
Final Proposed Binding Construction Price submission	370
Issuance of Phase 2 NTP (contingent)	400

APPENDIX A

(Phase 1 Technical Deliverables)

Minimum Requirements Section	Submittal	Timeline
2.3.2 Work Initiation Meetings	Work Initiation Meeting Minutes	Within 72 hours of meeting conclusion
2.3.3 Regular Meetings	Regular Meeting Minutes	Within 72 hours of meeting conclusion
2.7.1 Invoices with the Application for Payment	Invoices with the Application for Payment	With Application for Payment
2.7.2 Monthly Progress Reports	Monthly Progress Report	With Application for Payment
2.7.3 Progress Schedule	Progress Schedule	With Application for Payment
2.7.4 Payment Breakdown	Payment Breakdown	Before the first monthly Application for Payment
2.7.5 Revised Payment Breakdown	Revised Payment Breakdown	Before submittal of an Application for Payment that includes the Payment Breakdown Revisions
2.7.6 Design Breakdown Report	Design Breakdown Report	Before the first monthly Application for Payment
2.8.2 Health and Safety Plan	Health and Safety Plan	Within 30 Days after Phase 1 NTP
3.5.3 Completion, Timeliness and Review of Submittals	Indicative Baseline Schedule	With OPCC
3.5.3 Completion, Timeliness and Review of Submittals	Draft Baseline Schedule	With first Binding Construction Price Proposal
3.5.3 Completion, Timeliness and Review of Submittals	Final Baseline Schedule	With Final Construction Price Proposal
3.5.3 Completion, Timeliness and Review of Submittals	Progress Schedule	With Monthly Application for Payment

Minimum Requirements Section	Submittal	Timeline
3.5.3 Completion, Timeliness and Review of Submittals	Revised Baseline Schedule	Within fourteen (14) days of request
3.5.3 Completion, Timeliness and Review of Submittals	Final As-Built Schedule	Acceptance of Final As-Built Schedule is required as part of Final Completion
4.2.1 60% Design Submission	Comprehensive 60-Percent Design Package	Per Design-Builder's approved Phase 1 schedule
4.8 Design Exceptions and Waivers	Design Exception and/or Design Waivers	As needed to support the 60% design submittal
5.5 Quality Plan	Quality Plan	Within 90 days after the Phase 1 NTP
5.6.1 Design Quality Plan	Design Quality Plan	Prior to submission of design plans to VPRA
5.7.1 Design Certifications	Certifications of Design Conformance and Checker	Within 30 Days of Phase 1 NTP
5.8.2 Construction Quality Plan	Construction Quality Plan	Prior to start of construction
5.8.2.2 Material Certifications	Sources of supply and item Material types that will be used in the Work	No less than 30 days prior to delivery of such Materials to the Project
5.8.2.5 Construction Work Plans	Construction Work Plans	Prior to scheduling pre-activity meeting
8.1 Subcontracting Plan	Subcontracting Plan	90 days after the Phase 1 NTP
9.1 General	Utilities Matrix	No less than 45 days prior to the 60% design submittal
9.6.3 Utility Coordination Work Plan	Utility Coordination Work Plan	With the 60% Design Submittal
9.6.4 Utility Agreements	Draft Utility Agreements	As needed or required
9.6.4 Utility Agreements	Utility Relocation Design Plans (Once scope added)	As needed or required

Minimum Requirements Section	Submittal	Timeline
9.6.6 Utility Permits	Utility Permits	As needed or required
10 Track Design and Railroad Requirements	Track and Railroad 60% Design	With 60% Design Submittal
10.4 CXST Right of Way Protection / Flagging Requirements	Right of Way Protection Request Form	As needed when performing approved design and field investigation activities during Phase 1
11.3 Design-Builder Responsibilities	Public Engagement and Communication Plan	Within 90 days after Phase 1 NTP
11.3.2 Construction Updates and Lookahead Calendars	Construction Updates and Lookahead Calendars	Weekly and monthly
11.3.3 Content and Materials Development	Formatted content for printed newsletters, project website, social media posts and other public information materials as needed	Within 90 days after Phase 1 NTP
11.3.3 Content and Materials Development	Display boards	Within 90 days after Phase 1 NTP
11.3.3 Content and Materials Development	Public-friendly graphics to explain construction work	As needed
11.3.3 Content and Materials Development	Outreach materials such as fact sheets, FAQs, news releases, traffic advisories, flyers, door hangers, presentations and other products as needed	As needed
11.3.4 Dialogue with Directly Impacted Audiences	Communications with impacted residents, businesses and other entities about upcoming construction activities	As needed
11.3.5 Crisis Communications	Crisis Management Plan	Within 90 days after Phase 1 NTP
11.3.6 Media Relations	Deadline-responsive responses to media inquiries	As needed

Minimum Requirements Section	Submittal	Timeline
11.3.7 Hotline and Inquiry Database	Construction hotline	Within 90 days after Phase 1 NTP
11.3.7 Hotline and Inquiry Database	Comprehensive public inquiry/complaint database and response tracker	Within 90 days after Phase 1 NTP
11.3.7 Hotline and Inquiry Database	Content to answer public inquiries/complaints	No more than 72 hours of receipt of inquiry/complaint
11.3.8 Photos	Fifteen(15) safety-approved, high-resolution construction progress photos per month	Monthly
11.3.8 Photos	Project construction progress photos	A minimum of every six (6) months
11.3.9 Project Identification Signage	Project identification signs	Within 90 days after Phase 1 NTP
12.3 Owner's Environmental Roles and Responsibilities	Commitment Tracking Database (CTD)	Within 90 days after the Phase 1 NTP
12.4 Design-Builder Roles and Responsibilities	Vegetation Protection/Restoration Plan	With the 60% Design submittal
12.4 Design-Builder Roles and Responsibilities	Cultural Interpretation Plan	With the 60% Design submittal
12.4.1 Environmental Compliance Plan	Environmental Compliance Plan	Within 60 days after the Phase 1 NTP
12.4.2 Monthly Environmental Monitoring Report and Compliance Checklist	Monthly Environmental Monitoring Report and Compliance Checklist	Within 90 days after the Phase 1 NTP and thereafter as needed
12.4.3 Compliance Checklist	Project-Wide Compliance Checklist	Within 90 days after the Phase 1 NTP
12.7 Natural Resources	Time of Year Restriction Plan	Within 90 days after the Phase 1 NTP
12.10 Water Quality	Water Quality Monitoring Plan	Included as part of the 60% design submittal
12.11 Contaminated Materials	Spill Prevention Control and Countermeasures Plan	Within 90 days after the Phase 1 NTP

Minimum Requirements Section	Submittal	Timeline
12.12 Air Quality	Air Quality Control Plan	Within 90 days after the Phase 1 NTP
12.13 Construction Noise/Vibration	Noise and Vibration Control Plan	Within 90 days after the Phase 1 NTP
12.13 Construction Noise/Vibration	Underwater Noise Monitoring Plan	Within 90 days after the Phase 1 NTP
13.3 Stakeholder Management Plan	Stakeholder Management Plan	Within 90 days after the Phase 1 NTP
15.1 Surveying General	Project and supplemental horizontal and vertical control surveys, subsequent mapping and topographic surveys, bridge-site surveys, track layout, Utility surveys, soils surveys	During Phase 1, PDB shall provide supplemental surveying as necessary
15.5 Preconstruction Survey	Preconstruction survey	45 days prior to submission of the first Binding Construction Price Proposal
17 Structural	Structural Design Plans	With the 60% Design Submittal
17.3.3 Design Life	Service Life and Corrosion Protection Plan for bridge structures	Within 60 days of the Phase 1 NTP
17.3.14 Retaining Walls	Service Life and Corrosion Protection Plan for retaining walls	With 60% Design Submittal
18.3 Subsurface Investigations	Field Investigation Plan	Minimum of 30 days prior to commencement of field investigations
18.5 Monitoring of Existing Infrastructure	Settlement and Vibration Monitoring Plan	In conjunction with 60% Design Plan submittal
18.6 Geotechnical Reports	Geotechnical Reports	Prior to 60% Design submittal
18.7 Design Requirements	Geotechnical Technical Memorandum	With the 60% Design submittal
18.7.1 Bridge Foundation Design	Foundation Testing Program	With the 60% Design submittal
19 Roadway	Roadway Plans and Pavement Report	With the 60% Design Submittal

Minimum Requirements Section	Submittal	Timeline
20.9 Submittals	Project map and memorandum showing which jurisdiction's requirements will be applied to infrastructure	90 Days after Phase 1 NTP
20.4 Mandatory Standards	Drainage map, Drainage plans, calculations and stormwater management report	With 60% Design Submittal
20.4 Drainage Mandatory Standards	Temporary drainage plans and calculations for each proposed construction phase	With 60% Design Submittal
20.4 Mandatory Standards	Stormwater Pollution Protection Plan	With the 60% Design Submittal
20.5 Data Collection	Survey for existing storm sewer system within the Site	90 Days after Phase 1 NTP
20.5 Data Collection	Level B survey for existing utilities within the Site	90 Days after Phase 1 NTP
20.5 Data Collection	Topographic survey data within the Site	90 Days after Phase 1 NTP
20.5 Data Collection	GIS, As-Built, or survey of drainage structures and topography outside the Site to accurately delineate water entering the Site from offsite	90 Days after Phase 1 NTP
20.5 Data Collection	NASSCO PACP CCTV footage of existing pipes to remain in use	Phase 1
20.5 Data Collection	Delineation of areas with floodplains, wetlands, ditches, protected waters, historically inadequate drainage (flooding or citizen complaints), environmentally sensitive areas, localized flooding, maintenance problems associated with drainage, and areas known to contain Hazardous Materials.	90 Days after Phase 1 NTP
20.5 Data Collection	Existing Conditions Drainage Survey and Report	90 Days after Phase 1 NTP

Minimum Requirements Section	Submittal	Timeline
20.6 Design	Site drainage area maps for each storm sewer catch basin/outlet/SWM facility with pertinent data, such as boundaries of the drainage area, topographic contours, flow direction arrows, time of concentration flow paths, land use with design curve number, and/or design runoff coefficients.	With the 60% Design Submittal
20.6 Design	Drainage and SWM plans which show geotechnical and environmentally sensitive areas, streams and wetlands with buffer boundaries, riparian zones, sanitary drain fields, and utilities.	With 60% Design Submittal
20.6 Design	Tabular conveyance data for nodes and between nodes showing discharges, velocities, ponding, and hydraulic grade lines.	With 60% Design Submittal
20.6 Design	Location and tabulation of all existing and proposed pipe and drainage structures. These include size, class or gauge, catch basin spacing, detailed structure designs, and any special designs.	With 60% Design Submittal
20.6 Design	Specifications for the pipe bedding material and structural pipe backfill on all proposed pipes and alternative pipes.	With the 60% Design Submittal

