



**LONG BRIDGE PROJECT
SOUTH PACKAGE**

**DESIGN-BUILD
AGREEMENT**

Contract ID No.: 01-001-24-0002



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EXHIBITS

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X.	Cost Breakdown Structure
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Z.	Special Provision Regarding Participation In The U.S. Department Of Labor's Office Of Federal Contract Compliance Programs Mega Construction Project Program (SP 10)

This Design-Build Agreement (the “Agreement”) is entered into by and between the Virginia Passenger Rail Authority, a political subdivision of the Commonwealth of Virginia (“VPRA”) and Long Bridge Rail Partners, a joint venture comprised of Trumbull Corporation, a Pennsylvania corporation; Joseph B. Fay, Co., a Pennsylvania corporation; and Wagman Heavy Civil, Inc., a Pennsylvania corporation (“Design-Builder”) (each individually a “Party” and collectively, the “Parties”), and is effective as of the Effective Date.

RECITALS

- A. Pursuant to its enabling legislation, Va. Code § 33.2-287 *et seq.*, VPRA was established as a body corporate and political subdivision of the Commonwealth for purposes of increasing passenger rail capacity, improving passenger rail services, and ameliorating current and future traffic congestion on the highways of the Commonwealth.
- B. VPRA has determined that the Project—a key component to VPRA’s Transforming Rail in Virginia Program—will significantly promote and expand the availability of passenger and commuter rail service in the Commonwealth and increase ridership by connecting population centers with passenger and commuter rail service.
- C. By the authority granted in Va. Code § 33.2-292, VPRA may enter into contracts necessary and incidental to the performance of its duties.
- D. On June 30, 2023, VPRA issued a Request for Qualifications (“RFQ”) to obtain Statements of Qualification (“SOQs”) from firms interested in serving as the design-builder on the Project. After evaluation of the SOQs, VPRA named two (2) design-build entities to a shortlist that would be invited to submit proposals for the Project.
- E. On February 9, 2024, VPRA issued a Request for Proposals (“RFP”) to the shortlisted design-build entities. Of the shortlisted design-build firms, two (2) submitted Technical Proposals and Price Proposals on or before the due dates set forth in the RFP. Each such proposal was evaluated in accordance with the RFP requirements and VPRA’s procurement rules whereupon VPRA determined that Design-Builder was the Proposer that best met the selection criteria in the RFP. Following limited negotiations with Design-Builder, VPRA concluded that Design-Builder submitted the best proposal and offered the Best Value to VPRA and its funding partners.
- F. By vote of the VPRA board of directors held on January 16, 2025, the VPRA executive director has been expressly authorized to enter into this Agreement and to take all action contemplated by such instrument, including the execution of such other contracts which are incidental to the Agreement.
- G. This Agreement is structured as a lump sum design-build agreement. Design-Builder shall perform all Work necessary to complete the Project by the Completion Deadlines and for the Contract Price. The Completion Deadlines and Contract Price may only be adjusted as provided in this Agreement. The Agreement limits Design-Builder’s ability to make requests for an increase to the Contract Price or an adjustment of the Completion Deadlines. Design-Builder agrees to assume the responsibilities and risks included in this Contract, and the assumption of those responsibilities and risks is reflected in the Contract Price.

- H. The Parties acknowledge that VPRA will suffer substantial losses if Design-Builder fails to comply with certain of the requirements herein, including the failure to complete the Project within the time limitations set forth in the Contract Documents and the retention of Key Personnel. Due to the imprecise nature of the damages sustained, Liquidated Damages may be assessed for these and other events specified herein.

- I. VPRA has provided the Conceptual Design for the purpose of defining certain aspects of the Project. VPRA has also provided the Reference Information Documents to Design-Builder. Design-Builder has no right to rely on the Reference Information Documents except to the extent specifically permitted in the Contract Documents. VPRA and Design-Builder both intend for Design-Builder to (1) assume full responsibility and liability with respect to the design of the Project, including correcting any errors in the Reference Information Documents, and (2) indemnify and hold harmless VPRA and others with respect to any defects in the Project, including errors in the Reference Information Documents, except where otherwise addressed in the Contract Documents.

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

ARTICLE 1

Contract Components, Interpretation

1.1 Definitions

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

1.2 Contract Documents and Order of Precedence

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

- (a) Change Orders;
- (b) The Agreement, including the Exhibits thereto and such other documents as may be incorporated by reference;
- (c) Design-Builder’s Proposal Commitments and Alternative Technical Concepts set forth in Exhibit B-1 and Exhibit B-2;
- (d) The Technical Provisions (including any Exhibits thereto);
- (e) Applicable Standards;
- (f) Issued for Construction Documents;
- (g) The Technical Proposal and Price Proposal, except that Design-Builder shall comply with all statements, offers, and terms that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms that are more advantageous to VPRA than the requirements of the Contract Documents, as determined by VPRA; and
- (h) The Statement of Qualifications, except that Design-Builder shall comply with all statements, offers, and terms that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents or to perform services in addition to those otherwise required, or otherwise contains terms that are more advantageous to VPRA than the requirements of the Contract Documents, as determined by VPRA.

1.3 Interpretations

1.3.1 Interpretation Generally

In the Contract Documents, where appropriate:

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

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

1.3.2 Interpretation of Design-Builder Obligations

Unless otherwise specified:

- (a) Design-Builder is the subject of all statements and commands in the Contract Documents; and
- (b) lists contained in the Contract Documents defining the Project or the Work are not deemed to be all-inclusive.

1.4 Referenced Standards and Specifications

Work that must comply with an Applicable Standard must comply with the latest edition or revision of that standard in effect on the Setting Date, including any amendments in effect on that date, unless otherwise specified in the Contract Documents or otherwise directed by VPRA. In the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to an Applicable Standard within a Contract Document or set of Contract Documents, the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality

or better performance will apply, unless VPRA approves otherwise in writing. VPRA may direct Design-Builder to comply with an updated standard after the Setting Date and Design-Builder may follow the process for a VPRA-Directed Change if Design-Builder contends that following the updated standard entitles Design-Builder to an adjustment of the Contract Price or a Completion Deadline.

1.5 Omission of Details

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

1.6 Computation of Periods

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

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

1.7 Standards for Approvals

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

1.8 Federal and District Requirements

VPRA anticipates receiving federal and District-supplied financial assistance on the Project through the USDOT and DDOT in the form of: (i) a Federal-State Partnership for Intercity

Passenger Rail grant awarded and/or administered by the FRA; (ii) a Rebuilding American Infrastructure with Sustainability and Equity grant awarded and/or administered by the FRA; (iii) Transportation Infrastructure Finance and Innovation Act (TIFIA) loan proceeds supplied through the Commonwealth Transportation Board; and (iv) District-supplied funding in support of the Bike/Ped Bridge. Design-Builder must fully comply with the Federal Requirements applicable to any such funding sources, as applicable, and flow down such provisions in any of its Subcontractor agreements on the Project. This includes all Laws applicable to work financed with federal or District funds and the provisions required to be included in contracts therefor, including the provisions set forth in Exhibits C, D, E, F and Z. Notwithstanding anything to the contrary contained in the Contract Documents, in the event of any conflict between any Federal Requirement and the other requirements of the Contract Documents, the Federal Requirements will prevail, take precedence, and be in force over and against any such conflicting provisions.

1.9 Compliance with Laws

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

1.10 Approvals for Alternative Technical Concepts

Design-Builder is solely responsible for obtaining any approvals from Persons other than VPRA that are necessary or required to implement ATCs incorporated in the Contract Documents. If Design-Builder fails to obtain any necessary or required approval, Design-Builder shall comply with the corresponding baseline requirements of the Contract Documents (unmodified by the ATC) without any increase in the Contract Price or adjustment of a Completion Deadline. The applicable baseline requirements shall be those in the RFP unmodified by the ATC.

ARTICLE 2

Scope of Work

2.1 Design-Builder to Perform the Work

Design-Builder shall perform the Work, as such term is defined herein.

2.2 Design Work

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

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

2.3 Documents Furnished by VPRA

Except as set forth in Section 2.4 below, VPRA makes no representation or warranty as to the accuracy, completeness, or sufficiency of any document furnished by VPRA to Design-Builder prior to the Effective Date, including the RFP Documents and the Conceptual Design. Design-Builder shall independently verify and confirm the accuracy, completeness, and sufficiency of any documents furnished by VPRA, and shall promptly report in writing to VPRA any error, omission, or insufficiency in such documents that Design-Builder discovers. Design-Builder's warranties and indemnities under the Agreement cover errors in the Project even though they may be related to any error, omission, or insufficiency in the RFP Documents and Conceptual Design. Except as set forth in Section 2.4 below, Design-Builder shall have no right to seek any adjustment to a Contract Price or the Completion Deadlines as the result of any error, omission, or insufficiency relating to the Conceptual Design or any information provided to Design-Builder by or on behalf of VPRA in connection with this Agreement.

2.4 Designated VPRA-Furnished Information

Notwithstanding Section 2.3 above, Design-Builder shall be entitled to reasonably rely upon the accuracy of certain information provided to Design-Builder by VPRA and identified in Exhibit G ("Designated VPRA-Furnished Information"). VPRA does not, however, represent that the Designated VPRA-Furnished Information is complete or sufficient for purposes of Design-Builder's performance of the Work. Design-Builder shall be responsible for identifying what additional information is required in addition to the Designated VPRA-Furnished Information to develop a complete and sufficient Design for the Project. If Design-Builder discovers any material inaccuracy in the Designated VPRA-Furnished Information, it shall promptly report in writing to VPRA such material inaccuracy, whereupon VPRA shall determine and instruct Design-Builder how to proceed. Design-Builder shall have the right to seek an adjustment to a Contract Price and/or Completion Deadlines arising out of or related to material inaccuracies in Designated VPRA-Furnished Information to the extent such inaccuracies in the Designated VPRA-Furnished Information reasonably could not have been discovered during the Design-Builder's conduct of

the Scope Validation activities and provided that Design-Builder establishes entitlement to a Relief Event subject to Article 12.

2.5 Ownership of Work Product

2.5.1 VPRA Owns All Work Product

VPRA shall own all rights, title, and interest in the Work Product upon Design-Builder's production of such Work Product, except for (i) Governmental Approvals, which shall only transfer to VPRA upon termination of the Agreement in accordance with Articles 14 and 15 and (ii) Materials, which shall only become property of VPRA upon fulfillment of the conditions in Sections 10.4 and 11.3.2. VPRA's ownership rights include the right of VPRA, and anyone contracting with VPRA, to incorporate any ideas or information from the Work Product into: (a) any other contract awarded in reference to the Project; or (b) any subsequent procurement by VPRA on another project. In receiving all rights, title, and interest in the Work Product, subject to the exclusions in this Section 2.5.1, VPRA is deemed to own all intellectual property rights, copyrights, patents, trade secrets, trademarks, and service marks in the Work Product, and Design-Builder agrees that it shall, at the request of VPRA, execute all papers and perform all other acts that may be necessary (if any) to ensure that VPRA's rights, title, and interest in the Work Product are protected. The rights conferred herein to VPRA include VPRA's ability to use the Work Product without the obligation to notify or seek permission from Design-Builder.

2.5.2 VPRA to Use the Work Product at its Sole Risk

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

2.5.3 Other Documents Prepared by Design-Builder

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

2.6 Scope Validation

2.6.1 Scope Validation Period

The "Scope Validation Period" is the period of time that begins on the date of Design-Builder's receipt of NTP 1 and extends for a period of one hundred and eighty (180) days. During the Scope Validation Period, Design-Builder shall perform the following activities ("Scope Validation"): (i) review and compare all Reference Information Documents, RFP Documents, Environmental Documents, and the Contract Documents inclusive of Designated VPRA-Furnished Information; (ii) investigate the actual conditions at the Site and any other areas necessary for the completion of the Work; and (iii) prepare the submittals, documentation, surveys, inventories, and other activities identified in the Technical Provisions as required after issuance of NTP 1, including:

- (a) all Work required in relation to Utilities under Sections 7.1, 7.3, 7.4, 7.6. and 7.7 of the Technical Provisions;

- (b) all Work required in relation to permits for the Project under Section 10.4 of the Technical Provisions;
- (c) all Work required in relation to the Right of Way under Section 12 of the Technical Provisions;
- (d) all Work required in relation to surveying under Sections 13.1 and 13.3 of the Technical Provisions;
- (e) all Work required in relation to hydrology under Section 15.11.1 of the Technical Provisions;
- (f) all Work required in relation to fender and fire protection systems under Section 15.13(ii) of the Technical Provisions;
- (g) all Work required in relation to geotechnical investigation under Section 16 of the Technical Provisions;
- (h) Pre-construction Survey activities as required by Section 16.4.5.1 of the Technical Provisions;
- (i) all data collection activities required for stormwater management, drainage, and erosion and sediment control in accordance with Section 18.5 of the Technical Provisions;
- (j) all Work required in relation to hydrologic and hydraulic investigations under Section 19.4.1 of the Technical Provisions; all Work required in relation to signage for the Project under Sections 20.4.3 and 20.4.4 of the Technical Provisions; and
- (k) all Work required in relation to lighting for the Project under Section 20.5.1 of the Technical Provisions.

Design-Builder shall undertake the activities described in clauses (i) through (iii) above to verify and validate Design-Builder's proposed design concept for the Project and identify any defects, errors, or inconsistencies in the Reference Information Documents, RFP Documents, Environmental Documents, and the Contract Documents inclusive of Designated VPRA-Furnished Information that affect Design-Builder's ability to complete the Work within the Contract Price and by the Completion Deadlines (collectively referred to as "Project Site and Scope Issues"). The term "Project Site and Scope Issues" shall not be deemed to include items that Design-Builder should have reasonably discovered prior to the Technical Proposal Due Date.

2.6.2 Scope Validation Period Accessibility

Design-Builder shall perform the Scope Validation consistent with its Scope Validation Plan, the Governmental Approvals or other permits obtained pursuant to the Scope Validation Plan, and as needed to fulfill its obligations under the Contract Documents.

If Design-Builder is unable to conduct the additional investigations contemplated by Section 2.6.1 because Design-Builder does not have access to certain areas within the Site during Scope Validation Period, Design-Builder shall notify VPRA of all such non-accessible areas and the dates upon which such areas are expected to become accessible. If VPRA agrees that such areas are non-accessible, then, for the limited purpose of determining Project Site and Scope Issues that directly arise from geotechnical evaluations for such areas, the term "Scope Validation Period" shall be deemed to be the ninety (90) day period after the date on which the specified area becomes accessible for purposes of conducting the geotechnical evaluation. If VPRA does

not agree that such areas are non-accessible, then the Scope Validation Period shall not be extended.

Notwithstanding the foregoing, no area of the Site shall be considered non-accessible if Design-Builder: (1) did not identify such area of the Site in its Scope Validation Plan to conduct Scope Validation, or (2) Design-Builder failed to submit required information to obtain the proper Governmental Approvals or other permits to access such area of the Site during the Scope Validation Period.

2.6.3 Submission Requirements for Project Site and Scope Issues

If Design-Builder intends to seek an adjustment to the Contract Price or a Completion Deadline arising from Project Site and Scope Issues, it shall promptly, but in no event later than 10 days after the expiration of the Scope Validation Period, follow the process in Section 12.4 for a Request for Change Order. As part of the Request for Change Order, Design-Builder shall provide VPRA with documentation that specifically explains the basis for the proposed Change Order relating to the Project Site and Scope Issues. The Request for Change Order shall include: (i) the assumptions that Design-Builder made during the preparation of its Proposal that form the basis for its relief sought, along with documentation verifying that it made such assumptions in developing its Proposal; (ii) an explanation of the defect, error, inconsistency, or absence of information in the RFP Documents that Design-Builder could not have reasonably identified prior to the Technical Proposal Due Date; and (iii) the impact that the alleged Project Site and Scope Issue(s) will have on the Contract Price and Completion Deadlines. For the avoidance of doubt, Design-Builder shall not have the right to seek any relief for any Project Site and Scope Issues that have not been specifically identified in the Request for Change Order requested pursuant to this Section 2.6.3.

2.6.4 Design-Builder Burden of Proof for Project Site and Scope Validation Issues

Notwithstanding anything to the contrary in the Contract Documents or as a matter of law, Design-Builder shall have the burden of proving that the alleged Project Site and Scope Issue could not have been reasonably identified prior to the Technical Proposal Due Date and that such Project Site and Scope Issue materially impacts its price or time to perform the Work.

2.6.5 Design-Builder's Assumption of Risk of Project Site and Scope Issues

Design-Builder acknowledges that the purpose of the Scope Validation Period is to enable Design-Builder to identify those Project Site and Scope Issues that could not reasonably be identified prior to the Technical Proposal Due Date. By executing the Agreement, Design-Builder acknowledges that the Scope Validation Period is a reasonable time to enable Design-Builder to identify Project Site and Scope Issues that will materially impact the Contract Price and Completion Deadlines. After the expiration of the Scope Validation Period, with the sole exception of those Project Site and Scope Issues identified in the Request for Change Order submitted under Section 2.6.3, the Parties agree as follows:

- (a) Design-Builder shall assume and accept all risks, costs, and responsibilities of any Project Site and Scope Issue arising from or relating to the Contract Documents, including conflicts within or between the RFP Documents and the Proposal, and Design-Builder shall not be entitled to an adjustment to the Contract Price or a Completion Deadline for or arising from the Project Site and Scope Issues;

- (b) Design-Builder shall be deemed to have expressly warranted that the Contract Documents existing as of the end of the Scope Validation Period are sufficient to enable Design-Builder to complete the Work without any increase in the Contract Price or extension of the Substantial Completion Deadline; and
- (c) VPRA expressly disclaims any responsibility for, and Design-Builder expressly waives its right to seek any adjustment of the Contract Price or a Completion Deadline for, any matter associated with any of the Contract Documents, including the RFP Documents, discovered after the Scope Validation Period that, if discovered and asserted by Design-Builder during the Scope Validation Period, would have met the definition of Project Site and Scope Issue.

