



REQUEST FOR PROPOSALS (RFP)

RFP Number: 1-007-24-0002

ISSUE DATE: October 16, 2024

ISSUING AND USING AUTHORITY: Virginia Passenger Rail Authority (VPRA)

SERVICES PROCURED: Construction Management Services

DESCRIPTION: VPRA is procuring professional construction management services in support of the Franconia Springfield Bypass project.

TERM/PERFORMANCE PERIOD: Through final completion and close-out of the Project.

DUE DATE: Proposals will be received until **2:00 PM, January 15, 2025**

ACCESS TO SOLICITATION: This solicitation and any addenda are publicly posted and may be accessed at any time at: [Current Contracting Opportunities - VPRA \(vpassengerrailauthority.org\)](https://www.vpassengerrailauthority.org/CurrentContractingOpportunities)

SUBMIT PROPOSALS TO: proposals@vpra.virginia.gov

*******NOTICE*******

VPRA is requesting proposals from consulting firms to provide professional services in support of the Franconia-Springfield Bypass Project. All requests for information and questions regarding this procurement should be directed to: Jason Lofgreen, procurement@vpra.virginia.gov. Questions/requests for clarification concerning this RFP must be received via email no later than: **November 15, 2024 @ 5:00PM**. All email communications shall contain "RFP 1-007-24-0002" in the subject line followed by the Offeror's name.

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

INSTRUCTIONS TO OFFERORS

TABLE OF CONTENTS

1.0	DEFINITIONS.....	3
2.0	INTRODUCTION.....	3
3.0	RFP DOCUMENTS.....	3
4.0	LEGAL AUTHORITY.....	3
5.0	FINANCIAL ASSISTANCE; COMPLIANCE WITH FUNDING REQUIREMENTS.....	4
6.0	RAILROAD INDEMNIFICATIONS.....	4
7.0	STATEMENT OF NEEDS.....	4
8.0	PRE-PROPOSAL CONFERENCE.....	4
9.0	PROCUREMENT SCHEDULE.....	5
10.0	SINGLE POINT OF CONTACT.....	5
11.0	OFFEROR'S DESIGNATED CONTACT.....	6
12.0	RULES OF CONTACT.....	6
13.0	INELIGIBLE FIRMS.....	6
14.0	VPRA FURNISHED PROJECT INFORMATION DOCUMENTS.....	7
15.0	QUESTIONS/REQUESTS FOR CLARIFICATION FROM OFFERORS.....	7
16.0	REQUESTS FOR CLARIFICATION FROM VPRA.....	7
17.0	ADDENDA.....	7
18.0	QUALIFICATIONS; LICENSURE.....	8
19.0	RIGHT TO INVESTIGATE.....	8
20.0	SMALL, DIVERSE, AND DISADVANTAGED BUSINESS PARTICIPATION.....	8
21.0	PRE-SUBMITTAL OBLIGATIONS.....	9
22.0	DESIGNATION OF CONFIDENTIAL INFORMATION.....	9
23.0	PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS.....	10
24.0	EVALUATION AND SCORING.....	16
25.0	DISCUSSIONS; INFORMAL INTERVIEWS.....	17
26.0	NOTIFICATION TO OFFERORS.....	18
27.0	ADDITIONAL SUBMITTALS.....	18
28.0	NEGOTIATION AND AWARD OF THE CONTRACT.....	18
29.0	SENSITIVE SECURITY INFORMATION; CRITICAL INFRASTRUCTURE.....	19
30.0	CONTRACT EXECUTION; AT RISK WORK.....	19
31.0	DEBRIEFINGS.....	19
32.0	APPLICABLE COST PRINCIPLES; ACCOUNTING REQUIREMENTS.....	20
33.0	ORGANIZATIONAL CONFLICTS OF INTEREST.....	20
34.0	WITHDRAWAL, DURATION OF PROPOSALS.....	20
35.0	PROCUREMENT DECISION APPEALS.....	21
36.0	OFFERORS RESPONSIBLE FOR ALL COSTS.....	21
37.0	NO ASSUMPTION OF LIABILITY.....	21
38.0	RESERVATION OF RIGHTS.....	21
39.0	COMPLIANCE WITH LAW IN THE COMMONWEALTH.....	22
40.0	ETHICS IN PUBLIC CONTRACTING.....	22
41.0	REPRESENTATIONS.....	22

APPENDICES

APPENDIX 1: DEFINITIONS

APPENDIX 2: FORMS

A	OFFEROR INFORMATION AND ACKNOWLEDGEMENT (FORM PD 02)
B	OFFEROR QUESTIONS/REQUESTS FOR CLARIFICATION FORM (FORM PD 22)
C	SMALL AND DIVERSE BUSINESS SUBCONTRACTING PLAN (FORM PD 60)
D	DBE UTILIZATION PLAN (FORM PD 50B)
E	MONTHLY SMALL AND DIVERSE BUSINESS SUBCONTRACTING UTILIZATION REPORT (FORM PD 61)
F	MONTHLY DBE PARTICIPATION REPORT (FORM PD 51)
G	PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA (FORM PD 44)
H	PROPRIETARY/CONFIDENTIAL INFORMATION IDENTIFICATION (FORM PD 25)
I	CERTIFICATION REGARDING LOBBYING (FORM PD 58)
J	CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (FORM PD 59)
K	NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) CERTIFICATIONS
L	KEY PERSONNEL DESIGNATIONS
M	EXCEPTIONS TO RFP DOCUMENTS (FORM PD 20)
N	FEE SCHEDULE (FORM PD 71)

EXHIBITS

- EXHIBIT 1 SCOPE OF WORK
- EXHIBIT 2 GENERAL TERMS AND CONDITIONS (FORM PD 100)
- EXHIBIT 3 SPECIAL TERMS AND CONDITIONS (Federal Railroad Administration Clauses) (FORM PD 210 (FRA/SVC))
- EXHIBIT 4 CONSOLIDATED RAIL INFRASTRUCTURE AND SAFETY IMPROVEMENTS GRANT PROGRAM PROVISIONS (Appendixes A, E, Exhibit B.5)
- EXHIBIT 5 NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) SUPPLEMENTARY GENERAL PROVISIONS FOR NONCONSTRUCTION CONTRACTS
- EXHIBIT 6 SPECIAL PROVISION INVOLVING PROPERTY AND FACILITIES OWNED, CONTROLLED OR UTILIZED BY CSX TRANSPORTATION, INC., NORFOLK SOUTHERN RAILWAY COMPANY, AND THE NATIONAL RAILROAD PASSENGER CORPORATION (SP 01 CRA)
- EXHIBIT 7 INSURANCE REQUIREMENTS
- EXHIBIT 8 CONTRACT FOR CONSULTANT SERVICES (FORM PD 04)
- EXHIBIT 9 PROJECT INFORMATION DOCUMENTS

1.0 DEFINITIONS

- 1.1 Unless otherwise defined herein, capitalized terms shall have the meanings set forth in Appendix 1.

2.0 INTRODUCTION

- 2.1 The Virginia Passenger Rail Authority (“VPRA”) is issuing this Request for Proposals (“RFP”) to solicit proposals from qualified single entities to establish a contract through competitive negotiation for the procurement of construction management services in support of the Franconia-Springfield Bypass project (the “Project”).
- 2.2 Included within VPRA’s Transforming Rail in Virginia program, and a key component of the Phase 1, I-95 project group, the Project consists of 1.4-miles of infrastructure improvements within the Richmond, Fredericksburg, and Potomac (“RF&P”) corridor. The primary feature of this Project is a new, approximately 0.6-mile-long two-track rail flyover bypass bridge over the CSX Transportation, Inc. (“CSXT”) mainline tracks. The bypass bridge and other Project deliverables will greatly enhance the movement of passenger trains crossing over the two existing CSXT mainline freight tracks between the west side of the corridor north of the new flyover bridge and the east side of the corridor south of the new bridge without delay to trains on any of the tracks at this location.
- 2.3 VPRA awarded the CM/GC contract for the Project to Flatiron-Herzog JV, a joint venture consisting of Flatiron Constructors, Inc. and Herzog Contracting Corp (the “CM/GC”). Design services for the Project are being provided by Parsons Transportation Group (the “Design Consultant”).
- 2.4 VPRA is delivering the Project in partnership with CSXT, National Railroad Passenger Corporation (“Amtrak”), Virginia Railway Express (“VRE”), and other state and local agencies with jurisdiction over the Project area. Design is nearing completion and construction is anticipated to commence in mid- 2025. Construction management services are required to assist VPRA with observing, documenting, and reporting on construction activities upon commencement of the work.
- 2.5 This is a single step, qualifications-based procurement. One award will be made by VPRA in connection with this solicitation.

3.0 RFP DOCUMENTS

- 3.1 The documents included within this RFP shall consist of the RFP cover page, these Instructions to Offerors, as well as any appendices, forms, exhibits, and addenda (collectively, the “RFP Documents”).
- 3.2 Hard copies of the RFP Documents will be available upon request. If there is any conflict between the electronic format and hard copy of any RFP Documents, the hard copy on file shall control.
- 3.3 Offerors shall not take advantage of any actual or potential error in the RFP Documents. Offerors shall identify any potential errors in writing to VPRA’s point of contact specified in [Section 10](#). If VPRA determines that the RFP Documents contain an ambiguity, conflict, error, omission, or mistake, VPRA reserves the right to modify the RFP Documents to correct the ambiguity, conflict, error, omission, or mistake.

4.0 LEGAL AUTHORITY

- 4.1 VPRA was created by the Virginia General Assembly on July 1, 2020, pursuant to Va. Code § 33.2-287, *et seq.*, and established as “a body corporate and political subdivision of the

Commonwealth....” Pursuant to its enabling legislation, VPRA administers all capital expansion projects, infrastructure, and land acquisitions related to the Transforming Rail in Virginia Program, which initiative will double Amtrak state-supported service and substantially increase Virginia Railway Express (“VRE”) service in Virginia over the next decade.

4.2 VPRA undertakes its procurements in accordance with the *Virginia Passenger Rail Authority Procurement Rules* dated May 23, 2022 (“Procurement Rules”). Offerors shall read and familiarize themselves with the Procurement Rules and the submittal of a Proposal shall constitute acceptance of the Procurement Rules for purposes of this procurement. Offerors may access a copy of the Procurement Rules on VPRA’s website at <https://vapassengerrailauthority.org/procurement/>.

4.3 VPRA is exempt from the requirements of the Virginia Public Procurement Act (“VPPA”) (Va. Code § 2.2-4300 *et seq.*), and this procurement is not subject to or otherwise governed by the VPPA. Notwithstanding the foregoing, in accordance with Va. Code § 33.2-299.1, VPRA procures professional services consistent with the terms of Va. Code §§ 2.2-4302.2, -4303.1, and -4303.2.

5.0 FINANCIAL ASSISTANCE; COMPLIANCE WITH FUNDING REQUIREMENTS

5.1 VPRA anticipates receiving financial assistance from (a) the U.S. Department of Transportation (“DOT”) in the form of grant(s) and/or cooperative agreement(s) through a DOT Component, including the Federal Railroad Administration (“FRA”), and (b) Amtrak in the form of a capital grant. Accordingly, this procurement and the resulting contract shall be subject to all requirements associated with DOT federal financial assistance provided by a DOT Component and all requirements associated with Amtrak capital grant assistance. Representative terms are included herewith at Exhibits 3, 4, and 5. Applicable flow-down provisions associated with financial assistance on the Project will be confirmed in the negotiation phase and made a part the Contract Documents.

6.0 RAILROAD INDEMNIFICATIONS

6.1 As part of VPRA’s delivery of the Project, VPRA is obligated to provide certain indemnifications to CSXT and Amtrak that will be passed through to the Consultant. These indemnification obligations are attached as Exhibit 6 and are non-negotiable.

7.0 STATEMENT OF NEEDS

7.1 A detailed description of the statement of needs for this RFP is set forth in Exhibit 1 (Scope of Work). Offerors are expected to thoroughly review this material before submitting a Proposal.

8.0 PRE-PROPOSAL CONFERENCE

8.1 VPRA will be hosting a pre-proposal conference at **9:00 AM EST on October 25, 2024**, at the following location: 1725 Duke Street, Alexandria, VA 22314 (first floor conference room).

8.2 Attendance at the pre-proposal conference is optional; however, Offerors who intend to submit a Proposal are highly encouraged to be present. Attendance at the pre-proposal can be either virtual or in person. If attending in person, firms are limited to two (2) representatives on account of occupancy limitations.

8.3 Registration to attend the pre-proposal conference is required by **October 21, 2024 at 11:59 PM**. Offerors can register at [Pre-Proposal Conference](#). Once registered, you will

receive additional instructions as well as a link for the webinar. Please note that every person who plans to attend, either virtual or in person, must register.

- 8.4 Following the pre-proposal conference, VPRA will publish the presentation materials and a list of registered attendees on the VPRA website. Any questions and answers that are presented during the pre-proposal conference or any changes to the solicitation resulting from this conference will be issued in a written addendum in accordance with Section 17.0.

9.0 PROCUREMENT SCHEDULE

- 9.1 Below is VPRA's planned schedule for this procurement. VPRA reserves the right to amend these dates in its sole discretion.

Event/Milestone	Date/Date Range
Release of RFP	October 16, 2024
Pre-Proposal Conference	October 25, 2024
Questions/Requests for Clarifications Due	November 15, 2024
Proposal Due Date	January 15, 2025
Interviews	February 26, 2025
Notice of Intent to Award Issued	March 2025
Negotiations	March 2025
Contract Award	April 2025

10.0 SINGLE POINT OF CONTACT

- 10.1 VPRA's sole point of contact ("POC") for matters related to this procurement is

Jason Lofgreen, Buyer
919 E. Main Street, Suite 2400
Richmond, VA 23219
procurement@vpra.virginia.gov

- 10.2 All communications regarding the procurement shall be directed to the POC in writing by email transmittal to the address specified in Section 10.1. Written communications to VPRA's POC from Offerors shall contain "RFP 01-007-24-0002" in the subject line followed by the Offeror's name.
- 10.3 VPRA disclaims the accuracy of information derived from any source other than VPRA's POC, and the use of any such information is at the sole risk of the Offeror. Only written communications received from the POC or its designee may be relied on throughout this procurement. VPRA is not responsible for oral communications or other communications that occur outside the communications protocol established by this RFP.
- 10.4 VPRA may, in its sole discretion, waive or modify the provisions of this Section 10.0 wherever deemed prudent to the efficient administration of the procurement.

11.0 OFFEROR'S DESIGNATED CONTACT

- 11.1 Offeror's Designated Contact, who shall be the single point of contact for each Offeror, shall be the individual designated in Form A. Offerors may change the Designated Contact by written communication to VPRA's POC.

12.0 RULES OF CONTACT

- 12.1 As of the date of issuance of this RFP, no Offeror shall contact any employee or representative of VPRA concerning this RFP or the Project, including members of VPRA's Board of Directors, except for the POC as specifically permitted in this RFP. This prohibition does not apply to discussions with VPRA not related to this RFP or the Project.
- 12.2 Offerors shall not communicate with the CM/GC or its subcontractors on any matter concerning this RFP or the Project.
- 12.3 The following entities are considered "representatives" of VPRA (or other Project stakeholders) during this procurement and may not be contacted by any means whatsoever concerning this RFP or the Project:
- (a) Kimley-Horn and Associates, Inc.;
 - (b) The Mott-MacDonald Group;
 - (c) Parsons Transportation Group;
 - (d) Michael Baker International; and
 - (e) ButlerMatrix.
- 12.4 In addition, Offerors are prohibited from contact with the following stakeholders concerning this RFP or the Project:
- (a) CSXT;
 - (b) Amtrak;
 - (c) VRE;
 - (d) Other governmental agencies with jurisdiction;
 - (e) Adjacent landowners; and
 - (f) Business owners in the vicinity of the Project.

13.0 INELIGIBLE FIRMS

- 13.1 The below listed firms are not eligible to participate in this procurement as an Offeror or sub-offeror.
- (a) Kimley-Horn and Associates, Inc.;
 - (b) The Mott-MacDonald Group;
 - (c) Parsons Transportation Group;
 - (d) Michael Baker International;
 - (e) Caliber Consulting Group, LLC;
 - (f) Endesco, Inc.;
 - (g) Vanasse Hangen Brustlin, Inc.;
 - (h) McDonough, Bolyard, and Peck, Inc.;
 - (i) ButlerMatrix;
 - (j) Moffat & Nichol, Inc.;
 - (k) Schnabel Engineering;
 - (l) Alvi Associates, Inc.;
 - (m) O.R. Colan Associates; and
 - (n) Alfred Benesch & Company.

- 13.2 VPRA made this determination in accordance with its Organizational Conflict of Interest Policy. If any firm listed above desires to appeal this determination of its ineligibility, such appeal must be made accordance with the procedures set forth in Section 8.4 of the Organizational Conflict of Interest Policy. In VPRA's discretion, exceptions may be granted on the grounds provided in the Organizational Conflict of Interest Policy. VPRA's reconsideration determination will be in writing.

14.0 VPRA FURNISHED PROJECT INFORMATION DOCUMENTS

- 14.1 VPRA anticipates releasing certain reference documents for information purposes only. VPRA makes no representations or warranties with respect to the reference information, and, unless otherwise provided, Offeror may not rely on them. Given the confidential nature of the reference documents, Offerors will be required to execute a confidentiality/non-disclosure agreement ("NDA") prior to the release of the records to be included at Exhibit 9. Offerors should contact the VPRA designated POC to request a copy of the NDA.

15.0 QUESTIONS/REQUESTS FOR CLARIFICATION FROM OFFERORS

- 15.1 All questions and requests for clarification regarding this RFP shall be submitted to VPRA's POC via electronic mail using Form B, which Offerors shall submit in Microsoft Word format. No requests for additional information, clarification or any other communication should be directed to any other individual. NO ORAL REQUESTS FOR INFORMATION WILL BE ACCEPTED.
- 15.2 Offerors shall not provide information that discloses the Offeror's identity in the body of the question or request for clarification. All questions or requests for clarification must be submitted by **5:00 PM, November 15, 2024**. Questions or clarifications requested after such time will not be answered, unless VPRA elects, in its sole discretion, to do so.
- 15.3 VPRA will post responses to the questions/requests for clarification received and answered on VPRA's website at [Current RFPs - Virginia Passenger Rail Authority \(vapassengerrailauthority.org\)](https://www.vapassengerrailauthority.org). Upon submission of a Proposal, Offerors will be required to affirm receipt of all questions/clarification requests and responses using Form A.