Minimum Requirements Section	Submittal	Timeline
20.6 Design	Complete pipe profiles, including pipe size, type, and gradient; station offsets from the centerline of the railway; length of pipe; class/gauge of pipe; hydraulic grade line; new and existing (to remain in place) utility crossings and offsets; and numbered drainage structures with coordinate location and elevations.	With 60% Design Submittal
20.6 Design	Specifications, Special Provisions, and Technical Specifications necessary as construction specifications.	With the 60% Design Submittal
20.6 Design	Other exhibits to provide details necessary to clarify and support the calculations.	With the 60% Design Submittal
21.4.3 Hydraulics	H&H Report, including data collection as necessary	With the 60% Design Submittal
21.4.4 Scour and Stream Bank Protection and Stabilization	Quantitative Cost-Benefit Analysis for Scour Risk	With the 60% Design Submittal
21.4.4 Scour and Stream Bank Protection and Stabilization	Scour Analysis	With the 60% Design Submittal
22.4.2 Preliminary Traffic Operations and Engineering Design Analysis	Preliminary Traffic Operations and Engineering Design Analysis Report	Within 90 days after issuance of the Phase 1 NTP
24.4.3 Final Traffic Operations and Engineering Design Analysis	Final Traffic Operations and Engineering Design Analysis Report	With 60% Design Submittal
22.4.4 Pavement Markings	Pavement Marking Plans	With 60% Design Submittal

Minimum Requirements Section	Submittal	Timeline
22.4.5 Signing	Signing Plans	With 60% Design Submittal
22.4.13 Traffic Signal Plans	Traffic Signal Plans, including sightline plans	With 60% Design Submittal
22.8 General Lighting Roll Plan	Lighting Roll Plan	With 60% Design Submittal
22.10 General Lighting Plans	Lighting Plans	With 60% Design Submittal
22.18 ITS Plans	ITS Plans	With 60% Design Submittal
23.4 Transportation Management Plan	Transportation Management Plan	Prior to 60% Design Submittal
23.6 Work Zone Impacts Assessment	Work Zone Impacts Assessment Maintenance of Traffic Alternative Analysis High-Level Construction / MOT Phasing	As necessary to support 60% Design Submittal
23.7 Work Zone Traffic Analysis	Work Zone Traffic Analysis	As necessary to support the 60% Design Submittal
23.8 Work Zone Impacts Management Strategies	Work Zone Impacts Management Strategies	As necessary to support the 60% Design Submittal
23.9 Contingency Plan	TMP Contingency Plan	As needed to support the 60% Design Submittal
23.10 Traffic Incident Management Plan	Traffic Incident Management Plan	With 60% Design Submittal
23.11 TMP Implementation and Monitoring	TMP Implementation and Monitoring Plan	With 60% Design Submittal
23.16 Construction Access and Mobility Plan	Construction Access and Mobility Plan	With 60% Design Submittal
27.2 Vegetation Protection Plan	Vegetation Protection Plan	6 months after Phase 1 NTP
27.3 Vegetation Restoration Plan	Vegetation Restoration Plan	With 60% Design Submittal

Minimum Requirements Section	Submittal	Timeline
27.4 Proposed Landscape Plan	Proposed Landscape Plan	With 60% Design Submittal
28.1 General	Sketches, 2D drawings, 3D drawings, 3D visualizations, renderings and photo simulations as necessary to adequately portray visual quality concepts to the relevant stakeholders	As needed

EXHIBIT C – FRA REQUIRED TERMS (FORM PD 260)

EXHIBIT D – SPECIAL PROVISION REGARDING SMALL BUSINESS UTILIZATION (SP 06)

EXHIBIT E – DESIGNATED VPRA-FURNISHED INFORMATION

1. LBPE Phase I Environmental Site Assessment Report (2021-09-03)
2. Long Bridge Project Draft EIS Affected Environment Report
3. LBPE Geotech Data Report (2023-02-13)

EXHIBIT F – REQUIRED CERTIFICATIONS

[Note: to be inserted at execution]

EXHIBIT G – UTILITY RELOCATION AGREEMENT TEMPLATE

[STANDARD UTILITY RELOCATION AGREEMENT]^[1]

FOR

THE LONG BRIDGE PROJECT NORTH PACKAGE

AMONG

THE VIRGINIA PASSENGER RAIL AUTHORITY

AND

[DESIGN-BUILDER]

AND

[UTILITY OWNER]

RECITALS

WHEREAS, the Virginia Passenger Rail Authority (“**VPRA**”) entered into a progressive design-build agreement with contract ID number 01-001-23-0001, dated [●] (the “**Project Contract**”), between VPRA and [design-builder (“**Design Builder**”)]; and

WHEREAS, the Project Contract provides for the design and construction of the North Package of the Long Bridge Project (the “**Project**”); and

WHEREAS, [●] (“**Utility Owner**”) owns and maintains [●] (the “**Existing Facilities**”) within the limits of the Project, which require relocation to accommodate the Project; and

WHEREAS, the parties desire to enter into this agreement to establish rights and duties with respect to the timely and efficient relocation of the Existing Facilities to accommodate the Project.

AGREEMENT

NOW THEREFORE, the parties agree as follows.

1. Responsibility for Design and Construction; Standards.

- a. **Design Plans and Schedule.**^[2] In accordance with the Project’s *Minimum Requirements*, Design-BUILDER will provide Project design plans to Utility Owner

once the plans have reached a state that fully identifies the impacts of the Project on the Existing Facilities. After the delivery of such plans, [Utility Owner or Design-Builder] shall have [thirty] calendar days to prepare and provide to the other parties to this agreement preliminary plans together with a proposed design and construction schedule providing for relocation of the Existing Facilities needed to accommodate the construction of the Project. VPRA and [Utility Owner or Design-Builder] shall review such preliminary plans and proposed schedule within [21] calendar days after receipt and either approve or reject them. If rejecting, the rejecting party shall note the reasons therefore in writing; thereafter, [Utility Owner or Design-Builder] shall prepare and provide to the other parties to this agreement revised preliminary plans and a proposed schedule, and the process shall be repeated until all parties to this agreement agree to plans and a schedule for relocation of the Existing Facilities needed to accommodate construction of the Project.

- b. **Construction.** Responsibility as between the Utility Owner and Design-Builder for the relocation of the Existing Facilities is set forth in **EXHIBIT A** (*Relocation Responsibilities Matrix*). Such work shall be completed in accordance with the plans and schedule approved by the parties under Section 1.a. above, and the cost estimate(s) approved under Section 3.a. below.
- c. **Standards.** [Utility Owner and/or Design-Builder] shall design and construct the relocation of the Existing Facilities in accordance with the standards and specifications listed in **EXHIBIT B** (*Governing Standards and Specifications*).

2. Betterments.

- a. **Existence of Betterment.** The relocation of the Existing Facilities contemplated by this agreement [does/does not] contain a Betterment, which will be implemented at Utility Owner's cost.
- b. **Description and Compensation Structure.** The Betterment is [describe the Betterment generally]; it has been approved by VPRA and will be compensated as follows: [lump sum, unit prices, or directed work compensated to DB in accordance with Exhibit I to the Project Contract].^[3] Utility Owner agrees to pay such compensation allocable to the Betterment directly to VPRA and Design-Builder agrees not to request or accept any payments directly from Utility Owner for the Betterment.

- c. **Compensation to Design-Builder for Betterment.** If Design-Builder is performing some or all of the work associated with the Betterment, VPRA will be responsible for payment to Design-Builder for such efforts under the terms of the Project Contract.

3. Cost Estimates; Compensation.

- a. **Development of Cost Estimate.** Within [●] calendar days after the approval of plans and schedule under Section 1.a. above, [Utility Owner or Design-Builder] shall provide to VPRA for its review and approval or rejection an estimate of the costs to relocate the Existing Facilities. If rejecting, VPRA shall note the reasons therefore in writing; thereafter, [Utility Owner or Design-Builder] shall prepare and provide a revised cost estimate, and the process shall be repeated until VPRA has agreed to a final cost estimate.
- b. **Cost Estimate as Cap.** The actual compensation paid by VPRA with respect to the relocation of the Existing Facilities shall not exceed the final, VPRA-approved cost estimate, unless otherwise agreed in writing by VPRA.
- c. **Compensation.** As between Design-Builder and VPRA, compensation for all work performed pursuant this agreement shall be governed by the Project Contract. Compensation for work performed by Utility Owner (including, for the avoidance of doubt, work performed by Utility Owner's subcontractor(s) or material supplier(s) of any tier) will be paid by VPRA directly to Utility Owner as follows: [●]^[4]

- 4. VPRA Authorization to Proceed. [Utility Owner or Design-Builder] shall begin the relocation of the Existing Facilities only after VPRA has provided to Design-Builder written authorization to proceed with such work in the normal course under the Project Contract.^[5]

- 5. Inspections and Testing. Design Builder's Utility Coordinator shall have access to the relocation work at all times to observe (including, *inter alia*, for safety), inspect, and test it. To the extent Design Builder's Utility Coordinator discovers any relocation work not in conformance with the requirements of this agreement, [Utility Owner or Design-Builder] shall be required to re-perform such work at its own cost. No inspections or tests performed pursuant to this section will be construed to relieve the party performing the relocation work from its duty to perform such relocation work in accordance with the requirements of this agreement.

6. Additional Rights.

- a. **Identification.** To the extent they are needed to support the relocation of the Existing Facilities, the acquisition of any additional real property interests, encroachments, licenses, or other similar rights shall be identified by Utility Owner working together with Design-Builder, in accordance with Section 9.4 Project's *Minimum Requirements*.
- b. **VPRA's Role.** VPRA will facilitate the acquisition of any such real property interests or other rights, and compensation to third-party interest holders will be the responsibility of VPRA.

7. Points of Contact. Each party's point of contact for the purposes of this agreement and the efforts undertaken hereunder are:

VPRA	Design-Builder	Utility Owner
[•]	[•]	[•]

8. Miscellaneous.

- a. **Schedule.** Design-Builder shall be responsible for coordinating relocation work in accordance with the Approved Baseline Schedule developed under the Project Contract.
- b. **Permitting.** Unless already provided by VPRA, Design-Builder shall be responsible to obtain any permits or other permissions required from governmental or other entities with respect to the relocation of the Existing Facilities in support of the Project.
- c. **Avoidance of Multiple Relocations.** Utility Owner and Design Builder agree that they will use best efforts to ensure that the Existing Facilities are relocated only one time with respect to the Project.