2.6.6 Waiver of Rights

The failure of Design-Builder to meet the submission requirements required under Section 2.6.3 above for a Project Site and Scope Issue, including the times for providing notice and documentation of the Project Site and Scope Issue, shall conclusively constitute a waiver of Design-Builder's rights to seek relief for such issues.

ARTICLE 3

Design-Builder's Obligations; VPRA's Obligations

3.1 Design-Builder's Performance Requirements

3.1.1 Performance of Work

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

Without limiting the foregoing, Design-Builder shall perform or cause to be performed all Design Work, engineering, procurement, Construction Work, supervision, labor, inspection, testing, start-up, and provide Material, Equipment, machinery, temporary utilities, and other temporary facilities to complete construction of the Project consistent with the Contract Documents. Design-Builder shall endeavor to develop, implement, and maintain, a spirit of cooperation, collegiality, and open communication with VPRA so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by the Parties. Design-Builder shall Self-Perform no less than 30% of the value of the Work.

3.1.2 Performance Standards

Design-Builder shall design the Project and shall construct the Project as designed. Design-Builder shall perform Design Work in accordance with all professional engineering principles, Good Industry Practice, and the requirements of the Contract Documents. Design-Builder shall perform Construction Work in accordance with Good Industry Practice (but at least meeting the requirements of the Contract Documents) and in a good and workmanlike manner, free from defects. Design Work shall comply with the applicable standard of care and Construction Work shall be free from defects.

3.1.3 Performance as Directed

Design-Builder shall, at all times, comply with all provisions of the Contract Documents. Design-Builder shall perform the Work diligently, without delay, and in compliance with VPRA's decisions and orders, including during the course of a dispute between the Parties. The existence of a dispute between the Parties shall not be grounds for Design-Builder to stop Work on any aspect of the Project. The foregoing does not, however, impact Design-Builder's right to stop Work under Section 15.3.

3.1.4 Management of the Work

Design-Builder shall be responsible for completely supervising and directing the Work under this Agreement and all Subcontractors using its best skill and attention. Subcontractors who perform Work under this Agreement shall be responsible to Design-Builder, and Design-Builder agrees that it is as fully responsible for the acts and omissions of its Subcontractors as it is for the acts and omissions of its own employees. Design-Builder shall manage the services provided under this Agreement until all services have been completed in accordance with the Contract Documents and Final Acceptance of the Project has been achieved. Design-Builder understands and acknowledges that the Work may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. Design-

Builder shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.

3.1.5 Coordination with DDOT

Pursuant to Exhibit Y, VPRA intends to transfer title to the Bike/Ped Bridge to DDOT permanently for long-term operations and maintenance after Design-Builder has achieved Bike/Ped Bridge Substantial Completion. Accordingly, Design-Builder shall coordinate with DDOT in accordance with Exhibit Y, including:

- (a) providing DDOT access to the Site to perform supplemental inspections of the DDOT Assets;
- (b) transmitting to DDOT design deliverables relating to the DDOT Assets for DDOT's review and comment;
- (c) transmitting to DDOT weekly progress reports and a two-week look ahead schedule, and inviting DDOT inspectors to regular progress meetings that relate to the DDOT Assets;
- (d) with respect to the DDOT Assets, transmitting to DDOT monthly reports and other construction documentation to verify compliance and other efforts related to ongoing construction activities (including schedule updates, material testing reports, material approvals, requests for information, non-conformance reports, delivery tickets, quality management plans, inspector daily reports, documentation of field design changes, material certifications including Buy America, systems testing reports);
- (e) using DDOT's customary permit submission portals to submit any required DDOT permit applications related to the Project;
- (f) coordinating with DDOT with respect to construction schedules, maintenance of traffic, construction access, and public outreach for the Project and overlapping DDOT projects; and
- (g) inviting DDOT participation for any Punch List inspections relating to the Bike/Ped Bridge.

3.2 General Obligations of Design-Builder

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

- (a) furnish all design and other services, provide all Materials and labor, and undertake all efforts necessary or appropriate (excluding only those services, Materials, and labor that the Contract Documents specify will be undertaken by other Persons) to:
 - (i) construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents, all Laws, all Governmental Approvals, and all other applicable safety, environmental, licensing, and other requirements, taking into account the ROW Work Map and other constraints affecting the Project, so as to complete the Work by the applicable Completion Deadlines; and
 - (ii) do everything else required by and in accordance with the Contract Documents;
- (b) obtain all Governmental Approvals, except those the Contract Documents identify as to be obtained by others;

- (c) comply with all conditions imposed by all Governmental Approvals, and undertake all actions required by and necessary to maintain the Governmental Approvals in full force and effect. This includes implementing all environmental mitigation measures required by the Contract Documents, except where the Contract Documents expressly assign responsibility for those measures to another Person;
- (d) provide such assistance as is reasonably requested by VPRA in dealing with any Person, and in prosecuting and defending lawsuits in any and all Project-related matters. This may include providing information and reports regarding the Project, executing declarations, and attending meetings and hearings;
- (e) comply with all requirements of all Laws;
- (f) comply with the Quality Plan requirements in Section 5.5 of the Technical Provisions;
- (g) cooperate with VPRA and Governmental Persons with jurisdiction over the Project in the review and oversight of the Project and other Work-related matters;
- (h) supervise and be responsible to VPRA for acts and omissions of all Design-Builder-Related Entities, as though all such entities (and Persons employed by those entities) were directly employed by Design-Builder;
- (i) pay all applicable taxes, fees, charges or levies, whether direct or indirect, relating to, or incurred in connection with, performing the Work; and
- (j) mitigate delay to the Project and mitigate damages due to delay to the extent possible, including by resequencing, reallocating or redeploying Design-Builder's forces to other work, as appropriate.

3.3 Small, Diverse, and Disadvantaged Business Requirements

3.3.1 Design-Builder shall be bound by its participation commitments within its approved Small and Diverse Business Subcontracting Plan (Exhibit T) and approved DBE Utilization Plan (Exhibit U). Design-Builder may not make changes to its plan commitments, substitute a certified small, diverse, and or disadvantaged business or make any other changes to the plans without the prior written approval of VPRA. Unauthorized changes or substitutions, including performing Work designated for certified SWaMs or DBEs with Design-Builder's own forces, without the prior written approval of VPRA shall be a breach of the Agreement. Notwithstanding the foregoing, VPRA may allow amendments to the approved Small and Diverse Business Subcontracting Plan and/or approved DBE Utilization Plan where: (a) the modification to the plan(s) will have the effect of increasing overall certified SWaM and DBE utilization on the Project or (b) where Design-Builder is able to evidence that a Subcontractor certified as a SWaM or DBE has been terminated for cause or has been decertified or (c) that another reasonable basis exists for the proposed amendment (e.g., a SWaM or DBE is unable or unwilling to perform the Work).

3.3.2 Design-Builder shall report SWaM/DBE utilization on a monthly basis using VPRA Procurement Forms PD 61 (Exhibit V) and PD 51 (Exhibit W), which forms shall be included with Design-Builder's monthly Application for Payment. Only SWaM firms certified by DSBSD and DBE firms certified by DSBSD/MWAA will be eligible for participation credit on the Project. Design-Builder shall maintain a record of payments to certified small, diverse, and disadvantaged businesses and all other Subcontractors and Suppliers for Work performed. If a Subcontractor is

certified as both a SWaM and a DBE, Design-Builder shall report their utilization on both Forms PD 61 (Exhibit V) and PD 51 (Exhibit W) 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.

3.3.3 Design-Builder 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 Design-Builder shall include a description of the proposed corrective action to be taken by the Design-Builder.

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

3.3.5 Neither Design-Builder nor any of its Subcontractors or Suppliers shall discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement.

3.4 Representations, Warranties, and Covenants

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

3.4.1 Maintenance of Professional Qualifications

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

3.4.2 Evaluation of Constraints

Design-Builder has evaluated the constraints affecting delivery of the Project, including the availability of ROW, the conditions of the Environmental Approvals, and the timing of Utility Work. Design-Builder represents that the Project can be delivered within those constraints.

3.4.3 Feasibility of Performance

As of the Effective Date, Design-Builder has evaluated the feasibility of performing the Work within the Completion Deadlines specified in the Contract Documents and for the Contract Price. Design-Builder represents that it is feasible to perform the Work within those cost and time constraints. Upon completion of the Scope Validation Period, Design-Builder represents that it is feasible to perform the Work for the Contract Price and within the Completion Deadlines, accounting for any adjustment to the Contract Price and Completion Deadlines resulting from the Scope Validation.

3.4.4 Review of Site Information

Design-Builder has undertaken appropriate and reasonable activities sufficient to familiarize itself with surface conditions and subsurface conditions affecting the Project, including Scope Validation as described in Section 2.6. These activities included reviewing the utility and geotechnical information provided by VPRA, including in the Designated VPRA-Furnished Information, if any, and inspecting and examining the Site and surrounding locations to the extent possible. Having performed these activities, Design-Builder represents that it is familiar with and accepts the physical requirements of the Work, subject to the right to receive a Change Order

only for Differing Site Conditions as provided in Section 12.12.2. Before commencing any Work on a particular aspect of the Project, Design-Builder shall verify all governing dimensions and conditions at the Site and examine all adjoining work that may have an impact on such Work. Design-Builder is responsible for ensuring that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions and conditions.

3.4.5 Governmental Approvals

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

3.4.6 Progression of Work

Design-Builder shall schedule and direct its Work to provide an orderly progression of the Work to achieve the applicable Completion Deadlines. Design-Builder shall prosecute its Work in accordance with the Baseline Schedule and will furnish labor, Materials, facilities, and Equipment and will work the hours (including extra shifts and overtime operations) needed to meet the Completion Deadlines.

3.4.7 Design and Engineering Personnel

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

3.4.7.1 Guarantor

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

3.4.8 Organization

Design-Builder represents and warrants that it is a joint venture duly organized and validly existing under the laws of the Commonwealth, comprised of Trumbull Corporation, a corporation duly existing under the laws of the Commonwealth of Pennsylvania, Wagman Heavy Civil, Inc., a corporation duly existing under the laws of the Commonwealth of Pennsylvania, and Joseph B. Fay Co., a corporation duly existing under the laws of the Commonwealth of Pennsylvania.. Design-Builder represents and warrants that it is in good standing and duly qualified to conduct

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

3.4.9 Authorization

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

3.4.10 Legal, Valid, and Binding Obligation

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

3.4.11 False or Fraudulent Statements and Claims

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

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

3.4.12 Covenant Regarding Brokerage

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

3.5 Design Requirements

3.5.1 Design Compliance

Design-Builder acknowledges and agrees that the Design must meet all requirements and comply with the Contract Documents. VPRA has furnished the Conceptual Design for Design-Builder's reference; however, except where explicitly incorporated into the Technical Provisions, Design-Builder is not bound by the Conceptual Design.

3.5.2 Design Review Process

Design-Builder shall furnish the Design Documents to VPRA and obtain VPRA's Acceptance of the Design Documents in accordance with Section 4.2 of the Technical Provisions. Design-Builder shall obtain VPRA's Acceptance of the Issued for Construction Documents in accordance with

section 4.2.4 of the Technical Provisions prior to commencing construction of the portion of the Project shown in a design submittal. VPRA may review all Design Documents for compliance with the requirements of the Contract Documents and provide comments on all Design Documents.

If Design-Builder believes incorporating VPRA's comments would cause the Issued for Construction Documents, other Design Documents, or any Contract Documents to contain errors or would otherwise adversely affect the design or construction of the Project, then Design-Builder shall notify VPRA in response to VPRA's comments. VPRA will have the right to modify its comments. If Design-Builder fails to notify VPRA as required by this section, then Design-Builder accepts all responsibility for VPRA's changes to the Issued for Construction Documents and other Design Documents, and those changes will be treated as if Design-Builder had initiated those changes.

3.5.3 Design Reviews Required by Third Parties

Design-Builder shall be responsible for obtaining all design reviews and approvals required by Third-Parties, including Governmental Persons, Utility Owners, Regulatory Agencies, Railroad Owners, and any Persons other than VPRA. VPRA shall coordinate these reviews in accordance with Section 4 of the Technical Provisions. Design-Builder shall comply with and be subject to the timelines and other commitments to Third-Parties described in Section 4 of the Technical Provisions.

3.5.4 Compliance with Contract Documents and Design

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

3.5.5 Engineer of Record

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

3.5.6 Professional Licensing Laws

VPRA does not intend to contract for, pay for, or receive any design services that are in violation of any professional licensing laws, and by executing the Agreement, Design-Builder acknowledges that VPRA has no such intent. The Parties intend that Design-Builder is fully responsible for furnishing the Design and that the fully licensed design firm(s) or individuals designated in the Contract Documents will perform the design services required by the Contract Documents. The terms and provisions of this Section 3.5.6 shall control and supersede every other provision of the Contract Documents.

3.6 VPRA's Obligations, Generally

VPRA shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations, and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents. VPRA shall provide timely reviews and (where required) approvals of any submittals, requests, submissions or Design Documents consistent with the response times set forth in the Contract Documents. This Section 3.6 shall not

be construed to apply to the acquisition of Governmental Approvals by either Design-Builder or VPRA.

3.7 Ownership of Design

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

ARTICLE 4

Performance of Construction Work

4.1 Time of the Essence

Time is of the essence for Design-Builder to perform this Agreement.

4.2 Notices to Proceed

4.2.1 Issuance of Notice to Proceed as a Precondition to Performance of the Work

Design-Builder shall not be entitled to payment unless and until VPRA issues NTP 1. All Work performed by Design-Builder prior to issuance of NTP 1 shall be at Design-Builder's sole risk. VPRA has no obligation to issue NTP 1 and Design-Builder shall not be entitled to any compensation if VPRA does not issue NTP 1.

4.2.2 Work Authorized by NTP 1

Issuance of NTP 1 authorizes Design-Builder to perform only the following:

- (a) mobilization, including establishment of the Engineer's Office;
- (b) at Design-Builder's option, commence Design Work, provided that VPRA will not pay for Design Work or commence review of Design Documents until all conditions precedent to such actions are met, including Approval of the Design Quality Plan;
- (c) preparation of submittals contemplated after issuance of NTP 1 in the Technical Provisions and other Work necessary to receive Approval or Acceptance of the submittals that are a precondition to issuance of NTP 2;
- (d) enter the Project ROW that VPRA has made available or to which Design-Builder has been granted access by permit to conduct Scope Validation activities, including surveys and site investigations, geotechnical, Contaminated Materials, and utilities investigations; and
- (e) other Work authorized by VPRA in writing, including any early Construction Work agreed with VPRA.

4.2.3 Pre NTP 2 Construction Work

Upon the agreement of Design-Builder and VPRA, Design-Builder may begin performing certain limited Construction Work prior to issuance of NTP 2. Design-Builder shall not begin to perform this limited Work until all the following conditions have been fully satisfied:

- (a) Design-Builder has notified VPRA in writing of the Work to be performed and has received VPRA Approval, which may require Issued for Construction Documents with VPRA Acceptance;
- (b) Design-Builder has obtained all Governmental Approvals it needs to perform the limited Work, and met all prerequisite conditions for beginning the limited Work as required by the Governmental Approvals;
- (c) Design-Builder has delivered, and VPRA has received, all insurance policies and bonds that must be received and Accepted or Approved by VPRA as required by the Contract Documents;

- (d) all necessary rights of access for such portion of the Project have been obtained;
- (e) Design-Builder has acquired permits, if required prior to performing certain Construction Work, as listed in Section 10.4.5 of the Technical Provisions; and
- (f) VPRA has Approved the environmental items, if required prior to performing certain Construction Work, listed in Section 10.23 of the Technical Provisions and the Design-Builder's Environmental Compliance Plan required under Section 10.4.1 of the Technical Provisions.

4.2.4 Issuance of NTP 2

Subject to Section 4.5, Design-Builder shall perform the remainder of the Work as directed and described in NTP 2. VPRA will issue NTP 2 only after all of the following events have occurred:

- (a) VPRA has Approved the payment breakdown provided by Design-Builder under Section 2.4.2 of the Technical Provisions;
- (b) VPRA has Approved Design-Builder's Quality Plan;
- (c) VPRA has Approved the environmental items listed in Section 10.23 of the Technical Provisions and the Design-Builder's Environmental Compliance Plan required under Section 10.4.1 of the Technical Provisions;
- (d) VPRA has Approved the Transportation Management Plan;
- (e) VPRA has Approved the Project Management Plan;
- (f) VPRA has Approved the Utility Coordination Work Plan required by Section 7.6.3 of the Technical Provisions;
- (g) VPRA has Accepted the Baseline Schedule required under Section 3.2 of the Technical Provisions and Design-Builder has submitted the progress earnings schedule required under Section 3.7 of the Technical Provisions;
- (h) VPRA has Approved the Project-specific Spill Response Plan required by Section 2.9 of the Technical Provisions;
- (i) Design-Builder has provided VPRA with the Contract Submittals List required by Section 4.5.1 of the Technical Provisions;
- (j) VPRA has Approved the Spill Prevention Control and Countermeasure Plan required by Section 10.13 of the Technical Provisions;
- (k) VPRA has Approved the Site Safety and Security Plan required by Section 2.10 of the Technical Provisions;
- (l) VPRA has approved the Underwater Noise Monitoring Plan required under Section 10.9 of the Technical Provisions;
- (m) VPRA has approved the Water Quality Monitoring Plan required under Section 10.12 of the Technical Provisions;
- (n) VPRA has Accepted the Construction Management Control Plan required under Section 10.17 of the Technical Provisions;
- (o) VPRA has Accepted and signatories have approved the Programmatic Agreement of the Construction Noise and Vibration Control Plan required under Section 10.18 of the Technical Provisions;

- (p) VPRA has approved the Construction Screening Plan as required under Section 14.1 of the Technical Provisions;
- (q) VPRA has approved the Settlement and Vibration Monitoring Plan as required under Section 16.4.3 of the Technical Provisions
- (r) VPRA has approved the Construction Access and Mobility Plan as required under Section 21.16 of the Technical Provisions;
- (s) VPRA has approved the Vegetation Protection Plan as required under Section 25.2 of the Technical Provisions;
- (t) Design-Builder has submitted the documentation of existing site conditions and resolved all VPRA comments thereon, including the Preconstruction Survey required under Section 16.4.5.1 of the Technical Provisions and the Existing Conditions Drainage Survey and Report required by Section 18.5 of the of the Technical Provisions;
- (u) Design-Builder has established the Engineer's Office in accordance with Section 27 of the Technical Provisions;
- (v) VPRA has issued NTP 1; and
- (w) Design-Builder has completed all other prerequisites to issuance of NTP 2 stated in the Contract Documents.