16.0 REQUESTS FOR CLARIFICATION FROM VPRA

- 16.1 VPRA may at any time issue one or more requests for clarification to the individual Offerors, request additional information from an Offeror, or may request an Offeror verify or certify any aspect of its Proposal. Any requests for clarification from VPRA shall be in writing to Offeror's Designated Contact. Offerors shall respond to any such requests within the time stated in the request from VPRA. Upon receipt of requested clarifications and additional information as described above, if any, VPRA may re-evaluate the Proposals to factor in the clarifications and additional information.

17.0 ADDENDA

- 17.1 VPRA may amend the RFP from time to time in its sole discretion. Any such amendments shall be incorporated into the RFP through an addendum. Addenda to the RFP, if any, will be posted on VPRA's website at [Current RFPs - Virginia Passenger Rail Authority \(vapassengerrailauthority.org\)](https://www.vapassengerrailauthority.org).
- 17.2 Offerors shall base their Proposals on the terms and conditions of the RFP Documents included in the latest issued addendum. VPRA will not be bound by any oral communications, or written interpretations or clarifications that are not set forth in an addendum.

- 17.3 Upon submission of a Proposal, Offerors will be required to affirm receipt of all issued addenda on Form A.

18.0 QUALIFICATIONS; LICENSURE

- 18.1 Each business entity (prime and sub-consultants) on the proposed team who is practicing or offering to practice professional services in the Commonwealth, including but not limited to, those practicing or offering to practice engineering, surveying, hydrologic and hydraulic analysis, geotechnical analysis and landscape architecture, shall be required to possess the appropriate commercial professional registration and license details for all main and branch offices proposed for this Project, as well as appropriate individual registration and license details for those professional occupations.

19.0 RIGHT TO INVESTIGATE

- 19.1 VPRA may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to furnish the services and/or goods required in the performance of the Contract to be awarded under this RFP. The Offeror shall furnish to VPRA all such information and data for this purpose as may be requested. VPRA further reserves the right to reject any Proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy VPRA that such Offeror is properly qualified to carry out the obligations of the Contract and to provide the services and/or goods contemplated therein.

20.0 SMALL, DIVERSE, AND DISADVANTAGED BUSINESS PARTICIPATION

- 20.1 It is the policy of VPRA that firms certified as a small and diverse businesses by the Department of Small Business and Supplier Diversity (“DSBSD”) (i.e., SWaM Businesses) and those certified as a Disadvantaged Business Enterprise (“DBE”) by either DSBSD or the Metropolitan Washington Airports Authority (“MWAA”) have an equal opportunity to participate in VPRA procurements.
- 20.2 No SWaM or DBE contract goals are included within this solicitation. However, Offerors must ensure that DSBSD-certified SWaMs and DSBSD/MWAA-certified DBEs have a meaningful chance to compete for and perform Work on the Project. Offerors should take all necessary and reasonable steps for this assurance.
- 20.3 Wherever feasible, the successful Offeror(s) should seek to maximize the use of SWaMs and DBEs for as much of the Work as possible throughout the lifetime of the Contract. A directory of DSBSD-certified SWaM businesses and DSBSD/MWAA-certified DBEs is available online at: <https://directory.sbsd.virginia.gov/#/executiveExport>. Offerors are encouraged to consider assisting small, diverse, and/or disadvantaged businesses in obtaining certification wherever eligible.
- 20.4 In accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4), 49 C.F.R. Part 21, and 28 C.F.R. § 50.3, VPRA hereby notifies all Proposers that it will affirmatively ensure that for any contract entered into pursuant to this solicitation, DBEs will be afforded full and fair opportunity to submit Proposals in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
- 20.5 Additional details regarding SWaM and DBE submittal requirements are set forth in Section 23.3. Any agreement between an Offeror and a SWaM or DBE whereby the SWaM or DBE agrees not to provide quotations for performance of work to other Offerors is prohibited.

21.0 PRE-SUBMITTAL OBLIGATIONS

- 21.1 Each Offeror shall be solely responsible for examining the RFP Documents, including any addenda issued to such documents, and all conditions that may in any way affect its Proposal or the performance of the work on the Contract, including but not limited to:
- (a) examining and carefully studying the RFP Documents, including any addenda and other information or data identified in the RFP Documents;
 - (b) evaluating their organizational capacity to fulfill the requirements of the RFP in a timely and professional manner;
 - (c) addressing all potential issues and/or impacts involving third parties and ensuring all such issues and/or impacts have been included in the Offeror's Proposal;
 - (d) becoming familiar with and satisfying itself as to all federal, state, and local laws and regulations that may affect the cost, progress, or performance of its work on the Contract;
 - (e) determining that the RFP Documents are sufficient to indicate and convey understanding of all terms and conditions for the performance of Offeror's work on the Contract; and
 - (f) notifying VPRA in writing, in accordance with the processes set forth in Section 10.0, of all conflicts, errors, ambiguities, or discrepancies that Offeror discovers in the RFP Documents which require correction and/or clarification.
- 21.2 Any failure to fulfill these responsibilities is at the Offeror's sole risk and no relief will be provided by VPRA.

22.0 DESIGNATION OF CONFIDENTIAL INFORMATION

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

23.0 PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

23.1 *General Requirements*

- (a) Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in VPRA requiring prompt submission of missing information and/or giving a lowered evaluation of the Proposal. Proposals that are substantially incomplete or lack key information may be rejected by VPRA at its discretion. Offerors must use VPRA -issued forms when submitting their Proposal. Alteration or omission of any form may result in a Proposal being deemed non-responsive.
- (b) Proposals should be as thorough and detailed as possible so that VPRA may properly evaluate the Offeror's capabilities to provide the required services.
- (c) Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the Proposal should be numbered. The Proposal should contain a table of contents which cross-references the RFP requirements.
- (d) Information the Offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the Proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the Evaluation Team is unable to find where the RFP requirements are specifically addressed.
- (e) Proposals should be prepared simply and economically, providing straightforward concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content. Elaborate brochures and other representations beyond that sufficient to present a complete and effective proposal are not required and will not be utilized in the evaluation of the Proposal.
- (f) VPRA wants to remind Offerors to be mindful about size limits when sending electronic Proposals to proposals@vpra.virginia.gov. VPRA can accept files up to 150 MB in size. If the response exceeds 150 MB, it is recommended that the file(s) be compressed and sent as an attachment, zip file, if possible. VPRA will only accept a downloadable link if the response cannot be compressed.
- (g) As used in this RFP, the terms "must," "shall," "should," and "may" identify the degree to which requirements are critical. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labelled as "should" or "may" are highly desirable, although their absence will not have a large impact and would be useful but are not necessary. Depending on the overall response to the RFP, some individual "must" and "shall" items may not be fully satisfied, but it is the intent to satisfy most, if not all, "must" and "shall" requirements. The inability of an Offeror to satisfy a "must" or "shall" requirement does not automatically remove that Offeror from consideration; however, it may seriously affect the overall rating of the Offeror's Proposal. Once the Offeror and VPRA have entered into the Contract, the terms "must," "shall," "should," and "may" where used in those portions of the RFP incorporated into the Contract shall have their ordinary meaning.

23.2 *Specific Requirements*

- (a) To be considered for selection, Offerors must submit a complete written response to this RFP to: proposals@vpra.virginia.gov.
- (b) Proposals must be received by **2:00 PM, January 15, 2025**.
- (c) Text shall be in English in a standard font, a minimum of 12 points, single-spaced. Proposals are limited to a maximum of 25 single-sided, numbered pages, excluding a cover letter, required forms, registrations and licenses, covers, sub-tabs, dividers, table of contents, and Key Personnel resumes. Resumes should be limited to two (2) pages in length.
- (d) Proposals shall be presented on 8 ½" x 11" paper; however, pages with organizational charts, matrices, or diagrams may be presented on 11" x 17" paper. Type size shall be no smaller than 12-point for narrative sections, but may be reduced for captions, footnotes, etc., while maintaining legibility.

23.3 *Required Submittals*

Offerors are required to submit the below listed items for their Proposal to be considered complete.

TAB 1: General (non-scoring)

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

1. Form A (Offeror Information and Acknowledgement);
2. Form G (Proof of Authority to Transact Business in Virginia) (include additional forms for any sub-Offerors);
3. Form H (Disclosure of Proprietary/Confidential Information), if applicable;
4. Form I (Certification Regarding Lobbying);
5. Form J (Certification Regarding Debarment, Suspension, and Other Responsibility Matters); and
6. Form K: (National Railroad Passenger Corporation (Amtrak) Certifications).

TAB 2: Qualifications and Experience of Firm; Key Personnel [10 page maximum]

The Offeror must describe the skills and qualifications it has available to perform the work described in Exhibit 1 (Scope of Work). The Offeror shall provide the following information concerning its company and sub-offerors:

1. Expertise and experience of the firm relative to the tasks described in Exhibit 1 (Scope of Work), such as: construction management, railroad construction, railroad construction safety procedures, bridge and retaining wall construction, construction quality assurance/quality control, erosion and sediment control/stormwater plan review and field inspection, stakeholder coordination, construction cost controls and invoice reviews, change and claims management, document management, and materials management.

2. A detailed statement indicating the organizational structure under which the firm proposes to conduct business. If more than one firm is involved in the Project, state the type of arrangement between the firms, the percentage of work to be performed by each, a list of previous projects in which the firms have previously collaborated. Include a comprehensive organizational chart. The full organizational chart for the Franconia-Springfield Bypass project is shown in Exhibit 9.
3. At least three and no more than five (5) projects on which the Offeror or sub-Offeror have worked that are similar in scope and character to the Project. Projects shall have been completed in the last 10 years or be substantially complete. Projects shall include client contact name, address, telephone number; project description, scope of services provided, level of completion of the project; small, diverse, or disadvantaged business percentage (original commitment and final achieved); and project dollar value.
4. Disclosure of any professional disciplinary judgments or actions taken against the Offeror or the Offeror's principles by any professional regulatory bodies (include for sub-Offerors if part of Key Personnel).

Additionally, the Offeror shall identify Key Personnel with the qualifications and experience necessary to ensure efficient administration and successful completion of the Project. Offerors shall submit Form L containing the identity of the individuals proposed to fill the Key Personnel positions identified in the table below. Offerors shall also submit a resume for each Key Personnel. Resumes shall include three (3) references for each Key Personnel.

Key Personnel	Duties and Responsibilities; Position Requirements	Preferred Qualifications
Construction Oversight Manager (CM)	<ul style="list-style-type: none"> • Holds the Consultant's leadership role for the Project. • Directly supports VPRA's project leadership to enable successful on-time and on-schedule delivery of the Project construction. • Responsible for management and oversight of the Project construction, including coordinating with stakeholders and meeting all federal requirements. • Represents the team on technical discussions and has the technical background to discuss and resolve technical issues. • Sees the Project's "big picture" beyond engineering and construction requirements, and understands the interface with the Project's objectives. 	<ul style="list-style-type: none"> • Typically possesses more than 20 years of experience in transportation infrastructure development and construction, including Class 1 railroads. • Demonstrated experience in similar roles/responsibilities as consultant project construction manager on past projects of similar magnitude and complexity. • Demonstrated knowledge of public policy and business practices related to transportation issues. • Demonstrated familiarity with state rail and FRA policies and procedures. • Demonstrated skill in maneuvering through complex construction situations with sensitivity to how people and organizations function, as well as negotiating and leading

Key Personnel	Duties and Responsibilities; Position Requirements	Preferred Qualifications
	<ul style="list-style-type: none"> • Able to act decisively and timely to ensure VPRA's schedule responsibilities are met. • Able to balance technical constraints, policy goals, and stakeholder needs to recommend optimal solutions to difficult issues. <p>Note: This Key Personnel position requires a Professional Engineer license from the Virginia Department of Professional and Occupational Regulation.</p>	<p>discussions to reach positive outcomes.</p> <ul style="list-style-type: none"> • Demonstrated knowledge, skills, and experience to manage, coordinate, and oversee construction to meet on-time, on- budget, high quality business objectives. • BS in Civil Engineering or related field.
<p>Quality Assurance Manager (QAM)</p>	<ul style="list-style-type: none"> • Manages the construction Quality Assurance Program. • Responsible for oversight of the CM/GC Contractor's quality program. • Oversee the Project's conformance with the approved quality plan and the Design throughout construction • Primary liaison with the Contractor's quality program. <p>Note: This Key Personnel position requires a Professional Engineer license from the Virginia Department of Professional and Occupational Regulation.</p>	<ul style="list-style-type: none"> • Typically possesses more than 20 years of experience in quality management of transportation infrastructure and Class 1 railroad construction projects. • Demonstrated experience in similar roles/responsibilities as consultant QAM on projects of similar magnitude and complexity. • Demonstrated knowledge, skills, and experience to manage, coordinate, and oversee quality assurance programs on similar projects. • BS in Civil Engineering or related field.
<p>Environmental Compliance and Inspection Manager (EM)</p>	<ul style="list-style-type: none"> • Responsible for ensuring that all work complies with environmental laws and environmental requirements specific to the Project. • Review designs to ensure compliance with environmental requirements. • Oversee construction operations to ensure compliance with all environmental requirements. <p>Note: This position requires Virginia Department of Environmental Quality (DEQ) Dual Inspector (Erosion & Sediment Control and Stormwater Management) Certification.</p>	<ul style="list-style-type: none"> • Typically possesses more than 10 years of experience overseeing environmental compliance for similar projects. • Demonstrated experience in similar roles/responsibilities as EM on past projects of similar magnitude and complexity. • Demonstrated knowledge of Commonwealth of Virginia environmental policy, regulations, and practices related to construction issues. • Virginia DEQ Dual Plan Reviewer (Erosion & Sediment Control and Stormwater Management) certification preferred • BS in Civil Engineering or related field.

Key Personnel	Duties and Responsibilities; Position Requirements	Preferred Qualifications
Office Engineer (OE)	<ul style="list-style-type: none"> • Manages the Construction Management field office. • Maintains up-to-date construction plans, specifications, contract documents, inspection reports, materials and quality assurance testing. • Originates and monitors resolution of Request for Information, Nonconformance Reports, and other project documentation. • Maintains documentation concerning the project budget, schedule, claims, and change orders. • Performs contract administration responsibilities under the direction of the Construction Oversight Manager. 	<ul style="list-style-type: none"> • Typically possesses five (5) or more years of experience in construction field operations, management, documentation, construction methods, procedures, practices, plans, specifications, and contracts. • BS in Civil Engineering or related field.
Additional Value Add Positions	An Offeror may name up to four (4) other individuals that the Offeror considers as key to the success of the Project. Their resumes shall describe their anticipated role, relevant experience, registration(s), education, and other elements of qualification applicable to the Project.	

TAB 3: Methodology / Approach for Providing Services [10 page maximum]

The Offeror must provide a detailed description of its understanding of the Project requirements, with descriptions of the approach and procedures Offeror has successfully employed on similar projects elsewhere.

Additional required elements shall include the following:

1. A description of the project management procedures the Offeror will follow, including processes and procedures for meeting schedules and budgets, and recovery strategies proposed for the Project.
2. A description of the firm’s risk management and mitigation strategies relevant to the tasks described in Exhibit 1 (Scope of Work).
3. A description of Offeror’s quality control procedures and how they will be deployed toward the successful completion of the tasks described in Exhibit 1 (Scope of Work).
4. A description of other services or specialties that may distinguish the ability of the Offeror to successfully deliver the Project.

Where applicable, the Offeror may identify and describe any relevant support services that will be available to VPRA relevant to the various types of tasks described in Exhibit 1 (Scope of Work).

TAB 4: Organizational Capacity

[5 page maximum]

The Offeror shall describe its human and financial resources and discuss any issues which might positively or negatively impact its ability to fulfill the Project requirements. Additional required elements shall include the following:

1. Disclosure of the location of Offeror's headquarters and primary office from where the Project work will be performed.
2. Disclosure of Offeror's and sub-Offerors' current major projects and the anticipated completion date of the projects.
3. Discuss the availability of the Key Personnel by providing a list of current projects, anticipated completion dates, and percent availability for the Project. Offerors shall guarantee that Key Personnel identified will be available for the duration of the Project.
4. A description of organizational capacity to fulfill the Project requirements.

TAB 5: Small, Diverse, and Disadvantaged Business Participation

The Offeror shall submit the following:

1. A completed Form C (Small and Diverse Business Subcontracting Plan; VPRA Form PD 60) detailing Offeror's Small and Diverse Business Subcontracting Plan for the Work; and
2. A completed Form D (DBE Utilization Plan; VPRA Form PD 50B) detailing Offeror's plan to use DSBSD/MWAA-certified DBEs for the Work.

As further addressed in Section 24.0, Offerors will be scored exclusively on Section B of their Small and Diverse Business Subcontracting Plan (Form C), which details their small/small diverse business commitments for the Project. DBEs will not count toward an Offeror's score unless the DBE is also certified as a small business by DSBSD and listed within Section B of Form C. Firms not certified as a small business by DSBSD but holding other SWaM certifications or other status with DSBSD (e.g., women-owned business, minority-owned business) will also not count towards an Offeror's score but should be listed in Section C of Form C.

Each Offeror is responsible for independently verifying the certification status of firms that it includes within its Small and Diverse Business Subcontracting Plan (Form C) and DBE Utilization Plan (Form D). Deductions in scoring may be made by the Evaluation Team where an Offeror has included a firm within Section B of Form C that is not properly certified by DSBSD at time of Proposal submittal. Alternatively, the Evaluation Team, in its sole election, may elect to award zero points in those circumstances.

If awarded the Contract, an Offeror's approved Small and Diverse Business Subcontracting Plan and approved DBE Utilization Plan become part of the Contract Documents and are to be construed as material to the Contract. Consultant will be required to report small, diverse, and/or disadvantaged business utilization to VPRA on a monthly basis using Forms E and F, as applicable.

During the performance of the Contract, VPRA may allow amendments to the Small and Diverse Business Subcontracting Plan and/or DBE Utilization Plan where the modification to the plan will have the effect of increasing overall participation by SWaMs and/or DBEs on the Project or where the Consultant is able to evidence that a SWaM and/or DBE subcontractor has been terminated for cause or has been decertified.

