



COMMONWEALTH of VIRGINIA

Virginia Passenger Rail Authority

DJ Stadtler
Executive Director

919 East Main Street, Suite 2400
Richmond, Virginia 23219

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

Tiffany Robinson
Chairperson

RESOLUTION OF THE VIRGINIA PASSENGER RAIL AUTHORITY BOARD

January 16, 2025

MOTION

Made By: **Patty Doersch** Seconded By: **Cynthia Moses-Nedd**

Action: **Motion carried, unanimously**

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

WHEREAS, on June 30, 2023, the Virginia Passenger Rail Authority (“**VPRA**”) published a request for qualifications soliciting statements of qualifications from design-build teams for the Long Bridge Project – South Package; and

WHEREAS, VPRA received statements of qualifications in response, and on November 30, 2023, VPRA shortlisted two design-build teams to submit proposals to design and construct the Long Bridge Project – South Package; and

WHEREAS, on February 9, 2024, VPRA published Request for Proposals No. 01-001-24-0002 (the “**RFP**”), soliciting proposals from the two shortlisted teams; and

WHEREAS, on September 4, 2024, VPRA received a proposal in response to the RFP from each of the following two shortlisted teams:

- (i) a joint venture comprised of: (a) Trumbull Corp., (b) Joseph B. Fay, Co., and (c) Wagman Heavy Civil, Inc., and collectively referred to as Long Bridge Rail Partners (“**LBRP**”), and
- (ii) a joint venture comprised of: (a) Archer Western Construction, LLC and (b) Traylor Bros., Inc., and collectively referred to as Archer-Western/Traylor Brothers; and

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

WHEREAS, in accordance with §§ 2.7 and 9 of the RFP and § 3.2.3.3 of VPRA's *Procurement Rules*, VPRA conducted limited negotiations with LBRP and has finalized terms and conditions of a design-build agreement, which is attached hereto as **EXHIBIT A**; and

WHEREAS, the Board now desires to award the design-build agreement for the Long Bridge Project – South Package to LBRP.

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

EXHIBIT A

[SEE ATTACHED]

####



LONG BRIDGE PROJECT SOUTH PACKAGE

DESIGN-BUILD AGREEMENT

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



TABLE OF CONTENTS

RECITALS 1
ARTICLE 1 Contract Components, Interpretation..... 3
 1.1 Definitions..... 3
 1.2 Contract Documents and Order of Precedence..... 3
 1.3 Interpretations..... 4
 1.4 Referenced Standards and Specifications..... 4
 1.5 Omission of Details 5
 1.6 Computation of Periods..... 5
 1.7 Standards for Approvals..... 5
 1.8 Federal and District Requirements 5
 1.9 Compliance with Laws 6
 1.10 Approvals for Alternative Technical Concepts 6
ARTICLE 2 Scope of Work..... 7
 2.1 Design-Builder to Perform the Work..... 7
 2.2 Design Work 7
 2.3 Documents Furnished by VPRA..... 7
 2.4 Designated VPRA-Furnished Information..... 7
 2.5 Ownership of Work Product 8
 2.6 Scope Validation 8
ARTICLE 3 Design-Builder’s Obligations; VPRA’s Obligations..... 12
 3.1 Design-Builder’s Performance Requirements..... 12
 3.2 General Obligations of Design-Builder 13
 3.3 Small, Diverse, and Disadvantaged Business Requirements 14
 3.4 Representations, Warranties, and Covenants 15
 3.5 Design Requirements 17
 3.6 VPRA’s Obligations, Generally..... 18
 3.7 Ownership of Design..... 19
ARTICLE 4 Performance of Construction Work..... 20

4.1	Time of the Essence	20
4.2	Notices to Proceed.....	20
4.3	Completion Deadlines	22
4.4	Baseline Schedule	22
4.5	Prerequisites for Start of Construction.....	23
ARTICLE 5 Control of the Work		24
5.1	Control and Coordination of Work	24
5.2	Safety	24
5.3	Construction Quality Management	24
5.4	Effect of Oversight	25
5.5	Nonconforming Work	25
ARTICLE 6 Site Access, Utilities, Environmental, Railroads.....		28
6.1	Access to Project ROW.....	28
6.2	Utility Work.....	29
6.3	Utility Work Obligations	31
6.4	Environmental Compliance	31
6.5	Railroads	32
ARTICLE 7 Equal Employment Opportunity, Non-Discrimination, Subcontracts, Labor.....		34
7.1	Equal Employment Opportunity.....	34
7.2	Non-Discrimination.....	34
7.3	Prevailing Wages	35
7.4	Subcontracting Requirements.....	36
7.5	Key Personnel Requirements.....	39
7.6	Independent Design Quality Manager	40
7.7	Employee Performance Requirements.....	40
ARTICLE 8 Surety Bonds, Guarantees, Joint & Several Liability.....		41
8.1	Performance and Payment Bonds	41
In addition to VPRA, the Performance and Payment Bonds shall include the Virginia Department of Transportation as an obligee.		41
8.2	Duration of Performance Bond.....	41
8.3	Utility Work.....	41

8.4	Guarantee.....	41
8.5	Joint and Several Liability	42
8.6	No Relief of Liability and Double Recovery	42
ARTICLE 9 Insurance		43
9.1	General Insurance Requirements	43
ARTICLE 10 Risk of Loss.....		45
10.1	Site Security and Maintenance.....	45
10.2	Maintenance and Repair of Work and On-Site Property.....	45
10.3	Damage to Off-Site Property.....	46
10.4	Title.....	46
ARTICLE 11 Contract Price; Payment.....		47
11.1	Contract Price	47
11.2	Invoicing and Payment.....	48
11.3	Limitations on Payment; Retainage.....	48
11.4	Deductions.....	50
11.5	Final Payment.....	50
11.6	Payments to Subcontractors	51
11.7	Interest on Late Payments	52
11.8	Disputes.....	52
ARTICLE 12 Changes in the Work.....		53
12.1	Circumstances Under Which a Change Order May Be Issued	53
12.2	VPRA-Initiated Change Orders	54
12.3	Design-Builder-Initiated Agreement Modification.....	55
12.4	Delivery of Request for Change Order	58
12.5	VPRA Response to Request for Change Order	60
12.6	Subcontractor Claims.....	61
12.7	Allowance for Specified Relief Events	61
12.8	Limitations on Change Orders and Allowance Draws.....	62
12.9	Payment for Extra Work Change Orders.....	64
12.10	Force Account Change Orders.....	65

12.11	Payment of Change Orders	65
12.12	Additional Conditions and Limitations on Certain Relief Events.....	66
12.13	Price Adjustments for Certain Materials	70
12.14	Matters Not Eligible for Change Orders.....	70
12.15	Waiver	72
12.16	No Release or Waiver.....	72
12.17	Change Order Disputes	72
12.18	Performance of Disputed Work	72
12.19	Change Order Status Log	73
ARTICLE 13	Suspension of the Work	74
13.1	Suspension for Convenience	74
13.2	Suspension for Cause.....	74
13.3	Design-Builder Responsibilities During Suspension	74
13.4	Suspension of Construction Work	74
ARTICLE 14	Termination for Convenience	76
14.1	Notice of Termination.....	76
14.2	Design-Builder's Responsibilities upon Termination.....	76
14.3	Responsibility After Notice of Termination.....	77
14.4	Negotiated Termination Settlement.....	77
14.5	Determination of Settlement Amount if Negotiations Fail.....	78
14.6	Partial Termination.....	79
14.7	Reduction in Amount of Claim.....	79
14.8	Inclusion in Subcontracts	80
14.9	Limitation on Payments to Subcontractors	80
14.10	No Unearned Profits or Consequential Damages.....	80
14.11	No Waiver.....	80
14.12	Dispute Resolution.....	81
14.13	Allowability of Costs	81
14.14	Provision of Records to Establish Costs.....	81
ARTICLE 15	Default.....	82

15.1	Default by Design-Builder	82
15.2	Remedies.....	84
15.3	Right to Stop Work if Undisputed Payment is Not Made.....	86
15.4	Notice and Opportunity to Cure Other Types of VPRA Breaches	86
15.5	Availability of Funds; Appropriation	87
ARTICLE 16 Damages.....		88
16.1	Liquidated Damages and Disincentives	88
16.2	Other Remedies, Damages.....	91
16.3	Set-Off; Waiver	91
16.4	Payment of Liquidated Damages	91
16.5	Limitations on Damages.....	92
ARTICLE 17 Indemnification		93
17.1	Indemnifications by Design-Builder	93
17.2	Responsibility of VPRA for Certain Contaminated Materials	93
17.3	No Effect on Other Rights	94
17.4	CERCLA Agreement.....	94
ARTICLE 18 Partnering and Dispute Resolution		95
18.1	Partnering	95
18.2	Dispute Resolution Process	95
18.3	Use of Neutral for Dispute Resolution	97
18.4	Continuation of Work During a Dispute	100
18.5	Litigation of Unresolved Disputes.....	100
18.6	Attorney’s Fees.....	101
ARTICLE 19 Completion and Acceptance of Project.....		102
19.1	Completion of Abutment B	102
19.2	Substantial Completion	102
19.3	Completion of Bike/Ped Bridge	104
19.4	Final Acceptance	105
19.5	Clayton Act Assignment.....	107
ARTICLE 20 Warranties.....		108

20.1	Warranties by Design-Builder.....	108
20.2	Subcontractor Warranties	110
20.3	Assignment of Other Warranties	111
20.4	No Limitation of Liability	111
20.5	Warranty Beneficiaries.....	111
ARTICLE 21 Documents and Records.....		112
21.1	Escrowed Proposal Documents	112
21.2	Subcontractor Documents.....	114
21.3	Project Records	114
21.4	Retention of Records	116
21.5	Virginia Freedom of Information Act.....	117
ARTICLE 22 Miscellaneous Provisions		118
22.1	Amendments.....	118
22.2	Waiver	118
22.3	Independent Contractor	118
22.4	Successors and Assigns.....	119
22.5	Designation of and Cooperation with Representatives	119
22.6	Reserved	119
22.7	Survival.....	119
22.8	Limitation on Third-Party Beneficiaries.....	119
22.9	No Personal Liability	120
22.10	Notices and Communication	120
22.11	Forum and Venue; Waiver of Jury Trial.....	121
22.12	Notice of Bankruptcy or Insolvency	121
22.13	Immigration Reform and Control Act of 1986	122
22.14	Drug Free Workplace.....	122
22.15	Occupational Safety and Health Standards.....	122
22.16	Sensitive Security Information; Critical Infrastructure	122
22.17	Marketing and Publicity.....	123
22.18	Duty to Cooperate on Funding Opportunities	123

22.19 Further Assurances.....	123
22.20 Severability	123
22.21 Headings	123
22.22 Governing Law.....	123
22.23 Sovereign Immunity	123
22.24 Entire Agreement.....	124
22.25 Counterparts; Electronic Signatures.....	124

EXHIBITS

Exhibit	
A.	Acronyms and Definitions
B-1.	Proposal Commitments
B-2.	Alternative Technical Concepts
C.	Special Terms and Conditions (Federal Railroad Administration Clauses) (Form PD 260 (FRA/CON))
D.	Standard Federal Equal Employment Opportunity Construction Contract Specifications
E.	Federal-State Partnership for Intercity Passenger Rail Program Provisions (Appendixes A, E, Exhibit B.5)
F.	Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Program Provisions
G.	Designated VPRA-Furnished Information
H.	Required Certifications
I.	Utility Relocation Agreement Template
J.	Davis-Bacon Wages
K.	Extra Work and Delay Cost Specification
L.	Key Personnel
M.	Form of Performance and Payment Bonds
N.	Form of Guarantee
O.	Insurance Requirements
P.	Designated Representatives
Q.	Special Provision Involving Property and Facilities Owned, Controlled or Utilized by CSX Transportation, Inc., Norfolk Southern Railway Company, and the National Railroad Passenger Corporation (SP 01)
R.	Design-Builder's Construction Draw Schedule and Proposal Price Breakdown
S.	Confidential / Proprietary Information Designation Form
T.	Approved Small and Diverse Business Subcontracting Plan (Form PD 60)
U.	Approved DBE Utilization Plan (Form PD 50B)
V.	Monthly Small and Diverse Business Subcontracting Utilization Report (Form PD 61)
W.	Monthly DBE Participation Report (Form PD 51)

X.	Cost Breakdown Structure
Y.	DDOT Memorandum of Agreement
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__

DESIGN-BUILD AGREEMENT EXHIBITS

Exhibit A – Acronyms and Definitions	1
Exhibit B-1 – Proposal Commitments	29
Exhibit B-2 – Alternative Technical Concepts	34
Exhibit C – Special Terms and Conditions (Federal Railroad Administration Clauses) (Form PD 260 (FRA/CON))	35
Exhibit D – Standard Federal Equal Employment Opportunity Construction Contract Specifications	48
Exhibit E – Federal-State Partnership for Intercity Passenger Rail Program Provisions (Appendixes A, E, Exhibit B.5)	53
Exhibit F – Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Program Provisions	66
Exhibit G – Designated VPRA-Furnished Information	71
Exhibit H – Required Certifications	72
Exhibit I – Utility Relocation Agreement Template	73
Exhibit J – Davis-Bacon Wages	84
Exhibit K – Extra Work And Delay Costs Specification	85
Exhibit L – Key Personnel	92
Exhibit M – Form of Performance and Payment Bonds	97
Exhibit N – Form of Guarantee	109
Exhibit O – Insurance Requirements	120
Exhibit P – Designated Representatives	127
Exhibit Q – Special Provision Involving Property and Facilities Owned, Controlled or Utilized by CSX Transportation, Inc., Norfolk Southern Railway Company, and the National Railroad Passenger Corporation (SP 01)	128
Exhibit R – Design-Builder’s Construction Draw Schedule and Proposal Price Breakdown	133
Exhibit S – Confidentiality / Proprietary Information Designation Form	134
Exhibit T – Approved Small and Diverse Business Subcontracting Plan (Form PD 60)	135
Exhibit U – Approved DBE Utilization Plan (Form PD 50B)	136
Exhibit V – Monthly Small and Diverse Business Subcontracting Utilization Report	

(Form PD 61)	137
Exhibit W – Monthly DBE Participation Report (Form PD 51)	139
Exhibit X – Cost Breakdown Structure	141
Exhibit Y – DDOT Memorandum of Agreement	149
Exhibit Z – Special Provision Regarding Participation in the U.S. Department of Labor’s Office of Federal Contract Compliance Programs Mega Construction Project Program (SP10)	150

EXHIBIT A – ACRONYMS AND DEFINITIONS

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

A.1 Acronyms

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ACM	Asbestos-containing Materials
ADA	Americans with Disabilities Act
AES	Area of Environmental Sensitivity
AGC	Associated General Contractors of America, Inc.
AHJ	Authorities Having Jurisdiction
AISC	American Institute of Steel Construction
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute
AOR	Audited Overhead Rate
APE	Area of Potential Effect
APL	Approved Products List
APS	Accessible Pedestrian Signals
AREMA	American Railway Engineering and Maintenance Association
ARTBA	American Road and Transportation Builders Association
ASCII	American Standard Code of Information Interchange
ASTM	ASTM International; formerly American Society of Testing and Materials
ATC	Alternative Technical Concept
ATMS	Advanced Traffic Management System
BMP	Best Management Practices
CADD	Computer-Assisted Drafting and Design
CCI	ENR Construction Cost Index
CCTV	Closed-Circuit Television
CFR	Code of Federal Regulations
CHBC	Criminal History Background Check
CIP	Cast-In-Place

CLOMA	Conditional Letters of Map Amendment
CLOMR	Conditional Letters of Map Revision
CLSM	Controlled Low Strength Material
CMS	Changeable Message Sign
CMP	Communications Plenum Cable or Corrugated Metal Pipe
CPM	Critical Path Method
CPR	Concrete Pavement Rehabilitation
CPT	Cone Penetration Test
CQM	Construction Quality Manager
CQP	Construction Quality Procedure
C&S	Communications and Signals
DBA	Design-Build Agreement
DBE	Disadvantaged Business Enterprise
DCP	Dynamic Cone Penetrometer or Penetration Index Method
DDOT	The District Department of Transportation
DMS	Dynamic Message Sign
DQM	Design Quality Manager
DQMP	Design Quality Management Plan
DSBSD	Department of Small Business and Supplier Diversity
EA	Environmental Assessment
EAW	Environmental Assessment Worksheet
ECM	Environmental Compliance Manager
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EMI	Environmental Monitoring Inspector
EMR	Environmental Monitoring Report
EOR	Engineer of Record
EPA	(U.S.) Environmental Protection Agency
EPD	Escrowed Proposal Documents
ESA	Endangered Species Act
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation
FCC	Federal Communications Commission
FDC	Field Design Change
FEIS	Final Environmental Impact Statement

FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FRA	Federal Railroad Administration
GAAP	Generally Accepted Accounting Principles
GDR	Geotechnical Data Report
GIS	Geographic Information System
HMA	Hot Mix Asphalt
IDQM	Independent Design Quality Manager
IFC	Issued for Construction
ISO	International Organization for Standardization
ITP	Instructions to Proposers
ITS	Intelligent Transportation Systems
klf	kip per linear foot
ksi	kip per square inch
KW	Kilowatt
LOD	Limits of Disturbance
LOE	Level of Effort
LOS	Level of Service
LRFD	Load Resistance Factor Design
LRFR	Load and Resistance Factor Rating
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding
MSDS	Material Safety Data Sheets
MSE	Mechanically Stabilized Earth
MUA	Master Utility Agreement
MUTCD	Manual on Uniform Traffic Control Devices
MWAA	Metropolitan Washington Airports Authority
NBIS	National Bridge Inspection Standards
NCR	Non-Conformance Report
NDC	Notice of Design Change
NEC	National Electrical Code
NEPA	National Environmental Policy Act
NFPA	National Fire Protection Association
NHS	National Highway System
NPDES	National Pollutant Discharge Elimination System

NPS	National Park Service
NTP	Notice to Proceed
NWL	Normal Water Level
OSHA	Occupational Safety and Health Administration
OTS	Over-the-Shoulder
PCC	Portland Cement Concrete
PM	Project Manager
PMO	Project Management Office
psi	Pounds per square inch (pressure, stress)
QA	Quality Assurance
QC	Quality Control
QP	Quality Plan
RFCO	Request for Change Order
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Qualifications
RID	Reference Information Documents
ROD	Record of Decision
ROW	Right of Way
R/W	Right of Way
RSC	Rigid Steel Conduit
RSS	Reinforced Soil Slopes
SIA	Schedule Impact Analysis
SMP	Stormwater Management Plan
SOE	Support of Excavation
SOQ	Statement of Qualifications
SSI	Sensitive Security Information
SUE	Subsurface Utility Engineering
SUP	Special Use Permit
SWM	Stormwater Management
SWPPP	Stormwater Pollution Prevention Plan
TCD	Traffic Control Device
TMP	Transportation Management Plan
UDS	Utility Design Sheet
U.S.C.	United States Code

USACE	(U.S.) Army Corps of Engineers
USCG	United States Coast Guard
USDOT	United States Department of Transportation
USDOL	United States Department of Labor
USGS	United States Geological Survey
USFWS	U.S. Fish and Wildlife Service
VE	Value Engineering
VQMP	Visual Quality Management Plan
VQP	Visual Quality Plan
WBS	Work Breakdown Structure

A.2 Definitions

Abutment B	The bridge abutment element as described further in Section 15.14 of the Technical Provisions.
Abutment B Deadline	The meaning set forth in <u>Section 4.3.1</u> .
Abutment B Substantial Completion	The occurrence and completion of the events described in <u>Section 19.1</u> to VPRA's satisfaction, evidenced by VPRA's issuance of a Notice of Abutment B Substantial Completion.
Acceleration Costs	Costs reasonably incurred by Design-Builder (i.e., costs over and above what Design-Builder would otherwise have incurred) that are directly attributable to increasing the performance level of the Work to complete necessary activities of the Work earlier than otherwise anticipated or to meet an existing Completion Deadline, such as for additional Equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision, and any unexpected movement of Materials, Equipment, or crews necessary for resequencing in connection with acceleration efforts.
Accept or Acceptance	Formal conditional determination in writing by VPRA that a particular matter or item appears to meet the requirements of the Contract Documents.
Addendum	A change to the RFP prior to the due date for Proposals.
Affidavit of Final Completion	The affidavit described in <u>Section 19.2.1.2</u> .
Affiliate	<p>(a) Any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Design-Builder or a Principal Participant; or</p> <p>(b) any Person for which 20 percent or more of the equity interest in such Person is held directly or indirectly, beneficially, or of record by, (i) Design-Builder, (ii) any Principal Participant, or (iii) any Affiliate of Design-Builder under clause (a) of this definition.</p> <p>For purposes of this definition, the term "control" means the possession directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relation, or otherwise.</p>
Agreement or Contract	The Design-Build Agreement between VPRA and Design-Builder dated January 17, 2025 and the Contract Documents as defined in <u>Section 1.2</u> .
Allowance	The allowance of \$30,000,000 to compensate Design-Builder without a Change Order for Extra Work Costs and Delay Costs caused by the occurrence of the Relief Events specified in <u>Section 12.7.1</u> .
Alternative Technical Concept	Design-Builder's request in accordance with the procedures in the RFP to perform Work that differs from the design, construction, and/or technical requirements of the Contract Documents and is of higher quality than the requirements of the Technical Provisions, which was included with the Proposal with VPRA's approval.

Amtrak	The National Railroad Passenger Corporation.
Applicable Standards	The standards referenced by incorporation into the Technical Provisions.
Application for Final Payment	The application described in <u>Section 11.5.1</u> .
Application for Payment	Design-Builder’s application for a Progress Payment in accordance with Section 2.4 of the Technical Provisions.
Approve or Approval	Formal conditional determination in writing by VPRA that a particular matter or item is good or satisfactory for the Project.
Area of Potential Effect	As defined in 36 C.F.R. § 800.16(d).
As-Built Documents	Documents that reflect all changes made in the drawings and specifications during the construction process, and show the exact dimensions, geometry, and location (including alignment points) of all elements of the Work completed under the Contract Documents.
Audited Overhead Rate	The audited rate of markup that is applicable to the relevant labor costs in accordance with Part 31 of the Federal Acquisition Regulation. The amount of the Audited Overhead Rate is calculated by multiplying the rate by the amount of direct cost to which the rate applies.
Authorities Having Jurisdiction	Third-Parties that have jurisdiction and/or approval rights over all or portions of the Project.
Baseline Schedule	The schedule Approved by VPRA setting forth the schedule of Work, as described in Section 3 of the Technical Provisions. Baseline Schedule means the most recent Approved Baseline Schedule.
Best Management Practices (BMP)	Management practices for erosion prevention, sediment control, and water quality that are the most effective and practicable means of controlling, preventing, and minimizing degradation of surface water, including avoidance of impacts, construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by state or designated area-wide planning agencies.
Best Value	Means the overall combination of quality, price, and various elements of required services that in total are optimal relative to VPRA’s needs.
Betterment	The upgrading of a Utility being relocated that is not attributable to the construction of the Project or is made solely for the benefit of and at the election of the Utility Owner. The use of new Materials or compliance with current standards in the performance of the Utility Work is not considered a Betterment.
Bike/Ped Bridge	The Bicycle and Pedestrian facility component of the Project, as described further in Section 23 of the Technical Provisions.
Bike/Ped Bridge Deadline	The meaning set forth in <u>Section 4.3.3</u> .

Bike/Ped Bridge Substantial Completion	The occurrence and completion of the events described in <u>Section 19.3</u> to VPRA's and DDOT's satisfaction, evidenced by VPRA's issuance of a Notice of Bike/Ped Bridge Substantial Completion.
Calendar Day	Any day shown on the calendar, beginning and ending at midnight.
Change in Law	Any change in a Law or adoption of a new Law, after the Setting Date, to the extent such changed or new Law: <ul style="list-style-type: none">(a) requires a material modification to the Design;(b) requires Design-Builder to obtain a new Environmental Approval not previously required for the Project; or(c) specifically targets the Project or Design-Builder. A "Change in Law" does not include the following: <ul style="list-style-type: none">(i) Any change in, or new, Law that was passed or adopted but not yet effective as of the date of the Setting Date;(ii) Any change in, or new, labor Laws of the Commonwealth or Washington, D.C.;(iii) Any change in, or new, Law relating to Design-Builder's general business operations, including minimum wage, licensing and registration fees, income taxes, gross receipts taxes, property taxes, transaction privilege taxes, sales and use taxes, payroll-related taxes, unemployment taxes or any other tax law changes.
Change Notice	Notification by Design-Builder that a Relief Event or potential Relief Event has occurred, as further described in <u>Article 12</u> .
Change Order	A written amendment to the Contract Documents, including a Unilateral Change Order.
Claim	A request or demand by Design-Builder for (a) a Completion Deadline adjustment, or (b) payment of money or damages exceeding the Contract Price arising from work done by or on behalf of Design-Builder in connection with the Agreement. A claim will cease to be a Claim upon resolution thereof, including resolution by delivery of a Change Order. Claims include all requests for adjustments to the Contract Price and/or Completion Deadlines arising out of a Relief Event. A Claim arising out of a Relief Event is considered filed or submitted upon Design-Builder's submission to VPRA of a Change Notice.
Commonwealth	The Commonwealth of Virginia.
Completion Deadline	The Abutment B Deadline, Substantial Completion Deadline, Bike/Ped Bridge Deadline, and/or Final Acceptance Deadline, depending on the context.
Conceptual Design	The 30% conceptual design for the Project provided by VPRA and included in the Reference Information Documents.
Concurrent Delay	Delay to the Critical Path of the Baseline Schedule that is simultaneously caused by both VPRA and Design-Builder.
Construction Documents	All working drawings and samples necessary for construction of the Project in accordance with the Contract Documents. Documents include Non-Conformance

Reports (NCR), monthly reports, submittals, test reports, test results, Request for Information (RFI), Field Design Changes (FDC), Notice of Design Changes (NDC), and other official correspondence to/from Design-Builder, VPRA, and Subcontractors.

Construction Screening Plan

Design-Builder's Approved plan for visual screening of construction areas throughout Construction Work.

Construction Work

All work to build or construct, make, form, manufacture, furnish, supply, install, deliver, or equip the Project.

Constructor

A Principal Participant or Subcontractor that performs Construction Work for the Project.

Contaminated Materials

(a) Any soil, sediment, debris, or water that has chemical contaminants at or above federal, Commonwealth or Local regulatory criteria.

(b) Any substance, product, waste or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to any Environmental Law,

(c) any substance, product, waste or other material of any nature whatsoever that exceeds maximum allowable concentrations for elemental metals, organic compounds or inorganic compounds, as defined by any Law,

(d) any substance, product, waste or other material of any nature whatsoever that may give rise to liability under clause (b) or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court,

(e) petroleum hydrocarbons, excluding petroleum hydrocarbon products contained within regularly operated motor vehicles, and

(f) All hazardous or toxic substances, materials, wastes, pollutants and contaminants which are listed, defined, or regulated under applicable laws, rules, regulations, codes, ordinances, orders and directives pertaining or regulated to health, safety or the environment, including the Comprehensive Environmental Response Compensation and Liability Act as amended, (42 U.S.C. § 9601 et seq), the Resource Conservation and Recovery Act as amended, (42 U.S.C. § 6901 et seq), the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1451 to 1387), the Clean Air Act (42 U.S.C.A. §§ 7401 to 7671q), the Emergency Planning and Community Right to Know Act (42 U.S.C.A. §§ 11001 to 11050), the Toxic Substances Control Act (15 U.S.C.A. §§ 2601 to 2692), the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901 to 6992k), the Oil Pollution Act (33 U.S.C.A. §§ 2701 to 2761) and all rules and regulations promulgated pursuant thereto. Without limiting the generality of the foregoing, "Contaminated Materials" shall specifically include polychlorinated biphenyl, asbestos (friable and non-friable), radon, urea formaldehyde, gasoline, diesel, oil, hydrocarbons, petroleum derived constituents, biomedical waste, or hazardous or toxic residue.

Contract Days

The total number of Days for performance of the Work, starting (and including) the date of issuance of the NTP 1 and ending on the date of Substantial Completion, as adjusted.

Contract Documents

The meaning set forth in Section 1.2.

Contract Price	The lump-sum price to complete the Work stated in <u>Section 11.1.1</u> , payment of which is subject to the conditions stated in the Agreement.
Cost Breakdown Structure	A breakdown or hierarchal representation of the various costs on the Project that represents the cost components in the Work Breakdown Structure.
Court Order	An order by a court of competent jurisdiction that enjoins or otherwise significantly restricts all or any portion of the Work.
CPM Schedule	The meaning set forth in Section 3 of the Technical Provisions.
Critical Activity	An activity with zero or negative total Float.
Critical Infrastructure	A system or asset so vital that its incapacity or destruction would (i) have a debilitating impact on public health, safety or security; or (ii) cause significant economic harm or instability.
Critical Path	The longest continuous sequence of activities through a schedule that establishes the minimal overall duration to Substantial Completion.
Day or day	The meaning set forth in <u>Section 1.6</u> .
DDOT Assets	Assets or property that DDOT will own, operate, and maintain after construction of the Project or (ii) components of the Project that will impact the DDOT-controlled “public space” (e.g., rail bridges over public space).
Delay Costs	Design-Builder’s additional costs due to a delay to the Critical Path caused by a Relief Event, as limited to those costs provided in <u>Exhibit K</u> .
Design	The design of the Project.
Design-Builder or Contractor	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-Related-Entity	Design-Builder; Design-Builder’s shareholders, members, partners, or joint venture members; Principal Participants; Subcontractors and Suppliers; any other Persons performing any of the Work directly or indirectly on Design-Builder’s behalf over which Design-Builder directly or indirectly exercises control; any other Persons for whom Design-Builder may be legally or contractually responsible; and the employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns, and invitees of any of the foregoing.
Design Documents	Documents including design drawings, calculations, special provisions, special management plans, other reports, and shop drawings required for construction, including the Issued for Construction Documents.
Design Work	All efforts necessary to prepare the Design.
Designated VPRA-Furnished Information	The documents described in <u>Section 2.1.4</u> and identified in <u>Exhibit E</u> to the Agreement, including the information identified as Designated VPRA-Furnished Information in the RFP.

Differing Site Condition	<p>Concealed or latent physical conditions or subsurface conditions at the Site that: (i) materially differ from the conditions indicated in the Designated VPRA-Furnished Information; (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work and (iii) reasonably could not have been discovered as part of the Scope Validation undertaken in accordance with Section 2.6.</p> <p>The foregoing definition shall not apply to Utilities, Contaminated Materials, or Force Majeure events.</p>
Directive Letter	<p>The letter defined in Section 12.1.1.2.</p>
Disadvantaged Business Enterprise or DBE	<p>A firm certified as a DBE by either DSBSD or MWAA.</p>
Discovery of Unknown Preexisting Contaminated Materials	<p>The discovery of Contaminated Materials in the Project ROW existing prior to the Effective Date that requires assessment, containment, and/or remediation before the Work can proceed at the affected location and was either not disclosed in the RFP Documents or Designated VPRA-Furnished Information or was not and could not have been discovered by Design-Builder using commercially reasonable efforts during the Scope Validation Period.</p>
Dispute	<p>A dispute between VPRA and Design-Builder that qualifies for resolution using the Dispute Resolution Process. When used in its lower case form, “dispute” shall have its plain language meaning.</p>
Dispute Resolution Process	<p>The procedures under Article 18 for the resolution of Disputes.</p>
District	<p>The District of Columbia.</p>
Easement	<p>A right acquired by VPRA to use or control property for a designated purpose.</p>
Effective Date	<p>The date of execution of the Agreement by the final Party thereto.</p>
Electronic Document System	<p>The electronic system provided by VPRA for the purpose of exchanging documents and information for the Project.</p>
Engineer of Record	<p>The Commonwealth and District of Columbia licensed professional engineer who develops the overall design and the design criteria for the Plan, drawing, specification, plat, report, or other document and is responsible for the preparation of the Design Documents.</p>
Environmental Approvals	<p>The Governmental Approvals necessary to comply with Environmental Laws impacting the Project.</p>
Environmental Commitments	<p>The commitments stated in Table 2-2 of the FEIS/ROD for the Project and such other commitments and requirements pertaining to the environment with which the Project must comply.</p>

Environmental Compliance Plan	The environmental compliance plan provided by Design-Builder and Approved by VPRA as described in Section 10.4.1 of the Technical Provisions.
Environmental Documents	The documents and materials containing the environmental approvals and requirements for the Project, including the FEIS.
Environmental Laws	All Laws now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or to emissions, discharges, releases, or threatened releases of hazardous, toxic or dangerous waste, substance or material into the environment, including into the air, surface water or groundwater, or onto land, or relating to the manufacture, processing, distribution, use, re-use, treatment, storage, disposal, transport, or handling of Contaminated Materials or otherwise relating to the protection of public health, public welfare, or the environment (including protection of nonhuman forms of life, land, surface water, groundwater and air), including CERCLA; RCRA; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 <i>et seq.</i> ; the National Environmental Policy Act, 42 U.S.C. §§ 4321 <i>et seq.</i> ; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 <i>et seq.</i> ; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 <i>et seq.</i> ; the Endangered Species Act, 16 U.S.C. §§ 1531 <i>et seq.</i> ; the Clean Water Act, 33 U.S.C. §§ 1251 <i>et seq.</i> ; the Clean Air Act, 42 U.S.C. §§ 7401 <i>et seq.</i> ; the Safe Drinking Water Act, 42 U.S.C. §§ 300f <i>et seq.</i> ; the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 <i>et seq.</i> ; and the Bald Eagle Protection Act, 16 U.S.C. § 668, each as amended.
Equipment	All machinery, tools, and apparatus, together with the necessary supplies for upkeep and maintenance, necessary for the proper construction and/or completion of the Work.
Escalation Ladder	The process described in <u>Section 18.2.1</u> for resolving Disputes.
Escrowed Proposal Documents	All documentary information used in Design-Builder's preparation of the Proposal Price, and by Subcontractors in the preparation of their Subcontract prices, in addition to all documents relating to the pricing of Change Orders.
Event of Default	A default as described in <u>Section 15.1.1</u> , following notice and opportunity to cure to the extent permitted by <u>Section 15.1.2</u> and issuance by VPRA of notice to Design-Builder that an Event of Default has occurred.
Extra Work	Any Work in the nature of additional work, altered work or deleted work that is directly attributable to a Relief Event and that, absent the Relief Event, would not be required by the Contract Documents.
Extra Work Costs	The additional costs attributable to Extra Work, including costs for labor, Material, and Equipment, and other direct and indirect costs. Extra Work Costs shall be calculated in accordance with <u>Exhibit K</u> . Extra Work Costs do not include Delay Costs.
Extreme Weather Event	The occurrence of rain or snow at any location on the Project ROW that prevents Design-Builder from performing Work on a Critical Path activity for 6 hours or more and that does not otherwise qualify as a Force Majeure. For a rain event to qualify as an Extreme Weather Event, the rainfall must be at least equivalent to a 100-year

frequency 24-hour rainfall event, as defined by the National Oceanic and Atmospheric Administration (NOAA) Atlas 14. The total rainfall experienced during an analyzed duration must equal or exceed the single depth listed for the duration by NOAA, in inches, to qualify as an Extreme Weather Event; confidence intervals do not apply. For snow to qualify as an Extreme Weather Event, the snow must be at a rate of no less than 20 inches per 24 hour period, as defined by the National Weather Service.

**Federal
Prevailing Wage
Rates**

The wage rates provided in Exhibit J, as specified by the U.S. Department of Labor.

**Federal
Requirements**

All Laws applicable to work financed with federal funds or District-supplied funds, and the provisions required to be included in contracts therefor, including the provisions set forth in Exhibits C, D, E, F and Z.

**Field Design
Change**

A document produced by Design-Builder to notify VPRA of a change in design resulting from situations discovered in the field after the design package has been Issued for Construction. A Field Design Change could affect Issued for Construction Documents.

**Field Indirect
Costs**

The costs of performing Construction Work not allocable to a specific construction activity, also referred to as field overhead or general conditions costs. Field Indirect Costs (which do not include any Home Office Overhead) include the following:

- (a) wages including benefits, payroll insurance, and taxes for onsite management, supervision, engineers, safety personnel, quality control staff, and administration staff;
- (b) cost of construction survey;
- (c) ownership or rental of building, maintenance, facility and debris removal, utilities, office and engineering expendables, furniture, computers and infrastructure, and photographs;
- (d) insurance other than that based on payroll, such as railroad protective, Equipment insurance, and other specified or Design-Builder-required insurances (insurance that is carried by Design-Builder as a general cost of doing business and is already included as Home Office Overhead shall not be considered a Field Indirect Cost);
- (e) taxes, excluding payroll taxes, such as property tax and any special local or state sales tax, included with the applicable item taxed;
- (f) cost of ownership or rental, set up, maintenance, and removal of buildings such as owner's office (if not otherwise a direct bid item), warehouses, first aid building, and other miscellaneous buildings;
- (g) personnel expense (other than direct labor) such as small tools and supplies, safety expendables, drug screen testing, training, physicals, and hiring expense, including any per-diem costs for craft or indirect personnel;
- (h) Site utilities such as temporary electric, water, and sanitary;

(i) mobile Equipment such as overhead vehicles, maintenance Equipment and personnel (if not in equipment operating expense), and general service Equipment and personnel (such as flatbeds and forklifts if not in direct cost);

(j) construction plant, including site fences, parking areas, material yards, temporary access, and other such special construction costs not included in direct costs (haul road construction and maintenance are included in direct costs);

(k) cost of Quality Control labor, Equipment, and supplies and outside services and Design-Builder-hired personnel with site overhead wages;

(l) cost of payment and performance bonds or other guaranties as specified or allowed; and

(m) estimated cost of items for which firm pricing cannot be obtained, including increases in craft and field indirect wage rates and fringe benefits whether by agreement or estimated.

Final Acceptance VPRA's Acceptance of the Project as described in Section 19.4.

Final Acceptance Deadline The meaning set forth in Section 4.3.4.

Final Design Design Work to complete the Design and enable Design-Builder to request and receive IFC disposition of Design packages.

Final Payment VPRA's final payment to Design-Builder for the Work, with the exception of any payment that the Contract Documents contemplate will be paid by VPRA to Design-Builder after Final Acceptance.

Flagging The signaling and traffic control activities undertaken to ensure the safe operation of trains, prevent the delay of trains, and ensure the safety of all property and personnel on the Site.

Float The meaning set forth in Section 3 of the Technical Provisions.

Force Account The basis of payment set forth in Exhibit K.

Force Account Change Order A Change Order for which additional compensation is paid on the basis of Force Account.

Force Majeure An unforeseeable event beyond the control of Design-Builder, not due to an act or omission of any Design-Builder-Related Entity, that materially and adversely affects Design-Builder's ability to meet its obligations under the Contract Documents, to the extent that the event (or the effects of which event) could not have been avoided or prevented by due diligence and use of reasonable efforts by Design-Builder, and to the extent that such event directly and materially impacts the Project. Force Majeure shall include only the following events:

(a) war;

(b) an act of terrorism, riot, insurrection, civil commotion, or sabotage;

- (c) national strikes that specifically cause disruption to the Project and are not specific to a Design-Builder-Related Entity;
- (d) explosion caused by an explosive device;
- (e) flood, other than that caused by an Extreme Weather Event;
- (f) a fire, tornado, sinkhole, or landslide, in each case caused by natural events;
- (g) a state of emergency (as declared by the Governor of Virginia or Mayor of Washington, D.C.) other than an Extreme Weather Event, except one consisting of or arising out of traffic accidents;
- (h) one or more earthquakes with a moment magnitude greater than 5.0 (measured by the U.S. Geological Survey moment magnitude) with an epicenter within 100 miles of the northernmost point of the Project ROW; and
- (i) pandemic or epidemic, in each case to the extent that it results in a delay to the supply of Materials or the quarantine of workers.

General Assembly

The legislative body of the Commonwealth.

Good Industry Practice

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

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

Governmental Approval

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

Governmental Person

Any federal, state, Local or foreign government and any political subdivision of each of the foregoing, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity. The term includes the Commonwealth and agencies and subdivisions thereof, other than VPRA.

Guarantor Guarantee

Each entity providing a Guarantee.

Each guarantee of Design-Builder's obligations under the Contract Documents.

Health and Safety Plan

Design-Builder's Approved plan establishing all health and safety procedures for the Work.

Hold Point

A specific point in the design or construction process at which further activity associated with the deliverable is suspended until formal Acceptance of the interim product is obtained. Acceptance is formally obtained when all issues and design changes have been resolved, all Materials testing and inspection procedures have been performed and provide passing results, and the work meets the requirements

of the Contract Documents. A Hold Point may also be referred to as a Quality Control Point in the Contract Documents.

Holidays	The days of each year set aside by legal authority for public commemoration of special events, and on which no public business shall be transacted except as specifically provided in cases of necessity. Unless otherwise noted, Holidays shall be as established in § 2.2-3300 of the Code of Virginia.
Home Office Overhead	Design-Builder's overhead costs and expenses that cannot be attributed and are not billed to a specific project, but are incurred in support of all of Design-Builder's (or the Principal Participants') projects, including rent, office equipment and furnishings, insurance, office supplies, depreciation, taxes, and utilities, as well as executive salaries, administrative staff salaries, project support staff salaries, and accounting and payroll services.
I-395 Park Segment	The portion of Interstate 395 within the Long Bridge Project limits running through East and West Potomac Park.
Inaccurate Utility Information	The meaning set forth in <u>Section 12.12.3.1</u> .
Indemnified Party(ies)	The Virginia Indemnitees and other parties expressly entitled to indemnification by Design-Builder under the Contract Documents, including Amtrak and CSXT to the extent specified in <u>Exhibit Q</u> .
Independent Design Quality Manager	The firm(s) performing quality assurance over the Design, as required by Section 5.7.2 of the Technical Provisions.
Independent Quality Assurance	All actions performed by VPRA to verify that the Design complies with the requirements of the Contract Documents.
Instructions to Proposers	The RFP document identified as the Instructions to Proposers.
Issued for Construction (IFC)	A signed and sealed Final Design Accepted by VPRA and approved by all applicable permitting agencies as provided in Section 4.2.5 of the Technical Provisions.
Issued for Construction Documents or IFC Documents	Design Documents that have received an Issued for Construction disposition in accordance with the process in Section 4.2.5 of the Technical Provisions. IFC Documents include drawings, specifications, special provisions, technical memos, studies, calculations, independent check calculations for structures, and other pertinent data, as applicable.
Issued for Construction Submittal or IFC Submittal	The submittal described in Section 4.2.5 of the Technical Provisions.
Lane Closure	The closing of a traffic lane or shoulder by Design-Builder such that traffic cannot move freely.

Law	All applicable federal, state, and Local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, and orders and decrees of any Governmental Person having jurisdiction over the Project or Project ROW, the practices involved in the Project or Project ROW, any Work, or any Utility Work being performed by a Utility Owner. “Law” does not include Governmental Approvals.
Lead Designer	The design/engineering firm leading the production of the Design. The Lead Designer is STV Incorporated, a New York corporation.
Lien	Any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument, and the filing of or agreement to file any financing statement or other instrument intended to perfect a security interest).
Limits of Disturbance	The boundary of the Project ROW that may be disturbed as part of the Project.
Liquidated Damages	The liquidated damages that may be assessed by VPRA as provided in the Contract Documents.
Local	Any municipality or other subdivision of a state or federal government, including Washington, D.C.
Local Agency	Any subdivision of the Commonwealth or federal government with jurisdiction over any portion of the Project.
Long Bridge Project	VPRA’s capital project to improve the 1.8-mile railroad corridor between Rosslyn interlocking in Arlington, Virginia and L’Enfant Interlocking near 10th Street SW in the District of Columbia.
Material	Any substances required for use in the completion of the Project and its appurtenances.
Necessary ROW Change	As stated in <u>Section 12.12.9</u> , a change in the Right of Way provided in the ROW Work Map where Design-Builder proves it is unable to design and build the Project as required by the Contract Documents within the Right of Way provided in the ROW Work Map.
Neutral	The Person to whom Disputes are referred subsequent to the Escalation Ladder, as described in <u>Section 18.3</u> .
Neutral Session	A session held with the Neutral during which the Parties present their position on Disputes submitted to the Neutral, as described in <u>Section 18.3.5</u> .
New Environmental Approval	Any of the following: (a) a new Governmental Approval of the same type as an Environmental Approval; and (b) a revision, modification or amendment to one or more of the Environmental Approvals, that is the responsibility or obligation of the Design-Builder to obtain under <u>Section 6.4.2</u> .

Nonconforming Work	Work that does not meet the requirements of the Contract Documents.
Non-renewal of VPRA Permits or Environmental Clearance	The non-renewal of permits or environmental clearance that VPRA is required by the Contract Documents to obtain, provided that Design-Builder has cooperated with all requests for information from VPRA or other steps for which Design-Builder is responsible that are necessary for VPRA to obtain renewal of the permit or environmental clearance at issue.
North Package	The northern portion of the Long Bridge Project that is being separately procured by VPRA.
Notice of Abutment B Substantial Completion	Notice issued by VPRA stating that substantial completion of Abutment B has occurred.
Notice of Bike/Ped Bridge Substantial Completion	Notice issued by VPRA stating that substantial completion of the Bike/Ped Bridge has occurred.
Notice of Design Change	A document produced by Design-Builder to notify VPRA of a proposed change to design after the design package has been Issued for Construction.
Notice of Final Acceptance	Notice issued by VPRA stating that Final Acceptance has occurred in accordance with Section 19.4.
Notice of Substantial Completion	Notice issued by VPRA stating that Substantial Completion has occurred.
Open Book	Design-Builder's provision of information, including pricing, that shows all assumptions, data, and other substantiation supporting the information presented and that allows VPRA to check and verify the accuracy of the material presented. For cost estimates, this entails the provision of all information that Design-Builder used to develop the cost under consideration, including labor, fringe, benefits, equipment, materials, productivity, estimating factors, allowances, risk, contingency, indirect costs, discount rates, interest rates, inflation, insurance, bonding, fees, overhead, profit, and other items that comprise the cost.
Over-the-Shoulder Reviews	Informal meetings between Design-Builder and VPRA design staff during the development of a design package intended to generate discussion and provide conceptual level feedback. No minutes of these meetings are kept, and any Design-Builder actions based on these meetings are at Design-Builder's own risk.
Partnering Party	The processes and procedures described in <u>Section 18.1</u> . A party to the Agreement, as identified therein.
Performance and Payment Bonds	The performance and payment bonds described in <u>Section 8.1</u> .

Person	Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization, joint venture, or Governmental Person, including VPRA.
Plan	The plan, profiles, typical cross-sections, and supplemental drawings that show the locations, character, dimensions, and details of the Work to be done.
Principal Participant	A Person that is: <ul style="list-style-type: none">(a) A member of the joint venture, if Design-Builder is a joint venture;(b) Design-Builder, if Design-Builder is a corporation; or(c) An equity owner of Design-Builder, if Design-Builder is organized as a business other than a corporation (e.g., a member, partner, or shareholder of the Respondent entity).
Price Proposal	The Design-Builder's Price Proposal as defined in the RFP Documents.
Price Proposal Due Date	The date on which Price Proposals were due to VPRA, October 11, 2024.
Private Utility	A Utility that is owned by a Private Utility Owner.
Private Utility Owner	Any owner or operator of a Utility that is not a Public Utility Owner.
Professional Services	All work other than Construction Work, including: <ul style="list-style-type: none">(a) design and engineering;(b) environmental permitting and compliance;(c) public involvement and communications;(d) right of Way acquisition and support; and(e) surveying other than for construction. <p>Professional Services does not include construction superintendence, construction project management, or other services of a professional nature (accounting, legal, financial) performed by a Constructor.</p>
Progress Payment	Payment to Design-Builder based on the progress of the Work in accordance with Section 2.5.2 of the Technical Provisions.
Progress Schedule	The schedule submitted with each Application for Payment showing the progress of the Work, consistent with Section 3 of the Technical Provisions.
Project	The South Package of the Long Bridge Project, as more specifically described in Section 1 of the Technical Provisions, and all other Work to be provided by Design-Builder as a condition to Final Acceptance in accordance with the Contract Documents.
Project ROW	The parcels of Right of Way shown in the ROW Work Map, and any new parcels of Right of Way added as part of a Necessary ROW Change. Project ROW does not include Temporary Work Areas.
Project Site and Scope Issues	Matters discovered by Design-Builder during the Scope Validation Period that conflict with or supplement the information supplied or accessible to Design-Builder

	prior to the Technical Proposal Due Date and that impact the Contract Price or Completion Deadlines as of the Effective Date.
Prompt Payment Law	Subcontractor payment requirements under the Code of Virginia, § 11-4.6.
Proposal	The documents constituting Design-Builder's response to the RFP, including the Technical Proposal and the Price Proposal and any supplements as may have been requested by VPRA.
Proposal Commitments	Design-Builder's binding commitments stated in <u>Exhibit B-1</u> .
Proposal Price	The lump-sum price for completion of the Work contained in Design-Builder's Price Proposal.
Proposer	An individual, firm, partnership, corporation, joint venture or combination thereof that was shortlisted under VPRA's RFQ and that submitted a Proposal in response to the RFP.
Protection of Existing Utilities	Any activity undertaken to avoid damaging a Utility that does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility's location by construction Equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered Protection of Existing Utilities; whereas temporarily moving power lines to another location after cutting them would be considered a temporary Utility Relocation.
Public Engagement and Communications Plan	The public information plan provided by Design-Builder and Approved by VPRA as described in Section 11 of the Technical Provisions.
Public Utility	A Utility that is owned by a Public Utility Owner.
Public Utility Owner	An owner or operator of a Utility that is a municipality, county, or other political subdivision of a state or the federal government.
Punch List	The list of Work items that remain to be completed after substantial completion of Abutment B, Substantial Completion, or substantial completion of the Bike/Ped Bridge, which is subject to Approval by VPRA and is limited to minor incidental items of Work that have no adverse effect on the safety or operability of the Project and that can be performed without shutting down rail operations or a roadway.
Quality Assurance	With respect to the Construction Work, all planned and systematic actions performed by VPRA to certify that all Work complies with the requirements of the Contract Documents and that all Materials incorporated in the Work, all Equipment used, and all elements of the Work will perform satisfactorily for the purpose(s) intended. Actions include specification reviews, document control reviews, and working plan reviews; construction inspection; Materials sampling and testing at the production Site and the Project Site; oversight of manufacturing/processing facilities and

equipment; oversight of on-Site equipment; calibration of test equipment; acceptance or rejection of Material; and documentation of all activities.

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

Quality Control The total of all activities that are performed by Design-Builder, the Lead Designer, Subcontractors, producer, or manufacturer to ensure the Work meets the requirements of the Contract Documents. Quality Control may include design reviews and checks; inspection of Material handling and construction; calibration and maintenance of sampling and testing equipment; working plan review; document control; production process control; any inspection, sampling, and testing done for these purposes; and documentation of Quality Control activities.

Quality Plan The quality plan provided by Design-Builder and Approved by VPRA as described in Section 5.5 of the Technical Provisions.

Railroad Depending on the context, either the right of way, tracks, and systems used for rail traffic, or the owners and/or operators of such rail systems.

Railroad Delay A delay to the Critical Path caused by a Railroad Owner's failure to issue a permit or other approval necessary for Work that impacts a Railroad by the time required by a legal obligation, whether by Law or contract, or a Railroad Owner's failure to comply with any approved permit or other commitment, provided that Design-Builder has cooperated with all reasonable requests from the Railroad Owner with respect to the matter causing the delay.

Railroad Owner The owner and/or operator of a Railroad, including VRE, Amtrak and CSXT.

Reasonable Accuracy The meaning set forth in Section 12.12.3.2.

Recommendations The non-binding report of recommendations issued by the Neutral in accordance with Section 18.3.6.

Recovery Schedule A proposed schedule submitted by Design-Builder that shows Design-Builder's plan to recover from a delay and achieve the Completion Deadlines, as set forth in Section 3 of the Technical Provisions.

Reference Information Documents The information and materials supplied with the RFP for Design-Builder's information only, use of which by Design-Builder is subject to the limitations stated in the Contract Documents.

Regulatory Agency A government or quasi-government agency with jurisdiction or authority over a portion of the Work.

Release of Contaminated Materials Any release of Contaminated Materials that requires remediation to continue the Work safely.

Relief Event Relief Event shall mean the occurrence of one or more of the following:
(a) VPRA-Directed Change;
(b) VPRA-Caused Delay;

- (c) Force Majeure;
- (d) Utility Delay;
- (e) Inaccurate Utility Information;
- (f) Railroad Delays;
- (g) Release of Contaminated Materials;
- (h) Discovery of Unknown Preexisting Contaminated Materials;
- (i) Discovery of archeological, paleontological, cultural, or biological resources;
- (j) Discovery of threatened or endangered species;
- (k) Differing Site Condition;
- (l) Change in Law;
- (m) Court Order;
- (n) Uncovering and Restoring Work;
- (o) Non-renewal of VPRA Permits or Environmental Clearance;
- (p) Extreme Weather Event; and
- (q) Necessary ROW Change.

Relocation or Relocate	As related to Utilities, each removal, transfer of location, In-Place/Out-of-Service, and/or Protection of Existing Utilities (including provision of temporary services as necessary) of any and all Utilities that is necessary or advisable to accommodate or permit construction of the Project.
Relocation Plan or Utility Relocation Plan	The design plans for Relocation of a Utility impacted by the Project to be prepared by Design-Builder or the Utility Owner.
Request for Change Order	The request submitted by Design-Builder for a Change Order in accordance with <u>Section 12.4</u> .
Request for Change Proposal	A proposal issued by VPRA under <u>Section 12.2.1</u> .
Request for Information	A formal request for additional information regarding the design and construction of the Project that may be initiated by anyone associated with the Project.
Request for Proposals (“RFP”)	The Request for Proposals for the Project issued by VPRA on February 9, 2024, and as amended.
Request for Qualifications (“RFQ”)	The Request for Qualifications for the Project issued by VPRA on June 30, 2023, and as amended.
Review Level	The levels of review in the Escalation Ladder, as described in <u>Section 18.2.1.1</u> .
RFP Documents	Any information and materials supplied by VPRA with the RFP.
Right of Way (“ROW”)	The real property (inclusive of all estates and interests in real property) that is necessary for ownership and operation of the Project (includes permits).
Road	A general term denoting a public way for purposes of vehicular travel.