4.3 Completion Deadlines

4.3.1 Abutment B Completion Deadline

Design-Builder shall achieve Abutment B Substantial Completion of Abutment B on or before August 2, 2027 ("Abutment B Deadline").

4.3.2 Substantial Completion Deadline

Design-Builder shall achieve Substantial Completion of the Project on or before 1,875 Days after issuance of NTP 1 ("Substantial Completion Deadline"). The counting of days shall include the date of issuance.

4.3.3 Bike/Ped Bridge Completion Deadline

Design-Builder shall achieve Bike/Ped Bridge Substantial Completion on or before 365 Days after Substantial Completion ("Bike/Ped Bridge Deadline").

4.3.4 Final Acceptance Deadline

Design-Builder shall achieve Final Acceptance no later than the later of: (a) 30 days after it achieves completion of the Bike/Ped Bridge or (b) 120 days after it achieves Substantial Completion.

4.3.5 No Completion Deadline Extensions

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

4.4 Baseline Schedule

Design-Builder shall deliver the Project in accordance with the Baseline Schedule, as updated in accordance with the Technical Provisions.

4.5 Prerequisites for Start of Construction

Unless otherwise authorized by VPRA, Design-Builder shall not start Construction Work (or recommence Construction Work following any suspension) of any portion of the Project, until all the following events have occurred;

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

ARTICLE 5

Control of the Work

5.1 Control and Coordination of Work

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

5.2 Safety

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

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

5.3 Construction Quality Management

5.3.1 Design-Builder Quality Management

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

5.3.2 Oversight, Inspection, and Testing by VPRA and Others

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

5.3.3 Obligation to Uncover Finished Work

Design-Builder shall remove or uncover portions of the finished Construction Work as directed by VPRA at any time before Final Acceptance. After VPRA and any other Persons designated by VPRA examine the Work, Design-Builder shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing, and restoring the Work and

any delay or recovery thereof as a result of these activities will be at Design-Builder's expense and Design-Builder shall not be entitled to a Contract Price or Completion Deadline adjustment.

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

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

5.4 Effect of Oversight

5.4.1 Oversight and Acceptance

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

5.4.2 No Estoppel

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

5.5 Nonconforming Work

5.5.1 Rejection, Removal, and Replacement of Nonconforming Work

VPRA may, in its sole discretion, reject Nonconforming Work. Upon the discovery of Nonconforming Work by Design-Builder or VPRA, VPRA shall provide notice of its decision to Design-Builder and Design-Builder shall remove and replace rejected Nonconforming Work to ensure compliance with the requirements of the Contract Documents within ten (10) Days of

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

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

5.5.2 VPRA Removal and Replacement of Nonconforming Work

If:

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

VPRA may:

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

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

5.5.3 Acceptance of Nonconforming Work

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

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

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

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

ARTICLE 6

Site Access, Utilities, Environmental, Railroads

6.1 Access to Project ROW

6.1.1 VPRA to Acquire Project ROW

VPRA shall acquire the Project ROW.

6.1.2 Obligation to Provide ROW

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

6.1.3 Delays to ROW Access

If VPRA is unable to provide access to a particular parcel by the scheduled date on the ROW Schedule, VPRA will notify Design-Builder of the revised projected date for provision of access. Design-Builder shall take appropriate action to minimize any cost and time impact and must work around the parcel until access can be provided, including rescheduling and resequencing Work so as to avoid any delay to the Project. Subject to Section 6.1.4 and Article 12, to the extent that a delay to the Critical Path cannot be avoided, Design-Builder may seek relief for a VPRA-Caused Delay.

6.1.4 Obligation to Provide Written Notice

Design-Builder shall not be entitled to an increase in the Contract Price or adjustment of a Completion Deadline related to VPRA's delivery of access to the parcels identified on the ROW Work Map later than the date identified in the ROW Schedule unless Design-Builder: (a) gives written notice to VPRA within thirty (30) days of VPRA's notice provided under Section 6.1.3, describing how the unavailability of a given parcel will result in an impact to the cost or schedule, and (b) complies with the requirements of Section 6.1.3. Additionally, Design-Builder must comply with all requirements of Article 12 for seeking relief for a VPRA-Caused Delay.

6.1.5 Temporary Work Areas

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

6.1.6 Additional Temporary Construction Easements and ROW for Design-Builder's Convenience

Design-Builder may request additional ROW, including both Temporary Construction Easements and ROW for permanent incorporation into the Project. All such requests are subject to VPRA's Approval. Design-Builder may acquire additional Temporary Construction Easements upon receipt of written approval from VPRA, except that VPRA shall acquire additional Approved Temporary Construction Easements on land owned by the National Park Service. If VPRA approves additional ROW for Design-Builder's convenience that will be permanently incorporated

into the Project, VPRA will acquire such additional ROW. VPRA will be under no obligation to undertake eminent domain proceedings to acquire additional ROW for Design-Builder's convenience that will be permanently incorporated into the Project.

6.1.7 Design-Builder to Acquire Temporary Construction Easements for Convenience

If Approved by VPRA, Design-Builder shall acquire the additional Temporary Construction Easements for Design-Builder's convenience and shall be responsible for all Work necessary in connection with such acquisition. Design-Builder shall comply with all Laws when acquiring Temporary Construction Easements for the Project.

6.1.8 Design-Builder Responsible for Costs of Acquisition

Whether acquired by VPRA or Design-Builder, Design-Builder shall be responsible for any and all costs of acquiring any Right of Way that is acquired for convenience and for the cost of preparing such Right of Way to make it usable for the Project.

Design-Builder shall be responsible for all Work required for Design-Builder to make use of the Temporary Construction Easement or Right of Way that is acquired for Design-Builder's convenience.

Design-Builder shall reimburse VPRA for any costs incurred by VPRA in connection with Design-Builder's acquisition of Right of Way for Design-Builder's convenience. VPRA may deduct these amounts from payments due under this Agreement, or may invoice Design-Builder. Design-Builder shall reimburse VPRA for any amounts paid or incurred by VPRA no later than 10 Days after receiving the related invoice from VPRA.

6.1.9 Responsibility for Site Conditions of ROW for Convenience

Design-Builder shall not be entitled to any adjustment of the Contract Price or a Completion Deadline as a result of the site conditions of any additional ROW acquired for Design-Builder's convenience outside the Project ROW. Unless otherwise agreed, Design-Builder shall bear the full cost and schedule responsibility for all Utility Work for ROW acquired for Design-Builder's convenience. This Section 6.1.9 applies regardless of whether Design-Builder or VPRA acquires the Right of Way for Design-Builder's convenience.

6.2 Utility Work

6.2.1 Design-Builder to Perform Utility Work

Design-Builder shall perform the Utility Work consistent with the responsibility for the Relocation of Utilities stated in Section 7.5 of the Technical Provisions. As contemplated by the Technical Provisions, certain Utility Work may be self-performed by a Utility Owner rather than Design-Builder. VPRA will use commercially reasonable efforts to enter into bilateral Utility Agreements with Utility Owners, and shall make any such Utility Agreements available to Design-Builder within a reasonable time after execution thereof. The template Utility Agreement attached as Exhibit I is provided to Design-Builder as an example of the template that VPRA will use to begin negotiations with each Utility Owner, *provided however*, that the terms of any given final Utility Agreement are subject to change as compared to Exhibit I, depending on the needs of VPRA and the corresponding Utility Owner.

6.2.2 Betterments

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

6.2.2.1 Procedure

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

6.2.2.2 Betterment Pricing

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

6.2.2.3 Change Order Increasing the Contract Price

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

6.2.2.4 VPRA's Approval of Betterments

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

6.2.2.5 Change Order Reducing the Contract Price

If any Betterment has been added to the Work and the Contract Price has been increased accordingly by Change Order, but the Betterment is later deleted from the Work, or the scope of Design-Builder's Work relating to the Betterment is materially reduced, VPRA will be entitled to issue a Change Order reducing the Contract Price to reflect the value of any reduction in the costs of the Work and reducing any adjustment of a Completion Deadline, in both cases to the extent

directly attributable to the deletion or reduction. With respect to costs, the Change Order will be equal to the lump sum amount added to the Contract Price pursuant to Section 6.2.2.3, if applicable, if the entire Betterment has been deleted from the Work, and the reduction in time will be equal to the Completion Deadline adjustment previously granted. If the entire Betterment is not deleted from the Work, the amount of the Change Order and the time adjustment will be determined in accordance with Article 12.

6.3 Utility Work Obligations

6.3.1 Multiple Relocations of the Same Utility

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

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

6.3.2 Minimizing Utility Costs

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

6.3.3 Utility-Related Right of Way Costs

6.3.3.1 Reserved

6.3.3.2 Design-Builder's Responsibility

In relation to any Design-Builder-initiated Agreement modification, Design-Builder shall be responsible for the cost of any Relocation that is the result of any Design-Builder-initiated Agreement modification, including any change to the Design that is Approved or Accepted by VPRA.

6.4 Environmental Compliance

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

6.4.1 Mitigation Requirements

Design-Builder shall perform all environmental mitigation measures for the Project. The phrase “environmental mitigation measures” includes all requirements of the Environmental Approvals and similar Governmental Approvals, regardless of whether these requirements fall within a strict definition of the phrase. The Contract Price includes compensation for Design-Builder’s performance of all mitigation measures and for performance of all mitigation measures arising from New Environmental Approvals that Section 6.4.2 designates as Design-Builder’s responsibility, and the cost of all activities to be performed by Design-Builder as described in Section 10 of the Technical Provisions.

6.4.2 New Environmental Approvals

6.4.2.1 New Environmental Approvals under Certain Conditions

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

6.4.2.2 Approvals to be Obtained by Design-Builder

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

6.5 Railroads

6.5.1 Railroad Permits

Design-Builder shall comply with the terms of all permits obtained by VPRA for Work that impacts a Railroad. The permits that VPRA will obtain are identified in Section 10.4.5 of the Technical Provisions.

6.5.2 Railroad Coordination

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

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

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

6.5.4 Indemnity and Insurance Obligations

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

ARTICLE 7

Equal Employment Opportunity, Non-Discrimination, Subcontracts, Labor

7.1 Equal Employment Opportunity

7.1.1 Equal Employment Opportunity Requirements

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

7.1.2 Inclusion in Subcontracts

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

7.2 Non-Discrimination

7.2.1 Federal Requirements

Design-Builder and its Subcontractors shall comply with the non-discrimination requirements in the Federal Requirements.

7.2.2 State Law Provisions

7.2.2.1 Va. Code § 2.2-4201

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

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

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

- (iv) The requirements of these provisions (a) and (b) are a material part of the Agreement. If Design-Builder violates one of these provisions, VPRA may terminate the affected part of the Agreement for breach, or at its option, the whole Agreement. Violation of one of these provisions may also result in debarment from state contracting regardless of whether the specific contract is terminated.
- (b) Design-Builder will include the provisions of subdivisions (i)-(iii) above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Subcontractor or supplier.

7.2.2.2 Disabilities Act, Va. Code § 51.5-40

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

7.3 Prevailing Wages

7.3.1 Design-Builder to Pay Federal Prevailing Wage Rates

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

7.3.2 Federal Prevailing Wage Rate Determination

Federal Prevailing Wage Rates, as established by the Wage and Hour Division of the United States Department of Labor in accordance with 29 C.F.R. § 1.6(a)(3), are set forth in Exhibit J. Design-Builder shall bear the cost of any changes in the Federal Prevailing Wage Rates throughout the life of the Project and shall not be entitled to an increase in the Contract Price or a Completion Deadline adjustment. Without limiting the foregoing, no Claim will be allowed that is based upon Design-Builder's lack of knowledge or a misunderstanding of any such requirements or Design-Builder's failure to include in the Contract Price adequate increases for applicable prevailing wage rates to the extent required by law.

7.3.3 Subcontractor Compliance with Prevailing Wage Rates

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

7.3.4 Certified Payrolls

Design-Builder and each Subcontractor shall maintain weekly certified payroll records for submittal to VPRA, as required. Design-Builder shall be responsible for the submittal of payroll records of all Subcontractors. Additionally, the certified payroll records shall be available for inspection at all reasonable hours at the principal office of Design-Builder or such other location as may be designated within the Technical Provisions.

7.4 Subcontracting Requirements

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

7.4.1 Subcontract Terms

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

- (a) Set forth a standard of professional responsibility or a standard for commercial practice equal to the requirements of the Contract Documents for work of similar scope and scale and shall set forth effective procedures for claims and change orders;
- (b) Require the Subcontractor to carry out its scope of work in accordance with the Contract Documents, the Governmental Approvals, and applicable Law;
- (c) Expressly include the Federal Prevailing Wage Rates determinations applicable to the Project;
- (d) Provide that VPRA is a third-party beneficiary of the Subcontract with the right to enforce all terms of the Subcontract for its own benefit;
- (e) Without cost to Design-Builder or VPRA, expressly permit assignment to VPRA or its successor, assign or designee of all Design-Builder's rights under the Subcontract, contingent only upon delivery of a request from VPRA following termination of this Agreement, allowing VPRA or its successor, assign or designee to assume the benefit of Design-Builder's rights, with liability only for those remaining obligations of Design-Builder accruing after the date of assumption, such assignment to include the benefit of all Subcontractor warranties, indemnities, guarantees, and professional responsibility;
- (f) Expressly state that any acceptance of assignment of the Subcontract to VPRA or its successor, assign or designee shall not operate to make the successor, assignee or designee responsible or liable for any breach of the Subcontract by Design-Builder or for any amounts due and owing under the Subcontract for work or services rendered prior to assumption (but without restriction on the Subcontractor's rights to suspend work or demobilize due to Design-Builder's breach);
- (g) Expressly include a covenant to recognize and attorn to VPRA upon receipt of notice from VPRA that it has exercised its rights under this Agreement, without necessity for consent or approval from Design-Builder or to determine whether VPRA validly exercised its rights, and Design-Builder's covenant to waive and release any claim or cause of action against the Subcontractor arising out of or relating to its recognition and attornment in reliance on any such notice;
- (h) Not be assignable by the Subcontractor to any Person other than VPRA (or its successor, assignee or designee) without Design-Builder's prior consent;
- (i) Expressly require that the Subcontractor will: (1) maintain usual and customary books and records for the type and scope of business operations in which it is engaged (e.g., constructor, equipment Supplier, designer, service provider) and maintain records for

disputed work in compliance with Section 21.3.6; (2) permit audit of books and records with respect to the Project or Work by each of Design-Builder and VPRA pursuant to Section 21.3; and (3) provide progress reports to Design-Builder appropriate for the type of work it is performing sufficient to enable Design-Builder to provide the reports it is required to furnish VPRA under this Agreement;

- (j) Include the right of Design-Builder to terminate the Subcontract in whole or in part upon any termination of this Agreement without liability of Design-Builder or VPRA for the Subcontractor's lost profits, business opportunity or other consequential damages;
- (k) Expressly require the Subcontractor to participate in meetings between Design-Builder and VPRA, upon VPRA's request, concerning matters pertaining to such Subcontract or the work thereunder, provided that all direction to such Subcontractor shall be provided by Design-Builder, and provided further that nothing in this subparagraph (k) shall limit the authority of VPRA to give such direction or take such action which, in its sole opinion, is necessary to remove an immediate and present threat to the safety of life or property;
- (l) Include an agreement by the Subcontractor to give evidence in any dispute resolution proceeding pursuant to Article 21, if such participation is requested by either VPRA or Design-Builder;
- (m) Expressly include a provision prohibiting cross-contract offset between the parties thereto, meaning that if a Subcontractor is performing work on multiple contracts for the other party to the Subcontract or the other party's affiliates, the other party or its affiliate shall not withhold payment from the Subcontractor on its Subcontract because of disputes or claims on another contract;
- (n) Expressly include Sections 7.1, 7.2, and 7.3 (with appropriate changes in the names of the parties);
- (o) Expressly include in every Subcontract (including purchase orders and in every Subcontract of any Design-Builder-Related Entity for the Work), provisions to effectuate the SWaM/DBE requirements and require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor. All Subcontracts at any tier, including those with SWaM and DBE businesses, and all contracts with Suppliers, shall require compliance with the SWaM/DBE utilization requirements in the Contract Documents. The requirements of this subparagraph (o) shall not apply to Subcontracts at any tier with VPRA or Governmental Entities;
- (p) Expressly require the Subcontractor to make payments to its lower tier Subcontractors, and be liable for interest payments to such Subcontractors, as set forth in Section 11.6, respectively;
- (q) Contain no waiver of the prompt payment protections for the Subcontractor;
- (r) Expressly provide that all claims and charges of the Subcontractor and its Subcontractors at any tier shall not attach to any interest of VPRA in the Project or the Project ROW;
- (s) Expressly include a covenant, expressly stated to survive termination of the Subcontract, to promptly execute and deliver to VPRA a new contract between the Subcontractor and VPRA on the same terms and conditions as the Subcontract, in the event: (1) the Subcontract is rejected by Design-Builder in bankruptcy or otherwise wrongfully

terminated by Design-Builder; or (2) VPRA delivers a request for such new contract following termination or expiration of this Agreement;

- (t) Provide that all guarantees and warranties, express and implied, will inure to the benefit of VPRA and VPRA's successors and assigns, as well as Design-Builder;
- (u) Contain the language in Section 7.4.4;
- (v) Be consistent in all other respects with the terms and conditions of the Contract Documents to the extent such terms and conditions are applicable to the scope of work of a Subcontractor, and include all provisions required by this Agreement;
- (w) Include provisions concerning termination consistent with Article 14;
- (x) Include all safety requirements applicable to the Work, including Section 2.8.1 of the Technical Provisions; and
- (y) Expressly include Exhibits C, D, E, F and Z.