- d. **Liability.** The Utility Owner may be required by CSX Transportation, Inc., or other underlying property owner, to obtain and maintain certain insurance coverage types and amounts prior to undertaking the relocation of the Existing Facilities.
- e. **Appropriations.** VPRA's duty to pay compensation under this agreement is subject to the appropriations of the General Assembly and allocation by the relevant oversight board (VPRA's board of directors, and in some cases, the Commonwealth Transportation Board).
- f. **Compliance with Laws.** In undertaking the relocation work contemplated by this agreement, [Utility Owner or Design-Builder] shall comply with all applicable laws and regulations, including any legal requirements arising from VPRA's federal funding partners with respect to the Project.
- g. **Sovereign Immunity.** Nothing in this agreement shall be construed as a waiver or limitation of VPRA's sovereign immunity.
- h. **Capitalized Terms.** Capitalized terms used in this agreement but not otherwise defined herein shall have the meanings ascribed to those same terms within the Project Contract.

[SIGNATURE PAGE FOLLOWS]

VIRGINA PASSENGER RAIL AUTHORITY	[UTILITY OWNER]	[DESIGN-BUILDER]
By: _____	By: _____	By: _____
Title: _____	Title: _____	Title: _____
Date: _____	Date: _____	Date: _____

EXHIBIT A
RELOCATION RESPONSIBILITIES MATRIX

DESIGN-BUILDER PERFORMED RELOCATION WORK	UTILITY OWNER PERFORMED RELOCATION WORK
[Insert agreed scope]	[Insert agreed scope]

EXHIBIT B

GOVERNING STANDARDS AND SPECIFICATIONS

[Insert latest standards and specifications, including those provided by Utility Owner]

- [\[1\]](#) Form intended for use where there is not already an agreement in place between the utility owner and the underlying landowner governing relocation of the utility's assets to accommodate the Project.
- [\[2\]](#) Template provision is flexible, allowing for design work to be completed either Design-Builder or Utility Owner, and thereafter reviewed and approved by the other two parties.
- [\[3\]](#) Use only if there is a Betterment.
- [\[4\]](#) Address any effort undertaken directly by Utility Owner or its subcontractor, and compensated by VPRA directly.
- [\[5\]](#) Work performed by Design-Builder will be authorized under progressive design-build agreement.

EXHIBIT H – DAVIS-BACON WAGES

[Note: to be inserted at execution]

EXHIBIT I – FORCE ACCOUNT WORK / EXTRA WORK AND DELAY COSTS SPECIFICATION

This Exhibit I sets forth the methods for calculating Extra Work Costs and Delay Costs owing from VPRA to Design-Builder 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 I 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 Design-Builder indirect costs, Field Indirect Costs, and profit. Where the Extra Work is performed by Subcontractors, the Subcontractor may include a 15% markup for the Subcontractor's indirect costs, Field Indirect Costs, and profit. The negotiated lump sum shall not include any Home Office Overhead of Design-Builder or Subcontractors.

1.1.3. Where Extra Work is performed by Subcontractors, Design-Builder may only include a supplemental markup of 5% of the Subcontractor's costs as Extra Work Costs. Design-Builder'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, Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder 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 Indirect Costs (10 percent), Home Office Overhead (10 percent), and profit (10 percent).

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

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

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

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

1.2.1.2 Professional Services Labor

For Professional Services labor, VPRA will pay the following:

1. Actual unburdened wage ((i.e., the base wage paid to the employee excluding any fringe benefits), plus
2. A markup consisting of the Professional Service provider's Audited Overhead Rate ("AOR"), plus
3. A markup for profit, at the rate stated in Section 2.4.2(a)(ii) of the Agreement.

Accordingly, the hourly rate for Professional Services shall be calculated as follows:

$$\text{Hourly Rate} = \text{Wage Rate} + \text{AOR} + ((\text{Wage Rate} + \text{AOR}) \times \text{Profit}).$$

The foregoing will be the only payment allowable for Professional Services Extra Work, and constitutes full compensation for all indirect costs, direct costs, overhead, and profit. The labor surcharge compensates Design-Builder for all costs necessary for a worker to perform the work that the worker is hired to perform. This includes Social Security and Medicare, worker's compensation, other taxes, State and federal unemployment insurance, fringe benefits, training, paid holidays, use of vehicles, personal protective equipment, office, office furniture, equipment, supplies, etc.

Overtime shall only be payable where required by Law. An overtime pay rate shall not apply to workers exempt from the Fair Labor Standards Act, 29 U.S.C. § 201, et. seq., whether or not a worker's employer elects to pay overtime wages for hours worked in excess of 40 hours per week. Where overtime is applicable, the hourly rate shall be calculated as follows:

$$\text{Hourly Rate} = \text{Wage Rate} + \text{AOR} + ((\text{Wage Rate} + \text{AOR}) \times \text{Profit}) + (\text{Wage Rate} \times 0.5).$$

Design-Builder shall require the provider of the Professional Services Extra Work to submit its audited overhead rate to VPRA to determine the amount of the AOR. VPRA may perform an audit in its sole discretion to validate the overhead rate. For Professional Services providers without an audited overhead rate, VPRA shall determine the method of computing the allowable AOR.

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 Design-Builder for the following actual reasonable costs paid to (or on behalf of) workers:

- Subsistence and travel allowances that do not exceed applicable per diem rates and allowable expenses and rates under the Federal Acquisition Regulation; and
- 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 Design-Builder the actual cost of the following items as they relate to the Extra Work, plus six percent (6%):

1. Property damage, liability, and worker's compensation insurance premiums;
2. Unemployment insurance premiums or contributions;
3. Applicable payroll taxes (not including gross receipts taxes); and
4. Social Security taxes.

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

1.2.3 Materials

VPRA will pay Design-Builder the reasonable actual cost of Materials provided by the Design-Builder, Accepted by VPRA, and incorporated into the Force Account work, including reasonable transportation charges paid by Design-Builder (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 Design-Builder, 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 Design-Builder 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) Design-Builder 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 Design-Builder, an Affiliate or a Subcontractor that is not listed in the RRBB, VPRA will establish a suitable rental rate for that Equipment. Design-Builder 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. Design-Builder 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 Design-Builder, 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 Design-Builder 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 Design-Builder, 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 Design-Builder. Design-Builder 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 Design-Builder from a third party (not an Affiliate or Subcontractor) exclusively for such Force Account Extra Work, the Extra Work costs shall be determined in accordance with the following formula:

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

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

1.2.4.4 Moving of Equipment

(a) The rental time (including for owned equipment) to be included in calculating Extra Work costs for needed Equipment shall be the time the Equipment is in operation on the Force Account Extra Work being performed, and, in addition, shall include no more than the time required to move the Equipment to the location of the Force Account Extra Work and return the Equipment to the original location, or to another location requiring no more time than that required to return the Equipment to its original location, except that moving time is not includable in Extra Work costs if the Equipment is used at the site of the Force Account Extra Work on other than the Force Account Extra Work either before or after the Force Account Extra Work. Loading and transporting costs will be included in Force Account Extra Work costs, in lieu of moving time, when the Equipment is moved by means other than its own power. However, moving time back to the original location or loading and transporting costs will not be included in the calculation of Force Account Extra Work costs if the Equipment is used at the site of the Force Account Extra Work on other than the Force Account Extra Work.

(b) For use of Equipment moved from one location on the Site to another location on the Site exclusively for the Force Account Extra Work, the cost of transferring and/or moving the Equipment to the site of the Force Account Extra Work and returning it the original location may be included in the Extra Work Costs as specified in this Section 1.2.4.4.

(c) For use of Equipment moved from a location not on the Site to a location on the Site, the original location of the Equipment to be hauled to the Site shall be subject to VPRA's prior Approval for the purpose of determining allowable Force Account Extra Work Costs.

(d) Where the move of the Equipment is made by common carrier, the Force Account Extra Work costs to be included will be the invoiced amount paid for the freight plus 15 percent of such amount to cover profit, overhead, and indirect costs. If Design-Builder 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. Design-Builder 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. Professional Services shall not be eligible for recovery of idle labor costs.

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 for Home Office Overhead

Design-Builder shall be entitled to recover Home Office Overhead costs, also known as General and Administrative costs, that are impacted due to a delay for which Design-Builder is entitled to Delay Costs. The additional allowable daily markup for Home Office Overhead shall be determined as follows:

Home Office Overhead Daily Rate: $(A \times C)/B$

Where:

A = Phase 2 Price on the date of the Phase 2 Amendment

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

C = .06

2.5 Daily Rate for Field Indirect Costs

An additional daily amount will be added as Delay Costs as compensation for all other items for which a specific amount is not provided above, including all field overhead and any other costs. The additional allowable daily markup shall be the total amount of Field Indirect Costs in the Phase 2 Price as of the date of the Phase 2 Amendment divided by the number of Contract Days on the date of the Phase 2 Amendment. The field daily rate shall not be subject to adjustment over the life of the Project.

Delay Costs for Early Work may be negotiated separately for each Early Work Package consistent with this Section 2.