24.0 EVALUATION AND SCORING

24.1 Immediately following the due date for Proposals, the Director of Procurement (or his designee) shall distribute the Proposals to the Evaluation Team. Proposals determined to be responsive to the RFP will be evaluated and scored in accordance with this Section 24.

24.2 The Offeror’s Proposal will be assigned points as follows:

Category	Total Points Available
<i>Qualifications and Experience of Firm; Key Personnel (Tab 2)</i>	40 points
<i>Methodology/Approach for Providing Services (Tab 3)</i>	35 points
<i>Organizational Capacity (Tab 4)</i>	20 points
<i>Small/Small and Diverse Business Participation (Tab 5)</i>	5 points
Total	100 points

24.3 In ascribing points, the Evaluation Team will utilize the following Evaluation Criteria:

Category	Evaluation Criteria
<i>Qualifications and Experience of Firm; Key Personnel (Tab 2)</i>	The extent to which Offeror shows that it has successfully performed similar prior work that demonstrates its qualifications and ability to successfully fulfill the Project requirements; the extent to which Offeror’s Key Personnel have the background and experience to be successful at delivering a quality Project.
<i>Methodology/Approach for Providing Services (Tab 3)</i>	The extent to which Offeror demonstrates a comprehensive understanding of the Project, key risks, and mitigation strategies; overall soundness of Offeror’s plan; soundness of Offeror’s quality control procedures; other distinguishing elements Offeror can bring to the Project.

<p><i>Organizational Capacity (Tab 4)</i></p>	<p>The Offeror's ability to timely perform the work given its current resources and other project demands.</p>
<p><i>Small/Small and Diverse Business Participation (Tab 5)</i></p>	<p>VPRA will award points for small/small and diverse business participation based on a formula that awards the maximum number of points available to the Offeror that commits to use the highest percentage of small or small and diverse businesses on the Project (Section B of Form C). The number of points awarded to each Offeror is as follows:</p> <p style="text-align: center;">5 x (Offeror's % Commitment / Highest % Committed).</p> <p>Note: Where an Offeror is a DSBSD-certified small business, they will be awarded all 5 points provided they are self-performing 100% of the Work.</p>

- 24.4 Except for Small/Small Diverse Business Participation, members of the Evaluation Team will score Proposals individually, which scores, in turn will be aggregated into a consensus score for each criteria. The Evaluation Team is at liberty to consider all information contained within an Offeror's Proposal, as well as Offeror's presentation and responses to questions in any informal interviews, if held.
- 24.5 The consensus score will be added to the Small/Small Diverse Business Participation score to yield an Offeror's overall score. The Offeror with the highest overall score will be deemed to be the top ranked Offeror, subject to any adjustments in scoring as may be made by the Evaluation Team following the informal interviews described in Section 25.0.

25.0 DISCUSSIONS; INFORMAL INTERVIEWS

- 25.1 Upon completion of the initial scoring, VPRA will engage in individual discussions with two or more Offerors deemed fully qualified, responsible, and suitable on the basis of their Proposal and with emphasis on professional competence to provide the required services. These informal interviews, which may be repetitive in nature, may include each such Offeror giving an oral presentation of its Proposal.
- 25.2 Informal interviews shall not be used to fill in missing or incomplete information that was required in the Proposal and instead are designed to provide an opportunity for selected Offerors to clarify or elaborate on the corresponding Proposal and to expound upon their qualifications or staff expertise pertinent to the Project. The informal interviews are a fact finding/explanation session only and do not include negotiation. Offerors are advised that Project stakeholders and funding partners may be in attendance and have the ability to separately ask questions.
- 25.3 VPRA will not explicitly evaluate the interviews as a standalone element of the Proposal; however, the interviews may be considered by the Evaluation Team when evaluating and scoring the Proposals.
- 25.4 If selected for an informal interview, VPRA will provide the Offeror with the date and time to appear. Whenever feasible, VPRA will, in its sole discretion, accommodate any request by an Offeror to modify the date and/or time established for their informal interview.

- 25.5 At the conclusion of discussions outlined in this Section 25.0, VPRA shall select in the order of preference, two or more Offerors whose professional qualifications and proposed services are deemed most meritorious as determined by the Evaluation Team's final ranking.

26.0 NOTIFICATION TO OFFERORS

- 26.1 At the conclusion of the evaluation process described in this RFP, VPRA will advise Offerors as to the status of their Proposal and provide a Notice of Intent to Award to the top ranked Offeror for the Project.

27.0 ADDITIONAL SUBMITTALS

- 27.1 Within ten (10) Business Days of receipt of the Notice of Intent to Award, the top ranked Offeror shall provide the information and materials stated in this section to VPRA. Provision of these materials and approval thereof by VPRA is a condition precedent to execution of the Contract. Failure to provide these materials and receive approval from VPRA shall constitute a failure on the part of the Offeror to execute the Contract.

- 27.2 The top ranked Offeror shall provide the following:

- (a) Form M (Exceptions to RFP Documents);
- (b) Form N (Fee Schedule);
- (c) FAR Audited Overhead Rate for Offeror and all sub-Offerors;
- (d) copies of all registrations and licenses for main and branch offices, and copies for individual licenses for Key Personnel as issued by the Department of Professional and Occupational Regulation and such other applicable bodies. This includes registrations and licenses for any sub-Offerors that Offeror has named as Key Personnel;
- (e) Evidence of insurance required by the Contract as specified in Exhibit 7. This document may take the form of a letter from an insurance carrier(s) that it will issue the insurance policies required by the Contract upon execution of the Contract; and
- (f) Such additional information as may be designated by VPRA within the Notice of Intent to Award.

28.0 NEGOTIATION AND AWARD OF THE CONTRACT

- 28.1 After receipt and evaluation of all Proposals, VPRA will conduct limited negotiations with the Offeror deemed to be fully qualified and best suited among those submitting Proposals (i.e., the top ranked Offeror), including the negotiation of any terms and conditions proposed by VPRA to which the selected Offeror objected to within Form M.

- 28.2 Offerors acknowledge that certain terms and conditions are not subject to negotiation or waiver by VPRA, including terms and conditions required by (a) VPRA's third party agreements, (b) federal or state law, regulation, order, or ordinance, and (c) funding partner agreements or guidance.

- 28.3 If a contract satisfactory and advantageous to VPRA can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to VPRA, the award shall be made to that Offeror. Otherwise, negotiations with the Offeror ranked first shall be formally terminated and negotiations conducted with the Offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

- 28.4 The award document will be a contract incorporating by reference all requirements, terms and conditions of the solicitation, and the successful Offeror's Proposal as negotiated. A Contract template is included in this RFP at Exhibit 8.
- 28.5 Notice of the award will be published on VPRA's website and shall remain available for public viewing for at least ten (10) days.

29.0 SENSITIVE SECURITY INFORMATION; CRITICAL INFRASTRUCTURE

- 29.1 If any information in this Project is determined to contain Sensitive Security Information ("SSI") or information pertaining to Critical Infrastructure, the top ranked Offeror(s) shall be required to execute VPRA's standard Confidentiality and Non-Disclosure Agreement to the extent the top ranked Offeror has not already executed such agreement in connection with this solicitation.
- 29.2 Once negotiations have been completed and prior to execution of the Contract, personnel handling SSI material and/or information pertaining to Critical Infrastructure, or who otherwise require access to Critical Infrastructure may be required to pass a fingerprint-based Criminal History Background Check ("CHBC"). An individual employee's failure to successfully pass the fingerprint-based CHBC will not negate the selection and the top ranked Offeror will be allowed to replace those individuals. However, if Key Personnel fail the fingerprint-based CHBC, the selection may be canceled and negotiations begun with the next ranked Offeror.

30.0 CONTRACT EXECUTION; AT RISK WORK

- 30.1 Upon award of the Contract, VPRA will deliver an executed copy of the Contract to the successful Offeror, who shall execute and deliver such copy to VPRA within five (5) Business Days of receipt.
- 30.2 No Work shall be performed by the successful Offeror under the Contract until the Contract is fully executed and the successful Offeror has been issued a written Notice to Proceed by VPRA.
- 30.3 Notwithstanding the provisions set forth in Section 30.2, VPRA may, in its sole discretion, permit an Offeror to commence Work on the Project prior to execution of the Contract and/or issuance of Notice to Proceed, subject to such terms and conditions as are established by VPRA and which will be memorialized in a letter agreement to be executed by the parties. In such event, all Work performed by Offeror prior to issuance of Notice to Proceed will be deemed to be "at risk" (Offeror assuming all risk of non-payment) and Offeror must, among other things, agree to waive any and all rights of recovery, claim, action or cause of action against VPRA and its officers, directors, employees and agents for labor and materials furnished in the event the Contract is not executed, the Notice to Proceed is not issued, or the procurement is otherwise canceled.

31.0 DEBRIEFINGS

- 31.1 Offerors not selected for an award may request a debriefing. If requested, debriefings shall be provided at the earliest feasible time after execution of the contract. The debriefing shall be conducted by VPRA's POC or designee, who may be accompanied by other VPRA officials familiar with the rationale for the selection decision.
- 31.2 Debriefings shall:
- (a) Be limited to discussion of the unsuccessful Offeror's Proposal and will not include specific discussion of a competing Proposal;

- (b) Be factual and consistent with the evaluation of the unsuccessful Offeror's Proposal;
and
- (c) Provide information on areas in which the unsuccessful Offeror's Proposal had weaknesses or deficiencies.

Debriefing will not include discussion or dissemination of the identities, thoughts, or notes of individual members of the Evaluation Team, but may include a summary of the rationale for the selection decision. In its sole discretion, VPRA may delay and/or limit the scope of a debriefing in the event it is determined that the information to be furnished to an Offeror may provide the firm with an unfair competitive advantage on another pending procurement.

32.0 APPLICABLE COST PRINCIPLES; ACCOUNTING REQUIREMENTS

- 32.1 The Contract will be performed and audited in accordance with 48 C.F.R Part 31, "Contract Cost Principles and Procedures," ("FAR Part 31"), which provisions are incorporated herein by reference. To be eligible for reimbursement, Consultant's and any sub-consultant's costs must (1) be incurred in accordance with the terms of the Contract; (2) be in accordance with the final approved Fee Schedule; and (3) comply with cost principles set forth in FAR Part 31. All Offerors submitting Proposals (prime consultants, joint ventures and sub-consultants) must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of FAR Part 31 and be sufficient to exclude unallowable cost items from Project invoicing to VPRA.

33.0 ORGANIZATIONAL CONFLICTS OF INTEREST

- 33.1 Matters involving real or perceived organizational conflicts of interest ("OCI") will be administered in accordance with VPRA's Organizational Conflict of Interest Policy (the "OCI Policy") which is available at <https://vapassengerrailauthority.org/procurement/>.
- 33.2 Offerors are notified that prior or existing contractual obligations between a company and a federal or state agency relative to the RFP or VPRA's programs could give rise to potential OCI. Each Offeror shall independently assess potential OCI and require its proposed team members to identify real and apparent OCI, with particular emphasis on that which provides a real or perceived unfair competitive advantage relative to this procurement. In accordance with the OCI Policy, Offerors shall promptly disclose to VPRA all real or apparent OCI. In instances where an Offeror is unclear as to whether a particular circumstance could be considered real or apparent OCI, they must, in accordance with the OCI Policy, seek a determination from VPRA.
- 33.3 VPRA shall have sole discretion as relates to determinations involving OCI on this RFP. Any firm determined to have an OCI that cannot be neutralized, mitigated or otherwise waived (when determined to be in the public interest), shall not be allowed to participate in the procurement. Failure to abide by VPRA's determination in this matter may result in a Proposal being declared non-responsive.

34.0 WITHDRAWAL, DURATION OF PROPOSALS

- 34.1 The Proposal shall be binding upon the Offeror for one hundred twenty (120) days following the due date for proposal submittal. If not withdrawn at that time, the Proposal shall remain effective until an award is made or the solicitation is cancelled.
- 34.2 Proposals may be withdrawn by written notice from the Offeror to the VPRA's POC prior to the RFP closing date and time. The withdrawal shall be made by the person signing the Proposal or by any individual who is authorized by the Offeror. The Offeror must provide

written evidence of the individual's authority to withdraw the Proposal if the individual withdrawing the Proposal is other than the person signing the Proposal.

35.0 PROCUREMENT DECISION APPEALS

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

36.0 OFFERORS RESPONSIBLE FOR ALL COSTS

36.1 Issuance of this RFP by VPRA in no way constitutes a commitment by VPRA to award a contract or to pay any costs incurred by an Offeror in the preparation of a response to this RFP. Offerors shall be responsible for all costs associated with participation in this procurement process, including but not limited to the preparation of Proposals, submission of questions, participation in informal interviews, attendance at public forums or other meetings established pursuant to the procurement process, and any other efforts or costs arising from or related to this procurement.

37.0 NO ASSUMPTION OF LIABILITY

37.1 In no event shall VPRA be bound by, or liable for, any obligations with respect to the RFP until such time (if at all) a contract, in form and substance satisfactory to VPRA, has been executed and authorized by VPRA and then, only to the extent set forth therein.

38.0 RESERVATION OF RIGHTS

38.1 In connection with this procurement, VPRA reserves to itself all rights (which rights shall be exercisable by VPRA in its sole discretion) available to it under applicable law, including without limitation, the following, with or without cause and with or without notice:

- (a) The right to cancel, withdraw, postpone, or extend this RFP in whole or in part at any time prior to the execution by VPRA of the Contract, without incurring any obligations or liabilities.
- (b) The right to issue a new RFP.
- (c) The right to reject any and all submittals, responses and Proposals received at any time.
- (d) The right to modify all dates set or projected in this RFP.
- (e) The right to suspend and terminate the procurement process for the Project, at any time.
- (f) The right to waive or permit corrections to data submitted with any response to this RFP until such time as VPRA declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed.
- (g) The right to issue addenda, supplements, and modifications to this RFP.
- (h) The right to permit submittal of addenda and supplements to data previously provided with any response to this RFP until such time as VPRA declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed.

- (i) The right to hold meetings and conduct discussions and correspondence with one or more of the Offerors responding to this RFP to seek an improved understanding of the responses to this RFP.
- (j) The right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to the RFP, including the right to seek clarifications from Offerors.
- (k) The right to permit Offerors to add or delete firms and/or Key Personnel until such time as VPRA declares in writing that a particular stage or phase of its review has been completed and closed.
- (l) The right to add or delete Offeror responsibilities from the information contained in this RFP.
- (m) The right to waive deficiencies, informalities and irregularities in a Proposal, accept and review a non-conforming Proposal or seek clarifications or supplements to a Proposal.
- (n) The right to disqualify any Offeror that changes its submittal without VPRA approval.
- (o) The right to change the method of award at any time prior to submission of the proposals.
- (p) The right to respond to all, some, or none of the inquiries, questions and/or request for clarifications received relative to the RFP.

39.0 COMPLIANCE WITH LAW IN THE COMMONWEALTH

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

40.0 ETHICS IN PUBLIC CONTRACTING

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

41.0 REPRESENTATIONS

- 41.1 By submitting a Proposal, Offeror hereby represents and warrants that (1) as of the date hereof, and on and as of the date of the provision of goods or services contemplated herein, the Offeror is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; and (2) the Offeror has the full right, power and authority and has taken all necessary action under the laws of its jurisdiction of organization to authorize it to execute and deliver a Contract, to consummate the transactions contemplated hereby and in the Contract and to perform its obligations thereunder. The Offeror hereby agrees

to furnish to VPRA any and all certificates of governmental authorities and/or officers or directors of the Offeror that VPRA may reasonably require in order to confirm the due authorization and execution of the Proposal and the Contract and the Offeror's right, title and authority to perform its obligations under the Contract.

APPENDIX 1 – DEFINITIONS

Amtrak	The National Railroad Passenger Corporation.
Business Days	A Monday, Tuesday, Wednesday, Thursday, or Friday that is not a holiday.
Commonwealth	The Commonwealth of Virginia.
Consultant	The firm selected pursuant to the RFP, which enters into the Contract with VPRA to perform the requisite professional services for Project.
Contract	The written agreement executed between VPRA and the Consultant pursuant to this RFP and which contains the terms and conditions governing the Work.
Contact Documents	Shall have the meaning ascribed in the Contract.
Criminal History Background Check	A criminal history check of an individual based on fingerprints and other identifying information obtained by a law enforcement officer conducted through the Federal Bureau of Investigation-Identification Division (FBI-ID).
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.
Design	The final plans, drawings and other documentation furnished by the Design Consultant for construction of the Project.
Design Consultant	The engineering firm engaged by VPRA to prepare the Design. The Design Consultant for the Project is Parsons Transportation Group.
Designated Contact	The individual designated by an Offeror as the point of contact for communications with VPRA during the procurement (i.e., the person listed in Section B of Form A).
Disadvantaged Business Enterprise (DBE)	A firm certified as a DBE by either DSBSD or MWAA.
DOT Component	The division, office, or mode within the USDOT awarding Federal financial assistance. This includes the FRA.
Evaluation Team	The individuals who will perform the evaluation and scoring of Proposals.
Evaluation Criteria	The criteria used to score and rank Proposals as set forth in <u>Section 24.3</u> of this RFP.
FAR Audited Overhead Rate	An indirect cost rate established in accordance with the Federal Acquisition Regulation.
Fee Schedule	The hourly wage rates and Federal Acquisition Regulation (“FAR”) audited overhead rates submitted by an Offeror and any their sub-offerors as detailed on <u>Form N</u> .
Instructions to Offerors	The part of the RFP stating the submission requirements and evaluation criteria for the selection of the Consultant.
Key Personnel	The individuals specified in <u>Section 23.3 (Tab 2)</u> of this RFP.
Offeror	A professional services entity that submits a Proposal in response to the RFP. Where context dictates, Offeror shall also mean a potential Offeror.
Notice of Intent to Award	The written notification provided by VPRA informing an Offeror that it is the party to whom VPRA intends to award the Contract.
Notice to Proceed (NTP)	The written notice issued by VPRA authorizing Consultant to proceed with the Work.
Organizational Conflict of Interest Policy	VPRA’s policy governing conflicts of interest, as described further in <u>Section 33</u> of this RFP.
Procurement Schedule	The schedule for this procurement detailed in <u>Section 9.1</u> of this RFP.