Road Closure	The closure of a Road, whether due to an intended, purposeful closing of the Road or by activities that cause the Road to be unusable by the traveling public.
ROW Schedule	The schedule in Section 12.3 of the Technical Provisions providing the dates that VPRA will make the ROW shown on the ROW Work Map available to Design-Builder for access and use.
ROW Work Map	The information identifying: (i) the ROW currently owned or controlled by VPRA or CSXT which is to be made available to Design-Builder for the purposes of the Project; and (ii) the ROW to be acquired by or through VPRA and made available to Design-Builder for purposes of the Project. The Project ROW Map includes the information provided in Section 12.3 of the Technical Provisions and other information provided by VPRA. The ROW Work Map defines the Right of Way that will be made available to Design-Builder for the Project.
Schedule	The Baseline Schedule, Progress Schedule, or Recovery Schedule, as dictated by context.
Schedule Impact Analysis (SIA)	Analysis of the anticipated impacts of schedule changes impacting the Critical Path, as described in Section 3.8 of the Technical Provisions.
Scope Validation	The Work described in <u>Section 2.6.1</u> .
Scope Validation Period	The period of time that is defined in <u>Section 2.6.1</u> .
Scope Validation Plan	The final plan submitted by Design-Builder during the RFP process.
Self-Perform	The act of Design-Builder undertaking the Construction Work directly with its own forces (rather than having a Subcontractor or other Person undertake such Construction Work). When used in its lower case form, “self-perform” shall have its plain language meaning.
Self-Performed Work	Construction Work undertaken by Design-Builder’s own forces. Self-Performed Work does not include Construction Work performed by Subcontractors or other Persons.
Service Line	A Utility line, the function of which is to connect an individual service location (e.g., a single-family residence or an industrial warehouse) to another Utility line that connects more than one such individual line to a larger system. The term “Service Line” also includes any Utility on public or private property that services structures located on such property.
Setting Date	The date that is thirty (30) days prior to the Price Proposal Due Date.
Shop Drawing	Drawings prepared by the fabricator or supplier showing the layout and details of components fabricated in a shop for inclusion in the permanent Work (e.g., structural steel, reinforcing steel, railing, etc.).

Site	The parcels of Right of Way identified on the ROW Work Map on which the Project is to be constructed and areas in the vicinity used by Design-Builder to facilitate work for the Project.
Small Business	A firm certified as small business by the Department of Small Business and Supplier Diversity (DSBSD). This shall also include DSBSD- certified women- and minority-owned businesses and businesses with DSBSD service disabled veteran -owned status when they also hold a DSBSD certification as a small business.
Small and Diverse Business Subcontracting Plan	The plan prepared by Design-Builder, subject to VPRA’s Approval, that describes Design-Builder’s Small and Diverse Business Utilization commitments on the Project.
Stakeholder	An entity impacted by the Project, including Third-Parties, Local Agencies, and Utility Owners.
Statement of Qualifications	Design-Builder’s response to the Request for Qualifications.
Steel	The types of steel described in <u>Section 12.13</u> . “Steel” shall refer to the types of steel individually or collectively depending on the context.
Stormwater Pollution Prevention Plan (SWPPP)	A plan for stormwater discharge that includes both temporary and permanent measures to prevent erosion and control sediment.
Stop Work Notice	A formal notification by VPRA or Design-Builder’s authorized personnel requiring Design-Builder to stop work partially or fully in accordance with the terms of the notice.
Street	A general term denoting a public way for purposes of vehicular travel.
Structures	Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains, and other man-made features.
Subcontract	Any subcontract to perform any part of the Work or provide any Materials, Equipment or supplies for any part of the Work between Design-Builder and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.
Subcontractor	Any Person with whom Design-Builder has entered into any Subcontract and any other Person with whom any Subcontractor has further subcontracted any part of the Work, at any tier.
Substantial Completion	The occurrence and completion of the events described in <u>Section 19.2</u> to VPRA’s satisfaction, evidenced by VPRA’s issuance of a Notice of Substantial Completion.
Substantial Completion Deadline	The meaning set forth in <u>Section 4.3.2</u> .

Supplier	Any Person other than employees of Design-Builder not performing Work at the Site that supplies machinery, Equipment, Materials or systems to Design-Builder or any Subcontractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver, or carry Materials, personnel, parts, or Equipment or any other items or Persons to or from the Site shall not be deemed to be performing Work at the Site.
Surety	Each properly licensed surety company approved by VPRA that has issued the Payment and Performance Bonds.
SWaM Business or SWaM	A firm certified by DSBSD as small, women-owned, or minority-owned business or related to a small, women-owned, or minority-owned business.
Technical Proposal	The Design-Builder’s Technical Proposal as defined in the RFP Documents.
Technical Proposal Due Date	The date on which Technical Proposals were due to VPRA, August 23, 2024.
Technical Provisions	The specifications, standards, and requirements included in the Contract Documents that provide the technical requirements for the Project, Contract ID No.: 01-001-24-0002 dated January 17, 2025.
Temporary Construction Easement	A temporary interest in land to provide for temporary use of private property for construction of the Project to perform project engineering and/or Construction Work. Temporary Construction Easements include those shown in the ROW Work Map.
Temporary Work Area	Areas in which Design-Builder performs Project-specific or Project-related activities on a temporary basis in connection with the Work, but that are not within the Project ROW, including certain construction work sites, staging areas, storage areas, lay-down areas, earth work material borrow sites, and other locations for Design-Builder’s convenience, in addition to any co-located office.
Third-Party	A Person that is not a Party to the Agreement but that has approval rights or a right to provide input over the Work.
Track Closure	The closure of a railroad track, whether due to an intended, purposeful closing of the track or by activities that cause the track to become unusable for rail operations.
Transportation Management Plan	The plan provided by Design-Builder and Approved by VPRA as described in Section 21.4 of the Technical Provisions.
Uncovering and Restoring Work	The situation for which Design-Builder is entitled to relief as provided in <u>Section 5.3.3</u> .
Unilateral Change Order	A Change Order issued by VPRA as defined in <u>Section 12.2.2</u> .
Unknown Pre-existing Contaminated Materials	Contaminated Materials that were present within the Project ROW prior to the Price Proposal Due Date and that were not disclosed in the RFP Documents and were not capable of discovery by Design-Builder using commercially reasonable efforts as part of the Scope Validation.

Unpermitted Road Closure	The closure of any Road outside the time Approved by VPRA.
Unpermitted Track Closure	The closure of any Railroad outside the time Approved by VPRA or a Railroad Owner.
Unresolved Disputes	The Disputes that have not achieved resolution at Final Acceptance of the Project and that have complied with all requirements to which the Dispute is subject under the Contract Documents, including <u>Article 12</u> and <u>Article 18</u> .
Utility	A privately, publicly or cooperatively owned line, facility, and/or system that supplies a resource or substance that directly or indirectly serves the public, including power, light, gas, heat, telecommunications, cable, telegraph, telephone, crude products, water, steam, waste, storm water, signal system, pipeline or sewer service. Except for Service Lines, the necessary appurtenances to each utility facility shall be considered part of such utility. The term “Utility” shall specifically exclude existing storm water facilities connected with drainage of the roadway.
Utility Agreement	An agreement with a Utility Owner, addressing one or more Utility conflicts associated with the Project. Unless otherwise agreed by the Parties at the time, the counterparty to such agreement will be VPRA. In some cases, a Utility Owner may be party to an already-existing Utility Agreement between it and CSXT, which already-existing agreement contains provisions governing Relocation of the Utility Owner’s facilities for the benefit of the Project.
Utility Delay	Subject to <u>Section 12.12.4</u> , any failure by a Utility Owner to meet any time parameters for performance by such Utility Owner that are set forth in a Utility Agreement or other arrangement for performance by a Utility Owner, which failure by the Utility Owner delays the Critical Path.
Utility Easements	All permanent easements and/or other permanent interests in real property owned by Utility Owners in connection with existing Utilities, including those acquired for the purpose of Relocating a Utility to accommodate the Project.
Utility Information	The information regarding Utilities provided in the RFP, as well as any additional information about Utilities discovered by Design-Builder during the Scope Validation Period.
Utility Notification Service	A service that notifies Utility Owners of planned work that may impact a Utility, including such services as 811, Miss Utility, Virginia 811, DigAlert, OneCall, and others, depending on location.
Utility Owner	The owner or operator of any Utility.
Utility Permit	All appropriate approvals, exemptions, filings, licenses, permits and registrations, and any other Governmental Approvals required by or with any Governmental Person or Utility Owner necessary for any Utility Work.
Utility Removal Work	Work necessary to remove any Utilities for which leaving the Utilities in-place is not feasible or not permitted, or that Design-Builder otherwise proposes to be removed to accommodate or permit construction of the Project, regardless of whether replacements for such Utilities are being installed in other locations.

Utility Work	(a) The Work associated with Relocation of Utilities, including the design, construction, installation, manufacture, supply, testing and inspection, adjustments (including manholes and valves), and otherwise required by the Contract Documents, including all labor, Materials, Equipment, supplies, utilities, and subcontracted services provided or to be provided by Design-Builder and/or the Utility Owners, and (b) any Betterments added to the Work pursuant to <u>Section 6.2.2</u> .
Virginia Indemnitees	The Commonwealth of Virginia and VPRA as defined in <u>Section 17.1.1</u> .
VPRA	The Virginia Passenger Rail Authority.
VPRA-Caused Delay	Unavoidable delays, to the extent that they affect the Critical Path, arising from the following matters and no others: (a) A suspension for convenience pursuant to <u>Section 13.1</u> , to the extent provided therein; (b) VPRA-Directed Changes; (c) Failure or inability of VPRA to provide Design-Builder with access to Right of Way identified on the ROW Work Map on or before the date stated in the ROW Schedule, subject to <u>Section 6.1</u> ; (d) Failure or inability of VPRA to provide responses to proposed schedules, design submittals, and other submittals and matters for which response by VPRA is required, within the time periods provided in the Contract Documents. This clause (d) applies to VPRA's late provision of responses due to a Third-Party's delay in returning comments to VPRA on a Design-Builder submittal or other document; or (e) VPRA's breach of a material obligation under the Contract Documents.
VPRA-Directed Change	Any changes in the Work or the Contract Documents that VPRA has directed Design-Builder to perform, as described in <u>Article 12</u> .
Warranty	Design-Builder's warranties of the Work specified in <u>Section 20.1.1</u> .
Warranty Work	Corrective Work performed or to be performed by Design-Builder to remedy defects or otherwise cause an element of the Work to comply with Design-Builder's Warranties.
Work	All work required under the Contract Documents, including all administrative, design, engineering, support services, Utility Work, procurement, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, Materials, Equipment, maintenance, documentation, and other duties and services to be furnished and provided by Design-Builder as required under the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance, except for those efforts that the Contract Documents expressly state will be performed by Persons other than a Design-Builder-Related-Entity.
Work Breakdown Structure	A deliverable-oriented grouping of Project activities that organizes and defines the total scope of the Project.

- Work Product** All drawings, specifications, calculations, reports, documentation, and all other deliverables required by or contemplated by the Work, as well as all underlying documents and information prepared by Design-Builder in the course of generating the foregoing. Work Product includes all formats in which the foregoing exists, including paper, electronic, or otherwise.
- Working Day** Any Day other than Saturday, Sunday, or a Holiday.
- Working Drawings** Design Work consisting of calculations and drawings prepared by Design-Builder for temporary structures not permanently incorporated in the work (erection plans, shoring, excavation support, scaffolding, etc.).

EXHIBIT B-1 – PROPOSAL COMMITMENTS

Item	Technical Proposal Reference	Commitment
1	5.1.1 Executive Summary 5.2.1 (B) Construction Approach – Limited Staging and Access 5.2.1 (B) Construction Approach – Potomac River & Reagan National Construction Challenges	LBRP will eliminate the conceptual access trestle shown in the preliminary plans. LBRP will construct the new bridge using barges and floating equipment in lieu of the temporary steel trestle.
2	5.1.1 Executive Summary	For highway traffic, LBRP commits to maintaining two through lanes on the GWMP at all times, except when bridge elements are lifted over the roadway, which will occur during temporary night shutdowns.
3	5.1.1 Executive Summary 5.2.1 (B) Construction Approach – Overview of Sequence of Construction	Access plans will focus major deliveries from I-395 at night on the D.C. side. LBRP will use the new spans over the GWMP to allow most deliveries on the Virginia side from I-395 via an access road in front of the ramp to GWMP. LBRP will initially construct the first two spans of the railroad bridge over the GWMP, which will be used for vehicular and smaller delivery access to marine bulkheads directly from EWP. This will eliminate conflicts with GWMP commercial vehicle restrictions, MVT bicycle and pedestrian traffic, and time-of-day restrictions for lane closures.
4	5.1.1 Executive Summary	LBRP will develop an integral precast footing system with tubs to form the footing and provide a watertight seal for the placement of footing concrete. This will eliminate the cofferdam system.
5	5.1.1 Executive Summary 1.2.1(A) Design Approach – Rail Bridge Substructure	LBRP will reduce pier size while maintaining the look of the existing bridge. The reduction in pile cap footprint will reduce the area of blockage across the river section and will reduce the area exposed to flood waters by 50 percent.
6	5.2.1 (A) Design Approach – Hydraulic Design	Drainage west of GWMP will tie into existing drainage networks before conveying east across GWMP. This will eliminate the need for open cut drainage installation across GWMP.
7	5.2.1 (A) Design Approach – Stormwater Management Design	LBRP will purchase 3.48 pounds of nutrient credits to satisfy the Virginia DEQ requirement, eliminating the need for on-site stormwater management.

8	5.2.1 (A) Design Approach – Roadway design and geometry	<p>LBRP will design the GWMP using the functional classification of a freeway with a design speed of not less than 40 mph. LBRP will design Ohio Drive SW using a functional classification of local road with a design speed of not less than 20 mph.</p> <p>The design will provide mill and overlay of all paved areas of the GWMP and Ohio Drive impacted by construction and provide full depth pavement along the inside shoulders of GWMP for the construction of the proposed bridge pier.</p> <p>Guardrail in the median of GWMP within the project limits will be replaced by MASH-compliant guardrail.</p>
9	5.2.1 (A) Design Approach – Surface Structures / Bridge Details	Design approach simplifies the detailing of the proposed railroad and pedestrian bridges by reducing the types and sizes of plates used.
10	5.2.1 (A) Design Approach – Rail Bridge Superstructure	The design will employ shop-welded splices to transition to more efficient flange thicknesses at the quarter-points of each span.
11	5.2.1 (A) Design Approach – Rail Bridge Superstructure	“Floor beam-only” support system will reduce the number of structural connections and provides a cleaner finished structure.
12	5.2.1 (A) Design Approach – Rail Bridge Superstructure	LBRP will improve and simplify the deck protection system using a three-step approach for preparing the deck for the placement of ballast. First, the placement of a thin concrete layer, with a minimum thickness of 1.5 inches; next, the placement of a waterproofing system; and finally, the placement of ballast mats. LBRP will use a high-quality waterproofing system that is not damaged by contact with ballast, eliminating the need for the ballast mat. LBRP will apply a hi-build epoxy material, compatible with the waterproofing product, to the steel deck surface to provide the necessary cross slope.
13	5.2.1 (A) Design Approach – Bike-ped bridge Superstructure	To accommodate the 180-foot span over GWMP, the top chord to the truss will be arched to provide the depth required and a visually appealing transition down to the typical truss height. LBRP will obtain Third-Party approvals necessary for this design.
14	5.2.1 (B) Construction Approach – Limited Staging and Access	Sacrificial tubs will provide 20” of extra protection below pile caps to prevent debris accumulation during low water events.
15	5.2.1 (B) Construction Approach – Limited Staging and Access	LBRP will drive plumb piles in lieu of battered piles, allowing continuous pile driving operations with secured loads that cannot foul CSXT and WMATA

		tracks (partially driven plumb piles in two-tiered leads are considered a secured load) and reduces footprint of pile driving operations.
16	5.2.1 (B) Construction Approach – Limited Staging and Access	Early construction of new spans over GWMP will allow access to staging areas and water access points directly from I-395.
17	5.2.1 (B) Construction Approach – Limited Staging and Access	LBRP will provide an access point directly from I-395 to Parking Lot B.
18	5.2.1 (B) Construction Approach – Potomac River & Reagan National Construction Challenges	LBRP will develop a private Aids to Navigation (ATON) plan to increase safety for marine craft. The ATON will define work zones during the different stages of work across the river and will include signage, buoys, light and air horns.
19	5.2.1 (B) Construction Approach – Railroad Land Substructure	Two lanes will be maintained in each direction on GWMP (ATC 01). This creates a dedicated acceleration lane from the I-395 NB to GWMP SB ramp and eliminates the sub-optimal yielding merge condition in a construction zone with the 10-foot lanes in the Conceptual Design. The MVT will not be relocated until Pier 2 is constructed in a later phase so bicyclists do not enter the construction zone.
20	5.2.1 (C) Third Party Coordination	Construction access will not require crossing existing CSXT facilities.
21	5.2.1 (F) Geotechnical	LBRP will perform static load tests in the Potomac River and on land in the vicinity of Rail Bridge Piers 2 and 3 and monitor vibration magnitudes and adjacent settlement. The results of the monitoring will establish the minimum distance for pile driving adjacent to existing structures.
22	5.2.1 (F) Geotechnical	Where driven pile foundations in the Potomac River are planned within 25 feet of the existing Long Bridge or the distance established during scope validation, piles will be driven inside an outer casing. Where foundations are planned within 25 feet of existing structures on land, auger cast piles will be used to reduce potential structure damage.
23	5.2.1 (F) Geotechnical	A standalone retaining wall is planned near rail bridge abutment A between Sta. 4016+50 and 4019+00. It will be a gravity wall such as T-wall or other approved system. Embankment adjacent to the wall will be supported on rigid inclusion to improve wall bearing and stability. This results in an optimized design that will reduce the length of the T-wall stems and contact pressure.
24	5.2.1 (F) Safety – Health and Safety Plan	In addition to on-site safety personnel, LBRP will conduct periodic safety audits to report to the site safety manager, and ultimately an executive committee, to promote a safe workplace.

25	5.2.1 (F) Safety – Rail and Pedestrian Bridges	Limiting switches on the cranes will be incorporated into the workplan so that crane booms do not foul adjacent WMATA and CSXT tracks.
26	5.2.1 (F) Safety – Rail and Pedestrian Bridges	LBRP’s emergency response plan will use fully equipped rescue boats operated by qualified personnel.
27	5.3 Draft Quality Plan – Construction QC Approach	STV will routinely audit the subconsultant work for a second layer of quality compliance checks.
28	5.3 Draft Quality Plan – Independent Quality Staff	The entire quality team and project staff will be given authority to stop work upon discovery of any quality issues or concerns.
29	5.3 Draft Quality Plan – Inspection Verification On & Off Site	LBRP will meet with every major fabricator, supplier, or producer to approve their internal quality program to verify it meets the project specifications.
30	5.3 Draft Quality Plan – Inspection Verification On & Off Site	LBRP will hire local quality inspectors to monitor the offsite program, audit for compliance, then stamp the product before release from the facility.
31	5.3 Draft Quality Plan – Offsite Inspection and Testing	Critical elements such as precast concrete and structural steel that require offsite inspection, testing and certification by both LBRP and Vpra quality staff will automatically fall into LBRP’s Key Scope Pilot Quality Program.
32	5.3 Draft Quality Plan – Key Scope Pilot Quality Programs	The quality and production teams will complete a pilot program to provide proof of any necessary quality testing and new methods of improving quality prior to putting work in place. These include: <ul style="list-style-type: none"> - Prefabricated pedestrian truss - Structural steel - Precast tubs - Mass concrete pours - Marine concrete - Rail work - Deep foundations Following design, Construction Work Plans (CWPs) will be developed and preparatory meetings will be included as part of these programs.
33	5.3 Draft Quality Plan – Subcontractor/Supplier Quality Management Approach	LBRP’s final CQCP will include a procedure requiring dedicated LBRP quality staff to stamp and certify that prefabricated and precast materials meet project specifications prior to shipment while also ensuring manufacturers and fabricators are following the pre-approved CQCP.
34	5.4 (A) Permits and Third-Party Approvals	LBRP will have permit submissions reviewed by a permit expeditor to provide pre-submission feedback and act as a local liaison to keep submissions and approvals moving forward.

35	5.4 (C) Approach to Project Management - Environmental Compliance Management	LBRP will use Commitments and Constraints Mapping (CCM) and digital layers to assist with avoidance and minimization strategies early in design. The CCM is compiled from the Commitment Tracking Database (CTD) and details the specific location of NEPA LOD limits, project commitments/constraints, survey limits, environmental control requirements, and permitted impact limits. The CCM will become part of the Environmental Compliance Plan to identify constrained areas. The CCM will also be used for regulatory compliance checks in the field and are downloadable as a KMZ file to facilitate field reviews and inspections. The CCM will be available to the construction team at pre-construction meetings to confirm the resource impact limits of work and permitted disturbance.
36	5.4 (C) Approach to Project Management - Environmental Compliance Management	LBRP will use bubble curtains and underwater noise monitoring to verify compliance with noise restrictions.
37	5.4 (D) Approach to Project Management – Key & Additional Staff	LBRP will have a dedicated Design-Build Integration Manager.
38	5.4 (E) Approach to Project Management – Schedule Delay Mitigation	LBRP will use 4D construction modeling for activity completion forecasting.
39	5.4 (E) Approach to Project Management – Schedule Delay Mitigation	In addition to the requirements for work plans included in Section 5.8.8 of the Technical Provisions, LBRP’s work plans will incorporate design drawings, specifications, safety and railroad requirements, environmental commitments, quality control requirements, utility conflicts, and other specific items required for operations.

EXHIBIT B-2 – ALTERNATIVE TECHNICAL CONCEPTS

Long Bridge South Package

Additional Concepts for Consideration

I. ATCs

VPRA identified three ATCs from other proposers' proposal for LBRP's consideration. These ATCs are listed below with the conditions VPRA provided, where applicable. PDFs with the full description of these ATCs are included in the "AWT ATCs" folder.

ATC Number	ATC Topic	VPRA Conditions
AWT ATC 3	Bike-Ped Span 1 Fill Section and Removal of Wall A	This ATC may be acceptable upon the satisfaction, in VPRA's sole discretion, of the following conditions: <ul style="list-style-type: none">- Design-Builder must obtain Section 106 Signatory concurrence.- Design-Builder must obtain DDOT and NPS approval.- Design-Builder shall provide analysis showing that this construction can accommodate adjacent rail live loads and does not cause settlement which would impact existing structures.
AWT ATC 4	Double-Sided Fillet Welds for the Flange to Web Welds	This ATC is acceptable for inclusion in the Proposal.
AWT ATC 5	Bolting of the Deck Plate vs. Welding	This ATC is acceptable for inclusion in the Proposal.

II. Additional Concepts for Consideration

Additional concepts for LBRP to evaluate and consider integrating into LBRP's project approach and design are provided below. Several of these concepts originate from other Proposers' technical proposal. VPRA included PDFs with the applicable proposal pages for reference in the "Additional Concepts for Consideration" folder.

- Time of Year Restriction (TOYR) approach to pile driving if a waiver is not received (*PDF #1; AWT Technical Proposal p. 2-10; Slide 62*)
- Use of precast elements for Bike/Ped Bridge instead of cast-in-place (*PDF #2; AWT Technical Proposal p. 2-12 and Drawing D-125*)
- Pre-install stone facing for pier stems on precast concrete panels that are erected in segments on the pile caps (*PDF #3; AWT Technical Proposal p. 2-6, Drawings B-215-B-216; Slides 23, 29*)
- System to address high pH concrete wash water and allow discharge into the river under a NPDES discharge permit (*PDF #4; AWT Technical Proposal p. 4-1 and 4-6*)
- Consider finger piers over shallow areas instead of dredging.
- Investigate a potential approach to build the Bike/Ped Bridge from the water, rather than using the new rail bridge to build the Bike/Ped Bridge.

Going to Work (Construction)

With the site set up, we are ready to start major construction operations for the project.

Protection of Existing Assets

A large risk for the project is its proximity to existing assets and structures including CSXT, WMATA, Long Bridge Aquatic Center, GWMP, Ohio Drive, I-395, NPS landscaping and the Potomac River. **Our overarching strategy for safeguarding these assets involves minimizing our proximity to them and the frequency of potential physical contact.** This is evident by our modular approach to construction, reducing the duration we need crane booms in the air and the number of picks.

HIGHLIGHTS: ASSET PROTECTION PLAN

- ✓ Incorporate into workplans work limitations for construction equipment movements beyond what is noted in CSXT/WMATA manuals, providing additional buffer
- ✓ Install flagging/visual warning systems for cranes
- ✓ Reduce roadway use for deliveries including delivery of precast elements, pile, etc. via water

Work Adjacent to Existing Bridges — Working over water and adjacent to existing bridges requires detailed planning and coordination. This project area presents additional unique challenges as it is located in an urban environment adjacent to existing bridges, existing trails, park visitors, and the navigational channel in an environmentally sensitive area. Addressing these unique requirements along with maintaining a fully functional trail, keeping an open navigational channel for the public and eliminating impacts to the traveling public was our key priority during the development of our design and construction methods. The biggest safety risks that we considered during planning were maintaining the safety of the traveling public on MVT, the existing WMATA and Long Bridge, keeping the navigational channel open and avoiding encroachment on the railroad's safety zone.

MOT on Ohio Drive — AWT-JV's alignment for the work adjacent to Ohio Dr. builds on the RFP concept but adds wider lanes, and eliminates signalized intersections, lessening the interaction with vehicular traffic during the construction operations. Incorporating this alignment provides a safer configuration because construction will not be occurring on both sides during live traffic simultaneously. This approach also allows us to minimize lane shifts during construction. Our team has focused on developing access points off of I-395 that eliminate interaction of construction deliveries with park traffic, and minimize impacts to the traveling public while providing improved space for commuters on Ohio Dr.

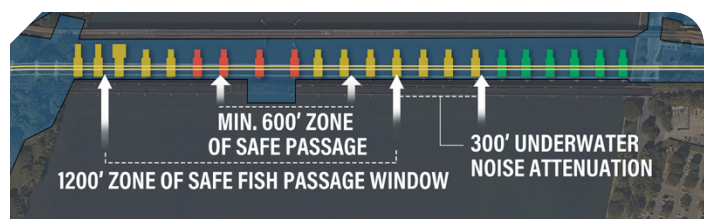
Sequence of Work

AWT-JV has intentionally sequenced the work as shown in *Figure 2.14* on the next page, for the following reasons:

- » **Abutment A/B Start Early in the Project:** Prioritizing areas of interaction with adjacent contracts enables coordination to happen early, reducing probable impacts to the project schedule.
- » **Production Line Type Sequence:** The repetitive design of the structures facilitates linear progress from both shores, akin to a production line for work execution. This approach enables crews to incrementally improve repetitive construction methods, thereby emphasizing safety and quality, which ultimately leads to exceptional performance.
- » **Land Piers Parallel with Water Piers:** Parallel construction of these substructure elements reduces the overall duration of the project.
- » **Bike/Ped Bridge Piers Parallel with Rail Bridge Piers:** Constructing foundations for both bridges as we work our way along the alignment allows for efficient use of resources, improves schedule and produces greater safety. We can use the same crane and hammer for both foundations, limiting the back-and-forth movement on the trestle.
- » **Efficient Use of Resources:** Cranes and crew quantities are optimized to provide continuous work.

In-Water Work/Time-Of-Year Restriction (TOYR)

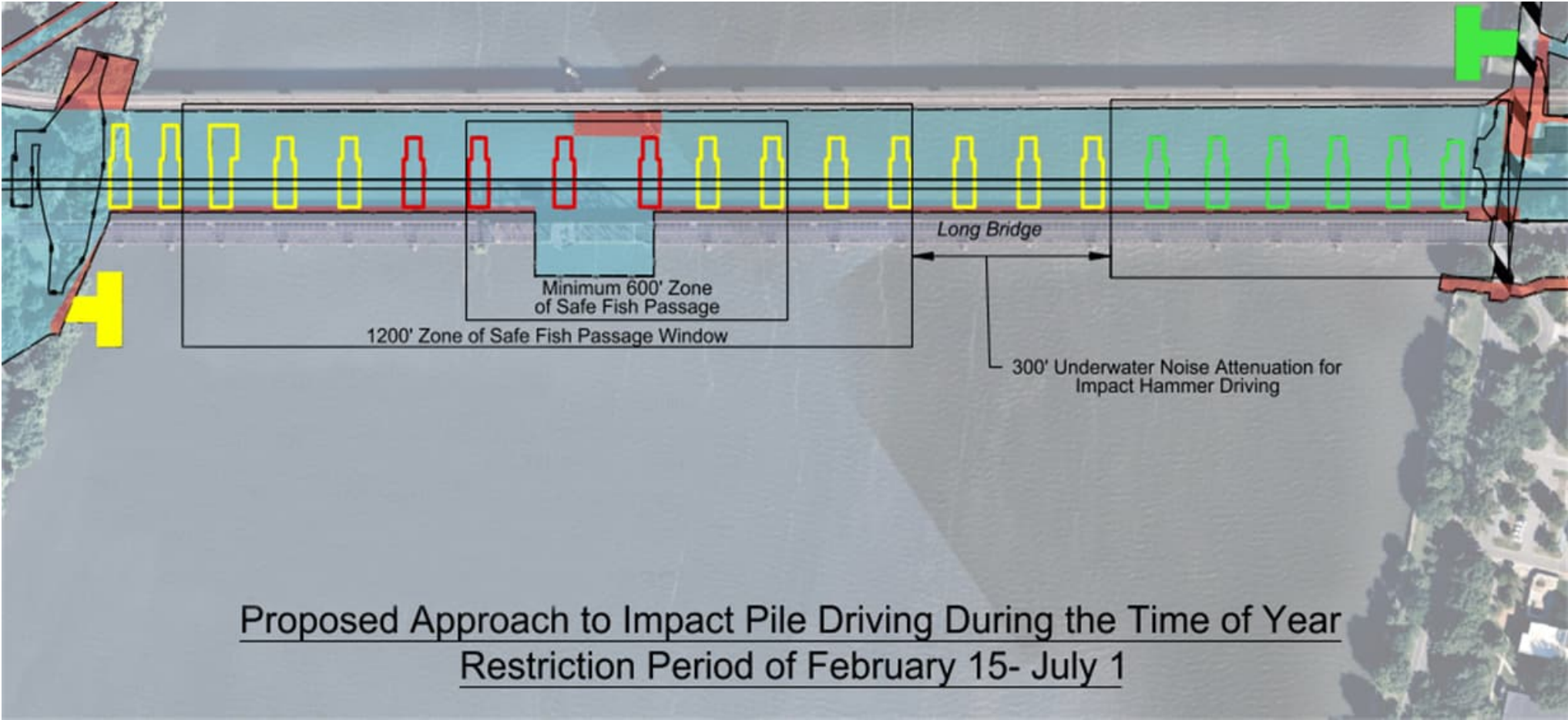
As shown in the sequence of work, AWT-JV will install a work trestle to support efficient construction of river-based substructure elements for the bridges. We will also use bubble curtains, turbidity barriers and noise reduction methods. AWT-JV understands VPPA has submitted a TOYR waiver request as provided in the RFP and RID documents. Utilizing our experience on the Potomac and Anacostia Rivers in DC, AWT-JV has developed a plan to drive railroad and bike/pedestrian foundations and trestle piles in compliance with the TOYR if a waiver is not received, as shown in *Figure 2.13*. This is an example of our experience and ability to address the needs of the project and execute work in the most efficient way possible.



- No impact driving during TOYR period
- Contained air bubble curtain/underwater noise monitoring if 300' from Zone 1
- Permitted with contained air bubble curtain/underwater noise monitoring

Figure 2.13 // Approach to impact pile driving during TOYR.

Potential Approach to Pile Driving During the TOY-R



Innovations/Means and Methods

The AWT-JV approach to project execution has guided what innovations we bring to the work execution. Our innovations focus on improving safety/quality and reducing impacts to the public and AHJs, as shown in *Figure 2.16* on the following page.

In addition to the elements called out in the previous page, AWT-JV has planned to execute the **substructure installation of the railroad and bike/pedestrian bridges in a simple, modular setup to reduce work over the water** (*Figure 2.15* below).

Precast Elements

AWT-JV will use precast elements in our design and construction to lower the risk of cast-in-place quality defects and to eliminate potential weather-related delays. The precast elements will undergo offsite QA/QC certification procedures, allowing for fabrication of elements in a controlled environment rather than on-site construction conditions. We will use pre-casters that are locally based, enabling us to deliver those items via barges. Elements that fall into this category will include pile caps, columns, and piers. **The pre-casting method will expedite the construction schedule and considerably reduce the delivery of the materials required for cast-in-place (rebar, form, concrete) operations.**



Precast Build Process

Click/Scan the video link for full animation.

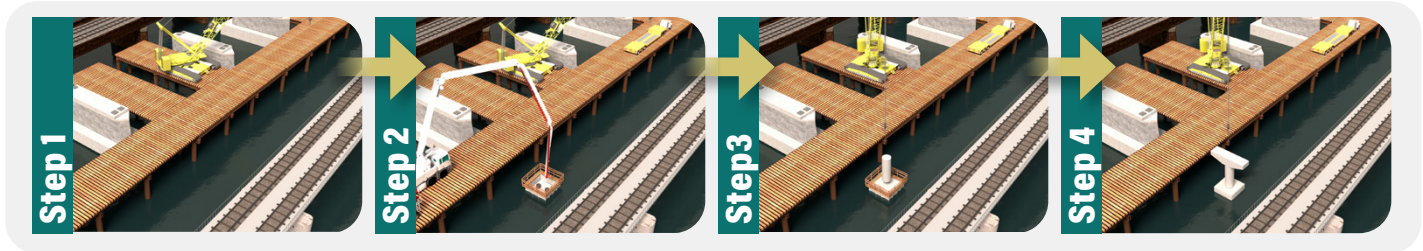
RAILROAD BRIDGE PRECAST STONE PANELS:

The consistent piers of the railroad bridge over the water provide a great opportunity to use precast concrete panels to build a shell for the pier stems. The granite stone fascia, while aesthetically appealing, is heavy and requires tailored access to address installation on the water. AWT-JV will precast fascia elements of the railroad bridge piers using stone that matches the aesthetics of the existing Long Bridge. These elements will be set at the pier locations in modular pieces as shown in the steps below.



BIKE/PEDESTRIAN BRIDGE PRECAST ELEMENTS:

Like the railroad bridge, the bike/pedestrian bridge substructure allows for precast elements. AWT-JV plans to precast a tub for the footing, as well as columns and caps. Taking this work offsite reduces project schedule/work duration.



ADDITIONAL BENEFITS OF THE USE OF PRECAST COMPONENTS



Reduced Schedule:

Off-site assembly/precasting/modular approach improves schedule timeline by increasing efficiency.



Improved Safety:

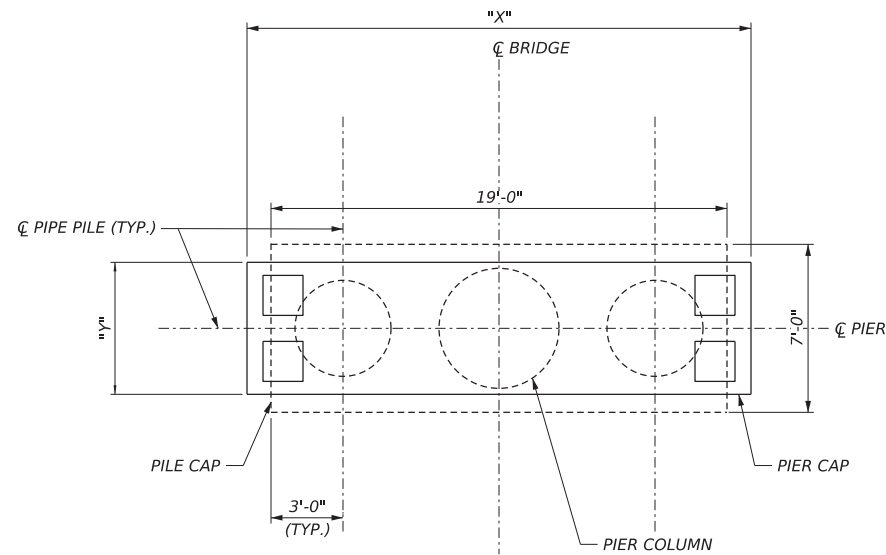
Reduced duration of craft workers over water. Easy access to construction elements in yards/off-site.



Higher Quality:

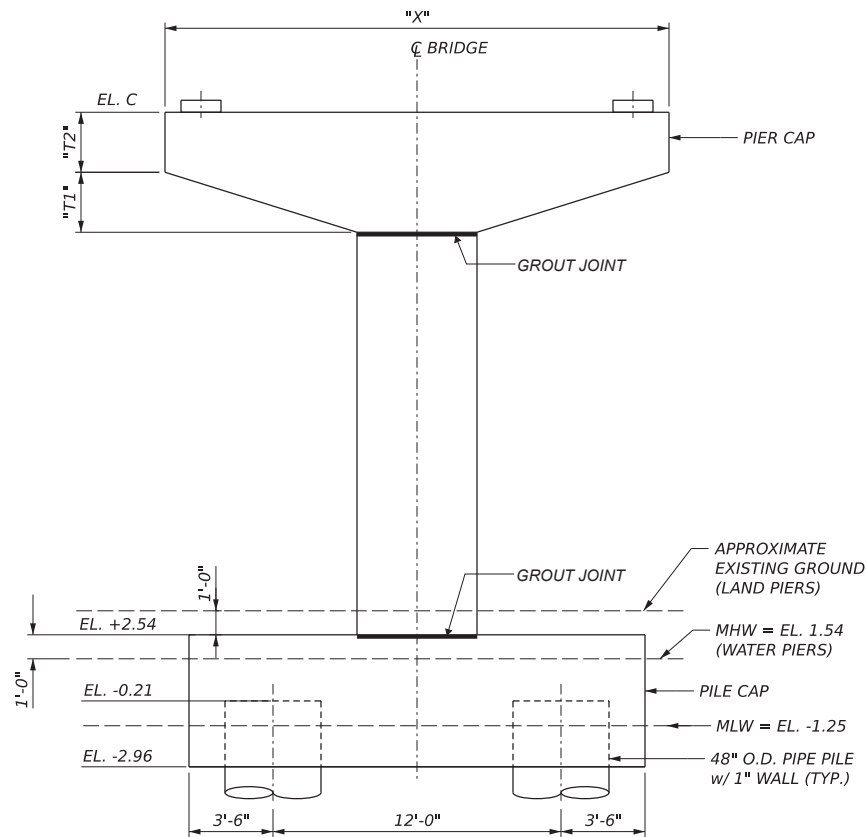
Easy access by QC personnel and supervision to review and monitor work progress with work elements being constructed on grade.

Figure 2.15 // Modular substructure installation of the railroad and bike/pedestrian bridges.



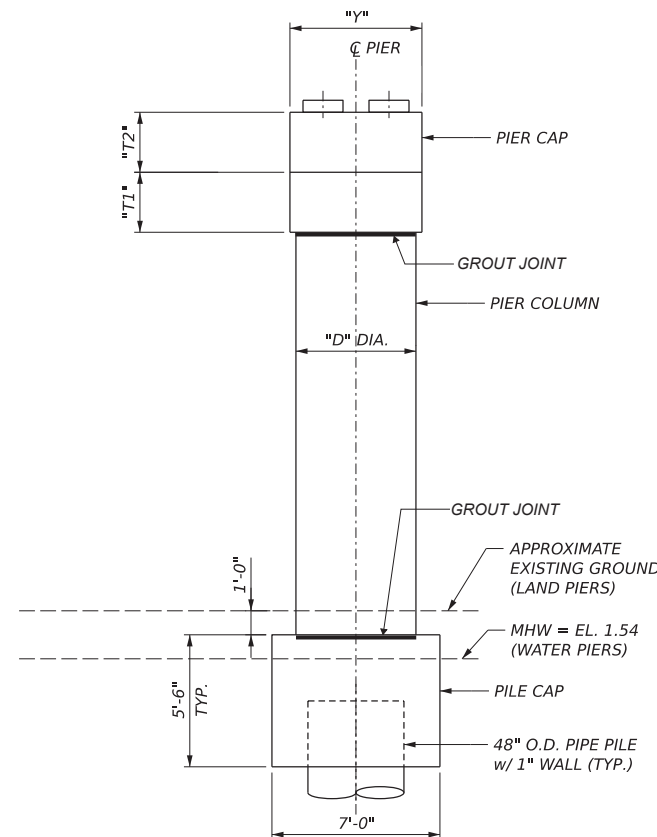
PLAN - BRIDGE PIER

SCALE: 1/4" = 1'-0"



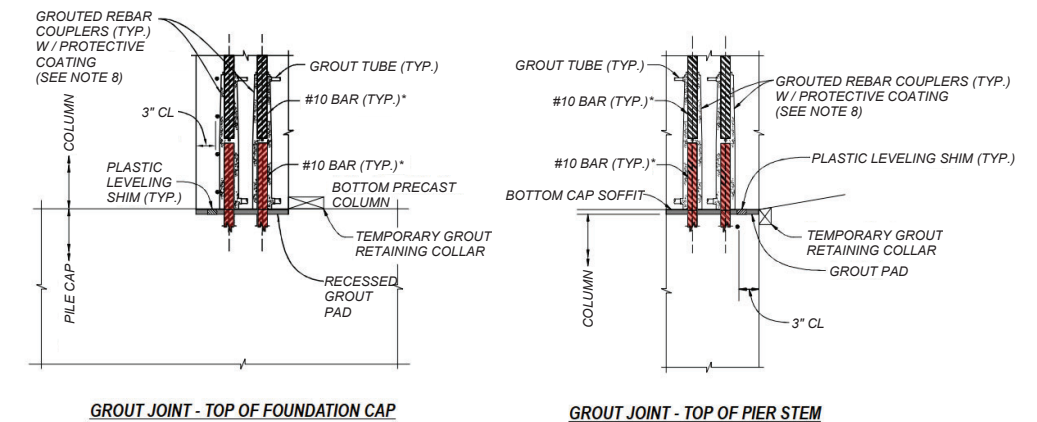
LONGITUDINAL SECTION - BRIDGE PIER ELEVATION

SCALE: 1/4" = 1'-0"



TRANSVERSE SECTION - BRIDGE PIER ELEVATION

SCALE: 1/4" = 1'-0"



* PROVIDE 20 - #10 BARS FOR 4'-0" DIAMETER COLUMNS
PROVIDE 23 - #10 BARS FOR 5'-0" DIAMETER COLUMNS

NOTES:

1. PLUMBNESS, FLATNESS, AND MEMBER TOLERANCES SHALL BE CONSISTENT WITH INDUSTRY PRACTICE.
2. MECHANICAL COUPLER SHALL BE OVERSIZED BY 1/2" (MIN.) OVER REQUIRED BAR SIZE TO GIVE ADDITIONAL MATING TOLERANCES FOR REINFORCING AND COUPLERS.
3. POLYMER OR COMPOSITE LEVELING SHIMS MAY BE UTILIZED. LIMIT SHIM HEIGHT TO 1 INCH.
4. 3D TEMPLATES SHALL BE USED TO LOCATE REINFORCING IN BOTH PRECAST AND CAST-IN-PLACE ELEMENTS. COUPLERS SHALL BE LOCATED WITH A POSITIONING DEVICE IN CONJUNCTION WITH A TEMPLATE.
5. EACH FACE OF GROUT JOINTS SHALL BE PREPARED AS FOLLOWS:
 - 5.1. EXPOSED AGGREGATE FINISH.
 - 5.2. APPLY EPOXY BONDING AGENT OR SATURATED SURFACE DRY CONDITION.
6. MOCK-UP TESTING SHALL BE PERFORMED FOR A GROUT JOINT AND MATCH CAST JOINT (IF UTILIZED). FEATURES OF MOCK-UP TESTING SHALL INCLUDE:
 - 6.1. MOCK-UPS SHALL BE FULL-SIZE IN PLAN AND 4 FEET VERTICALLY FOR EACH COMPONENT.
 - 6.2. FOR EACH APPLICABLE TYPE, PERFORM TWO MOCK-UPS TESTS.
 - 6.3. MOCK-UP TESTING SHALL BE PERFORMED BY SAME PERSONNEL, EQUIPMENT, AND PROCEDURES THAT WILL BE UTILIZED IN THE FIELD.
 - 6.4. AFTER COMPLETION OF THE MOCK-UP, THE SPECIMEN SHALL BE DISASSEMBLED TO REVEAL THE CONDITION OF MATING SURFACES AND GROUTING OF COUPLING SLEEVES.
7. THE SHOP DRAWINGS SHALL INCLUDE A TECHNICAL SPECIAL PROVISION FOR FABRICATION AND CONSTRUCTION AND SHALL DESCRIBE MOCK-UP TESTING AND ACCEPTANCE CRITERIA.
8. GROUTED COUPLERS SHALL UTILIZED THERMAL DIFFUSION GALVANIZING PER ASTM-A1059A/M.

TECHNICAL PROPOSAL SHEETS

DESIGNED BY	B. ANDERSON
DRAWN BY	S. RAMYA
CHECKED BY	S. MATTY
APPROVED BY	S. MATTY
DATE	6/13/2024



LONG BRIDGE
SOUTH PACKAGE
ARLINGTON, VA TO WASHINGTON, DC
SUBDIVISION: RF&P ZONE: CENTRAL
POTOMAC RIVER BIKE-PED BRIDGE
PRECAST PIER DETAILS

PROJECT NO.	VPRA R02A CSXT XXXX
DRAWING NO.	D-125
REV.	SHEET NO. PAGE 7-86
SCALE	N/A
	AS SHOWN

Piers 5 through 26 in the Potomac River — have been designed to closely resemble the 1904 Long Bridge River pier aesthetic, type and shape. The piers provided in these proposal phase documents have been designed to meet the conceptually/preliminarily approved aesthetics included in the Reference Information Documents and will comply with the EIS and Section 106 Programmatic Agreement. The stone facing for the pier stems will be pre-installed on precast concrete panels that will be erected in segments on the pile caps. The void between the precast concrete panels will consist of two cast-in-place reinforced concrete columns positioned beneath the centerline of the through girders, and cast-in-place concrete that will be placed after columns and precast panels are in place. The cast-in-place reinforced concrete pier cap will then be placed on top of the completed stem wall system. See *Figure 2.7*.

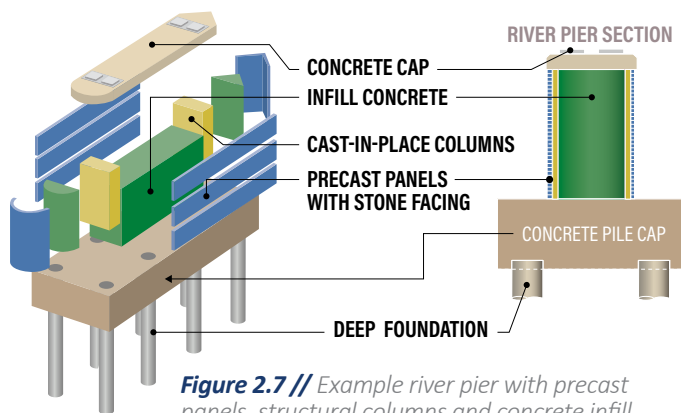


Figure 2.7 // Example river pier with precast panels, structural columns and concrete infill.

Proposed Fender System — has been designed in accordance with Section 15.10 of the Technical Provisions. The fender system proposed to flank the navigation channel under the Potomac River Undergrade Bridge and the adjacent Potomac River Bike/Ped Bridge provides a continuous face extending from the existing Long Bridge fender system to the existing fender system under the WMATA Yellow Line Bridge. The proposed system consists of adjacent segments under the Potomac River Undergrade and Bike/Ped Bridges which are independent of each other, and independent of the adjacent existing fender systems.

The bridge piers, including those adjacent to the navigation channel, have been designed to sustain the impact loads associated with drifting barge and transiting vessel scenarios without reliance on the protection offered by the fendering system provided at the channel. The function of the Proposed Fender System is to demarcate the channel to mariners, and to gently guide off-track transiting vessels back towards the middle of the channel. The system is designed to elastically sustain oblique impacts by an empty barge with a displacement of 300 short tons, a forward speed of 5 knots and an

approach angle not exceeding 15 degrees off the face of the system.

To absorb the impact energy, the system utilizes composite fiberglass-reinforced pipe piles, interconnected with a series of horizontal reinforced composite marine timber waler members, which form the contact face, and which mobilize the participation of numerous piles beyond the point of impact to assist in resisting the applied point load. Double piles are provided at each end of each segment to compensate for the absence of wale continuity at these locations.

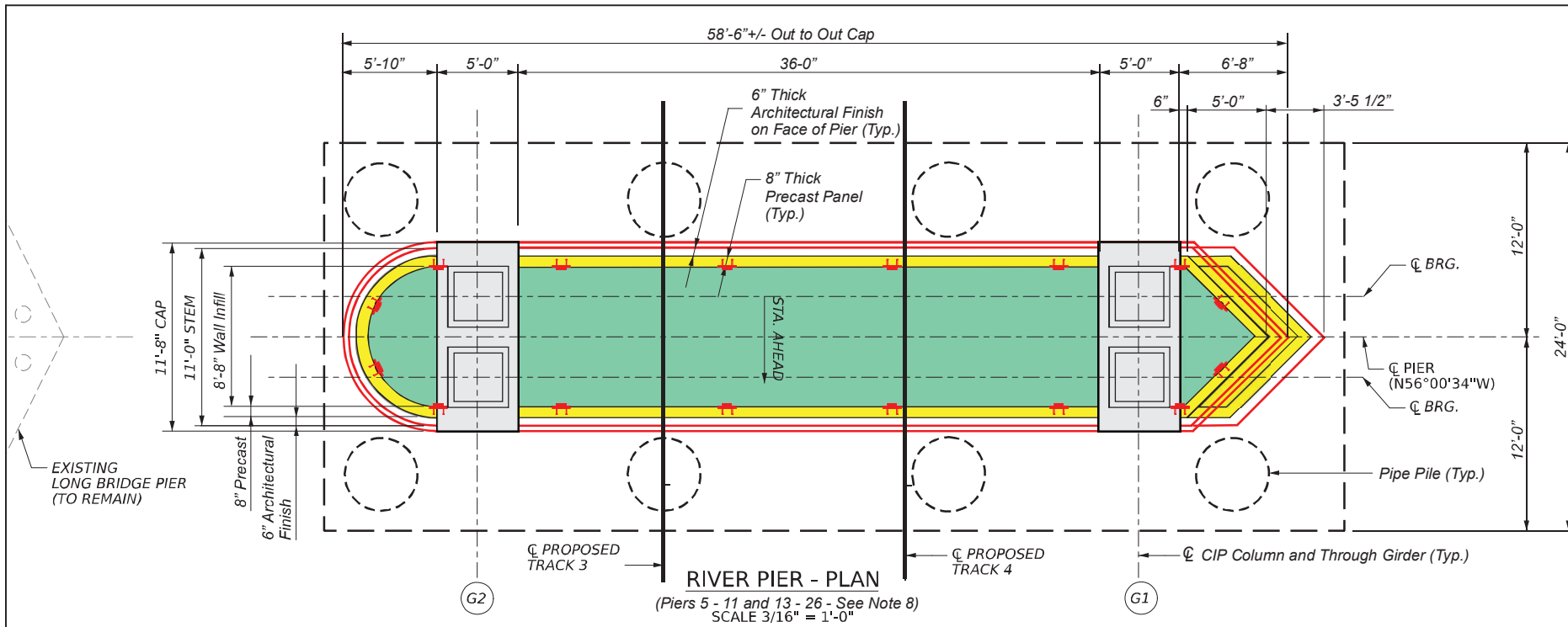
The contact face formed by the walers extends from Mean Low Water (MLW) up to El. +15 ft. 10 in., where a maintenance walkway is provided. Connections are made using stainless steel hardware.

Superstructure — details provided in the proposal plans have been designed and detailed in accordance with AREMA Chapter 15 and Section 15 of the Technical Provisions using the Allowable Stress Design Method for the A709 Grade 50W structural steel. To meet the requirements of the RFP, the superstructure consists of multiple through girder simple span weathering steel ballasted deck structures, maintaining the same web depth for Spans 3 through 27. Additional railroad superstructure features are shown in *Figure 2.8*. The structural cross-section of the superstructure, as shown in *Figure 2.9* on the following page, consists of two through girders, transverse floor beams, longitudinal diaphragms, knee bracing, transverse and bearing stiffeners, and a steel deck plate with the required waterproofing system for the double-track ballast deck.

5 ATC ASTM F3125, Grade A325 Type 3, 7/8" diameter bolted connections will be maximized throughout to minimize fatigue stresses on welded connections. Welding of the transverse stiffeners to the web of the through girders will be designed and detailed to limit the live load stress range to 12 ksi and the bottom of the transverse stiffeners will be bolted to the bottom flange of the through girders to eliminate transverse welds subjected to fatigue stresses at the connection of the fracture critical elements of the through girders.

4 ATC There will be no Category C fatigue details. Flange plate thicknesses are limited to 4 in. and the flanges will be welded to the webs using the appropriately sized fillet weld in accordance with AREMA requirements.

All structural elements are designed for the loads and group loadings in AREMA Chapter 15 and any modifications to those loads as described in Section 15.3.6 of the Technical Provisions including the centrifugal forces that will occur in Spans 1 through 4.