EXHIBIT J – KEY PERSONNEL

Key Personnel	Requirements and Preferred Qualifications	Time Commitment
<p>Project Manager</p> <p>Name:</p> <p>Thomas O'Rourke</p>	<p>The Project Manager will manage the overall Project for the Design-Builder, including both the Phase 1 and Phase 2 Work. This person will be the main point of communication for the Design-Builder and VPRA's primary point of contact. The Project Manager will be responsible to ensure adequate personnel and other resources are made available for the Project, 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 • Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example 	<p>Phase 1: 100%</p> <p>Phase 2: 100%</p>
<p>Design Manager</p> <p>Name:</p> <p>Michael Rothenheber</p>	<p>The Design Manager is responsible for coordinating all aspects of the Design, including coordinating between the design disciplines. The Design Manager will be responsible for ensuring that the overall Project Design is completed in accordance with the Contract Documents.</p> <p>The Design Manager must be an employee of the Lead Designer and must be a registered Professional Engineer in the Commonwealth and Washington, D.C.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years managing or performing design for similar projects • Managing and/or preparing designs for alternative delivery projects or delivery methods with early contractor involvement, including, for example, progressive design-build, CM/GC, and design-build 	<p>Phase 1: 100%</p> <p>Phase 2: 100% until final IFC by VPRA of the last set of plans; thereafter as needed to resolve design matters</p>
<p>Construction Manager</p> <p>Name:</p>	<p>During Phase 1, the Construction Manager will lead constructability reviews and provide input on the Design to ensure that the</p>	<p>Phase 1: 50%</p> <p>Phase 2: 100%</p>

<p>Robert Boyce</p>	<p>Design is constructible within the constraints of the Construction Work. During Phase 2 and any Early Work, the Construction Manager is responsible for coordinating and overseeing all aspects of Construction Work.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years managing construction of similar projects • Providing constructability reviews of designs • CMAA Certification • Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example 	
<p>Quality Manager</p> <p>Name:</p> <p>Brian McGuinness</p>	<p>The Quality Manager will be in charge of the Design-Builder's quality program. During Phase 1, the Quality Manager will be responsible for development of the Design-Builder's quality program and Quality Plan and provide inputs to the Design where appropriate to address quality-related concerns. During Phase 2, the Quality Manager will oversee that the Project is built in conformance with the approved Quality Plan and the Contract Documents. The Quality Manager will be the primary liaison with VPRA's Design IQA and Construction Quality Acceptance program. The Quality Manager must work for the Design-Builder under the direct supervision of an executive officer above the level of and under a line of authority independent of the Project Manager. The individual must have the ability to stop design or construction at any time and 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 and Washington, D.C. 	<p>Phase 1: 100%</p> <p>Phase 2: 100%</p>

<p>Independent Design Quality Manager Director</p> <p>Name:</p> <p>Kelly Burnell</p>	<p>The Independent Design Quality Manager Director (“IDQMD”) shall be an employee of one of the IDQM firm(s) identified as part of Respondent’s organization. During Phase 1, the IDQMD shall perform reviews of Design-Builder’s Design for conformance to the Contract Documents, environmental commitments, permit conditions, and conformance with the Design Quality Plan. During Phase 2, the IDQMD shall review each set of IFC plans submitted by Design-Builder for conformance to the Technical Provisions. The IDQMD shall oversee and supervise the reconciliation and resolution of comments between the IDQM and Design-Builder. After review of the Design and resolution of comments, the IDQMD shall cause the IFC plans to be signed and stamped by a qualified member of the IDQM before submission to VPRA. The stamp shall attest that, under the supervision of the IDQMD, the IFC plans have been reviewed and inspected, conform to the Technical Provisions and the Design Quality Plan, and represent good industry practice.</p> <p>The IDQMD must be a registered Professional Engineer in the Commonwealth and Washington, D.C.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • Twenty (20) years of experience in the analysis and design of rail systems and bridge structures. Emphasize experience with rail design, bridges, retaining structures, drainage structures, and projects of similar size and type of work. 	<p>Phase 1: 100%</p> <p>Phase 2: 100% until final IFC by VPRA of last set of plans; thereafter as needed to resolve design matters</p>
<p>Structures Design Manager</p> <p>Name:</p> <p>Arthelius (Trip) Phaup</p>	<p>The Structures Design Manager (“SDM”) will be in charge of all structural design work on the Project and ensuring that the structural design is prepared in conformance with the Contract Documents. THE SDM will be responsible for the design of all structures on the Project.</p> <p>The SDM must be a registered Professional Engineer in the Commonwealth and Washington, D.C.</p>	<p>Phase 1: 100%</p> <p>Phase 2: 100% until final IFC by VPRA of the last set of plans; thereafter as needed to resolve design matters</p>

	<p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years of demonstrated experience in bridge engineering, design and analysis, including projects of similar size, type of work, and complexity as the Project. • Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example 	
<p>Geotechnical Design Manager</p> <p>Name:</p> <p>Michael Leffler</p>	<p>The Geotechnical Design Manager (“GDM”) will be in charge of all geotechnical design work on the Project and ensuring that the geotechnical design is prepared in conformance with the Contract Documents. The GDM will be responsible for geotechnical design of the retaining walls, foundations, cut and fill slopes, embankment materials and construction, geotechnical instrumentation, and pavement subgrade and structure.</p> <p>The GDM must be a registered Professional Engineer in the Commonwealth and Washington, D.C.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years of experience including planning and overseeing subsurface exploration programs for bridge structures and roadways, including projects of similar size, type of work, and complexity as this Project. • Experience with alternative delivery methods or projects with early contractor involvement, including progressive design-build, CM/GC or design-build for example 	<p>Phase 1: 100%</p> <p>Phase 2: 100% until final IFC by VPRA of the last set of plans; thereafter as needed to resolve design matters</p>
<p>Environmental Compliance Manager</p> <p>Name:</p> <p>Leyla Lange</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 Phase 1, the Environmental Compliance Manager may review designs to ensure compliance with environmental requirements. During Phase 2, the Environmental Compliance Manager will oversee construction operations to ensure</p>	<p>Phase 1: As needed</p> <p>Phase 2: 100%</p>

	<p>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> <p>Edi Rakvin</p>	<p>The Lead Cost Estimator is responsible for the cost estimating process during Phase 1. 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 Design-Builder provides its Construction Cost Estimates on an Open Book basis.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 10 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 	<p>Phase 1: 100%</p> <p>Phase 2: As needed</p>
<p>Lead Scheduler</p> <p>Name:</p> <p>Anthony Guzzi</p>	<p>The Lead Scheduler is responsible for preparing the proposed Construction Schedule for Phase 2, accounting for applicable constraints on the Construction Work. The schedule prepared by the Lead Scheduler will be the schedule on which the Construction Cost Estimates are based.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 10 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>Phase 1: 50%</p> <p>Phase 2: As needed</p>
<p>Utility Coordinator</p> <p>Name:</p>	<p>The Utility Coordinator is responsible for coordinating with impacted Utility Owners, negotiating the terms of utility agreements, resolving utility conflicts, and managing the utility relocation process. During Phase 1,</p>	<p>Phase 1: 100%</p> <p>Phase 2: 100%</p>

<p>Ted Collins</p>	<p>the Utility Coordinator will hold meetings with impacted Utility owners to develop relocation plans and ensure that such plans are incorporated into the Project's design and the Construction Schedule. During Phase 2, the Utility Coordinator will ensure compliance with the terms of utility agreements, coordinate utility relocation work, and manage the progress of utility work.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 15 years of managing utility work 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>Third-Party Coordinator</p> <p>Name:</p> <p>Patrice Brooks</p>	<p>The Third-Party Coordinator is responsible for engaging with third-parties and stakeholders as needed to manage construction and other Project operations. During Phase 1, this Person will meet with third-parties to understand and manage concerns, establish schedules, and serve as point person for the Design-Builder. During Phase 2, this Person will communicate progress with third-parties and manage the resolution of conflicts.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 10 years of experience with third-party coordination 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>Phase 1: 100%</p> <p>Phase 2: 100%</p>
<p>Public Information Coordinator</p> <p>Name:</p> <p>Kim Manning</p>	<p>The Public Information Coordinator is responsible for coordinating and managing information provided to stakeholders and the public. During Phase 1, the Public Information Coordinator will engage with the public, obtain feedback, and provide such information to the Design-Builder and VPRA. During Phase 1 and Phase 2, the Public Information Coordinator will work with VPRA</p>	<p>Phase 1: 50%</p> <p>Phase 2: 50%</p>

	<p>to ensure that information about the Project is consistent and accurate. During Phase 2, the Public Information Coordinator will act as the Design-Builder's liaison to the public and with stakeholders.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> 10 years of experience with public information management for similar projects 	
<p>Safety Manager</p> <p>Name:</p> <p>Ken Payne</p>	<p>The Safety Manager shall oversee and be responsible for safety on the Project site. During Phase 1, the Safety Manager shall be responsible for preparation of Design-Builder's Safety Management Plan and may assist with constructability review to verify that construction can be performed safely. During Phase 2, the Safety Manager shall ensure that all Construction Work is performed safely and in compliance with the Contract Documents and Design-Builder's 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: 25%</p> <p>Phase 2: 100%</p>
<p>Bridge Architect</p> <p>Name:</p> <p>Jesse Miguel</p>	<p>Added Value Personnel No. 1</p>	<p>Phase 1: 100%</p> <p>Phase 2: As needed</p>
<p>Design-Build Manager</p> <p>Name:</p> <p>Bjarne Gudmundsen</p>	<p>Added Value Personnel No. 2</p>	<p>Phase 1: 100%</p> <p>Phase 2: 100%</p>

EXHIBIT K – MAJOR SUBCONTRACTORS

Entity Name	Specialty	Scope of Work
TB&A	Third-Party and public information coordination	Third-Party and public information coordination
iDesign Engineering, Inc.	Utility coordination	Utility coordination
Genesis Structures, Inc.	Constructability engineering	Constructability engineering
Mueser Rutledge Consulting Engineers, PLLC	Geotechnical engineering and foundation design	Geotechnical engineering and foundation design

EXHIBIT L – THREE-PARTY AGREEMENT

[Executed Three-Party Agreement among VPRA, Design-Builder, and Lead Designer to be included with PDBA]

EXHIBIT M – FORM OF PERFORMANCE AND PAYMENT BONDS

BOND NO. _____

PENAL SUM: \$[•]

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, the Virginia Passenger Rail Authority (“Owner”) has awarded to [•], a [•] duly organized and existing under the laws of the State of [•] (“Design-Builder”) a contract (“Contract”) for the [•] (“Project”) dated [•]; and

WHEREAS, one of the conditions of the Contract is that Design-Builder provide this duly executed instrument (“Bond”).

NOW THEREFORE, We, the undersigned Design-Builder and [•], a corporation duly organized and existing under and by virtue of the laws of the State of [•] and authorized to transact business as a surety within the Commonwealth of Virginia (“Surety”), are held and firmly bound unto Owner, as obligee, and its successors and assigns in the sum of [•], lawful money of the United States of America, for the payment of which, well and truly be made to Owner, Design-Builder and Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. Any reference to the “Surety” in this Bond shall be read as a reference to the Co-Sureties and each of them on the basis of such joint and several liability.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

1. The Contract is hereby incorporated by reference herein as if said Contract were fully set forth herein. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Contract.

2. If Design-Builder shall at all times promptly, and faithfully perform the Contract and any alteration in or addition to the obligations of Design-Builder arising thereunder in strict accordance with the terms and conditions of the Contract, including the matter or infringement, if any, of patents or other proprietary rights, and all guarantees and warranties, including the guarantee and warranty periods, established by the Contract, and comply with all of the covenants therein contained, in the manner and within the times provided in the Contract, and shall fully indemnify and save harmless Owner from all costs and damages which it may suffer by reason or failure so to do, and shall fully reimburse and repay Owner all outlay and expenses which it may incur in making good any default, and reasonable counsel fees incurred in the prosecution of or defense of any action arising out of or in connection with any such default, then Surety's obligations under this Bond shall be void; otherwise such obligations shall remain in full force and effect.