Proposal	The response to the RFP submitted by an Offeror.
Sensitive Security Information or SSI	The information covered by Title 49 of the Code of Federal Regulations.
SWaM Business or SWaM	A firm certified by DSBSD as a small, women-owned, or minority-owned business or related to a small, women-owned, or minority-owned business.
Utility Owner	The owner or operator of any utility.

APPENDIX 2 - FORMS

FORM A

OFFEROR INFORMATION AND ACKNOWLEDGEMENT

[attached]



OFFEROR INFORMATION AND ACKNOWLEDGEMENT

RFP No. _____

A. General Information

Company Name: _____

Address: _____

Phone: () _____

Fax Number: () _____

DUNS NO.: _____

FEI/FIN NO.: _____

Website: _____

B. Offeror's Designated Representative

Name: _____

Title: _____

Phone (W): _____

Phone (E): _____

Email: _____

C. DBE / SWaM Information

(Please check all that apply)

Federal Classifications:

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

ISSUING BODY: _____

Out of State firm that is certified as a DBE by their home state's Unified Certification Program: () YES () NO

Commonwealth of Virginia Certifications/Classifications (SWaMs and other):

Small/Micro Business: () YES () NO

Women-Owned Business: () YES () NO

Minority-Owned Business: () YES () NO

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

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

Other Classifications:

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

CERTIFICATION#: _____

ISSUING BODY: _____

D. Exceptions

Does your proposal contain exceptions to the RFP Documents? () YES () NO

If so, *complete and attach FORM PD 20 with your proposal unless otherwise instructed in the RFP. Note: If this is an A/E procurement, exceptions are not due until the ranking for negotiations is complete.*

E. Proprietary or Confidential Information

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

If so, *complete and attach FORM PD 25 with your proposal.*

F. Acknowledgements

In signing below, Offeror hereby acknowledges receipt of the above-referenced RFP and the below listed amendments and responses to questions/requests for clarification issued by VPRA. (Attach additional pages if necessary).

1. RFP Addendum

Addendum # _____

Addendum Date ____/____/____

Addendum # _____

Addendum Date ____/____/____

Addendum # _____

Addendum Date ____/____/____

Addendum # _____

Addendum Date ____/____/____

Addendum # _____

Addendum Date ____/____/____

Addendum # _____

Addendum Date ____/____/____

Addendum # _____

Addendum Date ____/____/____

Addendum # _____

Addendum Date ____/____/____

2. Response to Questions/Requests for Clarification

Resp. to Question # _____

Issue Date ____/____/____

Resp. to Question # _____

Issue Date ____/____/____

Resp. to Question # _____

Issue Date ____/____/____

Resp. to Question # _____

Issue Date ____/____/____

[SIGNATURE PAGE FOLLOWS]

FOR THE OFFEROR:

Company Name: _____

By, _____
(signature)

(printed name)

Its, _____
(title)

Dated: _____

FORM B

OFFEROR QUESTIONS/REQUESTS FOR CLARIFICATION

[attached]

FORM C

SMALL AND DIVERSE BUSINESS SUBCONTRACTING PLAN

[attached]



SMALL AND DIVERSE BUSINESS SUBCONTRACTING PLAN

For Internal Use:

Approved by, _____

Dated: _____

Definitions:

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

"SWaM" shall have the meaning set forth in Va. Code § 2.2-1604.

Certification:

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

Point Allocation:

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

Modification:

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

Instructions:

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

Small and Diverse Business Subcontracting Plan (cont.)

Section A

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

Certification number: _____ Certification Date: _____

Small Business Subsets (check all that apply):

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

Section B

Populate the table below to show your firm's plans for utilization of **DSBSD-certified Small/Small Diverse Businesses** in the performance of this Contract for the initial contract period. Include plans to utilize Small/Small Diverse Businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

It is important to note that the proposed participation will be incorporated into the subsequent contract and will be a requirement of the Contract. Failure to obtain the proposed participation percentages may result in a determination that Contractor/Consultant is in breach of the Contract.

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

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

Section C

Populate the table below to show your firm's plans for utilization of **DSBSD-certified Women-Owned Businesses and DSBD-certified Minority-Owned Businesses (i.e., any SWaM business not certified as Small and already listed in Section B)** in the performance of this Contract for the initial contract period. Firms which hold DSBSD status as a **Service-Disabled Veteran-Owned Business** should also be listed in this Section C. Include plans to utilize Women-Owned Businesses, Minority-Owned Businesses, and Service-Disabled Veteran-Owned Businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.

It is important to note that the proposed participation will be incorporated into the subsequent contract and will be a requirement of the Contract. Failure to obtain the proposed participation percentages may result in a determination that Contractor/Consultant is in breach of the Contract.

(a) SUBCONTRACTOR NAME/ADDRESS	(b) DSBSD CERTIFICATION NO. (for all other SWaM certifications other than small)	(c) DSBSD CERTIFICATION/STATUS DESCRIPTION (e.g., women-owned (W), minority-owned (M), service disabled veteran- owned (SDV))	(d) OTHER CERTIFICATIONS (can be local, state or federal) [OPTIONAL] ²	(e) DESCRIPTION OF WORK	(f) PLANNED CONTRACT INVOLVEMENT (%)	(g) ESTIMATED SPEND (\$) <i>Applicable to fixed price contracts only</i>

Offeror Name: _____

Preparer Name: _____ **Date:** _____

***Attach additional sheets as necessary

² This information is collected for informational purposes only. Offerors are encouraged to report the participation of subcontractors which, while not qualifying as a DSBSD certified business, hold other, related certifications which demonstrate participation by either a small, disadvantaged or veteran-owned businesses.

FORM D
DBE UTILIZATION PLAN

[attached]



DBE UTILIZATION PLAN

For Internal Use:
 Approved by, _____
 Dated: _____

Part I

DBE FULFILLMENT BY PRIME CONTRACTOR/CONSULTANT

To be completed ONLY by Bidders/Offerors that are certified as a DBE by DSBSD/MWAA at time of bid/proposal submittal and which intend to fulfill the contract goal through work to be performed with its own forces:

DSBSD/MWAA Certification number: _____ Certification Date: _____

Part II

DBE SUBCONTRACTOR/SUPPLIER UTILIZATION

NAME OF DBE FIRM	DSBSD/MWAA CERT. NO.	OTHER DSBSD CERTIFICATIONS/ DESIGNATIONS <small>(e.g., micro, small, women-owned, minority-owned, service disabled veteran-owned)</small>	FUNCTION <small>(e.g., subcontractor, supplier, manufacturer, service provider, broker)</small>	DESCRIPTION OF WORK	PLANNED CONTRACT INVOLVEMENT (%)	ESTIMATED SPEND (\$) <small><i>Applicable to fixed price contracts only</i></small>

NOTE: ATTACH ADDITIONAL PAGES, IF NECESSARY.

FORM E
MONTHLY SMALL AND DIVERSE BUSINESS SUBCONTRACTING
UTILIZATION REPORT

[attached]



MONTHLY SMALL AND DIVERSE BUSINESS UTILIZATION REPORT

Project		Reporting Period (M/Y)	
Prime Contractor Name			
Contact Name			
Phone Number			
Email			
		Date Submitted	

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

Attach additional pages if necessary

I certify that contracts have been executed with the above firms, amounts listed are accurate and payments were made in accordance with contractual obligations. Cancelled checks and/or supporting information will be on file for inspection or audit.	
Signature	Title

Notes:

- (1) Denotes firms which are certified as a "small businesses," by the Department of Small Business and Supplier Diversity (DSBSD) and which are identified in Section B of the approved Small Business and Diverse Subcontracting Plan (Form PD 60)
- (2) Denotes firms which are not certified as a "small business," by DSBSD but which hold other certifications or status from either DSBSD or the Metropolitan Washington Airports Authority (MWAA) (i.e., women-owned (W), minority-owned (M), service disabled veteran-owned (SDV), or disadvantaged business enterprise (DBE)). Please include classification code along with payment information.
- (3) Denotes firms which are not certified by DSBSD or MWAA, but which are otherwise certified as a small or diverse business by another certifying body. Please include a description of the certification along with payment information.

FORM F
MONTHLY DBE PARTICIPATION REPORT

[attached]



MONTHLY DBE PARTICIPATION REPORT

For Internal Use:

Reviewed by, _____

Dated: _____

Contract Id. No.: _____

Check Here if Final Report []

Contractor/Consultant:	Reporting Period (Month/Year):	Report No.:
Contact:	Email:	Phone:

All Contractors making payments to DBE subcontractors/subconsultants/suppliers, regardless of their tier, are required to complete and submit this form each time payments are made to a DBE subcontractors/subconsultant/supplier during the previous thirty-day payment period of the Contract.

NAME OF CERTIFIED DBE FIRM (Subcontractor/Subconsultant/Supplier)	DBE FIRM'S FEDERAL TAX ID NUMBER	DATE OF PAYMENT (To DBE)	AMOUNT PAID THIS MONTH (To DBE)	AMOUNT PAID TO DATE (To DBE)	ACTUAL DBE UTILIZATION TO DATE (%)	DBE UTILIZATION AS LISTED ON FORM PD 50B (%)

I certify that contracts have been executed with the above firms, amounts listed are accurate and payments were made in accordance with contractual obligations. Cancelled checks and/or supporting information will be on file for inspection or audit.

Signature	Title
Date	

FORM G

PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

[attached]

PROOF OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA

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

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

- A. Bidder/Offeror is a Virginia business entity organized and authorized to transact business in Virginia by the State Corporation Commission ("SCC") and such vendor's Identification Number issued to it by the SCC is: _____.
- B. Bidder/Offeror is an out-of-state (foreign) business entity that is authorized to transact business in Virginia by the SCC and such vendor's Identification Number issued to it by the SCC is: _____.
- C. Bidder/Offeror does not have an Identification Number issued to it by the SCC and such vendor is not required to be authorized to transact business in Virginia by the SCC for the following reason(s):

Please attach additional sheets if necessary. If Bidder/Offeror is a joint venture, attach a completed Form PD 44 for each of the partner firms comprising the joint venture.

- D. Bidder/Offeror has a pending application before the SCC for authority to transact business in the Commonwealth of Virginia and wishes to be considered for a waiver to allow Bidder/Offeror to submit the SCC Identification Number after the due date for bids/proposals. (VPRA reserves the right to determine, in its sole discretion, whether to allow such waiver).

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

Authorized Signature

Print or Type Name and Title

Date

*****RETURN THIS FORM AND ANY SUPPORTING DOCUMENTATION WITH YOUR PROPOSAL*****

FORM H

PROPRIETARY/CONFIDENTIAL INFORMATION IDENTIFICATION

[attached]

PROPRIETARY/CONFIDENTIAL INFORMATION IDENTIFICATION

NAME OF FIRM/OFFEROR: _____

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

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

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

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

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

FORM I
CERTIFICATION REGARDING LOBBYING

[attached]

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with THIS Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].
- (3) The undersigned shall require that the language of this certification be included in the award documents of all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub- recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization: _____

Street address: _____

City, State, Zip: _____

CERTIFIED BY:

(signature)

(type or print name)

(title)

Executed this ____ day of _____, 20____

FORM J

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS**

[attached]

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND
OTHER RESPONSIBILITY MATTERS**

(Read instructions before completing certification.)

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, or proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1.b of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ORGANIZATION NAME

NAME(S) AUTHORIZED REPRESENTATIVE(S)

TITLE(S) OF AUTHORIZED REPRESENTATIVE(S)

SIGNATURE(S)

DATE

Instructions for Certification

- (1) By signing and submitting this form, the prospective primary participant is providing the certification set out on page 1 in accordance with these instructions.
- (2) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out on this form. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- (3) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
- (4) The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (5) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- (6) The prospective primary participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- (7) The prospective primary participant further agrees by submitting this form that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management (SAM) database.
- (9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (10) Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

FORM K

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) CERTIFICATIONS

[attached]



NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK)

SUPPLEMENTARY GENERAL PROVISIONS
FOR NONCONSTRUCTION CONTRACTS
APPENDIX A TO SUPPLEMENTARY GENERAL PROVISIONS
FOR
NONCONSTRUCTION CONTRACTS

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Bidder/Offeror/Contractor

Signature of Authorized Representative

Printed Name of Authorized Representative

Title of Authorized Representative

Date



**APPENDIX B TO SUPPLEMENTARY GENERAL PROVISIONS
FOR
NONCONSTRUCTION CONTRACTS**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The offeror/prospective contractor certifies, by submission of this offer or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the offeror/prospective contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this offer or proposal.

Name of Bidder/Offeror/Contractor

Signature of Authorized Representative

Printed Name of Authorized Representative

Title of Authorized Representative

Date

FORM L
KEY PERSONNEL DESIGNATIONS

[attached]

FORM L
KEY PERSONNEL DESIGNATIONS

Key Personnel Position	Name of Individual	Years of Experience	Education and Registrations	Employer Name	Reference Name, Title, Phone Number, and E-mail Address
Construction Oversight Manager (CM)					1. 2. 3.
Quality Assurance Manager (QAM)					1. 2. 3.
Environmental Compliance and Inspection Manager (EM)					1. 2. 3.
Office Engineer (OE)					1. 2. 3.
Additional Value Add Positions					1. 2. 3.

FORM M
EXCEPTIONS TO RFP DOCUMENTS

[attached]

EXCEPTIONS TO RFP DOCUMENTS

Instructions:

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

Notwithstanding the foregoing, for solicitations involving the procurement of architectural or engineering services, a list of any deviation(s), exception(s), or variation(s) to or from the RFP Documents shall not be due until qualified Offerors/Proposers are ranked for negotiations (refer to the RFP for specific terms as to submittal due dates of this form).

As used herein, "RFP Documents" shall include the Instructions to Offerors/Proposers and all exhibits, forms, appendices, and addenda set forth within or issued in connection with the RFP.

Offeror/Proposer notes the following deviations, exceptions, or variations (each an "Objection"):

RFP Document	Section, paragraph or other identifier	Description of Objection

IF THERE ARE NO OBJECTIONS, PLEASE WRITE "N/A" IN THE CHART ABOVE.

RFP No. _____

Offeror/Proposer Name: _____

Preparer Name: _____ Date: _____

FORM N
FEE SCHEDULE

[attached]

Fee Schedule	
Effective Date:	
Services Procured:	[insert project/program title]
RFP No.:	[insert number]
Consultant:	

	A	B	C	D	E
Personnel Classification	(Year) Hourly Wage Rate	(Year) Overhead Rate	Profit (%)	(Year) Total Fixed Billable Rate	Annual Percentage Rate Increase*
				\$ -	
				\$ -	
				\$ -	
				\$ -	
				\$ -	
				\$ -	
				\$ -	
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				\$ -	
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				\$ -	
				\$ -	

*API only applies to Hourly Rate in Column A

EXHIBIT 1
SCOPE OF WORK

[attached]

EXHIBIT 1

SCOPE OF WORK

1.0 OVERVIEW

- 1.1 The scope of services under this RFP primarily includes Construction Management services for the Project. Among other things, the Consultant may be tasked with plan reviews, analysis of change order cost data, development of independent change order cost estimates, reconciliation of change order quantity and costs differences, support for key stakeholder coordination, development of reports and accurate cost projections, compliance with federal/state statutes, execution of the Project's Quality Assurance/Quality Control (QA/QC) and Environmental Permit Compliance programs, including inspections and testing, administration and support in civil rights compliance, public affairs, communications, grant compliance, monitoring of DBE/SWaM utilization, and other relevant activities.

2.0 PROJECT DELIVERABLES SCHEDULE

- 2.1 VPRA is currently prosecuting the Project work under a Construction Manager/General Contractor (CM/GC) contract awarded to Flatiron-Herzog JV ("FHJV" or "CM/GC"), a joint venture consisting of Flatiron Constructors, Inc. and Herzog Contracting Corp. Generally, the Consultant's work will be broken down into the following phases:

1. Pre-Construction Phase Q2 2025 through Q3 2025:

This phase will continue until the necessary design and construction permits are completed, which is currently projected to be April 2025 and marks the point when construction may proceed. During this phase, it is anticipated that the Consultant would develop contractor oversight plans, develop the Quality Assurance and environmental compliance programs, assist with utility and stakeholder coordination, field office and site preparation, and other activities needed to prepare the project for construction.

2. Construction Phase Q3 2025 through Q1 2028:

This phase will encompass active construction of the project, contract and change order oversight, continuing coordination with stakeholders, coordination with neighboring property owners, utilities, and permitting agencies. Conducting the project's Quality Assurance program will be part of the Consultant's scope for this phase, as well as managing the Environmental Permit Compliance program.

3. Post-Construction Q2 2028 through Q3 2029:

This phase will commence once VPRA construction contract(s) are deemed Substantially Complete. This will include contract closeout, final completion punch lists, warranty oversight, permit closeout, and similar activities to bring the project to completion, including providing support to CSXT in preparation for operations by the middle of 2028.

3.0 PROJECT REQUIREMENTS

- 3.1 The construction management services required for this Contract may include, but are not limited to the following:

3.1.1 **Pre-Construction Phase Services:**

a. Construction Management:

- 1) Oversight and implementation of a project construction management plan, including documentation, contract management, change management and claim avoidance. Project procedures and documentation will be managed through VPRA's project management information system (PMIS), Kahua.
- 2) Oversight and administration of the CM/GC with an emphasis on compliance with the applicable contract documents, as well as any applicable Federal, State or local law, regulation or ordinance.
- 3) Coordination with concurrent construction project owners and contractors adjacent to or within the Project footprint, including:
 - Franconia to Lorton Third Track (CSXT/VPRA)
 - Franconia to Lorton Third Track Utility Relocations (Various)
 - Railroad Bridges over Newington Road (CSXT/VPRA)
 - Franconia-Springfield Station Improvements (Virginia Railway Express)
 - Cinder Bed Road Bikeway (Fairfax County Department of Transportation)

b. Engineering Support Services:

- 1) Provide Technical expertise in disciplines, including but not limited to rail, roadway, drainage, structures, bridges, retaining walls, constructability, erosion and sediment control, equipment and materials staging and storage, construction work zones and maintenance of traffic and other aspects of infrastructure development.
- 2) Support VPRA's Design Consultant with field observations, measurements, reports, and CM/GC-provided materials to facilitate completion and closure of RFIs., field design changes, nonconformance reports, and other engineering analyses needed to advance construction.

c. Review proposed Early Work Amendments from the CM/GC contractor in accordance with the Phase 2 Amendment and any special provisions to the construction contract documents. Provide recommendations to VPRA on scope, cost, and constructability.

d. Perform reviews of submittals and deliverables.

e. Facilitate acceptance of submittals and deliverables by the appropriate Authorities Having Jurisdiction (AHJs).

f. Contract oversight support for VPRA's construction contracts, claims avoidance management, change order management.

g. Perform invoice reviews, and provide progress reports to be used both internally and externally.

h. Support project coordination efforts with project stakeholders and cooperating agencies to include the Commonwealth of Virginia, Fairfax County, Federal Railroad Administration, US Army Corps of Engineers, Virginia Railway Express, CSX Transportation, Washington Metropolitan Area Transit Authority, and other federal, state, and local permitting agencies, as well as private landowners, including obtaining preliminary construction permits and

developing necessary agreements.