7.4.2 Subcontractor Approval

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

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

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

7.4.3 Subcontract Data

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

7.4.4 Responsibility for Work by Subcontractors

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

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

7.4.5 Debarred Subcontractors

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

7.5 Key Personnel Requirements

7.5.1 Key Personnel

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

7.5.2 Representations, Warranties, and Covenants

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

7.6 Independent Design Quality Manager

At all times until VPRA's Acceptance of the final Issued for Construction design package, Design-Builder shall employ one or more Independent Design Quality Manager firms as provided in Section 5.7.2 of the Technical Provisions. No Independent Design Quality Manager firm shall be an Affiliate of, or have any other contractual relation to, the Lead Designer or a Subcontractor performing Professional Services.

7.7 Employee Performance Requirements

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

ARTICLE 8

Surety Bonds, Guarantees, Joint & Several Liability

8.1 Performance and Payment Bonds

Design-Builder shall provide Performance and Payment Bonds in the form attached hereto as Exhibit M for the Work in the amount of 100% of Contract Price. Design-Builder shall maintain the bond in effect at all times during the performance of the Work until Final Acceptance and thereafter in accordance with Section 8.2. Design-Builder shall obtain the required bond from a Surety licensed as a Surety and qualified to do business in the Commonwealth. The surety or insurance company providing the bond must be rated AA-/Aa3 by two nationally recognized rating agencies or at least A-VII by A.M. Best and Company, be listed on Treasury Department Circular 570, and be authorized to transact the business of suretyship in the Commonwealth.

8.1.1 VDOT as Obligee

In addition to VPRA, the Performance and Payment Bonds shall include the Virginia Department of Transportation as an obligee.

8.2 Duration of Performance Bond

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

8.3 Utility Work

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

8.4 Guarantee

As of the Effective Date, there is no Guarantor guaranteeing Design-Builder's obligations under the Contract Documents and has provided a Guarantee to VPRA. If a Guarantor becomes required, each Guarantee shall be in the form attached hereto as Exhibit N, and shall be provided with appropriate evidence of authorization, execution, delivery, and validity thereof, and shall guarantee Design-Builder's obligations under the Contract Documents. Design-Builder may replace an existing Guarantee with a new Guarantee only with VPRA's written consent. Any new Guarantee shall be in the form provided as Exhibit N.

8.5 Joint and Several Liability

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

8.6 No Relief of Liability and Double Recovery

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

ARTICLE 9

Insurance

9.1 General Insurance Requirements

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

9.1.1 Evidence of Insurance

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

9.1.2 A.M. Best Rating

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

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

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

9.1.4 No Recourse

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

9.1.5 Indemnification

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

9.1.6 Commercial Unavailability of Required Coverage

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

of coverage and the requirement to provide acceptable alternatives. VPRA will be entitled to a reduction in the Contract Price if it agrees to accept alternative policies providing less than equivalent coverage, with the amount to be determined by extrapolation using the insurance quotes included in the Escrowed Proposal Documents (or based on other evidence of insurance premiums as of the Price Proposal Due Date if the Escrowed Proposal Documents do not provide adequate information).

9.1.7 Primary and Non-Contributory

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

9.1.8 Governmental Immunity

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

ARTICLE 10

Risk of Loss

10.1 Site Security and Maintenance

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

10.2 Maintenance and Repair of Work and On-Site Property

10.2.1 Responsibility of Design-Builder

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

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

10.2.2 Relief from Liability for Maintenance

Starting the day after the date on which VPRA issues a Notice of Substantial Completion, VPRA accepts maintenance responsibility, and the risk of loss shall shift from Design-Builder to VPRA, for all elements of the Project for which VPRA has issued the Notice of Substantial Completion. Notwithstanding the foregoing, Design-Builder shall retain maintenance responsibility and risk of loss for the Bike/Ped Bridge until Bike/Ped Bridge Substantial Completion (if not complete as of Substantial Completion) and any elements of the Project or portions of the Project Site for which performance of a Punch List item or other prerequisite to Final Acceptance requires Design-Builder to maintain control over a select portion of the Site. VPRA accepts maintenance responsibility for the Bike/Ped Bridge upon issuance of Notice of Bike/Ped Bridge Substantial Completion of the Bike/Ped Bridge and all remaining Project elements at Final Acceptance. For elements of the Work that will be owned by Persons other than VPRA (such as Utility facilities), maintenance responsibility will transfer to those Persons when they accept (or are contractually required to accept) those elements.

10.3 Damage to Off-Site Property

Design-Builder shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to property adjacent to the Site or likely to be affected by the Work. If property is damaged, injured, or lost due to an act or omission of any Design-Builder-Related Entity, then Design-Builder shall restore such property to a condition similar or equal to that existing before the damage, injury or loss occurred or compensate the owner of the affected property for the cost of restoration.

10.4 Title

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

ARTICLE 11

Contract Price; Payment

11.1 Contract Price

11.1.1 Contract Price

As full compensation for the Work and all other obligations to be performed by Design-Builder under the Contract Documents, VPRA will pay to Design-Builder a lump sum amount of \$695,380,000 (\$ Six Hundred Ninety-Five Million, Three Hundred Eighty Thousand and 00/100) (the "Contract Price"). The Contract Price may be increased or decreased only by a Change Order issued under Article 12. Notwithstanding the foregoing, the payment of the Contract Price is subject to limitations on draws from the Allowance and adjustments for the price of fuel and Steel.

Design-Builder agrees that the Contract Price includes the following, subject to Design-Builder's rights under Article 12:

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

11.1.2 Delay in Issuance of NTP 1

VPRA will automatically adjust (*i.e.*, Design-Builder is not required to comply with the requirements of Article 12 to obtain such adjustment) the Contract Price as stated in this Section 11.1.2 if VPRA has not issued NTP 1 on or before 180 Days after the Price Proposal Due Date due to no fault of any Design-Builder-Related-Entity. The Contract Price shall be adjusted by VPRA only for the period starting on the 181st day after the Price Proposal Due Date and ending on the effective date of NTP 1. Such adjustment will be based on the difference between (i) the contemporaneous CCI value on the 181st day after the Price Proposal Due Date and (ii) the contemporaneous CCI value on the effective date of NTP 1.

VPRA's delay in issuance of NTP 1 shall not be grounds for Delay Costs or any adjustment to a Completion Deadline.

11.2 Invoicing and Payment

Invoicing and payment for the Work shall be as stated in Section 2.5 of the Technical Provisions (including the isolation of any costs attributable to the Bike/Ped Bridge) and comply with the Prompt Payment Law. VPRA reserves the right to withhold processing and payment of an invoice if the requirements of Section 2.5 of the Technical Provisions or Prompt Payment Law are not met. VPRA will make payment of all undisputed and valid amounts invoiced within thirty (30) days of VPRA's receipt of a compliant invoice. VPRA reserves the right to withhold processing and payment of a Progress Payment if Design-Builder has not complied with the relevant insurance requirements or has not delivered to VPRA certificates of such insurance in the required forms.

11.3 Limitations on Payment; Retainage

VPRA has no obligation to pay Design-Builder any amount that exceeds the amount owing under Section 2.5.2 of the Technical Provisions.

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

11.3.1 Limitations on Payment for Mobilization

Design-Builder shall be entitled to payment for mobilization in the amount for mobilization set forth in Exhibit R, which shall not exceed 10% of the Contract Price. This amount shall be fixed and not subject to adjustment, and shall be paid in installments as follows:

- (a) the first payment for mobilization shall be in an amount not to exceed 20% of the total payment for mobilization, and shall become payable to Design-Builder after 5% or more of the Contract Price is earned on items other than mobilization;
- (b) the second payment for mobilization shall be in an amount not to exceed 40% of the total payment for mobilization less other payments previously received for mobilization, and shall become payable after 10% or more of the Contract Price is earned on items other than mobilization;
- (c) the third payment for mobilization shall be in an amount not to exceed 60% of the total payment for mobilization less other payments previously received for mobilization, and shall become payable after 20% or more of the Contract Price is earned on items other than mobilization; and
- (d) the fourth payment for mobilization shall be in an amount not to exceed 80% of the total payment for mobilization less other payments previously received for mobilization, and shall become payable after 30% or more of the Contract Price is earned on items other than mobilization; and
- (e) the final payment for mobilization shall be in an amount not to exceed 100% of the total payment for mobilization less other payments previously received for mobilization, and

shall become payable after 50% or more of the Contract Price is earned on items other than mobilization.

11.3.2 Unincorporated Materials

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

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

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

11.3.3 Third-Party Payments

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

11.3.4 Tax-Exempt Status

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

any savings are attributable to VPRA's tax-exempt status, Design-Builder shall not be entitled to share in such savings.

Nothing contained in this Section 11.3.4 shall be construed to mean that Design-Builder is exempt from sales and use tax when procuring Materials, Equipment, machinery or supplies for the Project. Any such sales or use tax, whenever and wherever applicable, shall be paid by Design-Builder and is deemed included within the Contract Price, except for events covered under Article 12. It is the responsibility of Design-Builder to determine the applicability of any and all taxes and to act in accordance with all Laws pertaining to such matters.

Tax exemption certification shall be furnished to Design-Builder upon request. Unless allowed by Law, Design-Builder may not use VPRA's tax exemption number when procuring Materials, Equipment, machinery or supplies for the Project.

11.4 Deductions

VPRA may deduct from any amounts otherwise owing to Design-Builder, including each Progress Payment and Final Payment, the following:

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

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

11.5 Final Payment

11.5.1 Application for Final Payment

On or about the date Design-Builder delivers its Affidavit of Final Completion, Design-Builder shall prepare and submit a proposed Application for Final Payment showing the proposed total amount due Design-Builder. In addition to meeting all other requirements for invoices under the Agreement, the Application for Final Payment shall list all Unresolved Disputes and all existing or threatened claims, and Liens by Subcontractors, laborers, Utility Owners or other third parties relating to the Project, including any notices filed or to be filed with the Affidavit of Final Completion. The Application for Final Payment must state the amount at issue associated with each such notice. The Application for Final Payment must be accompanied by (a) complete and

legally effective releases or waivers of Liens satisfactory to VPRA from all Persons legally eligible to file Liens in connection with the Work, (b) consent of Surety(ies) to Final Payment, (c) the release and affidavit required by Section 11.5.2, and (d) such other documentation as VPRA may reasonably require. Prior applications and payments will be subject to correction in the proposed Application for Final Payment. Change Notices filed concurrently with the Application for Final Payment must be otherwise timely and meet all requirements under Articles 12 and 18. If a Subcontractor or Supplier refuses to furnish a release or waiver required by VPRA, Design-Builder may furnish a bond satisfactory to VPRA to indemnify VPRA against such Lien.

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

11.5.2 Release and Affidavit as Condition to Final Payment

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

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

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

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

11.5.3 Partial Estimates and Payments Subject to Correction

All prior partial estimates and payments will be subject to correction in the Final Payment.

11.6 Payments to Subcontractors

11.6.1 Prompt Payment

Design-Builder shall promptly pay each Subcontractor, out of the amount VPRA paid to Design-Builder for the Subcontractor, all undisputed amounts (less any retainage and any other offsets and deductions provided in the Subcontract or by law) due and owing under the Subcontract. In accordance with the Prompt Payment Law, payment by Design-Builder shall be made the earlier of (i) sixty (60) Days after the satisfactory completion of the portion of the Work for which the Subcontractor has invoiced or (ii) seven (7) days after receipt of amounts paid by VPRA to Design-Builder for Work performed by the Subcontractor. Within 30 Days after satisfactory completion of all Work to be performed by a Subcontractor, including provision of appropriate releases, certificates, and other evidence of the Subcontractor's compliance with all applicable requirements of the Contract Documents, Design-Builder shall return any moneys withheld in retention from the Subcontractor. Design-Builder shall, by appropriate agreement with each

Subcontractor, require each Subcontractor to make payments to its lower tier Subcontractors in a similar manner. VPRA will have no obligation to pay or responsibility to cause the payment of money to a Subcontractor, except as may otherwise be required by law.

11.7 Interest on Late Payments

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

11.8 Disputes

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

ARTICLE 12

Changes in the Work

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

12.1 Circumstances Under Which a Change Order May Be Issued

12.1.1 Definition and Requirements

12.1.1.1 Change Orders

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

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

12.1.1.2 Directive Letters

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

12.1.2 Performance of Changed or Extra Work

Design-Builder's receipt of a Change Order executed by VPRA or a Directive Letter is a condition precedent to Design-Builder's right to receive an adjustment to the Contract Price or a Completion Deadline for changed or Extra Work, provided that VPRA's failure to execute a Change Order or Directive Letter does not negate Design-Builder's right to pursue the Relief Event process in the event of a dispute over entitlement to relief. If Design-Builder undertakes any such work without

receiving a Directive Letter or Change Order executed by VPRA, Design-Builder shall be deemed to have performed such work voluntarily and will not be entitled to a Change Order for performing that work. In addition, VPRA has the right to require Design-Builder to remove or otherwise undo any such voluntary work, at Design-Builder's sole cost.

12.1.3 Impact of Directive Letter

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

12.2 VPRA-Initiated Change Orders

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

12.2.1 Request for Change Proposal

12.2.1.1 Issuance of Request

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

12.2.1.2 Initial Consultation

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

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

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

12.2.1.3 Notification by VPRA

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

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

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

12.2.1.4 Submittal of Change Order Form

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

12.2.2 Unilateral Change Orders

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

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

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

12.3 Design-Builder-Initiated Agreement Modification

12.3.1 Eligible Changes

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

12.3.1.1 Contract Price Adjustment

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

12.3.1.2 Completion Deadline Adjustment

Upon the occurrence of a Relief Event, Design-Builder shall follow the process in this Article 12 to request adjustment of a Completion Deadline, subject to the limitations herein. Except as

otherwise provided herein, Design-Builder may submit a request to adjust a Completion Deadline for all Relief Events.

12.3.1.3 Request for Change Order and Cost and Schedule Savings

Design-Builder at any time may submit a Request for Change Order to VPRA that proposes changes to the scope of Work of the Contract Documents that are “equal to or better” than the original requirements. The provisions of Section 12.3.3 regarding delivery of a Change Notice do not apply to a proposed Design-Builder-initiated Agreement modification under this Section 12.3.1.3. If VPRA approves a Request for Change Order submitted under this Section 12.3.1.3, Design-Builder and VPRA shall each be entitled to 50% of any cost and schedule savings. The cost savings shall be realized by issuance of a deductive Change Order reducing the Contract Price by 50% of the value of the change to the Work. Any schedule savings shall be realized by a deductive Change Order that makes the applicable Substantial Completion Deadline earlier by one-half the number of Days saved due to the change. If the schedule savings are an odd number of days, the half-day shall not be counted toward the reduction in schedule time; for example, if the time savings is five (5) Days, the applicable Substantial Completion Deadline will become two (2) Days earlier.

12.3.2 Conditions Precedent

The requirements set forth in this Section 12.3 constitute conditions precedent to Design-Builder’s entitlement to request and receive a Change Order in all circumstances except those involving a Request for Change Proposal by VPRA, a Unilateral Change Order, or a Design-Builder-initiated Agreement modification under Section 12.3.1.3. Design-Builder agrees that the filing of Change Notices and subsequent filing of Requests for Change Orders with VPRA pursuant to Sections 12.3 and 12.4 are necessary to begin the administrative process for adjustments to the Contract Price and Completion Deadlines. Design-Builder understands that it shall be forever barred from recovering against VPRA under this Article 12 and the Agreement if it fails to follow the process under Sections 12.3 and 12.4.

12.3.3 Delivery of Change Notice

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

12.3.4 Prompt Delivery of Change Notice Required

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

omissions, or otherwise that comprise the Relief Event(s). A Change Notice will be deemed delivered only if it fully conforms to the requirements of Section 12.3.5. VPRA will acknowledge receipt of a Change Notice in writing within seven (7) Days of receipt, provided that such written notice shall not constitute acknowledgement that the Change Notice meets the requirements of Section 12.3.5.

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

12.3.5 Contents of Change Notice

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

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

The nature and scope of the potential Change Order stated in the Change Notice shall remain consistent (except for reductions) for the remainder of the Change Order process and, if applicable, during any subsequent Dispute Resolution Process, except with respect to consequences of a Relief Event that (i) are of a different nature or scope, (ii) first arise or occur

after Design-Builder delivers the Change Notice to VPRA, and (iii) could not have been anticipated through the exercise of reasonable diligence prior to delivering the Change Notice. If any such new consequences arise or occur prior to submission of the Request for Change Order, Design-Builder shall report them to VPRA by a supplemental Change Notice. If a single Relief Event is a continuing cause of delay, only one Change Notice shall be necessary.