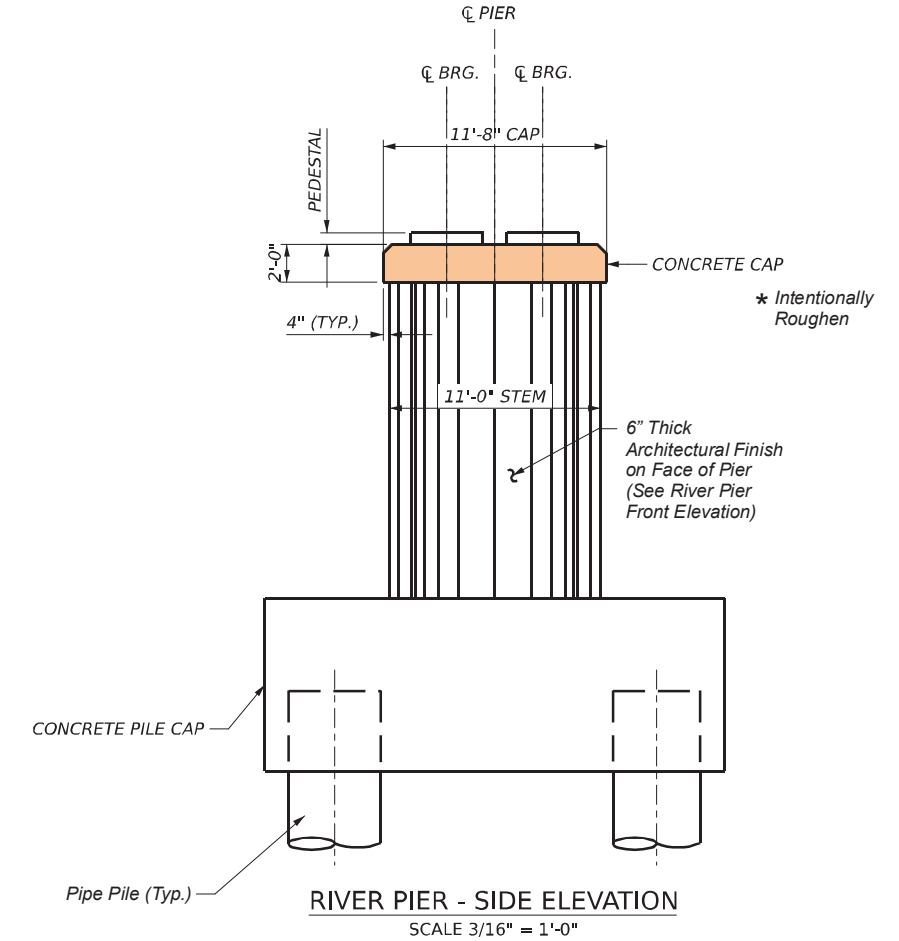
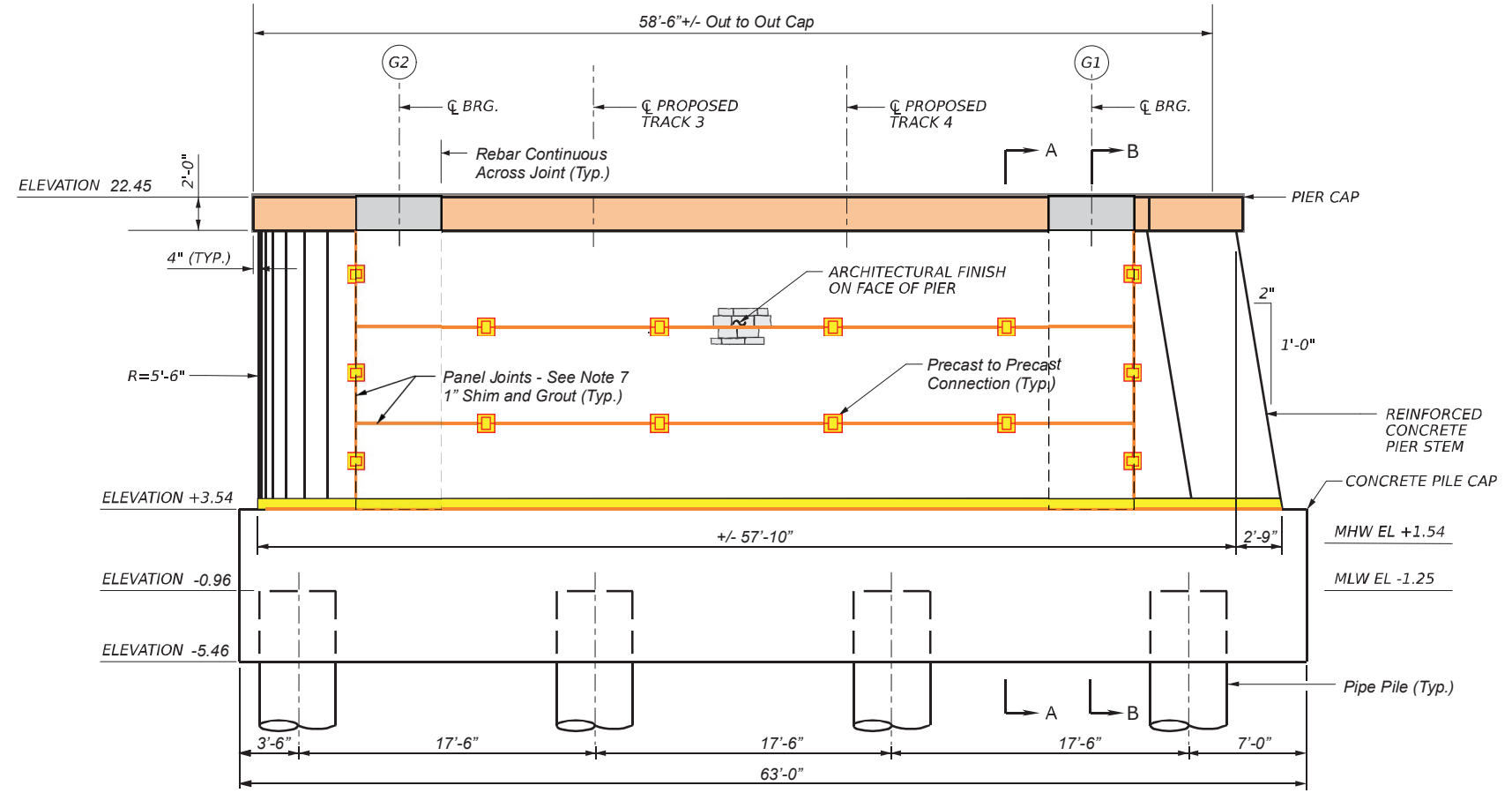


Legend:

- Wall Infill
- Column Stem
- Precast: (See Note 5)
- Footing
- Precast Pier Cap

Notes:

1. For CL of pier stations, See General Plan and Elevation Sheets.
2. Top of pier cap shall be at the same elevation for all river piers and pedestals used, where necessary, to meet required bearing elevations.
3. Infill concrete will be reinforced with hairpins extending from precast panels and shear needles from foundation cap and extending to concrete cap at top of Pier Cap.
4. For precast and stone connection details, see Precast Sheet 2 of 2.
5. Reinforcing requirements for transportation, lifting, and placement of infill concrete shall be the responsibility of the Contractor.
6. Infill concrete and structural concrete are both classified as mass concrete.
7. Locations for horizontal and vertical grouted joints are optional. Final locations shall be determined by the Contractor and submitted for review and approval.
8. Pier 12 uses similar precast details; however, pile layout differs.



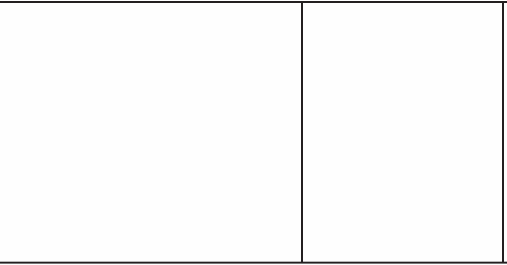
RIVER PIER - FRONT ELEVATION
(Piers 5 - 11 and 13 - 26, Looking Back - See Note 8) SCALE 3/16" = 1'-0"

RIVER PIER - SIDE ELEVATION
SCALE 3/16" = 1'-0"

FILE NAME: River_Pier_Details_v07

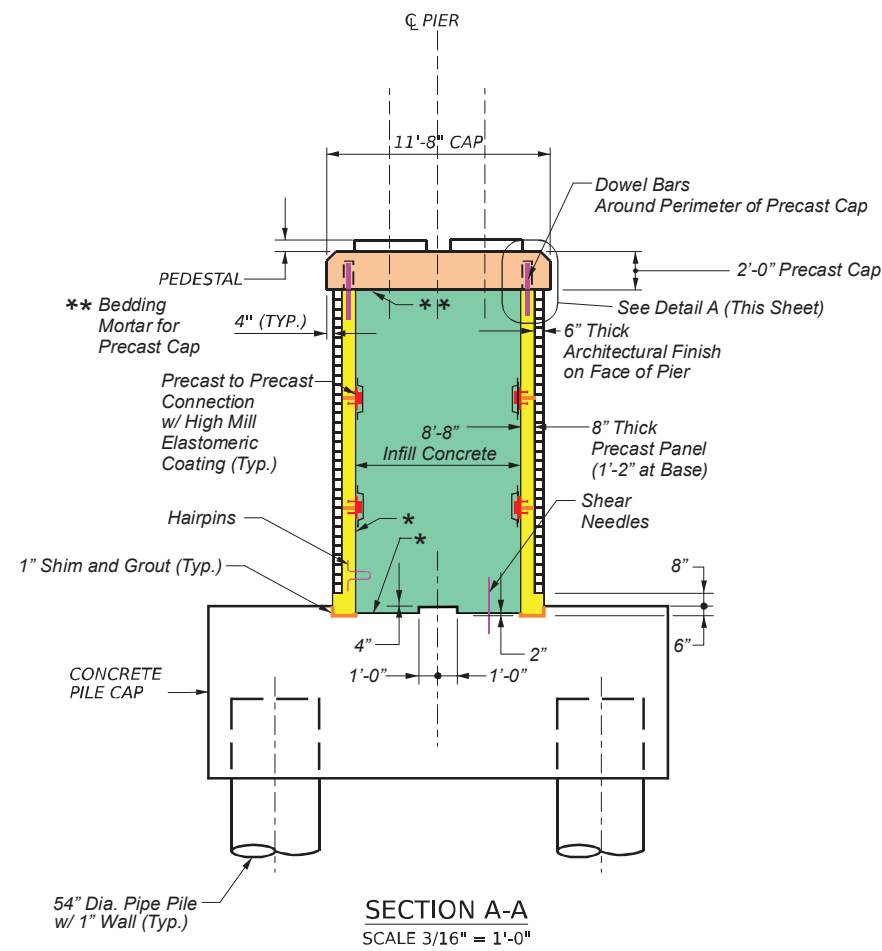
Rev.	Date	Description

DESIGNED BY	R. ANDERSON
DRAWN BY	R. ANDERSON
CHECKED BY	S. MATTY
APPROVED BY	J. ALWARDEN
DATE	8/7/2024

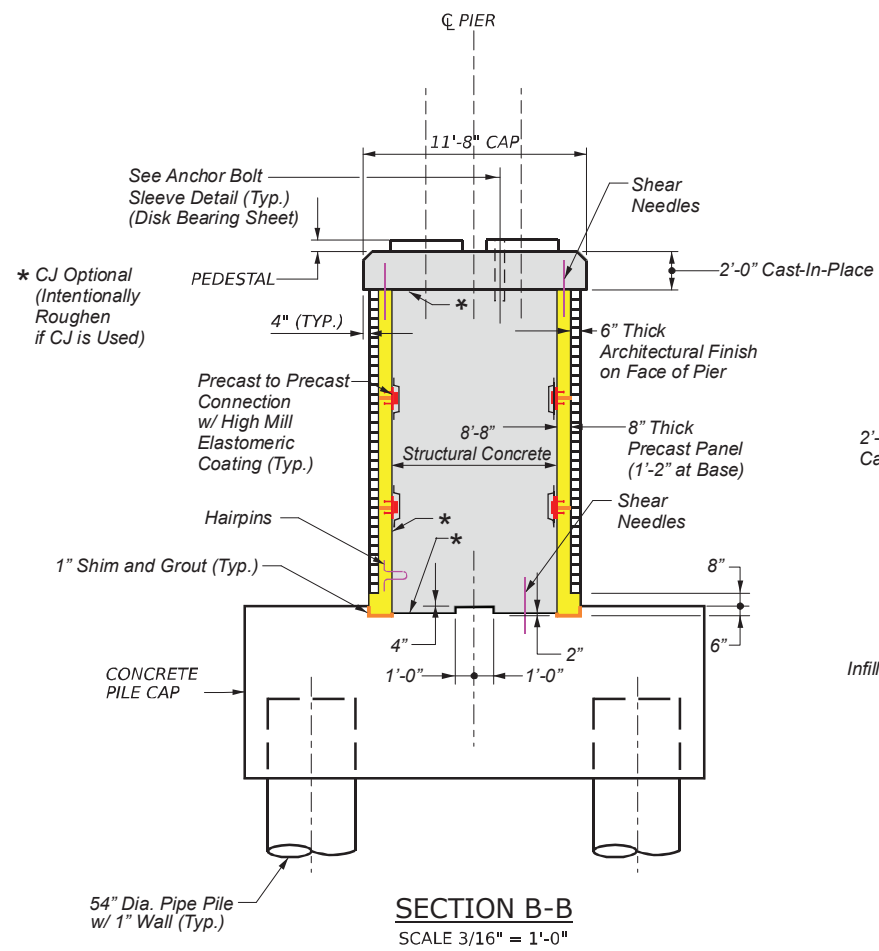


LONG BRIDGE
SOUTH PACKAGE
ARLINGTON, VA TO WASHINGTON, DC
SUBDIVISION: RF&P ZONE: CENTRAL
POTOMAC RIVER
UNDERGRADE BRIDGE
w/ PRECAST CAP (1 of 2)

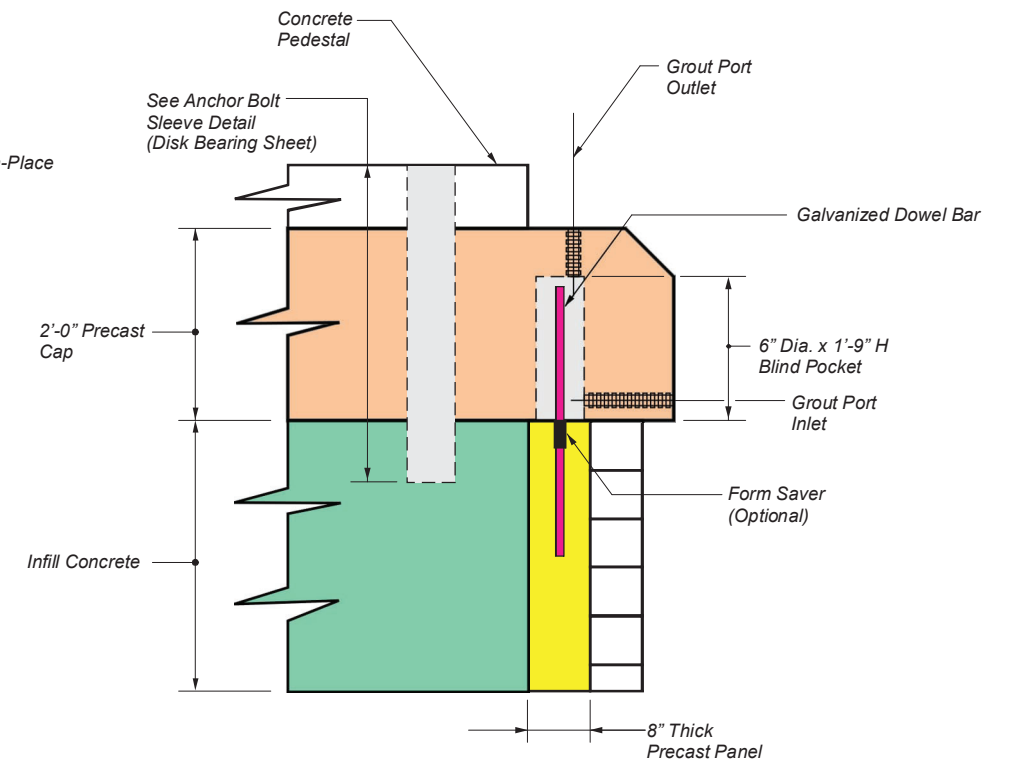
PROJECT NO.	VPRA R02A CSXT XXXX
DRAWING NO.	B-215
REV.	SHEET NO.
N/A	PAGE 7/53
SCALE	AS SHOWN



SECTION A-A
SCALE 3/16" = 1'-0"



SECTION B-B
SCALE 3/16" = 1'-0"



DETAIL A
(Blind Pocket for Dowel Bars)

FILE NAME: River_Pier_Details_v07

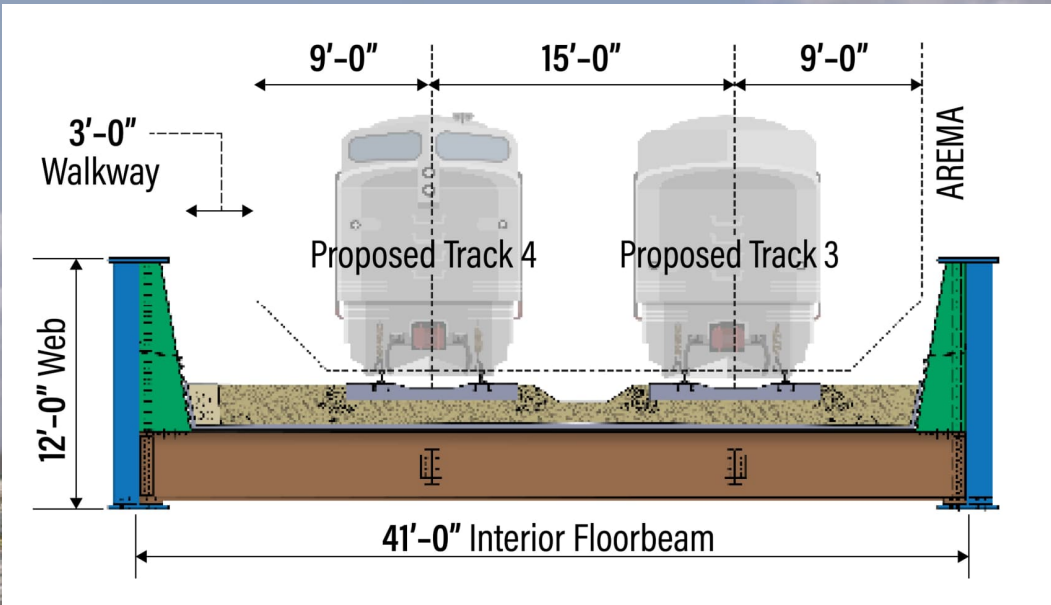
TECHNICAL PROPOSAL SHEETS		
Rev.	Date	Description

DESIGNED BY	R. ANDERSON
DRAWN BY	R. ANDERSON
CHECKED BY	S. MATTY
APPROVED BY	J. ALWARDEN
DATE	8/7/2024

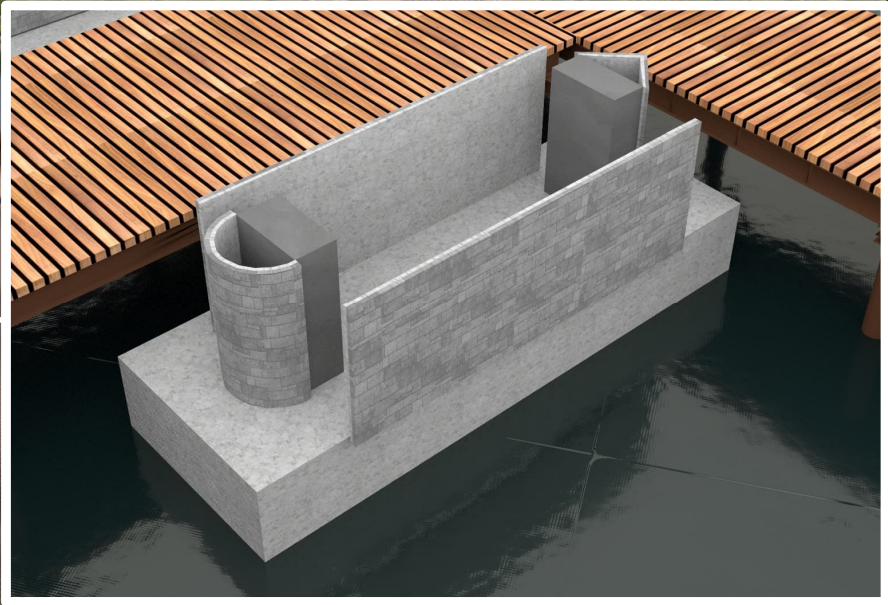


LONG BRIDGE
SOUTH PACKAGE
ARLINGTON, VA TO WASHINGTON, DC
SUBDIVISION: RF&P ZONE: CENTRAL
POTOMAC RIVER
UNDERGRADE BRIDGE
w/ PRECAST CAP (2 of 2)

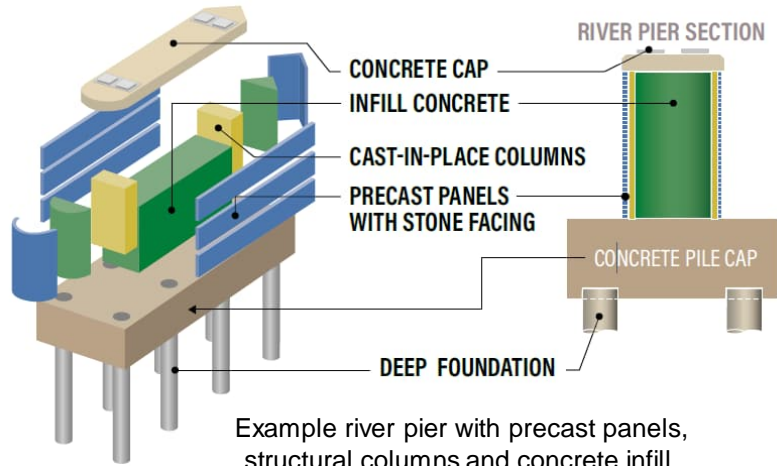
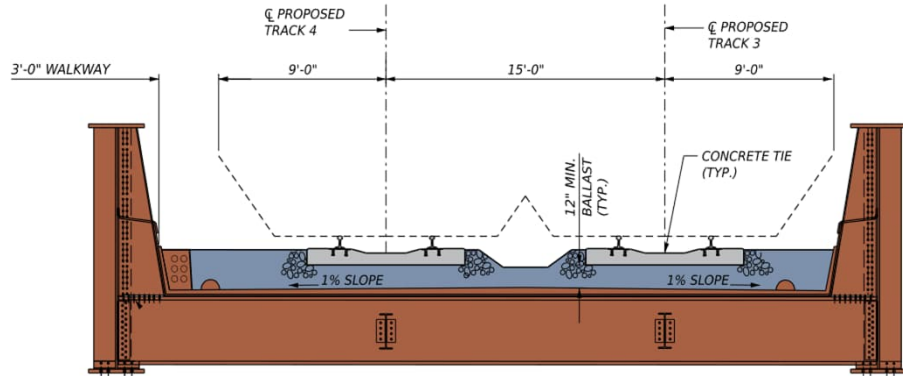
PROJECT NO.	VPRA R02A CSXT XXXX
DRAWING NO.	B-216
REV.	SHEET NO.
N/A	PAGE 7/54
SCALE	AS SHOWN



RR bridge through girder per the TP and piers align with existing



Design of Project Potomac River Undergrade Bridge (Rail Bridge)



Example river pier with precast panels, structural columns and concrete infill.



SECTION 4

Project Management

4.1

4.1.a Permits/Third-Party Approvals

VPRA has assessed and detailed permits required for the project. The permitting for the D.C. Department of Buildings (DOB) and the District Department of Transportation (DDOT) is extensive and is likely to continue well into the construction phase.

We have established trust with the Federal Aviation Administration (FAA) over the past half decade, managing a large crane fleet on the Frederick Douglass Memorial Bridge (FDMB) and Arlington Memorial Bridge (AMB) Projects. We are well-versed with the crane height restrictions, lighting and marking requirements, and ongoing coordination and filings needed with the FAA. Obtaining all necessary permits to start construction is a major challenge and risk for any large project, particularly in Washington D.C. with many stakeholders and agencies, all with their own priorities, processes, and timelines.

Environmental Permits

AWT-JV acknowledges that VPRA has assessed and detailed the required permits in Table 14 of the Technical Provisions (TP) and VPRA is currently pursuing essentially all major permits and approvals in an effort to greatly expedite the process and start construction as soon as possible. AWT-JV responsibilities are outlined in *Figure 4.1*.

To mitigate this schedule risk to the program, we have local permitting experts led by our **Environmental Compliance Manager (ECM), Mike Baker**, who has spent more than five years permitting the largest and most complicated design-build bridge projects in D.C.

– Nice Middleton Bridge, FDMB, and AMB. Examples of innovations that will be implemented on the Long Bridge South Project include fish protection during pile/shaft installation, beneficial use of saturated soils and use of a specialized system to treat high pH concrete wash water.

The team’s experience over the last 20 years in D.C. has led to invaluable relationships with the environmental agencies in and around D.C. Mike’s excellent relationship with Tammy Stidham and others from the NPS will help to expedite the NPS Construction Special Use Permit as we obtained the same Special Use Permits for the FDMB Project. We have worked extensively with the USACE Baltimore District and will swiftly obtain the NWP-6 for geotechnical borings and similar preconstruction activities. Regarding borings, our geotechnical subconsultants will develop the application packages to obtain the Well Permits needed from the Department of Energy & Environment (DOEE) to drill.

MIKE BAKER
Environmental Compliance Manager/
Local DC Permitting Expert



FIGURE 4.1 // PERMIT AND APPROVAL RESPONSIBILITIES

- Obtaining several remaining critical path environmental permits to start site investigation/scope validation activities as soon as possible and in accordance with the aggressive master schedule, including: *FAA crane/bridge permits, USCG L-NTM, USACE NWP and DOEE Section 401 Water Quality Certification; DC Water Discharge Permit; DOB/DDOT permits; DOEE/NPDES and VDEQ/VPDES approvals for ESC/SWPPP Early Access Packages and related approvals; take permits (if needed); NPS SUP permits/coordination (landside and river bottom); VCP application; WMATA Adjacent Construction Approval; CSXT ROE; and VDOT Land Use Permit(s).

- Supporting VPRA on finalizing certain approvals such as the Final Design Approvals from NCPC and CFA.

- Obtaining approval for any changes or modifications to any permits or approvals that VPRA has procured, in

collaboration with VPRA. This potentially includes a JPA for modifying the VPRA permits for the bridges and trestle as well as appropriate NEPA re-evaluations and documentation/coordination needed to gain Section 106 Signatory concurrence for ATCs. Aside from the ATCs, AWT-JV is focused on minimizing permit modifications.

- Advancing the ESC/SWM packages with both DOEE and VDEQ until both are final and purchasing nutrient credits as deemed appropriate/feasible.

**Definitions L-NTM: Local Notice to Mariners; NWP: Nation-Wide Permit; DOEE: DC Department of Energy & Environment; DOB: DC Department of Buildings; NPDES/VPDES: National/Virginia Pollutant Discharge Elimination System; ESC: Erosion & Sediment Control; SWPPP: Stormwater Pollution Prevention Plan; ROE: Right of Entry; SUP: Special Use Permit; VCP: Voluntary Cleanup Program.*

4.1.c Management of Environmental Compliance

The risk for environmental noncompliance on this project is high unless properly managed and mitigated. Similar to safety, environmental sensitivity will not be solely the responsibility of the environmental team but instead will be part of the culture of the entire AWT-JV team. This culture will be instilled in the team through top management participation in environmental compliance programs, employee and subcontractor training, focus as part of the formal partnering program, and strict enforcement of project policies and procedures.

Compliance starts with the right team managing the environmental aspects. Our ECM, Mike Baker, and his environmental team have managed the compliance for **Woodrow Wilson Bridge, South Capitol Street Bridge, Arlington Memorial Bridge, and Harry Nice Memorial Bridge** and have deep experience on large projects over the Potomac River engaging with NPS, USACE-Baltimore District, NMFS, FAA, USCG, DOEE, VDEQ, CFA, NCPC and other regulatory and resource agencies. The team includes expertise in not only permitting but also construction compliance and ESC/SWM. From initiation of the permitting process to closeout at final completion, consistency and tenacity are key and the AWT-JV environmental team has proven success. Early detection of issues and making swift corrections with robust resources before they become violations is critical.

First off, as noted in Section 10.2 of the TPs, the AWT-JV Team will create a Commitment Tracking Database (CTD) to track compliance with all permits, approvals, and associated commitments and conditions through both design and construction. The AWT-JV CTD will be updated and submitted to VPRA on a quarterly basis and the CTD will also be used to generate the monthly Environmental Monitoring Reports, which are also submitted to VPRA.

As the team moves toward starting field activities, pre-activity meetings will be crucial to conveying critical environmental compliance topics to the work crews. Erosion and sediment controls (ESCs) will need to be properly installed and checked by DOEE/DEQ Compliance inspectors prior to work starting. The ESCs will need to be formally inspected and documented by AWT-JV at least once per week and following each rain event. All corrective action items will be addressed within a week unless there is the potential for a sediment release and then the issues will be addressed within 24 hours or before the next storm. Demarcating the LOD and other key landside issues are noted in the table in *Figure 4.6*.

Regarding in-river work, following required pre-construction meetings, we will commence water quality monitoring in concert with bottom-disturbing work and proper use of turbidity curtains and cofferdams (if/as needed). Though not anticipated, if turbidity levels become elevated, we will pause work to make proper adjustments to the turbidity curtain and resume work. Fish protection during pile driving will be a major topic and we will use underwater monitoring to confirm noise threshold compliance with permits and commitments. Adjustments will be made to the contained air bubble curtain system, as needed, to remain in compliance.

Pile muck outs have the potential to produce river sediment that will need to be managed. Weanack Beneficial Use Site on the James River in VA (designed by Mike Baker in 2000 for the Wilson Bridge Project dredged material) is the likely permitted disposal site for river sediment.

VPRA GOAL: AWT-JV team members have a proven track record of including SWaMs/DBEs and diverse workforces on projects across the Mid-Atlantic region. As local contractors, the AWT-JV team brings the advantage of knowing and working with the local market's qualified subcontractors, vendors, and diverse workforce.

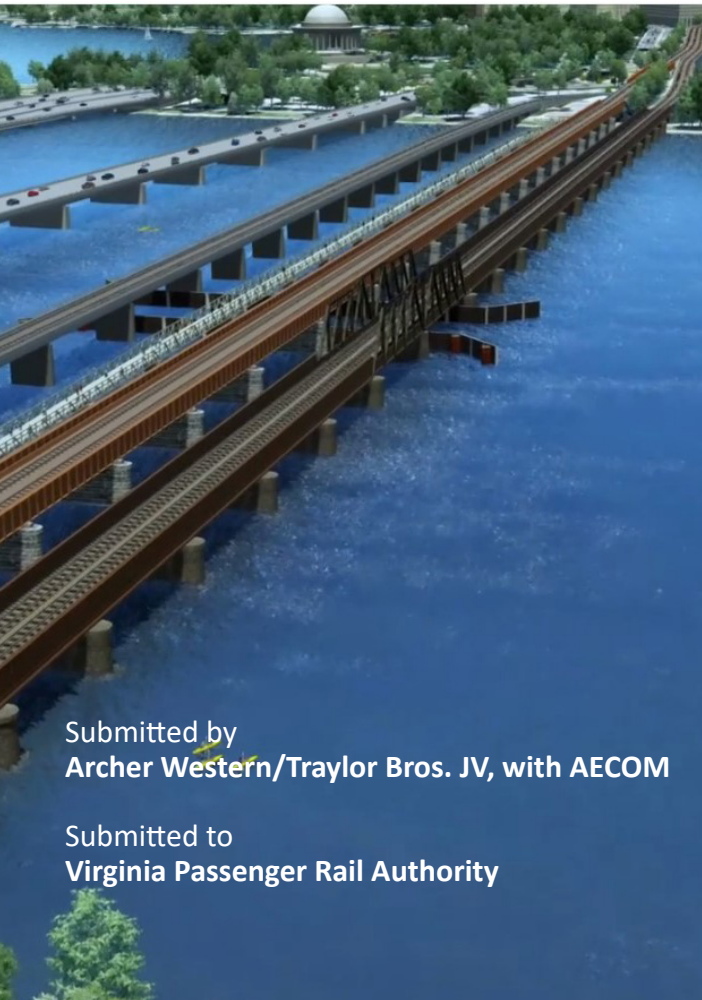


AWT-JV Project: Woodrow Wilson Bridge

+ PROVEN EXPERIENCE ON SIMILAR PROJECTS

Our ECM, Mike Baker, implemented the use of the first contained air bubble curtain (C-ABC) system just down the Potomac at the Woodrow Wilson Bridge Project in 2003 and has led the management of many C-ABC's since. Concrete waste and concrete wash water are also potential challenges as they cannot be discharged into the river and must be carefully managed. We are maximizing the use of pre-cast concrete to minimize cast in place concrete, but we developed the use of an innovative system on the Harry Nice Memorial Bridge Project which instantly treats high pH concrete wash water and allows discharge into the river under a NPDES discharge permit, saving significant time and money.

VIRGINIA
PASSENGER RAIL
AUTHORITY



Submitted by
Archer Western/Traylor Bros. JV, with AECOM

Submitted to
Virginia Passenger Rail Authority

LONG BRIDGE SOUTH PACKAGE

CONFIDENTIAL ATC

ATC 3 - Bike-Ped Span 1
Fill Section and
Removal of Wall A

RFP No.: 1-001-23-0002
May 8, 2024



JOINT VENTURE

ATC 3 – Bike-Ped Span 1 Fill Section and Removal of Wall A

(c) a narrative description and conceptual drawings of the configuration of the ATC or other appropriate descriptive and technical information;

This ATC includes removal of the Span 1 structure along the bike-ped bridge and removal of Wall “A” along Tracks 3/4 approximately between Stations 3016+50 and 3018+05. The bike-ped bridge typical section includes a reinforced-steepened 1H:2V slope (RSS) along removed Span 1 - Station Left (West Side), and grading along removed Span 1 - Station Right (East Side). The implementation of this ATC would also eliminate the need to remove the existing wall located within these station limits. The existing wall would remain in place, buried, and graded over.

The south abutment for the bike-ped bridge is shifted to the approximate location of Pier 1. Wall “A” would also be replaced with 2H:1V grading. The roadside grading between the bike-ped path and tracks would include a minimum of 2’ safety grading prior to the hinge point, no steeper than 2H:1V side slopes, and a minimum of 2’ wide bottom ditch or bioretention facility.

(d) the locations where, and an explanation of how, the ATC would be used on the Project;

The approach is located between the Aquatics Center and GWMP and includes grading between the proposed bike-ped bridge and the undergrade rail bridge.

(e) any changes in operational requirements associated with the ATC, including ease of operations;

None

(f) any changes in routine or capital maintenance requirements associated with the ATC, including ease of maintenance;

Removing Span 1 of the bike-ped bridge and Wall “A” and replacing them with fill will reduce maintenance of structural assets. Maintenance for the SWM facility and maintenance of the RSS would be relatively minimal.

(g) any changes in the anticipated life of the components and items comprising or affected by the ATC;

Installation and maintenance of the proposed grading would eliminate the need for more costly maintenance of structural elements within the anticipated life of the components. The service life of the proposed bike-ped and undergrade rail bridges will not be impacted.

(h) any change to the time period necessary to design and construct the Project, including changes in phasing and sequencing, resulting from implementing the ATC, including, as appropriate, a description of method and commitments;

This ATC does not result in a change in design duration. The construction work sequence will be altered, directly tying together the bike-ped path and rail through fill. There will be some gained efficiency in reduction of concrete operations.

(i) references to requirements of the Contract Documents that are inconsistent with the proposed ATC, an explanation of the nature of the deviations from such requirements, and a request for approval of such deviations;

This ATC deviates from Technical Provision (TP) Section 16.5.19.2 which does not allow permanent slopes steeper than 2H:1V. The 1H:2V RSS is a deviation and is proposed along the west side of the bike-ped bridge. Refer to the attached cross section for details of the RSS. Removing Span 1 and replacing it with fill is listed as a potential ATC in the ITP, Section 4.1.2(e). The deviation would need to be approved by VPRA and DDOT. Alternatively, the RSS can be substituted with a fill slope that is a minimum of 2:1, which would increase the fill footprint, LOD needs and ROW impacts.

(j) an analysis justifying use of the ATC, including explanations of (i) why the deviations, if any, from the requirements of the Contract Documents should be allowed, and (ii) how the ATC is equal or better in quality and performance as compared to the requirements of the Contract Documents;

The removal of Span 1 and the retaining wall will result in cost savings due to the replacement of structural elements with grading. Removing structural assets also minimizes the maintenance needed in this area. Providing a fill section with vegetation will provide a more natural transition and blend into the existing landscape. Furthermore, the grading provides the opportunity for a small SWM facility in this area, which would help with water quality treatment.

Ground improvements (GI) are currently shown for Wall “A” because Technical Provisions (TPs) do not allow T-walls on existing or new fill. The risk for eliminating GI is negligible, which is supported by the settlement estimate in the Reference Information Documents (RIDs). The immediate settlement estimate in the RID is less than 1½ in. with no post-construction settlement expected, and this estimate has been validated by our team’s independent analysis. Eliminating Wall “A” eliminates the need for GI in this area, and because of the low risk of settlement, we do not anticipate that GI would be required for the RSS on the west side of the bike-ped bridge approach.

(k) if and what additional ROW will be required to implement the ATC; (l) a preliminary assessment of the need for additional environmental analysis and the potential impacts on environmental permitting and clearances, the surrounding community, safety, design, construction, operations, and maintenance;

No additional ROW will be required to implement the ATC.

(m) an estimate of the impact of the ATC on the Contract Price and schedule (including time savings or additional time necessary), should the ATC be approved and implemented;

This ATC results in cost savings since structures are being replaced by fill. This ATC reduces construction time in this area since it would be quicker to grade versus installing the retaining wall, Span 1, and one additional pier. Currently this ATC proposes an approximate reduction of [REDACTED] that would be directly realized by VPRA through our team’s cost proposal. Since this work is not the critical path of the construction schedule, this ATC does not affect the overall duration of the project.

(n) any prior projects on which the Proposer used the concept(s) in the ATC or similar concepts, as well as a description of the project, how the ATC was implemented, how the ATC was successful, and the name and contact information (phone number and email address) of a reference person from the project; and

The RSS has been used in various previous projects, some of which are listed below:

Kankakee Dunes Trail in Porter County, IN. Contact Dan McClure, Walsh and Kelly (now Milestone Contractor, LP) at 219-924-5900. This was an embankment widening along SR 49 to allow for a new trail approach to the bridge carrying SR 49 over US 20. The RSS was used so that traditional embankment widening was not necessary beyond the existing embankment footprint to avoid poor foundation soil conditions at the toe of the slope. The slope has been in place about 10 yrs.

I-465 Widening in Indianapolis, IN. Contact INDOT Crawfordsville District. I-465 was widened, and the available ROW was insufficient to construct a traditional slope. This has been in place for about 20 years maintenance free.

Eagle Creek Shoreline Stabilization in Indianapolis, IN. Contact Dan Sweet, Beatty Construction, Inc. at 317-835-2254. This is a nearly 40-ft high steepened slope built to restore a failed shoreline condition. This has been in place for almost 20 years maintenance free.

CSO 016 Sewer Outfall in Mishawaka, IN. Contact Chris Jeter, P.E., Lawson-Fisher Associates, P.C. at 574-234-3167, cjeter@lawson-fisher.com A very steep natural slope is present along the St. Joe River. A storm sewer outfall was required to cut through the slope. Re-establishing the slope to such a steep condition was not possible with traditional soil fill compaction to achieve a minimum factor of safety. A vegetated RSS was used to restore the riverbank condition. This has been in place for about 15 yrs.

(o) a description of added or reduced risks to VPRA, CSXT or other third parties associated with implementing the ATC.

This ATC places additional fill between the bike-ped path and railroad tracks within the limits of the Floodplain. Since this area is located at the edge of the Floodplain, preliminary analysis has been completed, to ensure the additional fill does not increase the Water Surface Elevation (WSEL).

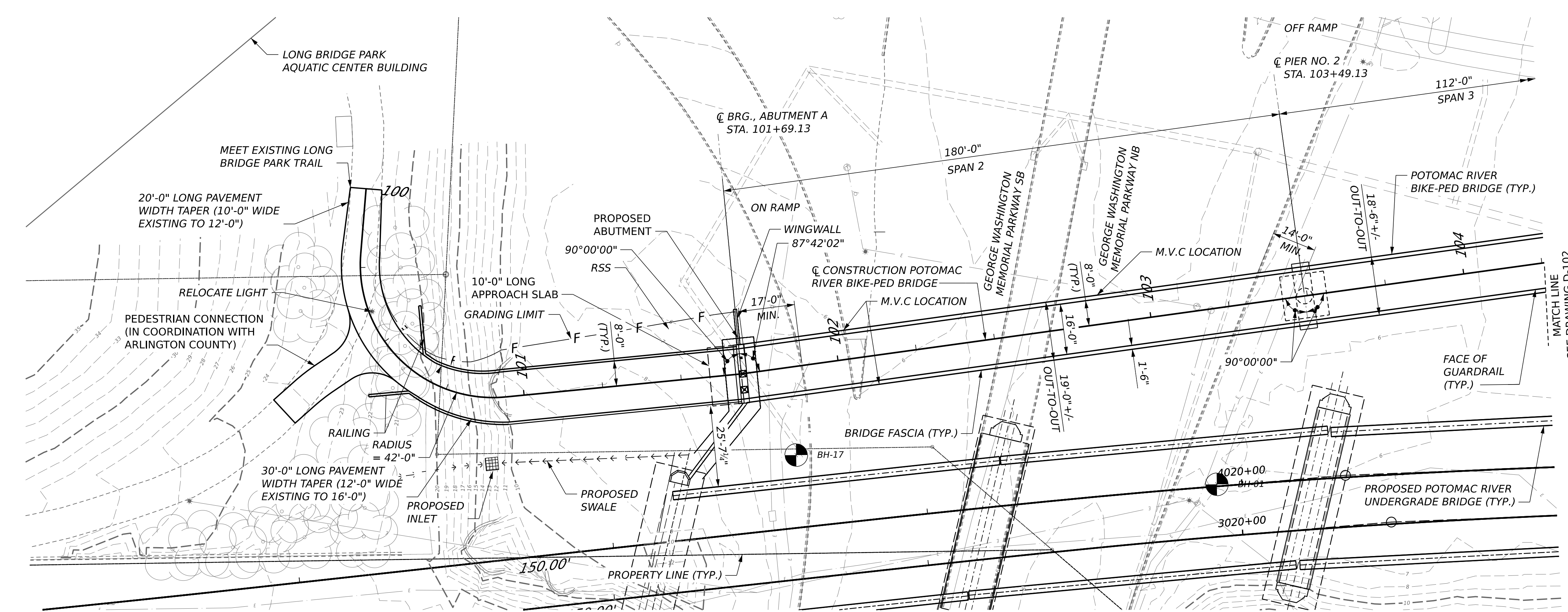
The anticipated ground conditions are such that long term settlement is not expected. This ATC reduces risks associated with GI (as shown in the RIDs) and long-term performance risks of walls adjacent to railroad traffic.

Additional LOD is required for the installation of fill and new location of the bike-ped bridge abutment. It is worth noting that additional LOD would be required in this area to provide adequate room for construction activities and access, even if bike-ped bridge – Span 1 and Wall “A” were to remain. The recent draft documents from VPRA showing potential increase in LOD would address the needed additional required LOD associated with this ATC.

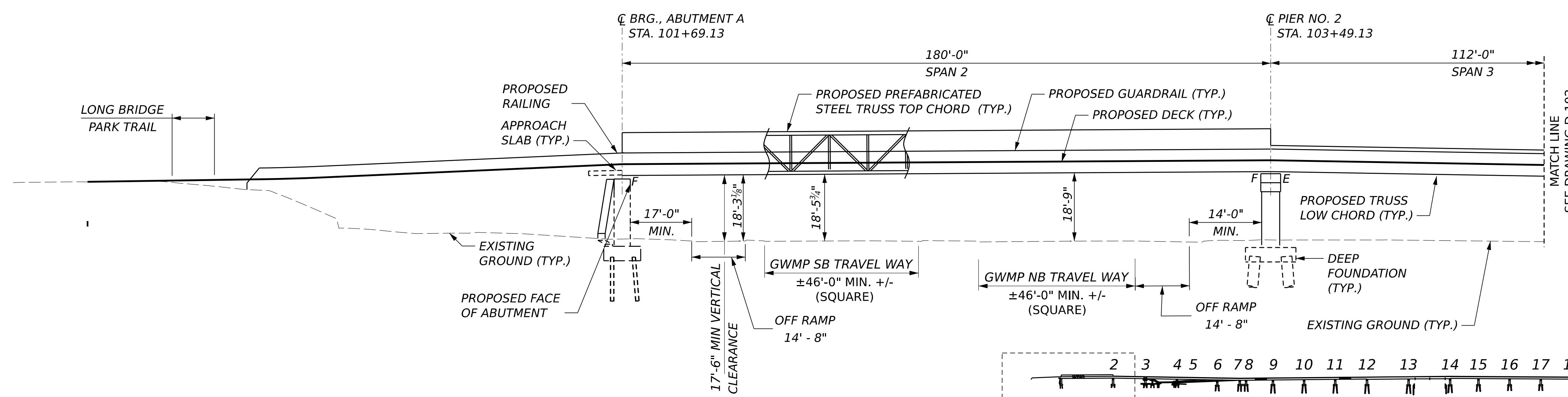
No additional impacts to wetlands or waterways are anticipated as part of this ATC. Additional tree impacts are possible; however, it deserves mention that additional tree impacts would be needed if Wall “A” is constructed anyway, due to the proximity of the existing trees to the proposed wall.

The NPS SUP will likely need modification and CFA/NCPC review may be required.

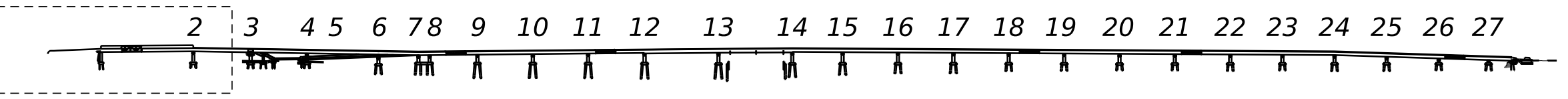
SOUTH TO "AF" NORTH TO "CP VIRGINIA"



PLAN
SCALE: 1" = 20'



ELEVATION
SCALE: 1" = 20'



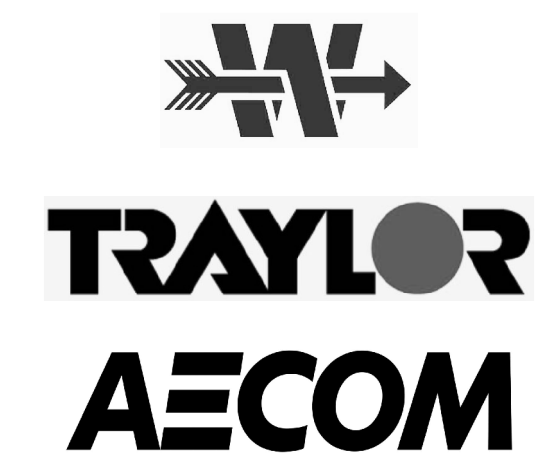
- NOTES:
- REFER TO PROFILE SHEETS FOR ELEVATIONS AND GRADES.
 - BEARING LONGITUDINAL FIXITIES NOTED IN ELEVATION AS "E" FOR EXPANSION AND "F" FOR FIXED BEARINGS. FINAL FIXITIES TO BE COORDINATED AND UPDATED AS REQUIRED IN COORDINATION WITH SUPERSTRUCTURE AND PIER FINAL DESIGNS.
 - PERMANENT BRIDGE ELEMENTS TO BE LOCATED ENTIRELY ON NPS PROPERTY.
 - ALL DRAINAGE PIPES AND STRUCTURES ARE SUBJECT TO CHANGE, AS THE TEAM CONTINUES TO COORDINATE EFFORTS WITH AWT. THESE PLANS ASSUME A CURB AND SCUPPERS WILL BE INSTALLED ALONG THE WEST SIDE OF THE BIKE-PED BRIDGE, PER THE OWNER-PROVIDED DESIGN WAIVERS. ADDITIONAL VPRO INPUT IS NEEDED TO DETERMINE WATER MANAGEMENT ON THE PED-BIKE BRIDGE

ATC 3 - BIKE-PED SPAN 1 FILL SECTION AND REMOVAL OF WALL A - 5/6/2024

DESIGNED BY	
DRAWN BY	
CHECKED BY	
APPROVED BY	
DATE	5/6/2024



PRELIMINARY
NOT FOR CONSTRUCTION



LONG BRIDGE
SOUTH PACKAGE
ARLINGTON, VA TO WASHINGTON, DC
SUBDIVISION: RF&P ZONE: CENTRAL
POTOMAC RIVER BIKE-PED BRIDGE
GENERAL PLAN
AND ELEVATION (1 OF 6)

PROJECT NO.	VPRA R02A CSXT XXXX
DRAWING NO.	D-101
REV.	SHEET NO.
N/A	
SCALE	AS SHOWN

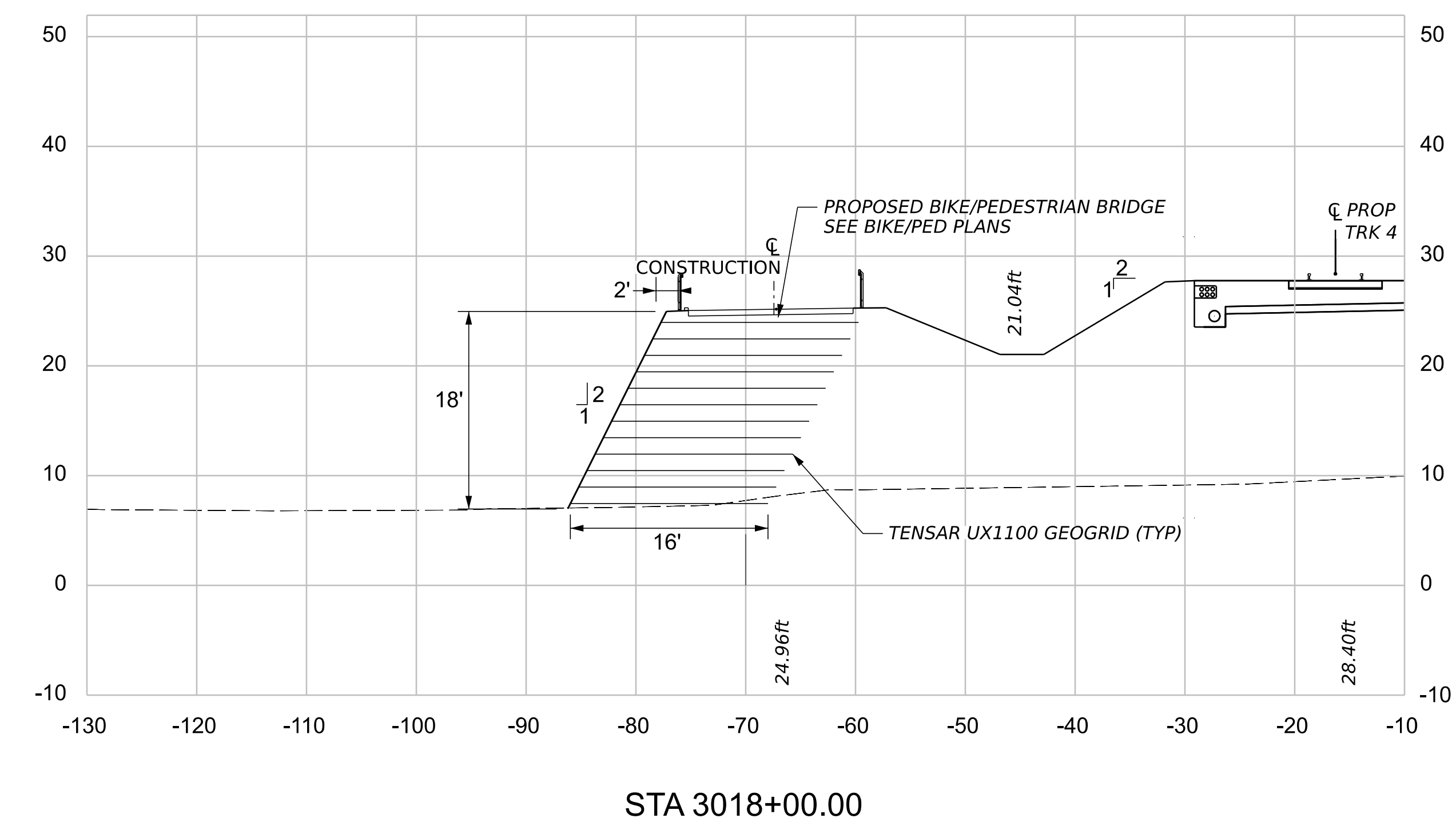
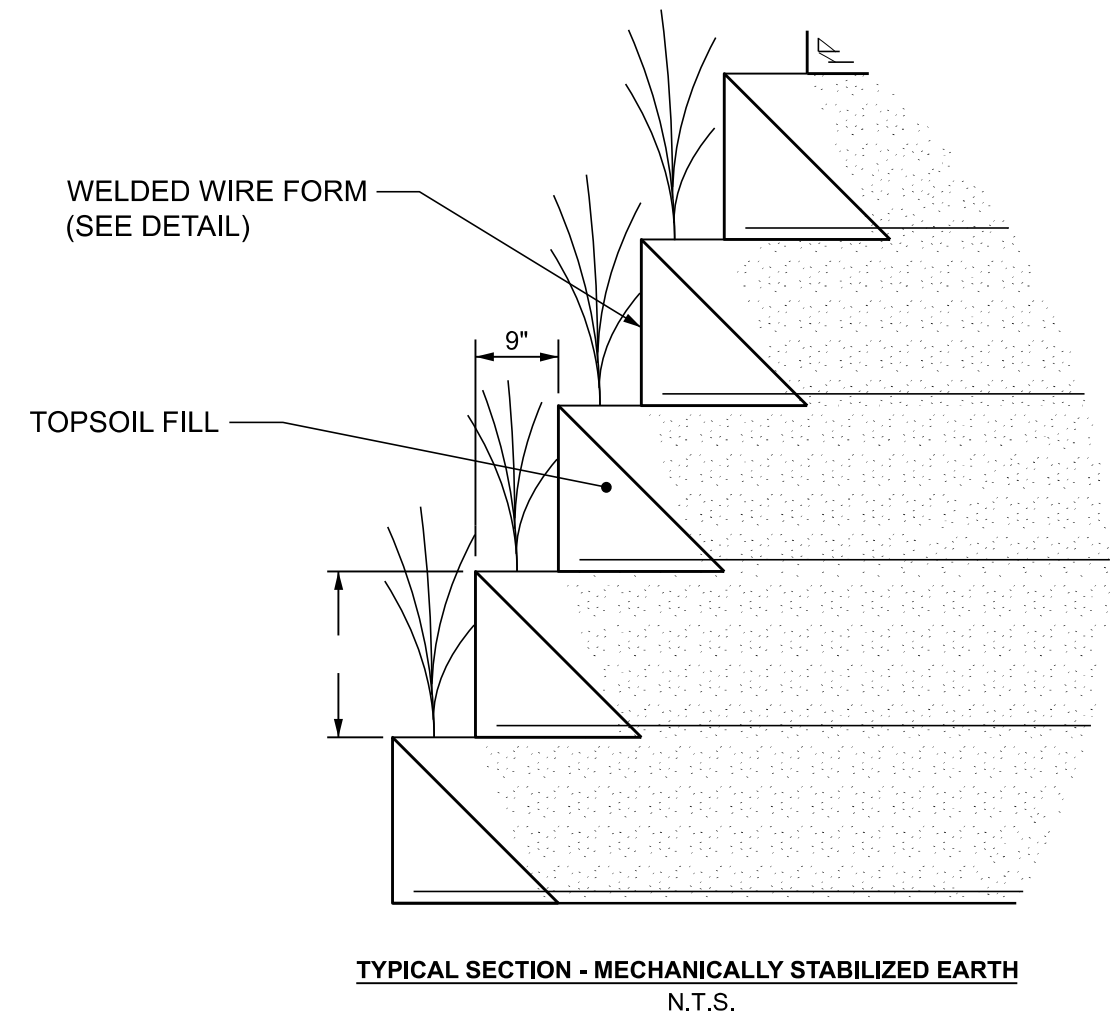
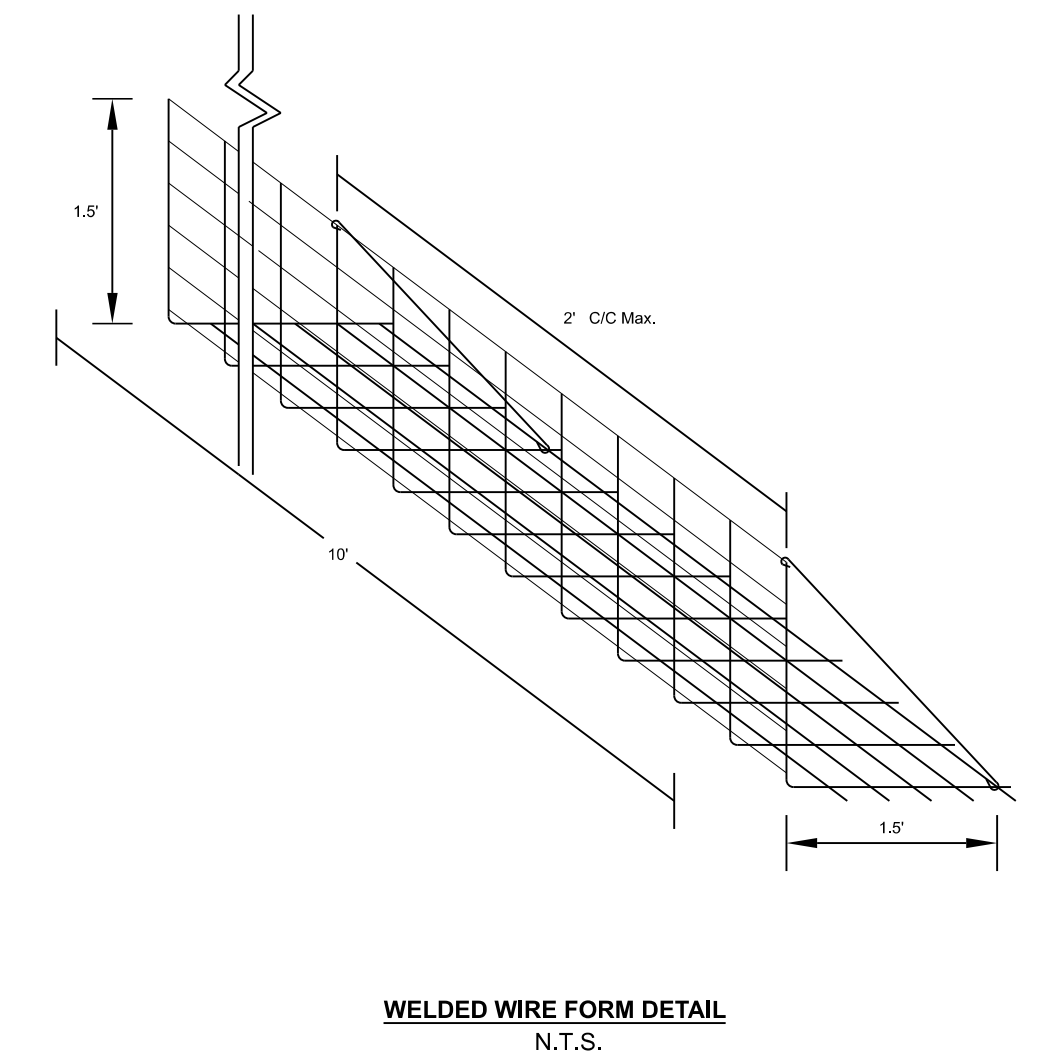
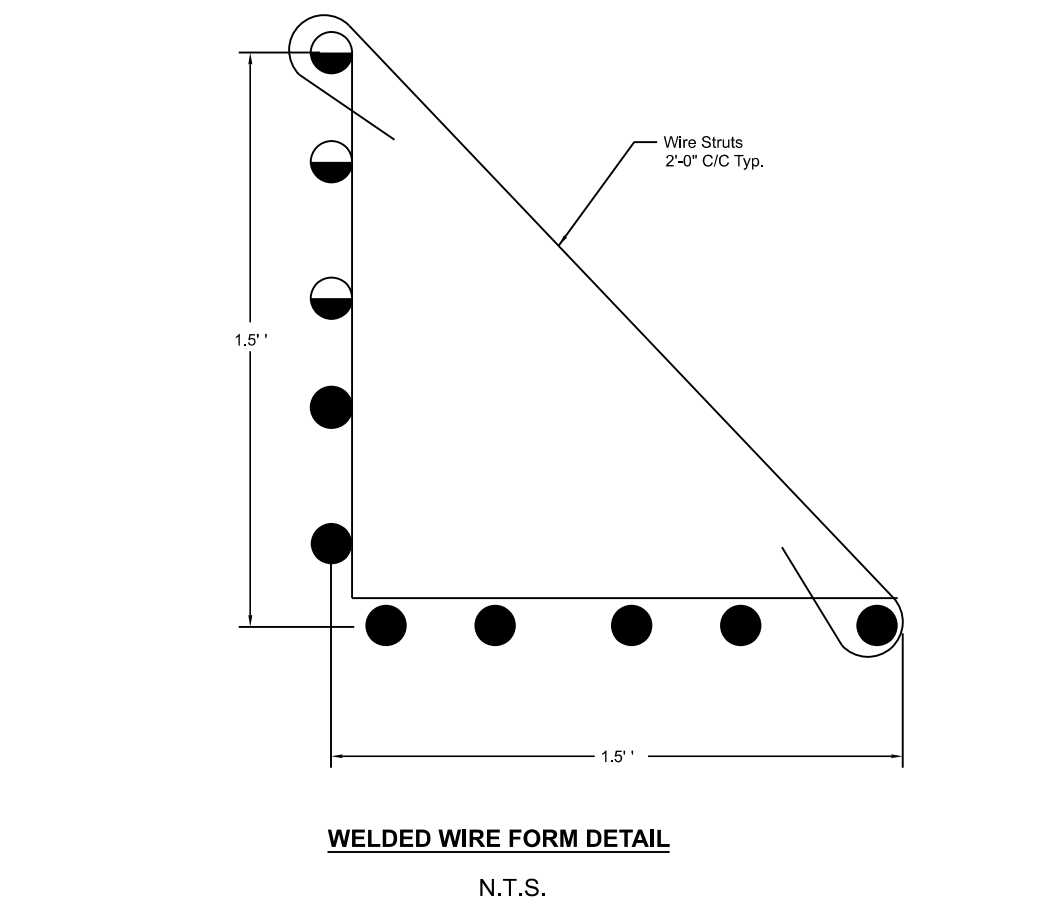
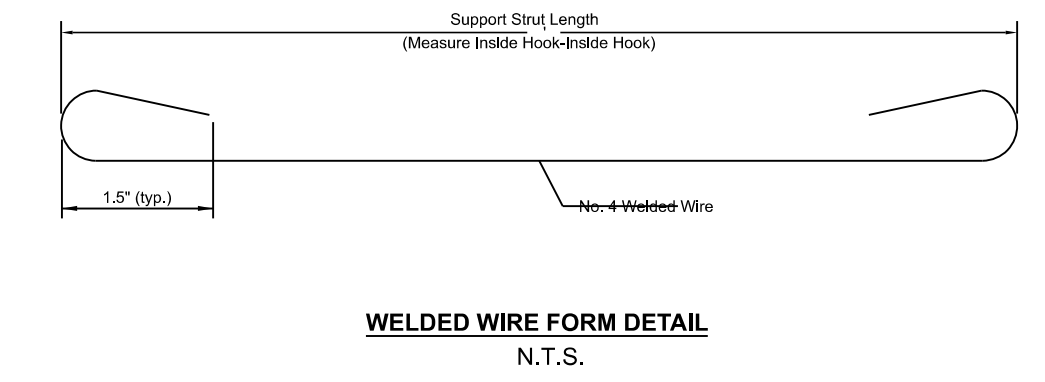
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 5/6/2024
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Rev.	Date	Description