- i. Provide necessary field office support and administrative assistance. Office space will be provided to the construction management team at the VPRA Alexandria Office (4 cubicles) and at FHJV's field office (minimum 400 SF in accordance with CSXT Specification Section 10590) at or near the project site.*
- j. Provide appropriate training and badging for Project staff, to include CSXT Roadway Worker Protection (RWP) training, materials testing certifications, and Virginia DEQ inspector certifications.*
- k. Environmental Services:*
 - 1) Preparation and/or review of documentation in accordance with the National Environmental Policy Act (NEPA) as amended (42 USC § 4321 et. seq. and 23 CFR Part 771) and/or with Commonwealth of Virginia requirements.
 - 2) .Performance of erosion and sediment control (ESC) and stormwater management (SWM) inspections in accordance with Virginia DEQ and VPRA Annual Standards and Specifications.
 - 3) Review of contractors' proposed changes to the project's approved ESC plans, construction phases, and materials. Provide approval or rejection recommendations to VPRA's Environmental Compliance Manager.
 - 4) Tracking and reporting for permit obligations and compliance.
 - 5) Oversight of contaminated and/or hazardous materials investigations and removals.
 - 6) Tracking environmental commitments.
- l. Right of Way and Utility Services:*
 - 1) Acquisition coordination and field support.
 - 2) Utility relocation coordination with CSXT and Fairfax County.
- m. Traffic Management Plan (TMP) and Coordination:*
 - 1) Review Traffic Management Plans for roadway traffic.
 - 2) Oversee congestion management activities, maintenance of traffic.
 - 3) Liaise with first responders and traffic operations centers.
 - 4) Review and conduct independent analyses of traffic operational and safety impacts of construction and incidents on surrounding local roads.
- n. Public Affairs / Outreach Management:*
 - 1) Provide minimal public affairs and communications support as requested by VPRA.
- o. Other Services as may be necessary for:*
 - 1) Value Engineering.

3.1.2 **Construction Phase Services:**

- a. *Continuation of relevant services from the Pre-Construction Phase.*
- b. *Construction Management and Inspection Services:*
 - 1) Provide Independent verification of Contractor's quality processes.
 - 2) Provide construction engineering management and inspection.
 - 3) Provide detailed written records of construction activities, inspections, events, issues, and corrective actions.
 - 4) Provide accurate daily records of labor and equipment usage
 - 5) Shop drawing review.
 - 6) Documentation of pre-construction conditions.
 - 7) Payroll monitoring.
 - 8) Invoice review/progress estimation.
 - 9) Punchlist management.
- c. *Quality Assurance Program Execution and Materials Services:*
 - 1) Execute the Project's Quality Assurance/Quality Control (QA/QC) program as determined during Pre-Construction phase.
 - 2) Provide instrumentation, field investigation, and field materials testing capabilities.
 - 3) Provide instrumentation, sampling, and laboratory testing capabilities. An on-site or mobile laboratory is not desired for the project.
 - 4) Provide a detailed record of all permanent materials installed on the project with traceability to the sources of supply and delivery documentation
 - 5) Identify, document, and coordinate the resolution of nonconforming work in coordination with FHJV, the engineer of record, VPR, and other applicable AHJs. Document corrective actions, repairs, and "use as-is" acceptances with written reports, photographs, and calculations.
 - 6) Exclusions:
 - Geotechnical inspections, such as drilled shaft drilling/shaft bottom acceptance and retaining wall bearing capacity, will be performed by the Design Consultant.
 - Specialty drilled shaft testing, including Osterberg Cell (O-Cell) and Crosshole Sonic Logging (CSL) will be performed by FHJV.
 - Railroad signal testing will be performed by CSXT.
 - Utility relocation inspection and testing will be performed by others.

3.3.1 Post-Construction Services:

- a. *Continuation of relevant services from Pre-Construction and Construction Phase as directed by VPRA.*
- b. *Assist VPRA in performing such additional activities as are necessary to bring Project to a conclusion:*
 - 1) Management of contract closeout, warranties, as-built drawings, final documentation, final payments, and any other activities to conclude the Project.

3.4.1 Miscellaneous Services and Support:

- a. *The Consultant shall furnish other necessary engineering or support services to facilitate the success of the Project, including inspection, testing, and independent assurance for structural steel fabrication, structural steel coating, and precast concrete fabrication activities at supplier/manufacturer facilities.*
- b. *Compliance Support Services:*
 - 1) Monitoring Contractor's DBE and SWaM utilization commitments during delivery of the Project, assisting VPRA with information collection and reporting, workforce utilization and contractor compliance guidance, support services and training programs.
 - 2) Consultant shall be capable of supporting VPRA's administrative obligations relative to state and federal grant programs. These services could potentially entail but are not limited to the following: (1) monitoring compliance with policies, procedures and/or systems required by a funding partner; (2) preparation and submittal of reports required by any funding partner; and (3) review and oversight of VPRA's contract administration to ensure the accuracy and reliability of Project construction data under any applicable grant program.

****END OF DOCUMENT****

EXHIBIT 2
GENERAL TERMS AND CONDITIONS
(FORM PD 100)

[attached]

GENERAL TERMS AND CONDITIONS

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

1. NATURE OF RELATIONSHIP

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

2. STANDARD OF CARE

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

3. CONSULTANT'S MANAGEMENT OF THE WORK

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

4. QUALIFICATIONS OF STAFF

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

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

5. CHANGES IN STAFF

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

6. INSURANCE

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

7. OPERATING AUTHORITY AND CREDENTIALS OF VEHICLES

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

8. DELIVERABLES

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

agreed in writing by the Parties, each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the Consultant pursuant to or in connection with this Contract shall be the exclusive property of VPRA.

9. CORRECTION OF ERRORS

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

10. CHANGES TO THE CONTRACT

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

11. CONTINGENCY FUND

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

12. INVOICING; PERIODIC PAYMENTS

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

13. FINAL ACCEPTANCE AND FINAL PAYMENT

Upon receipt of a written notice from Consultant of completion of the services, VPRA will make a review to

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

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

14. SET-OFF RIGHTS

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

15. AVAILABILITY OF FUNDS; APPROPRIATION

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

16. PROMPT PAYMENT OF SUBCONTRACTORS

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

17. TAX EXEMPT STATUS

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

18. SUSPENSION OF WORK

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

19. TERMINATION

19.1 Termination for Convenience

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

19.2 Termination for Insufficient Funding

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

19.3 Termination for Cause

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

19.4 Termination Necessitated by Standard

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

20. EXAMINATION AND AUDIT; RETENTION OF RECORDS

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

21. DISPUTE RESOLUTION

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

21.1 Senior Representative Negotiations

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

21.2 Mediation

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

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

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

22. FORUM AND VENUE

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

23. GOVERNING LAW

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

24. NOTICES

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

25. COMPLIANCE WITH ALL LAWS AND REGULATIONS

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

26. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH

A consultant organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact

business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with VPRA shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provision of this section.

27. NON-DISCRIMINATION PROVISION

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

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

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

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

28. IMMIGRATION REFORM AND CONTROL ACT OF 1986

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

29. DRUG FREE WORKPLACE

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

30. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

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

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

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

32. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION

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

33. INTELLECTUAL PROPERTY RIGHTS

33.1 Rights, Generally

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

If the whole or any part of any such copyrightable material cannot be deemed work made for hire or is deemed a joint work, Consultant agrees to assign, and does hereby irrevocably assign, its entire copyright interest therein to VPRA and shall execute and deliver such further documents as VPRA may reasonably request for the purpose of acknowledging or implementing such assignment. Consultant warrants that no individual, other than regular employees of Consultant or VPRA working within the scope of their employment, shall participate in the creation of any intellectual property pursuant to this Contract unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to VPRA.

33.2 Exceptions and Exclusions

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

34. COVENANT REGARDING BROKERAGE

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

35. TESTIMONY

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

36. CONFIDENTIAL RELATIONSHIP; PUBLICITY

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

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

37. STRICT LOYALTY

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

38. INDEMNIFICATION

Subject to state law or regulation (inclusive of Va. Code § 11-4.4, whenever applicable), Consultant, to the fullest extent permitted by law, shall indemnify and hold harmless the Commonwealth of Virginia, VPRA, CSX Transportation, Inc., Norfolk Southern Railway Company, and National Railroad Passenger Corporation, together with their officers, employees, and affiliates (collectively, the "VPRA Indemnitees") from suits, claims, actions, damages and costs, of every name and description arising from the Work under this Contract. This obligation shall include the cost of attorneys' fees, disbursements, costs and other expenses incurred in connection with such suits, actions or proceedings. VPRA may retain such monies from the amount otherwise due Consultant as may be necessary to satisfy any claim for damages recovered against the VPRA Indemnitees relative to the project. Acceptance of the services by VPRA shall not waive any of the rights of VPRA contained in this section nor release or absolve the Consultant from any liability, responsibility or duty contained herein.

39. LIMITATION OF LIABILITY

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

40. FORCE MAJEURE

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

41. ASSIGNMENT AND SUBCONTRACTING

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

42. DUTY TO COOPERATE ON FUNDING OPPORTUNITIES

VPRA seeks to maximize funding opportunities pertaining to its projects and the Work included in this Contract may become eligible for a grant and subject to certain requirements of a funding sponsor.

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

43. REMEDIES CUMULATIVE

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

44. NO WAIVER

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

45. ENTIRE AGREEMENT

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

46. AMENDMENTS

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

47. SOVEREIGN IMMUNITY

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

48. SEVERABILITY

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

END OF DOCUMENT

EXHIBIT 3

**SPECIAL TERMS AND CONDITIONS (Federal Railroad Administration Clauses)
(FORM PD 210 (FRA/SVC))**

[attached]

SPECIAL TERMS AND CONDITIONS (Federal Railroad Administration Clauses)

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

ARTICLE-1: DEFINITIONS

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

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

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

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

ARTICLE 3: PROHIBITED INTERESTS

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

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

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

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

- 5.1 **Access to Records.** Consultant agrees to provide sufficient access to FRA and its agents to examine, inspect, and audit records and information related to performance of this Contract as reasonably may be required.
- 5.2 **Access to the Sites of Performance.** Consultant agrees to permit FRA and its agents access to the sites of performance under this Contract as may reasonably may be required.
- 5.3 **Reproduction of Documents.** Consultant will retain, and will require its subconsultants at all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- 5.4 **Retention Period.** Consultant agrees to comply with the record retention requirements in accordance with 2 C.F.R §§ 200.334-200.338. Consultant shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto. The expiration or termination of this Contract does not alter the record retention or access requirements of this Article.

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

- 6.1 Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and USDOT regulations, "*Program Fraud Civil Remedies*," 49 C.F.R. Part 31, apply to its actions pertaining to this Contract. Upon execution of this Contract, Consultant certifies or affirms the truthfulness and accuracy of any statement is has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FRA-assisted project for which this work is being performed. In addition to other penalties that may be applicable, Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Consultant to the extent the Federal Government deems appropriate.
- 6.2 Consultant shall report to FRA Regional Counsel and the DOT Inspector General any current or prospective legal matter with potentially serious consequences, including a major dispute, default, breach, or litigation, or knowledge that Consultant has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, *et seq.*, or has committed a criminal or civil violation of law pertaining to fraud,

conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance; suspension, debarment, or other similar administrative or enforcement action against Consultant; or any matter or situation, including any other change or legal action that may adversely affect the Federal Government's interest in a Project or related activities.

ARTICLE 7: CIVIL RIGHTS

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

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

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

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

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

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

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

- 7.4 *Disabilities.*** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 et seq., and the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., Consultant agrees that it will not discriminate against individuals on the basis of disability. In addition, Consultant agrees to comply with the requirements of US EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, and any implementing requirements FRA may issue. Consultant will also ensure that accessible facilities (including vehicles and buildings) and services are made available to individuals with disabilities in accordance with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and any applicable implementing regulations.
- 7.5 *Information and Reports.*** Consultant shall provide all information and reports required by the regulations, or orders and instruction issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by VPRA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to VPRA, and shall set forth what efforts it has made to obtain the information.
- 7.6 *Sanctions for Noncompliance.*** In the event of Consultant's noncompliance with the provisions of this Contract, VPRA shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to,
- i. Withholding the payments to Consultant otherwise due under Contract until Consultant achieves compliance, and/or
 - ii. Cancellation, termination, or suspension of the Contract, in whole or in part.

ARTICLE 8: NONDISCRIMINATION LEGAL AUTHORITIES APPLICABLE TO THE CONTRACT

- 8.1** During the performance of this Contract, Consultant, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21;
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
 - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
 - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and consultants, whether such programs or activities are Federally funded or not);
 - Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;

- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

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

ARTICLE 9: EMPLOYEE PROTECTIONS

9.1 Consultant agrees to comply and assures that each subconsultant will comply with all federal laws, regulations, and requirements providing wage and hour protections for employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701, *et seq.*, and U.S.DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

9.2 Consultant agrees to comply and assures that each subconsultant will comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq.* to the extent that the FLSA applies to employees performing Work under the Contract.

9.3 Consultant shall maintain payrolls and basic payroll records during the course of the Work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Such records maintained under this paragraph shall be made available by Consultant for inspection, copying, or transcription by authorized representatives of the FRA and the USDOL, and Consultant will permit such representatives to interview employees during working hours on the job.

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

10.1 Consultant shall comply and facilitate compliance with USDOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the U.S. Office of Management and Budget (USOMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FRA official irrespective of the contract amount. Consultant agrees to, and assures that its third party contractors will, review the System for Award Management (SAM) before entering into any lower tier subconsultant/subcontractor agreements.

10.2 By signing this Contract, Consultant certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; and have not been convicted of any violations of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

ARTICLE 11: CERTIFICATION REGARDING LOBBYING

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

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

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

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

ARTICLE 12: TELECOMMUNICATIONS CERTIFICATION

- 12.1** Consultant certifies through the signing of this Contract that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), Consultant does not and will not use any equipment, system, or service that uses “covered telecommunications equipment or services” (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system.

ARTICLE 13: INTELLECTUAL PROPERTY RIGHTS [applies to contracts that includes research and development deliverables]

- 13.1** The requirements of this Article apply to all contracts for experimental, developmental, or research work purposes. Certain patent rights and data rights apply to all subject data first produced in the performance of this Contract. Consultant shall grant VPRA intellectual property access and licenses deemed necessary for the Work performed under this Contract and in accordance with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FRA or USDOT.
- 13.2** Except for its own internal use, Consultant may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Consultant authorize others to do so, without the written consent of FRA, until such time as FRA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.
- 13.3** The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
- 13.3.1 Any subject data developed under the Contract, whether or not a copyright has been obtained; and
- 13.3.2 Any rights of copyright purchased by Consultant using Federal assistance in whole or in part by the FRA.
- 13.4** Unless FRA determines otherwise, Consultant performing experimental, developmental, or research work required as part of this Contract agrees to permit FRA to make available to the public, either FRA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- 13.5** Unless prohibited by state law, upon request by the Federal Government, Consultant agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Consultant of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the contract. Notwithstanding the foregoing, Consultant shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any

employee, official, or agents of the Federal Government.

- 13.6** Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- 13.7** Data developed by Consultant and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into Work required by the underlying Contract is exempt from the requirements herein, provided that Consultant identifies those data in writing at the time of delivery of the Contract Work.

ARTICLE 14: ENVIRONMENTAL STANDARDS AND PRACTICES

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

ARTICLE 15: GEOGRAPHIC RESTRICTIONS

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

ARTICLE 16: ACQUISITION BY LEASE

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

ARTICLE 17: FLY AMERICA REQUIREMENTS

- 17.1** Consultant agrees to comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their consultants are required to use U.S. Flag Air Carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.

- 17.2** Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag Air Carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

ARTICLE 18: NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

- 18.1** To the extent applicable, Consultant agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note.

ARTICLE 19: SEISMIC SAFETY

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

ARTICLE 20: SAFE OPERATION OF MOTOR VEHICLES

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

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

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

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

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

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

ARTICLE 21: CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

- 21.1.** In accordance with 2 C.F.R. § 200.321, Consultant must take all necessary affirmative steps to assure that minority businesses, women's businesses, and labor surplus area firms are used when possible wherever subcontracts are to be let. Affirmative steps include:
- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

ARTICLE 22: TRAFFICKING IN PERSONS

- 22.1** Consultant agrees that it is in compliance with the Trafficking Victims Protection Act as amended (22 U.S.C. 7104), in which the Federal Government has adopted a zero tolerance policy regarding trafficking in persons. The provisions found in 2 C.F.R. Part 175, are hereby incorporated into this Contract by reference.
- 22.2** Consultants, its employees, and subconsultants/subcontractors, or subconsultant's/subcontractors' employees are prohibited from the following activities:
- a. Engaging in severe forms of trafficking in persons during the period of performance of the Contract;
 - b. Procuring commercial sex acts during the period of performance of the Contract; or
 - c. Using forced labor in the performance of the Contract.
- 22.3** Consultant agrees that it shall notify, and require all of its subconsultants/subcontractors to notify, its employees of the prohibited activities described in the preceding paragraph.
- 22.4** Consultant shall notify VPRA immediately of any information it receives from any source alleging a violation of a prohibition set forth in this Article 22.
- 22.5** VPRA has the right to immediately and unilaterally terminate this Contract if any provision in this Article 22 is violated, and in addition to all other remedies, VPRA may implement section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104(g)), see 2 C.F.R. Part 175.