12.4 Delivery of Request for Change Order

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

12.4.1 Contents of Request for Change Order

Each Request for Change Order shall contain the following information:

- (a) full details of the Relief Event, including its nature, the date of its occurrence, its duration (to the extent that the Relief Event and the effects thereof have ceased, or estimated duration to the extent that the Relief Event and the effects thereof have not ceased), affected locations, items of Work affected, and information required by Section 12.8.5;
- (b) any written communications between VPRA, Design-Builder, and other Persons concerning the Relief Event and identification of the substance of any material oral communications between VPRA and Design-Builder, if any, relating to the Relief Event and the name of the Person or Persons making such oral communications;
- (c) identification of the specific provisions of the Contract Documents that are impacted by the Relief Event or that Design-Builder claims entitles it to the relief sought or pertain to the relief sought, and a complete, detailed statement that explains the reasons why the provisions entitle Design-Builder to that relief or are otherwise impacted by the requested relief. Design-Builder shall additionally include any documents or other materials that Design-Builder contends support entitlement to the relief sought;
- (d) where Design-Builder makes a request for a Completion Deadline adjustment, a Schedule Impact Analysis of the Baseline Schedule that: (i) identifies the Critical Path (with activity durations, predecessor, and successor activities and resources, including total Float), and illustrates the effect of schedule changes or disruptions on the Completion Deadlines; and (ii) complies with the requirements of Section 12.4.2 and Section 3.8 of the Technical Provisions;
- (e) a detailed, itemized estimate of all amounts claimed for Extra Work Costs and Delay Costs to the extent such amounts are eligible for compensation under this Article 12 for the Relief Event in question, subject to the following requirements:

- (i) all such amounts shall be broken down in terms of the eligible costs for labor (including hourly wage rates, fringe benefits rates, and audited burden), Materials, Equipment, third party fees and charges, extra insurance, and performance and payment security (e.g., bonds and letters of credit), as applicable, and other costs, including expenses and profit, and any other cost category or categories VPRA specifies; and
 - (ii) Design-Builder shall provide copies of invoices or other documentation of incurred or potential future costs for Equipment or Materials, and for Equipment, shall provide evidence of the applicable rental rate or cost of Equipment in accordance with Exhibit K;
- (f) the effect of the Relief Event on Design-Builder's ability to perform any of its obligations under the Contract Documents, including details of the relevant obligations, the effect on each such obligation, and the likely duration of that effect;
- (g) not used;
- (h) an explanation of the measures that Design-Builder has previously taken to prevent, and proposes to undertake to mitigate, the costs, delay, and other consequences of the Relief Event;
- (i) the type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance, subject to the following requirements:
- (i) Design-Builder shall provide a copy of every notice letter and/or claim submitted to an insurer or other party that may be liable to reimburse or indemnify Design-Builder due to the Relief Event;
 - (ii) and, if the Relief Event may be covered by Design-Builder's self-insurance, Design-Builder shall provide documentation of any claim against such insurance that it prepares in the ordinary course of business; and
- (j) Design-Builder Representation: Each Request for Change Order must contain a sworn certification by Design-Builder certifying that the amount of the Completion Deadline or Contract Price adjustment requested includes all known and anticipated impacts or amounts that may be incurred as a result of the event or matter giving rise to the Relief Event and also certifying that Design-Builder has no reason to believe and does not believe that the factual basis for the Request for Change Order is falsely represented.

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

If Design-Builder seeks a Completion Deadline adjustment and/or Delay Costs arising from a Relief Event, Design-Builder shall update VPRA as to the time impact of the Relief Event until such time as VPRA issues a Change Order, Design-Builder withdraws the Request for Change Order, or resolution of the Dispute Resolution Process. Unless VPRA has issued a Change Order for the Relief Event, Design-Builder withdraws the Request for Change Order, or the Dispute Resolution Process is complete, once Design-Builder knows or should reasonably be expected to know the actual time impact of a Relief Event, Design-Builder shall submit a revised Schedule Impact Analysis showing the actual impact of the Relief Event to the Critical Path consistent with Section 3.8.1(c) and (d) of the Technical Provisions. Such updated information shall supersede any previously submitted Schedule Impact Analysis for purposes of establishing the appropriate

amount of a Completion Deadline adjustment and Delay Costs, if applicable, in a Change Order issued with respect to the Relief Event.

12.4.3 Alternative Requests for Change Orders for Time-Related Relief

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

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

12.4.4 Supplements to Request for Change Order

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

12.5 VPRA Response to Request for Change Order

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

12.5.1 VPRA Response to an Incomplete Request for Change Order

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

correct the deficiencies therein and timely resubmit the Request for Change Order for VPRA's consideration.

12.6 Subcontractor Claims

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

12.7 Allowance for Specified Relief Events

12.7.1 Eligible Relief Events

Design-Builder will have access to the Allowance to provide compensation for Extra Work Costs and Delay Costs arising out of the following Relief Events: Inaccurate Utility Information, Utility Delay, Differing Site Conditions, and Railroad Delay. All Relief Events are subject to the limitations stated in Section 12.12.

12.7.2 Use of Allowance Funds

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

12.7.3 Procedure to Request Disbursement from the Allowance

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

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

12.7.4 Completion Deadline Adjustment

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

Order if Design-Builder establishes entitlement to a Completion Deadline adjustment consistent with the requirements of this Article 12.

12.7.5 Payment of Allowance

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

12.7.6 Unused Allowance

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

12.8 Limitations on Change Orders and Allowance Draws

12.8.1 Duty to Mitigate

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

12.8.2 Limitation on Contract Price Increases

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

- (a) costs caused by the breach of contract or fault or negligence, or act or failure to act, of any Design-Builder-Related Entity;
- (b) consistent with Section 12.12.1 below, any costs or circumstances that could reasonably have been anticipated due to Design-Builder's performance of the Scope Validation;
- (c) costs that could reasonably have been avoided by Design-Builder, including by resequencing, reallocating or redeploying its forces to other portions of the Work or to other activities unrelated to the Work, or other work-around measures;
- (d) costs covered by insurance;
- (e) costs for any rejected Work that failed to meet the requirements of the Contract Documents and any necessary remedial Work; and
- (f) any costs incurred to prepare a Claim or Dispute, including costs of preparing a Change Notice, Request for Change Order, requests to draw from the Allowance, and all costs incident thereto, including attorney's fees and expert fees.

12.8.3 Completion Deadline Adjustments and Delay Costs

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

12.8.4 Limitations on Delay Costs and Other Costs

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

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

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

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

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

12.8.5 Additional Limitations on Completion Deadline Adjustments and Delay Costs

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

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

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

12.8.6 Concurrent Delay

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

12.9 Payment for Extra Work Change Orders

12.9.1 Negotiated Price for Extra Work

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

12.9.2 Extra Work

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

12.9.3 Deleted Work

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

12.9.4 Work Both Added and Deleted

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

12.10 Force Account Change Orders

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

12.10.1 Determination of Costs

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

12.10.2 Payment of Delay Costs

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

12.11 Payment of Change Orders

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

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

12.11.1 Timing of Change Order Payments

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

- (a) if as a lump sum payment other than a negotiated fixed price, VPRA will make payment of all undisputed amounts not later than with the first Progress Payment after VPRA's receipt of all pertinent data, documents, and information on an Open Book basis with respect to the Extra Work or Delay Costs, as applicable;
- (b) if as a lump sum payment that is a negotiated fixed price, VPRA will make payment of all undisputed amounts with the first Progress Payment after VPRA's receipt of all

documentation required from Design-Builder pursuant to the terms of the negotiated fixed price Change Order with respect to Extra Work or Delay Costs, as applicable;

- (c) if as Progress Payments as the Work is completed, VPRA will make payment of all undisputed amounts with the Progress Payment occurring after Design-Builder submits and VPRA approves an itemized invoice showing the components of the Extra Work and Delay Costs included in the Change Order, to be submitted with each Progress Payment request, of the Extra Work and Delay Costs, as applicable, incurred during the previous month.

12.11.2 Limitations on Payment of Change Orders for Work Not Completed

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

12.11.3 Compliance with Federal Acquisition Regulation

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

12.12 Additional Conditions and Limitations on Certain Relief Events

12.12.1 General Limitations on Certain Relief Events

Except for the Request for Change Order pursuant to Section 2.6.3, Design-Builder shall not be entitled to submit a Claim (either a Change Order or request to draw from the Allowance) for any Project Site and Scope Issue or any conditions, elements, or otherwise that Design-Builder discovered or reasonably should have discovered during the Scope Validation Period. Design-Builder expressly acknowledges that the risk of Project Site and Scope Issues is assumed by Design-Builder at the conclusion of the Scope Validation process. Design-Builder's right to submit a Claim arising from a Relief Event is limited to those acts, omissions, conditions, events, or otherwise that Design-Builder could not have discovered during the Scope Validation Period or that occur subsequent to the conclusion of the Scope Validation process.

12.12.2 Differing Site Conditions

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

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

12.12.3 Inaccurate Utility Information

12.12.3.1 Inaccurate Utility Information Defined

If any existing underground Utility that requires Relocation as part of the Work (or any portion of the Utility) is not indicated at all in the Utility Information or is not indicated with "Reasonable Accuracy" therein (as defined in Section 12.12.3.2) and was not discovered or reasonably could not have been discovered during the Scope Validation Period, Design-Builder may request a Change Order for Inaccurate Utility Information. Notwithstanding the obligations in this section, Design-Builder shall be responsible for, no drawings from the Allowance and no Change Order will be issued due to, Inaccurate Utility Information for any of the following:

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

12.12.3.2 Reasonable Accuracy

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

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

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

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

12.12.3.3 Design-Builder Acknowledgement Regarding Designated VPRA-Furnished Information

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

12.12.3.4 Partial Inaccuracy

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

12.12.4 Utility Delays

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

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

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

12.12.5 Force Majeure

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

12.12.6 Extreme Weather Event

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

12.12.7 Contaminated Materials

12.12.7.1 Release of Contaminated Materials

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

12.12.7.2 Discovery of Unknown Preexisting Contaminated Materials

Design-Builder shall not be entitled to a Relief Event for the Discovery of Unknown Preexisting Contaminated Materials (Relief Event (h) of the definition thereof) arising from the discovery of Contaminated Materials that were identified in the Designated VPRA-Furnished Information or other RFP Documents furnished prior to the Technical Proposal Due Date or should have been discovered during the Scope Validation Period.

12.12.7.3 Notification of Discovery of Unknown Preexisting Contaminated Materials

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

12.12.7.4 Contaminated Materials for Which Design-Builder is Responsible

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

12.12.8 Relief Events (i) and (j)

Design-Builder shall not be entitled to relief under Relief Events (i) and (j) in the definition thereof to the extent that the archeological, paleontological, cultural, or biological resources, or the threatened or endangered species, were identified in the Designated VPRA-Furnished Information or other RFP Documents furnished prior to the Technical Proposal Due Date or should have been discovered during the Scope Validation Period.

12.12.8.1 Occurrences Outside the Project ROW

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

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

12.12.9 Necessary ROW Change

12.12.9.1 Conditions to Relief

Design-Builder's right to seek relief for a Necessary ROW Change is subject to the following:

- (a) Design-Builder must establish that it is not physically possible to design and construct the Project within the ROW provided by VPRA as shown in the ROW Work Map;
- (b) a Necessary ROW Change shall not apply to ROW deemed necessary for Design-Builder to comply with an ATC; and
- (c) Design-Builder shall only be entitled to seek relief for a Necessary ROW Change as part of the Scope Validation process. Design-Builder's failure to request relief for a Necessary ROW Change as part of the Request for Change Order submitted pursuant to Section 2.6.3 shall preclude any right to relief for a Necessary ROW Change.

12.12.9.2 Relief for Necessary ROW Change

In the event of a Necessary ROW Change, VPRA shall acquire any additional ROW necessary for Design-Builder to design and construct the Project in compliance with the Technical Provisions. Design-Builder shall be responsible for obtaining any New Environmental Approvals and shall be responsible for demolition and clearing of the newly acquired ROW. Design-Builder shall be entitled to Extra Work Costs for the incremental costs associated with the Necessary ROW Change, including the costs of obtaining New Environmental Approvals, demolition and clearing, Relocations of Utilities, and management of Contaminated Materials.

Design-Builder's entitlement to a Completion Deadline adjustment and/or Delay Costs shall only apply if VPRA does not deliver the additional necessary ROW for Design-Builder's use within the timeframes stated below:

- (a) for additional parcels that will be permanently incorporated into the Project, 180 days after the date on which VPRA Approves the ROW work map showing the additional ROW to be acquired; and
- (b) for Temporary Construction Easements, 90 days after the date on which VPRA Approves the ROW work map showing the ROW needed for the Temporary Construction Easement.

12.13 Price Adjustments for Certain Materials

The Contract Price shall be subject to adjustment (increase or decrease) to account for the price of structural steel, reinforcing steel, and steel piles ("Steel") and diesel fuel at the time Design-Builder purchases Steel and diesel fuel for use on the Project. Design-Builder shall submit the actual direct cost of Steel and diesel fuel with the Application for Payment in which Design-Builder seeks payment for Steel and diesel fuel. Design-Builder shall only be entitled to payment up to the quantity of Steel and fuel that are factored into the Proposal Price.

12.14 Matters Not Eligible for Change Orders

Design-Builder acknowledges and agrees that no increase in the Contract Price or adjustment of a Completion Deadline is available except in circumstances expressly provided for in the Agreement, that such Contract Price and Completion Deadline adjustments shall be available only as provided in this Article 12, and that Design-Builder shall bear full responsibility for the

consequences of all other events and circumstances. Matters that are Design-Builder's exclusive responsibility include the following:

- (a) errors in the Design Documents and Construction Documents (including errors directly attributable to errors in the Reference Information Documents that are not guaranteed in Section 2.4);
- (b) any design changes required by VPRA, a Railroad Owner, or any other Third-Party, as part of the process of Accepting the Design Documents for consistency with the requirements of the Contract Documents, the Governmental Approvals, and/or Laws;
- (c) defective or incorrect schedules of Work or changes in the planned sequence of performance of the Work (except to the extent arising from a Relief Event);
- (d) action or inaction of Design-Builder's employees, Suppliers, Subcontractors or any Design-Builder-Related Entity (unless arising from a Relief Event);
- (e) untimely delivery of Equipment or Material, or unavailability, defectiveness, or increases in costs of Material, Equipment or products specified by the Contract Documents (except to the extent arising from causes that otherwise constitute a Relief Event or under Section 12.13 concerning price adjustments);
- (f) delays not on the Critical Path;
- (g) costs covered by insurance proceeds received by or on behalf of Design-Builder;
- (h) correction of Nonconforming Work and oversight and related activities in connection therewith by VPRA (including rejected design submittals);
- (i) failure by Design-Builder to comply with the requirements of the Contract Documents;
- (j) all other events beyond the control of VPRA for which VPRA has not agreed to assume liability hereunder,
- (k) a Railroad Owner's or VPRA's refusal to grant a Track Closure or permission to perform adjacent work, in either case in response to a prior Unpermitted Track Closure, until approval by VPRA and/or a Railroad Owner of Design-Builder's plan to avoid future Unpermitted Track Closures, as provided in Section 8.3 of the Technical Provisions;
- (l) Project Site and Scope Issues that Design-Builder discovered or should have discovered during the Scope Validation Period; and
- (m) any situations (other than Force Majeure events) which, while not within one of the categories delineated above, were or should have been anticipated because such situations are referred to elsewhere in the Contract Documents or arise out of the nature of the Work.

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

12.15 Waiver

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

12.16 No Release or Waiver

12.16.1 Extension of Time for Performance

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

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

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

12.17 Change Order Disputes

If VPRA and Design-Builder cannot agree on (i) whether certain matters constitute a Relief Event, (ii) whether a Change Order is required under Article 12, or (iii) the amount of the adjustments in the Contract Price and/or the Completion Deadline proposed within a Change Order issued under Article 12, then such matters will be considered a Dispute eligible for resolution under Article 18, provided that Design-Builder has first complied with the requirements of Article 12.

12.18 Performance of Disputed Work

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

12.19 Change Order Status Log

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

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

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

ARTICLE 13

Suspension of the Work

13.1 Suspension for Convenience

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

13.2 Suspension for Cause

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

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

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

13.3 Design-Builder Responsibilities During Suspension

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

13.4 Suspension of Construction Work

If VPRA suspends the Work for convenience for more than 180 consecutive Days after issuing NTP 1, Design-Builder may consider the Agreement as having been terminated for convenience under Article 14. If Design-Builder wishes to exercise this option, Design-Builder shall deliver written notice of termination to VPRA, specifying its effective date. The provisions of Article 14

shall apply if Design-Builder exercises this option. This Section 13.4 shall not apply to suspensions by VPRA for cause.

ARTICLE 14

Termination for Convenience

14.1 Notice of Termination

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

14.1.1 Termination for Insufficient Funding

VPRA may immediately terminate this Agreement for convenience 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. Design-Builder shall not be entitled to payment for any services that are provided after notice and effective date of termination, except for any recovery to which Design-Builder is entitled due to a termination for VPRA's convenience as provided in this Article 14.