3. This Bond shall cover the cost to perform all the obligations of Design-Builder arising out of or required under the Contract, and the obligations covered by this Bond specifically include Design-Builder's liability for liquidated damages as specified in the Contract.

4. Whenever Design-Builder shall be, and is declared by Owner to be in default under the Contract, the Surety shall within thirty (30) days of receipt of a letter from Owner in the form set forth in Schedule A:

- (a) remedy such default; or
- (b) undertake completion of the Contract itself; or
- (c) tender to Owner a proposed contract for completion of the Contract by a contractor acceptable to Owner, secured by performance and payment bonds issued by a qualified surety, combined with payment to Owner of the amount of damages in excess of the remaining Contract balance incurred by Owner as a result of the default, including costs of completion; or
- (d) waive the Surety's right to remedy such default, undertake completion of the Contract, or tender to Owner a proposed contract for completion, and with reasonable promptness under the circumstances, make payment of the full penal sum of the bond to Owner; or
- (e) dispute liability under this Bond and proceed in accordance with paragraph 5 below.

5. In the event that Surety disputes its liability under this Bond, which includes any allegations of fraud, such dispute shall be determined in the first instance in accordance with the dispute resolution process ("DRP") attached hereto as Schedule B. If Surety fails to make an election within the thirty (30) days set forth in paragraph 4 of this Bond, then the claim shall be deemed to be in dispute for purposes of this paragraph. A Decision, as defined in Schedule B, shall be rendered within thirty (30) days of the Adjudication Commencement Date, or as otherwise extended pursuant to the DRP. The Decision shall be binding on the Surety, Design-Builder, and Owner as to their respective rights and obligations under this Bond but subject to each party's right to commence a de novo appeal of the Decision to a court of competent jurisdiction at any time. The parties shall immediately begin to comply with the Decision and the terms of this Bond until the Final Completion Date under the Contract notwithstanding of, and during, any appeal de novo of the Decision and unless or until such time as a court of competent jurisdiction issues a final order or ruling vacating or modifying the Decision, either in whole or in part, at the conclusion of any de novo appeal of the Decision (the "Obligation to Comply with the Decision"). Surety's costs to fulfill its Obligation to Comply with the Decision is limited to the penal sum of the Bond.

6. The parties acknowledge that the Obligation to Comply with the Decision is of the essence of the Bond, and the parties agree that Surety's failure to fulfill its Obligation to Comply with the Decision will cause irreparable harm to Owner and Design-Builder. Accordingly, Surety waives and releases any right it may have to initiate any action in court seeking a stay of its obligations arising pursuant to the Decision or seeking a stay of enforcement of the Decision. Surety's only recourse to court processes in connection with the Decision is to file for a de novo appeal of the Decision while continuing to fulfill its Obligation to Comply with the Decision. In any such de novo appeal or in any action seeking enforcement of the Decision, the Surety (a) waives any right to file for an interim stay of its obligations arising pursuant to the Decision or to seek a stay of enforcement of the Decision, (b) waives any right to object to or contest an action brought

to enforce specific performance of Surety's obligations arising pursuant to the Decision and waives all defenses in such an action, and (c) consents to an order or ruling directing and requiring Surety to perform its obligations arising pursuant to the Decision, and that an action for such an order or ruling may be sought on an expedited (emergency) basis under the rules of the court. The parties' Obligation to Comply with the Decision does not alter any party's right to pursue a de novo appeal of the Decision in a court of competent jurisdiction.

7. On the day following the Final Completion Date ("Step-Down Date"), the Penal Sum of [●] shall automatically be reduced to [●], with the understanding that such reduced Penal Sum shall be the aggregate liability of the surety and shall only be applicable to any claims submitted, or suits, or actions brought, after the Step-Down Date. For the avoidance of doubt, the entire Penal Sum of [●] is subject to any claims submitted, or suits or actions brought, against the Bond prior to the Step-Down Date; *provided, however*, that notwithstanding anything to the contrary herein, Surety's aggregate liability hereunder shall in no event exceed the Penal Sum of [●].

8. Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the Work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission by Design-Builder of the Contract, or this Bond, shall in any way affect its obligations on this Bond, and Surety does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

9. Correspondence or claims relating to this Bond shall be sent to Surety at the following address: [●]

10. Schedules A and B are an integral part of this Bond and are specifically incorporated herein as if set out in full in the body of this Bond.

11. If any provision of this Bond is found to be unenforceable as a matter of law, all other provisions shall remain in full force and effect.

12. Any provision in this Bond which conflicts with applicable laws, regulations, and ordinances, shall be deemed modified to conform to applicable laws, regulations, and ordinances. This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard for conflicts of laws principles, and any action seeking enforcement of the Bond will be litigated exclusively in the courts of the Commonwealth of Virginia.

13. ***[Note: Use in case of multiple sureties ("Co-Sureties") or, otherwise, delete; If Co-Sureties are used, modify the preceding language accordingly to reflect this]*** The Co-Sureties agree to empower and designate a single "Lead Surety" with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that Owner will have no obligation to deal with multiple sureties hereunder. All correspondence from Owner to the Co-Sureties and all claims under this Bond shall be sent to the Lead Surety and shall be deemed served upon all Co-sureties. The Lead Surety may be changed only by delivery of written notice (by personal delivery

or by certified mail, return receipt requested) to Owner designating a new Lead Surety, signed by all of the Co-Sureties. The initial Lead Surety is [●].

[Signature Page Follows]

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this ____ day of _____ 20____.

DESIGN-BUILDER (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

SURETY (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

[Note: Date of this Bond must not be prior to date of Contract.]

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: A copy of a certificate that the Surety (or Co-Sureties) is (are) authorized to transact business in Virginia must be attached.]

[Note: The Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but are not a members of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority including the appropriate power of attorney documentation must be attached.]

**SCHEDULE A
FORM OF DEMAND**

Date

Re: Performance Bond No.: [] (the “Bond”)

Principal: [] (the “Principal”)

Obligees: Virginia Passenger Rail Authority (the “Obligee”)

Contract: The Design-Build Contract, dated [] between the Principal as Design-Builder and the Virginia Passenger Rail Authority for the [●] Project (the “Contract”)

Dear Sir:

Pursuant to the Bond, the Obligee hereby certifies that:

1. the Principal is and continues to be in default of the Principal’s obligations under the Contract;
2. the Obligee has issued a notice of default to the Principal in accordance with the provisions of the Contract; and
3. the Obligee has honored and will continue to honor and perform in all material respects its obligations under the Contract.

We hereby demand that the Surety honor its obligations under the Bond forthwith.

The Obligee acknowledges that if the Surety intends to dispute its liability pursuant to the Bond, then the parties shall proceed immediately with the DRP set forth in Schedule B.

Yours truly,

Virginia Passenger Rail Authority

By: _____

Name:

Title:

SCHEDULE B DISPUTE RESOLUTION PROCESS

Given the on default nature of the Bond, the Principal, the Surety and the Obligor acknowledge that they may not agree whether the Surety is liable to perform or make payment pursuant to the Bond. To ensure that such disputes are determined quickly so as to allow for the orderly and timely completion of the Contract, the Principal, the Surety and the Obligor agree to submit such disputes to the dispute resolution process set out below. Terms not defined herein shall have the meaning ascribed to them in the body of the Bond. The parties acknowledge that any decision rendered in the dispute resolution process (an “Award”) will be binding, but subject to appeal de novo by any party at any time to a court of competent jurisdiction.

1. “Dispute” means a disagreement as to the Surety’s liability pursuant to the Bond following an Obligor’s Demand.
2. Disputes arising out of or in connection with the Bond shall be submitted for binding resolution to adjudication (the “Adjudication”) administered by JAMS – The Resolution Experts! (“JAMS”) in accordance with the procedure set out below. The JAMS’ Dispute Resolution Rules for Surety Bond Disputes, effective as of the effective date of the Bond shall apply to the resolution of any Dispute unless modified by the provisions herein, in which case, the provisions of this Bond shall govern.
3. The Surety or the Obligor shall demand Adjudication by filing an Adjudication statement electronically with JAMS, and serving electronic copies by email upon the Principal and the Obligor, utilizing the electronic forms and filing directions provided by JAMS on its website at www.jamsadr.com. The Adjudication statement shall set forth in detail the factual and legal issues submitted for Adjudication and shall be sent no later than the later of 10 days after (a) the Surety makes its election pursuant to paragraph 4 of the Bond, or (b) the claim is deemed to be in dispute pursuant to paragraph 5 of the Bond.
4. Within three (3) Business Days after the Adjudication statement is filed and served, the parties shall appoint an adjudicator (the “Adjudicator”) who shall be a panelist on the JAMS Global Engineering & Construction Panel (“JAMS GEC Panel”) of dispute adjudicators. JAMS shall appoint an Adjudicator administratively from the JAMS GEC Panel if the parties fail to appoint an Adjudicator within the three day period. The Adjudicator shall be under a duty to act impartially and fairly and shall serve as an independent neutral.
5. The Adjudication shall commence on the date that JAMS receives the Adjudication statement and initial deposit of funds, and confirms the appointment of the Adjudicator (the “Adjudication Commencement Date”). Unless the Adjudicator decides otherwise, the Principal, the Surety and the Obligor shall pay the final fees and expenses of Adjudication in accordance with the provisions set forth in the Contract governing the payment of fees and expenses of dispute resolution. In an Adjudication in which the Adjudicator determines that the Principal and Surety are aligned with the same commonality of interest against the Obligor, the Principal and Surety jointly shall be charged with one share and the Obligor will be charged with one share. Should any party fail to deposit funds as required by JAMS, any other party may advance the deposit, and the amount of that advance deposit will be taken into consideration in the Adjudicator’s decision.