ARTICLE 23: NOTICE OF LEGAL MATTERS EFFECTING THE FEDERAL GOVERNMENT

- 23.1** If a current or prospective legal matter that may affect the Federal Government emerges, Consultant must promptly notify VPRA, which will promptly notify and FRA Chief Counsel and FRA Regional Counsel. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

ARTICLE 24: NO OBLIGATION OF FEDERAL GOVERNMENT

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

ARTICLE 25: INCLUSION IN SUBCONTRACTOR AGREEMENTS

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

END OF DOCUMENT

EXHIBIT 4

CONSOLIDATED RAIL INFRASTRUCTURE AND SAFETY IMPROVEMENTS GRANT PROGRAM PROVISIONS (Appendixes A, E, Exhibit B.5)

[attached]

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, Federal Railroad Administration (FRA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or FRA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or FRA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or FRA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or FRA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the



contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

EXHIBIT B.5: EQUIVALENT LABOR PROTECTIONS UNDER 49 U.S.C. 22905(c)(2)(B)

This Exhibit provides guidance on the protective arrangements equivalent to the protective arrangements established under Section 504 of the Railroad Revitalization Reform Act of 1976, with respect to employees affected by actions taken in connection with a Project financed in whole or in part with financial assistance subject to 49 U.S.C. § 22905(c)(2)(B). Fluctuations and changes in volume or character of employment brought about solely by other causes are not within the scope of this Exhibit.

1. Definitions. Whenever used in this Exhibit, capitalized terms shall have the meanings below:

(a) “Average Monthly Compensation” means the total compensation received by a Displaced Employee or a Dismissed Employee during the last twelve (12) months in which they were employed immediately preceding the date of their displacement or dismissal, divided by twelve (12). The Average Monthly Compensation shall be adjusted to reflect subsequent general wage increases.

(b) “Average Monthly Time” means the total number of hours worked by a Displaced Employee during the last twelve (12) months in which they were employed immediately preceding the date of their displacement, divided by twelve (12).

(c) “Day” means one 24-hour calendar day (including holidays and weekends) for purposes of calculating deadlines and other timeframes in this Exhibit.

(d) “Displaced Employee” means a Protected Employee who remains employed by a Railroad but, as a result of a Project, is placed in a worse position with respect to compensation and rules governing working conditions. A Protected Employee’s status as a Displaced Employee begins on the date said employee is harmed.

(e) “Dismissed Employee” means a Protected Employee who: (1) as a result of a Project, is deprived of employment with the Railroad because (i) the Railroad eliminates the Protected Employee’s position, or (ii) the Railroad eliminates another employee’s position (and that employee’s exercise of seniority rights results in the Protected Employee’s inability to secure another position by the exercise of the Protected Employee’s seniority rights); and (2) is unable to secure another position by exercise of their seniority rights. A Protected Employee’s status as a Dismissed Employee begins on the date said employee is deprived of employment.

(f) “Project” means any action financed in whole or in part with financial assistance subject to 49 U.S.C. § 22905(c)(2)(B).

(g) “Protected Employee” means an employee of a Railroad who is affected by actions taken pursuant to a Project, whether the Project is initiated by a Railroad or a Recipient. If a Railroad rearranges or adjusts its forces in anticipation of a Project with the purpose or effect of depriving an employee of benefits to which they otherwise would have become entitled under this Exhibit, then that employee is a Protected Employee under this Exhibit. An employee’s status as a Protected Employee shall continue for the duration of the applicable Protective Period. An employee who solely benefitted as a result of a Project shall not be a Protected Employee under this Exhibit.

(h) “Protective Period” means that period during which a Displaced Employee or a Dismissed Employee is provided the protections described in this Exhibit. The Protective Period begins

on the date an employee of a Railroad is displaced or dismissed and ends after six (6) years. However, the Protective Period for any particular employee shall not continue longer than the period of time the Railroad employed the employee prior to the date of their displacement or dismissal. For purposes of this Exhibit, an employee's length of service shall be determined in accordance with the provisions of Section 7(b) of the Washington Job Protection Agreement of May 1936, as amended.

(i) "Recipient" means any person or entity receiving financial assistance subject to the requirements of 49 U.S.C. § 22905(c), including grantees, subrecipients, contractors, and subcontractors.

(j) "Railroad" means (1) a railroad carrier as defined in 49 U.S.C. § 20102(3), or (2) any person deemed a rail carrier pursuant to 49 U.S.C. § 22905(b).

2. Flow Down.

(a) In accepting financial assistance for a Project, the Recipient is responsible for ensuring the compliance with the protections provided in this Exhibit. The Recipient shall make the acceptance of this Exhibit a condition of any new contract (or incorporate its terms into any existing contract by amendment) that uses funds subject to the requirements of 49 U.S.C. § 22905(c). These conditions shall apply to a Recipient, any Railroad and any contractor of any tier with which the Recipient contracts using funds subject to the requirements of 49 U.S.C. § 22905(c).

(b) The Recipient shall require in an agreement (either in a new agreement or as an amendment to an existing agreement) with a Railroad owning the right-of-way to be improved by a Project that the Railroad notify its employees (or their representatives) of the Project being funded with financial assistance subject to 49 U.S.C. § 22905(c) and the applicability of these protections.

(c) Any Railroad employee (or their representatives) may notify a Recipient of a dispute or controversy relating to the requirements of this Exhibit to ensure compliance with 49 U.S.C. § 22905(c)(2)(B).

3. Collective Bargaining Agreements.

(a) **Existing Agreements.** The rates of pay, rules, working conditions, and all collective bargaining and other rights, privileges, and benefits (including continuation of pension rights and benefits) of a Railroad's employees under applicable laws, regulations, and/or existing collective bargaining agreements shall be preserved and remain applicable unless changed by future collective bargaining agreements or applicable statutes or regulations. As applied to the regulation of subcontracting by the Railroads of a Project, the provisions of this section shall mean that a determination of whether or not such work validly may be subcontracted by a Railroad shall not be affected by the fact that the work is being financed by funds subject to the requirements of 49 U.S.C. § 22905(c)(2)(B). Nothing in this Exhibit shall be construed as depriving any Railroad employee of any rights or benefits or eliminating any obligations that such employee may have under any existing contractual or statutory arrangement, including job security agreements, protective conditions, or arrangements.

(b) **Election by Protected Employee.** Where a Protected Employee is eligible for protections under both this Exhibit and another contractual or statutory arrangement, the Protected Employee shall elect between the protection under this Exhibit and protection under such other arrangement. After

such an election, the Protected Employee shall be protected only by the arrangement that they elect. The Protected Employee shall not be entitled to any protection or benefit (regardless of whether such benefit is duplicative) under the arrangement that they do not elect. However, if the elected protection expires pursuant to the terms of the arrangement that governs the elected protection, the Protected Employee is entitled to protection under the arrangement not originally elected for the remainder, if any, of the Protective Period.

4. Change in Operations, Services, Facilities, or Equipment.

(a) **Notice.** When a Railroad contemplates a change or changes in its operations, services, facilities, or equipment as a result of a Project, which may cause the dismissal or displacement of Protected Employees or rearrangement of forces involving such employees, it shall give at least sixty (60) days' written notice of such intended changes to both Protected Employees and their duly authorized representatives (if applicable). Such notice shall contain a full and adequate description of the proposed changes, including an estimate of the number of Protected Employees of each class affected by the intended changes.

(b) **Negotiations.**

(i) **Initiation of Negotiation.** Within sixty (60) days after the Railroad issues a notice under Section 4(a) of this Exhibit, the Railroad or the Protected Employees (or their representatives) may, by written notice to the other party, request a meeting and opportunity to negotiate an agreement with respect to the application of the terms and conditions of this Exhibit. These negotiations shall commence within fourteen (14) days from the receipt of such request.

(ii) **Subject of Negotiations.** Each change to rail operations, services, facilities, infrastructure, or equipment (including rights-of-way, track, and signal and crossing systems) that may result in dismissal or displacement of Protected Employees or rearrangement of forces involving such employees shall be subject to review and negotiation by the parties, but only to the extent necessary to ensure compliance with this Exhibit. For any contemplated rearrangement of rail forces, the Railroad and the representative(s) of the Protected Employees shall agree on the method of selection of employees to be moved, and the assignment of those employees to new roles.

(c) **Arbitration.** If the Railroad and the representative(s) of the Protected Employees fail to agree within forty-five (45) days from the initial meeting and opportunity to negotiate, either party may submit the dispute for arbitration in accordance with the following procedures:

(i) **Notice & Selection of Arbitrator.** Within ten (10) days after either party has notified the other in writing of their desire to submit the dispute for arbitration, the parties shall select a neutral arbitrator. If the parties cannot agree upon the selection of said arbitrator, then the parties shall submit a request to the National Mediation Board to appoint an arbitrator. In either case, a hearing shall be scheduled no later than thirty (30) days after an arbitrator has been appointed.

(ii) Binding Decision. The decision of the arbitrator shall be final, binding, and conclusive and shall be rendered within thirty (30) days from the date of the commencement of the hearing of the dispute.

(iii) Expenses. The salary and expenses of the arbitrator shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(d) Implementation. If a notice is issued under Section 4(a), the Railroad shall not implement such a change or changes until: (i) sixty (60) days after the notice in accordance with Section 4(a), if no party requests a meeting and opportunity to negotiate; (ii) the parties reach agreement pursuant to Section 4(b), if a party requests a meeting and opportunity to negotiate; or (iii) a referee has rendered a decision pursuant to Section 4(c).

5. Protections for Displaced Employees

(a) Displacement Allowances

(i) In General. If a Displaced Employee is unable, in the normal exercise of such employee's seniority rights under existing agreements, rules and practices, to obtain a position that is compensated equal to or exceeding the compensation the Displaced Employee received in the position from which such employee was displaced, then the Displaced Employee shall, during the Protective Period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by the Displaced Employee in the position in which such employee is retained and the Average Monthly Compensation received by the Displaced Employee in the position from which such employee was displaced (the "Displacement Allowance").

(ii) Application of Displacement Allowance. If a Displaced Employee's compensation in that employee's retained position is less in any month in which such employee performs work than the Average Monthly Compensation, then the Displaced Employee shall be paid the difference between the current compensation and the Average Monthly Compensation. However, the Displacement Allowance shall be reduced by the Displaced Employee's time lost as a result of voluntary absences, to the extent that the Displaced Employee is not available for service equivalent to the Displaced Employee's Average Monthly Time. If, on the other hand, the Displaced Employee, in such employee's retained position, works in excess of the Average Monthly Time in any given month, then the Displaced Employee shall be additionally compensated for such excess time at the rate of pay of the employee's retained position. If a Displaced Employee fails to exercise their seniority rights to secure another position available to the employee which does not require a change in such employee's place of residence, to which the employee is entitled under the working agreement, and which carries a rate of pay and compensation exceeding those of the position that the employee elects to retain, then the Displaced Employee shall thereafter be treated for the purposes of this section as occupying the position such employee elects to decline.

(iii) Early Expiration. The Displacement Allowance shall cease prior to the expiration of the Protective Period in the event of the Displaced Employee's resignation, death, retirement, or dismissal for justifiable cause.

(b) **Moving Expenses.** Any Protected Employee retained in the service of a Railroad, or who is later restored to service after being entitled to receive a Dismissal Allowance, and is required to change the point of such employee's employment as a result of the Project, and within the employee's Protective Period is required to move the employee's place of residence, shall be reimbursed for all expenses of moving the employee's household and other personal effects, including travel expenses, temporary living expenses, and any actual wage loss during the time necessary to make the move, and for a reasonable time thereafter, not to exceed five (5) days.

(i) **Prior Agreement.** The exact extent of the responsibility of a Railroad under this Section and the ways and means of transportation shall be agreed upon in advance by the Railroad and the Protected Employee or their representatives.

(ii) **Exception.** Changes in residence that are not a result of a Project, which are made after the initial change and that grow out of the normal exercise of seniority rights, are not within the purview of this Section.

(iii) **Furloughed Employees.** The Railroad shall, to the same extent provided above, assume the moving expenses outlined in Section 5(b) for an employee furloughed within three (3) years after changing such employee's point of employment as a result of a Project, who elects to move their place of residence back to their original point of employment.

(iv) **Reimbursement.** A claim for reimbursement shall be paid under the provisions of this Section within sixty (60) days after it is submitted, unless disputed by the Railroad, but no claim shall be paid if presented to the Railroad more than ninety (90) days after the date on which the expenses were incurred.

(c) **Losses from Home Sale or Contract Termination.** Any Displaced Employee who is retained in the service of a Railroad (or who is later restored to service after being entitled to receive a dismissal allowance), and who is required to change the point of such employee's employment during the Protective Period as a result of a Project, is entitled to the following:

(i) **Home Sale for Less Than Fair Market Value.** If the Displaced Employee owns their place of residence in the locality from which such employee is required to move, then at the Displaced Employee's option, the Railroad shall reimburse the Displaced Employee for the difference between the actual sale price and the fair market value of the employee's place of residence. The Railroad shall pay such difference within sixty (60) days after the Displaced Employee has filed a claim for such loss in accordance with Section 5(c)(vi), unless a controversy arises as to which Section 5(c)(vii) applies. In each case, the fair market value of the home in question shall be determined without consideration of the Project. The Railroad shall in each instance be afforded an opportunity to purchase the home at such fair market value before it is sold by the Displaced Employee to any other person.

(ii) **Election to Receive Closing Costs.** The Displaced Employee may elect to waive the provisions of Section 5(c)(i) and to receive, in lieu thereof, an amount equal to the closing costs that are customarily paid for and assumed by a seller of real estate in the jurisdiction in which the employee's residence is located. Such costs shall include customary fees paid to a licensed realtor (not to exceed six percent (6%) of the final sale price) and any prepayment penalty required by any mortgagor or beneficiary of a deed of trust. Such costs shall not include

the payment of any mortgage discount points or similar interest discount fees by the Displaced Employee.

(iii) Pending Contract to Purchase. If a Displaced Employee has entered into a contract to purchase a place of residence, but due to a Project must cancel that contract, the Railroad shall indemnify the Displaced Employee against any losses due to such cancellation, and shall relieve the Displaced Employee from any further obligation under the contract.

(iv) Unexpired Lease. If the Displaced Employee holds an unexpired lease of a dwelling as the employee's primary place of residence, and the Displaced Employee must cancel the lease due to a Project, the Railroad shall indemnify the Displaced Employee from all costs and liability arising from said cancellation.

(v) Exclusions. Any change in residence that is not due to or caused by a Project, or that resulted from the normal exercise of a Protected Employee's seniority rights, shall not be within the purview of this Section.

(vi) Notification of Claims. A Displaced Employee shall notify, in writing, the Railroad of such employee's claim arising from this Section 5(c) within one (1) year of the date the Displaced Employee's claim accrues.

(vii) Home Value Disagreements. In the event of disagreement between a Railroad and a Displaced Employee as to the value of a Displaced Employee's claim, either party (or their representatives) may request, in writing, a joint conference to resolve the disagreement.

A. Real Estate Appraisers. If the parties are unable to resolve the disagreement, either party may refer the disagreement to two licensed real estate appraisers, one of whom shall be selected by the Displaced Employee (or such employee's representatives), and one of whom shall be selected by the Railroad. If the two selected real estate appraisers are unable to agree on a valuation within thirty (30) days, the selected real estate appraisers shall designate (or agree to a method by which to select) a third licensed real estate appraiser within ten (10) days. If unable to agree on a selection, either party may request the National Mediation Board to designate within twenty (20) days a third licensed real estate appraiser. A decision by two of the three licensed real estate appraisers shall be required to determine the value in dispute. Said decision shall be final and conclusive.

B. Payment of Expenses. The salary and expenses of the third or neutral appraiser shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(d) Failure to Exercise Seniority Rights. If a Displaced Employee is able but does not exercise such employee's seniority rights to secure another position that does not require a change in the employee's primary place of residence, the Displaced Employee shall not be entitled to moving expenses or protections due to the sale of a home outlined in Sections 5(b)&(c).

6. Protections for Dismissed Employees.

(a) **Dismissal Allowance.** A Dismissed Employee shall be paid a monthly dismissal allowance from the date they are deprived of employment through the Protective Period.

(i) **Monthly Dismissal Allowance Calculation.** The monthly dismissal allowance shall be equivalent to the Average Monthly Compensation received by the Dismissed Employee in the last twelve (12) months of employment prior to the employee's dismissal.

(ii) **Submission of Claim.** A claim for the initial month of a dismissal allowance shall be paid within ninety (90) days and a claim for a subsequent month shall be paid within sixty (60) days after the claim is filed by the Dismissed Employee, unless the claim is disputed by the Railroad pursuant to Section 8 of this Exhibit.

(iii) **Reduction or Suspension of Dismissal Allowance.** If a Dismissed Employee accepts new employment (or reemployment by the dismissing Railroad) during the Protective Period, the dismissal allowance shall be reduced such that the accepted monthly compensation at the then-current position (including any unemployment insurance compensation received) plus the dismissal allowance is equivalent to the Dismissed Employee's Average Monthly Compensation. If the compensation of the Dismissed Employee's then-current employment is greater than the dismissal allowance, the dismissal allowance shall be suspended. Such reduction or suspension shall continue for the duration of the Protective Period, unless and until the Dismissed Employee's then-current compensation is reduced or eliminated. Prior to dismissal, such Dismissed Employee (or their representative) and the dismissing Railroad shall agree upon a procedure by which such Railroad shall be informed of the earnings and benefits of such Dismissed Employee in their new position of employment.

(iv) **Early Termination.** The dismissal allowance shall cease prior to the expiration of the Protective Period in the event of the Dismissed Employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure without good cause to return to service after being notified in accordance with an applicable working agreement, or failure without good cause to accept a comparable position that does not require a change of residence, for which the Dismissed Employee is qualified and eligible with the Railroad from which such employee was dismissed after being notified, if the employee's return does not infringe upon employment rights of other employees under a working agreement.

(b) **Separation Allowance.** A Dismissed Employee may, at such employee's option, within seven (7) days of dismissal or an arbitration award establishing the employee's status as a Dismissed Employee, resign and (in lieu of all other benefits and protections provided in this Exhibit) accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May 1936, as amended.

(c) **Priority of Employment or Re-Employment.** Any Protected Employee whose employment is terminated or who is furloughed as a result of a Project shall, if they so request, be granted priority of employment or re-employment to fill a position comparable to that which they held on the Railroad (even if in a different craft or class), so long as they are qualified, or by training or retraining can become physically and mentally qualified, for the position. However, such priority of

employment or re-employment must not be in contravention of any relevant collective bargaining agreements.