14.2 Design-Builder's Responsibilities upon Termination

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

- (a) stop Work as specified in the notice;
- (b) communicate the termination to all affected Subcontractors and cause Subcontractors to stop Work as specified in the notice, unless otherwise authorized in writing by VPRA;
- (c) not enter into additional Subcontracts or place orders for Materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or as necessary to mitigate damages;
- (d) terminate all Subcontracts to the extent that they relate to the Work terminated;
- (e) if directed to do so by VPRA and in the manner directed by VPRA, assign to VPRA all of Design-Builder's right, title, and interest in the terminated Subcontracts. VPRA will have the right, in its sole discretion, to assume Design-Builder's rights and responsibilities under the assigned Subcontract accruing after the date of assignment, or to settle or pay any or all claims arising out of terminating those Subcontracts;
- (f) settle all outstanding liabilities and claims arising out of the terminated Subcontracts, with VPRA's prior approval, provided that VPRA shall not be responsible for anticipated profit on work not yet performed as of the effective date of the notice of termination;
- (g) provide VPRA with an inventory list of all Materials previously produced, purchased or ordered from Suppliers for use in the terminated Work and not yet used in the terminated Work, including their storage location. Provide VPRA with any documentation or other property required to be delivered for the terminated Work that is either being developed or has been completed but not yet delivered to VPRA. Provide other information as

requested by VPRA. Transfer title and deliver to VPRA, in the manner directed by VPRA, including: (i) fabricated or unfabricated parts, Work in process, completed Work, supplies, and other Material produced, ordered or acquired for the Work terminated; (ii) the Design Documents, Construction Documents, and all other completed or partially completed drawings (including plans, elevations, sections, details, and diagrams), specifications, records, samples, information, and other property that would have been required to be furnished to VPRA if the terminated Work had been completed and (iii) the interest or rights under any applications for Governmental Approvals;

- (h) perform, in accordance with the Contract Documents, all Work not terminated by VPRA;
- (i) take all action that may be necessary, or that VPRA directs, for the safety, protection, and preservation of (i) the public, including rail users, motorists, bicyclists, and pedestrians, (ii) the Work, and (iii) the Equipment, machinery, Materials, and property related to the Contract Documents that is in the possession of Design-Builder and in which VPRA has or may acquire an interest;
- (j) use best efforts to sell any property of the types referred to in Section 14.2(g) as directed or authorized by VPRA. Best efforts does not require Design-Builder to extend credit to any purchaser. Design-Builder may acquire the property for itself under the conditions prescribed and at prices approved by VPRA. The proceeds of any sale, transfer or disposition will be applied to reduce any payments to be made by VPRA to Design-Builder due to the termination;
- (k) remove Materials, Equipment, tools and instruments, debris or waste Materials, from all or parts of the Site as directed by VPRA; and
- (l) take other actions directed by VPRA.

14.3 Responsibility After Notice of Termination

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

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

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

14.4 Negotiated Termination Settlement

14.4.1 Settlement Proposal

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

sixty (60)-Day period in which Design-Builder was to have delivered the termination settlement proposal.

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

14.4.2 Negotiated Settlement Amount

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

14.5 Determination of Settlement Amount if Negotiations Fail

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

14.5.1 Payment Amount

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

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

- (c) The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section 14.2(f). This excludes amounts paid or payable for supplies or Materials delivered or services furnished by the Subcontractor prior to the effective date of the notice of termination; VPRA will include those amounts under Section 14.5.1(a).
- (d) The reasonable out-of-pocket cost incurred to preserve and protect property pursuant to Section 14.2(i), and any other reasonable out-of-pocket cost incidental to terminating the Work. This allowance includes reasonable overhead and Design-Builder's reasonable costs of handling Material returned to the vendor, delivered to VPRA or otherwise disposed of as directed by VPRA. The allowance also includes a reasonable amount for Design-Builder's administrative costs in determining the amount due to Design-Builder as the result of the termination of Work.

14.5.2 Maximum Compensation

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

14.5.3 Excluded Items

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

14.5.4 Payment of Termination Amount

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

14.6 Partial Termination

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

14.7 Reduction in Amount of Claim

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

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

14.8 Inclusion in Subcontracts

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

14.9 Limitation on Payments to Subcontractors

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

14.10 No Unearned Profits or Consequential Damages

Except as provided in Section 14.5.1(b), Design-Builder shall not be entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Article 14. The payment to Design-Builder determined in accordance with this Article 14 constitutes Design-Builder's sole and exclusive remedy for a termination under this Article 14.

14.11 No Waiver

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

14.12 Dispute Resolution

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

14.13 Allowability of Costs

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

14.14 Provision of Records to Establish Costs

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

ARTICLE 15

Default

15.1 Default by Design-Builder

15.1.1 Events of Default

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

- (a) Design-Builder fails to promptly begin the Work under the Contract Documents after VPRA issues NTP 1 or NTP 2, as applicable, authorizing such Work;
- (b) Design-Builder materially fails to perform the Work with sufficient resources to ensure the Work is completed promptly;
- (c) Design-Builder materially fails to comply with the Quality Plan;
- (d) Design-Builder materially fails to perform the Work in accordance with the Contract Documents;
- (e) Design-Builder refuses to remove and replace rejected Materials or Nonconforming or unacceptable Work, or fails to remove and replace workers as directed by VPRA under Section 7.7;
- (f) Design-Builder stops prosecuting the Work, unless due to one of the following:
 - (i) VPRA suspends or terminates the Work;
 - (ii) a Force Majeure event occurs; or
 - (iii) VPRA fails to pay Design-Builder undisputed sums, subject to Section 15.3;
- (g) Design-Builder fails to resume performing Work that has been suspended or stopped after receipt of notice from VPRA to do so within the time stated in VPRA's notice or (if applicable) after the event or condition preventing performance has ceased;
- (h) Design-Builder materially breaches any other agreement, representation or warranty contained in the Contract Documents;
- (i) Design-Builder materially fails to perform any other obligation under the Contract Documents, including EEO and SWaM/DBE subcontracting requirements;
- (j) Design-Builder fails to provide and maintain the required insurance;
- (k) Design-Builder fails to provide and maintain the required Performance and Payment Bonds;
- (l) Design-Builder assigns or transfers the Contract Documents or any right under the Contract Documents, except as expressly permitted under Section 22.4.2;
- (m) Design-Builder fails to make undisputed payment when due for labor, Equipment or Materials in accordance with its agreements with Subcontractors or Suppliers and applicable law;

- (n) Design-Builder materially fails to comply with any Law or Governmental Approval; or fails reasonably to comply with the instructions of VPRA consistent with the Contract Documents, including Directive Letters;
- (o) Design-Builder fails to discharge or obtain a stay within ten (10) Days of any final judgment(s) or order for the payment of money against it in excess of \$100,000 in the aggregate arising out of the prosecution of the Work (provided that, for purposes hereof, posting of a bond in the amount of 125 percent of such judgment or order will be deemed an effective stay);
- (p) Design-Builder has become insolvent, is generally not paying Design-Builder's debts as they become due, admits in writing that Design-Builder is unable to pay its debts, or makes an assignment for the benefit of creditors;
- (q) Any Guarantor has become insolvent, is generally not paying its debts as they become due, admits in writing that Guarantor is unable to pay its debts, or makes an assignment for the benefit of creditors;
- (r) Design-Builder or a Principal Participant is the subject of any voluntary or involuntary insolvency, receivership, reorganization, or bankruptcy proceedings, and Design-Builder fails to have those proceedings dismissed within sixty (60) Days;
- (s) VPRA determines that any representation or warranty made by Design-Builder or any Guarantor in the Contract Documents or in any certificate, schedule, instrument or other document delivered pursuant to the Contract Documents was false or materially misleading when made;
- (t) Design-Builder or any Guarantor is a party to fraud;
- (u) Any Guarantor revokes or attempts to revoke its obligations under the Guarantee, or otherwise takes the position that such instrument is no longer in full force and effect;
- (v) Design-Builder or a Principal Participant is debarred or suspended by the Commonwealth or is suspended or debarred by any federal agency;
- (w) Design-Builder communicates that it cannot perform its material obligations under the Contract Documents; or
- (x) Design-Builder fails to employ an Independent Design Quality Manager as required by Section 7.6.

15.1.2 Right to Cure

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

If VPRA believes a condition affecting the Project poses an immediate and imminent danger to public health or safety, VPRA may rectify the condition at Design-Builder's cost without giving

notice or providing any cure period. Public safety is paramount for VPRA; Design-Builder shall be liable for the costs to correct the danger to the public health or safety even if VPRA was under a mistaken belief that the occurrence of a breach or default required VPRA to take such action. VPRA's good faith determination of the existence of such danger will be deemed conclusive in the absence of clear and convincing evidence to the contrary.

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

15.2 Remedies

15.2.1 Rights of VPRA

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

- (a) VPRA may order Design-Builder to suspend or discontinue the Work or any portion of the Work;
- (b) VPRA may terminate the Agreement or a portion thereof, in which case, the provisions of Sections 13.2, 14.4, and 14.5 apply;
- (c) If and as directed by VPRA, Design-Builder shall withdraw from the Site and must remove such Materials, Equipment, tools, and instruments used by, and any debris or waste Materials generated by, any Design-Builder-Related Entity in the performance of the Work;
- (d) Design-Builder shall deliver to VPRA possession of any or all facilities of Design-Builder located on the Site that are for the exclusive use of the Project, as well as any or all Work Product, Design Documents, Construction Documents, and all other completed or partially completed drawings (including plans, elevations, sections, details, and diagrams), specifications, records, information, schedules, samples, Shop Drawings, and other documents that VPRA deems necessary for completion of the Work;
- (e) Design-Builder shall confirm the assignment to VPRA of the Subcontracts requested by VPRA, and Design-Builder shall terminate, at its own cost and without recourse from VPRA, all other Subcontracts;
- (f) VPRA may deduct from any amounts payable by VPRA to Design-Builder such amounts payable by Design-Builder to VPRA, including Liquidated Damages or other damages payable to VPRA under the Contract Documents or at law;
- (g) VPRA will have the right, but not the obligation, to pay such amount and/or perform such act(s) as may then be required for the Project;
- (h) VPRA, without incurring any liability to Design-Builder, will have the rights: (i) to take the performance of all or a portion of the Work from Design-Builder (either with or without the

use of Design-Builder's Materials, Equipment, tools, and instruments) and enter into an agreement with another Person for the completion of such Work; or (ii) to use such other methods, as in the opinion of VPRA, will be required for the completion of the Project; and/or

- (i) If VPRA exercises any right to perform any obligations of Design-Builder, in the exercise of such right VPRA may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such Work; (ii) spend such sums as VPRA deems necessary and reasonable to employ and pay such architects, engineers, consultants, and contractors, and obtain Materials and Equipment as may be required for the purpose of completing such Work; (iii) execute all applications, certificates, and other documents as may be required for completing the Work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions that it may consider necessary to complete the Work; and (vi) prosecute and defend any action or proceeding incident to the Work.

15.2.2 Liability of Design-Builder

15.2.2.1 Occurrence of Event of Default

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

15.2.2.2 Alternative to Terminating the Contract and Completing the Work

Instead of exercising the other provisions of this Section 15.2 for terminating the Contract and completing the Work, VPRA may pay Design-Builder for the portions of Work already performed in accordance with the Contract Documents and may eliminate the remaining portions of the Work and treat the remaining portions as if they had never been included or contemplated by the Contract Documents. If VPRA exercises this option, Design-Builder shall not be entitled to prospective profits on, or any other compensation relating to, Work that Design-Builder did not complete.

15.2.2.3 Termination Deemed to Constitute a Termination for Convenience

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

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

If VPRA suffers damages because Design-Builder failed to perform an obligation under the Contract Documents, VPRA will be entitled to recover those damages from Design-Builder regardless of whether the breach or failure that caused the damages ripens into an Event of Default. Design-Builder, its Principal Participants, Surety(ies) (in accordance with the terms of the Performance and Payment Bonds, and Guarantor(s) (in accordance with the Guarantee, if any) shall be jointly and severally liable for such damages.

15.2.2.5 Cumulative Remedies

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

15.2.2.6 Continued Liability of Design-Builder and Surety

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

15.3 Right to Stop Work if Undisputed Payment is Not Made

Design-Builder has the right to stop Work if VPRA fails to make an undisputed payment. As a precondition to exercising such right, Design-Builder must submit written notice of nonpayment to VPRA after VPRA's thirty (30) Days to make such payment have lapsed without payment by VPRA, and sixty (60) Days must thereafter elapse without payment of the undisputed amounts from VPRA after VPRA's receipt of such notice. If Design-Builder stops Work under this Section 15.3, that stoppage will be considered a suspension under Section 13.1. Design-Builder shall not have the right to terminate the Agreement for default if VPRA fails to make an undisputed payment when due, but Design-Builder shall have the right to declare a termination for convenience under Article 14 upon meeting the requirements of Section 13.4. For purposes of clarity, Design-Builder shall not be entitled to declare a termination for convenience until no less than 240 Days have elapsed since the expiration of VPRA's thirty (30) Days to make payment have passed without payment by VPRA.

15.4 Notice and Opportunity to Cure Other Types of VPRA Breaches

If VPRA breaches the Agreement (other than by failing to make payments to Design-Builder as provided in Section 15.3), Design-Builder shall provide a written notice to VPRA describing the breach. VPRA will have 30 Days from the date VPRA received the notice to cure the breach. The thirty (30)-Day cure period is extended for any breach that is capable of cure but by its nature

cannot be cured within thirty (30) Days; in such case, VPRA will have an additional period of time as may be reasonably necessary to cure the breach so long as VPRA commences the cure within the 30-Day period and diligently proceeds to cure the breach. Design-Builder shall have no right to exercise any remedies to which it may be entitled at law or in equity until (1) Design-Builder has given the required notice and (2) the cure period has lapsed and VPRA has not cured the breach.

15.5 Availability of Funds; Appropriation

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

ARTICLE 16

Damages

16.1 Liquidated Damages and Disincentives

The Parties have agreed to Liquidated Damages under this Section 16.1 to fix and limit Design-Builder's costs and to avoid later disputes over the amount of damages that VPRA has suffered and are properly chargeable to Design-Builder. Design-Builder expressly waives the right to subsequently challenge the Liquidated Damages in any court of competent jurisdiction, including asserting as a claim or defense that the amount of the Liquidated Damages is disproportionate to any probable loss or that the amount of the Liquidated Damages grossly exceeds the actual damages sustained by VPRA.

16.1.1 Failure to Meet Completion Deadlines

If Design-Builder fails to complete the Work in accordance with the Contract Documents, VPRA will suffer substantial losses and damages. Design-Builder shall be liable for all such losses and damages. Design-Builder acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the rail transit system in the Washington, D.C. metropolitan area, and the fact that inconvenience to the traveling public and freight traffic will be one of the significant impacts of any completion delay, it is impracticable and extremely difficult to ascertain and determine the actual damages that would accrue to VPRA and the public if Design-Builder fails to achieve a Completion Deadline. Therefore, Design-Builder and VPRA agree to stipulate the amount payable by Design-Builder for its failure to meet a Completion Deadline. Liquidated Damages are intended to compensate VPRA solely for Design-Builder's failure to meet a Completion Deadline and will not excuse Design-Builder from liability for any other breach of the Agreement, including any failure of the Work to conform to applicable requirements. The fact that VPRA has agreed to accept Liquidated Damages as compensation for its damages associated with any delay in meeting a Completion Deadline will not preclude VPRA from exercising its other rights and remedies concerning the delay set forth in Section 15.2, other than the right to collect other damages due to the delay.

If Design-Builder fails to achieve a Completion Deadline, Design-Builder shall pay VPRA Liquidated Damages in the following amounts:

- (a) \$130,000 per Day for Design-Builder's failure to complete the Work on Abutment B by the Abutment B Deadline, until the date Design-Builder completes the Work on Abutment B;
- (b) \$26,000 per Day for Design-Builder's failure to complete the Work on the Bike/Ped Bridge by the Bike/Ped Bridge Deadline, until the date Design-Builder completes the Work on the Bike/Ped Bridge;
- (c) \$95,000 per Day for Design-Builder's failure to achieve Substantial Completion by the Substantial Completion Deadline, until the date Design-Builder achieves Substantial Completion; and
- (d) \$26,000 per Day for Design-Builder's failure to achieve Final Acceptance by the Final Acceptance Deadline, until the date Design-Builder achieves Final Acceptance.

16.1.1.1 Maximum Liquidated Damages for Delay

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

16.1.1.2 Liquidated Damages as Remedy for Delay

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

16.1.2 Unpermitted Road Closures

Design-Builder shall pay VPRA Liquidated Damages for each Unpermitted Road Closure as provided in Section 21.20 of the Technical Provisions.

16.1.2.1 Inapplicability of Liquidated Damages for Certain Unpermitted Road Closures

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

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

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

16.1.3 Key Personnel

16.1.3.1 Reasonableness of Liquidated Damages Amounts; Waiver

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

16.1.3.2 Removal or Substitution of Key Personnel

The individuals identified in Exhibit L shall perform the Key Personnel role and responsibilities stated therein and Design-Builder's failure to maintain such individuals in their identified roles or

perform the identified responsibilities shall entitle VPRA to assess the Liquidated Damages described in this Section 16.1.3.2. Design-Builder shall not remove or substitute any Person identified as Key Personnel in Exhibit L or allow a position to remain vacant unless approved in writing by VPRA. If Design-Builder removes or substitutes an individual filling a Key Personnel position or the individual filling a Key Personnel position is not in compliance with the time commitment identified in Exhibit L for the Key Personnel role, unless otherwise authorized by VPRA in writing, VPRA may assess Liquidated Damages as follows:

Key Personnel Role	Liquidated Damages Amount
Project Manager	\$250,000
Design Manager	\$200,000
Construction Manager	\$200,000
Quality Manager	\$200,000
Independent Design Quality Manager Director	\$200,000
Structures Design Manager	\$200,000
Geotechnical Design Manager	\$200,000
Environmental Compliance Manager	\$200,000
Third Party Coordinator	\$200,000
Public Information Coordinator	\$200,000
Safety Manager	\$200,000
Other Key Personnel	\$200,000

With respect to the assessment of Liquidated Damages due to the failure of the individual filling a Key Personnel position to comply with the time commitment identified in Exhibit L for the Key Personnel role, VPRA shall afford Design-Builder one notice and 30 days to cure the deficiency before assessing Liquidated Damages. Any further failures to comply with the time commitment in Exhibit L for the same position shall be subject to the immediate assessment of Liquidated Damages.