6. Upon commencement of the Adjudication, the Adjudicator is empowered to take the initiative in ascertaining the facts and the law, and to exercise sole discretion in managing the Adjudication process. Among other things, the Adjudicator may require the parties to make additional factual submissions such as sworn witness statements and business documents, may interview important witnesses after notice to the parties and affording opportunity to attend, may request and consider expert reports and may call for memoranda on legal issues. Notwithstanding the foregoing, the Adjudicator must decide the following questions:
 - a. Is the Principal in default of the Principal's obligations under the Contract?
 - b. Is the Surety liable to perform in accordance with Paragraph 4 and/or 5 of the Bond (which liability, for the avoidance of doubt, does not arise if Obligor is in uncured material breach of its obligations under the Contract)?
7. The Adjudicator shall issue a written decision (the "Decision") which shall be binding upon and enforceable by the parties through the completion of the Principal's obligations under the Contract, subject to any party's right to commence an appeal de novo in a court of competent jurisdiction at any time in accordance with the terms of the Bond. Any payment required in the Decision shall be made immediately. The Decision shall be issued through JAMS as soon as practicable but in no event later than thirty (30) calendar days of the Adjudication Commencement Date or within any later time agreed upon by the parties. Unless the parties agree otherwise, the Decision shall state reasons therefore and shall be admissible in later administrative, arbitral or judicial proceedings solely concerning Surety's liability pursuant to the Bond between the parties.
8. This 30 calendar day period also may be extended by the Adjudicator in its sole discretion up to 14 days in the event that JAMS has requested any party to make an additional fee and expense deposit and such funds have not been deposited as requested or advanced by another party.
9. Any party may request clarification of the Decision within five (5) business days after issuance, and the Adjudicator shall endeavor to respond within an additional five (5) business days, and, subject to any party's right to commence an appeal de novo in a court of competent jurisdiction at any time in accordance with the terms of the Bond. The parties shall comply with the Decision, unless and until subsequently vacated or modified, through the completion of the Principal's obligations under the Contract.
10. Upon any settlement by the parties of the Dispute prior to issuance of a Decision, the parties shall jointly terminate the Adjudication. Such removal or termination shall not affect the parties' continuing joint and several obligations for payment to JAMS of unpaid fees and expenses.

If the Decision is that the Surety is liable to perform in accordance with Paragraphs 4 and 5 of the Bond, then notwithstanding the commencement of any appeal de novo of the Decision, the Surety shall perform in accordance with the Decision and with the terms of the Bond until the Principal's Obligations under the Contract are completed, but not to exceed the penal sum of the Bond.

FORM OF PAYMENT BOND

BOND NO. _____

BOND AMOUNT: \$[•]

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, the Virginia Passenger Rail Authority (“Owner”) has awarded to [•], a [•] duly organized and existing under the laws of the State of [•] (“Design-Builder”) a contract (“Contract”) for the [•] Project (“Project”) dated [•]; and

WHEREAS, one of the conditions of the Contract is that Design-Builder provide this duly executed instrument (“Bond”).

NOW THEREFORE, We, the undersigned Design-Builder and [•], a corporation duly organized and existing under and by virtue of the laws of the State of [•] and authorized to transact business as a surety within the Commonwealth of Virginia (“Surety”), are held and firmly bound, jointly and severally, unto Owner, as obligee, and its successors and assigns, in the sum of [•], lawful money of the United States of America, for the payment of which, well and truly be made to Owner and Claimants, Design-Builder and Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

1. The Contract is hereby incorporated by reference herein as if said Contract were fully set forth herein. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Contract.

2. If Design-Builder shall: (a) make payments of all sums due to all persons and entities having a direct contract with Design-Builder, or a direct contract with a subcontractor having a direct contract with Design-Builder, for supplying labor, material, and/or supplies used directly or indirectly by Design-Builder in the prosecution of the Work provided in the Contract (such persons and entities hereinafter referred to collectively as “Claimants”); and (b) shall fully indemnify and save harmless Owner from all costs and damages which Owner may suffer by reason of Design-Builder’s failure to fulfill its obligations to Claimants under clause (a) above, including but not limited to, fully reimbursing and repaying Owner reasonable counsel fees incurred as a result of any action arising out of or in connection with any such failure, then Surety’s obligations under this Bond shall be void; otherwise such obligations shall remain in full force and effect.

3. All Claimants shall have a direct right of action only against Surety and Contractor under this Bond; *provided, however*, that no claim, suit or action shall be brought by any Claimant after the expiration of one (1) year following the date on which Claimant last performed labor or last furnished or supplied materials to the Project. Any suit or action must be brought in a state or federal court of competent jurisdiction located in the Commonwealth of Virginia.

4. Any Claimant who does not have a direct contractual relationship with Contractor shall, as a condition precedent to bringing such claim, suit or action, provide written notice thereof to Contractor, Surety, and Owner, no later than ninety (90) days from the date Claimant last supplied labor or materials, stating with substantial accuracy the amount claimed, the name of the person for whom the work was performed or to whom the material was furnished, and the dates on which such labor or materials were supplied.

5. Surety shall, after receipt of reasonable notice to Surety of any claim, demand, suit or action brought against Owner by a Claimant, defend, with counsel approved by Owner, indemnify and hold harmless Owner from any and all claims, demands, suits or actions brought by any Claimant. Owner shall have a direct right of action against Surety and Contractor for any breach by Surety of its obligation to defend, indemnify and hold harmless Owner.

6. Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the Work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission by Contractor of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of Claimants otherwise entitled to recover under this Bond, shall in any way affect its obligations on this Bond, and Surety does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

7. Surety acknowledges that the amounts owed to Contractor under the Contract shall first be available for the performance of the Contract, including Owner's superior right to use the funds due for the completion of the Work, and then may be available to satisfy claims arising under this Bond. Owner shall not be liable for the payment of any costs or expenses or claims of any Claimant under this Bond and shall have no obligation to make payments to, or give notice on behalf of, any Claimant.

8. Any provision in this Bond which conflicts with applicable laws, regulations and ordinances shall be deemed modified to conform to applicable laws, regulations and ordinances.

9. Contractor or Owner shall furnish a copy of this Bond or permit a copy to be made upon request by any person or entity who may be a Claimant as defined above.

10. ***[Note: Use in case of multiple sureties ("Co-Sureties") or, otherwise, delete; If Co-Sureties are used, modify the preceding language accordingly to reflect this]*** The Co-Sureties agree to empower and designate a single, "Lead Surety" with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that Owner and Claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from Owner and Claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated Lead Surety and service of such correspondence or notice upon the Lead Surety shall constitute service upon all co-sureties. The Lead Surety may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to Owner designating a single new Lead Surety, signed by all of the Co-Sureties. The initial Lead Surety shall be [●].

11. This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard for conflicts of laws principles, and any action seeking enforcement of the Bond will be litigated exclusively in the courts of the Commonwealth of Virginia.

[Signature Page Follows]

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this ____ day of _____ 20____.

DESIGN-BUILDER (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

SURETY (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

[Note: Date of this Bond must not be prior to date of Contract.]

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: A copy of a certificate that the Surety (or Co-Sureties) is (are) authorized to transact business in Virginia must be attached.]

[Note: The Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but are not a members of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority including the appropriate power of attorney documentation must be attached.]

EXHIBIT N – FORM OF GUARANTEE

This **GUARANTEE** (this “Guarantee”) is made as of [●], by [●], a [●] (the “Guarantor”), to the Virginia Passenger Rail Authority (“VPRA”), political subdivision of the Commonwealth of Virginia, with respect to the obligations of [●], a [●] (the “Design-Builder”), pursuant to that certain agreement titled *Long Bridge Project North Package Progressive Design-Build Agreement*, dated [●], by and between the VPRA and the Design-Builder (the “PDBA”). The PDBA is hereby incorporated by reference herein, and capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the PDBA. The Guarantor is an Affiliate of the Design-Builder. The Guarantor acknowledges that financial and direct benefits will accrue to the Guarantor by virtue of entering into this Guarantee and that such benefits constitute adequate consideration therefor.

This Guarantee is provided pursuant to Section 8.4 of the PDBA.

1. GUARANTEE

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

1.2. Obligations. Except as otherwise provided in Section 4.6, the obligations of the Guarantor hereunder shall remain in full force and effect until all the Guaranteed Obligations have been paid, performed and completed in full, irrespective of any assignment, amendment, modification, or termination of the PDBA. The obligations of Guarantor hereunder shall not accrue unless Design-Builder defaults on any of the Guaranteed Obligations. The obligations of Guarantor hereunder shall terminate upon the satisfaction of Design-Builder’s obligations under the PDBA in accordance with the terms thereof.

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

1.3.1. any failure of the Design-Builder to retain or preserve any rights against any person, except to the extent the Design-Builder is required under the terms of the PDBA to relinquish such rights and Design-Builder’s compliance with such requirement prejudices Guarantor;

1.3.2. the lack of prior enforcement by the Design-Builder of any rights against any person and the lack of exhaustion of any bond, letter of credit or other security held by the Design-Builder, except to the extent the Design-Builder is required under the terms of the PDBA not to enforce such rights or not to exhaust any such bond,

letter of credit or other security held by Design-Builder and Design-Builder's compliance with such requirement prejudices Guarantor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.4. Enforcement of the PDBA and Guaranteed Obligations.

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

1.4.2. In the event that Design-Builder defaults on any of the Guaranteed Obligations, the Guarantor shall be obligated to undertake all curative actions (which may include payments relating to the Guaranteed Obligations and/or performance of the Guaranteed Obligations) within fourteen (14) days following notice under Section 4.6 below (to the extent not prohibited thereunder). Thereafter, the Guarantor shall use commercially reasonable efforts to effectuate such curative actions without further notice. If the Guarantor fails to undertake such curative actions in a timely manner, VPRA shall have the right to perform or have performed by third parties the necessary curative actions, and the costs thereof shall be borne by the Guarantor. Any payment by the Guarantor to VPRA shall be in U.S. dollars.

1.4.3. VPRA may bring and prosecute a separate action or actions against the Guarantor to enforce its liabilities hereunder, regardless of whether any action is brought against the Design-Builder and regardless of whether any other person

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

2. REPRESENTATIONS AND WARRANTIES

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

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

2.1.2. Organization and Existence. The Design-Builder is a [●] duly organized, validly existing and in good standing under the laws of its state of formation. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of [●];

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

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

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

2.1.6. No Conflict or Breach. Neither the execution, delivery or performance by the Guarantor of this Guarantee, nor compliance with the terms and provisions hereof, conflicts or will conflict with or will result in a breach or violation of any material terms, conditions, or provisions of any Laws, regulations and ordinances applicable to the Guarantor or the charter documents, as amended, or bylaws or equivalent governing documents, as amended, of the Guarantor, or any order, writ,

injunction or decree of any court or governmental authority against the Guarantor or by which it or any of its properties are bound, or any indenture, mortgage or contract or other agreement or instrument to which the Guarantor is a party or by which it or any of its properties are bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties;

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

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

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

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

2.1.11. No Default. The Guarantor is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any agreement or instrument to which the Guarantor is a party, which default may materially and adversely affect the Guarantor's ability to fulfill its obligations hereunder;

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

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

3. WAIVERS, SUBROGATION AND SUBORDINATION

3.1. Waivers.

3.1.1. The Guarantor hereby unconditionally waives:

3.1.1.1. notice of acceptance of this Guarantee or of the intention to act in reliance hereon and of reliance hereon;

3.1.1.2. notice of the incurring, contracting, amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or of the failure to assert, any Guaranteed Obligation;

3.1.1.3. any invalidity of the PDBA due to lack of proper authorization of or a defect in execution thereof by the Design-Builder, its purported representatives or agents;

3.1.1.4. any right of the Guarantor to receive notices to the Design-Builder to which the Guarantor might otherwise be entitled except notice to the extent required in Section 4.6 below; and

3.1.1.5. any duty on the part of VPRA to disclose to the Guarantor any facts VPRA may now or hereafter know with regard to the Design-Builder.