(i) **Training or Re-Training.** In the event such training or retraining is requested by a Protected Employee pursuant to Section 6(c), the Railroad shall provide such training or retraining at no cost to the Protected Employee.

(ii) **Waiver of Protections.** If a Protected Employee who has made a request under Section 6(c) fails without good cause within ten (10) days to accept an offer of a comparable position for which such employee has satisfactorily completed such training, the Protected Employee shall, upon the expiration of such ten (10) day period, forfeit all rights and benefits under this Exhibit.

7. Fringe Benefits. No Protected Employee shall be deprived during the Protective Period of any (non-salary) rights, privileges, or benefits attached to such employee's previous employment under the terms and conditions of an existing employment agreement (including, but not limited to, free transportation, hospitalization, pensions, insurance, or vacation benefits), so long as such rights, privileges, or benefits continue to be accorded to other employees of the Railroad, in active service or on furlough as the case may be, to the extent that such rights, privileges, or benefits can be so maintained under present authority of law, corporate action, or through future authorization.

8. Arbitration of Disputes.

(a) **Scope.** Any dispute under these conditions not settled by the relevant parties will be resolved in arbitration as provided herein. In the event a Railroad and the Protected Employee(s) (or their representatives) cannot settle a dispute or controversy with respect to the interpretation, application, or enforcement of any provision of this Exhibit (other than those Sections of this Exhibit that provide for another means of dispute resolution) within thirty (30) days after the dispute arises, either party may refer the dispute to an arbitration committee. The affected Protected Employee(s) (or their representatives) may notify a Recipient of a dispute or controversy under this Section 8 to ensure compliance with 49 U.S.C. § 22905(c)(2)(B).

(b) **Notice.** The party referring the dispute to an arbitration committee shall notify the other party in writing of its intent to refer a dispute or controversy to an arbitration committee.

(c) **Selection of Members.** Within ten (10) days of receipt of the written notice, each party to the arbitration shall select one (1) member of the committee, and the members thus chosen shall select an additional, neutral member to serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or a senior officer designated by the Railroad or the Recipient, as the case may be, shall be deemed the selected member. Should the members be unable to agree upon the appointment of the neutral member within ten (10) days, the parties shall then within an additional ten (10) days agree to a method by which a neutral member shall be appointed; failing such agreement, either party may request the National Mediation Board to designate within twenty (20) days the neutral member whose designation will be binding upon the parties.

(d) **Multiple Representatives.** In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the Railroad or Recipient may appoint additional representatives equivalent to the number of labor

organization representatives; provided, however, that the decision in such case shall be made by the neutral member.

(e) **Decisions Binding.** The decision, by majority vote except as provided otherwise in paragraph (d) of this Section, of the arbitration committee shall be final, binding, conclusive, and rendered within forty-five (45) days after the hearing of the dispute or controversy has been concluded and the record closed.

(f) **Expenses.** The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding, and all other expenses shall be paid by the party incurring them.

9. Classification of a Protected Employee. In the event an employee (or their representatives) cannot settle a dispute or controversy with the Railroad or the Recipient as to whether or not a particular employee would be affected by a Project, either party may refer the dispute to an arbitration committee within thirty (30) days after the dispute arises pursuant to the arbitration procedures in Section 8. For any such dispute, the employee of a Railroad shall have the burden to identify, with reasonable specificity, the Project that allegedly affected them, and to specify the pertinent facts of that Project, including the change or changes resulting from the Project that allegedly affected them. The burden shall then shift to the Railroad or Recipient to show that factors other than a change resulting from the Project affected the employee. The employee shall prevail on this issue if it is established that the Project had an effect upon the employee, even if other factors also may have affected the employee.

10. Resolution of Disputes for Non-Bargaining Unit Protected Employees. Any Protected Employee who is not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under this Exhibit. In the event any dispute arises between a Railroad and an employee not represented by a labor organization with respect to the interpretation, application, or enforcement of any provision of this Exhibit that cannot be settled by the parties within thirty (30) days after the dispute arises, either party may, as an alternative to the dispute resolution procedures outlined in this Exhibit, refer the dispute within ninety (90) days after the dispute arises to the Secretary of Labor for determination. The determination of the Secretary of Labor, or their designated representative, shall be final and binding on the parties.

11. Severability. In the event any provision of this Exhibit is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this Exhibit shall not be affected.

EXHIBIT 5

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) SUPPLEMENTARY GENERAL PROVISIONS FOR NONCONSTRUCTION CONTRACTS

[attached]



NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK)

SUPPLEMENTARY GENERAL PROVISIONS
FOR NONCONSTRUCTION CONTRACTS

1.0 Equal Employment Opportunity.

Contractor shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. Contractor shall prohibit discrimination based on race, color, religion, national origin, sex (including gender identity), disability, or age.

2.0 Rights In Intangible Property.

2.1 Definition. Intangible property, as defined herein means property having no physical existence, such as trademarks, copyrights, patents and property applications.

2.2 Title to Intangible Property. Intangible property acquired or created in the performance of this Contract vests in Amtrak upon acquisition or creation, as applicable. The requirements of this Section 2.0 shall apply only to intellectual property acquired or created under a planning, experimental, developmental, or research grant or contract.

2.3 Copyright. Amtrak may copyright any work that is subject to copyright and was created or for which ownership was acquired under this Contract. For any work acquired or created under a planning, experimental, developmental, or research grant or contract, Contractor agrees that the Federal Railroad Administration has reserved a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes and to authorize others to do so for Federal Government purposes.

2.4 Patents. The following provisions will apply to patents under this Contract:

2.4.1 If the Contract involves the performance of experimental, developmental, or research work, the rights of the Federal Government and Amtrak shall be in accordance with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the Federal Railroad Administration (FRA).

2.4.2 If any invention, improvement, or discovery of Contractor or any of its subcontractors is conceived or first actually reduced to practice in the course of or

under a planning, experimental, developmental, or research grant or contract, Contractor agrees to grant Amtrak and the Federal Railroad Administration, a royalty-free, nonexclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.

2.5 Research Data. For any research data (as defined in 2 CFR Part 200.315(e)) acquired under this Contract, the Federal Railroad Administration has a right to:

2.5.1 Obtain, reproduce, publish, or otherwise use the research data produced under this Agreement for Federal Government purposes; and

2.5.2 Authorize others to receive, reproduce, publish, or otherwise use such research data for Federal Government purposes.

3.0 Byrd Anti-Lobbying Amendment.

Contractors that apply or bid for an award exceeding \$100,000 shall file the required certification at 49 CFR Part 20, and attached hereto as Appendix A. Each tier contractor certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to Amtrak.

4.0 Debarment And Suspension.

For contracts that exceed \$250,000, Contractor shall certify to Amtrak that Contractor is not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with OMB guidelines at 2 CFR Part 180 that implement Executive Orders 12549 and 12689, "Debarment and Suspension". SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractor shall comply and cause its subcontractors to comply with U.S. DOT regulations, 2 CFR Part 180 and 2 CFR Part 1200, "Nonprocurement Suspension and Debarment," Contractor shall execute the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary

Exclusion” set forth in Appendix B. Contractor agrees to obtain the same such certification on debarment and suspension from its subcontractors and lower tier subcontractors.

5.0 Domestic Buying Preference/Buy American Act.

5.1 In accordance with Amtrak’s Domestic Buying Preference requirements at 49 U.S.C. 24305(f), Amtrak shall only buy, and accordingly, Contractor shall only supply (a) unmanufactured articles materials, and supplies mined or produced in the United States; or (b) manufactured articles, material, and supplies manufactured in the United States substantially from articles, materials, and supplies mined, produced or manufactured in the United States. For purposes of this provision, substantially means that more than 55% of all components by cost must be domestic. This Section 5.1 shall apply only when the cost of those articles, material, or supplies bought or supplied to Amtrak by Contractor is at least \$1,000,000.

5.2 When complying with Section 5.1, Contractor shall comply with the domestic preference requirements of the Build America, Buy America Act (BABA) § 70914, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by OMB, USDOT, and FRA.

5.3 In accordance with 2 C.F.R. §200.322, as appropriate and to the extent consistent with law, Contractor shall, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts and purchase orders for work or products under this Contract.

(a) For the purposes of this Section 5.3:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

6.0 Cargo Preference--Use Of United States-Flag Vessels. As required by U.S. DOT, Maritime Administration regulations, “Cargo Preference -- U.S.-Flag Vessels,” 46 CFR Part 381, if equipment, materials or commodities may be

transported by ocean vessel in carrying out the activities funded under this Contract, Contractor agrees:

6.1 To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates.

6.2 To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “On-Board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to Amtrak (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590, marked with appropriate identification.

6.3 To insert the substance of the provisions of this Section in all subcontracts issued pursuant to this Contract.

7.0 Drug-Free Work Place. Contractor agrees to comply with U.S. DOT regulations, “Government-wide Requirements for Drug-Free Workplace (Grants)”, 49 CFR Part 32, and FRA regulations, “Control of Alcohol and Drug Use”, 49 CFR Part 219.

8.0 Participation By Small Business Concerns Owned and Controlled By Socially And Economically Disadvantaged Individuals. Contractor is encouraged to utilize small business concerns owned and controlled by socially and economically disadvantaged individuals (as that term is defined in 49 CFR Part 26 in carrying out activities funded under this Contract.

9.0 Record Retention And Access.

9.1 Contractor shall retain all financial records, supporting documents, statistical records and all other Contractor records pertinent to this Contract for a period of three years after contract closeout as set forth in 2 CFR 200.333-200.337.

9.2 Authorized representatives of the Federal Railroad Administration, Inspectors General, and the Comptroller General of the United States shall have access to and the right to examine, audit and copy any of Contractor’s directly pertinent books, documents, papers, or other records involving transactions related to this Contract as long as the records are retained.

9.3 In cases where litigation, a claim, or an audit is initiated prior to the expiration of the three-year period, records must be retained until completion of the action and resolution of the issues or the end of the three-year period, whichever is later.

9.4 In accordance with the May 2013 Executive Order on Making an Open and Machine Readable the New Default for Government Information, the Contractor shall, whenever practicable, collect, transmit, and store Contract-related information in open and machine readable formats rather than in closed formats or on paper.

10.0 Environmental Protection. *This section applies if the Contract exceeds \$150,000.* Contractor will conduct work under this Contract, and will require that work that is conducted as a result of this Contract be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and all regulations issued thereunder. Where applicable, Contractor shall comply with the **Wild and Scenic Rivers Act** of 1968 (16 U.S.C. 1271 *et seq.*).

11.0 Application To Lower-Tier Subcontractors. Contractor shall insert in each subcontract the provisions set forth in these Supplementary General Provisions and also a provision requiring the subcontractors to include these provisions in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth herein. Contractor shall also include in each subcontract that exceeds \$250,000, and cause its subcontractors to include in each lower tier subcontract that exceeds \$250,000 provisions that allow for administrative, contractual or legal remedies in instances which a contractor or subcontractor violates or breaches contract terms.

12.0 Contract Termination Provisions. All subcontracts in excess of \$10,000 shall address termination for cause and termination for convenience, including the manner by which termination will be effected and the basis for settlement.

13.0 Allowable Costs. Contractor's expenditures will be reimbursed only if they conform with Federal guidelines or regulations and Federal cost principles as set forth in Federal Acquisition Regulation, 48 CFR Chapter I, Subpart 31.2, "Contracts with Commercial

Organizations", which are incorporated herein by reference. If any costs are disallowed, as determined by an audit by Amtrak or the Federal Government, Contractor agrees to reimburse Amtrak for such disallowed costs within sixty (60) days of advice to Contractor of the determination of disallowance.

14.0 Americans With Disabilities Act. Contractor shall comply and cause its subcontractors and lower tier subcontractors to comply with the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 *et seq.*), the Rehabilitation Act of 1973, as amended (29 U.S.C. 794 *et seq.*) and the implementing Department of Transportation regulations at 49 CFR Parts 27, 37 and 38.

15.0 Capital Acquisition. The FY 2016 Appropriations Act requires Amtrak to include a statement in any contract for a capital acquisition that exceeds \$10,000,000 in life cycle costs that funding for the acquisition is subject to the availability of funds appropriated by Congress in an Appropriations Act, even though Amtrak is not subject to the Anti-Deficiency Act, does not receive appropriations directly from Congress, and possesses other sources of revenue that may fund the capital acquisition.

16.0 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Contractor shall provide no equipment, services, or systems under the Contract that causes Amtrak to be in violation of 2 CFR §200.216 (Prohibition on certain telecommunications and video surveillance services or equipment). As of the effective date of 2 CFR §200.216, companies that may be implicated by this provision are: Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Contractor shall include this provision in all subcontracts it issues.

17.0 Application of Federal Laws and Regulations. Contractor understands that Federal laws, regulations, policies, and related administrative practices may be modified from time to time. Contractor agrees that the most recent of such Federal requirements will govern this Contract at any particular time, except if there is sufficient evidence in this Contract of a contrary intent.



**APPENDIX A TO SUPPLEMENTARY GENERAL PROVISIONS
FOR
NONCONSTRUCTION CONTRACTS**

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Bidder/Offeror/Contractor

Signature of Authorized Representative

Printed Name of Authorized Representative

Title of Authorized Representative

Date



**APPENDIX B TO SUPPLEMENTARY GENERAL PROVISIONS
FOR
NONCONSTRUCTION CONTRACTS**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. The offeror/prospective contractor certifies, by submission of this offer or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the offeror/prospective contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this offer or proposal.

Name of Bidder/Offeror/Contractor

Signature of Authorized Representative

Printed Name of Authorized Representative

Title of Authorized Representative

Date

EXHIBIT 6

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

[attached]

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

This Special Provision shall apply to all work being undertaken by Contractor in and along property and facilities owned, controlled or utilized by CSX Transportation, Inc., Norfolk Southern Railway Company, and/or the National Railroad Passenger Corporation (collectively, the "Railroad Operators" and each a "Railroad Operator"). These terms are required pursuant to VPRA's contractual arrangements with the Railroad Operators and are not subject to negotiation or modification. In the event of a conflict between the terms and conditions of this Special Provision and any other instrument incorporated within the Contract Documents, the terms and conditions of this Special Provision shall control. Capitalized terms not defined herein shall have the meaning assigned in the Contract, and if not defined therein, the meaning recognized within industry. For reference, Contractor as used herein, may be identified elsewhere in the Contract Documents as "Design-Builder," "CM/GC Contractor," "Consultant," "Service Provider," or "Vendor".

1. DEFINITIONS

1.1 **"Affiliate"** means, when used to indicate a relationship with a specified Person, a 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.

1.2 **"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.

1.3 **"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

SP 01 (CRA)

(Rev. 09/2023)

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.

1.4 **"Amtrak Trains"** means all trains operated by Amtrak as part of its intercity passenger rail service, but which excludes commuter rail service.

1.5 **"Commonwealth"** means the Commonwealth of Virginia.

1.6 **"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.

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

1.8 **"Norfolk Southern Railway Indemnified Parties"** means the Norfolk Southern Railway Company, its parent company, its affiliates, and any and all of their respective officers, directors, employees, agents, affiliates, successors, and permitted assigns.

1.9 **"Person"** means any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a governmental authority, including VPRA.

2. RAILROAD OPERATOR INDEMNIFICATION AND INSURANCE REQUIREMENTS

Subject to applicable law, including Va. Code § 11-4.1, the following indemnity and insurance obligations shall apply to the Contract:

2.1 Projects Involving Property/Rights of Way Used by CSX Transportation, Inc. ("CSXT")

Where the Scope of Work involves entry or work upon "Segment 1" or "Segment 3" (as defined within the Comprehensive Rail Agreement dated March 26, 2021, ("CSXT Comprehensive Rail Agreement")), Contractor shall be required to indemnify the CSXT Indemnitees, regardless of fault, to the same extent Contractor is required to indemnify VPRA pursuant to the Contract Documents. A copy of the CSXT Comprehensive Rail Agreement is available at <https://vapassengerrailauthority.org/wp-content/uploads/2021/06/11.1.1.43-Comprehensive-Rail-Agreement-Fully-Executed-without-Exhibits-1.pdf?bcs-agent-scanner=6f5ab9a3-367c-924b-9a9a-e2794740ce2d>.

Additionally, prior to entering upon any property/right of way owned or controlled by CSXT, Contractor may be required to execute CSXT's standard Inspection Right of Entry Agreement using the CSXT Property Portal (https://propertyportal.csx.com/pub_ps_res/ps_res/jsf/public/index.faces). CSXT shall have sole discretion on whether Contractor will be required to execute the standard Inspection Right of Entry Agreement, and if executed, Contractor's failure to comply with the standard Inspection Right of Entry Agreement may constitute a breach of the Contract.

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

Where the Scope of Work involves entry upon the Purchased V-Line (as defined within the Comprehensive Rail Agreement dated January 10, 2022 (“NS Comprehensive Rail Agreement”)) for purposes of construction and maintenance activities, Contractor shall be required to indemnify the Norfolk Southern Railway Indemnified Parties to the same extent Contractor is required to indemnify VPRA pursuant to the Contract Documents. To the extent Contractor engages in construction and maintenance activities on the Purchased V-line, it must also be adequately insured in accordance with the requirements set forth in Exhibit K to the NS Comprehensive Rail Agreement. A copy of the NS Comprehensive Rail Agreement is available at <https://vapassengerrailauthority.org/wp-content/uploads/2022/02/Redacted-Final-Signature-NSR-Comprehensive-Rail-Agreement-Combined-Execution-Version-c.pdf?bcs-agent-scanner=a52d286c-bdbb-d647-90e8-d47eec142fd9>.

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

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

Where the Scope of Work involves entry or work upon rail lines used in connection with the operation of Amtrak Trains, Contractor shall be obligated to indemnify and defend Amtrak for all losses or claims arising from the acts or omissions of the Contractor in the performance of the Contract whether or not Contractor is negligent and irrespective of any negligence or fault of Amtrak. Notwithstanding the foregoing, Contractor’s indemnity and duty to defend shall not extend to Amtrak-Assumed Individuals and/or Amtrak-Assumed Property.

In case a lawsuit shall at any time be brought against Amtrak asserting a liability against which Contractor or any of its subcontractors has agreed to indemnify and save harmless Amtrak, Contractor or subcontractor, at Contractor’s or subcontractor’s own cost and expense and without any cost or expense whatever to Amtrak, shall defend such suit and indemnify and save harmless Amtrak against all costs and expenses thereof and promptly pay or cause to be paid any final judgment recovered against Amtrak; provided, however, that Amtrak shall promptly upon the bringing of any such suit against it give notice to VPRA and thereafter provide all such information as may from time to time be requested by either VPRA or Contractor.