SOUTH TO "AF"

NORTH TO "CP VIRGINIA"

LAYER	ELEVATION (FT)	DEPTH BELOW TOP OF STRUCTURE FILL (FT)
1	24.0	1.0
2	22.5	2.5
3	21.0	4.0
4	19.5	5.5
5	18.0	7.0
6	16.5	8.5
7	15.0	10.0
8	13.5	11.5
9	12.0	13.0
10	10.5	14.5
11	9.0	16.0
12	7.5	17.5



KEY CONSIDERATIONS FOR REINFORCED SOIL SLOPE (RSS):
 - A GROUND REINFORCEMENT LENGTH OF NO LESS THAN 90% OF THE SLOPE HEIGHT
 - GROUND REINFORCEMENT CONSISTING OF GEOGRIDS SPACED NO MORE THAN 18" VERTICALLY AND AT 100% COVERAGE AT EACH LAYER OF REINFORCEMENT (APPROXIMATE ELEVATIONS AND DEPTHS PROVIDED IN TABLE ABOVE FOR THIS PARTICULAR CROSS SECTION)
 - TENSAR UX1100 UNIAXIAL GEOGRID WITH MINIMUM LONG TERM ALLOWABLE TENSILE STRENGTH OF 1,450 LB/FT (OR EQUIVALENT)
 - ESTABLISH THE FACE OF SLOPE TO THE GEOMETRY SHOWN IN THE CROSS SECTION (1H:2V) CONSISTING OF L-SHAPED WIRE FORMS TO BE VEGETATED. DESIGN LIFE OF 75 YEARS.
 - PROVIDE STORM WATER MANAGEMENT TO MINIMIZE SHEET FLOW OVER THE SLOPE

SCALE
1" = 10'-0"

NOTE: SECTIONS ARE BASED OFF PROPOSED TRACK 3 BASELINE

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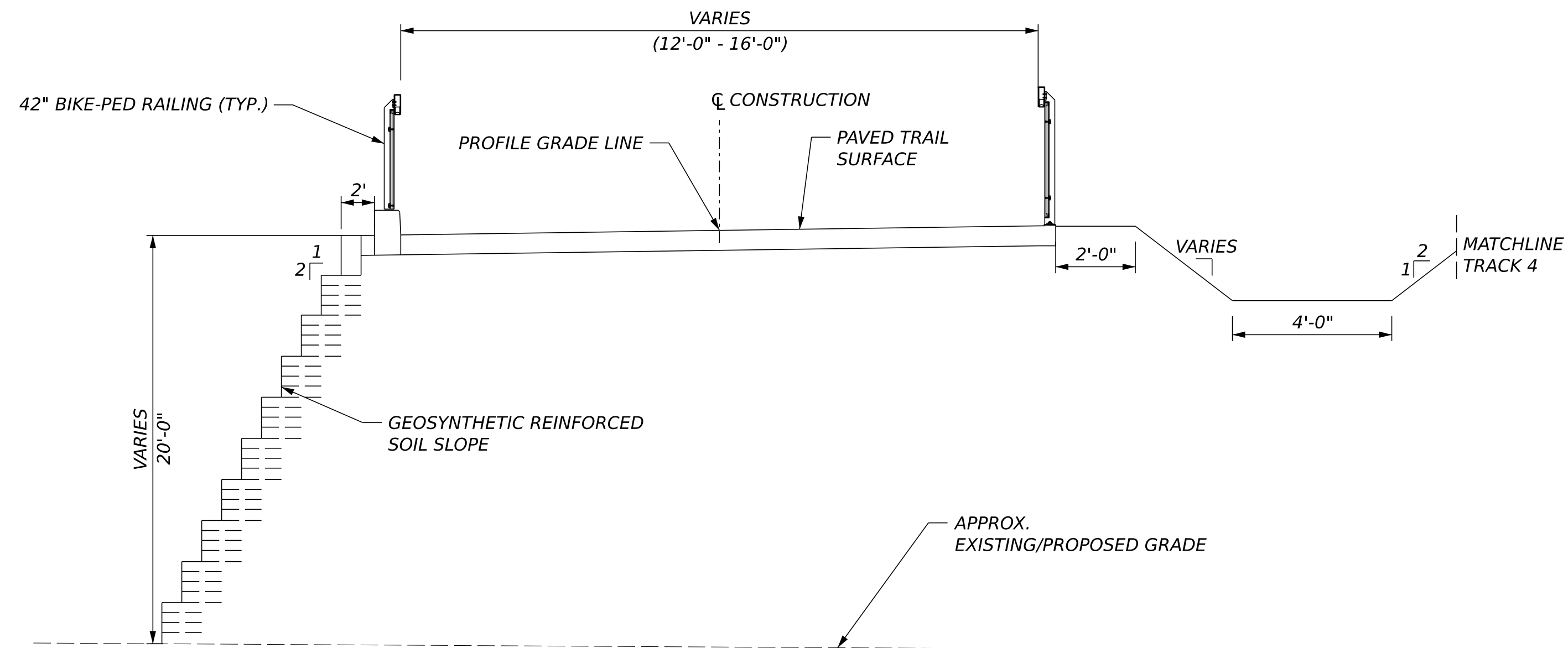
Rev.	Date	Description

DESIGNED BY
DRAWN BY
CHECKED BY
APPROVED BY
DATE
5/6/2024

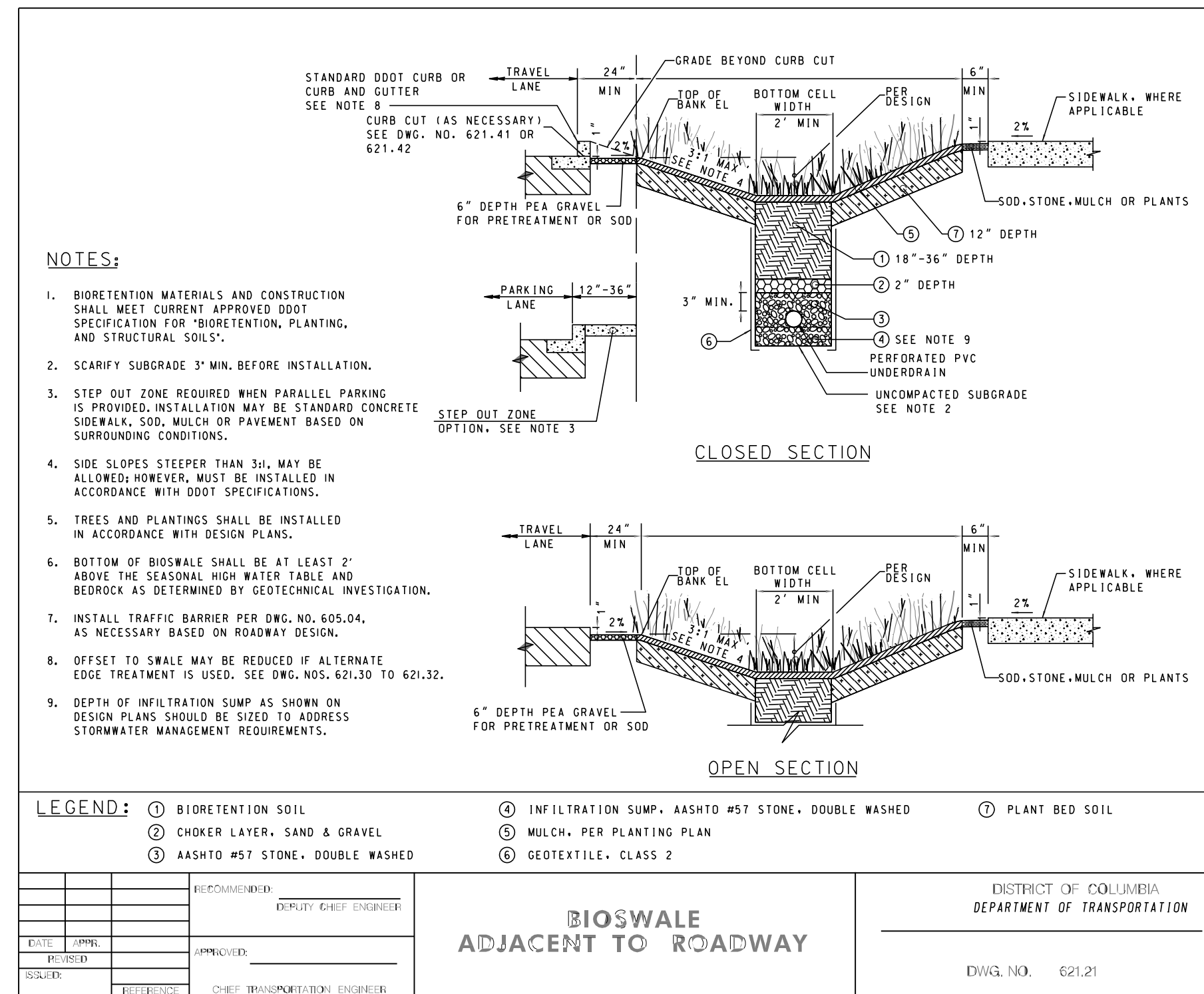
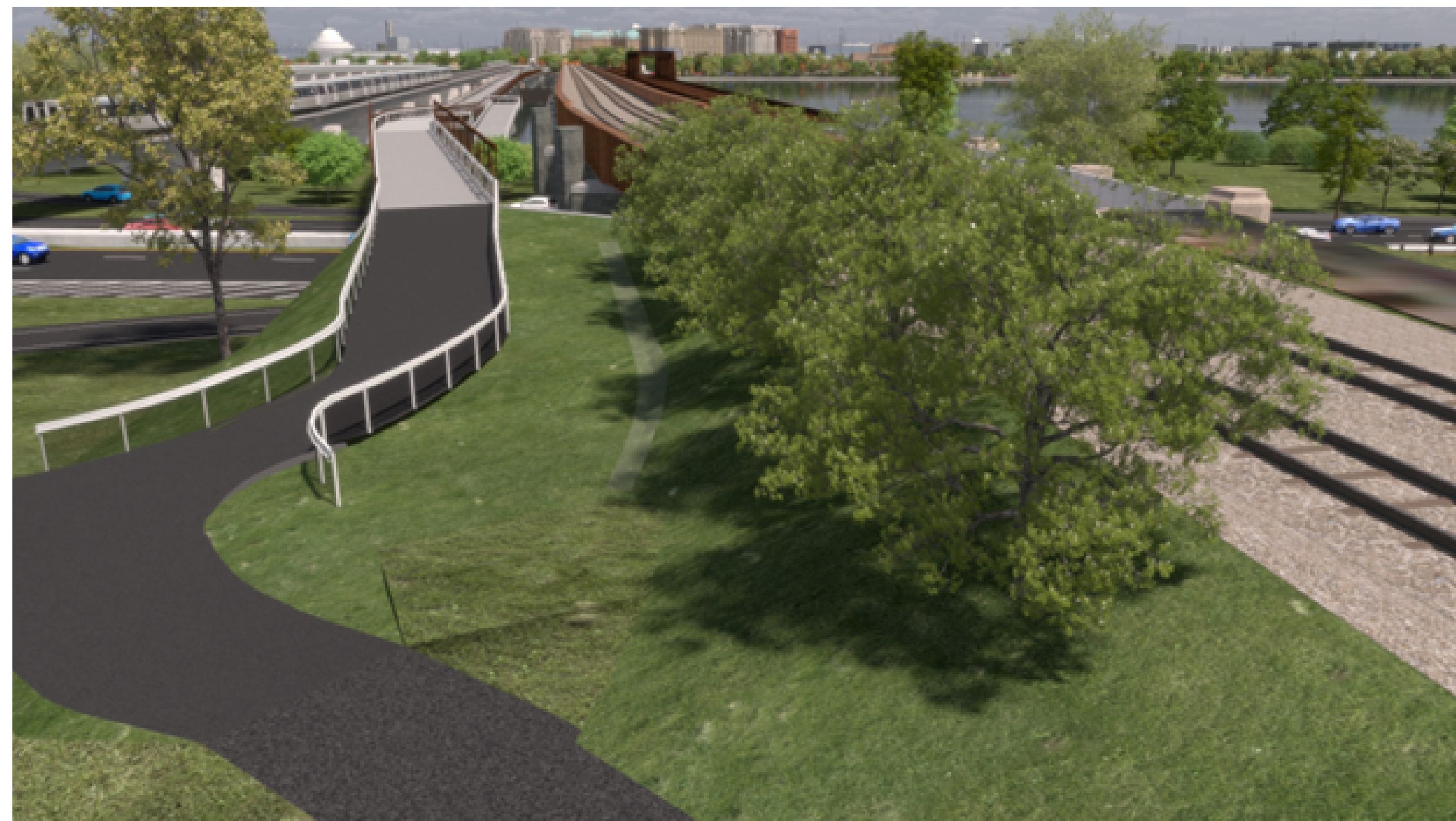
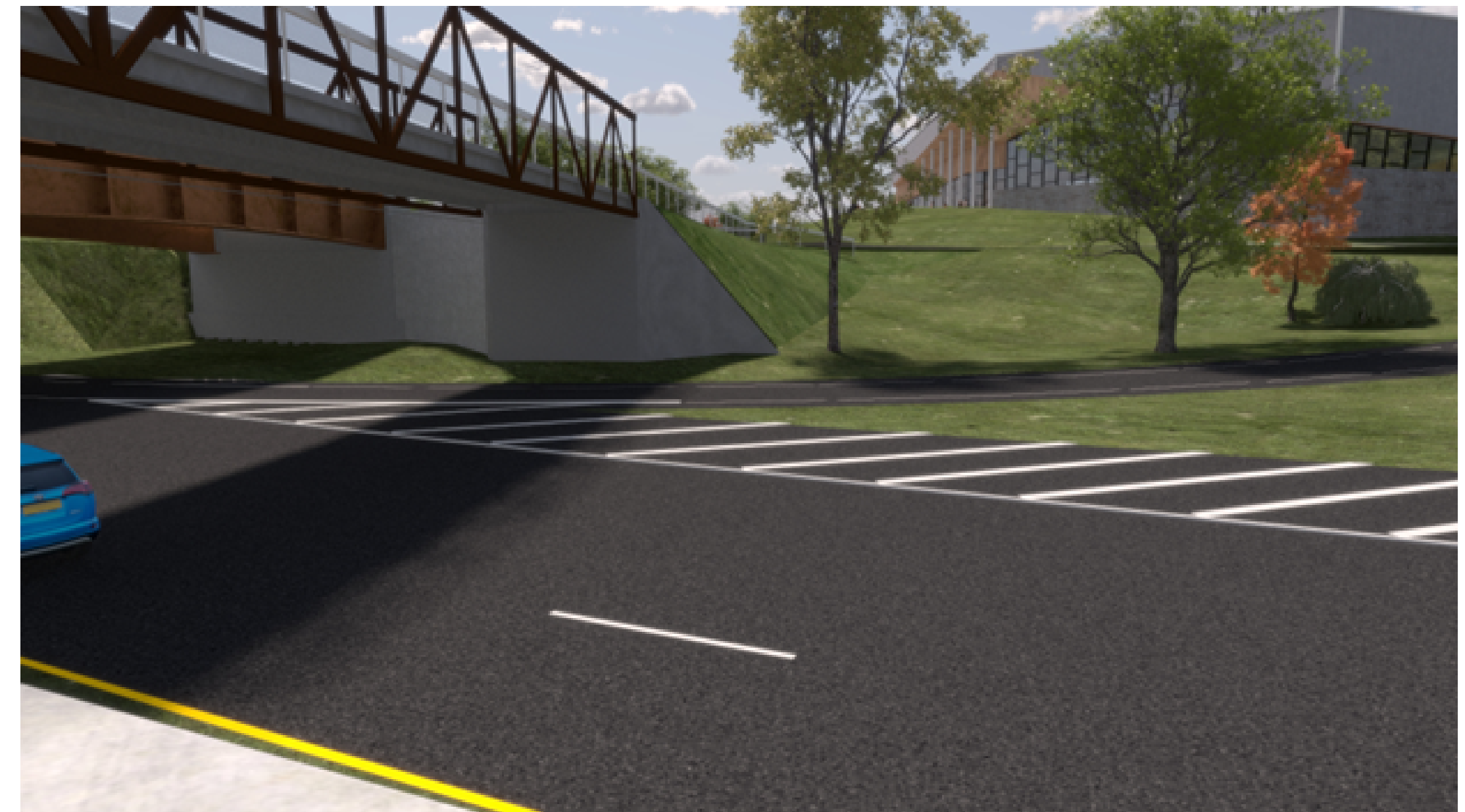
PRELIMINARY
NOT FOR CONSTRUCTION

LONG BRIDGE
SOUTH PACKAGE
ARLINGTON, VA TO WASHINGTON, DC
SUBDIVISION: RF&P ZONE: CENTRAL
CROSS SECTIONS
(9 OF 35)

PROJECT NO.	VPRA R02A CSXT XXXX
DRAWING NO.	
REV.	SHEET NO.
N/A	
SCALE	AS SHOWN



TRANSVERSE SECTION - TYPICAL ON-GRADE APPROACH
AT LONG BRIDGE TRAIL
SCALE: NOT TO SCALE



BIOSWALE TYPICAL SECTION
SCALE: NOT TO SCALE

ATC 3 - BIKE-PED SPAN 1 FILL SECTION AND
REMOVAL OF WALL A - 5/6/2024

DESIGNED BY

DRAWN BY

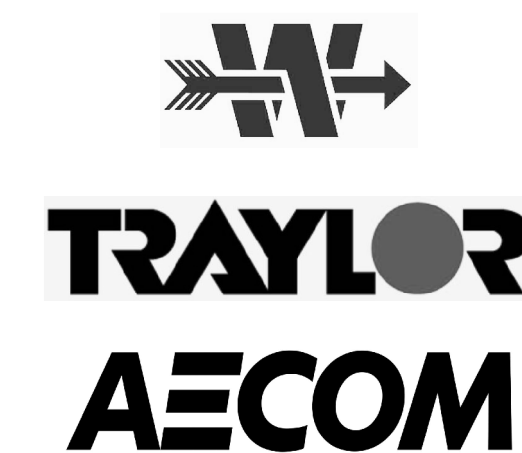
CHECKED BY

APPROVED BY

DATE



PRELIMINARY
NOT FOR CONSTRUCTION



LONG BRIDGE
SOUTH PACKAGE
ARLINGTON, VA TO WASHINGTON, DC
SUBDIVISION: RF&P ZONE: CENTRAL
POTOMAC RIVER BIKE-PED BRIDGE
TRANSVERSE SECTIONS

PROJECT NO.

VPRA R02A
CSXT XXXX

DRAWING NO.

D-112

REV.

SHEET NO.

N/A

SCALE

AS SHOWN

Final ATC Response

To: EJ O'Neill, Vice President Archer Western & Authorized Representative for Archer Western
Traylor Brothers (AWT-JV)
13454 Sunrise Valley Drive,
Suite 440, Herndon, VA 20171

From: John Kostyniuk; VPRA

Date: June 24, 2024

Subject: VPRA Response to AWT-JV ATC 3 - Bike-Ped Span 1 Fill Section and Removal of Wall A

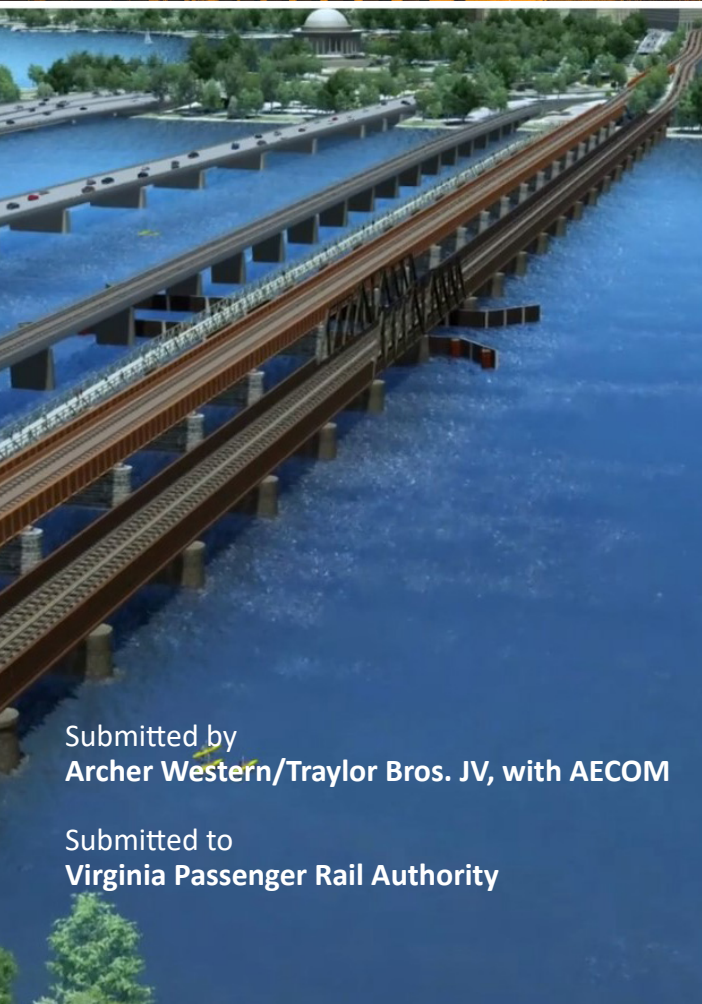
In accordance with Section 4.4 of the RFP, VPRA provides the following response to the above-listed ATC:

This ATC may be acceptable upon the satisfaction, in VPRA's sole discretion, of the following conditions:

- Design-Builder must obtain Section 106 Signatory concurrence.
- Design-Builder must obtain DDOT and NPS approval.
- Design-Builder shall provide analysis showing that this construction can accommodate adjacent rail live loads and does not cause settlement which would impact existing structures.



VIRGINIA
PASSENGER RAIL
AUTHORITY



Submitted by
Archer Western/Traylor Bros. JV, with AECOM

Submitted to
Virginia Passenger Rail Authority

LONG BRIDGE SOUTH PACKAGE

CONFIDENTIAL ATC

ATC 4 - Double-sided
Fillet Welds for the
Flange to Web Welds

RFP No.: 1-001-23-0002
May 8, 2024



JOINT VENTURE

ATC 4 – Double-sided Fillet Welds for the Flange to Web Welds

(c) a narrative description and conceptual drawings of the configuration of the ATC or other appropriate descriptive and technical information;

The Technical Provisions, Section 15.13(h) require the flange to web welds of the through plate girders to be complete joint penetration welds. We propose to use double-sided fillet welds for the flange to web welds. The fillet weld size will not be less than 5/16". If the required fillet weld is greater than 1/2", we will provide a complete joint penetration weld for this connection.

Flange to web welds offer an excellent opportunity to utilize fillet welds since the direction of stress is nearly entirely longitudinal caused by horizontal shear flow from the flange to web. Fillet welds will significantly reduce both fabrication time and cost, including associated testing, while providing the required capacity to transfer horizontal shear between the flanges and webs.

(d) the locations where, and an explanation of how, the ATC would be used on the Project;

These fillet welds would be used at the flange to web connection of both the top and bottom flanges of the through plate girders for all 27 spans of the Undergrade Potomac River Bridge.

(e) any changes in operational requirements associated with the ATC, including ease of operations;

There will be no changes to the operational requirements.

(f) any changes in routine or capital maintenance requirements associated with the ATC, including ease of maintenance;

There will be no changes to the capital maintenance requirements.

(g) any changes in the anticipated life of the components and items comprising or affected by the ATC;

There will be no changes to the anticipated life of the components since the welds will be sized to meet the fatigue requirements as stipulated in the Technical Provisions, Section 15.3.7.1

(h) any change to the time period necessary to design and construct the Project, including changes in phasing and sequencing, resulting from implementing the ATC, including, as appropriate, a description of method and commitments;

There will be no changes to the design. Fabrication time will be reduced.

(i) references to requirements of the Contract Documents that are inconsistent with the proposed ATC, an explanation of the nature of the deviations from such requirements, and a request for approval of such deviations;

Technical Provision Section 15.13(h) specifies complete joint penetration welds for the flange to web welds.

(j) an analysis justifying use of the ATC, including explanations of (i) why the deviations, if any, from the requirements of the Contract Documents should be allowed, and (ii) how the ATC is equal or better in quality and performance as compared to the requirements of the Contract Documents;

The proposed fillet welds will be designed to meet the required strength and serviceability requirements as stipulated in both the Technical Provisions and AREMA Chapter 15. The welds will be inspected in accordance with the requirements in AREMA and AWS D1.5.

(k) if and what additional ROW will be required to implement the ATC; (l) a preliminary assessment of the need for additional environmental analysis and the potential impacts on environmental permitting and clearances, the surrounding community, safety, design, construction, operations, and maintenance;

Additional ROW is not required for this ATC.

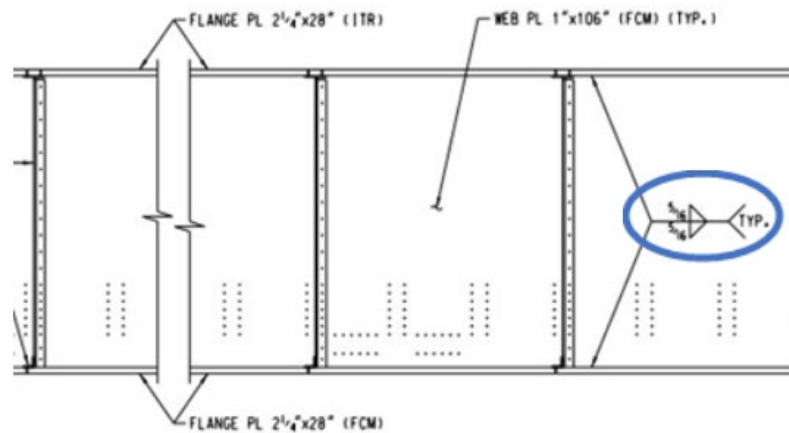
(m) an estimate of the impact of the ATC on the Contract Price and schedule (including time savings or additional time necessary), should the ATC be approved and implemented;

The team is still working with fabricators on the prefabricated costs of the girders, and which finalized costs may not be known in the coming weeks, however initial pricing indicates this ATC would potentially save [REDACTED] to the price of the project. Additionally, preliminary schedule reviews showed an approximate 20% reduction in fabrication timelines for the anticipated works. Initial schedule evaluations show that this ATC could result in a 2-4 month savings on the critical path of the rail bridge.

(n) any prior projects on which the Proposer used the concept(s) in the ATC or similar concepts, as well as a description of the project, how the ATC was implemented, how the ATC was successful, and the name and contact information (phone number and email address) of a reference person from the project; and

Other rail agencies such as BNSF, Kansas City Southern Lines, Norfolk Southern Railway and Alaska Railroad allow fillet welds for the flange to web welds for through plate girders.

BNSF Example Detail:



(o) a description of added or reduced risks to VPRA, CSXT or other third parties associated with implementing the ATC.

There is no added risk to VPRA, CSXT or other third parties associated with implementing this ATC.

Final ATC Response

To: EJ O'Neill, Vice President Archer Western & Authorized Representative for Archer Western
Traylor Brothers (AWT-JV)
13454 Sunrise Valley Drive,
Suite 440, Herndon, VA 20171

From: John Kostyniuk; VPRA

Date: June 24, 2024

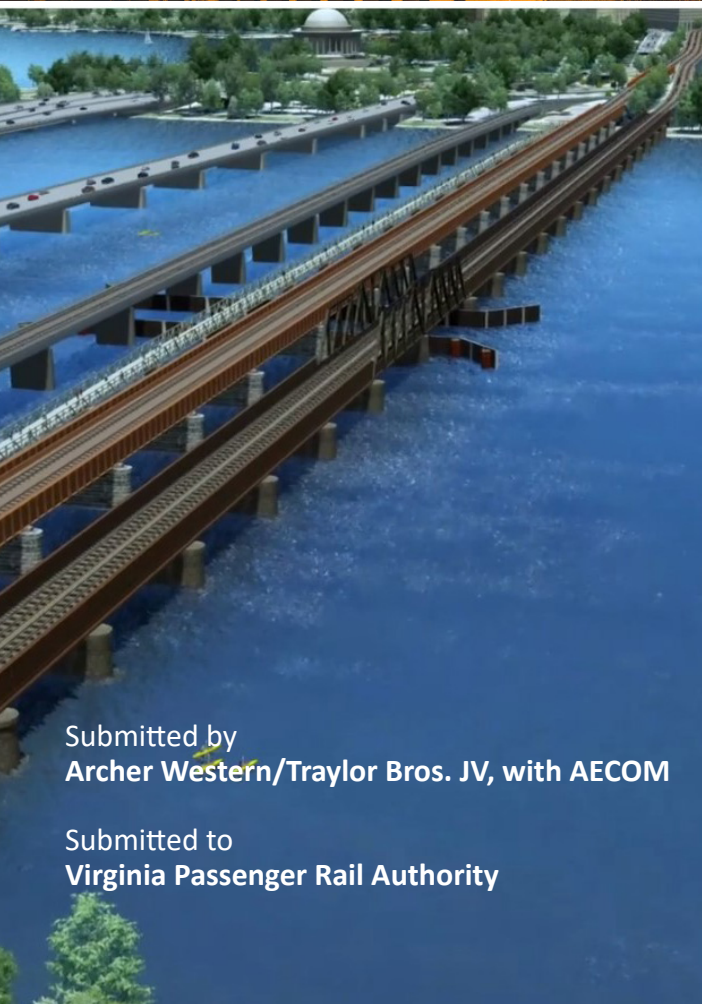
Subject: VPRA Response to AWT-JV ATC 4 - Double-Sided Fillet Welds for the Flange to Web Welds

In accordance with Section 4.4 of the RFP, VPRA provides the following response to the above-listed ATC:

This ATC is acceptable for inclusion in the Proposal.



VIRGINIA
PASSENGER RAIL
AUTHORITY



Submitted by
Archer Western/Traylor Bros. JV, with AECOM

Submitted to
Virginia Passenger Rail Authority

LONG BRIDGE SOUTH PACKAGE

CONFIDENTIAL ATC

ATC 5 - Bolting of the
Deck Plate vs. Welding

RFP No.: 1-001-23-0002
May 8, 2024



JOINT VENTURE

ATC 5 – Bolting of the Deck Plate vs. Welding

(c) a narrative description and conceptual drawings of the configuration of the ATC or other appropriate descriptive and technical information;

Our team is proposing to attach the steel deck plate to the floor beams and knee braces of the Potomac River Undergrade Bridge using 7/8" diameter ASTM F3125, Grade A325 Type 3 high strength bolts. The CSX Public Projects Manual specifies both shop and field welding of the steel deck plate to the floor beams. Although this specific manual is not referenced in Section 15 of the Technical Provisions, it is referenced elsewhere in the Technical Provisions. Welding of the steel deck plate will require both shop and field welding with over 15-miles of welding, 1/3 of which will likely be field welding. The Technical Provisions also require the steel deck plate to be non-composite with the superstructure; therefore, there is no structural requirement to provide continuous fillet welds to attach the deck plate to the floor beams. Additionally, AREMA does not require welding the floor beam to deck plate. The high strength bolts will be designed to meet sealing and stitch requirements in accordance with AREMA Chapter 15, Section 1.5.13 and 1.5.14, with a maximum spacing not exceeding 7-inches and tightened to meet the minimum tension requirements in accordance with AREMA Chapter 15, Table 15-1-12.

(d) the locations where, and an explanation of how, the ATC would be used on the Project;

This ATC would apply to all floor beams and knee braces for all spans of the Potomac River Undergrade Bridge.

(e) any changes in operational requirements associated with the ATC, including ease of operations;

There will be no changes to the operational requirements.

(f) any changes in routine or capital maintenance requirements associated with the ATC, including ease of maintenance;

There will be no changes to the routine or capital maintenance requirements.

(g) any changes in the anticipated life of the components and items comprising or affected by the ATC;

There will be no changes to the anticipated life of the components and items comprising or affected by this ATC.

(h) any change to the time period necessary to design and construct the Project, including changes in phasing and sequencing, resulting from implementing the ATC, including, as appropriate, a description of method and commitments;

There will be no changes to the time period necessary to design the project. We anticipate a reduction in the fabrication and assembly/erection duration. The project team would not be required to perform welding outside of the shop environment. For example, erecting a span in place would no longer require crew members to perform overhead welding in tight environments.

(i) references to requirements of the Contract Documents that are inconsistent with the proposed ATC, an explanation of the nature of the deviations from such requirements, and a request for approval of such deviations;

Section IX.E of the Criteria for Undergrade Railroad Bridges in the appendix of the CSX Public Project Information for Construction and Improvement Projects that may involve the Railroad specifies the steel deck plate be shop welded and field welded to the floor beams.

(j) an analysis justifying use of the ATC, including explanations of (i) why the deviations, if any, from the requirements of the Contract Documents should be allowed, and (ii) how the ATC is equal or better in quality and performance as compared to the requirements of the Contract Documents;

Allowing the deck plate to be bolted to the floor beams and knee braces will eliminate an extensive amount of field welding, which will require: 1) ventilation for worker safety; and 2) carefully followed welding procedures to maintain quality and to avoid unwanted distortion of the floor beam flanges during the welding process. Bolting the deck plate will allow the deck plate to be drawn together with the floor beams to eliminate field adjustments for potential camber differentials between floor beams. Since the deck plate is non-composite with the floor beams there are no structural requirements for the connection. The high strength bolts will be spaced to satisfy sealing and stitch requirements. Attaching the deck plate with high strength bolts in lieu of welding is safer for craft workers.

(k) if and what additional ROW will be required to implement the ATC; (l) a preliminary assessment of the need for additional environmental analysis and the potential impacts on environmental permitting and clearances, the surrounding community, safety, design, construction, operations, and maintenance;

Additional ROW is not required.

(m) an estimate of the impact of the ATC on the Contract Price and schedule (including time savings or additional time necessary), should the ATC be approved and implemented;

The team is still working with fabricators on the costs of this ATC. However initial pricing with respect to building spans on-site indicates this ATC would potentially save [REDACTED] to the price of the project. Additionally, preliminary schedule reviews shows an approximate a two-month savings on the critical path of the rail bridge when building the spans in place.

(n) any prior projects on which the Proposer used the concept(s) in the ATC or similar concepts, as well as a description of the project, how the ATC was implemented, how the ATC was successful, and the name and contact information (phone number and email address) of a reference person from the project; and

Connecting the steel deck plate to the floor beams and knee braces of through plate girder bridges is standard practice for bridges designed in accordance with both Canadian National Railway requirements. We have attached several examples of projects where this detail has been used, including a standard detail from CN Railway and Union Pacific Railroad. (See Exhibit ATC5-1).

(o) a description of added or reduced risks to VPRA, CSXT or other third parties associated with implementing the ATC.

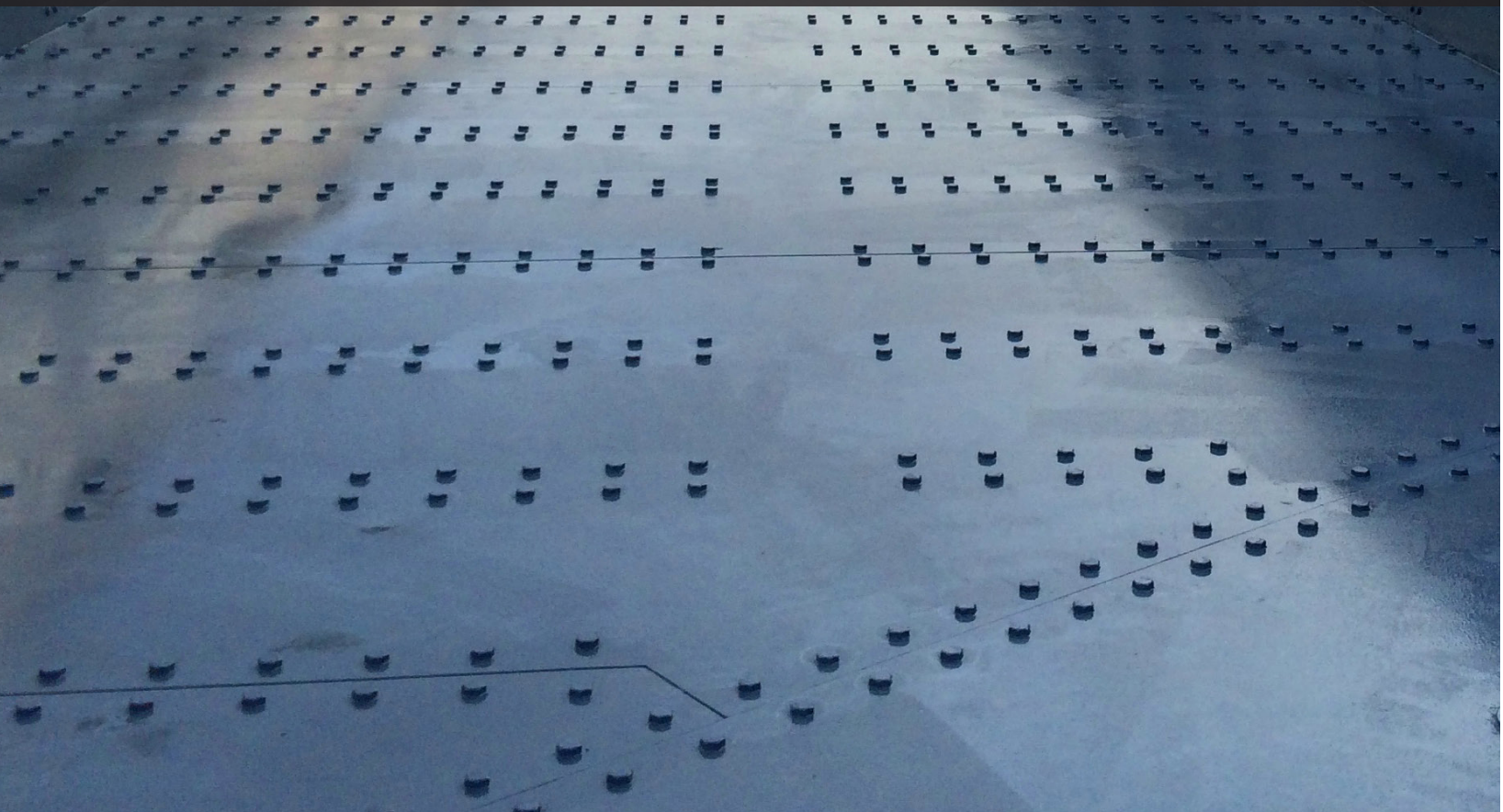
There is no added risk to VPRA, CSXT or other third parties associated with implementing this ATC. A bolted deck plate to floor beam connection will perform equally or better than a welded connection.

Exhibits:

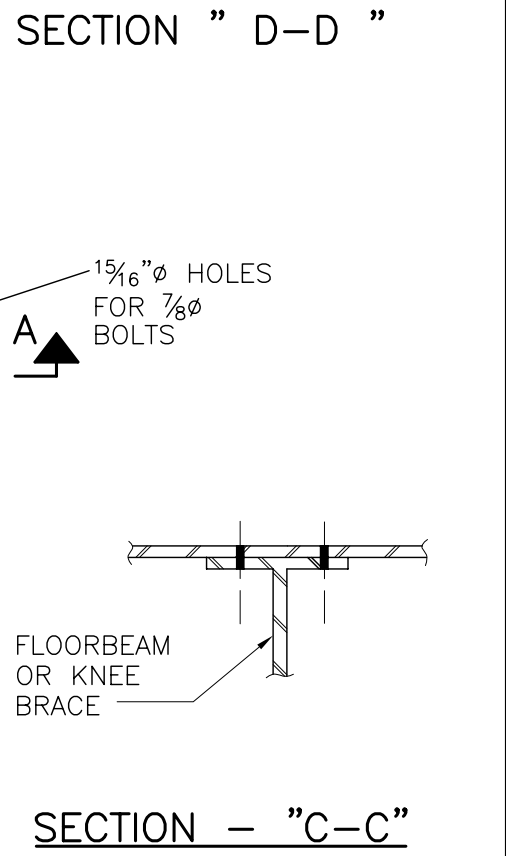
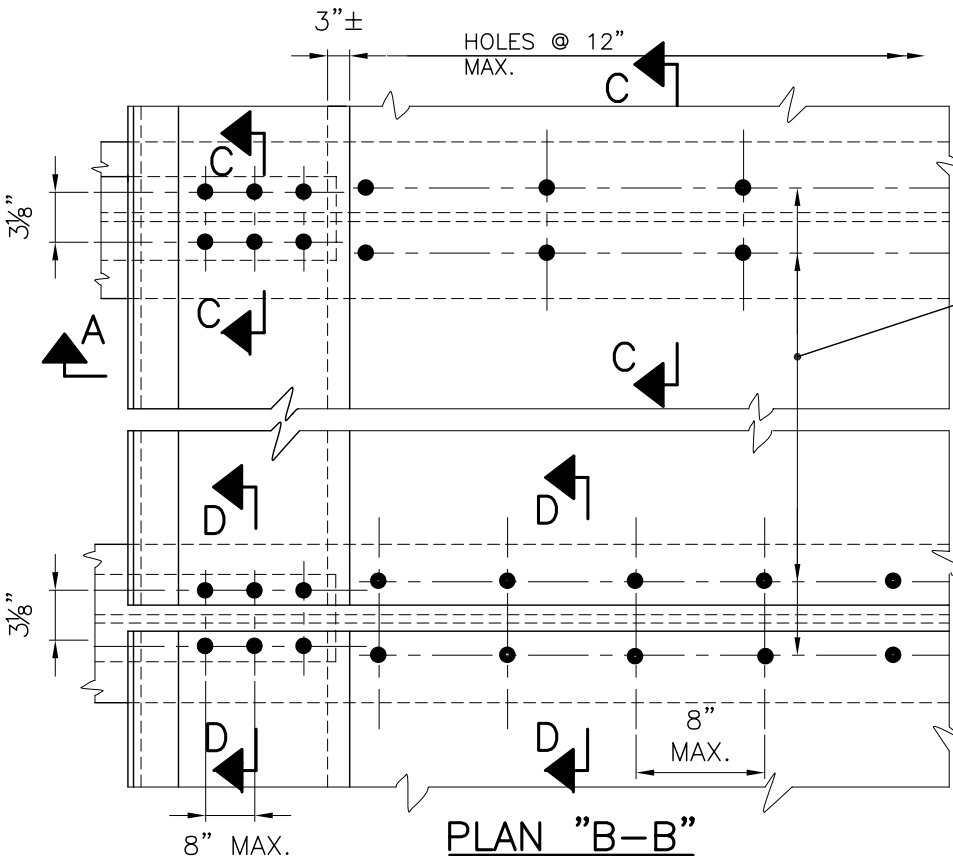
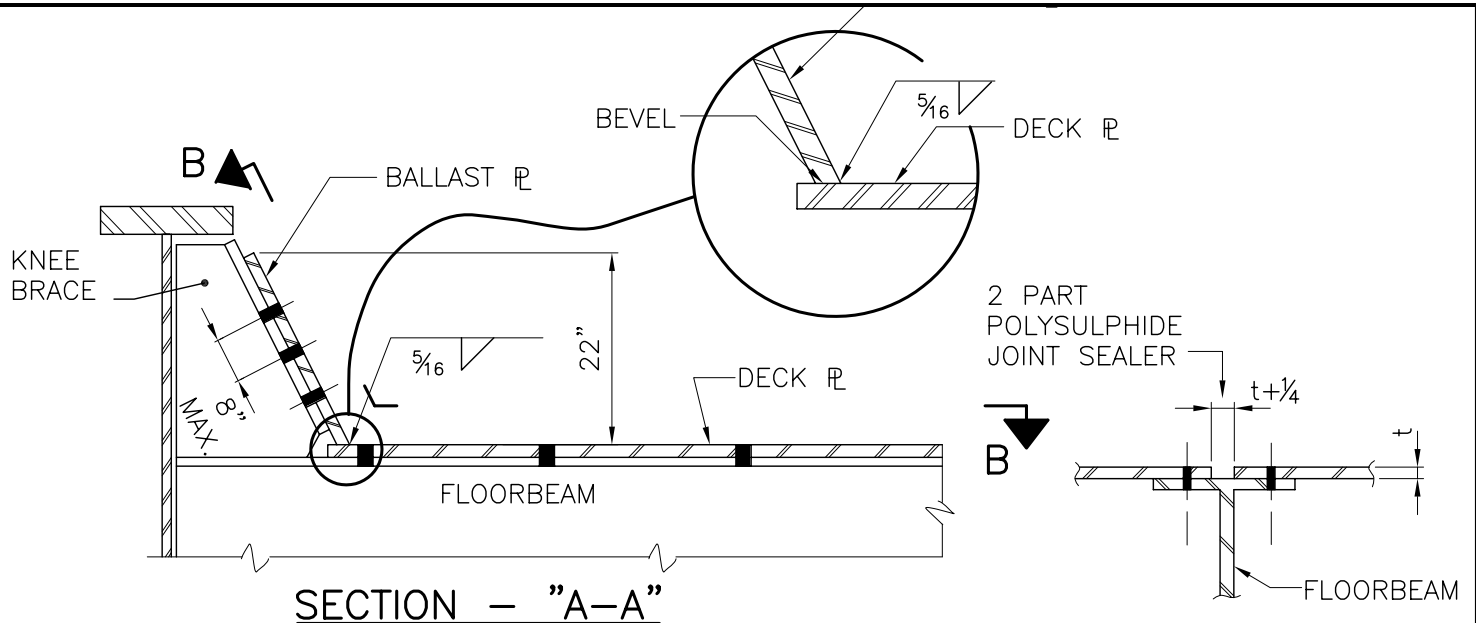
ATC5-1: Bolted deck plate examples



Norfolk Southern MP ML-83.74 over SR 0019
Norfolk Southern Railway







NOTE: USE E 55018 ELECTRODE OR EQUIVALENT FOR WELDS SHOWN.