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

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

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

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

3.3. Subordination.

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

4. MISCELLANEOUS

4.1. Enforcement of Guarantee.

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

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

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

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

4.1.5. VPRA acknowledges and agrees that this Guarantee does not and is not intended to impose, in the event the Guarantee is called upon, any greater obligations upon the Guarantor than are imposed upon the Design-Builder under the PDBA, other than with respect to the Guarantor's obligation hereunder to pay VPRA for its reasonable costs and expenses of enforcing this Guarantee.

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

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

OR IN CONNECTION WITH, THIS GUARANTEE OR THE TRANSACTIONS CONTEMPLATED BY THIS GUARANTEE.

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

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

4.2.1. personally;

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

4.2.3. by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to VPRA:

Virginia Passenger Rail Authority
1800 Diagonal Road, Suite 300
Alexandria, VA 22314
Attention: Sr. Director, Long Bridge Project
email: shirlene.cleveland@vpra.virginia.gov

With copies to:

Virginia Passenger Rail Authority
919 E. Main Street, Suite 2400
Richmond, VA 23219
Attention: General Counsel
email: michael.westermann@vpra.virginia.gov

If to the Guarantor:

[•]

[•]

Attention: [•]

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

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

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

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

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

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

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

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

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

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

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

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

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

[•],
a [•]

By: _____
Name: _____
Title: _____

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

VIRGINIA PASSENGER RAIL AUTHORITY

By: _____
DJ Stadtler
Executive Director

EXHIBIT O – INSURANCE REQUIREMENTS

All capitalized terms not otherwise defined in this Exhibit O shall have the meanings ascribed to such terms within Exhibit A (*Acronyms and Definitions*) to the Agreement. Design-Builder 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, Design-Builder 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 9 of the Agreement, prior to commencing the corresponding Work under the Agreement. All required insurances shall contain a waiver of subrogation provision in favor of the Commonwealth, VPRA, Amtrak, and CSXT.

A. PHASE 1 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 Design-Builder leases one or more employees through the use of a payroll, employee management, or other similar company, then Design-Builder 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. Coverage shall be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act and the Jones Act.
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 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 Design-Builder in the Agreement and shall include, but not be limited to, claims involving 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 for Cyber Liability) in the amount of \$25,000,000 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. **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 \$10,000,000 any one claim and in the aggregate. The Commonwealth, VPRA, CSXT, and Amtrak are to be included on any such policies as indemnified parties. 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 Design Work by Design-Builder 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. This requirement for professional liability insurance coverage may be satisfied by the Lead Designer, in lieu of being procured by the Design-Builder.
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 \$5,000,000 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 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. VPRA reserves the right to require greater pollution liability coverage limits if needed based on the scope of the negotiated additional Construction Work during this Phase 1 (i.e., Early Work).

9. **Other Insurance.** Should any activities during Phase 1 involve marine operations, the Design-Builder and/or any Subcontractors so engaged shall carry Marine Protection and Indemnity Insurance providing protection and indemnity coverage with respect to bodily injury or property damage arising from marine operations, including damage to piers, wharves, other fixed or movable structures, and loss or damage to any other vessel, craft, or property on such other vessel or craft. Such insurance will have minimum limits of \$5,000,000 per occurrence and in the aggregate. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis. Similarly, any use of unmanned aircraft shall be appropriately insured with minimum limits of \$5,000,000 per occurrence and aggregate and additional insured status for the above-noted parties.
10. **Subcontractor Insurance.** The Design-Builder will cause the Lead Designer and all Subcontractors, if any, working at the site or providing Professional Services in conjunction with the Project 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 worker's compensation) 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 for contract expenditures of less than \$100,000, the limits must be no less than \$1,000,000 per occurrence and \$1,000,000 in the 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.
 - (e) **Professional Liability Insurance** (applicable only to Subcontractors other than the Lead Designer rendering Professional Services, including, but not limited to, architects, engineers, traffic consultants, accountants, attorneys, etc.) with limits of at least \$1,000,000 per claim and in the aggregate. Such insurance will remain in full force and effect during the performance of such Professional Services and

with an extended reporting period for two years after completion of such Professional Services.

B. EARLY WORKS INSURANCE REQUIREMENTS

Should VPRA authorize any Early Work, the following insurance requirements shall apply to Design-Builder and Lead Designer and any Subcontractors utilized by them: All such insurance may be provided under corporate (so-called “practice”) insurance policies and need not be purchased on a Project-specific basis. Policy coverage limits may be achieved through a combination of insurance policies (e.g., primary and/or excess).

1. Workers’ Compensation and Employer’s Liability Insurance with statutory workers’ compensation (Coverage A) limits and employer’s liability (Coverage B) limits of \$1,000,000 bodily injury by accident, each accident, and \$1,000,000 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).
2. Commercial General Liability Insurance including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, 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. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as additional insured on a primary, non-contributory basis.
3. 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 additional insured on a primary, non-contributory basis.
4. Umbrella/Excess Liability Insurance to be carried only by the Design-Builder and Lead Designer in excess of the underlying limits noted above for employer’s liability, commercial general liability, and automobile liability in the amount of \$4,000,000 per occurrence and in the aggregate. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as additional insured on a primary, non-contributory basis.
5. Architects/Engineers Professional Liability Insurance covering the Lead Designer for acts, errors, or omissions arising in connection with the Early Work for not less than \$5,000,000 for any one claim and in the aggregate. Such insurance must remain in full force and effect during the performance of the Early Work.
6. Other Insurance. Should any of the Early Work involve marine operations, Design-Builder shall ensure that appropriate Marine Protection and Indemnity insurance is in place. Similarly, if any Early Work shall involve use of drones, Design-Builder will ensure that appropriate liability insurance (and/or extension of coverage under the Commercial General Liability insurance of the entity operating the drone) is in place. In either instance, the Commonwealth, VPRA, CSXT, and Amtrak are to be named as additional insured on a primary, non-contributory basis.

All such policies shall comply with all other insurance requirements included herein including primary and non-contributory and waiver of subrogation.

C. 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 Design-Builder leases one or more employees through the use of a payroll, employee management, or other similar company, then Design-Builder 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. Coverage shall be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' compensation Act and the Jones Act.
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 Design-Builder in the Agreement and shall include, but not be limited to, claims involving 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 for Cyber Liability) in the amount of \$250,000,000 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. **Professional Liability Insurance** utilizing one of the three options below to cover liability for acts, errors or omissions arising in connection with the Work including for a period of five years after all Work is complete:
- (a) Maintain a Project-specific Professional Liability Insurance Policy in a form acceptable to VPRA with a limit of not less than \$25,000,000 per claim and \$25,000,000 in the aggregate. The policy must include Design-Builder and Lead Designer as named insureds and may be extended to cover all Subcontractors providing Professional Services. Coverage shall be maintained for the duration of all Professional Services and include a minimum five-year extended reporting period. The policy may extend coverage to Subcontractors, at Design-Builder’s option. In the alternative, the Design-Builder can procure a \$20,000,000 Project-specific Professional Liability Insurance Policy naming only the Lead Designer (and, at their option, other Subcontractors) and then provide a minimum of \$10,000,000 of practice or Project-specific Contractor’s Professional Liability Insurance in the name of the Design-Builder; or
 - (b) A combination of underlying practice professional liability policies covering the Design-Builder and Lead Designer and a Project-specific Contractor’s Protective Professional Indemnity (CPPI) policy. The Lead Designer practice professional liability policies must each have a minimum limit of \$10,000,000 per claim and in the aggregate and the CPPI policy, which must be carried by the Design-Builder and cover the Design-Builder’s own professional liability exposures as well must have a minimum limit of \$20,000,000 per claim or in the aggregate. At the option of the Design-Builder, the above-noted option to utilize the Lead Designer’s practice professional liability policy can be replaced by a Project-specific policy. The CPPI policy form is subject to review and acceptance by VPRA , but any policies utilized to implement this option must remain in effect for at least five years after all Professional Services are complete; or
 - (c) Utilization of practice professional liability policies by the Design-Builder and the Lead Designer, provided each are able to provide VPRA with evidence, satisfactory to VPRA in its reasonable discretion, of practice professional liability policy limits of at least \$20,000,000 per claim and aggregate. Coverage must remain in effect for at least five years after all Professional Services are complete.

The Commonwealth, VPRA, CSXT, and Amtrak are to be included on any such policies as indemnified parties. Such policy shall not contain any exclusions directed toward any types of projects, materials, services, or processes involved in the Work. The policy will state 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. Any coverage required under this Section shall have a retroactive date that encompasses all Professional Services on the Project including those undertaken during Phase 1 and any Early Works (if any).

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 Design-Builder, 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 limits of such coverage be less than \$350,000,000. Further, the policy shall include sub-limits as follows: (x) at least \$25,000,000 for off-site storage and transit; (y) at least \$100,000,000 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, Design-Builder shall submit to VPRA on or before the Effective Date: (x) a letter of certification from the Design-Builder or the Design-Builder'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** on a Project-specific basis to indemnify for bodily injury, property damage, cleanup/remediation costs or other amounts which the Design-Builder, 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 \$15,000,000 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 completed operations 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 Design-Builder or other insured party (i.e., cross-liability). The Contractor's Pollution Liability Insurance must be in place, at the latest, by Phase 2 NTP, *provided that if the Contractor's Pollution Liability Insurance is not in place on the Effective Date, the Design-Builder shall submit to the Department on or before the Effective Date:*
- (a) a letter of certification from the Design-Builder or the Design-Builder's insurance broker confirming that Contractor's Pollution Liability Insurance complies with the requirements contained herein will be placed prior to Phase 2 NTP; and
 - (b) a specimen Contractor's Pollution Liability Insurance policy with all appropriate attachments, sub-limits, etc.