To the extent Contractor engages in construction and maintenance activities on Amtrak rail lines, it must also be adequately insured in accordance with the requirements set forth in Attachment 1 to this Special Provision

3. INCLUSION IN SUBCONTRACTOR AGREEMENTS

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

Attachment 1
(Amtrak Insurance Requirements)

A. Liability Insurance Guidelines for Construction Projects Impacting Rail Lines

The guidelines below are intended to provide protection for Amtrak under contracts issued by VPRA for the construction along the Amtrak rail lines:

1. Limits of Insurance

Construction Crossing Active ROW	\$10M/\$20M
Construction Adjacent to Active ROW	\$10M/\$20M
Construction Not Impacting Active ROW	\$10M/\$20M

2. Amtrak included as an additional insured

3. Contractor and its insurer waive right of recovery/subrogation against Amtrak

4. No exclusion for contractual liability to railroads

5. Cross liability of insureds and severability of interests of insureds

6. Contractor coverage is primary and non-contributory with respect to coverage carried by additional insureds

B. Liability Insurance Guidelines for Maintenance along Rail Lines

The guidelines below are intended to provide protection for Amtrak under contracts issued by VPRA for the maintenance of the Amtrak rail lines:

1. Limits of Insurance

Maintenance Within the ROW	\$10M/\$20M
Maintenance Outside of ROW	\$2M/\$2M

2. Amtrak included as an additional insured

3. Contractor and its insurer waive right of recovery/subrogation against Amtrak

4. No exclusion for contractual liability to railroads

5. Cross liability of insureds and severability of interests of insureds

6. Contractor coverage is primary and non-contributory with respect to coverage carried by additional insureds

EXHIBIT 7
INSURANCE REQUIREMENTS

[attached]

INSURANCE REQUIREMENTS

Consultant, 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. Consultant shall have its insurance broker or insurance company submit a certificate of insurance giving evidence of the relevant coverage types and amounts set forth below, prior to commencing the corresponding Work under the Contract. All required insurances shall contain a waiver of subrogation provision in favor of the Commonwealth of Virginia, Virginia Passenger Rail Authority, CSX Transportation, Inc., and the National Railroad Passenger Corporation.

A. REQUIRED POLICIES/LIMITS

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 Consultant leases one or more employees through the use of a payroll, employee management, or other similar company, then Consultant must procure workers' compensation insurance written on an "if any" policy form, including an endorsement providing coverage for alternate employer/leased employee liability. Such insurance shall be in addition to the workers' compensation coverage provided to the leased employee by the payroll, employee management, or other similar company.
2. **Employer's Liability Insurance** with limits of \$1,000,000 per occurrence for bodily injury, \$1,000,000 per employee for bodily injury by occupation disease, and \$1,000,000 policy limit for bodily injury by disease.
3. **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, and broad form contractual liability having a combined single limit of not less than \$5,000,000 per occurrence for all loss, damage, cost and expense, including attorneys' fees, arising out of bodily injury liability and property damage liability during the policy period, apply separately to each annual period. 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. The Commonwealth of Virginia, Virginia Passenger Rail Authority, CSX Transportation, Inc., and the National Railroad Passenger Corporation are to be named as an additional insured on a primary, non-contributory basis.
4. **Automobile Liability Insurance** with a limit of at least \$1,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Commonwealth of Virginia, Virginia Passenger Rail Authority, CSX Transportation, Inc., and the National Railroad Passenger Corporation are to be named as an additional insured on a primary, non-contributory basis.
5. **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for all the above mentioned policies in the amount of \$5,000,000 per occurrence and in the aggregate. Such policy(ies) shall apply without any gaps in the limits of coverages and be at least as broad as and follow the form of underlying primary coverages required herein. The Commonwealth of Virginia, Virginia Passenger Rail Authority,

CSX Transportation, Inc., and the National Railroad Passenger Corporation are to be named as an additional insured on a primary, non-contributory basis.

6. **Professional Liability Insurance** covering liability for acts, errors, or omissions arising in connection with professional services, for not less than \$5,000,000 with respect to any one claim and in the aggregate.
7. **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 Consultant in this Contract and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.
8. **Railroad Protective Liability Insurance** will be maintained on behalf of owners/operators of railway service within the Project limits (the "Railway Operators") whenever requested by the Railway Operators. The policy, which shall name the Railway Operators as covered insureds, shall be in accordance with the form prescribed by the Railway Operators and must comply with Federal Aid Policy Guide 23 CFR 646 subpart A. The limits of the policy will be set by the Railway Operators.

B. GENERAL REQUIREMENTS RELATING TO INSURANCE

1. **General Insurance Requirements.** Consultant shall, at a minimum procure and keep in effect the insurance policies required herein and shall require all subcontractors to similarly comply with the insurance requirements required herein, as appropriate. Each such insurance policy shall be procured from an insurer that is authorized to conduct business in the Commonwealth.

Each such policy maintained by the Consultant 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 VPPRA and any other parties as required by contract. Additionally, the Commonwealth of Virginia, Virginia Passenger Rail Authority, CSX Transportation, Inc., and the National Railroad Passenger Corporation shall have no responsibility or liability for payment of any premiums, deductibles or self-insured retentions under any of the insurance policies required herein.

2. **Subcontract Agreements.** Consultant shall by appropriate written agreements flow down the requirement for the above-noted insurance including the requirement for: (i) the waiver of subrogation for all required insurance, (ii) additional insured coverage under all required insurance, and (iii) other requirements of this Exhibit to all tiers of subcontractors.
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 of Virginia, Virginia Passenger Rail Authority, CSX Transportation, Inc. and the National Passenger Railroad Corporation against any other insured under the policies (i.e., no 'insured v. insured' exclusion).

4. **Waiver of Right to Recover, Including Subrogation.** Consultant hereby waives all its rights of recovery, under subrogation or otherwise, against the Commonwealth of Virginia, Virginia Passenger Rail Authority, CSX Transportation, Inc. and the National Passenger Railroad Corporation with respect to the Project, to the extent covered by insurance required to be provided by Consultant 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 Consultant's rights of recovery against its own subcontractors, vendors, and suppliers of whatever tier. Consultant 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, Consultant 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. **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 Consultant or by other third parties pursuant to obligations of Consultant hereunder, and, in each case, available or applicable to the Project are intended to apply to the full extent of the insurance policies, and nothing contained in the Contract limits, or shall be deemed to limit the application of such insurance coverage.

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

6. **Inadequacy of Required Coverages.** Virginia Passenger Rail Authority 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 Consultant against its undertakings under the Contract or its liabilities to any third party. It is the responsibility of Consultant and any and all subcontractors to determine if any changes or additional coverages are required to adequately protect their interests. No such limits of liability or approved variances therefrom shall preclude VPRA from taking any actions as are available to it under the Contract or otherwise at law.

****END OF DOCUMENT****

EXHIBIT 8

**CONTRACT FOR CONSULTANT SERVICES
(FORM PD 04)**

[attached]

CONTRACT FOR CONSULTING SERVICES

Contract Id No. [insert number]

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

WITNESSETH:

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

WHEREAS, in accordance with its Procurement Rules, VPRA issued a solicitation for the above-numbered Contract and received proposals from offerors determined to be responsive and responsible; and

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

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

ARTICLE 1

PROJECT TITLE/DESCRIPTION

Project/Program Title:	Franconia-Springfield Bypass
General Description of Services:	Construction Management Services

ARTICLE 2
CONTRACT EXHIBITS

The following exhibits (the “Exhibits”) are attached and hereby incorporated by reference into this Contract:

Exhibit A	Acronyms and Definitions
Exhibit B	Designation of Confidential/Proprietary Information (Form PD 25) [if applicable; specify “Reserved” if exhibit not needed]
Exhibit C	Scope of Work
Exhibit D	Designated Key Personnel
Exhibit E	Approved Fee Schedule (Form PD 71)
Exhibit F	General Terms and Conditions (Form PD 100)
Exhibit G	Insurance Requirements
Exhibit H	Approved Small and Diverse Business Subcontracting Plan (Form PD 60)
Exhibit I	Approved DBE Utilization Plan (Form PD 50B)
Exhibit J	Monthly Small and Diverse Business Subcontracting Utilization Report (Form PD 61)
Exhibit K	Monthly DBE Participation Report (Form PD 51)
[Other]	

ARTICLE 3
CONTRACT DOCUMENTS

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

- (a) Change Orders;
- (b) Work Plans/Task Orders;
- (c) The Contract, including the Exhibits thereto and such other documents as may be incorporated by reference;
- (d) Consultant’s Proposal dated [redacted];
- (e) Request for Proposals [specify RFP no.] dated [specify] (inclusive of all attachments, exhibits, and addendum) (collectively, the “RFP Documents”); and
- (f) [list additional materials where applicable].

Notwithstanding anything to the contrary contained in the Contract Documents, in the event of any conflict between any Federal requirements (where applicable) 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.

ARTICLE 4
CONTRACT REPRESENTATIVES

The respective points of contact for the parties (each a “Contract Representative”) and related contact information, including the places for delivery of notice, are as designated below:

For VPRA:

Virginia Passenger Rail Authority
Attn: [insert]
919 East Main Street, Suite 2400
Richmond, VA 23219
Phone: (804) 385-4176
Email: [insert]

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

For the Consultant:

Company Name:
Address:

Point of Contract:
Phone:
Email:

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

ARTICLE 5
DEFINITIONS

A list of acronyms and definitions used throughout the Contract Documents is set forth at Exhibit A.
A. Unless specifically defined differently 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 Contract, but not defined in Exhibit A or elsewhere in the Contract Documents, shall have the meaning generally ascribed to such terms within the industry classification associated with this Contract.

ARTICLE 6
SERVICES

Consultant shall furnish services required for the Project as outlined in the Scope of Work (“SOW”) attached at Exhibit C and as may be more particularly described in any Work Plan and/or Task Order that may be issued under the Contract (the “Work”). All such Work shall be delivered in conformance with the Contract Documents. VPRA may, in its sole discretion, elect to delete certain tasks/services set forth within the SOW and any Work Plan and/or Task Order.

No Additional Services shall be rendered by Consultant unless and until such Additional Services are first approved by written amendment to this Contract through Change Order. Compensation for Additional Services shall be in accordance with the terms of the Approved Fee Schedule, inclusive of any adjustments made thereto in accordance with the terms of this Contract.

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

ARTICLE 7
KEY PERSONNEL

Consultant's list of designated Key Personnel approved and accepted by VPRA is identified in Exhibit D. Consultant shall comply with all requirements applicable to Key Personnel as set forth in the Contract Documents.

ARTICLE 8
TERM; COMMENCEMENT OF WORK

The initial term of this Contract (“Initial Term”) shall commence on the date this Contract is fully executed by the parties and shall continue in effect until completion of the Work unless sooner terminated as provided for in this Contract. Where authorized, the Director of Procurement may extend the term of this Contract with each extension (the “Renewal Term”) to commence upon the expiration of the Initial Term or any preceding Renewal Term.

Consultant shall not commence the Work until such time as the Director of Procurement or his/her designee has issued an NTP to Consultant. Where applicable, Consultant shall complete the Work within the time specified for performance within the Contract Documents. Under no circumstance shall VPRA be

liable for any services rendered unless and until the NTP has been issued. Consultant must acknowledge receipt of the NTP within five (5) Business Days from receipt.

ARTICLE 9
PAYMENT OF FEES AND COSTS

Subject to the terms set forth in the Contract Documents, VPRA will compensate the Consultant for the Work in accordance with the approved Fee Schedule attached at Exhibit E. Notwithstanding the foregoing, the total Not-To-Exceed (“NTE”) value of this Contract, inclusive of Consultant’s fees and direct costs associated with the Work, is: \$_____.

Consultant may account for annual escalation of its hourly wage rates once a year beginning on the anniversary of the Contract and continuing on each subsequent anniversary thereafter. Unless specified in Exhibit E pursuant to an advance agreement of the parties, the escalation rate shall be negotiated and not exceed 3.0%. Where escalation is proposed by Consultant, an amended Fee Schedule shall be submitted to VPRA’s Contract Representative (as designated in Article 4) for approval at least thirty (30) days prior to the anniversary date of the Contract. For contracts involving architectural or engineering services, indirect cost rates shall be updated on an annual basis in accordance with the Consultant’s annual accounting period and in compliance with the Federal cost principles.

Consultant will be reimbursed for all eligible direct costs consistent with this Contract or as otherwise agreed by the Parties and documented in a written amendment to this Contract. Direct costs shall include mileage, parking (as needed), and travel [expand to include other direct costs where applicable]. Consultant shall not be reimbursed for any other expenses unless the expense is first approved in writing by VPRA. Reimbursement for travel (mileage, meals, and lodging) is not allowed for positions not required to have a vehicle, unless approved in advance by VPRA. In those cases where travel allowance is authorized, travel reimbursement shall be in accordance with the most current version of the Commonwealth of Virginia, Department of Accounts (“DOA”), “Commonwealth Accounting Policies and Procedures (CAPP) Manual Topic 20335.” The CAPP Manual is available at the DOA website at <http://www.doa.virginia.gov>. When travel is authorized, it must originate from Consultant’s nearest office. Consultant shall not be eligible for reimbursement for company-owned/leased vehicles allocated to a project unless preauthorization has been provided by VPRA. In those instances, reimbursement shall be governed by Instructional Memorandum (IM) 24-01, which is incorporated herein by reference.

Invoicing and payment, including charges for Additional Services, will be governed by Article 12 of the General Terms and Conditions (Form PD 100) attached hereto as Exhibit F. For the sake of clarity, any payment terms set forth in Consultant's Proposal which in any way deviate from or otherwise conflict with VPRA's General Terms and Conditions (Form PD 100) will be deemed a nullity and of no legal effect.

ARTICLE 10
INSURANCE

Consultant agrees to maintain insurance in accordance with Exhibit F (General Terms and Conditions) and the requirements and specifications set forth in the Insurance Requirements attached hereto at Exhibit G, subject to any agreed exceptions and modifications as may be granted in writing by VPRA's Director of Procurement. In executing this Contract, Consultant warrants and represents that the certificates of coverage furnished to VPRA remain in full force and effect as of the Effective Date of this Contract.

ARTICLE 11
**SMALL, DIVERSE, AND DISADVANTAGED
BUSINESS PARTICIPATION**

Consultant shall be bound by its participation commitments within its approved Small and Diverse Business Subcontracting Plan (Exhibit H) and approved DBE Utilization Plan (Exhibit I), and Consultant may not make changes to its contractual small business commitments, substitute a certified SWaM or DBE or make any other changes to the plans without the prior written approval of VPRA. Unauthorized changes or substitutions, including performing Work designated for a SWaM or DBE with Consultant's own forces, without the prior written approval of VPRA shall be a breach of the Contract. Notwithstanding the foregoing, VPRA may allow amendments to the approved Small and Diverse Business Subcontracting Plan and/or approved DBE Utilization Plan where the modification to the plan will have the effect of increasing overall certified SWaM and/or DBE utilization on the Project or where Consultant is able to evidence that a subconsultant/subcontractor certified as a SWAM or DBE has been terminated for cause, is unable or unwilling to perform the subcontract work, or has been decertified.

Unless otherwise directed by VPRA, Consultant shall report SWaM and DBE utilization on a monthly basis using VPRA Procurement Forms PD 61 and PD 51 (Exhibits J and K, respectively), which forms shall be included with Consultant's invoices. If a subcontractor/subconsultant is certified as both a SWaM and a DBE, Consultant shall report their utilization on both Forms PD 61 and PD 51 and utilization

credit will be allowed under both the Small and Diverse Business Subcontracting Plan and DBE Utilization Plan, including for the same work activity.

Consultant shall maintain a record of payments to certified SWaM and DBE businesses and all other subcontractors and suppliers for Work performed. The records shall be made available to VPRA for inspection and copying upon request. Consultant shall report to VPRA any performance deficiencies with its approved Small and Diverse Business Subcontracting Plan and/or approved DBE Utilization Plan. Any notice of deficiency provided by Consultant shall include a description of the proposed corrective action to be taken by the Consultant.

Consultant has a duty to accurately report SWaM and DBE information to VPRA. A Consultant who intentionally supplies inaccurate information may be subject to civil and/or criminal sanctions or contractual remedies available to VPRA and other third parties.

Neither Consultant nor any of its subcontractors/subconsultants shall discriminate on the basis of race, color, national origin, or sex in the performance of this Contract.

ARTICLE 12 **E-VERIFY COMPLIANCE**

Consultant and its subconsultants/subcontractors have an obligation to utilize the U.S. Department of Homeland Security's ("DHS") E-Verify system for all newly hired employees. By executing this Contract, the Consultant certifies that it is registered with and uses the E-Verify system for all newly hired employees. Consultant shall provide a copy of its DHS Memorandum of Understanding ("MOU") to VPRA's Contract Representative within ten (10) Business Days of Contract execution. If Consultant is not enrolled in DHS E-Verify System, it will do so within (10) Business Days of the Notice of Award and provide VPRA's Contract Representative a copy of its MOU within ten (10) Business Days of Contract execution.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES TRUE AND COMPLETE

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

ARTICLE 14
COUNTERPARTS/FACSIMILE OR ELECTRONIC EXECUTION

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

ARTICLE 15
EFFECTIVENESS

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

ARTICLE 16
AUTHORITY TO EXECUTE AGREEMENT

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

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

[SIGNATURES FOLLOW ON SUBSEQUENT PAGE]

For: VIRGINIA PASSENGER RAIL AUTHORITY

By, _____
(signature)

(printed name)

Its, _____
(title)

Dated: _____

For: [specify]

By, _____
(signature)

(printed name)

Its, _____
(title)

Dated: _____

EXHIBIT 9
PROJECT INFORMATION DOCUMENTS

[attached]

Project information will be made available to Offerors upon execution of VPRA's Non-Disclosure and Confidentiality Agreement ("NDA"). For further information or to request a copy of the NDA, please contact procurement@vpra.virginia.gov.

VPRA reserves the right to deny access to project information contained within this Exhibit 9 to any party who, in its sole discretion, is determined not to have a legitimate business purpose for the information