(FOR SQUARE SPANS 40'-0 & OVER & ALL SKEWED SPANS)

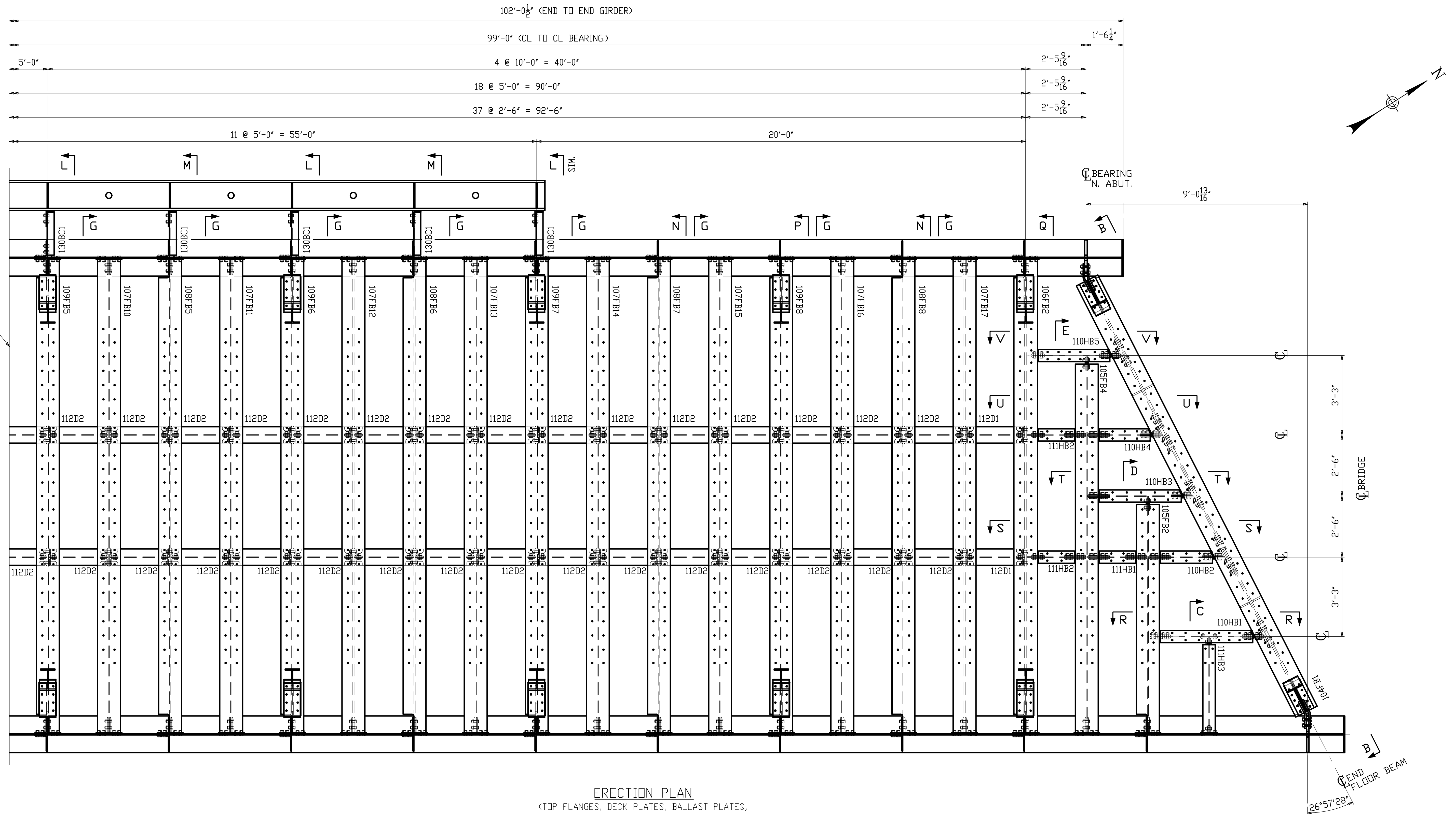
Drawn: Dessin: JHH	Checked: Vérification:
Scale: Echelle: AS NOTED	Date: AUG. 29/2005

**ATTACHMENT OF DECK PLATE BY BOLTING
IN SHOP OR FIELD**

Office of chief engineer
Bureau de L'Ingénieur en chef



Drawing number
Dessin Numero
S10i A




ERECTION PLAN
 (TOP FLANGES, DECK PLATES, BALLAST PLATES,
 GRATING SUPPORTS & WALKWAY NOT SHOWN FOR CLARITY)

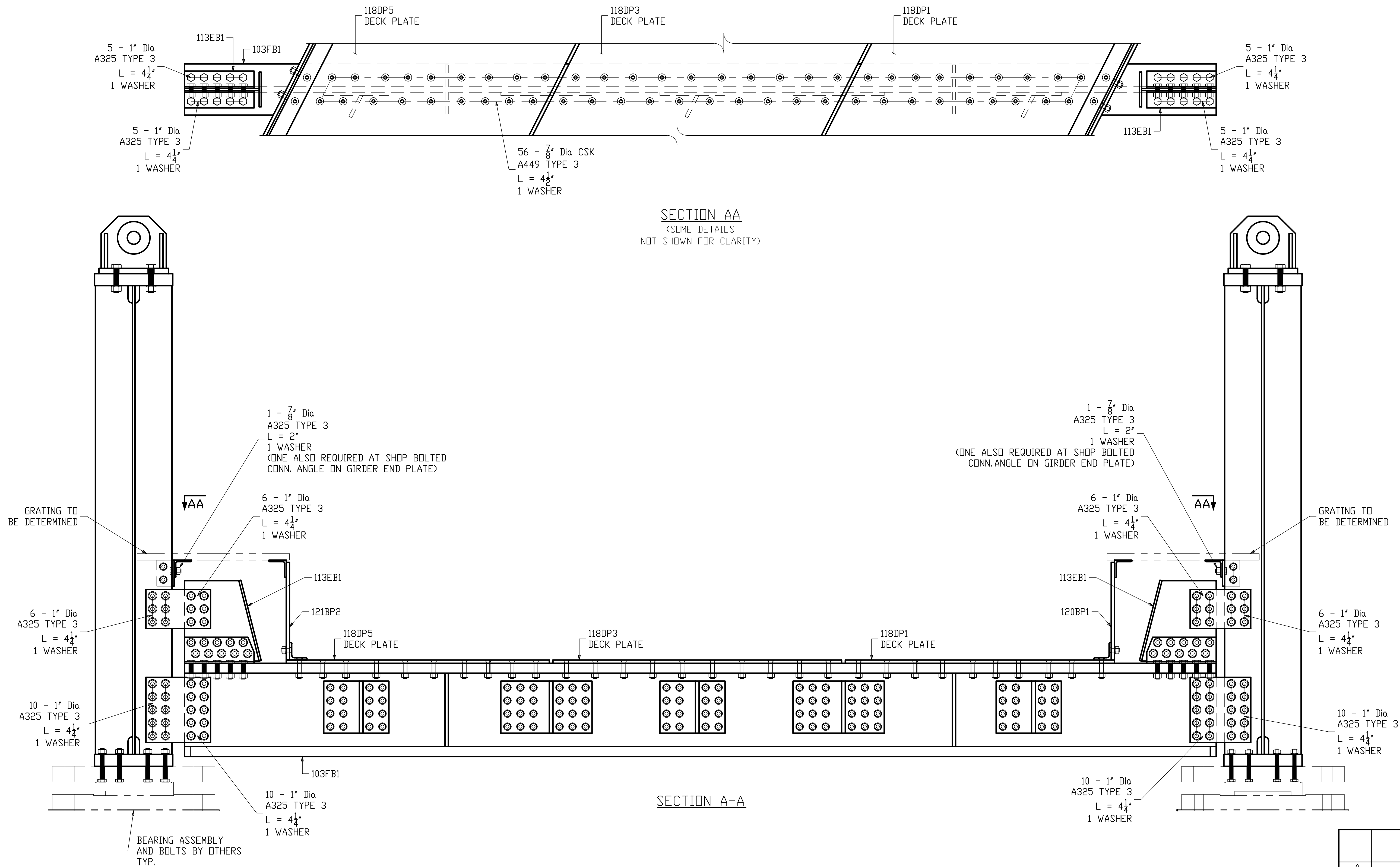
SEE SHEET E103 & E104
 FOR MARKS OF DECK PLATE,
 BALLAST PLATE, END FLOOR BEAM BRACKET,
 KNEE BRACE, WALKWAY BRACKET,
 WALKWAY FASCIA & MASONRY PLATE

ALL STEEL SHALL BE ERECTED WITH THE
 "SHIPPING MARK" IN THE SAME RELATIVE POSITION
 AS SHOWN ON THE ERECTION PLAN

NOTICE TO ERECTOR
 BACKCHARGES FOR CORRECTIVE WORK
 OR REPLACED MATERIAL WILL NOT BE
 ACCEPTED UNLESS EXPRESSLY AUTHORIZED
 BY VERITAS STEEL, LLC BEFORE ANY SUCH
 COSTS ARE INCURRED.

NOTES:
 1. FOR GENERAL NOTES SEE SHEET GN101.

NO.	DATE	REMARKS	BY
REVISIONS			
 2-EAU CLAIRE, WI 3-WAUSAU, WI 4-PALATKA, FL			
STRUCTURE	CN RAILROAD - LEIGHTON MI 40.71 OVER GOLF ROAD		
LOCATION	NEAR: ELGIN, ILLINOIS		
PROJECT NO.	HDR		
ENGINEER	HDR		
CONTRACTOR	WALSH CONSTRUCTION		
ITEM	ERECTION PLAN		
SURFACE PREP.	SEE P101	OPEN HOLES	-
PAINT	SEE P101		
APPROVAL	DRAWN MH 12/06/23	SHEET NO. E102	PLANT 4
SHOP	CHECKED DP 12/07/23	ORDER NO. 23032A	F.P. NO. -




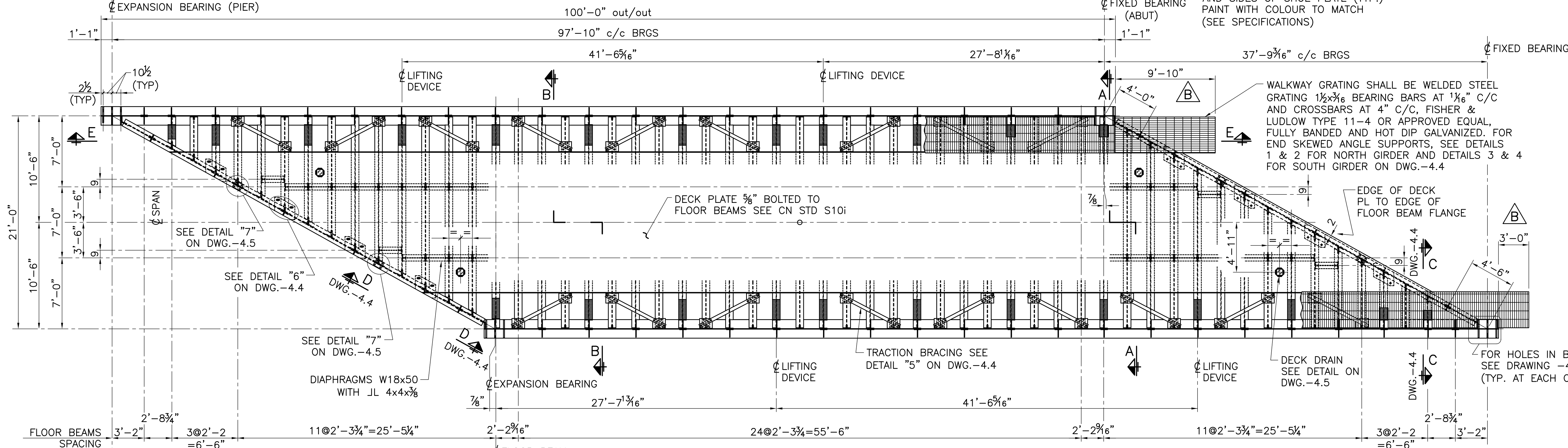
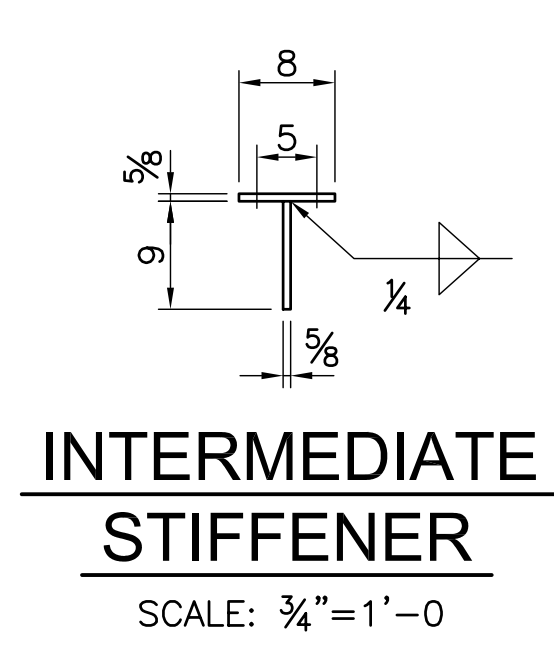
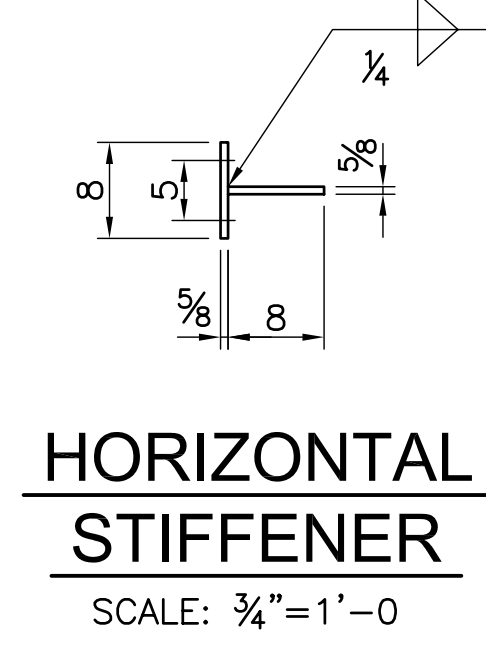
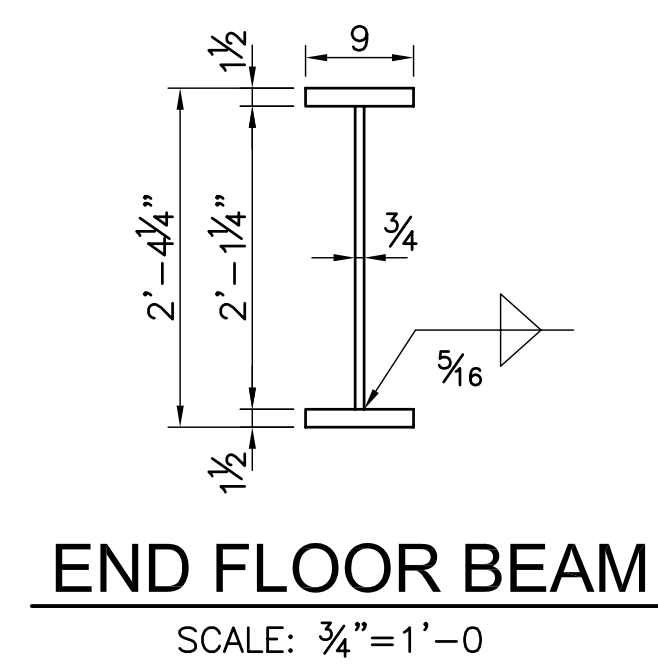
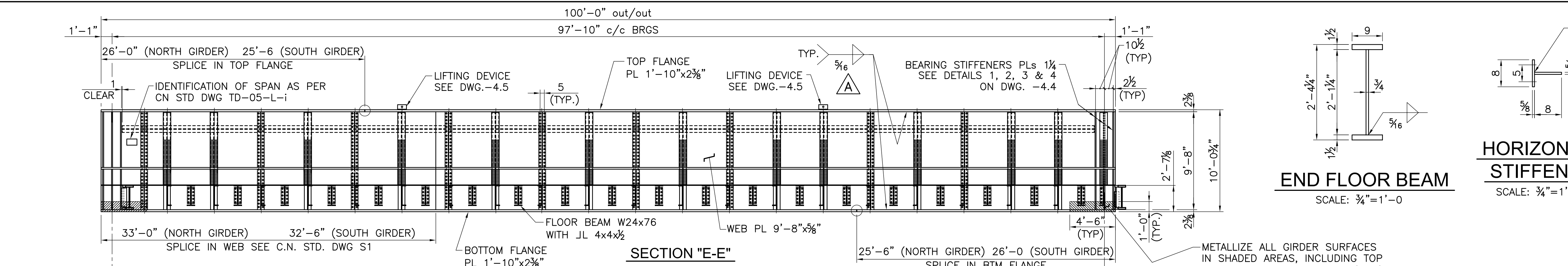
SECTION AA
(SOME DETAILS NOT SHOWN FOR CLARITY)

SECTION A-A

ALL STEEL SHALL BE ERECTED WITH THE "SHIPPING MARK" IN THE SAME RELATIVE POSITION AS SHOWN ON THE ERECTION PLAN

NOTES:
1. FOR GENERAL NOTES SEE SHEET GN101.

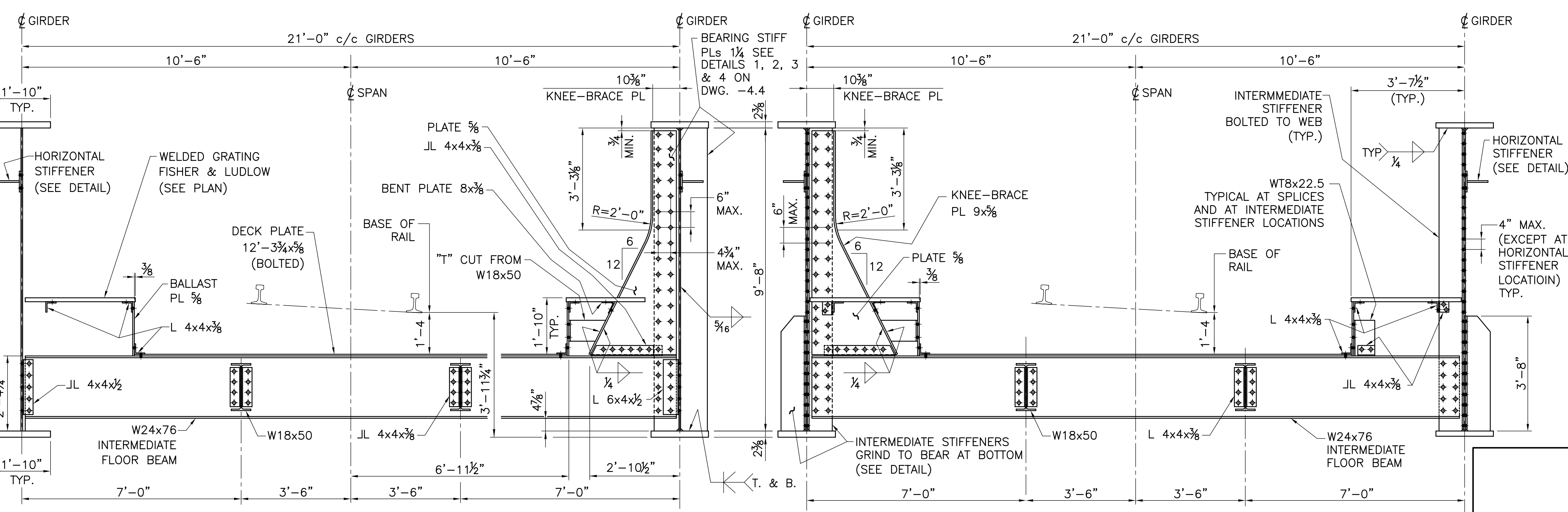
NO.	DATE	REMARKS	BY
REVISIONS			
			
STRUCTURE <u>CN RAILROAD - LEIGHTON MI 40.71 OVER GOLF ROAD</u>			
LOCATION <u>NEAR: ELGIN, ILLINOIS</u>			
PROJECT NO. _____			
ENGINEER <u>HDR</u>			
CONTRACTOR <u>WALSH CONSTRUCTION</u>			
ERECTION PLAN - SECTIONS			
SURFACE PREP. <u>SEE P101</u> OPEN HOLES <u>-</u>			
PAINT <u>SEE P101</u>			
APPROVAL	DRAWN MH <u>12/06/23</u>	SHEET NO. <u>E105</u>	PLANT <u>4</u>
SHDP	CHECKED DP <u>12/07/23</u>	ORDER NO. <u>23032A</u>	F.P. NO. <u>-</u>



PLAN
SCALE: 3/16"=1'-0"

NOTES:

- FOR GENERAL NOTES SEE DRAWING AAB40-327.01-4.1
- FOR OTHER NOTES, DETAILS AND ESTIMATED QUANTITIES SEE DRAWING AAB40-327.01-4.4
- READ THIS DRAWING IN CONJUNCTION WITH DRAWINGS AAB40-327.01-4.4, -4.5, -4.6 AND -4.7
- FOR ADDITIONAL INFORMATION NOT PROVIDED ON THESE DRAWING SEE C.N. STD S11, S21, S31, S41, S51, S61 AND S101.

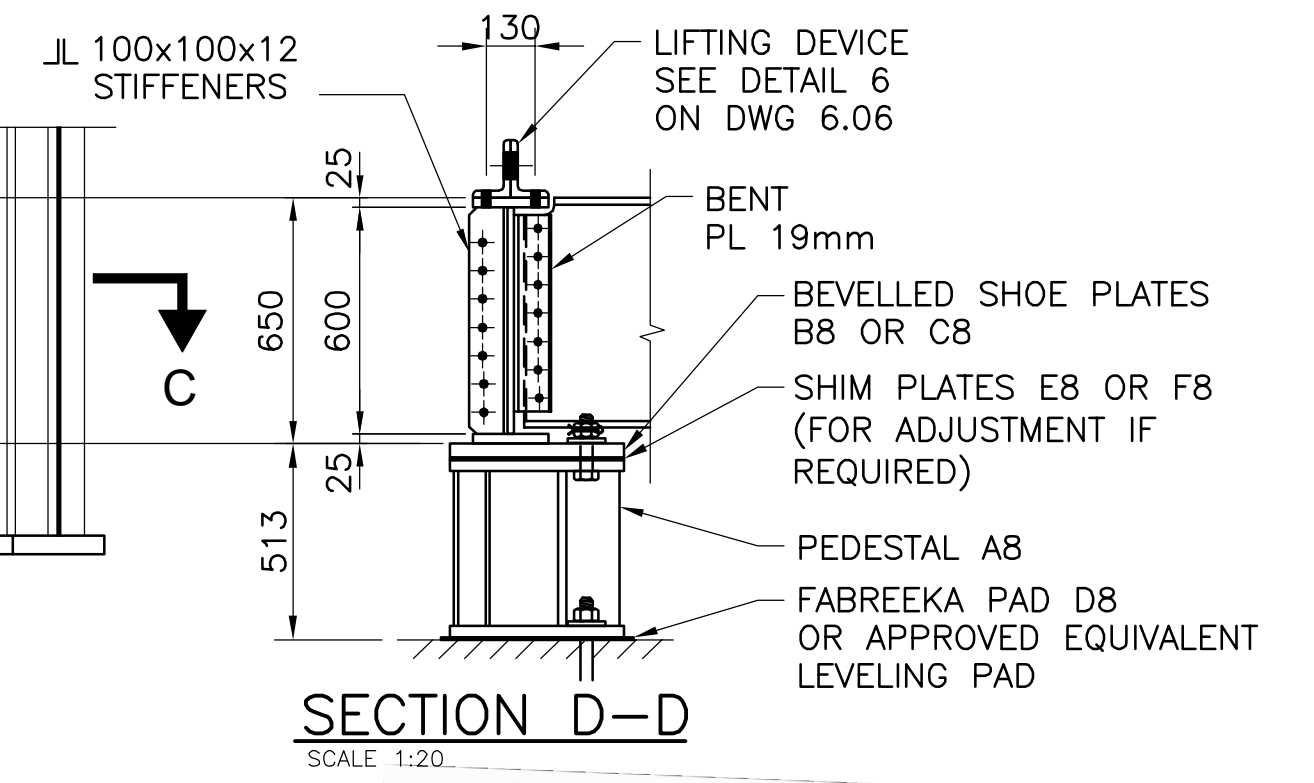
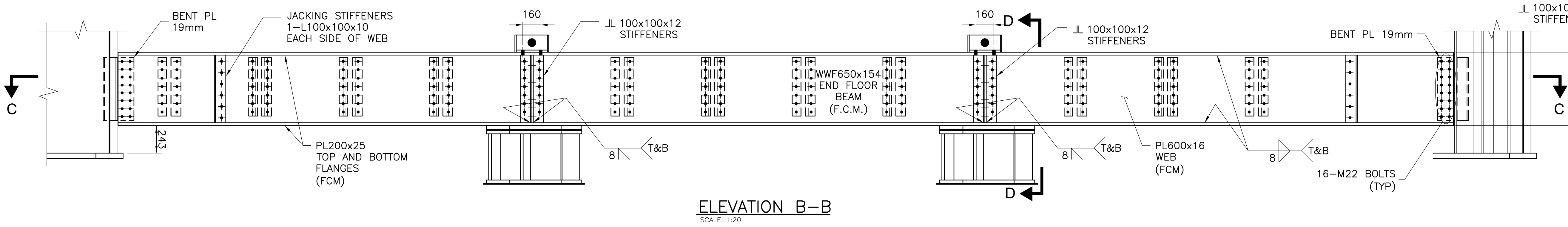
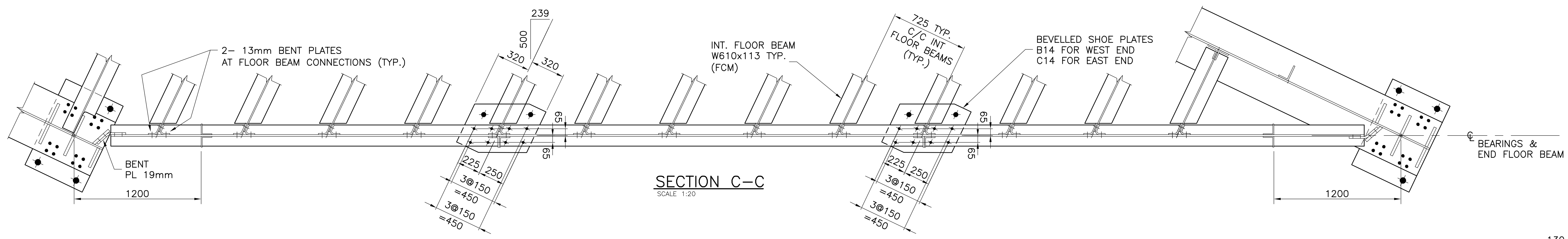
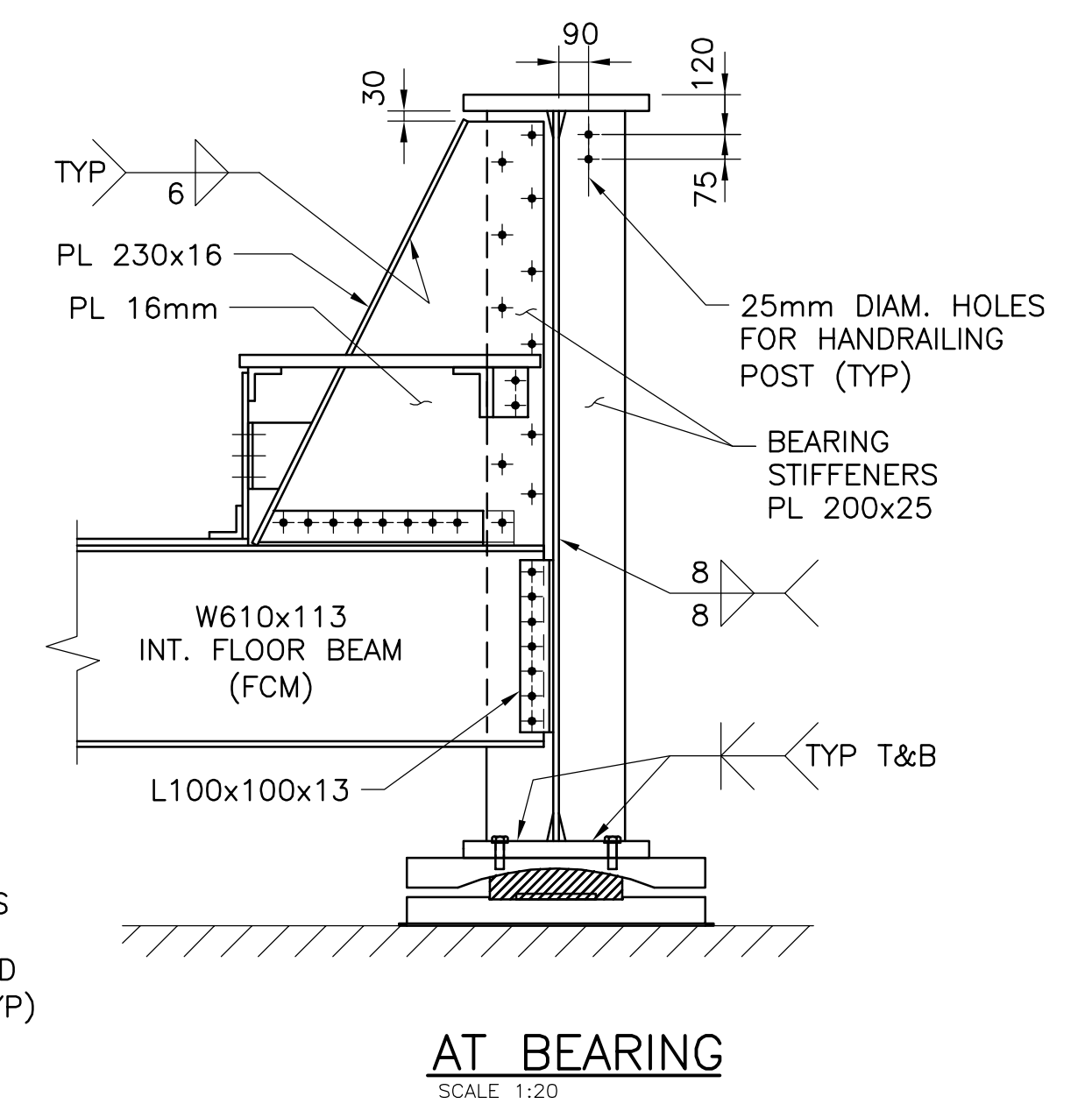
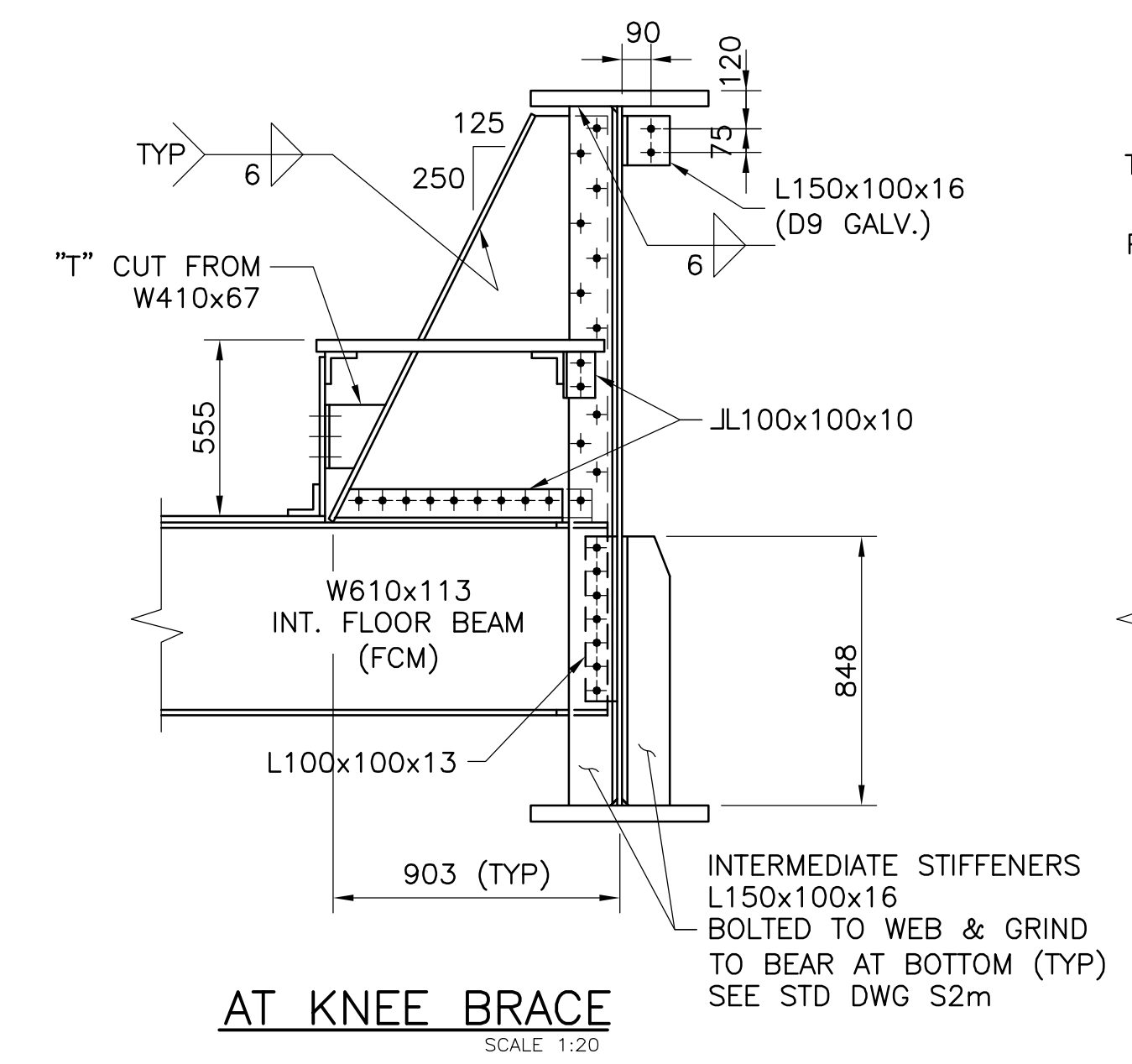
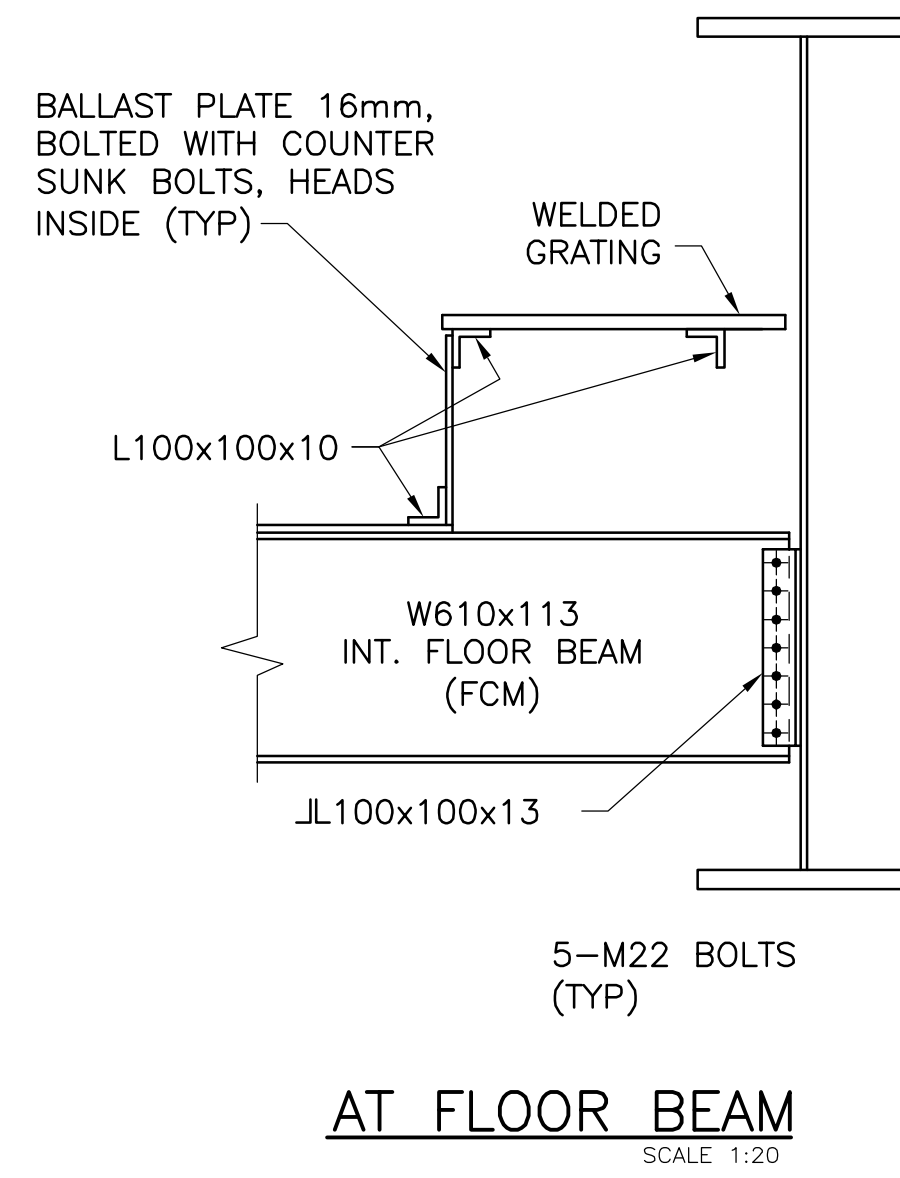
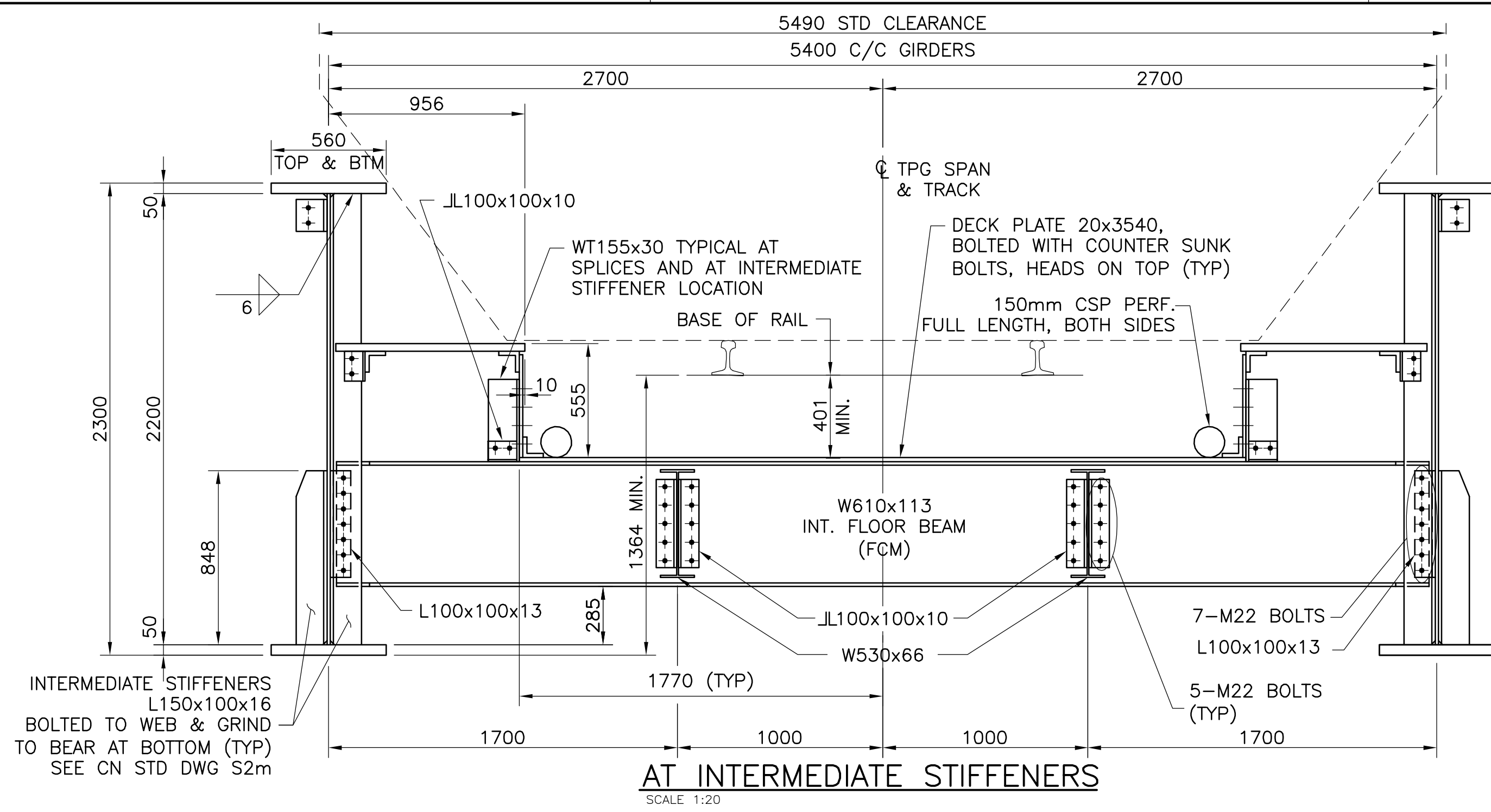


SECTION "A-A"
SCALE: 1/2"=1'-0"

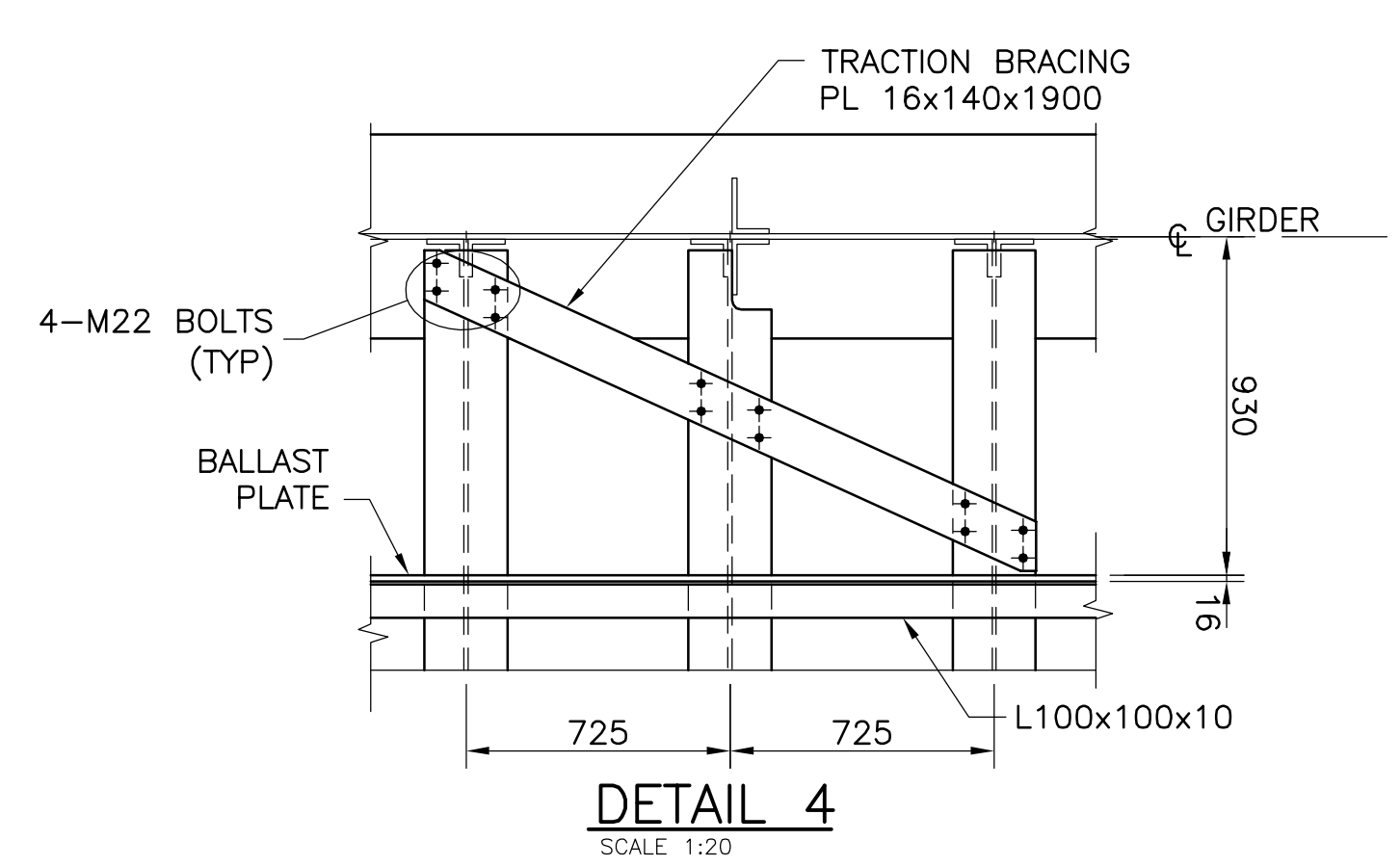
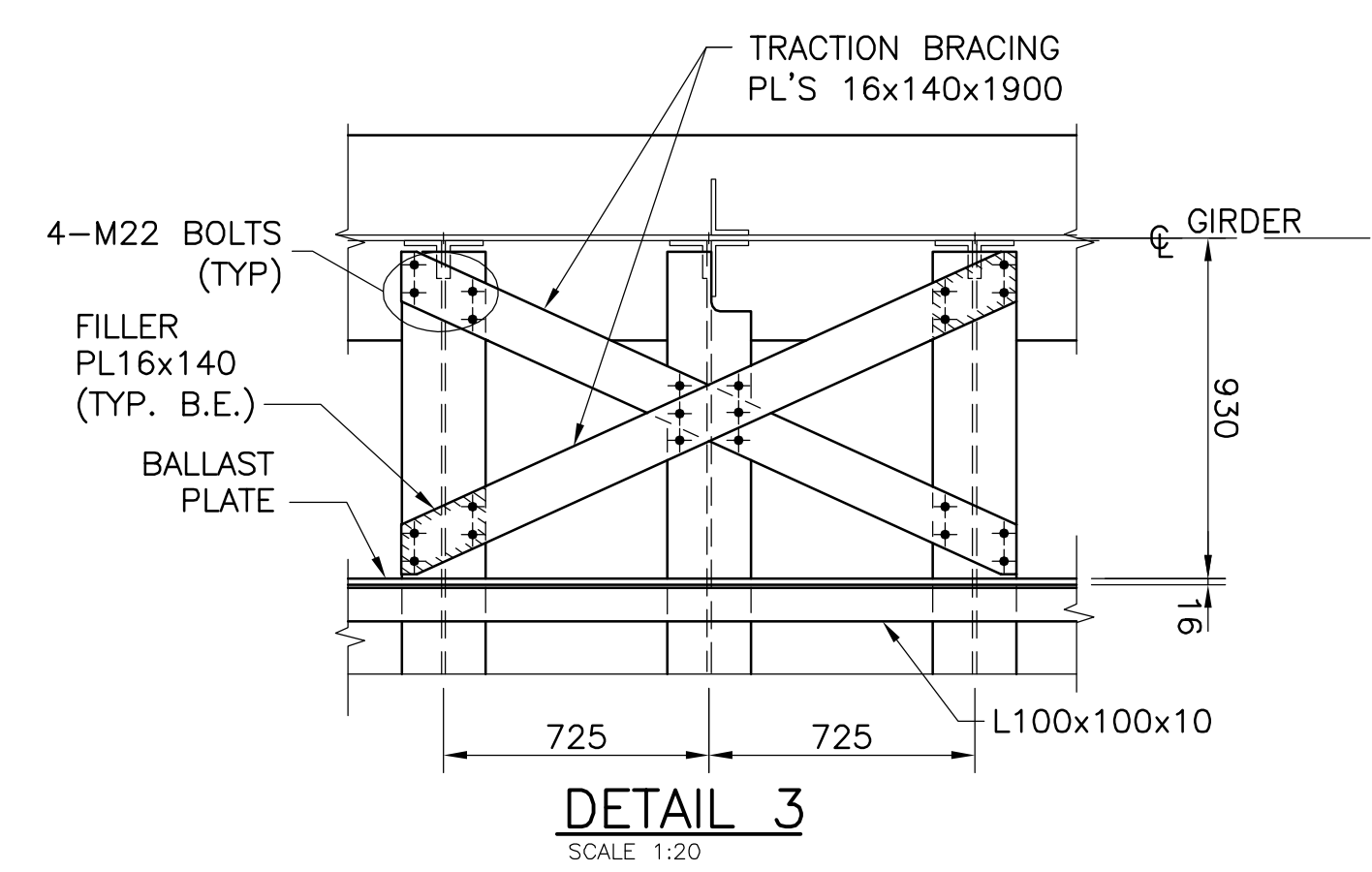
SECTION "B-B"
SCALE: 1/2"=1'-0"

SENIOR STRUCTURAL ENGINEER			
AB	06/06/23	AS CONSTRUCTED	JC
No.	Date	Revision	By/Par
Division	EASTERN CANADA	Sub-division	KINGSTON
Mile	327.01	Mile	327.01
KINGSTON 327.01, DANFORTH AVENUE SCARBOROUGH, ONT. BRIDGE WIDENING 97'-10" c/c T.P.G. SPANS (1 of 5)			
Drawn	GG	Designed	SKH
Dessin		Conception	
Checked		Verification	
Scale	NOTED	Date	05/08/17
Office of Chief Engineer			
Bureau de l'Ingénieur en Chef			
File Reference	327.01 KINGSTON	Drawing Number	AA840-327.01-4.3AB
		Dessin Numero	

TECHNICAL SECTION, I.C. INC. (514) 455-5650



Shoof Nowak Nov 23, 2009
SENIOR STRUCTURAL ENGINEER



END FLOOR BEAM WWF 650x154
TOTAL BEAM LENGTH = 11840mm
DESIGN SPAN LENGTH = 4520mm

TOTAL TOP FLANGE STRESS	= 117.7 MPa
PERMISS. STRESS	= 192.5 MPa
RATIO	WORKING PERMISS. = 0.61
DEFLECTION	= 1/2063
MAXIMUM STRESS RANGE	= 81.0 MPa
PERMISS. FATIGUE STRESS	= 110.3 MPa
RATIO	= 0.73

FLOOR BEAM W610x113
SPAN LENGTH = 5400mm

TOTAL TOP FLANGE STRESS	= 149.8 MPa
PERMISS. STRESS	= 192.5 MPa
RATIO	WORKING PERMISS. = 0.78
DEFLECTION	= 1/848
MAXIMUM STRESS RANGE	= 108.6 MPa
PERMISS. FATIGUE STRESS	= 165.5 MPa
RATIO	= 0.66

No.	Date	Revision	By/Par
A	2009-12-03	ISSUED FOR CONSTRUCTION	C.D.
	2009-08-31	ISSUED FOR FABRICATION TENDER	
Division		Sub-division	Mile
EST		KINGSTON	211.90
KINGSTON 211.90 - HIGHWAY No.2 SUBWAY			
NEAR SHANNONVILLE, ONT			
FLOOR BEAM DETAILS			
Drawn	Designed	Checked	Scale
AB	Conception	F.P./ Verification	AS NOTED
Date	Date		
2009-08-31	2009-08-31		

AECOM

C. DENHAUD
100148961
PROVINCE OF ONTARIO

Nov 27, 2009

THIS DRAWING TO BE READ IN CONJUNCTION WITH DWG AA840-211.90-6.04, 6.06, 6.07 & 6.08

0431-388-29_01-ST0005

Office of Chief Engineer
Bureau de l'Ingénieur en chef

CS

File 211.90 KINGSTON Drawing Number AA840-211.90-6.05

Final ATC Response

To: EJ O'Neill, Vice President Archer Western & Authorized Representative for Archer Western
Traylor Brothers (AWT-JV)
13454 Sunrise Valley Drive,
Suite 440, Herndon, VA 20171

From: John Kostyniuk; VPRA

Date: June 24, 2024

Subject: VPRA Response to AWT-JV ATC 5 - Bolting of the Deck Plate vs. Welding

In accordance with Section 4.4 of the RFP, VPRA provides the following response to the above-listed ATC:

This ATC is acceptable for inclusion in the Proposal.

**EXHIBIT C – SPECIAL TERMS AND CONDITIONS (FEDERAL RAILROAD ADMINISTRATION
CLAUSES) (FORM PD 260 (FRA/CON))**

SPECIAL TERMS AND CONDITIONS (Federal Railroad Administration Clauses)

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

ARTICLE 1: DEFINITIONS

- 1.1 **“C.F.R.”** means the United States Code of Federal Regulations, which contains regulations applicable to FRA grant recipients and their contractors and subcontractors.
- 1.2 **“Contractor”** means the party entering into the Contract with VPRA as a result of the solicitation for construction services and is intended to include the “Design-Builder” and “CM/GC Contractor,” to the extent that term is used and/or defined elsewhere in the Contract.
- 1.3 **“DOT”** means the United States Department of Transportation (also represented as USDOT).
- 1.4 **“EPA”** means the United States Environmental Protection Agency (also represented as USEPA).
- 1.5 **“Federal Government”** means the government of the United States of America, and any body or entity exercising executive, legislative, judicial, regulatory or administrative functions of the government of the United States of America.
- 1.6 **“FRA”** means the Federal Railroad Administration, an operating administration of the USDOT.
- 1.7 **“Grant Agreement”** shall mean the grant agreement between VPRA and FRA which forms the basis for federal financial assistance on the Contract.
- 1.8 **“Project”** shall have the meaning set forth in the Contract and, if no such definition is specified, shall mean the subject matter pertaining to Contract Work.
- 1.9 **“U.S.C.”** means the United States Code.
- 1.10 **“Work”** shall have the meaning set forth in the Contract and includes the services to be furnished by Contractor under the Contract.

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

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

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

ARTICLE 3: PROHIBITED INTERESTS

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

ARTICLE 4: ACCESS TO RECORDS, ACCESS TO CONSTRUCTION SITE, AND MAINTENANCE OF RECORDS

- 4.1** ***Access to Records.*** Contractor agrees to provide sufficient access to FRA and its agents to examine, inspect, and audit records and information related to performance of this Contract as reasonably may be required.
- 4.2** ***Access to the Sites of Performance.*** Contractor agrees to permit FRA and its agents access to the sites of performance under this Contract as may reasonably be required.
- 4.3** ***Reproduction of Documents.*** Contractor will retain, and will require its subcontractors/subconsultants at all tiers to retain, complete and readily accessible records related in whole or in part to this Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- 4.4** ***Retention Period.*** Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R §§ 200.334-200-338. Contractor shall maintain all books, records, accounts, and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims, or exceptions related thereto. The expiration or termination of this Contract does not alter the record retention or access requirements of this Article.

ARTICLE 5: PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

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

suspension, debarment, or other similar administrative or enforcement action against Contractor; or any matter or situation, including any other change or legal action that may adversely affect the Federal Government's interest in a Project or related activities.

ARTICLE 6: CIVIL RIGHTS

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

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

6.2.1 ***Nondiscrimination in Employment.*** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex (including gender identity), age, or disability. In addition, Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FRA may issue, including but not limited to 49 C.F.R Part 21.

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

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

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

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

Contractor agrees to comply with any implementing requirements FRA may issue.

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

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

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

ARTICLE 8: NONDISCRIMINATION LEGAL AUTHORITIES APPLICABLE TO THE CONTRACT

- 8.1** During the performance of this Contract, Contractor, for itself, its assignees, and successors in interest, agrees to comply with all applicable nondiscrimination statutes and authorities; including but not limited to, the following:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and consultants, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

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

ARTICLE 9: PREVAILING WAGE AND ANTI-KICKBACK

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

9.2 All contract clauses required by 29 C.F.R. 5.5(a)(1)-(11) shall be deemed incorporated in the Contract by reference and will be given the same force and effect as if they were inserted in full text.

ARTICLE 10: CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

10.1 Contractor shall comply with all federal laws, regulations, and requirements providing wage and

hour protections in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

10.2 Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5 or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this 29 C.F.R. 5.5, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph (b)(1) of 29 C.F.R. 5.5, in the sum currently provided in 29 C.F.R. 5.8 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of 29 C.F.R. 5.5.

(3) **Withholding for unpaid wages and liquidated damages.**

- a. *Withholding process.* The FRA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth 29 C.F.R. 5.5(b) on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.
- b. *Priority to withheld funds.* The Department of Labor has priority to funds withheld or to be withheld in accordance with paragraphs (a)(2)(i) or (b)(3)(i) of 29 C.F.R. 5.5, or both, over claims to those funds by: (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties; (2) A contracting agency for its procurement costs; (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate; (4) A contractor's assignee(s); (5) A contractor's successor(s); or (6) A claim asserted under the

Prompt Payment Act, 31 U.S.C. 3901–3907.

- (4) **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (b)(1) through (5) of 29 C.F.R. 5.5 and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.
- (5) **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
- (i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act or its implementing regulations in 29 C.F.R. Part 5;
 - (ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under Contract Work Hours and Safety Standards Act or 29 C.F.R. Part 5;
 - (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under Contract Work Hours and Safety Standards Act or 29 C.F.R. Part 5; or
 - (iv) Informing any other person about their rights under Contract Work Hours and Safety Standards Act or 29 C.F.R. Part 5.

10.3 All regular payrolls and other basic records must be maintained by the Contractor and any subcontractor during the course of the Work and preserved for all laborers and mechanics working at the site of the Work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the Contract is completed. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Such records maintained under this paragraph shall be made available by Contractor for inspection, copying, or transcription by authorized representatives of the FRA and the USDOL, and Contractor will permit such representatives to interview employees during working hours on the job.

10.4 All contract clauses required by the Contract Work Hours and Safety Standards Act or 29 C.F.R. Part 5 not otherwise set forth herein shall be deemed incorporated in the Contract by reference and will be given the same force and effect as if they were inserted in full text.

ARTICLE 11: WHISTLEBLOWER PROTECTION

11.1 Pursuant to 41 U.S.C. § 4712, employees of Contractor will not be discharged, demoted, or otherwise discriminated against as reprisal for disclosing to a person or body described in 41 U.S.C. § 4712(a)(2), information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to this Contract.