16.1.3.3 Basis of Liquidated Damages; Waiver

Design-Builder understands and agrees that any Liquidated Damages payable under Section 16.1.3.2 and/or Section 16.1.3.4 are not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date. The Parties have agreed to Liquidated Damages under Section 16.1.3.2 and Section 16.1.3.4 to fix and limit Design-Builder’s costs and to avoid later disputes over the amount of damages that VPRA has suffered and are properly chargeable to Design-Builder.

16.1.3.4 Replacement of Key Personnel

Unless otherwise agreed in writing by VPRA, in the event of a Key Personnel vacancy, Design-Builder shall replace any Key Personnel within sixty (60) days after the departure of the individual previously filling the position. A replacement individual must meet the qualifications for the Key Personnel position stated in Exhibit L. VPRA may assess Liquidated Damages of \$1,000 per day

starting on the 61st day until and including the day on which the Key Personnel position is filled with a qualified individual. The Liquidated Damages under this Section 16.1.3.4 are without regard to whether Liquidated Damages under Section 16.1.3.2 are applicable or assessed. The Liquidated Damages under this Section 16.1.3.4 are in addition to any Liquidated Damages assessed or applicable under Section 16.1.3.2.

16.1.3.5 Incapacity, Resignation or Termination of Key Personnel

Design-Builder shall not be liable for the Liquidated Damages in Section 16.1.3.2 if the departure of an individual filling a Key Personnel role is due to the death of the individual or an injury or health condition that prevents the individual from fulfilling the role. Additionally, Design-Builder shall not be liable for the Liquidated Damages in Section 16.1.3.2 if the individual filling a Key Personnel role resigns or is terminated from employment with Design-Builder or a Design-Builder-Related-Entity, provided that the individual does not become employed with an Affiliate of the foregoing within 180 days of resignation or termination. In the event of a Key Personnel departure under this Section 16.1.3.5, Design-Builder shall be responsible for replacing the Key Personnel position and shall be liable for the Liquidated Damages as described in Section 16.1.3.4 if Design-Builder fails to replace the individual.

16.2 Other Remedies, Damages

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

16.3 Set-Off; Waiver

16.3.1 Set-Off Rights

VPRA shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include VPRA's option to withhold for the purposes of set-off any moneys due to Design-Builder under this Agreement up to any amounts due and owing to VPRA with regard to this Agreement, plus any amounts due and owing to the Commonwealth for any other reason including tax delinquencies, fee delinquencies or monetary penalties relative thereto.

16.3.2 Waiver of Liquidated Damages

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

16.3.3 No Waiver of Liquidated Damages

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

16.4 Payment of Liquidated Damages

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

16.5 Limitations on Damages

16.5.1 Limitations on Damages Recoverable by Design-Builder

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

- (a) damages for delay other than those in Section 2 of Exhibit K;
- (b) punitive damages;
- (c) damages, costs, or expenses that are indirect, special, incidental, exemplary or consequential, including lost or impaired bonding capacity, loss of bidding and contracting opportunities, loss of credit standing, cost of financing, interest paid, lost material discounts, economic loss, loss of reputation, loss of other work, loss of use, loss of business opportunity, loss of product or output, income, loss of profit or revenue, cost of capital, financing, and for loss of management or employee productivity or of the services of such persons, and business devastation, bankruptcy, or insolvency;
- (d) interest, late payment charges associated with any Claim, or disputed construction services or Materials;
- (e) late payment charges for any judgment or award to Design-Builder;
- (f) pre-judgment interest relating to or arising from any disputed Claim or on any award to Design-Builder; and
- (g) attorney's fees and costs, Claim preparation expenses, and litigation or other costs relating to or arising from any disputed Claim, or prosecution thereof.

16.5.2 Waiver of Consequential and Punitive Damages by VPRA

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

ARTICLE 17

Indemnification

17.1 Indemnifications by Design-Builder

17.1.1 General Indemnification of Virginia Indemnitees

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

17.1.2 Losses Due to Negligence or Misconduct of Virginia Indemnitees

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

17.1.3 Railroad Operator Indemnifications

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

17.2 Responsibility of VPRA for Certain Contaminated Materials

17.2.1 Pre-Existing Site Contamination

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

17.2.2 Generator Number for Contaminated Materials

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

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

17.2.3 Notification of Discovery of Contaminated Materials

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

17.3 No Effect on Other Rights

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

17.4 CERCLA Agreement

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

ARTICLE 18

Partnering and Dispute Resolution

18.1 Partnering

18.1.1 Commencement of Partnering Process

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

Within thirty Days after VPRA's issuance of the NTP 1, Design-Builder shall arrange a Partnering meeting between Design-Builder, VPRA, and, if desired, key stakeholders. This meeting will establish:

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

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

18.1.2 Third-Party Facilitator

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

18.2 Dispute Resolution Process

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

18.2.1 Escalation Ladder

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

18.2.1.1 Escalation Ladder Process

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

Review Level	VPRA Reviewer	Design-Builder Review	Time Limit
1	Design/Construction Lead	Mike Dugan	10 days
2	Project Manager	Bryon Breese	10 days
3	Chief Operating Officer	Mark Gentile	20 days

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

18.2.1.2 Escalation Ladder Outcome

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

18.3 Use of Neutral for Dispute Resolution

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

18.3.1 Timing of Submission

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

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

18.3.2 Effect of Submission to Neutral

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

18.3.3 Qualifications of Neutral

Within sixty (60) days of issuance of the NTP 1, the Parties shall meet to select a Neutral for the Project. The Neutral shall be a Person with a background in law and/or engineering and who has substantial experience resolving disputes related to similar types of construction as the Project. The Parties must mutually agree on the Person to serve as the Neutral, provided that a Party may only object to a Neutral candidate in good faith.

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

- (a) a Person who has a financial interest (including equity or stock ownership) in (i) VPRA or (ii) a Design-Builder-Related-Entity or an Affiliate thereof,
- (b) a Person who has a financial interest in the Project other than engagement as the Neutral;
- (c) a current employee or consultant of (i) VPRA or (ii) a Design-Builder-Related-Entity or any Affiliate thereof;
- (d) a Person who was previously employed in the two years preceding selection of the Neutral by (i) VPRA or (ii) a Design-Builder-Related-Entity or any Affiliate thereof;
- (e) a Person who was previously engaged as a consultant in the two years preceding selection of the Neutral by (i) VPRA or (ii) a Design-Builder-Related Entity or any Affiliate thereof; or

- (f) a Person who has any other actual or apparent conflict of interest that may prevent the Person from impartially considering any Dispute.

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

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

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

18.3.4 Dismissal of the Neutral

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

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

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

18.3.5 Neutral Procedure

18.3.5.1 Initial Meeting

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

18.3.5.2 Pre-Neutral Session Submissions

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

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

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

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

18.3.5.3 Neutral Session

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

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

During the Neutral Session, the Neutral may ask questions of each Party relevant to the Dispute. The Neutral may also hold private conversations with each Party to discuss the Dispute during

the designated time for the Neutral Session. If the Neutral finds it necessary, the Neutral may request that the Parties provide supplemental information on a specific issue relevant to the Dispute. Such supplemental information shall be limited to 5 written pages and 10 pages of exhibits and must be submitted to the Neutral within 10 days after requested by the Neutral. The Neutral shall distribute the supplemental information to both Parties in the same manner provided for exchange of written materials in Section 18.3.5.2. The Neutral Session shall not be considered concluded until receipt by the Neutral of any supplemental material requested.

18.3.6 Recommendation

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

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

18.3.7 Confidentiality

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

18.3.8 Neutral Process is Non-Binding

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

18.4 Continuation of Work During a Dispute

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

18.5 Litigation of Unresolved Disputes

18.5.1 Tolling of Claims and Statute of Limitations

Neither Party may invoke the option to litigate the Unresolved Disputes in accordance with Section 18.5.2 until Design-Builder has identified all outstanding Claims concurrently with its

submission to VPRA of the Application for Final Payment pursuant to Section 11.5.2 (and has released and waived all other potential Claims), and only after full compliance of each Unresolved Dispute with Article 12 and Sections 18.2 and 18.3.

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

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

18.5.2 Litigation

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

18.6 Attorney's Fees

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

ARTICLE 19

Completion and Acceptance of Project

19.1 Completion of Abutment B

19.1.1 Notice by Design-Builder

Design-Builder shall provide written notice to VPRA when it has performed the Work specified in Section 15.14 of the Technical Provisions and fulfilled all requirements pertaining to Abutment B as specified in the Contract Documents.

19.1.2 Correction of Defects

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

19.1.3 Notice of Abutment B Bridge Substantial Completion

VPRA will issue a Notice of Abutment B Substantial Completion when:

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

19.2 Substantial Completion

19.2.1 Notice by Design-Builder

Design-Builder shall provide written notice to VPRA when all of the following have occurred with respect to the entirety of the Project, except for the Bike/Ped Bridge:

- (a) Design-Builder has completed all Work, except for Punch List items and other items only included in the requirements for Final Acceptance;
- (b) Design-Builder has ensured that the Work has been performed in accordance with the requirements of the Contract Documents and that all requirements in the Contract Documents identified as prerequisites to Substantial Completion have been met;

- (c) Design-Builder has received all applicable Governmental Approvals required for Project use;
- (d) Design-Builder has furnished to VPRA certifications from Design-Builder's Design Manager, in form and substance satisfactory to VPRA, certifying conformity of the Design Documents with the requirements of the Contract Documents;
- (e) Design-Builder has furnished to VPRA certifications from Design-Builder's Project Manager, in form and substance satisfactory to VPRA, certifying conformity of the construction with the Design Documents;
- (f) Design-Builder has furnished to VPRA certifications from Design-Builder's Quality Manager, in form and substance satisfactory to VPRA, certifying that there are no outstanding nonconformances other than those identified on the Punch List and that such nonconformances will be corrected;
- (g) Design-Builder has furnished to VPRA a certification from Design-Builder's Quality Manager, in form and substance satisfactory to VPRA, certifying that the Work is completed in accordance with the requirements of the Contract Documents.
- (h) Design-Builder has ensured that the Project may be used without damage to the Project or any other property on or off the Site, and without injury to any Person;
- (i) Design-Builder has obtained all applicable Third-Party approvals relating to the Work and all Third-Parties have completed all Work that involves obligations by Design-Builder;
- (j) Design-Builder has removed all temporary facilities, supports, staging, storage, and equipment that require interruption of the final rail and vehicle traffic configuration to remove, including all elements of the temporary trestle, piles, and deep foundation elements, and filled voids with Materials Approved by VPRA to match adjacent levels of substrate, as provided in Section 15.15 of the Technical Provisions;
- (k) Design-Builder has ensured that all four (4) tracks are open to rail traffic and all other elements of the Project are complete and functional for final traffic configuration;
- (l) CSXT has inspected the Work and issued a written certificate that the Work is substantially complete;
- (m) Design-Builder has submitted the certification regarding Utility Work required by Section 7.4 of the Technical Provisions;
- (n) the load ratings and inspections required by Section 15.1 of the Technical Provisions have occurred;
- (o) all stormwater management BMPs have been inspected during a rain event or tested for functionality and the results show that the BMPs meet all required tests and are sufficient for their intended use, as required by Section 18 of the Technical Provisions;
- (p) Design-Builder has inspected and cleaned all drainage facilities as required by Section 18.8.3 of the Technical Provisions;
- (q) Design-Builder has complied with all other preconditions to Substantial Completion in the Contract Documents; and

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

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

19.2.2 Correction of Defects

Upon receipt of Design-Builder's notice under Section 19.2.1, VPRA will conduct such inspections, surveys, and/or testing as VPRA deems desirable. If such inspections, surveys, and/or tests disclose that any Work does not meet the requirements of Section 19.2.1 or the Contract Documents, VPRA will promptly advise Design-Builder as to Nonconforming Work (including incomplete Work) necessary to be corrected as a condition to Substantial Completion, Nonconforming Work (including incomplete Work) that may be corrected as Punch List items, and/or whether Design-Builder shall reassess the accuracy and completeness of its notice. Upon correction of the Nonconforming Work (including incomplete Work) identified as a prerequisite to Substantial Completion, Design-Builder shall provide written notification to VPRA and VPRA will conduct additional inspections, surveys, and/or tests as VPRA deems desirable. This procedure shall be repeated until VPRA finds that Design-Builder has met all prerequisites to Substantial Completion.

19.2.3 Notice of Substantial Completion

VPRA will issue a Notice of Substantial Completion when:

- (a) VPRA determines that all conditions set forth in Section 19.2.1 have been satisfied;
- (b) VPRA determines that all Nonconforming Work (including incomplete Work) identified as prerequisites to Substantial Completion has been corrected or may be included in the Punch List, or VPRA has Accepted the Nonconforming Work in accordance with Section 5.5.2; and
- (c) VPRA has Approved Design-Builder's Punch List.

19.3 Completion of Bike/Ped Bridge

19.3.1 Notice by Design-Builder

Design-Builder shall provide written notice to VPRA when it has performed the Work specified in Section 22 of the Technical Provisions and fulfilled all requirements pertaining to the Bike/Ped Bridge as specified in the Construction Documents.

19.3.2 Correction of Defects

Upon receipt of Design-Builder's notice under Section 19.3.1, VPRA, together with DDOT, will conduct such inspections, surveys, and/or testing as VPRA deems desirable of the Bike/Ped Bridge. If such inspections, surveys, and/or tests disclose that any Work does not meet the requirements of Section 19.3.1 or the Contract Documents, VPRA will promptly advise Design-Builder as to Nonconforming Work (including incomplete Work) necessary to be corrected as a condition to Bike/Ped Bridge Substantial Completion, Nonconforming Work (including incomplete Work) that may be corrected as Punch List items, and/or whether Design-Builder shall reassess the accuracy and completeness of its notice. Upon correction of the Nonconforming Work (including incomplete Work) identified as a prerequisite to Bike/Ped Bridge Substantial

Completion, Design-Builder shall provide written notification to VPRA and VPRA will conduct additional inspections, surveys, and/or tests as VPRA deems desirable. This procedure shall be repeated until VPRA finds that Design-Builder has met all prerequisites to Bike/Ped Bridge Substantial Completion.

19.3.3 Notice of Bike/Ped Bridge Substantial Completion

VPRA will issue a Notice of Bike/Ped Bridge Substantial Completion when:

- (a) VPRA, in consultation with DDOT, determines that all conditions set forth in Section 19.3.1 have been satisfied;
- (b) VPRA, in consultation with DDOT, determines that all Nonconforming Work (including incomplete Work) identified as prerequisites to Bike/Ped Bridge Substantial Completion has been corrected or may be included in a Punch List, or VPRA has Accepted the Nonconforming Work in accordance with Section 5.5.2; and
- (c) VPRA has Approved Design-Builder's Punch List.

19.4 Final Acceptance

19.4.1 Conditions to Final Acceptance

19.4.1.1 Performance of Work After Substantial Completion

Developer shall immediately commence work on the Punch List items and diligently prosecute such work to completion, consistent with the Contract Documents within 90 days after receipt of the Notice of Substantial Completion. Design-Builder shall also satisfy all of its other obligations under the Contract Documents, including ensuring that the Project has been completed and all components have been properly adjusted and tested.

19.4.1.2 Conditions to Affidavit of Final Completion

Design-Builder shall provide to VPRA and DDOT an executed and sworn Affidavit of Final Completion stating the following, in addition to including the statement in Section 19.4.1.3:

- (a) all requirements for Substantial Completion have been fully satisfied and VPRA has issued Notice of Substantial Completion;
- (b) all requirements for Abutment B Substantial Completion have been fully satisfied and VPRA has issued Notice of Abutment B Substantial Completion;
- (c) all requirements for Bike/Ped Bridge Substantial Completion have been fully satisfied and VPRA has issued Notice of Bike/Ped Bridge Substantial Completion;
- (d) VPRA has received all Work Product, Issued for Construction Documents, Design Documents, As-Built Documents, right-of-way record maps, surveys, material certifications, test data, manufacturer's warranties, and other deliverables required under the Contract Documents;
- (e) all special tools, Equipment, furnishings, and supplies purchased by and/or used by Design-Builder as provided in the Contract Documents have been delivered to VPRA and all replacement spare parts have been purchased and delivered to VPRA free and clear of Liens;

- (f) all of Design-Builder's and Subcontractors' personnel, supplies, Equipment, waste materials, rubbish, and temporary facilities have been removed from the Site, Design-Builder has restored and repaired all damage or injury arising from such removal to the satisfaction of VPRA, and the Site is in good working order and condition;
- (g) Design-Builder has furnished to VPRA certifications from Design-Builder's Design Manager, in form and substance satisfactory to VPRA, certifying conformity of the Design Documents with the requirements of the Contract Documents;
- (h) Design-Builder has furnished to VPRA certifications from Design-Builder's Project Manager, in form and substance satisfactory to VPRA, certifying conformity of the Construction Work with the Design Documents;
- (i) Design-Builder has furnished to VPRA certifications from Design-Builder's Quality Manager, in form and substance satisfactory to VPRA, certifying that there are no outstanding nonconformances;
- (j) Design-Builder has furnished to VPRA certifications from Design-Builder's Environmental Compliance Manager, in form and substance satisfactory to VPRA, certifying that the Work is completed in accordance with the environmental requirements, including the completion of the Environmental Compliance Plan;
- (k) Design-Builder has furnished to VPRA certifications from Design-Builder's Project Manager and Quality Manager, in form and substance satisfactory to VPRA, certifying that all Materials incorporated in the Project conform to the requirements of the Contract Documents;
- (l) the Punch List items for Abutment B, the Bike/Ped Bridge, and the overall Project have been completed to the satisfaction of VPRA;
- (m) all of Design-Builder's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance as determined by VPRA) have been satisfied in full or waived in writing by VPRA; and
- (n) Design-Builder has furnished a list of the Unresolved Disputes to VPRA.