The Design-Builder shall also, if appropriate, provide coverage for marine operations and for liabilities under the Oil Pollution Act of 1990 (33 U.S.C. §§ 2701-2762) and the Comprehensive Environmental Response, Liability, and Compensation Act (42 U.S.C. §§ 9601-9675) either under the Contractor's Pollution Liability Insurance policy required herein or the Marine Protection and Indemnity Insurance required in paragraph 10 below.

10. **Marine Protection and Indemnity Insurance** on a Project-specific basis providing protection and indemnity coverage with respect to bodily injury or property damage arising from marine operations, including damage to piers, wharves, other fixed or movable structures, and loss or damage to any other vessel, craft, or property on such other vessel or craft if any of the work requires marine operations. Such insurance will have minimum limits of \$50,000,000 million in the aggregate. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis.
11. **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.
12. **Subcontractor Insurance.** Unless covered under a Contractor-Controlled Insurance Program (CCIP) for each of the insurance policies listed below, the Design-Builder shall cause the Lead Designer and all other Subcontractors working at the site or providing Professional Services in conjunction with the Project 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 also including a waiver of subrogation in favor of the above-noted parties. Note that should the

Design-Builder utilize and CCIP, any such contractors 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 for contract expenditures of less than \$100,000, the limits must be no less than \$1,000,000 per occurrence and \$1,000,000 in the 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.
- (e) **Professional Liability Insurance** (applicable only to Subcontractors other than the Lead Designer rendering Professional Services, including, but not limited to, architects, engineers, traffic consultants, accountants, attorneys, etc.) with limits of at least \$1,000,000 per claim and in the aggregate. Such insurance will remain in full force and effect during the performance of such Professional Services and with an extended reporting period for two years after completion of such Professional Services.

D. GENERAL REQUIREMENTS RELATING TO INSURANCE

1. **General Insurance Requirements.** Design-Builder 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 by A. M Best and Company's Insurance Reports Key Rating Guide.

Each such policy shall maintained by the Design-Builder and Lead Designer 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 20 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 deductibles or self-insured retentions under any of the insurance policies required herein.

2. **Subcontract Agreements.** Design-Builder shall by appropriate written agreements flow down the requirements for: (i) the waiver of subrogation for all required insurance, and (ii) additional insured coverage for all required insurance and (iii) other requirements of this Exhibit to Lead Designer and all tiers of Subcontractors for all insurance required of such Subcontractors under this Exhibit.
3. **Separation of Insureds/Cross Liability.** The 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 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.** Design-Builder hereby waives all its 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 Design-Builder and its Subcontractors of whatever tier, and further waives 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 Design-Builder's rights of recovery against its own Subcontractors, vendors, and suppliers of whatever tier. Design-Builder 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, Design-Builder 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 Controlled Insurance Program (CIP).** Design-Builder may utilize a Controlled-Insurance Program (CIP) to provide any and all of the coverages required above, provided, however, that any Subcontractors and the Design-Builder must still maintain compliant insurance for any off-site activities and for any coverages not included in the CIP. Any CIP, 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 Design-Builder, Lead Designer or by third parties pursuant to obligations of Design-Builder 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 Agreement 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 Design-Builder under the Agreement. Furthermore, the insurance limits required hereunder are minimum limits only and not intended to restrict the liability imposed on Design-Builder, Lead Designer, 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 Design-Builder against its undertakings under the Agreement or its liabilities to any third party. It is the responsibility of Design-Builder, Lead Designer 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 Agreement or otherwise at Law.

EXHIBIT P – DESIGNATED REPRESENTATIVES

VPRA:

- Shirlene Cleveland
- Fyiad Constantine
- Joseph Schinstock

Design-Builder:

- Michael Viggiano
- Keith Chouinard
- Thomas O'Rourke
- James Schneiderman
- Chase Cox

EXHIBIT Q – RAILROAD OPERATOR INDEMNIFICATIONS

1. INDEMNIFICATION DUTIES

- (a) CSXT. Design-Builder shall indemnify, defend, and hold harmless CSXT Indemnitees to the same extent to which VPRA is entitled to indemnity and defense under Section 17.1.1 of the Progressive Design-Build Agreement.
- (b) Amtrak. Subject to applicable law, including Va. Code § 11-4.1, Design-Builder shall indemnify and defend Amtrak for all losses or claims arising from the acts or omissions of Design-Builder in performing the Progressive Design-Build Agreement, whether or not Design-Builder is negligent and irrespective of any negligence or fault of Amtrak, *provided that*, Design-Builder's indemnity and duty to defend shall not extend to Amtrak-Assumed Individuals and/or Amtrak-Assumed Property.

2. 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.

3. INCLUSION IN SUBCONTRACTS

Design-Builder agrees to have the foregoing terms flow down to each subconsultant agreement and lower tier subcontract issued under the Progressive Design-Build Agreement, modified only to identify the subconsultant or subcontractor that will be subject to the provisions.

EXHIBIT R – PHASE 2 CASH FLOW

[TO BE ADDED BY AMENDMENT]

Month	Expenditure	Cumulative
1		
2		
3		
4		

EXHIBIT S – FORM OF PHASE 2 AMENDMENT

This Phase 2 Amendment to the Progressive Design-Build Agreement (Contract ID. No.: 01-001-23-0001) (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] (“Design-Builder”). VPRA and Design-Builder are each individually a “Party” and collectively, the “Parties.” Capitalized terms not otherwise used herein shall have the meanings given in the Agreement.

Therefore, VPRA and Design-Builder agree as follows.

ARTICLE 1

Lump Sum Contract Price

1.1 The Parties agree that the lump sum Phase 2 Price for the Phase 2 Services is _____ Dollars (\$_____).

ARTICLE 2

Substantial Completion

2.1 Unless otherwise modified in accordance with the Contract Documents, the Substantial Completion Deadline 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. Allowance Pool Total;
- d. Technical Provisions;
- e. Special Provisions;
- f. Deviations;
- g. Davis Bacon Wages; and
- h. Fully Executed Performance and Payment Bonds.

ARTICLE 4

Design-Builder Representations

4.1 By execution of this Phase 2 Amendment, Design-Builder 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 Design-Builder to submit its Final Construction Price Proposal;
- b. The Contract Documents are sufficient to enable Design-Builder to submit an accurate Final Construction Price Proposal and to complete the Work within the Phase 2 Price;
- c. Design-Builder has carefully inspected the Site and has satisfied itself of the conditions at the Site; and
- d. The Phase 2 Price 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;

ARTICLE 5
Miscellaneous

- 5.1 Design-Builder 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.
- 5.2 Design-Builder shall perform the Design Work and Construction Work necessary to complete the Project in accordance with the requirements of the Contract Documents, which includes this Phase 2 Amendment.
- 5.3 Except as set forth in this Phase 2 Amendment, the Agreement shall remain in full force and effect.
- 5.4 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]

IN WITNESS WHEREOF, the Parties have executed the Phase 2 Amendment 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: _____

DESIGN-BUILDER

[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 T – FORM OF EARLY WORK AMENDMENT

This Early Work Amendment to the Progressive Design-Build Agreement (Contract ID. No.: 01-001-23-0001) (hereinafter, the “Early Work 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] (“Design-Builder”). VPRA and Design-Builder are each individually a “Party” and collectively, the “Parties.” Capitalized terms not otherwise used herein shall have the meanings given in the Agreement.

Therefore, VPRA and Design-Builder agree as follows.

ARTICLE 1 **Early Work Price**

1.1 The Parties agree that the Early Work Price for the Early Work Package is _____ Dollars (\$_____).

ARTICLE 2 **Completion**

3.1 Unless otherwise modified in accordance with the Contract Documents, the Early Work Package shall be completed by [##].

ARTICLE 3 **Attachments**

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

- a. [Early Work Package scope of work;
- b. Early Work schedule;
- c. Technical Provisions;
- d. Special Provisions;
- e. Davis-Bacon Wages;
- f. Deviations; and
- g. Fully Executed Performance and Payment Bonds];

ARTICLE 4 **Design-Builder Representations**

4.1 By execution of this Early Work Amendment, Design-Builder represents and warrants, that as of the date of this Early Work Amendment:

- a. Design-Builder has carefully inspected the Site where the Early Work will take place and has satisfied itself of the conditions at such location; and

- b. The Early Work Price 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;

ARTICLE 5
Miscellaneous

- 5.1 Design-Builder shall not be entitled to any payment for the Early Work Package unless and until the Parties have executed this Early Work Amendment and VPRA issues the Early Work NTP.
- 5.2 Design-Builder shall perform the Design Work and Construction Work necessary to complete the Early Work Package in accordance with the requirements of the Contract Documents, which includes this Early Work Amendment.
- 5.3 Except as set forth in this Early Work Amendment, the Agreement shall remain in full force and effect.
- 5.4 This Early Work 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]

IN WITNESS WHEREOF, the Parties have executed the Early Work Amendment 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: _____

DESIGN-BUILDER

[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 U – CONFIDENTIALITY FORM

NAME OF DESIGN-BUILDER: _____

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

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

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

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

DOCUMENT	PAGE NUMBER(S)/ LINES / INFORMATION	REASON(S) FOR WITHHOLDING FROM DISCLOSURE

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

EXHIBIT W – SMALL BUSINESS SUBCONTRACTING PLAN (FORM PD 60)

EXHIBIT X – MONTHLY SMALL BUSINESS PARTICIPATION REPORT (FORM PD 61)

EXHIBIT Y – COST BREAKDOWN STRUCTURE

EXHIBIT Z – UNPERMITTED ROAD CLOSURE FEES

Functional Roadway Classification	Sample Roadways (Non-Exhaustive)	Lane User Fees			Limitations
		1-5 minutes	6th minute	Each subsequent minute	
Interstate (including ramps), Freeway / Expressway, Principal Arterial and Minor Arterial	I-395, 12th St Expressway, 14th St Bridge, Maine Ave SW	\$0	\$2,000	\$500	Maximum of \$200,000 per incident for any single location in 24-hr period
Collector and Local	D St SW, 12th St SW, Ohio Dr SW	\$0	\$1,500	\$250	Maximum of \$100,000 per incident for any single location in 24-hr period
Pedestrian / Bicycle Trails	Maine Ave SW Pedestrian Bridge	\$0	\$500	\$100	Maximum of \$20,000 per incident for any single location in 24-hr period

####