11.2 Contractor shall inform its employees in writing, in the predominant language of the workforce, of

the employee whistleblower rights and protections under 41 U.S.C. § 4712.

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

- 12.1** Contractor shall comply and facilitate compliance with USDOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200, which adopts and supplements the U.S. Office of Management and Budget (USOMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FRA official irrespective of the contract amount. Contractor agrees to, and assures that its third party contractors will, review the System for Award Management (SAM) before entering into any lower tier subconsultant/subcontractor agreements.
- 12.2** By signing this Contract, Contractor certifies to the best of its knowledge and belief, that it and its principals:
- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; and have not been convicted of any violations of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 12.3** This certification is a material representation of fact upon which VPRAs relies in entering this Contract. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to other remedies available to VPRAs, the Federal Government may pursue available remedies, including suspension and/or debarment. Contractor shall provide to VPRAs immediate written notice if at any time Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

ARTICLE 13: CERTIFICATION REGARDING LOBBYING

- 13.1** For any project of \$100,000 or more, Contractor is required to make the following certifications. Contractor must also require its subconsultants/subcontractors to make the following certification in any contracts or subcontracts valued at or above \$100,000.
- a. Contractor certifies, to the best of its knowledge and belief, that no Federal appropriated funds have been paid or will be paid by or on behalf of Contractor for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a

member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)]; and

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

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

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

ARTICLE 14: CERTIFICATION REGARDING NON-SEGREGATED FACILITIES

14.1 By signing this Contract, Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained. Contractor further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

14.2 As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, national origin, age or handicap, because of habit, local custom or otherwise.

ARTICLE 15: TELECOMMUNICATIONS CERTIFICATION

15.1 Contractor certifies through the signing of this Contract that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018) and 2 C.F.R. 200.216, Contractor does not and will not use any equipment, system, or service that uses "covered telecommunications equipment or services" as that term is defined in Section 889 of Pub. L. 115-232 and 2 C.F.R. 200.216.

ARTICLE 16: INTELLECTUAL PROPERTY RIGHTS [applies to contracts that include research and development deliverables]

16.1 Certain patent rights and data rights apply to all subject data first produced in the performance of this Contract. Contractor shall grant VPRA intellectual property access and licenses deemed necessary for the Work performed under this Contract and in accordance with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FRA or USDOT.

16.2 Except for its own internal use, Contractor may not publish or reproduce subject data in whole or

in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of FRA, until such time as FRA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to, computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

16.3 The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

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

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

16.4 Unless FRA determines otherwise, a Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FRA to make available to the public, either FRA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

16.5 Unless prohibited by state law, upon request by the Federal Government, Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. Notwithstanding the foregoing, Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

16.6 Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

16.7 Data developed by Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into Work required by the underlying Contract is exempt from the requirements herein, provided that Contractor identifies that data in writing at the time of delivery of the Contract Work.

ARTICLE 17 ENVIRONMENTAL STANDARDS AND PRACTICES

17.1 **Generally.** Contractor agrees to, and assures that its subcontractors will, comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements.

- 17.2 Clean Water Act.** For any project of \$150,000 or more, Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387. Contractor agrees to report each violation to VPRA and understands and agrees that VPRA will, in turn, report each violation as required to assure notification to FRA and the appropriate EPA Regional Office.
- 17.3 Clean Air Act Compliance.** For any project of \$150,000 or more, Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671q. Contractor agrees to report each violation to VPRA and understands and agrees that VPRA will, in turn, report each violation as required to assure notification to FRA and the appropriate EPA Regional Office.
- 17.4 Energy Conservation.** Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.
- 17.5 Recovered Materials.** Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and the EPA's, "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. Part 247.

ARTICLE 18: GEOGRAPHIC RESTRICTIONS

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

ARTICLE 19: BONDING

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

ARTICLE 20: ACQUISITION BY LEASE

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

ARTICLE 21: BUY AMERICA REQUIREMENTS

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

- 21.1** Contractor agrees to comply with 49 U.S.C. § 22905(a)(1), which provides that Federal funds may not be obligated unless iron, steel, and manufactured products used in FRA-funded projects are produced in the United States, unless a waiver has been granted by the Secretary of Transportation in accordance with 49 U.S.C. § 22905(a)(2).
- 21.2** Under 2 C.F.R. § 200.322, the Contractor should to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States
- 21.3** Contractor must submit to VPRA the appropriate Buy America certification attached to the solicitation or otherwise provided by VPRA with its (i) Bid (in the case of a sealed bidding procurement) or (ii) final offer or final revised Proposal (in the case of a negotiated procurement). Bids or Proposals (as applicable) that are not accompanied by a completed Buy America certification will be rejected as nonresponsive and cannot be considered by VPRA.

ARTICLE 22: BUILD AMERICA, BUY AMERICA REQUIREMENTS

- 22.1** Contractor agrees that iron, steel, manufactured goods, construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the USDOT, and FRA.
- 22.2** Contractor must submit to VPRA the appropriate Build America, Buy America certification attached to the solicitation or otherwise provided by VPRA with its (i) Bid (in the case of a sealed bidding procurement) or (ii) final offer or final revised Proposal (in the case of a negotiated procurement). Bids or Proposals (as applicable) that are not accompanied by a completed Build America, Buy America certification will be rejected as nonresponsive and cannot be considered by VPRA.

ARTICLE 23: FLY AMERICA REQUIREMENTS

- 23.1** Contractor agrees to comply with 49 U.S.C. § 40118 (the “Fly America Act”) in accordance with the General Services Administration’s regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag Air Carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.
- 23.2** Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. Flag Air Carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

ARTICLE 24: CARGO PREFERENCE

Contractor agrees:

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

ARTICLE 25: VETERANS PREFERENCE

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

ARTICLE 26: NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

26.1 To the extent applicable, Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and other FRA requirements that may be issued.

ARTICLE 27: SEISMIC SAFETY

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

ARTICLE 28: SAFE OPERATION OF MOTOR VEHICLES

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

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

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

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

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

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

ARTICLE 29: CONTRACTING WITH SMALL, MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, VETERAN-OWNED BUSINESSES, AND LABOR SURPLUS AREA FIRMS

In accordance with 2 C.F.R. § 200.321, Contractor must, when possible, assure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (see USDOL's list) are considered wherever subcontracts are to be let.

ARTICLE 30: TRAFFICKING IN PERSONS

- 30.1** Contractor agrees that it is in compliance with the Trafficking Victims Protection Act as amended (22 U.S.C. § 7104), in which the Federal Government has adopted a zero tolerance policy regarding trafficking in persons. The provisions found in 2 C.F.R. Part 175, are hereby incorporated into this Contract by reference.
- 30.2** Contractor, its employees, and subcontractors, or subcontractors' employees are prohibited from the following activities:
- a. Engaging in severe forms of trafficking in persons during the period of performance of the Contract;
 - b. Procuring commercial sex acts during the period of performance of the Contract; or
 - c. Using forced labor in the performance of the Contract.
- 30.3** Contractor agrees that it shall notify, and require all of its subcontractors to notify, its employees of the prohibited activities described in the preceding paragraph.
- 30.4** Contractor shall notify VPRA immediately of any information it receives from any source alleging a violation of a prohibition set forth in this Article 30.
- 30.5** VPRA has the right to immediately and unilaterally terminate this Contract if any provision in this Article 30 is violated, and in addition to all other remedies, VPRA may implement section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104(g)), see 2 C.F.R. Part 175.

ARTICLE 31: NOTICE OF LEGAL MATTERS AFFECTING THE FEDERAL GOVERNMENT

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

ARTICLE 32: NO OBLIGATION OF FEDERAL GOVERNMENT

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

ARTICLE 33: INCLUSION IN SUBCONTRACTOR AGREEMENTS

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

END OF DOCUMENT

EXHIBIT D – STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

(Executive Order 11246) (SP 07)

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas

where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the

sources compiled under 7b above.

- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**EXHIBIT E – FEDERAL-STATE PARTNERSHIP FOR INTERCITY PASSENGER RAIL
PROVISIONS (APPENDIXES A, E, EXHIBIT B.5)**

APPENDIX A

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

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



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

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Flow Down.

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

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

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

3. Collective Bargaining Agreements.

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

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

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

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

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

(b) **Negotiations.**

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

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

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

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

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

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

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

5. Protections for Displaced Employees

(a) Displacement Allowances

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Protections for Dismissed Employees.

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

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

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

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

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

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

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

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

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

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

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

8. Arbitration of Disputes.

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

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

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

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

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

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

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

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

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

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

**EXHIBIT F – REBUILDING AMERICAN INFRASTRUCTURE WITH SUSTAINABILITY AND
EQUITY (RAISE) PROGRAM PROVISIONS**

APPENDIX A

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

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

thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or FRA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

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

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

EXHIBIT G – DESIGNATED VPRA-FURNISHED INFORMATION

1. LBPE Phase I Environmental Site Assessment Report (2021-09-03)
2. Long Bridge Project Draft EIS Affected Environment Report
3. LBPE Geotech Data Report (2024-07-23)
4. Long Bridge Project PE Phase Pile Load Test Program (2023-11-27)

EXHIBIT H – REQUIRED CERTIFICATIONS

FORM G

BUY AMERICA CERTIFICATION/ FRA
(VPRA Procurement Form PD 32)

IFB/RFP No. 01-001-24-0002

Federal Project No.: _____
(if known)

Date submitted: 9/4/24

Certification for procurement of steel, iron, or manufactured products.

A Bidder or Offeror must submit to VPRA the appropriate Buy America certification (below) with all bids or offers on FRA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America Certification must be rejected as nonresponsive. ***Please check only one box and sign certification.***

Please check only one box and sign certification.

Certificate of Compliance with 49 U.S.C. § 22905(a)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. § 22905(a)(1) and any applicable regulations.

OR

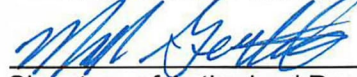
Certificate of Non-Compliance with 49 U.S.C. § 22905(a)(1)

The Bidder or Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 22905(a)(1) and any applicable regulations, but it may qualify for an exception from the Secretary of Transportation pursuant to 49 U.S.C. § 22905(a)(2).

I understand that a false statement on this certification may be grounds for rejection or termination of any award.

Long Bridge Rail Partners

Bidder's/Offeror's Firm Name



Signature of Authorized Representative

9/4/24

Date

FORM G

BUY AMERICA CERTIFICATION/ FRA
(VPRA Procurement Form PD 32)

IFB/RFP No. 01-001-24-0002

Federal Project No.: _____
(if known)

Date submitted: 9/4/24

Certification for procurement of steel, iron, or manufactured products.

A Bidder or Offeror must submit to VPRA the appropriate Buy America certification (below) with all bids or offers on FRA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America Certification must be rejected as nonresponsive. ***Please check only one box and sign certification.***

Please check only one box and sign certification.

Certificate of Compliance with 49 U.S.C. § 22905(a)(1)
The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. § 22905(a)(1) and any applicable regulations.

OR

Certificate of Non-Compliance with 49 U.S.C. § 22905(a)(1)
The Bidder or Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 22905(a)(1) and any applicable regulations, but it may qualify for an exception from the Secretary of Transportation pursuant to 49 U.S.C. § 22905(a)(2).

I understand that a false statement on this certification may be grounds for rejection or termination of any award.

Trumbull Corporation (Long Bridge Rail Partners)

Bidder's/Offeror's Firm Name


Signature of Authorized Representative

9/4/24
Date

FORM G

BUY AMERICA CERTIFICATION/ FRA
(VPRA Procurement Form PD 32)

IFB/RFP No. 01-001-24-0002

Federal Project No.: _____
(if known)

Date submitted: September 4 , 2024

Certification for procurement of steel, iron, or manufactured products.

A Bidder or Offeror must submit to VPRA the appropriate Buy America certification (below) with all bids or offers on FRA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America Certification must be rejected as nonresponsive. ***Please check only one box and sign certification.***

Please check only one box and sign certification.

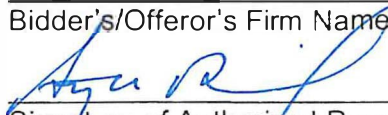
Certificate of Compliance with 49 U.S.C. § 22905(a)(1)
The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. § 22905(a)(1) and any applicable regulations.

OR

Certificate of Non-Compliance with 49 U.S.C. § 22905(a)(1)
The Bidder or Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 22905(a)(1) and any applicable regulations, but it may qualify for an exception from the Secretary of Transportation pursuant to 49 U.S.C. § 22905(a)(2).

I understand that a false statement on this certification may be grounds for rejection or termination of any award.

Wagman Heavy Civil, Inc.
Bidder's/Offeror's Firm Name



Signature of Authorized Representative

September 4, 2024
Date

FORM G

BUY AMERICA CERTIFICATION/ FRA (VPRA Procurement Form PD 32)

IFB/RFP No. 01-001-24-0002

Federal Project No.: _____
(if known)

Date submitted: August 26, 2024

Certification for procurement of steel, iron, or manufactured products.

A Bidder or Offeror must submit to VPRA the appropriate Buy America certification (below) with all bids or offers on FRA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America Certification must be rejected as nonresponsive. **Please check only one box and sign certification.**

Please check only one box and sign certification.



Certificate of Compliance with 49 U.S.C. § 22905(a)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. § 22905(a)(1) and any applicable regulations.

OR



Certificate of Non-Compliance with 49 U.S.C. § 22905(a)(1)

The Bidder or Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 22905(a)(1) and any applicable regulations, but it may qualify for an exception from the Secretary of Transportation pursuant to 49 U.S.C. § 22905(a)(2).

I understand that a false statement on this certification may be grounds for rejection or termination of any award.

Joseph B. Fay, Co.

Bidder's/Offeror's Firm Name



Digitally signed by Ryan Burnens
DN: cn=Ryan Burnens, o=Joseph B. Fay, S=USA
C=US, email=ryanburnens@jbfay.com
Date: 2024.08.26 09:50:34-0700

Signature of Authorized Representative

August 26, 2024

Date

FORM H

BUILD AMERICA, BUY AMERICA CERTIFICATION
(VPRA Procurement Form PD 33)

IFB/RFP No. 01-001-24-0002
Federal Project No.: _____
(if known)
Date submitted: 9/4/24

In accordance with Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 - 70927 (2021), none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver.

More particularly, the Build America, Buy America Act requires the following:

- (a) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (b) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent (currently) of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
- (c) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

A Bidder/Offeror must submit this Build America, Buy America certification with all bids or offers on solicitations which are funded in whole or in part by the FTA and/or FRA. Bids or offers that are not accompanied by a completed Build America, Buy America certification must be rejected as nonresponsive.

As a Bidder/Offeror for the project listed above, I certify that I have read, understand, and will comply with the Build America, Buy America Act provisions as required by federal law. Furthermore, I understand that Build America, Buy America Act provisions apply to any and all portions of this Project, including subcontracted portions and that I certify to the best of my knowledge and belief that I will identify domestic sources of Build America, Buy America Act-covered products, provide verification documentation for Build America, Buy America Act compliance, and when needed provide waiver documentation per current guidance.

I understand that a false statement on this certification may be grounds for rejection or termination of any award.

Long Bridge Rail Partners

Bidder's/Offeror's Firm Name


Signature of Authorized Representative

9/4/24

Date

FORM H

BUILD AMERICA, BUY AMERICA CERTIFICATION
(VPRA Procurement Form PD 33)

IFB/RFP No. 01-001-24-0002
Federal Project No.: _____
(if known)
Date submitted: 9/4/24

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More particularly, the Build America, Buy America Act requires the following:

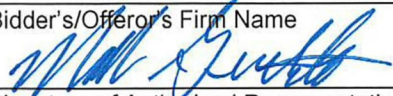
- (a) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (b) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent (currently) of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
- (c) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

A Bidder/Offeror must submit this Build America, Buy America certification with all bids or offers on solicitations which are funded in whole or in part by the FTA and/or FRA. Bids or offers that are not accompanied by a completed Build America, Buy America certification must be rejected as nonresponsive.

As a Bidder/Offeror for the project listed above, I certify that I have read, understand, and will comply with the Build America, Buy America Act provisions as required by federal law. Furthermore, I understand that Build America, Buy America Act provisions apply to any and all portions of this Project, including subcontracted portions and that I certify to the best of my knowledge and belief that I will identify domestic sources of Build America, Buy America Act-covered products, provide verification documentation for Build America, Buy America Act compliance, and when needed provide waiver documentation per current guidance.

I understand that a false statement on this certification may be grounds for rejection or termination of any award.

Trumbull Corporation (Long Bridge Rail Partners)

Bidder's/Offeror's Firm Name


Signature of Authorized Representative

9/4/24

Date

FORM H

BUILD AMERICA, BUY AMERICA CERTIFICATION
(VPRA Procurement Form PD 33)

IFB/RFP No. 01-001-24-0002

Federal Project No.: _____
(if known)

Date submitted: September 4, 2024

In accordance with Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 - 70927 (2021), none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver.

More particularly, the Build America, Buy America Act requires the following:


- (a) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (b) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent (currently) of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
- (c) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

A Bidder/Offeror must submit this Build America, Buy America certification with all bids or offers on solicitations which are funded in whole or in part by the FTA and/or FRA. Bids or offers that are not accompanied by a completed Build America, Buy America certification must be rejected as nonresponsive.

As a Bidder/Offeror for the project listed above, I certify that I have read, understand, and will comply with the Build America, Buy America Act provisions as required by federal law. Furthermore, I understand that Build America, Buy America Act provisions apply to any and all portions of this Project, including subcontracted portions and that I certify to the best of my knowledge and belief that I will identify domestic sources of Build America, Buy America Act-covered products, provide verification documentation for Build America, Buy America Act compliance, and when needed provide waiver documentation per current guidance.

I understand that a false statement on this certification may be grounds for rejection or termination of any award.

Wagman Heavy Civil. Inc.
Bidder's/Offeror's Firm Name


Signature of Authorized Representative

September 4, 2024
Date

FORM H

BUILD AMERICA, BUY AMERICA CERTIFICATION
(VPRA Procurement Form PD 33)

IFB/RFP No. 01-001-24-0002
Federal Project No.: _____
(if known)
Date submitted: August 26, 2024

In accordance with Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 - 70927 (2021), none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver.

More particularly, the Build America, Buy America Act requires the following:

- (a) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (b) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent (currently) of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
- (c) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

A Bidder/Offeror must submit this Build America, Buy America certification with all bids or offers on solicitations which are funded in whole or in part by the FTA and/or FRA. Bids or offers that are not accompanied by a completed Build America, Buy America certification must be rejected as nonresponsive.

As a Bidder/Offeror for the project listed above, I certify that I have read, understand, and will comply with the Build America, Buy America Act provisions as required by federal law. Furthermore, I understand that Build America, Buy America Act provisions apply to any and all portions of this Project, including subcontracted portions and that I certify to the best of my knowledge and belief that I will identify domestic sources of Build America, Buy America Act-covered products, provide verification documentation for Build America, Buy America Act compliance, and when needed provide waiver documentation per current guidance.

I understand that a false statement on this certification may be grounds for rejection or termination of any award.

Joseph B. Fay, Co.
Bidder's/Offeror's Firm Name


Signature of Authorized Representative

August 26, 2024
Date

FORM K

AFFIDAVIT OF NON-COLLUSION

I swear (or affirm) under the penalty of perjury:

1. That I am the Respondent (if the Respondent is an individual), a partner in the partnership (if the Respondent is a partnership), an equity member of the Respondent (if the Respondent is a joint venture), or an officer or employee of the Respondent corporation having authority to sign on its behalf (if the Respondent is a corporation);
2. That the attached SOQ submitted in response to the Long Bridge South Package Project Design Build Request for Qualifications has been arrived at by the Respondent independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other provider of materials, supplies, equipment or services described in the RFQ, designed to limit fair and open competition;
3. That the contents of the SOQ have not been communicated by the Respondent or its employees or agents to any person not an employee or agent of the Respondent and will not be communicated to any such persons prior to the SOQ due date; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Authorized Signature[†]: _____



Date: 11/21/23

Respondent's Firm Name: Trumbull Corporation

Respondent's Federal Employer Identification Number: 25-1021993

(Number used on Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941) (if Respondent does not have an EIN, then the EIN for each Principal Participant)

[†] If Respondent is not organized as an organization or is a Joint Venture, partnership, or any form of consortium, then an authorized representative of each Principal Participant must sign this Affidavit.

Virginia Passenger Rail Authority

Subscribed and sworn to me this 22 day of November, 2023

Notary Public Kathleen A. Banks

My commission expires: 3/2/25

Commonwealth of Pennsylvania - Notary Seal
Kathleen S. Banks, Notary Public
Allegheny County
My commission expires March 2, 2025
Commission number 1273482
Member, Pennsylvania Association of Notaries

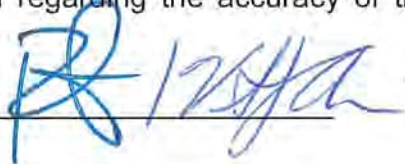
FORM K

AFFIDAVIT OF NON-COLLUSION

I swear (or affirm) under the penalty of perjury:

1. That I am the Respondent (if the Respondent is an individual), a partner in the partnership (if the Respondent is a partnership), an equity member of the Respondent (if the Respondent is a joint venture), or an officer or employee of the Respondent corporation having authority to sign on its behalf (if the Respondent is a corporation);
2. That the attached SOQ submitted in response to the Long Bridge South Package Project Design Build Request for Qualifications has been arrived at by the Respondent independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other provider of materials, supplies, equipment or services described in the RFQ, designed to limit fair and open competition;
3. That the contents of the SOQ have not been communicated by the Respondent or its employees or agents to any person not an employee or agent of the Respondent and will not be communicated to any such persons prior to the SOQ due date; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Authorized Signature[†]: _____



Date: 9/25/2023

Respondent's Firm Name: Joseph B. Fay Co.

Respondent's Federal Employer Identification Number:

25-0930077

(Number used on Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941) (if Respondent does not have an EIN, then the EIN for each Principal Participant)

[†] If Respondent is not organized as an organization or is a Joint Venture, partnership, or any form of consortium, then an authorized representative of each Principal Participant must sign this Affidavit.

Virginia Passenger Rail Authority

Subscribed and sworn to me this 25th day of September, 2023

Notary Public Irene Martin

My commission expires: June 6, 2025


Commonwealth of Pennsylvania - Notary Seal
Irene Martin, Notary Public
Beaver County
My commission expires June 6, 2025
Commission number 1313303
Member, Pennsylvania Association of Notaries

FORM K

AFFIDAVIT OF NON-COLLUSION

I swear (or affirm) under the penalty of perjury:

1. That I am the Respondent (if the Respondent is an individual), a partner in the partnership (if the Respondent is a partnership), an equity member of the Respondent (if the Respondent is a joint venture), or an officer or employee of the Respondent corporation having authority to sign on its behalf (if the Respondent is a corporation);
2. That the attached SOQ submitted in response to the Long Bridge South Package Project Design Build Request for Qualifications has been arrived at by the Respondent independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other provider of materials, supplies, equipment or services described in the RFQ, designed to limit fair and open competition;
3. That the contents of the SOQ have not been communicated by the Respondent or its employees or agents to any person not an employee or agent of the Respondent and will not be communicated to any such persons prior to the SOQ due date; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Authorized Signature[†]: 

Anthony W. Bednarik, Vice President Design Build Pursuits

Date: November 3, 2023

Respondent's Firm Name: Wagman Heavy Civil, Inc.

Respondent's Federal Employer Identification Number:

23-1312883

(Number used on Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941) (if Respondent does not have an EIN, then the EIN for each Principal Participant)

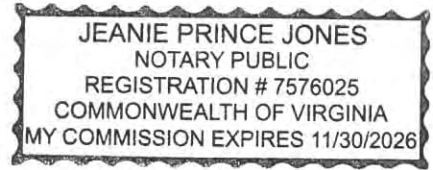
[†] If Respondent is not organized as an organization or is a Joint Venture, partnership, or any form of consortium, then an authorized representative of each Principal Participant must sign this Affidavit.

Virginia Passenger Rail Authority

Subscribed and sworn to me this 3rd day of November, 2023

Notary Public Jeanie Prince Jones

My commission expires: 11/30/2026



FORM L

LOBBYING CERTIFICATE

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

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

- (2) **If any funds other than Federal appropriated funds have been paid or will be paid** to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with **THIS** Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].

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

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

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The Respondent/Contractor, Trumbull Corporation, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Respondent/Contractor understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Date: 11/21/23

Company Name: Trumbull Corporation

Signature: 

Name: Mark A. Gentile
(Print)

Title: President

Virginia Passenger Rail Authority

NOTE: CONTRACTORS ARE REQUIRED PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYNG CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.

FORM L

LOBBYING CERTIFICATE

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

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

- (2) **If any funds other than Federal appropriated funds have been paid or will be paid** to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with **THIS** Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].

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

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

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The Respondent/Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Respondent/Contractor understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Date: 9/25/2023

Company Name: Joseph B. Fay Co.

Signature: 

Name: Ryan Surrena / Vincent J. Acri
(Print)

Title: President / Corporate Secretary

Virginia Passenger Rail Authority

NOTE: CONTRACTORS ARE REQUIRED PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYNG CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.

FORM L

LOBBYING CERTIFICATE

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

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

- (2) **If any funds other than Federal appropriated funds have been paid or will be paid** to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with **THIS** Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].

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

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

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The Respondent/Contractor, Wagman Heavy Civil, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Respondent/Contractor understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Date: November 3, 2023

Company Name: Wagman Heavy Civil, Inc.

Signature: 

Name: Anthony W. Bednarik
(Print)

Title: Vice President Design Build Pursuits

Virginia Passenger Rail Authority

NOTE: CONTRACTORS ARE REQUIRED PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.

EXHIBIT I – UTILITY RELOCATION AGREEMENT TEMPLATE

[STANDARD UTILITY RELOCATION AGREEMENT]^[1]

FOR

THE LONG BRIDGE PROJECT SOUTH PACKAGE

BETWEEN

THE VIRGINIA PASSENGER RAIL AUTHORITY

AND

[UTILITY OWNER]

RECITALS

WHEREAS, the Virginia Passenger Rail Authority (“VPRA”) entered into a design-build agreement with contract ID number 01-001-24-0002, dated [●] (the “Project Contract”), between VPRA and [design-builder (“Design Builder”)]; and

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

WHEREAS, [●] (“Utility Owner”) owns and maintains the existing assets listed in EXHIBIT C (*Existing Facilities*) (the “Existing Facilities”) within the limits of the Project, which require removal, relocation, and/or protection in place to accommodate the Project; and

WHEREAS, the Project will also require the installation of new facilities within the limits of the Project listed in EXHIBIT D (*New Facilities*) (the “New Facilities”), which New Facilities are to be owned and maintained by Utility Owner after their installation; and

WHEREAS, the parties desire to enter into this agreement to establish rights and duties with respect to the timely and efficient design and construction with respect to: (i) removal, relocation, and/or protection in place of the Existing Facilities, and (ii) installation of the New Facilities ((i) and (ii) collectively the “Utility Work”), in each case, needed to accommodate the Project.

AGREEMENT

NOW THEREFORE, the parties agree as follows.

1. Responsibility for Design and Construction; Standards.
 - a. **Design Plans and Schedule.**^[2] [use if Utility Owner performs design] VPRA will provide Project design plans to Utility Owner once the plans have reached a state that fully identifies the impacts of the Project on the Existing Facilities. After the delivery of such plans, Utility Owner shall have [thirty] calendar days to prepare and provide

to VPRA preliminary plans together with a proposed design and construction schedule providing for the Utility Work needed to accommodate the construction of the Project. VPRA shall review such preliminary plans and proposed schedule within [twenty-one] calendar days after receipt and either approve or reject them. If rejecting, VPRA shall note the reasons therefore in writing; thereafter, Utility Owner shall prepare and provide to VPRA revised preliminary plans and a proposed schedule, and the process shall be repeated until the parties to this agreement agree to plans and a schedule for the Utility Work needed to accommodate construction of the Project.

[use if VPRA's Design-Builder performs design] VPRA will cause its Design-Builder to provide to Utility Owner plans and a proposed schedule to perform the Utility Work. Utility Owner, acting reasonably, shall review the plans and proposed schedule within [twenty-one] calendar days after receipt and either approve or reject them. If rejecting, Utility Owner shall note the reasons therefore in writing; thereafter, VPRA shall cause its Design-Builder to prepare and provide to Utility Owner revised plans and a proposed schedule, and the process shall be repeated until the parties agree to plans and a schedule for the Utility Work needed to accommodate construction of the Project.

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

2. Betterments.

- a. **Existence of Betterment.** The Utility Work contemplated by this agreement [does/does not] contain a Betterment, which will be implemented at Utility Owner's cost.
- b. **Description and Compensation Structure.** The Betterment is [describe the Betterment generally]; it has been approved by VPRA and will be compensated as follows: [lump sum, unit prices, etc.].^[3] Utility Owner agrees to pay such compensation allocable to the Betterment directly to VPRA.

- c. **Compensation to Design-Builder for Betterment.** If VPRA's Design-Builder is performing some or all of the work associated with the Betterment, VPRA will be responsible for payment to Design-Builder for such efforts under the terms of the Project Contract.
3. Cost Estimates; Compensation.
 - a. **Development of Cost Estimate.** Within [●] calendar days after the approval of plans and schedule under Section 1.a. above, VPRA may request, and Utility Owner shall provide to VPRA for its review and approval or rejection, an estimate of the costs to perform the Utility Work. If rejecting, VPRA shall note the reasons therefore in writing; thereafter, Utility Owner shall prepare and provide a revised cost estimate, and the process shall be repeated until VPRA has agreed to a final cost estimate.
 - b. **Cost Estimate as Cap.** The actual total compensation paid by VPRA with respect to the Utility Work shall not exceed the final, VPRA-approved cost estimate, unless otherwise agreed in writing by VPRA.
 - c. **Compensation.** As between Design-Builder and VPRA, compensation for all Utility Work performed pursuant this agreement shall be governed by the Project Contract. Compensation for work performed by Utility Owner (including, for the avoidance of doubt, work performed by Utility Owner's subcontractor(s) or material supplier(s) of any tier) will be paid by VPRA directly to Utility Owner as follows: [●]^[4]
4. VPRA Authorization to Proceed. Utility Owner shall not begin the Utility Work assigned to it under this agreement unless VPRA has provided written authorization to proceed with such work.
5. Inspections and Testing. VPRA's Design Builder's Utility Coordinator shall have access to the Utility Work at all times to observe (including, *inter alia*, for safety), inspect, and test it. To the extent Design Builder's Utility Coordinator discovers any Utility Work not in conformance with the requirements of this agreement, Utility Owner shall be required to re-perform such work at its own cost. No inspections or tests performed pursuant to this section will be construed to relieve the party performing the Utility Work from its duty to perform such relocation work in accordance with the requirements of this agreement.
6. Additional Rights.
 - a. **Identification.** To the extent they are needed to support Utility Work, the acquisition of any additional real property interests, encroachments, licenses, or other similar rights shall be identified by Utility Owner working together with Design-Builder.

- b. **VPRA’s Role.** VPRA will facilitate the acquisition of any such real property interests or other rights, and compensation to third-party interest holders will be the responsibility of VPRA.

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

VPRA	Utility Owner
[•]	[•]

8. Miscellaneous.

- a. **Schedule.** Utility Owner will perform any Utility Work assigned to it in accordance with the Approved Baseline Schedule developed under the Project Contract.
- b. **Permitting.** Unless stated in this agreement, VPRA’s Design-Builder shall be responsible to obtain any permits or other permissions required from governmental or other entities with respect to the Utility Work.
- c. **Avoidance of Multiple Relocations.** Utility Owner will use best efforts to ensure that any relocated Existing Facilities are relocated only one time with respect to the Project.
- d. **Liability.** The Utility Owner may be required by CSX Transportation, Inc., or other underlying property owner, to provide indemnification and obtain and maintain certain insurance coverage types and amounts prior to undertaking the Utility Work.
- e. **Appropriations.** VPRA’s duty to pay compensation under this agreement is subject to the appropriations of the General Assembly and allocation by the relevant oversight board (VPRA’s board of directors, and in some cases, the Commonwealth Transportation Board).
- f. **Compliance with Laws.** In undertaking the Utility Work contemplated by this agreement, the parties shall comply with all applicable laws and regulations, including any legal requirements arising from VPRA’s federal funding partners with respect to the Project.

- g. ***Sovereign Immunity.*** Nothing in this agreement shall be construed as a waiver or limitation of VPRA's sovereign immunity.

- h. ***Capitalized Terms.*** Capitalized terms used in this agreement but not otherwise defined herein shall have the meanings ascribed to those same terms within the Project Contract.

[SIGNATURE PAGE FOLLOWS]

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

EXHIBIT A
UTILITY WORK RESPONSIBILITIES MATRIX

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

EXHIBIT B
GOVERNING STANDARDS AND SPECIFICATIONS

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

EXHIBIT C
EXISTING FACILITIES

[TO BE ADDED]

EXHIBIT D
NEW FACILITIES

[TO BE ADDED]

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

EXHIBIT J – DAVIS-BACON WAGES

[Note: to be inserted at execution]

EXHIBIT K – EXTRA WORK AND DELAY COSTS SPECIFICATION

This Exhibit K sets forth the methods for calculating Extra Work Costs and Delay Costs owing from VPRA to Design-Builder under the Agreement.

1. Extra Work Costs

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

1.1. Negotiated Lump Sum

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

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

1.1.2. Negotiated lump sum Extra Work Costs shall also include a 15% markup for Design-Builder indirect costs, Field Indirect Costs, and profit. Where the Extra Work is performed by Subcontractors, the Subcontractor may include a 15% markup for the Subcontractor's indirect costs, Field Indirect Costs, and profit. The negotiated lump sum shall not include any Home Office Overhead of Design-Builder or Subcontractors.

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

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

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

1.2 Force Account Basis

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

1.2.1 Labor

1.2.1.1 Construction Labor

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

VPRA will pay an amount equal to 30 percent of the sum of the direct labor costs and fringe benefits. This payment is in compensation in the following increments: Field Indirect Costs (10 percent), Home Office Overhead (10 percent), and profit (10 percent).

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

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

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

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

1.2.1.2 Professional Services Labor

For Professional Services labor, VPRA will pay the following:

1. Actual unburdened wage ((i.e., the base wage paid to the employee excluding any fringe benefits), plus
2. A markup consisting of the Professional Service provider's Audited Overhead Rate ("AOR"), plus
3. A markup for profit as negotiated by the Parties.

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

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

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

Overtime shall only be payable where required by Law. An overtime pay rate shall not apply to workers exempt from the Fair Labor Standards Act, 29 U.S.C. § 201, et. seq., whether or not a

worker's employer elects to pay overtime wages for hours worked in excess of 40 hours per week. Where overtime is applicable, the hourly rate shall be calculated as follows:

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

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

1.2.1.3 Other Reimbursable Costs

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

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

1.2.2 Bond, Insurance, and Tax

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

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

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

1.2.3 Materials

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

1.2.4 Equipment

1.2.4.1 General Equipment Rental Provisions

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

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

Where:

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

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

HOC = hourly operation cost;

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

- (a) Design-Builder shall not charge for those pieces of Equipment with a rental rate of \$5.00 per hour or less as listed in the RRBB.
- (b) An overhead and profit adjustment of 15 percent of the rates provided in the RRBB is included in the above formula.
- (c) If VPRA concurs that it is necessary to use Equipment owned by Design-Builder, an Affiliate or a Subcontractor that is not listed in the RRBB, VPRA will establish a suitable rental rate for that Equipment. Design-Builder may furnish any cost data which might assist VPRA in the establishment of the rental rate. If the rental rate established by VPRA is \$5.00 per hour or less, the provisions of Section 1.2.4.1(a) above shall apply.
- (d) The hourly operating cost (HOC) as provided above shall include the major costs of Equipment operation, such as the cost of fuel, oil, lubrication, supplies, field repairs, tires, expendable parts, up to one necessary attachment per piece of Equipment, maintenance, depreciation, storage, and insurance.
- (e) When multiple attachments are necessary or included for a piece of Equipment, only the attachment having the highest rate will be included for the purpose of calculating Force Account Extra Work costs, provided that the attachment has been approved by VPRA as being necessary to the Force Account Extra Work.
- (f) The cost of labor for operators of rented Equipment shall be determined as provided in Section 1.2.1 above ("Labor").
- (g) For costs of Equipment to be eligible for inclusion in Force Account Extra Work Costs, the Equipment must be in good working condition and suitable for the purpose for which the Equipment is to be used. Design-Builder shall handle and use the Equipment to provide normal output or normal production. All Equipment is subject to approval by VPRA. Equipment that is not in good working order or that is not of proper size for efficient performance of the Force Account Extra Work may be rejected by VPRA. Rental time shall apply to eligible Equipment used for Force Account Extra Work to establish or calculate the Extra Work Costs related thereto or resulting therefrom until such time as VPRA directs that the use of such Equipment be discontinued or until completion of the relevant work.
- (h) Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify Equipment for the determination of applicable rental rates. Equipment that has no direct power unit must be powered by a unit of at least the minimum rating recommended by the manufacturer.
- (i) Extra Work costs shall not include the costs of small tools. Individual pieces of Equipment or tools not listed in the RRBB and having a replacement value of \$400 or less, regardless of

whether consumed by use, shall be considered to be small tools, ineligible to be included in Force Account Extra Work Costs.

- (j) Rental time will not be allowed while Equipment is inoperative due to breakdowns.
- (k) For each piece of Equipment to be used to perform Force Account Extra Work, whether owned by Design-Builder, an Affiliate or a Subcontractor (and, therefore, covered by this Section 1.2.4.1) or rented (and covered by Section 1.2.4.3 below), Equipment use hours shall be recorded and charged to the nearest one-half hour and Design-Builder shall provide VPRA with the following additional information: the manufacturer's name; Equipment type; year of manufacture; model number; type of fuel used; horsepower rating; attachments required, together with their size or capacity; and any other information necessary to determine the Extra Work costs.

1.2.4.2 Stand-By Time

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

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

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

Stand-by hours will be limited to not more than eight hours in a 24-hour day or 40 hours in a week. No hours will be allowed or included and Force Account Extra Work Costs shall not be paid for Equipment that is inoperable. No hours shall be allowed or included and Extra Work costs shall not be paid for Equipment that is not operating because the Force Account Extra Work has been suspended by Design-Builder. Design-Builder shall request VPRA's approval for stand-by time no less than 48 hours prior to commencement of such stand-by time.

1.2.4.3 Outside Rented Equipment

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

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

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

1.2.4.4 Moving of Equipment

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

included in Force Account Extra Work costs, in lieu of moving time, when the Equipment is moved by means other than its own power. However, moving time back to the original location or loading and transporting costs will not be included in the calculation of Force Account Extra Work costs if the Equipment is used at the site of the Force Account Extra Work on other than the Force Account Extra Work.

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

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

(d) Where the move of the Equipment is made by common carrier, the Force Account Extra Work costs to be included will be the invoiced amount paid for the freight plus 15 percent of such amount to cover profit, overhead, and indirect costs. If Design-Builder hauls the Equipment with its own forces, costs will be included in the Force Account Extra Work costs for hauling the unit plus the driver's wages and the cost of loading and unloading the Equipment.

(e) For the purpose of determining Extra Work costs, the maximum rental period for the day that the Equipment is moved to the location on the Site where the Force Account Extra Work is performed and the day that the use of the Equipment is discontinued for Force Account Extra Work shall be the actual time that the Equipment is in operation on the Force Account Extra Work.

1.2.5 Miscellaneous

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

2. Delay Costs

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

2.1 Direct Cost of Idle Labor

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

2.2 Direct Cost of Idle Equipment

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

- (a) Compensation for idle Equipment shall not exceed 8 hours in any 24-hour period or 40 hours in a week;
- (b) Compensation shall only be eligible for the Working Days during a period of eligible delay (i.e., excluding Saturdays, Sundays, and Holidays); and

- (c) Compensation is not eligible for the time that Equipment is being used on Extra Work and is compensated in accordance with Section 1.2.4 above.

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

2.3 Subcontractor Markup

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

2.4 Daily Rate for Home Office Overhead

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

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

Where:

A = Contract Price as of the Effective Date

B = Contract Days

C = .06

2.5 Daily Rate for Field Indirect Costs

Design-Builder shall be entitled to recover Field Indirect Costs, that are impacted due to a delay for which Design-Builder is entitled to Delay Costs. The additional allowable daily rate for Field Indirect Costs shall be determined as follows:

Field Indirect Costs Daily Rate: (A / B)

Where:

A = Total Field Indirect Costs stated in the Price Proposal (subject to audit and adjustment by VPRA)

B = Contract Days

EXHIBIT L – KEY PERSONNEL

Key Personnel	Requirements and Preferred Qualifications	Time Commitment
<p>Project Manager Name: Bryon Breese</p>	<p>The Project Manager will manage the overall Project for the Design-Builder. This person will be the main point of communication for the Design-Builder and VPRA’s primary point of contact. The Project Manager will be responsible to ensure adequate personnel and other resources are made available for the Project, will handle contractual matters, and will be responsible for quality and timeliness of the team performance.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years managing similar projects • Design-Build experience 	<p>100%</p>
<p>Design Manager Name: Fred Parkinson</p>	<p>The Design Manager is responsible for coordinating all aspects of the Design, including coordinating between the design disciplines. The Design Manager will be responsible for ensuring that the overall Project Design is completed in accordance with the Contract Documents.</p> <p>The Design Manager must be an employee of the Lead Designer and must be a registered Professional Engineer in the Commonwealth and Washington, D.C.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years managing or performing design for similar projects • Design-Build experience 	<p>100% until final IFC by VPRA of last set of plans; thereafter as needed to resolve design matters</p>
<p>Construction Manager Name: Mike Dugan</p>	<p>The Construction Manager is responsible for coordinating and overseeing all aspects of Construction Work.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years managing construction of similar projects • CMAA Certification • Design-Build experience 	<p>100%</p>
<p>Quality Manager Name: Bryan Smith</p>	<p>The Quality Manager will be in charge of the Design-Builder’s quality program. The Quality Manager will oversee that the Project is built in conformance with the approved</p>	<p>100%</p>

	<p>Quality Plan and the Contract Documents. The Quality Manager will be the primary liaison with VPRA’s Quality Acceptance program. The Quality Manager must work for the Design-Builder under the direct supervision of an executive officer above the level of and under a line of authority independent of the Project Manager. The individual must have the ability to stop design or construction at any time and in the individual’s sole discretion.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years of quality management experience for similar projects • Licensed Professional Engineer • Design-Build experience 	
<p>Independent Design Quality Manager Director Name: Patrick Porzillo</p>	<p>The Independent Design Quality Manager Director (“IDQMD”) shall be an employee of one of the IDQM firm(s) identified as part of Respondent’s organization. The IDQMD shall perform reviews of Design-Builder’s Design for conformance to the Contract Documents, environmental commitments, permit conditions, and conformance with the Design Quality Plan. The IDQMD shall review each design submittal prior to submission to VPRA for conformance to the Technical Provisions. The IDQMD shall oversee and supervise the reconciliation and resolution of comments between the IDQM and Design-Builder. After review of the Design and resolution of comments, the IDQMD shall cause the IFC plans to be signed and stamped by a qualified member of the IDQM before submission to VPRA. The stamp shall attest that, under the supervision of the IDQMD, the IFC plans have been reviewed and inspected, conform to the Contract Documents and the Design Quality Plan, and represent good industry practice.</p> <p>The IDQMD must be a registered Professional Engineer in the Commonwealth and Washington, D.C.</p>	<p>100% until final IFC by VPRA of last set of plans; thereafter as needed to resolve design matters</p>

	<p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • Twenty (20) years of experience in the analysis and design of rail infrastructure and bridge structures. Emphasize experience with rail design, bridges, retaining structures, drainage structures, and projects of similar size and type of work. • Design-Build experience 	
<p>Structures Design Manager</p> <p>Name: Mark Ennis</p>	<p>The Structures Design Manager (“SDM”) will be in charge of all structural design work on the Project and ensuring that the structural design is prepared in conformance with the Contract Documents. THE SDM will be responsible for design of all structures on the Project.</p> <p>The SDM must be a registered Professional Engineer in the Commonwealth and Washington, D.C.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 20 years of demonstrated experience in bridge engineering, design and analysis, including projects of similar size, type of work, and complexity as the Project. • Design-Build experience 	<p>100% until final IFC by VPRA of last set of plans; thereafter as needed to resolve design matters</p>
<p>Geotechnical Design Manager</p> <p>Name: Derrick Shelton</p>	<p>The Geotechnical Design Manager (“GDM”) will be in charge of all geotechnical design work on the Project and ensuring that the geotechnical design is prepared in conformance with the Contract Documents. The GDM will be responsible for geotechnical design of the retaining walls, foundations, cut and fill slopes, embankment materials and construction, geotechnical instrumentation, and pavement subgrade and structure.</p> <p>The GDM must be a registered Professional Engineer in the Commonwealth and Washington, D.C.</p> <p>Preferred Qualifications:</p>	<p>100% until final IFC by VPRA of last set of plans; thereafter as needed to resolve design matters</p>

	<ul style="list-style-type: none"> • 20 years of experience including planning and overseeing subsurface exploration programs for bridge structures and roadways, including projects of similar size, type of work, and complexity as this Project. • Design-Build experience 	
<p>Environmental Compliance Manager</p> <p>Name: Steve Ott</p>	<p>The Environmental Compliance Manager is responsible for ensuring that all Work complies with all environmental laws and environmental requirements specific to the Project. The Environmental Compliance Manager may review designs to ensure compliance with environmental requirements, and will oversee construction operations to ensure compliance with environmental requirements.</p> <p>Preferred Qualification:</p> <ul style="list-style-type: none"> • 10 years of overseeing environmental compliance for similar projects 	100%
<p>Third-Party Coordinator</p> <p>Name: Aaron Cheskis</p>	<p>The Third-Party Coordinator is responsible for engaging with third-parties and stakeholders as needed to manage construction and other Project operations. This Person will meet with third-parties to understand and manage concerns, establish schedules, and serve as point person for the Design-Builder. Additionally, this Person will communicate progress with third-parties and manage the resolution of conflicts.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 10 years of experience with third-party coordination for similar projects • Alternative delivery experience or delivery methods with early contractor involvement, including, for example, progressive design-build, CM/GC, and design-build 	100%
<p>Public Information Coordinator</p> <p>Name: Carla Julian</p>	<p>The Public Information Coordinator is responsible for coordinating and managing information provided to stakeholders and the public. The Public Information Coordinator will engage with the public, obtain feedback, and provide such information to the Design-Builder and VPRA. Further, the Public</p>	25%

	<p>Information Coordinator will work with VPRA to ensure that information about the Project is consistent and accurate. Additionally, the Public Information Coordinator will act as the Design-Builder’s liaison to the public and with stakeholders.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 10 years of experience with public information management for similar projects • Alternative delivery experience or delivery methods with early contractor involvement, including, for example, progressive design-build, CM/GC, and design-build 	
<p>Safety Manager Name: Bobbie Sue Clawson</p>	<p>The Safety Manager shall oversee and be responsible for safety on the Project site. The Safety Manager shall be responsible for preparation of Design-Builder’s Safety Management Plan and may assist with constructability review to verify that construction can be performed safely. Additionally, the Safety Manager shall ensure that all Work is performed safely and in compliance with the Contract Documents and Design-Builder’s Safety Management Plan. The Safety Manager must be on site during all major construction operations.</p> <p>Preferred Qualifications:</p> <ul style="list-style-type: none"> • 15 years of managing safety for similar types of construction work, with an emphasis on rail construction and construction in a dense, urban environment 	<p>100%</p>
<p>Paul Jensen</p>	<p>Design-Build Integration Manager</p>	
<p>Jennifer Koch</p>	<p>Roadway/Bike-Ped/Civil</p>	

EXHIBIT M – FORM OF PERFORMANCE AND PAYMENT BONDS

BOND NO. _____

PENAL SUM: \$[●]

KNOW ALL MEN BY THESE PRESENTS, THAT:

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

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

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

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Signature Page Follows]

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

DESIGN-BUILDER (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

SURETY (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

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

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

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

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

**SCHEDULE A
FORM OF DEMAND**

Date

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

Principal: [_____] (the “Principal”)

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

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

Dear Sir:

Pursuant to the Bond, the Obligee hereby certifies that:

1. the Principal is and continues to be in default of the Principal’s obligations under the Contract;
2. the Obligee has issued a notice of default to the Principal in accordance with the provisions of the Contract; and
3. the Obligee has honored and will continue to honor and perform in all material respects its obligations under the Contract.

We hereby demand that the Surety honor its obligations under the Bond forthwith.

The Obligee acknowledge that if the Surety intends to dispute its liability pursuant to the Bond, then the parties shall proceed immediately with the DRP set forth in Schedule B.

Yours truly,

Virginia Passenger Rail Authority

By: _____

Name:

Title:

SCHEDULE B DISPUTE RESOLUTION PROCESS

Given the on default nature of the Bond, the Principal, the Surety and the Obligee acknowledge that they may not agree whether the Surety is liable to perform or make payment pursuant to the Bond. To ensure that such disputes are determined quickly so as to allow for the orderly and timely completion of the Contract, the Principal, the Surety and the Obligee agree to submit such disputes to the dispute resolution process set out below. Terms not defined herein shall have the meaning ascribed to them in the body of the Bond. The parties acknowledge that any decision rendered in the dispute resolution process (an “Award”) will be binding, but subject to appeal de novo by any party at any time to a court of competent jurisdiction.

1. “Dispute” means a disagreement as to the Surety’s liability pursuant to the Bond following an Obligee’s Demand.
2. Disputes arising out of or in connection with the Bond shall be submitted for binding resolution to adjudication (the “Adjudication”) administered by JAMS – The Resolution Experts! (“JAMS”) in accordance with the procedure set out below. The JAMS’ Dispute Resolution Rules for Surety Bond Disputes, effective as of the effective date of the Bond shall apply to the resolution of any Dispute unless modified by the provisions herein, in which case, the provisions of this Bond shall govern.
3. The Surety or the Obligee shall demand Adjudication by filing an Adjudication statement electronically with JAMS, and serving electronic copies by email upon the Principal and the Obligee, utilizing the electronic forms and filing directions provided by JAMS on its website at www.jamsadr.com. The Adjudication statement shall set forth in detail the factual and legal issues submitted for Adjudication and shall be sent no later than the later of 10 days after (a) the Surety makes its election pursuant to paragraph 4 of the Bond, or (b) the claim is deemed to be in dispute pursuant to paragraph 5 of the Bond.
4. Within three (3) Business Days after the Adjudication statement is filed and served, the parties shall appoint an adjudicator (the “Adjudicator”) who shall be a panelist on the JAMS Global Engineering & Construction Panel (“JAMS GEC Panel”) of dispute adjudicators. JAMS shall appoint an Adjudicator administratively from the JAMS GEC Panel if the parties fail to appoint an Adjudicator within the three day period. The Adjudicator shall be under a duty to act impartially and fairly and shall serve as an independent neutral.
5. The Adjudication shall commence on the date that JAMS receives the Adjudication statement and initial deposit of funds, and confirms the appointment of the Adjudicator (the “Adjudication Commencement Date”). Unless the Adjudicator decides otherwise, the Principal, the Surety and the Obligee shall pay the final fees and expenses of Adjudication in accordance with the provisions set forth in the Contract governing the payment of fees and expenses of dispute resolution. In an Adjudication in which the Adjudicator determines that the Principal and Surety are aligned with the same commonality of interest against the Obligee, the Principal and Surety jointly shall be charged with one share and the Obligee will be charged with one share. Should any party fail to deposit funds as required by JAMS, any other party may advance the deposit, and the amount of that advance deposit will be taken into consideration in the Adjudicator’s decision.

6. Upon commencement of the Adjudication, the Adjudicator is empowered to take the initiative in ascertaining the facts and the law, and to exercise sole discretion in managing the Adjudication process. Among other things, the Adjudicator may require the parties to make additional factual submissions such as sworn witness statements and business documents, may interview important witnesses after notice to the parties and affording opportunity to attend, may request and consider expert reports and may call for memoranda on legal issues. Notwithstanding the foregoing, the Adjudicator must decide the following questions:
 - a. Is the Principal in default of the Principal's obligations under the Contract?
 - b. Is the Surety liable to perform in accordance with Paragraph 4 and/or 5 of the Bond (which liability, for the avoidance of doubt, does not arise if Obligee is in uncured material breach of its obligations under the Contract)?
7. The Adjudicator shall issue a written decision (the "Decision") which shall be binding upon and enforceable by the parties through the completion of the Principal's obligations under the Contract, subject to any party's right to commence an appeal de novo in a court of competent jurisdiction at any time in accordance with the terms of the Bond. Any payment required in the Decision shall be made immediately. The Decision shall be issued through JAMS as soon as practicable but in no event later than thirty (30) calendar days of the Adjudication Commencement Date or within any later time agreed upon by the parties. Unless the parties agree otherwise, the Decision shall state reasons therefore and shall be admissible in later administrative, arbitral or judicial proceedings solely concerning Surety's liability pursuant to the Bond between the parties.
8. This 30 calendar day period also may be extended by the Adjudicator in its sole discretion up to 14 days in the event that JAMS has requested any party to make an additional fee and expense deposit and such funds have not been deposited as requested or advanced by another party.
9. Any party may request clarification of the Decision within five (5) business days after issuance, and the Adjudicator shall endeavor to respond within an additional five (5) business days, and, subject to any party's right to commence an appeal de novo in a court of competent jurisdiction at any time in accordance with the terms of the Bond. The parties shall comply with the Decision, unless and until subsequently vacated or modified, through the completion of the Principal's obligations under the Contract.
10. Upon any settlement by the parties of the Dispute prior to issuance of a Decision, the parties shall jointly terminate the Adjudication. Such removal or termination shall not affect the parties' continuing joint and several obligations for payment to JAMS of unpaid fees and expenses.

If the Decision is that the Surety is liable to perform in accordance with Paragraphs 4 and 5 of the Bond, then notwithstanding the commencement of any appeal de novo of the Decision, the Surety shall perform in accordance with the Decision and with the terms of the Bond until the Principal's Obligations under the Contract are completed, but not to exceed the penal sum of the Bond.

FORM OF PAYMENT BOND

BOND NO. _____

BOND AMOUNT: \$[●]

KNOW ALL MEN BY THESE PRESENTS, THAT:

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

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

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

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

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

2. If Design-Builder shall: (a) make payments of all sums due to all persons and entities having a direct contract with Design-Builder, or a direct contract with a subcontractor having a direct contract with Design-Builder, for supplying labor, material, and/or supplies used directly or indirectly by Design-Builder in the prosecution of the Work provided in the Contract (such persons and entities hereinafter referred to collectively as “Claimants”); and (b) shall fully indemnify and save harmless Owner from all costs and damages which Owner may suffer by reason of Design-Builder’s failure to fulfill its obligations to Claimants under clause (a) above, including but not limited to, fully reimbursing and repaying Owner reasonable counsel fees incurred as a result of any action arising out of or in connection with any such failure, then Surety’s obligations under this Bond shall be void; otherwise such obligations shall remain in full force and effect.

3. All Claimants shall have a direct right of action only against Surety and Contractor under this Bond; *provided, however*, that no claim, suit or action shall be brought by any Claimant after the expiration of one (1) year following the date on which Claimant last performed labor or last furnished or supplied materials to the Project. Any suit or action must be brought in a state or federal court of competent jurisdiction located in the Commonwealth of Virginia.