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

19.4.1.3 Requirements of Affidavit of Final Completion

The Affidavit of Final Completion referred to in Section 19.4.1.2 must include the following statement:

To the best of Design-Builder's knowledge and belief, the Work under the Agreement has been completed in strict accordance with the Contract Documents, no lawful debts for labor or Materials are outstanding, and no federal excise tax has been included in the Contract Price; all requests for funds for undisputed Work under the Agreement, including changes in the Work, and under all billings of whatsoever nature are accurate, complete, and final and no additional compensation over and above the Final Payment will be requested or is due under the Agreement or under any adjustment issued thereunder for said undisputed Work; except for the disclosed Unresolved Disputes and other disclosed claims and disputes, there are no outstanding claims, Liens or stop work notices relating

to the Project, including claims by Utility Owners, Subcontractors, and Suppliers; there is no existing default by Design-Builder under any Utility Agreement, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a claim relating to the Work or Event of Default under any Utility Agreement; and upon receipt of Final Payment, Design-Builder and Subcontractors acknowledge that VPRA and any and all employees of VPRA and their authorized representatives will thereby be released, discharged, and acquitted from any and all claims or liability for additional sums on account of undisputed Work performed under the Agreement.

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

19.4.2 Inspection and Issuance of Notice of Final Acceptance

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

19.4.3 Overpayments; No Relief from Continuing Obligations

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

19.5 Clayton Act Assignment

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

ARTICLE 20

Warranties

20.1 Warranties by Design-Builder

20.1.1 Project Warranties

Design-Builder warrants that:

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

20.1.2 Project Warranty Period

Except as provided herein and in Section 20.1.2.1, Design-Builder's Warranty period starts at Substantial Completion, except that a Warranty for a specific element owned by a Third-Party may start at the date the Third-Party accepts that specific element if (1) that date is prior to Substantial Completion, and (2) VPRA and Design-Builder have documented the earlier Warranty start date. Subject to extensions under Section 20.1.5, Design-Builder's Warranty obligations for all elements of the Project that will be owned by VPRA shall remain in effect until two years after Substantial Completion, except that any longer Warranty period specified elsewhere in the Contract Documents for a specific element of the Project shall control.

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

20.1.2.1 Project Warranty Period for the Bike/Ped Bridge

Design-Builder's Warranty period for the Bike/Ped Bridge starts at Bike/Ped Bridge Substantial Completion, as evidenced by VPRA's issuance of the Notice of Bike/Ped Bridge Substantial Completion. All other provisions in this Article 20 with respect to warranties shall apply to the Bike/Ped Bridge, including duration, extension, correction of Nonconforming Work, and all other provisions pertaining to the general Project warranties. Such provisions shall apply to the Bike/Ped Bridge in the same manner as applied to the general Project warranties. Design-Builder expressly acknowledges that at any time after Bike/Ped Bridge Substantial Completion, VPRA may assign to DDOT the Warranty related to the Bike/Ped Bridge provided within this Article 20, and that DDOT may thereafter enforce such Warranty directly against Design-Builder during the Warranty period with respect to any Warranty Work required on the Bike/Ped Bridge.

20.1.3 Corrective Work

20.1.3.1 Site Inspections

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

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

20.1.3.2 Notification and Performance of Corrective Work

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

20.1.3.3 Design-Builder Plan to Perform Warranty Work

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

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

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

20.1.3.4 Performance of Warranty Work

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

20.1.3.5 Emergency Corrective Work

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

20.1.3.6 Design-Builder Not Responsible for Certain Corrective Work

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

20.1.4 Costs of Correction of Work

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

20.1.5 Warranty of Corrected Work

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

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

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

20.2 Subcontractor Warranties

20.2.1 Assignment

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

Acceptance, and Approval, and (b) run directly to and be enforceable by Design-Builder and/or VPRA and their respective successors and assigns.

20.2.2 Enforcement

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

20.3 Assignment of Other Warranties

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

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

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

20.4 No Limitation of Liability

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

20.5 Warranty Beneficiaries

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

ARTICLE 21

Documents and Records

21.1 Escrowed Proposal Documents

21.1.1 Contents of Escrowed Proposal Documents

The Escrowed Proposal Documents (“EPDs”) shall consist of all cost, unit pricing, price quote, and other documentary information used in preparation of the Proposal Price, and provided to VPRA as part of the Proposal. The EPDs shall clearly detail how each cost or price included in the Proposal Price has been determined and shall show cost or price elements in sufficient detail adequate to enable VPRA to understand how Design-Builder calculated the applicable price. For Steel and diesel fuel, the EPDs shall show the unit price and assumed quantity used in the Proposal Price.

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

21.1.2 Manner and Duration of Retaining Escrowed Proposal Documents

As of the Effective Date, Design-Builder has provided one final copy of the EPDs and a detailed index and catalog of the EPDs. The EPDs and index shall be held in locked fireproof cabinet(s) supplied by Design-Builder and located in VPRA’s project office with the key to the fireproof cabinet(s) held only by Design-Builder. Further, concurrently with execution of each Subcontract or with approval of each Change Order or amendment to any Contract Document, the Parties shall add to the cabinet one copy of all documentary information respecting the Subcontractor bidding, pricing by the Subcontractor, or used in preparation of the Change Order or amendment, and shall update the index and catalog.

21.1.3 Retention of Escrowed Proposal Documents

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

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

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

21.1.4 Availability for Review

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

21.1.5 Proprietary Information

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

21.1.6 Design-Builder Representation

Design-Builder represents and warrants that the EPDs constitute all documentary information used in the preparation of the Proposal Price. Design-Builder agrees that no other information used to prepare the Proposal Price will be considered in resolving Disputes or Claims. Design-Builder further agrees that the EPDs are not part of the Contract Documents and that nothing in the EPDs shall change or modify any Contract Document.

21.1.7 Form of EPDs

Except as otherwise provided in the Contract Documents, Design-Builder shall submit the EPDs in such format as is used by Design-Builder in connection with the Proposal Price. Design-Builder represents and warrants that the EPDs provided with the Proposal were personally examined by an authorized officer of Design-Builder prior to delivery, and that the EPDs meet the requirements of this [Section 21.1](#). Design-Builder further represents and warrants that all additional EPDs to be provided hereunder were or will be personally examined prior to delivery by an authorized officer of Design-Builder, and that they shall meet the requirements of this [Section 21.1](#).

21.1.8 Review by VPRA to Confirm Completeness

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

21.1.9 EPDs for Change Order Pricing

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

21.2 Subcontractor Documents

21.2.1 Subcontractor Pricing Documents

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

21.3 Project Records

21.3.1 Maintenance of Records

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

21.3.2 Audit and Examination Rights

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

21.3.3 Audit of Force Account Work

If VPRA is paying for any Work on a Force Account basis, then the audit and examination rights include all books, records, documents, and other evidence and accounting principles and

practices sufficient to reflect all direct and indirect costs of any nature that Design-Builder claims to have incurred or anticipated to be incurred in performing the Work. If an examination indicates that Design-Builder has been overpaid under a previous progress report or Progress Payment, that overpayment will be credited against current progress reports or payments.

21.3.4 Change Order Pricing Data

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

21.3.5 Claims Examinations

All Claims filed against VPRA are subject to detailed examination at any time following the filing of the Claim. The examination may be performed by VPRA employees or by an auditor or other Person under contract with VPRA or under contract with VPRA's consultants. No notice is required before commencing any examination prior to 60 Days after Final Acceptance. Thereafter, VPRA will provide 20 Days' notice to Design-Builder and any Subcontractors or their respective agents whose records will be examined before commencing an examination. Design-Builder, Subcontractors or their agents must provide adequate facilities, acceptable to VPRA, for the examination during normal business hours. Design-Builder, Subcontractors, and their agents must cooperate with the Persons performing the examination. If Design-Builder, Subcontractors or their agents fail to maintain and retain sufficient records to allow the examiners to examine all of the Claim (or a Subcontractor's portion of the Claim) or fail to provide access to the books and records of Design-Builder, Subcontractors or their agents, then the Claim will be deemed waived and recovery for the Claim will be barred. With respect to item (q) and any other electronic correspondence, VPRA shall afford Design-Builder reasonable time to review the information for any applicable privileged communications before this waiver becomes effective. At a minimum, the following documents must be available as part of an examination:

- (a) Daily time sheets and supervisor's daily reports;
- (b) Union agreements;
- (c) Insurance, welfare, and benefits records;
- (d) Payroll registers;
- (e) Earnings records;
- (f) Payroll tax forms;
- (g) Material invoices and requisitions;
- (h) Material cost distribution worksheet;
- (i) Equipment records (list of company Equipment, rates, etc.);
- (j) Subcontractors' (including Suppliers) and agents' invoices;

- (k) Subcontractors' and agents' payment certificates;
- (l) Canceled checks (payroll and Suppliers);
- (m) Job cost report;
- (n) Job payroll ledger;
- (o) General ledger;
- (p) Cash disbursements journal;
- (q) E-mail, letters, and correspondence, including with Subcontractors and Suppliers;
- (r) Network servers, data storage devices, backup media;
- (s) All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim;
- (t) Non-privileged work sheets used to prepare the Claim establishing the cost components for items of the Claim including labor, benefits and insurance, Materials, Equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and
- (u) The native electronic files for all of the foregoing.

Design-Builder's full compliance with the provisions of this Section 21.3.5 is a condition precedent to Design-Builder's right to seek relief under Articles 12 and 18 and to the scheduling of a Neutral Session as provided in Section 18.3.5.2.

Design-Builder represents and warrants the completeness and accuracy of all information it or its agents provide in connection with this Section 21.3.

21.3.6 Separate Records for Disputed Work

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

21.4 Retention of Records

Design-Builder shall maintain all records and documents relating to the Agreement (including copies of all original documents delivered to VPRA) for five (5) years after Final Acceptance, unless otherwise notified by VPRA. Design-Builder shall notify VPRA of where Design-Builder is storing the records and documents. This retention period shall supersede any lesser period specified elsewhere in the Contract Documents or any of the Federal Requirements, regardless of order or precedence.

Design-Builder shall retain all records relating to Claims being processed or actions brought under the Dispute Resolution Process of this Agreement, even if the preceding paragraph allows Design-Builder to discard such records. Design-Builder shall make those records available to VPRA and its agents until the Parties have finally resolved the Claims and disputes. Design-

Builder shall retain all books, records, and other evidence bearing on Design-Builder's costs and expenses under the Contract Documents. Design-Builder shall make these records and documents available for examination at Design-Builder's Project office, at all reasonable times, and without charge to VPRA or VPRA's agents. Design-Builder shall allow VPRA and VPRA's agents to make copies of such documents. For Design-Builder's records in electronic form, Design-Builder shall provide VPRA and VPRA's agents with electronic copies of the documents on a portable media device or through another method of electronic transmission. VPRA and VPRA's agents are entitled to copy and retain all native electronic files in addition to copies thereof in electronic or other formats.

21.5 Virginia Freedom of Information Act

21.5.1 Applicability of VFOIA

Design-Builder understands VPRA must follow the requirements of the Virginia Freedom of Information Act ("VFOIA"), §§ 2.2-3700 et seq. of the Code of Virginia, and must disclose records requested under VFOIA for which there is no applicable exclusion. If Design-Builder discloses to VPRA information it deems confidential under this Agreement, it agrees to clearly mark any information with the word "confidential," "trade secret," or "non-public," as applicable, before providing it to VPRA, and to use the form attached as Exhibit S to invoke the appropriate provision of VFOIA exempting such records. If Design-Builder desires to prevent disclosure of certain materials or information, Design-Builder shall take all steps Design-Builder deems necessary at its sole cost and expense without the right to an adjustment of the Contract Price or a Completion Deadline. VPRA will respond to all requests for records and information as required by Law or court order.

21.5.2 Confidential Materials

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

21.5.3 Request for Design-Builder Escrowed Proposal Documents

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

ARTICLE 22

Miscellaneous Provisions

22.1 Amendments

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

22.2 Waiver

22.2.1 No Waiver of Subsequent Rights

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

22.2.2 Custom Does not Constitute Waiver

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

22.2.3 Waivers Must Be in Writing

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

22.3 Independent Contractor

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

22.4 Successors and Assigns

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

22.4.1 Assignment by VPRA

VPRA may assign all or part of its right, title, and interest in and to the Agreement, including rights with respect to the Performance and Payment Bonds, any Guarantee, and any other performance security provided, to a successor or other governmental body that assumes all or part of VPRA's obligations with respect to the Project.

22.4.2 Assignment by Design-Builder

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

22.5 Designation of and Cooperation with Representatives

22.5.1 Designation of Representatives

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

22.5.2 Cooperation

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

22.6 Reserved

22.7 Survival

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

22.8 Limitation on Third-Party Beneficiaries

The Parties do not intend for any of the provisions of the Contract Documents to create any third-party beneficiary unless a specific provision (such as the warranty and indemnity provisions)

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

22.9 No Personal Liability

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

22.10 Notices and Communication

22.10.1 Delivery of Notices

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

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

Long Bridge Rail Partners
P.O. Box 6774
225 North Shore Drive
Pittsburgh, PA 15212
Attn.: Bryon Breese
Telephone: 571-220-3115
Email: Bryon.Breese@trumbullcorp.com

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

Long Bridge Rail Partners
P.O. Box 6774
225 North Shore Drive
Pittsburgh, PA 15212

Attn.: Lauren Rodriguez, General Counsel
Telephone: 412-807-2174
Email: lauren.rodriguez@trumbullcorp.com

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

Virginia Passenger Rail Authority
Attn.: Gang Zhang
919 E. Main Street, Suite 2400
Richmond, VA 23219
Email: gang.zhang@vpra.virginia.gov

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

Virginia Passenger Rail Authority
Attn: Michael Westermann, General Counsel
919 E. Main Street, Suite 2400
Richmond, VA 23219
With a copy to: michael.westermann@vpra.virginia.gov

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

22.10.2 Receipt of Notices

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

22.10.3 Copies of Correspondence to VPRA

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

22.11 Forum and Venue; Waiver of Jury Trial

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

22.12 Notice of Bankruptcy or Insolvency

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

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

22.13 Immigration Reform and Control Act of 1986

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

22.14 Drug Free Workplace

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

22.15 Occupational Safety and Health Standards

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

22.16 Sensitive Security Information; Critical Infrastructure

Design-Builder must protect, and take measures to assure that its Subcontractors at each tier protect sensitive information made available during the course of administering a VPRA contract or Subcontract in accordance with 49 U.S.C. § 40119(b) and implementing U.S.DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. § 114(s) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520. VPRA reserves the right to conduct a fingerprint-based CHBC on all employees of Design-Builder and Subcontractors (together with any proposed replacements) during the term of the Agreement to the extent those individuals will require access to SSI and/or Critical Infrastructure associated with the Project. All costs associated with the fingerprint-based CHBC are the responsibility of Design-Builder. A VPRA issued photo-identification badge may be required for each employee of Design-Builder or any Subcontractor who will need access to SSI and/or Critical Infrastructure. Based upon the results of the fingerprint-based CHBC, VPRA reserves the right to deny issuance of a VPRA security clearance or a VPRA issued photo-identification badge. Design-Builder shall promptly return all VPRA-issued photo-identification badges whenever an employee of Design-Builder or a Subcontractor is no longer assigned to the Project or is otherwise terminated from employment.

22.17 Marketing and Publicity

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

22.18 Duty to Cooperate on Funding Opportunities

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

22.19 Further Assurances

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

22.20 Severability

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

22.21 Headings

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

22.22 Governing Law

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

22.23 Sovereign Immunity

VPRA, specifically and the Commonwealth generally, neither waive nor abrogate their sovereign immunity, in part or in whole, in any manner, under any theory, hereunder. Notwithstanding the foregoing, VPRA agrees and acknowledges that the Agreement constitutes a legal, valid, and

binding obligation of VPRA, enforceable against VPRA in accordance with its terms, except as enforceability may be limited or otherwise affected by (i) bankruptcy, insolvency, reorganization, moratorium, and other laws affecting the rights of creditors generally, (ii) principles of equity, whether considered at law or in equity, and (iii) the sovereign immunity of the Commonwealth; provided that sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement presented in accordance with the law of the Commonwealth.

22.24 Entire Agreement

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

22.25 Counterparts; Electronic Signatures

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

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

VIRGINIA PASSENGER RAIL AUTHORITY

By: _____ DJ STADTLER Its: Executive Director Date: _____, 20__ <i>Document Executed Pursuant to Delegation of Authority</i>

DESIGN-BUILDER

Trumbull Corporation
By: _____
Name: _____
Title: _____
Date: _____, 20__

Joseph B. Fay, Co.
By: _____
Name: _____
Title: _____
Date: _____, 20__

Wagman Heavy Civil, Inc.
By: _____
Name: _____
Title: _____
Date: _____, 20__