4. Any Claimant who does not have a direct contractual relationship with Contractor shall, as a condition precedent to bringing such claim, suit or action, provide written notice thereof to Contractor, Surety, and Owner, no later than ninety (90) days from the date Claimant last supplied labor or materials, stating with substantial accuracy the amount claimed, the name of the person for whom the work was performed or to whom the material was furnished, and the dates on which such labor or materials were supplied.

5. Surety shall, after receipt of reasonable notice to Surety of any claim, demand, suit or action brought against Owner by a Claimant, defend, with counsel approved by Owner, indemnify and hold harmless Owner from any and all claims, demands, suits or actions brought by any Claimant. Owner shall have a direct right of action against Surety and Contractor for any breach by Surety of its obligation to defend, indemnify and hold harmless Owner.

6. Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the Work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission by Contractor of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of Claimants otherwise entitled to recover under this Bond, shall in any way affect its obligations on this Bond, and Surety does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

7. Surety acknowledges that the amounts owed to Contractor under the Contract shall first be available for the performance of the Contract, including Owner's superior right to use the funds due for the completion of the Work, and then may be available to satisfy claims arising under this Bond. Owner shall not be liable for the payment of any costs or expenses or claims of any Claimant under this Bond and shall have no obligation to make payments to, or give notice on behalf of, any Claimant.

8. Any provision in this Bond which conflicts with applicable laws, regulations and ordinances shall be deemed modified to conform to applicable laws, regulations and ordinances.

9. Contractor or Owner shall furnish a copy of this Bond or permit a copy to be made upon request by any person or entity who may be a Claimant as defined above.

10. ***[Note: Use in case of multiple sureties ("Co-Sureties") or, otherwise, delete; If Co-Sureties are used, modify the preceding language accordingly to reflect this]*** The Co-Sureties agree to empower and designate a single, "Lead Surety" with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that Owner and Claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from Owner and Claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated Lead Surety and service of such correspondence or notice upon the Lead Surety shall constitute service upon all co-sureties. The Lead Surety may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to Owner designating a single new Lead Surety, signed by all of the Co-Sureties. The initial Lead Surety shall be [●].

11. This Bond shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard for conflicts of laws principles, and any action seeking enforcement of the Bond will be litigated exclusively in the courts of the Commonwealth of Virginia.

[Signature Page Follows]

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

DESIGN-BUILDER (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

SURETY (full legal name):

Address:

By: _____

Title:

Contact Name:

Phone: ()

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

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

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

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

EXHIBIT N – FORM OF GUARANTEE

This **GUARANTEE** (this “Guarantee”) is made as of [●], by [●], a [●] (the “Guarantor”), to the Virginia Passenger Rail Authority (“VPRA”), political subdivision of the Commonwealth of Virginia, with respect to the obligations of [●], a [●] (the “Design-Builder”), pursuant to that certain DBA[Design-Build Agreement for Long Bridge Project South], dated [●], by and between the VPRA and the Design-Builder (the “DBA”). The DBA is hereby incorporated by reference herein, and capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the DBA. [The Guarantor is an Affiliate of the Design-Builder.] The Guarantor acknowledges that financial and direct benefits will accrue to the Guarantor by virtue of entering into this Guarantee and that such benefits constitute adequate consideration therefor.

This Guarantee is provided pursuant to Section [●] of the DBA.

1. GUARANTEE

1.1. Guarantee. The Guarantor guarantees to VPRA, absolutely, unconditionally and irrevocably, that each and every payment and performance obligation and other liability of the Design-Builder now or hereafter arising under the DBA, including but not limited to all obligations and liabilities of the Design-Builder under any and all representations and warranties made or given by the Design-Builder under the DBA, under any and all liquidated or stipulated damage provisions of the DBA and under any and all indemnities given by the Design-Builder under the DBA (collectively the “Guaranteed Obligations”) will be paid promptly and satisfied in full when due and without offset, and performed and completed when required. This is a continuing guarantee of payment and performance of the Guaranteed Obligations.

1.2. Obligations. Except as otherwise provided in Section 4.6, the obligations of the Guarantor hereunder are absolute and unconditional and independent of the Guaranteed Obligations and shall remain in full force and effect until all the Guaranteed Obligations have been paid, performed and completed in full, irrespective of any assignment, amendment, modification or termination of the DBA.

1.3. No Exoneration. Except as otherwise provided in Section 4.6 below, the obligations of the Guarantor hereunder shall not be released, discharged, exonerated or impaired in any way by reason of:

1.3.1. any failure of the Design-Builder to retain or preserve any rights against any person, except to the extent the Design-Builder is required under the terms of the DBA to relinquish such rights and Design-Builder’s compliance with such requirement prejudices Guarantor;

1.3.2. the lack of prior enforcement by the Design-Builder of any rights against any person and the lack of exhaustion of any bond, letter of credit or other security held by the Design-Builder, except to the extent the Design-Builder is required under the terms of the DBA not to enforce such rights or not to exhaust any such bond, letter of credit or other security held by Design-Builder and Design-Builder’s compliance with such requirement prejudices Guarantor;

1.3.3. the lack of authority or standing of the Design-Builder or the dissolution of the Guarantor or the Design-Builder;

1.3.4. with or without notice to the Guarantor, the amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or failure to assert, any portion of the Guaranteed Obligations, the DBA, any rights or remedies of VPRA (including rights of offset) against the Design-Builder, or any bond, letter of credit, other guarantee, instrument, document, collateral security or other property given or available to VPRA to secure all or any part of the Guaranteed Obligations; *provided* that, notwithstanding the foregoing, the Guarantor shall have available to it any and all defenses relating to the Guaranteed Obligations that may be available to the Design-Builder based on any such amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination or failure to assert voluntarily made by VPRA, except defenses available to the Design-Builder under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors and those expressly waived under this Guarantee;

1.3.5. the extension of the time for payment of any amount owing or payable under the DBA or of the time for performance or completion of any Guaranteed Obligation; *provided, however,* that to the extent VPRA grants the Design-Builder an extension of time under the DBA for performance of any of the obligations of the Design-Builder thereunder, such extension of time shall likewise extend the time for performance by the Guarantor;

1.3.6. the existence now or hereafter of any other guarantee or endorsement by the Guarantor or anyone else of all or any portion of the Guaranteed Obligations;

1.3.7. the acceptance, release, exchange or subordination of additional or substituted security for all or any portion of the Guaranteed Obligations;

1.3.8. the taking of any action or the failure to take any action simply because it would constitute a legal or equitable defense, release or discharge of a surety;

1.3.9. any bankruptcy, arrangement, reorganization or similar proceeding for relief of debtors under federal or state law hereafter initiated by or against the Design-Builder or any of its members;

1.3.10. any full or partial payment or performance of any Guaranteed Obligation which is required to be returned as a result of or in connection with the insolvency, reorganization or bankruptcy of the Design-Builder or any of its members or otherwise;

1.3.11. the rejection of the DBA in connection with the insolvency, reorganization or bankruptcy of the Design-Builder or any of its members;

1.3.12. an impairment of or limitation on damages otherwise due from the Design-Builder by operation of law as a result of any insolvency, reorganization or bankruptcy proceeding by or against the Design-Builder or any of its members;

1.3.13. failure by the VPRA to file or enforce a claim against the estate (either in administration, bankruptcy or other proceedings) of the Design-Builder, any of its members, the Guarantor or any other guarantor;

1.3.14. any merger, consolidation or other reorganization to which the Design-Builder or the Guarantor is a party;

1.3.15. any sale or disposition of all or any portion of the Guarantor's direct or indirect ownership in the Design-Builder, or action by the Guarantor or its Affiliates which results in discontinuation or interruption in the business relations of the Design-Builder with the Guarantor (unless another entity acceptable to VPRA, in VPRA's sole discretion, assumes the Guarantor's liability hereunder); or

1.3.16. the failure of VPRA to assert any claim or demand, bring any action or exhaust its remedies against the Design-Builder or any security before proceeding against the Guarantor hereunder after the expiration of applicable notice and cure periods.

1.4. Enforcement of the DBA and Guaranteed Obligations.

1.4.1. Nothing contained herein shall prevent or limit VPRA from pursuing any of its rights and remedies under the DBA. VPRA may apply any available moneys, property or security in such manner and amounts and at such times to the payment or reduction or performance of any Guaranteed Obligation as it may elect, and may generally deal with the Design-Builder, the Guaranteed Obligations, such security and property as VPRA may see fit. Notwithstanding the foregoing, the Guarantor shall remain bound by this Guarantee.

1.4.2. In the event that Design-Builder defaults on any of the Guaranteed Obligations, the Guarantor shall be obligated to undertake all curative actions (which may include payments relating to the Guaranteed Obligations and/or performance of the Guaranteed Obligations) within fourteen (14) days (or immediately, in the case of emergency conditions) following notice under Section 4.6 below (to the extent not prohibited thereunder). Thereafter, the Guarantor shall use commercially reasonable efforts to effectuate such curative actions without further notice. If the Guarantor fails to undertake such curative actions in a timely manner, VPRA shall have the right to perform or have performed by third parties the necessary curative actions, and the costs thereof shall be borne by the Guarantor. Any payment by the Guarantor to VPRA shall be in U.S. dollars.

1.4.3. VPRA may bring and prosecute a separate action or actions against the Guarantor to enforce its liabilities hereunder, regardless of whether any action is brought against the Design-Builder and regardless of whether any other person is joined in any such action or actions. Nothing shall prohibit VPRA from exercising its rights against the Guarantor, the Design-Builder, any other guarantor of the Guaranteed Obligations, a performance bond or other security, if any, which insures the payment relating to or performance of the Guaranteed Obligations, or any other person simultaneously, or any combination thereof jointly and/or severally. VPRA may proceed against the Guarantor from time to time as it sees fit in its sole and absolute discretion; *provided, however*, VPRA shall not be entitled to enforce its rights and claims under this Guarantee for a breach of the Guaranteed Obligations to the extent that it has already received payment or discharge or

has otherwise been compensated in respect of the same breach of Guaranteed Obligations, including through insurance proceeds or call of any other security that VPRA may hold under the DBA.

2. REPRESENTATIONS AND WARRANTIES

2.1. Representations and Warranties. The Guarantor hereby represents and warrants, which shall be continuing representations and warranties until the expiration of the Guarantor's obligations under this Guarantee, that:

2.1.1. Consents. Consent of the Design-Builder to any modification or amendment of the DBA to which it is a party constitutes knowledge thereof and consent thereto by the Guarantor;

2.1.2. Organization and Existence. The Design-Builder is a [●] duly organized, validly existing and in good standing under the laws of its state of formation. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of [●];

2.1.3. Power and Authority. The Guarantor has the full power and authority to execute, deliver and perform this Guarantee, and to own and lease its properties and to carry on its business as now conducted and as contemplated hereby;

2.1.4. Authorization and Enforceability. This Guarantee has been duly authorized, executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with the terms hereof, subject as to enforceability of remedies to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating, to or affecting the enforcement of creditors' rights generally, as applicable to the Guarantor, and to general principles of equity;

2.1.5. No Governmental Consents. No authorization, consent or approval of, notice to or filing with, any governmental authority, is required for the execution, delivery and performance by the Guarantor of this Guarantee;

2.1.6. No Conflict or Breach. Neither the execution, delivery or performance by the Guarantor of this Guarantee, nor compliance with the terms and provisions hereof, conflicts or will conflict with or will result in a breach or violation of any material terms, conditions, or provisions of any Laws, regulations and ordinances applicable to the Guarantor or the charter documents, as amended, or bylaws or equivalent governing documents, as amended, of the Guarantor, or any order, writ, injunction or decree of any court or governmental authority against the Guarantor or by which it or any of its properties are bound, or any indenture, mortgage or contract or other agreement or instrument to which the Guarantor is a party or by which it or any of its properties are bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties;

2.1.7. No Proceedings. There are no suits or proceedings pending, or, to the knowledge of the Guarantor, threatened in any court or before any regulatory commission,

board or other governmental administrative agency against the Guarantor which could reasonably be expected to have a material adverse effect on the business or operations of the Guarantor, financial or otherwise, or on its ability to fulfill its obligations hereunder;

2.1.8. Contract. The Guarantor is fully aware of and consents to the terms and conditions of the DBA;

2.1.9. Financial Statements. All financial statements and data that have been given to VPRA by the Guarantor with respect to the Guarantor: (i) are complete and correct in all material respects as of the date given; (ii) accurately present in all material respects the financial condition of the Guarantor as of the date thereof; and (iii) have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods covered thereby;

2.1.10. No Adverse Change. There has been no material adverse change in the financial condition of the Guarantor since the date of the most recent financial statements given to VPRA with respect to the Guarantor;

2.1.11. No Default. The Guarantor is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any agreement or instrument to which the Guarantor is a party, which default may materially and adversely affect the Guarantor's ability to fulfill its obligations hereunder;

2.1.12. Accuracy of Information. All other reports, papers and written data and information given to VPRA by the Guarantor with respect to the Guarantor are accurate and correct in all material respects and complete; and

2.1.13. Notice of Change. The Guarantor shall advise VPRA in writing of any material adverse change in the business or financial condition of the Guarantor and promptly furnish to VPRA such information about the financial condition of the Guarantor as VPRA shall reasonably request.

3. WAIVERS, SUBROGATION AND SUBORDINATION

3.1. Waivers.

3.1.1. The Guarantor hereby unconditionally waives:

3.1.1.1. notice of acceptance of this Guarantee or of the intention to act in reliance hereon and of reliance hereon;

3.1.1.2. notice of the incurring, contracting, amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or of the failure to assert, any Guaranteed Obligation;

3.1.1.3. demand on the Guarantor in the event of default of the Design-Builder under the DBA (but not the giving of notice to the extent required in Section 4. 6 below);

3.1.1.4. any invalidity of the DBA due to lack of proper authorization of or a defect in execution thereof by the Design-Builder, its purported representatives or agents;

3.1.1.5. demand for payment or performance, presentment, protest and notice of nonpayment or dishonor to the Guarantor respecting any Guaranteed Obligation;

3.1.1.6. any right of the Guarantor to receive notices to the Design-Builder to which the Guarantor might otherwise be entitled except notice to the extent required in Section 4.6 below;

3.1.1.7. any demand for payment hereunder (but not the giving of notice to the extent required in Section 4.6 below); and

3.1.1.8. any duty on the part of VPRA to disclose to the Guarantor any facts VPRA may now or hereafter know with regard to the Design-Builder.

3.1.2. The Guarantor also hereby waives any right to require, and the benefit of all laws now or hereafter in effect giving the Guarantor the right to require, any prior enforcement as referred to in Section 1.3.2 above, and the Guarantor agrees that any delay in enforcing or failure to enforce any such rights or in making demand on the Guarantor for the performance of the obligations of the Guarantor under this Guarantee shall not in any way affect the liability of the Guarantor hereunder.

3.1.3. The Guarantor hereby waives, as against the VPRA or any person claiming under VPRA, all rights and benefits which might accrue to the Guarantor by reason of any bankruptcy, arrangement, reorganization or similar proceedings by or against the Design-Builder and agrees that its obligations and liabilities hereunder shall not be affected by any modification, limitation or discharge of the obligations of the Design-Builder that may result from any such proceedings.

3.1.4. Until the Design-Builder shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor hereby agrees not to file, or solicit the filing by others of, any involuntary petition in bankruptcy against the Design-Builder.

3.2. Subrogation. Until the Design-Builder shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor shall not (absent VPRA's prior written consent) claim or enforce any right of subrogation, reimbursement or indemnity against the Design-Builder, or any other right or remedy which might otherwise arise on account of any payment made by the Guarantor or any act or thing done by the Guarantor on account of or in accordance with this Guarantee.

3.3. Subordination.

3.3.1. All existing or future indebtedness of the Design-Builder to the Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as the Design-Builder shall be in default in the performance or payment of any Guaranteed

Obligation, no payments with respect to any such indebtedness shall be made by the Design-Builder to the Guarantor without prior written notice to VPRA.

3.3.2. In the event that VPRA provides written consent pursuant to Section 3.2, the Guarantor shall file all claims against the Design-Builder in any bankruptcy or other proceedings in which the filing of claims is required or permitted by law upon any obligation or indebtedness of the Design-Builder to the Guarantor, and shall have assigned to VPRA all of the Guarantor's rights thereunder to the extent of outstanding and unsatisfied Guaranteed Obligations. If the Guarantor does not file any such claim, VPRA is authorized as the Guarantor's attorney-in-fact to do so in the Guarantor's name, or in the discretion of VPRA, VPRA is authorized to assign the claim to, and cause proof of claim to be filed in the name of VPRA or its nominee. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to VPRA or its nominee the full amount payable on the claim in the proceeding before making any payment to the Guarantor, and to the full extent necessary for that purpose, the Guarantor assigns to VPRA all of its rights to any payments or distributions to which it otherwise would be entitled. If the amount so paid is in excess of the Guaranteed Obligations covered hereby, VPRA shall pay the amount of the excess to the party determined by it to be entitled thereto.

4. MISCELLANEOUS

4.1. Enforcement of Guarantee.

4.1.1. The terms and provisions of this Guarantee shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia.

4.1.2. No supplement, amendment, modification, waiver or termination of this Guarantee shall be binding unless executed in writing and duly signed by the Guarantor and VPRA. No waiver of any of the provisions of this Guarantee shall be deemed or shall constitute a waiver of any other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No failure on the part of VPRA to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise of any other right.

4.1.3. All disputes between VPRA and the Guarantor arising under or relating to this Guarantee or its breach shall be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, and any appellate court from any thereof, which shall have exclusive jurisdiction and venue. The Guarantor hereby irrevocably waives the defense of an inconvenient forum to the maintenance of any action or proceedings in such court arising out of or relating to this Guarantee. The Guarantor agrees that a final non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Guarantor agrees and consents to service of process by delivery in the manner and to the address set forth in Section 4.2 below. Nothing in this Section shall affect the right of VPRA or to serve legal process in any other manner permitted by law.

4.1.4. The rights of VPRA hereunder are cumulative and shall not be exhausted by any one or more exercises of said rights against the Guarantor or other

guarantors or by any number of successive actions until and unless all Guaranteed Obligations have been fully paid or performed.

4.1.5. VPRA acknowledges and agrees that this Guarantee does not and is not intended to impose, in the event the Guarantee is called upon, any greater obligations upon the Guarantor than are imposed upon the Design-Builder under the DBA, other than with respect to the Guarantor's obligation hereunder to pay VPRA for its reasonable costs and expenses of enforcing this Guarantee.

4.1.6. The Guarantor shall pay to VPRA all reasonable out-of-pocket legal fees and other reasonable out-of-pocket costs and expenses (including fees and costs on appeal) it incurs by reason of any permitted enforcement of its rights hereunder, *provided* that it is the prevailing party with respect to a substantial portion of its claim.

4.1.7. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION OR CLAIM WHICH IS BASED ON, OR ARISES OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTEE OR THE TRANSACTIONS CONTEMPLATED BY THIS GUARANTEE.

4.1.8. Notwithstanding anything to the contrary, if at any time payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned upon bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law, the Guarantor shall continue to remain liable therefor.

4.2. Notices. All notices, demands or other communications under this Guarantee shall be in writing and shall be sent to each other party, at its address specified below (or such other address as a party may from time to time specify to the other parties by notice given in accordance with this Guarantee), and shall be deemed to have been duly given when actually received by the addressee or when served:

4.2.1. personally;

4.2.2. by independent, reputable, overnight commercial courier; or

4.2.3. by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to VPRA:

[•]

With copies to:

Virginia Passenger Rail Authority
919 E. Main Street
Richmond, VA 23219
Attention: General Counsel
email: michael.westermann@vpra.virginia.gov

If to the Guarantor:

[•]

[•]

Attention: [•]

4.3. Severability. If any provision of this Guarantee shall for any reason be held invalid or unenforceable, to the fullest extent permitted by law, such invalidity or unenforceability shall not affect any other provisions hereof, but this Guarantee shall be construed as if such invalid or unenforceable provision had never been contained herein.

4.4. Assignment. Neither this Guarantee nor any of the rights, interest or obligations hereunder shall be assigned or delegated by the Guarantor without the prior written consent of VPRA. VPRA may assign this Guarantee, with prior notice but without need for the consent of Guarantor, but only together with an assignment of the DBA. This Guarantee and all of the provisions hereof shall be binding upon the Guarantor and its successors and permitted assigns and shall inure to the benefit of VPRA and its successors and assigns.

4.5. No Third Party Beneficiaries. Nothing in this Guarantee shall entitle any person other than VPRA and its successors and assigns to any claim, cause or action, remedy or right of any kind.

4.6. Certain Rights, Duties, Obligations and Defenses. Notwithstanding Sections 1. 1, 1. 2, 1. 3, 3. 1 and 4. 8 hereof, the Guarantor shall have all rights, duties, obligations and defenses available to the Design-Builder under the DBA relating to waiver, surrender, compromise, settlement, release or termination voluntarily made by VPRA, failure to give notice of default to the Design-Builder to the extent required by the DBA (except to the extent the giving of notice is precluded by bankruptcy or other applicable law), interpretation or performance of terms and conditions of the DBA, or other defenses available to the Design-Builder under the DBA except those expressly waived (otherwise than in Section 1. 2) in this Guarantee and defenses available to the Design-Builder as a result of any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. The Guarantor's duties under Section 1.4 above shall be subject to no prior notice or demand except for fourteen (14) days' prior written notice to the Guarantor (except to the extent the giving of notice to the Guarantor is precluded by bankruptcy or other applicable law affecting the Guarantor) in the case of any demand relative to any Guaranteed Obligation not paid or performed when due under the DBA setting forth the default of the Design-Builder.

4.7. Mergers, etc. The Guarantor shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other person or sell, assign, convey, transfer, lease or otherwise dispose of any material portion of its properties and assets to any person(s) or group of affiliated persons, unless:

4.7.1. in case of a merger, the Guarantor shall be the continuing corporation;

or

4.7.2. the person (if other than the Guarantor) formed by such consolidation or into which the Guarantor merges or the person(s) (or group of affiliated persons) that acquires by sale, assignment, conveyance, transfer, lease or other disposition a material

portion of the properties and assets of the Guarantor shall expressly agree to perform all of the obligations of the Guarantor hereunder, as a joint and several obligor with the Guarantor if the Guarantor continues to exist after such transaction, by a writing in form and substance reasonably satisfactory to VPRA.

Notwithstanding the agreement by any such person to perform the obligation of the Guarantor hereunder, the Guarantor shall not be released from its obligations hereunder unless released by operation of law or by consent.

4.8. Survival. The obligations and liabilities of the Guarantor hereunder shall survive termination of any or all of the DBA or the Design-Builder's rights thereunder due to default by the Design-Builder thereunder; *provided, however,* that for the avoidance of doubt, such obligations and liabilities are only in respect of the Guaranteed Obligations.

4.9. Headings. The Article and Section headings in this Guarantee are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

4.10. Counterparts. This Guarantee may be executed in one or more counterparts, all of which shall constitute one and the same instrument.

4.11. Entire Agreement. This Guarantee constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. The Guarantor agrees to execute, have acknowledged and delivered to VPRA such other and further instruments as may be reasonably required by VPRA to effectuate the intent and purpose hereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guarantee to be executed as of the day and year first above written by its duly authorized officer.

[•],
a [•]

By: _____
Name: _____
Title: _____

Receipt of this Guarantee is hereby acknowledged and accepted effective as of the day and year first written above.

VIRGINIA PASSENGER RAIL AUTHORITY

By: _____
DJ Stadtler
Executive Director

EXHIBIT O – INSURANCE REQUIREMENTS

All capitalized terms not otherwise defined in this Exhibit O shall have the meanings ascribed to such terms within Exhibit A (Acronyms and Definitions) to the Agreement. Design-Builder at its sole expense shall procure and maintain the types of insurance specified below (or cause others to procure the types and amounts of insurance specified below as appropriate) subject to any conditions noted therein. As a condition to each corresponding notice to proceed, Design-Builder shall have its insurance broker or insurance company submit a certificate of insurance to VPRA giving evidence of the relevant coverage types and amounts set forth below, as well as compliance with the provisions of Article 9 of the Agreement, prior to commencing the corresponding Work under the Agreement. As referenced herein, the Commonwealth, VPRA, Amtrak, and CSXT shall include their respective officers, directors, employees, and agents.

A. Required Policies/Limits

1. **Workers' Compensation** for all of its employees engaged in the Project as required by Chapter 8 of Title 65.2 of the Code of Virginia (1950), as amended and/or any other jurisdiction in which the Work is performed. Coverage shall be extended as needed to include claims under the United States Longshore and Harbor Workers' Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104). If Design-Builder leases one or more employees through the use of a payroll, employee management, or other similar company, then Design-Builder must procure workers' compensation insurance written on an "if any" policy form, including an endorsement providing coverage for alternate employer/leased employee liability. Such insurance shall be in addition to the workers' compensation coverage provided to the leased employee by the payroll, employee management, or other similar company.
2. **Employer's Liability Insurance** with limits of \$1,000,000 per occurrence for bodily injury, \$1,000,000 per employee for bodily injury by occupation disease, and \$1,000,000 policy limit for bodily injury by disease.
3. **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, products-completed operations, and broad form contractual liability with limits of at least \$1,000,000 per occurrence and \$2,000,000 annual general aggregate applicable on a per project basis. Such coverage shall be on an occurrence form providing for Named Insured Cross Liability and Severability of Interest and include endorsement CG 24 17 (10/01) Contractual Liability – Railroads, or its equivalent. There shall be no exclusion for work within 50 feet of a railroad. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis. Such insurance shall provide coverage for all operations and shall be maintained for five years after Final Acceptance and final payment for the Work.
4. **Automobile Liability Insurance** with a limit of at least \$1,000,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis.
5. **Cyber Liability Insurance** with limits not less than \$2,000,000 per claim. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Design-Builder

in the Agreement and shall include, but not be limited to, claims involving infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations. VPRA, the Commonwealth, Amtrak, and CSXT shall be additional insureds with regard to any third-party claims.

6. **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for all the above mentioned policies (except for Workers Compensation and Cyber Liability) in the amount of \$200,000,000 per occurrence and in the aggregate. Such policy(ies) shall be written on a “following form” basis without any gaps in the limits of coverages and be at least as broad as and follow the form of underlying primary coverages required herein. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis. Such insurance shall provide coverage for all operations including the products-completed operations hazard and shall be maintained for five years after Final Acceptance and final payment for the Work.
7. **Professional Liability Insurance** utilizing one of the three options below to cover liability for acts, errors or omissions arising in connection with the Work including for a period of five years after all Work is complete:
 - (a) Maintain a Project-specific Professional Liability Insurance Policy in a form acceptable to VPRA with a limit of not less than \$25,000,000 per claim and \$25,000,000 in the aggregate. The policy must include Design-Builder and Lead Designer as named insureds and may be extended to cover all Subcontractors providing Professional Services. Coverage shall be maintained for the duration of all Professional Services and include a minimum five-year extended reporting period. The policy may extend coverage to Subcontractors, at Design-Builder’s option. In the alternative, the Design-Builder can procure a \$20,000,000 Project-specific Professional Liability Insurance Policy naming only the Lead Designer (and, at their option, other Subcontractors) and then provide a minimum of \$10,000,000 of practice or Project-specific Contractor’s Professional Liability Insurance in the name of the Design-Builder; or
 - (b) A combination of underlying practice professional liability policies covering the Design-Builder and Lead Designer and a Project-specific Contractor’s Protective Professional Indemnity (CPPI) policy. The Lead Designer practice professional liability policies must each have a minimum limit of \$10,000,000 per claim and in the aggregate and the CPPI policy, which must be carried by the Design-Builder and cover the Design-Builder’s own professional liability exposures as well must have a minimum limit of \$20,000,000 per claim or in the aggregate. At the option of the Design-Builder, the above-noted option to utilize the Lead Designer’s practice professional liability policy can be replaced by a Project-specific policy. The CPPI policy form is subject to review and acceptance by VPRA. Any policies utilized to implement this option must remain in effect for at least five years after

all Professional Services are complete or include a five year extended reporting period after all Professional Services are complete; or

- (c) Utilization of practice professional liability policies by the Design-Builder and the Lead Designer, provided each are able to provide VPRA with evidence, satisfactory to VPRA in its reasonable discretion, of practice professional liability policy limits of at least \$20,000,000 per claim and aggregate. Coverage must remain in effect for at least five years after all Professional Services are complete.

The Commonwealth, VPRA, CSXT, and Amtrak are to be included on any such policies as indemnified parties. Such policy shall not contain any exclusions directed toward any types of projects, materials, services, or processes involved in the Work. Any project-specific policies must state that in the event of cancellation or non-renewal the discovery period for insurance claims will be at least five years or otherwise as by agreement with VPRA. Any coverage required under this Section shall have a retroactive date that encompasses all Professional Services on the Project.

8. **Builder's Risk Insurance** on an "all risks" basis for physical loss, destruction, or damage to the Work and any temporary structures or works. The Builder's Risk insurance must be Project-specific and will cover the Design-Builder, VPRA, and other Subcontractors of all tiers prior to Substantial Completion; *provided*, that the limits of such coverage may be based on a maximum probable loss analysis, as determined by an experienced third-party and subject to VPRA's approval of such maximum probable loss analysis. In no event will the minimum limits of such coverage be less than \$350,000,000. Further, the policy shall include sub-limits as follows: (x) at least \$25,000,000 for off-site storage and transit; (y) at least \$25,000,000 for debris removal and demolition; and (z) at least \$10,000,000 for increased costs of construction and soft costs (including VPRA's continuing Project administration expenses) and \$1,000,000 for professional fees and loss adjustment expenses. The policy also will include replacement cost coverage for materials, supplies, equipment, machinery, and fixtures that are or will be part of the Project. Coverage will include, but not be limited to, the following (provided that commercially reasonable sublimits will be accepted where typical):
- (a) right to partial occupancy;
 - (b) London Engineering Group (LEG) 3 type or equivalent coverage as available in the global insurance market for design error, faulty workmanship, and/or faulty materials;
 - (c) earthquake;
 - (d) earth movement (including subsidence, sinkhole, and collapse);
 - (e) flood;
 - (f) windstorm, tornado, hurricane or named storm;
 - (g) fire and explosion;
 - (h) theft, vandalism, and malicious mischief;

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

The Builder's Risk Insurance must be in place, at the latest, by NTP 2 or the commencement of any Construction Work under NTP 1, *provided* that if the Builder's Risk Insurance is not in place on the Effective Date, Design-Builder shall submit to VPRA on or before the Effective Date: (x) a letter of certification from the Design-Builder or the Design-Builder's insurance broker confirming that Builder's Risk Insurance compliant with the requirements contained herein will be placed prior to NTP 2 or the commencement of any Construction Work under NTP 1; and (y) a specimen Builder's Risk Insurance policy with all appropriate attachments, sub-limits, etc. and (z) any maximum probable loss analysis.

9. **Contractor's Pollution Liability Insurance** on a Project-specific basis to indemnify for bodily injury, property damage, cleanup/remediation costs or other amounts which the Design-Builder, its employees, its agents, or its Subcontractors are legally obligated to pay arising out of the Work, any transit and/or disposal at non-owned disposal sites. Such insurance will have minimum limits of \$15,000,000 for any one pollution incident and in the aggregate and will remain in full force and effect for the period of the Work and a five (5)-year completed operations period after Final Acceptance. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis. Such policy shall be written in a manner that allows any additional insured to still make a claim under the policy against Design-Builder or other insured party (i.e., cross-liability). The Contractor's Pollution Liability Insurance must be in place, at the latest, by NTP 2, *provided* that if the Contractor's Pollution Liability Insurance is not in place on the Effective Date, the Design-Builder shall submit to VPRA on or before the Effective Date:

- (a) a letter of certification from the Design-Builder or the Design-Builder's insurance broker confirming that Contractor's Pollution Liability Insurance compliant with the requirements contained herein will be placed prior to NTP 2 or the commencement of Construction Work under NTP 1; and
- (b) a specimen Contractor's Pollution Liability Insurance policy with all appropriate attachments, sub-limits, etc.

The Design-Builder shall also, if appropriate, provide coverage for marine operations and for liabilities under the Oil Pollution Act of 1990 (33 U.S.C. §§ 2701 et seq.) and the Comprehensive Environmental Response, Liability, and Compensation Act (42 U.S.C. §§ 9601 et seq.) either under the Contractor's Pollution Liability Insurance policy required herein or the Marine Protection and Indemnity Insurance required in paragraph 10 below.

10. **Marine Protection and Indemnity Insurance** on a Project-specific basis providing protection and indemnity coverage with respect to bodily injury or property damage arising from marine operations, including damage to piers, wharves, other fixed or movable structures, and loss or damage to any other vessel, craft, or property on such other vessel or craft if any of the work requires marine operations. Such insurance will have minimum limits

of \$50,000,000 million in the aggregate. The Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis.

11. **Other Insurance.** Any use of unmanned aircraft shall be appropriately insured with minimum limits of \$5,000,000 per occurrence and aggregate; the Commonwealth, VPRA, CSXT, and Amtrak are to be named as an additional insured on a primary, non-contributory basis.
12. **Subcontractor Insurance.** Unless covered under a Contractor-Controlled Insurance Program (CCIP) for each of the insurance policies listed below, the Design-Builder shall cause the Lead Designer and all other Subcontractors working at the site or providing Professional Services in conjunction with the Project to obtain and maintain the following insurance coverages with the Commonwealth, VPRA, CSXT and Amtrak as additional insureds on a primary, non-contributory basis (except for workers compensation, employer's liability and professional liability) and also including a waiver of subrogation in favor of the above-noted parties. Note that should the Design-Builder utilize a CCIP, any such contractors shall also provide the following coverages for all off-site activities including the additional insured and waiver of subrogation provisions noted above.
 - (a) **Workers' Compensation and Employer's Liability Insurance** with statutory workers' compensation (Coverage A) limits and employer's liability (Coverage B) limits of \$500,000 bodily injury by accident, each accident, and \$500,000 bodily injury by disease, each employee. Coverage will be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).
 - (b) **Commercial General Liability Insurance** will include coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and contractual liability with limits of no less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate annually. There shall be no exclusion for work within 50 feet of a railroad.
 - (c) **Automobile Liability Insurance** with a limit of at least \$500,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off.
 - (d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability and automobile liability in the amount of \$2,000,000 per occurrence and in the aggregate for any contracts valued at \$1,000,000 or more.
 - (e) **Professional Liability Insurance** (applicable only to Subcontractors other than the Lead Designer rendering Professional Services, including, but not limited to, architects, engineers, traffic consultants, quality control and inspection firms, accountants, attorneys, etc. who are not covered under any project-specific professional liability insurance noted above) with limits of at least \$1,000,000 per claim and in the aggregate. Such insurance will remain in full force and effect

during the performance of such Professional Services and with an extended reporting period or continuation of coverage for two years after completion of such Professional Services. Such coverage need not be project specific.

B. General Requirements Relating to Insurance

1. **General Insurance Requirements.** Design-Builder shall, at a minimum procure and keep in effect the insurance policies required herein and shall require all subcontractors to similarly comply with the insurance requirements required herein, as appropriate. Each such insurance policy shall be procured from an insurer that is authorized to conduct business in the Commonwealth and shall have a current policyholder's management and financial size category in accordance with Section 9.1.2 of the Contract.

Each such policy maintained by the Design-Builder and Lead Designer shall be endorsed to state that coverage cannot be cancelled or reduced in coverage or limits (except with respect to payments under the policy that by their nature erode or deplete the policy limits) by the insurers until 20 days' prior written notice (10 days for non-payment of premium) has been provided to VPRA and any other parties as required by contract. Additionally, VPRA, the Commonwealth, CSXT, and Amtrak shall have no responsibility or liability for payment of any premiums, deductibles or self-insured retentions under any of the insurance policies required herein.

2. **Subcontract Agreements.** Design-Builder shall by appropriate written agreements flow down the requirements for: (i) the waiver of subrogation for all required insurance, (ii) additional insured coverage for all required insurance, and (iii) other requirements of this Exhibit to Lead Designer and all tiers of Subcontractors for all insurance required of such Subcontractors under this Exhibit.
3. **Separation of Insureds/Cross Liability.** The insurance shall apply separately to each named insured and additional insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Such provision shall provide that the interests and protections of each additional insured shall not be affected by any misrepresentation, act or omission of another named insured, or any breach by named insured of any provision in the policy that would otherwise result in forfeiture or reduction of coverage for the other insureds on the policy. There shall be no limitation of coverage for any suits by the Commonwealth, VPRA, CSXT, or Amtrak against any other insured under the policies (i.e., no 'insured v. insured' exclusion).
4. **Waiver of Right to Recover, Including Subrogation.** Design-Builder hereby waives all its rights of recovery, under subrogation or otherwise, against the Commonwealth, VPRA, CSXT, and Amtrak with respect to the Project, to the extent covered by insurance required to be provided by Design-Builder and its Subcontractors of whatever tier, and further waives all rights of recovery which are not covered by insurance because of deductible or self-insurance obligations relating to such insurance. These waivers do not apply to Design-Builder's rights of recovery against its own Subcontractors, vendors, and suppliers of whatever tier. Design-Builder will require all tiers of its Subcontractors, vendors, and suppliers, by appropriate written agreements, to provide similar waivers each in favor of all parties enumerated in this paragraph. To the fullest extent permitted by law, Design-Builder will require all insurance policies required by this Exhibit to include clauses stating each insurer will waive all rights of recovery consistent with this paragraph. All waivers provided

herein shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in any property damaged.

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

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

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

EXHIBIT P – DESIGNATED REPRESENTATIVES

VPRA:

- Shirlene Cleveland
- Fyiad Constantine
- Joseph Schinstock
- Gang Zhang

Design-Builder:

- Mark Gentile
- Bryon Breese

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

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

1. DEFINITIONS

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

1.2 “**Amtrak-Assumed Individuals**” means:

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

derailed Amtrak train or any part thereof beyond the Commonwealth's railroad right-of-way.

1.3 "Amtrak-Assumed Property" means:

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

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

1.5 "Commonwealth" means the Commonwealth of Virginia.

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

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

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

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

2. RAILROAD OPERATOR INDEMNIFICATION AND INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

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

Where the Scope of Work involves entry or work upon rail lines used in connection with the operation of Amtrak Trains, Contractor shall be obligated to indemnify and defend Amtrak for

all losses or claims arising from the acts or omissions of the Contractor in the performance of the Contract whether or not Contractor is negligent and irrespective of any negligence or fault of Amtrak. Notwithstanding the foregoing, Contractor's indemnity and duty to defend shall not extend to Amtrak-Assumed Individuals and/or Amtrak-Assumed Property.

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

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

3. INCLUSION IN SUBCONTRACTOR AGREEMENTS

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

**Attachment 1
(Amtrak Insurance Requirements)**

A. Liability Insurance Guidelines for Construction Projects Impacting Rail Lines

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

1. Limits of Insurance

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

2. Amtrak included as an additional insured

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

4. No exclusion for contractual liability to railroads

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

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

B. Liability Insurance Guidelines for Maintenance along Rail Lines

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

1. Limits of Insurance

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

2. Amtrak included as an additional insured

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

4. No exclusion for contractual liability to railroads

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

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

**EXHIBIT R – DESIGN-BUILDER’S CONSTRUCTION DRAW SCHEDULE AND PROPOSAL
PRICE BREAKDOWN**

[Note: to be inserted at execution]

EXHIBIT S – CONFIDENTIALITY / PROPRIETARY INFORMATION DESIGNATION FORM

NAME OF DESIGN-BUILDER: _____

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

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

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

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

DOCUMENT	PAGE NUMBER(S)/ LINES / INFORMATION	REASON(S) FOR WITHHOLDING FROM DISCLOSURE

EXHIBIT T – APPROVED SMALL AND DIVERSE BUSINESS SUBCONTRACTING PLAN (FORM PD 60)

FORM D

SMALL AND DIVERSE BUSINESS SUBCONTRACTING PLAN **(VPRA Procurement Form PD 60)**

Definitions:

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

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

Certification:

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

Point Allocation:

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

Modification:

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

Instructions:

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

Small and Diverse Business Subcontracting Plan (cont.)

Section A

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

Certification number: N/A

Certification Date: N/A

Small Business Subsets (check all that apply):

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

Section B

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

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

(a)	(b)	(c)	(d)	(e)	(f)	(g)
SUBCONTRACTOR NAME/ADDRESS	DSBSD CERTIFICATION NO. <i>(for small business certification)</i>	ADDITIONAL DSBSD CERTIFICATIONS or STATUS <i>(e.g., micro (MIC), women-owned (W), minority-owned (M), service disabled veteran-owned (SDV))</i>	OTHER CERTIFICATIONS (can be local, state or federal) [OPTIONAL] ¹	DESCRIPTION OF WORK	PLANNED CONTRACT INVOLVEMENT (%)	ESTIMATED SPEND (\$) <i>Applicable to fixed price contracts only</i>
Floura Teeter Landscape Architects, Inc. 1001 N Charles St., Ste 500, Baltimore, MD 21201	5410	MIC W	DBE/WBE	Landscape architecture	0.09201%	
Quinn Consulting Services Inc. 14160 Newbrook Dr., Suite 220, Chantilly, VA 20151	626289	W	WOSB DBE/WBE	Highway & bridge quality control	0.59829%	

Precision Measurements, Inc. 770 Lynnhaven Pkwy, Suite 240, Virginia Beach, VA 23452	5346	W	WOBS DBE/WBE	Survey	0.06757%	
Siva Corrosion Services, Inc. 1020 Dogwood Ln, West Chester, PA 19382	981	MIC M	DBE/MBE	Corrosion analysis	0.07433%	
Precon Marine Incorporated 1401 Precon Dr, Ste 102, Chesapeake, VA 23320	813583	n/a	n/a	Pipe pile material supplier	0.17976%	
The Robert B Balter Company 18 Music Fair Rd, Owings Mills, MD 21117	682560	MIC	n/a	Drillers	0.06903%	
New Form Building Systems, Inc. 90 Heritage Pard Rd., Suite 2, Bucksport, ME 04416	674697	W	DBE/WBE, 8(a), EDWOSB, WOSB	P/C Inlets, Manholes, Endwall supplier	0.01311%	
Mohawk Bridge & Iron, Inc. 3901 Curtis Ave, Suite A, Curtis Bay, MD 21226	724874	M	DBE/MBE	Rebar supplier	0.70936%	
Mohawk Bridge & Iron, Inc. 3901 Curtis Ave, Suite A, Curtis Bay, MD 21226	724874	M	DBE/MBE	Rebar installation	0.46922%	
Tavares Concrete Co., Inc. 8000 Cinder Bed Rd., Lorton, VA 22079	626436	M	n/a	Concrete Paving – Curb/Gutter/ Sidewalk	0.04729%	
Firvida Construction Corporation 18139 Triangle	695400	M	DBE/MBE	Stone Veneer Sub	1.79166%	

Shopping Plz., Suite 203., Dumfries, VA 22026						
Nasir and Associates LLC 4 Nashua Ct Suite 17, Essex, MD 21221	681514	M	DBE/MBE	Temporary steel materials	0.50521%	
FinCite Group LLC 11900 N La Canada Dr, Box 69955, Oro Valley, AZ 85737	722259	M	DBE/MBE	Crane mat supplier	0.07730%	
Strong Women Industrial Materials LLC 14 Hadco Rd., Wilmington, DE 19804	828717	W	DBE/WBE	H-Pile material supplier	0.15679%	
La Terre Enterprises, Inc. 25471 Vance Rd., Chantilly, VA 20152	667016	n/a	n/a	On-site trucking	0.38341%	
New Form Building Systems, Inc. 90 Heritage Pard Rd., Suite 2, Bucksport, ME 04416	674697	W	DBE/WBE, 8(a), EDWOSB, WOSB	Reinf concrete pipe material	0.01120%	
Interlock Steelworkers Inc. 2703 Back Acre Circle, Mount Airy, MD 21771	626263	M	DBE/MBE	Fab structural steel railroad bridge	7.34857%	
Tegeler Source LLC 1900 Finishing Mill Rd, Ste 100, Sparrows Point, MD 21219	803100	W	DBE/WBE	Pipe pile material supplier	1.73974%	
Strong Women Industrial Materials LLC 14 Hadco Rd., Wilmington, DE 19804	828717	W	DBE/WBE	Sheet pile material supplier	0.17261%	

Tegeler Source LLC 1900 Finishing Mill Rd, Ste 100, Sparrows Point, MD 21219	803100	W	DBE/WBE	MSE wall material supplier	0.03086%	
A-Annandale, Inc. 30 Baron Park Rd, Fredericksburg, VA 22404	10032	n/a	n/a	Line painting sub	0.01578%	
Tegeler Source LLC 1900 Finishing Mill Rd, Ste 100, Sparrows Point, MD 21219	803100	W	DBE/WBE	Welded wire wall & accessories	0.01144%	
Tegeler Source LLC 1900 Finishing Mill Rd, Ste 100, Sparrows Point, MD 21219	803100	W	DBE/WBE	Bearing material	0.13810%	
Nasir and Associates LLC 4 Nashua Ct Suite 17, Essex, MD 21221	681514	M	DBE/MBE	Temporary shoring materials	0.07954%	
Seaward Marine Corp 602 Ford Dr, Norfolk, VA 23523	674169	n/a	n/a	Marine equipment	0.12531%	

Section C

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

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

(a)	(b)	(c)	(d)	(e)	(f)	(g)
SUBCONTRACTOR NAME/ADDRESS	DSBSD CERTIFICATION NO. (for all other SWaM certifications other than small)	DSBSD CERTIFICATION / STATUS DESCRIPTION (e.g., women-owned (W), minority-owned (M), service disabled veteran-owned (SDV))	OTHER CERTIFICATIONS (can be local, state or federal) [OPTIONAL] ²	DESCRIPTION OF WORK	PLANNED CONTRACT INVOLVEMENT (%)	ESTIMATED SPEND (\$) <i>Applicable to fixed price contracts only</i>
Froehling & Robertson Inc. 3015 Dumbarton Rd, Richmond, VA 23228	649650	M	n/a	Drillers	0.11217%	
Sunrise Safety Services, Inc. 6711 Bay Meadow Dr., Ste D, Glen Burnie, MD 21060	704986	WBE		Maintenance & protection of traffic sub	0.11116%	
Sunrise Safety Services, Inc. 6711 Bay Meadow Dr., Ste D, Glen Burnie, MD 21060	704986	WBE		Maintenance & protection of traffic supplier	0.02851%	
Concrete Mixes Inc. 100 M St SE, Washington DC 20003	670057	DBE/MBE		Concrete supplier	0.86156%	
D.W. Kozera Inc. 1408 Bare Hills Ave, #200, Baltimore MD 21209	5950425	WBE		Pile Dynamic Testing	0.03661%	
Sunrise Safety Services, Inc. 6711 Bay Meadow Dr., Ste D, Glen Burnie, MD 21060	704986	WBE		Signage Sub	0.00558%	

Offeror Name: Long Bridge Rail Partners

Preparer Name: Katie Banks

Date: October 11, 2024

***Attach additional sheets as necessary

EXHIBIT U – APPROVED DBE UTILIZATION PLAN (FORM PD 50B)

FORM E

DBE UTILIZATION PLAN (VPRA Procurement Form PD 50B)

Part I

DBE FULFILLMENT BY PRIME CONTRACTOR/CONSULTANT

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

DSBSD/MWAA Certification number: N/A

Certification Date: N/A

Part II

DBE SUBCONTRACTOR/SUPPLIER UTILIZATION

NAME OF DBE FIRM	DSBSD / MWAA CERT. NO.	OTHER DSBSD CERTIFICATIONS / DESIGNATIONS (e.g., micro, small, women- owned, minority-owned, service disabled veteran- owned)	FUNCTION (e.g., subcontractor, supplier, manufacturer, service provider, broker)	DESCRIPTION OF WORK	PLANNED CONTRACT INVOLVEMENT (%)	ESTIMATED SPEND (\$) <i>Applicable to fixed price contracts only</i>
Sunrise Safety Services, Inc. 6711 Bay Meadow Dr., Ste D, Glen Burnie, MD 21060	704986	MBE/WBE	Subcontractor	Maintenance & protection of traffic sub	0.11116%	
Sunrise Safety Services, Inc. 6711 Bay Meadow Dr., Ste D, Glen Burnie, MD 21060	704986	WBE	Supplier	Maintenance & protection of traffic supplier	0.02851%	
Concrete Mixes Inc.	670057	DBE/MBE	Supplier	Concrete supplier	0.86156%	

100 M St SE, Washington DC 20003						
D.W. Kozera Inc. 1408 Bare Hills Ave, #200, Baltimore MD 21209	5950425	WBE	Subcontractor	Pile Dynamic Testing	0.03661%	
Froehling & Robertson Inc. 3015 Dumbarton Rd, Richmond, VA 23228	649650	M	Subcontractor	Drillers	0.11217%	
Sunrise Safety Services, Inc. 6711 Bay Meadow Dr., Ste D, Glen Burnie, MD 21060	704986	WBE	Subcontractor	Signage Sub	0.00558%	

NOTE: ATTACH ADDITIONAL PAGES, IF NECESSARY

**EXHIBIT V – MONTHLY SMALL AND DIVERSE BUSINESS SUBCONTRACTING UTILIZATION
REPORT
(FORM PD 61)**



MONTHLY SMALL AND DIVERSE BUSINESS UTILIZATION REPORT

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

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

Attach additional pages if necessary

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

Notes:

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

EXHIBIT W – MONTHLY DBE PARTICIPATION REPORT (FORM PD 51)



MONTHLY DBE PARTICIPATION REPORT

For Internal Use:

Reviewed by, _____

Dated: _____

Contract Id. No.: _____

Check Here if Final Report []

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

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

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

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

Signature	Title
Date	

EXHIBIT X – COST BREAKDOWN STRUCTURE

Level	Level Description	Level ID	Level ID Description	Notes
Level 1	Project	R02A	Long Bridge Project	
Level 2	Contract Package	N	Contract Package North	Long Bridge in Washington D.C.
		S	Contract Package South	Long Bridge and Bike/Ped Bridge
Level 3	Project Phase	PD	Project Development	Including, but not limited to, feasibility study, environmental impact study, preliminary design (15%, 30%)
		EN	Engineering	Including, but not limited to, PD updates, environmental works and permits, subsurface exploration, survey, final design (60% to IFC design) for civil, guideway, track, and roadway
		RW	Right-of-Way	Including, but not limited to, Right-of-Way acquisition activities
		CS	Construction	Including, but not limited to, early utility relocations, design support during construction, fabrication, material delivery, installation, commissioning, and testing
		PM	Program Management	Including, but not limited to, VPRA PM, CSXT PM, PMSS
		UC	Unallocated Contingency	Including, but not limited to, unallocated contingency
Level 4	Element	T	Guideway/Track	Including, but not limited to, at-grade guideway and track, at-grade track special track, at-grade track crossings, bridges, flyover, storm drainage pipes and structures, utility relocation, storm water management systems, systems signal, communication
		R	Roadway	Including, but not limited to, roadways and associated site improvements
		Z	Project Wide	Including, but not limited to, payment and performance bonds, legal, permits, review fees, general and administrative expenses, and profit, hazardous material removal/mitigation, VPRA PM, CSXT PM, PMSS
Level 5	Sub-Element	AGT	At-grade Guideway/Track	Including, but not limited to, at-grade subgrade and tracks, at-grade special tracks, at-grade crossings, site retaining walls, site utilities, signal, and communication
		ELT	Elevated Guideway/Track	Including, but not limited to, aerial structures and tracks, special tracks, walkways, railings, signal, and communication
		PBB	Pedestrian/Bike Bridge	Including, but not limited to, concrete structure, structural steel framing and decking, railings, finishes, mechanical, electrical, and plumbing
		SWM	Storm Water Management System (SWM)	Including, but not limited to, culvert pipe extensions, storm water pipes and structures, at-grade SWMs including landscaping
		RDW	Wayside Roadway	Including, but not limited to, roadway paving, other access roads paving, curb and gutters, median barriers, pavement marking, traffic signals and signs
		TFS	Temporary Facilities and Services	Including, but not limited to, temporary facilities and structures, supervision, QA/QC, safety, MOT, staging and layover areas, and survey
		ZPW	Project Wide Items	Including, but not limited to, final design, general conditions, demolition, hauling, and utility relocation, payment and performance bonds, insurances, legal, permits, review fees, general and administrative expenses, and profit, hazardous material removal/mitigation, VPRA PM, CSXT PM, PMSS
Level 6	CSI Division	01	General Requirements	Including, but not limited to, final design, start-up, bond, supervision, QA/QC, safety, MOT, staging, survey
		02	Existing Conditions	Including, but not limited to, clearing and grubbing, grading, erosion control, site demolition

		03	Concrete	Including, but not limited to, cast in place, precast concrete
		05	Metals	Including, but not limited to, structural steel, steel framing, miscellaneous metal, fences, gates, and handrails
		06	Wood, Plastics, and Composites	Including, but not limited to, station and buildings wood and plastics
		10	Specialties	Including, but not limited to, station signs, parking lot signs, roadway signs, and track signs and markers
		26	Electrical	Including, but not limited to, electrical equipment and wiring, station and site lighting and power distribution, testing, and commissioning, power supply, central control
		27	Communications	Including, but not limited to, fiber optic, public announcement
		31	Earthwork	Including, but not limited to, clearing and grubbing, excavation and backfill, grading, structural for retaining wall foundation, abutments, drilled piles and shaft foundations
		32	Exterior Improvements	Including, but not limited to, site retaining wall, concrete sidewalk, fences and rails, site furnishing, bus canopies and wind screens, asphalt and concrete paving, and landscaping
		33	Utilities	Including, but not limited to, station and site utilities, power, track drainage, storm water management facilities, site grounding
		34	Transportation	Including, but not limited to, track sub-ballast, ballast, rails, ties, other track materials (OTM), switches, turnouts, crossovers, bumping posts, median barriers, and traffic signal
		35	Waterway and Marine	Including, but not limited to, cofferdams, fender systems, and marine support
Level 7	CSI Sub-Division	B01	Base Scope CSI Sub-Division work items	
		C01	Change Order CSI Sub-Division work items	

Long Bridge South Package
Cost Breakdown Structure (CBS)

No	CBS Code	CBS Description	Budgeted Cost (\$)	Actual Cost to Previous Period (\$)	Actual Cost for Current Period (\$)	Actual Cost to Current Period (\$)	Actual Cost to Current Period (%)
1	R02A.S.EN.Z.ZPW.01.B04.80.02	Project final design through IFC					
2	R02A.S.CS.Z.ZPW.01.B03.40.08	Project mobilization					
3	R02A.S.CS.Z.ZPW.02.B01.40.02	Project wide early utility relocation before construction NTP					
4	R02A.S.CS.Z.ZPW.02.B02.40.01	Project wide demolition, clearing, hauling, and disposal					
5	R02A.S.CS.Z.ZPW.02.B03.40.02	Project wide utility removal, protection, and relocation during construction					
6	R02A.S.CS.T.TFS.01.B01.40.08	Project wide survey, temporary facilities, staging and laydown areas					
7	R02A.S.CS.T.TFS.01.B02.40.08	Project wide safety, MOT, contractor QC					
8	R02A.S.CS.T.TFS.01.B03.40.08	Project wide construction administration and management					
9	R02A.S.CS.Z.ZPW.01.B01.40.08	Project wide payment and performance bond, insurance					
10	R02A.S.CS.Z.ZPW.01.B02.40.08	Project wide legal, permits, review fees					
11	R02A.S.CS.Z.ZPW.02.B05.40.03	Project wide hazardous material removal/mitigation					
12	R02A.S.CS.Z.ZPW.02.B06.40.04	Project wide environmental mitigation					
13	R02A.S.CS.T.AGT.31.B01.10.08	At-grade guideway fill concrete retaining wall structure excavation, SOE, and backfill					
14	R02A.S.CS.T.AGT.03.B01.10.08	At-grade guideway fill concrete retaining wall piles and foundations					
15	R02A.S.CS.T.AGT.03.B02.10.08	At-grade guideway fill concrete retaining wall footing and stem wall					
16	R02A.S.CS.T.AGT.03.B03.10.08	At-grade guideway fill concrete retaining wall architecture finishes					
17	R02A.S.CS.T.AGT.31.B02.10.08	At-grade guideway cut retaining wall structure excavation, SOE, and backfill					
18	R02A.S.CS.T.AGT.03.B04.10.08	At-grade guideway cut retaining wall drilled shafts and foundations					
19	R02A.S.CS.T.AGT.03.B05.10.08	At-grade guideway cut retaining wall piles and lagging					
20	R02A.S.CS.T.AGT.31.B03.40.05	At-grade guideway concrete crash wall structure excavation, SOE, and backfill					
21	R02A.S.CS.T.AGT.03.B06.40.05	At-grade guideway concrete crash wall piles and foundations					
22	R02A.S.CS.T.AGT.03.B07.40.05	At-grade guideway concrete crash wall footing and stem wall					
23	R02A.S.CS.T.AGT.31.B04.10.08	At-grade ballast track excavation, backfill, grading					
24	R02A.S.CS.T.AGT.33.B01.10.08	At-grade ballast track drainage system					
25	R02A.S.CS.T.AGT.34.B01.10.11	At-grade ballast track subballast/preballast/ballast					
26	R02A.S.CS.T.AGT.34.B02.10.11	At-grade ballast track wood/concrete ties					
27	R02A.S.CS.T.AGT.34.B03.10.11	At-grade ballast track running rails and guard rails					
28	R02A.S.CS.T.AGT.10.B01.10.08	At-grade ballast track signage and markers					
29	R02A.S.CS.T.AGT.32.B01.10.08	At-grade guideway chain link fences and gates					
30	R02A.S.CS.T.AGT.32.B02.40.06	At-grade guideway landscape, trail, and access road					
31	R02A.S.CS.T.AGT.33.B02.40.02	At-grade guideway wet utilities					
32	R02A.S.CS.T.AGT.33.B03.40.02	At-grade guideway dry utilities					
33	R02A.S.CS.T.AGT.26.B02.40.06	At-grade guideway lighting and fixtures, power including low voltage and grounding					

No	CBS Code	CBS Description	Budgeted Cost (\$)	Actual Cost to Previous Period (\$)	Actual Cost for Current Period (\$)	Actual Cost to Current Period (\$)	Actual Cost to Current Period (%)
34	R02A.S.CS.T.ELT.31.B01.10.04	Elevated guideway concrete pier structural excavation, SOE, and backfill					
35	R02A.S.CS.T.ELT.31.B02.10.04	Elevated guideway concrete pier piles and drilled shafts					
36	R02A.S.CS.T.ELT.03.B01.10.04	Elevated guideway concrete pier pile caps and footings					
37	R02A.S.CS.T.ELT.03.B02.10.04	Elevated guideway concrete pier columns					
38	R02A.S.CS.T.ELT.03.B03.10.04	Elevated guideway concrete pier caps					
39	R02A.S.CS.T.ELT.31.B03.10.04	Elevated guideway abutment structural excavation, SOE, and backfill					
40	R02A.S.CS.T.ELT.31.B04.10.04	Elevated guideway abutment piles, drilled shafts					
41	R02A.S.CS.T.ELT.03.B04.10.04	Elevated guideway abutment footings and pile caps					
42	R02A.S.CS.T.ELT.03.B05.10.04	Elevated guideway abutment concrete walls and slope protection					
43	R02A.S.CS.T.ELT.35.B01.10.04	Potomac River cofferdams, drilled shaft access platforms, access trestle, fender system, marine support					
44	R02A.S.CS.T.ELT.05.B01.10.04	Elevated guideway structural steel superstructure					
45	R02A.S.CS.T.ELT.05.B02.10.04	Elevated guideway hand rails, fences, and miscellaneous steel					
46	R02A.S.CS.T.ELT.32.B01.10.04	Elevated guideway deck and walkway					
47	R02A.S.CS.T.ELT.32.B02.10.04	Elevated guideway approach slab					
48	R02A.S.CS.T.ELT.03.B06.10.04	Elevated guideway concrete parapet					
49	R02A.S.CS.T.ELT.33.B01.10.04	Elevated guideway concrete utility duckbank					
50	R02A.S.CS.T.ELT.33.B02.10.04	Elevated guideway deck drainage pipe					
52	R02A.S.CS.T.PBB.31.B01.10.04	Bike-Ped Bridge structure excavation and SOE for foundations					
53	R02A.S.CS.T.PBB.03.B01.40.06	Bike-Ped Bridge pier piles, drilled shafts					
54	R02A.S.CS.T.PBB.03.B02.40.06	Bike-Ped Bridge pier pile caps, footings					
55	R02A.S.CS.T.PBB.03.B03.40.06	Bike-Ped Bridge pier columns					
56	R02A.S.CS.T.PBB.03.B04.40.06	Bike-Ped Bridge pier column caps					
57	R02A.S.CS.T.PBB.32.B01.40.06	Bike-Ped Bridge concrete deck and walkway					
58	R02A.S.CS.T.PBB.05.B01.40.06	Bike-Ped Bridge steel truss					
59	R02A.S.CS.T.PBB.05.B02.40.06	Bike-Ped Bridge rub rails and misc. steel					
60	R02A.S.CS.T.PBB.03.B05.40.06	Bike-Ped Bridge ramps and stairs					
61	R02A.S.CS.T.PBB.26.B01.40.06	Bike-Ped Bridge lighting and fixtures, power including low voltage and grounding					
61	R02A.S.CS.T.SWM.33.B01.40.02	Guideway stormwater management facility, RCP culvert extension					
62	R02A.S.CS.R.RDW.32.B06.40.07	Roadway concrete flatwork					
63	R02A.S.CS.R.RDW.32.B01.40.07	Roadway full-depth asphalt paving					
64	R02A.S.CS.R.RDW.32.B02.40.07	Roadway milling and overlay asphalt paving					
65	R02A.S.CS.R.RDW.32.B03.40.07	Roadway pavement marking					
66	R02A.S.CS.R.RDW.10.B01.40.07	Roadway traffic control and signage					
67	R02A.S.CS.R.RDW.32.B04.40.07	Roadway concrete median barrier, guardrail, delineators					
68	R02A.S.CS.R.RDW.32.B05.40.07	Roadway road traffic signal modification and addition					
Grand Total							

Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Level 7						
Project ID	Contract ID	Phase ID	Element ID	Sub-Element ID	CSI ID	CSI Sub-Division ID	WBS CSI Sub-Division Description	SCC Code	WBS Code	CBS Code	RESP	Discipline
R02A	S	PD	Z	ZPW	01	B01	Project development, feasibility and environmental studies, NEPA clearance	80.01	R02A.S.PD.Z.ZPW.01.B01	R02A.S.PD.Z.ZPW.01.B01.80.01	VPRA	ZPW
R02A	S	PD	Z	ZPW	01	B02	Project development, preliminary design	80.01	R02A.S.PD.Z.ZPW.01.B02	R02A.S.PD.Z.ZPW.01.B02.80.01	VPRA	ZPW
R02A	S	EN	Z	ZPW	01	B01	Project engineering, NEPA reevaluation and PE updates	80.02	R02A.S.EN.Z.ZPW.01.B01	R02A.S.EN.Z.ZPW.01.B01.80.02	VPRA	ZPW
R02A	S	EN	Z	ZPW	01	B02	Project engineering, environmental works, permits	80.02	R02A.S.EN.Z.ZPW.01.B02	R02A.S.EN.Z.ZPW.01.B02.80.02	VPRA	ZPW
R02A	S	EN	Z	ZPW	01	B04	Project final design through IFC	80.02	R02A.S.EN.Z.ZPW.01.B04	R02A.S.EN.Z.ZPW.01.B04.80.02	Design Builder	ZPW
R02A	S	RW	Z	ZPW	01	B01	Project Right-of-Way acquisition	60.01	R02A.S.RW.Z.ZPW.01.B01	R02A.S.RW.Z.ZPW.01.B01.60.01	VPRA	ZPW
R02A	S	PM	Z	ZPW	01	B01	Engineering activities - VPRA management	80.02	R02A.S.PM.Z.ZPW.01.B01	R02A.S.PM.Z.ZPW.01.B01.80.02	VPRA	ZPW
R02A	S	PM	Z	ZPW	01	B02	Engineering activities - CSXT management	80.02	R02A.S.PM.Z.ZPW.01.B02	R02A.S.PM.Z.ZPW.01.B02.80.02	CSXT	ZPW
R02A	S	PM	Z	ZPW	01	B03	Project Management for Design and Construction - VPRA management	80.03	R02A.S.PM.Z.ZPW.01.B03	R02A.S.PM.Z.ZPW.01.B03.80.03	VPRA	ZPW
R02A	S	PM	Z	ZPW	01	B05	Construction Administration & Management - VPRA management	80.04	R02A.S.PM.Z.ZPW.01.B05	R02A.S.PM.Z.ZPW.01.B05.80.04	VPRA	ZPW
R02A	S	PM	Z	ZPW	01	B06	Project management, construction management, engineering support, and flagging during Construction - CSXT management	80.04	R02A.S.PM.Z.ZPW.01.B06	R02A.S.PM.Z.ZPW.01.B06.80.04	CSXT	ZPW
R02A	S	PM	Z	ZPW	01	B07	Professional Liability and other Non-Construction Insurance	80.05	R02A.S.PM.Z.ZPW.01.B07	R02A.S.PM.Z.ZPW.01.B07.80.05	VPRA	ZPW
R02A	S	PM	Z	ZPW	01	B08	Legal: Permits: Review Fees by other agencies, cities, etc.	80.06	R02A.S.PM.Z.ZPW.01.B08	R02A.S.PM.Z.ZPW.01.B08.80.06	VPRA	ZPW
R02A	S	PM	Z	ZPW	01	B09	Surveys, Testing, Investigation, Inspection	80.07	R02A.S.PM.Z.ZPW.01.B09	R02A.S.PM.Z.ZPW.01.B09.80.07	VPRA	ZPW
R02A	S	UC	Z	ZPW	01	B01	Unallocated Contingency	90.00	R02A.S.UC.Z.ZPW.01.B01	R02A.S.UC.Z.ZPW.01.B01.90	VPRA	ZPW
R02A	S	CS	Z	ZPW	01	B03	Project mobilization	40.08	R02A.S.CS.Z.ZPW.01.B03	R02A.S.CS.Z.ZPW.01.B03.40.08	Design Builder	ZPW
R02A	S	CS	Z	ZPW	02	B01	Project wide early utility relocation before construction NTP	40.02	R02A.S.CS.Z.ZPW.02.B01	R02A.S.CS.Z.ZPW.02.B01.40.02	Design Builder	ZPW
R02A	S	CS	Z	ZPW	02	B02	Project wide demolition, clearing, hauling, and disposal	40.01	R02A.S.CS.Z.ZPW.02.B02	R02A.S.CS.Z.ZPW.02.B02.40.01	Design Builder	ZPW
R02A	S	CS	Z	ZPW	02	B03	Project wide utility removal, protection, and relocation during construction	40.02	R02A.S.CS.Z.ZPW.02.B03	R02A.S.CS.Z.ZPW.02.B03.40.02	Design Builder	ZPW
R02A	S	CS	T	TFS	01	B01	Project wide survey, temporary facilities, staging and laydown areas	40.08	R02A.S.CS.T.TFS.01.B01	R02A.S.CS.T.TFS.01.B01.40.08	Design Builder	ZPW
R02A	S	CS	T	TFS	01	B02	Project wide safety, MOT, contractor QC	40.08	R02A.S.CS.T.TFS.01.B02	R02A.S.CS.T.TFS.01.B02.40.08	Design Builder	ZPW
R02A	S	CS	T	TFS	01	B03	Project wide construction administration and management	40.08	R02A.S.CS.T.TFS.01.B03	R02A.S.CS.T.TFS.01.B03.40.08	Design Builder	ZPW
R02A	S	CS	Z	ZPW	01	B01	Project wide payment and performance bond, insurance	40.08	R02A.S.CS.Z.ZPW.01.B01	R02A.S.CS.Z.ZPW.01.B01.40.08	Design Builder	ZPW
R02A	S	CS	Z	ZPW	01	B02	Project wide legal, permits, review fees	40.08	R02A.S.CS.Z.ZPW.01.B02	R02A.S.CS.Z.ZPW.01.B02.40.08	Design Builder	ZPW
R02A	S	CS	Z	ZPW	02	B05	Project wide hazardous material removal/mitigation	40.03	R02A.S.CS.Z.ZPW.02.B05	R02A.S.CS.Z.ZPW.02.B05.40.03	Design Builder	ZPW
R02A	S	CS	Z	ZPW	02	B06	Project wide environmental mitigation	40.04	R02A.S.CS.Z.ZPW.02.B06	R02A.S.CS.Z.ZPW.02.B06.40.04	Design Builder	ZPW
R02A	S	CS	T	AGT	31	B01	At-grade guideway fill concrete retaining wall structure excavation, SOE, and backfill	10.08	R02A.S.CS.T.AGT.31.B01	R02A.S.CS.T.AGT.31.B01.10.08	Design Builder	Civil
R02A	S	CS	T	AGT	03	B01	At-grade guideway fill concrete retaining wall piles and foundations	10.08	R02A.S.CS.T.AGT.03.B01	R02A.S.CS.T.AGT.03.B01.10.08	Design Builder	Civil
R02A	S	CS	T	AGT	03	B02	At-grade guideway fill concrete retaining wall footing and stem wall	10.08	R02A.S.CS.T.AGT.03.B02	R02A.S.CS.T.AGT.03.B02.10.08	Design Builder	Civil
R02A	S	CS	T	AGT	03	B03	At-grade guideway fill concrete retaining wall architecture finishes	10.08	R02A.S.CS.T.AGT.03.B03	R02A.S.CS.T.AGT.03.B03.10.08	Design Builder	Civil
R02A	S	CS	T	AGT	31	B02	At-grade guideway cut retaining wall structure excavation, SOE, and backfill	10.08	R02A.S.CS.T.AGT.31.B02	R02A.S.CS.T.AGT.31.B02.10.08	Design Builder	Civil
R02A	S	CS	T	AGT	03	B04	At-grade guideway cut retaining wall drilled shafts and foundations	10.08	R02A.S.CS.T.AGT.03.B04	R02A.S.CS.T.AGT.03.B04.10.08	Design Builder	Civil
R02A	S	CS	T	AGT	03	B05	At-grade guideway cut retaining wall piles and lagging	10.08	R02A.S.CS.T.AGT.03.B05	R02A.S.CS.T.AGT.03.B05.10.08	Design Builder	Civil
R02A	S	CS	T	AGT	31	B03	At-grade guideway concrete crash wall structure excavation, SOE, and backfill	40.05	R02A.S.CS.T.AGT.31.B03	R02A.S.CS.T.AGT.31.B03.40.05	Design Builder	Civil
R02A	S	CS	T	AGT	03	B06	At-grade guideway concrete crash wall piles and foundations	40.05	R02A.S.CS.T.AGT.03.B06	R02A.S.CS.T.AGT.03.B06.40.05	Design Builder	Civil
R02A	S	CS	T	AGT	03	B07	At-grade guideway concrete crash wall footing and stem wall	40.05	R02A.S.CS.T.AGT.03.B07	R02A.S.CS.T.AGT.03.B07.40.05	Design Builder	Civil

R02A	S	CS	T	AGT	31	B04	At-grade ballast track excavation, backfill, grading	10.08	R02A.S.CS.T.AGT.31.B04	R02A.S.CS.T.AGT.31.B04.10.08	Design Builder	Civil
R02A	S	CS	T	AGT	33	B01	At-grade ballast track drainage system	10.08	R02A.S.CS.T.AGT.33.B01	R02A.S.CS.T.AGT.33.B01.10.08	Design Builder	Civil
R02A	S	CS	T	AGT	34	B01	At-grade ballast track subballast/preballast/ballast	10.11	R02A.S.CS.T.AGT.34.B01	R02A.S.CS.T.AGT.34.B01.10.11	Design Builder	Track
R02A	S	CS	T	AGT	34	B02	At-grade ballast track wood/concrete ties	10.11	R02A.S.CS.T.AGT.34.B02	R02A.S.CS.T.AGT.34.B02.10.11	Design Builder	Track
R02A	S	CS	T	AGT	34	B03	At-grade ballast track running rails and guard rails	10.11	R02A.S.CS.T.AGT.34.B03	R02A.S.CS.T.AGT.34.B03.10.11	Design Builder	Track
R02A	S	CS	T	AGT	10	B01	At-grade ballast track signage and markers	10.08	R02A.S.CS.T.AGT.10.B01	R02A.S.CS.T.AGT.10.B01.10.08	Design Builder	Civil
R02A	S	CS	T	AGT	32	B01	At-grade guideway chain link fences and gates	10.08	R02A.S.CS.T.AGT.32.B01	R02A.S.CS.T.AGT.32.B01.10.08	Design Builder	Civil
R02A	S	CS	T	AGT	34	B04	At-grade ballast track existing track removal, realignment, and cutover	10.11	R02A.S.CS.T.AGT.34.B04	R02A.S.CS.T.AGT.34.B04.10.11	CSXT	Track
R02A	S	CS	T	AGT	34	B05	At-grade ballast track special track including switches, turnouts, crossovers, and appurtenances	10.12	R02A.S.CS.T.AGT.34.B05	R02A.S.CS.T.AGT.34.B05.10.12	CSXT	Track
R02A	S	CS	T	AGT	27	B01	At-grade guideway signal and communication system	50.01	R02A.S.CS.T.AGT.27.B01	R02A.S.CS.T.AGT.27.B01.50.01	CSXT	Systems
R02A	S	CS	T	AGT	32	B02	At-grade guideway landscape, trail, and access road	40.06	R02A.S.CS.T.AGT.32.B02	R02A.S.CS.T.AGT.32.B02.40.06	Design Builder	Civil
R02A	S	CS	T	AGT	33	B02	At-grade guideway wet utilities	40.02	R02A.S.CS.T.AGT.33.B02	R02A.S.CS.T.AGT.33.B02.40.02	Design Builder	Civil
R02A	S	CS	T	AGT	33	B03	At-grade guideway dry utilities	40.02	R02A.S.CS.T.AGT.33.B03	R02A.S.CS.T.AGT.33.B03.40.02	Design Builder	Civil
R02A	S	CS	T	AGT	26	B02	At-grade guideway lighting and fixtures, power including low voltage and grounding	40.06	R02A.S.CS.T.AGT.26.B02	R02A.S.CS.T.AGT.26.B02.40.06	Design Builder	Civil
R02A	S	CS	T	ELT	31	B01	Elevated guideway concrete pier structural excavation, SOE, and backfill	10.04	R02A.S.CS.T.ELT.31.B01	R02A.S.CS.T.ELT.31.B01.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	31	B02	Elevated guideway concrete pier piles and drilled shafts	10.04	R02A.S.CS.T.ELT.31.B02	R02A.S.CS.T.ELT.31.B02.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	03	B01	Elevated guideway concrete pier pile caps and footings	10.04	R02A.S.CS.T.ELT.03.B01	R02A.S.CS.T.ELT.03.B01.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	03	B02	Elevated guideway concrete pier columns	10.04	R02A.S.CS.T.ELT.03.B02	R02A.S.CS.T.ELT.03.B02.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	03	B03	Elevated guideway concrete pier caps	10.04	R02A.S.CS.T.ELT.03.B03	R02A.S.CS.T.ELT.03.B03.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	31	B03	Elevated guideway abutment structural excavation, SOE, and backfill	10.04	R02A.S.CS.T.ELT.31.B03	R02A.S.CS.T.ELT.31.B03.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	31	B04	Elevated guideway abutment piles, drilled shafts	10.04	R02A.S.CS.T.ELT.31.B04	R02A.S.CS.T.ELT.31.B04.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	03	B04	Elevated guideway abutment footings and pile caps	10.04	R02A.S.CS.T.ELT.03.B04	R02A.S.CS.T.ELT.03.B04.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	03	B05	Elevated guideway abutment concrete walls and slope protection	10.04	R02A.S.CS.T.ELT.03.B05	R02A.S.CS.T.ELT.03.B05.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	35	B01	Potomac River cofferdams, drilled shaft access platforms, access trestle, fender system, marine support	10.04	R02A.S.CS.T.ELT.35.B01	R02A.S.CS.T.ELT.35.B01.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	05	B01	Elevated guideway structural steel superstructure	10.04	R02A.S.CS.T.ELT.05.B01	R02A.S.CS.T.ELT.05.B01.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	05	B02	Elevated guideway hand rails, fences, and miscellaneous steel	10.04	R02A.S.CS.T.ELT.05.B02	R02A.S.CS.T.ELT.05.B02.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	32	B01	Elevated guideway deck and walkway	10.04	R02A.S.CS.T.ELT.32.B01	R02A.S.CS.T.ELT.32.B01.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	32	B02	Elevated guideway approach slab	10.04	R02A.S.CS.T.ELT.32.B02	R02A.S.CS.T.ELT.32.B02.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	03	B06	Elevated guideway concrete parapet	10.04	R02A.S.CS.T.ELT.03.B06	R02A.S.CS.T.ELT.03.B06.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	33	B01	Elevated guideway concrete utility duckbank	10.04	R02A.S.CS.T.ELT.33.B01	R02A.S.CS.T.ELT.33.B01.10.04	Design Builder	Structure
R02A	S	CS	T	ELT	33	B02	Elevated guideway deck drainage pipe	10.04	R02A.S.CS.T.ELT.33.B02	R02A.S.CS.T.ELT.33.B02.10.04	Design Builder	Structure
R02A	S	CS	T	PBB	31	B01	Bike-Ped Bridge structure excavation and SOE for foundations	10.04	R02A.S.CS.T.PBB.31.B01	R02A.S.CS.T.PBB.31.B01.10.04	Design Builder	Structure
R02A	S	CS	T	PBB	03	B01	Bike-Ped Bridge pier piles, drilled shafts	40.06	R02A.S.CS.T.PBB.03.B01	R02A.S.CS.T.PBB.03.B01.40.06	Design Builder	Structure
R02A	S	CS	T	PBB	03	B02	Bike-Ped Bridge pier pile caps, footings	40.06	R02A.S.CS.T.PBB.03.B02	R02A.S.CS.T.PBB.03.B02.40.06	Design Builder	Structure
R02A	S	CS	T	PBB	03	B03	Bike-Ped Bridge pier columns	40.06	R02A.S.CS.T.PBB.03.B03	R02A.S.CS.T.PBB.03.B03.40.06	Design Builder	Structure
R02A	S	CS	T	PBB	03	B04	Bike-Ped Bridge pier column caps	40.06	R02A.S.CS.T.PBB.03.B04	R02A.S.CS.T.PBB.03.B04.40.06	Design Builder	Structure
R02A	S	CS	T	PBB	32	B01	Bike-Ped Bridge concrete deck and walkway	40.06	R02A.S.CS.T.PBB.32.B01	R02A.S.CS.T.PBB.32.B01.40.06	Design Builder	Structure
R02A	S	CS	T	PBB	05	B01	Bike-Ped Bridge steel truss	40.06	R02A.S.CS.T.PBB.05.B01	R02A.S.CS.T.PBB.05.B01.40.06	Design Builder	Structure
R02A	S	CS	T	PBB	05	B02	Bike-Ped Bridge rub rails and misc. steel	40.06	R02A.S.CS.T.PBB.05.B02	R02A.S.CS.T.PBB.05.B02.40.06	Design Builder	Structure
R02A	S	CS	T	PBB	03	B05	Bike-Ped Bridge ramps and stairs	40.06	R02A.S.CS.T.PBB.03.B05	R02A.S.CS.T.PBB.03.B05.40.06	Design Builder	Structure
R02A	S	CS	T	PBB	26	B01	Bike-Ped Bridge lighting and fixtures, power including low voltage and grounding	40.06	R02A.S.CS.T.PBB.26.B01	R02A.S.CS.T.PBB.26.B01.40.06	Design Builder	Structure
R02A	S	CS	T	SWM	33	B01	Guideway stormwater management facility, RCP culvert extension	40.02	R02A.S.CS.T.SWM.33.B01	R02A.S.CS.T.SWM.33.B01.40.02	Design Builder	Civil
R02A	S	CS	R	RDW	32	B06	Roadway concrete flatwork	40.07	R02A.S.CS.R.RDW.32.B06	R02A.S.CS.R.RDW.32.B06.40.07	Design Builder	Civil
R02A	S	CS	R	RDW	32	B01	Roadway full-depth asphalt paving	40.07	R02A.S.CS.R.RDW.32.B01	R02A.S.CS.R.RDW.32.B01.40.07	Design Builder	Civil
R02A	S	CS	R	RDW	32	B02	Roadway milling and overlay asphalt paving	40.07	R02A.S.CS.R.RDW.32.B02	R02A.S.CS.R.RDW.32.B02.40.07	Design Builder	Civil
R02A	S	CS	R	RDW	32	B03	Roadway pavement marking	40.07	R02A.S.CS.R.RDW.32.B03	R02A.S.CS.R.RDW.32.B03.40.07	Design Builder	Civil
R02A	S	CS	R	RDW	10	B01	Roadway traffic control and signage	40.07	R02A.S.CS.R.RDW.10.B01	R02A.S.CS.R.RDW.10.B01.40.07	Design Builder	Civil

R02A	S	CS	R	RDW	32	B04	Roadway concrete median barrier, guardrail, delineators	40.07	R02A.S.CS.R.RDW.32.B04	R02A.S.CS.R.RDW.32.B04.40.07	Design Builder	Civil
R02A	S	CS	R	RDW	32	B05	Roadway road traffic signal modification and addition	40.07	R02A.S.CS.R.RDW.32.B05	R02A.S.CS.R.RDW.32.B05.40.07	Design Builder	Civil

EXHIBIT Y – DDOT MEMORANDUM OF AGREEMENT

EXECUTION VERSION

**MEMORANDUM OF AGREEMENT
BETWEEN
THE DISTRICT DEPARTMENT OF TRANSPORTATION
AND
THE VIRGINIA PASSENGER RAIL AUTHORITY
FOR
COORDINATION ON THE LONG BRIDGE PROJECT**

RECITALS

WHEREAS, VPRA was established by Chapter 1230 of the 2020 Acts of Assembly to promote, sustain, and expand the availability of passenger and commuter rail service in Virginia and to implement all capital expansion projects, infrastructure, and land acquisitions related to rail expansion in Virginia; and

WHEREAS, the existing Long Bridge is a strategically important transportation asset critical to the operation of trains by CSX Transportation Inc., Virginia Railway Express, and the National Railroad Passenger Corporation; and

WHEREAS, VPRA is leading the design and construction of railroad improvements and other related improvements, and the realignment of existing railroad tracks, to expand the railroad corridor from two tracks to four tracks between Rosslyn interlocking (MP 110.1) near Long Bridge Park in Arlington County, Virginia, and L'Enfant interlocking (MP 111.5) near 10th Street, S.W. in the District of Columbia (such project the "**Long Bridge Project**" and the railroad corridor between such interlockings the "**Long Bridge Corridor**"), including the construction of a new railroad bridge (the "**New Rail Bridge**") across the Potomac River; and

WHEREAS, the Federal Railroad Administration ("**FRA**"), jointly with DDOT and Virginia Department of Rail and Public Transportation ("**DRPT**"), and in cooperation with the National Park Service ("**NPS**"), signed a Combined Final Environmental Impact Statement ("**FEIS**" and which term is, for the avoidance of doubt, inclusive of the corresponding Draft Environmental Impact Statement), Final Section 4(f) Evaluation, and Record of Decision ("**ROD**") in August of 2020; and

WHEREAS, the purpose and need of the FEIS and ROD was to provide additional long-term railroad capacity and to improve the reliability of railroad service through the Long Bridge Corridor (currently, there is insufficient capacity, resiliency, and redundancy to accommodate the projected demand in future railroad services); and

WHEREAS, construction of the New Rail Bridge will provide additional long-term railroad capacity and improve the reliability of railroad service through the Long Bridge Corridor; and

EXECUTION VERSION

WHEREAS, pursuant to Section 2.3.1 of the FEIS and ROD, the 4(f) mitigation proposed for the use of NPS lands during the Long Bridge Project is the construction of an independent bridge dedicated solely for pedestrian and bicyclist use (the “**Bike and Ped Bridge**”), which will also cross the Potomac River and must be constructed as part of the Long Bridge Project; and

WHEREAS, the FEIS and ROD contain certain assumptions, one of which is that DDOT is the owner of Interstate 395 (“**I-395**”) within the Long Bridge Project limits, however, the portion of I-395 running through East and West Potomac Park (the “**I-395 Park Segment**”) remains in the inventory of NPS, necessitating a special use permit for entry; and

WHEREAS, NPS and DDOT have agreed to undertake a transfer of jurisdiction (“**TOJ**”) for the I-395 Park Segment, and DDOT is currently in the process of completing the survey work needed for the TOJ; and

WHEREAS, the District of Columbia, in support of the Bike and Ped Bridge, in its Fiscal Year 2025 Local Budget Act of 2024 (D.C. Act 25-501), transmitted to Congress on August 6, 2024, allocated capital funding for the Bike and Ped Bridge in the amount of fifty-one million, seven hundred thousand dollars (\$51,700,000) in future years associated with project number LMXLBC and facility name “Long Bridge Pedestrian and Bicycle Connection” (the “**District-Supplied Funding**”); and

WHEREAS, the District of Columbia will use a portion of the District-Supplied Funding for its own costs in support of the Bike and Ped Bridge (the “**District Costs**”); and

WHEREAS, DDOT has agreed to review and approve (i) the design of the Bike and Ped Bridge and (ii) any work in the DDOT right-of-way, and (iii) any work impacting the I-395 Park Segment (including prior to the completion of the TOJ); and

WHEREAS, VPRA acknowledges that if the Long Bridge Project commences before the TOJ is complete, and access is needed to the I-395 Park Segment, then VPRA will need to obtain special use permits or other land rights from NPS; and

WHEREAS, VPRA also agrees that if the TOJ is completed before VPRA obtains special use permits or other land rights from NPS, once the TOJ is complete, VPRA will need to obtain a public space permit from DDOT for the relevant Long Bridge Project assets; and

WHEREAS, the parties desire to enter into this agreement to memorialize the cooperation on the design and construction of the Long Bridge Project, and transfer of the Bike and Ped Bridge from VPRA to DDOT after construction.

EXECUTION VERSION

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained in this agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following.

A. DEFINITIONS. Capitalized terms used but not otherwise defined herein shall have their normal and customary meanings. Capitalized terms used in this agreement and not otherwise defined in the recitals or body provisions hereof shall have the following definitions.

a. **“Bike and Ped Bridge Best Practices”** shall mean:

- i. **Reinforcement**: reinforcement for concrete deck, approach slab, curbs, diaphragms, abutments and piers shall conform to AASHTO M 334M/M 334-17 *Standard Specification for Uncoated, Corrosion-Resistant, Deformed and Plain Chromium Alloyed, Billet-Steel Bars for Concrete Reinforcement and Dowels*, UNS* Designations: K81550 (Alloy Type 1035 CS steel with a minimum chromium content of 9.2%) or S24100 (VDOT Type 1);
- ii. **Concrete Mix Design**: new DDOT standard concrete mix (expected to be issued as final in 2024, with a draft to be provided by DDOT to VPRA) to be used for the bridge deck, all other components shall meet DDOT standard concrete mix designs;
- iii. **Structural Steel Paint**: structural steel paint system shall meet the requirement of the DDOT Standard Specifications;
- iv. **Abutments Joint Details**: eliminate bridge deck joints by using deck extensions similar to the VDOT detail;
- v. **Deck Joint Details (Strip Seals)**: deck joints shall be strip seals (compression seals shall not be used);
- vi. **Deck Joint Details (Link Slabs)**: minimize joints over piers by eliminating every other joint by using link slabs (link slabs are required to include stainless steel reinforcement to eliminate risk of corrosion due to link slab rotations); and
- vii. **Curbs**: metal plate curb dams shall not be used, rather, a full concrete curb upstand shall be provided to direct drainage.

b. **“Bike and Ped Bridge Minimum Standards”** shall mean the minimum design standards applicable to the Bike and Ped Bridge required to:

- i. comply with published DDOT Standards and Specifications;

EXECUTION VERSION

- ii. comply with DDOT's demonstrable standard practices on DDOT-led and DDOT-funded projects (even if not required by DDOT's published Standards and Specifications);
- iii. implement the Bike and Ped Bridge Best Practices;
- iv. comply with applicable law and regulations;
- v. ensure the Bike and Ped Bridge is safe for users, including compliance with Titles I and II of the Americans with Disabilities Act, 42 USC §§ 12101, *et seq.*; and
- vi. implement Life Cycle Design Changes;

provided, however, that with respect to (i) and (ii) above, the applicable and governing versions of those standards shall be the standards at 30% design, provided further that if construction does not begin on or before December 31, 2028, then the design standards at that time shall apply.

- c. **“Life Cycle Design Change”** shall mean a design change proposed by DDOT with respect to the Bike and Ped Bridge to facilitate reasonable economy of operations and ease of maintenance of the Bike and Ped Bridge, *provided, however,* that VPRA will have no duty to incorporate any Life Cycle Design Change if any of the following is true: (i) the incorporation of such Life Cycle Design Change would likely result in the aggregate cost to incorporate all Life Cycle Design Changes to exceed two percent (2%) of the cost estimate (measured by the firm price provided by VPRA's design-builder) to design and construct the Bike and Ped Bridge, (ii) DDOT proposes the Life Cycle Design Change after DDOT's review opportunity to comment with respect to the 90% design, or (iii) the Life Cycle Design Change has a negative impact on the Rail Critical Path.
- d. **“Rail Critical Path”** shall mean the longest sequence of interdependent activities or tasks identified in a construction schedule that must be completed for the New Rail Bridge to be open for passenger rail traffic.

B. VPRA ROLES AND RESPONSIBILITIES. VPRA agrees to do the following:

- 1. use its best efforts to obtain funding in addition to the District-Supplied Funding for the implementation of the Bike and Ped Bridge;
- 2. manage the implementation of the Bike and Ped Bridge as described in the FEIS and ROD;
- 3. obtain all governmental approvals and permits necessary and proper for the implementation of the Bike and Ped Bridge;

EXECUTION VERSION

4. procure the design and construction of the Bike and Ped Bridge in accordance with this agreement;
5. for any assets or property that DDOT will own, operate, and maintain after construction of the Long Bridge Project (inclusive of the I-395 Park Segment and the Bike and Ped Bridge) and for components of the Long Bridge Project that will impact the public space (*e.g.*, rail bridges over public space), VPRA shall:
 - a. transmit to DDOT for review and comment relevant design submittals,
 - b. allow DDOT to undertake supplemental compliance inspections during construction,
 - c. include DDOT inspectors in construction progress meetings held between VPRA and third-party contractors,
 - d. transmit monthly to DDOT reports and other construction documentation to verify compliance and other efforts related to ongoing construction activities (including but not limited to schedule updates, material testing reports, material approvals, requests for information (RFI), non-conformance reports, delivery tickets, quality management plans, inspector daily reports, documentation of field design changes, material certifications including Buy America, systems testing reports), and
 - e. transmit weekly to DDOT weekly progress reports and two week look-ahead schedule;
6. provide to DDOT for its concurrence each proposed alternative technical concept impacting the Bike and Ped Bridge prior to VPRA accepting and incorporating such alternative technical concept.
7. act as lead for the Bike and Ped Bridge reviews, and implementation of approved mitigation;
8. use DDOT's customary permit submission portals to submit any required DDOT permit applications related to the Long Bridge Project;
9. acquire all permits and authorizations needed for construction, maintenance, and operation of the Bike and Ped Bridge, including, for the avoidance of doubt, any such permits and authorization from NPS, Arlington County, VA, the State of Virginia, the District government, the federal government, and any other governmental body; and
10. acquire all property interests needed for the long-term operation and maintenance of the Bike and Ped Bridge, including, for the avoidance of doubt, any such property interests from NPS, Arlington County, VA, the State of Virginia, the federal government, and any other governmental body.

EXECUTION VERSION

C. DDOT ROLES AND RESPONSIBILITIES. DDOT agrees to the following:

1. with respect to the Long Bridge Project, endeavor to timely (i) review and process any permit applications submitted to DDOT, (ii) issue such permits upon satisfaction of applicable conditions, and (iii) conduct any DDOT inspections of the construction work, in all cases with the goal of avoiding or minimizing negative schedule impacts arising from delays of any such reviews, issuances, or inspections;
2. implement a design review and approval process for the Bike and Ped Bridge, which ensures such design meets the Bike and Ped Minimum Standards;
3. for any (i) assets or property that DDOT will own, operate, and maintain after construction of the Long Bridge Project (inclusive of the I-395 Park Segment and the Bike and Ped Bridge), or (ii) components of the Long Bridge Project that will impact the public space (*e.g.*, rail bridges over public space), DDOT will have the right (but not the duty) to:
 - a. receive, review, and comment on relevant design submittals, provided that, no design reviews conducted by DDOT under this agreement shall be construed to shift professional or other liability for such design to DDOT,
 - b. conduct supplemental compliance inspections during construction, provided that, no inspections conducted by DDOT under this agreement shall be construed to shift liability for the inspected work to DDOT, and provided further that, DDOT shall conduct such inspections in coordination with the third-party that is in control of the relevant site, and may conduct such inspections randomly, and VPRA shall require its contractor(s) provide access to the work area,
 - c. require DDOT inspectors to attend construction progress meetings held between VPRA and third-party contractors, and
 - d. receive reports and other construction documentation required under Section B.5.d above from VPRA to verify compliance and other efforts related to ongoing construction activities;
4. make available to VPRA the District-Supplied Funding for the Bike and Ped Bridge, subject to the conditions of this agreement;
5. accept District of Columbia ownership of the Bike and Ped Bridge subject to the conditions of this agreement;
6. provide support to the Long Bridge Project including, but not limited to, permit review for elements located in DDOT's public space; and

EXECUTION VERSION

7. provide VPRA one or more public space permits necessary to construct, maintain, and operate the Long Bridge Project assets within the DDOT public space.

D. ONGOING OVERALL COORDINATION. With respect to the Long Bridge Project in its entirety, the parties will:

1. coordinate with one another in good faith on construction schedules, maintenance of traffic, construction access, and public outreach with respect to the Long Bridge Project and other overlapping or nearby DDOT-led projects;
2. upon request by the other party, share available information relating to any third-party rights (*e.g.*, utilities) relevant to components of the Long Bridge Project work;
3. engage in the following ongoing coordination groups at intervals agreed by the parties:
 - a. the parties' technical teams to meet to address engineering and other technical issues;
 - b. the parties' planning and legislative teams to meet to advance funding opportunities and/or legislative initiatives;
 - c. the parties' executive level staff to meet to review the progress of the Long Bridge Project;
 - d. the parties' public outreach staffs to meet to coordinate communications and other public outreach related to street and road closures in the District of Columbia, along with other construction updates; and
 - e. the parties' legal and real property teams to collaborate with respect to the development of plats, deed forms, and other documents related to the transfer of real property from NPS to VPRA pursuant to the Long Bridge Act of 2020 (Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1447, 1507 (December 27, 2020)), certain of which real property rights will be transferred to DDOT, subject to the conditions of this agreement, in support of the long-term ownership, maintenance, and operation of the Bike and Ped Bridge.

E. DISTRICT FUNDING.

1. Reimbursements. Subject to the conditions of this agreement, DDOT shall make available to VPRA the District-Supplied Funding, less the District Costs, in support of the Bike and Ped Bridge. DDOT shall make payments to VPRA up to the amount of the District-Supplied Funding on a reimbursable, cost-incurred basis and after the submission by VPRA to DDOT of a request for reimbursement that documents

EXECUTION VERSION

the costs VPRA incurred on the construction of the Bike and Ped Bridge that are chargeable to DDOT and that includes complete documentation of the costs incurred, including invoices and proofs of payment. VPRA shall submit a request for reimbursement within fifteen (15) days after the end of each calendar quarter. DDOT shall use reasonable efforts to make payment to VPRA within sixty (60) calendar days after receiving a complete request for reimbursement.

2. Overrun Risk. DDOT shall provide to VPRA an amount up to the District-Supplied Funding amount without bearing the risk of cost overruns related to the Bike and Ped Bridge, or the reward of cost savings related to the Bike and Ped Bridge.
3. District Costs; Non-Binding District Costs Estimate. DDOT will apply the District-Supplied Funding to cover the District Costs. Following execution of this agreement, VPRA shall provide to DDOT information necessary so that DDOT is able to develop a non-binding, good faith estimate of the District Costs throughout the life of the Long Bridge Project (the “**Non-Binding District Costs Estimate**”). Thereafter, if at any time DDOT reasonably believes that the actual District Costs will be greater than Non-Binding District Costs Estimate, then DDOT shall notify VPRA in writing as soon as practicable, and the parties will meet and confer within thirty (30) days after such notice to review and agree upon the anticipated additional amount of District Costs. If agreement cannot be reached on the District Costs, then DDOT shall have the right, in its sole discretion, to stop work under this agreement.

F. TRANSFER OF BIKE AND PED BRIDGE TO DDOT.

1. Notice of Substantial Completion. Once VPRA believes construction of the Bike and Ped Bridge has advanced to the point where it can be opened for use by the public, VPRA shall provide written notice of substantial completion to DDOT. For clarity, nothing in this agreement shall be construed to obligate VPRA to open the Bike and Ped Bridge for use by the public prior to transferring title to the Bike and Ped Bridge to DDOT. Within ten (10) calendar days after VPRA delivers such notice, the parties will conduct a joint inspection of the Bike and Ped Bridge and VPRA shall provide to DDOT a list of work that does not conform to the construction specifications (the “**Punch List**”). In conjunction with such inspection, VPRA shall make available to DDOT documentation supporting the close out of any deficiencies identified through DDOT inspector daily reports and non-conformance reports issued during construction.
2. Conditions for Substantial Completion. To be considered substantially complete, the following shall be true with respect to the Bike and Ped Bridge:
 - a. all bicycle and pedestrian lanes shall be in their final configuration and available for normal operations and safe use;
 - b. all major safety features are installed and functional;

EXECUTION VERSION

- c. all required lighting for normal and safe use and operation is installed and functional;
 - d. all required signage and pavement markings for normal and safe use are installed and functional;
 - e. the need for temporary traffic controls or lane closures at any time has ceased (other than for routine maintenance or to complete Punch List items);
 - f. VPRA has otherwise caused the completion of the Bike and Ped Bridge in accordance with all applicable requirements, and it is in a physical condition such that it can be used for normal and safe pedestrian, bicycle, and permitted vehicular travel at all points of entry and exit, subject only to Punch List items;
 - g. all utilities, if any, have been installed and accepted by the applicable utility company; and
 - h. VPRA has provided a bridge load rating to DDOT with respect to the Bike and Ped Bridge.
3. DDOT Verification of Substantial Completion. Within fifteen (15) business days after conducting the joint inspection, DDOT shall either provide to VPRA a written certificate of substantial completion, or a written notice that substantial completion has not been achieved, noting the deficiencies. Thereafter, the process shall be repeated until DDOT issues a certificate of substantial completion.
4. Notice of Final Completion. Once VPRA believes all Punch List items have been completed, it shall provide written notice of final completion to DDOT.
5. Conditions for Final Completion. To be considered finally complete, the following shall be true with respect to the Bike and Ped Bridge:
- a. VPRA has achieved substantial completion;
 - b. VPRA has removed all construction material, construction equipment, and construction refuse from the Bike and Ped Bridge;
 - c. VPRA has completed all Punch List work; and
 - d. VPRA has delivered to DDOT as-built plans stamped by a professional engineer.

EXECUTION VERSION

6. DDOT Verification of Final Completion. Within fifteen (15) business days after receiving VPRA's written notice of final completion, DDOT shall either provide to VPRA a written certificate of final completion, or a written notice that final completion has not been achieved, noting the deficiencies. Thereafter, the process shall be repeated until DDOT issues a certificate of final completion.
7. Additional Conditions Prior to Transfer. Even after DDOT has issued a certificate of final completion, the Bike and Ped Bridge will not be transferred by VPRA to DDOT unless:
 - a. VPRA has transferred all transferable warranties to DDOT with respect to the Bike and Ped Bridge;
 - b. the Bike and Ped Bridge has gone through the process such that it is eligible to be added to the public space in accordance with District of Columbia law and regulation; and
 - c. VPRA has obtained all permits, authorizations, and property interests referred to in Section B.9 and B.10, above.
8. Transfer of Title. Upon achieving final completion with respect to the Bike and Ped Bridge, and upon satisfaction of the additional conditions listed in Section F.7. above, the parties shall enter into one or more mutually agreeable instruments transferring title of the Bike and Ped Bridge from VPRA to DDOT and transferring any permits, authorizations, and property interests referred to in Section B.9 and B.10, above, or rights thereunder, needed to allow for DDOT's maintenance and operation of the Bike and Ped Bridge. Such instruments shall be in a form acceptable to DDOT and shall, at a minimum, provide sufficient rights, in DDOT's sole discretion, to re-construct, operate, and maintain the Bike and Ped Bridge together with unrestricted access to DDOT for the long-term operation and maintenance of the Bike and Ped Bridge and emergency access. To the extent VPRA is unable to deliver instruments in a form or with sufficient interest acceptable to DDOT or DDOT stops work under Section E.3. above, then DDOT's sole remedy under this agreement shall be refusal to accept title to the Bike and Ped Bridge. The right to operate and duty to maintain the Bike and Ped Bridge will only shift to DDOT when (i) DDOT agrees to accept the Bike and Ped Bridge, and (ii) upon the recordation of the documents transferring title. After the Bike and Ped Bridge is transferred to DDOT, DDOT shall operate and maintain the Bike and Ped Bridge at its own cost and expense, and VPRA shall have no continuing duties with respect to the Bike and Ped Bridge, except that VPRA shall, upon request of DDOT,

EXECUTION VERSION

enforce any non-transferable warranties during the relevant warranty periods, for the benefit of DDOT with respect to the Bike and Ped Bridge.

G. NOTICES.

Notices and other communications required or permitted under this agreement shall be in writing and delivered via email, sent by recognized overnight delivery service, or by certified or registered mail, postage prepaid with return receipt requested. All notices shall be addressed as follows:

If to DDOT:

District Department of Transportation
Government of the District of Columbia
250 M Street, SE
Washington, DC 20003
Attention: Acting Director
Email: sharon.kershbaum@dc.gov

District Department of Transportation
Government of the District of Columbia
250 M Street, SE, Suite 633
Washington, DC 20003
Attention: Chief Engineer
Email: richard.kenney@dc.gov

District Department of Transportation
Government of the District of Columbia
250 M Street, SE
Washington, DC 20003
Attention: General Counsel
Email: Frank.Seales@dc.gov

If to VPRA:

Virginia Passenger Rail Authority
919 East Main Street, Suite 2400
Richmond, Virginia 23219
Attention: Executive Director
Email: dj.stadtler@vpra.virginia.gov

Virginia Passenger Rail Authority
919 East Main Street, Suite 2400
Richmond, Virginia 23219
Attention: Chief Operating Officer
Email: michael.mclaughlin@vpra.virginia.gov

Virginia Passenger Rail Authority

EXECUTION VERSION

919 East Main Street, Suite 2400
Richmond, Virginia 2319
Attention: General Counsel
Email: michael.westermann@vpra.virginia.gov

H. DISPUTE RESOLUTION.

1. The parties will promptly attempt in good faith to resolve any controversy or claim arising out of or relating to this agreement.
2. As the first level of dispute resolution, the Chief Engineer of the Infrastructure Project Management Administration of DDOT and the Chief Operating Officer of the VPRA or their designee shall resolve all adjustments and disputes arising from services performed under this agreement.
3. If the dispute cannot be resolved at the first level, the Director of DDOT and the Executive Director of the VPRA shall resolve all adjustments and disputes arising from services performed under this agreement.
4. If a mutually satisfactory resolution cannot be achieved in the manner described above, the parties retain all rights to pursue actions available under law.

I. TERMINATION

The parties may terminate this agreement in whole or in part by giving ninety (90) days' notice to the other party based on any of the following grounds:

1. lack of a Congressionally approved budget;
2. insufficient funding to implement the Long Bridge Project;
3. changes in applicable law which renders impossible the ability of either party to perform its obligation hereunder;
4. where compliance with this agreement would violate state, federal, and/or District of Columbia laws or regulations; and
5. where compliance with this agreement would violate the Anti-Deficiency Act.

J. GENERAL TERMS AND CONDITIONS.

1. Incorporation of Recitals. The recitals are hereby incorporated by this reference into this agreement and made a part hereof.
2. Independent Agency. It is agreed that the relationship between the parties to this agreement is that of independent agencies. Nothing contained herein shall be

EXECUTION VERSION

- interpreted or construed to mean that any party is acting as an employee, employer, partner, or joint venture of or with any of the other parties. All persons performing services which are to be performed by one party will at all times be under the exclusive direction and control of that party and will be employees or agents of that party and not employees or agents of any other party.
3. Laws, General Powers; Immunity. DDOT is subject to all laws governing federal and District of Columbia procurements and to all regulations and rules promulgated thereunder, whether now in force or hereafter enacted or promulgated. Nothing in the agreement shall be construed as in any way impairing the general powers of the District of Columbia, nor shall it be construed in any way to waive the sovereign immunity of VPRA or the Commonwealth of Virginia.
 4. Representations and Warranties
The parties warrant and represent that:
 - a. each party has full power and authority to enter into and perform this agreement;
 - b. the execution, delivery, and performance of this agreement by each party has been duly authorized by all requisite governmental action; and
 - c. this agreement has been executed and delivered by each party's duly authorized official.
 5. Sole Agreement. This agreement constitutes the entire understanding between DDOT and VPRA with respect to the subject matter hereof. This agreement supersedes any and all previous agreements, commitments, and understandings between the parties, whether oral or written, and neither DDOT nor VPRA has relied on or will rely on any representation of the other except to the extent set forth herein. This agreement may not be modified except by way of a writing signed by duly authorized representatives of DDOT and VPRA.
 6. Severability. If any provisions of this agreement or the application of any provision to any person or circumstance is held invalid, the remainder of this agreement and the application of such provision to other persons or circumstances shall not be affected unless the provisions held invalid shall impair substantially the benefits of the remaining portions of this agreement.
 7. Authority. The authority for DDOT to enter into this agreement is 23 CFR 646 Subpart B: Railroad – Highway Projects, D.C. Official Code 50-921.02(f)(1)(B). The authority for VPRA to enter into this agreement is Va. Code Ann. § 33.2-292(9) (2021). Nothing in this agreement shall be construed as limiting or affecting the legal authority of the parties or requiring the parties to perform beyond their respective authority. Nothing in

EXECUTION VERSION

this agreement shall be deemed to bind any party to expend funds in excess of available appropriations and allocations.


8. Anti-Deficiency Limitations. The obligations of DDOT to fulfill financial obligations pursuant to this agreement are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2004), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2006 Supp.) ((i) and (ii) collectively, as amended from time to time, the “**Anti-Deficiency Acts**”); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in this agreement shall create an obligation of DDOT in anticipation of an appropriation by Congress for such purpose, and DDOT’s legal liability for the payment of the any agreed upon contribution or other charges pursuant to the terms of this agreement shall not arise or vest in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress. This agreement shall not constitute an indebtedness of the District of Columbia, nor shall it constitute an obligation for which the District of Columbia is obligated to levy or pledge any form of taxation or for which the District of Columbia has levied or pledged any form of taxation. No District of Columbia official or employee is authorized to obligate or expend any amount under this agreement unless such amount has been appropriated by act of Congress and is lawfully available.
9. VPRA Appropriation and Allocation. The parties acknowledge and agree that all financial obligations of VPRA are subject to appropriations by the General Assembly, approval by the VPRA Board, and in some cases, allocation by the Commonwealth Transportation Board.
10. Counterparts. This agreement may be executed in triplicate and with multiple counterparts, all of which when taken together shall constitute one and the same instrument.
11. Rule Against Perpetuities. If any provision of this agreement shall be interpreted to constitute a violation of the Rule Against Perpetuities as statutorily enacted in the District of Columbia, such provision shall be deemed to remain in effect only until the death of the last survivor of the now living descendants of any member of the 118th Congress of the United States, plus twenty-one (21) years thereafter.

The parties have caused this agreement to be executed, each by its duly authorized officers.

[SIGNATURE PAGE FOLLOWS]

EXECUTION VERSION

DISTRICT DEPARTMENT OF TRANSPORTATION

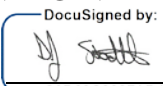
By:  _____

Name: **SHARON KERSHBAUM**

Title: **ACTING DIRECTOR**

Date: 9/16/2024

VIRGINIA PASSENGER RAIL AUTHORITY

By:  _____
C0D69C9037AD424...

Name: **DJ STADTLER**

Title: **EXECUTIVE DIRECTOR**

Date: 9/16/2024

[SIGNATURE PAGE TO MOA BETWEEN DDOT AND VPRA FOR COORDINATION ON THE LONG BRIDGE PROJECT]

EXHIBIT Z – SPECIAL PROVISION REGARDING PARTICIPATION IN THE U.S. DEPARTMENT OF LABOR’S OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS MEGA CONSTRUCTION PROJECT PROGRAM (SP10)

The U.S. Department of Labor’s Office of Federal Contract Compliance Programs (“OFCCP”) has a Mega Construction Project Program through which it engages with project sponsors as early as the design phase to help promote compliance with non-discrimination and affirmative action obligations. Through the program, OFCCP offers contractors and subcontractors extensive compliance assistance, conducts compliance evaluations, and helps to build partnerships between the project sponsor, prime contractor, subcontractors, and relevant stakeholders. OFCCP engagement can provide immediate impact on contractor and subcontractor recruitment and hiring the construction trades and can help build robust applicant pools that include talented workers from underrepresented backgrounds

Federally assisted contractors and subcontractors are required to participate in the Mega Construction Project Program whenever a project has been designated for inclusion in the program by the OFCCP. Projects eligible for designation as Megaprojects are valued at \$35 million or more in funding, some part of which must be federal funding, and are expected to last for at least one year.

The Project has been designated as a Megaproject by the OFCCP. Federal financial assistance furnished in support of the Project obligates Design-Builder and any of its Subcontractors to participate in the Mega Construction Project Program and to fulfill the program obligations throughout the duration of the Agreement. Details regarding Mega Construction Project Program and the obligations of contractors and subcontractors thereunder can be obtained at the OFCCP’s website <https://www.dol.gov/agencies/ofccp/Mega-Construction-Project-Program> or by calling OFCCP’s Customer Service Desk at 1-800-397-6251.

Design-Builder shall flow down the terms of this Special Provision in any subcontractor agreements issued on the Project.